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# A Preliminary Study of Third-Party Funding Regulation for International Commercial Arbitration

**Abstract:**

*In the context of increasingly complex international commercial disputes and diversified demands for dispute settlement, the development of third-party funding is irresistible. The third-party funding model while providing investment opportunities for the funders and sharing the economic burden and arbitration risks for the parties to disputes, makes up for the lack of a legal aid system in the arbitration field which indirectly improves the quality of arbitration trials, thus promoting the better development of arbitration as a dispute settlement method. However, the ensuing conflicts of interest, the confidentiality of cases, enforcement, and other risks also pose significant challenges to arbitration practice. It is, therefore, necessary to establish sound regulatory mechanisms to protect the development of third-party funding models. In this paper, the risks faced by the model in practice are analyzed, and the relevant factors hindering the better development of the model are clarified. On this basis, the interests of all subjects are taken into account, the process of each stage is regulated in detail, and the "regulation" of third-party funding is overall structured.*

**Keywords:** international commercial arbitration; dispute settlement; third-party funding; conflict.

## Introduction:

In international commercial arbitration, the third-party funding (TPF) refers to that the third party unrelated to the case provides the arbitration parties with the cost assistance during the arbitration period, and through signing the funding agreement, it is agreed to receive the benefits of the partial winning award under the premise of winning the case or obtain the funding return in other specific ways. The TPF model originated from an ancient criminal charge in common law countries-*"maintenance and champerty."* With social development and institutional progress, this crime has been gradually outlawed in some countries and regions, replaced by explicit recognition of the third-party funding model in legislation and practice. The TPF mode's flourishing development brings many benefits to the arbitration practice but also brings a series of challenges.[1] The current concerns of the academic community mainly focus on the conflicts of interest between third-party sponsors, sponsored parties, lawyers, arbitral tribunals, and cost-sharing, confidentiality, enforcement, and other issues. How to solve these problems and avoid related risks is the focus of this paper.

In the common law system, countries and regions have mixed attitudes towards third-party funding. In the Chinese legal system, most of them are on a conservative wait-and-see basis, except for countries such as Germany, Switzerland, France, Austria, and the Netherlands, which have explicitly expressed their openness to the development of third-party financing in their own country. The TPF mode's flourishing development brings many benefits to the arbitration practice but also brings a series of challenges. The current concerns of the academic community mainly concern the conflicts of interest between third-party sponsors, sponsored parties, lawyers, arbitral tribunals, and cost-sharing, confidentiality, enforcement, and other issues. How to solve these problems and avoid related risks is the focus of this paper.

### 1. Clarify the challenges brought by the TPF model to arbitration practice:

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The challenge posed by the TPF model to arbitration practice focuses on the following four aspects. First, the third-party funders are not the parties to the arbitration. The details of the case that the funders learned in the whole dispute settlement process, from the conclusion of the funding intention to the signing of the funding agreement to the end of the case arbitration, are likely to threaten the performance of the confidentiality obligation of the arbitration. Second, third-party funding is essentially an investment act. The interests of the funders are closely related to the arbitration results of the case. To achieve the purpose of investment proceeds, the funders may intervene in the selection of lawyers, determination of claims, and strategic selection and settlement conditions in the arbitration proceedings. Third, it is difficult for a lawyer who cooperates with third-party funders for a long time to act as an agent or arbitrator in a case in which the sponsor is involved to ensure that its independence and impartiality are not affected. Fourth, different countries (or regions) have different recognition levels of third-party funding, which also brings enforcement risks to arbitration awards involving third-party funding.[2]

The question of whether third-party funding would encourage abuse remains open to question; whether the two aspects of cost-sharing and the conflict of interest between the parties to be funded and the third party funding constitute a challenge to arbitration still needs to be further explored? Because of the above questions and challenges, the author makes the following finding.

***(1) Third-party funding will not lead to abuse:***

The essence of third-party funding is investment behavior, and the purpose of investment is to make profits. Because in the third-party funding, whether the funder can profit from it depends on the probability of winning the lawsuit. Therefore, before the funding, the funder will conduct a comprehensive investigation: filter out the cases with the low winning rate or no arbitration value through investigation and seek the causes that can achieve a certain balance between the expected return and risk. So far, there is no data or evidence that the development of third-party funded arbitration systems has led to an increase in cases of bogus claims in arbitration practice. In fact, through multiple prudential, rigorous, professional due diligence, third-party donors end up investing only in a small number of cases in which they receive a large number of funding requests. In addition, third-party funders generally inform the parties to the dispute of the reasons for the refusal when rejecting their applications for financial assistance. In cases where the success rate of claims is low, the parties may be inspired by the sponsors' reasons for rejection rather than devote effort, time, and financial resources to a pointless arbitration. In this way, the TPF model will also reduce and avoid many frivolous claims. It is believed that the third-party funders, for their benefit, will encourage the parties to increase the number of claims arbitrarily. In the case of dispute, whether to choose the way of money claim is a right of the parties to the dispute. The ultimate success of the claim and the amount of the specific claim depends on the judgment of the arbitral tribunal.[3] The amount of the dispute generally affects the collection of the case acceptance fee, while third-party sponsors are usually experienced investors, and have their own internal or external legal and financial affairs experts to help the parties determine the amount claimed. Third-party sponsors would, therefore, strive to balance the number of claims recovered in the case of final victory against the number of arbitration expenses invested in, rather than unreasonably encouraging the parties to increase their claims.[4]

***(ii) The cost-sharing of the award is not subject to third-party funding:***

In countries such as the United Kingdom and Germany, the costs of third-party funding for arbitration can be compensated as litigation or arbitration costs. For example, in a September 2016 case in the High Court of England, a judge found third-party funding costs as "other costs" in arbitration compensable, However, in countries such as Brazil, Finland, and Sweden, the third-party funding the arbitration is not a party to the arbitration and is not a qualified subject to claim for compensation.[5]

The principle of contract relativity can solve this problem effectively. The idea is first to determine the eligible applicants of cost compensation, and secondly determine the attribution of cost compensation. In making the cost award, the arbitral tribunal does not consider the existence of third-party funders or non-parties in the arbitration, let alone the funding agreement, in determining the sharing of arbitration costs among the parties. According to the relativity analysis of the contract, the legal relationship between a third-party financial sponsor and the party financed shall be adjusted by the financial aid agreement, and the arbitral tribunal shall adjust any interest dispute between the parties to the arbitration according to the dispute resolution clause in the original commercial contract. The contribution of the third party to an arbitration fee shall be solely attributable to the party against whom the arbitration fee is to be paid based on the aid agreement, and for the arbitral tribunal, the arbitration fee shall be equivalent to the contribution of the party. Although a third-party sponsor is not qualified to file a claim for

compensation because it is not a party to the arbitration, the party to be funded is undoubtedly qualified. Therefore, the arbitral tribunal, in determining the costs of arbitration, only needs to determine the cost-sharing of the parties following the normal award process, cost considerations, and the rules for the award of the unfavorable claim.[6]

If an arbitration applicant is envisaged to be funded by a third party, the compensation for the arbitration expenses to be paid by the applicant shall still be paid by the applicant (even if a third party funds the arbitration expenses) when the applicant wins the lawsuit. At the same time, the claimant's claim amount due to the award of victory should also be awarded by the arbitral tribunal to the applicant without involving third-party funders. As for the investment returns of third-party funders, the funding agreement will explicitly stipulate the calculation of the benefits after the final victory, including what the basic benefits include and the specific proportion.[7] Therefore, both parties to the financing agreement may negotiate whether the calculation basis includes the award of the winning arbitration fee.

If one party to the financial aid loses the lawsuit, according to the arbitration cost-sharing rules, the expenses for the unfavorable lawsuit that should be borne by the party to the financial aid losing the lawsuit shall still be borne by it. As to whether the actual expenses are paid by the party against whom the financial aid is granted or by a third party, it is a distribution of rights and obligations between the parties against whom the financial aid is granted. It shall be stipulated in the financial aid agreement, which is irrelevant to the arbitral tribunal. Therefore, the arbitral tribunal may not issue cost awards directly to third-party funders without considering the presence of third-party funders in making cost awards.[8] If a dispute arises between a third-party sponsor and the sponsored party over the performance of the sponsorship agreement, the dispute settlement clause as agreed upon in the sponsorship agreement shall be dealt with separately.[9]

***(iii) Follow the principle of a voluntary contract between the funded party and the funder:***

From the perspective of legal theory, the conflicts and imbalances between the funded parties and the third-party funders should belong to the scope of the arbitration investment market and the parties to the financing agreement to resolve by themselves, and the arbitration rules and legal norms should not be too involved.

First, the relationship between the funded parties and the funder is the same subject, and the funding agreement concluded by both parties is a civil and commercial contract in nature. In the civil and commercial field, some people believe that the parties whose legitimate rights and interests are damaged will not take judicial remedies based on the consideration of various factors, and the judicial authorities will take an attitude of "ignoring" them. In the case of civil and commercial disputes, the role of public justice is to provide the parties with an alternative means of redress, but it is up to the parties to decide whether or not to adopt and how to measure their claims. Arbitration, as an alternative dispute resolution method in the private field, requires not to be too much thinking about and involved in the creation of an environment of absolute fairness in international commercial activities[10].

Secondly, as Party A and Party B of the funding agreement, both parties can communicate and on specific matters. In the process of arbitration, the choice of lawyers, whether to reach a settlement, the determination of the contents of the settlement, and whether to continue to adhere to other reasonable demands except for economic interests belong to the realization and performance of the rights and obligations of both parties in the contractual relationship. As long as the contract is based on voluntariness, whether an agreement is finally reached and whether the agreement is fair or not should be the business of both parties of the funding agreement. If the two parties cannot reach an agreement, the parties to the dispute can find another funder, so there is no obvious unfair contract and take advantage of the situation. In addition, when deciding whether to withdraw from the funding agreement, the funder must consider the fund, time, and default cost agreed in the agreement. In the process of insisting that the willing arbitration strategy and appeal are not under the control of the sponsor, the sponsored party will also consider the risk of withdrawing the fund midway and the disadvantage it brings to itself. Even in the judicial proceedings in the public domain, the law also allows the parties and their agents to adopt litigation strategies in favor of themselves on the premise of not violating the law.[11]

## 2. The framework of the TPF Model Regulatory System to Meet Challenges:

As discussed earlier, the TPF model poses challenges to arbitration practice, primarily concerning case confidentiality, conflicts of interest, and enforcement. In response to these risks and challenges, many countries and regions that explicitly recognize third-party funding have begun to establish their own *"regulatory"* systems. For example, England and Wales in the United Kingdom have attempted to *"regulate"* them through a self-regulatory

model; Australia has adopted a combination of court-led authority and government-authorized access; Singapore has established a binding system of civil legislative authority supplemented by legal professional rules, and Hong Kong has adopted a self-regulatory model with legislative authority and a statutory disclosure system. Hong Kong has adopted an industry self-regulation model under legislative authority, which is coupled with a statutory disclosure system.

Many scholars have also discussed the construction of a risk *"regulation"* system under the third-party funding model, including.

(1) establishing a review mechanism for the filing of cases in third-party funded arbitration to avoid abusive litigation; (2) arbitration institutions improving the recusal and disclosure system for arbitrators by amending the arbitration rules and establishing a fee guarantee system for third-party funded cases; (3) parties to arbitration agreements explicitly agreeing by contract on the scope of case confidentiality in the presence of third-party funders; and (4) parties to arbitration expanding their authority to the arbitral tribunal through the arbitration agreement to allow them to use the arbitral tribunal in individual cases.

(3) The parties to the arbitration agreement contractually agree on the scope of confidentiality in cases involving third-party financiers, and (4) the parties to the arbitration agreement expand the authority of the arbitral tribunal to issue adverse costs orders against third-party financiers in individual cases. The author proposes that the best approach is not to establish separate prevention mechanisms for each of these risks but to build an integrated regulatory system.

(i) Establishment of a trade association for third-party funders of international arbitration

Some countries have established third-party funder associations to standardize and regulate domestic funders. For example, the United Kingdom (England and Wales) established the Litigation Funders Association in 2011. For example, in 2011, the United Kingdom (England and Wales) established the Association of Litigation Funders (ALF). The Association acts as a self-regulatory body for the industry to regulate the conduct of funders, and then the Civil Justice Council introduced the Code of Conduct for Litigation Funders to authorize the Association. The Code of Conduct for Litigation Funders was introduced by the Civil Justice Council to empower the Association to enforce it.[12]

However, given that not all countries (or regions) have self-regulatory organizations for third-party funders, and that the standards of self-regulatory organizations are not uniform across countries, it is important to note that the Code of Conduct for Litigation Funders was established by the Civil Justice Council to regulate the conduct of funders. However, given that third-party funder self-regulatory organizations do not exist in all countries (or regions), and that the standards of self-regulatory organizations are not uniform across countries, members of arbitral tribunals, parties, and their lawyers in international arbitration may come from different countries and regions. The inconsistency of regulatory standards may pose a risk of conflict of interest, confidentiality, etc. in international arbitrations where the members of the tribunal, the parties, and their lawyers may come from different countries and regions. The inconsistency of regulatory standards will inevitably lead to conflicts of interest, confidentiality, and other risks, thus threatening the smooth conduct and completion of arbitration. Therefore, while calling on countries and regions to expedite the establishment of, therefore, while calling on countries and regions to expedite the establishment of regional third-party financier associations, I advocate the establishment of an international third-party financier association. The author advocates the establishment of an international association of third-party funders, and the establishment of "industry guidelines" and information sharing with national and regional industry organizations to regulate third-party funders globally. I also advocate the establishment of an international association of third-party funders and the regulation of global third-party funders through the development of industry guidelines and information sharing with national and regional industry organizations.[13]

**1. The need for a third-party funder association**

First, the establishment of a third-party funder association can share the workload of arbitration institutions. By centralizing the management of information and conduct of funders, the association can avoid the risk of confidentiality and conflict of interest that may arise in the practice of third-party funded arbitration and separate the arbitration institution from the work of improving the case review and disclosure rules that may be required to regulate the conduct of third-party funders, thus easing the work pressure of the arbitration institution. Second,

separating the arbitral tribunal from the conflict-of-interest relationships that may arise from third-party funding. In conjunction with the proposal below (i.e., that the arbitration institution establishes a special department for third-party funding cases), the conflict of interest relationship between third-party funders and counsel representing the parties to the arbitration should be examined separately, and the arbitrator should be shielded from information about third-party funders instead of changes to the disclosure system, so that the arbitrator's decision-making process is not influenced by the existence of funding facts, thus providing the arbitral tribunal with a more independent and fairer decision space. In addition, compared to permanent arbitral institutions, third-party arbitrators are more likely to be able to provide a more independent and fair decision. In addition, third-party financier associations would have a clearer advantage over permanent arbitral institutions for ad hoc tribunals. In addition, the association's standardized management of funders and the follow-up of arbitration cases involving third-party funding provide investors and parties in need with an efficient and trustworthy platform for the timely and adequate search for their desired counterparties. This will help the TPF model of international arbitration to develop better.[14]

**2. Establishment, Nature, and Funding of the Association**

Since the development of third-party funded arbitration in the international community is still in its early stages, this paper proposes the establishment of the association should not be involved in litigation funding for the time being. The third-party funding association should issue licenses to its registered members to fund arbitrations, and international arbitration institutions should cooperate with the association. The association should issue a joint statement guiding its establishment and advocating those fund seekers actively use it as a platform to raise funds. The Association shall issue a joint statement guiding its establishment and promoting the active use of the Association as a platform for funding. Commercial entities and natural persons who wish to engage in third-party funding of arbitration, as well as those who have participated in arbitration funding before the establishment of the association, are urged to The association should be a voluntary and timely registration of commercial entities, natural persons and third parties who have participated in arbitration funding before the establishment of the association. This will help to improve the credibility of the association in the eyes of the parties to the dispute. The association's credibility and recognition in the minds of the parties to the dispute will be enhanced, and it will be easier for the financing association to review the relationship between the parties in its subsequent work. This will facilitate the review of the relationship between the parties in the subsequent work of the funding association and avoid conflicts of interest that may lead to the unsuccessful completion of the arbitration. The association is a self-regulatory organization, and membership is voluntary. On the one hand, the association gives, the association gives more supervision and protection to both parties to the funding agreement (especially to the funded party); on the other hand, it provides a more adequate financing platform for the parties in need. As a result, disputants are more likely to, on the other hand, provides a more adequate funding platform for parties in need of funding, so that parties in dispute will be more likely to send their funding requests to the association rather than seek funders privately, which will gradually promote potential third-party This will also gradually encourage potential third-party funders to proactively join the association.[15]

The Association's day-to-day operations are funded by three main sources: membership fees paid by members, donations from members, and a fixed honorarium paid by the member parties who receive investment opportunities. In particular, the Association is required to pay a flat fee to the sponsor of the investment opportunity. The reason for requiring funders of investment opportunities to pay a flat fee to the Association, rather than a percentage of the proceeds of a successful investment, is to prevent a sponsor from entering into a shady contract with a funded party regarding the funding agreement to avoid or reduce the amount of the fee. The Association shall not be liable for any failure to comply with the terms and conditions of the arbitration, or for any failure to truthfully communicate the results of the arbitration. The Association's contingency funds may be divided among the members according to the total costs to be incurred. The remaining costs after the contingency are resolved shall be allocated to the daily operating expenses. Daily operating expenses are mainly The Association's staff salaries and benefits and daily operations.[16]

**3. Association operation process**

The Association shall classify its members according to country, nature of the subject, etc., based on their registration, and shall publish on its official website the list shall be published with the basic information of each member (e.g. name of the subject, nationality, etc.). First of all, those who need financial support from the parties in dispute who are interested in financial support can apply to the association for financial support (no information about the case will be disclosed at this stage). The Association will send invitations to all registered members, and

those members who wish to fund the arbitration case shortly will have a deadline to submit their applications to the Members who wish to fund the case shortly may submit their application to the Association within the deadline. Next, the parties to the dispute applying for funding will select 3 to 5 parties from the alternative list of applicants. The three to five potential funders selected at this stage shall, under the supervision of the Association, work together with the dispute applicant. The selected 3-5 potential funders shall sign a case confidentiality agreement with the applicant under the supervision of the Association. Finally, the 3-5 potential funders selected at this stage shall sign a confidentiality agreement with the parties in dispute under the supervision of the Association. ～The 3-5 potential funders selected at this stage shall sign a confidentiality agreement with the party applying for funding under the supervision of the Association. If there are 2 or more funders, the choice will be given to the applicant. The final selection of the selected sponsor will sign a funding agreement with the applicant under the supervision of the Association. The above process can be accomplished by improving the Association's official website, creating a supporting system, and pre-setting the website. The above process can be accomplished by improving the association's official website, creating a supporting system, and pre-setting the website. As the association grows and becomes more recognized, it may be possible for a grantee to sign a funding agreement with the applicant in the future. If a funder and a funded party reach an agreement privately outside the association, it will also indirectly urge and compel them to actively and timely register with the association, to be able to register with the association promptly. The association will also indirectly urge and compel the grantees to actively and timely register with the association so that the rights and obligations of both parties can be better monitored throughout the process of the agreement. The Association will also indirectly urge and compel the parties to actively and timely register with the Association so that the rights and obligations of both parties can be better monitored throughout the implementation of the agreement. After the arbitration is completed and successfully executed, the parties to the funding agreement shall file the case with the Association promptly.[17]

**4. Associations improve risk prevention mechanisms**

The Association should establish its own rules and mechanisms to regulate the conduct of third-party funders, including, inter alia. Requirements on fund adequacy, restrictions on withdrawal of funds in the middle of an arbitration case, restrictions on the impact on the arbitration process, requirements on confidentiality of case information, establishment of a credit list and security deposit system for third-party funders, and establishment of corresponding penalties in case of violation of the rules, etc. To address the risk of conflict of interest, the third-party funding association should share information with the bar association to ensure the implementation of the filing review and practice restriction provisions. Each arbitration case funded by a third party must be registered with the association, including information about the funder, the funding agreement, the arbitrator, the parties and their representatives, and the outcome of the arbitration award. Lawyers and arbitrators who have served in third-party funded arbitrations are prohibited from serving in arbitrations involving the same funder for three years, thus preventing the establishment of a dependency relationship between lawyers and arbitrators, and third-party funders. This practice not only helps to avoid challenges to arbitrator neutrality and lawyer independence in specific cases but also helps to prevent the establishment of a dependency relationship between lawyers and arbitrators and third-party funders. The practice not only helps to avoid challenges to arbitrator neutrality and lawyer independence in specific cases but also provides information that can be traced after the fact for many potential problems.[18]

To establish a bond for the risk of insufficient funds, withdrawal of funds, and unfavorable litigation costs in case of unsuccessful litigation. Guarantee system. According to the case situation, the association may require the sponsor to pay a certain amount of guarantee in advance when signing the funding agreement. This deposit will be used to supervise the grantees. This deposit will be used to monitor the funder's timely and full performance of its obligations under the agreement and to provide for the following risks provide security for damages to both parties to the arbitration and the arbitral tribunal if the funder is underfunded during the arbitration. unilateral termination of the funding agreement by the funder during the arbitration without cause; the funder's failure to pay for any adverse claims that may exist under the agreement The parties to the arbitration agreement shall not be liable for any loss or damage caused to the parties to the arbitration or the arbitral tribunal. Parties to a funding agreement the parties to the agreement shall agree at the time of signing the agreement to bear the costs of adverse arbitration proceedings. In particular, if it is agreed that the funding The Association shall require the sponsor to pay the deposit if the sponsor agrees to bear the costs; if the sponsored party agrees to bear the costs on its own, the Association shall not be liable for the costs.[19]

If it is agreed that the funded party shall bear the costs, the association shall not have the right to request security for the funded party, but shall wait for the commencement of the arbitration proceedings until the other party applies or the arbitral tribunal decides whether to provide security for enforcement. If it is agreed that the party to be financed will be responsible for the execution of the guarantee, the Association shall not have the right to request the guarantee.

For the risk of confidentiality of the case, from the time the parties to the dispute seek funding to the conclusion of the funding agreement to the termination of the confidentiality obligation The Association will follow up and supervise the entire process from the time the parties seek funding to the conclusion of the funding agreement to the termination of the confidentiality obligation. The parties to the arbitration agreement should agree in the dispute resolution clause whether The parties to the arbitration agreement should make a clear agreement in the dispute resolution clause as to whether they can seek third-party funding and define the information that can be disclosed when seeking funding. Seeking Parties seeking funding do not need to provide any case information at the application stage to the Association; at the initial selection stage of three to five alternative funders, only information about the case is required. At the initial selection of three to five alternative funders, only some of the basic information agreed upon in the arbitration agreement is required, and the alternative funders are required to provide the same information as the party seeking funding at that stage.

Only at the final stage of the reciprocal selection is it necessary to disclose more information to the sole, identified funder. Only at the final stage of cross-selection should additional information about the case be disclosed to the sole, identified funder, and the confidentiality clause is re-agreed in the funding agreement. The Association shall strictly regulate the above-mentioned matters and shall not only support the funded parties in pursuing their civil liability if they violate the above-mentioned rules. The Association shall not only support the funded parties in pursuing their civil liability but also impose restrictions on them from engaging in arbitration funding for a certain period. The Association shall establish a credit list of third-party funders and publish on the Association's website the facts of their violations of the funding rules. The credit list of third-party funders will be published on the Association's website for violations of the funding rules. In practice, the market credibility of third-party funders is the most powerful tool for regulating their behavior.[20]

**(2) Bringing into play the role of professional regulation of the IBA**

1. Improve the code of conduct for lawyers' practice and the obligation to disclose conflict of interest

The IBA should, through the formulation and implementation of a code of conduct for lawyers, emphasize that lawyers should always act in the interests of their clients while complying with the law. In cases involving third-party funding, lawyers should be supervised to avoid meeting or establishing other interests with the funder outside of the parties to the dispute, and should not disclose their opinions on arbitration strategies and interests in the arbitration process. In the arbitration process, lawyers should not cede the right to choose their arbitration strategy and interests to the third-party financier. The firm should not compromise its independent judgment of the case by introducing the business or providing financial support to the third party.

To address the risk of conflict of interest, the ILA should maintain information sharing with third-party financier associations to ensure that the aforementioned filing review and practice restriction provisions are enforced. Lawyers who have been involved in cases involving third-party financiers should be urged to file relevant information with the association or report it to their law association and have the association notify the third-party financier association. Once a lawyer discovers a potential conflict of interest between the third-party financier and himself or herself in an arbitration case, he or she should immediately explain the situation to his or her client, whether the third-party financier is his or her client or the opposing party's financier, and let the client decide whether to change the lawyer or the financier.[21]

**2. Prohibiting Lawyers and Legal Services Organizations from Engaging in Third-Party Funding**

While there is nothing theoretically improper about lawyers and legal service providers as arbitration funders, the special status of lawyers and legal and legal service providers have a special status that makes it difficult to avoid the risk of conflict of interest when they participate as funders in arbitration cases. The special status of lawyers and legal service providers makes it difficult to avoid the risk of conflict of interest when they participate in arbitration cases as funders. As an important participant in dispute resolution, lawyers should always

represent and protect the interests of the client in the dispute resolution. The interests of the client should always be represented and protected. As two parties to a funding agreement, the interests of the funder and the client are not identical. The professional nature of the attorney's profession dictates that the parties to a dispute cannot judge the attorney's advice and arbitration strategy in the arbitration process. The professional nature of the legal profession means that parties to a dispute cannot determine whether the advice of counsel and arbitration strategy in the arbitration process is the best choice for their rights and interests. The parties choose to be represented by lawyers they trust, but when the lawyers also have another role that may conflict with their interests, it may be difficult for the parties to choose a lawyer that they trust. When the attorney also has another identity that may conflict with his or her interests, it is difficult for the client to maintain his or her trust and for the attorney to put the client's interests above his or her own.[22]

While we can regulate dual capacity in this context through a code of practice for lawyers or a code of conduct for sponsors, we can also restrict lawyers from acting as both an agent and a sponsor in the same case. We can also restrict lawyers from acting as both attorneys and funders in the same case, and legal service organizations from acting as funders in cases in which their lawyers act as attorneys. The first and foremost, however, is undeniably a dual role.

First of all, when a lawyer acts as a sponsor, it is difficult for him or her to truly separate his or her representation from that of the sponsor at the stages of the funding agreement, arbitration, and enforcement of the award. It is difficult for the lawyer to truly distinguish his or her dual identity as an agent and a financier, and it is difficult for the financier to enjoy substantive rights in the arbitration proceedings. Secondly, lawyers and legal service institutions, as a relatively fixed professional group, have a lot of influence on the arbitration process. Second, as a relatively fixed professional group, lawyers and legal service institutions have inseparable ties to society, including work Secondly, as a relatively fixed professional group, lawyers and legal service organizations have inseparable ties in society, including work, business ties, and competition in practice. Therefore, it is recommended that lawyers and legal service organizations be excluded. The legal service organizations are not eligible to engage in third-party financing.[23]

**(3) Establishment of a special department for third-party financing cases in arbitration institutions**

***i. Shielding information on third-party financiers of cases from the arbitral tribunal***

Each arbitration institution establishes a separate internal department dedicated to third-party funding to file, review, and monitor arbitration cases involving third-party funding. A separate department is established within each arbitration institution to file, review, and monitor arbitration cases involving third-party funding. This department shares information with international third-party financiers associations and Independent of the arbitral tribunal, the department reviews the conflict-of-interest relationships of the parties involved in the arbitration, including The review includes the attorneys representing the parties to the dispute, the third-party financier, and the members of the arbitral tribunal in the case. The parties are reviewed for If the parties do not have a conflict of interest that could threaten the independence of the arbitration, the case is referred to the arbitration department of the institution for follow-up. If a conflict of interest is found to exist, the case is referred to the arbitration department of the institution for a subsequent tribunal hearing. If a conflict of interest is identified, the parties are asked to change their representatives or members of the tribunal. This is intended to make it possible for the parties in a given case to change their representatives or members of the tribunal. This is intended to keep the existence of a third-party financier in a particular case from being known to the members of the tribunal, thereby avoiding the possibility of the arbitrator being influenced by the arbitrator. This is intended to prevent the arbitrator from being influenced by the third-party financier itself and the fact of its existence, thereby safeguarding the impartiality and independence of the arbitration. This is to ensure that the arbitrator is not influenced by the third-party financier itself and the fact of its existence to ensure that the arbitration is conducted fairly and independently.[24]

***ii.. Publish model funding agreements to raise awareness of the risks to the parties to the agreement***

An international association of third-party funders or an independent arm of an arbitration institution could develop and publish model funding agreements for the reference of parties to disputes and third-party funders to raise the risk awareness of both parties to the funding agreement. The model funding agreement could be developed and published for the reference of the parties to the dispute and the third-party funder, to raise the risk awareness of both parties to the funding agreement and promote the standardization of the signing of the funding agreement, to

reduce unnecessary risks during the performance stage. To reduce unnecessary disputes and conflicts of interest during the performance stage.[25]

The model should guide both parties to the grant agreement. The model should guide the parties to the funding agreement on matters involving arbitration rights and obligations, case confidentiality, disclosure obligations, etc. that may lead to conflicts of interest at a later stage. The model should guide the parties to the funding agreement to agree on matters that may lead to conflicts of interest at a later stage.[26]

For example, due to the contractual nature of the funding agreement, to avoid the risk of performance at a later stage, the parties should For example, based on the contractual nature of the funding agreement, the parties should agree on the possible conflict of interest in the agreement to avoid the risk of later performance. Clearly define the stages and content of the arbitration process in which the third-party funder may participate. The stage, content, and extent of the third-party funder's participation in the arbitration process should be clearly defined. For example, the scope of the sponsor's contribution to the costs of the arbitration, the extent of the sponsor's contribution to the costs of the arbitration, and the extent of the sponsor's contribution to the costs of the arbitration. The extent to which the funder can provide funding for arbitration costs, whether the funder has the right to intervene in the choice of counsel (e.g., the right to appoint or advise), and whether the funder has the right to intervene in the arbitration strategy (e.g., the right to decide or recommend), whether the funder has the right to The funders have the right to influence the will of the funded party in settlement negotiations, and who will bear the costs of adverse litigation in the event of a loss.[27]

For example, third-party financiers may not be overly concerned about the settlement terms accepted by the funded party during the settlement negotiation phase. Third-party funders are generally reluctant to accept compensation other than monetary payments during the settlement phase to ensure their business gains, while parties to the arbitration are often willing to accept other settlement terms based on their interests or business relationships. Therefore, a model funding agreement could be issued to improve the level of contracting between the parties and avoid conflicts of interest at the settlement stage. Funders can ensure that their funding benefits are not affected by the terms of the settlement by modifying the terms of payment and calculation in the funding agreement. First, specify what constitutes a successful claim, i.e., the conditions under which the funder is entitled to receive the investment proceeds. Second, a dual agreement on the manner of receiving the financial support payment, i.e., when the funded party's success is in the form of a monetary payment.[28]

When the funded party is successful in its claim for monetary compensation, it agrees to receive a percentage of the entire claim; when the funded party is successful in its claim for non-monetary compensation, it agrees to receive a percentage of the amount of the funding or a fixed amount. When the funded party is successful in a non-pecuniary payment, it is agreed to receive a certain multiple of the amount of funding or a certain fixed amount. Thus, regardless of whether the settlement is in the form of pecuniary or other benefits, the settlement will The settlement, whether in the form of money or other benefits, does not affect the return on the funder's investment.[29]

## 4. Conclusion

The accelerating process of globalization has put forward higher requirements for the development of the field of international commercial dispute settlement. On one hand, the international community should actively explore the development of new models and systems to meet the diversified and individualized dispute resolution needs of parties to commercial disputes while on the other hand, it should expedite the improvement of the regulatory framework of the corresponding models and systems to protect the development of new models. As a new model that responds to the needs of international arbitration, the regulatory system of the third-party funding model needs to be improved. Based on this, this paper makes preliminary suggestions for the development of third-party funding models in international commercial arbitration. First, theoretically, we analyze the possible risk factors and clarify that third-party funding does not, to a large extent, lead to an increase in "abusive litigation" and that arbitral tribunals need not take into account the existence of third-party funders when making adverse cost-sharing awards. For the balance of rights and obligations between the financier and the funded party, the law should not intervene excessively in the conflict of interests that should belong to the market and the balance between the two parties of the contract. Second, given the real risks, we should try to establish a unified regulatory system at the international

level. For example, an international association of third-party financiers should be established to unify standards and add detailed prevention of potential risks to the regulatory process structure of the association, to provide a more diversified choice and a more reliable international regulatory system for parties in need of financing. Establish a separate department within arbitration institutions for third-party funding. The International Bar Association (IBA) should be given full play in improving the code of conduct for lawyers and conflict of interest disclosure obligations, and strictly restricting lawyers and professional legal service providers from engaging in third-party funding. The establishment of a separate department within the arbitration institution for third-party financed arbitration cases, with independent conflict-of-interest review by the department to isolate the members of the arbitral tribunal in a particular case from information on the financing of the case, to procedurally safeguard the independence and impartiality of arbitrators. The department also provides a good reference for both parties to the agreement by issuing a model funding agreement to reduce the risk of later performance. The model funding agreement is also published to provide a good reference for both parties to the agreement and to reduce the risk for later performance. Based on this, the sponsor associations are encouraged to maintain information sharing with arbitration institutions, to combine industry self-regulation with arbitration institution review and supervision. The funders' associations are encouraged to share information with arbitration institutions to combine industry self-regulation and arbitration institution review and supervision.

The effect of the above regulatory proposals in practice is yet to be further tested, and in the specific adoption and implementation stage will inevitably encounter many new problems. However, we believe that with the joint efforts of the international community and domestic parties, these problems will be successfully solved and third-party financing will serve international commercial dispute resolution in a perfect model.

**References**

[1]Kühn, W., & van Oeveren, H. (2018). The Full Recovery of Third-Party Funding Costs in Arbitration: To Be or Not to Be?. *Journal of International Arbitration*, *35*(3).

[2] Biksadský, B., Catelani, S. P., & Nava, V. T. (2021). Third-Party Funding in International Arbitration–Current Status, Development and Cases Involving Mining Disputes. In *Social License and Dispute Resolution in the Extractive Industries* (pp. 9-37). Brill Nijhoff.

[3] Yannaca-Small, K. (Ed.). (2010). *Arbitration under international investment agreements: A guide to the key issues*. Oxford University Press on Demand.

[4] Colombo, G. F., & YOKOMIZO, D. (2018). A Short Theoretical Assessment on Third Party Funding in International Commercial Arbitration. *名古屋大学法政論集*, (280), 109-124.

[5] Decisions on Costs in International Arbitration – ICC Arbitration and ADR Commission Report https://iccwbo.org/publication/decisions-on-costs-in-international-arbitration-icc-arbitration-and-adr-commission-report/

[6] Sattorova, M. (2011). Arbitration Under International Investment Agreements: A Guide to the Key Issues (Katia Yannaca-Small, Ed.)-Book review. *Transnational Dispute Management (TDM)*, *8*(1).

[7] The "fundamental interest" herein refers to the basis of the earnings ratio calculation. That is, in the case of winning the lawsuit by the parties to the subsidy, the investment compensation to be collected by the third party shall be calculated on the basis of the amount.

[8] Because the third party sponsor is not a party to the arbitration proceedings, the arbitral tribunal has no legal jurisdiction over it.

[9] Ibid,

[10] Zivkovic, P., & Galagan, D. (2015). If They Finance Your Claim, Will They Pay Me If I Win: Implications of Third Party Funding on Adverse Costs Awards in International Arbitration. *European Scientific Journal, ESJ APRIL*.

[11] Ibid,

[12] Sweify, M. (2021). Third Party Funding in International Arbitration: a Critical Appraisal & Pragmatic Proposal.

[13] Ibid,

[14] Mansinghka, V. (2017). Third-party funding in international commercial arbitration and its impact on independence of arbitrators: an Indian perspective. *Asian International Arbitration Journal*, *13*(1).
[15] Moses, M. L. (2017). *The principles and practice of international commercial arbitration*. Cambridge University Press.
[16] Ibid,
[17] Lew, J. D., Mistelis, L. A., Kröll, S. M., & Kröll, S. (2003). *Comparative international commercial arbitration*. Kluwer Law International BV.
[18] Shah, A. (2021). *INTERNATIONAL COMMERCIAL ARBITRATION IN INDIA: CHALLENGES AND OPPORTUNITIES* (Doctoral dissertation, The Maharaja Sayajirao University of Baroda).
[19] Ibid,
[20] Ibid,
[21] Park, W. W. (2014). A fair fight: Professional guidelines in international arbitration. *Arbitration International*, *30*(3), 409-428.
[22] Flake, C. (2015). Third Party Funding in Domestic Arbitration: Champerty or Social Utility?. *Dispute Resolution Journal*.
[23] Ibid,
[24] Qtiashat, K. S., & Qtaishat, A. K. (2021). Third party funding in Arbitration: Questions and justifications. *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*, *34*(2), 341-356.
[25] Trusz, J. A. (2012). Full Disclosure: Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration. *Geo. LJ*, *101*, 1649.
[26] Ibid,
[27] Strong, S. I. (2014). Beyond international commercial arbitration-the promise of international commercial mediation. *Wash. UJL & Pol'y*, *45*, 10.
[28] Ibid,
[29] Lew, J. D., Mistelis, L. A., Kröll, S. M., & Kröll, S. (2003). *Comparative international commercial arbitration*. Kluwer Law International BV.