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Third-Party Funding in International Arbitration: Examining Global Trends and the Indian Conundrum

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Abstract

Third-party funding (TPF) is a process via which a financer can fund the legal costs of a particular party to a dispute in return for a percentage of the claim amount. Although Initially it was barred under the doctrines of maintenance and champerty, TPF has evolved overtime due to global acceptance and changing rules and regulations both in international commercial and investment arbitration. While it does enable acesxs to justice to parties previously uinable to due to extreme costs involved in pursuing arbitration, it has its own set of ethical and legal concerns, including disclosure, conflicts of interest, funder's influence over the litigation strategy, confidentiality risks, and disputes over cost recovery and security for costs. In countries like the UK, Australia, and Singapore, and institutions like ICC and ICSID, have newer provisions have been enacted to counter these concerns, as illustrated in cases like Essar Oilfields v Norscot and EuroGas v Slovak Republic. However, In India, despite the judgement in A.K. Balaji and Tomorrow Sales Agency v SBS Holdings, there have been no progressive regulations, leaving India susceptible to abuse of procedure and forum shopping. This paper analyses the key global regulation, major case laws and India's position in regulating TPF, concluding that there is a need for robust regulations mandating disclosure, regulating funders' influence on the proceedings and protecting funded parties' interests to align the domestic law with the international standards so as to utilise the benefits of TPF without compromising the legal and ethical interest of the parties.

Keywords: *Third-Party Funding, International Arbitration, Transparency, Party Autonomy*

Introduction

Third-party funding(TPF) is an arrangement via which a third party that has no connection to the dispute, generally a professional funder, agrees to fund the litigating expenses of one of the parties to the dispute in exchange for a percentage of the claim provided in the arbitral award. This form of funding is becoming increasingly common in international arbitration due to the high cost of proceedings that often leave companies short of cash flow required to run their business smoothly. Hence, it becomes a great option for companies to finance their disputes via these professional funders. This also allows companies with weak financials but strong claims to have access to justice by pursuing cost-heavy arbitral proceedings, which would otherwise leave an unsurvivable dent on their finances. However, this relationship is one-sided, i.e., if the claim fails, the funder receives no compensation and still has to bear all the costs involved. As described by Nieuwveld and Sahani,

"*Third-party funding is a financing method in which an entity that is not a party to a particular dispute funds another party's legal fees or pays an order, award, or judgement rendered against that party, or both.*"

Thus, the use of TPF does give rise to several legal and ethical considerations regarding conflict of interest, party autonomy, and transparency.

The concept of third-party funding in itself is not new. Its origins can be traced back to the domestic litigation in countries like the USA, United Kingdom, and Australia. However, over the past two decades, the prevalence of TPF in international arbitration has greatly increased. This includes both commercial and investor-state arbitration. This is because disputes of this sort have long, drawn-out, costly legal proceedings, which may leave many financially weak organisations unable to dispute their claim. Due to this, TPF is often argued as a means of making justice more accessible to parties that would have otherwise been unable to do so and hence levels the playing field between parties that have varying financial statuses.

However, the increase in adoption of TPF has also given rise to various issues and concerns. The major argument against TPF is based upon its violation of the doctrines of maintenance and champerty. These include the chances of bias due to the undisclosed relations of funder and arbitrator, undue influence of funders over the decisions during the proceedings, and difficulties regarding the cost of dispute and reward percentages. Moreover, in a country like India, where arbitration law and international arbitration are still evolving, the lack of any regulatory framework surrounding TPF can give rise to a host of legal issues. Therefore, the debate around TPF mainly consists of its pros regarding access to justice and its cons regarding procedural integrity.

This paper seeks to critically examine the role of third-party funding in international arbitration and determine whether the financial assistance results in greater access to justice for disadvantaged parties or whether it undermines the procedural integrity and does more harm than good. In doing so, the paper analyses the regulatory framework around TPF across various jurisdictions, evaluates the legal and ethical concerns it gives rise to, and explores India's evolving stance on the issue. Ultimately, the paper will conclude with a well-reasoned argument after weighing in the various advantages and disadvantages and will suggest measures to make TPF more viable.

Legal Framework and Comparative Overview

From being prohibited under the doctrines of maintenance and champerty in common law to becoming an accepted and regulated practice in international arbitration, Third party funding (TPF) has come a long way from its inception. In the United Kingdom, the Criminal Law Act 1967 abolished the criminal liability under the doctrines of maintenance and champerty which in turn gave a green flag to third-party funding in litigation. Similarly in Australia, reformed laws as well as court precedents legitimised TPF, which paved the way for its inclusion in both domestic and international arbitration.

This shift has been promptly adopted by arbitral institutions worldwide. The ICC's 2021 Arbitration Rules introduced an article requiring mandatory disclosure by parties of the involvement of a third-party funder. It states that parties need to inform the secretariat of the involvement of any third-party funders who have an economic interest in the claim amount. A similar provision is present in the ICSID Rules, where the identity of the third party funding the claim has to be disclosed with their full credentials and any other information the tribunal might request. However, there are institutions such as the SIAC and HKIAC that have not made TPF disclosure compulsory but have given the tribunals express powers to demand information in certain cases.

The domestic law of countries, however, differs from jurisdiction to jurisdiction. In Singapore, TPF is allowed in international and regulated via a recent amendment to the Civil Law Act (2017), given that conditions of funder eligibility and ethical transparency are followed. On the other hand, the law in the UK regarding TPF follows the model of common law, which is shaped primarily through court decisions such as the case of *Arkin v Borchard Lines Ltd* and more recent rulings that focus on funder liability and strict disclosure rather than a full-fledged legislation. In *Essar Oilfields* case, the English High Court

upheld an ICC tribunal's decision to award TPF costs that amounted to 300% of the investment as recoverable under the definition of "costs" in section 59 of the Arbitration Act 1996. The court stated that reimbursement of such costs was "blindingly obvious" and the market standard. Similarly, in *EuroGas Inc & Belmont Resources Inc v Slovak Republic* the tribunal ordered disclosure of the funder's identity for risks of potential conflicts and security costs. This reinstated what was already mentioned in earlier ICSID decisions, such as *Çap v Turkmenistan,* in recognising tribunals' authority to look into TPF agreements when necessary.

In India the involvement of TPF in arbitration is not defined anywhere in the Indian Arbitration and Conciliation Act 1996. Due to this, the sector of TPF is rather unregulated and informal, working under the grey areas of law. Although Rule 6 of the Bar Council Rules prohibits advocates from working on a conditional fee arrangement, it does not apply to third parties. This gap in legislation is a growing concern, as it creates uncertainty at a time when arbitration is evolving rapidly in India.

All these developments, both in legislation and precedents, indicate a shift towards impartiality, transparency, and procedural fairness in third-party funded international arbitration. Institutional reforms from ICC and ICSID along with the judicial frameworks of countries like Singapore and the UK, are at the forefront of this change. India is still still lacking in concerte rules regarding TPF arbitration and needs to evolve with the growing landscape. As TPF becomes more prevalent, both international and domestic regulations need to reform so as to accommodate TPF without compromising procedural integrity.

Key Legal and Ethical Issues

A major ethical issue that is caused by TPF is that of disclosure and conflict of interest. Transparency is key in TPF arbitral processes because an undisclosed relationship between the funder and the arbitrator can lead to biases, lack of transparency, and also a pattern of a certain arbitrator getting elected multiple times in a row by the same funder, indicating an undisclosed relationship. Moreover, even if an arbitrator is unrelated to a third party, thus eliminating the chance of impartiality, the principles of independence and impartiality of arbitrators, besides targeting actual independence and impartiality, also cover the absence of an appearance of dependence or partiality. Therefore, the question of whether or not the arbitrator is actually connected to the parties is immaterial since an undisclosed relationship will always indicate an assumed bias.

To counter this, certain regulations have come about in recent times. The implementation of the IBA Guidelines on Conflicts of Interest was the very first time when disclosure obligations were extended to third-party funders, as they were deemed to have "economic interest" in the arbitral process. This paved the way for more concrete regulations, such as ICC Article 11(7), which mandates prompt disclosure of funders, and ICSID Rule 14, which gives power to the tribunal to authorise disclosure where necessary. Courts even have the power to invalidate an award if information regarding an undisclosed third party is found later on.

Beyond disclosure, TPF also raises concerns regarding control of proceedings. In most cases the party to the dispute not only has to cater to its own interest but also the interest of the funders, which can in certain cases prolong the dispute since the party knows it will have to pay the funder from the claim amount and hence needs to enlarge the scope of this dispute to manage the biggest award possible. This aspect of TPF to some degree undermines party autonomy, since it focuses more on the monetary benefit of the funder rather than the best interest of the litigant. Hence, measures shall be taken by both the arbitrator and the counsel to make sure funders objectives don't jeopardise the litigant's core interest.

Another issue that arises is that of confidentiality and transparency. One of the key features of arbitration is its ability to maintain privacy of the dispute. However, TPF arrangements require extensive disclosure of information that includes

litigation strategy, documentary evidence, and even personal client information. This disclosure is treated as an exception to the principle of privacy by many institutions, but only a few rights exist to protect opposing parties. Some tribunals do emphasise how far this exception goes and try to reserve the right of parties, but this practice is far too inconsistent, raising questions regarding procedural fairness and predictability.

Finally, the last major issue is regarding cost allocation and security for costs in TPF arrangements. In *Essar Oilfields* the ICC held that under some circumstances, in a successful claim, the funded party could recover its cost of funding, but such an approach is not automatic and will depend on a case-by-case basis. However, not all tribunals agree to this. For example, in *Kardassopoulos v Georgia*, an ICSID tribunal declined the recovery of cost by the funder and hence did not include their share in the recoverable cost. The practice of security of costs from funders by the tribunals also has inconsistent practice. While some UNCITRAL tribunals have accepted security when required, others have refused on the grounds that funding alone cannot be the sole indicator of a party's inability to satisfy adverse cost awards. This proves to be an important issue since third-party funders are typically not parties to the arbitration agreement, and tribunals may lack jurisdiction to award costs directly against them, which leaves claimants exposed in an event of an adverse award against them and the funders backing out.

Therefore, the issues of disclosure and conflicts, control of proceedings, confidentiality, and cost allocation are the core concerns regarding TPF. As we have seen, there is still a lot of inconsistency within tribunals regarding the implications of TPF, which poses risks of procedural imbalance, challenges to awards for lack of impartiality, and strategic abuse. Emerging soft law instruments such as the ICCA–Queen Mary Task Force Principles provide guidance on appropriate disclosure and cost recovery, but in the absence of a binding authority, these principles are dependent on voluntary adoption by parties. While TPF can enhance access to justice for legitimate claimants, it also poses serious ethical and procedural risks. To maintain the core principles of arbitration regarding neutrality and party autonomy, steps need to be taken to develop well-drafted funding agreements with limited control clauses and cost rules that anticipate funder behaviour. Without these safeguards, TPF might serve the opposite purpose and become an obstruction to justice.

India's Position and the Way Forward

The concept of third-party funding (TPF) is relatively new in India but not entirely alien to its legal landscape. While a numerous amount of jurisdictions have adopted newer regulations to adopt TPF in arbitration, India still lacks clear legislation or a regulatory and institutional framework in this regard. However, recent judicial precedents and trends do point towards a positive future of TPF in India.

Historically, the Indian judiciary has to some degree supported TPF in litigation. In fact, in certain cases, TPF agreements have been upheld, provided they do not contravene public policy or amount to champerty or maintenance. The Privy Council's judgement in *Ram Coomar Coondoo v. Chunder Canto Mookerjee* progressively affirmed the position of third-party funding agreements provided they are fair and bona fide. The courts still held the power to scrutinise such agreements if they seemed unfair or against public policy. This judgement was reaffirmed in *Ram Sarup v Court of Wards*, where the courts stated that such agreements involving risk and advantages were permitted by law as long as they were within the borders of conscience and justice. More recently, the Supreme Court of India in *Bar Council of India v A.K. Balaji* third-party agreements for profit sharing are valid so long as the advocates are not party to it. More recently, the Delhi High Court, in *Tomorrow Sales Agency Pvt Ltd v SBS Holdings Inc & Ors* (2023), held that third-party funding is essential for greater access to justice in arbitration, although a related disclosure order was stayed.

Despite getting a green flag from the judiciary, the legislation around TPF in India is still lacking. The Arbitration and Conciliation Act, 1996, which is the main act governing arbitration in India, is silent on the topic of TPF. This means that there are no regulations in place governing a TPF agreement. This means that there are no provisions regarding the issues of TPF, namely, mandating disclosure, addressing conflicts of interest, or regulating control over proceedings by funders. This gap in the legal framework poses a major risk since arbitration in India is growing both in scale and complexity.

This lack of regulation may lead to India becoming a hub of frivolous arbitration, sought by claimants who want to maliciously hide their identity or lack an honest motive for dispute resolution. Moreover, such an undisclosed agreement can result in a conflict of interest since the arbitrators could have pre-existing ties with the third-party funder. Hence, without clear legislation in this regard, the issues of transparency, cost allocation, or security for costs will continue to exist and hamper India's growth as an arbitration hub.

Therefore, India must not delay in addressing these gaps. Firstly, disclosure of third-party funders should be made mandatory at the beginning of the proceedings themselves, both in international and domestic arbitration. This is in conformity with the provisions of ICC and ICSID, and is essential to safeguard the integrity of the arbitral proceedings and fairness. Secondly, the Bar Council of India should issue guidelines for legal professionals to make sure their ethical responsibilities are upheld when a third-party funder is involved. Particularly, it must be made sure that attorney-client privilege and the independent legal judgement of the advocate are not compromised due to the funder's commercial interest. Lastly, arbitral institutions in India like the Mumbai Centre for International Arbitration (MCIA) and the Indian Council of Arbitration (ICA) should bring reforms conforming to the new ICC and ICSID guidelines to adjust to the influx of TPF arbitration. These provisions should address the abovementioned issues of disclosure, funder liability for costs, and control of proceedings by the funder. The MCIA Rules 2016, for instance, currently do not address funding. Reforms aligning with the ICC or HKIAC models could help place Indian arbitral institutions among the more credible places for arbitration.

Ultimately, while TPF's main appeal lies in its ability to make justice more accessible to parties with limited resources, its success in India highly depends on the country's ability to adapt and bring reforms as soon as possible. Without a robust legal framework, the risks of procedural abuse, ethical violations, and arbitral inefficiency may outweigh its potential benefits.

Conclusion

The concept of third-party funding is a complex one. It has great advantages, but without a proper regulatory framework, it can lead to greater disadvantages. It is a double-edged sword whose impact largely depends upon the legal framework surrounding it. While TPF can certainly make justice more accessible to parties with limited resources, it can also compromise the very interest of the party it aims to aid. These include issues of disclosure, conflict of interest, transparency, leaking of valuable information, and other ethical concerns.

The international regulatory framework has evolved in recent times, but its implementation is rather lacklustre, with issues regarding disclosure and conflict of interest still existing. Institutions such as ICSID and ICC have taken the initiative to bring reforms but have not been able to encourage other institutions to adapt as well. However, India has still not caught up with the changing international regime. The domestic law lacks any provisions governing TPF. This absence of a comprehensive regulatory framework leads to major issues such as forum shopping and manipulation of the procedure, which can seriously hamper India's global reputation as an arbitration hub.

Hence, there is a dire need for provisions regulating TPF in India. Internationally too the framework still needs a lot of work so as to make sure

that funders don't abuse the gap in the current legislation. This includes mandating disclosure of funders, issuing professional conduct guidance through bodies like the Bar Council of India, and encouragement by international institutions for fair arbitration practice. If these regulations are strictly enforced, they can bring about a balance where the benefits of TPF can be utilised while sidelining its disadvantages and helping weaker parties gain greater access to justice without compromising their own interest in the dispute.

References

1. De Brabandere, E. & Lepeltak, aJ. (2012). Third party funding in international investment arbitration. *Grotius Centre Working Paper*, No. 2012/1, pp. 15–18.
2. De Navacelle, S. and Gerzso, T. (n.d.). Regulating third-party funding. [online] IDFPAC. Available at: https://ifdpac.org/en/arbitration/regulating-third-party-funding/ [Accessed 22 July 2025].
3. International Bar Association. (2014). *IBA Guidelines on Conflicts of Interest in International Arbitration*. London: IBA.
4. International Chamber of Commerce. (2021). ICC Arbitration Rules 2021.
5. International Chamber of Commerce. (n.d.). Note to parties and arbitral tribunals on the conduct of arbitration under the ICC rules of arbitration. [online] Available at: https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/note-parties-arbitral-tribunals-conduct-arbitration/ [Accessed 23 July 2025].
6. International Centre for Settlement of Investment Disputes. (2022). *Amendments to ICSID Rules*. Washington D.C.: ICSID.
7. International Centre for Settlement of Investment Disputes. (2022). *ICSID Arbitration Rules 2022*, Rule 14. Washington D.C.: ICSID.
8. Locatelli, D.F. (n.d.). Challenges and comparative perspectives on third-party litigation funding. [online] Available at: https://www.judicium.it/challenges-and-comparative-perspectives-on-third-party-litigation-funding/ [Accessed 22 July 2025].
9. Moseley, S. (2021). Disclosing third party funding in international investment arbitration. *Texas Law Review*, 97(6), pp.1189.
10. Nieuwveld, L.B. & Sahani, V.S. (2017). *Third-Party Funding in International Arbitration*. 2nd ed. Alphen aan den Rijn: Kluwer Law International, p.1.
11. Norton Rose Fulbright. (2016). *International Arbitration Report*. Issue 7. London: Norton Rose Fulbright.
12. Singapore. (2017). *Civil Law Act (Amendment) 2017*. Singapore: Government of Singapore.
13. United Kingdom. (1967). *Criminal Law Act 1967*, ss.13–14. London: The Stationery Office.
14. Wolters Kluwer. (n.d.). The Essar v. Norscot case: A final argument for the 'full-disclosure-wingers' of TPF in international arbitration. [online] Available at: https://legalblogs.wolterskluwer.com/arbitration-blog/the-essar-v-norscot-case-a-final-argument-for-the-full-disclosure-wingers-of-tpf-in-international-arbitration/ [Accessed 20 July 2025].