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# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

**[ISSN 2581-9453]**

**Volume 2 | Issue 3**

**2020**

# Third Party Funding in International Arbitration: New Challenges and Global Trends

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## ABSTRACT

*International commercial arbitration is a mechanism, rather an alternative method of resolving disputes ascending between private parties under international commercial contracts. Third-party funding (TPF), if not totally novel but relatively innovative phenomenon in international commercial arbitration. The notion of TPF is the fastest growing and highly deliberated contentious issue in the international commercial arbitration. TPF involves in an arbitration when a non-party, namely third-party funder to a dispute provides funding all or a portion of arbitration costs to one of the parties in return for a percentage of the amount recovered as previously agreed. In case the arbitral tribunal renders an adverse award against the funded party, the funder's investment is lost. The funding generally covers legal fees including but not limited to, such as costs of lawyers, experts, outside counsels' assistance, and any other expenses that maybe incurred by the claimants relating to the arbitration proceedings. The TPF funding institutions includes insurance companies, investment banks, hedge funds, and client's attorney or law firms. The present article will examine the notion of TPF in international commercial arbitration and how it influences the arbitration proceedings in international commercial arbitration. After analyzing the basic concept of TPF, it will throw light upon the challenges the TPF such as conflicts of interests and transparency and disclosure requirements. The article identifies transparency and disclosure requirements is one of the most important issues shaping TPF funding arrangement and proceedings in international commercial arbitration. It argues for the mandatory disclosure of existence of TPF agreement.*

**Keywords:** *International Commercial Arbitration, Third-party Funding, Arbitral Transparency & Disclosure Requirement.*

## I. THIRD PARTY FUNDING IN CONTEXT

The last few years have witnessed a significant increase in funding activity initially focused on investor-state arbitration but later spreading on to international commercial arbitration.

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However, unlike in domestic litigation where disputes are settled by court-appointed judges, investor-state disputes or commercial disputes are decided by the party appointed arbitrators.

Third party funding is a financing method in which an entity that is not party to a particular dispute funds another party's legal fees or pays an order, award, or judgment rendered against that party or both.[2] This mechanism of financing is very much lucrative to clients because it lets them to move forward with a claim while shifting the burden of cost and risk of losing to the third-party funder entirely. It occurs when an unrelated third party provides monetary support to a party involved in a legal claim; in return that third party receives a portion of the proceeds resulting from the claim or noting if the claim is unsuccessful.[3] It is known by various names such as claim funding, alternative litigation funding, and third party litigation funding. A funding decision by a third party funder is purely an investment in nature. The funder which having no connection whatsoever with the dispute in question indulges itself into the equation via advancing of funds.

Third party funding is an umbrella term which embraces a variety of situations. The concept was originally conceptualized Australia then subsequently judicially blessed in England and Wales and extensively used in the Continental Europe. An arrangement of third party funding may cover any situation under a contractual arrangement between the client (funded party) and the funder, while the payment to the funder is linked to the proceeds recovered by the client in arbitration.[4] The term would also cover lawyers' contingency fee arrangements and insurance contract. In a contingency fee model, the lawyer or attorney advances the claim by investing his or firm's resources in the claim with no guarantee of recovery. Under the contingency fee model the recovery of attorney's fee is based upon the outcome of the case, the fees are recoverable if the client's claim succeeds. A conditional fee arrangement is similar to the contingent fee arrangement with a slight difference between the two. In conditional fee arrangement, the client will usually pay a reduced fee as opposed to no fee if the claim is lost.[5]

Third party funding permits the parties to pursue viable claim without any financial commitment and for lawyers to do their work without risk of non-payment. In most cases the

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[2] Maria Choi, Third-Party Funders in International Arbitration: A Case for Protecting Communication Made in Order to Finance Arbitration, 29 Geo. J. Legal Ethics 883 (2016)

[3] Jennifer A. Trusz, quoting Michele DeStefano, Nonlawyers influencing Lawyers: Too Many Cooks in the Kitchen or Stone Soup?, 80 Fordham L. REV. 2791, 2818 (2012), Full Disclosure: Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration, 101 Geo. L.J. 1649 (2013)

[4] William Stone, 'Third Party Funding in International Arbitration: A Case for Mandatory Disclosure?, Asian Dispute Review, (Hong Kong International Arbitration Centre (HKIAC) 2015, Volume 17 Issue 2) pp. 62 – 70.

[5] Maria Choi, Third-Party Funders in International Arbitration: A Case for Protecting Communication Made in Order to Finance Arbitration, 29 Geo. J. Legal Ethics 883 (2016)

entity supplying the financial backing is an insurance company or a financial institution such as a bank or hedge fund. While some institutional funders are specialized in third party funding others are specialized investors in litigation and arbitration claims as a part of a wider portfolio of traditional financial investments[6]. The majority of the specialized litigation funding institutions are based in countries where the third party funding industry is well industrialized such as Australia, Germany, United Kingdom, United States, the Netherlands, Canada, and South Africa.[7]

The funder usually provides the funded party with either a normal traditional loan or non-recourse funding where the payment is contingent upon the client winning the case. In case funded party having an insurance policy which covers situation at hand, then the insurance policy would work as a third party funding especially, if the terms explicitly state that the insurance company will bear the arbitration expenses.

The clients of third party funding maybe corporations, law firms, individuals, and even sovereign states. According to Victoria A. Shannon, there are four main reasons which are known to help third party funding industry flourish globally. Firstly, funders help individuals having inadequate financial capacity bring claims which they could not afford to bring; secondly, many small companies or insolvent companies pursue third party funding as a means to bring valid claims otherwise they could not pursue; thirdly; many large companies that are frequently sued due to its nature of business would like a way to even out the litigation line item on their balance sheets and funders can offer them a fixed payment system for managing litigation costs as defendants; fourthly, the worldwide market turmoil over the past several years has caused many investors to seek investments that do not dependent upon financial markets, stock prices, or company valuations.[8]

When investing in a claim the third party funder considers various factors such as probability of success, the amount of the claim and investment, the time span of recovery, the legal merits, the collection risk, and the business context. In other words funders generally require a good prospect of success. Unless specialized in funding, funders of smaller claims will generally fund unique cases where likely damages are estimated at 10 million pound plus.[9] A survey by the Australian funding corporations discloses that funders are not interested in commercial claims with "human elements" such as case involving family law, defamation, or

[6] Victoria A. Shannon, Harmonizing Third-Party Litigation Funding Regulation, 36 Cardozo L. Rev. 861 (2015)
[7] Ibid
[8] Victoria Shannon Sahani, Judging Third-Party Funding, 63 UCLA L. Rev. 388 (2016)
[9] https://www.ashurst.com/en/news-and-insights/legal-updates/quickguide---third-party-funding-in-international-arbitration/

 

injuries to the funded party.[10]

## II. THIRD PARTY FUNDING IN INDIA

At a legal tech innovation conference organized by India's leading law firm Cyril Amarchand Mangaldas, former Supreme Court judge B N Srikrishna and another former Chief Justice of the Supreme Court argued that Parliament should make law for third party funding. Justice Srikrishna further said that "it is going to be difficult if it were to be implemented merely by interpretation of existing position of law by courts.[11]

Third party financing has been growing at a tremendous rate and gaining prominence as a feasible and readily available form of dispute financing. The world's largest Third party funder has an investment portfolio of $ 2.4 billion with a market capitalization of around $ 3.2 billion.[12] Although the concept of third party financing is not new to the Indian legal market as many a cases have been bought and sold in an unorganized market in India, though it is still in its embryonic phase.

Despite the leading performance of litigation financing over private equity, real estate, credit and hedge funds, the third-party financing is 'yet to be found asset class in India'. Even though such outstanding growth, third party financing, also known as litigation financing is 'yet to be found asset class in India'. At a recent meeting of legal professionals in India, seventy (70%) percent of them believed that third party funding is proscribed under Indian laws.[13]

Indian laws are utterly inaudible in terms of third party funding in arbitration. In fact, no law explicitly bars or permits third party funding. Moreover, there is no express provision in the Arbitration and Conciliation Act of 1996 pertaining to the legality or illegality of third party funding. However, use of third party funding is expressly acknowledged in the context of civil suits in states such as Maharashtra, Gujarat, Madhya Pradesh, and Uttar Pradesh. By amendment of Rule 1 of Order XXV of Code of Civil Procedure 1908 these states have enabled the courts to secure litigation cost from a financier by making them a party to the proceedings. Yet it is not proper to conclude that third party funding is permitted.

[10] Jennifer A. Trusz, Full Disclosure: Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration, 101 Geo. L.J. 1649 (2013)
[11] Swati Deshpande, As third party funding (TPF) of litigation takes off globally, will India follow the suit? (March 14, 2019, 12.27am), https://timesofindia.indiatimes.com/city/mumbai/as-third-party-funding-tpf-of-litigation-takes-off-globally-will-india-follow-suit/articleshow/68119946.cms
[12] Cyril Shroff, Amita Gupta Katragadda, Third party Funding of Litigation in India: An Asset Class in Waiting. (March 14, 2019, 12.27am), https://www.bloombergquint.com/opinion/third-party-funding-of-litigation-in-india-an-asset-class-in-waiting#gs.0rpd8e
[13] ibid

 

As early as 1800s, India had witnessed third party litigation funding agreements or *pactum de quota litis* before formal codification of contract law.[14] As Indian legal system followed the footsteps of common law jurisprudence it is thought that restrictions on champerty and maintenance were applicable to litigation funding in Indian context. However over the years many inconsistent decisions were rendered, leaving the question of enforceability of such agreements in ambiguity.[15]

In Grove & another v Amirtamayi Dasi Mr. Justice Phear after exhausting all English and Indian cases came to the conclusion that the proscription of maintenance and champerty under English law was in force at least within Presidency towns and accordingly, the agreements of such character were against the interests of society in India, being opposed to public policy, thus, void.

However, in the subsequent Privy Council in Ram Coomar Coondoo and others v Chunder Canto Mookerjee[16] held that the English laws of maintenance and champerty are not of force as specific laws in India". It opined that, "they were laws of a special character, directed against abuses[17] prevalent, it may be, in England in early times and had fallen into at least comparative desuetude". Although the Privy Council noted that the doctrine of maintenance and champerty had no application to the Indian context due to its uniqueness, in certain circumstances it could be invoked if the champertous agreement is opposed to public policy. Their Lordships made it explicitly clear, 'agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so far as to be inequitable against the party; or to be made, not with the *bona fide* object of assisting a claim. This case established the initial proposition that the embargo is not absolute and circumscribed it to "improper objects, as for purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy".

The precedent was crystalized in Lala Ram Swarup v The Court of Ward[18], where Justice Rankin said, "the uncertainties of litigation are proverbial; and if the financier must needs

[14] The Law of Contract in India was codified by the way of introducing Indian Contract Act 1972.
[15] Anish Wadia and Shivani Rawat, Third Party Funding in Arbitration – India's Readiness in Global Context, TDM Special Issue on "International Commercial Arbitration and Investment Dispute in and with India", Vol. 15, Issue 2, Feb 2018.
[16] Ram Coomar Coondoo and others v Chunder Canto Mookerjee, Judgment of the Lords of the Judicial Committee of the Privy Council, High Court of the Judicature at Fort William in Bengal, 1876.
[17] The judgment notes that the English statutes on the subject enacted in early times mainly to prohibit high judicial officers and officers of the State from exploiting the King's subjects by maintaining suits or purchasing rights in litigation.
[18] Lala Ram Swarup vs. The Court of Ward, 42 BOMLR 307, 1940

risk losing his money he may well allowed some chance of exceptional advantage”.[19]

The Supreme Court of India in Bar Council of India v A.K. Balaji and others (2015) clarified the position of the third party funding in unambiguous terms. The Apex court through A.K Goyal and UU Lalit JJ, held that there appears to be no restrictions on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation.[20] The Bench to substantiate their views referred the positions of legal practitioners in the USA and UK in relation to third party funding.[21]

The Supreme Court in G, A senior Advocate[22] differentiated third party funding by lawyers and non-lawyers.[23] The Apex Court held that the rigid notion of champerty and maintenance had no application in India. The third party champertous agreement is valid and legally enforceable when non-lawyers are parties to the agreement. The Court had stated in unequivocal manner that there is nothing wrong, immoral, or unconscionable in the third party agreement and it is not against public policy *per se*.[24]

Litigation funding by lawyers in India is not explicitly prohibited but conjoint construing of Rule[25] 18[26], 20[27], 21[28], and 22[29] make it clear that lawyers practicing in India cannot fund litigation on behalf of their clients.[30]

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[19] Ibid.

[20] Bar Council of India vs. A.K Balaji and others , AIR SC 1382.

[21] Ibid para. 35 of judgment says “In India, funding of litigation by advocates is not explicitly prohibited, but a conjoint reading of Rule 18 (fomenting litigation), Rule 20 (contingency fees), Rule 21 (share or interest in an actionable claim) and Rule 22 (participating in bids in execution, etc.) would strongly suggest that advocates in India cannot fund litigation on behalf of their clients. There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. In U.S.A., lawyers are permitted to fund the entire litigation and take their fee as a percentage of the proceeds if they win the case. Third Party Litigation Funding/Legal Financing agreements are not prohibited. In U.K., Section 58B of the Courts and Legal Services Act, 1990 permits litigation funding agreements between legal service providers and litigants or clients, and also permits third party Litigation Funding or Legal Financing agreements, whereby the third party can get a share of the damages or winnings”.

[22] In Re: Mr. ‘G’, A Senior Advocate of vs. Unknown AIR 1954 SC 560.

[23] Justice Bose penned, “now it can be accepted at once that a contract of this kind would be legally unobjectionable if no lawyers are involved”.

[24] Ibid para. 11.

[25] Rules on Professional Standards made under Advocates Act of 1961. Available on: http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartVonwards.pdf

[26] Rule 18 provides, “Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt”.

[27] Rule 20 provides, “An advocate must provide the client with the copy of the client’s account maintained by him on demand, provided that the necessary copying charge is paid”.

[28] Rule 21 says, “An advocate shall not enter into arrangements whereby funds in his hands are converted into loans”.

[29] An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client. An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding”.

[30] Bar Council of India vs. A.K Balaji and others , AIR SC 1382. Para. 35.

In summary the agreement between the disputant and a third party to finance the cost of litigation in return for share of the proceeds arising out of litigation is not illegal *per se* and it cannot be declared void on the grounds of champerty and maintenance as these doctrines are not applicable to Indian context. Such agreements would be tested on the anvil of equity, reasonableness, and legality of the object, and the reprehensible terms would be hit by section 23 of the Indian Contract Act of 1872.[31]

## III. THIRD PARTY FUNDING: A CASE FOR MANDATORY DISCLOSURE

It is only a decade since third party funding of international arbitrations are now well acknowledged and cherished. Statistics from leading commercial third party funders illustrate that third party funding has not only expanded rapidly but has shown a new horizon to arbitral reality.[32] The most debatable question pertaining to third party funding in international arbitration is whether a funded party is required to disclose the existence and /or terms of a third party funding agreement. But why such kind of disclosure is needed as a rule? The answer is third party funding may touch upon specific procedural issues which may in turn require disclosure of certain facts relating to funding. Such issues are; a) impartiality and independence of arbitrators in the context of third party funding, b) security for costs against funded parties, c) awarding costs in the presence of third party funders, and d) confidentiality in international proceedings and third party funding etc.

At present, parties to an international commercial or investment arbitration are under no obligation to disclose the fact that they are being funded. The fact that the party is being funded is usually neither disclosed to the arbitral tribunal nor to the opponent. Currently there is no arbitral laws or rules require a party to reveal how it finances its claim or defense.[33] Presently there is no funding disclosure requirement even in most universally used international arbitration rules such as ICC, the LCIA, and UNCITRAL.[34] Thus, as such there is no general practice or obligation to disclose the facts.

In the context of litigation some jurisdictions have rules requiring disclosure of information relating to third party funding. In fact, Singapore introduced amendments to the professional

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[31] Anish Wadia and Shivani Rawat,
[32] William Stone, 'Third Party Funding in International Arbitration: A Case for Mandatory Disclosure?', Asian Dispute Review, (Hong Kong International Arbitration Centre (HKIAC); Hong Kong International Arbitration Centre (HKIAC) 2015, Volume 17 Issue 2) pp. 62 – 70.
[33] 'Chapter 4: Disclosure of Third-Party Funding in International Arbitration Proceedings', in Jonas von Goeler , Third-Party Funding in International Arbitration and its Impact on Procedure, International Arbitration Law Library, Volume 35 (Kluwer Law International; Kluwer Law International 2016) pp. 125 - 162
[34] William Stone, 'Third Party Funding in International Arbitration: A Case for Mandatory Disclosure? Asian Dispute Review, (Hong Kong International Arbitration Centre (HKIAC); Hong Kong International Arbitration Centre (HKIAC) 2015, Volume 17 Issue 2) pp. 62 – 70.

conduct rules for lawyers making it obligatory for lawyers to disclose to the court or tribunal and to all other parties in the proceedings the existence of third party funding agreement and the identity of third party funder.[35] Similarly the Arbitration Ordinance in Hong Kong is another important example. The new Hong Kong legislation imposes a duty upon the funded parties to disclose to the court or tribunal and to their opponents about the existence of third party funding agreement and the whereabouts of the funders.[36]

In respect of third party funders' participation in international arbitration, arbitrators' potential conflict of interest are among the first and most conspicuous concerns which invites attention. The more pressing questions involved are who, how, to what extent, and by whom disclosures should be made in order to assess arbitrators, parties, and institutions, potential conflict of interest involving third party funders.[37] The leading international arbitral institutions through their recent rules impose a duty upon the arbitrators to disclose information regarding the conflict of interest to the ICC Secretariat[38], ICDR Administrator[39], or the LCIA Registrar[40]. Arbitrators are required to disclose information pertaining to third party funding since such relationship between arbitrators and third party funders may have repercussions on arbitrators' independence.[41]

In some cases parties may voluntarily disclose to the arbitral tribunal or to the opponent parties at the inception or at a later stage of the proceedings that they have been funded by a third party funder. However prior consultations with third-party funder may be required in such voluntary disclosure initiatives, considering the contractual obligations of confidentiality. However the disclosure can also be a tactical step in some situations, such as when the funded party desires to highlight its financial distress or conversely to show it has sufficient means to pursue the arbitration proceedings till the end to bring the opponent down for a settlement. It may also be that the funded party may wish to send out a strong message

[35] See more Part 5A sections 49A and 49B of Legal Profession (Professional Conduct) Rules 2015. Available at: https://sso.agc.gov.sg/SL/LPA1966-S706-2015?DocDate=20180209&ProvIds=P14-

[36] Nicolás Costábile and Anthony Lynch, 'Applicable Law in Arbitrations Involving Third-Party Funding Agreements', Spain Arbitration Review | Revista del Club Español delArbitraje, (Club Españoldel Arbitraje; Wolters KluwerEspaña 2017, Volume 2017 Issue 30) pp. 161 – 181.

[37] Chapter 4: Disclosure and Conflicts of Interest', ICCA Reports No. 4: Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration, ICCA Reports Series, Volume 4 (International Council for Commercial Arbitration 2018) pp. 81 – 115.

[38] See Article 11(2), ICC Arbitration Rules (In force as from 1st March 2017) Available at: https://iccwbo.org/publication/arbitration-rules-and-mediation-rules/

[39] See Article 13(2) ICDR International Arbitration Rules (Rules Amended and Effective June 1st 2014) Available at: https://www.icdr.org/rules_forms_fees

[40] See Article 5(4) LCIA Arbitration Rules (2014) Available at: https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx#Article%205

[41] Jennifer A. Trusz, Full Disclosure: Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration, 101 Geo. L.J. 1649 (2013)

to the arbitral tribunal as well as opponents that it has a strong and winnable case, in view of the fact that the third party funders fund only after a thorough assessment of case's strengths and weaknesses.

Now, I would like to discuss about a few important arbitral decisions which involved third-party funding agreements. The disputes involves in these cases are impartiality and independence of arbitrators, security for costs against funded parties,  awarding costs in the presence of third party funders, and probable conflict of interests of arbitrators.

RSM Production Corporation v. Saint Lucia[42] was the first and most controversial investment arbitration involving disclosure of third party funding. In that case the disclosure was sought in relation to costs not in relation to potential conflicts of interest. However one arbitrator[43] was challenged due to his strong language he used to describe third party funding. The claimant's basis for challenge is Dr. Griffith's Assenting Reasons to the decision on St. Lucia's request for security for costs. According to claimant Dr. Griffith's choice of language and comments demonstrate bias towards the third party funders and the third-party funded claimants. In fact the claimant had even questioned the impartiality and independence of Dr. Griffith by stating that he lacked qualities required of an arbitrator.[44] The tribunal rejected the submissions of claimant by holding that "the expression used by Dr. Griffith in his Assenting Reasons, such as gambling, adventurers and the reference to the gambler's nirvana are strong and figurative metaphors. It opined that these expressions primarily served the purpose of clarifying and emphasizing the point Dr. Griffith purports to make, namely the paramount importance, of third party funding of a party in connection with a request for security for costs. Further the arbitral tribunal opined that these terms reveal any underlying bias against third party funders in general or claimant in particular.

In Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan[45] an ICSID case where the tribunal had ordered the claimant to disclose both the identity of the funder and the terms of the funding arrangement. The respondent had requested the tribunal to order the claimant to disclose the "identity and nature of the involvement of third party funders for claimants in this proceedings". According to the respondent-state the disclosure was necessary for many reasons such as to check if there was any conflicts of interest. The claimants refused to disclose such details of third party funding. The tribunal was of the view

[42] RSM Production Corporation v. Saint Lucia, ICSID Case No. ARB/12/10. Decision on claimant's proposal for the disqualification of Dr. Gavan Griffith QC.

[43] Disqualification proposal was made against the arbitrator Dr. Gavan Griffith QC.

[44] See para 39 o 41 of the case.

[45] Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v.Turkmenistan, ICSID Case No. ARB 12/6, Procedural Order No. 3 of 12 June 2015.

that it had inherent powers to make orders of the nature requested when it is necessary to preserve rights of the parties and integrity of the process.[46] Accordingly the tribunal ordered the claimants to disclose whether their claims were funded by third party / parties and if so the names and details of the third party funder(s) along with the terms of the agreement.[47]

In another important ICSID case is EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic.[48] In this case the dispute arose when the facts disclosed to the arbitral tribunal disclosed that the claimants did not have the capacity to fund the arbitration proceedings.[49] And they obtained funding from third-party from numerous sources by selling rights in potential arbitral awards.[50] Tribunal had ordered the claimants to reveal the identity of its third party funder for the purposes of checking arbitrators' conflicts of interest but did not require the claimant to disclose terms of the funding arrangement.[51]

In the recently released SIAC Investment Arbitration Rules, a specific authorization is available for the tribunal to order the disclosure of the existence of a third party funding arrangement, the identity of the third party funder, and where appropriate details of the third party funder's interest in the outcome of the proceedings.[52] The provision also requires to disclose whether the third party funder has committed to undertake adverse costs liability.[53]

A few trade and investment treaties as well as a few proposed treaties' have lately introduced disclosure obligation with respect to third party funding.[54] The Comprehensive Economic and Trade Agreement (CETA), a new free trade agreement between Canada and European Union, has made explicit provisions on disclosure of third party funding. Article 8.26 requires the disputing party taking benefits of third-party funding to disclose the name and address of the

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[46] Ibid para. 6.
[47] Ibid para. 8.
[48] EuroGas Inc and Belmont Resources Inc v. Slovak Republic (ICSID Case No. ARB/14/14), Transcript of the First Session and Hearing on Provisional Measures (17 March 2015) p. 145.
[49] Ibid.
[50] EuroGas Inc and Belmont Resources Inc v. Slovak Republic (ICSID Case No. ARB/14/14), Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, 10th September 2014.
[51] Supra. Transcript of the First Session and Hearing on Provisional Measures (17 March 2015) p. 145, The ICSID tribunal also held that the third party funder will have the normal obligations of confidentiality.
[52] Investment Arbitration Rules of the Singapore International Arbitration Centre. SIAC IA Rules (1st Edition, 1 January 2017)
[53] Ibid See more Additional Powers of the Tribunal under Article 24(l).
[54] The Comprehensive and Economic Trade Agreement, or CETA, is a trade deal between the EU and Canada entered into force provisionally on 21 September 2017. See more article 8.36 for provisions relating to third-party funding. Available at: http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/ The Transatlantic Trade and Investment Partnership (TTIP) is an ambitious, comprehensive, and high-standard trade and investment agreement is currently being negotiated between the United States and the European Union. See more article 8 of subsection 3 of the chapter II (Investment), TTIP – Trade in Services, Investment, and E-commerce. (EU textual proposal. Available at: http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230

third party funder to the other disputing party and the tribunal. It also provides that the disclosure shall be made at the time of the submission of a claim the or if the third party agreement is concluded or the donation or grant is made after the submission of a claim, the disclosure shall be made, without delay, as soon as the agreement is concluded or the donation or grant is made. Similarly, in the Transatlantic Trade and Investment Partnership (TTIP) a high-standard trade and investment agreement being negotiated between the United States and the European Union (EU). EU in his textual proposal on TTIP – Trade in Services, Investment, and E-commerce has proposed provisions relating to the third party funding which is under consideration.

From the above discussion it can be concluded that there is no general rule on disclosure of third party funding agreement to the arbitral tribunal. And each arbitration institutions have their own sets of arbitration laws, rules and procedures relating disclosure requirements of third-party funding arrangements, the present authors recommend the idea of automatic conflict check by the arbitral institutions or ad-hoc arbitral tribunals. Upon receiving notice by a disputant party regarding the funding relationship, the arbitral institution or ad-hoc arbitral tribunal shall conduct an automatic conflicts check. In this procedure the arbitrators are already required automatically to disclose information pertaining to third party funding upon their appointment. Thus the institution shall have all the necessary information to check conflicts of interest.[55]

## IV. Conclusion

Few would dispute that the existing domestic as well as international arbitral rules on independence and disclosure requirements are inadequate and incapable in addressing the difficulties the arbitration tribunals are experiencing. As this study demonstrates the arbitral tribunals are dealing such situations on a case by case basis. The respective cases where disclosure was required to be made by the arbitral tribunals were not directly linked to the notion of third party funding rather arose from general disclosure rules and practices which in turn required disclosure of relevant facts related to third party funding to deal with specific procedural issues. Hence, what arbitral institutions and ad hoc arbitral tribunals should do is that they must take it upon themselves to require disclosure by arbitrators, funded parties. However, institutions and tribunals are also under the obligation to keep the disclosed information confidential. It is suggested that the arbitral institutions and ad hoc arbitral tribunals may boost the disclosure of third party funding relationship by prohibiting tribunals

[55]Jennifer A. Trusz, Full Disclosure: Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration, 101 Geo. L.J. 1649 (2013).

from taking into consideration third party funding arrangements while awarding costs or security for costs. And that in turn would instill confidence in the disputant parties. These above-stated cures are only transient in nature till the arbitral institutions, national legislatures come up with full-fledged rules on third party funding.

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 [ISSN 2581-9453]