THIRD-PARTY FUNDING: PRACTICAL, ETHICAL AND PROCEDURAL ISSUES

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Abstract

Nowadays the elective course "International Commercial Arbitration" is in demand. The primary objective of the study is to study the current trends in the development of legislation and practice in the field of arbitration, the implementation of which allowed achieving the key goal of the study - identifying advantages and disadvantages, familiarising a wide circle of lawyers, including novice lawyers, with the best international practices.

This article reflects one of the current trends in the development of arbitration, namely, investments in financing the resolution of disputes by way of arbitration. This experience that has emerged in law enforcement practice has not yet reached sufficient legislative regulation, but at the same time has generated many ethical and procedural problems for the participants in arbitration.

The authors of the article, using the comparative legal research method estimated the level of development of the considered legal phenomenon in many countries, noting that today the leaders should be called the UK, Australia, the USA, Singapore, and Hong Kong.

As a result of the study, it can be concluded that the undoubted advantages of attracting a sponsor to finance arbitration proceedings are the increased access to justice in the absence of financial resources for one of the parties to address the arbitration court, despite the high probability of winning the dispute. Moreover, often the sponsor is interested and ensures the involvement of highly qualified lawyers, necessary experts in order to protect the legal rights and interests of the party. The undoubted advantage for the funded party is the sharing of risks with the funding organisation and minimising the risk of losses. However, with all the advantages of financing third-party international arbitration, there are always risks of practical, ethical and procedural issues, such as investor's intervention in the process, abuse of his authority over the funded party, the occurrence of a conflict of interest between the funded lawyer and the sponsor, breach of arbitration confidentiality and others. They affect the procedural effectiveness, the term of the proceedings, the increase in additional costs, the legal certainty of the arbitration proceedings. Will the golden mean be found? Answers will be found only with time.

Keywords: arbitration, resolution of disputes, funded party, funding party

1 INTRODUCTION

The issue of securing financing in dealing with alternative dispute resolution is particularly relevant for
international arbitration proceedings (including investment arbitration), where major disputes are usually resolved.

Financing of court and arbitration proceedings in the USA, England, and Australia has been used for a long time. The global financial crisis forced the parties to the dispute to be wary of managing financial risks associated with conducting large arbitration cases (Boomvan W., 2011), and triggered the development of third-party funding (TPF).

In international arbitration, TPF has begun to attract the attention of sponsors since 2008 (Bogart C., 2013, p.50-55). The main prerequisites for the rapid development and widespread use of third-party financing in international arbitration are, firstly, the increasing role of commercial and investment arbitration as a way to resolve disputes, secondly, the increase in costs associated with handling major disputes (IIA Issues Note, 2013).

At the present stage, there are various ways of attracting third-party financing to protect interests in court or arbitration. In international arbitration, commercial financing by specialized financing companies is most prevalent. The financing of the proceedings by a “third party” means attracting a sponsor to pay for expenses related to arbitration (expenses on representation, involvement of experts, administration of disputes by arbitration institutions, etc.). In case of a successful outcome of the case, the sponsor should not only be compensated for these expenses, but he will receive some benefit from such investment.

The increase in the parties' appeal to an outside sponsor was a prerequisite for a broad discussion of the issue at the level of the international arbitration community. Since when attracting a third-party sponsor in international arbitration, many problematic issues arise, in 2015 the International Congress and Conference Association, together with the Queen Mary University of London, formed a Working Group on the financing of arbitration by third parties in international arbitration. The participants of this project came to conclusion that it is necessary to develop a unified code of conduct for financiers, which would reduce the risks of attracting an outside sponsor when considering and resolving investment and commercial disputes (Seidel S. (2013) p.16-21).

There are indeed a lot of challenging issues when using third-party funding. The parties, while choosing arbitration, are primarily interested in resolving the conflict. What happens when a sponsor, a third party who has nothing to do with the substance of the dispute, whose interest in the case is usually only financial - participates in a dispute? There is a possibility that the willingness of the financing party to increase its profits may not coincide with the goal of the parties to the proceedings to obtain a fair decision, which in general can serve as a threat to arbitration as a legitimate way of resolving disputes.

Moreover, at the heart of these problems lies the fact that the involvement of a third party makes “bipolar” negotiated arbitration more difficult. The sponsor did not sign the arbitration agreement; however, he has an interest in the dispute, as well as a certain amount of control over the course of the arbitration. These circumstances raise questions of the procedural status of the sponsor when considering a dispute. Также возникает вопрос, необходимо ли устанавливать обязанность по раскрытию арбитрам сторонам спора факта привлечения финансирования. Как при таких обстоятельствах сохранять конфиденциальность, какой объем информации необходимо предоставлять, кто должен это делать, в какие сроки?

Another question arises: whether it is necessary to establish the duty of disclosing the fact of raising funds to the arbitrators and parties to the dispute? How to maintain confidentiality, how much information should be provided, who should do it, what is the time provided?

Another important issue is the allocation and reimbursement of costs with the participation of the sponsor in the proceedings.

Legislative amendments adopted in 2017 in Singapore and Hong Kong partially provide answer to emerging questions. At present, there is an objective need for legal regulation, even non-regulatory, of the participation of a third investor in the consideration and resolution of a dispute in international arbitration. It is important that such a procedure, on the one hand, does not limit the benefits of attracting third-party funding, and on the other hand, limits the abuse of the parties.

Sponsors are often huge banks, hedge funds, and also private investors. Currently, the most well-known companies specializing in the financing of litigation and arbitration proceedings, including international arbitration proceedings are Bentham IMF Limited, Burford Capital Limited, Calunius Capital LLP, Harbor Litigation Funding Limited, Juridica Investments Limited, and others. In 2016 the Russian Federation launched the Platforma service (https://platforma-online.ru), which specializes in financing the resolution of disputes both in state courts and in arbitration. It is also necessary to mention the NLF Group fund, which became famous thanks to the financing the claims of smartphone users in Russia to Apple (Rozhkov R, Novyi V., 2018).
Today, this is becoming a new trend of business development in the field of investment.

2 METHODOLOGY

The authors pay attention that the present research has been conducted and prepared specifically for students for educational purposes. The material is presented in the most accessible form, allowing to obtain systematised information for the purpose of study at a law school, preparing for classes, making reports, as well as for preparing master's theses and dissertations. In modern social and economic conditions, the educational environment should be developed, erasing borders between countries in the academic environment, as indicated by lawyers in such works as Dudin M.N., Ivashchenko N.P., Frolova E.E., Abashidze A.H. (2017); Dudin M.N., Frolova E.E., Protopopova O.V., Artemieva Ju.A., Abashidze A.H. (2016); Dudin M.N., Frolova E.E., Kovalev S.I., Ermakova E.P., Kirsanov A.N. (2017).


The authors also used studies and reports prepared by international organisations and law firms, in particular the International Arbitration Survey: Improvements and Innovations in International Arbitration, Queen Mary University of London; 2015. White & Case; Report Of The ICCA-Queen Mary Task Force On Third-Party Funding In International Arbitration, IIA Issues Note (2013), Recent Developments in Investor-State Dispute Settlement (ISDS). Their analysis allows us to draw up a consolidated opinion of legal practitioners regarding the advantages and disadvantages of TPF, as well as the risks associated with its use.


3 RESULTS

3.1 Legal Basis for the Recognition of TPF

The very idea of financing a third party trial has been denied for a long time, since the involvement of a third party, unrelated to the trial, whose sole purpose is profit, undermined the foundations of justice and court proceedings. This idea dates back to Medieval England, where the development of the common law doctrine of maintenance and champerty developed. These doctrines subsequently predetermined the development of TPF not only in England but also in Australia and the USA. TPF received the highest development and recognition concerning lawsuits in Australia, Great Britain, and the USA in the second half of the 20th century (Lisa Bench Nieuwveld, Victoria Shannnon, 2017, p. 1-20).

The Supreme Court of the United States (In re Primus, Supreme Court of the United States, Judgment of 30 May, 436 U.S. 412 (1978)) defined the essence of these doctrines as follows: “maintenance” means the unlawful support of one of the litigants. That is, a person may be found guilty of “maintenance” if he, in essence, supports the trial in the absence of any legitimate interest and without any reasons or grounds. “Champerty” is an unlawful interference with a lawsuit of a person who is not relevant to the case on the merits, while still receiving a portion of the amount awarded by the court. That is, “champerty” is a kind of “maintenance”, only it is complicated by the fact that a person receives a share in the total sum awarded. It was believed that such actions only contribute to the corruption of the judicial process since the primary purpose of a third party is to make a profit. Therefore, such actions were recognized as civil delicts, and in some cases even criminal offences.

Nevertheless, a more loyal approach was gradually developed. In the middle of the twentieth century, in
England, criminal responsibility for “maintenance” and “champerty” has been abolished. At the same time, the effect of these doctrines in England has not yet completely terminated its efficacy. Courts may declare financing agreements null and void if there is a reason to believe that such an agreement undermines the foundations of justice if the sponsor has more authority to control the proceedings than the party to the dispute itself. Financing agreements are recognised as acceptable when, in particular, the sponsor does not aim to gain control over the process, the sponsor's income from financing is reasonable; the financing agreement gives the funded party access to justice, which would be difficult due to its limited financial resources.

In 1999, the Access to Justice Act was adopted, the purpose of which was to develop new alternative ways of financing trials. The law contained a provision according to which the claimant, who won the case, was entitled to remuneration for the work of a lawyer in the “loser pays” system from the respondent. Also, the law established the “after the event insurance”, which allowed the parties to insure the risks of paying the other party compensation when the case was lost. These events all together contributed to the development of third-party financing of the proceedings.

In Australia, litigation funding shaped in its modern form in the 1990s after passing the law which allowed the heads of legal entities to conclude agreements on judicial funding. The development of TPF also contributed to the legalisation of collective claims. Campbells Cash & Carry Pty Limited v. Fostif Pty Ltd in 2006 played a significant role in recognising third-party funding institutions. In this case, the defendant contested an agreement on third-party financing of the plaintiff. The Australian Supreme Court ruled that the financing agreement does not contradict public order, does not constitute an abuse of the judicial process, and that the court has sufficient authority to influence the behaviour of the sponsors in case of any abuse of the process.

In the US, specialised commercial financing of litigation was developed in the early 2000s. The legality of court financing agreements varies from state to state. These are specific forms of financing agreements and the corresponding terms of such agreements. They are friendly to TPF in New York, Florida, Texas, Ohio, Nebraska, while in Alabama, Colorado, Kentucky, Pennsylvania are somewhat hostile to TPF. In the states of Maine, Ohio, and Nebraska, laws have been enacted governing the raising of funds, despite existing restrictions on granting loans on a regular basis. There is a tendency to recognise the financing of litigation, including arbitration, by third parties and in other states.

In the Russian Federation, this institution is only at the stage of its formation. In 2017, the Chairman of the Council of Judges, Viktor Momotov, proposed to develop a system of investing litigations in the country. Moreover, for the first time, the court approved a settlement agreement in a case in which an outside sponsor participated (Kulikov V., 2017).

However, in addition to recognition, it is necessary to resolve issues arising from the use of TPF, such as the procedural position of the sponsor in the dispute, reimbursement of the sponsor’s expenses, the occurrence of conflicts of interest, confidentiality and disclosure of information about the TPF. Otherwise, prerequisites are created for abuses both by the sponsor and by the lawyers of the claimant, the financed party itself.

Some problematic issues were resolved in Singapore with the adoption in 2017 of the Civil Law (Amendment) Act 2017, Singapore (No. 2 of 2017) and the accompanying Resolution of the Minister of Justice of Singapore (Civil Law (Third-Party Funding) Regulations 2017, Singapore (No.S 68/2017). They made appropriate changes to the Legal Profession Act OF 1966, The Law Society Of Singapore Guidance Note OF 2015. Among other things, it was recognised that the financing of the proceedings by a third party in international arbitration was legal. The law defined the criteria for the validity of a financing agreement. Thus, only professional investors with a paid-up share capital of at least S $ 5 million are eligible to provide financial support to the parties to the dispute in arbitration. Singapore was followed by Hong Kong, which adopted Arbitration and Mediation Legislation of 2016 Third-Party Funding (Amendment) Ordinance No. 6 of 2017. The new law provides that the “maintenance” and “champerty” doctrines do not apply to third-party financing through domestic, international arbitration and mediation. The peculiarities of the adopted change are that only written financing agreements are recognised as valid, under which the financier receives its compensation only as a result of a successful outcome of the case in favour of the financed party. This fact should be the sole interest of the sponsor. The issues of disclosure of TPF involvement issues were resolved. At the same time, a Code of Practice is being developed in Hong Kong, with the help of which the fair financing of arbitration by third parties will be guaranteed in order to avoid all kinds of abuse.

Earlier in England, a Code of Conduct for sponsors financing lawsuits in England and Wales (including arbitration proceedings) was developed. In 2014, the Code was amended to require the disclosure of the availability of a financing agreement. (Lisa Bench Nieuwveld, Victoria Shannnon, 2017, p. 245-247) Although
the Code is recommendatory in essence and does not provide for sanctions for the improper implementation of its provisions, its importance should not be underestimated.

In mid-2013, the International Congress and Convention Association ICCA, together with Queen Mary University of London, created a Working Group called “Third Party Funding in International Arbitration”, whose members systematically study and make recommendations on various TPF issues. The members of this project came to the conclusion that it was necessary to develop a unified code of conduct for sponsors in international arbitration proceedings, by which the parties could, without any risk, attract an outside sponsor when considering and resolving investment and commercial disputes (Seidel S., 2013, p. 16-21).

3.2 Procedural Status of the Financier in Dispute

The role and powers of the sponsor in each case are different and depend on the agreement of the parties. Most often, besides finance, the party of the arbitration proceedings receives legal assistance from the funding organisation, assistance in the selection of experts, arbitrators, as well as advice on making strategic and tactical decisions on the dispute.

On the other hand, by providing funding to a litigant, the sponsor is in a better position, which leads to an imbalance of economic forces between the sponsor and the funded party. The risk of abusing its power by the sponsor is increasing.

The risk primarily lies in the fact that the sponsor may insist on a specific resolution of the dispute, which may not coincide with the interests of the funded party. For example, in Ambiente Ufficio v Argentina, the process was sponsored by the North Atlantic Societied Administration’s (NASAM), which tried to put pressure on the funded party to prevent it from accepting the counter-proposal of Argentina. The funded party resisted the requirements of the sponsoring organisation.

Lawyers recommend that parties willing to appeal to the sponsor, in order to limit the sponsor’s control, specify in the agreement the specific powers of the third-party (financier), and issues that will be resolved with the sponsor’s participation (Winter J., Patel A., 2013, p.11).

Since the sponsor has his economic interest in resolving the dispute in favour of his client, as well as due to some of his control over the claim itself, the question of determining the procedural position of the sponsor in a court of arbitration arises. The question of participation in the arbitration of persons who are not signatories to the arbitration agreement has always been one of the most sensitive and complex problems of international arbitration (Born G. B., 2014, p.1406).

By involving the sponsor in arbitration as an additional party, it is required to prove that the sponsor is a party to the arbitration agreement using various legal instruments. Thus, a party may invoke implied consent arising from its conduct. In determining the implied consent, it is necessary to take into account, in addition to the third party’s intention to be bound by the terms of the arbitration agreement, also the will of the actual signatories (Born G. B., 2014, p.1432). The behaviour of the interested party is also taken as a basis as implied consent or as a prerequisite for implied consent (Fouchard Ph., Gaillard S., Goldman B., 1999, p.30). Thus, it is necessary to take into account the behaviour of the sponsor during the negotiation or execution of the main contract. Only substantial involvement can indicate the existence of the agreement with the terms of the arbitration agreement.

However, as noted by J. von Göhler, financing agreements, as a rule, are concluded after the conclusion of the main contract of which the dispute arose. The sponsor is not associated with obligations to execute the main contract; he also could not participate in the negotiations on the conclusion of the contract. Moreover, even if the financing agreement allows the sponsor to influence the way the funded party manages the case, the sponsor is not always ready to be an active party to the proceedings. Besides, the mere fact that the sponsor supports the party in order to increase the chances of getting a share in case of a win does not in any way indicate the sponsor's intention to be personally involved in arbitration. In essence, this is not different from the work of a lawyer who is only a representative of a party to a dispute but is in no way bound by the terms of the arbitration agreement. J. von Göhler also notes that the fact that a party to a dispute cannot initiate proceedings without the help of a sponsor cannot be interpreted as the consent of the sponsor to be the third party to the dispute. In such a case, the person providing the financing is not different from the bank providing the loan (Jonas von Goeler, 2016, p.67-73).

In several disputes, considered by way of investment arbitration, the question of the procedural status of the financing party was raised (Ambiente Ufficio v. Argentina, CSOB v. Slovakia, Teinver v. Argentina. The analysis shows that the arbitrators, recognising the unique role of the financing party in the process, noted that this does not affect its procedural position in the dispute, including the procedural power of the claimant.
to conduct the case in its interests, who in any case retains an interest in the outcome of the case.

### 3.3 Conflict of Interest and the Problem of Disclosure

In connection with the likelihood of a conflict of interest between the sponsoring party and the arbitrator or the representative of the party, the question arises of the need to disclose information about the existence of a financing agreement.

The consensus among experts has not yet been developed. Some express the view that there is no need to disclose this information, as there is no risk of complications associated with the possible presence of a conflict of interest (Jonas von Goeler, 2016, p. 210). There are also some arguments that there is no need for disclosure since the third party did not sign the arbitration agreement, respectively, the arbitration court considering the dispute does not have the authority to regulate the relationship between the sponsored party and the sponsor arising from the financing agreement. Other experts object to this point of view, arguing that hiding information can lead to a situation where the financed party is in a better position, taking the position of a stronger party in the process and abusing it. Moreover, the purpose of the consideration of a dispute in international arbitration is aimed not only at resolving the dispute, but also so that the rendered decision can be executed in the future. Concealment of information about the third party process financing may result in challenging the decision of the arbitral tribunal and annul the award (Goldstein M. J., 2011 p.5-6).

Currently, the obligation to disclose information on the availability of third-party funding is extremely rare. Moreover, if the disclosure of TPF information is recognised as unresolved, questions arise at what stage this information should be disclosed, which of the participants in the process should act as the initiator of disclosure, how much information should be disclosed: the fact of involving a third party providing funding, the sponsor's identity, or it is necessary to inform the parties about the terms of the financing agreement, and others. What should the legal consequences be in case of violation of the obligation to disclose information?

Some authors specify that disclosure is necessary because the use of TPF is related to important issues such as checking conflict of interest, the possibility of recovering sponsor's expenses from the losing side, increasing transparency and accurate identification of the dispute participant, as well as confidentiality issues. As a rule, when conducting “due diligence”, the sponsor gets access to information that is directly related to the proceedings. Unlike a lawyer, the sponsor is not bound by any professional secrecy provisions. Thus, in practice, the question may arise whether the opposing party is entitled to demand the provision of documents held by the financing company and of interest in the context of a specific proceeding (Frischknecht A., Schmidt V., 2011).

In practice, voluntary disclosure is very rare. If a party discloses this information, it does so for a specific purpose: to focus on its financial position, to show the opposing party that in the process of considering the dispute, it is ready to “go to the end”. Moreover, the very fact that a party receives funding from a third party suggests that the party may have a strong position on the merits of the dispute, which may affect the conclusion of a settlement agreement.

Despite this, disclosure of information in most cases is accidental rather than a voluntary action of the party or the sponsor. Therefore, the adoption of the relevant regulations in Singapore and Hong Kong has become a kind of discovery. Adoption of relevant amendments to the laws establishes the need for disclosure of information on the application of TPF. Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017 (Ordinance No. 6 of 2017), Hong Kong establishes that the party using TPF must, first, inform the availability of a financing agreement, and second, who the sponsor is. Information should be disclosed to each party of the arbitration, as well as to the arbitration court itself at the very beginning of the consideration of the dispute. If a financing agreement is concluded after the start of the proceedings, then its existence must be reported within 15 days after its conclusion.

In Singapore (Legal Profession Act (Chapter 161), Original Enactment: 5 of 1981, Singapore) the need for disclosure is also introduced, but the approach to this issue is slightly different. The main differences are that the information on the application of the TPF, as well as who are the sponsors, should be disclosed to the other party and the arbitration court by the lawyer of the party, and not by the party itself. Meanwhile, the time of disclosure is not precisely defined - either as of the date of filing the application to arbitration or within a reasonable time after the conclusion of the financing agreement.

Recently, some steps have been taken by the Singapore International Arbitration Center (SIAC), which stipulated in its rules that the tribunal has the right to require disclosure of TPF information, the sponsor's identity, and, if necessary, details of what the sponsor's interest is in the case, and whether the sponsor is liable for the costs of its client, that is, the parties to the dispute.
Partially, the proposals were accepted by the laws of Singapore and Hong Kong, as indicated above. Amendments were made to the arbitration rules of the Hong Kong International Arbitration Center (HKIAC). They state that the funded party must inform all parties to the dispute and the arbitration institution considering the dispute about the existence of the TPF and the identity of the third party providing the funding. This information must be provided in the application for arbitration or in response to the application. If the financing agreement is concluded after the submission of the application, then within 15 days after its conclusion.

According to a study conducted by the Queen Mary School of International Arbitration in 2015, 76% of respondents indicated that disclosure of funding information is a must, 63% answered that information about the identity of the sponsor must be disclosed. At the same time, 71% of respondents categorically expressed against full disclosure of the terms of the financing agreement (International Arbitration Survey 2015).

### 3.4 The Possibility of Reimbursement of the Costs in the Arbitration from the Losing Party with the Involvement of TPF

In international arbitration, the winning party is entitled to apply to arbitration with a claim for reimbursement of the costs associated with conducting the arbitration from the losing party. As a rule, the sponsor covers most of the costs associated with the proceedings. The involvement of TPF complicates the resolution of this issue since the sponsor is not a party to the proceedings.

In the absence of legal regulation, an analysis of international arbitration decisions (Kardassopoulos v. Georgia, Fuchs v. Georgia, Quasar de Valors v. Russian Federation, Essar Oil field Services Limited (Essar) v. Norscot Rig Management Pvt Limited (Norscot), shows that there is currently no uniform approach to resolving this issue. In some cases, the arbitrators believed that the sponsor’s expenses should be reimbursed, as would be the case with the expenses of the party. In other cases, the arbitrators followed the opposite approach, denying such compensation.

The dissemination of the recommendations of the Working Group on TPF, which made up the report of the ICCA-Queen Task Force on Third-Party Funding In International Arbitration 2018, which states that the participation of the sponsor should not exclude the recovery of costs to the funded party, should be supported. If only expenses incurred are to be recovered, the obligation of the funded party to the financier in case of victory means that the expenses have been incurred. In this case, it is indicated that the following criteria should be taken into account when recovering expenses incurred in connection with the involvement of TPF: the reasonableness of expenses, the costs incurred for a particular arbitration, the actual payment or the obligation to bear such costs. At the same time, the authors mentioned that the arbitration court does not have the competence to recover the expenses of the opposing party from the sponsor.

### 4 FINDINGS

Currently, there is no single effective mechanism for applying the TPF, which, on the one hand, would not reduce benefits for the parties when it is used, and on the other hand, would not allow sponsors to unduly influence the course of the arbitration.

Given the growing interest in using TPF to finance arbitration proceedings and the existence of certain procedural risks associated with its use, securing the fundamental rules governing TPF relations at the international level seems justified and necessary. The lack of regulation leads to a state of legal uncertainty. The development of an international agreement may take years and not give a tangible effect in the near future. The adoption of unified laws in different countries on the basis of a model law has been shown to be effective. Perhaps such a mechanism would be the most acceptable in modern conditions. While such a model act has not been elaborated, acts of a recommendatory nature, developed by international organisations, in particular, the Report Of The ICCA-Queen Mary Task Force On Funding In International Arbitration 2018, shall be considered useful.

Scholars in the field of international arbitration underline both advantages and disadvantages of funding by third parties. Supporters of TPF note that in the context of international arbitration proceedings in connection with high costs, TPF creates additional access to justice. In practice, there are often situations when companies whose counterparty has violated contractual obligations do not have enough free funds to handle legal litigation. At the same time, the sponsor, whose primary goal is to optimise his income from investments, not only helps the funded party to rationalise expenses but also interferes with the business strategy that may not coincide with the interests of the party itself, for example, reconciliation with the counterparty.
Summarising international practice, it is worth noting that the participation of the sponsor in international
commercial disputes does not lead to its involvement as a third party to the dispute. Its involvement in
arbitration in the form of economic interest and control is not enough to recognise it as an additional party to
the dispute, no matter how significant the involvement is, because otherwise, it would contradict the
consensual, contractual nature of arbitration.

Addressing the need for disclosure of information on the fact of involving TPF and, therefore, excluding the
possibility of a conflict of interest, it is considered expedient to require the administrative institution to require
the parties and their lawyers to disclose information on the availability of funding for the process through the
TPF. At the same time, the arbitrators, nominated for each particular dispute will also need to provide
information about the possible relationship with the sponsoring organisation. In addition to the need to
disclose information about the availability of TPF, it is also necessary to fix the relevant procedure for
providing this information through an arbitration court in institutional arbitration.

Regarding the possibility of reimbursement of expenses of the sponsor by the losing party, the practice is
currently heterogeneous, which confirms the desirability and necessity of legal regulation of financing
international arbitration proceedings by a third party in order to minimise legal uncertainty and financial risks.

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JUGEMENTS


Ioannis Kardassopoulos v. The Republic of Georgia, ICSID Case No. ARB/05/18, Award (March 3,2010), paras. 691-692;


Ron Fuchs v. Georgia, ICSID Case No.ARB/07/15, Award (March 3, 2010), para. 691.