
FUNDING JUSTICE: THE RISE, RISKS, AND REGULATION OF THIRD-PARTY FUNDING IN ARBITRATION

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ABSTRACT

Third-Party Funding (TPF) has become a significant feature of international arbitration, enabling claimants lacking financial resources to pursue meritorious claims with the backing of external funders. These commercial entities cover legal costs in return for a share of any award or settlement, shifting the traditional financing model of arbitration. While once considered ethically problematic, TPF is now embraced in leading jurisdictions such as the United Kingdom, Singapore, and Hong Kong through structured legal and regulatory frameworks.

This article critically examines the evolution of TPF and its global regulatory landscape, identifying key safeguards, such as disclosure requirements, cost allocation powers for tribunals, and limitations on funder control, that help maintain fairness and procedural integrity. It argues that these protections are crucial to prevent conflicts of interest, undue influence, and speculative claims.

Turning to India, the article highlights the country's lack of a coherent TPF regime. Although judicial recognition in cases like *Tomorrow Sales* has acknowledged the concept, the absence of legislative backing, mandatory disclosure obligations, and tribunal powers leaves stakeholders in a state of legal uncertainty. Without statutory clarity, funders may hesitate to engage with Indian-seated arbitrations, and claimants may face enforceability issues.

To address these challenges, the article proposes comprehensive reforms: amending the Arbitration and Conciliation Act, 1996 to formally recognise TPF, introducing mandatory disclosure norms, empowering tribunals to order security for costs and allocate adverse costs to funders where appropriate, and establishing ethical standards to govern funder involvement.

By adopting a balanced and transparent TPF framework aligned with global best practices, India can enhance access to justice, protect procedural fairness, and position itself as a credible international arbitration hub. The regulation of TPF is no longer optional, it is a strategic imperative.

1. Introduction

In the rapidly evolving field of international dispute resolution, Third-Party Funding (TPF) has emerged as a transformative innovation, redefining traditional notions of access, affordability, and risk allocation in arbitration. Historically, international arbitration has been critiqued for its high costs and procedural complexities, often rendering it inaccessible to individuals, small businesses, and under-resourced entities. TPF disrupts this paradigm by allowing a third party, often a specialised commercial funder with no direct stake in the dispute, to finance a litigant's legal and procedural expenses in return for a share in the final arbitral award or settlement.¹

This financial mechanism, once viewed with scepticism, has gained traction across major arbitration hubs such as Singapore, Hong Kong, the United Kingdom, and Australia. These jurisdictions have moved toward regulatory clarity, embracing TPF as a legitimate means of facilitating access to justice while maintaining procedural integrity.² Indeed, TPF is increasingly seen not only as a tool of financial enablement but also as a strategic litigation asset - one that can level the playing field and promote fairness in a typically resource-intensive process.³

However, TPF's growing footprint also presents a host of legal, regulatory, and ethical challenges. Questions surrounding the independence and control of the funded party, potential conflicts of interest involving arbitrators and funders, obligations of disclosure, confidentiality, and the apportionment of adverse costs remain contentious and, in many jurisdictions, unresolved.⁴ These complexities are magnified in emerging arbitration jurisdictions such as India, where the legal framework surrounding TPF remains underdeveloped and ambiguous.

A watershed moment in India's arbitration discourse on TPF came with the Delhi High Court's

¹ Kaira Pinheiro and Dishay Chitalia, 'Third-Party Funding in International Arbitration: Devising a Legal Framework for India' [2021] 14 *NUJS L Rev* 255 <<https://nujslawreview.org/wp-content/uploads/2021/10/14.2-Pinheiro-Chitalia.pdf>> accessed 30 June 2025

² Xiyue Li, 'Third-Party Funding in International Arbitration: An Analysis of Policy Challenges and Practical Considerations' [2024] 15 *Beijing Law Review* 295 <<https://doi.org/10.4236/blr.2024.151019>> accessed 1 July 2025

³ European Law Institute, *ELI Principles Governing the Third Party Funding of Litigation* (European Law Institute 2024)

<https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf> accessed 1 July 2025

⁴ Napoleão Casado Filho, 'The Duty of Disclosure and Conflicts of Interest of TPF in Arbitration' (Kluwer Arbitration Blog, 23 December 2017) <<https://arbitrationblog.kluwerarbitration.com/2017/12/23/duty-disclosure-conflicts-interest-tpf-arbitration/>> accessed 1 July 2025

decision in *Tomorrow Sales Agency v SBS Holdings Inc*⁵ (*Tomorrow Sales*), which brought the issue into sharper judicial and academic focus. While the judgment provided important clarifications regarding the permissibility of TPF under Indian law, it also underscored the pressing need for a coherent legal and regulatory framework.

This article undertakes a comprehensive exploration of the evolution, benefits, and concerns surrounding TPF in international arbitration. It critically examines global best practices and the legislative responses adopted in leading arbitral jurisdictions. It assesses the current state of TPF in India and identifies key regulatory gaps. Finally, it concludes by offering context-sensitive, actionable recommendations that aim to align India's arbitration regime with global standards while preserving the core principles of transparency, fairness, and judicial independence.

In an era where the democratisation of legal remedies is increasingly central to global rule-of-law efforts, understanding and regulating third-party funding is not merely a policy option-it is an imperative.

2. The Mechanics and Emergence of Third-Party Funding

In its simplest form, TPF refers to a financial arrangement in which an external entity, unconnected to the underlying dispute, agrees to fund a party's legal costs in arbitration in exchange for a share in the proceeds recovered, whether through an award or settlement.⁶ This arrangement is typically formalised through a private contract between the funder and the claimant (or, less commonly, the respondent), with terms stipulating the scope of funding, control over strategy, and the quantum of return on investment. Unlike conventional bank loans or contingency fees, third-party funders assume the financial risk of litigation without recourse against the funded party in the event of an unsuccessful outcome, making it a non-recourse, risk-sharing financing model.⁷

⁵ [2023] SCC OnLine Del 3191 (Del HC)

⁶ Hughes Hubbard & Reed, 'What is Third Party Funding? How Is It Used in International Arbitration?' (Hughes Hubbard & Reed LLP, 2022)

<<https://www.hugheshubbard.com/index.php?p=actions/hchhrutils/download/asset&id=1009194>> accessed 1 July 2025

⁷ Pinsent Masons, 'Jurisdiction Guide to Third Party Funding in International Arbitration' (7 May 2021) <<https://www.pinsentmasons.com/out-law/guides/third-party-funding-international-arbitration>> accessed 1 July 2025

The emergence of TPF marks a paradigmatic shift in how international arbitration is financed and conceptualised. Traditionally, arbitration has been dominated by well-resourced corporate players, with smaller entities or individuals often deterred by the significant costs associated with filing claims, paying arbitrators' fees, and hiring legal counsel. TPF mitigates these barriers by redistributing financial burdens, enabling claimants with meritorious cases but limited means to pursue justice. In this sense, it functions not merely as a funding mechanism but as a catalyst for greater access, equity, and efficiency in international dispute resolution.⁸

Globally, jurisdictions have responded to TPF's ascent in markedly different ways, revealing a diverse and evolving regulatory landscape. Countries like Australia and the United Kingdom have normalised TPF in both commercial and investor-state arbitration. In Australia, TPF is a well-established practice, supported by court jurisprudence that recognises its role in promoting access to justice.⁹ The UK, particularly in the wake of the *Arkin* doctrine¹⁰ and the introduction of the Association of Litigation Funders¹¹ (ALF), has developed a sophisticated self-regulatory framework that balances funder accountability with procedural flexibility.¹²

Meanwhile, Asia has witnessed a rapid and well-structured embrace of TPF, particularly in jurisdictions seeking to position themselves as global arbitration hubs. Both Hong Kong and Singapore have enacted statutory amendments that expressly legalise and regulate third-party funding in international arbitration. Hong Kong, through the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017¹³, introduced mandatory disclosure requirements and a Code of Practice for funders, enforced by the Hong Kong International Arbitration Centre (HKIAC).

Initially, however, the legal and ethical legitimacy of TPF was contested. Rooted in medieval

⁸ Swargodeep Sarkar, 'Third Party Funding in International Arbitration: New Challenges and Global Trends' [2020] 2 International Journal of Legal Science and Innovation 270
<https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3846346_code2696200.pdf?abstractid=3846346&mirid=1&type=2> accessed 1 July 2025

⁹ Norton Rose Fulbright, 'Third Party Funding in the Asia-Pacific: Australia' (December 2021)
<<https://www.nortonrosefulbright.com/en-au/knowledge/publications/0ac96d60/third-party-funding-in-the-asia-pacific>> accessed 1 July 2025

¹⁰ *Arkin v Borchard Lines Ltd and Ors* [2005] EWCA Civ 655, [2005] 1 WLR 3055 (CA)

¹¹ Association of Litigation Funders, 'Code of Conduct for Litigation Funders' (Version 3, January 2018)
<<https://associationoflitigationfunders.com/wp-content/uploads/2018/03/Code-Of-Conduct-for-Litigation-Funders-at-Jan-2018-FINAL.pdf>> accessed 2 July 2025

¹² Rachael Mulheron, 'England's Unique Approach to the Self-Regulation of Third Party Funding: A Critical Analysis of Recent Developments' [2014] 73(3) The Cambridge Law Journal 570

¹³ (Hong Kong) Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017, Ord No 6 of 2017 <<https://www.elegislation.gov.hk/hk/2017/6!en>> accessed 2 July 2025

doctrines of champerty and maintenance, which prohibited third parties from intermeddling in disputes for profit, TPF was long regarded with suspicion in common law jurisdictions. Critics argued that it might encourage frivolous litigation, create conflicts of interest, or unduly influence litigation strategy. Over time, these objections have softened, particularly as courts and arbitral institutions began to differentiate modern funding arrangements from historic abuses, recognising their potential to enhance fairness and procedural equality.¹⁴

Nonetheless, the TPF varies globally. Australia and the UK have clear frameworks ensuring ethical standards,¹⁵ while the US adopts a fragmented, state-based approach¹⁶. As TPF continues to evolve from an experimental tool into a mainstream component of global arbitration practice, the need for harmonised regulatory standards, robust ethical safeguards, and judicial clarity becomes increasingly urgent. For emerging arbitration jurisdictions like India, where jurisprudence on TPF is still in its infancy, understanding these global developments is critical to shaping a regulatory environment that fosters both investor confidence and procedural integrity.

3. Position in England, Singapore, Hong Kong and India

3.1 England

In England, the legal principles of maintenance and champerty were originally outlawed as far back as 1275, through the enactment of the Statute of Westminster.¹⁷ A shift toward a more permissive stance on third-party funding began in 1908 with the case *British Cash and Parcel Conveyors v Lamson Store Service Co*, where the court recognised that these doctrines were outdated in light of contemporary legal practices.¹⁸ This trend continued with the passage of the Criminal Law Act 1967, which formally eliminated maintenance and champerty as both criminal offences and torts, although such agreements could still be deemed unenforceable if they contravened public policy.¹⁹

¹⁴ Julia H McLaughlin, 'Litigation Funding: Charting a Legal and Ethical Course' [2007] 31 Vermont Law Review 615 <<https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/mclaughlin.pdf>> accessed 1 July 2025

¹⁵ Wala Al-Daraji, 'Third Party Funding Disclosure in England and Wales and in Australia' [2021] 75(3) Dispute Resolution Journal 31

¹⁶ Edouard Bertrand, 'The Brave New World of Arbitration: Third-Party Funding' [2011] 29(3) ASA Bulletin 607

¹⁷ Statute of Westminster I 1275 (3 Edw 1, cc 1-51)

¹⁸ *British Cash & Parcel Conveyors Ltd v Lamson Store Service Co* [1908] 1 KB 1006

¹⁹ (UK) Criminal Law Act 1967, ss 13-14

TPF, once considered morally questionable, has developed into an accepted feature of the legal landscape in the United Kingdom.²⁰ The traditional legal doctrines of maintenance and champerty have been significantly narrowed in scope and are now primarily used to prevent funders from improperly interfering in legal proceedings. In *R (Factortame Ltd.) v Secretary of State for Transport*, the Court of Appeal clarified that only those funding arrangements that compromise the fairness of the judicial system or obstruct the proper administration of justice would breach the principles of maintenance and champerty.²¹

In the case of *R (on the application of PACCAR Inc. and others) v Competition Appeal Tribunal and others*²² (*PACCAR*), the UK Supreme Court ruled that litigation funding agreements (LFAs) which allow funders to claim a share of the awarded damages, known as Damages-Based Agreements (DBAs), are not legally enforceable under the provisions of the Courts and Legal Services Act 1990 (CLSA).²³

The *PACCAR* ruling was briefly addressed in *Therium Litigation Funding AIC v Bugsby Property LLC*.²⁴ In this case, the High Court of England and Wales considered whether a clause within a litigation funding agreement, specifically one resembling a DBA, could be separated from the rest of the contract and whether this issue met the threshold of presenting a “serious issue to be tried.” This assessment was crucial in deciding whether to grant an asset preservation or freezing order requested by the funder, aimed at stopping the funded party from dissipating funds that the funder claimed were owed. The funding agreement in question included terms that allowed the funder to recover not only the original funding but also a return calculated as a multiple of that amount, as well as a share of the successful recovery.

In the recent judgment, *Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd*²⁵, the Court of Appeal clarified the enforceability of revised LFAs in the wake of the Supreme Court’s decision in *PACCAR*. The Court held that LFAs which calculate a funder’s return as a multiple of its capital outlay, rather than as a percentage of damages, are not DBAs within the meaning of section 58AA of the Courts and Legal Services Act 1990. Importantly, the court emphasised that merely capping a funder’s fee by reference to the

²⁰ *UK Trucks Claim Ltd v Fiat Chrysler Automobiles NV and Others* [2019] CAT 29; *Road Haulage Association Ltd v Man SE and Others* [2019] CAT 26

²¹ *R (Factortame Ltd) v Secretary of State for Transport* [2002] EWCA Civ 932

²² *R (PACCAR Inc and Others) v Competition Appeal Tribunal and Others* [2023] UKSC 28

²³ (UK) The Courts and Legal Services Act 1990, s 58AA

²⁴ *Therium Litigation Funding AIC v Bugsby Property LLC* [2023] EWHC 2627 (Comm)

²⁵ *Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd* [2025] EWCA Civ 841

proceeds of a claim does not convert an LFA into a DBA, as such a cap is ancillary and does not constitute the basis for determining the funder's entitlement. This ruling provides critical certainty to funders and claimants in collective proceedings, affirming that non-percentage-based LFAs remain enforceable and are not caught by the statutory restrictions applicable to DBAs.

3.1.1 UK Legal Framework on Cost Awards Against Litigation Funders

English courts have offered protection to third-party funders from excessive adverse costs through what is known as the *Arkin Cap*. In the case of *Arkin v Borchard Lines Ltd and Others*²⁶, the Court of Appeal ruled that if a funded claimant loses the case, the funder's liability for adverse costs is limited to the amount they had contributed to the litigation. This ruling was well-received by funders, as it placed a clear ceiling on their potential exposure to cost liabilities.

In *Bailey v GlaxoSmithKline UK Ltd*²⁷, the High Court of England and Wales chose not to apply the *Arkin Cap* when deciding whether to impose a security for costs order. The Court clarified that although the *Arkin Cap* may be relevant when determining liability for actual adverse costs, it does not restrict the court's discretion in setting the amount of security for costs, which may exceed the cap if deemed appropriate.

Over time, the strict application of the *Arkin Cap* has been weakened. In *Chapelgate Credit Opportunity Master Fund Ltd v Money*²⁸, the Court of Appeal declined to enforce the *Arkin Cap*, reasoning that it may lead to unfair outcomes in certain cases. The Court gave an example where a funder invests £100,000 toward legal costs of £300,000 in a claim worth £10 million, yet stands to receive 90% of any net recovery. It said that if a funder could make a big profit (like getting 90% of a £10 million claim) by only putting in a small amount (£100,000), then it's fair they may have to pay more in costs. In such scenarios, it may be equitable for a judge to require the funder to cover costs exceeding the amount they initially funded. As a result, the Court confirmed that the *Arkin Cap* is not a fixed rule, and judges may take into account additional considerations - such as the funder's level of control over the litigation and the

²⁶ *Arkin* (n 10)

²⁷ *Bailey v GlaxoSmithKline UK Ltd* [2017] EWHC 3195 (QB)

²⁸ *Chapelgate Credit Opportunity Master Fund Ltd v Money* [2020] EWCA Civ 246

potential financial benefit they could receive - to determine whether they should be treated as a true party to the proceedings.

In *Laser Trust v CFL Finance Ltd*²⁹, the High Court of England and Wales noted that non-party cost orders should not automatically be imposed on a funder acting solely as a *pure funder*. However, the Court clarified that where a funder assumes a role that extends beyond simply providing financial support, such as exerting significant control over the litigation, they may be held liable for costs; in such cases, the protection of the *Arkin Cap* would not apply.

In *Excalibur Ventures LLC v Texas Keystone Inc & Others*³⁰, the Court of Appeal in England addressed concerns over the potential misuse of third-party funding to support unmeritorious claims and expanded the legal approach to adverse costs. The Court concluded that it was appropriate to order a third-party funder to cover the opposing side's legal costs on an indemnity basis, given that the funder had financed the proceedings for personal financial gain and had effectively assumed the role of a principal party in the litigation.

The funder's significant financial stake, active participation, and influence over the conduct of the litigation led the court to conclude that holding the funder liable for costs was fair and appropriate. When making the costs order, the court did not apply the *Arkin Cap* to restrict the funder's liability and briefly remarked that the cap is sometimes viewed as being overly favourable to commercial funders.

3.2 Singapore

Historically, Singapore applied the doctrines of maintenance and champerty, leading to restrictions on TPF agreements due to concerns over public policy violations. In *Otech Pakistan v Clough Engineering*³¹, the Court of Appeal in Singapore broadened the application of champerty, ruling that it also extended to private dispute resolution mechanisms. However, Singapore has progressively shifted its approach, aligning with its strong pro-arbitration policy and adopting a more supportive stance toward TPF.

Singapore was the first Asian jurisdiction to formally permit third-party funding in arbitration. This was achieved through the enactment of the Civil Law (Amendment) Act 2017 and the

²⁹ *Laser Trust v CFL Finance Ltd* [2021] EWHC 1404 (Ch)

³⁰ *Excalibur Ventures LLC v Texas Keystone Inc and Others* [2016] EWCA Civ 1144

³¹ *Otech Pakistan v Clough Engineering* [2006] SGCA 46

Civil Law (Third-Party Funding) Regulations 2017, which eliminated champerty and maintenance as legal barriers in the context of international arbitration and related proceedings, including those involving enforcement before Singaporean courts.³²

Following this, the Civil Law (Third-Party Funding) Amendment Regulations 2021 introduced by Singapore's Ministry of Law expanded the scope of TPF to cover domestic arbitrations, court cases connected to domestic arbitration, matters brought before the Singapore International Commercial Court (SICC) provided they remain within its jurisdiction, as well as any proceedings related to these categories.³³

TPF has become an integral part of Singapore's dispute resolution framework. Both the Singapore International Arbitration Centre (SIAC) and the Law Society of Singapore have issued distinct guidelines to promote transparency and fairness in the use of TPF.³⁴ These guidelines emphasise the importance of disclosing TPF arrangements to avoid conflicts of interest and to uphold the impartiality of arbitrators, as well as to clarify the responsibilities and rights of funders. Additionally, the SIAC incorporated specific provisions acknowledging TPF into its 2017 Investment Arbitration Rules.³⁵ Under Rule 24(1), arbitral tribunals are empowered to require disclosure of TPF arrangements, including the identity of the funder and, where relevant, their financial interest in the outcome. The Rules also grant tribunals discretion to take TPF agreements into account when deciding how to allocate both arbitration³⁶ and legal costs.³⁷

In Singapore, legal professionals are now permitted to engage in Conditional Fee Arrangements (CFAs) with their clients, following the enactment of the Legal Profession (Amendment) Act 2022³⁸ and the accompanying Legal Profession (Conditional Fee Agreement) Regulations 2022.³⁹ These arrangements enable lawyers to charge fees that depend on the result of the case. Currently, the regulations limit the use of CFAs to international and domestic arbitration,

³² *Civil Law (Amendment) Act 2017* (Singapore); *Civil Law (Third-Party Funding) Regulations 2017* (Singapore)

³³ *Civil Law (Third-Party Funding) Amendment Regulations 2021* (Singapore)

³⁴ Singapore International Arbitration Centre, 'Practice Notes on Arbitrator Conduct in Cases Involving External Funding' PN-01/17 (31 March 2017); Law Society of Singapore, 'Guidance Note 10.1.1 on Third-Party Funding' (25 April 2017)

³⁵ SIAC Investment Arbitration Rules 2017, r 24(1)

³⁶ SIAC Investment Arbitration Rules 2017, r 33.1

³⁷ SIAC Investment Arbitration Rules 2017, r 35

³⁸ Legal Profession (Amendment) Act 2022 (No 8 of 2022) (Singapore), Singapore Statutes Online <<https://sso.agc.gov.sg/Acts-Supp/8-2022/>> accessed 12 July 2025.

³⁹ Legal Profession (Conditional Fee Agreement) Regulations 2022 (S 333/2022) (Singapore), Singapore Statutes Online <<https://sso.agc.gov.sg/SL-Supp/S333-2022/>> accessed 12 July 2025.

specified proceedings before the Singapore International Commercial Court (SICC), and related court and mediation matters.

The Singapore High Court delivered a ruling in the case of *Hyflux Ltd (in compulsory liquidation) and others v Lum Ooi Lin*⁴⁰ that worked in favour of those providing litigation funding ruled that an irrevocable and unconditional commitment from the plaintiffs' funder to cover the defendant's legal costs qualifies as acceptable security. The Court reasoned that such an undertaking offers a tangible source against which a cost order can be enforced, if required. This approach may help reduce the initial costs of litigation funding, as it offers an alternative to conventional methods of securing costs, such as paying the sum into court, providing a bank guarantee, or relying on a solicitor's undertaking. The Singapore Court of Appeal later upheld the reasoning adopted by the High Court.⁴¹

3.3 Hong Kong

In Hong Kong, the doctrines of maintenance and champerty remain part of the legal framework, though courts have acknowledged specific exceptions. In *Siegfried Adalbert Unruh v Hans-Joerg Seeberger*⁴², the Court of Final Appeal clarified that the mere fact that an agreement falls within the broad definitions of these doctrines does not automatically render it invalid. Instead, courts must assess the circumstances to determine whether the arrangement threatens the integrity of judicial proceedings, whether public policy considerations, such as promoting access to justice or acknowledging shared legal or commercial interests, outweigh the concerns, and whether there are additional factors like the exploitation of a vulnerable party or improper solicitor involvement. The Court identified several exceptions to the traditional rules:

- (i) individuals with a genuine stake in the litigation's outcome;
- (ii) funding arrangements that enhance access to justice; and
- (iii) other lawful scenarios, such as assignments made by bankruptcy trustees.

⁴⁰ *Hyflux Ltd (in compulsory liquidation) and Others v Lum Ooi Lin* [2023] SGHC 113

⁴¹ *Lum Ooi Lin v Hyflux Ltd (in compulsory liquidation) and Others* [2023] SGCA 43

⁴² *Siegfried Adalbert Unruh v Hans-Joerg Seeberger* [2007] HKCU 246

In the context of arbitration, the case *Cannonway Consultants Ltd v Kenworth Engineering Ltd*⁴³ established that while the doctrines of maintenance and champerty may still apply to traditional court litigation, they do not extend to arbitration proceedings. Building on this distinction, Hong Kong enacted the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017⁴⁴, which formally allowed third-party funding in arbitration and mediation, including matters involving emergency arbitrators and related court proceedings. The provision permitting TPF in arbitration, outlined in Section 3 (Part 10A) of the Ordinance, officially came into effect on February 1, 2019.

The Secretary of Justice in Hong Kong introduced a Code of Practice outlining key requirements and standards for third-party funding, including rules on capital adequacy, mandatory conflict of interest disclosures, terms to be included in funding agreements, and responsibility for adverse costs.⁴⁵ To ensure adherence, an advisory committee made up of three senior legal professionals from Hong Kong was established. In alignment with both the Arbitration Ordinance and the Code of Practice, the Hong Kong International Arbitration Centre (HKIAC) also updated its arbitration rules, effective from November 1, 2018, to strengthen disclosure obligations concerning TPF arrangements.⁴⁶

Following the legal reforms, the Hong Kong International Arbitration Centre (HKIAC) introduced the Administered Arbitration Rules, 2018, which include dedicated provisions addressing third-party funding. These rules require detailed disclosure of any TPF arrangements and grant the arbitral tribunal the discretion to take such arrangements into account when determining the allocation of arbitration costs.⁴⁷

Hong Kong now allows specific types of outcome-based fee arrangements between lawyers and clients in arbitration and associated court proceedings. This change was introduced through the Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Ordinance 2022⁴⁸ and the Arbitration (Outcome Related Fee

⁴³ *Cannonway Consultants Ltd v Kenworth Engineering Ltd* [1995] 1 HKC 179 (HKCA)

⁴⁴ *Hong Kong Arbitration and Mediation Legislation Ordinance* (n 13)

⁴⁵ Hong Kong Department of Justice, *Code of Practice for Third-Party Funding of Arbitration* (issued 7 December 2018, in force 1 February 2019)

<<https://www.info.gov.hk/gia/general/201812/07/P2018120700601.htm>> accessed 13 July 2025

⁴⁶ *Hong Kong International Arbitration Centre Administered Arbitration Rules 2018* (HKIAC, 1 Nov 2018)

<<https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018>> accessed 13 July 2025

⁴⁷ *ibid*, arts 34.4 and 44

⁴⁸ (Hong Kong) *Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Ordinance 2022* (Ordinance No 6 of 2022, 30 Jun 2022)

Structures for Arbitration) Rules⁴⁹, which came into effect on 16 December 2022. These legal instruments authorise and govern three categories of such fee structures: (a) conditional fee agreements, (b) damages-based agreements, and (c) hybrid damages-based agreements.

3.4 India

India has never explicitly prohibited third-party funding (TPF) through legislation. In fact, some states have indirectly acknowledged their existence by modifying provisions related to security for costs under Order XXV of the Civil Procedure Code, 1908 (CPC). For instance, in states like Maharashtra and Madhya Pradesh, Order XXV Rule 3 permits courts to implead and demand security from third person financing litigation.⁵⁰ If the plaintiff is funded by another party, that funder may be added to the proceedings as a co-plaintiff, or as a defendant if they refuse, and the court can compel them to provide security. Failure to do so may result in the funder being barred from asserting any claim or interest in the subject matter of the litigation.

Indian courts have recognised the enforceability of TPF arrangements.⁵¹ In *Ram Coomar Coondoo v Chander Canto Mookerjee*, the Privy Council stated that it is legally permissible for a person to finance a lawsuit in exchange for a portion of the recovered property, as long as the agreement is fair. It was highlighted that the doctrines of maintenance and champerty do not apply in the Indian legal system, making such funding arrangements lawful unless they violate public policy.⁵² However, the Privy Council advised careful consideration when entering into TPF agreements. The legal stance that has developed is that these doctrines only become relevant if a funding agreement is exploitative, grossly unfair, or unethical, conditions that could invalidate the arrangement.⁵³ Courts assess factors like the share of the claim promised to the funder relative to the financial support provided, to check the validity of a TPF.⁵⁴ This principle was applied by the Bombay High Court in *Harilal Nathalal Talati v Bhailal Pranlal Shah*⁵⁵, where a litigant committed to give half of his expected inheritance to

<<https://www.elegislation.gov.hk/hk/2022/6!en>> accessed 13 Jul 2025

⁴⁹ (Hong Kong) *Arbitration (Outcome Related Fee Structures for Arbitration) Rules* (Cap 609 sec 98ZM, 16 Dec 2022) <<https://www.elegislation.gov.hk/hk/cap609D>> accessed 13 Jul 2025

⁵⁰ (India) Civil Procedure Code 1908, Ord XXV r 3, as amended by Maharashtra and Madhya Pradesh

⁵¹ *Raje Dattaji v Mangesh* AIR 1932 PC 278

⁵² *Ram Coomar Coondoo v Chunder Canto Mookerjee* [1876] 2 AC 186, 208 (PC); see also *Banarsi v Sital* AIR 1930 Lah 392; *Raje Dattaji v Mangesh* AIR 1932 PC 278

⁵³ *Ibid*; *Raja VV Subhadrayamma v Poosapati Venkatapati* [1924] SCC OnLine PC 22; *Khaja Moinuddin v SP Ranga Rao* [1999] SCC OnLine AP 583

⁵⁴ *Nuthaki Venkataswami v Katta Nagireddy* [1962] SCC OnLine AP 100; *Suganchand v Balchand* [1956] SCC OnLine Raj 127; *Lal Ram Sarup v Court of Wards through Deputy Commissioner, Delhi* AIR 1940 PC 19

⁵⁵ *Harilal Nathalal Talati v Bhailal Pranlal Shah* AIR 1940 Bom 143

a funder upon success. The court declared this share to be excessively high compared to the litigation costs, ruling the agreement to be unconscionable, exploitative, and against public policy.

In one case, the Andhra Pradesh High Court's Division Bench upheld the legitimacy of a funding arrangement in which the funder was entitled to receive INR 8,000 in return for supporting litigation that cost the claimant INR 6,000 to pursue the litigation. The funder had not only provided financial backing but also assisted throughout the legal process.⁵⁶ Similarly, the Madras High Court validated a funding agreement where the financier, who advanced approximately INR 1 lakh, was entitled to receive INR 5 lakhs (without interest) for supporting a case involving property valued at INR 30 lakhs. The Court noted that the financier's role extended beyond providing money and included activities such as hiring lawyers and managing legal documentation.

Moreover, even though the legal proceedings extended over a period of 12 years, the funder was not entitled to any interest on the INR 5 lakh payment, despite having spent more than the initially agreed INR 1 lakh. Given these facts, the court concluded that the third-party funding arrangement could not be considered exploitative or unfair.⁵⁷

In *Re: 'G' A Senior Advocate of the Supreme Court*⁵⁸, the Supreme Court examined whether a lawyer could lawfully enter into a fee arrangement tied to the outcome of a case. The Court ruled that TPF agreements, in and of themselves, are neither unethical nor contrary to public policy, provided that legal practitioners are not parties to such agreements. This conclusion was based on Rules 20 and 21 of the Bar Council of India Rules, 1975, which prohibit advocates from making their fees contingent on the case outcome or from acquiring any share or interest in an actionable claim.⁵⁹ The same principle was reinforced in *Bar Council of India v A.K. Balaji*⁶⁰, where the Supreme Court clarified that while advocates are restricted from participating in TPF arrangements, there is no legal prohibition on non-lawyers financing litigation and receiving reimbursement from the proceeds of the case. The Court emphasised

⁵⁶ *Pandragi Gopalam v Chidamana Chinnayya* AIR 1958 AP 630

⁵⁷ *The Executive Officer for Sri Navaneethakrishnaswami Devasthanam Veekeralampudur v Rukmani and Co Ltd through its Director L Muthiah and Others* [1955] 2 Mad LJ 339

⁵⁸ *Re 'G' A Senior Advocate of the Supreme Court; B Sunitha v State of Telangana* [2017] SCC OnLine SC 1412

⁵⁹ *Bar Council of India Rules 1975* (India), rr 20-21

⁶⁰ *Bar Council of India v AK Balaji* AIR 2018 SC 1382

that these restrictions on lawyers are essential for avoiding conflicts of interest and upholding the ethical standards of the legal profession.⁶¹

In *Tomorrow Sales*⁶², the Delhi High Court declined to direct the funder of the award-debtor in an arbitration to provide security for the award amount. The Court distinguished this case from *Arkin* and *Excalibur* on two main points: (1) In the UK, courts have statutory authority granting them broad discretion to impose costs on third-party funders, a legal foundation that does not exist under Indian law; and (2) unlike *Arkin* and *Excalibur*, where courts imposed cost liabilities on funders, the *Tomorrow Sales* case involved arbitral proceedings in which the funder was neither a party to the arbitration agreement nor a participant in the proceedings. Therefore, the absence of the funder's consent to be bound by the arbitral award played a key role in the Court's reasoning.

Therefore, TPF arrangements are recognised as a valid way to assist litigants who may struggle to access justice on their own. While these agreements can be invalidated if deemed overly one-sided or exploitative, commercial funders generally act within acceptable boundaries that avoid raising such issues.

4 Navigating the Regulatory and Ethical Landscape of Third-Party Funding in India

As India aspires to establish itself as a premier global hub for international arbitration, it finds itself at a crucial crossroads. On the one hand, the increasing global acceptance of TPF presents an opportunity to democratise access to justice. On the other hand, India's failure to address the legal and ethical complexities of TPF through a formal regulatory framework creates significant uncertainty, threatening the credibility and competitiveness of its arbitration regime.⁶³

Despite significant changes in international best practices, India's Arbitration and Conciliation Act, 1996, remains notably silent on the issue of TPF.⁶⁴ This lack of legislative guidance leaves

⁶¹ Ibid; *Re K L Gauba* AIR 1954 Bom 478

⁶² *Tomorrow Sales* (n 5)

⁶³ Maitrey Chaudhary, 'Third-Party Funding in International Commercial Arbitration: Next Step for India' (IBC Laws, 2025)

<<https://ibclaw.in/third-party-funding-in-international-commercial-arbitration-next-step-for-india/?print=pdf>>
accessed 3 July 2025

⁶⁴ Kritika Krishnamurthy and Naveena Pradeep, 'Third-Party Funding of Domestic Arbitration in India - Key Technical Barriers, Plausible Solutions and the Way Forward' (18 November 2023) *SCC Online Blog*

several critical questions unanswered, from the enforceability of funding agreements to concerns about impartiality, procedural fairness, and the accountability of funders. As a result, parties involved in arbitration, including litigants, tribunals, and funders, are left navigating a legal environment that is fragmented and uncertain.

4.1 Legal Ambiguity and the Enforceability of Funding Agreements

In the absence of statutory recognition, one of the key legal hurdles is the uncertain enforceability of TPF agreements under Indian law. Could these contracts be deemed void on the grounds of violating public policy, or be interpreted as forms of champerty and maintenance? Although landmark decisions like *Tomorrow Sales* have cautiously upheld the legitimacy of such arrangements, the legal landscape remains underdeveloped and fragmented. India still lacks a clear, cohesive doctrinal framework that firmly defines the legal standing of TPF agreements.⁶⁵

Parties face significant risk when entering into funding contracts. Reputable global funders, often risk-averse and compliance-driven, may be dissuaded from funding Indian-seated arbitrations, fearing that their agreements could be challenged in Indian courts. Equally, claimants relying on such funding remain exposed to potential enforcement obstacles if the funding arrangement is later deemed invalid. This uncertainty undermines both the viability and predictability of arbitration in India and hampers the growth of a legitimate funding ecosystem.

4.2 The Problem of Disclosure and Procedural Fairness

Another glaring regulatory gap is the absence of mandatory disclosure requirements. In contrast to best-practice jurisdictions like Singapore and Hong Kong, India has not mandated that parties reveal the existence of a funder, the funder's identity, or their financial interest in the dispute. This opacity has far-reaching implications: it can hinder conflict-of-interest

<<https://www.scconline.com/blog/post/2023/11/18/third-party-funding-of-domestic-arbitration-in-india-key-technical-barriers-plausible-solutions-and-the-way-forward/>> accessed 3 July 2025

⁶⁵ Arunadhri Iyer and Ashwin Mathew, 'Third-Party Funding of Litigation - A Damocles Sword or a Welcome Step' (27 March 2021) *SCC Online Blog* <<https://www.scconline.com/blog/post/2021/03/27/litigation-2/>> accessed 3 July 2025

assessments, undermine arbitrator impartiality, and complicate cost-sharing or procedural fairness evaluations.⁶⁶

Not having this kind of openness can lead to serious problems. For example, it becomes harder to check if the arbitrator might have a hidden connection to the funder, which can affect the fairness of the decision. It can also make it harder to decide who should pay what costs and to ensure the process is fair.

Even worse, if a funding arrangement is kept secret, the final decision (the “award”) might be challenged or cancelled later, either before or after it’s given, under international laws like the UNCITRAL Model Law⁶⁷ or the New York Convention.⁶⁸ That could lead to more legal battles and uncertainty.

4.3 Tribunal Powers and Security for Costs

The effectiveness of TPF often depends on the tribunal’s ability to maintain procedural balance. However, Indian law does not empower arbitrators to order security for costs, even when a claimant is backed by a funder but lacks independent financial solvency. This regulatory void leaves respondents vulnerable, particularly in cases where enforcement against the actual claimant is implausible, and the funder cannot be held accountable for adverse costs.⁶⁹ By

⁶⁶ Brooke Guven and others, ‘Regulating Third-Party Funding in Investor-State Arbitration Through Reform of ICSID and UNCITRAL Arbitration Rules: Holding Global Institutions to Their Development Mandates’ (Boston College Law School Legal Studies Research Paper No 627, 13 November 2020) <<https://ssrn.com/abstract=4785477>> accessed 7 July 2025

⁶⁷ United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on International Commercial Arbitration 1985*, arts 12(1)-(2), 34(2)(a)(iv), 34(2)(b)(ii) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf> accessed 3 July 2025

⁶⁸ United Nations, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)*, arts V(1)(b), V(1)(d), V(2)(b) <<https://uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf>> accessed 3 July 2025

⁶⁹ Harshitha Swarna and Ishita Agrawal, ‘Security for Costs in the Third-Party Funding Framework of International Arbitration (Part II)’ Mapping ADR Law and Dispute Resolution Blog, O.P. Jindal Global University <<https://jgu.edu.in/mappingADR/security-for-costs-in-the-third-party-funding-framework-of-international-arbitration-part-ii/>> accessed 3 July 2025

contrast, jurisdictions such as the UK⁷⁰ and Australia⁷¹ allow tribunals to impose such safeguards. The absence of equivalent powers in India raises questions about fairness and efficiency in funder-backed claims.

This gap not only increases the risk for respondents but also encourages speculative claims backed by funders with no connection to India. The lack of a mechanism for security for costs in Indian-seated arbitrations undermines fairness and may deter parties from choosing India as the seat. Amending the Arbitration and Conciliation Act or adopting institutional rules to empower tribunals in this regard would promote procedural balance and align India with global best practices.

4.4 Institutional Inertia and the Policy Vacuum

While courts and tribunals are beginning to grapple with TPF-related issues, key institutional actors have largely remained passive. The Law Commission of India has yet to issue any focused recommendations on TPF, despite its past influence on arbitration reform. Similarly, the Bar Council of India has not clarified whether it is ethical for lawyers to facilitate or advise on funding agreements, thus leaving legal practitioners in a grey zone.⁷²

This institutional inertia is not only disappointing but also detrimental. The absence of leadership from legal and policy institutions delays the development of a robust funding ecosystem, discourages innovation, and leaves claimants, counsel, and funders operating in a state of legal limbo.

In the absence of formal guidance, much of the legal discourse around TPF in India remains reactive, driven by isolated judicial pronouncements rather than proactive policymaking. This gradual, case-by-case development has led to a fragmented system in which neither funders

⁷⁰ Glyn Rees, 'In review: third party litigation funding in United Kingdom (England & Wales)' (Lexology, 22 November 2021)

<<https://www.lexology.com/library/detail.aspx?g=0bb931d4-d3fa-4eda-8293-16386b572897>> accessed 3 July 2025

⁷¹ Dirk Luff and Jason Geisker, 'In review: third party litigation funding in Australia' (Lexology, 8 December 2022) <<https://www.lexology.com/library/detail.aspx?g=e87ed4a2-ce8e-44b0-abc6-96fcb96df0c8>> accessed 3 July 2025

⁷² Sumeet Kachwaha and Ankit Khushu, *Third-Party Litigation Funding: Overview (India)* (Practical Law UK Practice Note, 1 June 2023)

<https://kaplegal.com/wp-content/uploads/2023/07/Third-Party_Litigation_Funding_Overview_India-2023.pdf> accessed 4 July 2025

nor litigants can reliably anticipate how TPF arrangements will be interpreted or handled by different forums.

Moreover, the silence of professional regulatory bodies leaves lawyers exposed to potential ethical pitfalls. Without explicit rules, legal practitioners may hesitate to engage with TPF, even where it could benefit their clients, fearing professional misconduct allegations. Clarifying these boundaries is essential to encourage responsible engagement with funding and to promote confidence in India's growing arbitration market.

5 The Path Forward: Building a Balanced and Transparent TPF Regime

To bridge the critical regulatory, ethical, and institutional gaps in India's current arbitration landscape, a robust and forward-looking TPF regime must be developed. This reform must be multidimensional, incorporating legislative clarity, institutional accountability, and ethical oversight. The aim should not only be to regulate TPF but also to integrate it in a manner that aligns with India's constitutional commitment to access to justice and its aspirations of becoming a global arbitration hub.

5.1 Enact a Comprehensive Legal Framework

The starting point must be legislative reform. India's arbitration statute, The Arbitration and Conciliation Act, 1996, should be amended to explicitly recognise the legality and enforceability of TPF arrangements. Presently, the lack of statutory recognition fosters uncertainty, deters funders, and inhibits legal practitioners from engaging confidently in funding discussions.⁷³

Drawing from comparative jurisdictions, such as Singapore's Civil Law (Amendment) Act, 2017⁷⁴ and Hong Kong's Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance, 2017⁷⁵, India should enact legislation that:

- Validates third-party funding agreements as lawful and enforceable contracts;

⁷³ *Third-Party Funding* (n 63)

⁷⁴ *Singapore Civil Law (Amendment) Act* (n 32)

⁷⁵ *Hong Kong Arbitration and Mediation Legislation Ordinance* (n 13)

- Delineates the legal relationships between the funder, the funded party, and the opposing side;
- Grants arbitral tribunals discretion to manage issues of disclosure, cost allocation, and funder liability;
- Embeds safeguards consistent with India's broader constitutional ethos, particularly the right to access effective remedies.

A statutory foundation will send a strong signal to investors, litigants, and the international legal community that India is committed to transparency, predictability, and fairness in dispute resolution.

5.2 Mandate Early and Transparent Disclosure

One of the most pressing needs is the introduction of mandatory disclosure requirements. To uphold the principles of impartiality and procedural fairness, parties should be required to disclose:

- The existence of a funding arrangement;
- The identity and role of the third-party funder;
- Any past or present relationships between the funder and tribunal members, parties, or their legal counsel.

Ideally, such disclosures should be made at the time of tribunal constitution, enabling early conflict checks, informed arbitrator appointments, and procedural adjustments. This mirrors best practices seen in Singapore, Hong Kong, and ICC Guidelines.⁷⁶ The absence of early disclosure can compromise the integrity of the arbitral process and expose parties to the risk of award annulment or enforcement refusal under the UNCITRAL Model Law and the New York Convention.

⁷⁶ Aren Goldsmith and Lorenzo Melchionda, 'The ICC's Guidance Note on Disclosure and Third-Party Funding: A Step in the Right Direction' (Kluwer Arbitration Blog, 14 March 2016) <<https://arbitrationblog.kluwerarbitration.com/2016/03/14/the-iccs-guidance-note-on-disclosure-and-third-party-funding-a-step-in-the-right-direction/>> accessed 4 July 2025

5.3 Limit Funder Control Over Litigation Strategy

While third-party funding can relieve financial pressure, it must not undermine the autonomy of the claimant or the integrity of the dispute process. Regulatory standards must ensure that the funder's role remains passive and non-intrusive.⁷⁷ To this end:

- Funders should not possess a veto over settlement decisions;
- They must not have unilateral control over the selection or dismissal of legal counsel;
- They should be prohibited from dictating litigation or arbitration strategy.

Regulations should encourage the adoption of **model funding agreements** with built-in safeguards and should empower professional bodies to monitor and sanction abusive control. Arbitration must remain **party-driven**, not funder-directed.

5.4 Empower Tribunals to Manage Funder-Related Risks

Arbitral tribunals should not be left powerless in the face of increasingly complex TPF arrangements. As funders gain a more prominent role in shaping the strategic and financial landscape of disputes, tribunals must be equipped with sufficient authority to ensure procedural fairness, protect both parties' interests, and preserve the integrity of the arbitral process. Amendments to the Arbitration and Conciliation Act, 1996 and corresponding institutional rules should explicitly empower tribunals to:

- Order security for costs in situations where the claimant is backed by a third-party funder but lacks sufficient assets or where there are concerns about the frivolity or speculative nature of the claim.⁷⁸ This would help safeguard respondents from the risk of incurring irrecoverable legal expenses;
- Allocate adverse cost orders to funders in appropriate cases, particularly when funders exercise substantial control over the proceedings or influence litigation strategy, thereby

⁷⁷ Pragya Avtar, 'The Role of Third-Party Funding in Insolvency Litigation in India' (October 2024) The Resolution Professional, Institute of Insolvency Professionals of ICAI
<<https://www.iiipicai.in/wp-content/uploads/2024/11/42-47-Article-The-Role-of-Third.pdf>>
accessed 4 July 2025

⁷⁸ Victoria A Shannon, 'Harmonizing Third-Party Litigation Funding Regulation' [2015] 36 Cardozo L Rev 879-80 <<http://cardozolawreview.com/wp-content/uploads/2018/08/SHANNON.36.3.pdf>> accessed 7 July 2025

stepping into the shoes of the funded party⁷⁹;

- Review funding agreements in camera to assess whether there are any potential abuses, such as disproportionate control by the funder, conflict of interest, or unfair terms, that could undermine the fairness or balance of the proceedings. Such a review would also allow tribunals to evaluate cost and security risks better.⁸⁰

These procedural powers are essential not only to ensure equality of arms, especially for under-resourced respondents facing well-capitalised, funder-backed claimants, but also to deter the filing of speculative or vexatious claims driven solely by financial arbitrage. Ultimately, a more transparent and empowered approach to TPF within arbitration will foster confidence in the system's ability to administer justice impartially and efficiently.

5.5 TPF as a Catalyst or Risk?

India is at a pivotal crossroads. Third-party funding has the potential to act as a **catalyst for access to justice**, allowing under-resourced claimants to pursue legitimate claims, particularly in high-stakes commercial disputes.⁸¹ It can also position India as a more attractive venue for international arbitration, aligning with global trends and investor expectations.

However, without a clear regulatory blueprint, TPF may become a double-edged sword, bringing with it **legal ambiguity, ethical conflicts, and institutional inertia**.⁸² Passive regulators and unclear jurisprudence will only magnify the risk of abuse, forum shopping, and loss of arbitral credibility.

The choice before India is stark: adapt to the evolving financial realities of dispute resolution or remain an outlier in the global arbitration ecosystem. A **coherent, transparent, and future-ready TPF regime** is not merely advisable; it is imperative. Bold, thoughtful reform can ensure

⁷⁹ *Third-Party Funding in International Arbitration* (n 1)

⁸⁰ Investment Division - Directorate for Financial and Enterprise Affairs, 'Transparency and Third-Party Participation in Investor-State Dispute Settlement Procedures' [2005] OECD 1/2005 <https://www.oecd.org/content/dam/oecd/en/publications/reports/2005/05/transparency-and-third-party-participation-in-investor-state-dispute-settlement-procedures_g17a16e5/524613550768.pdf> accessed 6 July 2025

⁸¹ Krrishan Singhania, Avni Singhania and Aayush Shah, 'Third Party Funding in the Indian Arbitration Scenario' [2024] 4(17) *Journal of International ADR Forum* 15 <<https://singhanialaw.com/third-party-funding-in-the-indian-arbitration-scenario/>> accessed 6 July 2025

⁸² Valentina Frignati, 'Ethical Implications of Third-Party Funding in International Arbitration' [2016] 32(3) *Arbitration International* 505 <<https://academic.oup.com/arbitration/article-abstract/32/3/505/1741422>> accessed 6 July 2025

that TPF serves its intended purpose: empowering litigants, upholding fairness, and strengthening India's position in the international arbitration community.

6 Current Status and Recent Developments in Third-Party Funding

The legal and institutional treatment of TPF continues to evolve across jurisdictions, revealing a dynamic global landscape shaped by both judicial scrutiny and proactive regulatory reform. While earlier sections have outlined foundational practices in the UK, Singapore, Hong Kong, and India, recent developments signal important turning points that will likely influence the future trajectory of TPF, particularly in emerging jurisdictions like India.

A landmark moment in the United Kingdom was the Supreme Court's ruling in *PACCAR supra*, which unsettled the litigation funding industry by classifying typical litigation funding agreements (LFAs) as Damages-Based Agreements (DBAs). As most existing agreements did not comply with the regulatory framework for DBAs under the Courts and Legal Services Act 1990, the ruling rendered many unenforceable. This sparked widespread concern, particularly in collective proceedings, and prompted the Civil Justice Council (CJC) to issue a June 2025 report recommending legislative amendments to remove LFAs from the definition of DBAs,⁸³ although concrete reforms are unlikely before 2026. The ruling underscores the fragile legal footing upon which TPF arrangements may rest, even in mature jurisdictions.

In contrast, jurisdictions like Singapore and Hong Kong have continued to consolidate their pro-TPF stance through clear, enforceable legislative frameworks. Both jurisdictions have integrated TPF within their arbitration systems, establishing mandatory disclosure obligations, ethical codes for funders, and institutional mechanisms to manage conflicts of interest. These developments have not only increased transparency but also bolstered their reputations as trusted international arbitration hubs.⁸⁴

India, meanwhile, is inching toward a more formal approach. While judicial recognition of TPF, most notably in *Tomorrow supra*, has lent a degree of legitimacy to the practice, the absence of codified regulation continues to cause uncertainty. In response, recent policy-level

⁸³ Civil Justice Council, *Review of Litigation Funding: Final Report* (2 June 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report.pdf>> accessed 6 July 2025

⁸⁴ Christine Sim, 'Third Party Funding in Asia: Whose Duty to Disclose?' (Kluwer Arbitration Blog, 22 May 2018) <<https://arbitrationblog.fexpertkluwerarbitration.com/2018/05/22/third-party-funding-asia-whose-duty-disclose/>> accessed 6 July 2025

initiatives signal a shift toward reform. A 2023 Expert Committee recommended amending the Arbitration and Conciliation Act to include disclosure obligations and expand the definition of “affiliate” to encompass funders, measures aimed at mitigating arbitrator bias and improving transparency. A proposed new Section 18A would require funded parties to disclose the identity of their financiers to the tribunal, aligning India’s practice with emerging international norms. These recommendations were echoed in the Committee’s 2024 report⁸⁵, which also urged the Law Commission to undertake a broader review of TPF regulation.

Although India’s current statutory framework does not explicitly reference TPF, provisions related to cost deposits under Sections 38 and 39 of the Arbitration and Conciliation Act, 1996, could potentially accommodate funder participation. Moreover, in insolvency proceedings, the existing legal architecture, particularly the Insolvency and Bankruptcy Code, 2016, has already embraced forms of external financing, further illustrating the system’s latent capacity to incorporate TPF with proper safeguards.⁸⁶

Institutional actors have also begun integrating global best practices. The ICC⁸⁷, SIAC⁸⁸, and HKIAC⁸⁹ have incorporated mandatory funder disclosure provisions in their arbitration rules, demonstrating a clear move toward systemic transparency. These reforms offer valuable templates for India’s institutional and legislative path forward.

Taken together, these developments signal a wider global transformation - from seeing TPF as an outlier to acknowledging it as a crucial tool for promoting access to justice and addressing financial imbalances in arbitration. However, as the UK’s experience illustrates, even advanced legal systems can encounter serious challenges without clear legislative guidance. For India, the message is unmistakable: judicial support alone is insufficient. To fully leverage the

⁸⁵ (India) Ministry of Law & Justice, *Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996 to make it alternative in the letter and spirit* (Feb 2024) <https://www.livelaw.in/pdf_upload/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf> accessed 6 July 2025

⁸⁶ Insolvency and Bankruptcy Code 2016, ss 5(15), 20(2)(c), 25(2)(c), 30(2); Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, reg 31

⁸⁷ Jonathan Barnett, Lucas Macedo and Jacob Henze, ‘Third-Party Funding Finds its Place in the New ICC Rules’ (Kluwer Arbitration Blog, 5 January 2021) <<https://arbitrationblog.kluwerarbitration.com/2021/01/05/third-party-funding-finds-its-place-in-the-new-icc-rules/>> accessed 6 July 2025

⁸⁸ Lisa M Richman, Maria Cristina Rosales del Prado and Maxime Delabarre, ‘SIAC Rules 2025: Enhancing Efficiency and Transparency in Arbitration’ (20 December 2024) McDermott Will & Emery <<https://www.mwe.com/insights/siac-rules-2025-enhancing-efficiency-and-transparency-in-arbitration/>> accessed 6 July 2025

⁸⁹ Jae Hee Suh, ‘Disclosure of Third Party Funding: Hong Kong and Singapore Setting the Trend?’ (2 October 2017) *Practical Law Arbitration Blog* <<http://arbitrationblog.practicallaw.com/disclosure-of-third-party-funding-hong-kong-and-singapore-setting-the-trend>> accessed 6 July 2025

advantages of TPF while managing its potential downsides, India needs a well-defined regulatory framework that meets international benchmarks while being sensitive to the country's unique legal and institutional context.

7 Conclusion: Toward Balanced Reform of Third-Party Funding in India

Third-Party Funding (TPF) has quickly transitioned from a marginal concept to a central feature of international arbitration. What was once dismissed as a relic of champerty is now recognised as a powerful enabler - unlocking access to justice, levelling the playing field, and bringing financial sophistication to complex disputes. Around the globe, jurisdictions like Singapore and Hong Kong have set the gold standard, with comprehensive statutes and institutional rules that marry innovation with transparency. The UK's legal journey - from *Arkin* to *PACCAR*, and most recently *Sony Interactive* - has highlighted the dynamism of judicial engagement and the necessity of continuous recalibration in the face of new funding models.

India, meanwhile, is standing at a decisive crossroads. The *Tomorrow Sales* judgment was a bold first step, acknowledging that TPF is not alien to Indian law. But without a legislative backbone, India's position remains uncertain. Unlike in *Excalibur* or *Chapelgate*, Indian tribunals cannot order security for costs or hold funders liable, leaving respondents exposed and the system vulnerable to imbalance. Similarly, ethical ambiguity - reflected in cases like *Re: 'G'* and *A.K. Balaji* - leaves legal professionals in the dark about how far they can go in engaging with funders.

If India is serious about establishing itself as a global arbitration hub, it must transition from piecemeal adjudication to a forward-looking regulatory architecture that reflects both international best practices and the unique dynamics of its domestic legal system. This includes:

- Enacting a comprehensive statutory regime that defines the scope, obligations, and limitations of TPF;
- Requiring transparent disclosure mechanisms to protect arbitral integrity;
- Equipping tribunals with robust procedural powers over funding-related issues, such as security for costs and adverse cost liability;

- And adopting ethical guidelines and accreditation frameworks that promote responsible funder conduct without stifling innovation.

Such a regime must be rights-sensitive, placing the autonomy of the funded party at the centre while ensuring that funder involvement does not override legal strategy or conflict with public interest objectives, particularly in investor-state and public law disputes.

Moreover, the integration of TPF into India's arbitration ecosystem should not be viewed in isolation. It intersects with broader imperatives, ease of doing business, judicial efficiency, investor confidence, and access to economic justice. As India continues to reform its commercial dispute resolution infrastructure, TPF can serve not only as a financial instrument but also as a symbol of systemic modernisation, offering pathways to resolve disputes that are efficient, equitable, and globally credible.

Third-party funding is not inherently a threat to arbitration - it is a tool. And like any tool, its value lies in how it is regulated, deployed, and aligned with the ends of justice. With the right legal and policy frameworks, TPF can evolve from a grey area into a pillar of India's arbitral future, bridging financial asymmetries while preserving the sanctity of the arbitral process. The time to act is now - before opportunity hardens into inertia, and innovation gives way to uncertainty.