THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION: BRIDGING INDIA'S REGULATORY VACUUM

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ABSTRACT

Over the decades, third-party funding (TPF), a practice in which a non-party funder covers a party's arbitration costs in return for a portion of the final award, has emerged as an important feature of international dispute settlement. As arbitration has become increasingly commercial in nature, and the need to balance procedural integrity with access to justice has grown, it has evolved from a historical taboo into a crucial practical tool enabling claimants to pursue meritorious claims without immediate financial burden. While countries like Singapore, Hong Kong, and Malaysia have responded with carefully structured statutory frameworks, India continues to operate within a structural regulatory vacuum: there is no mandatory disclosure requirement, no legislation governing the practice, and no institutional mechanism addressing potential conflicts of interest that arise when an undisclosed funder supports a claimant. In light of the increasing complexity and scope of TPF transactions, this article contends that India's current permissive but silent stance derived primarily from the inapplicability of champerty and maintenance doctrines established through judge-made law dating back to 1876 is no longer adequate. The article proposes a targeted TPF framework for India based on a comparison of the regulatory models of Singapore and Hong Kong, international institutional rules such as those of the International Centre for Settlement of Investment Disputes (ICSID), International Chamber of Commerce (ICC), and the Singapore International Arbitration Centre (SIAC), as well as India's own recent developments like the Draft Mumbai Centre for International Arbitration (MCIA) Rules 2024. The proposed framework includes mandatory disclosure of funders, qualifying funder requirements, safeguards against conflict of interest, confidentiality protections, and greater clarity on tribunals' powers to order security for costs; implemented through coordinated institutional rule reform or amendments to the Arbitration and Conciliation Act, 1996. Absent such reform, India's stated ambition of becoming a major international arbitration hub remains structurally jeopardized.

I. INTRODUCTION

The promise of an impartial and efficient dispute resolution process is undermined when a party to an international arbitration has a valid claim but lacks the funds to pursue it. Third-party finance (TPF) emerges to bridge this gap between formal legal rights and actual access. In its most common form, TPF entails an agreement whereby an outside party, usually a hedge fund, insurance company, or professional litigation finance firm, provides the funding necessary to carry out arbitration proceedings in exchange for a predetermined portion of any award.[1] The entire financial risk of the proceeding's rests with the funder; if the claim is denied, the investment is forfeited.

An equally notable variation has accompanied this expansion in how legal systems regulate or fail to regulate TPF. In order to explicitly authorize and regulate TPF for international arbitration proceedings, Singapore passed the Civil Law (Amendment) Act in 2017. In the same year, Hong Kong did the same by making specific changes to its Arbitration Ordinance. Nigeria passed the Arbitration and Mediation Act of 2023, and Malaysia followed suit with the Arbitration (Amendment) Act of 2024. India, on the other hand, is in a very unusual position: it has never specifically forbidden TPF (the English theories of champerty and maintenance were deemed inapplicable to Indian courts as early as 1876), but it has also not implemented any positive regulatory system.[2] As a result, funding agreements are neither mandated to be disclosed nor forbidden from being concealed, TPF is neither clearly legal nor illegal, and the ethical dilemmas arising from funder involvement are left to the good faith of private parties.

There are tangible costs associated with this regulatory apathy. The impartiality of the tribunal is jeopardized when an undisclosed funder has a prior commercial relationship with one of the designated arbitrators, without the parties being able to identify or challenge the conflict. The lack of regulations on funder liability renders a response helpless when confronted with a well-funded claimant who requests security for costs. These are the foreseeable, recurrent effects of an unmanaged TPF environment, not hypothetical situations.

[1] Kaira Pinheiro & Dishay Chitalia, *Third-Party Funding in International Arbitration: Devising a Legal Framework for India,* 14 NUJS Law Review 255 (2021).
[2] A. Wadia & S. Rawat, *Third-Party Funding in Arbitration — India's Readiness in a Global Context,* 15 Transnat'l Disp. Mgmt. no. 2 (2018).

II. UNDERSTANDING THIRD-PARTY FUNDING: CONCEPT, MECHANICS, AND STAKEHOLDERS

The concept of third-party finance is not one-dimensional. It encompasses a range of financial arrangements sharing a core feature: the involvement of an outside party to the dispute that funds a party and assumes the risk of non-recovery in exchange for a return contingent on the success of the claim.[3] Because different funding arrangements result in varied conflict profiles, confidentiality concerns, and security for costs implications, understanding this spectrum is necessary before evaluating the regulatory issues they present.

In its most familiar form, third-party funding involves specialized litigation finance company, such as Burford Capital, Omni Bridgeway, or Vannin Capital. These companies evaluates a potential claim, assesses its merits and expected financial yield, and consents to fund the claimant's legal expenses in exchange for a portion of the recovered award, usually between twenty and forty percent of the total amount obtained.[4] The multiple-of-capital model is an alternate return calculation approach in which the parties agree to employ whichever method produces the highest figure. The funder's return is computed as a multiple of the invested capital, such as three times the amount funded.[5] TPF differs from traditional commercial lending because to its non-recourse structure, which also accounts for its regulatory complexity and appeal to claimants. A more complex variation is portfolio funding, in which a funder finances multiple claims of a single client or law firm, distributing risk over several cases at once. Law firms find this structure especially appealing since it enables them to reduce upfront fees in exchange for a share of successful outcomes.[6]

A series of relationships requiring legal regulation arises from the tripartite structure of TPF: the funded party, the opposing party, and the funder. The Third-Party Funding Agreement (TPFA), a private contract that binds the funder and the funded party, typically governs the scope of funding, return structure, withdrawal rights, access to privileged documents for due

[3] Pinheiro & Chitalia, *supra* note 1.
[4] Christopher Knaus, *Compensation sought for Australians caught up in Facebook privacy breach*, The Guardian (July 10, 2018), https://www.theguardian.com/technology/2018/jul/10/compensation-sought-for-australians-caught-up-in-facebook-privacy-breach; Omni Bridgeway, *In Singapore's first funded commercial litigation, Omni Bridgeway assists an artist to recover revenue*, https://omnibridgeway.com/insights/case-studies/all-case-studies/case-study/case-studies/2020/05/28/in-singapore's-first funded-commercial-litigation-omni-bridgeway-assists-an-artist-to-recover-revenue
[5] Astha Kothari & Arryan Mohanty, *Third-Party Funding in International Arbitration,* 3 Journal of Alternate Dispute Resolution no. 4 (2024).
[6] *Id.*

diligence, and the extent of the funder's control over litigation strategy and settlement.[7] The majority of the regulatory issues that TPF creates stem from this imbalance, in which the funded party obtains resources from an organization whose name and interests may stay completely hidden from the opposing party and the arbitral tribunal.

III. CHAMPERTY AND MAINTENANCE: THE HISTORICAL BAR AND INDIA'S DIVERGENCE

One must first comprehend what India acquired from English common law and what it rejected in order to understand why TPF operates in India without a regulatory structure. Over centuries, English courts developed the doctrines of maintenance and champerty to prohibit third-party involvement in legal proceedings. Maintenance is essentially financial assistance for another person's legal action by a party with no legitimate interest in the outcome; champerty referred to such assistance coupled with an agreement to share the claim proceeds.[8] Under English law, both were regarded as criminal offenses and civil torts, demonstrating a pervasive judicial concern about the monetization of justice and the potential distortion of legal processes by unrelated parties.

India's position was settled in *Ram Coomar Coondoo v Chunder Canto Mookerjee* as early as 1876.[9] The Privy Council held that the strict English doctrines of maintenance and champerty do not naturally apply to Indian jurisdiction, where parties may lack the means to pursue legitimate claims without external funding. However, it clarified that funding agreements are not entirely unrestricted; agreements that were deemed to be unconscionable, extortionate, or made for improper purposes, such as speculative litigation, would be void as contrary to public policy.[10]

A later Privy Council ruling in *Raja Rai Bhagawat Dayal Singh v Debi Dayal Sahu*,[11] reaffirmed qualified permissive approach, while emphasizing that advocates cannot profit directly from the proceedings they are conduct. In *Bar Council of India v. A.K. Balaji*,[12] the Supreme Court clarified that although advocates cannot enter contingency fee arrangements,

[7] *Id.*
[8] Meenal Garg, *Introducing third-party funding in Indian Arbitration: A tussle between conflicting policies*, 6(2) NLUJ Law Review 71 (2020).
[9] Ram Coomar Coondoo v. Chunder Canto Mookerjee, (1876) 2 App Cas 186 (PC).
[10] Wadia & Rawat, *supra* note 2.
[11] Raja Rai Bhagawat Dayal Singh v. Debi Dayal Sahu, (1908) 35 IA 48 (PC).
[12] Bar Council of India v. A.K. Balaji, 2018 SCC OnLine SC 214; Wadia & Rawat, *supra* note 2.

non-lawyer third parties may fund litigation and recover returns from the proceeds, thereby reinforcing the legitimacy of professional TPF in India.

Other common law jurisdictions have followed a similar trajectory, but through legislation rather than judicial development. Through the Criminal Law Act of 1967, England eliminated champerty and maintenance as criminal and tortious wrongs, but it kept them as possible grounds to void contracts that are against public policy in extreme circumstances.[13] Without a centralized regulatory law, Australia, which fostered the first professional TPF industry in the 1990s due to the unique demands of insolvency practice, also developed toward acceptability. Ireland reversed its earlier restrictive stance following Persona Digital Telephony Ltd v. Minister for Public Enterprise[14] in 2017 through the Courts and Civil Law (Miscellaneous Provisions) Act, 2023. These developments illustrate that common law jurisdictions that previously viewed TPF as an abuse of process are now treating it as a legitimate aspect of the dispute resolution landscape, subject to varying degrees of regulatory supervision that India has not yet implemented.

IV. THE GLOBAL REGULATORY LANDSCAPE: LESSONS FOR INDIA

A. Singapore

Due to its close proximity to Indian economic interests both geographically and commercially, as well as the careful and sophisticated construction of the framework, Singapore's legislative approach to TPF is the most instructive model for India. Sections 5A and 5B of the Civil Law Act[15] were added by the Civil Law (Amendment) Act 2017, which concurrently defined the permitted scope of TPF and explicitly recognized it for international arbitration proceedings. The Civil Law (Third-Party Funding) Regulations 2017[16] were also introduced to operationalize the Act. Since its inception, the framework has gradually been expanded. The scope of authorized TPF, initially limited to international arbitration, was expanded in 2021 to include court actions resulting from or connected to international arbitration, domestic arbitration proceedings, and associated mediation.[17]

[13] Criminal Law Act, 1967, § 13, 14 (UK).
[14] Persona Digital Telephony Ltd v. Minister for Public Enterprise, [2017] IESC 27.
[15] Civil Law (Amendment) Act, 2017, § 5A, 5B (Singapore).
[16] Civil Law (Third-Party Funding) Regulations, 2017 (Singapore)
[17] Civil Law (Third-Party Funding) Amendment Regulations, 2021 (Singapore)

The dispute settlement process in Singapore is now deeply ingrained with TPF. Guidelines have been released by the Law Society of Singapore and the Singapore International Arbitration Centre (SIAC) to guarantee transparency and justice, especially by mandating the disclosure of funding arrangements to avoid conflicts of interest and preserve arbitrator neutrality.[18] In its 2017 Investment Arbitration Rules, the SIAC codified TPF, enabling arbitral courts to order the disclosure of financing information, such as the identity and financial interest of the funder.[19]

Rule 38 of the SIAC Rules, 2025 strengthens disclosure requirements at the institutional level. This provision requires all parties involved in a TPF agreement to promptly notify the Registrar, the arbitral tribunal, and the opposing parties of the funding's existence and the identity of the funder. Additionally, it prohibits parties from making such agreements after the tribunal has been established if doing so could put any arbitrator in a position of conflict of interest. Sanctions for non-compliance could include adverse cost orders.[20] Taken together, this framework, combining legislative recognition, regulatory oversight, and institutional safeguards, establishes a coherent and structured regime for governing TPF.

B. Hong Kong

Though it adopts a somewhat different institutional framework, Hong Kong's strategy is similar to Singapore's in terms of goal. The Arbitration Ordinance (Cap 609), which was modified by the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance, 2017 and came into effect in February 2019, authorizes TPF for arbitration proceedings and gives the Secretary for Justice the authority to publish a Code of Practice that governs third-party funders' behaviour.[21] The Code, which was released in December 2018, sets requirements for capital adequacy, disclosing funding terms to funded parties, limiting interference with litigation strategy, and handling conflicts of interest.

Articles 44 and 45 of the HKIAC Administered Arbitration Rules 2024 operationalize the

[18] 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)
[19] Singapore International Arbitration Centre, *SIAC Investment Arbitration Rules* rr. 24(1), 33.1, 35 (2017).
[20] Riffat Soin, *Third-Party Funding in Arbitration: Global Trends, Challenges, and the Roadmap for India*, The Arbitration Digest (Apr. 26, 2026, 8:15 PM) https://thearbitrationdigest.com/third-party-funding-in-arbitration-global-trends-challenges-and-the-roadmap-for-india/
[21] Abhishek Pandey, *Funding Justice: The Rise, Risks and Regulation of Third-Party Funding in Arbitration*, 5 IJIRL no. 4 (2025).

framework by requiring a party that has received TPF to promptly disclose the following: the funding arrangement's existence, the funder's identity, whether the funder has consented to pay an adverse costs award, and any modifications to the funding arrangement during the arbitration. Since funders occasionally enter or quit agreements as proceedings go, with consequences for conflicts of interest that may not have occurred at the outset, the necessity to disclose changes during the arbitration, rather than simply at commencement, is an especially crucial characteristic.[22]

For the Indian policy debate, Hong Kong's framework's empirical impact is illuminating. After the regulatory framework was introduced and implemented, the number of TPF-related disclosures to the HKIAC increased from three in 2020 to seventy-three in 2022.[23] This twenty-four-fold increase is a reflection of both the worldwide TPF market's underlying growth and the particular trust that mandated disclosure obligations instil among parties to a dispute.

C. International Institutional Rules

The international arbitration community has responded to the expansion of TPF through concerted institutional rule-making, which now forms a developing global norm, in addition to national legislation. ICSID Arbitration Rule 14(1), which came into effect on July 1, 2022, requires all parties to reveal the existence of any third-party funder who has agreed to provide or is providing funds for the purpose of pursuing or defending a claim, along with the funder's identity and, if a legal person, its place of incorporation.[24] This disclosure must be included in the party's initial written submission, updated as soon as circumstances change, and kept up to date throughout the proceedings. Since numerous investment arbitration claims resulting from Indian regulatory actions have been or may be brought under the ICSID Rules, the ICSID model is very important for India. In order to ensure that the arbitral tribunal can assess and reveal conflicts of interest involving the funder, Article 11(7) of the ICC Rules of Arbitration 2021 similarly requires parties to disclose any relationship between their counsel or themselves and any third-party funder.[25]

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[22] Soin, *supra* note 20.
[23] Rishika Sharma & Shambhavi, *Third-Party Funding in Arbitration: Is India Keeping Up with the Times?* NLIU ADRC (2025)
[24] *Third-Party Funding in International Arbitration*, Lexology (Apr. 26, 2026, 8:21 PM) https://www.lexology.com/library/detail.aspx?g=345daadb-2603-45be-829e-16735af6590c
[25] *Id.*

The mandatory disclosure of TPF arrangements to the arbitral tribunal is no longer a contentious innovation, as the convergence of ICSID, ICC, SIAC, and HKIAC regulations shows; rather, it is a well-established norm of responsible and credible arbitral practice. Indian-seated arbitrations would be structurally less credible than those conducted under the rules of all major international arbitral institutions if any Indian institutional rule or regulation fell short of this baseline.

V. THE INDIAN POSITION: A REGULATORY VACUUM AND ITS CONSEQUENCES

A. The Current Legal Landscape

Even the most recent version of the Arbitration and Conciliation Act 1996, which was amended in 2015, 2019, and 2021, does not specifically cover third-party funding. The state-level modifications to Order XXV of the Code of Civil Procedure 1908, which permit courts in Maharashtra, Uttar Pradesh, Tamil Nadu, and Orissa to demand security from a third party financing litigation, are the closest the statutory framework comes to recognizing the phenomenon.[26] However, these revisions are procedural concessions intended for domestic court processes; funders acting in the unique environment of international arbitration are not provided with any enforceable rules, transparency framework, or conflict-of-interest mechanism.

The Delhi High Court's ruling in *Tomorrow Sales Agency v. SBS Holdings Inc*.,[27] which represents the most thorough judicial interaction with TPF to date, is another noteworthy milestone in the Indian legal system. The Court acknowledged TPF as an essential instrument for obtaining justice, noting that without it, deserving plaintiffs might not be able to obtain rightful compensation. Crucially, however, the Court decided that a third-party funder cannot be held accountable for unfavorable costs if they did not sign the arbitration agreement or take part in the proceedings. This decision gives funders a great deal of autonomy, but it does not give respondents a clear way to recover costs from the party whose resources enabled the

[26] (Civil Procedure Code, 1908, Order XXV, Rule 3 (India) (as amended by Maharashtra and Madhya Pradesh), as amended by Maharashtra and Madhya Pradesh; Sakshi Srivastava, *Third Party Funding in Arbitration in India,* American Review of International Arbitration (Columbia Law, 21 March 2022)
[27] Tomorrow Sales Agency v. SBS Holdings Inc., 2023 SCC OnLine Del 3191 (Del HC)

funded claim. This imbalance emphasizes how urgent legislative action is.[28]

The Draft MCIA Rules 2024, which for the first time include TPF disclosure requirements for arbitrations conducted by the Mumbai Centre for International Arbitration, are the most important institutional advance to date.[29] This is the first time an Indian arbitral institution has formally addressed the matter, which is a positive and significant step. However, the fact that it is institution-specific means that only parties who elect to arbitrate under the MCIA Rules are bound by it. The International Arbitration and Mediation Centre, the Delhi International Arbitration Centre, and the great majority of ad hoc arbitrations in India are still completely outside its purview.

The importance of the 2017 Saikrishna High Level Committee Report is worth considering. The Committee, which was established by the Ministry of Law and Justice to suggest changes to India's institutional arbitration infrastructure, specifically noted the regulatory void surrounding TPF as a concern and suggested that a thorough TPF framework be created as part of India's larger endeavour to become a globally competitive arbitration hub.[30] Almost ten years ago, the suggestion was made. It is a startling and illuminating legislative decision that two further modifications to the Arbitration and Conciliation Act were passed in 2019 and 2021 without addressing the TPF recommendation.

B. Conflict of Interest: The Arbitrator's Blind Spot

Conflicts of interest in the arbitral tribunal's composition are the primary harm caused by India's regulatory vacuum. Before accepting an appointment, an arbitrator is required by Section 12 of the Arbitration and Conciliation Act 1996,[31] read with the Fifth Schedule,[32] to disclose any circumstances that could raise reasonable questions about their independence or impartiality. If new circumstances emerge during the proceedings, the disclosure obligation is still in effect.

In the case of TPF, the issue is structural rather than deliberate. If an arbitrator is unaware that a litigation finance firm is paying the claimant or respondent in front of them, they are unable

[28] Sharma & Shambhavi, *supra* note 23.
[29] *Id.*
[30] Department of Legal Affairs, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (July 30, 2017), http://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf.
[31] Arbitration and Conciliation Act, 1996, § 12 (India).
[32] Arbitration and Conciliation Act, 1996, sch. V (India).

to assess whether their prior employment, consultation, referrals, or investment in the firm poses a conflict of interest. Because there is no disclosure requirement, the tribunal may never learn the identity of the funder, and the conflict may not become apparent until after the award is made, at which point it can be challenged under Section 34 of the Act.[33] One of the most disruptive consequences in international arbitration, for both the parties and the legitimacy of the arbitral process itself, is a hidden conflict of interest that only comes to light during the enforcement or challenge stage.

C. The Confidentiality Tension Under Section 42A

With the exception of a few situations in which consent is granted or disclosure is mandated by law, Section 42A,[34] which was added to the Arbitration and Conciliation Act by the 2019 Amendment, imposes a duty of confidentiality on the parties, the arbitral institution, and the arbitral tribunal with regard to all arbitral proceedings and the awards made in them.

This provision is directly and unresolvedly at odds with TPF arrangements. A funder performs extensive due diligence prior to committing funds to an arbitration, examining the merits of the claim, the supporting documentation, the legal strategy, the financial risk, and the projected timeline. The funder must receive and examine documents and information that are secret under Section 42A as part of this due diligence. But according to the Act, the funder is neither "the arbitral institution" nor "the arbitral tribunal," nor is it a "party" to the arbitration. As a result, it is not covered by the Section 42A confidentiality obligation, which means that the information exchanged with it is not protected by the same legal duty of confidentiality that applies to the parties.[35] This gap poses a serious risk: a funder may unintentionally or intentionally jeopardize the confidentiality of the proceedings if they receive confidential arbitral materials and then engage in another arbitration or business transaction involving one of the other parties, or if they simply fail to maintain sufficient internal information barriers. Instead of outlawing the sharing of materials with funders, which would essentially outlaw TPF, the solution is to either make it mandatory for the TPFA to include a confidentiality clause as a condition of its legal recognition or to explicitly extend the confidentiality obligation under Section 42A to funders as a statutory matter.

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[33] Arbitration and Conciliation Act, 1996, § 34 (India).
[34] Arbitration and Conciliation Act, 1996, § 42A (India).
[35] Yamini Singh*, Third-Party Funding in Arbitration and Its Effect on Confidentiality and Impartiality*, 11 Law Journals no. 7 (2025).

D. Security for Costs and Funder Liability for Adverse Costs

It is particularly challenging for the respondent to obtain cost security when the claimant is supported by a third party. A respondent may seek to the tribunal for an order requiring the claimant to deposit money or give a bond as security against that risk if they are concerned that the claimant will not be able to pay an adverse costs order at the end of the proceedings. Usually, the application is based on proof that the claimant is impecunious or poses an exceptional litigation risk.[36]

Since the financial capacity underlying the claim is essentially that of the funder rather than the claimant, the existence of a TPF arrangement, especially where the funder's identity remains undisclosed, prevents the respondent from proving the funded nature of the claim, which would be highly relevant to any security for costs application. The Act does not currently give an arbitral tribunal the authority to order costs against a non-party funder or to join the funder as a party for costs purposes, even in cases where the funder's involvement is known.

In *Arkin v. Borchard Lines Ltd*.,[37] the English Court of Appeal examined this issue and determined that a professional third-party funder is liable for unfavourable costs up to but not beyond the amount of funding it has given to the funded party, a concept known as the "Arkin cap."[38] Since funders usually only contribute a small portion of the overall amount at risk in a claim, the cap has been criticized on the grounds that it may consistently undercompensate successful respondents. However, India has not yet embraced and urgently needs to address the idea that funders face some costs accountability proportionate to their financial engagement.

VI. THE CASE FOR A DEDICATED INDIAN TPF FRAMEWORK

A. Why Self-Regulation Is Insufficient

Foremost, it is necessary to address the most mistaken argument against legislative action that TPF markets can self-regulate, with funders willingly adhering to practices best suited because of commercial and reputational incentives. In developed nations like England, where the

[36] Kalicki, *Security for Costs in International Arbitration*, Transnational Dispute Management (2006); Darwazeh and Leleu, *Disclosure and Security for Costs or How to Address Imbalances Created by Third-Party Funding*, 33(2) Journal of International Arbitration 131 (2016).
[37] Arkin v. Borchard Lines Ltd., (2005) E.W.C.A. Civ. 65 (U.K.).
[38] Sandra Bailey & Ors. v. GlaxoSmithKline UK Limited, [2017] EWHC 3195 (QB).

Association of Litigation Funders and well-established case laws uphold accountability, this carries some weight.

The Indian context, however, is materially different. The market is still evolving, there is no voluntary code, and there is little judicial direction. More significantly, private agreements between funders and funded parties cannot bind tribunals or shield opposing parties, so self-regulation is unable to address the fundamental asymmetry in TPF.

B. Element One: Statutory Definition

The proposed Indian framework's first component is to introduce a clear statutory definition of both "third-party funder" and "third-party funding agreement." A practical definition must be both precise enough to exclude common commercial lending, trade credit insurance, shareholder financing, and conventional insurance from its scope and broad enough to encompass the entire range of funding structures, including standard TPF agreements, portfolio funding arrangements, After-the-Event insurance policies, and hybrid law firm participation models.

A useful starting point can be found in the Singapore's approach, which stipulates that TPF's operations must be the qualified funder's "principal business activity."[39] In the Indian context, this should be supplemented with a financial substance requirement, such as minimum paid-up capital or assets under management, to exclude ad hoc, single-transaction, or undercapitalized funders whose participation may not meet acceptable standards of conduct.

C. Element Two: Mandatory Disclosure

An obligatory disclosure obligation is the second and most fundamental component. The existence of the funding arrangement, the identity and principal place of business of the funder, and whether the funder has agreed to bear any adverse costs award that may be made against the funded party should all be promptly disclosed by any party that has entered into a TPFA or enters into one at any point during the arbitration. The arbitral tribunal, the arbitral institution (where the arbitration is conducted), and the opposing party must all receive this disclosure.

The obligation must be updated if the funding arrangement materially changes during the

[39] Civil Law (Amendment) Act, 2017 (Singapore).

arbitration, such as if the funder withdraws, if the terms of the arrangement change significantly, or if a new funder enters the arrangement. It should attach at the start of proceedings or at the time the TPFA is entered into, whichever comes first. In order to protect the funder's rightful commercial confidentially and meet the tribunal's requirement to identify potential conflicts, the commercial conditions of the TPFA itself, the return %, the funder's strategic rights, and the withdrawal triggers need not be revealed to the opposing party.[40] However, no party agreement to protect confidentiality may supersede the funder's identity being disclosed to the tribunal in an absolute and non-waivable manner.

D. Element Three: Conflict-of-Interest Safeguards

The conflict-of-interest issue is specifically addressed in the third component. The framework should forbid a party from entering into a new funding arrangement or adding new funders to an existing arrangement after the arbitral tribunal is constituted, if the new arrangement would create a conflict of interest with any member of the tribunal, based on the SIAC 2025 Rule 38 model.[41] The IBA Guidelines' classification should be used as the relevant criteria in cases when a revelation of funder identification indicates a relationship between the funder and an assigned arbitrator.

The framework should also make it clear ideally through an explicit clause in the Act that failing to disclose a TPFA as required is a basis for contesting an arbitral award under Section 34 of the Act, 1996,[42] either on the grounds that the tribunal's composition violated applicable law or that the award is against Indian public policy. This would provide the disclosure obligation effective enforceability by confirming the applicability of existing grounds to instances of non-disclosure, rather than creating a new ground of challenge.

E. Element Four: Confidentiality

The fourth component deals with the confidentiality issues mentioned in Part V. The framework should clearly state that, in accordance with Section 42A of the Act, a funder who obtains confidential information about arbitral proceedings in order to assess, enter into, or maintain a TPF arrangement is subject to the same duty of confidentiality as the arbitration's

[40] Swargodeep Sarkar, *Third Party Funding in International Arbitration: New Challenges and Global Trends*, 2 International Journal of Legal Science and Innovation no. 3 (2020)
[41] Singapore International Arbitration Centre, *SIAC Rules* r. 38 (2025).
[42] Arbitration and Conciliation Act, 1996, § 34 (India).

parties. Regardless of the conditions of the TPFA, this extension of confidentiality requirement to funders should be unchangeable.[43]

F. Element Five: Security for Costs and Costs Liability

The expenses and security concerns are covered in the fifth and last component. The framework should specifically give arbitral tribunals the authority, upon request from the respondent after a TPFA is disclosed, to take into account the funder's existence and financial capacity when deciding whether to order security for costs and to set the amount of any security order at a level that takes into account the fact that the funder, not the claimant, is the practical financial capacity of the claim. When a claimant's claim is supported by a billion-dollar hedge fund, an order for security in the amount that an impoverished claimant could furnish does not sufficiently protect the respondent's position.[44]

The framework should also stipulate that, in cases where a funded party receives an adverse costs award, the tribunal may issue a supplementary costs order against the funder, up to the total amount of funding provided. This would be an adaptation of the Arkin cap approach calibrated to the Indian statutory context.[45] The tribunal should consider the conditions of the TPFA to be obligatory when it specifically states that the funder will cover unfavourable costs.

G. Legislative vs. Institutional Reform: The Path to Change

The Arbitration and Conciliation Act of 1996 might be amended legislatively, or India's main arbitral institutions could work together to modify institutional rules in order to implement the above-mentioned framework. Every pathway has unique benefits and drawbacks that should be considered.

The Draft MCIA Rules 2024 serve as an example of the institutional way, which is quicker and more operationally adaptable. Institutional rules can be modified without the involvement of parliament, improved gradually as issues arise, and customized to meet the unique procedural requirements of each institution's operations. The institutional approach, however, has a significant structural drawback: it only binds parties who elect to arbitrate in accordance with

[43] Singh*, supra* note 35.
[44] Victoria A Shannon, *Harmonizing Third-Party Litigation Funding Regulation*, 36 Cardozo L Rev 879 80 (2015)
[45] Pinheiro & Chitalia, *supra* note 1.

that institution's regulations. Institution-specific reforms leave most of the market uncontrolled in a legal context where ad hoc arbitrations and arbitrations under other institutional standards make up a significant fraction of Indian-seated international arbitrations.

The preferred and essential long-term solution is the legislative approach, which involves adding a particular clause or chapter to the Arbitration and Conciliation Act of 1996 that governs third-party funding. Statutory coverage is all-encompassing: it covers all arbitrations held in India regardless of the institutional rules selected, offers foreign investors assessing the Indian market a stable and predictable legal environment, and communicates India's commitment to establishing a commercially credible arbitration jurisdiction at the highest legislative level. Developing implementing laws, establishing qualifying funder standards, and integrating TPF governance into its institutional grading framework could be major responsibilities of the Arbitration Council of India, which was created under the 2019 Amendment and has been gradually constituted ever since.[46]

Therefore, a two-track reform is advised: as a temporary measure, all major Indian arbitral institutions, including MCIA, DIAC, and IAMC, should immediately adopt coordinated TPF disclosure provisions based on the HKIAC 2024 and SIAC 2025 Rules; this will be followed by a statutory amendment to the Arbitration and Conciliation Act that incorporates the previously described framework.

VII. CONCLUSION

For Indian arbitration law, third-party funding is a present reality rather than a future concern. International arbitrations with Indian seats are already seeing funding transactions. They are surrounded by a regulatory vacuum that is not neutral; it benefits opaque funders, disadvantages opposing parties, raises the possibility of award challenges because of undeclared conflicts, and deters reputable funders from entering the market. The assumption that India's historical non-prohibition of champerty and maintenance provides an adequate regulatory foundation confuses mere permissibility with regulatory sufficiency.

India is still in a permissive but under-regulated stage, while countries like Singapore, Hong Kong, Australia, England, Ireland, and Nigeria have made progress toward formal regulation.

[46] *Id.*

In a developed international arbitration environment, where all major international arbitral institutions have mandatory TPF disclosure provisions, where all parties are subject to disclosure obligations under the ICSID Rules, and where sophisticated commercial parties frequently encounter TPF in the arbitrations they participate in, continued regulatory silence is no longer tenable.

Comparative experience demonstrates that regulation enhances rather than suppresses the market: Hong Kong's disclosure policy and Singapore's 2017 measures have increased confidence and certainty. Despite the early identification of the issue by the Saikrishna High Level Committee and initial institutional efforts such as the Mumbai Centre for International Arbitration Draft Rules 2024, comprehensive legislative action remains absent.[47] India needs to get over legal ambiguity if it wants to compete with top arbitration seats. With the help of institutional changes and advice from the Arbitration Council of India, the Arbitration and Conciliation Act 1996 might be amended to make TPF a transparent and trustworthy system that would improve both access to justice and India's reputation as a centre for arbitration.

[47] Dept. of legal affairs, *supra* note 30.