

THIRD-PARTY FUNDING FOR ARBITRATION IN INDIA

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ABSTRACT

Third-party funding has become a necessary evil in light of the exorbitant expenses associated with international and local arbitration. Third-party funding had historically been declared unlawful in litigation in the majority of common-law countries due to the application of the outdated doctrines of maintenance and champerty. Arbitration hotspots such as Singapore and Hong Kong have enacted legal frameworks recognizing and accepting third-party funding in arbitration, thus abolishing these antiquated principles. Despite the uproar over its ethical, economic, and legal implications, regulating this financing method encourages access to justice and helps qualified plaintiffs to progress in their cases. This paper attempts to examine the advantages and dangers connected with third-party funding by referring to current regulatory systems in various countries. Due to the absence of regulation, the Indian market may continue to face considerable dangers. Legislation to address this legal void might aid India in becoming the arbitration center that it aspires to be.

A. Introduction:

International arbitration has grown in popularity as a vehicle for resolving cross-border conflicts. One cannot ignore the fact that eminent international arbitral institutions have assured the quality of case management systems, the strength of arbitrator panels, and the prompt disposition of cases. Numerous organizations, on the other hand, have failed to confront the excessive expenses associated with international arbitration, which may surpass millions of dollars at times.¹ This often discourages parties with potentially genuine claims from pursuing them owing to a lack of

¹Emmanuel Gaillard & John Savage, Fouchard, Gaillard, Goldman On International Commercial Arbitration (Kluwer Law International, 1st ed. 1999).

accessible capital or, conversely, encourages them to seek justice via Third-Party Funding (“ThPF”). Given the expenses associated with international arbitration, both in commercial and investment arbitration, the majority of parties are driven to investigate other methods of funding their claims even before delving into the merits of their claims. The International Council on Commercial Arbitration-Queen Mary University Task Force on Third-Party Funding (“TaF”), a task force comprised of academics and practitioners of arbitration law, recognized the thriving market for ThPF and the benefits that would accrue to all parties in international arbitration.² The TaF recently adopted an exhaustive definition of ThPF, which refers to an agreement by a non-party to a dispute to provide funds or other material support to a party (either claimant or respondent), an affiliate of that party, or a law firm representing that party, in order to finance a portion or all of the cost of the proceedings, either individually or as part of a broader range of cases.³ Such assistance or finance is either offered in exchange for compensation or reimbursement that is entirely or substantially contingent on the resolution of the dispute, or it is provided in the form of a grant or premium payment. In this kind of funding, an entity that is not a party to a specific dispute covers the legal bills of another party or pays an order, award, or judgment imposed against the party, or both.⁴ The worldwide market for ThPF has accelerated, resulting in the formation of various institutional financing groups.⁵ The TaF recognized the thriving market for ThPF and the advantages that an international arbitration would provide to all parties. The TaF emphasized that the advantages of this system would be realized only with a more consistent approach and educated decision-making in resolving the ensuing difficulties.⁶ The growing dependence on ThPF agreements has become a worldwide trend.⁷ ThPF arrangements are gaining popularity, necessitating a more consistent approach to them. Because

²International Council For Commercial Arbitration et al., Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration (April, 2018), https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Third-Party-Funding-Report%20.pdf.

³*Id.*

⁴LISA BENCH NIEUWVELD & VICTORIA SHANNON SAHANI, *THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION* (Wolters Kluwer, 2nd ed. 2017).

⁵*Id.* at 1277.

⁶Tsai-fang Chen, *The Outsider’s Identity in International Commercial Arbitration — From the Group of Companies Doctrine and IBA Guidelines on Conflict of Interest to Adverse Costs Awards Against Third-Party Funders*, 12 Contemporary Asia Arbitration Journal (2019).

⁷*Id.*

third-party funders view the funding agreement as a financial investment, which necessitates extensive due diligence, an analysis of the merits of the claim, the likely damages that may result, and the prospects for enforcing the award ultimately reached through the arbitration proceeding, this could undoubtedly open Pandora's box for unfair bargains.⁸ The party using ThPF may have much more resources available to contest the allegations and hence be able to finance a protracted arbitration or possibly litigation. Additionally, there is a possibility that a third-party financier may utilize financial influence on a weak party, resulting in 'unfair bargains' and unnecessary intervention in the arbitral processes.

ThPF has historically been judged unlawful under common law on grounds of champerty and maintenance.⁹ These concepts are still in effect in some countries, such as Ireland and Malaysia, and ThPF remained an actionable common law tort in Singapore until 2017.¹⁰ ThPF's status in civil law systems like France and Belgium is ambiguous; nonetheless, the practice is often frowned upon. However, these legal hurdles have been removed in jurisdictions such as Australia, Germany, the United Kingdom ("UK"), the United States of America ("USA"), and, more recently, Singapore and Hong Kong.¹¹ As a result of the disparate methods taken by various countries, a level of complication has been established for the international arbitration community. There has been no agreement on the strategy that should be taken with regard to ThPF.

Regardless of these divergent methods, the demand for ThPF has already generated a market for third-party financiers such as Burford Capital (USA), Juridica Investment Ltd. (UK), and Omni Bridge way (Netherlands), to name a few. In essence, there is a market for ThPF in international arbitration, and each market has its own set of advantages and disadvantages. As such, it must be

⁸Julio César Betancourt & Great Britain, *Defining issues in international arbitration : celebrating 100 years of the Chartered Institute of Arbitrators* (Oxford University Press) (2016); Frank Garcia, *Third-Party Funding as Exploitation of the Investment Treaty System*, 59 Boston College Law Review 2911 (2018), <https://lawdigitalcommons.bc.edu/bclr/vol59/iss8/15> (last visited Oct 29, 2021).

⁹Nieuwveld & Sahani, *supra*note 4.

¹⁰Pranav V. Kamnani & Aastha Kaushal, *Regulation of Third Party Funding of Arbitration in India: The Road Not Taken*, 8 Indian Journal of Arbitration Law 151(2019).

¹¹Christine Sim, *Third Party Funding in Asia: Whose Duty to Disclose?* (May 22, 2018) (KluwerArbitration), <http://arbitrationblog.kluwerarbitration.com/2018/05/22/third-party-funding-asia-whose-duty-disclose/>.

controlled to limit risks that might jeopardize the openness and secrecy of arbitral proceedings and to further safeguard the opposing party's interests. Today, ThPF has become an integral aspect of the international arbitration process, allowing impecunious claimants (or respondents) to pay their claims; providing capital to such parties for arbitration is no longer seen as a simple consequence of the arbitration's expenses. This paper is divided into six sections. **Section A** introduces the subject and sets the scope for the paper. **Section B** analyses the dilution of the doctrine of Maintenance and Champerty in India. **Section C** examines the growth and need for ThPF. **Section D** analyses the regulatory gaps in the Indian ThPF regime. **Section E** provides regulatory recommendations for closing the regulatory gaps for ThPF in India. **Section F** sums up the paper and concludes.

B. Dilution of India's Maintenance and Champerty Doctrines

The doctrines of maintenance and champerty are not applicable in India, as ruled by the Privy Council in the case of *Ram Coomar Coondoo v. Chunder Canto Mookerjee*.¹² In this case, the Privy Council determined that the English rules of maintenance and champerty are not applicable in India as distinct laws.¹³ However, it was established that the aforementioned principles would apply to an arrangement that is inequitable, extortionate, or unconscionable, and was not entered into with the bona fide purpose of helping a claim.¹⁴ As a result, they would apply only in restricted circumstances to deter persons from gambling on litigation or promoting frivolous litigation.

In reality, the Transfer of Property Act, 1882 allows for the transfer of 'actionable claims' but prohibits the transfer of a mere right to sue in order to avoid the practice of gambling on litigation.¹⁵ In *Re: 'G', a Senior Advocate of the Supreme Court*, the Supreme Court of India concluded that an arrangement in which a third party had an interest in the result of the case would be legally uncontroversial and enforceable if and only if no lawyer was engaged.¹⁶ As a result, there was nothing morally reprehensible about it, and it would not contravene public

¹²Ram Coomar Coondoo v. Chunder Canto Mookerjee, [1876] 2 AC 186, 208 (PC).

¹³*Id.*

¹⁴*Id.* at 210.

¹⁵AVTAR SINGH, TEXTBOOK ON THE TRANSFER OF PROPERTY ACT 39 (Lexis Nexis 6) (2019).

¹⁶ AIR 1954 SC 557, ¶11.

policy.¹⁷ The result was unequivocal: the rigorous principles of maintenance and champerty do not apply in India and are reserved for attorneys. The same prohibition is also statutory under Part VI of the Bar Council of India Rules, where Rule 20 prohibits an advocate from entering into a fee arrangement contingent on the outcome of a dispute, and Rule 21 prohibits an advocate from purchasing, trafficking, stipulating, or agreeing to receive any share or interest in an actionable claim.¹⁸

Most recently, in *Bar Council of India v. A.K Balaji*, the Supreme Court of India said that there seems to be no prohibition on other parties (non-lawyers) sponsoring litigation and being reimbursed once the action concludes.¹⁹ Thus, the express prohibition on funding the parties to a dispute is imposed on attorneys by the Bar Council Rules in order to prevent a conflict of interest and to preserve a lawyer's professional standards. This prohibition on legal involvement precludes a scenario in which the final award is set aside or declared unenforceable on the basis of 'public policy.'

The 1996 Arbitration and Conciliation Act ["**1996 Act**"] makes no reference to the function of a third-party funder in an arbitration. This element was not addressed in the Arbitration and Conciliation (Amendment) Act, 2015, and it is not addressed in the Arbitration and Conciliation (Amendment) Act, 2019 ["**2019 Act**"]. As such, it is necessary to emphasize that ThPF is not unlawful in India per se, but rather a sector of legislation that has escaped the lawmakers' attention. ThPF as a method of financing has not undergone any formal development and is neither expressly mandated nor prohibited according to the letter of the law.

C. The Growing Need for Third-Party Funding Regulation in India

The United Nations General Assembly resolution 67/1 that endorses access to justice and recognizes that all institutions are accountable to just, fair, stable, and equitable laws has been a critical justification for the development of ThPF, as it enables a party with insufficient financial resources to overcome the hurdles of exorbitant costs if it has a meritorious claim.²⁰ The market

¹⁷Id.

¹⁸ Bar Council of India (Standards of Professional Conduct and Etiquette) Rules, 1975, Gazette of India, Rule 20-21.

¹⁹ AIR 2018 SC 1382, ¶35.

²⁰ G.A. Res. 67/1, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, (2012) ¶ 2.

for THPF has expanded from a tiny and niche market to a widely widespread one, due to the exponential growth in reliance on arbitration as a method for resolving disputes over the years.²¹ This increased demand for arbitration has resulted in an increase in the overall costs involved; as a result, claimants frequently rely on external financing, not only to hedge against the risk of losing but also to avoid capital being tied up while the arbitral proceedings are ongoing. This is simply because cash flow is a business's lifeblood.²²

The merits of ThPF in the arbitral process have been extensively studied in several scholarly publications, and the financing mechanisms' ability to give access to justice to destitute parties is indisputably commendable.²³ThPF, on the other hand, produces some imbalances between claims and responders when it is not controlled, most notably information asymmetry, since there is no need to declare any financing received from a third party. Additionally, the 'arbitral hit-and-run' situation in which the expenses of arbitration become irrecoverable as a result of the spurious and exaggerated claims generated, is a critical element to consider before arguing for its control.²⁴ The impediments to a competent ThPF regulation regime and feasible remedies to these explicitly highlighted issues are discussed in the next section.

D. Regulatory Loopholes involved in ThPF:

To adequately address the legislative gaps regarding ThPF, this section will analyze four risk factors. First, the section will address the risk of potential for abuse(i). Second, the section will examine the public policy regulation issue in the context of ThPF(ii). Third, the section will look into the possibility of circumventing conflicts of interest in ThPF(iii). Finally, the section will address the attitude and behavior of those providing funds for ThPF(iv).

i. Abuse

²¹Tara Santosuosso & Randall Scarlett, *Third-Party Funding in Investment Arbitration: Misappropriation of Access to Justice Rhetoric by Global Speculative Finance*, 60 Boston College Law Review E. Supp. I-8 (2019), <https://lawdigitalcommons.bc.edu/bclr/vol60/iss9/5> (last visited Oct 29, 2021).

²²Pranav v. Kamnani & Aastha Kaushal;*supra*note 10.

²³Michael Abramowicz, *Litigation Finance and the Problem of Frivolous Litigation*, 63 DePaul Law Review (2014).

²⁴*RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, ¶33.

ThPF proponents argue that it restricts the scope of frivolous lawsuits.²⁵ This is true if we believe that institutional financing arrangements across countries would invest in claims that optimize their funders' chances of success. Despite this, a recent United Nations Conference on Trade and Development report indicated that ThPF corporations have an economic incentive to invest in weak cases that have a possibility of receiving a large monetary reward via the establishment of a "portfolio" of claims.²⁶ This, however, allows for conjecture and is a conceivable stain on a responder State's image, as in the event of an investor-State dispute. This uncertainty in recouping expenses from invested claims raises the total 'costs' of an arbitral proceeding. Additionally, and perhaps most significantly, if a respondent obtains an adverse costs decision against an impoverished claimant who relied on ThPF, the respondent cannot guarantee that the award is enforced since the financier is not a direct party to the dispute between the respondent and the claimant.²⁷ This raises the problem of contractual privity between the donor and the funded claimant. This is often referred to as 'arbitral hit-and-run.'²⁸

This paper argues that the statutory provisions relating to 'security for costs', as provided for in certain state amendments to Order XXV of the Code of Civil Procedure, 1908, and as dealt with in English law, most notably in the Civil Procedure Rules and the 1996 Act, and in institutional rules such as the London Court of International Arbitration Rules be similarly adopted under the 1996 Act. This incorporation would enable courts to universally seek security from third-party financiers, regardless of their privity. Additionally, the English Arbitration Act provides that if a peremptory order for security for costs is not met, the claim will very certainly be rejected. Incorporating such a clause would safeguard both parties' rights, namely the claimant's right to access to court and the respondent's right to financial protection for their expenses, hence lowering the likelihood of 'arbitral hit-and-run' situations.

ii. Public Policy

²⁵Clive Bowman et al., *Third party funding in international commercial and treaty arbitration - a panacea or a plague? A discussion of the risks and benefits of third party funding*, 4 TDM (2011).

²⁶UNCTAD, *Recent Developments in ISDS (UNCTAD)* (2013).

²⁷Pranav V. Kamnani & Aastha Kaushal, *supranote 10*.

²⁸*Id.*

Australia, like India, has acquired the ideas of maintenance and champerty. However, unlike the untouched market in India, lawsuit finance is a thriving sector in Australia today.²⁹ *Campbells Cash and Carry Pty. Ltd. v. Fostiff Pty. Ltd.*³⁰ and *Mobil Oil Australia Pty Ltd. v. Victoria*³¹ held that no to the issue of whether third-party funders might be involved in a process deemed to be contrary to public policy. In both of these decisions, the Australian High Court acknowledged that probable issues of law and public policy may emerge in connection to the agreement's fairness.³² It is also worth noting that no objective test was established in any of these instances to judge the agreement's fairness. To determine whether a financing deal violates public policy or constitutes an abuse of procedure, the courts would have to evaluate three major problems. To begin, determine if the agreement has a detrimental effect on the litigation process. Second, if negotiating authority has been fairly utilized. Finally, if the funder exerted undue control.³³ As a result, there is no conclusive test for the same, and they are case-by-case determinations.

Additionally, it was noted that establishing an overarching norm would apply a too wide ax to the issues that may be seen to lurk beneath the anxieties.³⁴ This explains the legislature's reluctance to legitimize ThPF in India, given the long-running problem around 'public policy' in the Indian arbitration context. However, this is not an argument for delaying ThPF regulation.³⁵ While these doctrines are intended to safeguard vulnerable parties, it is essential that ThPF be harmonized with the theory of public policy in order to preserve the fairness of financing arrangements.

iii. Absence of Overt Conflicts of Interest

²⁹Jason Geiskar & Dirk Luff, *The Third Party Litigation Funding Law Review: Australia*, *The Third Party Litigation Funding Law Review* (2021).

³⁰ (2006) 229 CLR 386, ¶ 146-149.

³¹(2002)211CLR1.

³²*Supra*note 30, ¶ 92.

³³*Id.* ¶ 88-93.

³⁴*Id.* ¶ 91.

³⁵Bhavana Sunder & Kshama Loya, *Demystifying Public Policy To Enable Enforcement Of Foreign Awards – Indian Perspective PART II*, 11 *The National Law Review* (2021).

A third-party financier may already have contact with a member of the arbitral panel. If there is no duty to reveal the identity of the third-party funder, this possibility would impair the arbitral process's openness and would also violate the arbitrator's independence and impartiality. The TaF recommended that a party or its representative disclose the existence of a ThPF arrangement, as well as the identity of the funder, to the arbitral institution as soon as possible or immediately after such an agreement is entered and that this disclosure must be made without regard for any legal privilege.³⁶ This would further decrease the possibility of the arbitral ruling not being enforced.³⁷

Additionally, the International Chamber of Commerce's Guidance Note on the Conduct of Arbitration requires arbitrators to disclose any relationships between arbitrators and any entity with a direct economic interest in the dispute, as well as any obligation to indemnify a party for the final award obtained.³⁸ The protracted debate over whether or not to reveal the financing agreement often results in International Centre for Settlement of Investment Disputes tribunals demanding disclosure based on the tribunal's "inherent powers."³⁹ While the Singapore International Arbitration Centre provides that the tribunal has the option to mandate disclosure of the financing agreement or funder, the Canada-European Union Trade Agreement requires mandatory disclosure of the ThPF agreement. More recently, a revision to Article 43 of the Rules of the Milan Chamber of Arbitration specifically demands disclosure of both the financing arrangement and the name of the donor. The absence of regulation regarding disclosure requirements creates a serious dilemma regarding the confidentiality and transparency of arbitral proceedings; however, this paper believe that this dilemma can be resolved by requiring disclosure of the existence of a funding agreement and the funder's name. In this respect, it is worth noting that Singapore requires all practitioners to declare the existence of ThPF, and the name and address of any third-party funder to the court or arbitral tribunal and all other parties.⁴⁰

³⁶International Council For Commercial Arbitration et al.;*supra*note 2 at p. 81.

³⁷*Id.* at p. 117.

³⁸ICC, Note To Parties and Arbitral Tribunals On The Conduct Of The Arbitration Under The ICC Rules Of Arbitration (ICC) (2021), ¶. 28.

³⁹ See *Eurogas Inc. & Belmont Res. Inc. v. Slovak Repub.*, ICSID Case No. ARB/14/14, Hearing on Provisional Measures (2015); *Muhammet Çap & Sehil Ins, aat Endustri ve Ticaret Ltd. Sti. v. Repub. of Turkm*, ICSID Case No. ARB/12/6.

⁴⁰Pranav V. Kamnani & Aastha Kaushal,*supra*note 10.

Hong Kong, on the other hand, requires disclosure of the ThPF and the identity of the third party to the other parties to the arbitration and the arbitral tribunal at the time of the arbitration's commencement if the funding was obtained on or before the commencement of proceedings or within 15 days of the agreement's execution if the agreement was executed after the commencement of the arbitration proceedings.

This paper recommends the Hong Kong method to transparency be implemented into the Indian Arbitration Act and the laws governing the professional conduct of third-party funders (as it imposes such an obligation directly on the party, unlike Singapore where the obligation is imposed on legal professionals through rules of professional conduct). As a result, Singapore's approach to funders' behavior imposes no responsibility on foreign practitioners and is silent on the time period within which such money must be declared.

As a result, the Hong Kong approach would be the most appropriate in terms of guaranteeing that disclosure rules are not subject to misuse. Concerning the financing agreement's disclosure, a requirement to divulge the agreement in its entirety would not only violate any confidentiality provision included in the agreement (if any) but would also risk disclosing the financed parties' litigation strategy (such as quantification of claims, choice of counsel, etc.). This would not be required, however, if security for expenses order has been entered. In this respect, the writers of this article argue that the publication of the financing arrangement should be left to the tribunal's discretion.

iv. Attitude and Behavior of those providing funds

The motivation for funders to invest in claims despite the unfathomable profits is shown in the example of *Teinver v. Argentina*,⁴¹ in which the financing organization Burford Capital earned a 736 percent return on their investment.⁴² This example demonstrates the twisted aim with which funders often provide their services, which are no longer confined to assisting the party in a poor financial condition.⁴³ If ThPF is expressly permitted, self-regulation of third-party funders, akin to the UK Code of Conduct for Litigation Funders ("UKC"), would be required.⁴⁴ Through the

⁴¹*Teinver S.A., Transportes de Cercanías S.A. & Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision (2011).

⁴²Burford Capital, 2018 Annual Report (Burford Capital) (2018).

⁴³Frank Garcia, *supra*note 8.

⁴⁴UK Ministry of Justice, *The Code of Conduct for Litigation Funders* (Civil Justice Council) (2011).

many obligations and duties imposed by the UKC, the UKC addresses funders' capital sufficiency, termination, and the control funders have over the parties being financed.⁴⁵ Additionally, the IBA's Conflicts of Interest Guidelines, as updated in 2014, impose an additional onus on funders to disclose any conflict of interest with the arbitrators sitting over the dispute, notwithstanding the arbitrators' existing requirement to examine for conflicts. The Hong Kong Code of Practice for Third-Party Funding of Arbitration offers a self-regulating approach that third-party funders must adhere to statutorily, hence promoting accountability.⁴⁶ In contrast to the UKC of Conduct, Hong Kong's Code of Practice is required and enforceable on all parties (including prospective funders) and applies to all fundraising agreements.⁴⁷ Having a code of conduct for funders would prevent misuse of the law and keep a check on the degree of power funders have over the process, ensuring that speculative funders do not exploit the market system in the name of giving access to justice.

E. Proposed Regulatory Framework for the Financing of Third-Party Transactions in India

The report of a High-Level Committee headed by Justice B.N. Srikrishna acknowledged the existence of ThPF regulatory systems in arbitration-friendly jurisdictions such as Singapore, Hong Kong, and Paris.⁴⁸ Additionally, the systematic change from ban to the regulation of ThPF was cited as a significant factor in the establishment of these countries as arbitration hotspots. It is possible that rules governing ThPF would benefit litigating parties, third-party funders, and the economy as a whole by opening a window of investment possibilities in India.

The 2019 Act aspires to establish India as a regional arbitration center for domestic and international disputes.⁴⁹ Nonetheless, it fails to address the critical issue of ThPF regulation. The Parliament's audacious aspirations need various barriers to be cleared before India can position itself as a global arbitration center. This paper proposes that a comprehensive regulatory

⁴⁵Rachael Mulheron, England's Unique Approach To The Self-Regulation Of Third Party Funding: A Critical Analysis Of Recent Developments, 73 *The Cambridge Law Journal* 570–597 (2014).

⁴⁶Mahdev Mohan & Chester Brown, *The Asian turn in foreign investment* (Cambridge University Press) (2021).

⁴⁷Pranav V. Kamnani & Aastha Kaushal, *supranote 10*.

⁴⁸Shri. Ravi Prasad Shankar, *High Level Committee to Review the Institutionalisation of Arbitral Mechanism in India* (Legal Affairs) (2017).

⁴⁹*Id.*

framework governing ThPF arbitration, as recently adopted by the governments of Singapore and Hong Kong, be incorporated into the Arbitration Act in order to achieve the aforementioned objective of becoming an arbitration hub in the near future. Adopting such a policy will undoubtedly increase India's appeal as a centre for conflict settlement.⁵⁰ In this regard, this paper asserts that a framework regulating ThPF in India must include a provision for ordering 'security for costs' and the consequences of non-compliance with such an order; mandatory disclosure of access to ThPF and the identity of the third party funder, though disclosure of the terms of the funding agreement may not be required; and discretionary authority must be vested in a single individual

This paper acknowledges that a proposal to create a code of conduct for third-party funders may be too broad at the moment. This paper has left that proposal open ended, as the formulation of a code of conduct could be done while emulating certain provisions from the UK and Hong Kong codes of conduct, subject to the State's policy and the parameters it prefers to adopt for permitting and certifying this funding mechanism. This code of conduct would also be updated on a regular basis to guarantee that third-party funders do not engage in repressive behavior that is contrary to public policy. Despite this, clauses requiring obligatory disclosure of the funder's name, cost protection, and empowering arbitral tribunals with discretionary authority to force disclosure of funding agreements are unquestionably necessary.

F. Conclusion

Due to the enormous expenses associated with international arbitration, finance must be obtained via a variety of vehicles to ensure that parties with apparently valid claims are not disadvantaged and have a meaningful chance to submit their case. The conflicting values at stake, including the promotion of due process and justice for investors who lack financial backing on the one hand, and the possible promotion of gambling and speculation on cases on the other, which would be contrary to the public interest, must be carefully evaluated before definitive regulatory legislation is enacted.

While highlighting the worldwide expansion of the ThPF market, this paper sought to recommend ways to close loopholes in India's legislative regulation. It should be borne in mind that the potential for the ThPF market to have a far-reaching impact in India necessitates the

⁵⁰Carlos Esplugues Mota, *Foreign investment and investment arbitration in Asia (Intersentia)* (2019).

adoption of the TaF's recommendations, with certain tailored modifications, which discuss in detail the procedural, ethical, and policy issues relating to ThPF in international arbitration.

Although the 2019 Act's principal objective was to strengthen India's ambition of becoming a center for local and international arbitration, it fails to address ThPF regulation while aggressively institutionalizing arbitration. As a result of India's institutionalization of arbitration, the regulation of ThPF is now in the hands of cautious arbitral institutions, as the government has fallen behind the curve. Adopting such laws would surely aid in the pursuit of genuine claims, both domestically and internationally, and by choosing not to regulate ThPF, the government has chosen the less travelled path, which has made all the difference.