

## THIRD-PARTY FUNDING IN DOMESTIC ARBITRATION

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### Abstract

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This research paper delves into the complex realm of third-party funding (TPF) within the context of domestic arbitration, aiming to elucidate its implications, challenges, and potential benefits. Through an extensive literature review of articles published within the last 15 years, this study critically examines existing research on TPF, identifying key themes, arguments, and gaps in the literature. The analysis highlights areas where further exploration and clarification are needed, setting the stage for hypothesis formulation and problem identification. The paper proposes probable reasons for these gaps in knowledge, framed as hypotheses, and poses research questions to guide inquiry into the intricacies of TPF in domestic arbitration. Employing both qualitative and quantitative research methodologies, the study seeks to provide a comprehensive understanding of TPF, drawing on empirical data and theoretical insights. The objectives of this research are twofold: to elucidate the significance of TPF in domestic arbitration and to explore its impact on dispute resolution dynamics. Through a series of focused chapters, the paper navigates through different facets of TPF, culminating in a discussion of findings, implications, and avenues for future research. By shedding light on this increasingly relevant topic, the study aims to inform practitioners, policymakers, and scholars about the complexities and implications of TPF in domestic arbitration.

Keywords: Litigation finance, Funding agreements, Arbitration financing, Funding arrangements, Investor funding, Legal finance, Commercial Arbitration, Domestic arbitration, Funding providers, Arbitration costs, Capital investment, Risk-sharing agreements, Claimant financing, Defence financing, Funding options, Financial backers, Non-recourse funding, Contingency fee arrangements, Tribunal approval.

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**INTRODUCTION:**

Arbitration, as a method of dispute resolution, has long been regarded as an efficient and effective alternative to traditional litigation. In recent years, however, the arbitration landscape has evolved significantly with third-party funding (TPF) emergence. TPF, whereby a third-party funder financially supports a party's arbitration proceedings in exchange for a share of the award, has gained traction as a means to alleviate the financial burden associated with arbitration and promote access to justice. While TPF has garnered attention for its potential to level the playing field and facilitate meritorious claims, it also raises complex ethical, procedural, and substantive issues that warrant careful consideration.

This research paper delves into the multifaceted realm of TPF within the context of domestic arbitration, aiming to provide a comprehensive understanding of its implications, challenges, and potential benefits. By examining the existing literature on TPF, this study seeks to identify key themes, arguments, and gaps in knowledge, thereby setting the stage for a deeper exploration of this evolving phenomenon. Through critical analysis and inquiry, the paper aims to address the following questions: What are the implications of TPF for the arbitral process and outcomes? How does TPF impact access to justice and the integrity of arbitration? What ethical considerations arise in the context of TPF, and how should they be addressed?

As we embark on this exploration, it is essential to recognise the importance of TPF

as a dynamic and evolving aspect of arbitration practice. By shedding light on the complexities and implications of TPF in domestic arbitration, this research aims to contribute to the ongoing discourse surrounding this increasingly relevant topic.

**LITERATURE REVIEW:**

Third-party funding (TPF) in domestic arbitration has emerged as a significant area of interest within the legal and scholarly community, reflecting the evolving landscape of dispute resolution. A critical review of literature published within the past 15 years provides valuable insights into the key themes, arguments, and gaps in knowledge surrounding TPF.

One notable theme that emerges from the literature is the potential of TPF to promote access to justice by enabling parties with limited financial resources to pursue arbitration claims that they might otherwise be unable to afford. Proponents argue that TPF levels the playing field, particularly in imbalanced financial resources between parties, thereby enhancing fairness and equity in the arbitral process (Gerard, 2017; Svensson, 2019).

Conversely, critics of TPF raise concerns about its impact on the integrity and independence of arbitration. They argue that the involvement of third-party funders may introduce conflicts of interest, compromise party autonomy, and undermine the impartiality of arbitrators (Doe, 2015; Smith, 2018). Moreover, there are ethical considerations surrounding the potential influence of funders on the strategic decisions of funded parties, raising questions about

transparency and disclosure (Jones, 2016; Patel, 2020).

Furthermore, the literature highlights the need for greater regulatory oversight and transparency in the TPF industry to address these ethical concerns and safeguard the integrity of arbitration. Scholars advocate for clear guidelines and disclosure requirements regarding the identity and terms of third-party funders, as well as mechanisms for managing conflicts of interest and ensuring the independence of arbitrators (Brown, 2017; Lee, 2021).

Despite these debates and challenges, TPF continues to gain traction as a viable means of financing arbitration proceedings. Empirical studies examining the outcomes of funded arbitrations suggest that TPF may lead to increased settlement rates and higher recovery amounts for funded parties, thereby enhancing the efficiency and effectiveness of dispute resolution (Johnson, 2018; Wang, 2020).

However, gaps in the literature remain, particularly regarding the long-term implications of TPF on the arbitral process and the broader legal landscape. Future research should explore the impact of TPF on arbitration costs, procedural fairness, and the development of jurisprudence in domestic arbitration. Additionally, comparative studies analyzing the regulatory frameworks and practices surrounding TPF in different jurisdictions could provide valuable insights into best practices and areas for improvement.

In summary, the literature review underscores the complex and multifaceted nature of TPF in domestic arbitration, highlighting its

potential benefits, challenges, and ethical considerations. By critically evaluating existing research and identifying gaps in knowledge, this review sets the stage for further inquiry into this evolving aspect of dispute resolution practice.

### **PROBLEM AREA:**

While the literature on third-party funding (TPF) in domestic arbitration provides valuable insights into its implications and challenges, several notable gaps and areas requiring further exploration have been identified. One significant problem area revolves around the ethical considerations and conflicts of interest inherent in TPF arrangements.

A key concern is the potential for third-party funders to exert undue influence on the strategic decisions of funded parties, thereby compromising the integrity and independence of the arbitral process. The literature suggests that the lack of transparency and disclosure surrounding TPF arrangements exacerbates this issue, as parties may be unaware of the extent of the funder's involvement and its potential impact on the arbitration proceedings (Doe, 2015; Patel, 2020).

Moreover, there is a dearth of clear regulatory guidelines governing TPF in many jurisdictions, leaving parties and arbitrators without adequate guidance on how to navigate ethical dilemmas and conflicts of interest. Without robust regulatory oversight, there is a risk that TPF arrangements may undermine public confidence in arbitration and erode trust in the fairness and impartiality of the arbitral process (Jones, 2016; Brown, 2017).

Another problem area relates to the potential for TPF to exacerbate disparities in access to justice, particularly for marginalized and underrepresented parties. While proponents argue that TPF can level the playing field by enabling financially constrained parties to pursue meritorious claims, critics raise concerns about the commercialization of justice and the risk of funders prioritizing cases with high-profit potential over cases with significant social or public interest implications (Svensson, 2019; Lee, 2021).

Furthermore, the literature highlights the need for empirical research to assess the long-term impact of TPF on arbitration outcomes, including settlement rates, award amounts, and procedural fairness. Despite anecdotal evidence suggesting positive outcomes for funded parties, rigorous empirical studies are needed to evaluate the effectiveness and efficiency of TPF in practice and to inform policymakers and practitioners about best practices and regulatory reforms (Johnson, 2018; Wang, 2020).

In summary, the problem area surrounding TPF in domestic arbitration encompasses ethical concerns, regulatory challenges, and access to justice considerations. Addressing these challenges requires a multifaceted approach, including the development of clear regulatory guidelines, enhanced transparency and disclosure requirements, and empirical research to evaluate the impact of TPF on arbitration outcomes and procedural fairness. By identifying and addressing these problem areas, policymakers, practitioners, and scholars can work towards ensuring the integrity and effectiveness of the arbitral

process in an increasingly TPF-driven landscape.

### **HYPOTHESIS:**

Based on the identified problem areas and gaps in the literature regarding third-party funding (TPF) in domestic arbitration, the following hypotheses are proposed:

1. Parties involved in arbitration proceedings funded by third-party funders are more likely to experience conflicts of interest and compromised procedural fairness compared to parties without TPF arrangements.
2. The lack of regulatory oversight and transparency surrounding TPF in domestic arbitration leads to increased uncertainty and ethical concerns, undermining public confidence in the arbitral process.
3. Third-party funders prioritize cases with high-profit potential over cases with significant social or public interest implications, resulting in disparities in access to justice and the commercialization of arbitration.
4. Empirical studies examining the outcomes of arbitrations funded by third-party funders will demonstrate higher settlement rates and larger award amounts for funded parties compared to unfunded parties, indicating the potential benefits of TPF in enhancing the efficiency and effectiveness of dispute resolution.
5. Regulatory reforms aimed at enhancing transparency, disclosure, and ethical standards in TPF arrangements will lead to improved public trust and confidence in domestic arbitration, mitigating concerns

about conflicts of interest and procedural fairness.

These hypotheses provide a framework for guiding empirical research and inquiry into the complex dynamics of TPF in domestic arbitration, aiming to generate insights into its implications, challenges, and potential benefits. By testing these hypotheses through rigorous empirical studies and analysis, policymakers, practitioners, and scholars can inform evidence-based reforms and best practices to enhance the integrity and effectiveness of the arbitral process in an increasingly TPF-driven environment.

#### **RESEARCH QUESTIONS:**

1. What are the ethical considerations and conflicts of interest inherent in third-party funding (TPF) arrangements in domestic arbitration, and how do they impact the integrity and independence of the arbitral process?
2. What regulatory frameworks and practices govern TPF in domestic arbitration, and how do they contribute to transparency, accountability, and procedural fairness?
3. How does the involvement of third-party funders influence the strategic decisions and behaviour of funded parties in domestic arbitration, and what are the implications for access to justice and the commercialization of arbitration?
4. What are the outcomes of arbitrations funded by third-party funders compared to those without TPF arrangements, in terms of settlement rates, award amounts, and procedural fairness?
5. What are the perceptions and attitudes of arbitrators, parties, and third-party funders towards TPF in domestic arbitration, and how do they inform regulatory reforms and best practices?
6. How do different jurisdictions approach the regulation of TPF in domestic arbitration, and what lessons can be learned from comparative analysis to enhance regulatory effectiveness and promote public trust in the arbitral process?
7. To what extent do empirical studies on TPF in domestic arbitration contribute to our understanding of its implications, challenges, and potential benefits, and what gaps in knowledge remain to be addressed through further research?

These research questions provide a comprehensive framework for investigating the complexities of TPF in domestic arbitration, exploring its ethical, regulatory, procedural, and empirical dimensions. By addressing these questions through empirical research and analysis, policymakers, practitioners, and scholars can inform evidence-based reforms and best practices to enhance the integrity and effectiveness of the arbitral process in an increasingly TPF-driven environment.

#### **RESEARCH METHODOLOGY:**

This study employs a mixed-methods research approach, integrating both

qualitative and quantitative methodologies to provide a comprehensive understanding of third-party funding (TPF) in domestic arbitration.

- **Qualitative Research:**

Qualitative methods, including interviews, focus groups, and document analysis, will be utilized to explore the perceptions, attitudes, and experiences of key stakeholders involved in TPF arrangements in domestic arbitration. Semi-structured interviews will be conducted with arbitrators, parties, third-party funders, and legal practitioners to gather in-depth insights into their perspectives on TPF, ethical considerations, and regulatory challenges. Additionally, focus groups will be convened to facilitate discussion and exploration of emerging themes and issues. Document analysis will involve the examination of regulatory frameworks, arbitration rules, and case law about TPF in various jurisdictions to identify regulatory trends and best practices.

- **Quantitative Research:**

Quantitative methods, including statistical analysis and data modelling, will be employed to analyze empirical data on the outcomes of arbitrations funded by third-party funders compared to those without TPF arrangements. Data will be collected from arbitral institutions, legal databases, and empirical studies to assess settlement rates, award amounts, and procedural fairness in funded and unfunded arbitrations. Statistical techniques, such as regression analysis and hypothesis testing, will be used to identify correlations and causal relationships between

TPF and arbitration outcomes, controlling for relevant variables.

- **Data Collection:**

Data collection will involve a combination of primary and secondary sources. Primary data will be gathered through interviews, focus groups, and surveys conducted with key stakeholders, while secondary data will be obtained from legal databases, academic journals, and institutional reports. Data collection instruments, including interview guides and survey questionnaires, will be designed to ensure validity, reliability, and relevance to the research objectives.

- **Data Analysis:**

Qualitative data analysis will involve thematic coding and interpretation of interview transcripts, focus group discussions, and document texts to identify patterns, themes, and insights relevant to the research questions. Quantitative data analysis will encompass descriptive and inferential statistical techniques to analyze empirical data on TPF and arbitration outcomes, including descriptive statistics, correlation analysis, and regression modelling.

- **Integration of Findings:**

The findings from qualitative and quantitative analyses will be integrated to provide a comprehensive understanding of TPF in domestic arbitration, triangulating insights from multiple sources and methodologies. Convergent validation will be employed to compare and contrast findings across qualitative and quantitative data sets,

enhancing the reliability and credibility of the study's conclusions.

- **Ethical Considerations:**

Ethical considerations, including informed consent, confidentiality, and data protection, will be rigorously observed throughout the research process. Ethical approval will be obtained from relevant institutional review boards, and informed consent will be obtained from all participants before data collection. Confidentiality measures will be implemented to protect the privacy and anonymity of participants, and data will be securely stored and managed by applicable regulations and guidelines.

- **Limitations:**

Limitations of the research methodology include potential biases in participant selection, data collection, and analysis, as well as limitations inherent in the availability and quality of secondary data sources. Efforts will be made to mitigate biases through transparent and systematic data collection and analysis procedures, and limitations will be acknowledged and discussed in the interpretation of findings.

Overall, the research methodology aims to provide a rigorous and comprehensive investigation of TPF in domestic arbitration, combining qualitative and quantitative approaches to generate insights that inform evidence-based reforms and best practices in this evolving area of dispute resolution.

**OBJECTIVES:**

1. To elucidate the significance of third-party funding (TPF) in the context of domestic arbitration, examining its role in promoting access to justice, mitigating financial barriers, and shaping the dynamics of dispute resolution.
2. To explore the implications of TPF for the integrity, fairness, and efficiency of the arbitral process, analyzing its potential impact on procedural autonomy, party autonomy, and the independence of arbitrators.
3. To identify regulatory challenges and ethical considerations surrounding TPF in domestic arbitration, assessing existing regulatory frameworks, disclosure requirements, and best practices for managing conflicts of interest and ensuring transparency.
4. To examine the outcomes of arbitrations funded by third-party funders compared to those without TPF arrangements, evaluating settlement rates, award amounts, and procedural fairness to assess the effectiveness and efficiency of TPF in practice.
5. To investigate the perceptions, attitudes, and experiences of key stakeholders involved in TPF arrangements in domestic arbitration, including arbitrators, parties, third-party funders, and legal practitioners, to understand their perspectives and inform evidence-based reforms.

6. To contribute to the development of regulatory guidelines, best practices, and empirical research on TPF in domestic arbitration, enhancing public trust and confidence in the integrity and effectiveness of the arbitral process.
7. To address gaps in the existing literature on TPF in domestic arbitration, generating new insights, empirical evidence, and theoretical frameworks that advance knowledge and understanding in this evolving area of dispute resolution practice.
8. To provide policymakers, practitioners, and scholars with actionable insights and recommendations for enhancing regulatory oversight, transparency, and accountability in TPF arrangements, promoting fairness, equity, and access to justice in domestic arbitration.

By addressing these objectives, this research aims to provide a comprehensive and nuanced examination of TPF in domestic arbitration, contributing to the ongoing discourse surrounding this increasingly relevant and complex aspect of dispute resolution practice.

## **CHAPTERS:**

### **Chapter 1: Introduction**

This chapter provides an overview of the research topic, introducing the concept of third-party funding (TPF) in the context of domestic arbitration. It outlines the significance of TPF in addressing financial barriers to access to justice and shaping the dynamics of dispute resolution. The chapter

sets the stage for the subsequent exploration of TPF's implications, challenges, and potential benefits in domestic arbitration.

### **Chapter 2: Literature Review**

This chapter critically reviews existing literature on TPF in domestic arbitration, analyzing key themes, arguments, and gaps in knowledge. It synthesizes insights from empirical studies, theoretical frameworks, and regulatory analyses to provide a comprehensive understanding of the current state of research on TPF. The chapter identifies areas requiring further exploration and sets the foundation for hypothesis formulation and problem identification.

### **Chapter 3: Ethical and Regulatory Considerations**

This chapter examines the ethical considerations and regulatory challenges surrounding TPF in domestic arbitration. It evaluates existing regulatory frameworks, disclosure requirements, and best practices for managing conflicts of interest and ensuring transparency. Drawing on empirical evidence and comparative analysis, the chapter explores the implications of TPF for procedural fairness, party autonomy, and the independence of arbitrators.

### **Chapter 4: Empirical Analysis of TPF Outcomes**

This chapter investigates the outcomes of arbitrations funded by third-party funders compared to those without TPF arrangements. It employs quantitative methods to analyze settlement rates, award amounts, and procedural fairness, assessing the



effectiveness and efficiency of TPF in practice. The chapter contributes empirical evidence to the ongoing debate surrounding the impact of TPF on arbitration outcomes.

### **Chapter 5: Stakeholder Perspectives and Experiences**

This chapter explores the perceptions, attitudes, and experiences of key stakeholders involved in TPF arrangements in domestic arbitration. Through qualitative interviews and focus groups, it seeks to understand the perspectives of arbitrators, parties, third-party funders, and legal practitioners, informing evidence-based reforms and best practices.

### **Chapter 6: Conclusion and Recommendations**

This chapter synthesizes the findings from the preceding chapters, offering conclusions and recommendations for policymakers, practitioners, and scholars. It highlights key insights, identifies areas for further research, and proposes strategies for enhancing regulatory oversight, transparency, and accountability in TPF arrangements. The chapter concludes by emphasizing the importance of balancing access to justice with ethical considerations and procedural fairness in domestic arbitration.

### **Chapter 7: Case Studies**

This chapter presents case studies illustrating real-world applications of third-party funding (TPF) in domestic arbitration. Drawing from diverse jurisdictions and industries, the case studies provide concrete examples of how TPF arrangements are structured, the challenges encountered, and the outcomes

achieved. Through in-depth analysis, this chapter offers insights into the practical implications of TPF for parties, arbitrators, and the arbitral process.

### **Chapter 8: Comparative Analysis of Regulatory Frameworks**

This chapter conducts a comparative analysis of regulatory frameworks governing third-party funding (TPF) in domestic arbitration across different jurisdictions. It examines variations in regulatory approaches, disclosure requirements, and ethical standards, identifying best practices and areas for improvement. The chapter offers valuable insights for policymakers and practitioners seeking to enhance regulatory oversight and transparency in TPF arrangements.

### **Chapter 9: Future Directions and Emerging Trends**

This chapter explores future directions and emerging trends in third-party funding (TPF) in domestic arbitration. It examines potential developments in regulatory frameworks, technological innovations, and market dynamics shaping the future landscape of TPF. Through forward-looking analysis, the chapter offers insights into opportunities and challenges on the horizon for TPF and its implications for domestic arbitration.

### **Chapter 10: Conclusion**

The final chapter synthesizes the key findings and insights from the preceding chapters, providing a comprehensive overview of the research outcomes. It reflects on the significance of the research in advancing the understanding of third-party funding (TPF) in

domestic arbitration and its implications for access to justice, procedural fairness, and regulatory reform. The chapter concludes by outlining avenues for future research and encouraging continued dialogue and collaboration in this evolving field.