

THIRD PARTY FUNDING

The third party funding (hereinafter – the “*TPF*”), in particular – as seen from the perspective of the international arbitration domain, is yet not well-explored phenomenon, which, for the time being, has established itself in a handful of jurisdictions, many of which are the common law states. Not being prohibited in the most of the remaining countries, this type of funding is simply not known, or, at least, not legally reflected, being also not subject to many applied verifications.

The jurisdictions which allow the TPF in, nevertheless subject its application to a number of conditions, this way emphasizing on its somewhat shaky nature, eventually hitting the margin between the “*desirable*” and the “*illicit*”.

Table 1: TPF “*on the map*”

State	Legal status of the TPF
Argentina	No regulation/ No explicit prohibition
Australia	Allowed
Austria	Allowed
Belgium	No regulation/ No explicit prohibition
Brazil	No regulation/ No explicit prohibition
Canada	[Overall] Allowed
China	No regulation/ No explicit prohibition
Cyprus	No regulation/ No explicit prohibition
Denmark	Allowed
Finland	No regulation/ No explicit prohibition
France	No regulation/ No explicit prohibition
Germany	Allowed
Greece	No regulation/ No explicit

(contd.)

State	Legal status of the TPF
Lithuania	Allowed
Luxembourg	Prohibited
Malta	No regulation/ No explicit prohibition
Mexico	No regulation/ No explicit prohibition
Netherlands	No regulation/ No explicit prohibition
Poland	No regulation/ No explicit prohibition
Portugal	No regulation/ No explicit prohibition
Romania	No regulation/ No explicit prohibition
Russian Federation	No regulation/ No explicit prohibition
Singapore	Prohibited
Slovakia	No regulation/ No explicit prohibition
South Africa	Allowed
South Korea	No regulation/ No explicit

	prohibition
Hong Kong	Prohibited
Hungary	No regulation/ No explicit prohibition
Ireland	No regulation/ No explicit prohibition
Italy	Allowed
Japan	No regulation/ No explicit prohibition

	prohibition
Spain	No regulation/ No explicit prohibition
Sweden	Allowed
Switzerland	Allowed
UK	Allowed
US	Allowed in 28 states

In most general terms, the TPF model is based on the “*entry*” of third and not related neither to the parties nor to the dispute between them entity, the funder, into the controversy. Ideally, without any intrusion in the dispute resolution process *per se*, the funder is supposed to provide financial support to one of the parties (the “*funded party*”), covering its relevant expenses on the agreed scale - in full or in part – in exchange for certain percentage of the gain, should the party, subsequently, prevail. The risk of TPF dwells, however, on the losing case. Should the funded party fail to succeed, the funder would not recover anything, and, moreover, depending on the terms of the agreement with the party and/or on the applicable regulations and the setting, might be obliged to contribute to or pay in full the legal costs of the winner.

The main dilemma underlying the third party funding – the dispute resolution funding structure which was, supposedly, developed in order to cure the inability of the meritorious claimants to meet the heightened burden of proof in presenting their cases, is undoubtedly the access to justice v. public policy crossroad. In particular, while allowing such claimant to avail themselves of litigation, or, as the case may be, of an arbitration, - an utterly positive trend, - TPF [in case its use oversteps certain safeguards and limits], might establish dependence of the claimants on the funders, or, even more so, cause *de-facto* shift in the party composition of the controversies concerned, from that among the parties having genuine substantive interest to that among the parties bearing financial or other related interest in an outcome only. The latter model is often considered to be socially detrimental due to modifying the generally accepted core “rights protection” emphasis in the dispute resolution.