


Third Party Funding



“Alternative funding is here to stay, and not just for small or cash-strapped claimants.”

Freshfields Bruckhaus Deringer

What is arbitration finance?

Although professionalization is new, outside financing is not

- Long history of outside arbitration financing being provided from a range of sources
 - Law firms working on contingency or conditional fee arrangements
 - Loans, debt and equity instruments from banks, private funds, secured creditors
 - Risk-avoidance instruments
 - BTE or ATE insurance from insurance companies
 - Professional providers of arbitration finance like Burford
- All of these sources could be considered “third-party arbitration finance”
- Indeed, the IBA defines a “third-party funder” as:

Any person or entity that is contributing funds or material support to the prosecution or defense of the case and that has a direct economic interest in the award to be rendered in the arbitration.*

*Source: IBA Guidelines on Conflict of Interest in International Arbitration (23 October 2014), Explanation to General Standard 6(b).



“I predict that in five years’
time, every corporate CFO
and general counsel will be
exploring financial
alternatives for costly
litigation.”

*Christopher Bogart, CEO, Burford Capital,
The Times, 'Funding Lawsuits is Only Game in Town', 1 December 2016*

TYPES OF THIRD PARTY FUNDING

- Case Basis
- Portfolio of Cases
- Collateralization
- Discounted Payment on Uncollected Award
- Premium Coverage on Uncollected Awards
- Insurance Coverage - (ATE) insurance

Growth of Third Party Funding

- Increased Fourfold from 2013 to 2016
- Half of Surveyed Law Firms Will Seek Outside Capital
- Three Quarters of Clients Predict Third Party Funding Growth

English Law

- *Essar Oilfields Services Limited v Norscot Rig Management PVT Limited* [2016] EWHC 2361 (Comm)
- *Excalibur Ventures LLC v Texas Keystone Inc. and Others* [2016] EWCA Civ 1144
- *Arkin v Borchard Lines* [2005] 1 WLR 3055.
- The Arbiter LeannePower@AndrewsKurth.com

Ethical Considerations

- Rule 1.08. Conflict of Interest: Prohibited Transactions
- (e) A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - (1) the client consents;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (3) information relating to representation of a client is protected as required by Rule 1.05.