The YSIAC Advocacy Roadshow 2015

On the Road for Delhi, Mumbai and Jakarta

The Singapore International Arbitration Centre (SIAC) and the YSIAC are pleased to report the successful kick-off of the YSIAC Advocacy Roadshow 2015 in Delhi, India, on 4 September 2015.

The YSIAC Advocacy Roadshow is a series of mock arbitration workshops developed by YSIAC that aims to provide delegates with tools to enhance their advocacy skills under the guidance of renowned arbitration practitioners. It will also feature members of the SIAC Court of Arbitration sharing their insights to guide the participants.

After the Delhi kick-off workshop, the Roadshow took place in the following cities, touring alongside the main SIAC Conferences: 9 September in Mumbai, India; and 16 September in Jakarta, Indonesia. For the rest of 2015, the Roadshow will take place on 4 November in Beijing, China; 10 November in Seoul, South Korea; and 12 November in Tokyo, Japan.

YSIAC Delhi Advocacy Workshop – 4 September 2015

The YSIAC Delhi Advocacy Workshop was attended by over 110 delegates from the legal and business communities. Ms Lim Seok Hui, CEO of SIAC and SIMC, gave the welcome address and Mr Ankit Goyal, Co-Chair of the YSIAC Committee, gave a brief introduction to YSIAC and the concept of the workshop.

The Delhi leg of the workshop involved a mock arbitration scenario, where witnesses were cross-examined by counsel in front of a sole arbitrator, who was played by Mr Gary Born, President, SIAC Court of Arbitration. The mock case scenario, which had been distributed to the delegates prior to the workshop, revolved around a contract between an Indian shipping company and an Indonesian company as charterer. The case scenario was also made interesting for the delegates by the use of names similar to those of big Bollywood personalities. There were two witnesses each for the Claimant and the Respondent who were cross-examined in turn by two counsel acting for each of the parties. Each cross-examination segment was followed by a panel session (with panellists comprising Mr Born, the counsel and their witnesses), which examined the do’s and don’ts of cross-examination which had earlier been presented to the delegates.
The Claimant’s witnesses, played by Mr Pranav Mago, Head (South Asia) of SIAC, and Mr Bishwajit Dubey, Partner Designate of Cyril Amarchand Mangaldas, were first cross-examined by Mr Kabir Singh, Partner, Clifford Chance Asia, and Mr Moazzam Khan, Associate, Nishith Desai Associates, respectively. Each witness was cross-examined for fifteen minutes. During the panel session that followed, Mr Born gave some good pointers for cross-examination, and how advocacy is different in international arbitration and in traditional litigation.

For the second half of the programme, the witnesses for the Respondent, played by Mr Prashant Mishra, Managing Associate, Luthra and Luthra, and Ms Neeti Sachdeva, Senior Associate, Trilegal, were cross-examined by Mr Vivekananda N, International Counsel, Allen and Gledhill LLP, and Mr Madhur Baya, Founder, Lex Arbitri. There were many engaging questions put to the panel by the delegates, who also had the opportunity to interact with the participants after the event over coffee and refreshments.

The Mumbai leg of the YSIAC Advocacy Roadshow was held on 9 September 2015 at The Trident Hotel, Nariman Point. Mr Gary Born gave a talk on “Tips for Successful Advocacy in International Arbitration”, followed by a Q&A session moderated by Mr Ankit Goyal.

During his talk, Mr Born spoke fondly of his experience as a young counsel early on in his career, and as an arbitrator. He also shared some useful advocacy tips with the audience, emphasising the importance of keeping things simple.

The talk was attended by over 50 delegates, which exceeded the number of registrations received.
Similar to the Delhi workshop, the YSIAC Jakarta Advocacy workshop was a three-hour exercise based on a mock case scenario which had been previously distributed to the attendees. The Jakarta workshop was attended by over 50 delegates and was held in the offices of Hadiputranto, Hadinoto & Partners.

Ms Lim Seok Hui delivered the opening address, whilst Ms Koh Swee Yen, Co-Chair of the YSIAC Committee, provided an introduction to the case scenario and the concept of the workshop. The mock case scenario involved the construction of a nuclear power plant in Java, Indonesia, which had been delayed for seven months.

The mock arbitration tribunal consisted of Prof Hikmahanto Juwana, Consultant, Makes & Partners Law Firm, who chaired the tribunal; Prof Dr Frans Winarta, Founding Partner, Frans Winarta & Partners, and Mr Richard Tan, Consultant, Morgan Lewis Stamford LLC.

Different young practitioners gamely participated in the cross-examination sessions and added a light touch to proceedings by playing, at times, variously helpful, uncooperative or even well-coached witnesses, resulting in a fun yet informative session which the audience thoroughly enjoyed. During the panel sessions following the cross-examination segments, various members of the audience directed questions to the tribunal and the participants on issues such as techniques for cross-examination and how SIAC arbitrations are conducted. The panelists were also able to share their different experiences in conducting cross-examinations over the years.

During the first cross-examination session, Respondent’s counsel, played by Ms Gitta Satryani, Senior Associate, Herbert Smith Freehills, cross-examined the Claimant’s witness, played by Mr Paul Sandosham, Partner, Clifford Chance Asia, for fifteen minutes. Thereafter, the second Respondent’s counsel, played by Mr Togi Pangaribuan, Associate, Hadiputranto, Hadinoto & Partners, cross-examined the second Claimant’s witness, Mr Antony Leonardo, Junior Associate, Lubis Ganie Surowidijono. This was followed by a panel discussion on the first cross-examination session, moderated by Ms Koh Swee Yen.

For the second cross-examination session, Claimant’s counsel, Mr Harun Reksodiputro, Partner, Ginting Reksodiputro, cross-examined the first Respondent’s witness, played by Mr Lee Baker, Associate Director, Hill International. Thereafter, the second Claimant’s counsel, Ms Koh Swee Yen, Partner, WongPartnership LLP, cross-examined the second Respondent’s witness, played by Mr Jeremiah Purba, Associate, Norton Rose Fulbright. The panel discussion which followed thereafter was moderated by Mr Andi Kadir, Partner, Hadiputranto, Hadinoto & Partners. A networking lunch followed after the conclusion of the programme.

SIAC and YSIAC invite everyone to attend the other upcoming YSIAC Advocacy Workshops slated for the rest of 2015, for a fun, educational and engaging learning experience.
Interviewing Prospective Arbitrators

By Kabir Singh and Elan Krishna, Clifford Chance

Introduction

It is often said that the choice of a party-nominated arbitrator is the single most important decision a party will make in any arbitration. The right to appoint one of the decision-makers sets the arbitral process apart from litigation, and is touted as a key selling point.

When exercising this right, it is now increasingly common for parties to interview a prospective arbitrator. This is understandable, and will often give a party valuable insight into the candidate, including his personality, technical skills, language abilities and approach to the arbitral process in general. Considering the time and costs associated with a full blown international arbitration, the stakes are high and parties are keen to ensure that the right candidate is appointed.

While arbitrators previously abhorred pre-appointment interviews as unseemly, there is now a growing acceptance of such a practice – but only if the interview is conducted appropriately. Great care is required to ensure that such interviews do not compromise the integrity of the arbitral process, and that the prospective arbitrator remains able to carry out his key role as an impartial and independent third party decision maker.

Guidance

Unfortunately, not as much has been written or decided on this issue as we would have liked. But there are guidelines issued by international organisations such as the IBA and CIArb to assist arbitration practitioners and their clients in staying on the right track.

The IBA Guidelines on Party Representation in International Arbitration (the "IBA Guidelines") suggest that ex parte communications with a prospective arbitrator should be limited to providing a general description of the dispute and obtaining information regarding the suitability of the prospective arbitrator. Guideline 8(a) provides that "A Party representative may communicate with a prospective Party-Nominated Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest".

As to areas of discussion which are "out of bounds", Guideline 8(d) provides that "While communications with a prospective Party-Nominated or Presiding Arbitrator may include a general description of the dispute, a Party Representative should not seek the views of the prospective Party-Nominated Arbitrator or Presiding Arbitrator on the substance of the dispute". It is therefore inappropriate to seek the prospective arbitrator’s views on matters which may form part of the case.

The Chartered Institute of Arbitrators has also issued Practice Guideline 16: The Interviewing of Prospective Arbitrators (the "CIArb Guidelines") – with the stated aim of stimulating discussion on the topic and providing a framework for arbitrators to work within.

Great care is required to ensure that such interviews do not compromise the integrity of the arbitral process, and that the prospective arbitrator remains able to carry out his key role as an impartial and independent third party decision maker.

Practical Steps

When approaching a prospective arbitrator about a pre-appointment interview, the following pointers (which are by no means exhaustive) may assist counsel:

1. Be aware that all communications with the arbitrator are potentially discoverable, and may form the basis for a challenge of his appointment. Think carefully about what you wish to achieve through the interview, and how this is documented;

2. Prepare an initial briefing note to the prospective arbitrator, which should be sent across in advance of the interview. This should cover the following issues to enable him or her to run the necessary conflict checks and to confirm his or her general availability:
   a. the identities of the parties and counsel;
   b. the names of arbitrators who have already been appointed;
   c. the applicable procedural rules and the quantum of the dispute;
   d. the seat and/or venue of the arbitration;
   e. any specific nationality, language and/or other requirements under the arbitration agreement; and
   f. the estimated timeline of proceedings;

3. Use the IBA Guidelines and/or the CIArb Guidelines as the basis of the interview and specify any other parameters that you wish to set. Give advance notice to the prospective arbitrator of these guidelines and principles. He or she should read and be familiar with these guidelines and principles before the interview;

4. Give advance notice to the prospective arbitrator of the constitution of the interviewing team, and the details of parties (if they choose to attend in person).
Keep the attendees to a core group but ensure that the interview proper is conducted by one individual – typically lead counsel;

5. Give advance notice to the prospective arbitrator of the list of questions/topics to be raised during the interview. This will enable him or her to properly prepare for the interview and also express any reservations about the nature of any questions beforehand;

6. If technical questions are posed, the CIArb Guidelines make clear that they should be limited to testing the prospective arbitrator’s knowledge and understanding of:
   a. the nature and type of the dispute in question;
   b. the substantive and procedural law applicable to the dispute;
   c. international arbitration principles, practice and procedure;

7. The CIArb Guidelines also make clear that the following issues should not be discussed or raised during the interview:
   a. the specific facts or circumstances giving rise to the dispute;
   b. the positions or arguments of the parties; and
   c. the merits of the case, and in particular an arbitrator’s view on an issue in dispute;

8. In an article written by Doak Bishop and Lucy Reed1 (which pre-dated the IBA Guidelines and the CIArb Guidelines), they observed that it is generally proper to discuss the following matters during the interview:
   a. the identities of the parties, counsel and witnesses;
   b. the estimated timing and length of hearings;
   c. a brief description of the general nature of the case sufficient to allow the prospective arbitrator to determine if he or she is competent to decide the dispute, has disclosures to make, and has the time to devote to the matter;
   d. the prospective arbitrator’s background, qualifications and resume;
   e. the prospective arbitrator’s published articles and speeches;
   f. any expert witness appearances of the prospective arbitrator, including positions taken;
   g. any prior service as an arbitrator, including decisions rendered (subject to any confidentiality requirements);
   h. whether there is anything in the prospective arbitrator’s background that would raise justifiable doubts as to his or her independence or impartiality, and any disclosures that the prospective arbitrator would need to make;
   i. whether the prospective arbitrator feels competent to determine the parties’ dispute; and
   j. the availability of the prospective arbitrator (i.e. whether he or she can devote sufficient time and attention to the parties’ dispute in a timely manner).

It cannot be emphasised enough that parties and their counsel must avoid any discussion of the merits of the case beyond what is necessary for the prospective arbitrator to determine his or her competence, potential conflicts of interests and availability to hear the dispute.

Hypothetical questions about potential arguments and counter-arguments on issues of law and fact should also be avoided. In practice, this is easier said than done, but the rule of thumb is that when in doubt, don’t ask the question!

A difficult issue is whether to have a simultaneous tape recording of the interview, so that it can be kept and relied upon in the event of a challenge. Practitioners are divided on the correct approach. The IBA Guidelines are silent on this issue, while the CIArb Guidelines recommend such a practice, while observing that it is not without controversy. This is an important tactical call, and the answer could well vary in each case. But as a rule, even if you choose not to record the interview, both the prospective arbitrator and counsel should keep detailed file notes of what transpires. This could prove critical evidence to vindicate a party’s position, in the event of a challenge by the other side, and to preserve the integrity and reputation of the arbitrator.

Conclusion
The interview of prospective arbitrators is fraught with potential pitfalls which, in extreme cases, may impugn the integrity of the arbitral process and invalidate the award. However, if utilised properly, it ensures that the appointed arbitrator is, as Professor Martin Hunter put it, “someone with maximum pre-disposition towards my client, but with minimum appearance of bias”.2

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2 See Martin Hunter, Ethics of the International Arbitrator, 53 Arbitration 219 (1987), 222-223
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Third Party Funding in International Arbitration: A Slippery Slope or Levelling the Playing Field?

By Mak Shin Yi

Introduction

International arbitration is facing a costs crisis. According to a survey by the Chartered Institute of Arbitrators, a party paid $52,860,000–3,198,0001 for international arbitration between 1991 and 2010.2 Despite “an increasing chorus of voices that international arbitration is getting too expensive”,3 costs are still “rising at an unsustainable rate”.4

Against this backdrop, professional third-party funders have emerged to meet a demand for alternative ways to finance dispute resolution. While the practice of third-party funding is far from new,5 these funders have made a business out of supporting parties in high-stakes litigation or arbitration in return for a share of potential damages. For example, US-based Burford Capital typically invests US$8 million per claim, with clients ranging from small businesses to the world’s largest companies.6

The trend has provoked debate in Europe, Australia and the US, where the funding industry is most developed, but is also attracting attention in Asia. Singapore and Hong Kong, as major arbitral seats in the region, have started considering legal reforms to regulate third-party funding in international arbitration.7 Both jurisdictions retain the doctrines of maintenance and champerty – relics of the common law which prohibit third parties from meddling in others’ disputes. However, that has not discouraged funders like Singapore-based Teras Group from eyeing opportunities in Asia.8

Therefore, it is timely to examine the policy debate regarding third-party arbitration funding with reference to the laws and developments in Singapore. This paper considers the extent to which third-party funding levels the playing field by promoting access to justice, and whether its attendant hazards present a slippery slope to abuse. The focus will be on professional third-party funders; other players, including lawyers, creditors and insurers, are beyond the scope of this discussion.

Naturally, the “standard” client who appeals to a funder is one with a strong claim (or counterclaim) for substantial damages. Not all such clients are in financial distress; sophisticated entities also use third-party funding to conserve their own resources for other uses.

Access to Justice

Access to justice entails parties with meritorious claims or defences being able to bring their cases before the arbiters of justice.9 Yet, international arbitration is priced beyond the reach of many parties, who cannot afford the legal fees, arbitrator fees, expert fees, administrative expenses, and other costs and disbursements involved.

Third-party funding is said to increase access to justice by providing an additional means – sometimes the only means – for a party to pursue his claim.10 As the Singapore Ministry of Law has observed, this has prompted a shift away from the doctrines of maintenance and champerty in support of third-party funding in other jurisdictions.11 The same reason has persuaded the Singapore Academy of Law to propose statutory reforms allowing litigation funding in cases of insolvency, for the benefit of creditors who would otherwise be left without legal redress due to lack of funds.12 Arguably, the public policy behind access to justice applies equally, if not more, in favour of third-party funding in international arbitration, given the astronomical costs.

The question is: whose access to justice? Funders are investors who seek to profit from damages in a successful claim. Naturally, the “standard” client who appeals to a funder is one with a strong claim (or counterclaim) for substantial damages.13 Not all such clients are in financial distress; sophisticated entities also use third-party funding to conserve their own resources for other uses.14 At the same time, the profit-driven model of third-party funding excludes several categories of parties: (i) parties seeking non-pecuniary relief; (ii) respondents who are purely defending the claims against them, without counterclaims of their own;15 and (iii) parties with unmeritorious claims (or counterclaims), which are so unlikely to succeed that they are not worth investing in.16

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1 $US2,145,600–2,400,000 or £1,413,000–1,580,000. Based approximately on exchange rates at the time of writing.
5 It can be traced to the medieval practice of feudal lords backing unrelated parties in litigation, often in exchange for a share of the proceeds.
6 Burford Capital LLC, FAQs, online: http://www.burfordcapital.com/gl/faqs/.
8 Teras Group Pte Ltd, About Us, online: http://terasgroup.com/about/.
10 Ibid. at 117.
11 MinLaw, supra n 7, at [29]–[33].
12 Singapore Academy of Law, Report of the Law Reform Committee on Litigation Funding in Insolvency Cases (February 2014) at [65].
13 Goldsmith and Melchionda, “Third Party Funding in International Arbitration: Everything You Ever Wanted to Know (But Were Afraid to Ask)” (2012) IBJI 53 (“Goldsmith”) at 56.
15 Goldsmith, supra n 13, at 59–60.
16 However, the concept of access to justice does not extend to the frivolous pursuit of arbitration.
It is thus only meaningful to speak of third-party funding as promoting access to justice for certain parties in certain contexts. The industry’s poster child is, of course, the meritorious but impecunious claimant. A funder saves the day when it enables him to present his case before a tribunal, levelling the playing field between rich and poor claimants. Alternatively, funders can support claimants against well-resourced respondents such as corporate giants or states, thereby helping David to take on Goliath in the arbitral arena. Calunius Capital has described its funding of Oxus Gold plc’s arbitration against Uzbekistan, after the investor lost all assets to alleged expropriation, as a “classic” example. 17

While funding will be unavailable to many parties, including meritorious but impecunious respondents, this is not, in principle, unfair. The uncomfortable truth is: international arbitration contains no principle of equality of arms in terms of funding. Rather, the market just has to develop alternative financing solutions, like after-the-event insurance, to meet respondents’ needs.

Recovery of Costs

But there are glaring difficulties with treating arbitration as a level playing field when third-party funders do not have to abide by the rules of the game. Funders operate in a “legal no man’s land”: beyond the jurisdiction of arbitral tribunals as well as the limited supervision of most curial courts. 18

That can have potentially troubling consequences under the present costs regimes. Institutional rules typically require a tribunal to determine the costs of arbitration and the proportions in which they are to be borne by the parties, 19 and tribunals have a frequent practice of ordering the unsuccessful party to compensate the successful party for reasonable costs. 20 However, a funder’s involvement can upset the equation, whether the funded claimant loses or prevails against the respondent.

Where a funded claim fails, a respondent may be forced to bear the brunt of costs. Third-party funding creates a moral hazard by making it possible for an impecunious claimant to pursue arbitration with neither intention nor ability to pay costs, aptly termed “arbitral hit-and-run”. 21 By the time the respondent succeeds in his defence, he may have racked up staggering bills, but the claimant’s lack of assets will render any costs award futile. In practice, there have been reports of funded claimants who fail to satisfy costs awards. 22 No recourse will be available against the funder in most jurisdictions; the Singapore courts, for instance, have disavowed any power to order costs against non-parties to arbitration. 23

Where a funded claim prevails, issues with equitable treatment remain. One may question why the respondent should pay for adverse costs if he loses the case when he had no practical prospect of being compensated for his own costs if he had won. Moreover, compared to a cost-conscious claimant, the funded claimant who enjoys extensive resources has greater liberty to prolong arbitration proceedings, increasing costs beyond what the parties might otherwise incur. 24 Nonetheless, in Ioannis Kardassopoulous and Ron Fuchs v The Republic of Georgia, the tribunal declared that it knew “of no principle why any ... third party financing arrangement should be taken into consideration” in determining the claimants’ entitlement to costs. 25 That reasoning has been followed by at least two other tribunals. 26 As the Singapore courts are loathe to interfere with a tribunal’s discretion to allocate costs, 27 the respondent again has little room for recourse.

The problem for a tribunal in either scenario is, of course, the limits of its jurisdiction. A funding arrangement likely falls beyond both the terms of the arbitration agreement and the scope of the dispute referred to arbitration. Moreover, the third-party funder has not consented to the tribunal’s jurisdiction. On all accounts, the immutable principle of party autonomy precludes the tribunal from using the funding arrangement as a basis for cost-shifting between the parties, let alone issuing any costs award against the third party. Any such attempt may open a Pandora’s box, leading to accusations of the tribunal exceeding its jurisdiction, or objections over the extent to which claimants can be compelled to disclose funding arrangements.

Third-party funding creates a moral hazard by making it possible for an impecunious claimant to pursue arbitration with neither intention nor ability to pay costs, aptly termed “arbitral hit-and-run”.

Safeguards against Abuse

Fortunately, the challenges thrown up by third-party funding are not insurmountable. Existing controls can be used to prevent funded claimants from abusing the arbitral process and mitigate the risks to respondents.

17 Calunius Capital LLP, FAQs, online: http://www.calunius.com/FAQs.aspx
23 Chin Yoke Choong Bobby v Hong Lam Marine Pte Ltd [1999] 3 SLR(R) 907 at [27].
24 Goldsmith and Melchionda, “Third Party Funding in International Arbitration: Everything You Ever Wanted to Know (But Were Afraid to Ask)—Part Two” (2012) 2 SLR(R) 221 at 223.
25 Ioannis Kardassopoulous and Ron Fuchs v The Republic of Georgia, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award (3 March 2010) (“Kardassopoulous v Georgia”) at [686], [691].
26 RSM Production Corporation v Grenada, ICSID Case No. ARB/05/14, Order of the Committee Discontinuing the Proceeding and Decision on Costs (28 April 2011) at [68]; ATA Construction, Industrial and Trading Company v The Hashemite Kingdom of Jordan, ICSID Case No. ARB/08/2, Order Taking Note of the Discontinuance of the Proceeding (11 July 2011) at [34].
27 Vv v VW (2008) 2 SLR(R) 929 at [31].
Third party funding in international arbitration: a slippery slope or levelling the playing field?

By Mak Shin Yi

Firstly, the requirement of advances on costs and the discretionary relief of security for costs provide safeguards against a claimant’s potential inability to pay costs at the end of arbitration. RSM Production Corporation v Saint Lucia is one notable example where a funded claimant was ordered to provide security for costs as it would have been “unjustified to burden [the respondent] with the risk emanating from the uncertainty as to whether or not the unknown third party will be willing to comply with a potential costs award in [the respondent’s] favor.” The likelihood of an “arbitral hit-and-run” has been recognised by many commentators as a compelling ground for granting security for costs.

Secondly, in line with usual costs principles, a funded claimant can only recover reasonable costs. While there is no presumption that funded claimants will incur excessive costs, the tribunal will assess whether the fees and disbursements claimed are reasonable in the circumstances. For instance, in Kardassopoulous v Georgia, the tribunal found it reasonable for the two funded claimants to recover US$8 million in total costs, after extensive proceedings and arguments which led to the respondent being held liable in damages of US$15 million to each claimant.

Finally, a tribunal is always empowered to protect the fairness and integrity of its own process. If abuse of process is alleged to arise from the operation of a funding arrangement, it is appropriate, indeed obligatory, for a tribunal to review such allegations. Although there is no reported decision on this issue, a tribunal can be expected to pay heed to the courts’ interpretation of “abuse of process” in the context of litigation funding. The courts have considered factors like the funder’s degree of control over the proceedings, any undertaking by the funder to satisfy adverse costs orders, and the role of counsel acting in the proceedings, to be potentially relevant. Traditional forms of abuse of process may also be found where the proceedings involve deception, are brought for some ulterior or improper purpose, are manifestly groundless, or are vexatious or oppressive. A finding of abuse of process can lead to the proceedings being stayed, possibly subject to compliance with appropriate conditions.

Where tribunals are ill-equipped to tackle the problems, national legislatures, arbitral institutions and the arbitration community can develop new measures to regulate funders and funded parties. For instance, the Singapore Ministry of Law has suggested legislative changes to empower the courts and tribunals to order costs and security for costs directly against funders, so that respondents are not prejudiced by a lack of recourse in funded claims. Further, to enable the tribunal or court to become aware of issues arising from funding, parties may be obliged to disclose funding arrangements, though the extent of disclosure required is an open question. Other challenges remain, such as the implications of third-party funding on confidentiality and privilege, solicitor-client duties, even the economy. Only further debate can inform the policy choices that need to be made.

Conclusion

It should come as no surprise to observers that Singapore is thinking of welcoming third-party funders under its international arbitration regime. However, serious consideration must be given to the issues outlined here, which lie at the heart of the controversy regarding the practice. Funders may serve both the interests of justice and profit when they fulfill a party’s need for legal redress, but they are shadowy players in the arbitration world. The risks posed to respondents must be carefully managed, even as more claimants gain access to justice. Indeed, the question is not whether, but how, to regulate around the hazards of third-party funding so as to best reap its benefits.

Funders may serve both the interests of justice and profit when they fulfill a party’s need for legal redress, but they are shadowy players in the arbitration world. The risks posed to respondents must be carefully managed, even as more claimants gain access to justice.

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30 RSM Production Corporation v Saint Lucia, ICSID Case No. ARB/12/10, Decision on Saint Lucia’s Request for Security for Costs (13 August 2014) at [83].
31 Kirtley, supra n 21, at 26.
32 Kardassopoulous v Georgia, supra n 25, at [692].
33 Ibid. at [693(f)].
35 Waterhouse v Contractors Bonding Ltd [2013] 1 NZLR 91 at [57], [61]; c.f. Campbells Cash & Carry Pty Limited v Fastf Pty Limited [2006] HCA 41. The Singapore courts have not addressed this issue.
36 Chee Siok Chin v Minister for Home Affairs [2006] 1 SLR(R) 582 at [34].
37 MinLaw, supra n 7, at [33(b)].
38 Ibid. at [33(d)]. See also General Standard 7(a) of the IBA Guidelines on Conflicts of Interest in International Arbitration (2014).