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Effects of a Third-Party Funding Agreement on the Parties to an Arbitration Agreement in a Conflict of Interest Situation

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Abstract

Today, the field of TPF has expanded from domestic law to international law, from litigation to arbitration, which has had a profound impact on the field of international investment arbitration .TPF in international investment arbitration has a specific and specific concept: in international investment arbitration proceedings, a sponsor or third party, independent of both parties, provides financial assistance to one of the parties to the arbitration dispute by a document called a “financing agreement” and, in return, receives a percentage of the proceeds of the case after the case is won. Most sponsors, as third parties, set up special financial institutions such as Buford Capital or hedge funds such as E. G. F .As a matter of fact ,nowadays ,in many legal systems, there is a procedure and solution called "third-party litigation financing" to achieve the right to sue .Besides, in cases where there are legal aspects of disclosing information, including suspicious transactions, according to the Art ۷ .of the Anti-Money Laundering Amendment Act, the litigation financer must disclose contractual information. What has not been independently examined in previous research is the effects of disclosure of financing on the parties to the lawsuit, which is addressed in the present study .Moreover, in light of what has been said, the purpose of the present study is to examine and analyze the contract for financing a lawsuit by a third party in a conflict of interest situation .TPF may not be a completely new phenomenon to lawyers, yet the wide range of problems arising from its emergence in arbitration practice proves that it is a complex institution. The mere introduction of a third-party provider eliminates the stability of the existing relationship between the parties to the dispute, their lawyers, and the arbitrator. The goal of any legal system is to achieve justice, so this complexity should focus the attention of legislators on dealing with conflicts of interest .TPF is when a person (natural or legal) who was not previously a party to the dispute provides funds or other material support to one of the parties to the dispute, directly or indirectly, to advance a claim or defense. Arbitration practices in recent years have seen a variety of financing schemes in terms of the types of claims funded, the interests in the procedure, and the markets for TPF.Therefore, the rules on litigation funding should be consistent and unified. With a consistent definition, legislators can have a clear view of the conflict of interest in TPF .Conflicts of interest may arise with the arbitrator or with the funded party, each of which has a different impact on the procedure. While a conflict of interest of the arbitrator threatens the arbitral award, conflicts of interest may harm the rights of the litigants. This article has indicated the situations in which a

conflict may arise and also examined the levels of conflict of interest. For a conflict of interest of an arbitrator, these three paths should be followed: disclosure of the TPF agreement, disqualification of the arbitrator, and disclosure of the conflict of interest .In particular, the parties must disclose the TPF to the arbitrator, and the arbitrator must disclose facts or circumstances that give rise to doubts about his or her impartiality and independence. For conflicts of interest between the parties, it is recommended to implement professional conduct rules for lawyers and investors to hold the parties liable in the event of misconduct .TPF includes the financial terms, obligations, and rights of the parties to the agreement, including how the proceedings will be managed, the rights related to the termination of the TPF by the third party, etc. In addition, the most important items agreed upon in TPF include: a case-by-case budget for the payment of costs, liability for the payment of costs related to the failure of the case, how the provider will be monitored, and the right of priority in the payment of the provider's benefits .The adoption of a third-party litigation financing entity in Iranian law requires that the content of the contract be regulated and, as far as possible, the relevant regulations be approved so that there is no ambiguity, both for the parties to the contract and for the authority investigating a possible dispute. Disclosure of TPF can be one of the solutions to prevent conflicts of interest and the problems arising from it. Thus ,TPF should be automatically disclosed to the investigating authority to avoid significant interference by the provider in the course of the case and the emergence of discrepancies and conflicts of interest .This allows for the examination and assessment of the role of the supplier and facilitates the determination of the dominance and overall extent of the supplier's interventions in the course of the case; however, failure to disclose this contract to the investigating authority and the other party to the lawsuit has undeniable disadvantages that will not only harm the course of the proceedings but even its legitimacy. Disclosing this contract, however, will also create an obstacle in this way and will not allow the supplier or even the recipient who has obtained the supplier's information and trade secrets to misuse the information obtained. In this regard, the important point in adopting the TPF institution in the Iranian legal system is that issues such as the obligation to disclose, the manner and possibility of disclosing the contract, the obligation of the judge and the parties to disclose, as well as issues related to transparency in the relations between the parties, are regulated.

Keywords: TPF, arbitration, conflict of interests, Founder, third party.

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