

THIRD-PARTY FUNDING AS A JOINT VENTURE AND NOT AS A MERE FINANCE AGREEMENT: THE INDEPENDENCE AND IMPARTIALITY OF THE ARBITRATORS

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1. Dynamic perspective on third-party funding of international arbitration. 2. Independence and impartiality of arbitrators – a new challenge. 3. Different realities of third-party funding. 4. Third-party funding as a joint venture and not as a mere finance agreement. 5. Third-party funding and the duties of disclosure of an arbitrator. 6. Disclosure of third-party funding: principles and rules of action.

1. Dynamic perspective on third-party funding of international arbitration

Third-party funding of commercial arbitration is quite new to the majority of jurisdictions all over the world and maybe unexpected to many arbitration participants. However, this is a reality, and it raises relevant issues concerning the independence and impartiality of arbitrators.

The first assessment to be done is on the dynamism of this practice: third-party funding of arbitration is here to stay?

The “2013 International Arbitration Survey – Corporate Choices in International Arbitration, Industry Perspectives”, jointly issued by the School of International Arbitration of Queen Mary University and PWC, shows that “the sample of respondent companies who had experience of third-party funding is too small to provide any reliable evidence of trend”. In fact, only 6% of the respondents said that they already had used third-party funding and 89% of the respondents said that in the past 5 years they had not had to withdraw from an arbitration they had primarily initiated because of difficulties in the funding of the proceedings.

However, other issues are of the utmost importance to this assessment. First, 20% of the respondents said that their organizations have