PROHIBITION WITHOUT A FORUM: ARTICLE 16 OF THE INDIA-UAE BIT 2024, THIRD-PARTY FUNDING, AND THE LAW OF THE SEAT

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ABSTRACT

Article 16 of the India-UAE Bilateral Investment Treaty 2024 provides that third-party funding of an investor in case of a dispute shall not be permitted. It provides nothing further. It does not say who decides whether funding exists, on what standard, at what stage, or with what consequence. No tribunal has yet been asked to apply it. When one is, it will have to characterise the provision, and the available characterisations are three: a condition on the host State's consent to arbitrate, which makes the objection jurisdictional and terminal; a requirement of admissibility, which suspends the claim rather than defeating it; or a rule of procedure, which the law of the seat may displace. Each produces a different result on identical facts. This article argues that the third characterisation is the most difficult for India, because the treaty separately requires the arbitration to be seated in a State party to the New York Convention, and every realistic seat within that class permits third-party funding. India has therefore drafted a prohibition that only a foreign tribunal applying a foreign procedural law will ever be asked to enforce, and has given that tribunal no instruction on how. The article develops three further difficulties: that Indian law does not prohibit funding domestically and the Delhi High Court has recently affirmed its legitimacy in a Singapore-seated arbitration funded by an Indian financier; that a prohibition on funding is structurally asymmetric because a respondent State never requires it; and that the clause disadvantages Indian investors abroad. It concludes that India should replace Article 16 in future treaty practice with a disclosure and security-for-costs regime, and that if the prohibition is retained it must at minimum be given an operative consequence.

Keywords: third-party funding; India-UAE BIT 2024; investor-State dispute settlement; law of the seat; lex arbitri; jurisdiction and admissibility; New York Convention; Tomorrow Sales Agency; access to justice; Model BIT.

I. Introduction

Article 16 of the India-UAE Bilateral Investment Treaty 2024 contains one sentence. Thirdparty funding of an investor in case of a dispute shall not be permitted.[1] There is no definition of funding, no carve-out, no disclosure alternative, and no stated consequence. It is among the shortest operative provisions in the treaty and it may prove to be among the most difficult.

The commentary on the treaty has been substantial and it has been unanimous on this point in a particular way. Article 16 is noted, its unusualness is remarked upon, the contrast with the disclosure model in CETA and the EU-Vietnam agreement is drawn, and the observation is made that Indian law does not regulate funding domestically. Then the discussion moves on. What has not been asked is the operational question. Assume a UAE investor with a funded claim against India. Assume the objection is taken. What happens? Nobody knows.

That is not a rhetorical complaint about drafting. It is a description of a genuine doctrinal gap, and this article is an attempt to work out what fills it. Part II situates Article 16 in the treaty. Part III sets out precisely what the provision omits. Part IV works through the three characterisations a tribunal could adopt and shows that they produce different outcomes on the same facts. Part V argues that the treaty's own seat requirement makes the third characterisation, the procedural one, both the most likely and the most awkward for India. Part VI turns to Indian law and finds that the State has prohibited by treaty what it permits at home. Part VII takes up asymmetry and the position of Indian investors abroad. Part VIII proposes a replacement. Part IX concludes.

II. Article 16 and the Treaty It Sits In

The India-UAE BIT was signed on 13 February 2024 and entered into force on 31 August 2024, replacing the 2013 Bilateral Investment Promotion and Protection Agreement and giving effect to the commitment in Article 12.1 of the two States' Comprehensive Economic Partnership Agreement.[2,3] It is, on most measures, a liberalisation. The 2016 Model BIT had

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[1] Agreement Between the Republic of India and the United Arab Emirates on the Promotion and Protection of Investments art. 16, India-U.A.E., Feb. 13, 2024, entered into force Aug. 31, 2024 [hereinafter India-UAE BIT] ("Third-party funding of an investor in case of a dispute shall not be permitted.").

[2] Press Release, Press Info. Bureau, Ministry of Fin., Gov't of India, Bilateral Investment Treaty Between India and the United Arab Emirates Comes Into Effect (Oct. 7, 2024). The 2013 Bilateral Investment Promotion and Protection Agreement expired on Sept. 12, 2024.

[3] Comprehensive Economic Partnership Agreement, India-U.A.E., art. 12.1, Feb. 18, 2022.

narrowed the definition of protected investment by importing the Salini criteria and excluding portfolio holdings; the UAE treaty widened the definition and brought portfolio investment back within protection.[45] The Model BIT required five years of domestic litigation before an investor could commence treaty arbitration; the UAE treaty reduced that to three.[6] Whatever else it is, the treaty is a retreat from the defensive posture India adopted after Vodafone and Cairn.

Article 16 runs the other way. The 2016 Model BIT was silent on third-party funding.[7] The treaties India concluded with Belarus, Brazil and Kyrgyzstan are silent on it. The India-UAE BIT prohibits it outright. On this one issue the treaty is not a liberalisation but a hardening, and it is a hardening against the international current. The provision appears to be inherited rather than invented: the UAE had prohibited funding in its 2018 treaty with Argentina, and the clause reads as a UAE contribution to the text rather than an Indian one.[8] That matters for interpretation, because it means the clause may never have been examined in India against Indian law at all.

The comparators are worth stating plainly. CETA requires disclosure of the existence of funding and the name of the funder. The EU-Vietnam Investment Protection Agreement does the same. So do the Indonesia-Australia CEPA and the EU-Singapore FTA.[9] The ICCA-Queen Mary Task Force, after four years of work, recommended disclosure and a considered approach to security for costs, not prohibition.[10] The IBA Guidelines address funders through the conflicts framework, treating a funder with a direct economic interest as bearing the identity of the party.[11] UNCITRAL Working Group III has canvassed prohibition, restriction and

[4] MINISTRY OF FIN., GOV'T OF INDIA, MODEL TEXT FOR THE INDIAN BILATERAL INVESTMENT TREATY (2016) [hereinafter MODEL BIT]. The text is silent on third-party funding.
[5] India-UAE BIT, supra note 1, art. 1.4 (widening the definition of investment and restoring portfolio investments to the scope of protection).
[6] India-UAE BIT, supra note 1 (reducing the mandatory exhaustion of local remedies period from five years to three). The corresponding provision of the Model BIT is art. 15.
[7] Agreement Between the Argentine Republic and the United Arab Emirates for the Reciprocal Promotion and Protection of Investments art. 24, Arg.-U.A.E., Apr. 16, 2018.
[8] Comprehensive Economic and Trade Agreement, E.U.-Can., art. 8.26, Oct. 30, 2016, 2017 O.J. (L 11) 23; Investment Protection Agreement, E.U.-Viet., art. 3.37, June 30, 2019; Indonesia-Australia Comprehensive Economic Partnership Agreement art. 14.32, Mar. 4, 2019; Free Trade Agreement, E.U.-Sing., art. 3.8, Oct. 19, 2018.
[9] ICCA-QUEEN MARY TASK FORCE ON THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION, REPORT OF THE ICCA-QUEEN MARY TASK FORCE (Apr. 2018).
[10] IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION, General Standard 6(b) and Explanation (2024) (treating a funder with a direct economic interest in the award as bearing the identity of the party).
[11] U.N. Comm'n on Int'l Trade Law, Working Group III (Investor-State Dispute Settlement Reform), Possible Reform of Investor-State Dispute Settlement: Third-Party Funding, U.N. Doc. A/CN.9/WG.III/WP.157 (2019).

permission as models and the discussion has not settled on prohibition.[12] India has chosen the outlier position without, so far as the public record discloses, explaining why.

III. What Article 16 Does Not Say

The provision is one sentence and the omissions are structural rather than incidental.[13]

It does not define third-party funding. This is not pedantry. The funding market includes nonrecourse claim financing, portfolio facilities, contingent fee arrangements with counsel, after-the-event insurance, and ordinary corporate lending secured on general assets. A prohibition that captures the first three and not the last two is a different rule from one that captures all five, and a claimant funded by a parent company or a bank overdraft is in a different position again. Article 16 supplies no boundary. A tribunal asked to apply it would have to construct one, and the ordinary meaning of the term in its context, which is the interpretive starting point under Article 31 of the Vienna Convention, is exactly what is contested.[14]

The definitional gap is sharper in this treaty than it would be in most. The UAE investors most likely to hold protected investments in India are sovereign wealth funds, state-linked holding companies, and family conglomerates that finance their subsidiaries internally. Suppose an Indian project company is owned by a UAE holding vehicle, and the parent funds the subsidiary's treaty claim on terms that give the parent a share of the recovery. Is that third-party funding? The parent is a third party to the arbitration in the strict sense, it is providing finance, and it has an economic interest in the award. On a literal reading Article 16 catches it. On a purposive reading it plainly should not, because the mischief the provision addresses is external speculative finance rather than intra-group capital allocation. The text supports the literal reading and nothing in the treaty supports the purposive one. A provision that could be read to prohibit a UAE parent from financing its own subsidiary's claim against India is not a provision anyone drafted deliberately.

It does not say who decides. Nor at what stage. Funding arrangements are usually confidential

[12] The provision is textually unqualified. It does not identify the decision-maker, the standard of proof, the point in the proceedings at which the question arises, or the consequence of a breach.
[13] India-UAE BIT, supra note 1. The treaty requires that any arbitration be seated in a State party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3 [hereinafter New York Convention]. The article number should be confirmed against the treaty text.
[14] On the distinction generally, see Hochtief AG v. Argentine Republic, ICSID Case No. ARB/07/31, Decision on Jurisdiction, 90-96 (Oct. 24, 2011); Abaclat v. Argentine Republic, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 246-250 (Aug. 4, 2011).

and are not always disclosed. If the treaty contains no disclosure obligation, and it does not, then the prohibition depends for its operation on a respondent State discovering something the claimant has no duty to reveal. A rule that can only be triggered by information the rule does not require to be produced is a rule with a hole in the middle of it.

It does not say what happens. This is the omission that matters most. Suppose funding is established. Is the claim dismissed? Suspended until the funding is unwound? Is the tribunal without jurisdiction, so that the award is a nullity and any enforcement attempt fails at the New York Convention stage? Or does the tribunal note the breach, record it, and proceed, perhaps with an adjustment to costs? Article 16 supports each of these readings and compels none. A prohibition without a sanction is an instruction to a tribunal to invent one.

IV. Three Characterisations

The distinction between jurisdiction and admissibility is familiar in investment arbitration and it is usually decisive. Jurisdiction concerns the existence of the tribunal's power; admissibility concerns whether a claim within that power should be heard at this time and in this form.[15] Article 16 has to be placed on one side of the line or the other, or on a third line altogether. Each placement is arguable and the consequences diverge sharply.

A. Article 16 as a Condition on Consent

The strongest argument for India is that a State's consent to arbitrate under a treaty is given on the terms the treaty specifies, and Article 16 is one of those terms. On this reading India has consented to arbitrate with unfunded investors and no others. A funded claimant has not accepted the offer India made; it has accepted a different offer that India did not make. The tribunal is therefore without jurisdiction, the objection can be raised at any time, and the defect is not curable by the claimant subsequently terminating the funding agreement, because consent either existed at the moment of acceptance or it did not.

This reading has force and it has a serious weakness. Conditions on consent are ordinarily framed as conditions: the treaty says that a claim may be submitted only if certain things are true, and it locates the requirement in the dispute settlement chapter. Article 16 is not drafted

[15] Salini Costruttori S.p.A. v. Kingdom of Morocco, ICSID Case No. ARB/00/4, Decision on Jurisdiction (July 23, 2001).

that way. It is a flat prohibition, and it is not obviously addressed to the tribunal at all. It may be addressed to the investor, or to the States, or to nobody in particular. Reading a jurisdictional condition into a sentence that does not use the language of jurisdiction is a substantial interpretive step, and tribunals have generally declined to take that step in the absence of clear text.

B. Article 16 as a Question of Admissibility

The middle position treats Article 16 as a requirement about the form in which a claim may properly be brought rather than about whether the tribunal has power over it. On this reading a funded claim is inadmissible while the funding subsists. The tribunal would suspend the proceedings and permit the claimant to unwind the arrangement, and the claim would proceed once it did.

This has the practical merit of proportionality. It gives the provision effect without producing the result that a meritorious expropriation claim is destroyed by the manner of its financing. It also fits the drafting better, since a provision that does not use jurisdictional language is more naturally read as regulating conduct within the proceedings than as withdrawing consent to them.

But it produces an odd outcome and the oddness should be acknowledged rather than smoothed over. An investor who needed funding because it could not otherwise afford the arbitration is told that it may proceed once it stops being funded. That is not a cure. It is the end of the claim expressed as a procedural direction. The admissibility reading is more elegant than the jurisdictional one and, for the claimant without resources, identical in effect.

C. Article 16 as a Rule of Procedure

The third reading is that the permissibility of funding is a question of procedure, that questions of procedure in an arbitration are governed in the first instance by the parties' chosen rules and beyond that by the law of the seat, and that a treaty provision purporting to regulate procedure does not displace the mandatory or permissive law of the lex arbitri.[16] On this reading Article

[16] See Giovanni Alemanni v. Argentine Republic, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, ¶ 276 (Nov. 17, 2014); Teinver S.A. v. Argentine Republic, ICSID Case No. ARB/09/1, Decision on Jurisdiction (Dec. 21, 2012). In both, objections founded on the presence of a funder were rejected on the ground that the funder is not a party.

16 states a policy of the contracting States which the tribunal notes and which the law of the seat overrides where the seat has legislated to permit funding.

Tribunals have leaned in this direction whenever funding has been raised as an objection, though not on treaty text of this kind. In Alemanni and in Teinver, respondent States argued that the presence of a funder defeated jurisdiction ratione personae or vitiated consent, and the tribunals rejected the objections on the ground that the funder is not a party to the arbitration.[17] That reasoning does not answer Article 16, which does not depend on the funder being a party. But it indicates the direction of travel. Tribunals have been reluctant to allow the financing of a claim to determine the fate of the claim.

The procedural reading is the most likely to prevail and it is the worst outcome for India, because it means Article 16 does nothing. India will have negotiated a clause, secured it in the text, and then found that a tribunal sitting in Singapore applying Singapore law treats it as a statement of preference. Part V explains why that seat is not hypothetical.

V. The Seat Problem

The treaty requires that any arbitration under it be seated in a State party to the New York Convention.[18] The requirement is sensible in isolation. Its purpose is to ensure that a resulting award is enforceable, and it reflects a real Indian concern, since section 44 of the Arbitration and Conciliation Act defines a foreign award partly by reference to territories the Central Government has notified as reciprocating, and India has notified only a minority of the Convention's parties.[19] A seat outside that class produces an award that Indian courts may treat as neither foreign nor domestic.

But look at what the seat requirement does to Article 16. The Convention has more than one hundred and seventy parties, and the seats that parties to an India-UAE investment dispute would realistically select are a much smaller set: Singapore, London, Paris, Geneva, and perhaps Hong Kong or Dubai. Singapore abolished maintenance and champerty for

[17] Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331.
[18] Civil Law (Amendment) Act 2017 (Act 2 of 2017) (Sing.); Civil Law (Third-Party Funding) Regulations 2017 (Sing.). The Act abolished the torts of maintenance and champerty for the purposes of international arbitration and related proceedings.
[19] Legal Services Act 2007, c. 29, §§ 58-58AA (U.K.); Association of Litigation Funders of England and Wales, Code of Conduct for Litigation Funders (2018).

international arbitration in 2017 and built a regulatory framework for funding.[20] England permits funding under the Legal Services Act framework and a self-regulatory code.[21] Hong Kong legislated for it in the same year as Singapore.[22] France has no prohibition. Geneva has no prohibition.

The point becomes acute when the seat is in the UAE itself, which for a treaty between India and the UAE is not a remote possibility. Arbitrations seated in the Dubai International Financial Centre are governed by DIFC law, and the DIFC has not prohibited funding but regulated it. Practice Direction No. 2 of 2017 requires a funded party to give notice of the funding agreement and to disclose the funder's identity, and confirms the DIFC Courts' jurisdiction to make costs orders against funders.[23] The ADGM requires written notice of a funding agreement.[24] The UAE federal arbitration law says nothing about funding at all.[25] A tribunal seated in Dubai and applying Article 16 would be enforcing, against a UAE investor, a prohibition that the seat had considered and declined to impose.

There is no realistic seat under this treaty whose law prohibits third-party funding. India has drafted a rule that no likely forum will support and that every likely forum has legislated against. If the procedural characterisation is correct, Article 16 is unenforceable in every arbitration the treaty permits. If the jurisdictional characterisation is correct, then a tribunal sitting in Singapore is required to apply a treaty rule that Singapore has affirmatively decided is contrary to its own policy on access to arbitration, which is not impossible but is a position tribunals dislike being placed in and tend to construe their way out of.

India, in other words, has written a prohibition and then required that it be adjudicated only in places that reject the prohibition. The two clauses were plainly drafted without reference to one another. Whether that was an oversight or a concession negotiated in isolation cannot be

[20] Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (H.K.).
[21] GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION § 11.03 (3d ed. 2021) (on the allocation of procedural questions between the lex arbitri and the parties' chosen rules).
[22] Ram Coomar Coondoo v. Chunder Canto Mookerjee, (1876) L.R. 4 I.A. 23 (P.C.) (holding that agreements to finance litigation in exchange for a share of the proceeds are not per se void in India, the English doctrines of maintenance and champerty being inapplicable).
[23] Bar Council of India v. A.K. Balaji, (2018) 5 S.C.C. 379 (India) (observing that there is no bar on a third party funding litigation and being repaid on success, while advocates may not do so).
[24] Tomorrow Sales Agency Pvt. Ltd. v. SBS Holdings, Inc., 2023 SCC OnLine Del 3191 (Del. H.C. May 29, 2023) (Division Bench).
[25] Id. The funded claimants had brought a SIAC-administered arbitration under a Bespoke Financing Agreement dated Dec. 20, 2018. The tribunal rejected the claims by award dated Dec. 22, 2022 and awarded costs of approximately INR 96.2 million against the claimants. The respondent then sought interim measures against the funder under § 9 of the Arbitration and Conciliation Act, 1996, in O.M.P.(I)(COMM.) 71/2023.

established from the public record, but the effect is the same either way.

VI. What Neither State Did at Home

The most striking feature of Article 16 is that it reflects the domestic law of neither contracting party.

Third-party funding is not prohibited in India. The Privy Council held in 1876 that agreements to finance litigation for a share of the proceeds are not per se void in India, the English doctrines of maintenance and champerty having no application.[26] The Supreme Court observed in Bar Council of India v. A.K. Balaji that there is no bar on a third party funding litigation and being repaid on success, the restriction falling on advocates rather than financiers.[27] The Bar Council Rules prohibit an advocate from stipulating for a contingent fee; they say nothing about funders.[28] Several States have amended Order XXV Rule 1 of the Code of Civil Procedure to contemplate the financier of a suit being joined for the purposes of security for costs, which is a form of statutory recognition.[29] India has no legislation prohibiting funding, no regulator, and no judicial hostility to it.

It has, in fact, the opposite. In May 2023 a Division Bench of the Delhi High Court decided Tomorrow Sales Agency Pvt. Ltd. v. SBS Holdings, Inc.[30] The claimants had brought a SIACadministered arbitration financed under a Bespoke Financing Agreement; the tribunal rejected their claims and awarded costs of approximately INR 96.2 million against them; the successful respondent sought interim measures against the funder under section 9 of the Arbitration and Conciliation Act.[31] The Division Bench refused. A funder that was not a party to the arbitration agreement, the proceedings, or the award could not be mulcted with a liability it had neither undertaken nor was aware of. The Court went further than the disposal required

[26] Id. (holding that a funder which was not a party to the arbitration agreement, the proceedings, or the award could not be "mulcted with liability" it had neither undertaken nor was aware of, and calling on the Government to formulate rules on disclosure and transparency).
[27] BAR COUNCIL OF INDIA RULES pt. VI, ch. II, § II, r. 20 (prohibiting an advocate from stipulating for a fee contingent on the results of litigation or agreeing to share the proceeds).
[28] CODE CIV. PROC. Order XXV, r. 1 (India) (as amended in Maharashtra, Gujarat, Madhya Pradesh and Uttar Pradesh, expressly contemplating the financier of litigation being made a party for the purposes of security for costs).
[29] Arbitration and Conciliation Act, No. 26 of 1996, § 44 (India) (defining a foreign award by reference, inter alia, to territories notified by the Central Government as reciprocating). India has notified a minority of the States party to the New York Convention.
[30] Prabhash Ranjan, India-United Arab Emirates BIT: A New Indian Investment Treaty Practice?, FOREIGN TRADE REV. (2025).
[31] UNCTAD, WORLD INVESTMENT REPORT 2025, FDI FACT SHEET: INDIA (2025).

and affirmed the value of funding to access to justice, and it called on the Government to formulate rules on disclosure and transparency.[32]The funder was Indian.

So the position is this. An Indian non-banking financial company financed a Singapore-seated arbitration; an Indian court held that the financing was legitimate and that the funder was protected; the same court asked the Government to regulate funding rather than forbid it; and within a year the Government signed a treaty forbidding it. The Delhi High Court's request for a regulatory framework was answered, in the only instrument that has addressed the question since, with a prohibition that applies to nobody in India and everybody outside it.

The UAE is in the same position, and the symmetry is what makes the point more than an Indian curiosity. The DIFC introduced its Practice Direction on third-party funding in 2017 as part of an express policy of widening access to justice, and it chose disclosure and costs jurisdiction over prohibition.[33] The ADGM followed with a notice requirement.[34] The Dubai International Arbitration Centre, in its 2022 Rules, requires a funded party to disclose the existence of funding, the funder's identity, and the funder's position on adverse costs before the tribunal is constituted.[35] The federal arbitration law of 2018 is silent.[36] Onshore UAE law neither prohibits nor regulates funding. Not one instrument in either State forbids it.

So Article 16 is a rule that neither contracting party applies to itself, addressed to conduct neither party has criminalised or voided, adjudicated in forums that have legislated the other way, including the forums of the contracting parties themselves. It is difficult to identify the constituency for it. The clause is most plausibly explained as a bargaining artefact carried over from the UAE-Argentina treaty of 2018 and accepted by India without examination, which would explain why it is inconsistent with both States' law and with the treaty's own seat

[32] For the disclosure model as applied in institutional rules, see ICC ARBITRATION RULES art. 11(7) (2021); SIAC ARBITRATION RULES r. 38 (2025); CIArb, Guideline on Third Party Funding (2025).
[33] DIFC COURTS, PRACTICE DIRECTION NO. 2 OF 2017 ON THIRD PARTY FUNDING IN THE DIFC COURTS, 4-6, 9 (Mar. 14, 2017) (requiring a funded party to give notice of the existence of a litigation funding agreement and to disclose the funder's identity, and confirming the Courts' jurisdiction to make costs orders against funders).
[34] ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, § 225 (Abu Dhabi Global Mkt.) (requiring written notice of a litigation funding agreement).
[35] DIAC ARBITRATION RULES art. 22 (2022) (requiring a funded party to disclose the existence of third-party funding, the funder's identity and the funder's commitment as to adverse costs, before constitution of the tribunal). The article number should be confirmed against the Rules as published by the Dubai International Arbitration Centre.
[36] Federal Law No. 6 of 2018 on Arbitration (U.A.E.) (containing no provision prohibiting or regulating thirdparty funding).

provision.

That inconsistency has an interpretive consequence and not merely a rhetorical one. If Article 16 were an expression of Indian public policy, a tribunal might give it weight even on the procedural reading, on the footing that the prohibition reflects a settled position of the host State. It does not reflect any such position. India permits domestically what it has prohibited by treaty, and so does the UAE. A tribunal invited to treat Article 16 as a matter of fundamental Indian policy has a complete answer available to it in Tomorrow Sales.

VII. Asymmetry and the Outbound Investor

Two further objections do not depend on characterisation at all.

The first is structural. A prohibition on third-party funding is not a neutral rule that binds both sides equally. It binds one side. A respondent State has a treasury, a law officer, and the capacity to instruct counsel for as long as the proceedings last. It has no need of funding and will never seek it. Funding matters to claimants, and among claimants it matters most to those without the balance sheet to carry a multi-year arbitration against a sovereign. The rule therefore does not balance the regime. It removes a category of claimant from it, and the category it removes is defined by wealth rather than by the merits of the claim. States defending against funded claims frequently argue that funding encourages speculative litigation, and the concern is not frivolous, but the response to speculative claims is security for costs and early dismissal mechanisms, which are directed at the claim. Article 16 is directed at the claimant.

The second is that the clause cuts against India. India is now a substantial capital exporter, and Indian companies hold investments across Southeast Asia, Africa, the Gulf and Europe. An Indian investor expropriated in the UAE is subject to Article 16 in precisely the same terms as a UAE investor expropriated in India. If that investor is a mid-sized company facing a sovereign respondent, the prohibition may be the difference between a claim and no claim. The commentary has noticed this point in passing. It deserves more than passing notice, because it is the clearest illustration of a defect running through India's treaty practice generally: the terms were designed by a State thinking of itself as a respondent, and India is increasingly going to be a claimant's home State.

VIII. Drafting the Provision India Meant to Write

The concerns behind Article 16 are legitimate and it is worth saying so before proposing that the provision be abandoned. Funders have economic interests in outcomes and those interests can generate conflicts that the ordinary disclosure regime does not catch. A funder may exercise practical control over settlement. A claimant with no assets and a funder with no liability for costs can impose asymmetric risk on a respondent, which is exactly what happened to the respondent in Tomorrow Sales. These are real problems and the international response to them is not to pretend funding does not exist.

The response that works is disclosure with consequences attached. It has three components and each is already in operation somewhere. First, mandatory disclosure of the existence of funding and the identity of the funder at the outset of proceedings, on the CETA and EU-Vietnam model, enforced by an adverse inference or a costs sanction for non-disclosure. This solves the conflicts problem directly, because once the funder is identified the arbitrators can run the check that the IBA Guidelines already contemplate. Second, an express power in the tribunal to order security for costs, with the presence of funding as a relevant but not determinative factor, which is where the ICCA-Queen Mary Task Force landed after considering the question at length. This solves the asymmetric risk problem, and it solves it against the claim rather than against the claimant. Third, a costs regime that permits the tribunal to take the funding arrangement into account in allocating costs. The institutional rules have already moved in this direction and India's treaty practice is behind them.

If the prohibition is to be retained in future Indian treaty practice, and the reported principles of the revised Model BIT do not indicate whether it will be, then it must be given the operative content that Article 16 lacks. That means a definition of funding that identifies what is caught and what is not; a disclosure obligation, because a prohibition that depends on discovery is not a prohibition; an express statement of whether the requirement goes to jurisdiction or to admissibility; and a statement of consequence. A treaty that prohibits conduct without specifying who decides, on what test, or with what result has not regulated the conduct. It has passed the question to a tribunal and hoped.

IX. Conclusion

Article 16 will be tested. The treaty runs to 2034 at least, the India-UAE investment relationship is among India's largest, and the treaty preserved investor-State arbitration where much of India's recent practice has narrowed it. A funded claim will be brought and the objection will be taken.

When it is, the tribunal will find a one-sentence prohibition with no definition, no disclosure mechanism, no allocation of decision-making authority, and no consequence, sitting in a treaty that requires the arbitration to be seated in a State that permits the very thing the sentence forbids. It will find that the host State whose policy the provision supposedly expresses permits funding at home, and that the host State's courts affirmed the legitimacy of funding in a Singapore-seated arbitration financed by a domestic funder a year before the treaty was signed. The most probable outcome is that the tribunal characterises the provision as procedural, notes it, and proceeds. India will have obtained nothing from the clause except the appearance of having obtained something.

The wider point is not about funding. India's investment treaty practice has for a decade been built by addition: each adverse experience produces a new restriction, and the restrictions accumulate without anyone asking whether they cohere. Article 16 and the seat requirement are in the same treaty, drafted at the same time, and they contradict each other. That is what happens when a treaty is assembled from defensive reflexes rather than designed. The revision of the Model BIT announced in 2025 is an opportunity to notice that. Whether it will be taken is a different question, and the reported principles do not encourage optimism.