
THE TPF PARADOX: REGULATION OR COMPLETE PROHIBITION?

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ABSTRACT

This paper provides an in-depth analysis of prohibition and regulation of third-party funding in investment arbitration by examining the paradox between enhanced access to justice for claimant investors and the systemic risks to procedural integrity. Following the 2008 economic recession, third-party funding has expanded significantly in investor-state dispute settlement, raising concerns regarding conflicts of interest, breach of confidentiality, structural asymmetries favouring claimants, and settlement deterrence. The 2024 India-UAE BIT is used as a prime example illustrating complete prohibition of third-party funding whereas other treaties, national legislations and institutional rules are studied to illustrate different forms of regulating third-party funding in investment arbitration. This paper demonstrates, through doctrinal analysis of key ICSID jurisprudence, that unregulated third-party funding creates radical asymmetries whereby funded claimants face no downside risk whilst respondent States bear full defense costs from public budgets. This paper advocates for comprehensive multilateral regulation encompassing mandatory disclosure requirements, capital adequacy standards, success fee caps and more, arguing that prohibition or substantive regulation constitutes a necessary safeguard against wealth transfers from taxpayers to commercial speculators whilst preserving legitimate access to justice.

Introduction

The CIArb in their proposed guidelines for third-party funding (TPF) have proposed the definition for third-party funding as

*“A contractual arrangement in which an external entity (the funder) finances some or all of a party’s legal fees and expenses to pursue or defend a claim. In exchange, the funder is entitled to either a share of any financial recovery or a multiple of its invested amount if the claim is successful.”*¹

In these arrangements, funding is typically provided on a non-recourse basis, meaning that if the claim is unsuccessful, the claimant is not liable to repay the funder’s investment.² After the economic recession in 2008, third-party funding has rapidly expanded its presence in investment arbitration, particularly because investment arbitration involves States as the respondent parties with claims and costs paid from State budgets (primarily taxpayers’ incomes) rather than commercial defendants’ resources.³ The limitations and demerits to this approach have been discussed in this paper.

Although it has potential to enhance access to justice for claimants with limited resources, third-party funding in investment arbitration raises serious concerns on the regulatory front that warrant intervention. The increasing use of third-party funding has given rise to problems including conflicts of interest, confidentiality risks, structural imbalance between investors and States, and discouragement of settlement.⁴ Another important aspect to note about funders is that they have veto power in settlement transactions, which may prevent amicable settlements between parties since funders need to recover their investment and obtain a profit.⁵ The European Parliament has recognized that third-party funding is a booming phenomenon in investment arbitration that multiplies the number and volume of claims of private investors against States. These concerns regarding conflicts of interest, confidentiality, procedural

¹ Chartered Inst. of Arbitrators, *Guideline on Third-Party Funding* (2025), <https://www.ciarb.org>.

² Hughes Hubbard & Reed LLP, *Attorneys Explain Third Party Funding in Arbitration* (Feb. 2025), <https://www.hugheshubbard.com/news/third-party-funding-in-international-arbitration>.

³ Xin (Sherry) Chen, *Researching Third-Party Funding in Investor-State Dispute Settlement*, N.Y.U. Sch. of L. GlobalLex (April, 2024), https://www.nyulawglobal.org/globallex/third-party_funding_investorstate_dispute_settlement1.html.

⁴ D. Kayalı, *Third-Party Funding in Investment Arbitration: How to Define and Disclose It*, 38 ICSID Rev.–Foreign Inv. L.J. 113 (2023).

⁵ U.N. Conf. on Trade & Dev., *Third-Party Funding in International Investment Arbitration*, UNCTAD Inv. Pol’y Hub Blog (Apr. 8, 2013), <https://investmentpolicy.unctad.org/blogs/21/third-party-funding-in-international-investment-arbitration>.

control, and the overarching control of funders over the arbitral processes have induced discussions about the necessary regulatory frameworks required to address the ethical implications surrounding investment arbitration. Keeping in mind the substantial risks to the investment arbitration proceedings and the increased financial burden on respondent states, regulation and prohibition of third-party funding becomes a necessary safeguard.

Third-party funding proponents claim that it provides access to justice for impecunious parties. Given the structural deficits in international investment law and claims are fulfilled from taxpayers' funds, allowing unregulated third-party funding risks creating unjustifiable wealth transfers from the citizens of target states for the benefit of speculators. The research sets off with identifying the concerns associated with third-party funding in investment arbitration, after which it delves into the rationale behind which India's new BIT framework has begun signaling a shift towards regulation or prohibition of third-party funding. Firstly, the research will deconstruct the 2024 India-UAE BIT which is India's maiden attempt at regulating third-party funding in investment arbitration. Secondly, this paper will examine the necessity of regulating third-party funding in investment arbitration with the help of recent case law from across the world, various national legislations and institutional rules, and scholarly jurisprudence in this field. This will also involve a deep dive into both the merits and demerits of third-party funding in investment arbitration. Finally, before concluding, the paper will conclude with recommendations and suggestions to further enhance third-party funding regulation in India's BIT framework.

The 2024 India-UAE Bilateral Investment Treaty and its Relevance to the Energy Sector

In response to these concerns, the 2024 India-United Arab Emirates Bilateral Investment Treaty represents India's pioneering attempt to address third-party funding through explicit prohibition.

Article 16 of the India-UAE BIT expressly provides-

“Third Party funding of the Investor in case of dispute is not permitted.”⁶

This express exclusion is notable as third-party funding in investor-state dispute settlement has

⁶ Bilateral Investment Treaty Between the Government of The Republic Of India and The Government of The United Arab Emirates, India-U.A.E., art. 16, Feb. 13, 2024 (entered into force Aug. 31, 2024), <https://edit.wti.org/document/show/cc53a87e-1f5e-4225-9ed7-94414f0c4ce1>.

been identified by UNCITRAL Working Group III as a serious concern raising ethical issues such as third-party funders influencing the arbitral process.⁷ The prohibition is in line with India's public policy principles grounded in the doctrines of champerty and maintenance. The treaty adopts a prohibition model, whereas many other BITs and FTAs either do not address third-party funding or adopt restrictive models that regulate through disclosure requirements. From the State's perspective, prohibiting third-party funding seeks to minimize the financial and administrative burden associated with defending multiple or less meritorious disputes, ensuring that only investors with sufficient resources pursue legitimate claims.⁸

The India-UAE BIT fulfils the promise in Article 12.1 of the Comprehensive Economic Partnership Agreement between the two States to replace their 2013 Bilateral Investment Promotion and Protection Agreement (BIPPA).⁹ Since India's Model BIT which was adopted in 2016 remains silent on the issue of third-party funding, the 2024 India-UAE marks a significant departure from not only the Model BIT but also from India's established practice of non-regulation of third-party funding of investment disputes. Moreover, it is crucial to note that this treaty also differs from India's recently concluded BITs with Belarus, Brazil and Kyrgyzstan, none of which either regulate or prohibit third-party funding of investor-state disputes. On a general scale, Indian law does not prohibit or regulate third-party funding of litigation or arbitration, and national jurisprudence on this issue remains exiguous. This amplifies the significance of the 2024 India-UAE BIT as the blanket prohibition on third-party funding portrays India's foray into previously untested waters.

However, it is worthwhile to take note of the fact that prohibition of third-party funding is not an unknown practice for the UAE as evident from its BITs with other nations, such as Article 24 of the 2018 Argentina-UAE BIT which prohibits third-party funding completely.¹⁰ This alludes to the suggestion that India was influenced by UAE's practice of complete prohibition and decided to begin incorporating such a practice within its own treaties as well. In the broader context of current world trade which is governed by large-scale cross-border investments and

⁷ Colum. Ctr. on Sustainable Inv., *Third-Party Funding in Investor-State Dispute Settlement*, CCSI Blog (July 30, 2021), <https://ccsi.columbia.edu/content/third-party-funding-investor-state-dispute-settlement>.

⁸ S&R Assocs., *The New India-UAE BIT: Changing the Model BIT by BIT* (Jan. 2025), <https://www.snrlaw.in/the-new-india-uae-bit-changing-the-model-bit-by-bit>.

⁹ Herbert Smith Freehills Kramer, *India-UAE BIT 2024: A Measured Approach* (Dec. 19, 2024), <https://www.hsfkramer.com/notes/arbitration/2024-posts/India-UAE-BIT-2024-A-Measured-Approach>.

¹⁰ Argentina–United Arab Emirates Bilateral Investment Treaty, Arg.–U.A.E., art. 24, Apr. 16, 2018 (entered into force Nov. 12, 2018), <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3819/argentina---united-arab-emirates-bit-2018->.

technology transfers, various States have chosen to regulate third-party funding either by warranting disclosure of the third-party funding arrangements (which includes the names of the funders, the agreements/contracts enabling the funding, prior relationships of the funders with the arbitrators, etc..) or outright prohibition through BITs and FTAs. Article 8.26 of the 2017 EU-Canada Comprehensive Economic and Trade Agreement,¹¹ Article 3.37 of the 2019 EU-Vietnam Investment Protection Agreement,¹² Article 14.32 of the 2019 Indonesia-Australia Comprehensive Economic Partnership Agreement,¹³ Article 3.8 of the 2018 EU-Singapore FTA, the 2021 Protocol to the Colombia-Spain BIT,¹⁴ and Article 8.23 of the 2022 Pacific Alliance-Singapore FTA,¹⁵ all mandate disclosure of all or any third-party funding to prevent potential conflicts of interest. In fact, Article 3.37(3) of the EU-Vietnam Investment Protection Agreement also requires ISDS tribunals to consider the fact of third-party funding while awarding security for costs and account for such disclosure while deciding on the cost of proceedings.¹⁶ From these cross-border agreements, it is evident that although only the 2024 India-UAE BIT and the 2018 Argentina-UAE BIT mandate complete prohibition of third-party funding of investor-state disputes, various other jurisdictions all around the world have inculcated provisions in their BITs, FTAs, CEPAs and other international agreements to regulate, more specifically disclose third-party funding in investor-state disputes.

The prohibition of third-party funding in the 2024 India-UAE BIT generates countervailing effects between claimant investors and respondent States. From an investor's perspective, this prohibition affects access to justice in broader concerns, although this too has been disproved in the following paragraphs. This prohibition's primary aim is to tilt the balance in the respondent State's favour as it will help in reducing the financial burden on the States, especially the taxpayers, in defending multiple or less meritorious disputes, ensuring that only investors with sufficient resources pursue legitimate claims. As such, third-party funding is

¹¹ Comprehensive Economic and Trade Agreement art. 8.26, Can.–EU, Oct. 30, 2016 (provisionally applied Sept. 21, 2017).

¹² Investment Protection Agreement Between the European Union and Its Member States, of the One Part, and the Socialist Republic of Viet Nam, of the Other Part art. 3.37, June 30, 2019, <https://edit.wti.org/document/show/66f74a5f-5c00-455d-97f5-709f837d2bb4>.

¹³ Indonesia–Australia Comprehensive Economic Partnership Agreement art. 14.32, Mar. 4, 2019 (entered into force July 5, 2020), <https://edit.wti.org/document/show/e19cba47-4727-4c6c-aeb8-7537c6ce845a>.

¹⁴ Free Trade Agreement Between the European Union and the Republic of Singapore art. 3.8, Oct. 19, 2018 (entered into force Nov. 21, 2019), <https://edit.wti.org/document/show/cc10e51a-dd70-4d9c-9e75-eab0db2346f6>.

¹⁵ Pacific Alliance–Singapore Free Trade Agreement, Jan. 26, 2022, <https://edit.wti.org/document/show/pdf/b2351442-4a42-4acc-a8c4-1f1e01609add>.

¹⁶ S&R Assocs., *The New India-UAE BIT: Changing the Model BIT by BIT* (Jan. 2025), <https://www.snrlaw.in/the-new-india-uae-bit-changing-the-model-bit-by-bit>.

likely to remain a bone of contention in current and future treaty negotiations.

Necessity of Regulating Third-Party Funding in Investment Arbitration: Inspection Through International Jurisprudence and Scholarly Works

Coming back to it, an interesting observation is that third-party funding in investment arbitration, although a transformative development, its merits remain highly controversial due to its misuse by claimant investors. While supporters of this practice celebrate third-party funding as democratizing access to justice, it raises profound concerns about procedural fairness, conflicts of interest between the funders and the arbitrators, and unequal burdens on respondent States. In this section of the paper, we will briefly examine the merits and demerits of third-party funding in investment arbitration, followed by analyzing key International Centre for Settlement of Investment Disputes (ICSID) cases to demonstrate why comprehensive regulation is essential.

i) The Merits of Third-Party Funding

As discussed earlier in this paper, access to justice is the primary justification used by proponents of third-party funding in investment arbitration. Investment arbitration involves substantial costs including legal fees, arbitrator fees, and expert witness expenses, often amounting to millions of dollars. As Garimella notes, these costs “may discourage parties with legitimate claims from initiating proceedings, thus creating insurmountable barriers for small enterprises and claimants from developing countries.”¹⁷

Third-party funding addresses this by providing capital in exchange for a share of any award, which usually ranges from 20% to 50% of recovery.¹⁸ As third-party funding operates on a non-recourse basis, if the claim fails, the funders lose their investments, and the funded claimants do not incur any obligation to repay the amount. This enables financially constrained claimants to pursue legitimate grievances against States allegedly violating treaty obligations. Thus, this form of funding is risk-intensive, which highly incentivizes funders to invest in claims they thoroughly believe will yield positive results. Professional funders conduct extensive studies and due diligence about the merits and evidentiary strength of a claim before

¹⁷ Sai Ramani Garimella, *Interrogating Third Party Funding in Investment Arbitration: The Need for Regulation in the UK and India*, 16 Manchester J. Int'l Econ. L. 213, 216 (2019).

¹⁸ Ridhima Sharma, *Third Party Funding in International Commercial Arbitration*, 12 NUALS L.J. 61, 63 (2018).

investing. Chen notes that empirical research reveals that such extensive studies before investing may improve case quality by filtering out weak or speculative claims.¹⁹

ii) The Demerits of Third-Party Funding

The most significant drawback is the radical asymmetry third-party funding creates. While funded claimants face no downside risk, respondent States are forced to defend themselves at full expense with no outside funding, regardless of whether there is any merit in the claim.²⁰ Even when successfully defending against meritless claims, states typically cannot recover full costs including governmental resources devoted to defense of the claim.²¹ These costs, as mentioned earlier, can reach millions of dollars, thus resulting in a major drain on public resources, the burden of which is passed on to the taxpayers. This is particularly problematic in developing countries.

iii) The *Teinver v. Argentina* Case

The ICSID case *Teinver S.A. v. Argentine Republic* provides crucial evidence of the problems that come with third-party funding.²² In this case, Spanish corporations initiated arbitration against Argentina, with the tribunal awarding \$320.7 million in damages plus \$3.5 million in costs. Argentina sought to annul the award on the ground that Burford Capital Limited, the third-party funder, would be the principal beneficiary, constituting an abuse of the ICSID system.

As per the Funding Agreement entered between the claimant and the funder, Burford was entitled to the “Recovery Amount” from the award proceeds.²³ Argentina based its argument on the claim that the “principles of champerty and maintenance are an abuse of process that is contrary to public policy.”²⁴ Although finally, the ICSID Committee rejected Argentina’s annulment application, the dissenting opinion noted that “the ultimate beneficiaries of the award would be the funder and the counsel for the claimants (not the claimants themselves).”²⁵

¹⁹ Tsai-fang Chen, *Third-Party Funding in Investment Arbitration: A New Player in the System*, 17 *Contemp. Asia Arb. J.* 269, 271 (2024).

²⁰ Sharma, *supra* note [10], at 75.

²¹ Garimella, *supra* note [9], at 226.

²² *Teinver S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Argentina’s Application for Annulment (May 29, 2019).

²³ *Id.* ¶ 185.

²⁴ *Id.* ¶ 183.

²⁵ *Id.* ¶ 6.

This highlights concerns that third-party funding transforms investment arbitration from fulfilling its primary objective of aiding aggrieved investors into a profit-driven enterprise serving commercial speculators.

iv) The Importance of Regulation in Various Jurisdictions- Mandatory Disclosure, Capital Adequacy Requirements, Enhanced Cost-Shifting, Security for Costs, and Success Fee Caps.

Third-party funding introduces conflicts threatening party autonomy. As Rachel Howie and Geoff Moysa note in their paper, “a funder providing millions of dollars inevitable influences strategic decisions about settlement, selection of legal counsel, and pursuit or abandonment of particular claims.”²⁶ The Honk Kong reforms, through section 98V(3)(c) of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Act 2017, requiring funding agreements to specify “the degree of control of the third-party funder” over the claimant investors and the claim itself, acknowledge the influence.²⁷

Moving on, it is important to note that comprehensive regulation must begin with universal mandatory disclosure of third-party funding arrangements. Various jurisdictions have incorporated into their national legislations’ provisions mandating disclosure of third-party funding arrangements. One such approach has been followed in Singapore where Regulation 4 of The Civil Law (Third Party Funding) Regulations 2017 requires disclosure of “funding existence and funder identity.”²⁸ Furthermore, the International Bar Association’s 2014 Guidelines recognize that “third-party funders may have a direct economic interest in the award,”²⁹ but without mandatory disclosure requirements, these guidelines have more of an “aspirational rather than a binding effect.”³⁰ In *Muhammet Çap & Sehil İnşaat v Turkmenistan*,³¹ the tribunal identified five factors warranting disclosure of funding arrangements, including avoiding arbitrator conflicts and ensuring transparency. The inconsistency in regulation is seen when we look into the Canadian domestic legislations which remains silent on disclosure requirements.³² This gap was highlighted in *Seedlings Life Science*

²⁶ Rachel Howie & Geoff Moysa, *Financing Disputes: Third-Party Funding in Litigation and Arbitration*, 57 Alta. L. Rev. 465 (2019).

²⁷ Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (H.K.) § 98V(3)(c).

²⁸ Civil Law (Third-Party Funding) Regulations 2017 (Sing.) reg. 4.

²⁹ Int’l Bar Ass’n, *IBA Guidelines on Conflicts of Interest in International Arbitration*, Gen. Standard 6(b) (2014).

³⁰ Sharma, *supra* note [10], at 65.

³¹ *Muhammet Çap & Sehil İnşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan*, ICSID Case No. ARB/12/6, [title of decision/order] ¶ 50 (May 4, 2021).

³² Howie & Moysa, *supra* note [12], at 497.

Ventures v Pfizer Canada,³³ where the Federal court stated that it does not have jurisdiction to approve funding agreements in commercial litigation, leaving parties flummoxed as to what the correct position of law was. Although this case dealt with third-party funding of commercial litigation, it clarifies the complexities surrounding third-party funding arrangements in different fora. It is also crucial to note that arbitral institutions like the Singapore International Arbitration Centre (SIAC) through its 2017 Investment Arbitration Rules gives arbitrators the power to mandate disclosure of the existence of a party's third-party funding arrangement, the identity of the third-party funder, and the details of the funder's interest in the outcome of the dispute.³⁴ Other arbitral institutions such as the 2018 Rules of the Hong Kong International Arbitration Centre (HKIAC) and the 2021 Rules of the Australian Centre for International Commercial Arbitration provide for disclosure of third-party funding requirements.^{35 36}

Singapore's requirement that third-party funders maintain paid-up capital of at least \$5 million provides important safeguards.³⁷ Effective regulation should establish professional standards, insurance requirements, and capital adequacy scaled to portfolio size, ensuring adequate capitalization relative to exposure across multiple cases. The *RSM Production Corporation vs. St. Lucia* case demonstrates tribunals' recognition of third-party funding concerns being raised worldwide.³⁸ In this case, the Tribunal noted that it would be "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 cost award."³⁹

Enhanced cost-shifting should enable successful respondents to recover not only external costs but also internal governmental costs which are basically costs that are currently not compensated by the losing claimants despite representing significant public resource exhaustion of the respondent States. For developing countries where public budgets are severely constrained, arbitration defense costs result in reduced resources that have been set aside for healthcare, education, and infrastructure development.

Regulation is also necessary to protect vulnerable parties from potentially exploitative

³³ *Seedlings Life Sci. Ventures, LLC v. Pfizer Can. Inc.*, 2017 FC 826, ¶¶ 22–23 (Can.).

³⁴ Sing. Int'l Arb. Ctr., Investment Arbitration Rules r. 24(1) (1st ed. 2017).

³⁵ Hong Kong Int'l Arb. Ctr., *Administered Arbitration Rules* art. 44 (2018).

³⁶ Austl. Ctr. for Int'l Com. Arb., *Arbitration Rules* art. 54 (2021).

³⁷ Civil Law (Third-Party Funding) Regulations 2017 (Sing.) reg. 3(2)(b).

³⁸ *RSM Prod. Corp. v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs (Aug. 13, 2014).

³⁹ Garimella, *supra* note [9], at 230.

arrangements. In *McIntyre Estate v Ontario (Attorney General)*,⁴⁰ the Ontario Court of Appeal established that third-party funding arrangements must not violate principles against maintenance and champerty yet provided limited guidance on acceptable terms. Subsequently, courts and tribunals across the world have struggled with inconsistent approaches with some awarding up to 50% of the award, while others express concerns about agreements lacking caps on funder returns.⁴¹ This uncertainty particularly affects class action participants who, unlike commercial litigants, lack sophistication to negotiate fair terms and require court protection. A study of the *Essar Oilfields* case, in which the funder received the majority of 300% of the sums lent or 35% of the damages awarded demonstrate the need for regulatory caps.⁴² Reasonable regulation, through treaties and legislations, should limit success fees to around 30% of net recovery or 2-3 times of the invested capital. This will prevent windfall gains while ensuring claimants retain meaningful and substantial shares of their recovery. Comprehensive and substantial regulation of third-party funding of third-party funding in investment arbitration would substantially benefit the respondent States by levelling the playing field which has been maladjusted by unscrupulous claimants and funders. Such regulation or prohibition will reduce abusive claims and preserve scarce public resources. When unscrupulous funders face full liability for adverse costs and capped returns, their investment criteria will become more conservative, thus focusing third-party funding on genuinely meritorious cases rather than speculative claims brought for settlement value.

Recommendations for the future

Following the in-depth study on third-party funding in investment arbitration, it is safe to conclude that either complete prohibition or at least, any form of, regulation is necessary in the global setup. However, it is crucial for the third-party funding regime requires a harmonized multilateral approach rather than fragmented and inconsistent national legislations. UNCITRAL Working Group III should direct its focus towards developing model provisions on third-party funding that can aid countries and blocs in drafting international treaties and arbitration rules. Such a framework should establish minimum standards while allowing jurisdictions flexibility to impose stricter restrictions based on the needs of their respective countries.

⁴⁰ *McIntyre Estate v. Ontario (Att'y Gen.)* (2002), 61 O.R. (3d) 257 (Can. Ont. C.A.).

⁴¹ *Metzler Inv. GMBH v. Gildan Activewear Inc.*, 2009 CanLII 41540, ¶ 67 (Can. Ont. S.C.J.).

⁴² *Essar Oilfields Servs. Ltd. v. Norscot Rig Mgmt. PVT Ltd.* [2016] EWHC 2361 (Comm) (Eng.).

Furthermore, regarding the disclosure requirement in most third-party funding regulations, there must be a universal regime mandating disclosure of third-party funding arrangements in all cases. This can be done by elevating this requirement to the status of a customary international law norm. This can be done by satisfying two conditions: consistent State practice and *opinio juris*. Disclosure must usually follow the notice of arbitration. Disclosure must extend beyond mere funder identity disclosure to include: the financial terms and success fee structure of the funding agreements, the extent of funder control over settlement decisions and case strategy (this will help in reducing funder restricting party autonomy), whether the funder has invested in other claims against the same respondent State, and the relationship between funders and legal counsel. The EU-Canada CETA model serves as a suitable example.

Capital adequacy requirements and presumptive security for costs are suggested regulations that are based on Singaporean civil laws. Singapore's \$5 million capital requirement provides a good template for international standards, where capital requirements should increase proportionally with a funder's portfolio exposure. Following the innovative approach in *Manuel Garcia Armas vs. Venezuela*,⁴³ regulations should create a rebuttable presumption that funded claimants must provide security for costs. The burden should shift to funded claimants to demonstrate either that the funder has committed to recover adverse costs or that the claimant possesses independent means to satisfy potential cost orders.

Future investment treaties should include specific third-party funding provisions rather than leaving regulation to ad-hoc arbitral tribunals. Rather than immediate comprehensive regulation, a phased step-by-step approach gives sufficient leeway for the industry to adapt. Initial soft law guidelines issued by institutions like ICSID and UNCITRAL would help in establishing best practices, followed by rule amendments incorporating the core principles discussed above. This phased approach will help in avoiding transitioning to the new framework while avoiding major disruptions to the current framework.

Conclusion

The proliferation of third-party funding in investment arbitration presents a fundamental challenge to the legitimacy and long-term sustainability of the investor-state dispute settlement system. While it is true that third-party funding ostensibly democratizes access to justice for

⁴³ *Manuel García Armas v. Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (June 20, 2018), discussed in Garimella, *supra* note [9], at 230.

claimants, from what is seen above it is clear that unregulated funding transforms arbitration from a remedial mechanism for aggrieved investors into a profit driven enterprise serving the interests of commercial speculators i.e., funders. This results in respondent States, and ultimately taxpayers- bearing disproportionate financial burdens even when successfully defending meritless claims.

The 2024 India-UAE BIT's complete prohibition of third-party funding represents a legitimate sovereign response to these systemic concerns, particularly given the absence of international consensus and regulatory standards. However, outright prohibition may unduly restrict access to justice for genuinely impecunious claimants with meritorious claims. The optimal approach requires harmonized multilateral regulation through UNCITRAL Working Group III, establishing universal mandatory disclosure requirements and various other requirements such as capital adequacy, success fee caps and so on. The renewable energy sector jurisprudence, exemplified by the Spanish solar disputes, demonstrates how regulatory uncertainty compounds third-party funding related concerns, making treaty-level provisions essential rather than discretionary. Only through comprehensive, multilateral regulatory frameworks can the international investment law system balance access to justice imperatives against procedural integrity and equitable burden distribution between investors and states.