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Third-Party Funding and Access to Justice in Investment Arbitration: Security for Costs as a Provisional Measure or a Standalone Procedural Category in the Newest Developments in International Investment Law

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Abstract Third-party funding (TPF) may be regarded as a tool to allow the parties in an investment dispute to exercise their fundamental right to access to justice by having access to investment arbitration. This proposition should be taken into consideration by arbitral tribunals when dealing with requests for posting security for costs in investment arbitration and the request comes from the fact that a party is relying on TPF. Security for costs has been treated traditionally as one of the many types of provisional measures that an arbitral tribunal can grant. However, a new trend has emerged to treat security for costs as a standalone figure, independent from

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the procedural category of provisional measures. Special attention is paid to the newest approach by the Institute of International Law (IIL) as well as to those of the two leading administrative centres of investment arbitration proceedings: the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the Working Paper #3 of the International Centre for Settlement of Investment Disputes (ICSID) for the amendment of its Arbitration Rules.

1 Introduction

Third-party funding (TPF) may be regarded as a tool to contribute to granting access to justice to the parties in an investment dispute and, consequently, to allow them to exercise their fundamental right to access to justice. Several implications emerge from this proposition, but this chapter will focus in particular on its effect over the requests for posting security for costs that we usually see in investment arbitration case law and the attention that arbitral tribunals should pay to such proposition, especially when one of the parties requests an order for security for costs because the other party is relying on TPF to pursue its claim or defence.

Originally, security for costs has been treated as one of the many types of provisional measures that an arbitral tribunal can grant. However, a new trend has emerged to treat security for costs independently from the procedural category of provisional measures. Special attention will be paid to the newest approach by the Institute of International Law (IIL), as well as to those of the two leading administrative centres of investment arbitration proceedings: the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the International Centre for Settlement of Investment Disputes (ICSID), in all cases from the perspective of TPF.

2 Third-Party Funding: The Fundamental Right to Access to Justice and the Equality of the Parties in Investment Arbitration

The main purpose behind the hiring of the services of a TPF provider is, in principle, to help an individual or a company to file a claim against their counterparty or to defend itself from a claim filed by its counterparty, in both cases when such individual or company does not have sufficient assets to finance that legal action.

By committing its funds, and notwithstanding any expected earnings if the legal action is successful, the TPF provider is, in the end, helping an allegedly aggrieved person to exercise its fundamental right to access to justice as claimant or

respondent. Access to justice is considered a fundamental right in a plethora of international covenants,[1] as well as national constitutions and bills of rights.[2]

TPF was traditionally banned in some common law jurisdictions as tort under the names of *maintenance*, *champerty*, or *barretry*.[3] State-of-the-art jurisdictions like Singapore[4] and Hong Kong[5] are the latest ones to adopt the opposite position, even accepting this practice for the purposes of promoting themselves as international litigation and arbitration hubs. At the same time, many countries have established state-funded schemes to allow low-income people to afford the legal costs of claims as plaintiffs or defendants (*legal aid*).[6] Consequently, the funding of claims by third parties is neither new nor exclusive to investment arbitration.

Investment arbitration (whether under a treaty, a domestic investment statute, or a contract) is in many occasions the only reasonable remedy for an aggrieved investor to seek effective redress against damaging actions or omissions by the host state

[1]See Article 8 of the Universal Declaration of Human Rights, UN GA Resolution 217 A, 10 December 1948, https://www.un.org/en/universal-declaration-human-rights/; Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 4 November 1950, 213 United Nations Treaty Series (UNTS) 222, https://www.echr.coe.int/Documents/Convention_ENG.pdf; Article 14 of the International Covenant on Civil and Procedural Rights, UN GA Resolution 2200A (XXI), 16 December 1966, 999 UNTS 171, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; Article 8 of the American Convention on Human Rights, "Pact of San José, Costa Rica" (B-32), 22 November 1969, 1144 UNTS 123, https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf; Article 7 of the African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217, https://www.achpr.org/legalinstruments/detail?id=49.

[2]See Article 24 of the Italian Constitution, 27 December 1947, https://www.cortecostituzionale.it/documenti/download/pdf/Costituzione_della_Repubblica_italiana_agg2014.pdf; Article 24 of the Spanish Constitution, 27 December 1978, Spanish official gazette BOE No. 311, 29 December 1978, https://www.boe.es/boe/dias/1978/12/29/pdfs/A29313-29424.pdf.

[3]See in general Neuberger (2013).

[4]The Civil Law (Amendment) Act 2017 was passed by the Singaporean Parliament on 10 January 2017 and, along with the Civil Law (Third-Party Funding) Regulations 2017, came into force on 1 March 2017. See Republic of Singapore's Government Gazette, No. 8, 2017, 24 February 2017, https://sso.agc.gov.sg/Acts-supp/2-2017/ (Act) and https://sso.agc.gov.sg/SL-Supp/S68-2017/Published/20170224?DocDate=20170224 (Regulations).

[5]The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017, Ordinance No. 6 of 2017 (the Amendment Ordinance), was enacted by Hong Kong's Legislative Council on 14 June 2017 "to ensure that third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty." This legislation came into force in general on 23 June 2017. See Hong Kong's Government Gazette, No. 25, Vol. 21, https://www.gld.gov.hk/egazette/pdf/20172125/es1201721256.pdf.

[6]See, within the European Union, the website of the European Commission on the European Judicial Network in civil and commercial matters, section 'Legal Aid': https://e-justice.europa.eu/content_legal_aid-55-en.do. See also Spain's Act 1/1996, of 10 January, on legal aid, Spanish official gazette *BOE* No. 11, 12 January 1996, https://www.boe.es/boe/dias/1996/01/12/pdfs/A00793-00803.pdf.

against its investment.[7] Consequently, when a TPF provider decides to finance that investor in order to have access to arbitration, the former is also allowing the latter to exercise its fundamental right to access to justice.

In a similar fashion, when a state pursues a claim against an investor in an investment arbitration proceeding, whether a direct claim or a counterclaim (in particular, under an investment contract,[8] but also, in certain circumstances, under an investment treaty[9]), it may be also the sole remedy for that state to obtain effective redress against the investor's actions and omissions. Consequently, when the TPF provider decides to finance that state to have access to arbitration, the former is also allowing the latter to exercise its fundamental right to access to justice.

As a consequence, TPF may contribute to level the playing field for the parties, allowing them to be on an equal footing in terms of access to justice with no regard to their economic capacity.[10] In this sense, the Resolution adopted by the IIL on August 28, 2019 in its Session of The Hague[11] has confirmed this line of reasoning.[12] The Resolution, entitled "Equality of Parties before International Investment Tribunals", states in Article 2(1) (*Access*) that "both the State and the investor are equally

[7]See Dolzer and Schreuer (2012), p. 236: "[t]he gap left by the traditional methods of dispute settlement (diplomatic protection and action in domestic courts) has led to the idea of offering investors direct access to effective international procedures, especially arbitration."

[8]See Pluspetrol Perú Corporation S.A. and others v. Perupetro S.A., ICSID Case No. ARB/12/28, Award, 21 May 2015, https://www.mef.gob.pe/contenidos/inv_privada/sicreci/c_arbitrales/Laudo_Pluspetrol.pdf.

[9]See Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. the Argentine Republic, ICSID Case No. ARB/07/26, Award, 8 December 2016, https://www.italaw.com/sites/default/files/case-documents/italaw8136_1.pdf.

[10]Sahani et al. (2018), p. 52, note that "third-party funding is not only used by impecunious parties. There are many corporate entities that use third-party funding as a form of corporate finance to raise money for the company, allocate risk, maintain liquidity, or smooth out the dispute resolution costs line item on the company's balance sheet, especially if the company finds itself with a steady stream of disputes." The tribunal in South American Silver Limited (Bermuda) v. The Plurinational State of Bolivia, PCA Case No. 2013-15, Procedural Order (PO) No. 10, 11 January 2016, para. 76, https://www.italaw.com/sites/default/files/case-documents/italaw7176.pdf, endorsed that "[i]t is possible to obtain financing for other reasons. The fact of having financing does not imply risk of non-payment," denying Bolivia's request for an order of security for costs even though the claimant was relying on TPF.

[11]Rapporteur: Professor Campbell McLachlan; http://www.idi-iil.org/app/uploads/2019/09/18-RES-EN.pdf.

[12]The IIL's concerns on TPF in investment arbitration is not new. See the Resolution adopted on 13 September 2013 in its Session of Tokyo entitled, "Legal Aspects of Recourse to Arbitration by an Investor Against the Authorities of the Host State under Inter-State Treaties" (rapporteur: Professor Andrea Giardina), http://www.idi-iil.org/app/uploads/2017/06/2013_tokyo_en.pdf. Article 8 of the 2013 Resolution provided that "[c]onflicts of interest shall be avoided in investor-State arbitration. Particular attention shall be given to problems that may arise from third-party funding." The 2019 Resolution contains an elaborated response to TPF, but regarding conflicts of interests Article 3(3) forwards the problem to determination under the IBA Guidelines on Conflicts of Interest in International Arbitration.

entitled to submit a claim in relation to an investment to a tribunal, subject to the terms of the instrument of consent..."

In terms of costs of the proceedings, the Resolution is courageous in recalling in Article 12(1) (*Costs*) that the lack of sufficient sources for funding an investment claim may affect both developing states and small- and medium-sized companies: "The ability of parties, whether investors or States, to pursue or defend claims before a tribunal should not be determined on grounds of cost. Particular regard should be paid in this context to the position of small and medium-sized enterprises and to that of developing States."

In our view, the Resolution supports the three main conclusions regarding TPF in investment arbitration that stem from the above:

i) TPF may help the pursuit of either claims or defences (Article 12(2)), because a state can submit a counterclaim under a bilateral investment treaty, as Article 6 of the Resolution acknowledges, or even a claim under an investment contract;[13]
ii) TPF may help impecunious claimants or respondents to have access to arbitration and, consequently, access to justice in pursuit of claims or defences; and,
iii) TPF contribute to materialize such access to justice in the form of the equality of parties to present their cases.

3 Third Party Funding and Security for Costs: Where Do We Go in Investment Arbitration?

The issue of security for costs in investment arbitration has generated hot debates in practice as well as in academic circles. From a procedural point of view, we can see the ongoing transformation of the legal treatment of security for costs in international arbitration. At the beginning we had a conditional analysis of the facts of the case to be conducted by the arbitral tribunal to meet implicit legal criteria that form part of the concept of provisional measures in order to grant such a request for security for costs.[14] Now we can see an apparent attempt to allow the more automatic granting of requests for security for costs no longer as a provisional measure and whenever some factual elements appear, in particular the existence of a TPF scheme behind one of the parties.

[13]Garcia and Hough (2018), p. 2 consider that "[t]he vast majority of funding goes to claimants since financing claimants yields a greater "upside" (or profit) as compared to the funding of respondent states (which gain no financial award under the current BIT rules)." However, Lamm and Hellbeck (2013), p. 103, noted that states may enter into TPF arrangements to cover the legal defence or a portion thereof when they play the role of respondent, or to protect themselves "against a greater-than-expected amount of damages, if any, that the respondent might be ordered to pay in the event the claimant prevails."

[14]On the treatment of security for costs as a provisional measure see Yeşilırmak (2005), pp. 214–218. From the point of view of investment arbitration see Harwood et al. (2017), pp. 105–107.

3.1 *Treatment of Security for Costs as a Provisional Measure in International (Investment) Arbitration*

There have been multiple cases of requests for posting security for costs (*cautio iudicatum solvi*) as a provisional measure in investment arbitration, for example under Article 47 of the ICSID Convention[15] or Article 26 of the UNCITRAL Rules of Arbitration.[16] In the first cases, the states' requests for security for costs derived from the fact that the claimant could be insolvent (*Pey Casado v. Chile*)[17] or, simply, that a foreigner was claiming against the host state (*Maffezini v. Spain*).[18]

Only in more recent cases, particularly in the leading decision rendered by the majority in *RSM v. Saint Lucia*,[19] one of the reasons behind the respondent state's request for security for costs as a provisional measure (but not the sole reason) was that the claimant was receiving TPF.[20]

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[15]An exception to this approach is the impossibility for an ad hoc Committee dealing with the annulment of an ICSID award to order provisional measures, given that Article 52(4) of the ICSID Convention excludes the application of Article 47 of the ICSID Convention to annulment proceedings. See Commerce Group Corp. & San Sebastian Gold Mines, Inc. v. Republic of El Salvador, ICSID Case No. ARB/09/17 (Annulment Proceeding), Decision on El Salvador's application for Security for Costs, 20 September 2012, paras 39–42 and 45, https://www.italaw.com/sites/default/files/case-documents/italaw1087.pdf, where the ad hoc Committee considered (and denied) a request for security for costs by El Salvador on the basis of "inherent powers to safeguard the integrity of the proceedings."

[16]See Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia, PCA Case No. 2011-17, PO No. 14, 11 March 2013, para. 6, https://www.italaw.com/sites/default/files/case-documents/italaw1331.pdf; South American Silver v. Bolivia, PO No. 10, para. 50; Manuel García Armas and others v. Bolivarian Republic of Venezuela, PCA Case No. 2016-08, PO No. 9, 20 June 2018, para. 186, https://www.italaw.com/sites/default/files/case-documents/italaw9849_2.pdf.

[17]See Víctor Pey Casado and Fundación Presidente Allende v. Republic of Chile, ICSID Case No. ARB/98/2, Decision on the adoption of provisional measures requested by the Parties, 25 September 2001, paras 78, 84, https://www.italaw.com/sites/default/files/case-documents/ita0629.pdf.

[18]See Emilio Agustín Maffezini v. Kingdom of Spain, ICSID Case No. ARB/97/7, PO No. 2, 28 October 1999, esp. paras 3, 24–26, https://www.italaw.com/sites/default/files/case-documents/italaw7939_0.pdf.

[19]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, https://www.italaw.com/sites/default/files/case-documents/italaw3318.pdf. See also EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic, ICSID Case No. ARB/14/14, PO No. 3, Decision on the Parties' Requests for Provisional Measures, 23 June 2015, para. 119, http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3604/DC6416_En.pdf.

[20]In RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, paras 77–78, the majority found that the claimant in that case as well as other physical persons related to it had not honoured their financial obligations in two ICSID cases against Grenada, so it considered that the request for security for costs submitted by Saint Lucia should be granted: "The Tribunal concludes from Claimant's conduct in the Annulment Proceeding and the Treaty Proceeding that it was unwilling or unable to pay the requested advances (…). Hence, absent a material change of circumstances, the Tribunal is satisfied that also in this proceeding, there is a material risk that

In all those cases, the respondent state had to demonstrate to the competent tribunal that the request for security for costs met the implicit legal criteria set out in case law decisions for the granting of provisional measures: *prima facie* jurisdiction of the arbitral tribunal, the existence of a right to be preserved, necessity, urgency, and proportionality.[21] Coherently, the arbitral tribunals then rendered their decisions based on the articles on provisional measures of the applicable arbitration rules, giving reasons as to why the requirements of provisional measures were met or not. Only the tribunal in *RSM v. Saint Lucia* (by majority) concluded that the provisional measure had to be granted.

3.2 *New Approaches in Investment Arbitration: Towards a Standalone Procedural Category*

Nowadays the approach towards security for costs in international arbitration is shifting to a treatment thereof separated from the concept of provisional measures, whether explicitly by regulating each of them in different provisions,[22] or implicitly when the requirements for security for costs as a provisional measure depart from the general ones for other unnamed provisional measures.[23]

Following is an analysis of three recent developments in the investment arbitration field with a special focus on the impact that TPF may have for the consideration of the request for security for costs by the tribunal.[24]

Claimant would not reimburse Respondent for its incurred costs, be it due to Claimant's unwillingness or its inability to comply with its payment obligations. Concerning Claimant's potential inability, its statements in the present arbitration as cited in the Tribunal's Decision of December 12, 2013, raise serious doubts" (para. 81).

[21] See the analysis made of these requirements in Eskosol S.p.A. in liquidazione v. Italian Republic, ICSID Case No. ARB/15/50, PO No. 3, paras 32–36.

[22] See Article 23 ("Interim Measures of Protection and Emergency Relief") and Article 24 ("Security for Costs") of the 2018 Administered Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC), https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/2018_hkiac_rules.pdf; Rule 27 ("Additional Powers of the Tribunal", referring to security for costs in letters (j) and (k)) and Rule 30 ("Interim and Emergency Relief") of the SIAC 2016 Rules of the Singapore International Arbitration Centre (SIAC), http://www.siac.org.sg/our-rules/rules/siac-rules-2016.

[23] See Article 25(2) of the London Court of International Arbitration (LCIA) Arbitration Rules (2014), https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx#Article 25; Article 33(6) of the Vienna Rules and Vienna Mediation Rules 2018 of the Vienna International Arbitration Centre (VIAC), https://www.viac.eu/en/arbitration/content/vienna-rules-2018-online.

[24] Significantly, the Arbitration Rules of the International Court of Arbitration of the International Chamber of Commerce (ICC) in force as from 1 March 2017, https://iccwbo.org/content/uploads/sites/3/2017/01/ICC-2017-Arbitration-and-2014-Mediation-Rules-english-version.pdf.pdf, which are also applied to a certain extent to investment arbitration cases, do not have any reference to security for costs.

3.2.1 Approach by the Institute of International Law (IIL)

First, the IIL has stated in Article 12(3) of its Resolution of August 28, 2019 that "[w]here on application the tribunal is satisfied that a claimant may be unable to pay an award of costs in the event that its claim is unsuccessful and that the provision of security is necessary to preserve the equal protection of the parties, the tribunal has discretion to order security for costs."

This provision appears just after the mention in Article 12(2) to TPF and is made under the overall title of Costs. In our view, this provision prompts three open questions that merit comments in this chapter even though the Resolution is not, technically speaking, a legal text—but it may have a persuasive effect on international tribunals due to the relevant scholars behind its drafting.

The first one is philosophical in view of the principles inspiring the Resolution. Article 12(3) focuses on the claimant's position (in most cases, the investor), but nothing is said about the respondent, that may be also in difficult conditions to pay a potential award on costs and that it may also be relying on TPF to defend itself from the claim. So, is this provision a departure from the principle of equality of parties underlying the whole Resolution?

The second one is conceptual. The Resolution is silent about the treatment of a request for security for costs as a provisional measure. The same applies to the Final Resolution entitled "Provisional Measures" that the IIL adopted in its Session of Hyderabad on September 8, 2017.[25] Consequently, does the IIL treat security for costs separately from the concept of provisional measures?

The third one is legal. Reference to the tribunal's *discretion* to order security for costs means that the tribunal would be empowered to decide about the need to make such an order without having followed any legal test to check the request against. Could this be a more automatic granting of the request for security for costs from now onwards? Could this be, at the same time, an invitation to the arbitral tribunal to disregard the need to consider the parties' right to access to justice, that in requests for provisional measures is or may be included in the proportionality test?[26]

[25]Rapporteur: Lord Collins of Mapesbury. Retrieved from: http://www.idi-iil.org/app/uploads/2017/08/3-RES-FINAL-EN-COR.pdf.

[26]In terms of proportionality see Gustav F W Hamester GmbH & Co KG v. Republic of Ghana, ICSID Case No. ARB/07/24, Award, 18 June 2010, para. 17, https://www.italaw.com/sites/default/files/case-documents/ita0396.pdf: "The Tribunal ruled on the Respondent's request for provisional measures in Procedural Order No. 3 issued on June 24, 2009, upon ICSID's receipt of the Claimant's advance payment shortly before the Hearing. It ruled that there was a serious risk that an order for security for costs would stifle the Claimant's claims and that, in any event, it had not been shown that the measures requested were necessary and urgent." See also Guaracachi v. Bolivia, PO No. 14, para. 9: "The same goes for the analysis required by Article 26(3)(a) of the UNCITRAL Rules of the balance of inconvenience, to find whether the harm, if the measure is not granted, "substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted." The issue (. . .) of the appropriate balance between the right of access to justice of entities that have been allegedly expropriated and the protection of States

3.2.2 New Approach by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

Second, the SCC, one of the leading arbitral institutions in the field of investment arbitration,[27] has recently introduced two elements to the arbitration proceedings conducted under its rules that are specifically related to TPF.

On the one hand, on 11 September 2019, the SCC Board adopted a Policy on the "Disclosure of third parties with an interest in the outcome of the dispute."[28] The Policy *encourages* (rather than *obliges*) each party, in its first written submission in an SCC arbitration or any time afterwards during the course of the arbitration, to disclose the identity of any third party with a significant interest in the outcome of the dispute, including but not limited to (a) ultimate beneficial owners; (b) persons obligated to pay an award under an indemnification or other agreement; (c) persons entitled to receive proceeds of an award under a TPF scheme or other agreement; and (d) ultimate parent companies of a party.

According to the SCC, the reasons for adopting the Policy lie in the fact that, pursuant to Article 18 of the 2017 SCC Arbitration Rules,[29] the prospective or appointed arbitrators shall disclose any circumstances that may give rise to justifiable doubts of their independence or impartiality. For the moment, however, this Policy has not been formally included in the SCC Arbitration Rules, nor does the Policy refer to the availability of or the need to order security for costs whenever TPF is on the scenario.

On the other hand, Article 38 of the same 2017 Arbitration Rules provides for the arbitral tribunal to order one of the parties in an active procedural role (i.e., claimant or counterclaimant) to provide security for costs. Article 38 is a special or independent provision by comparison with the tribunal's general ability to grant interim measures enshrined in Article 37. Like in the case of the Policy, Article 38 does not refer expressly to the existence of TPF arrangements as a basis for ordering security for costs, but some of the elements that the arbitral tribunal shall have regard to in determining whether to order such security may be read as implicit but nonetheless clear references to the existence of TPF (like the party's inability to comply with an adverse costs award):

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against alleged frivolous claims by parties who may not have sufficient assets to guarantee the payment of an adverse costs award is a serious issue."

[27] See, in general, Oldenstam et al. (2019), pp. 119–131.

[28] https://sccinstitute.com/media/1035074/scc-policy-re-third-party-interests-adopted.pdf.

[29] Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, adopted by the Stockholm Chamber of Commerce and in force as of 1 January 2017, https://sccinstitute.com/media/293614/arbitration_rules_eng_17_web.pdf. Appendix III to the Rules contain some provisions specifically drafted for investment treaty disputes, but they are mainly aimed at the handling by the arbitral tribunal of applications for leave to intervene as non-disputing parties (whether *amici curiae* proper (Article 3) or by non-disputing treaty parties (Article 4)).

(1) The Arbitral Tribunal may, in exceptional circumstances and at the request of a party, order any Claimant or Counter-claimant to provide security for costs in any manner the Arbitral Tribunal deems appropriate.
(2) In determining whether to order security for costs, the Arbitral Tribunal shall have regard to:

(i) the prospects of success of the claims, counterclaims and defences;
(ii) the Claimant's or Counterclaimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
(iii) whether it is appropriate in all the circumstances of the case to order one party to provide security; and
(iv) any other relevant circumstances.

In our opinion, the reading of Article 38 and the Policy in conjunction should not prompt that SCC arbitral tribunals feel inclined to order security for costs for the mere fact that a party is relying on TPF. Otherwise, the tribunal would be ignoring the requirement of 'actual risk of non-payment of an adverse costs awards' that more or less qualifies as urgency or *periculum in mora*, one of the main legal requirements of provisional measures.

3.2.3 Proposed Amendments to the Arbitration and Conciliation Rules of the International Centre for Settlement of Investment Disputes (ICSID)

Third, the very recent Working Paper #3 of August 16, 2019 containing the Proposals for Amendment of the ICSID Rules[30] currently under debate within ICSID includes some relevant provisions regarding TPF of arbitration claims.[31]

3.2.3.1 Specific Provisions on Third Party Funding and Security for Costs and Influences by ICSID Case Law

On the one hand, draft new Rule 14 of the Arbitration Rules[32] sets out a so-called "Notice of Third-Party Funding," whereby a party shall file a written notice disclosing the name of any non-party from which the party, its affiliate or its representative

[30] https://icsid.worldbank.org/en/Documents/WP_3_VOLUME_1_ENGLISH.pdf.

[31] At the time of finalizing this Chapter, ICSID announced that it would issue a new paper (Working Paper #4) to summarize the comments received in writing and during the consultation meeting held with ICSID Member States in Washington, D.C., on 11–15 November 2019; https://icsid.worldbank.org/en/Pages/News.aspx?CID=344.

[32] A similar provision has been included in draft new Rule 23 of the new (Additional Facility) Arbitration Rules, draft new Rule 12 of the new Conciliation Rules and draft new Rule 21 of the new (Additional Facility) Conciliation Rules. Draft new Rule 14 of the Arbitration Rules appeared as draft Rule 21 in the Working Paper #1 (https://icsid.worldbank.org/en/Documents/Amendments_Vol_Two.pdf) and as draft new Rule 13 in the Working Paper #2 of March 2019 (https://icsid.worldbank.org/en/Documents/Vol_1.pdf).

has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the dispute. Draft new Rule 14(3) goes on stating that that party shall file such notice with the Secretary-General of ICSID upon registration of the request for arbitration or immediately upon concluding a TPF arrangement after registration. This provision is in line[33] with provisions in modern investment treaties like Article 8.26.2 of CETA[34] and Article 3.8 of the EU-Singapore Investment Protection Agreement.[35] In addition, it resembles the order by the tribunal in *Muhammet Çap v. Turkmenistan* to the claimants, on the basis of its inherent powers (apparently, considering that they stem from Article 44 of the ICSID Convention), to disclose whether their claims were provided with TPF.[36]

On the other hand, the same Working Paper #3 includes draft new Rule 52 of the Arbitration Rules on Security for Costs,[37] which is treated separately from draft new Rule 46 on Provisional Measures, although some relevant legal elements are applicable to both in a similar manner.[38] It seems that ICSID's Administrative Council

[33]See Working Paper #3, p. 295, para. 52.

[34]See Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, *OJ* L 11, 14 January 2017, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0114(01)&from=EN.

[35]See Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part, signed on 15 October 2018, https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5714/download.

[36]See Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan, ICSID Case No. ARB/12/6, PO No. 3, 12 June 2015, paras 6 and 13, https://www.italaw.com/sites/default/files/case-documents/italaw4350.pdf.

[37]A similar provision has been included in draft new Rule 62 of the new (Additional Facility) Arbitration Rules. Draft new Rule 52 of the Arbitration Rules appeared as draft new Rule 51 in both Working Papers #1 and #2. Regarding draft new Rule 51 in Working Paper # 2 see Luttrell (2019), pp. 388–398.

[38]Indeed, the procedures to be followed for a request for provisional measures in draft new Rule 46 (2) and for a request for security for costs and draft new Rule 52(2) are identical:

(a) the request shall specify [Rule 46] the rights to be preserved, the measures requested, and the circumstances that require such measures / [Rule 52] the circumstances that require security for costs;
(b) the Tribunal shall fix time limits for written and oral submissions on the request, as required;
(c) if a party requests [Rule 46] provisional measures / [Rule 52] security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and
(d) the Tribunal shall issue its decision on the request within 30 days after the latest of:

(i) the constitution of the Tribunal;
(ii) the last written submission on the request; or
(iii) the last oral submission on the request.

Moreover, draft new Rule 46(5) and draft new Rule 52(7) order the parties to promptly disclose any material change in the circumstances upon which the tribunal recommended provisional

has read the pleadings of Judge Edward Nottingham in his dissenting opinion in *RSM v. Saint Lucia* requesting the Administrative Council to address "the general concerns about third-party funding and security for costs (. . .) if there is a problem that needs to be dealt with,"[39] particularly whether such request falls within the concept of provisional measure envisioned in Article 47 of the ICSID Convention.[40] Like in the case of the IIL in the August 28, 2019 Resolution, ICSID's current response seems to be in the negative.

Draft new Rule 52(1) sets out that, upon request of a party, the tribunal may order any party asserting a claim or counterclaim (like in SCC, a party in an active procedural role) to provide security for costs. Nothing is said when a party merely asserts a defence, although ICSID has justified in the Working Paper #3 that a suggestion that only claimants be required to provide security for costs was rejected.[41]

Moreover, according to draft new Rule 52(4), the tribunal may consider TPF as evidence relating to a circumstance to order a party to provide security for costs, but the draft Rule emphasizes that the mere "existence of third-party funding by itself is not sufficient to justify an order for security for costs."[42] The Working Paper #3 stresses such principle four times in the explanatory notes of the draft Arbitration

measures/ordered security for costs. Finally, draft new Rule 46(6) and draft new Rule 52(8) allow the tribunal at any time to modify or revoke the provisional measures/order on security for costs, on its own initiative or upon a party's request.

[39]RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, Dissenting Opinion by Judge Edward W. Nottingham, para. 20.

[40]See RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, para. 54. See also Rachel S. Grynberg, Stephen M. Grynberg, Miriam Z. Grynberg and RSM Production Corporation v. Government of Grenada, ICSID Case No. ARB/10/6, Tribunal's Decision on Respondent's Application for Security for Costs, 14 October 2010, para. 5.16, http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C980/DC1731_En.pdf, where Judge Nottingham also issued a dissenting opinion feeling that the tribunal lacked jurisdiction to order the posting of security for costs, among other reasons, because "there is no express provision allowing a Tribunal to order such a posting in the ICSID Convention or Arbitration Rules."

[41]See Working Paper #3, p. 334, para. 131: "On AR [Arbitration Rule] 52(1), a few States and one public commentator reiterated the suggestion that only claimants be required to provide security for costs. This suggestion has not been adopted. Consistent with the objective of rules balanced between investors and States, the rule is available to any party that incurs costs as a result of having to defend a claim or counterclaim." See, in any event, Pey Casado v. Chile, Decision on the adoption of provisional measures requested by the Parties, para. 83, where the tribunal showed its surprise that the possibility to order security for costs was not foreseen in the ICSID Convention as far as payment of costs by claimants is concerned, "le paiement des dépens par un Etat ne suscitant, en revanche, aucun problème compte tenu à la fois de la solvabilité de l'Etat, souligné à juste titre par la Partie défenderesse, et du caractère internationalement obligatoire et exécutoire des sentences arbitrales dans le système CIRDI."

[42]An opposite view can be seen in Harwood et al. (2017), pp. 107–109, where it is argued that the claimant's reliance on TPF does constitute a ground for making an order for security for costs and that "a third-party funder with confidence in the claims may well decide to finance the security, and some funders even consider this part of their normal commitment."

Rules,[43] noting in particular that "an automatic order for security for costs could unreasonably impede access to ICSID dispute resolution mechanisms, particularly for SMEs."[44]

Draft new Rule 52(4) seems to support the findings of a number of arbitral tribunals, including those of the chairman of the tribunal in *RSM v. Saint Lucia* (Professor Siegfried Elsing), who found (in an apparent majority with co-arbitrator Dr. Gavan Griffith QC) that the existence of TPF ruled as an additional reason (but not the sole reason) to grant the respondent's request for security for costs: "the admitted third party funding further supports the Tribunal's concern that Claimant will not comply with a costs award rendered against it, since, in the absence of security or guarantees being offered, it is doubtful whether the third party will assume responsibility for honoring such an award."[45]

Mention is made to the *chairman* of the tribunal only because the respondent's co-arbitrator (Dr. Gavan Griffith, QC) issued so-called "Assenting Reasons" that raise serious doubts, in our view, on whether there was actually a majority on that point of the tribunal's order for security for costs. Indeed, Dr. Griffith expressed very strong criticism[46] against the "new industry of mercantile adventurers as professional BIT claims funders"[47] and suggested a shift in the burden of proof of the solvency of the claimant whenever TPF arrangements appear to exist: "My determinative proposition is that once it appears that there is third party funding of an investor's claims, the onus is cast on the claimant to disclose all relevant factors and to make a case why security for costs orders should not be made."[48] Draft new Rule 52 of Working Paper #3 is clearly not following such approach.

On another note, Dr. Griffith supported the idea that, in the event of TPF schemes, the traditional requirement of demonstrating the tribunal's jurisdiction *prima facie* for the granting of provisional measures should not be required when states request security for costs:

> Whilst under a BIT treaty claim an investor claimant may be required to establish prima facie jurisdiction to obtain an order for provisional measures, conceptually it is inadmissible to apply any such requirement upon a respondent State party's application for security for costs orders. (...) For these reasons, I would recast the possibility hinted at paras 59 and 60 [of the Decision] to the level of an absolute proposition that there is no requirement for a respondent

[43] See Working Paper #3, pp. 295–296, para. 57 (Rule 14); p. 334, paras 130, 133, 134 (Rule 52).

[44] Working Paper #3, p. 334, para. 133 (Rule 52).

[45] RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, para. 83.

[46] Dr. Griffith was later challenged by the claimant in view of the contents of the Assenting Reasons, but the proposal was dismissed by the rest of the tribunal. See RSM Production Corporation v. Saint Lucia, ICSID Case No. ARB/12/10, Decision on Claimant's Proposal for the Disqualification of Dr. Gavan Griffith QC, 23 October 2014, paras 76–90, https://www.italaw.com/sites/default/files/case-documents/italaw4062.pdf.

[47] RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, Assenting reasons of Gavan Griffith, para. 14.

[48] RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, Assenting reasons of Gavan Griffith, para. 18.

party applying for provisional measures to establish any, let alone prima facie, position on jurisdiction.[49]

Current Draft new Rule 52 leaves this question open, as does draft new Rule 46 for provisional measures.

Moreover, draft new Rule 52(4) seems to be also in line with the findings of the tribunal in *Muhammet Çap v. Turkmenistan*, where the tribunal ordered the claimants to disclose the existence of TPF of their claim based on some factors, including the respondent state's *intention* to apply for security for costs. The tribunal noted that "[i]t is unclear on what basis such application will be made, e.g. Claimants' inability to pay Respondent's costs and/or the existence of a third party funder."[50]

However, the tribunal declared that it was "sympathetic to Respondent's concern that if it is successful in this arbitration and a costs order is made in its favour, Claimants would be unable to meet these costs and the third-party funder will have disappeared as it is not a party to this arbitration."[51]

Finally, draft new Rule 52 would be available also for ad hoc Committees dealing with requests for annulment of ICSID awards. In this regard, draft new Rule 71 does not prohibit the application of the specific provision on security for costs to the procedure applicable to interpretation, revision and annulment of awards.[52]

3.2.3.2 Analysis from the Point of View of the Access to Arbitration or to Justice

In order to categorize the new approach taken by ICSID regarding security for costs, and notwithstanding the final agreement of the ICSID Contracting States on the new Arbitration Rules, we can start by recalling that Judge Nottingham wondered in his dissenting opinion in *RSM v. Saint Lucia* as follows: "Is such funding [TPF] a legitimate tool allowing the pursuit of meritorious claims which otherwise could not be brought? Or is it a form of reprehensible barratry?"[53]

The solution reached for the moment by ICSID seems to support the first alternative, particularly when the Working Paper #3 affirms that "States generally recognize that TPF is a widely available mechanism that provides important

[49]RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, Assenting reasons of Gavan Griffith, paras 4 and 6.

[50]Muhammet Çap v. Turkmenistan, PO No. 3, para. 10.

[51]Muhammet Çap v. Turkmenistan, PO No. 3, para. 12.

[52]See the problem in Commerce Group v. El Salvador, Decision on El Salvador's application for Security for Costs, 20 September 2012, paras 39–42. The same conclusion of applicability to annulment proceedings can be seen in Luttrell (2019), pp. 390, 392–393 (referring to the provisions as numbered and drafted in Working Paper #2).

[53]RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, Dissenting Opinion by Judge Edward W. Nottingham, para. 19.

systemic benefits, for example, by enhancing access to arbitration for small and medium enterprises ("SMEs")."[54]

Such "access to arbitration" is of course "access to justice" in the circumstances of investment arbitration expressed at the beginning of this chapter. In this regard, although the expression 'access to justice' is not included as such in Working Paper #3, it did appear three times in Working Paper #2.[55] This means, in our view, that ICSID is aware of the positive role to be played by TPF regarding access to arbitration or to justice of any party in an investment dispute. Consequently, ICSID arbitral tribunals applying the upcoming new Arbitration Rules (if their contents were in the end those included in Working Paper #3) must then consider this principle whenever TPF is concerned. In this regard, it is telling that, contrary to what happens with provisional measures under Rule 39(3) of the 2006 Arbitration Rules currently in force or what would happen with draft new Rule 46(4), draft new Rule 52 does not give the tribunal the express power to order security for costs on its own initiative, thus limiting the tribunal's margin of appreciation to order such a measure.[56]

Second, Judge Nottingham also highlighted that security for costs is "a provision with the potential for significant limitation on investor-claimants' access to ICSID."[57] Meanwhile, the majority in *RSM v. Saint Lucia* stroke a balance between the interests at stake when it decided to grant the measure requested by the host state:

> Against the background of the aforesaid, the Tribunal, after carefully balancing Respondent's interest with Claimant's right to access to justice, is confident that the described circumstances constitute sufficient grounds and exceptional circumstances as required by ICSID jurisprudence for ordering Claimant to provide security for costs.[58]

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[54]See Working Paper #3, p. 295, para. 51.

[55]See Working Paper #2, Vol. 1, March 2019, p. 120, para. 127 (on draft new Rule 13, now draft new Rule 14); p. 234, para. 357 and p. 235, para. 360 (on draft new Rule 51, now draft new Rule 52).

[56]On another note, while Rule 39(3) of the 2006 Arbitration Rules and draft new Rule 46(4) allow the tribunal to recommend provisional measures different from those requested by a party, it seems that draft new Rule 52(5) will allow the tribunal to modify the party's request when it "shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order."

[57]RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, Dissenting Opinion by Judge Edward W. Nottingham, para. 8.

[58]RSM v. Saint Lucia, Decision on Saint Lucia's Request for Security for Costs, para. 87. In that case, the claimant had not disclosed the name of the TPF provider, nor had it identified the terms of the agreement it had entered into with it. The majority affirmed that "Against this background, the Tribunal regards it as unjustified to burden 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 Respondent's favor" (para. 83). See also Assenting reasons of Gavan Griffith, para. 12: "It is increasingly common for BIT claims to be financed by an identified, or (as here) unidentified third party funder, either related to the nominal claimant or one that engages in the business venture of advancing money to fund the Claimant's claim, essentially as a joint-venture to share the rewards of success but, if security for costs orders are not made, to risk no more than its spent costs in the event of failure."

In this regard, draft new Rule 52(3) states that, in determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including, letter (c) says, the effect that providing security for costs may have on the party's ability to pursue its claim or counterclaim.[59] This is not new,[60] but a constant in the decisions on provisional measures rendered by ICSID tribunals when they assess the proportionality of the requested measure, as well as another intrinsic legal link between provisional measures and security for costs in ICSID arbitration.[61] In this sense, as early as in 1999, the tribunal in *Maffezini v. Spain* rejected the request to require the claimant to post a guaranty, bond or similar instrument in the amount of the costs expected to be incurred by the respondent state in defending against that action[62] because "[a] determination at this time which may cast a shadow on either party's ability to present its case is not acceptable. It would be improper for the Tribunal to pre-judge the Claimant's case by recommending provisional measures of this nature."[63]

This principle has been endorsed systematically by ICSID arbitral tribunals like the landmark decision in *Pey Casado v. Chile*,[64] as well as in the series of cases dealing with security for costs and TPF starting with *RSM v. Grenada*: "It is simply not part of the ICSID dispute resolution system that an investor's claim should be heard only upon the establishment of a sufficient financial standing of the investor to meet a possible costs award."[65]

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[59]Draft new Rule 52(3): "In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:

(a) that party's ability to comply with an adverse decision on costs;
(b) that party's willingness to comply with an adverse decision on costs;
(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and
(d) the conduct of the parties."

[60]Draft new Rule 52(3) in Working Paper #3 is more elaborated than Draft new Rule 51(3) in Working Paper #2. The Working Paper #2 text led Luttrell (2019), pp. 390–392 to rightly criticize that the proposal "[did] not contain any express wording to indicate that a particularly high threshold must be met for security to be granted, and indeed the Working Paper suggests that Draft Rule 51 is intended to lower the threshold that an applicant for security must meet." The same author showed his concern that the draft rule would limit a party's access to justice.

[61]In fact, draft new Rule 46(3)(b) orders the tribunal, in deciding whether to recommend provisional measures, to consider, among all relevant circumstances, "the effect that the measures may have on each party."

[62]See Maffezini v. Spain, PO No. 2, para. 2.

[63]Maffezini v. Spain, PO No. 2, para. 21.

[64]See Pey Casado v. Chile, Decision on the adoption of provisional measures requested by the Parties, para. 86: "En d'autres termes, rien n'indique que, dans le système de la Convention, la requête soumise par un investisseur ne devrait être considérée comme recevable qu'à la condition pour le demandeur d'établir sa propre solvabilité. Pareille restriction à la protection des investissements serait certes concevable, mais elle aurait pu et dû être prévue expressément, que ce soit par la Convention de Washington ou par le Traité bilatéral entre le Chili et l'Espagne."

[65]RSM v. Grenada, Tribunal's Decision on Respondent's Application, para. 5.19.

The same applies to the conclusions reached by the tribunal in *EuroGas v. Slovakia*:

> The Tribunal is of the view that financial difficulties and third-party funding – which has become a common practice – do not necessarily constitute per se exceptional circumstances justifying that the Respondent be granted an order of security for costs.[66]

And, last but not least, *Eskosol v. Italy*:

> [P]roportionality is a critical part of any provisional measures analysis, and a party seeking provisional measures must demonstrate that its need for the measures are not outweighed by the hardships to which the other party would be subjected if the measures are granted. This type of proportionality analysis would be particularly critical where the burden of a potential measure is one that is said to impinge, at least potentially, on a party's ability to pursue its claims or defenses at ICSID. A tribunal should not lightly recommend a provisional measure that could impede access to justice.[67]

Moreover, even in non-ICSID cases, arbitral tribunals have affirmed that the existence of TPF cannot be the sole reason for the granting of security for costs in light of the need to respect the right to access to justice:

> The Tribunal considers that while the existence of a third-party funder may be an element to be taken into consideration in deciding on a measure as the one requested by Bolivia, this element alone may not lead to the adoption of the measure. (...) The existence of the third-party funder alone does not evidence the impossibility of payment or insolvency (...) If the existence of these third-party funders alone, without considering other factors, becomes determinative on granting or rejecting a request for security for costs, respondents could request and obtain the security on a systematic basis, increasing the risk of blocking potentially legitimate claims.[68]

For the foregoing, reading in conjunction the positive approach towards TPF that the new Arbitration Rules would have in terms of access to arbitration or to justice and the draft new Rule 52, ICSID arbitral tribunals should not grant security for costs automatically whenever TPF is involved, but only in light of all the factual circumstances of the case and, in practice, only exceptionally.[69]

[66] EuroGas v. Slovakia, PO No. 3, para. 123.

[67] Eskosol v. Italy, PO No. 3, para. 38.

[68] South American Silver v. Bolivia, PO No. 10, paras. 75–77.

[69] See EuroGas v. Slovakia, PO No. 3, para. 121. See also Pey Casado v. Chile, Decision on the adoption of provisional measures requested by the Parties, para. 86: "De cette première conclusion provisoire résulte seulement que la recommandation « d'une caution » pour le paiement d'éventuels dépens ne saurait être admise comme une mesure générale et ordinaire."

4 Conclusion

TPF is part of the financial sector for good and evil. But, at the same time, it is part of a wider effort to help parties to afford the right to present a claim or defence before a court or tribunal. As far as investment arbitration is concerned, TPF can help any of the parties, bearing in mind that investors may also be small- and medium-sized companies and that developing states may pursue counterclaims under investment contracts or even investment treaties. Contrary to more ambiguous approaches by the IIL and SCC, ICSID seems to be aware of the role played by TPF and is limiting arbitral tribunals' discretion to order security for costs simply because a party acknowledges having funds from a TPF provider. Any other approach may lead arbitral tribunals to improperly establish barriers to the enforcement of the parties' fundamental right to access to justice.

References

Dolzer R, Schreuer C (2012) Principles of international investment law, 2nd edn. Oxford University Press, Oxford

Garcia FJ, Hough K (2018) Third party funding in international investor-state arbitration. ASIL Insights 22:16. https://www.asil.org/insights/volume/22/issue/16/third-party-funding-international-investor-state-arbitration

Harwood MK, Batifort SN, Trahanas C (2017) Third-party funding: security for costs and other key issues. In: Legum B (ed) The investment treaty arbitration review, 2nd edn. The Law Reviews, London, pp 103–121

Lamm CB, Hellbeck ER (2013) Third-party funding and investor-state arbitration. Introduction and overview. In: Cremades BM, Dimolitsa A (eds) Third-party funding in international arbitration. International Chamber of Commerce, Paris, pp 101–121

Luttrell S (2019) Observations on the proposed new ICSID regime for security for costs. J Int Arbitr 36(3):385–400

Neuberger L (2013) From barretry, maintenance and champerty to litigation funding, Harbour Litigation Funding first annual lecture, Gray's Inn. https://www.supremecourt.uk/docs/speech-130508.pdf

Oldenstam R, Löf K, Foerster A, Razani A, Ringquist F, Skogman A (2019) Mannheimer Swartling's concise guide to arbitration in Sweden. Mannheimer Swartling Advokatbyrå, Stockholm

Sahani V, Smith M, Deniger C (2018) Third-party financing in investment arbitration. In: Beharry CL (ed) Contemporary and emerging issues on the law of damages and valuation in international investment arbitration. Brill, Leiden, pp 27–56

Yeşilırmak A (2005) Provisional measures in international commercial arbitration. Kluwer Law International, The Hague

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