



SINGAPORE INSTITUTE OF ARBITRATORS

SIARB GUIDELINES FOR THIRD PARTY FUNDERS

1. Introduction

- 1.1 The Singapore Institute of Arbitrators (**SIARB**) welcomes the passing of the Civil Law (Amendment) Act (**CLA**) and the Civil Law (Third-Party Funding) Regulations 2017 (**CLA Regulations**) to facilitate third party funding of Singapore-seated international arbitrations and related court or mediation proceedings. Third party funding arises when a third party (**the Funder**) provides financial support to enable a party (**the Funded Party**) to pursue or defend an arbitration or related court or mediation proceedings. Such financial support is provided in exchange for an economic interest in any favourable award or outcome that may ensue.
- 1.2 While the CLA eliminates the common law torts of maintenance and champerty, contracts affected by maintenance and champerty may still be held unenforceable if they are contrary to public policy or illegal, unless they fall within certain permitted categories. Third party funding of international arbitration by Funders that meet qualifying criteria (set out in the CLA Regulations) is the first of these permitted categories. The current statutory regime regulates such funding with a light touch and contemplates that it will be supplemented by guidelines promulgated by stakeholders within the arbitration community to encourage best practices with respect to third party funding in Singapore.
- 1.3 It is in this context that these SIARB Guidelines for Third Party Funders aim to promote best practices among Funders who intend to provide funding to parties in Singapore-seated international arbitrations. These guidelines set expectations of transparency and accountability between the Funder and Funded Party, as well as to encourage Funders to behave with high ethical standards towards Funded Parties so as to uphold the integrity of international arbitration practice in Singapore. These guidelines and its recommendations may be referred to by parties seeking funding, or their legal advisers, when negotiating a third party funding contract (**Funding Contract**).
- 1.4 The Singapore International Arbitration Centre (**SIAC**) and The Law Society of Singapore (**Law Society**) have also issued related



SINGAPORE INSTITUTE OF ARBITRATORS

guidelines on third party funding in Singapore, directed at arbitrators and legal practitioners respectively. SIArb recommends that interested parties should review all of these guidelines together to obtain a comprehensive overview of current issues pertaining to third party funding in Singapore.

2. Preliminary Steps

- 2.1 Prior to executing a Funding Contract with a party interested in funding, a Funder shall take reasonable steps to ensure that:
 - 2.1.1 it has met the qualifications and other requirements of a qualifying Third Party Funder set out in the CLA Regulations and/or any relevant successive legislation and shall notify the party interested in funding and its legal practitioner expeditiously if the Funder reasonably foresees or believes that it will no longer be able to meet the qualifications and other requirements of a qualifying Third Party Funder;
 - 2.1.2 it has advised the party interested in funding to obtain independent legal advice on the terms of the Funding Contract; and
 - 2.1.3 it has satisfied itself that there are no circumstances arising from the funding that might give rise to any reasonably foreseeable conflict of interests, whether in connection with the party interested in funding and its legal practitioner, the other parties to the dispute and their legal practitioner(s), or the court or arbitral tribunal hearing the dispute.
- 2.2 In the course of assessing the merits of funding any claim by a party interested in funding, a Funder shall observe the confidentiality and/or privileged nature of all information and documentation relating to the claim to the extent provided by law, and subject to the terms of any Confidentiality or Non-Disclosure Agreement agreed between the Funder and the party interested in funding.
- 2.3 A Funder shall ensure that its marketing and publicity materials on its services or products are not false or misleading.

3. The Third-Party Funding Contract

- 3.1 The Funding Contract is a contractually binding agreement entered into between a Funder and a Funded Party relating to the resolution of disputes within Singapore. The Funding Contract:
 - 3.1.1 should be in writing,
 - 3.1.2 should specify the amount of funding to be provided to the Funded Party,



SINGAPORE INSTITUTE OF ARBITRATORS

- 3.1.3 should indicate the agreed investment return to the Funder;
 - 3.1.4 should be drafted in as clear and concise a manner as possible so as to be properly understood by the Funded Party;
 - 3.1.5 shall specify that the Funder authorises the subsequent disclosure of the Funder's identity, its address and the existence of the funding to the other parties, legal practitioners and court or arbitral tribunal in the funded proceedings (see also paragraph 8 below);
 - 3.1.6 shall adequately address all matters highlighted in sections 3 to 8 of these guidelines; and
 - 3.1.7 shall include a fair, transparent and independent dispute resolution mechanism for resolving any disputes that may arise between the Funder and the Funded Party.
- 3.2 The Funding Contract shall also state whether (and, if so, to what extent) the Funder is liable to the Funded Party:
- 3.2.1 to meet any liability for adverse costs;
 - 3.2.2 to pay any premium (including insurance premium tax) to obtain costs insurance;
 - 3.2.3 to provide security for costs; and
 - 3.2.4 to meet any other financial liability.

4. Financial Obligations

- 4.1 Until the conclusion of the prescribed dispute resolution proceedings or the lawful termination of the funding, a Funder shall take all reasonable steps to ensure that it will continue to meet the qualifications and other requirements of a qualifying Third-Party Funder; and a Funder shall notify the Funded Party and its legal practitioner expeditiously if the Funder reasonably foresees or believes that it will no longer be able to meet the qualifications and other requirements of a qualifying Third-Party Funder;
- 4.2 A Funder shall undertake to be audited regularly by a reputable audit firm.
- 4.3 At all times, a Funder shall maintain access to adequate financial resources to meet the obligations of the Funder, its subsidiaries and associated entities to fund all disputes that they have agreed to fund, and shall ensure that the Funder, its subsidiaries and associated entities maintain the capacity:
 - (a) to pay all debts when they become due and payable; and



SINGAPORE INSTITUTE OF ARBITRATORS

- (b) to cover aggregate funding liabilities under all of their Funding Contracts

5. Confidentiality and Legal Privilege

- 5.1 A Funder shall observe the confidentiality and/or privileged nature of all information and documentation relating to the Funded Party's dispute to the extent provided by law, and subject to the terms of any Confidentiality or Non-Disclosure Agreement agreed between the Funder and the Funded Party.
- 5.2 A Funder shall not seek disclosure of information from the Funded Party's legal practitioner which might amount to a breach of privilege or the confidentiality obligations of the Funded Party's legal practitioner unless such information is sought with the Funded Party's consent or pursuant to a pre-agreed arrangement approved by the Funded Party.

6. Conflicts of Interest and Control of Proceedings

- 6.1 A Funder shall not:
 - 6.1.1 induce or take any steps that cause or are likely to cause the Funded Party's legal practitioner to act in breach of their professional duties;
 - 6.1.2 pay any commission, fee or share of proceeds to legal practitioners or law practices for the introduction or referral of clients or potential clients;
 - 6.1.3 knowingly allow a legal practitioner or law practice representing the Funded Party to directly or indirectly hold any share or other ownership interest in the Funder, thereby taking into account any applicable legal professional conduct rules;
 - 6.1.4 seek to influence the Funded Party's legal practitioner to cede control or conduct of the dispute to the Funder except where and to the extent expressly permitted by the Funding Contract;
 - 6.1.5 fund or continue to fund other parties to the same proceedings where there arises a conflict of interests between or among the funded parties. If, in the course of funding, there appears to be potential for such a conflict, the Funder should draw this to the Funded Parties' attention and address, with the Funded Parties' agreement, how any conflict that may emerge shall be resolved.
- 6.2 A Funder shall:
 - 6.2.1 recognise that the Funded Party's legal practitioner owes professional ethical duties and duties of loyalty and



SINGAPORE INSTITUTE OF ARBITRATORS

confidentiality to the Funded Party, even though payment of the fees of the legal practitioner may be made by the Funder;

- 6.2.2 obtain the Funded Party's consent before the Funder may directly enter into any agreement with the Funded Party's legal practitioner relating to the funding or conduct of the funded dispute;
- 6.2.3 ensure that the Funding Contract contains effective procedures to address how actual and reasonably foreseen conflicts of interest shall be resolved, which procedures should be drawn to the attention of the Funded Party.

7. Withdrawal of Funding

- 7.1 The Funding Contract shall be clear on the extent to which the Funder may:
 - 7.1.1 provide input on the Funded Party's decisions in relation to settlements and how such input should be taken into account;
 - 7.1.2 terminate the Funding Contract in the event of clearly prescribed conditions; and
 - 7.1.3 remain liable for accrued obligations notwithstanding termination of the Funding Contract.

8. Disclosure of Funding

- 8.1 The Funder should cooperate with the Funded Party and its legal practitioner regarding the disclosure to an arbitral tribunal or court of any information concerning the funding if any applicable rules or order of arbitral tribunal or court so require.

Singapore Institute of Arbitrators Working Group Members:

Chan Leng Sun, SC
Dinesh Dhillon
Tay Yu Jin
Sapna Jhangiani

18 May 2017