BALANCING CONFIDENTIALITY AND PROCEDURAL INTEGRITY: THE EVOLUTION OF THIRD-PARTY FUNDING DISCLOSURE UNDER THE SIAC 2025 RULES

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On January 1, 2025, the seventh edition of the Singapore International Arbitration Centre Arbitration Rules (SIAC 2025 Rules) came into effect. Article 38 of the Rules introduces requirements for the disclosure of third-party funding information, stipulating that the funded party must disclose the existence of such funding and the identity of the funder. It also grants the tribunal the power to order disclosure of the third-party funding agreement.

This commentary will first introduce the definition and impacts of third-party funding. It will then analyze and evaluate the newly introduced provisions, considering whether they actually enhance transparency and reduce conflicts of interest while weighing the potential conflicts with confidentiality risks. The article will further explore the institutional improvements made regarding third-party funding disclosure.

This commentary argues that the new rules effectively ensure the disclosure of third-party funding, thereby mitigating potential conflicts of interest and assisting the tribunal in determining whether to order adverse costs. In this respect, the rules align with the trend among arbitral institutions to incorporate third-party funding disclosure into their regulatory frameworks. While the benefits of the rules remain undeniable, concerns regarding the disclosure of confidential information may be mitigated through the tribunal's prudent exercise of its discretion to implement them.

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I. INTRODUCTION OF THIRD-PARTY FUNDING

A. *Background*

Third-party funding was historically regarded as a controversial instrument in international arbitration[1], primarily because of the doctrines of champerty and maintenance.[2] The doctrines refer to the improper involvement of a third party funder with no legitimate interest in the proceedings in exchange for a share of the proceeds, which may encourage unmeritorious claims.[3] In addition, it introduces the external funder as an external actor. The funder's economic interests are directly tied to the outcome of the proceedings. By aligning a non-party's financial stake with the arbitral result, third-party funding was seen as disrupting the traditional bilateral nature of

1. William Stone, *Third Party Funding in International Arbitration: A Case for Mandatory Disclosure?*, 17 *ASIAN DISP REV*. 62, 62 (2015).

2. Derric Yeoh, *Third Party Funding in International Arbitration: A Slippery Slope or Levelling the Playing, Field?*, 33 J. INT'L ARB. 115, 115 (2016).

3. RACHAEL MULHERON, *THE MODERN DOCTRINES OF CHAMPERTY AND MAINTENANCE* 4 (Oxford Univ. Press 2023).

arbitration, which is premised upon a dispute confined to two parties and structured by their consent.

However, in recent years, third-party funding has become increasingly prevalent, with a growing number of disputes involving funding arrangements.[4] At the same time, major arbitral institutions have incorporated provisions addressing third-party funding into their arbitration rules.[5] The institutional recognition demonstrates that third-party funding has evolved from a controversial mechanism into an influential and significant feature of contemporary international arbitration.

B. *Definition of Third-Party Funding*

Under the guidance of UNCITRAL rules, the third-party funding agreement is an agreement by a non-party to a dispute to provide funds or other material support to a disputing party in return for a remuneration, which is dependent on the outcome of the dispute.[6]

In its broadest sense, third-party funding refers to a financing arrangement whereby an external entity not formally involved in the dispute provides financial support to one party in exchange for a return contingent upon the outcome of the case.[7] Typically, the funder covers part or all of the party's legal costs in return for a share of any monetary award obtained.[8] More specifically, funding arrangements may take various forms, including insurance products, lawyer financing, loans, or even the assignment of claims.[9]

C. *Advantages of Third-Party Funding*

Third-party funding has several advantages. First, it allows economically disadvantaged parties to get access to justice if the parties

4. JONAS VON GOELER, THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION AND ITS IMPACT ON PROCEDURE 74 (*Int'l Arb. L. Libr. vol. 35, Kluwer Law Int'l* 2016).

5. International Chamber of Commerce, ICC Rules of Arbitration art.11(7) (2021); Hong Kong International Arbitration Centre, HKIAC Administered Arbitration Rules art. 44 (1 Jun. 2024); Vienna International Arbitral Centre, VIAC Rules of Arbitration and Mediation art. 13(a) (1 Jan.2025).

6. *See* UNCITRAL, Working Group III, Thirty-Seventh Session, A/CN.9/WG.III/WP.157, 2 (2019)

7. *See* Astha Kothari & Arryan Mohant, *Third-Party Funding in International Arbitration*, 3 J. *DISP. RESOL.* at 1, 10 (2024).

8. *Id.*

9. *Id.* at 16.

otherwise cannot afford to secure a meritorious claim.[10] International arbitration represents not only a juridical confrontation but, in many cases, a test of the parties' financial resilience. Economic constraints can operate as a practical impediment to the effective pursuit or defense of claims. Given the composite nature of arbitral expenses, arbitration constitutes a relatively costly mechanism of dispute resolution. The financial obligations borne by the parties typically include institutional administrative charges, legal representation costs, expert evidence fees, and the fees of the arbitral tribunal, collectively amounting to a potentially significant economic burden.[11] With third-party funding, the impecunious party can get financial support from a funder, ensuring access to justice, which might otherwise be hindered by the party's limited financial capacity. For example, in *Yukos Universal Ltd. v. Russian Federation*, the claimants were effectively deprived of their principal asset following the State's expropriatory measures and faced significant financial constraints in pursuing legal remedies.[12] With the support of third-party funding, the claimants were able to pursue their claims under the Energy Charter Treaty.[13] In 2014, the tribunal awarded them approximately USD 50 billion in damages. Following extensive annulment proceedings in the Dutch courts, the awards were ultimately upheld, and enforcement actions have been pursued in multiple jurisdictions.[14] This suggests that third-party funding is particularly valuable where the aggrieved party has been rendered insolvent as a result of the expropriation of its assets in investment arbitration, or has suffered substantial financial losses due to the opposing party's breach of contract in commercial arbitration. In such circumstances, funding mechanisms enable the claimant to overcome liquidity constraints and pursue meritorious claims that might otherwise remain unenforced.

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10. Susanna Khouri, Kate Hurford & Clive Bowman, *Third Party Funding in International Commercial and Treaty Arbitration – A Panacea or a Plague? A Discussion of the Risks and Benefits of Third Party Funding*, 8 *TRANSNAT'L DISP. MGMT.* at 1, 3 (2011).

11. Shantanu Pachahara & Vikas Gandhi, *Third-Party Funding in International Commercial Arbitration: It Is About Time for Regulations*, 41 *CONFLICT STUD. Q.* 61, 63 (2022).

12. *See* Daniela Paez-Salgado, Gaillard and Banifatemi on Strategy Insights into the Yukos Arbitration at Harvard Law School, *Kluwer Arbitration Blog* (18 Feb. 2015), https://legalblogs.wolterskluwer.com/arbitration-blog/gaillard-and-banifatemi-on-strategy-insights-into-the-yukos-arbitration-at-harvard-law-school/.

13. *Id.*

14. *Yukos Universal Ltd. (Isle of Man) v. The Russian Federation, Final Award,* PCA Case No. AA 227, ¶1888 (Perm. Ct. Arb. 2014).

Second, third-party funding enables parties to shift financial burdens and litigation risks. International arbitration is inherently expensive, even for parties with stable financial positions. In practice, under the prevailing "costs follow the event" principle, the losing party is often required to bear not only the damages awarded but also the arbitration costs and the opposing party's legal fees.[15] Even where a party is financially capable of covering arbitral and legal expenses, third-party funding can reduce its immediate financial exposure and reallocate the risk of an adverse outcome to the funder. By transferring part of the downside risk, funding allows parties to manage cash flow more efficiently and mitigate the financial uncertainty associated with high-stakes proceedings.

Third, third-party funding contributes strategic value. Owing to their direct economic interest in the outcome of the proceedings, funders typically conduct rigorous due diligence before agreeing to finance a claim and continue to monitor the case throughout its lifecycle.[16] Their accumulated experience in complex arbitration and litigation allows them to provide insights on risk allocation, cost management, and enforcement prospects. In certain circumstances, funders may also seek to influence the selection of legal counsel or the constitution of the arbitral tribunal to safeguard their investment, which in turn offers expertise to the funded party's proceedings.[17]

D. *Disadvantages of Third-Party Funding*

However, third-party funding is not a panacea. While it enhances access to justice, it also introduces risks with respect to arbitrators' independence, confidentiality, and the overall integrity of the proceedings.

Among these concerns, independence and impartiality constitute the cornerstone of procedural fairness in international arbitration. Conflicts of interest may arise when arbitrators have professional or economic connections with a funder involved in the case. For example, an arbitrator or their law firm may have previously represented the third-party funding company or have been repeatedly appointed in cases financed by the same funder.[18] Even if such relationships do not automatically imply bias, they may create objective doubts as to the arbitrator's neutrality, especially where an ongoing or significant

15. *See* Kothari et al., *supra* note 8, at 22.

16. *See* Pachahara et al., *supra* note 12, at 64.

17. *See* Khouri et al., *supra* note 11, at 5.

18. *See* Yeoh, *supra* note 3, at 121.

economic relationship exists. Recognizing these risks, arbitral rules and soft law instruments provide mechanisms to safeguard independence and impartiality.

Under Article 26.1 of the SIAC Rules 2025, an arbitrator may be challenged if circumstances give rise to justifiable doubts as to their impartiality or independence.[19] Paragraph 2.3.6 of the Waivable Red List of *IBA Guidelines on Conflicts of Interest in International Arbitration* provides that a conflict may arise where an arbitrator's law firm currently maintains a significant commercial relationship with one of the parties or its affiliate, including a third-party funder, and full disclosure is required.[20] The failure to disclose such relationships is especially problematic, which can undermine confidence in the tribunal and may later jeopardize the enforceability of the award.

Under Article V(1)(d) of the *New York Convention*, recognition and enforcement of an award may be refused if the composition of the arbitral tribunal was not in accordance with the parties' agreement or the applicable law of the seat.[21] Additionally, under Article V(2)(b), enforcement may be denied if it would be contrary to the public policy of the enforcing state.[22] A serious undisclosed conflict affecting an arbitrator's independence may therefore provide grounds for resisting enforcement. Accordingly, while third-party funding offers practical benefits, undisclosed funder-arbitrator relationships may generate procedural challenges, prolong post-award litigation, increase costs, and ultimately threaten the finality and enforceability that arbitration seeks to guarantee.

Third-party funding also poses risks to the confidentiality of the proceeding. Confidentiality is generally regarded as a defining feature of international arbitration, unless the parties agree otherwise. However, the involvement of an external funder, whose economic interests are closely connected to the success of the claim, inevitably requires extensive due diligence both before and during the proceedings. In order to assess the merits and risks of the case, funders typically request access to comprehensive information relating to the

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19. Singapore International Arbitration Centre, SIAC Arbitration Rules art. 26.1 (1 Jan. 2025).

20. International Bar Association, IBA Guidelines on Conflicts of Interest in International Arbitration*,* Part II, Section (2), waivable red list of IBA guideline 2.3.6, 16 (2024).

21. U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(1) (d)*,* 10 June, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

22. *Id.* at art. V(2)(b).

dispute.[23] This may include the underlying agreement and arbitration clause, the factual and legal basis of the claim, the quantum sought, and even supporting evidence.[24] The disclosure of detailed information relating to the arbitral proceedings to funders might entail the risk of "trial by press release," whereby the funder may seek to publicize the favorable development to gain a tactical advantage, or as a means of advertising.[25] Even where the funding agreement contains a confidentiality clause prohibiting the funder from disclosing information without the consent of the funded party, the funder may still misuse information obtained during the former proceedings to support the subsequent disputes involving the same party, thereby profiting from such information.[26] As a result, sensitive information that would otherwise remain within the circle of the contracting parties may be disclosed and exploited by non-signatories to the arbitration agreement.

In addition, third-party funding may give rise to issues concerning attorney-client privilege. Following the commencement of the arbitration, funders generally require periodic updates to monitor the progress of the case and to ensure that the funded party complies with its obligations under the funding agreement.[27] In practice, counsel for the funded party may be asked to provide reports and strategic assessments to the funder.[28] The transmission of such information creates potential risks that privileged communications or work-product materials could be exposed, or that privilege protections may be challenged.

The integrity of the proceedings may also be compromised when the external forces intrude into the dual structure of arbitration, particularly where a third-party funder, by virtue of its superior financial resources and bargaining power, exerts significant influence over the funded party's decision-making or even dictates the course of the arbitration. Third-party funders are typically financially sophisticated entities with significant bargaining power, which may

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23. *See* Khouri et al., *supra* note 11, at 5; Eric de Brabandere & Julia Lepeltak, *Third-Party Funding in International Investment Arbitration*, 27(2) *ICSID REV*. 379, 384 (2012).

24. Jonas von Goeler, *supra* note 5, at 299.

25. *Id.* at 300.

26. Maxi Scherer & Aren Goldsmith, Third Party Funding in International Arbitration in Europe: Part 1- Funders' Perspectives, *REV. DR. AFF. INT.* 649, 663 (2012).

27. *See* Stone, s*upra* note 2, at 64.

28. *Id.*

result in funding agreements containing unfavorable terms for the funded party.[29] These may include disproportionate returns for the funder or extensive control rights over strategic decisions, such as counsel selection and procedural strategy.[30] Divergences may also arise between the funder and the funded party regarding the objectives of the arbitration.[31] While a funder compensated by a percentage of the award may seek to maximize damages, the funded party may prioritize swift resolution or reputational considerations. Where the funding agreement grants the funder substantial decision-making authority, the funded party's autonomy may be constrained. In such cases, the proceedings risk reflecting not only the parties' will, but also the economic interests of a third actor, compromising the integrity of the proceeding.

II. SIAC Legal Framework of Third-party Funding Disclosure

However, the benefits of third-party funding remain undeniable. Its potential drawbacks can be mitigated through a feasible and well-designed regulatory framework.

On 1 January 2025, the Seventh Edition of the SIAC Rules 2025 entered into force. The revised Rules strengthen the regulatory framework governing third-party funding, in particular by introducing and clarifying mandatory disclosure obligations.

A. *The Third-Party Funding Disclosure Regime Before the Introduction of the SIAC 2025 Rules*

The 2016 SIAC Rules did not contain any mandatory provisions specifically addressing third-party funding. Nevertheless, the framework for third-party funding disclosure had already begun to take shape through institutional guidance and statutory reform.

Under the 2016 SIAC Rules, disclosure relating to third-party funding could only be pursued through document production.[32] Parties could only rely on Rule 27(f), which empowered the tribunal to order the production of documents that are relevant, material, and within the possession or control of a party.[33]

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29. *See* Yeoh, s*upra* note 3, at 118.

30. *Id.*

31. *See* Stone, s*upra* note 2, at 64.

32. Singapore International Arbitration Centre, SIAC Arbitration Rules 2016 (1 Aug. 2016), art. 27(f).

33. *Id.*

Further guidance emerged in SIAC Practice Note PN–01/17, issued on 31 March 2017, which expressly recognized the tribunal's authority to order disclosure of the existence of external funding, the identity and interests of the funder, and whether the funder had agreed to assume liability for adverse costs where appropriate.[34]

Accordingly, prior to the adoption of the 2025 Rules, third-party funding was legally recognized by SIAC, and the tribunals possessed the authority to order related disclosures. However, that authority was derived from general procedural powers and arbitral guidance rather than from express provisions in the Rules themselves, and its scope and standards remained insufficiently defined.

At the statutory level, the reform of Singapore statutory law also has created the legal basis for the later formal incorporation of third-party funding provisions into the SIAC Rules 2025, avoiding the arbitral award being challenged on the ground that the involvement of a third-party funder violates the law of the seat. In 2017, the Civil Law (Amendment) Act 2017 abolished the long-standing common-law doctrines of maintenance and champerty, which had previously constrained third-party participation in legal proceedings.[35] Through this reform, Singapore aligned itself with jurisdictions that permit third-party funding in designated dispute resolution proceedings, expressly encompassing arbitration. SIAC subsequently incorporated the reformed recognition of third-party funding directly into its new arbitral rules.

B. *Development of SIAC Rules 2025*

Article 38 of the SIAC Rules 2025 establishes a clearer legal framework for the disclosure of third-party funding. Article 38.1 introduces a mandatory disclosure obligation requiring parties to disclose the existence of any third-party funding arrangement, as well as the identity and relevant details of the third-party funder.[36] The provision further requires that such disclosure be made "as soon as

34. Singapore International Arbitration Centre, Practice Note, PN–01/17 (31 March 2017), https://siac.org.sg/wp-content/uploads/2022/08/Practice-Note-for-Administered-Cases-–-On-Arbitrator-Conduct-in-Cases-Involving-External-Funding.pdf.

35. Republic of Singapore, Civil Law (Amendment) Act 2017 (24 February 2017), art. 2; *see also* Christina G. Hioureas, Daniel Schimmel & Sudhanshu Roy Key, *Changes In The 2025 SIA Arbitration Rules*, MONDAQ (7 April 2025), https://www.mondaq.com/civil-law/1607598/key-changes-in-the-2025-siac-arbitration-rules.

36. SIAC Rules 2025, s*upra* note 20, art. 38.1.

practicable."[37] Prior to the adoption of the SIAC 2025 Rules, however, the disclosure of third-party funding was governed primarily by the SIAC Practice Note PN–01/17 issued in 2017. The Practice Note merely recognized the tribunal's power to order disclosure of the existence of external funding, the identity and interests of the funder, and whether the funder had agreed to assume liability for adverse costs.[38] Importantly, it also allowed the parties to agree otherwise and exclude such disclosure.[39] Consequently, before the SIAC Rules 2025 came into force, disclosure was not a mandatory requirement but remained within the tribunal's discretionary powers, and could even be waived by party agreement. The introduction of Article 38.1 therefore marks a significant shift from a discretionary to a mandatory disclosure regime. By formalizing disclosure obligations within the Rules, SIAC now places greater emphasis on transparency in third-party funding arrangements, thereby helping to mitigate potential conflicts of interest.

Moreover, compared with other institutional arbitration rules, the SIAC Rules 2025 adopt a relatively broader and more comprehensive disclosure requirement. For instance, the 2021 Arbitration Rules of the International Chamber of Commerce do not contain a dedicated provision on third-party funding disclosure. Instead, Article 11(7) addresses the issue within the general provisions concerning the arbitral tribunal, requiring parties only to disclose the existence of third-party funding and the identity of the funder, which does not mandate disclosure of the details of the funding agreement.[40] A similar approach exists in the 2024 HKIAC Administered Arbitration Rules. Although Article 44 specifically addresses third-party funding, it likewise requires disclosure only of the existence of the funding arrangement and the identity of the funder, without extending the requirement to the contractual details of the funding agreement.[41] Against this backdrop, the SIAC Rules 2025 represent a relatively more robust regulatory approach by expanding both the scope and the mandatory nature of third-party funding disclosure.

The disclosure obligation extends beyond the commencement of the arbitration and continues throughout the whole proceedings by

37. *Id.*

38. 2017 Practice note, s*upra note* 35.

39. *Id.*

40. International Chamber of Commerce, ICC Rules of Arbitration art.11(7) (2021).

41. Hong Kong International Arbitration Centre, HKIAC Administered Arbitration Rules art. 44 (1 Jun. 2024).

way of an ongoing duty to update. In Article 38.2, a funded party should promptly notify the tribunal and the other parties of any changes to the third-party funding arrangement.[42] This ensures that information regarding the funding remains updated throughout the proceedings and enables potential conflicts of interest to be identified and addressed in a timely manner.

Article 38.3 goes a step further by empowering the tribunal to direct the party to withdraw from any third-party funding arrangement that gives rise to a conflict of interest after the tribunal has been constituted.[43] Such authority allows the tribunal to directly eliminate problematic funding relationships, thereby avoiding the need for additional procedures such as arbitrator challenges, which helps reduce the risk of award annulment and streamlines the procedural process. More broadly, this provision strengthens the tribunal's capacity to safeguard the integrity and fairness of the arbitral proceedings.

Crucially, the SIAC 2025 Rules mark a significant step forward: they require not only disclosure of the existence and identity of third-party funding, but also key details of the funding arrangement itself—going beyond the more limited disclosure obligations found in most other institutional rules. Article 38.4 empowers the tribunal to order the disclosure of the third-party funding agreement if it considers such disclosure appropriate.[44] Importantly, the provision requires the tribunal to take into account the parties' views before issuing such an order.[45] This requirement serves as a procedural safeguard that prevents the tribunal from exercising unfettered discretion and reflects the parties' right to be heard. In practice, it also allows parties to present evidence or arguments either supporting or opposing the disclosure of the funding agreement. The disclosure of the funding agreement may provide the tribunal with information beyond the mere identity of the funder. Funding agreements typically contain financial terms, including provisions defining the qualification of a successful outcome and prescribing the mechanism to allocate the value of any award between the funded party and the funder.[46] They also incorporate waterfall provisions, explaining both the priority ranking according to which any recovery is distributed and the proportionate shares allocated to each

42. SIAC Rules 2025, *supra* note 20, art. 38.2.

43. *Id.* at art. 38.3.

44. *Id.* at art. 38.4.

45. *Id.*

46. The Chartered Institute of Arbitrators, Guideline on Third-Party Funding, at 35 (2025), https://www.ciarb.org/media/xbbegf1e/guidelines-on-third-party-funding_-published-final.pdf.

beneficiary.[47] Such agreements usually specify the funding commitment of the funder[48] and impliedly acknowledge the control of the funder over the claim, such as rights to decide the appointment of counsels and arbitrators, settlement and strategic decisions, and termination right.[49] It enables the tribunal to examine the funder's financial interest in the outcome of the proceedings, including the extent to which the funder's return is directly linked to the arbitral award and the degree of control the funder may exercise over the conduct of the proceedings.

Third-party funding disclosure not only affects conflicts of interests but also plays a pivotal role in tribunal's determination of adverse costs in arbitration. Articles 38.5 and 38.6 recognize this by creating a balanced framework. On one hand, they allow the tribunal to consider the third-party funding when ordering security for costs. On the other hand, they use regulatory instruments to limit the tribunal's overreliance on such disclosures. Article 38.5 clarifies that the tribunal should not infer a party's financial condition solely from the existence of a third-party funding arrangement.[50] Article 38.6 further provides that the funding agreement may nevertheless be considered when the tribunal allocates costs.[51]

Third-party funding agreements can assist the tribunal in making the decision whether to order the security for costs.[52] Security for costs is an interim measure where the claimant is required to provide security and hold it to escrow, to secure the respondent against the risks that the claimant may be unable to satisfy an adverse costs order if claimant loses the case.[53] The disclosure of third party funding agreement can reveal whether the funder will also fund the adverse costs, which will directly determine whether it is necessary to order the claimant for security for costs.[54] It is also necessary in determining the termination right of the funder, i.e., whether there's a risk that the funder can terminate the funding agreement suddenly and leave claimant unable

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47. *Id.* at 39.

48. *Id.* at 36.

49. von Goeler, *supra* note 5, at 35.

50. *Id.* at art. 38.5.

51. *Id.* at art. 38.6.

52. von Goeler, *supra* note 5, at 338.

53. Nigel Blackaby KC, Constantine Partasides KC & Alan Redfern, *Redfern and Hunter on International Arbitration*, ¶5.32 (Oxford University Press., 7th ed. 2023); Noah Rubins, *In God We Trust, All Others Pay Cash: Security for Costs in International Arbitration*, *11 AM. REV. INT'L ARB.* 307, 310 (2000).

54. von Goeler, *supra* note 5, at 340.

to pay the adverse costs.[55] The existence of funding agreements may be considered as one of the factors indicative of claimant's general financial ability as well.[56] However, it should not be treated as the decisive factor to decide the order of security for costs, because a proper assessment of the claimant's financial circumstances also requires consideration of other evidence, such as annual accounts, statutory filings, and other relevant financial records.[57]

These provisions reflect the prevailing view in arbitral practice that the mere presence of third-party funding does not justify an order for security for costs.[58] Tribunals generally reject the assumption that a funded party is necessarily in a weaker financial position, recognizing that parties may resort to third-party funding for various strategic reasons, including the allocation and management of litigation risks and costs.[59] Consistent with this approach, arbitral tribunals have held that additional circumstances are typically required to justify a security for costs order, such as a party's history of non-compliance with adverse awards[60] or other unusual or abusive conduct during the proceedings[61]

Against this backdrop, Articles 38.5 and 38.6 establish a balanced framework. The articles acknowledge that the existence and terms of a third-party funding arrangement may be relevant when assessing issues such as security for costs and cost allocation. However, they prevent tribunals from relying solely on the disclosure of funding to presume financial weakness and automatically order security for costs, which could otherwise impede a party's access to justice.[62] This design also mitigates the potential chilling effect that disclosure rules might create. By limiting the extent to which tribunals may rely on the mere existence of funding, the rules reduce the risk that parties will hesitate to disclose funding arrangements while simultaneously ensuring that tribunals

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55. *Id.*

56. *Id.* at 341.

57. *Id.* at 340.

58. *See* Martina Polasek & Celeste E. Salinas Quero, *Chapter 21: Security for Costs Overview of ICSID Case Law*, *in* FINANCES IN INTERNATIONAL ARBITRATION (Kluwer Law International 2019) at 392-399.

59. *Id.*

60. *RSM Production Corporation v. Government of Grenada*, ICSID Case No ARB/10/6, Tribunal's Decision on Respondent's Application for Security for Costs), ¶¶81-82 (14 October 2010).

61. *Lighthouse Corporation Pty v. Democratic Republic of Timor-Leste*, ICSID Case No ARB/15/2, Provisional Order No 2, ¶61 (13 February 2016).

62. S*outh American Silver v. Bolivia,* PCA Case No 2013-15, Provisional Measure No 10, ¶77 (11 January 2016).

retain sufficient authority to consider such arrangements when genuinely relevant.

Finally, Article 38.7 grants the tribunal discretionary power to adopt appropriate measures, including sanctions, damages, or cost orders, in the event of non-compliance with the disclosure requirements.[63] This provision explicitly introduces potential liability for breaches of third-party funding disclosure obligations, thereby reinforcing the enforceability of the disclosure regime and incentivizing parties to comply with such requirements.

III. COMMENTS ON THE THIRD-PARTY FUNDING DISCLOSURE REQUIREMENTS IN SIAC RULES 2025 AND WAYS FORWARD

A. *Benefits of the Disclosure Requirements*

Overall, the third-party funding disclosure regime under Article 38 of the SIAC Rules 2025 represents a significant step toward enhancing transparency and procedural integrity in international arbitration.

By introducing a mandatory disclosure obligation, the Rules address long-standing concerns regarding undisclosed financial interests that may create conflicts of interest with arbitrators. Through the mandatory disclosure of the identity and relevant details of third-party funders, together with the tribunal's discretionary power to order disclosure of the funding agreement, the rules enable tribunals to identify potential conflicts of interest and safeguard the independence and impartiality of arbitrators at an early stage, preventing extra procedures to challenge the arbitrator or even annul the award. Moreover, such disclosure provides tribunals with a more informed basis for assessing the necessity and urgency of ordering security for costs.[64]

This framework provides a more comprehensive approach to third-party funding disclosure compared with many other institutional arbitration rules. It requires disclosure at an early stage, beginning with the submission of the Notice of Arbitration or the Response, and imposes a continuing obligation to update such disclosure throughout the proceedings. This ongoing requirement ensures that the tribunal

63. SIAC Rules 2025, s*upra* note 20, at art. 38.7.

64. Abayomi Okuboe, *Transparency and Third-Party Funding*, International Bar Association, https://www.ibanet.org/article/BBC1C665-EE2E-409D-897D-BB31AF3A6938.

and the parties remain informed of any developments in the funding arrangement, enabling the tribunal to effectively monitor potential conflicts of interest. The regime is further reinforced by the possibility of sanctions for non-compliance, which strengthens the enforceability of the disclosure obligations.

In addition, the scope of disclosure is broader. Beyond requiring disclosure of the existence of the funding arrangement and the identity of the funder, the rules empower the tribunal, where appropriate, to order disclosure of the third-party funding agreement itself. This mechanism provides the tribunal with a procedural avenue to obtain more detailed information when necessary, without relying solely on document production standards such as relevance and materiality. At the same time, the rules recognize the relevance of third-party funding disclosure in assessing security for costs, while limiting excessive reliance on such disclosure in order to ensure that it does not impede a party's access to justice.

B. *Potential Risks of the Disclosure Requirements*

At the same time, the framework is not without potential drawbacks. In particular, the possibility that tribunals may order disclosure of the funding agreement may raise concerns regarding confidentiality and the protection of commercially sensitive information. Funding agreements typically contain provisions addressing issues such as the degree of control retained by the funded party, the categories of expenses covered by the funder, the funder's share of any successful award, and other terms governing matters such as the circumstances under which the funded party may terminate the funding arrangement.[65] Such disclosure may create conflicts between confidential terms in the agreement and the arbitral order and lead to risks of leakage of confidential information like financial data of parties, funding structures, profit-sharing arrangements, and litigation strategies. The risks may even discourage parties from seeking funding.

The broad articulation of the tribunal's discretionary power to order disclosure of the third-party funding agreement may also create risks of excessive disclosure and overregulation. Article 38.4 merely provides that the tribunal may order disclosure where it considers such disclosure "fit," but it does not specify the circumstances in which such an order would be justified, nor does it clarify the burden or standard of proof required from the requesting party.[66] For example, it remains

65. *See* Pachahara et al., s*upra* note 12, at 64.
66. SIAC Rules 2025, *supra* note 20, at art. 38.4.

unclear whether the requesting party must demonstrate a *prima facie* case, a high probability, or a more convincing level of proof that circumstances such as a conflict of interest, the necessity for security for costs, or abusive control of the proceedings exist. The absence of clear thresholds may lead to inconsistent practices across tribunals, resulting in the coexistence of different disclosure regimes and a lack of clarity regarding applicable standards. Such uncertainty may in turn discourage parties from engaging in arbitration involving third-party funding, as the unpredictable consequences of disclosure could deter investors, parties, and arbitrators from participating in the process.[67] Moreover, overly broad disclosure powers may be strategically exploited by parties during the proceedings. Requests for disclosure could become tools for fishing expeditions by opposing parties, potentially triggering frivolous arbitrator challenges or unfounded applications for security for costs. These tactics may ultimately prolong the arbitration process and increase procedural costs.

Article 38.3 even empowers the tribunal to order a party to withdraw from a third-party funding agreement after the constitution of the tribunal, where the arrangement gives rise to a conflict of interest.[68] While this authority may help prevent lengthy procedures such as arbitrator challenges or potential annulment proceedings, it also raises concerns. In particular, allowing the tribunal to require the termination of a privately negotiated funding agreement may extend the tribunal's authority into the sphere of party autonomy and contractual consent. Such intervention appears to sit uneasily with the flexible and party-driven nature of arbitration. In addition, this power may create uncertainty for third-party funders and potentially produce a chilling effect on the availability of funding, as funders may face the risk that their agreements could be terminated by tribunal order after proceedings have commenced. Questions may also arise regarding the practical enforceability of such orders, particularly where the funder itself is not a party to the arbitration agreement.

C. *Ways forward for the application of the SIAC 2025 Rules*

Although the new rules on third-party funding raise certain concerns, they overall represent a significant improvement in addressing potential conflicts of interest and assisting tribunals in determining whether an order for security for costs is necessary. In the long term, these issues may be mitigated through further refinement

67. von Goeler, *supra* note 5, at 284.
68. SIAC Rules 2025, *supra* note 20, at art. 38.3.

of the arbitral rules themselves, the cautious exercise of the tribunal's discretionary powers, and the use of practice notes to clarify and supplement gaps in the rules.

First, practice notes could provide a non-exhaustive list of circumstances in which tribunals may order disclosure of a funding agreement, while also clarifying the applicable burden and standard of proof. For example, disclosure may be justified where the requesting party presents preliminary evidence suggesting that the funded party may face financial difficulties and seeks access to the funding agreement to determine whether the funder has undertaken liability for adverse costs. In such circumstances, the funding agreement could assist the tribunal in assessing whether an order for security for costs is necessary.

Second, to address concerns relating to commercially sensitive information, the rules could expressly permit tribunals to adopt protective measures when ordering disclosure. These measures may include requiring confidentiality logs, limiting disclosure to the tribunal only, allowing redactions of sensitive financial terms, or issuing confidentiality orders governing the use of the disclosed information. Such safeguards would help balance the objective of transparency with the protection of legitimate commercial interests.

Finally, the tribunal's discretion under Article 38.3 to order a party to withdraw from a third-party funding agreement should be exercised with particular caution. Such an order should only be considered where no less intrusive alternatives are available. The rules could expressly require tribunals to consider proportionality and procedural fairness before directing the termination of a funding arrangement. In practice, tribunals could first consider alternative measures, such as requiring the conflicted arbitrator to resign or allowing the parties to present their views and supporting evidence before determining whether withdrawal of the funding agreement constitutes the most efficient and proportionate solution.

IV. CONCLUSION

Third-party funding has become an increasingly important feature of contemporary international arbitration, playing a significant role in enhancing access to justice and enabling parties to pursue meritorious claims that might otherwise be abandoned due to financial constraints. At the same time, the growing presence of funders introduces legitimate concerns relating to conflicts of interest, confidentiality, and the integrity of arbitral proceedings.

The disclosure regime established under Article 38 of the SIAC Rules 2025 is an important attempt to balance these competing considerations. By requiring disclosure of the existence and identity of third-party funders while granting tribunals limited authority to order further disclosure where necessary, the rules enhance transparency and assist tribunals in identifying potential conflicts of interest and assessing procedural matters such as security for costs. Although the scope of tribunals' discretionary powers and the protection of confidential information remain inadequately defined, these issues can be mitigated through careful exercise of tribunal discretion and further clarification through arbitral practice.

Overall, the framework reflects a pragmatic approach that acknowledges the growing role of third-party funding while seeking to preserve the fairness, efficiency, and integrity of international arbitration.