Proposal for Eighth Annual Conference of ASCL YCC

Author’s name: *Yihua Chen*

Title of the paper: *The Regulation of Third-Party Funding of International Arbitration: in the Comparative Perspectives of Law, Economics and Judiciary*

Institutional affiliation: *Erasmus School of Law, Erasmus University Rotterdam, the Netherlands*

Contact information: y.chen@law.eur.nl

Keywords: *Third-Party Funding, International Arbitration, Regulatory Regime, Law and Economics, Judicial Competition*

Abstract

Third-party funding has been restricted by the doctrines of champerty and maintenance in common law jurisdictions for a long time. In recent 10 years, more and more jurisdictions have participated in legalizing and allowing third-party funding in dispute resolution. However, at the same time, the potential ethical and procedural hazards of third-party funding to international arbitration have been discovered and examined in practice and academics. Due to this, some jurisdictions have taken leading steps to regulate and guide the development of third-party funding in international arbitration. As for jurisdictions which are going to adopt or are just accepting third-party funding in dispute resolution, it is of great necessity to know what kind of regulatory regimes of third-party funding are applying in other justifications and what the regulatory focuses are. More importantly, what lessons can be drawn from it.

This article is first going to address the underlying reasons for the legitimizing of third-party funding in international arbitration from the perspective of law and economics. Specifically, the emergence of third-party funding is a result of marketization of dispute resolution; it satisfies the demands of the funder and the funded party in maximizing the value of legal assets and shifting litigation risks. The legitimization of third-party funding in international arbitration is to solve the issue of expensive arbitral costs and promote access to justice and has even become as a significant perspective of judicial competition. Judicial competition is one of the underlying forces driving the set-up of the well-regulated and organized regime of third-party funding. This is especially true to less advanced economies and non-common law jurisdictions. At the end of the day, it is the legal infrastructure and legal system that support and stabilize economic growth.

Second, the author is going to address why regulation should be imposed upon third-party funding in international arbitration from the perspectives of law, economics and judiciary. Specifically, the law and economic doctrine may explain the necessity of supply more high-quality third-party funding resources to the international arbitration community, which is seeking more stable and solid judicial infrastructures in the terms of effective dispute resolution and rights remedy. Although international arbitration has been commonly used by global commercial players in resolving their disputes, the inherent defects and drawbacks of arbitration may also promote a need for higher level of third-party funding regulatory regime with international characteristics

Third, the article is going to examine the current regulatory regimes of third-party funding in the UK, Hong Kong and Singapore. In the UK, a self-regulatory regime is adopted by the Litigation Funder Association of England and Wales, leading the conduct of third-party funders practising in England and Wales. Hong Kong is a jurisdiction adopting the light-touch regulatory approach, under which the minimum requirement for third-party funding of international arbitration is provided in Hong Kong Arbitration Ordinance and a Code of Practice for Third Party Funding of Arbitration and Mediation is set out concerning the practices and standards with which funders are expected to comply. As to the regulatory regime in Singapore, it is designed with flexibility and party autonomy and focuses on lawyers and law firms practising in Singapore.

Last, comparative research is going to be conducted after examining the current regulatory regimes of third-party funding in the main jurisdictions. The comparative research is going to be based upon the ‘tripartite' regulatory approach proposed by Victoria A. Shannon, including financial aspect, professional conduct, and procedural conduct. Then, this article will propose a multi-steps supervision and regulation approach to third-party funding in international arbitration.