

HONG KONG PERMITS THIRD PARTY FUNDING OF ARBITRATIONS

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From the year 2012 India has recognized Hong Kong as a recognized seat of Arbitration under New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Since then the Hong Kong seat has become a very important seat, for Parties from India, since Parties from China are comfortable with Hong Kong Seat than a seat in India. Following Singapore's Civil Law (Amendment) Bill 38/2016, which has regulated third party funding in international arbitrations seated in Singapore. The Singapore law did not only recognize the third-party funding but also prescribed certain important conditions to make the third-party funding contract enforceable.

Third party funding for arbitration means, recognizing the contracts which are meant for financing expenses of international arbitrations. This law allows parties to enter contingent contracts for financing the arbitration expenses and allow the financing party to share the outcome of the arbitration proceedings. Even though in many cases, it helps financially weak parties to contest the arbitrations effectively, they also lead to unhealthy trends and malpractices in arbitration proceedings. Hence these legislations try to ensure positive effects of the funding contracts and reduce the misuse of funding contracts.

The Hong Kong law which is enacted today on 14th June 2017 in the name of Arbitration and Mediation (Third Party Funding) (Amendment) Ordinance, that has recognized third party funding in Arbitration under Hong Kong Law. The said law makes Hong Kong a more attractive destination for international arbitration. The said third party funding law allows a third party to fund the expenses of an arbitration, in expectation of a financial return if the funded party is successful in the arbitration claim. The said law permits funding in Hong Kong seated arbitrations, emergency arbitrator proceedings, mediations and connected ancillary litigations.

Some of the funders play only a passive role in an arbitration but some of the funders play an active role and go beyond the limits. The Hong Kong law provides for the drawing up of a Code of Practice governing the conduct of the third-party funders. The said Code is expected to provide safe guards to avoid funders from controlling the arbitration and from influencing the lawyers appearing for parties. In International arbitration matters, the most important safe guard is avoiding conflict of interests between parties, arbitrators and lawyers. It also is expected to ensure declaration of the details of the funders so that, conflict of interest between the funders and arbitrators can be checked.

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If the above said law can ensure transparency in arbitrations, healthy relationship between parties and funders, reasonable sharing limits, control in the role of funders will help international arbitrations effectively achieving its objectives. The Code of Practice of Hong Kong is expected to be released in a few months which is expected to balance the requirements of the arbitration community.

