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Research Article

Third Party Funding (TPF) in Arbitration: An Analytical Study in Jordanian Arbitration Law

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Abstract: Arbitration is widely regarded as a more favourable alternative to litigation due to its efficiency, privacy, and reliance on subject-matter expertise. It serves as a time-efficient and economically viable means of resolving disputes. Accordingly, this study seeks to examine the various challenges encountered by entities providing third-party funding (TPF) within arbitral proceedings. To fulfil this objective, an analytical research design was adopted, facilitating the collection of qualitative data from both primary and secondary materials, including legal frameworks, statutory provisions, academic articles, scholarly texts, and existing literature. The analysis employed a content-based approach to derive the findings. The outcomes of the investigation revealed that while arbitration offers notable advantages in terms of cost and duration, these efficiencies may at times compromise the quality of legal services delivered. The study further identified a reciprocal relationship among quality, time, and cost within arbitral processes, emphasising the necessity for all participants to prioritise the intended procedural and substantive outcomes. The introduction of the contemporary practice of TPF has contributed to enhancing the overall quality and accessibility of arbitration by safeguarding the rights of all involved parties. In light of these insights, the research advocates for the inclusion of a specific legislative provision addressing TPF within Jordanian law.

Keywords: Third Party Funding, Arbitration, Jordanian Arbitration Law, Time, and Costs.

1. Introduction

Over time, a range of dispute resolution mechanisms have been employed, including negotiation, mediation, arbitration, and case evaluation. Among these, arbitration has increasingly emerged as a preferred method within legal systems, largely due to its high settlement success rate and cost efficiency [1]. Within international arbitration, TPF operates through a contractual arrangement whereby an external entity provides financial resources to cover a party's legal fees and related expenses, in exchange for a share in the potential claim proceeds [2]. The core issue examined in this study is whether arbitration proceedings extend to involve participants beyond the principal disputing parties, and who qualifies as the third party within such an agreement.

The rationale underpinning TPF arises from a litigant's financial need to pursue a favourable monetary outcome [3]. According to the International Centre for Settlement of Investment Disputes (ICSID) Rules, Rule 21 defines TPF as "the provision of funds or other material support by a juridical person not party to the dispute, to a claimant or its legal representative, for the purpose of financing proceedings." Such funding may take the form of either (1) a gratuitous contribution or (2) an investment in exchange for profit or remuneration [4]. Nonetheless, certain exceptions apply, particularly where obligations are undertaken on behalf of a third party—such as agency or trust relationships—or where stipulations are made in favour of a third party, as in beneficiary or insurance contracts. Article 208 of the Jordanian Civil Code states that "a contract may not impose an obligation upon a third party, but it may create a right in him" [5].

There remains ongoing debate concerning the precise legal standing of TPF and the role of financiers in arbitration. TPF is generally viewed as a financial mechanism designed to alleviate the cost burden of litigation. In the English case Arkin v. Borchard Ltd, TPF was interpreted as a commercial funding arrangement that "provides financial assistance to those unable to afford to seek justice" [6]. Similarly, Pinheiro and Chitalia [7] observed that in Indian jurisprudence, TPF is understood as a mechanism where a financier transfers or invests assets into the litigation process, to be reimbursed upon the successful outcome of the case. Conversely, under English law, a third party is typically defined as an individual or entity lacking a direct contractual or legal relationship to the principal agreement but nonetheless involved through financing or another related role that grants limited engagement in the underlying legal framework [8].

Jordan's growing position as a regional business centre has led to the adoption of more advanced legal systems to support commercial activity. Consequently, it has become crucial for Jordanian lawmakers to establish a robust legal framework governing arbitration. Arbitration Law No. 31 of 2001 currently regulates the referral of disputes to arbitral tribunals [9]. Although the legislature has not expressly addressed the extension of arbitration agreements to third parties, the judiciary has shown adaptability in line with evolving international legal norms [10]. Obeidat ,Khasawneh [11] highlighted that in case No. 1763/2021, the Jordanian Court of Cassation ruled that "while the Arbitration Law does not explicitly address third-party involvement in arbitration disputes, jurisprudence establishes that arbitration agreements, being contracts, generate legal effects solely between their signatories and are not binding upon third parties, in accordance with the principle that contracts operate as the law between the parties" [12]. This reflects the prevailing general principle.

Nonetheless, both doctrine and case law have recognised instances where the effects of an arbitration agreement may extend to non-signatories. These circumstances include cases involving general successors (heirs), special successors (assignees), and other exceptional contexts such as shared economic activity, joint debtor obligations, assignments of rights or debts, and undertakings for third-party benefit, as well as in collective or guarantee contracts [13]. Furthermore, where considerations of justice or public interest arise, the extension of arbitration agreements to third parties has been justified by the existence of inseparable links between the contracting parties and such third parties, the transfer of contractual rights, indivisible obligations, or the need to maintain transactional stability and avoid contradictory judgments [2; 14].

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Despite these developments, third parties involved in arbitration still face several practical challenges, primarily due to the inherent characteristics of the arbitral process. These include obstacles related to enforcement of awards, conflict management, limited access to proceedings, and confidentiality concerns. Obeidat ,Khasawneh [11] further observed that the Jordanian Court of Cassation has acknowledged the importance of TPF in arbitration and encouraged further examination of specific legal provisions regulating this practice, both nationally and internationally. In alignment with this, the present study focuses on the advantages of TPF and its role in improving access to justice, while also addressing associated risks such as potential conflicts of interest and breaches of confidentiality. Employing both analytical and comparative methodologies, the study reviews judicial precedents, statutory provisions, and doctrinal interpretations across diverse jurisdictions, with particular reference to Jordan.

Overall, this research enhances the understanding of third-party involvement within arbitration and underscores its growing significance. The findings are expected to serve as a foundation for subsequent studies exploring underexamined aspects of arbitral practice. Moreover, the study advocates the introduction of a dedicated legislative clause or article on TPF within the Jordanian arbitration framework to strengthen procedural transparency and improve the overall efficiency of arbitral funding mechanisms.

2. Literature Review

2.1 Arbitration Process

The arbitration framework functions as a private alternative to traditional judicial proceedings, offering numerous advantages such as confidentiality and efficiency in time management [15]. Compared to conventional court litigation, arbitration demonstrates several superior characteristics, particularly its adherence to principles of justice and fairness, and its capacity to preserve confidentiality throughout the proceedings [16]. This confidentiality helps safeguard the reputations of the involved parties Pablo [1] and prevents the disclosure of sensitive information, while also allowing disputing entities to maintain professional or commercial relationships despite underlying or emerging conflicts [17]. Arbitration further provides a more expedient and cost-efficient resolution process than formal litigation [9].

Yadav and Sharma [18] emphasise that one of the fundamental advantages of arbitration lies in the parties' autonomy to select arbitrators with expertise in the relevant field—such as commercial, construction, or contractual disputes—and to determine the nature of arbitration proceedings. These may include ad hoc proceedings under chosen rules, privately managed processes directly arranged by the disputants, or institutional arbitration administered through national or international arbitration centres [3]. Furthermore, arbitration allows the parties to decide upon essential procedural parameters such as the language of proceedings, venue, and duration. The process also guarantees the appointment of arbitrators who are both independent and impartial. Arbitrators are required to embody the qualities of neutrality and autonomy to preserve the integrity and credibility of the arbitration process. Courts may intervene when necessary to ensure the effectiveness and enforceability of arbitral awards [19]. Such judicial intervention serves as a complementary mechanism, providing procedural support and oversight to both arbitrators and disputing parties. In this supervisory capacity, courts assess arbitral awards to ensure consistency with applicable laws and procedural justice.

Globally, arbitration has experienced notable growth. In 2023, approximately 39.5 per cent of newly reported disputes were resolved through arbitration. Participants from 134 countries were engaged in arbitration in 2022, with this number increasing to 144 in 2023. The International Chamber of Commerce (ICC) has witnessed an expanding international reach, significantly contributing to this upward trend. In 2023, the geographical distribution of ICC members showed that over 40 per cent were based in Europe, 24 per cent in Asia, 13 per cent in North America, 15 per cent in Latin America, and 8 per cent in Africa. During 2021 and 2022, the United States recorded the highest number of participating arbitration parties at the ICC. Figure 1 illustrates the growth in newly registered arbitration cases across various arbitral institutions from 2020 to 2023, highlighting a marked increase in ICC-related cases [20]. This global expansion has encouraged Jordanian lawmakers to integrate arbitration more prominently within the national legal framework.

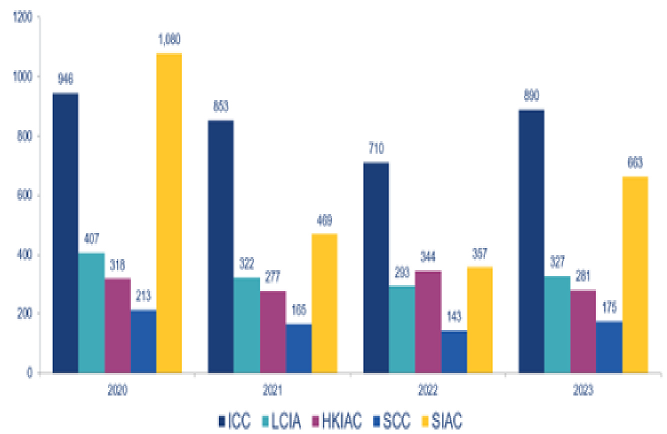

Figure 1: New Arbitrations Registered by Different Arbitral Institutions (2020-2023)
Source: Morgan ,Meaden-Torbitt [20]

2.2 Funding in the Arbitration Process

In Arabic, the term tamweel, meaning "funding," originates from the noun Mal, which denotes "money" or "wealth," and implies the possession or accumulation of financial resources. Technically, financing refers to the provision of monetary assistance to those requiring funds, either for a specified duration or in exchange for a service fee [21]. Broadly, financing encompasses the movement of funds—both in cash and financial instruments—across individuals, organisations, or states for purposes of production, investment, or consumption. Within the field of arbitration, funding is commonly referred to by several terms, including Third Party Litigation Funding (TILF), litigation financing, and pre-settlement financing, among others. These arrangements are categorised based on their dependence on the success of the case. According to Chaku [8], the Association of Litigation Funders (UK) defines litigation funding as a system in which an external financier provides the necessary capital to cover the expenses of complex arbitration or litigation proceedings. If the funded party succeeds, the funder receives an agreed portion of the proceeds, whereas, in the event of failure, the funder forfeits all invested resources [12].

Funding serves as the financial foundation enabling companies to maintain operations and sustain commercial activities. Within arbitration, a key issue concerns the relationship and contractual arrangement between the funder and the recipient [8]. Typically, third-party funders in arbitration include legal practitioners, client attorneys, corporations, banks, and insurance entities [6]. One of the primary challenges observed in such processes is financial instability arising from liquidity shortages and excessive indebtedness. To address these concerns, financial institutions have focused on developing innovative funding mechanisms. Consequently, businesses have adopted various agency contracts authorising banks and financial bodies to handle invoicing and secure the necessary financing [21]. Simultaneously, discounting contracts have been promoted to allow recovery of fixed debts prior to maturity. Factoring has also become a significant funding tool, providing enterprises with immediate liquidity to sustain operational continuity [4].

Globalisation has substantially influenced the evolution of financial instruments designed to meet expanding trade and economic requirements. Moreover, advancements in financial technology and engineering have reshaped the landscape of modern financing tools. Despite this, regulatory inadequacies remain prevalent, with legal frameworks often lagging behind economic transformation and growth [22]. Legislative enactments addressing these emerging mechanisms tend to progress slowly. Chaisse and Eken [23] observed that financing practices have gradually extended into previously unregulated domains such as arbitration and litigation funding, promoting broader economic efficiency. Disputes between contracting parties often lead to reduced liquidity and delayed payments, leaving one party financially disadvantaged and less capable of pursuing arbitration proceedings, thereby compelling it to settle under unequal conditions [24]. Within the arbitration context, the term TPF denotes the involvement of an external financier who covers legal expenses and procedural fees in return for a percentage of any awarded compensation [13].

3. Methodology

To investigate the various challenges encountered by funding parties in arbitration, an analytical study was undertaken using a comparative legal approach. This methodology involved examining

jurisprudential interpretations, judicial precedents, and statutory frameworks from both developed and developing jurisdictions that have introduced legislation concerning this issue. Particular attention was devoted to the provisions of the Jordanian Arbitration Law. The study relied on secondary qualitative data sourced from legal codes, statutory documents, academic articles, books, and other scholarly works addressing the difficulties faced by funding entities in arbitration contexts. For analytical purposes, content analysis was employed as the primary tool. This method proved effective in identifying recurring patterns within the collected materials, thereby facilitating the recognition and classification of the principal obstacles and challenges encountered by funding parties in arbitration proceedings.

4. Results and Discussion

The findings of this research are organised into two principal sections. The first section examines the evolution of TPF within the framework of arbitration, while the second section explores the application of TPF in arbitral proceedings, with particular attention to the emerging challenges associated with its implementation.

4.1 Section One: The Historical Development of TPF in Arbitration

As previously discussed, arbitration offers several advantages over conventional litigation and is widely regarded as the preferred mechanism for resolving commercial disputes. However, Nugraha and Riswadi [15] observed that arbitration expenses can be substantial and variable, encompassing arbitrator remuneration, expert and translator fees, attorneys' charges, travel and accommodation expenses, venue hire, and general administrative costs, all of which must be borne by the parties involved [1]. The considerable financial burden may discourage an aggrieved party from pursuing legitimate claims, prompting them to consider less costly alternatives such as mediation or the engagement of non-specialised legal representatives [17]. Under English law, the losing party is responsible for covering the overall legal expenses, including the opposing party's attorney fees, a principle also reflected in French law.

Historically, numerous theories have emerged linking law and economics to promote efficiency in dispute resolution and uphold access to justice. Among these, the Coase Theorem stands out as particularly influential. Thakkar and Agarwal [25] noted that the theorem posits that when legal entitlements are well-defined and transaction costs are negligible, disputing parties will reach an economically efficient outcome through negotiation, irrespective of how those rights were initially distributed. In practical terms, this implies that a plaintiff will pursue a claim only if the anticipated benefits outweigh the total litigation costs and will refrain from doing so if the costs exceed the potential gains—unless multiple claimants are involved, allowing financial risks to be shared [26]. Within this framework, TPF provides a mechanism for financially constrained parties to access justice, thereby promoting both procedural efficiency and investment opportunities that can generate profit [6].

Table 1: Trends Regarding the Acceptance of TPF

Trends	Description
Trend 1	Some countries, such as Ireland, remain sceptical about adopting TPF in arbitration. In 2017, the Irish Supreme Court ruled that third-party litigation funding violates both public and private law, declaring such agreements void and contrary to public policy due to their unlawful interference in case outcomes [2].
Trend 2	Certain jurisdictions, including France, India, most Arab nations, and several Latin American countries, have not established explicit legislative positions regarding TPF in arbitration [27].
Trend 3	Other jurisdictions, such as Australia, Hong Kong, and Singapore, have shown greater openness towards adopting TPF in arbitration. Although Switzerland initially prohibited TPF, the Federal Court of Lausanne lifted this restriction in 2004. The concept has since evolved in countries such as China, Germany, and Austria [2]. In the United States, regulatory approaches differ across states, with some maintaining public order principles that restrict third-party involvement, while others have relaxed such prohibitions.

According to Qtiashat and Qtaishat [2], many legal systems initially regarded third-party litigation funding (TPLF) as unlawful due to its perceived threat to judicial independence. In England, for instance, such funding was historically prohibited to prevent undue influence from powerful individuals or external financiers. Nonetheless, in 1967, England and Wales introduced a legislative exception permitting litigation funding solely in insolvency cases. Since the early 1990s, Australia has adopted TPF following a statutory exemption to the traditional Anglo-Saxon doctrines of maintenance and champerty in bankruptcy proceedings. This exemption was later extended through judicial rulings to cover a wider range of commercial disputes [7]. Subsequently, the United Kingdom and the United States also adopted similar frameworks. However, the expansion of litigation funding has generated extensive debate concerning the suitability of TPF in arbitral proceedings, primarily due to concerns regarding the confidentiality of arbitration, the impartiality and independence of arbitrators, and the requirement for adequate disclosure and transparency [22]. This divergence of views—balancing the advantages and drawbacks—has produced significant variation in national approaches to accepting TPF in arbitration. The resulting discourse is generally classified into three principal perspectives, as summarised in Table 1.

4.1.1 Third-Party Funding in Arbitration

The concept of TPF in arbitration has been defined in various ways across legal literature. Some scholars describe it as a mechanism involving financial support from external natural or legal persons who specialise in litigation or arbitration, in return for a share of the awarded proceeds. Such funding entities are not direct parties to the dispute and hold no personal or proprietary interest in the subject matter under arbitration [13]. Another definition characterises it as a process whereby a party to an arbitration receives financial assistance from an external investor or funder to pursue its claim. In exchange, the funder receives an agreed proportion of the potential profits arising from the arbitral award [4].

The International Centre for Commercial Arbitration, in collaboration with Queen Mary University, defined TPF in its 2018 report as an agreement through which a non-party entity provides financial or material support to a disputing party, its affiliate, or its legal representative to cover part or all of the procedural expenses. This support may extend to a specific case or a portfolio of cases and is generally offered in exchange for remuneration or reimbursement contingent upon the outcome of the dispute. The agreement may also stipulate that the funder bears responsibility for the opposing party's legal costs should the funded party lose the case [12]. Similarly, the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada defines TPF as any form of financial support extended by a non-disputing natural or legal person to cover, wholly or partially, the procedural costs. This funding may take the form of a donation, grant, or payment conditioned upon the outcome of the arbitration. A summary of the defining characteristics and core features of third-party funding, as derived from the aforementioned definitions, is presented in Table 2.

Table 2: Features of TPF

Features	Definitions
Feature 1	A formally executed written agreement between one of the disputing parties in an arbitration case and an independent funding entity.
Feature 2	The funding entity must be a third party, either a natural or legal person, who is not involved in the underlying dispute [23].
Feature 3	The funder's objective is to obtain a share of the proceeds awarded to the funded party if the claim succeeds; however, in the event of an unsuccessful claim, the funder receives no financial return and remains responsible for the costs committed under the funding contract [6].

Various challenges within arbitral tribunals, particularly those concerning the management of arbitration expenses and the securing of fees, often obstruct the practical implementation of TPF. Such difficulties typically emerge from disputes between parties over payment amounts and the absence of transparent fee structures [24]. As a result, payments are frequently delayed due to the financial incapacity of the disputing parties or disagreements regarding fees. The fee schedules established by arbitration institutions generally determine the arbitrators' remuneration and administrative expenses. According to Sivigang a [28], the determination of these costs is influenced by the value and complexity of the dispute. Arbitration organisations also ensure that payments for witnesses, experts, translators, document production, and solicitors' mediation are settled either in advance or during the proceedings.

Under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, Dorce [29] notes that the arbitral tribunal is responsible for determining the total arbitration costs in its final award or, if deemed appropriate, in a separate decision. The tribunal also holds discretion over cost allocation. These costs encompass the arbitrators' fees and expenses, their travel and other reasonable expenditures, the costs of expert advice or other assistance deemed necessary by the

tribunal, and any expenses incurred by the parties related to the proceedings, provided that such costs are considered reasonable. Additionally, fees and expenses associated with the appointing authority are included [12].

Article 41 of the same legal framework further stipulates that arbitrators' fees and expenses must remain reasonable, taking into account the dispute's value, the complexity of the subject matter, the time devoted by the arbitrators, and other relevant case circumstances. Where an appointing authority prescribes a particular schedule or method for determining arbitration fees, the tribunal must adhere to it when setting its own fees [8]. However, if the estimated fees appear excessive, the parties retain the right to seek judicial review to ensure cost control. Concerning the allocation of expenses, the UNCITRAL Arbitration Rules specify that the unsuccessful party generally bears the arbitration costs [30]. Nevertheless, the tribunal may, where appropriate, divide these costs between the parties, taking into consideration the specific case context, and formalise this apportionment in its final award [1]. TPF has become a significant topic in international arbitration, especially in relation to investment arbitration due to its rising cost implications [6]. The funder's decision to finance a claimant depends on several factors, including the claim's value, the claimant's profile, the expected duration of the proceedings, and the associated risks. Based on these considerations, funders estimate their profit margins, typically ranging from 15% to 50%. Litigation financiers often prioritise high-value claims, as such cases promise higher potential returns, balancing the financial risk with proportionate profit [31].

Funding entities generally employ a multi-stage evaluation process before committing to support an arbitration claim. The initial phase involves assessing investment criteria to filter out weak or non-viable applications. During this stage, the claimant's documentation and legal representation are critically reviewed to determine the strengths and weaknesses of the case [22]. Subsequent stages involve comprehensive evaluations integrating legal and financial expertise to reach a well-founded funding decision. This process requires collaboration between professionals in law, finance, asset valuation, and risk assessment to ensure sound investment judgement [7]. Overall, TPF represents an innovative mechanism within arbitration, primarily designed to alleviate the high financial costs of proceedings. It enhances access to justice by enabling financially constrained parties to pursue legitimate claims without bearing excessive economic burdens.

4.2 Section Two: Third-Party Funding of Arbitration: Legal Characterization and Emerging Challenges

4.2.1 The Legal Characterization of the TPF Arbitration Agreement

Over time, the legal nature of TPF in arbitration has been the subject of significant debate. Some jurisdictions consider TPF a loan arrangement, though interpretations vary considerably. Certain viewpoints equate it to a financial loan granted in return for a share in potential proceeds, reflecting the lender's financial interest. However, challenges persist in precisely defining TPF, as funders often design creative arrangements. Consequently, some scholars advocate for a "know it when you see it" perspective, urging parties to disclose the existence of funding regardless of its structure [32]. While this approach offers flexibility, it may also cause uncertainty among judges, arbitrators, and practitioners.

The funding agreement typically formalises the relationship between the financier and the claimant, ensuring procedural integrity throughout arbitration. It constitutes a consensual contract, free from defects such as coercion, fraud, or error in mutual consent, and must be documented in writing to ensure enforceability. Dorce [29] notes that although TPF facilitates access to justice, it can disrupt arbitral proceedings by creating potential conflicts of interest that may influence the final award. The subject of the funding contract must be lawful, specific, and feasible, and must relate to financing all or part of the expenses arising from dispute resolution. The arrangement benefits both sides: it allows one party to pursue arbitration without financial constraint while offering the funder an opportunity for profit. The agreement must be duly signed by both the claimant and the funder. For effective arbitration, the agreement should incorporate the following key clauses [33]:

- Clear and explicit intention toward the arbitrator
- Reference to a neutral and impartial tribunal
- Obligation to submit disputes to arbitration
- Finality of arbitral awards
- Adherence to relevant legal standards

Developing a sound funding agreement remains central to TPF within arbitration. Its principal elements generally include verification of available funds and their management, policies governing fund control, indemnity against adverse cost orders, measures to prevent conflicts of interest, confidentiality obligations, client–funder dispute protocols, and compliance with judicial orders. Furthermore, funders should be informed of factors such as potential damages, case merits, the legal team involved, and the parties' positions [34].

The funding agreement functions much like a spot contract, taking effect immediately upon execution and remaining active throughout the arbitration. Some legal scholars categorise it under a ji'alah framework, where a financial reward is granted for the completion of a specific task. This notion aligns with the principle of commission-based remuneration derived from the performance of a service or contribution to an outcome [35]. Others associate TPF with the muḍārabah contract, a profit-sharing model wherein one party contributes capital and another contributes effort or expertise in exchange for an agreed proportion of profit—commonly one-quarter or one-third [36]. In this arrangement, losses are absorbed by the investor unless caused by negligence or misconduct. Alternatively, some scholars relate TPF to a murābaḥah contract, in which a predetermined profit margin is assured for the financier [37]. Within the TPF context, a comparable pre-agreed return is established for the third-party funder.

TPF in arbitration can also be conceptualised as a contingent contract, akin to insurance, since both hinge on the occurrence of uncertain future events. Although it resembles wagering contracts in its dependency on uncertainty, TPF differs fundamentally in that financiers rely on extensive due diligence before committing funds, thereby mitigating speculative risk. Recently, TPF has gained prominence not only in traditional arbitration but also in tax treaty arbitration. This development reflects its growing utility in addressing financial and procedural barriers while enhancing access to justice and investment viability [38]. It is also essential to distinguish TPF from similar financial mechanisms such as lawyer financing (including pro bono representation, contingency, or conditional fee agreements), assignment of claims (as in mergers, liquidations, or factoring), and legal expense insurance, all of which manage litigation costs differently. Despite the growing relevance of TPF in international arbitration, Jordanian legislation still lacks explicit provisions governing it. Consequently, this study underscores this regulatory gap and offers recommendations to guide future legal and policy development in Jordan.

4.2.2 TPF in Arbitration: Advantages, Risks, and Facing Challenges

TPF in arbitration has gained significant scholarly and practical attention due to its mutual advantages for both the claimant and the funder. A key contribution of TPF lies in enhancing access to justice, particularly for claimants who encounter contractual disputes but lack sufficient financial means to pursue arbitration independently. In such situations, TPF provides essential financial support, covering arbitration fees and related expenses. This financial assistance not only empowers claimants to pursue their claims but also enhances their confidence throughout the process, which can contribute to more favourable outcomes.

The use of TPF enables claimants to engage legal representatives, often redirecting focus towards efficient resolution rather than mere cost constraints. Importantly, if the claim is unsuccessful, the claimant typically bears no financial burden. Furthermore, TPF enhances the credibility and quality of claims by encouraging rigorous legal scrutiny and due diligence. It also promotes the regulation of the claim-funding industry to ensure transparency and accountability [39]. Funders generally conduct extensive legal and risk assessments before investing, which can increase the likelihood of success for meritorious claims. By empowering financially disadvantaged claimants to pursue valid claims against wealthier opponents, TPF upholds fairness and equality in commercial arbitration. It deters the pursuit of frivolous or speculative claims and helps maintain balance in legal relationships. The practice aligns closely with SDG 16, which promotes access to justice and the development of effective institutions. Beyond arbitration, TPF is also applied in litigation and, in some cases, may extend to defendants [40].

Despite its advantages, TPF faces multiple challenges, including limited access to case law, instability of funding entities, and restrictions on confidential judgments. Funders often exercise discretion in selecting cases, which creates unequal access to financing. Key issues also involve conflicts of interest, cost security, exposure of confidential information, and potential procedural abuse [7]. Although TPF continues to gain global traction, it raises procedural and ethical concerns. Negotiating and finalising funding agreements can take considerable time, sometimes exceeding a year, leading to complex questions about disclosure and arbitrator impartiality [41]. Disputes between claimants and funders over settlement decisions, excessive funder influence, inflated claims, or fund misuse further complicate matters. Additionally, arbitral tribunals generally lack authority over funders, restricting their ability to address misconduct or funding withdrawal, which may cause

delays or termination of proceedings.

Overall, while TPF has strengthened access to justice and promoted equitable participation in arbitration, its practical, legal, and ethical challenges underscore the need for comprehensive regulation and transparency mechanisms to ensure its integrity and sustainability. Various obstacles linked to the TPF mechanism within arbitration are outlined as follows:

4.2.2.1 Confidentiality and Transparency

Confidentiality is widely recognised as a core principle of arbitration; however, it often conflicts with the requirement for disclosure imposed on both arbitrators and the disputing parties. Throughout the arbitral process, arbitrators are obligated to reveal any information that could potentially compromise or cast doubt on their neutrality. Likewise, the parties involved in arbitration must present all relevant case documents and disclose the identity of any third-party funders associated with the proceedings. In cases involving TPF, the funding entity and the recipient commonly enter into a confidentiality agreement that restricts the disclosure of details about the funding arrangement. Such confidentiality agreements are usually treated as separate contracts from the main arbitration agreement [4]. Additionally, in certain circumstances, information pertaining to the arbitration proceedings may be shared with external stakeholders, such as local communities, particularly when these groups are directly or indirectly affected or are linked through academic research, media interest, or contractual obligations. Consequently, striking a balance between confidentiality and transparency is considered crucial within arbitration practice. Despite the importance of confidentiality, transparency is often deemed more significant when the public or societal interest is at stake [4].

4.2.2.2 Conflict of Interest

A conflict of interest is characterised as an immediate and tangible opposition between an individual's personal interests and the interests of another party whose welfare that individual is obliged to safeguard. In the domain of financial investment, it is similarly described as a circumstance where a person's private interests come into tension with their professional responsibilities [42]. Such responsibilities generally pertain to the preservation of confidentiality, the maintenance of integrity, and the fulfilment of loyalty obligations. In standard arbitration proceedings, conflicts of interest typically arise between the claimant and the respondent. However, in cases involving TPF, the inclusion of additional financiers can further complicate matters, potentially giving rise to new conflicts. The delayed identification of such conflicts can prolong the arbitral process and may even lead to challenges against the arbitral award already rendered [43]. Although various legal frameworks and regulatory instruments have sought to address this matter, it remains relatively underexplored within arbitration scholarship owing to its emerging nature.

4.2.2.3 Allocation of Costs and Expenses

Given the emerging nature of TPF in arbitration, it continues to be largely unregulated at both international and national levels. One of the key challenges associated with its use concerns the allocation of arbitration expenses and costs, particularly since the funder is not formally recognised as a party to the arbitral proceedings. In instances where no prior agreement has been reached between the disputing parties and the arbitrators regarding the latter's remuneration, the arbitral tribunal is tasked with determining the appropriate fee. This decision is made with reference to the laws governing the seat of arbitration, including both procedural and substantive provisions, and may be appealed before the relevant judicial authority. The court's ruling in such matters is considered final, and in general practice, the losing party is held responsible for bearing the arbitration costs [44]. Arbitration costs encompass more than the fees and expenses of the arbitral tribunal; they also include institutional arbitration charges, as well as additional expenditures such as those incurred for witnesses, expert opinions, legal representation, and other case-specific requirements. The allocation of these costs typically follows one of three principal approaches [5]:

- Cost Follows the Event (English Principle): According to this principle, the unsuccessful party bears both its own and the opposing party's legal costs [45]. This approach seeks to discourage baseless or frivolous arbitration claims, and it is generally expected that the arbitral tribunal clarifies its application early in the proceedings.
- Pay Yourself (American Principle): Under this method, each party assumes responsibility for its own costs and expenses, irrespective of the case's outcome.
- Relative Success Approach: This method allocates costs proportionally, based on the extent to which each party succeeds in its respective claims [46].

Funding agreements are often treated as confidential due to the complex issues surrounding cost liability, especially in situations where an adverse costs order may be issued against the funded party. If the funded claimant loses the case, the funder may, in some circumstances, be required to provide financial support for these costs. Although no direct legal relationship exists between the funder and the opposing party (the respondent), liability may arise if explicitly stipulated in the funding agreement ([47]. Despite these provisions, arbitration proceedings are frequently viewed as financially demanding. Consequently, arbitral tribunals often play a crucial role in ensuring financial security for both sides by requiring the provision of cost securities. This measure becomes particularly important when the claimant possesses a strong legal case, but the respondent faces financial instability [48]. Such precautionary steps are essential to preserve the enforceability of the arbitral award and uphold the procedural integrity of the process. Moreover, while these measures aim to protect the claimant's rights, they may also deter potential claimants from initiating arbitration proceedings, thereby increasing the likelihood that claimants will seek third-party funding to meet the financial requirements associated with arbitration.

4.2.2.4 Corruption of Funding Sources

Despite the beneficial outcomes of globalisation in stimulating cross-border investment, capital movement, and service exchange, it has also contributed to a marked escalation in transnational financial crimes. A particular concern is the increasing incidence of money laundering operations designed to legitimise capital derived from unlawful or opaque origins [49]. This issue extends to arbitration proceedings, where certain funding sources may originate from unidentified or dubious international entities, effectively transforming TPF into a conduit for the circulation of illicit or smuggled assets. Such practices fundamentally compromise the ethical and legal underpinnings of TPF, whose primary objective is to promote equitable access to justice for disputing parties. Moreover, these illicit financial influences may infiltrate the arbitration process itself, potentially distorting its integrity and impartiality.

Arbitration possesses several distinguishing characteristics that set it apart from conventional judicial systems, including adherence to principles of equity, confidentiality, and procedural flexibility. It offers expedited proceedings, empowers parties to select both the governing law and their arbitrators, and provides a greater degree of autonomy. However, these same advantages have rendered arbitration susceptible to exploitation as a mechanism for money laundering and other financial crimes. One of the major criticisms levelled against arbitration as a dispute resolution mechanism is the heightened risk of corruption [50]. Addressing corruption has thus become a recurring challenge in both international commercial arbitration and investor–state arbitration, with arbitrators often navigating a delicate balance between adherence to international legal norms and their duties toward the parties involved.

Significant concerns have been raised regarding the ability of arbitrators in commercial arbitration to effectively recognise and address issues arising from criminal law, particularly in cases involving money laundering or corruption. An arbitrator encountering such matters for the first time must possess substantial expertise to comprehend how these offences influence the arbitral process. Nevertheless, empirical evidence suggests that corruption is frequently perpetuated by arbitral panels' reluctance to address contractual violations or unethical conduct by the parties [51]. This approach is often justified under the doctrine of separability, which safeguards the arbitration agreement from the taint of illegality in the underlying contract. Nonetheless, some scholars and practitioners contend that arbitral tribunals should have jurisdiction to adjudicate corruption-related disputes, invoking the competence-competence principle to reinforce the tribunal's authority to determine its own jurisdiction.

It is noteworthy that, although most jurisdictions have modelled their arbitration legislation on the UNCITRAL Model Law on International Commercial Arbitration [52], the Jordanian legal framework presents distinctive considerations. Jordan has made commendable progress in this domain through the enactment of the Amended Arbitration Law No. 16 of 2018 [53]. This legislation imposes a continuing duty upon arbitrators to disclose any new circumstances that may affect their impartiality or independence, extending from their appointment to the issuance of the final award. Moreover, in instances involving breaches of public order, Article 54/A of the Jordanian Arbitration Law allows partial enforcement of an arbitral award, provided that the portion contravening public order can be separated [54]. This provision ensures that the enforceable elements of an award remain valid and consistent with legal and ethical principles.

The findings of this study underscore the necessity of revising specific legal and regulatory provisions governing arbitration to align with

international best practices. Several recommendations emerge in this regard. Foremost among these is the need to incorporate explicit provisions addressing third-party funding within the Jordanian Companies Law and the Finance Companies Regulations, thereby preventing the annulment of arbitral awards on public policy grounds. Additionally, amendments to the Bar Association Law should be considered, alongside the introduction of a regulatory code of professional conduct governing relationships with funding institutions. Such a guide should mandate disclosure of the existence of funding arrangements, prohibit funder interference in arbitral proceedings or legal counsel decisions, and safeguard the confidentiality of communications between lawyers and clients.

5. Recommendations

Jordanian arbitration law necessitates the inclusion of detailed provisions to regulate TPF in order to align it with the principles of fairness, transparency, and procedural integrity that underpin arbitration. Given the emerging nature of TPF, several challenges arise, including issues related to conflicts of interest, transparency in disclosure, and the safeguarding of procedural integrity. Based on the findings discussed above, the following recommendations are proposed to strengthen the legislative and regulatory framework governing TPF in Jordan:

Enactment of a Clear Statutory Definition of TPF: It is proposed that a new provision explicitly defines TPF to prevent ambiguity. A suitable definition could be: “TPF is a contractual arrangement between a party to arbitration and an external entity (not a party to the dispute) under which the external entity finances part or all of the arbitration costs in exchange for a return contingent upon the case outcome.”

Introduction of a Dedicated Chapter on “Mandatory Disclosure of Funding”: This chapter should address all matters concerning disclosure obligations. One of its sub-provisions may read: “A party benefiting from third-party funding shall disclose in writing to both the arbitral tribunal and the opposing party the existence of the funding agreement and the identity of the funder. Confidentiality shall not be invoked to conceal the identity of the funding entity or any essential terms of the funding arrangement when such information is necessary to evaluate potential conflicts of interest.”

Insertion of a Clause Titled “Third-Party Funding and the Rejection of the Arbitrator”: This provision should state: “The existence of any direct or indirect financial or professional connection between the funder and a member of the arbitral tribunal shall constitute a valid ground for challenging the appointment of that arbitrator and for reconstituting the arbitral panel.”

Inclusion of an Article on “Securing Funding Integrity”: This clause should stipulate: “Funding arbitration through unidentified or illicit financial sources is strictly prohibited. Funding entities and funders must comply fully with anti-money laundering and counter-terrorist financing regulations.”

Addition of a new bylaw following Article 26 or Article 41(d) of the Jordanian Arbitration Law to strengthen procedural seriousness and continuity:

Unless the parties agree otherwise, the arbitral tribunal or the arbitrators may request the parties, upon initiation of the proceedings, to deposit sufficient funds to cover fees, administrative costs, and related expenses. If such funds are not provided, the arbitrators may suspend or terminate the proceedings.

In cases where a party fails to make payment within the prescribed period, the arbitrators must notify the other parties and grant an additional period to settle the outstanding amount before halting the proceedings.

Where arbitration is supported by third-party funding, the tribunal may require the funder or funding institution to submit a guarantee or partial guarantee letter to affirm financial commitment and ensure procedural continuity.

Clarification of the Standard for Disclosure Obligations: Although Jordanian arbitration law obliges arbitrators to disclose any circumstances that may raise doubts about their impartiality or independence, it does not clearly specify the threshold for this obligation. It is therefore recommended that Jordan adopt the International Bar Association’s Guidelines on Conflicts of Interest in International Arbitration (including subsequent amendments) as a standard reference.

Integration of the Proposed Reforms into the UNCITRAL Model Law Framework: To promote international harmonisation, these recommendations should be aligned with the UNCITRAL Model Law, which supports the incorporation of TPF mechanisms. Furthermore, it is advisable to establish a comprehensive Code of Conduct to regulate third-party funding in arbitration. This code should explicitly prohibit fraudulent, deceptive, reckless, or bad-faith behaviour, thereby safeguarding the integrity of arbitration and reinforcing public confidence in the process.

6. Conclusion

TPF in arbitration is a distinct commercial arrangement that functions independently of the arbitration agreement and may be established before or during the proceedings. Unlike traditional financing methods, it is a specialised contractual relationship with unique legal and financial implications. Despite its growing importance, TPF remains largely unregulated, limiting its global acceptance. The current Jordanian legal framework neither permits nor prohibits TPF, revealing a legislative gap and the need for reform. Under this arrangement, the funder is not a party to the arbitration and has no authority to influence the tribunal’s decisions. The funder’s obligations are limited to the funded claimant, while the identity of the funder must be disclosed to enhance transparency, with the specific terms of the funding agreement kept confidential. This disclosure helps prevent conflicts of interest and upholds the impartiality of proceedings. However, the absence of cost allocation mechanisms and concerns over illicit funding sources pose significant challenges. Therefore, it is essential for Jordanian arbitration law to include clear provisions regulating TPF to ensure fairness, transparency, and accountability, thereby strengthening confidence in arbitration as a dispute resolution method.

7. Research Implications

This study has undertaken a comprehensive examination of TPF within the framework of arbitration, elucidating its conceptual foundations, operational mechanisms, and legal implications. It has been established that TPF serves as a crucial instrument for providing financial support to parties engaged in arbitration, thereby facilitating access to justice. The research also underscores that such funding arrangements may be introduced at any phase of the arbitral process. Furthermore, the distinctions between TPF and other forms of financial support have been clearly delineated, highlighting its unique contractual and procedural characteristics. The study has also identified several legal constraints associated with the application of TPF, which signify the need for the establishment of a specific statutory framework to regulate its integration within arbitration proceedings. The findings derived from this research further advocate for the inclusion of explicit legislative provisions governing TPF within Jordanian law. In particular, the study recommends the introduction of a clause entitled “Third-Party Funding and the Rejection of the Arbitrator,” aimed at ensuring transparency and safeguarding the independence of arbitral tribunals. The adoption of such reforms is expected to encourage Jordanian legislators to formalise the role of TPF in arbitration, promoting its structured and effective implementation. Additionally, these recommendations will assist policymakers in developing comprehensive policies related to TPF, thereby mitigating potential procedural and ethical challenges while reinforcing confidence in the arbitration system.

8. Limitations and Directions for Future Research

One of the primary limitations of this research lies in its reliance on secondary data sources, stemming from restricted access to primary empirical evidence. Additionally, the study’s scope has been confined to an in-depth exploration of the concept of TPF within the arbitration context, which may reflect an element of research bias. Another limitation concerns the absence of a detailed comparative evaluation between Jordan and the United Kingdom. This gap restricts a comprehensive understanding of how the integration of TPF could enhance the Jordanian legal framework governing arbitration. Future investigations could address these limitations by incorporating primary data collection from relevant stakeholders, including legislators, policymakers, and legal practitioners, to obtain deeper insights into the evolution and practical implementation of TPF-related legislation. Moreover, subsequent studies may extend the analysis to encompass other dimensions of arbitration, such as cost efficiency, procedural duration, and the quality of arbitral outcomes. Conducting a focused comparative study between the United Kingdom and Jordan would also be valuable in identifying existing legal discrepancies and informing the development of more robust and contextually appropriate TPF provisions within Jordan’s Arbitration Law.

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