

Third-Party Funding in Nigerian Arbitration:

*Need for a Comprehensive
Regulatory Framework*



Introduction

Third-party funding (TPF) has become one of the most transformative developments in modern arbitration practice, reshaping how parties finance arbitral claims. By enabling an external financier to fund arbitral proceedings in exchange for a share of or stake in the proceeds of an arbitral award,¹ TPF enhances access to justice,² allowing parties, who may not have adequate means, to pursue meritorious claims.

Historically, TPF faced significant legal barriers in Nigeria due to the common law doctrines of maintenance and champerty.³ These doctrines prohibited third parties from funding disputes in which they had no legitimate interest.⁴ This position has now been fundamentally altered by the enactment of the Arbitration and Mediation Act 2023 ("AMA" or "the Act"),⁵ which expressly recognises and permits TPF in arbitration.

While this statutory recognition is a welcome development, considering that it promotes access to justice, Nigeria's TPF regime remains nascent. Critical questions relating to disclosure, ethical boundaries, and regulatory oversight remain unresolved. This article examines the emerging legal framework for TPF in Nigeria, identifies key gaps, and draws comparative lessons from more developed third-party funding frameworks as a guide to improving the Nigerian TPF legal framework.

Statutory Recognition of Third-Party Funding in Nigeria

The AMA represents a decisive shift in Nigeria's arbitration landscape by expressly recognising third-party funding arrangements. Most significantly, the Act provides that the torts of maintenance and champerty do not apply to third-party funding arbitrations seated in Nigeria and arbitration related proceedings before Nigerian courts. This reform removes a longstanding legal impediment that affected funding arrangements, ensuring that TPF are not objectionable merely on the basis of maintenance or champerty.

The implication of this development in Nigeria's arbitration ecosystem is twofold. First, as noted earlier, it enhances access to justice, particularly for claimants who have meritorious claims but lack sufficient financial resources to pursue them. Second, it introduces new commercial dynamics into arbitration, where funders become key stakeholders, though not parties, in dispute resolution (through arbitration) in Nigeria.

However, statutory recognition of TPF alone does not constitute a comprehensive regulatory framework. The AMA provides only a skeletal structure as regards TPF, with one of its key features being the recognition of TPF and abolishment of the prohibitive doctrines of maintenance and champerty, leaving many key areas unaddressed, creating regulatory gaps giving rise to uncertainties that may potentially undermine TPF in arbitration in Nigeria.

Regulatory Gaps in Nigeria's TPF Framework

Disclosure and Transparency

A central pillar of the emerging TPF framework in Nigeria is the requirement for disclosure of funding arrangements. The AMA mandates that a party benefiting from third-party funding must disclose the existence of the funding arrangement and the identity of the funder to all relevant parties to the arbitration: the other party or parties, the arbitral tribunal, and, where applicable, the arbitration institution.⁸

The Nigerian approach of requiring disclosure of third-party funding mirrors international best practices. For instance, the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration recognise the importance of disclosing relationships with funders.⁹ Similarly, arbitral rules such as those of the International Chamber of Commerce (ICC) and International Centre for the Settlement of Investment Dispute (ICSID) increasingly incorporate disclosure obligations relating to TPF.¹⁰

Despite this alignment, the Nigerian TPF framework lacks clarity on the scope and exact timing of disclosure. There is no requirement that the disclosure must include the terms of the funding agreement, or that updates are required when funding arrangements change, or whether non-compliance attracts procedural sanctions. These uncertainties may create inconsistencies in practice and undermine the effectiveness of the disclosure in TPF.

No Regime Governing

- Third-party funder registration or licensing
- Capital adequacy requirements
- Oversight mechanisms

Regulating Third-Party Funders

With the recognition of TPF, third-party funders are thrust into an important position in alternative dispute resolution in Nigeria. Considering their role, particularly as they fund disputes in Nigeria, they ought to be adequately regulated. However, there is no comprehensive regulatory regime governing third-party funder registration or licensing, capital adequacy requirements, or oversight mechanisms.

Without appropriate regulation, it means that third-party funders do not need to have adequate expertise in funding arbitration or capital. Given the complex nature of some arbitral proceedings, requiring technical expertise in structuring and funding the arbitral proceedings, this lacuna may allow the participation of funders lacking adequate experience, exposing funded parties to risks, which may include but are not limited to premature withdrawal of funding, inability to meet funding requirements, pressure to accept an unfavourable settlement.

Another issue that may arise with the introduction of TPF in Nigeria without adequate regime regulating third-party funders is the likelihood of a third-party funder having an interest in the subject matter of the dispute, which may be inconsistent with the funded party's position. While disclosure of TPF arrangement is mandated, it may be difficult to ascertain whether the funder has a prior conflicted interest in the subject matter of the dispute, and if so, the nature and extent of that interest.

In this regard, there appears to be a lacuna in the definition of third-party funders, as it relates to arbitration. For instance, AMA defines a 'third-party funder' as 'a person who is not a party to the dispute'.¹¹ This shows that third-party funders are not defined in a manner that prohibits a third-party funder from having an interest in the subject matter of arbitration.

Ethical and Professional Conduct

The fact that TPF involves the funding of arbitral proceedings usually for financial benefit heightens the risk of ethical issues and professional misconduct. These issues, as will be highlighted below, relate to both third-party funders and legal counsel representing the funded party in arbitral proceedings, and if unaddressed may undermine the prospects of TPF in Nigeria.

It is common practice that funders would want some control or involvement in key decisions relating to the arbitration, such as settlement discussions, discontinuing a claim, pursuing a related claim, disclosing funding terms, choice of arbitrator or counsel or experts. Ethical issues may arise where the legal counsel allows the third-party funder to dictate the arbitral proceeding due to the funder's projected financial goal. Despite this risk, there are no clear rules addressing the extent of funder control over arbitral proceedings.

Closely related to the above is the issue regarding confidentiality obligations. Professionally and legally, client-attorney confidentiality exists between legal counsel and the party represented in arbitral proceedings. The lack of definite rules regulating TPF and client-attorney confidentiality may create ethical risks for legal counsel where certain confidential information is disclosed to the third-party funder.

Where Funders Seek Control

- Settlement discussions
- Discontinuing a claim
- Pursuing a related claim
- Disclosing funding terms
- Choice of arbitrator, counsel or experts

Within a TPF arrangement, legal counsel and third-party funder provide services to the funded party in a broad sense that the former provides legal services while the former provides funding. There may be some level of relationship between the legal counsel and the third-party funder, which may include but not limited to recurring commercial relationship, referral arrangements, etc. However, the scope of this relationship remains undefined or unregulated, creating potential ethical issues, for instance, where the legal counsel takes a financial interest in the proceeds of the TPF.

The above highlights some of the regulatory gaps in Nigeria's TPF framework, which, if not addressed, as earlier noted, may not only undermine the development of TPF in Nigeria but may also create broader issues in the dispute resolution ecosystem, including ethical issues in the legal profession. In light of this, the subsequent section will address some of these issues, drawing inspiration from other jurisdictions.

Recommendations: Lessons from Other Jurisdictions

While the AMA may be considered to have improved dispute resolution in Nigeria with the introduction of TPF, from the analysis above, it becomes apparent that it raises certain issues. Nigeria can benefit from the experience of other jurisdictions to address some of these issues highlighted. The focus here will be Singapore and Hong Kong, which are one of the first jurisdictions to introduce specific statutory frameworks regulating TPF in arbitration.¹⁷

In 2017, Singapore passed the Civil Law (Amendment) Act 2017 (CLA) and the Civil Law (Third-Party Funding) Regulations 2017 (CLR), permitting TPF for international arbitration. Similarly, Hong Kong introduced the Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017 (AMLO) and the Code of Practice for Third-Party Funding for Arbitration in 2019 (Code of Practice).

Drawing on these laws, the areas that will be recommended, for the purpose of the present article, for a prospective TPF instrument in Nigeria's will cover disclosure obligations, regulating third-party funders, safeguards for ethical conduct. These areas will be discussed briefly below.

Singapore

Civil Law (Amendment) Act 2017 (CLA) and the Civil Law (Third-Party Funding) Regulations 2017 (CLR)

2017

Hong Kong

Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017 (AMLO) and the Code of Practice

2017 · 2019

Disclosure Obligations

In Hong Kong, the AMLO requires the funded parties to disclose the existence of TPF at the commencement of the arbitration or within 15 days after the conclusion of the funding agreement,¹⁸ while the Code of Practice mandates the third-party funder to remind the funded party of its obligation to disclose TPF.¹⁹ In Singapore, by the public consultation paper, it is the legal counsel that is required to disclose the existence of TPF as well as the identity of the third-party funder as soon as practicable.²⁰

As noted earlier, while the AMA provides the period to disclose TPF,²¹ it does not prescribe a definite timeline. However, as seen above, timing is considered important. In light of this, there is the need to prescribe a specific timeline to disclose any funding arrangement, while imposing the obligation to disclose on both the party and the legal counsel. Extending the duty to disclose TPF to legal counsel may ensure that proper advice is given to the funded party. The duty may be considered discharged if there is evidence that the funded party was advised to disclose the existence of TPF.

Regulating third-party funders

Under the AMLO in Hong Kong, a third-party funder is a party to a funding agreement providing fund for arbitration and who does not have an interest recognised by law in the arbitration other than the funding agreement. Going further, a person who does not have interest in the arbitration is one who does not have interest in the matter in which an arbitration is yet to commence or one who did not have interest in an arbitration that has ended.

By this definition of third-party funder, it means that if at any time the funder has an interest in the matter other than the interest in the funding agreement, they cannot participate as a funder. This provides an important limitation to TPF to minimise conflicts of interest or abuse, and it may be considered an appropriate way to regulate third-party funders' participation in arbitral proceedings.

To ensure that third-party funders are financially capable, in Hong Kong, the Code of Practice provides for 'capital adequacy requirements', requiring a funder, in addition to other financial requirements, "to maintain access to a minimum of HK\$20 million of capital". This ensures that the funder is able to pay its debts and can cover all its funding liabilities. In Singapore, the third-party funder must have not less than \$5 million or its equivalent in foreign currency in paid-up share capital.

Appreciating the potential for conflict of interest in TPF, in Hong Kong, the Code of Practice requires third-party funders to put in place effective procedures to manage any conflict of interest that may arise as a result of the funder's activities in relation to the funding agreement and to avoid any step(s) that may cause the funded party's legal representative to act in breach of their professional duties.

In addressing the issue of confidentiality, especially as regards information that might be provided by the funded party's legal representative, the Code of Practice mandates third-party funders 'to observe the confidentiality privilege of information and documentation relating to the arbitration and the subject of the funding agreement' to the extent that the law permits.

Capital Adequacy

- Hong Kong — access to a minimum of HK\$20 million of capital
- Singapore — not less than \$5 million in paid-up share capital

Safeguards for ethical conduct

In Singapore, the law has minimised legal counsel's conflict of interest in TPF. Under the CLA, which amended section 107 of the Legal Professional Act (Cap 161), while legal counsel can negotiate, advise, or draft TPF contract for the client, and can act on behalf of the client in dispute arising from the TPF contract, they are prohibited from receiving direct financial benefit from introducing or referring a third-party funder to the client (or funded party).²⁸

Conclusion

The recognition of TPF under the Arbitration and Mediation Act 2023 marks a significant milestone in the evolution of arbitration in Nigeria. By removing historical barriers and legitimising funding arrangements, the Act positions Nigeria as an emerging arbitration-friendly jurisdiction, at least to the extent that it enhances access to resolving disputes through arbitration. However, the current framework is incomplete, considering that without more comprehensive rules on disclosure, third-party funder regulation, and rules of ethical conduct, TPF may introduce new risks even as it attempts to enhance access to justice.

The challenge for Nigeria is therefore not whether to embrace TPF, but how to regulate it effectively. A coherent and well-developed framework, some of which had been addressed in the article, including but not limited to imposing disclosure obligations (including specific timelines), proper regulation of third-party funders, and providing safeguards for ethical conduct, would not only protect the integrity of arbitral proceedings but could also enhance Nigeria's attractiveness as a seat of arbitration in the global dispute resolution landscape.

The challenge ahead

"A coherent and well-developed framework ... would not only protect the integrity of arbitral proceedings but could also enhance Nigeria's attractiveness as a seat of arbitration in the global dispute resolution landscape."

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Endnotes

1. It must be pointed out that third party funding may not always be in exchange for a share in the proceeds of the arbitral award. See Arbitration and Mediation Act, 2023, s 91 (1) (with the definition of third-party funding agreement indicating that the funding could be 'through a donation or grant').
2. On discussions about the impact of third party funding on access to justice, see Ronen Avraham and Abraham Wickelgren, 'Third-Party Litigation Funding—A Signaling Model' (2014) 63 DePaul Law Review 233, 234; Victoria Sahani, 'Rethinking the Impact of Third-Party Funding on Access to Civil Justice' (2020) 69 DePaul Law Review 611, 617; David S Abrams and Daniel L Chen, 'A Market for Justice: A First Empirical Look at third Party Litigation Funding' (2013) 15(4) University of Pennsylvania Journal of Business Law 1075, 1077 n.7.
3. Maintenance is 'improperly stirring up litigation and strife by giving aid to one party to bring or defend a claim without just cause or excuse', while champerty is when a person 'maintaining another stipulates for a share in the proceeds' in the outcome of the dispute proceeding(s). See *In Re Trepca Mines Ltd (No.2)* (1963) 1 Ch. 199, 219-220; *Oyo v Mercantile Bank (Nig.) Ltd* (1989) 3 NWLR (Pt. 108) 213, 228 D-G.
4. *Ibid.*, 'The reason why the common law condemns champerty is because of the abuses to which it may give rise. The common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame the damages, to suppress evidence, or even to suborn witnesses'.
5. Arbitration and Mediation Act 2023, s 61.
6. *Ibid.*
7. In the case of *Oyo v Mercantile Bank (Nig.) Ltd*, 227-228 H-B, which arose from a dispute regarding the solicitor's fees, the Respondent sought to render the contingency fee arrangement illegal by contending that the Appellant was guilty of champerty.
8. Arbitration and Mediation Act 2023, s 62.
9. IBA Conflict of Interest in International Arbitration, General Standard 7(a)i and (b) (mandates a party to disclose 'any relationship, direct or indirect, between the arbitrator and any person with a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration; and any other person or entity it believes an arbitrator should take into consideration when making disclosures).
10. See ICSID Arbitration Rules, rule 14; ICC Arbitration Rules 2026, art 1(6).
11. Arbitration and Mediation Act 2023, s 91(1).
12. See CIARB, 'Guide on Third-Party Funding' (CIARB 2025) 42, 50 (recognising that while most funders may have a hands-off approach, they want to be involved in certain key decisions as it relates to the arbitration and these are usually contained in the funding agreement) <https://www.ciarb.org/media/sijpb14w/ciarb-guideline-on-third-party-funding-1.pdf> accessed on July 20, 2026.
13. It is the lawyer's responsibility to decide what cases to prosecute to defend. See Rules of Professional Conduct, rule 24(2). Abdicating that responsibility to a third-party funder may raise ethical issues.
14. See, for instance, Rules of Professional Conduct, rule 19.
15. It is common for the third-party funders to request and receive confidential and privileged information about the funded party's case. See Victoria Sahani, 'Disclosure of Third-Party Funding in David Siffert (ed) International Arbitration in Mandatory Disclosure Rules in Dispute Financing' (2020) 153, 175-76. Available on https://scholarship.law.bu.edu/faculty_scholarship/3478/?utm_source=scholarship.law.bu.edu%2Ffaculty_scholarship%2F3478&utm_medium=PDF&utm_campaign=PDFCoverPages accessed June 19, 2026.
16. A lawyer should not accept a retainer if the exercise of his professional judgment would be affected by financial, business, property, or personal interest. See Rules of Professional Conduct 2023, rule 17(2).
17. For extensive discussion on third-party funding laws in Singapore and Hong Kong, see Can Eken, 'A Detailed Comparison of Third-Party Funding Regulations in Hong Kong and Singapore' (2021) 29(1) Asia Pacific Law Review 21; Caroline Kenny, 'A Comparison of Singapore and Hong Kong's Third-Party Funding Regimes to England and Australia' (2021) 87(2) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 170; Oliver Gayner and Susanna Khouri, 'Singapore and Hong Kong: International Arbitration Meets Third-Party Funding' (2017) 40(3) Fordham International Law Journal 1033.
18. Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017, s 98U.
19. Code of Practice for Third Party Funding of Arbitration, Art 2 (2.10).
20. Public Consultation on the Draft Civil Law (Amendment) Bill 2016 ("Amendment Bill"); Civil Law (Third Party Funding) Regulation 2016, Government of Singapore, 30 June 2016. Available at <https://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-the-draft-civil-law--amendment--bill-2016/> accessed on June 17, 2026.
21. It stipulates either at the commencement of the arbitration or as soon as the agreement is made, if after the commencement of arbitration. See Arbitration and Mediation Act, s. 62(2).
22. Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017, s 98J (1).
23. Arbitration and Mediation Legislation (Third-Party Funding) (Amendment) Ordinance 2017, s 98J (2).
24. Code of Practice for Third Party Funding of Arbitration, Art 2 (2.5).
25. Civil Law (Third-Party Funding) Regulations 2017 (2024 Revised Edition), Art 4(1)b.
26. Code of Practice for Third Party Funding of Arbitration, Art 2 (2.6) (2.7).
27. Code of Practice for Third Party Funding of Arbitration, Art 2 (2.8).
28. Singapore Legal Profession Act (Cap 161), s 107 (3A).



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