

# Client Update

## Hong Kong and Singapore Permit Third-Party Funding in International Arbitration

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In June 2017, Hong Kong amended its arbitration law to allow third-party funding (“TPF”) for international arbitration and related court proceedings. The amendments follow on the heels of similar developments in Singapore, Paris and Dubai earlier this year, reflecting the increasing popularity of TPF.

### INCREASING ACCEPTANCE OF TPF

Until recently, the legality of TPF in some common law countries was uncertain. The historical torts of champerty and maintenance prevented a party without a good faith interest in a case from funding a litigant. These torts were seen as bars to the use of TPF.

Common law countries have, however, increasingly carved out space for TPF in arbitration. For example, in 2016, the English Commercial Court upheld a London-seated ICC tribunal’s order for costs that included a funder’s fee. In January 2017, Singapore abolished champerty and maintenance and confirmed that TPF may be used in international arbitration and related litigation. Most recently, in June 2017, Hong Kong amended its Arbitration Ordinance to expressly permit TPF.

Also this year, the Paris Bar Association passed a resolution endorsing TPF in arbitration and confirming that it is consistent with French law. The courts of the Dubai International Financial Centre also adopted a Practice Direction on TPF. In contrast, in May 2017, the Irish Supreme Court held that a TPF arrangement in a domestic claim constituted champerty under Irish law. The Court did, however, recognize the need for law reform in this area.

### PRACTICAL ISSUES

These developments come at a time of increased focus on regulation of TPF in international arbitration. Hong Kong announced that it will develop a Code of

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Practice setting out ethical and financial standards for funders (as the United Kingdom did in 2011). Both Hong Kong and Singapore now require that the use of TPF, and name of the funder, be disclosed to the tribunal and other parties.

Some issues to consider when using TPF are:

- Whether the funder can give instructions to the party's lawyers, or otherwise influence the conduct of the arbitration;
- Should communications between the lawyer or client and the funder be protected by privilege;
- Must parties disclose the use of TPF, and what information must be disclosed;
- How the discovery of adverse facts and the settlement of the case can affect the funding arrangement;
- Should TPF affect the allocation of costs; and
- Ethical or financial regulation of funders themselves.

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Please do not hesitate to contact any member of the International Disputes Group at Debevoise (contacts [here](#)) with questions that you may have about TPF in international arbitration.