

Examining the potential and difficulties of third-party funding in arbitration under Jordanian law

OMAR SADDAM FADHIL^{a,1}

^a Department of Law, College of Law and Political Science, Al-iraqia University, Email: omar.s.fadhil@aliraqia.edu.iq

* Corresponding Author: OMAR SADDAM FADHIL, omar.s.fadhil@aliraqia.edu.iq

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ABSTRACT

Third-party funding (TPF) is a current technique that improves parties' access to arbitration and helps to increase access to justice in light of recent legal and economic developments. Despite being widely accepted, the TPF concept is still not widely applied in Jordanian law and faces a number of ethical and legal framework-related obstacles. To comprehend its function and possibilities for enhancing the arbitration system, a thorough investigation is required. The purpose of this study is to examine the function of third-party funding in arbitration proceedings under Jordanian law, with an emphasis on the opportunities, risks, and potential difficulties that it may provide. In order to provide a thorough and cohesive overview of the subject, the study uses a legal analytical methodology based on a review of pertinent literature, an analysis of pertinent Jordanian legal texts, and pertinent international comparative studies. According to the study's conclusions, third-party funding has a great deal of potential to strengthen the arbitration environment by empowering parties with little money, increasing the efficiency of processes, and facilitating wider access to the legal system. A clear legal and regulatory framework is necessary to guarantee the preservation of all parties' rights, since the study identified ethical and legal issues pertaining to secrecy, conflicts of interest, and the independence of the arbitration panel. The study also underlined how crucial it is to raise ethical and transparency standards and create regulations for third-party fundraising in Jordan. The study concludes by highlighting the significance of creating a cogent legal framework that takes into account international trends, strengthens justice, and addresses the risks and difficulties involved. By ensuring openness, honesty, and the rights of all parties, this study is a major step toward the safe and successful incorporation of third-party funding into the Jordanian arbitration system.

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1. Introduction

A key component of settling civil and business disputes is arbitration. It is a versatile and efficient way to settle disputes between parties, especially in situations when speed and decisiveness are more important than in traditional court proceedings [1]. Numerous advancements have been made to arbitration since its establishment with the goal of increasing its efficacy, refining its

instruments, and identifying creative ways to increase accessibility [2]. This is meant to solve the time, money, and flexibility issues that the conventional legal system presents. The idea of third-party financing (TPF) has surfaced as a relatively new funding option among these advancements. Through TPF, parties to a dispute contribute money to arbitration proceedings in return for a cut of the costs or profits [3]. Particularly for parties with little means who might otherwise be prevented from pursuing their disputes through arbitration due to financial constraints, this contemporary financing model acts as an incentive to further improve justice and increase access to arbitration. This lowers financial obstacles and improves the mechanism's ability to settle conflicts [4].

Third-party financing is becoming better understood and regulated in many legal systems, especially in nations that have embraced sophisticated commercial and civil arbitration processes. Nonetheless, there is still a glaring lack of knowledge regarding how third-party financing methods align with Jordan's legal system. Arbitration is becoming more and more common in this environment, although its legal and ethical framework is not well defined by rules [5]. Given possible ethical and legal issues like confidentiality violations, conflicts of interest, or a misunderstanding of the roles of the financier and the arbitration mediator, this discrepancy raises significant concerns about how Jordanian laws handle third-party financing practices and whether they ensure the independence and integrity of arbitration proceedings. The integrity of arbitration procedures is threatened by the lack of a defined legal framework, which also makes it more difficult to disclose possible dangers [6]. This calls for a thorough investigation of the sector in order to set precise guidelines and standards that address Jordan's present demands while staying up to date with international advancements. By examining the function of third-party financing under Jordanian law, this study seeks to close this gap by examining both the opportunities it presents to promote access to justice and the difficulties it poses in terms of ethical and legal issues. Additionally, it aims to provide suggested insights for creating a legal and regulatory framework that guarantees the independence of arbitration proceedings, improves transparency, and tackles possible obstacles. In the end, the research aims to give legislators and stakeholders clear reference frameworks that help regulate this practice and balance its benefits and risks. This would allow third-party financing to become an effective and sustainable tool for strengthening the arbitration system in Jordan, thereby upholding the principle of justice and ensuring procedural integrity. This would allow third-party financing to expand in Jordanian arbitration while protecting the ethical and legal principles that protect the integrity and transparency of the proceedings.

2. Literature Review

2.1. The Definitions and Local and Global Development of the Third-Party Financing (TPF) Concept

In the realm of dispute resolution, third-party financing (TPF) is a relatively recent idea, especially when it comes to commercial and civil arbitration. TPF is a funding approach wherein financial support is provided to administer and direct arbitration procedures by an impartial party that is not involved in the dispute. The funding entity, as a non-participant in a particular dispute, offers the party in need financial support in return for a portion of the dispute's resolution, whether in the form of pay or other gains [7].

Due to the increasing demand for financial facilities to get around resource limitations, particularly for small and medium-sized businesses (SMEs) and parties without enough money to pursue their claims through arbitration procedures, third-party financing was first used in international commercial contracts in the late 20th century. As more laws, investigations, and standards have been developed, third-party funding (TPF) practices have continued to change. Because they want to create an atmosphere for arbitration that is open, equitable, and takes into account the interests of all parties, nations like the US, UK, and Australia have taken the lead in regulating this procedure [8].

In Jordan, however, the notion of TPF is still in its early phases. This approach has not been specifically approved by Jordanian law, and more research and regulations are required to make sure that its use aligns with the country's current legal frameworks and principles. However, unofficial procedures or private agreements involving TPFs that have been reached between some parties point to a possible real-world scenario that needs to be regulated and clarified [9].

2.2. The Significance of Arbitration Financing Models

In the context of arbitration, there are numerous third-party financing models available. These can be divided into groups based on return sharing, risk sharing, and funding methods. Among them are [10]:

A. Outcome Sharing Model: In exchange for agreeing to fund the proceedings, the financier gets a portion of the money or result that the party in need obtains. In intricate business issues, this paradigm is most frequently employed.

B. Loan Model: Without taking a cut of the final result, the financier offers a loan to pay arbitration fees, which must be paid back once the dispute is settled.

C. set or Graduated Fee Model: A set or graduated financing fee with predetermined repayment terms is agreed upon by the parties.

By enabling the smooth conclusion of arbitration proceedings and promoting the continuation of international contractual norms, these financing models are crucial because they empower parties with limited resources, increase their chances of enforcing their rights, and improve access to justice.

2.3. Legal Structures and the Jordanian Arbitration Law Framework

The legislative structure that governs arbitration in Jordan is directly related to the evolution of third-party funding activities. A key piece of legislation governing arbitration, the Jordanian Arbitration Capacity Law (Law No. 31 of 2001) lays forth the main guidelines for independent and adaptable conflict settlement processes. The law does not specifically address third-party funding schemes, govern the interactions between funders and parties, or specify their rights and obligations, despite the fact that it covers several broad aspects [11]. This creates a barrier to the actual implementation of funding procedures in the context of Jordanian arbitration and gives a great deal of opportunity for interpretation. Furthermore, although they are not expressly devoted to third-party funding in the context of arbitration, pertinent Jordanian legislation including the Companies Law, the Contracts Law, and the Civil Code function as fundamental guidelines controlling funding and contractual relationships generally. This calls for the creation of particular laws for this kind of model [12].

2.4. Comparative Analysis with Applicable International Laws and Customs

Significant progress has been made globally in efforts to regulate third-party funding, especially in nations that are leaders in this area like the US, UK, and Australia. The Financial Conduct Authority (FCA) in Australia has enacted strict rules that outline the conditions for the interaction between parties and financiers, guaranteeing openness, defending the rights of parties, and reducing legal risks. The Trade Finance Advisory Group (TFAG) Guidelines are one of the most well-known worldwide projects. They offer precise rules for governing the interaction between financiers and parties, with a focus on governance, fairness, and openness [13].

With an emphasis on adherence to anti-money laundering and counter-terrorism financing regulations, the Law Society of the UK's Trade Finance Principles govern financing methods in a way that improves financier accountability and offers a framework for safeguarding parties' rights. In order to maintain the integrity of third-party finance operations, the Financial Services Authority (FSA) also establishes explicit guidelines that mandate complete disclosure of terms and conditions.

Regulations are in place to guarantee transparency, legal monitoring, and the protection of the financing party and the recipient in the United States, where some detrimental financing models have been curtailed [14].

In addition to these steps, international research and studies have been conducted that address the risks and difficulties of third-party funding and how to reduce them. These include the possibility for conflicts between the interests of contesting and financing parties, the dangers of conflicts of interest, and the significance of contract regulation to guarantee the rights of all parties are respected. Thus, third-party financing's global development shows how well it works to advance access to justice and speed up arbitration procedures while maintaining accountability and openness. To strike a balance between safeguarding the parties' rights and guaranteeing the integrity and transparency of financing procedures, however, a clear legal and regulatory framework that complies with international standards and is suitably applied to the local and legal context, such as Jordan, is necessary.

3. Jordan's Third-Party Funding (TPF) Legal Foundation

3.1. The Laws That Control Arbitration in Jordan

The main legislative framework for arbitration in Jordan is the Arbitration Law No. 31 of 2001, which has been amended in compliance with UNESCO standards and international treaties. While upholding the ideals of impartiality and justice, this rule gives parties the flexibility to select the procedural framework that best serves their needs. Eliminating administrative invalidity and any potential roadblocks throughout the arbitration process are its main goals. Furthermore, the role of the courts in facilitating arbitration processes is governed by Civil Procedure Law No. 24 of 2001, specifically with regard to the appointment of arbitrators when required and the suspension of litigation during arbitration proceedings [15].

3.2. Legal Documents Concerning Funding and Its Application in Arbitration

The subject of third-party funding in the context of arbitration is not specifically covered in any Jordanian legal documents. Nonetheless, in addition to laws governing business operations, financial transactions, and the legal duty related to financing, some general requirements are founded on contractual principles and the parties' obligations. However, the lack of clear clauses allows for legal interpretations and poses significant queries regarding the validity, legality, and openness of using third-party financing models in arbitration, especially in relation to the parties' rights, the financier's obligations, and their legal responsibilities [16].

3.3. The Harmony between Third-Party Financing Practices and Jordanian Laws

The compliance of existing procedures with the broad principles of fairness, impartiality, and transparency must be evaluated in the absence of particular provisions. It is acknowledged that certain third-party financing practices can be in opposition to the core tenets of arbitration, particularly in cases where the legal relationship is unclear. This could raise the possibility of conflicts of interest and affect the arbitration process's impartiality. Contracts between the parties and the financiers must also abide by general laws, respect business ethics, give the parties legal protection, and set clear guidelines to guarantee that the financier has no say in the arbitration's outcome or the impartiality of the decisions [17].

3.4. Contracts and Agreements Between the Financiers and the Parties

Contracts signed by the person in need of funding (the claimant or debtor) and the financier serve as essential cornerstones that specify the legal parameters of the partnership and the risks involved. The financing percentage, fees, the parties' obligations, dispute resolution procedures, confidentiality provisions, and the financier's right to take part in or interfere with the arbitration process are usually included in these contracts.

These agreements must be transparent, suit the parties' interests, and adhere to normal legal norms, ethics, and contract law in Jordan. In order to maintain the independence of the arbitral tribunal and the integrity of the proceedings, it is also preferable for the contracts to contain specific provisions that limit the financier's authority, guaranteeing that their role does not surpass allowable bounds and preventing them from interfering with the arbitration process [18].

3.5. Legal Difficulties in Jordan's Third-Party Finance Implementation

The following are some of the main obstacles to the legal implementation of third-party financial activities because of the absence of clear regulation [19]:

A. Legal ambiguity: This jeopardizes the viability and legitimacy of financial operations, particularly those employed in the context of national or international conflicts.

B. Conflict of interest: The principle of fairness may be compromised by the effect of unregulated finance on arbitrators' decisions or the dispute's resolution.

C. Compliance risks: These risks are caused by the parties, especially when it comes to financial commitments, privacy, and openness.

D. The necessity of specific law: This legislation is required to define the obligations of financiers, govern the interaction between the parties, and ascertain the degree of their engagement in the proceedings.

The practice of third-party finance in the context of arbitration is not specifically and thoroughly regulated by Jordanian law, despite the fact that it has broad frameworks for arbitration. Therefore, in order to ensure that third-party financing practices adhere to the principles of justice and integrity and to prevent any conflicts with applicable laws and regulations, it is necessary to adopt the general principles of contracts and financial transactions, adhere to transparency standards, and refrain from interfering with the arbitration body's independence.

4. Examination of the connections between ethics and the law

To comprehend how third-party financing affects arbitration, it is essential to examine the moral and legal relationship between the lender and the party requesting finance. The legal underpinnings, moral dilemmas, and consequences of this relationship for the honesty and openness of arbitration procedures are all included in this paper.

4.1. The Connection Between the Party Seeking Funding and the Lender

A precise and comprehensive contract outlining each party's rights and obligations forms the foundation of the legal relationship between the lender and the entity looking for money. The terms of financing, the basis for repayment, fees, and any unique requirements pertaining to arbitration participation are usually covered in this contract. Legally speaking, this agreement is essential to figuring out the type of relationship—whether it's a loan or an investment—and whether third-party financing practices impose any unique requirements. In addition to abiding by Jordanian laws that regulate financial transactions and contracts generally, these contracts must uphold the values of justice and openness. It is crucial to remember that any contract that goes beyond the limitations of the relevant laws could put the parties at danger of legal action [20].

However, the relationship between the parties may give rise to legal questions about the funder's duty to protect confidentiality, honor the rights of the party requesting funds, and abstain from getting involved in administrative or judicial conflicts pertaining to the arbitration. This will stop the funder from becoming an intervening party or influencing choices that could have moral or legal ramifications.

4.2. Funding's Effect on Arbitration's Independence and Integrity

The degree to which arbitration retains its independence and integrity is where third-party funding has the biggest influence. These are core principles of the arbitration process, and any possible conflict of interest may jeopardize the arbitral tribunal's impartiality or cast doubt on the process's overall integrity. The funder's presence may affect the arbitrators' conclusions or raise questions about undue influence on the arbitration processes, particularly if they have a direct or indirect stake in the dispute's resolution [21].

The impact of funding is contingent upon the transparency of the process and the clarity of the relationship between the funder and the party requesting assistance. Funding may be viewed as a source of outside pressure or influence if there are unclear regulations to guarantee the parties' neutrality, which would raise moral and legal concerns with the validity of the decision.

4.3. Risks of Conflicts of Interest and Confidentiality Violations

The possibility of confidentiality violations is a basic risk of the relationship between the funder and the party in need, particularly if the funder actively supervises or directs the process or gathers data that might be used to sway the dispute's outcome. Conflicts of interest also present a serious concern if the funder has a direct financial or legal stake in the arbitration's conclusion, as this could lead to manipulation or distortion of the outcomes' integrity. In order to monitor the interaction between funders and parties in need, maintain confidentiality, uphold the principle of transparency, and reduce the possibility of conflicts of interest, it is imperative that clear norms and regulations be established. In order to prevent financing from being misused to produce unfair or predetermined arbitration decisions, which would damage arbitration's reputation as a dispute resolution process, legal and ethical oversight is also vital [22].

Therefore, maintaining the stability and integrity of arbitration procedures in Jordan requires finding a compromise between maximizing the potential benefits of third-party funding, which would assist efficiency and access to justice, and making sure that legal and ethical norms are respected. To ensure that the interactions between funders and parties in need do not impair transparency or jeopardize the independence and integrity of arbitration bodies, it is necessary to set up clear legal and ethical underpinnings as well as efficient monitoring and oversight systems [23].

5. Possibilities Provided by Outside Funding

One benefit that gives parties with limited resources a better chance to engage in arbitration procedures is third-party funding. This is accomplished by bolstering their financial capacity and empowering them to cover the expenses of arbitration proceedings, which plays a vital role in attaining justice and settling conflicts in a fair and efficient manner. However, by offering more resources, specialized knowledge, and increased credibility in conflict resolution, third-party funding improves the effectiveness of arbitration processes and produces more precise and impartial results.

5.1. Increasing Justice Access

The ability of third-party finance to provide access to justice for parties with low financial resources is among its most significant prospects. It is commonly recognized that many people and small or low-resource businesses find the expense of arbitration processes to be a barrier, particularly in complicated and drawn-out conflicts. These parties can get past this financial barrier and present their case before qualified arbitrators without having to worry about defaulting on proceedings or incurring heavy financial costs thanks to third-party sponsorship [24].

Additionally, funding increases the likelihood of success and speeds up the resolution process by allowing parties to concentrate on their main concerns rather than being unduly distracted by money-related issues. This lowers the load on judicial systems and speeds up dispute resolution by promoting contractual justice, creating opportunities for disputes that were previously closed

because of financial limitations, and broadening the scope of disputes that can be settled through arbitration as opposed to more conventional means [25].

5.2. Giving Parties with Limited Resources More Power

Parties with little resources are directly empowered to resolve conflicts that may appear beyond their financial means when third-party money is made available. Usually, the financing party is in charge of paying all or a portion of the arbitration fees or provide financial assistance to lessen the financial strain. This improves the quality and professionalism of arbitration procedures by extending beyond financial concerns to include legal, technical, and analytical guidance, which helps the party in need to present or defend their claims more successfully [26].

Additionally, third-party funding encourages a balance of power, especially when a strong and a weak party are at odds. It lessens the possibility that the larger party will abuse its financial clout and gives the weaker party the ability to more successfully and equitably defend their rights. To guarantee that it is carried out within a framework that respects the rights of all parties and upholds the impartiality of the arbitration process, this calls for the responsible and open management of funds.

5.3. Improving the Quality and Efficiency of Arbitration Processes

By offering the means and financial backing required to hire sophisticated legal and technical knowledge, third-party funding improves the effectiveness of arbitration processes and raises the standard of the arbitral tribunal's rulings. Funding helps the parties by allowing them to pay specialist experts, evaluate testimonies, interpret documents, and recruit highly qualified arbitrators. Deeper conversations, more precise evidence, and eventually more impartial and open decisions result from this. Moreover, by simplifying and improving processes, third-party funding lessens the need for drawn-out or expensive procedures. Financial assistance promotes more professional behavior, guarantees business continuation, and makes conflict resolution easier. This improves arbitration's credibility as a successful conflict settlement process and has a beneficial effect on the proceedings' pace and quality [27].

Enhancing access to justice, empowering parties with limited means, or improving the effectiveness and caliber of dispute resolution processes are just a few of the ways that third-party funding can greatly improve the arbitration system. But taking advantage of these opportunities necessitates a clear legal and ethical framework that governs the parties' relationship, guarantees integrity and transparency, and reduces the possibility of unfavorable outcomes or unethical use of third-party funding. This will boost trust in the arbitration system, confirm its impartiality and integrity, and guarantee that arbitration proceedings are fair and transparent for everyone [28].

6. Results and Discussion

The study's conclusions provide significant new information about the function of third-party funding in Jordanian arbitration law. These conclusions are examined by looking at how these practices affect different facets of the arbitration process, including the advantages and difficulties that come with them. According to the research framework, the key findings are described in depth below and are presented in an academic way.

First, the study's findings demonstrated that third-party funding successfully advances access to justice, which is one of arbitration's main goals as an alternative conflict settlement process. The primary advantage is that it makes it possible for parties with little money to pursue their claims, particularly when those claims are expensive. As a result, the arbitration system benefits a wider range of parties and improves legal justice. Additionally, the investigation showed that funding helps to raise the effectiveness and caliber of arbitration hearings. Arbitration procedures become more flexible and adaptive as a result of the specialized funding it provides for managing complex procedures, the reduction of timelines, and the production of more professional results.

Second, the results showed that third-party financing and the Jordanian legal system were reasonably compatible. Although there is some implicit permission for financing methods in Jordanian legal texts, it is necessary to create explicit legislation that regulates them in a way that strikes a balance between legal protection and preserving the integrity of arbitration procedures. The lack of clear regulation makes it more difficult for the parties to take full use of financing opportunities in a way that is consistent with justice principles and raises the possibility that contractual relationships and legal options will be confused.

Third, the conversation showed that a clear regulatory framework outlining each party's rights and responsibilities is necessary for the legal and moral connection between the financier and the entity requesting money. This structure ought to guarantee that funding doesn't affect the parties' choices or jeopardize the arbitral tribunal's impartiality and expertise. According to studies, financing might increase the likelihood of a conflict of interest, especially if there is uncertainty about the financier's relationship with the opposing party or the arbitral tribunal. Strict red lines must be established in order to ensure the fairness and effectiveness of arbitration procedures [29].

Fourth, in terms of risks, the results showed that third-party financing poses a number of moral and legal difficulties, chief among them being conflicts of interest, confidentiality violations, and dangers to the fairness of arbitration in the absence of strict transparency requirements. Strict rules must be established to guarantee data confidentiality and adherence to court ethics since the disclosure or abuse of private information calls into question the process's credibility and integrity.

Ultimately, the study came to the conclusion that the best use of third-party funding in arbitration necessitates the creation of a logical legal framework that governs the parties' interactions, sets forth precise guidelines for transparency, and ensures that funding doesn't jeopardize the proceedings' independence. Long-term, these actions will boost trust in the arbitration process and uphold pertinent moral and professional norms, helping to bring about justice and fostering an atmosphere that encourages responsible third-party financing practices that take into account the long-term interests of all parties and improve the system's reputation in the local and global legal communities.

7. Conclusion

The results of this study demonstrate the critical role that third-party funding (TPF) plays in Jordanian arbitration law since it presents special chances to increase access to justice and boost the effectiveness of arbitration procedures. The efficacy of arbitration as a flexible alternative to traditional litigation—a crucial factor in the current legislative and economic environment—is reinforced by this type of funding, which shows that it is a useful tool for empowering parties, especially those with limited resources, to pursue their legal rights.

However, the study also demonstrates that in order for parties to profit from financing, a clear legal and regulatory framework that strikes a balance between promoting these practices and preserving the independence and integrity of the arbitration process is required. The results highlight how the arbitration system is vulnerable to a number of hazards due to the lack of clear regulations, such as conflicts of interest and ethical and secrecy violations, which could jeopardize the core values of justice and integrity. Therefore, utilizing the potential of third-party finance responsibly requires the creation of a cogent legal framework that enforces strict norms of responsibility and transparency.

The practical scientific contribution of this research is what makes it valuable; in addition to analyzing the legal and practical frameworks, it also identifies best practices and upholds the ethical standards required to guarantee the independence and integrity of arbitration procedures. The study's conclusions also give legislators, courts, and attorneys useful information for creating and revising legislation that allows third-party financing in a way that is based on the values of justice, openness, and legal protection.

The report concludes by highlighting the importance of bolstering Jordan's third-party funding legal and ethical framework as a first step toward implementing more unbiased and trustworthy arbitration procedures. This strengthens the current and future arbitration system, helps efforts to reform the justice system, and greatly strengthens Jordan's standing as a legal center and a desirable location for international dispute settlement and investment.

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