

Book Review

A BOOK REVIEW ON CAN EKEN “THIRD-PARTY FUNDING IN INVESTMENT ARBITRATION: A NEW PLAYER IN THE SYSTEM” (SPRINGER, 2024)

*Tsai-fang Chen**

ABSTRACT

This review evaluates “Third-Party Funding in Investment Arbitration: A New Player in the System” by Can Eken. The book makes a significant contribution through its extensive empirical research, featuring interviews with thirty funders, offering unprecedented insights into funders’ practices and decision-making processes. Beyond its empirical foundations, the work provides thorough analysis of procedural and ethical challenges in third-party funding (hereinafter “TPF”), culminating in practical guidelines for funders operating in investment arbitration. The author’s balanced approach addresses both TPF’s role in facilitating access to justice and its potential challenges, while offering concrete recommendations for practice. This book fills an important gap in existing literature by combining theoretical analysis with empirical research and practical guidance, making it an essential resource for practitioners and scholars in international investment arbitration.

* Tsai-fang Chen, Professor and Director, Institute of Technology Law, School of Law, National Yang Ming Chiao Tung University, Hsinchu, Taiwan; Co-Chair Holder, WTO Chairs Programme. The author can be reached at ffc@nycu.edu.tw.

KEYWORDS: *third-party funding, investment arbitration, empirical research, arbitration ethics, ISDS procedure*

Dr. Can Eken's monograph on third-party funding (hereinafter "TPF") in investment arbitration arrives at a crucial moment, as evidenced by the intense discussions in United Nations Commission on International Trade Law (UNCITRAL) Working Group III. As an assistant professor at Durham Law School and a triple-qualified lawyer, serving as an attorney in California and Turkey and a solicitor in England and Wales, as well as a Fellow of the Chartered Institute of Arbitrators (FCIArb), Eken brings both academic rigor and practical insight to this comprehensive examination of TPF in investment arbitration.

The book is logically structured across seven chapters, moving from foundational concepts to practical recommendations. After introducing TPF as a new phenomenon in investment arbitration, the author provides a thorough examination of TPF's definition, history, and basic mechanisms. The book then progresses through an analysis of procedural issues and case law, before presenting original empirical research on the TPF market. The final chapters offer a thoughtful examination of ethical dilemmas and culminate in a practical set of guidelines for funders operating in investment arbitration.

The book's greatest strength lies in its empirical foundation, filling a significant void in existing literature. Through extensive interviews with thirty funders, Eken provides unprecedented insights into their practices and decision-making processes. Particularly noteworthy is the author's critical approach to the empirical data—rather than accepting funders' responses at face value, Eken carefully analyzes potential limitations and biases in their responses. The empirical research examines several previously underexplored issues, such as conflict of law issues between the funded parties and their lawyers, while also suggesting that some frequently debated academic concerns may be less significant in practice. The author's analysis of conflict of interest issues is nuanced, demonstrating skilled navigation of situations where interviewees may be constrained in discussing confidential matters while still drawing meaningful conclusions. The wealth of information gathered from funders provides valuable multiple perspectives on key issues. For instance, the analysis of funders' views on the recoverability of TPF costs illuminates the practical nature of the industry. Interestingly, the research reveals diverse opinions even among funders themselves, for example, regarding the need for regulation, adding depth to our understanding of the industry's internal dynamics.

Chapter Five's ethical discussion stands out for its depth, comprehensiveness, and theoretical grounding. Eken presents a passionate yet well-reasoned argument for access to justice while thoroughly addressing potential counterarguments. The analysis goes beyond superficial pro-TPF arguments to examine complex ethical challenges, including the implications of the "weeding mechanism" for rejected claimants, confidentiality concerns,

transparency issues, and the intricate relationships between funders, funded claimants, and lawyers.

The book's practical value is enhanced by its clear structure and concise analysis of key procedural issues in Investor-State Dispute Settlement (hereinafter "ISDS") cases, providing helpful guidance without unnecessary complexity. The culmination in a best practice guideline for funders operating in investment arbitration represents a practical contribution to the field, grounded in the author's comprehensive analysis of procedural and ethical concerns.

The book masterfully achieves its focused objectives in analyzing TPF. While reading it might prompt one to reflect on broader questions about investment arbitration—such as how profit-driven funding could interact with existing flaws of the ISDS system—such system-wide concerns lie well beyond the book's scope. This disciplined focus allows the author to deliver a thorough and valuable analysis of TPF specifically.

In conclusion, Eken's work represents a major advance in our understanding of TPF in investment arbitration. By combining rigorous empirical research with thoughtful analysis of procedural and ethical issues, it provides an essential resource for practitioners, scholars, and policy makers. The inclusion of practical guidelines based on comprehensive research makes this book valuable for those seeking to understand or engage with this increasingly important aspect of international dispute resolution.