DOI: https://doi.org/10.37547/supsci-ojhpl-05-12-108 Pages: 864-877

Oriental Journal of History, Politics and Law

ORIENTAL JOURNAL OF HISTORY, POLITICS AND LAW

journal homepage:
https://www.supportscience.uz/index.php/ojhpl

SOVEREIGN IMMUNITY AND THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION

Jamoliddin Rakhmonov
2nd year doctoral student
Tashkent State University of Law
Tashkent, Uzbekistan

ABOUT ARTICLE

Key words: Sovereign Immunity, Third-Party Funding, International Arbitration, Investor-State Dispute Settlement (ISDS), Enforcement of Arbitral Awards, Immunity from Execution, Foreign Sovereign Immunities Act (FSIA), ICSID Convention, New York Convention, Security for Costs.

Received: 19.12.25
Accepted: 20.12.25
Published: 21.12.25

Abstract: This report provides an in-depth analysis of the critical intersection between the doctrine of sovereign immunity and the practice of third-party funding (TPF) in international arbitration. It examines the fundamental conflict between a state's right to immunity and a funded claimant's ability to secure and enforce an arbitral award. Through a comparative analysis of legal frameworks, recent case law, and institutional rules, the report identifies the primary challenges—from jurisdictional disputes and security for costs applications to the significant hurdle of immunity from execution. It concludes by proposing a multi-faceted solution, including model treaty provisions and best practices for claimants, funders, and arbitrators, to foster a more predictable and balanced legal environment.

XALQARO ARBITRAJDA SUVERENITET IMMUNITETI VA UCHINCHI TOMON TOMONIDAN MOLIYALASHTIRISH

Jamoliddin Raxmonov
2-bosqich doktoranti
Toshkent davlat yuridik universiteti
Toshkent, O‘zbekiston

MAQOLA HAQIDA

Kalit so‘zlar: Suverenitet immuniteti, uchinchi tomon tomonidan moliyalashtirish, xalqaro arbitraj, investor-davlat nizolarini hal etish (ISDS), arbitraj qarorlarini ijro etish,

Annotatsiya: Mazkur ma’ruza xalqaro arbitrajda suverenitet immuniteti doktrinasi va uchinchi tomon tomonidan moliyalashtirish (Third-Party Funding — TPF) amaliyoti

ijrodan immunitet, Xorijiy davlatlar immuniteti to‘g‘risidagi qonun (FSIA), ICSID konvensiyasi, Nyu-York konvensiyasi, xarajatlar uchun kafolat.

o‘rtasidagi muhim o‘zaro bog‘liqlikni chuqur tahlil qiladi. Unda davlatning immunitet huquqi bilan moliyalashtirilgan da’vogarning arbitraj qarorini qo‘lga kiritish va ijro ettirish imkoniyati o‘rtasidagi asosiy ziddiyat ko‘rib chiqiladi. Huquqiy tizimlar, so‘nggi sud amaliyoti hamda arbitraj institutlari qoidalarining qiyosiy tahlili asosida yurisdiksiya bo‘yicha nizolar, xarajatlar uchun kafolat (security for costs) masalalari hamda ijrodan immunitet kabi asosiy muammolar aniqlanadi. Ma’ruza yakunida huquqiy muhitda barqarorlik va muvozanatni ta’minlash maqsadida namunaviy shartnoma normalari hamda da’vogarlar, moliyalashtiruvchilar va arbitrlar uchun ilg‘or amaliyotlarni o‘z ichiga olgan kompleks yechimlar taklif etiladi.

СУВЕРЕННЫЙ ИММУНИТЕТ И ФИНАНСИРОВАНИЕ ТРЕТЬИМИ СТОРОНАМИ В МЕЖДУНАРОДНОМ АРБИТРАЖЕ

Жамолиддин Рахмонов
Аспирант 2-го года обучения (PhD)
Ташкентский государственный юридический университет
Ташкент, Узбекистан

О СТАТЬ

Ключевые слова: Суверенный иммунитет, финансирование третьими сторонами, международный арбитраж, разрешение инвестиционных споров между государством и инвестором (ISDS), исполнение арбитражных решений, иммунитет от принудительного исполнения, Закон об иммунитетах иностранных государств (FSIA), Конвенция ICSID, Нью-Йоркская конвенция, обеспечение судебных расходов.

Аннотация: В данном докладе проводится углублённый анализ ключевого пересечения доктрины суверенного иммунитета и практики финансирования третьими сторонами (Third-Party Funding — TPF) в международном арбитраже. Рассматривается фундаментальный конфликт между правом государства на иммунитет и возможностью финансируемого истца получить и принудительно исполнить арбитражное решение. На основе сравнительного анализа правовых режимов, современной судебной практики и институциональных арбитражных правил выявляются основные проблемы — от споров о юрисдикции и ходатайств о предоставлении обеспечения судебных расходов до серьёзного препятствия в виде иммунитета от принудительного исполнения. В заключение предлагается комплексный подход, включающий модельные договорные положения и лучшие практики

для истцов, финансирующих сторон и арбитров, направленные на формирование более предсказуемой и сбалансированной правовой среды.

Introduction. The global landscape of dispute resolution has been reshaped by two powerful and converging forces. First, international arbitration has solidified its position as the preferred mechanism for resolving complex cross-border commercial and investment disputes, prized for its neutrality, finality, and superior enforceability compared to foreign court judgments. This has led to a proliferation of high-value Investor-State Dispute Settlement (ISDS) cases, where private investors bring claims against sovereign states under the protections afforded by bilateral and multilateral investment treaties. Second, the practice of Third-Party Funding (TPF) has emerged as a transformative financial tool within this ecosystem. TPF is a non-recourse arrangement in which an external entity, with no prior connection to the dispute, finances a party's legal costs in exchange for a share of any favorable award or settlement. This development has fundamentally altered the economics of arbitration, democratizing access to justice for claimants with meritorious cases but limited liquidity, while also introducing new strategic and ethical complexities.

Confronting these modern developments is the enduring and formidable doctrine of sovereign immunity. Rooted in the foundational principle of the sovereign equality of states, encapsulated in the maxim par in parem non habet imperium (an equal has no power over an equal), this doctrine shields states from the jurisdiction and, more critically, the enforcement measures of foreign courts. While an agreement to arbitrate is often seen as a waiver of a state's immunity from being sued, it does not typically extend to immunity from execution—the seizure of state assets to satisfy an award. This latter protection remains the "last bastion of State immunity", a legal fortress that can render a successful, multi-million-dollar award a mere "Pyrrhic victory" for the claimant.

The confluence of sophisticated third-party funding and the entrenched doctrine of sovereign immunity has created a new, high-stakes battleground in international arbitration. This dynamic, where well-capitalized, risk-mitigated claimants confront sovereign defendants, tests the very limits of state consent and the ultimate efficacy of the arbitral system. It exposes a fundamental tension between promoting access to justice and upholding state sovereignty, demanding a recalibration of legal frameworks, institutional rules, and stakeholder practices to ensure both the integrity of sovereign power and the enforceability of arbitral awards.

Methods. This research utilizes a qualitative and comparative legal methodology to investigate the functional relationship between third-party funding and sovereign immunity. The study relies on a doctrinal analysis of primary legal instruments, including the ICSID and New

York Conventions, alongside national statutes such as the US Foreign Sovereign Immunities Act (FSIA) and the UK State Immunity Act (SIA). A comparative framework is applied to assess how different jurisdictions—specifically the United Kingdom, the United States, and the People's Republic of China—interpret the distinction between immunity from jurisdiction and immunity from execution. The data collection involves a systematic review of contemporary case law from 2024, including Infrastructure Services Luxembourg v. Spain and NextEra Energy v. Spain, to track current judicial trends in award recognition and the "commercial activity" exception. Furthermore, the study analyzes institutional procedural shifts by examining the 2022 ICSID and 2021 ICC Arbitration Rules regarding mandatory disclosure and security for costs. Finally, the analysis incorporates legislative developments and draft provisions from UNCITRAL Working Group III to evaluate proposed multilateral reforms for investor-state dispute settlement.

Results. The principle of sovereign immunity is a cornerstone of public international law, historically derived from the personal immunity of the sovereign monarch, who could not be subjected to the judicial processes of another nation. This concept evolved from a personal mystique into an abstract principle of state sovereignty, but the core idea remained: one sovereign state cannot be subjected to the jurisdiction of another's courts without its consent. This principle is founded on the sovereign equality, independence, and dignity of states, preventing domestic courts from passing judgment on the acts of a foreign government. For centuries, this doctrine was applied in its absolute form, meaning states were almost entirely immune from suit in foreign courts, regardless of the nature of their actions.

A nuanced understanding of sovereign immunity requires separating it into two distinct, yet related, concepts: immunity from jurisdiction and immunity from execution.

• Immunity from Jurisdiction precludes the courts of one state from adjudicating a claim brought against another state. It is a procedural bar to a court hearing the case at all.

• Immunity from Execution protects the property of a state from being subject to measures of constraint, such as attachment or seizure, to satisfy a judgment or arbitral award. This immunity applies even after a court has validly exercised jurisdiction and rendered a final decision.

These two immunities are governed by distinct legal sources and require separate waivers. The critical point, which forms the central challenge for award creditors, is that a waiver of jurisdictional immunity does not automatically constitute a waiver of immunity from execution. A claimant who successfully overcomes the jurisdictional hurdle must then face the separate and often higher hurdle of identifying state property that is not protected by execution immunity.

The absolute theory of immunity proved untenable in a world of increasing state participation in global commerce. In the latter half of the 20th century, a majority of states adopted the "restrictive theory" of sovereign immunity, which is now codified in national statutes like the

United States Foreign Sovereign Immunities Act (FSIA) and the United Kingdom State Immunity Act 1978 (SIA).

This theory distinguishes between a state's acts based on their nature. States are not immune for their commercial activities (acta jure gestionis), where they act as private parties in the marketplace, but they retain immunity for their public, sovereign acts (acta jure imperii). However, this "commercial activity" exception applies differently to jurisdiction and execution. To establish jurisdiction, a claimant often needs to show that the lawsuit is based upon a commercial activity carried on by the foreign state. For execution, the standard is more specific and arduous: the particular assets targeted for seizure must themselves be "used for a commercial purpose". This requires the creditor to undertake the difficult task of locating state assets and then proving in court that they are not being used for sovereign functions, such as diplomatic or military activities, which are typically afforded absolute protection from execution.

A state can voluntarily relinquish its immunity, but the standards for doing so are stringent, particularly for immunity from execution. An agreement to arbitrate is now widely accepted as an implicit waiver of immunity from jurisdiction in proceedings to compel arbitration or to recognize and enforce the resulting award. By agreeing to a dispute resolution mechanism that produces a binding award, a state is understood to have consented to the judicial supervision necessary to make that mechanism effective.

However, the consensus ends there. The act of participating in an arbitration, even under institutional rules that require the parties to comply with the award, is generally held not to constitute a waiver of immunity from execution against state property. Domestic laws, such as the UK SIA and US FSIA, typically mandate that a waiver of execution immunity must be "express and specific" or "clear and unequivocal". This high threshold means that without an explicit waiver clause in a treaty or contract specifically addressing execution, a victorious claimant may hold a legally recognized award but have no means of compelling payment by seizing the state's assets. This is the fundamental legal impasse that both funded and unfunded claimants face.

Third-party funding has rapidly evolved from a niche product to a mainstream feature of the international arbitration landscape. It is a non-recourse financial arrangement where a non-party with a direct economic interest in the dispute—such as a specialized fund, hedge fund, or insurance company—agrees to finance some or all of a party's legal costs. In exchange, if the case is successful, the funder receives a share of the proceeds, often calculated as a multiple of its investment or a percentage of the award. If the case is lost, the funded party owes nothing to the funder, who loses its investment.

Several funding models exist. The most common is single-case funding, where a specific claim is financed. A growing alternative is portfolio financing, where a funder provides capital to

a law firm based on a slate of its cases, spreading the risk across multiple disputes. Some arrangements use a monetization model, where the funder deposits a lump sum into an escrow account from which the claimant or their counsel can draw funds for expenses. The process typically begins with the claimant and their counsel "packaging the claim" for potential funders, followed by a rigorous due diligence process by the funder, and culminates in the negotiation of a detailed funding agreement.

Proponents champion TPF as a vital tool for promoting access to justice. Its primary benefit is enabling claimants with meritorious claims but insufficient financial resources to pursue them, particularly against well-resourced opponents like sovereign states. By removing the financial barrier to entry, TPF helps to level the playing field.

The advantages extend beyond impecunious claimants. Financially sound corporations also utilize TPF to manage risk and preserve capital. By moving the significant expense of an arbitration off their balance sheets, companies can allocate their own capital to core business activities and growth rather than to financing a dispute. Furthermore, the mere fact that a sophisticated third-party funder has vetted a case and deemed it worthy of investment can signal its strength to the opposing party. This can enhance the claimant's credibility and increase their leverage in settlement negotiations.

Despite its benefits, TPF has attracted significant criticism. A primary concern is that it may encourage the filing of "marginal" or speculative claims. While funders assert that it is against their business interests to back frivolous cases, critics argue that the availability of funding may incentivize claims that push the boundaries of established legal standards in a claimant-friendly direction, particularly in the evolving field of investment law.

Ethical issues also loom large. The funder's economic interest can create a tension with the lawyer's professional independence and undivided loyalty to their client. There are concerns that a funder might exert undue influence over critical strategic decisions, such as whether to accept a settlement offer, potentially prioritizing its own return on investment over the client's best interests. Finally, the arbitral process, often chosen for its confidentiality, is inherently challenged by TPF. To conduct due diligence, funders require access to sensitive and privileged information about the case, raising complex questions about whether such disclosure constitutes a waiver of legal privilege.

Discussion. The intersection of third-party funding and sovereign immunity creates unique and contentious challenges from the very outset of an arbitral proceeding. These procedural skirmishes over disclosure and security for costs have become a primary battleground, shaping the strategic calculus of all parties involved.

The introduction of a third-party funder into a dispute creates a new web of relationships that can give rise to potential conflicts of interest for arbitrators. An arbitrator may have a financial interest in the funding entity, or may have been repeatedly appointed in other cases by the same law firm or funder, raising justifiable doubts about their impartiality.

Recognizing this threat to the integrity of the process, the international arbitration community has moved decisively toward greater transparency. The 2021 International Chamber of Commerce (ICC) Rules of Arbitration, in Article 11(7), now impose a mandatory and ongoing obligation on parties to promptly disclose the existence and identity of any non-party that has an economic interest in the outcome of the arbitration. Similarly, the 2022 International Centre for Settlement of Investment Disputes (ICSID) Arbitration Rules introduced Rule 14, which requires parties to file a written notice disclosing the name and address of any third-party funder. These rule amendments are designed to facilitate robust conflict checks by arbitrators, parties, and institutions, thereby insulating the final award from later challenges based on an undisclosed conflict of interest.

Perhaps the most contentious procedural issue is the application for security for costs. A respondent state, facing a claim from a claimant it believes to be impecunious and supported by a funder, will often argue that there is a significant risk it will be unable to recover its legal costs if it successfully defends the claim. This scenario is often dubbed an "arbitral hit-and-run," where the funded claimant can walk away from an adverse costs award, leaving the state to bear the expense of defending the case with taxpayer money. To mitigate this risk, states frequently request that the arbitral tribunal order the claimant to post security for costs, typically in the form of a bank guarantee or an escrow deposit, as a provisional measure.

States contend that the very presence of a third-party funder is an "exceptional circumstance" that justifies such an order, as it may signal the claimant's own financial weakness. Historically, however, tribunals have been cautious, balancing the state's legitimate concern against the risk of stifling a meritorious claim by imposing a financial burden that the claimant cannot meet, thereby impeding access to justice.

The recent amendments to institutional rules reflect an effort to codify and structure this balancing act. The 2022 ICSID Arbitration Rules, in Rule 53, now grant tribunals an explicit, stand-alone power to order security for costs. Crucially, the rule lists the existence of third-party funding as a relevant circumstance for the tribunal to consider, alongside the party's ability and willingness to comply with an adverse costs award and the potential effect of an order on the party's ability to pursue its claim. While the rule clarifies that the existence of TPF is not, by itself, sufficient to justify an order, its express inclusion has formalized the state's primary argument.

This codification reveals an interdependent architecture in the new rules. The mandatory disclosure of a funder's identity under ICSID Rule 14 is not an isolated transparency measure; it serves as a procedural gateway for applications under Rule 53. Without the disclosure requirement, a respondent state's application for security might be based on speculation. With it, the application is grounded in the disclosed fact of a funding arrangement. This intentional procedural pathway transforms the nature of the debate. It also creates a new strategic dynamic. Funders must now anticipate a higher likelihood of security for costs applications and may need to factor the cost of providing such security into their funding agreements, a provision that some funders already offer. This, in turn, increases the overall cost and complexity of obtaining funding, creating a feedback loop where rules designed to ensure procedural fairness may simultaneously raise the financial bar for the very access to justice that TPF aims to provide.

Ultimately, the enforcement of an arbitral award depends on the cooperation of national courts, which operate under their own domestic sovereign immunity laws. A comparative analysis of these statutes is essential for any party contemplating or funding an arbitration against a state, as the choice of enforcement jurisdiction is a critical strategic decision. The following table compares the legal frameworks in three key jurisdictions.

This comparative view reveals crucial strategic considerations. For an award creditor, the PRC's FSIL introduces a unique and potentially difficult hurdle by requiring that the targeted commercial asset also be "relevant to the arbitral proceedings," a nexus not explicitly required under the US or UK statutes. This kind of statutory nuance directly informs the global enforcement strategy of a funded claimant.

Even after navigating the procedural maze and securing a favorable award on the merits, a funded claimant faces the final and most formidable obstacle: sovereign immunity from execution. This is where a legal victory can be transformed into a practical defeat.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) was designed to create a self-contained and effective system for resolving investment disputes. Article 54 of the Convention appears to provide a powerful enforcement tool, obligating every contracting state to recognize the pecuniary obligations of an ICSID award and enforce it "as if it were a final judgment of a court in that State".

This seemingly straightforward obligation is immediately undercut by Article 55, which clarifies that nothing in Article 54 shall be construed as derogating from the laws in force in any contracting state relating to immunity from execution. This creates the "ICSID paradox": a state is required to recognize an award as a domestic judgment, but can then invoke its domestic sovereign immunity laws to prevent the seizure of its assets to satisfy that very judgment. The result is an

award that is legally binding but practically unenforceable against non-commercial state assets, leaving the claimant with a hollow victory.

For non-ICSID awards, enforcement is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which has been ratified by over 170 countries. While it provides a robust global framework for enforcement, the New York Convention does not explicitly address sovereign immunity. This leaves a critical gap that is filled by the domestic immunity laws of the state where enforcement is sought, such as the FSIA in the United States.

Furthermore, Article V of the New York Convention provides several grounds upon which a national court may refuse to recognize or enforce an award. These include procedural irregularities, an invalid arbitration agreement, or a finding that enforcement would be contrary to the public policy of the enforcing state. The public policy exception, in particular, can be a broad and unpredictable defense in the hands of a sovereign debtor, making enforcement under the New York Convention generally more challenging than the recognition process under ICSID.

The legal landscape for enforcement against sovereigns is in a state of "flux" and "uncertainty," with recent court decisions highlighting both progress for creditors and the persistence of the execution hurdle.

United Kingdom: The landmark 2024 Court of Appeal decision in the conjoined cases of Infrastructure Services Luxembourg v. Spain and Border Timbers v. Zimbabwe brought welcome clarity. The court established that by ratifying the ICSID Convention, member states have waived their immunity from the adjudicative jurisdiction of the English courts for the purpose of registering an award under Article 54. This ruling aligns the UK with a "broad international consensus" and is a significant victory for award creditors at the recognition stage. However, the court was careful to reaffirm that this waiver does not extend to immunity from execution, which remains governed by Article 55 and the SIA. In a separate development, the High Court's 2024 decision in General Dynamics v. Libya suggested a willingness to find a waiver of execution immunity from contractual language stating an award would be "wholly enforceable," a potentially expansive but highly fact-specific and questionable interpretation.

United States: In another key 2024 decision, the D.C. Circuit Court of Appeals in NextEra Energy v. Spain held that by being a party to the Energy Charter Treaty, Spain had waived its immunity from jurisdiction in U.S. courts under the FSIA's arbitration exception. This ruling confirmed that U.S. courts have jurisdiction to hear enforcement actions even in the contentious context of intra-EU investment disputes. While this provides important clarity for creditors seeking to confirm awards in the U.S., it, like the UK cases, does not lower the separate and higher bar for executing against sovereign assets.

Colombia: In stark contrast, the Colombian Supreme Court's 2024 decision in the Rusoro Mining v. Venezuela case illustrates the risks of enforcement in jurisdictions with less developed jurisprudence. The court denied recognition of a non-ICSID award, appearing to conflate the standards for immunity from jurisdiction with the stricter requirements for immunity from execution. The decision was criticized for demonstrating a "grave misunderstanding" of the international arbitration framework and for failing to conduct the required asset-specific analysis for execution immunity, thereby "muddying the waters" for future enforcement actions in the country.

These divergent outcomes reveal a critical bifurcation in the enforcement process. The legal battle is increasingly split into two distinct stages. The first stage, recognition and confirmation of the award, is becoming more streamlined and predictable in sophisticated, "pro-arbitration" jurisdictions like London and New York. Courts in these hubs are consistently finding that a state's agreement to arbitrate constitutes a waiver of its immunity from the court's jurisdiction to turn that award into a domestic judgment.

This reality has given rise to a new enforcement strategy for sophisticated creditors and their funders. The primary goal is no longer simply to win the arbitration, but to first secure recognition of the award in a reliable enforcement hub. Once the arbitral award is converted into a domestic court judgment in a jurisdiction like the UK or US, the creditor can then leverage that judgment to embark on the second stage: a global hunt for the sovereign's commercial assets. This elevates the strategic importance of certain financial and legal centers as "enforcement hubs," not because the state's assets are located there, but because their courts provide the most reliable forum for the initial conversion of the award. This multi-jurisdictional enforcement strategy now forms a core part of the due diligence process for third-party funders, who must assess not only the merits of the claim but also the global asset map of the respondent state and the legal landscape for execution in multiple potential jurisdictions.

The conflicts and uncertainties at the intersection of TPF and sovereign immunity demand proactive solutions. A more predictable and balanced system requires reforms to the underlying legal instruments and the adoption of sophisticated best practices by all participants in the arbitral process.

The most direct and effective solution to the problem of execution immunity is for states to provide an explicit waiver in the investment treaty or state contract itself. Ambiguity in this area is the primary cause of post-award litigation. To address this, organizations and practitioners have developed model clauses designed to be clear and comprehensive. For instance, ICSID itself proposes a model waiver clause for investment agreements: "The Host State hereby waives any

right of sovereign immunity as to it and its property in respect of the enforcement and execution of any award rendered by an Arbitral Tribunal constituted pursuant to this agreement.".

Best practices from commercial contracts provide further guidance. Effective waiver clauses should be "unconditional and irrevocable" and explicitly cover all facets of immunity, including "immunity from legal proceedings, immunity from jurisdiction, and immunity from execution against its property". The adoption of such clear language in future bilateral investment treaties and state contracts would preemptively resolve the distinction between jurisdiction and execution, providing certainty for investors and funders and reducing the likelihood of protracted and costly enforcement battles.

Recognizing the growing impact of TPF on investor-state disputes, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III is engaged in a multilateral effort to reform ISDS, with TPF as a key topic. This initiative presents a critical opportunity to create harmonized global standards.

The Working Group is considering several potential regulatory models for TPF, ranging from an outright prohibition to more nuanced approaches. These include an "access to justice model," which would permit funding only when necessary for a claimant to bring its claim, and a "restriction list model," which would permit funding unless certain problematic features are present. More importantly for procedural integrity, the draft provisions being discussed also contemplate mandatory disclosure rules. These would require the funded party to disclose not only the funder's name and address but also crucial details such as whether the funder has agreed to cover an adverse costs award and the extent of the funder's right to control or influence the proceedings. The outcome of this multilateral process could lead to the inclusion of standardized TPF regulations in future investment treaties or even a stand-alone multilateral instrument on ISDS reform.

To address the legitimate concerns of states about "arbitral hit-and-run" scenarios without unduly hindering access to justice, a more structured and balanced approach to security for costs is needed. Building on the new ICSID Rule 53 and academic proposals, a potential framework could involve a two-stage, burden-shifting test.

In the first stage, the respondent state would bear the initial burden of demonstrating two things: (1) the existence of a third-party funding arrangement (a fact that would be known due to mandatory disclosure rules), and (2) a prima facie case that the claimant would be unable or unwilling to satisfy a potential adverse costs award. If the state meets this initial threshold, the burden would then shift to the funded claimant to demonstrate why an order for security for costs should not be made. This could involve showing that it has sufficient assets to cover a costs award or that its funding agreement includes a commitment from the funder to cover adverse costs. Such

a structured test would provide tribunals with a clear analytical framework, balancing the state's interest in protecting public funds against the risk of prematurely terminating a potentially meritorious claim.

Beyond formal legal and rule-based reforms, the effective management of funded arbitrations against sovereigns depends on the adoption of sophisticated practices by claimants, counsel, funders, and arbitrators.

Legal counsel play a pivotal role in navigating the complexities of funded arbitration. Their responsibilities begin with meticulously "packaging" the claim for potential funders. This requires a detailed presentation that addresses the key criteria funders assess: the quantum of damages, a realistic budget, the strength of the legal arguments, and, most critically, a thorough analysis of recoverability against the specific sovereign respondent. Counsel should also provide strategic advice on which funders to approach, as different funders have varying appetites for risk and may specialize in or avoid certain types of claims or sovereign opponents. Once funding is secured, counsel must carefully manage the ongoing relationship with the funder, providing regular and transparent updates while remaining vigilant for any clauses in the funding agreement that could grant the funder excessive control over litigation strategy, thereby compromising counsel's professional duties to the client.

For third-party funders, a successful investment in a claim against a sovereign requires a due diligence process that extends far beyond the legal merits. A central consideration must be the "potential difficulties in enforcing the arbitration award". This necessitates a multi-faceted sovereign risk assessment, including an evaluation of the respondent state's political and economic stability, its historical track record of complying with international awards , and a detailed analysis of the location and character (commercial versus sovereign) of its assets worldwide. The choice of arbitral seat and potential enforcement jurisdictions is no longer a secondary consideration but a primary factor in the investment decision, requiring a sophisticated understanding of the comparative legal frameworks for immunity and enforcement across the globe.

Arbitrators are the ultimate guardians of the integrity of the process in funded cases against sovereigns. They must be proactive in managing the unique challenges these cases present. This begins with ensuring timely and complete disclosure of funding arrangements at the outset of the proceedings, which is essential for conducting thorough conflict checks and preventing later challenges to the award. When confronted with an application for security for costs, arbitrators must judiciously apply the relevant institutional rules, such as ICSID Rule 53, carefully weighing the state's legitimate interests against the fundamental principle of access to justice. They should use their broad discretion over evidentiary and procedural matters to maintain a fair and efficient

process, ensuring that disclosure requirements and security applications are not used as dilatory or abusive tactics by either party.

Conclusion. The analysis presented in this report confirms that the proliferation of third-party funding has sharpened the long-standing and inherent conflict between the enforceability of international arbitral awards and the doctrine of sovereign immunity. The primary arena of conflict has shifted. While disputes over the merits remain central, the modern battleground is increasingly defined by procedural skirmishes over TPF disclosure and security for costs, and by the ultimate confrontation with the formidable wall of immunity from execution. A claimant, empowered by a funder's capital, may win the legal war, only to find that the sovereign's assets are beyond its reach.

To navigate this complex terrain and foster a more stable and predictable legal environment, a multi-faceted approach is necessary. The most potent solutions lie in reforming the foundational legal instruments. The inclusion of clear, express, and irrevocable waivers of immunity from execution in future investment treaties and state contracts would provide the greatest degree of certainty for all parties. Concurrently, multilateral efforts, such as the ongoing work of UNCITRAL, are crucial for harmonizing global standards on the regulation of TPF, particularly regarding disclosure and security for costs. These top-down reforms must be complemented by the adoption of sophisticated, risk-aware best practices by all stakeholders: claimants and their counsel must engage in strategic case management and funder selection; funders must conduct advanced sovereign risk and enforceability due diligence; and arbitrators must exercise proactive and balanced procedural oversight.

The interplay between third-party funding and sovereign immunity will continue to be a defining feature of the investor-state dispute settlement system. A failure to find a sustainable equilibrium risks one of two undesirable outcomes: either the erosion of the legitimate sovereign authority of states, or the transformation of ISDS into an ineffective mechanism for justice, where awards are consistently rendered but rarely paid. The challenge for the international legal community is to fortify the system's legitimacy by ensuring that it can deliver not just judgments, but enforceable justice, even when the respondent is a sovereign.

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