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**Contingent Fees and Third Party Funding in
Investment Arbitration Disputes**

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CONTINGENT FEES AND THIRD PARTY FUNDING IN INVESTMENT ARBITRATION DISPUTES

A TRANSNATIONAL DISPUTE MANAGEMENT (TDM) SPECIAL ISSUE

Maya Steinitz and Joseph Matthews, Co-editors

Editorial

In this Special Mini-Edition of the Transnational Dispute Management Journal, co-editors Prof. Maya Steinitz and Joe Matthews have collected, edited and TDM now publishes original works by four authors who advance the critical analysis of issues raised by the increased presence of contingent fees and third party funding in connection with international investment disputes. TDM is also pleased to re-publish with permission an article authored by Prof. Steinitz in the Minnesota Law Review in January of this year entitled "*Whose Claim is This Anyway? Third Party Litigation Funding.*"

Use of contingent fees developed and expanded, primarily in the context of domestic litigation in the United States, as a means of increasing access to the civil justice system for citizens who otherwise lacked the financial ability to retain the services of legal counsel who, for the most part, enjoy a monopoly in the provision of advocacy services to citizens seeking to adjudicate rights in courts. Developed in the U.S. primarily to serve individual injured citizens in pursuit of tort claims and aided by the massive growth of the insurance industry (without which the willingness of the legal profession to take cases on a contingent fee basis would most certainly be reduced drastically) corporations and other forms of business organizations began to demand that lawyers make available contingent fee agreements in connection with commercial disputes.

In other parts of the world, most notably Australia and the U.K., the mechanisms of third party funding began to develop and flourish as well. Today, the use of contingent fee retainer agreements and/or third party funding arrangements in the world of international arbitration, both commercial and investment, is growing quickly. Thus, TDM decided to publish this special issue.

In the first article, Bernardo Cremades, Jr. provides an overview of the development of third-party funding, analyzes various situations in which it may be utilized and then reports on one of the most notorious recent cases that spilled into the public arena, *S&T Oil Equipment & Machinery Ltd. et al. v. Juridica Investments Ltd. et al.*

The second article is a re-publication of Prof. Steinitz' article, which carefully evaluates the issues presented by third party funding from the view of domestic U.S. based litigation, including analysis of legislative and other regulatory initiatives.

The third article by Marc Goldstein breaks new ground by analyzing the impact of third party funding from the perspective of the arbitrator and begins to consider what regulatory limitations might be developed in the area of international arbitration.

The fourth article is a comparative law analysis authored by Andreas Frischknecht and Vera Schmidt focusing on some of the most challenging issues presented in the third party funding context, including attorney-client and work product privileges.

The final article is from Susanna Khouri, Kate Hurford and Clive Bowman, all of IMF (Australia) Ltd., the grandfather of third party litigation funding.

We hope that you enjoy this mini-special issue and that the work of our authors will help to advance the analysis of issues presented by the growth of contingent fee and third party funding arrangements in international arbitration, particularly investment arbitration.

Prof. Maya Steinitz and Joe Matthews

The full online issue can be viewed at <http://www.transnational-dispute-management.com/journal-browse-issues-toc.asp?key=37>