

Legal Update

DTH & Anor v DTF & Ors¹ – Recoverability of a Successful Party’s Third-Party Funding Success Fee

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One recurring question in third-party funded arbitration is whether a successful claimant may recover from the unsuccessful party, as part of its costs, the success fee payable to its funder. In *DTH v DTF*, the Singapore International Commercial Court (“SICC”) considered that issue for the first time in Singapore. A three-judge coram upheld the tribunal’s decision that it had no power to award the applicants the success component of their third-party funding arrangement. The decision is significant because it clarifies both the limits of recoverable costs in Singapore-seated arbitration and the extent to which the Civil Law Act and the International Arbitration Act accommodate third-party funding arrangements.



Background

The applicants had successfully brought an oppression claim against the respondents in an SIAC arbitration. The first respondent was ordered to buy out the applicants’ shares for US\$14,736,000.

The applicants had entered into a litigation funding agreement with a third-party funder (“Funder”), under which the Funder was entitled to receive (a) reimbursement of the total funded costs; and (b) a success component calculated as the greater of a multiple of the total funded costs (0.5 to 3 times, depending on the period from funding to resolution) or a percentage of the award (5% to 30%, depending on that same period).

In the arbitration, the applicants claimed third-party funding costs of US\$14,608,695.11, in addition to legal costs and disbursements of US\$4,561,716.59.



The Costs Award

The tribunal awarded the applicants their legal costs of US\$4,561,716.59, but held that it had no power to award the claimed third-party funding costs of US\$14,608,695.11. The reasoning, subsequently endorsed by the SICC, may be summarised as follows:

- a) Although ss 5A and 5B of the Civil Law Act legalised qualifying third-party funding contracts, they did not alter the position of the unsuccessful opposing party or create any right to recover the funder’s return from that party. While s 5A(1) abolished the torts of maintenance and champerty in Singapore, s 5A(2) preserved the rule of law as to when a contract may still be treated as contrary to public policy or otherwise illegal.
- b) Rule 37 of the 2016 SIAC Rules², which permits a tribunal to order that all or part of a party’s “legal or other costs” be paid by another party, did not extend to recovery of the funder’s success fee for two reasons:
 - i. Section 12(5) of the International Arbitration Act permits a tribunal to award any remedy or relief that could have been ordered by the General Division of the High Court. As the High Court has no power to order an unsuccessful party to pay a successful party’s third-party funding costs, the tribunal likewise lacked that power.

¹ [2026] SGHC(I) 5

² The equivalent provision is rule 57 of the 2025 SIAC Rules

- ii. Third-party funding costs do not fall within the meaning of “other costs” in Rule 37, because construing the provision that broadly would run counter to the common law rules against maintenance and champerty.
- c) The success component of the funding agreement did not fall within the statutory definition of permitted third-party funding under the Civil Law Act, namely an agreement for the funding of all or part of the costs of proceedings in return for a share or other interest in the proceeds or potential proceeds of those proceedings. Instead, the success component was, in substance, a return on the funder’s investment.



Conclusion

The decision confirms that, under Singapore law, a successful party in arbitration cannot presently recover from the unsuccessful party the success fee payable under a third-party funding arrangement. More broadly, the SICCA’s analysis of the Civil Law Act and the International Arbitration Act suggests that the statutory recognition of third-party funding remains carefully confined and does not by itself expand the categories of recoverable costs.

Two practical implications follow. First, any uplift or success-based component payable under a contingency or conditional fee arrangement is, in principle, also unlikely to be recoverable as costs from the opposing party.

Secondly, the reasoning raises a broader question as to the enforceability of funding arrangements that calculate the funder’s return by reference to a multiple of the funded amount, rather than as a share or other interest in the proceeds of the claim. On the court’s analysis, only arrangements falling within the statutory scope of permissible third-party funding under the Civil Law Act are likely to be secure.

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