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THE CLAUSE ON THIRD-PARTY-FUNDING AND THE DISCLOSURE OBLIGATION IN ARTICLE 17.6 OF THE SCCA ARBITRATION RULES, AS A MANIFESTATION OF PROCEDURAL TRANSPARENCY IN ARBITRATION

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ABSTRACT

Background: *Third-party financing (TPF) agreements have become increasingly relevant in international arbitration, generating various procedural challenges that complicate the balance between procedural transparency and the principle of confidentiality. This paper studies TPF in international commercial arbitration, with a focus on the regulations applied by the Saudi Arbitration Court. After a general overview of TPF mechanisms and their increasing prevalence in international arbitration, this article reviews the obligation to disclose TPF under Article 17.6 of the Arbitration Rules of the Saudi Commercial Arbitration Centre (SCCA) (2023), an instrument designed to protect the independence and impartiality of arbitrators.*

Method: *This research follows a legal-dogmatic approach, based on the systematic and exegetical interpretation of the rule, particularly the literal wording of Article 17.6 of the SCCA Rules. This method is complemented by a comparative analysis of standard arbitration models to categorize the SCCA's regulatory framework. This study identifies the scope of disclosure and its function within the Saudi arbitration system, and defines the content of the disclosure obligation regarding TPF within the Saudi arbitration process. Furthermore, the connection with the principle of confidentiality is examined.*

Results and Conclusions: *The research findings demonstrate that Article 17.6 establishes a generic disclosure regime that imposes transparency levels limited to disclosing only the existence of the TPF contract and the identity of the third-party funder, excluding the contractual content of the agreement.*

This regulatory structure is conducive to detecting conflicts of interest at the outset of the procedure, preventing the integrity of the arbitral tribunal from being compromised while preserving the confidentiality of financing agreements and ensuring the legal security of arbitration.

The research infers that Article 17.6 of the SCCA Arbitration Rules (2023) establishes a generic disclosure model, grounded in a general framework for disclosing matters outside the contractual terms of financing agreements. This leads to the early detection of procedural risks, thereby preserving the arbitral tribunal's impartiality and independence. The disclosure obligation does not extend to the contractual terms of the agreement, maintaining an asymmetry between the principles of transparency and confidentiality.

1 INTRODUCTION

Within the broader process of structural transformation driven by the innovative Vision 2030 agenda,[1] the restructuring of the Saudi arbitration system is a key step toward increasing investor confidence and consolidating a secure and predictable legal environment. Some statistics confirm that arbitration remains the preferred dispute resolution mechanism in sectors such as construction, raw materials, and maritime.[2]

As a part of the regulatory reform carried out by the Saudi Center for Commercial Arbitration (SCCA hereafter), the concept of third-party funding (TPF) was incorporated in 2023, introducing the obligation to disclose and reveal any circumstance that could affect or undermine the integrity of the arbitral process, preserving the principle of

1 *Saudi Vision 2030* <https://www.vision2030.gov.sa/en> accessed 8 January 2026.

2 Yarik Kryvoi, 'Improving Saudi Arabia's Arbitration Climate: Comparative Study and Recommendations' (*SSRN*, 9 January 2023) doi:10.2139/ssrn.4640956 <https://ssrn.com/abstract=4640956> accessed 8 January 2026.

transparency (Article 17.6 SCCA).[3] In this climate of openness, the Saudi arbitral framework safeguards arbitral integrity and harmonizes its practice with international standards of transparency and good procedural governance.

This expansion of TPF raises specific concerns about potential conflicts of interest, particularly regarding the independence and impartiality of arbitrators. Disclosure to address the procedural risk triggered by TPF has been the primary regulatory response to these concerns.

In this vein, Article 17.6 of the SCCA Arbitration Rules (2023) enshrines, for the first time within the Saudi arbitral framework, a clear obligation of disclosure. On the grounds of Article 17.6, this paper aims to examine the scope of disclosure obligation in TPF**.** In particular, the following question arises: what should be the scope of disclosure when third-party funding is involved in international arbitration?

Based on an analysis of the 2023 Saudi SCCA Rules, this article focuses on the legal treatment of the obligation to disclose TPF arrangements under Rule 17.6, which introduces an express obligation to disclose their existence. The Saudi landscape surrounding TPF is undergoing regulatory innovation aimed at harmonizing its legal treatment with international standards of transparency and arbitral governance, as well as with best arbitral practices. The analysis conducted in our research is supplemented, where necessary, by referencing the wording of Rule 17.6 with other regulatory frameworks, insofar as they provide information that helps contextualize the scope of disclosure obligations for third-party-funded disputes in contemporary arbitration.

From a theoretical perspective, this research examines the specialized doctrine of third-party litigation funding in international arbitration, addressing issues such as the tension between confidentiality and transparency. This doctrine was selected for of its relevant contributions to defining the duty of disclosure in contemporary arbitration and for its usefulness in analyzing the scope of disclosure for TPF agreements.

2 THEORETICAL FRAMEWORK AND METHODOLOGY APPROACH TO TPF DISCLOSURE

This study relies on a conception of TPF grounded in the common law tradition, where this mechanism emerged and developed to finance and distribute litigation risk. Based on this conceptual framework, the article addresses the disclosure obligations associated with TPF agreements, focusing on their scope and limitations in the context of Saudi arbitration.

Three elements frame our theoretical analysis. First, we contextualize TPF by tracing its origins in traditional common law, where it was designed to finance litigation and distribute

3 Saudi Center for Commercial Arbitration, *SCCA Arbitration Rules: effective 1 May 2023* (SCCA publishing 2023) <https://www.acerislaw.com/the-2023-scca-arbitration-rules/> accessed 8 January 2026.

litigation risk. Its growing prominence in the field of arbitration has sparked doctrinal discussions regarding the potential emergence of conflicts of interest and their timely mitigation, the inappropriate control that the funder may exert over the process, and the threats to the independence and impartiality of arbitrators, with possible procedural repercussions. In response to these risks, and as a contingency, the duty of disclosure has emerged. In this sense, defining its scope is highly relevant, as it serves as a control mechanism for the arbitral process. Our research is developed within this theoretical framework. The starting point for analyzing its reception within Saudi arbitration law is its primary focus, particularly Article 17.6 of the SCCA Rules.

Secondly, the analysis addresses the duty of disclosure, considering the different configurations this obligation can take in arbitral practice, specifically, generic and selective disclosure. With this, we aim to interpret the scope of the duty of disclosure in the Saudi arbitral system and evaluate the model adopted by the SCCA Arbitration Rules (2023).

Thirdly, we assess the role of transparency as a structural element of contemporary arbitration within the Saudi arbitral process, weighing its implementation against the principle of confidentiality. This framework allows us to define the content of the disclosure duty, distinguishing between the information necessary to preserve the independence and impartiality of the arbitral tribunal and which, due to its contractual or strategic nature, must remain protected, thus preventing excessive disclosure that could affect the balance of the proceedings.

Once the theoretical framework was defined, the methodology employed in this study was structured primarily around a dogmatic approach. Specifically, an exegetical and systematic interpretation of Article 17.6 of the SCCA Arbitration Rules (2023) is carried out. This interpretation seeks to determine the scope and content of the disclosure obligation regarding TPF agreements. The systemic analysis of the rule is framed within the literal wording of Article 17.6 of the SCCA rules, which allows for an analysis of the duty to disclose and a determination of its scope. It also allows for an examination of how this disclosure operates in relation to the principles of the arbitrator's independence and impartiality.

Furthermore, the study employs a limited, functional comparative law method, matching the SCCA with other benchmark arbitration models. This comparison is specifically aimed at portraying the disclosure model adopted by the SCCA and placing it within established typologies, particularly between generic and selective disclosure. As a result of this analysis, we consider the obligation provided for in article 17.6 as a structurally generic and materially limited model, oriented towards the early detection of possible conflicts of interest and the preservation of the integrity of the arbitration procedure, without extending the disclosure obligation to the contractual or strategic content of the financing agreements.

3 ARBITRATION IN SAUDI ARABIA: UPDATE OF THE SCCA RULES (2023)

Over the past fifteen years, Saudi Arabia has undertaken a profound regulatory transformation aimed at updating its legal system and expanding its impact on international trade relations. With a focus on attracting Foreign Direct Investment, Saudi Arabia has made significant efforts to build trust in institutions, particularly the Saudi arbitration system. Transparency standards are one of the indicators that most affect increasing trust. Robust levels of transparency strengthening the parties' trust and the legitimacy of the process, as well as international confidence.

The 2012 Arbitration Law,[4] inspired by the United Nations Commission on International Trade Law (UNCITRAL hereafter) model law,[5] achieved progress in its regulatory framework regarding party autonomy in the choice of applicable law, procedural terms, and venue: limiting judicial intervention in the arbitration process, preserving religious and traditional values.[6] However, the law maintained the requirement that arbitration awards could not contravene the provisions of Sharia law or the public order established in accordance with its principles. These changes, while far-reaching, did not resolve the problems, as investors remained skeptical about whether the existing legal framework guaranteed genuine legal certainty, a perspective that clashed with local legal particularities.[7]

In 2017, the Implementing Regulations of the Arbitration Law were published by a Council of Ministers Resolution no. 541 dated 26/08/1438H[8] with the aim of complementing the regulatory framework introduced in 2012 and making it more operational. While these regulations represented progress from a technical standpoint, their scope was limited and did not fully resolve the structural issues of the arbitration system.[9] In any case, they constituted an intermediate phase within the reform process, which would later be deepened through the institutional update of the SCCA Arbitration Rules.

4 Royal Decree No M/34 of 2012 'On approving the Law of Arbitration' <https://www.lexismiddleeast.com/law/SaudiArabia/RoyalDecree_M34_1433/en> accessed 8 January 2026.

5 United Nations Commission on International Trade Law, *UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996: with additional article 5 bis as adopted in 1998* (UN publication 1999).

6 Ahmad Bedaiwi, 'Alternative Dispute Resolution: Toward a Clear, Reliable and Effective Dispute Resolution System in Saudi Arabia' (PhD thesis, The Pennsylvania State University, 2019) 122.

7 Sarah Mohammed Alshahrani and Surya P Subedi, 'The Law, Policy and Practice of a Major Petroleum Exporting Country on Investor-State Dispute Settlement Mechanism: The Experience of Saudi Arabia and Its Significance for the Development of International Investment Law' (2022) 19(3) Manchester Journal of International Economic Law 287.

8 Ministerial Resolution No 541 of 26 Sha'aban 1438 'Implementing Regulations of the Law of Arbitration' (22 May 2017) <https://www.wipo.int/wipolex/en/legislation/details/21901> accessed 8 January 2026.

9 Bedaiwi (n 6) 130.

Simultaneously, Saudi Arabia's regulatory landscape has undergone reforms regarding the enforcement of arbitral awards, aimed at enhancing the effectiveness of arbitration, without affecting the specific critical examination of the TPF disclosure duty. These measures are a significant step forward, particularly in adapting the Kingdom to international standards such as the 1958 New York Convention, and in creating specialized enforcement courts.[10]

With its updated 2023 Arbitration Rules, the SCCA consolidated its position in the region and became a leading arbitration center for alternative dispute resolution (ADR).[11] This led to its practices being more aligned with the highest international standards, enhancing its competitiveness compared to other arbitration courts in the MENA region. The SCCA also achieved technological and procedural enhancements.

Among the reform's key elements, transparency takes center stage, not only as a general procedural principle, but also through the introduction of specific obligations designed to preserve the integrity of arbitration. In this domain, making TPF disclosure an explicit requirement seeks to lessen conflicts of interest and to reinforce parties' confidence in the arbitral tribunal's impartiality.

The 2023 Rules strengthen the institutional role of the Arbitral Tribunal as the body responsible for key procedural decisions, strengthening procedural oversight. This strengthening and effective[12] institutional control provides the structural basis for introducing transparency-oriented obligations, including mandatory disclosure of TPF and the disclosure by arbitrators of circumstances that could compromise the proceedings.

4 THE DISCLOSURE DUTY IN THIRD-PARTY FUNDING AGREEMENTS

4.1. TPF: Legal Foundations and Evolution

TPF, grounded on a body of doctrine, has been hostile to the idea of interference by unrelated third parties in a process to which they are not involved. In the common law system, we find several doctrines about malpractice. First, maintenance, which posits the intervention of a third party who lacks a legitimate interest in litigation, with the aim of supporting one of the parties. This support could be financial or strategic. Second,

10 Saud Al-Ammari and A Timothy Martin, 'Arbitration in the Kingdom of Saudi Arabia' (2014) 30(2) Arbitration International 390, doi:10.1093/arbitration/30.2.387

11 *SCCA Arbitration Rules* (n 3).

12 C Mark Baker (ed), 'International Arbitration Report' (2024) 21 Norton Rose Fulbright <https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/publications/glo-iar-24-pdf.pdf?revision=a9948e3e-f89c-4dff-826b-ba85317a2553&revision=525024116949738790 4> accessed 8 January 2026.

champerty, an aggravated form of maintenance in which the third party not only finances the litigation but also obtains a financial benefit from it in the event of a positive outcome. The historical justification for the prohibition was to prevent what is recognized today as abuse of process and undue interference in the administration of justice.[13] Finally, barratry referred to the repeated or abusive promotion of litigation by third parties, historically rejected for its potential to disrupt the proper functioning of justice.

The argument of these doctrines is linked to the abuse of the judicial system, i.e., the instigation of unfounded lawsuits for pure economic or harassment purposes; even in some jurisdictions, opposition to these practices persists. With the progressive strengthening of institutions and the consolidation of an independent judiciary, these prohibitions gradually lost their original basis, although the doctrines of maintenance and champerty survived in common law as ethical vestiges, no longer as criminal offenses, but as practices contrary to public order. Therefore, English law understood that the intervention of a third party could "*sully the purity of justice*."[14]

Institutional strengthening and the establishment of regulatory mechanisms—driven by the professionalization of the courts and landmark judicial decisions—effectively ended the distortion of these prohibitions. Nonetheless, the doctrines of maintenance and champerty endured as ethical vestiges in common law, transitioning from criminal offenses to practices regarded as contrary to public order.[15]

At the beginning of the Twentieth Century, as litigation became more complex litigation and economic growth accelerated, access to justice became dependent on the parties' financial capacity. The absolute prohibition of maintenance and champerty became untenable. This gave rise to a model of ethical control based on transparency and judicial oversight, replacing the exclusion of third parties with their regulation. The ethical foundation of these prohibitions weakened as institutions strengthened, since *"as legal systems have become more formalized… the justification for these doctrines has waned."*[16] The system ceased to be vulnerable to external influences and evolved into a structure capable of controlling conflicts of interest through regulations.

13 David R Glickman, 'Embracing Third-Party Litigation Finance' (2016) 43(3) Florida State University Law Review 1052. See, *Wolford v Tankersley* (Idaho Supreme Court, 22 May 1984) 695 P2d 1201.

14 Eva Lein and others, *Mapping Third Party Litigation Funding in the European Union* (European Commission DG Justice and Consumers 2025) 507, doi:10.2838/3795189.

15 David S Abrams and Daniel L Chen, 'A Market for Justice: A First Empirical Look at Third Party Litigation Funding' (2013) 15(4) University of Pennsylvania Journal of Business Law 1082-3; Kaira Pinheiro and Disha Chitalia, 'Third-Party Funding in International Arbitration: Devising a Legal Framework for India' (2021) 14(2) NUJS Law Review 265.

16 Abrams and Chen (n 15) 1083.

In the United States, case law followed a pragmatic approach to this concept. Rather than considering a relevant breach, the reinterpretation focused on the disclosure of the third party's existence, identity, and the substance of their interest. **As Glickman points out:**

> "*Many courts around the country nowadays are unwilling to bar modern TPLF agreements under these ancient doctrines.*"[17]

This transition or reinterpretation constitutes the root of contemporary discussions on disclosure: what was previously prohibited to preserve the purity of justice is now regulated to protect procedural integrity. This transition produced a revaluation of third-party intervention, now understood not as a threat but as a functional mechanism. From a legal economics approach, Abrams and Chen argue that:

> "*selling litigation rights to parties with the resources to pursue the claims may address the problem of litigation undersupply.*"[18]

This same premise is extended to international arbitration, where the independence of the arbitrators and the arbitral institution, as well as transparency standards in the composition of the body, become relevant and are integrated as key elements of the system. The extensive study coordinated by the European Commission concludes:

> "*Regulation of funders seems a good thing. Approval and control of third-party funders, modeled on the regulation of financial institutions, seems necessary.*"[19]

In this vein, disclosure is not only an ethical requirement but also an institutional guarantee of confidence in arbitral justice.

4.2. An approach to the definition of third-party funding

In a lay rather than technical sense, TPF has been described as a mechanism whereby a party to litigation or arbitration obtains financial support from an external entity with no prior connection to the dispute, in exchange for a return linked to the outcome of the proceedings, typically assuming the costs and risks associated with the case.[20] For its part, the Litigation Finance describes it as:

> "*Litigation funding is where a third party provides the financial resources to enable costly litigation or arbitration cases to proceed. The litigant obtains all or part of the financing to cover its legal costs from a private commercial litigation funder, who has*

17 Glickman (n 13) 1052; Mariel Rodak, 'It's About Time: A Systems Thinking Analysis of the Litigation Finance Industry and its Effect on Settlement' (2006) 155 (2) University of Pennsylvania Journal of Business Law 511, doi:10.2307/40041312.

18 Abrams and Chen (n 15) 1076.

19 Lein and others (n 14) 681.

20 Maya Steinitz, 'Third Party Funding of Investment Arbitration' (2021) 42 University of Iowa College of Law Legal Studies Research Paper Series, doi:10.2139/ssrn.3873523.

> *no direct interest in the proceedings. In return, if the case is won, the funder receives an agreed share of the proceeds of the claim. If the case is unsuccessful, the funder loses its money, and nothing is owed by the litigant."*[21]

As Sahani pointed out:

> *"traditional third-party funding involves an external entity providing dispute-related financing to one of the parties in exchange for a share of the case's proceeds if the lawsuit is successful, typically without recourse. Unlike a loan, the funded party is not obligated to repay the funder if the lawsuit is unsuccessful."*[22]

The main arbitral institutions do not offer a uniform definition of third-party funding (TPF), although they agree on a functional characterization. Instruments such as the IBA Guidelines on Conflicts of Interest, the ICC Practice Note, and the SIAC guidelines describe the funder as a third party, unrelated to the dispute, that provides resources to one of the parties in exchange for a financial interest in the outcome of the arbitration. More precisely, the ICSID Rules (2022) do include an explicit definition, understanding TPF as funding provided by a non-party whose remuneration depends on the outcome of the dispute. For its part, and as we will discuss later, the SCCA does not define the concept of TPF, but acknowledges its existence by imposing disclosure obligations (Art. 17.6). Therefore, it can be stated that, from an institutional perspective, TPF is based on three essential elements: the involvement of a non-party third party, the funding of the costs of the proceedings, and the existence of a financial interest contingent upon the outcome of the arbitration.

TPF has evolved into a transnational industry, independent of the forum.[23] The concepts offered by arbitral institutions and even by legal scholarship must consider these new scenarios. The terminology and understanding of the TPF phenomenon will change as the sector evolves.[24] Third-party financing is booming, adapting to new global scenarios and multinational litigation or disputes, becoming a dynamic and adaptable mechanism whose conceptual development reflects both its global expansion and the inherent limitations of static regulatory definitions.

We consider it prudent to note that in civil law jurisdictions, typical of codified law, the legal nature of this concept is still debated. Academics have identified it with legal institutions such as *"contingency fees, assignment of receivables, partial loans, and joint venture accounts"*.[25] Saudi Arabia is currently codifying its legal system, but an analysis of this

21 'Litigation Finance' (*ALF Association of Litigation Funders of England and Wales*, 2025) <https://associationoflitigationfunders.com/about-us/litigation-finance/> accessed 8 January 2026.

22 Victoria Sahani, 'Keep to the Code: A Global Code of Conduct for Third-Party Funders' (2022) 102 Boston Law Review 2339.

23 ibid 2377.

24 ibid 2377-8.

25 See, Diego Agulló Agolli, 'Los Contratos de Financiación de Litigios por Terceros (Third-Party Funding) en España' (2022) 9(1) Revista de Derecho Civil 183; Daniel Fernández Bermejo, 'En Torno al Concepto del Blanqueo de Capitals: Evolución Normativa y Análisis del Fenómeno Desde el

concept from a purely civil law perspective, that is, unraveling its legal nature, would, in our opinion, be futile. This is because it offers concepts specific to Anglo-Saxon law, which, along with Sharia, ultimately exerts the greatest influence and finds a place in Saudi Arabia. The rise of the TPF has compelled legal doctrine to address new aspects and reconfigure concepts such as transparency, which has emerged as a cross-cutting principle in contemporary arbitration systems. From a procedural perspective, third-party funding involves assessing the impact of a third-party funder on the arbitral tribunal's independence and impartiality, which justifies determining the scope of the disclosure obligation.

4.3. TPF disclosure obligation: under Article 17.6 of the SCCA Arbitration Rules (2023). Generic disclosure or selective disclosure?

In international arbitration, a broad debate arises regarding the disclosure obligation of third-party financing agreements, the identity of the financier, and, in some cases, even the terms that govern the financing.[26] All this with the aim of preventing the arbitral court from any conflict of interest and empowering the opposing party, in exceptional cases, to know the means used by the opponent. Throughout the arbitration process, the impartiality and independence of the arbitrators must be safeguarded.[27] This justifies imposing a duty of disclosure regarding any third party with an economic interest in the dispute, especially when that third party could influence the strategy and relevant decision-making.

This information may be relevant for challenging arbitrators or for setting aside the award. However, there is no clear consensus on the scope of this duty.[28]

In Saudi arbitration, these disclosure obligations are primarily set out in Article 17 of the SCCA Rules.[29] Paragraphs 1 to 4 of Article 17 of the SCCA Arbitration Rules[30] establish a disclosure framework designed to ensure the objective and autonomous stance of arbitrators. This framework imposes a continuing duty to disclose any circumstances that may raise reasonable doubts, the failure to do so of which may lead to the arbitrator's disqualification or to a challenge to the award. The specific treatment of TPF, expressly addressed in paragraph 6 of the same article, is built upon this prior regulatory framework.

Derecho Penal' (2016) 69(1) Anuario de Derecho Penal y Ciencias Penales 211; José Carlos Fernández Rozas, 'El Mercado Emergente Sobre la Financiación Privada de Litigios Responsable en la Unión Europea: Un Cauce Para Facilitar el Acceso a la Justicia a Los Ciudadanos y Las Empresas Privadas' (2022) 108 La Ley Unión Europea 1.

26 Sofía Vicente Mazzuz, 'Extensión y Límites al Deber de Divulgación En Materia de Financiación Por Terceros En El Arbitraje' (2023) 10320 Diario La Ley 2.

27 ibid 6.

28 ibid 9.

29 *SCCA Arbitration Rules* (n 3).

30 ibid

Section 6 of Article 17, which serves as the primary motivation for this study, introduces a TPF *disclosure* clause that requires parties to identify any third party holding a financial interest in the outcome of the arbitration, including external funders. In addition, these obligations extend to the other entities with a financial interest in the claim, such as the *subrogated insurer*, the *indemnitor*, the *after-the-event insurer,* or the *assignees.* This disclosure obligation applies throughout the entire procedure, including the addition of a new third party or even any modification to the financing. This requirement has significant implications for the management of potential conflicts of interest[31], allowing the court and the parties to identify the "*true interested party*" in the dispute. It may also constitute a legitimate basis for decisions on costs and, where appropriate, *security for cost* measures, aligning with international trends in arbitration transparency.[32]

While establishing a duty to disclose is advisable, it is necessary to define its scope and determine what information must be communicated to the parties and the arbitral tribunal.

In this sense, we should answer the following question:

What should be the scope of disclosure?

In arbitration practice, the minimum requirement is to disclose the existence of the financing agreement and the identity of the TPF, but not the contractual terms or clauses that make up the contract.

As we have previously noted, it is essential to ensure the arbitrator´s independence and impartiality. We take the view that this justifies imposing a duty of disclosure on any third party with an economic interest in the dispute.

The disclosure should occur at the outset of the proceedings; a delayed disclosure could have detrimental consequences for the process, particularly regarding the existence and identity of the TPF involved. This could lead to challenges to the arbitrators or even grounds for setting aside the arbitral award.

While the disclosure obligation is an essential mechanism for preventing conflicts of interest, it may not, in all cases, fully guarantee the independence of arbitrators and the integrity of the proceedings. A comprehensive analysis of the procedural consequences of non-compliance would, however, exceed the scope of this study and could itself constitute the subject of a separate investigation.

In this regard, the possible challenge of the arbitrators or even the possible challenge of the award that may lead to its annulment may result from the insufficiency or inadequate disclosure, highlighting the procedural relevance of this obligation, emphasizing its direct

31 See, Agulló Daario (n 25); Oliver Cojo, 'Arbitraje y Financiación Procesal Parciaria (Third-Party Funding) En España: Un Análisis Bajo El Prisma de Las Nuevas Directrices de La IBA Sobre Conflictos de Interés' (2014) 8 La Ley Mercantil 68; Steinitz (n 20); Vicente Mazzuz (n 26).

32 Agulló Daario (n 25) 216-7.

impact on the stability and effectiveness of the arbitration procedure, as it projects onto the validity of the decisions adopted.

From this perspective, it is worth questioning whether the mere obligation of disclosure is sufficient; however, the answer will depend largely on the legal and institutional system governing the arbitration procedure, as well as the degree of intervention that the system considers appropriate to guarantee the independence, impartiality, and efficiency of the process. In this sense, the obligation to disclose is not limited to identifying the funder, but also serves an instrumental function in managing various procedural incidents, such as the challenge of arbitrators, the possible request for guarantees for costs, or the validity of the award itself, which shows that defining its material scope is crucial to the balance of the arbitration procedure. The literature indicates that any assessment of potential conflicts of interest or procedural implications necessarily presupposes knowledge of the existence of third-party funding, which thus acts as a prerequisite for the court and the parties to be able to effectively address these issues.[33]

In this regard, greater precision regarding the minimum content of the disclosure might be advisable, particularly concerning the identity of the third-party funder and the existence of the financing agreement, a matter that must be maintained throughout the entire procedure, and any change or circumstance that produces a variation with respect to the information that could be provided at the beginning must be reported, since ultimately such disclosure can contribute to reducing legal uncertainty and ensuring greater procedural consistency. Regarding the TPF disclosure, some arbitral rules remain silent on the matter; for example, the London Court of International Arbitration (LCIA) Rules 2020[34], with have a strong presence in the MENA region, make no pronouncement on the matter. The same applies to Arbitration Law in Spain,[35] which does not contain, in its current regulations, specific provisions relating to the existence, content, or identification of the third funder. The same applies to the UNCITRAL[36] framework, which does not establish a general duty of disclosure regarding third-party financing, leaving the issue outside of express regulation. In this respect, and despite differences of opinion, it is undeniable that when the duty of disclosure is not regulated, the existence of the agreement may become known to the opposing party, its defense, or the arbitral tribunal. This could lead to procedural consequences related to the arbitrator's abstention

33 Alberto Favro, 'Duty to Disclose Third-Party Funding in International Arbitration: Scope, Purpose and Limits' (2022) 12 La Ley: Mediación y Arbitraje 6-7.

34 The London Court of International Arbitration, *LCIA Arbitration Rules: effective 1 October 2020, Including Schedule of Costs effective 1 December 2023* (LCIA publishing 2020) <https://www.lcia.org//Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx> accessed 8 January 2026.

35 Ley núm 60/2003, de 23 de Diciembre 2003 'de Arbitraje' [2004] BOE 309 <https://www.boe.es/buscar/act.php?id=BOE-A-2003-23646> accessed 8 January 2026.

36 United Nations Commission on International Trade Law, *UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013), UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration* (UN publishing 2014).

due to a conflict of interest, a late challenge, or ultimately, the annulment of the award. This could translate into increased costs for the parties and an unnecessary prolongation of the proceedings. This regulatory silence may coincide with the institution's implicit preference for a selective disclosure approach (which will be examined below), which, as we have pointed out before, triggers disclosure only when it raises specific concerns about conflicts of interest or procedural integrity.

Depending on the type of disclosure, the obligation to disclose in relation to TPF has been described in practice as either a generic disclosure obligation, requiring notification of the funder's existence and identity at the start of the process, or a selective disclosure mechanism, activated only if a specific risk is identified that could compromise the arbitrator's independence or the course of due process.

The literal meaning of Article 17.6 requires the SCCA and the constituted arbitral tribunal, as well as the parties involved in the dispute, to be notified of the existence and identity of any natural or legal person who will finance the proceedings, as well as any contingent economic interest tied to the outcome of the arbitration.

Based on the Saudi regulatory framework, specifically Article 17.6 of the SCCA Rules, this study examines the procedural scope of the TPF disclosure. It determines whether the disclosure regime is structured as a generic obligation or as a selective disclosure mechanism.

Generic disclosure obliges the funded party to report, from the outset of the arbitration proceedings, both the funding agreement and the identity of the third-party funder, regardless of whether a specific conflict of interest has been identified. Nevertheless, *selective disclosure* defers this burden to a later stage, making disclosure contingent upon the identification of a specific risk that could affect the arbitrator's independence or the proper conduct of the proceedings.

Therefore, we conclude that the disclosure obligation contained in Article 17.6 falls under the category of structural generic disclosure, insofar as it establishes the duty of disclosure as a prerequisite for the full constitution and operation of the arbitral tribunal. The requirement to notify the existence and identity of any natural or legal person financing the proceedings or holding an economic interest linked to the outcome of the arbitration operates independently of any *prior* assessment of potential conflict. Procedurally, this configuration directly affects the allocation of burdens between the parties and the arbitral tribunal. In particular, early disclosure allows examination of conflicts of interest at an early stage of the arbitration, preventing such issues from subsequently affecting the validity of procedural acts already carried out or, ultimately, the effectiveness of the award.

Conversely, the regulations found in other arbitration rules can be linked to an implicit conception of selective disclosure, in which TPF only becomes procedurally relevant when its existence directly and concretely affects the arbitrator's independence or the respect for

due process guarantees. For instance, the disclosure duty provided in the Singapore International Arbitration Centre (SIAC) Rules, Rule 20[37] and the Oman Commercial Arbitration Centre Arbitration Rules, article 12[38] imposes on the arbitrator the obligation to disclose only those circumstances that may raise justifiable doubts about their independence or impartiality, without establishing a generic or automatic disclosure duty, which corresponds to the selective model.

From this perspective, the difference between the two categories lies not so much in the degree of transparency required,[39] but rather in the procedural stage at which risk control is implemented and in the consequences that a potential late disclosure may generate in terms of recusal, challenge, or the validity of the arbitral award.

4.4. The boundary between disclosure obligations and confidentiality

What information should be disclosed and what should remain confidential?

This matter is fundamental to the regulatory treatment of third-party funding in arbitration. In Saudi arbitration, in the context of Article 17.6, which governs disclosure obligations-operates as a light-touch regulatory approach.[40] This category is characterized by the regulation of the basic duty of disclosure, without specific requirements regarding financial control or authorization prior to the possibility of TPF, or sanctions. According to the Mapping Report: "*experts and stakeholders from different countries are in favor of a 'balanced' or 'light-touch' regulation of TPLF, which would provide basic, not too specific, rules, but be careful to keep TPLF a viable option.*"[41]

This opinion constitutes a powerful rationale for maintaining limited disclosure obligations that balance transparency and conflict prevention, while preserving the confidentiality of the funding arrangement, which contains highly specific clauses tailored to the financing structure and projected likelihood of success in dispute.

Under the regulatory framework for arbitration in Saudi Arabia, Article 17.6 of the SCCA Rules establishes a limited disclosure model to prevent conflicts of interest. In this context, disclosure is generally limited to the existence of the TPF agreement and the identity of the third-party funder, while the financial content and contractual terms of the agreement remain confidential. This article conforms to the International Bar Association (IBA) Rule 7(a)

37 Singapur Internacional Arbitration Centre, *SIAC Arbitration Rules* (7th edn, SIAC publishing January 1, 2025) <https://siac.org.sg/siac-rules-2025> accessed 8 January 2026.

38 Oman Commercial Arbitration Centre, *OAC Arbitration Rules* (OAC publishing 2020) <https://jusmundi.com/en/document/rule/en-ocac-oman-commercial-arbitration-center-arbitration-rules-2020-oac-arbitration-rules-2020-wednesday-25th-november-2020> accessed 8 January 2026.

39 Vicente Mazzuz (n 26) 7.

40 Lein and others (n 14).

41 ibid 694.

of the Guidelines on Conflicts of Interest,[42] which mandates the disclosure of any direct or indirect relationship between the arbitrator and the funder, without requiring the disclosure of the content of the funding agreement. In both cases, disclosure is an instrumental element that serves to identify potential future conflicts and does not constitute a substantive control requirement or a procedural prerequisite in the preliminary phase of the arbitration process. The terms of the funding agreement remain protected by the principle of confidentiality, which, in our opinion, is consistent with the procedural structure of arbitration and its traditional requirement of confidentiality.

For its part, the Asian International Arbitration Centre (AIAC) rule 28 e)[43] adopts an intermediate solution, which is entirely within the tribunal's discretion. Its disclosure regime follows a selective model -in which the initiative rests with the arbitral tribunal, which is empowered to order the disclosure of third-party financing agreements and the financier's financial interest when it deems it necessary for the proper conduct of the proceedings. From a procedural perspective, this design prevents the disclosure duty from resting with the financed party and facilitates control over relevant aspects, such as the potential assumption of costs by the third-party financier, though at the cost of granting the tribunal broad discretion. In contrast, the model adopted by the Arbitration Rules of the Saudi Center for Commercial Arbitration (SCCA), by imposing a generic ex ante disclosure duty, enhances predictability and legal certainty from the initial stages of proceedings, reducing the risk of unforeseen procedural issues. From this comparative perspective, the Saudi approach can offer greater normative certainty than silent or purely discretionary models, by clearly identifying what should be disclosed (existence and identity) and what should remain confidential (content and terms of the agreement), aligning itself with international good practices represented by the IBA and preserving, at the same time, confidentiality as an essential and structural feature of arbitration.

5 TRANSPARENCY DISCLOSURE AND PROCEDURAL RISKS ASSOCIATED WITH TPF

Transparency thus operates as a normative bridge between the practice of TPF and the requirements of impartiality and due process in contemporary arbitration. Disclosure mechanisms are designed to prevent conflicts of interest without imposing indiscriminate disclosure of the economic content of funding agreements.[44] However,

42 International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration*: *Approved by the IBA Council, 25 May 2024* (IBA publishing 2024) <https://www.ibanet.org/document?id=Guidelines-on-Conflicts-of-Interest-in-International-Arbitration-2024> accessed 8 January 2026.

43 Asian International Arbitration Centre, *AIAC Arbitration Rules* (AIAC publishing 2026) <https://admin.aiac.world/uploads/ckupload/ckupload_20251008054348_16.pdf> accessed 8 January 2026.

44 Steinitz (n 20).

such mechanisms must be sufficiently extensive to encompass the management of the entire process- including costs- and to identify the beneficial owner of the interest in the dispute. Disclosure mechanisms should guarantee the integrity of the process, equality between the parties, and the legitimacy of arbitration by ensuring a uniform level of transparency for all parties.

As outlined in the previous section, contemporary arbitration reflects the coexistence of multiple disclosure mechanisms regarding TPF. These approaches range from more rigid models imposing predefined disclosure obligations to regimes centered on broad or even absolute tribunal discretion, as well as frameworks based on minimum disclosure requirements limited to the existence of the funding arrangement and the identity of the funder. The ICCA Report states that the presence and identity of a funder must be disclosed or disclosable to allow arbitrators to assess conflicts of interest and the arbitrator's potential for them. However, as a general rule, this should not be sufficient to require disclosure of additional details about the funding relationship or the funding agreement. These details are usually irrelevant to the arbitrator's conflict-of-interest considerations. Nevertheless, according to the report, transparency and conflict avoidance must be balanced to prevent the parties from gaining an unreasonable strategic advantage. Tribunals must be cautious about potential dilatory strategies or arguments before the tribunal, based on unsubstantiated claims about the consequences of a funder's involvement.[45]

Therefore, transparency supported solely by disclosure may not always be sufficient to guarantee the arbitrator's independence and impartiality. As we mentioned above, revealing the funder's identity is necessary, but it does not, by itself, reduce all risks stemming from TPF. Thus, in some cases, additional measures must be implemented, such as granting the tribunal wider powers to examine the relationship between the funder and the party, or adopting specific procedural safeguards

Overall, these diverse models show a shattered but progressive regulatory environment aimed at safeguarding the impartiality and integrity of arbitral proceedings, without converging on a single, consistent disclosure pattern. In summary, transparency balances good practices and regulatory principles, grounded in a consolidated legal framework that institutionalizes TPF disclosure to warrant compliance with the principles of impartiality and due process. Nevertheless, TPF disclosure may entail risks regarding the scope of information disclosed, such as the strategic use of information by the counterparty, tensions with confidentiality, and legal privilege. The Report EC Mapping TPLF notes that TPF has raised concerns about potential conflicts of interest, ethical challenges, and the possibility of unfounded claims initiated by funders, mainly driven by financial gain.[46]

45 International Council for Commercial Arbitration, *Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration: The ICCA Reports no 4* (ICCA Publishing 2018) 98.

46 Lein and others (n 14) 9.

The disclosure of TPF may influence case dynamics by creating a financial imbalance, reducing the claimant's compensation, and increasing incentives for speculative litigation. From a procedural perspective, the disclosure of TPF can ultimately affect the dynamics of the proceedings, leading to financial imbalances that directly affect costs. If agreements are forced solely by the third-party funder's financial interests, the results can lead to complete dissatisfaction for the plaintiff or a reduction in the amount of compensation. These results would undermine the purpose of the process, which is to compensate those whose rights have been violated. In short, an excessive increase in the third-party funder's incentives can lead to speculative financing. The risks are varied and result in a structural asymmetry stemming from the TPF agreement itself. The most concerning aspects revolve around the funder's influence on the direction of the proceedings, which could impact professional independence or influence strategic procedural decisions. This may lead to excessive control by the funder. However, in our assessment, such risks could be contained through applying professional ethics (codes of conduct) that place the strategic and procedural leadership of the proceedings steadfastly under the authority of the attorney.

In closing, the arbitration principles of transparency and confidentiality should balance the disclosure of TPF agreements with the extended confidentiality of their terms. The lack of uniform criteria about what should be disclosed and what should remain confidential could trigger regulatory uncertainty and inconsistent outcomes across jurisdictions. This circumstance might impair procedural efficiency and the institutional solidity of the international arbitration system.

6 CONCLUSIONS

In response to the objective pursued by this study, the following conclusions can be drawn regarding the scope and extent of the disclosure obligation provided for in Article 17.6 of the SCCA Arbitration Rules.

The TPF disclosure obligation, set out in Article 17.6 of the SCCA Arbitration Rules, stipulates a generic disclosure model. This disclosure framework is based on a defined transparency model that aims to safeguard the independence and impartiality of the arbitrators. This setting provides legal certainty to the arbitral process, without undermining the confidentiality principle inherent in TPF in Saudi arbitration.

From a legal-procedural perspective, Article 17.6 is integrated within the general framework of the duty of disclosure of Article 17 of the SCCA Regulation. This article provides a preventive mechanism for the early detection of conflicts of interest, applicable throughout the process and extendable to subsequent modifications in the financing structure.

In determining the scope of the disclosure obligation, it is possible to affirm that the model adopted by the SCCA responds to a generic ex ante disclosure, insofar as it requires disclosure from the initial phase of the arbitration, informing of the existence of the financing agreement and the identity of the third-party funder, regardless of whether a specific conflict of interest has been identified.

The scope of the disclosure duty is limited, excluding the obligation to reveal the economic, contractual, or strategic terms of the financing agreement, which remain protected by the principle of confidentiality.

The regulatory design of disclosure under the SCCA shows a functional balance between transparency and confidentiality. Transparency serves as a structural mechanism to guarantee independence and impartiality, rather than a total disclosure strategy. Disclosure, by itself, is not always enough to secure procedural guarantees. On this point, each case must be assessed individually, and arbitrators may receive broader powers.

From a comparative perspective, the Saudi model aligns with international trends favoring generic and functional disclosure regimes, such as standards developed in the field of soft arbitration law. It diverges from both systems by balancing normative silence with those that grant wide discretion to the arbitral tribunal to order additional disclosures, thereby reinforcing the predictability and legal certainty of the arbitral proceedings. In this way, the predictability and legal certainty of arbitral proceedings are reinforced, and the extent to which the disclosure obligation can effectively serve the arbitral process is clarified, although it should not be considered the only mechanism ensuring its proper functioning.

REFERENCES

1. Abrams DS and Chen DL, 'A Market for Justice: A First Empirical Look at Third Party Litigation Funding' (2013) 15(4) University of Pennsylvania Journal of Business Law 1075
2. Agulló Agolli D, 'Los contratos de financiación de litigios por terceros (Third-Party Funding) en España' (2022) 9(1) Revista de Derecho Civil 183
3. Al-Ammari S and Martin AT, 'Arbitration in the Kingdom of Saudi Arabia' (2014) 30(2) Arbitration International 387, doi:10.1093/arbitration/30.2.387
4. Alshahrani SM and Subedi SP, 'The Law, Policy and Practice of a Major Petroleum Exporting Country on Investor-State Dispute Settlement Mechanism: The Experience of Saudi Arabia and Its Significance for the Development of International Investment Law' (2022) 19(3) Manchester Journal of International Economic Law 287
5. Baker CM (ed), 'International Arbitration Report' (2024) 21 Norton Rose Fulbright
6. Bedaiwi A, 'Alternative Dispute Resolution: Toward a Clear, Reliable and Effective Dispute Resolution System in Saudi Arabia' (PhD thesis, The Pennsylvania State University, 2019)

7. Cojo O, 'Arbitraje y Financiación Procesal Parciaria (Third-Party Funding) En España: Un Análisis Bajo El Prisma de Las Nuevas Directrices de La IBA Sobre Conflictos de Interés' (2014) 8 La Ley Mercantil 68
8. Favro A, 'Duty to Disclose Third-Party Funding in International Arbitration: Scope, Purpose and Limits' (2022) 12 La Ley: Mediación y Arbitraje 1
9. Fernández Bermejo D, 'En torno al concepto del blanqueo de capitales: Evolución normativa y análisis del fenómeno desde el Derecho penal' (2016) 69(1) Anuario de Derecho Penal y Ciencias Penales 211
10. Fernández Rozas JC, 'El mercado emergente sobre la financiación privada de litigios responsable en la Unión Europea: un cauce para facilitar el acceso a la justicia a los ciudadanos y las empresas privadas' (2022) 108 La Ley Unión Europea 1
11. Glickman DR, 'Embracing Third-Party Litigation Finance' (2016) 43(3) Florida State University Law Review 1043
12. Kryvoi Y, 'Improving Saudi Arabia's Arbitration Climate: Comparative Study and Recommendations' (*SSRN*, 9 January 2023) doi:10.2139/ssrn.4640956
13. Lein E and others, *Mapping Third Party Litigation Funding in the European Union* (European Commission DG Justice and Consumers 2025) doi:10.2838/3795189
14. Pinheiro K and Chitalia D, 'Third-Party Funding in International Arbitration: Devising a Legal Framework for India' (2021) 14(2) NUJS Law Review 265
15. Rodak M, 'It's About Time: A Systems Thinking Analysis of the Litigation Finance Industry and its Effect on Settlement' (2006) 155 (2) University of Pennsylvania Journal of Business Law 503, doi:10.2307/40041312
16. Sahani V, 'Keep to the Code: A Global Code of Conduct for Third-Party Funders' (2022) 102 Boston Law Review 2331
17. Steinitz M, 'Third Party Funding of Investment Arbitration' (2021) 42 University of Iowa College of Law Legal Studies Research Paper Series, doi:10.2139/ssrn.3873523
18. Vicente Mazzuz S, 'Extensión y Límites al Deber de Divulgación En Materia de Financiación Por Terceros En El Arbitraje' (2023) 10320 Diario La Ley 1

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПОЛОЖЕННЯ ПРО ФІНАНСУВАННЯ ТРЕТІМИ СТОРОНАМИ ТА ОБОВ'ЯЗОК ЩОДО РОЗКРИТТЯ ІНФОРМАЦІЇ У СТАТТІ 17.6 АРБІТРАЖНИХ ПРАВИЛ SCCA ЯК ПРОЯВ ПРОЦЕСУАЛЬНОСТІ В АРБІТРАЖІ

Карла Бехар* та Франсіско Бастіда

АНОТАЦІЯ

Вступ. *Угоди про фінансування третіми сторонами (TPF) стають дедалі актуальнішими в міжнародному арбітражі, створюючи різні процедурні проблеми, які ускладнюють дотримання балансу між принципами прозорості та конфіденційності. У цій статті досліджується TPF у міжнародному комерційному арбітражі, з особливою увагою на правилах регулювання, що застосовуються Арбітражним судом Саудівської Аравії. Після загального огляду механізмів TPF та їх дедалі ширшого застосування в міжнародному арбітражі, у цій статті розглядається зобов'язання розкривати інформацію про TPF, як це передбачено статтею 17.6 Арбітражних правил Саудівського комерційного арбітражного центру (SCCA) (2023), як інструмент, призначений для захисту незалежності та неупередженості арбітрів.*

Методи. *Це дослідження дотримується юридично-догматичного підходу, що ґрунтується на системному та екзегетичному тлумаченні правила, зокрема буквального формулювання статті 17.6 Правил SCCA. Цей метод доповнюється порівняльним аналізом зі стандартними арбітражними моделями з метою категоризації нормативно-правової бази SCCA. Це дослідження визначає обсяг розкриття інформації, її функцію в арбітражній системі Саудівської Аравії, а також окреслює зміст зобов'язання щодо розкриття інформації стосовно TPF в межах арбітражного процесу Саудівської Аравії. Крім того, розглядається зв'язок з принципом конфіденційності.*

Результати та висновки. *Результати дослідження показують, що стаття 17.6 встановлює загальний режим розкриття інформації, який передбачає обмежений рівень прозорості лише щодо факту існування договору TPF та ідентифікації третьої сторони, що здійснює фінансування, без розкриття змісту самого договору.*

Така регуляторна структура сприяє виявленню конфлікту інтересів на початку провадження, запобігаючи порушенню цілісності арбітражного суду, водночас зберігає конфіденційність угод про фінансування та гарантує правову безпеку арбітражу.

Дослідження показує, що стаття 17.6 Арбітражних правил SCCA (2023) встановлює загальну модель розкриття інформації, яка ґрунтується на загальному підході та не охоплює договірні умови фінансування. Це дозволяє своєчасно виявити процесуальні ризики та забезпечити неупередженість та незалежність арбітражного суду.

Зобов'язання щодо розкриття інформації не поширюється на договірні умови угоди, що зберігає асиметрію між принципами прозорості та конфіденційності.

Ключові слова. *Фінансування третіми сторонами, арбітраж Саудівської Аравії, зобов'язання щодо розкриття інформації, процедурна прозорість, Арбітражні правила SCCA (2023), конфлікт інтересів, конфіденційність.*

ABSTRACT IN ARABIC*

مقال بحثي

البند المتعلق بتمويل الأطراف الثالثة وواجب الإفصاح المنصوص عليه في المادة 17.6 من قواعد التحكيم الصادرة عن المركز السعودي للتحكيم التجاري، كدليل على الشفافية الإجرائية في التحكيم.

كارلا بيهار وفرانسيسكو باستيدا*

الملخص:

الخلفية:

أصبحت اتفاقيات تمويل الأطراف الثالثة ذات أهمية متزايدة في التحكيم الدولي، مما أدى إلى ظهور تحديات إجرائية متنوعة تُعقّد الموازنة بين الشفافية الإجرائية ومبدأ السرية. تتناول هذه الورقة البحثية تمويل الأطراف الثالثة في التحكيم التجاري الدولي، مع التركيز على اللوائح التي تطبقها محكمة التحكيم السعودية. بعد تقديم لمحة عامة عن آليات تمويل الأطراف الثالثة وانتشارها المتزايد في التحكيم الدولي، تستعرض هذه المقالة واجب الإفصاح عن تمويل الأطراف الثالثة، كما هو منصوص عليه في المادة 17.6 من قواعد التحكيم الصادرة عن المركز السعودي للتحكيم التجاري (2023)، كأداة تهدف إلى حماية استقلالية المحكمين ونزاهتهم.

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المنهجية:

يتبع هذا البحث منهجًا قانونيًا تحليليًا، قائمًا على التفسير المنهجي والتفسيري للقاعدة، ولا سيما الصياغة الحرفية للمادة 17.6 من قواعد المركز السعودي للتحكيم التجاري. ويُستكمل هذا المنهج بتحليل مقارن مع نماذج التحكيم المعيارية، بهدف تصنيف الإطار التنظيمي للمركز. تُحدد هذه الدراسة نطاق الإفصاح ووظيفته ضمن نظام التحكيم السعودي، مُبينةً مضمون التزام الإفصاح المتعلق بالتمويل من طرف ثالث في عملية التحكيم السعودي. كما تُدرس العلاقة بمبدأ السرية.

النتائج والاستنتاجات:

تُبين نتائج البحث أن المادة 17.6 تُرسّخ نظامًا عامًا للإفصاح، يُطبق مستويات من الشفافية تقتصر على الكشف عن وجود عقد التمويل من طرف ثالث وهوية المُموّل من طرف ثالث، دون الخوض في تفاصيل بنود العقد.

تُظهر نتائج البحث أن المادة 17.6 تُرسّخ نظامًا عامًا للإفصاح، يُطبق مستويات من الشفافية تقتصر على الكشف عن وجود عقد التمويل من طرف ثالث وهوية المُموّل من طرف ثالث، دون الخوض في بنود العقد.

يُسهم هذا الهيكل التنظيمي في الكشف عن تضارب المصالح في بداية الإجراءات، مما يحمي نزاهة هيئة التحكيم ويصون سرية اتفاقيات التمويل ويضمن الأمن القانوني للتحكيم.

يستنتج البحث أن المادة 17.6 من قواعد التحكيم الصادرة عن المركز السعودي للتحكيم التجاري تُرسّخ نموذجًا عامًا للإفصاح، قائمًا على إطار عام للكشف عن المسائل التي لا تندرج ضمن (2023) بنود اتفاقيات التمويل التعاقدية. ويؤدي ذلك إلى الكشف المبكر عن المخاطر الإجرائية، وبالتالي الحفاظ على حياد واستقلالية هيئة التحكيم. ولا يمتد التزام الإفصاح إلى البنود التعاقدية للاتفاقية، مما يُحافظ على توازن بين مبدأي الشفافية والسرية.

الكلمات المفتاحية:

التمويل من طرف ثالث، التحكيم السعودي، التزام الإفصاح، الشفافية الإجرائية، قواعد التحكيم الصادرة عن المركز السعودي للتحكيم التجاري (2023)، تضارب المصالح، السرية