

University of Gdańsk  
Faculty of Law and Administration  
Kaja Zaleska-Korziuk, M.A.

**Summery of the Ph.D. thesis**  
**„The legal nature of third-party arbitration funding contract”**

Supervisor: dr hab. J. Kruczałak-Jankowska, prof. UG

Advisor: dr hab. B. Gliniecki, prof. UG

**1. RESEARCH OBJECTIVES AND STATE-OF-THE-ART**

The main aim of the thesis is an analysis of the third-party funding agreement from the perspective of legal dogmatic as well as establishing its structure, basic contractual and normative terms, and legal character.

Neither the economic perspective, nor legal perspective of third party funding was comprehensively analyzed in Polish legal writing. Despite the fact that third-party funding agreement gives rise to a contractual obligations of the parties which constitute characteristics of third-party funding as such, the third-party funding agreement was also not widely analyzed in foreign legal writing.

**2. MAIN CONSIDERATIONS**

The thesis is divided into seven chapters, dealing with the main issues related to the third-party arbitration funding agreement.

- 2.1. The first chapter introduces a problem of third-party arbitration funding and established the research objectives, the state-of-the-art regarding the third-party funding in Polish and foreign legal writing. The authors also consider the appropriate terminology applicable to describe.
- 2.2. The second chapter analyses third-party arbitration funding agreement in nine jurisdictions. The author selected the following jurisdictions: Australia, US, England and Wales, Germany, Switzerland, Singapore, Hong Kong and Brazil with regard to *inter alia*:
  - an importance of the jurisdiction to the development of a model of third-party funding agreement as innominate contract (Australia, US, England and Wales),

- an introduction of legislation regarding third-party funding agreement into the legal system (Singapore and Hong Kong),
- an introduction of code of conduct for third-party funders (England and Wales, Singapore), and
- attractiveness of the jurisdiction to the third-party funders (Germany, Switzerland and Brazil).

Furthermore, the author considered the importance of the jurisdiction for commercial arbitration, specifically international commercial arbitration (France, England and Wales, Switzerland, Singapore, Hong Kong and Brazil).

- 2.3. In the third chapter the author considers the structure of the third-party funding agreement by analyzing its basic elements, i.e. parties, subject and contractual terms.
- 2.4. In the fourth chapter the author analyses the agreements related to the third-party arbitration funding agreement.
- 2.5. In the fifth chapter the author classifies third-party arbitration funding agreement within legal system.
- 2.6. The sixth chapter compares the third-party funding agreement with other, similar contracts to legally qualify the third-party arbitration funding agreement. As a result, the third-party arbitration agreement was compared to: loan, bank credit, donation, factoring contract, lawyer retainer, legal expenses insurance and silent partnership. As a result, the author proposed to qualify the third-party arbitration funding agreement as innominate contract for provision of services.
- 2.7. In the seventh chapter, the author considers the admissibility of third-party arbitration funding agreement under the Polish law (i.e. Art. 353<sup>1</sup> and 53 of the Polish civil code) and law applicable to the agreement.

### **3. CONCLUIONS**

The conducted research allows to draw the following conclusions:

- 3.1. the third-party arbitration agreements is a bilateral, bilaterally binding, consensual, causal, and non-reciprocal agreement.

- 3.2. comparison of the third-party arbitration funding agreement to other contracts, especially loan, donation, factoring, insurance, silent partnership and civil partnership justifies qualification of the third-party arbitration agreement as empirical contract, which features has been distinguished due to introduction of codes of conduct and dedicated legislation (Singapore, Hong Kong). In the light of Polish law, the third-party arbitration funding agreement should be classified as a innominate contract for provision of services (Art. 750 of the Polish Civil Code).
- 3.3. the third-party arbitration funding agreement is admissible under the Polish law (Art. 353<sup>1</sup> of the Polish Civil Code). Such finding is consistent with a assessment made in other civil law countries (e.g. France, Germany, Switzerland, Brazil or Belgium).
- 3.4. the third-party arbitration funding agreement is governed by the law applicable to the habitual residence of the third-party funder (i.e. a party required to effect the characteristic performance of the contract) in the light of Art. 4(2) of the Rome I Regulation.