

32<sup>nd</sup> Annual Meeting of the ICC Institute of World Business Law

# THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION

Paris | 26 November 2012



**Date:** Monday 26 November 2012

**Venue:** ICC Headquarters  
38 Cours Albert 1er  
75008 Paris, France

Earn  
8 CLE Credits  
6.75 MCLE Credits  
6.5 CPD Hours\*  
6.5 CNB Hours\*

## Conference Highlight

The last decade has seen an exponential growth in both international commercial arbitration and international investment arbitration. Yet, arbitration proceedings can prove to be very costly and their funding raises the delicate question of the accessibility of arbitration.

The solution offered by third-party funding has undoubtedly become a fact of life in the world of arbitration, despite reservations in some quarters. Although Continental countries continue to regard it with suspicion, Anglo-Saxon countries have embraced this solution and already built up a body of experience in the field. This conference will first consider the various funding techniques specific to international arbitration and then look at some of the legal issues raised by such funding and the reactions it may arouse amongst international arbitration practitioners.

This Annual Meeting is the ICC Institute of World Business Law's latest contribution to reflection on new practices in international arbitration and is inspired by the wish to see those practices develop in a way that is compatible with the basic principles which ensure the parties' rights.

*In principle, the proceedings will be published in the "Dossiers of the Institute" series, and a copy of the publication will be sent to all those who register for this Annual Meeting.*

## Who should attend?

All professionals involved in international trade and dispute resolution: lawyers, arbitrators, magistrates, academics and corporate counsel.

## The ICC Institute of World Business Law

The ICC Institute of World Business Law acts as a think-tank working closely with the ICC International Court of Arbitration. It is composed of 44 members of 23 nationalities, all experienced professionals or academics in international business law or international commercial arbitration. Created over 30 years ago, the Institute provides research, training and information to the legal profession concerned with the development of international business law. In line with its philosophy of excellence, it proposes publications, trainings and conferences on different topics related to international business law.



International Chamber of Commerce  
*The world business organization*

Training and Conferences

\* This conference has been sent for CPD and CNB approval

CONFERENCE

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## Morning Sessions

09:00-12:45

08:30

*Registration*

### Welcome address and introduction

#### Overview of Arbitration Finance

- Access to Justice and Due Process. "Wealth has indeed the monopoly of justice against poverty" (Jeremy Bentham).
- Risk sharing by lawyers: contingency fees (USA), conditional fees (UK), *pactum de quota litis* (civil law countries) and other forms of arbitration success fees.
- Arbitration insurance, before the event and after the event insurance. Sale and assignment of legal claims and arbitral decisions. Third Party Funding and "arbitration loans".
- The modern Third Party Funding Industry (Origins and development - Sources of funds - Type of Funders and level of sophistication: one-time players vs. repeat players - Analysis of funding mechanisms and structures, incl. structures for defendants)

#### The decision to invest in claims

- Objections to Third Party Funding. Ethical issues. Doctrines of maintenance, champerty and barratry; usury; illegal gambling in arbitration; and unconscionability.
- Cost-efficient dispute resolution. Levelling the playing field on which disputes are resolved. Economic analysis of the return on the investment. Examples of profitable investments in Third Party Funding context.
- Due diligence and the assessment of risks and returns
- The funding agreement and issues to be taken into account during the negotiation thereof.
- Fee: percentage of recovery vs. Interest which increases along with the passage of time.
- Collateral: pledges or mortgages over property to secure repayment of the funder's fee.

Q&A session

12:45 - 14:30

*Lunch*

## Afternoon Sessions

14:30 - 18:00

### Third Party Funding and the Arbitration Proceedings

- Confidentiality, transparency and attorney-client privilege
- How to identify that the opposing party is being financed by a Third Party Funding
- Conflicts of interest for lawyers - Arbitrators' independence and impartiality
- The role of funders in the proceedings - Production of documents, oral testimony, legal argument, settlement negotiations, termination of the funding agreement - When is it relevant?
- Cost issues

Q&A session

### Third-Party Funding in Investor-State Arbitration - Third-Party Funding and collateral litigation

- Special issues to be taken into account while funding state parties
- An invitation to class actions in Investor-State arbitration
- *Abaclat and Others v. Argentina* and strong dissenting opinion is a discussion going anyway?
- Experiences out of the *Lago Agrio* Third Party Funding
- Requests for discovery in local courts and interim measures against the Third Party Funding - The role of Third Party Funding in enforcement of awards - Recovery of the funder's fee
- Is there a need for national or international regulation or for soft-law regulation? What are the steps to be taken *de lege ferenda*?

Q & A session

### Synthesis and closing

*Cocktail reception*

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## Chairman of the ICC Institute of World Business Law

- **Yves Derains**, Partner, Derains & Gharavi, France; Former Secretary General, ICC International Court of Arbitration

## Co-Chairs of the 2012 Annual Meeting of the ICC Institute of World Business Law

- **Bernardo M. Cremades**, Senior Partner, B. Cremades y Asociados, Spain; Council Member, ICC Institute of World Business Law
- **Antonias C. Dimolitsa**, Antonias Dimolitsa & Associates, Greece; Vice-Chair, ICC Institute of World Business Law

## Speakers

- **Georges Affaki**, Vice-Chair, ICC Banking Commission, Paris; Council Member, ICC Institute of World Business Law
- **Christopher P. Bogart**, CEO, Burford Group, United States
- **Antonio Crivellaro**, Head of Arbitration, Bonelli Erede Pappalardo, Italy; Council Member, ICC Institute of World Business Law
- **Hamid Gharavi**, Partner, Derains & Gharavi, France
- **Mark Kantor**, Independent Arbitrator, United States
- **Charles Kaplan**, Avocat à la Cour; Partner, Herbert Smith, France; Associate Member, ICC Institute of World Business Law
- **Carolyn Lamm**, Partner, White & Case LLP, United States
- **Laurent Lévy**, Partner, Lévy Kaufmann-Kohler, Switzerland; Council Member, ICC Institute of World Business Law
- **Maxi Scherer**, Special Counsel, Wilmer Cutler Pickering Hale and Dorr LLP; Lecturer in International Arbitration, Queen Mary, University of London, United Kingdom
- **Timothy Scrantom**, Managing Director, BlackRobe Capital Partners LLC, United States
- **Selvyn Seidel**, Chairman, Fulbrook Management LLC, United States
- **Ignacio Torterola**, Of Counsel, Foley Hoag LLP, United States
- **Jim Tyrrell**, Regional Managing Partner, Patton Boggs LLP, United States

SPEAKERS



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## Registration fees

The registration fee includes all conference documentation, lunch and cocktails, as well as a copy of the publication of the proceedings of the conference, should they be published, in the Dossier of the Institute series. Travel and hotel expenses are not included.

### Early Bird Special until 14 September 2012

- ICC members: **€690\*** (€825,24)
- Non-members: **€790\*** (€944,84)

### After 14 September 2012

- ICC members: **€890\*** (€1,064,44)
- Non-members: **€990\*** (€1,184,04)

\*excl. VAT 19.6%. As of 2011, ICC Services must set its prices to include the VAT pursuant to Article 53 of the European Directive 2006-112CE. Please note that you can request a reimbursement of the VAT through your local tax administration. (If you are not a member of the EU, you must obtain a French tax representative in order to receive the VAT reimbursement.)

## How to register

**Easier and faster, register online** (secured payment by credit card) at [www.iccevents.org](http://www.iccevents.org)

Or return the registration form indicating method of payment to:

**E-mail:** [events@iccwbo.org](mailto:events@iccwbo.org)

**Tel:** +33 1 49 53 30 42

**Fax:** +33 1 49 53 30 30

**Post:** ICC Services, Training and Conferences, 38, Cours Albert 1er, 75008 Paris, France

Registration will be confirmed upon receipt of the registration form and registration fees.

To benefit from early bird rates, please note that ICC Services must receive the payment before the deadline.

## Travel and accommodation

Participants are responsible for making their own travel arrangements and hotel reservations. A **list of hotels** in Paris, with which ICC has negotiated preferential room rates, will be sent to you upon receipt of the registration form.

We are able to dispatch **visa invitation letters** to support your visa application only after receipt of your registration form and full payment of your registration fees.

## Working languages

English and French. Simultaneous interpretation will be provided.

## Credits and hours

ICC Training and Conferences is eligible for CLE credit under **New York's** approved jurisdiction procedures, is a State Bar of **California** approved MCLE provider and is a Solicitors Regulation Authority and General Council of the Bar of **England** and **Wales** External CPD Course Provider.

**French bars:** This training has been sent for CNB approval. Lawyers practising in France may apply for the reimbursement of this course before the FIFPL (Fonds Interprofessionnel de Formation des Professionnels Libéraux), subject to terms and conditions.

## Cancellation policy

50% of the registration fee will be refunded if notice of cancellation is received in writing **before 26 October 2012**. Cancellations after this date are not refundable. Subject to agreement from ICC Training and Conferences prior to the event, the registration may be transferred to another person from the same company or organization at no extra charge. Updated registration information will be required.

Please note that ICC Services reserves the right to cancel this event or to make minor alterations to the content and timing of the programme or to the identity of the speakers. In the unlikely event of cancellation, delegates will be offered a full refund. ICC Services will not, however, be held responsible for any related expense incurred by the participant.

## Partnership opportunities

This training offers you an unrivalled opportunity to build worldwide partnerships. Partnering will get you visibility with the major decision makers in global business and within the international arbitration network. For further information, please contact Ms Rodriguez at: [luz.rodriguez@iccwbo.org](mailto:luz.rodriguez@iccwbo.org)



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## Registration Form S 1211

Register online\*  
**www.iccevents.org**  
\*Secured payment by credit card

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38, Cours Albert 1er, 75008 Paris - France

or complete and return to  
**events@iccwbo.org**  
**Fax: +33 (0)1 49 53 30 30**

**Participant information**  
(Please print or type)

Title (Mr/Dr/Mrs/etc.) \_\_\_\_\_  
Family name \_\_\_\_\_ First/given name \_\_\_\_\_  
Position \_\_\_\_\_  
Company \_\_\_\_\_  
Address \_\_\_\_\_  
City/state \_\_\_\_\_ CEP/postal code \_\_\_\_\_  
Country \_\_\_\_\_ E-mail \_\_\_\_\_  
Tel ( \_\_\_\_\_ ) \_\_\_\_\_ Fax ( \_\_\_\_\_ ) \_\_\_\_\_

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**Method of payment**

Special code (NC, etc.)   
 **By credit card:**     American Express     Euro/MasterCard     Visa  
Card number \_\_\_\_\_ Expiry date \_\_\_\_\_  
Name of cardholder \_\_\_\_\_

**By bank transfer: LCL**  
Account No. 0000060021B    Clé RIB 64    Bank Code 30002    Branch Code 04866  
Swift: CRLYFRPP IBAN: FR61 3000 2048 6600 0006 0021 B64

**Please indicate the reference "S 1211" and the name of the participant.**

Please note that transfer fees charged by the bank must be covered by the participants themselves.

Date \_\_\_\_\_ Signature \_\_\_\_\_

**Data protection information**

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 Yes       No

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