



# The Asia-Pacific Arbitration Review

2024

**Developments in third-party funding in  
mainland China**

# The Asia-Pacific Arbitration Review

2024

---

The *Asia-Pacific Arbitration Review 2024* contains insight and thought leadership from 58 pre-eminent practitioners from the region. It provides an invaluable retrospective on what has been happening in some of Asia-Pacific's more interesting seats.

This edition also contains think pieces on complex financial instruments, private equity and investor-state arbitration, and several on new frontiers in energy disputes.

All articles come complete with footnotes and relevant statistics.

---

**Generated: February 8, 2024**

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

# Developments in third-party funding in mainland China

**Wang Heng**

Global Law Office

## Summary

IN SUMMARY

DISCUSSION POINTS

REFERENCED IN THIS ARTICLE

LOCAL FUNDERS ACTIVELY ENGAGED IN THE MAINLAND CHINA MARKET

TPF IN ARBITRATION PROCEEDINGS

TPF IN COURT PROCEEDINGS

THOUGHTS ON TPF IN MAINLAND CHINA

ENDNOTES

---

## IN SUMMARY

This article explores the emerging trend of third-party funding (TPF) in mainland China. Although the legality of TPF in arbitration has been affirmed by certain Chinese courts, other courts have expressed concerns about the legality of TPF in litigation. The courts' positions have significant implications for TPF in China; amendments to arbitration rules and laws may be necessary to clarify its legality and ensure safe operation.

---

## DISCUSSION POINTS

- Development of local funder
  - Legality of TPF in arbitration and litigation
- 

## REFERENCED IN THIS ARTICLE

- *Ruili Airlines Limited Company v Yunnan Jingcheng Group Limited and others*
  - *Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited*
  - *Winhc Information Technology Limited (Shanghai) v Changzhou Ainuo Textile Co, Ltd*
  - *Dongrunjintai (Shenzhen) Investment Management Centre LP v Bangying Internet Technology (Beijing) Holdings Co, Ltd*
- 

Third-party funding (TPF) has long been a hot topic in international dispute resolution. Recent years have seen an increase in international investment arbitration, commercial arbitration and litigation cases involving TPF. In line with practice developments, national legislation, arbitral rules and industry guidelines have begun to regulate and accommodate the rise of TPF in several jurisdictions.

In mainland China, despite heated discussion between legal professionals (especially arbitration practitioners) about the legality and development of TPF, and the fact that there are foreign and local funders actively engaging in advertising and promoting the funding business in mainland China, there have been a limited number of arbitration and litigation cases funded by TPF and disclosed to the public over the past several years. Due to the lack of any specific legal provisions on TPF under Chinese law, whether it is permitted in the Chinese legal system remained unclear for a long time.

Nevertheless, in 2022, major developments in TPF in mainland China occurred, such as the emergence of new local funders and the judicial review of TPF for arbitration and litigation proceedings, from which we might draw some clues, if not a conclusion, on the position of the Chinese courts on TPF. This article intends to provide a snapshot of the recent developments in the TPF practice in mainland China.

## LOCAL FUNDERS ACTIVELY ENGAGED IN THE MAINLAND CHINA MARKET

In recent years, there has been a growing number of third-party funders who finance disputes in the international market. These funders have also recognised the immense potential of the mainland Chinese market and have been actively engaging in a series of local business

development activities. Some notable examples of such funders include Omni Bridgeway and Deminor Recovery Services. Moreover, there has been a surge in the emergence of local funders, which are mostly established by Chinese lawyers with a wealth of experience in dispute resolution and a keen interest in the innovative financing solutions for dispute resolution that have been popular in the international market for some time.

The emergence of professional third-party funders in mainland China can be traced back to around 2015. Among these funders is Holding Capital, a local third-party funder that was established in 2022 by several experienced partners from famous Chinese law firms. According to its website, Holding Capital is a platform that provides both legal and financing services, and its team consists mostly of professionals from law firms. However, as it is still in its early stages, there is currently no published information or statistics about any cases that it has financed.

Another major local funder is DS Legal Capital, which is a third-party platform that was founded in 2016 by legal professionals and business intelligences with subsidiaries in several major cities in China. According to its website, DS Legal Capital is a pioneer in legal capital innovation and focuses on commercial disputes. It combines capital and legal services, and aims to revolutionise traditional legal models by providing creative financing to both litigants and lawyers. DS Legal Capital intends to become a high-end legal capital provider in China, and has a nationwide lawyer network that can recommend qualified lawyers with relevant experience and invite expert groups for assessment. Furthermore, it has assembled a committee of legal experts that provides strategic guidance in complex cases. According to its disclosed data, DS Legal Capital had invested in approximately 500 cases with over US\$400 million in dispute by the end of 2019.

The founders of both Holding Capital and DS Legal Capital are senior partners from law firms who specialise in commercial dispute resolution, including arbitration and litigation.

In addition to these companies, there are other third-party funders, including WHC Litigation Investment and Bangying. Public records indicate that both WHC Litigation Investment and Bangying were established around 2015. While it is unknown exactly how many disputes WHC Litigation Investment and Bangying have financed, a small number of publicly available court decisions reveal that they have indeed provided funding to litigation proceedings. It is worth noting that some of these cases have led to legal disputes between the funders and the parties, with the legality of the funding agreements being challenged and subsequently reviewed by the judiciary.

## TPF IN ARBITRATION PROCEEDINGS

As arbitration proceedings are confidential, it is difficult to determine which cases are funded by third-party funders unless the arbitral award is subject to national court review. In 2022, some arbitral awards related to TPF were challenged and referred to the courts for judicial review, marking the first time that TPF for arbitration was subject to Chinese court review. This attracted significant attention from legal professionals and the TPF industry.

The arbitral awards were rendered by the China International Economic and Trade Arbitration Commission (CIETAC) in foreign-related cases filed by a Chinese company as the claimant in disputes arising from aircraft leasing agreements with the respondents. After CIETAC rendered the awards, the claimant applied to the Wuxi Intermediate Court for enforcement. The respondents applied to the same court to refuse enforcement based on multiple grounds, but their application was dismissed.<sup>[1]</sup> The respondents then applied to the Beijing

Fourth Intermediate Court on similar grounds to set aside the arbitral awards, but their application was also rejected.

One of the grounds for the respondents to apply for non-enforcement and setting aside was the TPF engaged by the claimant in the arbitration, IMF Bentham. The claimant initiated arbitration proceedings, and voluntarily disclosed the existence of a TPF arrangement and the identity of the funder to avoid potential conflicts of interest. However, the claimant did not submit the funding agreement. The claimant acknowledged providing the funder with relevant information about the progress of the arbitration proceeding, hearing, arbitral award and other related matters.

The respondents alleged that the claimant violated the confidentiality provisions of the CIETAC Arbitration Rules by disclosing arbitration-related information to the funder despite their objections. The claimant argued that the funder was an 'other relevant person' and therefore allowed under the CIETAC Arbitration Rules to receive relevant information about the arbitration proceeding,<sup>[2]</sup> and that the funding agreement contained provisions on confidentiality duties preventing the funder from disclosing the information that it obtained. The claimant also maintained that TPF was not prohibited by the Arbitration Law or any applicable arbitration rules.

During the arbitration proceedings, the parties submitted written and oral arguments on the legality of TPF in arbitral proceedings. The tribunal ultimately concluded that the claimant had not violated any laws or arbitration rules by securing TPF to initiate arbitration. The main point of contention during the court proceedings was whether the involvement of TPF by the claimant violated the confidentiality provisions of the CIETAC Arbitration Rules. The courts held that article 38 (on confidentiality) of the CIETAC Arbitration Rules primarily deals with the requirement for hearings to be conducted privately and, since the arbitration hearing was indeed conducted in private, the disclosure of certain information to the funder did not constitute a breach of the CIETAC Arbitration Rules.

Furthermore, the courts noted that Chinese law does not prohibit TPF for arbitration and parties are entitled to accept such funding. This approach is consistent with many jurisdictions that have amended their laws, arbitration rules and industry guidelines to regulate TPF for arbitration, leveraging its advantages and safeguarding parties' rights.

This case demonstrates that Chinese courts take a similar approach to TPF for arbitration as international practice, indicating that TPF for arbitration is permissible in mainland China. In addition to this judicial practice, it is hoped that major arbitration institutions, such as CIETAC, the Beijing International Arbitration Centre, the Shenzhen Court of International Arbitration and others will revise their arbitration rules to include provisions on TPF to guide parties' practices appropriately.

Furthermore, it can be inferred from the aforementioned case that parties involved in arbitration proceedings in China are advised to voluntarily disclose any TPF arrangements to prevent potential conflicts of interest. When it comes to the question of whether and to what extent third-party funders shall be disclosed to the tribunal, although there is no explicit provision in Chinese law or arbitration rules in this regard, disclosure of the detailed content of the funding agreement or submission of the text of the funding agreement may not be mandatory.

## TPF IN COURT PROCEEDINGS

As Chinese laws are silent on the legality or illegality of TPF in mainland China, it is generally inferred that TPF in mainland China is legitimate and permitted in both arbitration and litigation proceedings, according to the principle that the absence of prohibition under law amounts to permission. However, TPF is treated differently in respect of arbitration and litigation. While the legality of TPF for arbitration was confirmed by the Wuxi Intermediate Court and the Beijing Fourth Intermediate Court in the above case, the legality of TPF for litigation has been seriously challenged in Shanghai.

In 2017, a company that suffered a loss due to a third party's breach of contract entered into a litigation funding agreement with a litigation funder and a law firm to seek financing for the litigation proceedings against the third party. The funding agreement provided that the funder is entitled to collect 27 per cent of the recovered amount and would coordinate with the law firm to provide legal services for the company independently. The funder would also cover the court and legal fees provided under a separate engagement letter between the company and the law firm. With the provision of funds and legal services, the company successfully recovered losses resulting from the third party's breach of contract, but it refused to pay the funder as agreed under the litigation funding agreement. Consequently, the funder initiated a lawsuit against the company based on the funding agreement, claiming payment from the company.

Although both the court of first instance and the appellate court in Shanghai recognised that litigation funding is a new matter and that there are no clear provisions prohibiting or permitting it under Chinese law,<sup>[3]</sup> both courts deemed the litigation funding agreement contrary to public policy and good morals, and invalid. Therefore, the funder was not entitled to the proceeds of the funded case.

The courts held that investment of funds into litigation runs counter to the prevailing national value orientation, which emphasises capital investment in and service to the real economy rather than the fictitious economy, and seeks to prevent capital from expanding in a disorderly fashion. Additionally, the courts considered TPF to have financial and profit-driven characteristics, aiming to maximise profit at its core, which would:

- encourage plaintiffs to initiate litigation wilfully, unscrupulously and recklessly; and
- exclude or expel mediation, settlement and other alternative dispute resolution methods that may be fundamentally better suited to easing conflicts and solving disputes.

The courts noted that TPF for litigation deviates from the underlying pursuit of litigation to settle disputes, contradictions and conflicts, thereby causing adverse effects on the order of litigation, which form part of social public order. Damage to the order of litigation therefore amounts to damage to social public order.

Moreover, the courts observed that TPF is not consistent with the ethical values of harmony and friendship. They noted that parties can resolve disputes through various mechanisms (eg, mediation and settlement) that reflect the principles of harmony and friendship instead of resorting to contentious court proceedings with TPF involvement.

The courts acknowledged that TPF is permitted in other jurisdictions. However, they emphasised that the judicial review of the legality of TPF in China shall be conducted with discretion and a precautionary approach. The courts deemed it inappropriate to grant

permission for TPF for litigation in certain judicial proceedings directly in China, given that no law, regulation or norm has been enacted to regulate or accommodate TPF in the country.

In arriving at their decision, the courts conducted a general review of TPF for litigation in addition to reviewing the specific funding agreement that was disputed in the case. The courts found that the funding agreement involved excessive control by the funder over the funded party. For instance, the funder designated the law firm representing the funded party and deprived the funded party of the right to remove the designated law firm. Furthermore, granting the funder the right to participate in the decision-making process constituted a limitation of the litigation rights of the funded party, resulting in a deprivation of its right to settle for any amount or compromise on any basis.

The courts' concerns about TPF arose in respect of several other aspects, such as the hypothetical connection between the funder behind the scenes and the judge panel hearing the funded litigation case, as well as the possible adverse influence caused by such a connection on the delivery of justice by the panel.

The court judgments in the above-mentioned case have attracted extensive attention and sparked heated discussions among legal professionals in China. Specifically, certain scholars have criticised the above judgments explicitly, although they noted that TPF for litigation is also not widely accepted in other jurisdictions due to the risk of encouraging vexatious litigation and being considered contrary to public policy.

Such scholars have pointed out that, in deciding a specific dispute arising from a particular agreement, the above judgments failed to identify whether any improper or undue control exercised by the funder occurred in the litigation proceeding at issue, except for what was provided under the agreement. In addition, the courts did not specify whether the decision made by the court in the funded litigation proceeding was indeed unduly affected by the funder behind the scenes, but merely referring to a risk of interference in the conduct of the case arising from a hypothetical connection between the funder and the panel hearing the funded case. Some legal professionals have also criticised the court's approach in denying the legality of TPF in a general sense without analysing it in a more specific context.

The case mentioned above has been selected as one of the representative cases for 2022 by the Shanghai High Court. The court's expression of grave concerns regarding the nature and effects of TPF, and its explicit position on the illegality and invalidity of the funding agreement, are likely to have a profound impact on future court decisions regarding litigation funding. It is highly probable that future cases involving TPF agreements will be subject to rigorous and careful scrutiny by the courts, and there is little chance that the courts will take a contrary view on this issue in the near future.

### **Divergent Conclusions**

Nevertheless, the case mentioned above is not the first in which a Chinese court has reviewed the legality of a litigation funding agreement. There have been cases in which other courts have reviewed the legality of such agreements and reached a completely different conclusion.

For instance, in 2021, the Songjiang District Court of Shanghai reviewed the legality of a litigation funding agreement in a contract dispute filed by the funder, WHC Litigation Investment, against the funded party. The funder sought a reimbursement of advanced court costs and payment of service fees.<sup>[4]</sup> Pursuant to the litigation funding agreement, the



funder advanced court costs and legal fees, and designated lawyers to represent the funded party in a court proceeding to recover the debt owed to the funded party by a third party. In exchange for the services provided by the funder, the funded party agreed to pay 20 per cent of the recovered amount as a service fee. However, after successfully recovering the claimed amount from the third party with the assistance of the funder, the funded party refused to pay the advanced costs and service fee to the funder. As a result, the funder launched a lawsuit against the funded party.

The Songjiang District Court issued a favourable judgment to the funder in a concise manner, affirming the legitimacy and validity of the funding agreement. It also granted all claims made by the funder, including the reimbursement of advanced costs and the payment of service fees.

In addition, in 2020, courts in Beijing reviewed the legality of a litigation funding agreement in a contract dispute brought by the funder, Bangying, against the funded party to claim the balance payment from the funded party.<sup>[5]</sup> The funded party argued that the litigation funding agreement was invalid and filed a counterclaim seeking a refund of the amount already paid to the funder under the agreement. The disputed funding agreement was executed between the funded party and the litigation funder regarding an enforcement proceeding filed by the funded party against a third party for failing to perform its obligations under a certain judgment. Under the funding agreement, the parties agreed to have the funder designate lawyers to represent the funded party in the enforcement proceeding and the funder advanced legal fees for the funded party. Later, the funded party successfully collected the amount due from the third party with the assistance of the funder and designated lawyers, but it refused to pay the balance owed to the funder according to the funding agreement.

Both the court of first instance and the appellate court in this case held that the funding agreement was valid, represented the genuine intentions of the parties, and did not contravene any mandatory provisions of laws and regulations. Therefore, the funded party was obliged to pay the funder as agreed. The funded party's refusal to pay the balance on the grounds of the invalidity of the funding agreement was considered a violation of the principle of honesty and good faith, and its argument was not accepted by the court.

Based on the above, it is evident that the Chinese courts have adopted divergent approaches with respect to TPF in the contexts of arbitration and litigation. TPF for arbitration is well embraced whereas, when it comes to TPF for litigation, the extant cases are split on the question of its legality.

## THOUGHTS ON TPF IN MAINLAND CHINA

The benefits brought by TPF to parties who intend to initiate legal proceedings but are short on funds are obvious, particularly in light of the economic impact of the covid-19 pandemic over the past three years. TPF enables such parties to pursue their claims and provides access to justice. Therefore, there are incentives for parties to engage third-party funders for such proceedings and for third-party funders to prosper in mainland China. Denying the legality of TPF for litigation or arbitration directly, without specific consideration of the context of the funding agreement or the factual circumstances involved, may not be best practice.

Currently, the legal system is silent on TPF. Judicial practice extends support to TPF for arbitration, but such practice takes inconsistent positions with regard to TPF for litigation, which seems to make the prospects of TPF for litigation in mainland China uncertain.

However, it should be noted that none of the above cases has been listed as a guiding case by the Supreme People's Court, which serves as a guideline for future cases with similar backgrounds. Furthermore, we have not noticed any cases relating to a TPF agreement heard by the Supreme People's Court itself. Therefore, it is not appropriate to conclude directly that the legality of TPF for litigation will always be denied in future cases.

If TPF for litigation or arbitration, or both, is permitted under Chinese law, to ensure that TPF operates safely under a secure regime, arbitration rules and the Arbitration Law may be amended accordingly:

- to incorporate provisions on TPF in relation to disclosure, confidentiality and other relevant aspects; and
- to balance or eliminate the potential harm that TPF may bring to the order of litigation.

## Endnotes

- 1 ***Ruili Airlines Limited Company v Yunnan Jingcheng Group Limited and others***, Jiangsu Province Wuxi Intermediate People's Court, Case No. (2022) Su 02 Zhi Yi 14, Civil Order, 30 May 2022; and ***Ruili Airlines Limited Company v Yunnan Jingcheng Group Limited and others***, Jiangsu Province Wuxi Intermediate People's Court, Case No. (2022) Su 02 Zhi Yi 13, Civil Order, 30 May 2022. [^ Back to section](#)
- 2 Article 38 of the CIETAC Arbitration Rules states that: [^ Back to section](#)
- 3 ***Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited***, Shanghai Jingan District People's Court, Case No. (2020) Hu 0106 Min Chu 2583, Civil Judgment; and ***Shanghai Xu Ding Capital Management Limited v Shanghai Weian Internet Technology Limited***, Shanghai Second Intermediate People's Court, Case No. (2021) Hu 02 Min Zhong 10224, Civil Judgment. [^ Back to section](#)
- 4 ***Winhc Information Technology Limited (Shanghai) v Changzhou Ainuo Textile Co, Ltd***, Shanghai Songjiang District People's Court, Case No. (2021) Hu 0117 Min Chu 12067, Civil Judgment, 22 October 2021. [^ Back to section](#)
- 5 ***Dongrunjintai (Shenzhen) Investment Management Centre LP v Bangying Internet Technology (Beijing) Holdings Co, Ltd***, Beijing Second Intermediate People's Court, Case No. (2020) Jing 02 Min Zhong 807, Civil Judgment, 12 June 2020; ***Dongrunjintai (Shenzhen) Investment Management Centre LP v Bangying Internet Technology (Beijing) Holdings Co, Ltd***, Beijing Dongcheng District People's Court, Case No. (2019) Jing 0101 Min Chu 5727, Civil Judgment, 10 November 2019. [^ Back to section](#)



---

**Wang Heng**

[wangh@glo.com.cn](mailto:wangh@glo.com.cn)

---

<http://www.glo.com.cn/en/>

[Read more from this firm on GAR](#)