

SICC Upholds Arbitral Tribunal's Refusal to Award Third-Party Funding Costs

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Introduction

In *DTH and another v DTF and two others* [2026] SGHC(I) 5 ("**DTH v DTF**"), the Singapore International Commercial Court ("**SICC**") dismissed an application to set aside an arbitral tribunal's refusal to award third-party funding ("**TPF**") costs. The decision highlights that while TPF may assist a claimant in pursuing arbitration, this does not necessarily mean that the costs of such funding can be passed on to the losing party. This holds true even where it causes a successful claimant to be effectively deprived of most of the fruits of its success.

The first and second respondents in this application were successfully represented by [Kelvin Poon, SC](#) (Deputy Managing Partner; Regional Head, Dispute Resolution), [Avinash Pradhan](#) (Deputy Head, International Arbitration) and [Divyesh Menon](#) (Partner, International Arbitration) of Rajah & Tann Singapore.

Background

The Applicants had entered into a joint venture with the first and second respondents (collectively, "**Respondents**") for the provision of financing technology services as shareholders in the third respondent. The parties' relationship subsequently deteriorated, and the Respondents purported to terminate shareholder and investment agreements entered into with the Applicants ("**Agreements**"). The Applicants were also removed as directors of the third respondent and terminated as employees.

Before an arbitral tribunal ("**Tribunal**"), the Applicants commenced arbitral proceedings against all three respondents for breaches of the Agreements, and against the Respondents for minority oppression. They also entered into a litigation funding agreement ("**LFA**") with a litigation funder ("**Funder**"). Under the LFA, the Funder financed the Applicants' legal

costs in exchange for reimbursement of the funded costs and a further sum calculated with reference to the amount awarded to the Applicants.

In its Partial Award, the Tribunal largely found in favour of the Applicants and made a buyout order of approximately US\$14.7 million. The Applicants then sought to recover approximately US\$14.6 million in TPF costs, in addition to legal costs and disbursements. They argued that these TPF costs were recoverable under Rule 37 of the Singapore International Arbitration Centre Rules ("**Rule 37**"), which states that the Tribunal "shall have the authority to order in its award that all or part of the legal *or other costs* of a party be paid by another party" [emphasis added]. The Applicants stressed that, without recovery of the funding costs, the obligation to pay the Funder would leave them with little practical benefit from the Partial Award.

Nevertheless, the Tribunal issued a Costs Award in which a majority of the Tribunal ("**Majority**") dismissed the claim for TPF costs ("**TPF Decision**") on the following grounds:

1. It lacked the power or authority to award TPF costs.
 - The 2017 amendments to Singapore's Civil Law Act ("**CLA**"), which legalised certain TPF arrangements, did not permit a successful party to pass its TPF costs on to the losing party.
 - Rule 37 did not confer authority to award such costs. In its view, section 12(5) of the International Arbitration Act limited a tribunal's powers to remedies that could also be granted by the High Court, and the High Court could not order an unsuccessful party to pay a successful party's TPF costs. Further, such TPF costs did not fall within the meaning of "other costs" in Rule 37.
2. The LFA did not fall within the statutory definition of a permitted TPF contract.
 - The LFA was more in the nature of a commercial investment, rather than being "for the purpose of funding all or part of the costs of [the Applicants]" within the meaning of section 5B(2) of the CLA.
 - As such, the LFA could not support a claim for recovery of TPF costs against the Respondents.

Setting-aside Application

The Applicants brought the present application before the Singapore International Commercial Court ("**SICC**"), seeking to set aside the TPF Decision on two grounds:

1. **Public Policy Issue:** That the TPF Decision was in conflict with the public policy of Singapore pursuant to Article 34(2)(b)(ii) of the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**"). The purported public policy was "ensuring access to justice for impecunious but deserving parties with meritorious claims." Denying recovery of TPF costs undermined that objective, because parties who require funding to pursue valid claims may be left with little practical benefit from a successful award.
2. **Arbitral Procedure Issue:** That the arbitral procedure adopted by the Majority in arriving at the TPF Decision was not in accordance with the parties' agreement pursuant to Article 34(2)(a)(iv) of the Model Law. The Applicants argued that the Tribunal had discretion to award TPF costs under Rule 37. In declining to award such costs on the basis that it lacked the jurisdiction or power to do so, the Majority had departed from the parties' agreement.

SICC Decision

The SICC dismissed the application on both grounds.

Public Policy Issue

1. The core question before the SICC was *not* whether the Majority had erred in concluding it lacked the power to award TPF costs. The policy of minimal curial intervention meant that even an error of Singapore law would not, without more, render an award contrary to public policy.
2. Rather, the question was (i) whether the public policy identified by the Applicants existed; and if so (ii) whether the Majority's determination on its power to award TPF costs conflicted with that public policy to the high degree conveyed by the expressions such as "shocking the conscience", "violating the forum's most basic notions of morality and justice", or being "clearly injurious to the public good".
3. The applicants' formulation of the applicable public policy, as one of ensuring access to justice for impecunious parties with meritorious claims, was impermissibly narrow in scope. Being confined to a specific class of impecunious arbitrants seeking TPF costs recovery, it could not properly be characterised as "public" policy that engaged at least a substantial segment of the public, if not the entirety thereof. It also risked eroding the distinction between *social* policy and public policy.
4. In any event, the SICC found that:
 - Access to justice was compatible with less than full cost recovery, which is a commonplace scenario even in arbitration.
 - The interests of the opposing party also had to be considered. On the Applicants' case, an opposing party would be exposed to paying more when sued by an impecunious fundee even if the opposing party was not responsible for the impecuniosity.
 - Finally, the SICC costs regime expressly prohibited the recovery of TPF costs. It was therefore difficult to argue that, even if the Majority were incorrect in finding TPF costs to be irrecoverable, this could shock the conscience or be injurious to the public good.

Arbitral Procedure Issue

1. Article 34(2)(a)(iv) of the Model Law is concerned with irregularities in the procedural rules governing how an arbitration is conducted, such as timelines, submission requirements, and notification rules. It cannot be extended to the substance or outcome of an arbitral decision.
2. Rule 37 of the SIAC Rules is not procedural in nature, as it governs the tribunal's authority to dispose of costs, not the procedural manner in which it arrives at that disposition. Any error by the Majority in concluding that it lacked power to award TPF costs was therefore an error of substance going to the merits, and not a departure from agreed procedure.
3. Even if Rule 37 were treated as procedural, it was for the Majority to determine what that rule authorised. That determination was not open to curial review unless the construction adopted was simply not open on any view of the text.

Finally, the SICC observed in *obiter* that even if a prescribed ground for setting aside had been made out, it retained a residual discretion to decline relief where no prejudice has been sustained. The TPF Decision also rested independently

on the ground that the LFA fell outside the TPF regime permitted under the CLA, such that the applicants would have failed on their TPF costs claim regardless of how the question on power was resolved.

Concluding Remarks

While Singapore has loosened the common law rules against maintenance and champerty to provide for TPF funding in specified contexts, *DTH v DTF* serves as a reminder that TPF does not equate to a blank cheque at the expense of the losing party. Parties considering TPF should therefore pay close attention not only to whether funding is permitted, but also to how the funding arrangement is structured, whether the arrangement falls within Singapore's statutory TPF regime, and whether the funding costs are recoverable. The decision suggests that a successful funded party may still bear the commercial consequences of its funding arrangement, even where it succeeds in the arbitration.

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