THE FINANCIALISATION OF INTERNATIONAL INVESTMENT LAW

The landscape of financial profiteering from investor-state dispute settlement claims

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Highlights

For decades, international investment treaties have empowered multinational corporations to extract natural resources worldwide. When countries enact regulations to protect their environment or public interest, these treaties allow foreign corporations to sue for hyperinflated claims—often billions of dollars—based on alleged 'lost future profits' caused by the new regulations.

These claims are decided within investor-state dispute settlement (ISDS), an international arbitration system biased in favour of corporations. It allows foreign investors to sue countries, but not the other way around.

Moreover, elite arbitration law firms—often led by the same arbitrators who decide these claims—are among the main beneficiaries of the system, charging millions of dollars per case.

The result is an inherently unjust system that effectively enables multinational corporations to wealth grab large amounts of public money and erodes environmental and human rights by facilitating the expansion of corporate control over natural and public resources.

Since 2008, large financial investors have exacerbated the inherent injustice of international investment agreements by creating an opaque market for ISDS claims, financing corporate lawsuits against countries to partake in this institutionalised 'heist' of taxpayer money.

This report sheds light on the financialisation of international investment arbitration disputes.

THESE ARE THE KEY HIGHLIGHTS

1. The financialisation of ISDS

The financialisation of ISDS is the process in which large financial actors and traditional ISDS players have created a market based on financing instruments for multinational corporations pursuing arbitral claims against sovereign states.

2. The causes of ISDS financialisation

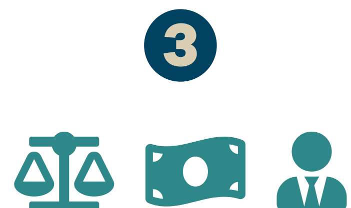
1

Relexation of external funding rules in 2006

2

Financial investors seeking non-correlated markets after 2008

3



Profitable relationships among Law firms – Funders – Investors

A rapidly growing multi-billion-dollar market
with more money than available legitimate claims to invest in

3. The actors in ISDS financialisation

MARKET WINNERS	LOSERS
Large financial investors: Banks, hedge funds, Sovereign Wealth Funds, Pension Funds and all the entities that invest in the litigation finance firms **Litigation finance firms (LFFs):** The key market players that fund and broker arbitration disputes **Elite law firms:** The 'counsel' of the parties and the intermediaries between the LFFs and the claimants **Transnational Corporations:** The 'claimants' in ISDS disputes, receiving funding from LFFs to pursue arbitration against states **Arbitrators:** The "judges" that decide over ISDS claims	**Sovereign states:** The 'respondents' in ISDS disputes. They can only defend themselves against the multi-billion dollar claims. Thus, they can only not loose the whole ISDS claims market bets against them. **Local communities:** Affected communities are the first to challenge transnational corporations that violate human and environmental rights. Investors use ISDS to undermine these efforts.

4. The Goal

To profit over billions of dollars from countries by claiming ownership over natural resources in a skewed arbitral system at zero cost for the claimants and at minimal risk for the LFFs.

5. Types of Litigation Finance

Third-Party Funding (TPF): LFFs cover all legal expenses of the claimant in exchange for a large share of the award on a non-recourse ('no win, no fee') basis

After-the-Event (ATE) Insurance: Covers LFFs' legal expenses of lost disputes and optionally also adverse costs of the opposing party

Claims Trading: The claim or award is sold to another entity

6. How it Works

Financial investors invest in LFFs, which channel third-party funding and insurance in exchange for a multiple of the invested amount in a single or portfolio of claims. In claims trading, LFFs buy or broker the claim and seek enforcement of the award or resell the claim in the secondary market.

7. Expectation vs. Reality

Expectation:
Access to justice for small business

Reality:
Balance sheet management for extractive corporations

8. Factors attracting ISDS financing

1. Hyperinflated claims

International investment arbitration allows investors to file claims greater than the original investments by alleging **"hypothetical profits"** even in undeveloped projects. This often leads to multi-billion-dollar awards.

2. Arbitrators' investor-bias

- 76% of arbitrators have a **corporate background**
- Corporations win in **60%** of the cases decided on merits
- Large investors often prefer to use investment treaty arbitration **instead of national courts**

3. Arbitrator – law firm dependency

- An arbitrator's average fee is **US$ 260,000 per case,** and they depend on being selected by one of the parties' law firms
- The strong ties among a few arbitrators and elite law firms leads to **4% of arbitrators deciding over 33% of disputes**

9. Litigation Finance Firms (LFFs)

1. LFFs are attracting huge investments:

Burford Capital increased its funds under management by US$ 1 billion per year from 2020 to 2023

2. Sovereign Wealth Funds are partnering with LFFs to create portfolios of claims for investment.

This means public money is being invested in ISDS claims and, consequently, used to appropriate public wealth from other sovereign states

3. The lack of transparency among LFFs is evident,

with only a handful of confirmed cases receiving litigation finance despite the boom in the ISDS claims industry. However, the few known cases highlight their low ethical standards, as they fund claims from fossil fuel and extractive companies, even in situations involving environmental and human rights concerns, as well as fraudulent practices.

10. Conflicts of interests

Over 40% of elite arbitrators also serve as counsel or experts, mostly working for arbitration law firms. These double hatting arbitrators engage with third-party funders when acting as lawyers for such firms.

LFFs and **elite law firms** form 'best friend' partnerships, together creating investment portfolios of cases

LFFs are hiring arbitrators to work as 'investment managers'

LFFs are buying elite law firms, allowing them to control the firms representing the claimants they finance

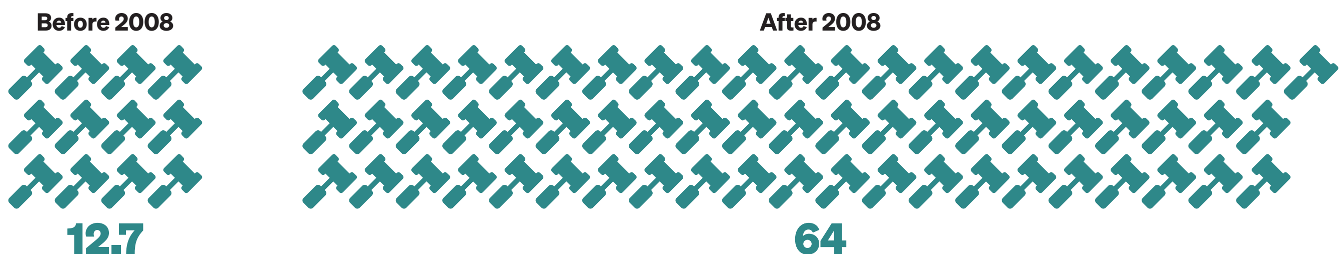
ISDS institutions have a normalised culture of conflicts of interests: ***challenges to arbitrators are disregarded***

11. Main Consequences of Litigation finance in ISDS

1. Increases ISDS disputes with the capacity to control settlement negotiations:

A. As third-party funding enables investors to seek multi-billion-dollar compensations free of costs and insurance minimises the losses of the LFFs it incentivises the filing of claims

Disputes / year before and after the boom of litigation finance in 2008



B. LFFs invest in frivolous and non-meritorious claims if the potential award is high enough. Despite the reigning investor-bias, a rise in low-merit claims would increase awards favouring states.

C. LFFs discourage settlements that are not deemed sufficiently profitable

2. Arbitration finance amplifies regulatory chill, deterring states from enacting environmental and social protections

51% of claims filed against an industry-level reform are **won by multinational corporations**

33% of these claims lead to the **states repealing their reforms.**

All countries are vulnerable to regulatory chill by ISDS. Though ***low-income countries are especially vulnerable,*** even to the mere threat of it.

3. Poses a huge economic toll on countries and its people

Recent third-party funded claims are threatening up to

359% of Greenland's GDP

300% of the Republic of Congo's GDP

over 10% of Venezuela's GDP

12. ISDS Reforms Institutionalise Litigation Finance

Lobbying by LFFs and the reigning corporate bias has led to ISDS institutions and counties to embrace litigation finance

New ISDS rules require claimants to disclose only the identity of third-party funders, without making it public

The new rules do not mandate the disclosure of the terms of the funding agreements, which are essential to know the actual power a funder may have over a claim

Arbitrators only have to disclose their ties to third-party funders if the disputing parties agree to the Code of Conduct

13. A Way Forward

ISDS is inherently unjust and all investment treaties with recourse to investment arbitration in any form should be ended. Until then:

- **Forbid any type of financializaton in ISDS claims**
- **Exclude any ISDS case that involves public interest issues**
- **Make automatic disclosure of funding agreements**
- **Enforce tougher conflict-of-interest regulations for investment arbitrators**

1. Introduction

When governments enact laws that protect people and the environment, companies often fear their profits will be affected.

International investment treaties facilitate foreign transnational corporations to sue any country in which they operate that has enacted such laws. For example, the energy giant RWE used the Energy Charter Treaty (ECT) to claim €1.4 billion from the Netherlands for its adoption of a law that phases out coal-fired power generation by 2030. In a more recent dispute, an Australian mining company, Energy Transition Minerals, is suing Greenland, claiming US$ 11.5 billion for adopting a ban on uranium mining.

These cases take place within an Investor-state dispute settlement (ISDS), where an international arbitration panel, composed of three selected arbitrators with corporate law backgrounds, decides whether to order the country to compensate the foreign investor or to dismiss the claim.

These tribunals have so far awarded over US$ 114 billion of public wealth to investors, the vast majority to energy and mining companies that claimed entitlement over national resources.[1]

Over the past decades, there has been significant research and public outcry exposing that the ISDS system is inherently opaque and unfair, with a corporate bias, conflicts of interests, and disregard for environmental and human rights that enable such costly transfers of public wealth to transnational corporations. Thus, it has long been recognised as a critical obstacle for countries in addressing pressing issues, such as climate change and systemic poverty.

Instead of fixing it, big financial investors have seized the opportunity to exploit ISDS to exacerbate the corporate appropriation of public wealth by creating a financing industry of ISDS claims. A market where third-party investors finance corporate claims against countries in exchange for a piece of these often over billion-dollar-awards.

This report exposes the workings of the ISDS claims market, its main players, the few financed cases that have come to light, its consequences, and how countries and arbitration institutions are embracing it.

2. Background

Trade and investment agreements have long reflected power imbalances between nations. However, with the rise of ISDS—and more recently, its financialisation—these agreements now reflect a deep imbalance where large corporations hold the upper hand over public institutions and, consequently, over the people.

This chapter outlines the basics of ISDS and how its inherently unfair design facilitates corporations to wealth grab over public resources. It also shows how big finance has exploited these flaws to profit from ISDS claims through litigation finance, explaining how this common third-party financing works by further exacerbating the corporate-public power imbalance under the guise of 'access to justice.'

The evolution of investment agreements

The first trade and investment agreements emerged in the 12th century as seafaring powers formalised reciprocal use of trade routes with mechanisms ensuring compensation and protection.

Centuries later, during the colonial period, Western powers imposed unequal treaties by establishing legal principles that legitimised their repressive actions to secure commercial advantages over poorer countries.

Following World War II, investors were given standing either in the host country, in an ad hoc state-to-state arbitration, or referred to the newly formed International Court of Justice (ICJ).

This changed in the 1960s, as independence movements were crucial in ending most imperial colonies. The former colonial powers reacted by perpetuating their domination over many of the decolonised nations and across the Global South through the creation of International Investment Agreements (IIAs). These, mainly in the form of Bilateral Investment Treaties (BITs), provided an apparently independent arbitration forum through investor-state dispute settlement (ISDS), which, from its inception, was, in fact, skewed towards large corporations and wealthier countries and deterred newly independent countries from nationalising their natural resources.[2]

The boom of IIAs with ISDS came following the Thatcher and Reagan governments with the global neoliberal era, marked by systemic financialisation and privatisation. Fewer than 500 IIAs were signed before 1990, and over 3,300 between then and 2010—nearly all with ISDS mechanisms.[3]

How do ISDS proceedings work?

In the ISDS system, only foreign investors—namely transnational corporations—can file claims against a country—they are the 'claimants.' On the contrary, the system does not allow for countries to file claims against corporations. Countries can only defend themselves—they are the 'respondents.'

An ISDS claim involves a specific demand for monetary compensation—often in the billions of dollars—due to alleged breaches of the specific investment treaty—typically a BiT—used to access the ISDS proceeding.

As a result, only corporations can claim compensation for the other party's action, and thus, only they can receive awards. For a respondent state, the best possible outcome—a 'win'—is for the tribunal to dismiss the claim and order the foreign corporation to cover the state's legal expenses. However, even when claims are dismissed, states are often left to bear their own costs.

Most disputes are conducted before a tribunal established under the auspices of the World Bank's International Centre for Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL) or the International Chamber of Commerce (ICC).

The legal expenses of the average claim upon an ICSID tribunal cost US$ 5.3 million for the state and US$ 7.2 million for the foreign investor.[4] Furthermore, tribunal costs sum to US$ 953,000.[5]

ISDS tribunals typically consist of three arbitrators, the majority of whom simultaneously work as corporate lawyers in private law firms. [6] A small 'elite club' of arbitrators dominate most panels.

Each party – the foreign investor and the state – appoints one arbitrator. These two party-appointed arbitrators then agree on the presiding arbitrator. Alternatively, the presiding arbitrator may be directly negotiated by the parties themselves.

The typical dispute lasts 3.8 years.[7] Lawyers representing each party, referred to as 'counsel,' present their cases with support from various experts. Notably, corporations rely on quantum experts to back their claims, often hyperinflated in the multi-billion-dollar range. Finally, the majority of the tribunal—at least two arbitrators—decide the award.

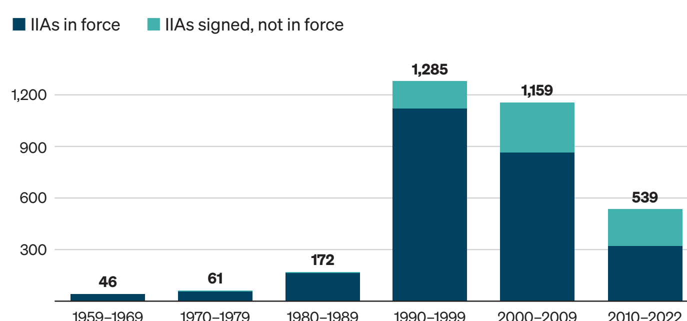
If a country loses an ISDS proceeding and fails to pay the award, the United Nations New York Convention[8] facilitates enforcement by allowing the expropriation of overseas assets belonging to the non-compliant state, which are then handed over to the multinational corporation.[9]

A longstanding 'crisis of legitimacy'

For over two decades, there has been wide discussion concerning substantive and procedural unfairness and democratic deficit within the ISDS process and international investment agreements. Countries have reacted differently to this crisis. For instance, the EU has proposed the creation of a permanent court to substitute ISDS, while some Latin American countries left ICSID altogether to protect themselves from the reach of ISDS claims. [10] Furthermore, since 2010, there has been a decline in the number of new IIAs.[11]

The decline in international investment agreements

Number of signed and in force, by date and signature, 1959–2022



Source: UNCTAD, 2023.

The unfairness and democratic deficit that has resulted in the legitimacy crisis of ISDS stems from several factors:

1. **Corporate bias:** Added to the fact that only investors—namely multinational corporations—can claim compensation to countries and not vice versa, arbitrators have also shown an evident bias towards corporations as well as to some Western countries.
2. **Lack of transparency:** ISDS proceedings are not public. Often, crucial information such as the name of the arbitrators and the claimed or awarded amount are not disclosed. Furthermore, Some ISDS proceedings happen in complete secrecy.
3. **Embedded financial interests:** Arbitrators, law firms, and corporations make huge financial gains from claims.
4. **Conflicts of interests:** Arbitrators, who often also act as lawyers in investor-state disputes, depend on being selected by one of the parties' law firms.
5. **Exerts a 'regulatory chill':** Corporations use ISDS to curtail any environmental and social legislation that may reduce their profits.
6. **Facilitates wealth grabbing:** The ISDS system has proven to be an effective mechanism for the institutionalised transfer of public wealth to multinational corporations. The taxpayers and people at large bear the burden of awards that often surpass the billion-dollar mark. This is especially true with 'indirect expropriation' claims.

'Indirect expropriation': the pinnacle of wealth grabbing

While ISDS initially served dominant countries to protect their invested projects in foreign countries from being expropriated, since the 1990s, its scope has expanded to include claims of 'indirect expropriation'. The concept of 'indirect expropriation' allows multinational corporations to seek compensation for the passing of any national legislation that allegedly reduces their so-called 'expected' future profits in the host country.[12]

In classical expropriation, the estimation of the amount to claim is based on actual confiscated assets. In 'indirect expropriation', claims are not estimated based on their real investments or legal rights as project developers but rather on their speculative future profits projected across decades of aspirational production—often for undeveloped projects—within an idealised regulatory environment.

Naturally, as we discuss throughout the report, law firms and funders favour indirect expropriation as it results in hyperinflated payouts from the taxpayers into corporate hands

A shower of billions

Before 2000, there had only been 44 ISDS claims; since 2000, there have been 1,318 claims.[13] 41% of all these are of 'indirect expropriation.'[14] The average claim up to May 2020 was US$ 1.5 billion, while the median was US$ 143 million[15]—the average skyrocketed because of hyperinflated 'indirect expropriation' claims. These billion-dollar claims rendered the average amount awarded to investors at US$ 438 million up to May 2020.[16] In total, it is estimated that ISDS tribunals have awarded over US$ 114 billion of public wealth to multinational corporations.[17]

However, these figures only correspond to what can be referred to as treaty-based ISDS.

ISDS beyond international treaties

> *"The key feature of ISDS is that it opposes private economic interests and the exercise of sovereign legislative, executive or judicial powers. What matters is not the stage on which the dispute is played out, but rather the competing private and public interests at stake."*[18]
>
> – Arbitrator and Judge Charles N. Brower

An increasing number of experts include contract-based and commercial arbitrations where one of the parties is a state or state-owned entity as a type of ISDS.[19] Such cases are relevant as they have similar impacts on sovereign countries, including imposing a heavy burden on public wealth and pressure to change national regulations.

Private-public arbitrations are commonly disguised as private-private arbitrations.[20] For instance, in the 2023 caseload at the ICC, apart from the 40 disputes directly involving a state, another 122 disputes involved state-owned entities.[21] Little is known about these disputes as they are even more opaque than treaty-based ISDS.

Furthermore, contract-based litigation initiated in a domestic court against a foreign state or state-owned company for its actions in its home country poses a threat to public wealth similar to that of ISDS arbitration. Such cases are especially taking place in US courts, where the lack of transparency and judge's bias against the foreign corporation can be as detrimental as ISDS arbitration.[22]

Along with treaty-based ISDS cases, this report reviews a few notable cases of commercial arbitration and litigation against states and state-owned entities, but first, it explains the latest stage in the deepening neo-colonial nature of the ISDS regime: its transformation into a market.

Exacerbating the injustice: the financialisation of investor-state disputes

Over the last 15 years, specialised brokers and hedge funds called litigation finance firms (LFFs) have orchestrated a financial market where law firms, along with banks, institutional investors, insurance companies, hedge funds, private equity funds, pension funds and sovereign wealth funds (SWFs), and other financial players, profiteer by investing in ISDS claims against countries at the cost of the livelihood of their people. LFFs, backed by big finance, have de facto converted the ISDS system into a market.

The basics of the ISDS claims market

Litigation finance is the means for converting ISDS claims into a market. Litigation finance is the external funding of disputes by third parties for the sole purpose of earning a profit. In ISDS, LFFs provide litigation finance in multiple forms—mainly third-party funding—to the multinational corporation that files a claim against a country. Often, LFFs arrange these financing instruments for an entire 'portfolio,' composed of many claims. The finance arrangements enable multinational corporations to pursue claims free of costs, insure the legal expenses, or even sell it to the contracting

LFF or another investor. In turn, LFFs earn immense profits from the proceeds of the awards, naturally benefiting the large financial entities that invest in them. The whole market of litigation finance in ISDS claims is built to maximise the amount of wealth transferred from the respondent countries to the multinational corporations and their funders. Hence, in the ISDS claims market, the countries—and, therefore, the people—always lose.

Market winners				
Large financial investors: Banks, Hedge funds, Sovereign Wealth Funds, Pension Funds, and all the entities that invest in LFFs	**Litigation finance firms (LFFs):** The key market players that fund and broker arbitration disputes	**Elite law firms:** Intermediaries between the LFFs and the claimants.	**Multinational Corporations:** The 'claimants' in ISDS disputes, receiving funding from LFFs to pursue arbitration against states.	**Arbitrators:** The judges in the ISDS system, who charge hefty fees can work for law firms and LFFs
Market losers				
Sovereign states: The 'respondents' in ISDS disputes. They can't initiate claims, and virtually the whole ISDS claims market bets against the states.				

An illegitimate corporate bias serving a multi-billion-dollar market

The legitimacy crisis of ISDS—marked by corporate bias, conflicts of interest, and a lack of transparency, among other factors—created fertile ground for the rise of litigation finance and the ISDS claims market.

The corporate bias of arbitrators in part stems from the fact that 76% of arbitrators have a corporate background, and 63% are also full-time lawyers in private law firms. In contrast, only 15% of panellists at the World Trade Organization (WTO) have substantial experience in private law firms.[23]

Logically, large financial investors invest in LFFs attracted by the inherent corporate bias in ISDS.

However, some commentators question this inherent bias by arguing that states have won more cases than investors (37.7% versus 28%),[24] this statistic overlooks a key reality: **settled cases reflect outcomes where the investor's interests prevail**, only that the state negotiates compensation rather than risking a full-blown award. When settlements are included, 46.5% of cases favour investors. The remainder (15.9%) are either discontinued or decided in favour of neither party.[25] Further scrutiny reveals a deeper skew: many rulings in favour of states are based on jurisdictional grounds. **When only considering cases decided on the merits, investors win 59% of the time**.[26]

A corporate bias also entails a disregard for environmental and human rights. In *Bear Creek v Peru,* the majority of the tribunal ruled that the social unrest against the silver mining project—which threatened local livelihoods—should not factor into the award calculation, as they held that the Canadian corporation had no legal obligation to engage with the community. Even Phillipe Sands—regarded as one of the more progressive arbitrators—argued only that under the ILO Convention, the corporation had international obligations to obtain approval from the local community, and therefore, the final award of US$ 18.2 million (plus US$ 6 million in legal costs) should merely have been reduced.[27]

Furthermore, empirical studies on ISDS rulings show that elite arbitrators have a special tendency to favour investors from the U.S., U.K., and France while also showing leniency toward the interests of the U.S. when it is a respondent state.[28]

This track record has made ISDS particularly attractive to financial investors, as big corporates betting in an investor-biased system fuel profits.

How did the financialisation of ISDS emerge?

Three factors fuelled the financialisation of ISDS.

1) The relaxation of domestic rules on third-party funding in several key jurisdictions:

In the past, domestic doctrines on champerty and maintenance – doctrines in common law jurisdictions that aim to prevent frivolous litigation – forbade external funding to cover litigation costs, deterring profiteering by non-interested parties. Australia took the lead in abolishing its champerty and maintenance laws in 2006, followed by the UK,[29] where the 2009 report by Sir Rupert Jackson, Lord Justice of Appeal of England and Wales, was crucial. His report recommended that the government and judicial system allow any third-party funding that complies with 'whatever regulation that emerges', but then followed with the contradictory recommendation – and neoliberal rationale – that third-party funding should be **'self-regulated' with voluntary 'codes of conduct'**.[30] Competitive pressure led other countries to follow suit, converting the ISDS into a market to be played in key arbitration hubs, such as London, Geneva, Hong Kong, Paris, Singapore, The Hague, and Washington.[31]

2) The surplus capital of large investors seeking new profitable markets after the 2008 global financial crisis:

Litigation finance really took off with the 2008 financial crisis. **The 2008 crisis left large financial actors seeking new non-financial markets to continue to profiteer**. ISDS cases, with its hyperinflated claims against states—considered highly solvent entities—rapidly caught investors' attention. Concurrently, the new financial fears prompted corporations to seek external funding for their ISDS cases.[32]

3) The intertwined relationships among lawyers, funders, and financial investors:

The rise of the ISDS litigation industry to a multi-billion-dollar market would not have happened without the **strong relationships the LFFs fostered with the top international arbitration law firms and large financial investors**. LFFs, acting as financiers and brokers, engaged lawyers to boost the number of cases filed. Law firms increased their billable hours and created profitable relationships with the ISDS legal community, including the arbitrators and expert witnesses. In turn, financial actors educated the traditional investment community on the profitable opportunities of the financialisation of the ISDS regime.[33]

How common is litigation finance in ISDS claims?

> *"It really is in the mainstream."*
>
> – Jeffery Commission, Director at Burford Capital [34]

This quote sums up the nature of litigation finance in arbitration: common but opaque. Despite only a few dozen litigation finance arrangements of ISDS claims coming to light, the consensus among LFFs is that litigation finance is "very prevalent".[35] However, there are no reliable statistics. Between 2021 and 2023, law firms have reported an average of 208 funded arbitration disputes.[36] Though this number includes both ISDS and commercial disputes. With an average of 64 treaty-based ISDS cases per year, it is reasonable to assert that litigation finance—mostly third-party funding—is explored for virtually all of them.

The ISDS claims market is so profitable that **large financial entities flood LFFs with more money than there are merit-worthy claims and pressure them to use all the money**. Consequently, **LFFs and law firms promote the use of litigation finance, encouraging disputes in order to attain staggering returns**.[37]

"The market for arbitration funding is big business. (Between 2012 and 2014) It has probably grown by well over 500 per cent."

– James Delaney, head of The Judge[38]

How big is the ISDS claims market?

The extraordinary profits generated in the early years of the financialisation of ISDS led mainstream financial investors to invest heavily in LFFs, propelling elite firms such as Burford Capital from managing hundreds of millions in 2010 to several billions by 2019.[39] The same year, Steven Friel, head of Woodsford Litigation Capital, estimated the **global litigation finance market to be worth £70 billion**.[40] Since arbitration disputes are often the most commonly funded type of claim[41] and result in the highest returns, the ISDS-specific litigation finance market must be worth a significant portion of the total market.

The pace of its continued rapid growth is poised to increase with economic turmoil. **Third-party funders reported that their business expanded during the COVID-19 financial downturn**,[42] viewing the pandemic as a time when "enormous multinational corporations" turned to them to finance their claims, and investors' growing appetite required the creation of new portfolios of claims to meet the demand.[43]

"As we enter the late stages of economic and credit cycles globally, investors are increasingly seeking uncorrelated asset classes that can perform well in a market downturn. Litigation funding is a unique asset class in this regard; demand for litigation funding increases during downturns in the markets – a time when litigation spikes."

– Zachary Cefaratti, CEO of Dalma Capital[44]

'Access to justice' or 'balance sheet management'?

"As has been recognised by senior judges and arbitrators, dispute funding has an important role to play in unlocking access to justice, particularly in cases where an "inequality of arms" exists."

– Harbour Litigation Funding[45]

The whole litigation finance industry presents itself as serving 'access to justice' by enabling small and medium investors to pursue legitimate claims against powerful countries. However, although litigation finance can facilitate small corporations to access ISDS arbitration, it is widely used by large multinational companies to obtain billions of dollars from states—and ultimately their people—free of cost.[46] Therefore, litigation finance primarily serves as a tool for corporations to keep arbitration expenses off their balance sheets while still reaping the benefits of the awards.

Moreover, even when small or medium-sized corporations file a claim—often through smaller project-based companies—large multinational corporations frequently hold significant shares in these corporations, giving them a financial interest in the outcome of the ISDS proceedings.

For instance, Litigation Capital Management (LCM) promotes its service as providing 'access to justice' through the ongoing dispute *Indo Gold Pty Limited v Republic of India*,[47] in which it has provided US$13.6 million to the claimant in exchange for a potential repayment of up to 425%, plus additional fees, contingent on an award.[48] The dispute was initiated after the High Court of Rajasthan upheld India's amendment to its mining law, effectively terminating pending prospecting licences.[49] The claimant will seek up to US$16 billion in compensation[50] despite the mining permit having been previously rejected on the grounds that it was located within a tribal area, among other reasons.[51]

But who is LCM providing 'access to justice'? Indo Gold is a subsidiary of Panthera Resources, which operates mining projects across West Africa, and more than 49% of Panthera is owned by a handful of financial giants,[52] including **Citigroup**,[53] **HSBC**, and **Merrill Lynch**.

"They know there is a potential pot of gold at the end of the rainbow, but they don't want to pay to be on the rainbow. As a result, very large corporates—companies with enough money in their coffers that the litigation costs would not even be a blip in their budgets—are making the decision at board level to de-risk their litigation through some form of funding arrangement"

– Arnold & Porter[54]

3. The forms of commodification of ISDS claims

Defining the different types of litigation finance[55] is complicated because of the myriad forms of financing arrangements and the constant creation of new ones – presenting a rapid evolution of thorny funding models characteristic of industries under financialisation. Litigation finance takes the form of loans, corporate finance, purchase of securities, insurance, trading of claims, capital investment and many other financial instruments that all share the purpose of generating profits for the funder.[56] Commentators often describe all forms of litigation finance as third-party funding or distinguish between third-party funding and claims insurance. This report conceives litigation finance within **three broad and changing forms: third-party funding, claims insurance, and claims trading**

The types of litigation finance

In third-party funding, the claimant receives advance funds from a third party (a 'non-party' to the dispute) to cover the costs of the arbitration in exchange for a percentage of the potential award or settlement proceeds.[57] Third-party funding arrangements are 'non-recourse'—also referred to as 'no win, no fee'—meaning that the third-party funder only gets paid if the claimant receives compensation. If the claimant loses, the funder receives nothing. While the funders may be involved in decision-making during the arbitration, they do not purchase the claim.[58] This is the most known practice.

Claims insurance, often called litigation cost protection, involves the claimant insuring a certain amount in the event of an unfavourable ruling. It is also typically a 'non-recourse' arrangement. Although it is a growing practice, it remains understudied.[59]

Claims trading essentially refers to the sale—including the assignment, restructuring, or transfer[60]—of entire or partial claims or awards to a 'non-party' corporation. Although claims trading is a widespread practice, it remains the least understood form of litigation finance. [61]

TABLE 1. Claims financing instruments

Third-Party Funding	LFF covers all legal expenses in exchange for a large share of the award. The claimant retains ownership of the claim.
Insurance	The claimant pays premiums, and the insurer covers legal costs if the case is lost. The LFF earns brokerage fees, and insurers profit only if the case is won.
Claims Trading	LFF either buys the claim or brokers its sale to a third party, who takes ownership and seeks to enforce or monetise it.

Common market characteristics of litigation finance instruments

The most fundamental characteristic of litigation finance in ISDS claims is that these financial arrangements are almost exclusively marketed to claimants,[62] predominantly serving multinational corporations.

As previously mentioned, LFFs arrange these instruments for either individual claims or portfolios of claims—often referred to as 'funds'.

These arrangements are made either directly with the claimant's lawyers or through financiers in the secondary market, which is primarily used for claims trading but also facilitates the sale and restructuring of other litigation finance instruments.

This market is part of the everyday workings of litigation finance, allowing funders to cash in on claims before the dispute is resolved. [63]

To channel and receive funds to and from the claimant, LFFs create 'special purpose vehicles' (SPVs)—phantom shell companies—in tax havens, typically in Delaware or the Cayman Islands. These entities operate as separate legal structures to reduce fiscal obligations and limit the liability of the parent firm and its financiers against legal and financial risks stemming from ISDS cases.[64]

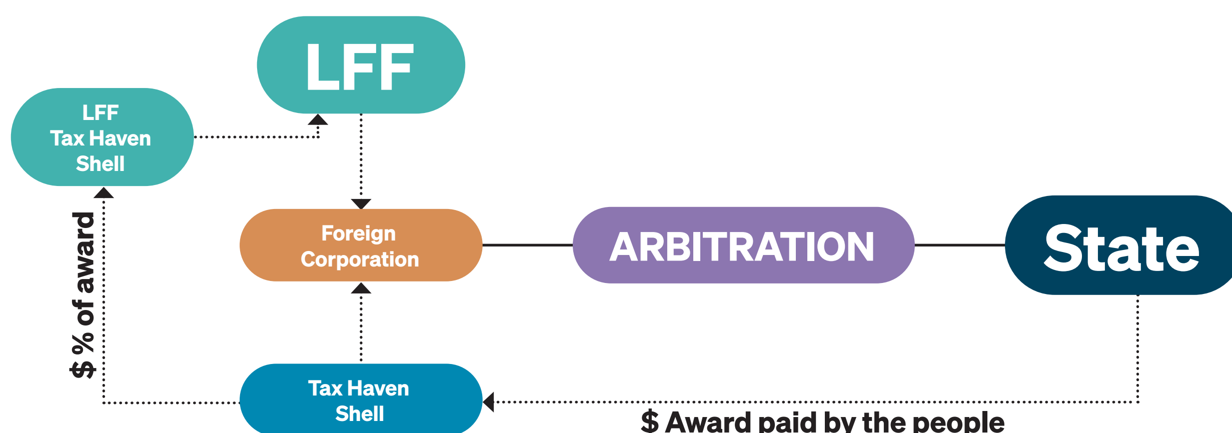
How does third-party funding work?

Although third-party funding can be used at any stage, such as for an annulment process, enforcement expenses, or even for specific expenses, such as expert witness costs, it is normally arranged before or at the start of the dispute and only to cover the corporation's legal expenses and arbitration costs.[65]

An average example of third-party funding is as follows:

A multinational corporation considers that new legislation in a country reduces its expected future profits from a planned project. The corporation hires a law firm to file the average US$ 1.5 billion 'indirect expropriation' claim against the state. However, the corporation does not want to account for the average US$ 8 million in legal expenses on its balance sheet. To address this, the law firm contacts an LFF to arrange a third-party funding agreement. It is also common that LFFs proactively approach potential claimants to encourage them to file ISDS claims.[66] Under the funding agreement, the LFF covers the US$ 8 million in legal expenses in exchange for 50% of any award or settlement, with no payment required from the corporation if it loses the case. The LFF then bundles this claim with 19 others into a portfolio of similar cases, which attracts investments from large financial entities. Considering that 'indirect expropriation' claims have an average success rate of over 20%,[67] and – as mentioned earlier – the typical award amounts to US$ 438 million, the net profits of this portfolio would total US$ 1.592 billion. From this, the law firms take US$ 160 million, the successful claimant corporations receive US$ 796 million, and the LFF retains US$ 796 million—all the players receiving the money in their respective shell companies in tax havens. Notably, the LFF is not liable for any adverse costs—such as the state's legal fees and arbitration costs in unsuccessful claims—as these are normally excluded in the agreements. However, the profits may be higher because the LFF insured the portfolio and is set to recuperate part or all the losses from unsuccessful claims of the portfolio.

Third-party funding Flow chart



CASE STUDY: Greenland Minerals Ltd v Greenland and Denmark

In July 2023, Greenland Minerals initiated proceedings against Greenland and Denmark in an ad hoc arbitration court in Copenhagen. Greenland Minerals is a wholly owned subsidiary of Energy Transition Minerals, an Australian rare-earth mining company that is traded in the Australian Securities Exchange (ASX), with major shareholders being Shenge Resource Holding – a leading state-owned Chinese rare-earth mining company – HSBC, Citigroup, and BNP Paribas, among other major investors.[68]

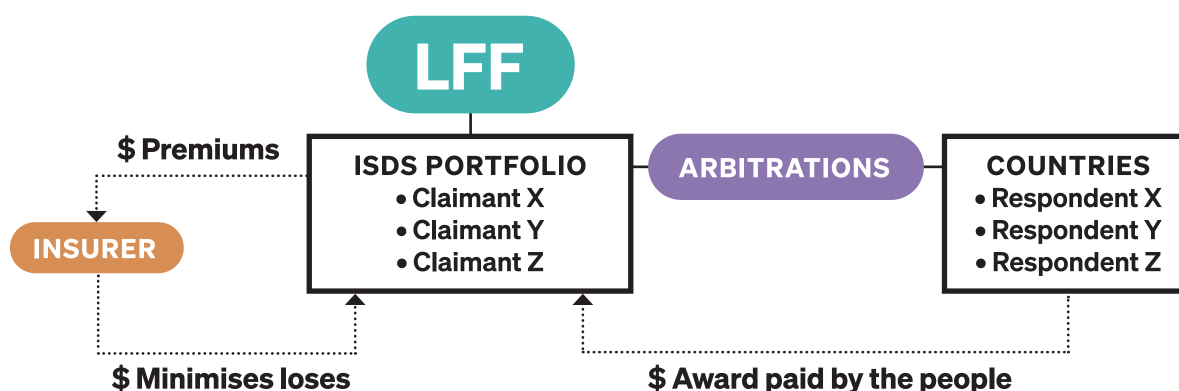
In 2007, Greenland Minerals was granted an exploration licence for the Kvanefjeld site, at the south-western tip of Greenland. The concession was controversial as since 1988, Denmark held a 'zero-tolerance' policy on the exploration and exploitation of uranium in Greenland. The Kvanefjeld site is the largest known deposit of rare-earth minerals, which are critical for the development of e-vehicles and wind turbines, and the sixth-largest deposit of uranium. The ubiquitous presence of uranium precluded the mining of rare-earth minerals without conflicting with the 'zero-tolerance' policy and thus heralded the political decisions to come. In 2013, Greenland, with full autonomy over its mineral resources since 2009, overturned the 'zero tolerance' policy on uranium mining.[69]

By December 2020, Greenland's authorities authorised the public consultation phase of Greenland Minerals' Environmental Impact Assessment (EIA) for the Kvanefjeld project. The mining company planned to simply dump all the radioactive by-product of the mining in a nearby lake behind two dams.[70] Greenland has a history of long-term pollution from mining sites, and the overturn of the uranium mining ban, along with poor environmental management plans for the Kvanefjeld project, raised national fears. One opinion poll showed that 71% of respondents were against the Kvanefjeld project.[71] In 2021, although Greenland Minerals and the country's political leaders promoted the project as potentially providing an investment of US$ 23 billion,[72] citizens voted the opposition Inuit Ataqatigiit party into government, which campaigned strongly against the Kvanefjeld project and uranium mining.[73] Consequently, it re-enacted a new zero-tolerance legislation on uranium mining, effectively impeding the development of the exploitation phase of the Kvanefjeld project.[74]

In July 2022, Greenland Minerals entered into a third-party funding agreement with Woolridge Investments LLC, a subsidiary of Burford Capital, to cover all legal costs for the arbitration dispute against Greenland and Denmark, in which it demands US$ 11.5 billion in compensation for the rejection of the exploitation permit.[75] Although the Kvanefjeld project was only in an exploration phase, Greenland Minerals demanded this sum based on 'future lost profits' over a period of 37 years. Despite the longstanding ban on uranium mining, the lack of an exploitation permit, and the risk of a radioactive catastrophe the project posed, Greenland Minerals maintained that they 'are entitled to an exploitation licence'[76] and referred to the new mining ban as 'politically motivated'[77] – as if the 2009 overturn of the 'zero-tolerance' policy was not.

Although the funding arrangement between Greenland Minerals and Burford Capital is confidential, it is certain that Burford is set to win a large chunk of the potential multi-billion-dollar award. By doing this, Burford will enable a mining venture backed by large financial entities and foreign companies to take billions from Greenland's people for democratically rejecting a radioactive hazard.

How does arbitration insurance work?



Arbitration insurance is a standard instrument used and offered by LFFs. In fact, in the UK, insurance arrangements are more common than third-party funding.[78] However, even fewer insurance arrangements than of third-party funding have come to light.

The insurance models commercialised for arbitration disputes can be defined within two categories: Before-the-Event (BTE) insurance and After-the-Event (ATE) insurance.

BTE is like traditional liability insurance as it is contracted before any insurable event and usually covers various legal expenses beyond ISDS disputes.

ATE insurance is more specific to ISDS disputes as it is contracted after the legal dispute arises. ATE insurance covers the claimant's legal costs and, **optionally,** the respondent-state legal costs in case of an adverse costs award. If the claimant succeeds, the insurer receives payment either through a fixed fee or a percentage of the award.[79]

Hence, **ATE insurers—like third-party funders—are motivated by maximising ISDS awards. And are, therefore, dispute-motivated**.[80]

Furthermore, most ATE insurance products stipulate that the premiums are only payable if there are enough proceeds from the favourable ruling in order to protect the claimant from unexpected low returns from a dispute. Nevertheless, **insurance companies generally profit by a multiple of the amount they put in**, though less than in third-party funding arrangements.[81]

Maximising portfolio profiteering with insurance

ATE Insurance and third-party funding go hand in hand as LFFs contract ATE insurance for entire portfolios to cover losses.[82]

For instance, Omni Bridgeway manages several funds, comprising a portfolio of claims with ATE insurance covering any adverse aggregate costs exceeding US$ 7.5 million.[83] However, the US$ 20.9 million in adverse costs to Omni Bridgeway in 2023 came from 'non-fund investments' – two single claims – from which it recovered US$ 8.7 million through ATE insurance.[84]

Miller, a UK litigation finance broker, goes further by offering portfolio investors insurance that covers the gap between the total expenses incurred across a portfolio of arbitration disputes and the actual financial returns, **ensuring that funders bear no financial burden from unfavourable rulings**.[85]

ATE insurance does not always cover adverse costs

Disputes where the claimant may have solvency issues—genuinely or artificially, by the common practice of bringing a claim through a shell company—present a high risk for the respondent state as the claimant may avoid paying for any adverse costs. To prevent this risk, the respondent state often demands the tribunal to impose 'security of costs' on the claimant. ATE insurance is often misconceived in that it covers adverse costs as well as the claimant's legal expenses. ATE insurance is not always designed to cover adverse costs, creating the risk that a tribunal rejects a petition for security for costs, assuming the claimant's ATE insurance will cover them when, in reality, it may not.[86]

To date, there are very few disclosed ATE insurance arrangements. One of them is *Eskosol SPA v Italy*, where Eskosol declared insolvency due to Italy's elimination of its solar energy tariffs, and Italy requested that Eskosol pay a security of costs. In 2017, the tribunal denied Italy's request because Eskosol disclosed that it had arranged an ATE insurance arrangement with The Judge[87]—which covered adverse costs for up to €1 million.[88] In 2020, the tribunal ruled in favour of neither party. Italy's legal costs amounted to €990.000, well below the average respondent-side legal expenses.[89] What would have occurred if Italy had 'won' and incurred slightly higher legal expenses? Future cases will help to answer this question.

CASE STUDY: Ascent Resources PLC v Slovenia

In 2007, Ascent Resources, a UK oil and gas company listed in the AIM London Stock Exchange, and its Slovenian subsidiary—incorporated in tax-friendly Malta—invested €50 million in the development of the Petišovci oil and gas field in Slovenia along with the Slovenian company Geonergo. Energy companies have been extracting gas from the Petišovci field since the 1960s.[90] In 2017, Ascent requested a permit for the use of hydraulic fracturing—known as fracking—to extract gas from two new wells.[91] The Slovenian Environment Agency requested an EIA as the new wells are near water bodies.[92] The Mura River—part of the Danube basin—circles the Petišovci field and, along with the many aquifers, plays a crucial role in the region's ecology and economy.

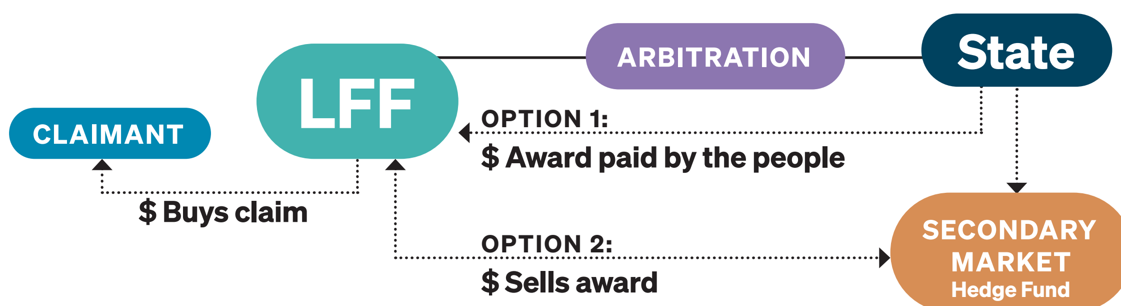
In 2020, its minority partner, Geonergo, challenged the request for an EIA in Slovenian courts, which ruled in favour of Slovenia.[93] Shortly after, Ascent's lawyers, Enyo Law, informed Slovenia that it was preparing for an ISDS dispute, alleging that the requirement for an EIA amounted to unfair treatment and arbitrary measures under the Energy Charter Treaty and the UK-Slovenia BiT.[94] In April 2022, the Slovenian parliament banned fracking.[95] Ascent argued that the ban arose from an 'anti-Ascent sentiment' and considered it an act of expropriation of its investment in the Petišovci gas project. The ISDS dispute formally started in July 2022 when Ascent claimed €656.5 million from Slovenia.[96]

Despite Ascent's 'indirect expropriation' claim in response to the EIA requirement, it continued gas extraction in the two wells without the need for fracking, though not at its desired production rates.[97] An EIA is an essential environmental protection measure required by EU regulation and the Espoo Convention, of which Slovenia is a signatory.[98] Furthermore, many other EU countries, such as Belgium, Bulgaria, France, the Netherlands, Spain and others have imposed a ban or a moratorium on fracking due to its high environmental risks and public opposition.

Nevertheless, Ascent managed to contract ATE insurance for its ISDS claim. The ATE insurance allegedly secures Ascent from major adverse costs.[99] Moreover, the tribunal considered the ATE insurance as a factor in rejecting Slovenia's petition for requiring Ascent to pay security for costs.[100] This is contrary to other judgements, such as in *Ron Fuchs v Georgia*, where the tribunal held that there is no principle that obliges it to consider any third-party funding—including insurance—when determining the allocation of costs. [101]

Despite this, the Petišovci unconventional gas field recovered 81.92% of its total recoverable reserves and currently accounts for approximately 6% of the country's daily output. Production is estimated to continue until the field reaches its 'economic limit' in 2028.[102]

How does claims trading work?



LFFs frequently purchase claims from the original claimant or broker them to investors. The new claim owners either pursue the claims against the respective respondent states or resell them in the secondary claims market. [103]

Most known ISDS claim trades were made in the pre-arbitration phase, while a smaller number of known cases occurred during the arbitration and post-arbitration phases.[104]

A claims trade that occurs before a dispute usually involves the sale of a right or asset that gives access to ISDS proceedings. A claims trade during the dispute typically involves the claimant selling the claim to an LFF or an investor in order to cash in. A sale in the post-arbitration phase involves the sale of an ISDS award to another corporation that will seek to enforce it in various jurisdictions. Regardless of in which phase the claim is traded, it entails financial investors profiting over public wealth.

Treaty shopping and abuse of process through claims trading

Pre-arbitration claims trading often occurs without the arbitrators' knowledge.[105] When trades are disclosed, tribunals assess the legitimacy of the transaction to standards that often accept 'abuse of process'—where a **trade is conducted for the sole purpose of commencing litigation for a foreseeable dispute—and** 'treaty shopping'—where the nationality of the new claimant provides access to arbitration under a BIT. [106]

One way a tribunal decides whether a trade is acceptable is to assess if the claimant has made an 'investment' or is an 'investor' in accordance with the treaty.[107] In *Vannessa Ventures v Venezuela,* Vannessa Ventures (now Infinito Gold), mostly owned by Canadian billionaire Ron Mannix,[108] **purchased rights to exploit Las Cristinas mining site for only US$ 50 to pursue a US$ 1 billion claim against Venezuela**,[109] clearly for the sole purpose of filing an ISDS dispute.

The tribunal accepted this cheap transaction as amounting to an 'investment' and disregarded any abuse of process.[110] Although the tribunal ruled in favour of Venezuela, it sentenced each party to bear its own legal costs—Venezuela's amounting to over $13 million—as well as half of the tribunal's costs.[111]

Abuse of process and treaty shopping also took place in the infamous *Aguas del Tunari v. Bolivia,* regarding Bolivia's reversal of the 1999 privatisation of the water services of Cochabamba.[112] Aguas del Tunari was a consortium of water corporations where the US multinational, Bechtel, and the Italian multinational, Edison, held majority control through an ad hoc company located in the Cayman Islands provided with only US$ 10,000 of capital.[113] The Spanish energy giant Abengoa and other

Bolivian companies controlled the remaining 45% of the consortium.[114] On 8 December 1999, Becthel and Edison transferred the ownership of Aguas del Tunari to another ad hoc subsidiary company called International Water Holdings,[115] effectively conducting a claims trade through restructuring in order to access the Netherlands–Bolivia BiT. The tribunal ruled that although the claims trade was solely conducted to access the Netherlands–Bolivia BiT, it was nevertheless legitimate because it was "long prior to bringing its claim in November 2001".[116] However, **the ICSID tribunal disregarded the fact that the widespread protests against the privatisation started in December 1999, just at the time of the claims trade. Therefore, the dispute was obviously foreseeable, and the claims trade involved a de facto act of treaty shopping.**

Vulturing over arbitral awards

"Awards are being bought and sold. And that's happening with increasing frequency"

– Jeffery Commission, Director of Burford Capital[117]

Although **the sale of arbitral awards is considered a widespread market**, there are still only a few academic articles on this practice, likely due to the lack of data as claims trade of an arbitration award does not require disclosure of the trade in order to seek enforcement of the award.[118]

Law firms promote the trading of awards as an opportunity for banks and investors investing in extractive projects.

'Awards are assignable, and can be bought and sold, or borrowed against. This gives lenders (banks and investors in resource projects) a number of ways to monetise arbitral awards, in some case(s) allowing them to bolster in-country and offshore asset security which may otherwise have been at risk.'

– Law firm, Norton Rose Fulbright[119]

The attraction of buying awards is that they are sold at a significantly lower price than the value of the award. Known award trades have been with discounts ranging from 25-82%. One factor that may influence the price range is that although ICSID and UNCITRAL are enforceable in 160 and 172 jurisdictions, respectively, some countries are more 'arbitration-friendly' and thus more lenient in seizing foreign state assets to enforce awards. Therefore, the successful enforcement of the award also depends on the financial power to claim legal expenses in different jurisdictions as well as the political influence of the new award owners.[120]

Unsurprisingly, in 2008, the African Development Bank created the African Legal Support Facility to **"provide legal assistance to African States, particularly Heavily Indebted Poor Countries (HIPCs), to meet the challenge of litigations with vulture funds"**.[121] A few wealthy nations, such as Belgium and France, have taken measures that aim at deterring vulture funds from seeking to attach certain developing state assets as part of their enforcement of an arbitral award they have purchased.[122] However, these laws are limited and would require many other countries to adopt ones to be effective.

CASE STUDY: Rockhopper v Italy

Third-party funding to tackle environmental protection policy and claims trading to develop an oil field

This dispute goes back to 2005 when Mediterranean Oil & Gas received an exploration permit for the Ombrina Mare oil field, discovering oil in 2008. Despite applying for a production concession, the Italian authorities never granted it. In 2014, **Rockhopper—a UK mining company with some major shareholders being HSBC, Union Bancaire Privée, and Hargreaves Lansdown[123]—acquired Mediterranean Oil & Gas for £29.3 million**, inheriting its interests in the Ombrina Mare. The coastal oil exploitation plans provoked major social protests demanding stronger environmental protections as government policy kept shifting with regard to coastal oil drilling.[124] Finally, in 2016, the Italian government banned oil drilling within 12 nautical miles of the coast, effectively halting the Ombrina Mare project.[125]

In response, **Rockhopper submitted a €275 million claim – based on loss of future profits** – to the ICSID against Italy for breaching the Energy Charter Treaty (ECT).[126] The ECT has been widely used to attack countries for their climate-protection measures, often with hyperinflated claims based on lost 'future profits'. In 2016, Italy became one of the first countries to leave the ECT. However, due to its 'sunset clause', a feature of nearly all investment treaties,[127] Italy can still be taken to court for 20 years post-exit for investments made before its departure.

Rockhopper entered into a non-recourse (no-win, no-fee) third-party funding arrangement in 2017 with Harbour Litigation Funding. Harbour covered all expenses from the commencement of arbitration to the award decision, which amounted to £3.5 million.[128] **Rockhopper mentioned that they would probably not have agreed to pursue it had it not been for Harbour's complete coverage of the dispute costs.**[129]

In August 2022, the tribunal found that Italy's drilling ban amounted to the expropriation of Rockhopper's investment and ordered payment for the 'future lost profits'. The tribunal awarded Rockhopper €190 million plus interest at EURIBOR +4%.[130] **By mid-2024, the total amount payable by Italy exceeded €330 million,**[131] **almost nine times more than Rockhopper's alleged initial investment of €29.2 million**.[132]

The respondent-nominated arbitrator, Pierre-Marie Dupuy, expressed the view that Rockhopper could not reasonably and legitimately have expected Italy to grant an operating permit since the law did not require it, no promise had been made, and the area in question had been considered off-limits due to real environmental and social concerns.[133] In separate interviews, Dupuy has said that he expects an increase in ISDS disputes regarding climate-related reforms.[134]

Rockhopper's use of litigation finance did not end with the arbitration award. Facing Italy's challenge to annul the award, Rockhopper sought to monetise it with a claims trade. **In December 2023, Rockhopper entered into a 'funded participation agreement' with an undisclosed LFF managing over US$ 4 billion** –probably Omni Bridgeway.[135] This deal provided Rockhopper with cash payments in several tranches: an upfront payment of €45 million, of which it retained €15 million after paying Harbour and the lawyers' success fees; a contingency payment of €65 million dependent on a successful outcome against the annulment; and an additional potential payment where Rockhopper would receive 20% on any recovery exceeding 200% of the total investment made by the fund. [136]

This arrangement is a claims trade by assignment, as although Rockhopper retained legal ownership, the undisclosed LFF had complete control and responsibility over the enforcement process. It allowed

Rockhopper to secure immediate financial gains from the arbitration award while maintaining the potential for further returns. Moreover, **the LFF took over all future costs related to the arbitration from the date of the agreement, relieving Rockhopper of further financial risk. Rockhopper has planned to use the funds from this monetisation to develop the Sea of Lion oil field north of the Falklands Islands**.[137]

The Sea Lion offshore oil field is estimated to contain 790 million barrels of crude oil, equivalent to over 340 million tons of CO_2—about 1% of global CO_2 emissions in 2021 or the annual emissions of Australia or Mexico.[138]

4. The litigation finance firms

As mentioned earlier, despite LFFs report annual turnovers in the billions, little is known about the claims they use to make such profits. This secrecy is partly inherited from the legal and financial culture of protecting privileged information and managing opaque asset valuations.[139]

To maintain their lack of regulation and secrecy, all major LFFs have recently formed two lobby groups: the International Legal Finance Association (ILFA) and the UK-based Association of Litigation Finance (ALF).

This chapter accounts for most of the largest LFFs and the few known ISDS disputes they have invested in.

Burford Capital

Founded in 2009 by Christopher Bogart and Jonathan Molot,[140] Burford is traded on the London and New York stock markets. Its largest shareholders are BlackRock, the Saudi investment giant Mithaq, the financial company Ameriprise, and the Teacher Retirement System of Texas.[141]

> *'Burford primarily provides legal finance to law firms and large corporates in relation to a portfolio of their legal claims.'*[142]
>
> – James Mackinnon, Vice president at Burford and former counsel at the Hong Kong International Arbitration Centre

Burford has become one of the LFFs with the most capital, increasing from managing US $4 billion in 2020[143] to over US $7 billion in 2023.[144] In 2023, Burford had record net revenues of 63%, without taking into account the favourable ruling of a New York court in a commercial litigation case it funded, brought in 2015 against Argentina regarding the re-nationalisation of the oil company Yacimientos Petrolíferos Fiscales (YPF).[145]

The dispute revolves around the nationalisation of YPF in 2012 when Argentina purchased 51% of YPF shares from the Spanish oil giant Repsol for an agreed sum of US $5 billion. At the time of the nationalisation, the Argentinian oil and investment company Petersen Energía Inversora (Peterson) and the US hedge fund Eton Park (Eton) were minority shareholders of YPF with 25% and 3%, respectively. The CEO of Peterson, the Argentinian banking tycoon Enrique Eskenazi, was also YPF's vice president. Peterson and Eton sued Argentina for not offering to purchase their shares as required by YPF's corporate charter in the event of changes in its majority control. The case was filed in the court of the Southern District of New York, which had already dealt with commercial litigation suits against Argentina concerning the 2001 debt crisis. Despite Argentina paying Repsol $5 billion for 51% of YPF's shares, in 2023, the New York court ruled that Argentina must compensate Peterson and Eton with US$ 14.38 billion and US$ 1.71 billion,[146] respectively, for the temporary loss in value of their 27% and 3% of YPF shares immediately after the 2012 nationalisation. **Burford is poised to collect around 35%**[147] **of Peterson's sum and 73% of Eton's, amounting to around US$ 6.28 billion**.[148] **President Javier Milei has maintained that the total sum of US$ 16 billion "must be paid"**.[149]

In *Teinver v. Argentina*, the investors – mainly Grupo Marsans, the now liquidated Spanish tour operator giant[150]– brought a €1.59 billion claim to an ICSID tribunal in 2008 against Argentina's nationalisation of two airlines during the 2001 crisis.[151] In 2010, Burford invested $12.8 million in the dispute. In 2017, the tribunal ruled an award of US$ 320 million plus interest against Argentina. The dissenting state-appointed arbitrator, Dr Kamal Hossain, held that:

> *"(The Spanish–Argentina BiT) is not intended to enable payment of awards to third-party funders who are not "investors" and who have no protected "investment", and who only come into the situation in the circumstances described above to advance funds in order to speculate on the outcome of a pending arbitration".*
>
> (Dissent of arbitrator Kamal Hossain)[152]

While Argentina sought an annulment of the award based on Burford's involvement, **Burford marketed the dispute in the secondary market and sold its interest in the claim for US$ 107 million in cash to unknown investors—hence profiting US $94.2 million, a 736% return**.[153] In 2019, the Annulment Committee denied Argentina's request for annulment and held that even if Burford's involvement may be illegal, it would not necessarily be enough to justify an annulment.[154]

Burford Capital promotes its ISDS-funded cases as aiding relatively small companies, such as the 2010 case of Rurelec, a UK energy company, against Bolivia. Rurelec was, in fact, owned by the large investment fund Sterling Trust Limited until 2024.[155] Burford funded Rurelec's claim through a US $15 million loan, which enabled Rurelec to "grow its business". Rurelec demanded compensation for the nationalisation of a Bolivian energy company that it partly owned. In 2014, the tribunal awarded over US $35 million to Rurelec.[156] Burford cashed US $26 million through one of its many tax haven shell companies.[157]

However, the disclosure of investments in ISDS claims of allegedly small companies merely serves the 'access to justice' façade. This contradiction is well illustrated in an interview with Mick Smith, Principal at Burford. He expresses amazement at how courts have accepted litigation finance as a tool for access to justice, only to follow with:

> *"The opportunities I have had to work on deals with major corporates and law firms have exceeded expectations"*[158]
>
> Mick Smith, Principal al Burford

Mick Smith was among the first to engage in arbitration finance. In 2006, he co-founded Calunius Capital, an LFF that funded the Canadian extractive company Rusoro Mining in its claim against Venezuela. The tribunal ordered Venezuela to pay US$ 1.28 billion to Rusoro.[159]

In 2018, Burford struck a deal with an undisclosed sovereign wealth fund (SWF) for the creation of a new US$ 1 billion fund called BOF-C, where the SWF provided US$ 667 million and Burford the remaining US$ 333 million. The deal positions Burford to receive 60% of the fund's profits despite investing only 33% of the capital.[160] The arrangement with the SWF has been expanded several times and, in 2024, accounts for US$ 1.2 billion of Burford's total portfolio of US$ 7.1 billion.[161] Burford's CEO, Christopher Bogart, describes the significance of this arrangement as reaching 'the highest form of institutional capital on the planet'.[162]

In other words, **Burford is receiving public money from a sovereign state in order to invest in ISDS claims and, therefore, appropriate public wealth from other sovereign states**.

This represents a novel and troubling process where countries' sovereign wealth is channelled into a system that perpetuates a double appropriation of public wealth worldwide—first, by supporting corporate claims over natural resources, and second, by extracting vast sums of public funds through the awards of these claims.

Fortress Investment Group LLC

Another SWF, the UAE's Mubadala Investment Company, directly purchased the US investment giant Fortress.[163] Fortress manages around US$ 50 billion and has increasingly invested in litigation finance. In 2017, it invested up to US$ 100 million in the LFF IMF Bentham, and in 2019, it purchased Vannin Capital, another top player in the sector.[164] The value of the deal was kept confidential.[165] Its investments in legal disputes, mostly through portfolio funding and purchases of awards, amount to US$ 6.8 billion.[166]

One of the disclosed investments of Vannin Capital was its third-party funding in *Infinito Gold Ltd v Costa Rica*.[167] Ronald Mannix, the owner of Infinito Gold cited earlier, was investigated for bribing the Costa Rican president in order to ensure its mining project in the country.[168] Infinito Gold filed for arbitration in 2013 after years of domestic court battles over Costa Rica's rejection of its mining licence and subsequent ban on open-pit mining, adopted following strong public opposition due to environmental concerns.[169] Even after all directors and officers had resigned and Infinito Gold was unresponsive to the ICSID tribunal's requests, Vannin Capital arranged to finance the case in 2016.[170]

The tribunal dismissed the case on the merits, based on narrow administrative grounds, and did not consider the social or environmental impacts. In fact, the ruling described the mining ban as inappropriate but did not affect the decision, as Costa Rica rejected the licence before adopting the mining ban.[171] However, the tribunal, presided by one of the investors' favourites, Kaufmann-Kohler, ordered each party to bear 50% of the costs of the arbitration and its legal fees. Thus, Costa Rica's taxpayers had to bear over US $3.7 million.[172]

Juridica Investment Ltd

In December 2007, Juridica was the second company after Credit Suisse to market litigation cases and the first LFF to be listed as a stock in the financial market. It soon **received significant investment from the Pension Fund of the Royal Bank of Scotland, which was mainly owned by the UK government**.[173] Yet, despite its prominence, the sole undisclosed ISDS case financed by Juridica involved a US oil company that brought a claim against Romania (*S&T Oil v Romania*). Romania discontinued the proceedings, which led Juridica to sue the oil company for breach of contract.[174] Juridica was liquidated in 2021 after years of financial strain due to losing large investments in its

anti-trust portfolio – not its ISDS portfolio.[175] By then, the founder of Juridica, Richard Fields, who in 1999 started a claims trading website,[176] had already sold its interests in the company, which was finally rebranded as Brickell Key Asset Management and continues to fund ISDS cases.[177]

Omni Bridgeway

Omni Bridgeway (Omni), formerly IMF Bentham, is currently considered the second-largest litigation finance company. In 2019, the Australian IMF Bentham acquired the Dutch litigation finance firm Omni Bridgeway and adopted its name.[178]

Its 2023 financial reports illustrate the exploitive nature of the industry: **Omni expects that its US $2.5 billion invested in different portfolios of claims will generate US $30.5 billion**, of which 25% ($7.6 billion) is expected to come from arbitration cases.[179]

Most of Omni's funds are covered with ATE insurance. In 2022, Omni made its first secondary market sale—two claims totalling US$76 million[180]—and planned to significantly expand the sale of full or partial interest in claims.[181] In fact, in May 2023, Omni sold to Gerchen Capital Partners—an LLF specialised in secondary market and post-award claims with over US$ 750 million for investments—a partial interest in one of Omni's funds for US$ 38 million. Omni profited US$ 30 million from the deal while maintaining interests in the fund valued at another US$ 35.7 million.[182]

Omni promotes its ISDS investments with a 'confidential' claim where an energy 'SME' was awarded significant proceeds against an African country.[183] Furthermore, Omni claims it considers climate and social criteria when selecting cases for its portfolios.[184] However, the small number of its funded arbitration disputes that have been disclosed show that it finances carbon-intensive and extractive corporations.

In 2018, for instance, it funded the fossil fuel multinational GBC Oil Company, incorporated in the Cayman Islands, in an ICC claim against Albania. The funding arrangement covered all expenses, which amounted to around US $3.6 million.[185] GBC Oil Company ultimately traded the claim to Omni Bridgeway; thus, the final award of over US $12.5 was to be paid directly to Omni.[186]

It also has an ongoing C$ 90 million ICSID claim brought by Montero Mining and Exploration (Montero), a Canadian mining company, against Tanzania.[187] Montero Mining shares managers with other Canadian mining corporations, such as Placer Dome Inc.—later acquired by mining giant Barrick Gold[188]—the corporation that traded its mining rights in Venezuela to Vannessa Ventures.[189]

Montero alleges expropriation from the Wigu Hill rare-earth element project after investing C$ 15.5 since 2008.[190] In 2021, Montero hired the legal firm Jeantet AARPI, covered by third-party funding from Omni, for all legal expenses up to US$ 2.32 million.

According to Montero, the dispute involves the 2017 amendment of the 2010 Mining Act, which resulted in the reclassification of mining permits and the publication of a public tender for the Wigu Hill project without compensating Montero Mining. [191] The amendment of the Mining Act raised the royalty rate from 4% to 6%, mandated a 16% share of foreign mining companies for the government, and introduced several local content requirements.[192]

Surveys of Tanzanian communities living near industrial mines show widespread marginalisation and a view that foreign mining companies neglect local communities.[193]

Since 2019, Montero has had a sale agreement for the Wigu Hill project with another Canadian company, Vital Metals, for US $1.2 million, contingent upon securing a mining licence.[194] Tanzania has seen a bombardment of ISDS mining claims, including its recent loss against a claim funded by Litigation Capital Management.

Litigation Capital Management

The Australian litigation finance fund Litigation Capital Management (LCM) was created in 1998 and has been listed on the stock exchange since 2016. LCM has around US $400 million invested in claims—through third-party funding and claims trading—of which US $70 million corresponds to arbitration cases.[195]

One of the disclosed funded arbitration cases—apart from the already mentioned *Indo Gold v India*—is the AU$ 127 million ICSID claim against Tanzania filed by the British mining company Indiana Resources in 2020. The managers of Indiana Resources also chair other ad hoc mining ventures in Australia, Ghana and Guinea.[196] The grounds of the claim were similar to Montero's in that the amendments to the 2010 Mining Act mounted to an indirect expropriation of its mining interests in Ntaka Hill. LCM paid for all of Indiana's legal costs, which amounted to US $3.86 million.[197] In July 2023, the ICSID tribunal ruled that Tanzania's reforms of its mining law resulted in indirect expropriation, ordering the country to pay US $76 million plus interest, summing US $109 million in 2023.[198] LCM was set to receive around US $17 million—a 440% profit.[199]

Jonathan Moulds, now Chairman of Litigation Capital Management (LCM), served as Chairman of the International Swaps and Derivatives Association (ISDA) from 2004 to 2008.[200] ISDA played a pivotal role in the lead-up to the 2008 financial crisis by standardising derivatives markets—most notably credit default swaps (CDS)—without transparency or regulatory oversight.

Therium

Therium, based in the UK, is among the top three litigation finance firms, along with Burford Capital and Omni Bridgeway.[201] It boasts—more than other firms—that it supports the UN Sustainable Development Goals (SDGs), specifically access to justice. It promotes its work using the imagery of social protest, depicting protest banners such as 'No Justice, No Peace' and 'I Can't Breathe'. [202]

Despite the rhetoric, the only ISDS case it uses as an example mentions that it enabled a mining company to bring a claim against a 'Central-American State' for expropriation. That case refers to *Dominion Minerals v Panama*.

Dominion Minerals is a Delaware-based mining venture founded in 2006 by Pini Althus, who has founded and chaired several US rare-earth mining ventures, aiming to compete with China in securing the supply of rare earth.[203] In 2007, Dominion obtained an exclusive copper and gold mining exploration licence for the Cerro Chorcha mining project in Panama, valid up to 2010, with the possibility of applying for a two-year extension.[204] The sub-secretary of Commerce and Industry who signed the licence, José Manuel Paredes, became a director of Dominion in 2009.[205] That same year, the Panamanian Supreme Court heard a lawsuit against the legality of the mining licence. The Supreme Court Judge Victor Benavides[206] provisionally suspended the licence until further notice due to the initial lack of an EIA and consultation with the local community.[207] Cerro Chorcha is located in the Ngöbe-Buglé region, a natural reserve. The Indigenous people of the Ngöbe and Buglé are 220,000 strong and have long protested against multinational companies that extract their resources facilitated by the government.[208] Amidst the ongoing social protests, the government

rejected granting the two-year extension of the already-suspended licence to Dominion. In 2012, the Ngöbe-Buglé people held large protests demanding the government maintain its promise to halt mining and energy projects on their land.[209] Police shot dead two protesters.[210]

In 2015, Therium Capital Management entered into a third-party funding arrangement with Dominion to file a US$ 268.3 million ICSID claim against Panama. Therium agreed to fund up to US$ 6 million in legal expenses in exchange for a percentage of the award plus a 250% profit on the funds provided, as usual, contingent on a favourable outcome. At the time, Dominion's only asset of value was the suspended mining licence. [211] In 2020, the Tribunal awarded Dominion $US 15.9 million,[212] though it is now pending an annulment decision filed by Panama.[213]

Harbour Litigation Funding

Harbour has raised over US $1.8 billion to invest in third-party funding, claims trading, and insurance disputes.[214] Its funded claims total over US $19 billion.[215] The founder of Harbour, Susan Dunn—referred to as the matriarch of litigation funding—also chairs the litigation finance lobby ALF. [216]

Harbour promotes its ISDS-related finance by vaguely describing its involvement in the previously commented case, *Rockhopper v Italy*.[217] Another Harbour-funded ISDS dispute that has come to light is *Cortec v Kenya*.

In 2013, the Kenyan government granted the UK mining company Cortec Limited a 21-year mining licence for extracting niobium, a rare-earth element with superconductive qualities. Cortec's management was also developing another rare-earth mine in Mozambique through another company.[218] The general elections held the same year brought a change in government, which revoked the licence because **Cortec lacked the mandatory EIA**.[219] **Cortec filed a US $2 billion claim to the ICSID against Kenya on the grounds of direct expropriation**.[220] Ultimately, the tribunal dismissed all of Cortec's claims. However, the tribunal ordered Cortec to cover only half of Kenya's legal costs, which amounted to US $6.4 million.[221] A representative of Harbour was part of Cortec's team in the annulment proceeding,[222] indicating a funding arrangement between the two. Hence, Harbour possibly lost its investment against Kenya unless it had also contracted ATE insurance.

Longford Capital

The US-based Longford Capital manages around US$ 1.2 billion in claims. The only ISDS investment it has disclosed is its 2021 third-party funding arrangement with a US hotel developer to fund a claim against Grenade, where it was constructing a luxury hotel on the Island's most famous beach.[223] However, another ISDS dispute Longford has recently funded but, on the contrary, does not promote is *Amorrortu v Peru*.[224]

In 2020, Bacilio Amorrortu, a US citizen, filed a US$ 1.8 billion claim to ICSID against Peru thanks to Longford's financial backing with an unknown amount. Amorrortu, who had prior oil-drilling experience in the Talara Basin, claimed that his expectations of operating there were illegally denied by Peru when it preferred to call for an international public tender allegedly rigged—according to Amorrortu—in favour of the Peruvian construction giant, Graña y Montero.[225] The Talara Basin is home to Indigenous communities that strongly oppose corporate and state oil-drilling activities in the region. The tribunal dismissed Amorrortu's claims on jurisdictional grounds. It, however, ignored Peru's request to oblige Longford to pay for Peru's costs. Instead, the tribunal ordered Amorrortu to pay only US$1.03 million to Peru, which amounts to less than two-thirds of Peru's costs.[226] As usual, the LFF walked away free of responsibility for adverse cost awards.

Tenor Capital Management

Tenor Capital Management, a US hedge fund specialising in arbitration finance, has financed at least two known multi-billion-dollar ISDS claims against Venezuela and Romania.

The background to the case against Venezuela, *Crystallex v Venezuela*, starts in 1997 when the Canadian mining company Crystallex – which had also received a loan from a Chinese state-owned mining company[227]– purchased the investment firm Inversora Mael for US$ 30 million. Inversora Mael was in a long legal battle against the government over gold-mining rights in Las Cristinas, a site in the Imataca National Forest Reserve.[228] **In 2002, Crystallex entered into a mining operation contract for an initial payment of €15 million.**[229] **However, in 2008, the Ministry of Environment denied granting its environmental permit to Crystallex due to the negative impacts of the mining operations on the environment and Indigenous people**.[230] In 2011, after allegedly investing over US$ 500 million,[231] Crystallex brought a US$ 3.16 billion claim to ICSID on the basis that the denial of the environmental permit was an expropriation of its mining operation in Las Cristinas.[232]

In 2016, the ICSID court ruled in favour of Crystallex with $1.2 billion – plus annual interest –**[233]**since 2008.**[234] **By 2017, Tenor Capital had funded the litigation with €75 million, including for domestic actions in the USA seeking to confiscate assets from Citgo, the US subsidiary of the Venezuelan state-owned oil company.**[235] In return, **Crystallex agreed to pay 70.5% of any of the proceeds to Tenor Capital.**[236] **The sale of the confiscated Citgo, which the US court valued at US$ 13 billion, is underway to satisfy Crystallex's awards and other holders of over billion-dollar ISDS awards, such as Rusoro Mining (discussed earlier) and ConocoPhillips.[237]

The other disclosed multi-billion-dollar claim Tenor attempted to profit from is *Gabriel Resources v Romania*. Since 1999, the Canadian mining venture Gabriel Resources and its Jersey-based subsidiary by the same name have sought to develop Europe's largest open-pit gold mine in Roşia Montană, a World Heritage site. At first, the government supported the project, which entailed the demolition of three villages, the eviction of thousands of people, the destruction of four mountains, and a permanent cyanide waste lake the size of 420 football fields. However, years of strong social mobilisation nationwide prevented fast-track deployment of the project and ultimately forced a change in national policy, with the government withdrawing its support in 2014.

Gabriela Resources, with Tenor's funding, sought ISDS arbitration in 2015 after years of Romanian courts declaring the project illegal. **Gabriel Resources claimed US$ 5.7 billion in compensation: around US$ 700 million to cover the investment and €5 billion in 'lost future profits'.**[238] In March 2024, the ICSID tribunal ruled in favour of Romania, ordering Gabriel Resources to pay Romania €9.3 million, plus interest, to cover arbitration and court costs. This was unexpected as even the president of Romania had said they awaited an unfavourable ruling.[239] **Gabriel Resources described the ruling as "deeply flawed and a travesty of justice" while it announced that it might challenge the decision through the ICSID annulment process and that it will seek further external funding**.[240]

While this is a significant victory for the people and the environment, it required major social mobilisation despite the fact that in 2000, the Aurul Gold mine in Baia Mare, near Roşia Montană, saw a cyanide spill causing the worst environmental crisis of the Danube basin, severely affecting Romania, Serbia, and Hungary.[241] The tailing dam ruptured and released 100,000 cubic metres of cyanide-contaminated waste into the Tisza, Danube, Sasar, Lapus, and Somes rivers. The spill contaminated the water supply of 2.5 million Hungarians and killed 80% of the aquatic life of the Tisza, Hungary's second-largest river.[242] The concentrations of heavy metals were way above safety levels, especially in the smaller rivers where some heavy levels ranged between 100 and 1,000 times above the permitted levels.[243] Aurul, the Australian mining company that ran the site, declared bankruptcy and never paid for the damages. As usual, the local population and the environment suffered the consequences, and taxpayers paid for the clean-up costs.[244]

5. Litigation finance intensifies conflicts of interest among ISDS players

"…for a company, it is a way to earn money for the lawyers involved a lot of money; for the state, it is a loss of its citizens' money. Ordinary justice, on the other hand, offers greater guarantees of protection due to the independence including economic independence of the judges who administer it and the existence of two or more levels of judgement with which to remedy any judicial errors"

– Giacomo Aiello, the Italian State attorney in *Rockhopper v Italy,* describing the arbitration market) [245]

Most of the issues regarding conflict of interest in the ISDS regime derive from the closed-loop relationships among its major players. In the early days – decades before the rise of LFFs – the small pool of arbitrators may have justified the tight circle. However, since the 1990s, the number of potential arbitrators has significantly increased, but law firms keep appointing the same ones.[246]

The top 25 law firms have repeatedly selected the top 25 arbitrators for over a third of all ISDS cases. These 25 arbitrators represent only 4% of the total pool of over 600. The 25 elite arbitrators are all men—except for the so-called 'two formidable women'—and all but four are from high-income countries.[247] Alexandrov, an arbitrator and lawyer very frequently appointed by investors, is the only elite arbitrator who is originally from Eastern Europe, although he was educated and lives in the USA, where he also works as a private lawyer and university professor.[248] The other three, not originally from the West, are from Argentina, Chile, and Costa Rica and also practise law in Western countries.[249]

The close relationship between elite arbitrators and elite law firms creates a cycle of dependence: law firms select arbitrators they trust or know will align with their interests, while arbitrators, lacking a fixed income, depend on these selections to earn their substantial case fees.[250]

Back in 2014, arbitrators charged US$ 3,000 per day, averaging US$ 200,000 per case.[251] The costs of tribunals costs have increased by around 26% from US$ 769.000 in 2013[252] to US$ 1.04 million in 2020,[253] which is widely due to the arbitrators' fees going up to US$ 4,000 per day.[254] Therefore, arbitrators may currently be charging an average of over US$ 260,000 per case.

These profitable relationships among ISDS players were exposed in the 2012 report, *Profiting from Injustice*.[255] The report shows that arbitrators share a similar cultural background with the same pro-market ideals and a lack of education in human rights and environmental rights. It also reveals 'collegial politics', as arbitrators tend to vote differently on similar disputes depending on who is their accompanying co-arbitrator. Most importantly, it shows the common practice of arbitrators wearing several hats, whereby arbitrators also act as lawyers, board members, and expert witnesses

appointed by the same corporations. These largely pro-business, multiple-hat players, who profit from the relationships with multinational corporations, contribute to the drafting of new investment treaties. Unsurprisingly, they push for clauses with vague wording that enable arbitrators to rule in accordance with their pro-market ideals. Finally, the report shows the initial entanglement between LFFs and elite law firms as the former hired lawyers from the latter, benefitting from their professional relationships to secure funding arrangements.[256]

Since the report, the issue of conflict of interest has been widely discussed, becoming a significant factor in the so-called 'legitimacy crises' of the ISDS regime. However, LFFs have further blurred the line between the different ISDS players.[257]

Conflicting relationships with litigation finance firms

In recent years, we have seen LFFs partnering with and even buying elite law firms, hiring arbitrators to select claims in which to invest, and dealing with double-hatting arbitrators when they act as lawyers.

Litigation finance firms partnering with and acquiring elite law firms

Recently, **it has become common for so-called 'best friend' relationships, where a funder partners with preferred law firms**. For instance, in 2021, Longford Capital partnered with elite law firm Willkie Farr & Gallagher, channelling US$ 50 million to their cases.[258] Willkie Farr & Gallagher staff members act as lawyers and arbitrators in ISDS cases.[259] In 2024, Longford struck another US$ 40 million arrangement with the elite law firm Quinn Emanuel Urquhart & Sullivan to fund its clients.[260] Harbour partnered with the London-based law firm Mishcon de Reya by investing US$ 200 million in a new fund of a portfolio of claims.[261] Litigation Capital Management arranged a fund with the law firm DLA Piper to finance its arbitration cases with US$ 150 million. Therium also partnered with DLA Piper in funding a specific arbitration branch with US$ 50 million.[262]

Moreover, LFFs are directly buying law firms. In 2020, Burford Capital purchased a 32% stake in the elite law firm PCB Litigation, now PCB Byrne, and provided capital to fund a portfolio of cases.[263] Burford is currently exploring further acquisitions of law firms.[264] **Before, funders allegedly had no direct power over the arbitration cases they funded; now, they may have decision-making power as part-owners of the law firms they fund**.

Arbitrators working as funders

The latest bright idea from the HR departments of LFFs seems to be: *Let's hire arbitrators!*—who better to know whether a claim will win or lose?

Dana MacGrath has a career spanning over 20 years, acting as an arbitrator in international commercial and investment arbitration forums such as ICSID, the International Chamber of Commerce (ICC), and the International Centre for Dispute Resolution (ICDR). Simultaneously, she acted as an international arbitration lawyer defending parties in the same forums, worked for elite law firms such as Sidley Austin, and served as a professor at Brooklyn Law School.[265] In 2019, Omni Bridgeway (then IMF Bentham) hired her as legal counsel and investment manager to help 'identify cases that are best fit for funding'.[266] At the time, she made clear that **"now with Omni Bridgeway as a funder, I am also serving as arbitrator as well"**[267] In 2021, the same year the ICC adopted new rules that mandated the disclosure of the existence of third-party funders,[268] she left Omni to become a full-time arbitrator.[269]

"I'm a third-party funder, I'm an arbitrator, I'm a professor, I chair committees, I'm president of Arbitral Woman (...) I do so many different activities."

– Dana MacGrath, ICC arbitrator[270]

Omni Bridgeway also hired Annie Lespérance in 2019, who previously worked as a lawyer and acted as Secretary to Arbitral Tribunals for one of the top three ISDS arbitrators, Yves Fortier. Yves Fortier, who is mainly appointed by corporations, may be deciding on multi-billion-dollar disputes funded by Omni Bridgeway, where his former assistant gives the green light for the funding. Annie Lespérance, now head of Omni's ISDS investments in Latin America, notes that:

"With various reforms underway [in Latin America], such as Mexico's electricity reform and Chile's constitutional reform affecting the mining sector we also expect to see large funding opportunities from disgruntled investors against these States."[271]

John Beechey, one of the world's best-known arbitrators, was president of the ICC from 2009 to 2015. His ICC presidency is regarded as one of significant reform, though did not adopt any measures regarding third-party funding. **In 2014, still as ICC president, he joined the Investment Advisory Board of Woodsford Litigation Funding**. In 2016, he was appointed Commander of the Order of the British Empire for his services to international arbitration. Like Dana Macgrath, he left Woodsford at the time the ICC adopted rules mandating third-party funding disclosure in 2021. Apart from his work at the ICC, John Beechey has worked as an arbitrator in all major institutions, including ICSID and UNCITRAL.[272] In 2019, 38 of his colleagues contributed to a book in honour of his service to the ICC.[273]

Woodsford submitted comments to UNCITRAL regarding the draft provision on third-party funding, stating that it would not fund a claim in which John Beechey is an arbitrator if there was a risk of conflict of interest.[274] However, the lack of transparency obscures broader situations of conflict of interest. For instance, as president of the ICC, Beechey was clearly in a position of power over many other arbitrators who may have had to rule over disputes funded by Woodsford.

Simon Powell, an arbitrator who has ruled ICC and UNCITRAL disputes, joined Woodsford in 2019. Unlike Beechey, **Powell is still a member of its Investment Advisory Panel.**[275]

Burford Capital also has arbitrators in its permanent staff. **Dr Rukia Baruti—an arbitrator of commercial disputes and co-editor of** Jus Mundi Arbitration Review**—has been on Burford's board of directors since 2022**.[276]

Nigel Jones KC, a lawyer and arbitrator affiliated with the London Court of International Arbitration (LCIA), also works for Harbour Litigation Funding. Jones is chair of Harbour's investment Committee, where he makes investment decisions regarding the merits of disputes worldwide.[277]

Ayse Yazir, a prominent figure in litigation funding, is a director at the top-ranked LFF, Benchwalk Advisors, where she has helped decide which disputes to fund since 2018. As a funder, Yazir is

recognised as having been instrumental in drafting rules on third-party funding for ICSID and UNCITRAL.[278] **Although her career has primarily been in litigation finance, the recently formed Energy Disputes Arbitration Centre (EDAC) has appointed her as an arbitrator**.[279] Furthermore, Yazir organises the Istanbul Arbitration Week, where arbitral institutions and law firms focused on international investment and trade engage in networking.[280]

Arbitrators dealing with funders when acting as lawyers

While the dual role of arbitrator–third-party funder emerged recently, it stems from a historical disregard for conflicts of interests in the ISDS regime, which normalised the dual role of arbitrator-lawyer.[281]

In the 1970s, no arbitrator worked simultaneously as a lawyer or expert. By the 1990s, about 10% of the arbitrators were also working as counsel at ICSID cases. The trend became more common in the 2000s and 2010s when over 25% of the panellists also provided counsel or expert knowledge in ICSID arbitrations. **Notably, this dual role was particularly prevalent among the top arbitrators and tribunal presidents of ICSID proceedings**. Over 40% of the top ICSID arbitrators were also lawyers or experts in other ICSID cases. About half of those serving as experts or counsel were also presiding over tribunals. Moreover, 36% of ICSID presiding arbitrators also served in different roles in ICSID arbitrations.[282]

Phillipe Sands, a top arbitrator whom states repeatedly select, is one of the few insiders with a critical view on the widespread practice of engaging in multiple roles:

"…it is possible to recognise the difficulty that may arise if a lawyer spends a morning drafting an arbitral award that addresses a contentious legal issue, and then in the afternoon as counsel in a different case drafts a pleading making arguments on the same legal issue. Can that lawyer, while acting as arbitrator, cut herself off entirely from her simultaneous role as counsel? The issue is not whether she thinks it can be done, but whether a reasonable observer would so conclude. Speaking for myself, I find it difficult to imagine that I could do so without, in some way, potentially being seen to run the risk of allowing myself to be influenced, however subconsciously."[283]

The frequent practice of arbitrators acting as a party's lawyer creates questionable relationships with funders, as these arbitrators, in their role as lawyers, are the main actors engaging with third-party funders. This is especially worrying for arbitrators who also have elite law firms, as such firms are the main beneficiaries of litigation finance firms and vice versa. Furthermore, they attend the same network seminars[284] and operate within an accepted revolving door between the two.

For instance, the elite arbitrator and lawyer Jan Paulsson,[285] along with other former Freshfields colleagues, founded the leading[286] arbitration law firm, Three Crowns. Paulson has likely engaged significantly with funders as the founding member of the law firm. Furthermore, at least one of Paulsson's former associates, Anastasia Bondarenko—who is also a member of several arbitration committees—joined Vannin Capital in 2018 and is now Vice President of Legal Assets at Fortress.[287]

In the case of *Corcoesto v Spain*, the Canadian mining company Edgewater—also operating in Ghana[288]—and its Panamanian-registered subsidiary, Corcoesto, hired Three Crowns to initiate a UNCITRAL arbitration against the Spanish government over the expiry of a gold-mining licence for a site in Galicia.[289] The composition of the arbitral tribunal ruling over the case is still undisclosed.[290] During the dispute, Edgewater's CEO accused leaders of the Galician government of demanding a cash bribe of €1.5 million.[291] The project faced local protests due to concerns about the use of cyanide in the extraction process. Third-party funding from an undisclosed source was secured through the British litigation finance broker ClaimTrading Ltd.[292] In 2020, the tribunal dismissed Edgewater's claim on jurisdictional grounds.[293] Who was this third-party funder? Did Jan Paulsson rule over other cases where this unknown funder also financed the claimant?

Similar questions should be raised regarding other elite arbitrators who have top law firms, such as the late arbitrator Emmanuel Gaillard.

Gaillard founded the elite law firms Shearman & Sterling and GBS Disputes, where he acted as the claimant's counsel in many ISDS disputes, such as in the notorious Energy Chater Treaty *Yukos* case, which resulted in a US$ 50 billion award.[294]

The stark lack of transparency regarding litigation finance agreements arranged through elite law firms of double-hatting arbitrators makes it impossible to determine specific cases of conflicts of interest. However, the systematic channelling of litigation finance through these firms calls into question the judgment of such arbitrators.

Beyond the fiscal and legal advantages, operating through tax haven shells allows LFFs to add layers of anonymity, making it more difficult for external researchers to identify potential conflicts of interest of arbitrators who engage with LFFs when acting as lawyers. This obscurity, in turn, reinforces the practice of double-hatting and facilitates the repeated appointment of familiar double-hatting arbitrators.[295]

Arbitrators appoint fellow arbitrators when acting as lawyers

The ISDS system often sees complex 'cross-appointments' of elite arbitrators, where law firms representing different parties in unrelated disputes engage in reciprocal appointments of double-hatting arbitrators from each other's law firm.

For example, Yves Fortier served as a legal expert in the claim-traded *Vannessa Ventures v Venezuela*, while V.V. Veeder chaired the tribunal and Charles Brower and Jan Paulsson acted as party-appointed arbitrators. Simultaneously, during the *Vannessa Ventures* proceedings, Paulsson—in his role as lawyer—was also involved in *ConocoPhillips v Venezuela* as the claimant's counsel and appointed Fortier as arbitrator. Furthermore, Fortier, also as a claimant-appointed arbitrator, nominated Veeder as presiding arbitrator in *Gemplus v Mexico* and *Talsud v Mexico*. These intertwined professional paths suggest a pattern where double-hatting arbitrators often collaborate on multiple cases, raising concerns about impartiality.[296]

These cross-appointments can lead to multi-layered conflicts of interest: double-hatting arbitrators heading different law firms could strike deals with the same LFF and simultaneously cross-appoint each other to arbitrate funded disputes. However, while some arbitrators and counsels resign (i.e. recuse themselves) when conflicts are raised, many remain despite serious concerns.

The Disregard for Challenges to Arbitrators with Conflicts of Interests

The only known challenge to an arbitrator regarding ties to an external funder occurred in the ICC dispute, *GBC Oil Company v Albania* (discussed earlier). The claimant-appointed arbitrator, Dr Scherer, an attorney at the law firm WilmerHale and professor at the Queens Mary University of London, was challenged due to the consulting services that WilmerHale provided to the claimant's funder, IMF Bentham. Although GBC Oil did not believe the challenge would have succeeded—as Dr Scherer was allegedly not involved in WhilmerHale's services to IMF Bentham—it agreed to Dr Scherer's resignation in order to reduce the risk of an annulment petition.[297]

Provided the scarcity of known funder-related ISDS challenges, it is relevant to assess the historical standards applied by panels when deciding on arbitrator challenges in general.

Though challenges have become more common, they are often unsuccessful for several reasons:

1. The decision over the challenge typically rests with the co-arbitrators, who may have personal or professional relationships with the challenged arbitrator;
2. The challenger must meet a high threshold, proving an evident conflict of interest rather than just raising legitimate concerns about potential bias;
3. The practice of party-appointed arbitrators creates an environment where some level of perceived conflict of interest is normalised within the system.[298]

ISDS Panel overlooks—domestic court identifies as a conflict of interest

The senior arbitrator, **Emmanuel Gaillard,** was challenged due to simultaneously serving as an **investor-appointed arbitrator** and acting as claimant's counsel in two similar disputes: *Telekom v Ghana* and *RFCC v Morocco*. Ghana challenged Gaillard's appointment, arguing that Gaillard, "who in his capacity of counsel opposes a specific notion or approach, cannot be unbiased in his judgment of that same notion or approach in a case in which he acts as arbitrator".[299] The unchallenged co-arbitrators dismissed the challenge, arguing that the different ISDS institutions (UNCITRAL, ICSID, SCC, ICC...) and the IBA Guidelines do not consider any conflict of interest in such cases. However, the challenge was accepted by The Hague District Court (the seat of the arbitration) and ordered Gaillard to resign from one of his positions.[300] **Hence, a non-ISDS judicial body contradicted and exposed the low standards of ISDS institutions in preventing conflict of interests**.

Alexandrov: awarding billions while dodging challenges

Stanimir A. Alexandrov, one of the investors' most frequently appointed arbitrator, has faced numerous challenges, especially in disputes where The Brattle Group, a quantum expert company with which he has longstanding ties, provided testimony.

In *Raiffeisen Bank v Croatia*, Croatia challenged Alexandrov on the grounds of this relationship. Nevertheless, the ICSID Chairman overseeing the disqualification process concluded that the evidence did not meet the high threshold required to disqualify Alexandrov. Alexandrov was also challenged on his relationship with The Brattle Group in *SolEs Badajoz v Spain* and *Tethyan Copper v Pakistan*. **Alexandrov resigned in the former, but in** Tethyan, **he continued to serve up to the award in 2019, ordering Pakistan to pay US$ 4 billion-plus interest** as well as the nearly US$ 4 million in tribunal expenses and the jaw-dropping US$ 59 million in legal costs incurred by the claimant.[301]

Alexandrov and his co-panellist awarded this immense sum **despite the fact that the project was not developed and that there was a 50% chance that it would never have made any profits**, along with many other factors that indicate that '**the quantum decision in** Tethyan **was a travesty**'.[302]

However, in *Eiser v Spain*, an ad hoc committee annulled the award. **The committee found that Alexandrov had failed to disclose his connections with The Brattle Group and Sidley Austin—the elite law firm he co-leaded for years when acting as a lawyer—which created a significant conflict of interest**. This highlights the injustice in past disputes where such conflicts of interest were permitted.[303]

Law firm continually appointing an arbitrator? No problem

Challenges on the basis of an arbitrator being repeatedly appointed by the same law firm are largely disregarded. For instance, elite arbitrator Francisco Orrego Vicuña faced a challenge in the *Burlington Resources v Ecuador* case due to his numerous appointments by Freshfields Bruckhaus Deringer. The challenging party contended that Vicuña's role in eight ICSID cases from 2007 to 2013 represented an excessively high number, and they criticised him for incomplete disclosure of these appointments. However, the Chairman did not sustain the disqualification request on the grounds that the challenging party was already informed about half of these appointments and had not raised concerns promptly.[304]

CASE STUDY: P&ID v Nigeria

A case that reflects an inherent conflict of interests, corporate bias, and institutional neo-colonialism in an arbitration process fuelled with third-party funding is Process & Industrial Developments (P&ID) v Nigeria. *P&ID v Nigeria* is a commercial dispute decided through an ad hoc arbitration in London, which was presided over by Leonard Hoffman, who also served in *Tethyan v Pakistan*. The case shows the complete disregard for crucial facts that often occur with corporate-bias arbitral institutions, resulting in mammoth awards to the detriment of an entire nation.

P&ID, a shell company registered in the Cayman Islands with no energy-project experience, landed a gas-leaning project with the Minister of Petroleum of Nigeria through multiple bribes.[305] The contract stipulated that Nigeria would pay for all the required infrastructure. A change of government prompted the two businessmen behind P&ID to engage in arbitration in order to monetise the 20-year agreement stipulated in their fraudulent contract.[306] In January 2017, the tribunal, presided by Leonard Hoffman, awarded P&ID **US$ 6.6 billion + 7% annual interest in compensation for the 20 years of lost profits**.[307]

The 'elite' lawyer representing P&ID in the arbitration, Seamus Andrew, purchased 75% of P&ID via his LFF, Lismore Capital—also registered in the Cayman Islands.[308] **Furthermore, Andrew struck a deal with a London-based hedge fund, VR Capital, to sell 25% of P&ID in exchange for US$ 45 million.**[309] **The profiteers were all set to seek enforcement of the award in New York and London courts, which would have aided them in seizing Nigerian state assets**.

However, in 2019, Nigeria filed a challenge of the award in the English High Court. **By the time the trial started in 2023, the award amounted to over US$ 11 billion**. **The judge, Justice Robin Knowles, did what many ISDS and commercial arbitrators disregard: investigate the facts, take into account the allegations of corruption, and review the claimant's background.** The award against Nigeria was overruled.

Justice Robin Knowles explicitly warned the arbitration community that **without a process of reflection, a case like this will happen again and possibly end up the other way with a country handing a large portion of its annual GDP to profiteers due to a corrupt empty contract.**[310]

> *"The arbitration was a shell that got nowhere near the truth"*
>
> – Justice Robin Knowles[311]

6. The consequences of the commodification of International Investment Law

The growth of the litigation finance market has undoubtedly affected the ISDS regime. Funders have used the ISDS system to profiteer with three major consequences:

1. An increase in the number of claims, including frivolous and low-merit claims, with the power to influence negotiations;[312]
2. a 'chilling' effect on the implementation of environmental and social protection measures; and
3. the generation of immense costs for countries.[313]

LFFs drive up claims, including low-merit ones, with the power to influence party negotiations

"Third-party funding is likely to encourage even the filing of frivolous lawsuits in cases where the potential payout is very large. This effect belies the notion that by enabling potential plaintiffs to bring lawsuits, funding arrangements enhance the pursuit of justice. In practice, it is far more likely to have the opposite effect."

– National Association of Mutual Insurance Companies[314]

Law firms and investors have profiteered from the vague wording common in IIAs. Top law firms and third-party funders make billions over the panel's interpretation of terms such as 'indirect expropriation' and 'investment-backed expectation'. This ambiguity, along with the closed-loop relationships, prevailing corporate bias, and the fact that LFFs are not liable to adverse cost awards, creates what commentators have described as the 'Gambler's Nirvana'.[315]

Empirical research shows that **third-party funders tend to invest in novel and risky disputes that the claimants would not pursue without the backing of the external funders – not because of a lack of funds but due to 'legal uncertainty' regarding the claims' merits.**[316]

"Investment funds, in contrast (with traditional insurers), are happy to bet on litigation if the returns are high enough"

– Jonathan Molot, founder of Burford Capital[317]

LFFs are keen to invest in high-value, low-merit claims if the potential payoff is sufficiently high. In other words, funders do not solely consider the merits of a claim as an investment but focus on the 'break-even point' of a claim, which can be measured by multiplying the amount of expected recovery by the probability of winning the claim. For instance, in *Eco Oro v Colombia* – discussed later – Tenor Capital had no problem investing US$ 14 million in this US$ 1 billion claim despite serious environmental and social reasons for Colombia to reject the mining permit. This investing approach aligns with the behaviour of risk-neutral investors, who may find a US$ 1 billion claim with a 5% success rate as appealing as a $25 million claim with a 'guaranteed' win.[318]

> *"The perception that you need strong merits is wrong – there's a price for everything."*
>
> – Mick Smith, pioneer in litigation finance[319]

Portfolio funding further incentivises investment in risky, low-merit claims, as the potential costs of losses are balanced against the wins in the portfolio.[320] This 'risk diversification' strategy adopted by LFFs prevents them from systematically rejecting frivolous claims.[321] Furthermore, unlike contingency lawyers, LFFs have no legal duty to advise their funded clients if a claim is frivolous.[322]

LFFs deny encouraging frivolous claims

Unsurprisingly, the same LFFs that admit to pursuing risky investment strategies also strongly deny that litigation finance encourages frivolous or low-merit claims. Burford's director dismisses this concern as "pure conjecture" that "does not hold any water," arguing that ISDS institutions have mechanisms to dismiss such claims early in the proceedings and can even refuse to register them.[323]

However, a doctoral thesis examining the effectiveness of these dismissal mechanisms in ISDS disputes reveals that tribunals apply them "only in overly narrow circumstances".[324] The author notes that tribunals are under no formal obligation to dismiss frivolous claims, and case history shows that arbitrators often avoid doing so, deeming it "far-reaching" and preferring instead to hear the claims on the merits.[325]

Claims have increased by 400%

One way to assess if litigation finance increases arbitration claims is by comparing the ISDS statistics before and after 2008—the turning point in litigation finance, as previously explained.

Between 1983 and 2008, there were a total of 331 ISDS cases over 26 years. From 2009 to 2022, there were 897 ISDS cases over 14 years. In other words, **before the prominence of LFFs, there was an average of 12.7 ISDS disputes per year. After their emergence, this figure rose to an average of 64 disputes per year**.[326]

More frivolous claims = More State wins

Despite the dominant investor bias in ISDS arbitration, a rise in frivolous claims is expected to result in more state wins. Between 1983-2008 and the 2009-2022 period, state wins increased from 32% to 37.7%.[327]

Although there may be no hard data regarding litigation finance and low-merit claims, if one assesses the few dozen third-party-funded cases that have come to light, it is obvious that several of these cases are based on frivolous or even corrupt claims. For instance, *Infinito Gold v Costa Rica*, *Cortec Mining v Kenya*, and *Churchill Mining and Planet Mining v Indonesia* were tainted with fraudulent practices, while in *South American Silver v Bolivia*, the claimant engaged in violent actions against Indigenous people.[328]

LFFs influence party negotiations: maximising profits over settlements

Furthermore, the non-recourse—no win, no fee—nature of funding agreements has led many commentators to suggest that LFFs pressure claimants to reject settlements deemed insufficiently profitable. Data supports this hypothesis: settled cases have declined from 24.8% to 15.8% (excluding pending cases). [329] This dynamic is also evident in leaked funding arrangements, such as in commercial disputes involving a food distribution giant against meat suppliers.

Burford Capital invested US $140 million in Sysco's lawsuits, **with a funding agreement stating that Sysco 'shall not accept a settlement offer without [funder's] prior written consent, which shall not be unreasonably withheld'.**[330] Burford ultimately rejected settlement proposals and later purchased all of Sysco's claims.[331]

The fuelling of ISDS disputes provided by the strong financial backing of LFFs can have a contrary effect on settled cases. Considering that some lower-income countries are going through dozens of the over 350 pending disputes, they may well be inclined to settle even in low-merit and frivolous cases in order to reduce expenses and avoid the risk of losing such disputes. Further research is required to assess the extent of this factor.

> *"third-party funding may create pressure on defendants to settle all but the most frivolous claims, and at amounts much higher than the probable value based on the merits."*
>
> – National Association of Mutual Insurance Companies[332]

Overall, LFFs fuel and profit from the increase in ISDS claims, including low-merit ones, and can exert decision-making power over settlements, which in turn exacerbates the regulatory chill.

Environmental and social regulatory chill

In the review for the annulment of *BG Group PLC v Argentina*, where Argentina was ordered to pay US$ 185 million to the British oil and gas giant BG Group—now Shell[333]—in 'compensation' for the emergency measures it adopted during its 2001 financial crisis, the dissenting arbitrator elucidated the ISDS chilling effect:

> *"By acquiescing to arbitration, a state permits private adjudicators to review its public policies and effectively annul the authoritative acts of its legislature, executive, and judiciary."*[334]
>
> – Chief Justice John Roberts

This chilling effect exemplifies a broader issue: **multinational corporations use ISDS to ensure long-term profits by blocking policies that threaten their financial expectations — typically policies promoting social and environmental rights**

A multinational corporation seeking to exert a regulatory change with an ISDS dispute will be less hesitant to file a low-merit claim if it receives third-party funding. And as discussed earlier, LFFs may be willing to fund such claims if the potential win is high enough.

Markets love the chill

Statistical studies confirm that when a large corporation files an ISDS claim in response to a new regulation, the market anticipates the chilling effect, and the stock value of other corporations in the same industry grows significantly. The likelier the reform's repeal, the greater the rise in stock value. This is also true for domestic corporations with no access to ISDS and, thus, can never expect to benefit from ISDS awards but only from regulatory changes. This cross-market profiteering from ISDS disputes is more pronounced in wealthy countries where strong institutions can steer the government into compliance. [335]

Chilling by threat or claim — in win or loss

In these industry-level regulatory cases, the claimant prevails 51% of the time, with states amending or repealing the challenged regulation in 17.5% of cases. **Notably, even when investors lose, the repeal rate is nearly identical (16.4%)—**likely to deter future claims or bow to pressures favouring 'market-friendly' policies.[336]

When focusing solely on cases brought by large corporations against wealthy countries, the repeal rate increases to 28%. This does not mean that large multinationals hold more power in wealthier countries than in lower-income ones. Rather, lobbying is more institutionalised and, therefore, more effective in influencing governments in wealthier countries, whereas in lower-income countries, big corporations can more easily resort to bribery instead of pushing for legislative change.[337]

This is in line with an overview of ISDS cases from 1993 to 2017, finding that most respondent states were 'stable democracies' that were challenged with claims of 'indirect expropriation'. [338] Lower-income countries are more vulnerable to regulatory chill through the mere threat of a costly ISDS.[339] As one elite law firm puts it:

> *"For every investor–State case that goes through to completion, there are several instances where companies have used IIAs as leverage to negotiate with the host government and cause it to change its behavior more quickly and less expensively."*
>
> – Crowell & Moring[340]

Regulatory chill through the threat of arbitration is strengthened as LFFs and investors lobby for a more corporate-friendly international investment regime. Ultimately, this funder–corporation alliance pressures governments to legislate in favour of the investor rather than the public interest.[341]

The chilling spreads across borders

Whatever the outcome of a dispute, the regulatory chill can spread to other countries. For instance, when Philip Morris filed a claim against Australia's tobacco labelling regulations, New Zealand decided to put its own labelling legislation on hold. Thus, Phillip Morris benefited from the case even though it lost it. Canada – which has frequently experienced regulatory chill from ISDS[342]– was also threatened by ISDS claims from the tobacco industry when it pushed for stricter labelling laws in 1994 and 2001. On both occasions, Canada revoked its plan to change the legislation. [343] The chill likely spread pre-emptively to poorer countries where the tobacco industry has the most growth potential, especially in African countries, where Gabon, Namibia, and Togo have faced ISDS threats by the tobacco industry.

Unsurprisingly, many European countries have expressed their intention to abandon the ECT, and wealthier countries are increasingly expressing concerns about the ISDS system.[344]

In all, the data suggests that all countries are vulnerable to large corporations instrumentalising ISDS to dismantle any regulation that reduces their profit margins.[345]

Third-party funding chilling environmental and human rights

LFFs promote the chilling effect of ISDS by financing claims that attack regulations expanding environmental and human rights. Remarkably, even domestic public actors who support ISDS acknowledge this chilling effect, claiming it encourages 'good governance'. [346]

CASE STUDY: Third-party funding reverses mining ban protecting orangutans

Indonesia has a history of yielding to corporations threatening with ISDS proceedings. In 2002, The Indonesian Ministry of Environment swiftly abandoned its proposed ban on open-pit mining in protected forests as dozens of large corporations threatened arbitration.[347] More recently, following the ISDS dispute initiated by the UK mining company Churchill Mining PLC and its Australian subsidiary, Planet Mining Pty, Indonesia further amended its mining laws to favour multinationals.

In *Churchill Mining and Planet Mining v Indonesia*, the company demanded US$ 1.3 billion in compensation for the revocation of its mining permit after allegedly investing US$ 40 million. The permit was revoked on environmental grounds owing to a serious threat to 2,000 orangutans.[348] **An undisclosed third-party funder – or several – paid for Churchill Mining's arbitration expenses,**[349] **even though the alleged mining permits were forged and obtained through corruption**.[350] In 2016, the tribunal dismissed all claims and ordered Churchill Mining to pay 75% of the respondent's legal expenses, which amounted to over US$ 12 million.[351] In 2019, the annulment committee finally dismissed all the claims but ordered Indonesia to bear its own legal costs for defending the annulment, amounting to nearly US$ 2 million.[352] **Following this dispute and two others, Indonesia amended its mining laws: reducing environmental obligations, expanding mining zones, and allowing automatic permit extensions for up to 20 years**.[353]

CASE STUDY: Billions in ISDS mining claims against Colombia to slash Indigenous rights

Colombia has historically regulated in favour of foreign mining companies, where they control over 70% of all mining production.[354] Colombia's mining industry is strongly linked to armed conflict, environmental destruction, human rights violations, and repression of Indigenous movements.[355]

Despite the favourable regulatory conditions for foreign investors, years of Indigenous mobilisation led the government to stop conceding further regulatory advantages to the mining industry. As mining corporations were not allowed to expand their operations in protected areas and national courts ruled against them, the mining industry responded with at least 10 ISDS claims.[356]

One of these is *Eco Oro v Colombia*. In February 2016, Colombia's Constitutional Court banned extractive activities in the *páramos* regions because of their critical role in both providing 70% of the country's drinking water and in mitigating the effects of climate change.[357] **The court emphasised the protection of fundamental rights to water and the environment. Eco Oro, a Canadian mining company, responded with a US$ 764 million ISDS claim as one of its gold mines was within the newly restricted zone. Tenor Capital invested US $14 million in Eco Oro's claim in exchange for 51% of the award.**[358]

Local communities, particularly Indigenous populations and environmental activists, strongly opposed the project. Protests and mobilisations, such as those organised by the Committee for the Defence of Water and the Santurbán Páramo, helped in raising awareness and resisting mining activities.[359] In July 2024, after eight years of arbitration, most members of the tribunal ruled in favour of Colombia. Eco Oro and Tenor Capital had spent US$ 33 million.[360] The respondent-appointed arbitrator, Phillipe Sands, referred to this 'jaw-dropping figure': "*In the context of facts and an environmental context which ought to have caused any reasonable lawyer to alert the Claimant to the serious risk of failure, the amount is indecent*".[361]

The other nine disputes amount to multi-billion-dollar claims against restrictions on mining concessions on the grounds of environmental and Indigenous rights. **Although case details are scarce, at least five of these are counselled by the top firm in international arbitration, Freshfields Bruckhaus Deringer,**[362] **who "has a growing portfolio of funded cases and strong relationships with funders around the world."**[363]

The pressure had an effect, as in mid-2019, the government of Iván Duque regulated to clarify that Indigenous and other local populations had the right to be consulted but not to prohibit mining projects as underground resources are under the government's jurisdiction. The president of the Colombian Mining Association said that the bill, which further reduces community power over mining projects, "is necessary to increase exploration and production across the whole country".[364]

Litigation finance facilitates a huge economic burden on countries

The fact that third-party funders boost the number of claims by backing disputes that would otherwise not be filed naturally entails a higher economic burden for respondent states.

LFFs' exemption from liability for adverse cost awards leaves states vulnerable to non-compliant claimants and additional enforcement expenses. A survey of ICSID cases highlights the scale of this issue: 27% of states had to pursue enforcement to secure cost awards.[365]

Furthermore, the opaque nature of litigation finance can also lead to higher respondent-side expenses. As Peru pointed out in its defence against a U.S. mining operator, beyond confronting the average arbitral expenses, the claimant's secrecy regarding its third-party funding forced the country to "unnecessarily" increase its expenses on investigations and motion filings concerning the nature of the funding arrangements.[366]

The length of ISDS proceedings—often over four years—also adds an economic burden because LFFs use it to their advantage as it allows them to "*seek higher pricing (whether through an increased multiple and/or a higher back-end share of proceeds)*" than if the claim was heard in a national court".[367]

However, these additional procedural, contractual, and legal costs are marginal compared to the immense expenses LFFs promote by encouraging hyperinflated indirect expropriation claims.

The DCF model: How corporations appropriate a country's wealth

"unless accompanied by public visibility or greater scrutiny by arbitrators, how suitable is the (arbitration) process in a case such as this where what is at stake is public money amounting to a material percentage of a state's GDP or budget?"

– Justice Robin Knowles on *P&ID v Nigeria*[368]

As explained in the 'Background' chapter, litigation finance firms prefer funding 'indirect expropriation' claims as they enable hyperinflated compensation amounts based on the conjectural concept of 'lost future profits.' Third-party funding of these claims supports an immense corporate grabbing of public wealth. The cases reviewed up to here confirm this, especially:

- ***P&ID v Nigeria:*** despite fraudulent evidence and no investment, the tribunal ordered the largest African economy to compensate the claimant with US $11 billion—**equal to 4.3% of its GDP** and nearly twice its annual federal budget.
- ***Crystallex v Venezuela (and others):*** Tenor Capital's third-party funding led to the US $1 billion award. Crystallex's pursuit for enforcing the award in a US court resulted in the judge ordering the confiscation of Venezuela's state oil company, which the court valued at US$ 13 billion,[369] to compensate Crystallex and other ISDS claimants, such as Rusoro Mining and ConocoPhillips. This confiscation may eat away over **10% of Venezuela's GDP**. [370]
- ***Energy Transition Minerals v Greenland and Denmark:*** The reenactment of a uranium ban has led to a US$ 11.5 billion claim. Greenland's GDP is US$ 3.2 billion, meaning that even **a considerably lower award would exceed the country's annual GDP many times over**.[371]

The valuation technique used to 'justify' such high amounts based on so little is the Discounted Cash Flow (DCF) model. The DCF model is the most frequently proposed valuation method in investor-state arbitrations.[372] The DCF model 'discounts' future cash flows to the present value. In doing so, the quantum experts allegedly reduce the actual amount of the future value of the investment by factoring factors such as inflation and economic uncertainties. In practice, the highly conjectural and subjective nature of the formula leads to valuation amounts that greatly reduce the risks and inflate the present and future value of the project that has led to the claim.

Take *Rockhopper v Italy*. **The oil company lacked an operating permit, and the law did not require Italy to provide one; the area suffered from seismic activity, and the community strongly opposed the project.** Despite this, the accepted DCF model converted a US$ 29 million investment to a US$ 330 million award. And all thanks to Harbour, as Rockhopper assured that it would not have filed for arbitration had it not been for its third-party funding.

LFFs value each of their investments using the DCF model,[373] which obviously normalises claimants' use of it.

Arbitrators have accepted the general use of the DCF model even though the World Bank and ICSID have longstanding guidelines clearly indicating that the model is only appropriate for projects generating profits for a sufficient period of time "with reasonable certainty, of its income in future years."[374]

Lawyers and funders have continuously pushed for the DCF model in claims regarding projects that yielded no profits or even no investments,[375] **and arbitrators have accepted it in nine out of 11 disputes**.[376]

In sum, The DCF model is a key instrument for financiers and investors to extract vast sums when governments and local communities reject their extraction plans. This is evident in the current wave of ISDS claims against the Republic of Congo.

CASE STUDY: Foreign mining corporations backed by LFFs looting the Republic of Congo

The Republic of Congo is currently threatened by at least four investor–state disputes for allegedly illegally cancelling the mining rights of several foreign mining companies located in the iron-ore sites of the Sangha and Mayoko-Moussondji and granting them to a Chinese corporation in 2021. **Although the four claims are brought by different corporations, they are all represented by the elite law firm Clifford and Chance**.[377]

The smallest of the known claims was filed in 2023 by the Australian corporation (incorporated in Mauritius), Equatorial Resources—BlackRock being its largest shareholder[378]—and **amounts to US$ 1.1 billion-plus pre-award interests that can sum up to US$ 741 million**. The Republic of Congo alleged in the proceedings that Equatorial Resources failed to pay for surface fees and to comply with environmental remediation requirements, but the tribunal dismissed these allegations on the grounds that the relevant BiT did not allow for the respondent state to file any counterclaims.[379] Equatorial Resources announced that it was studying potential litigation finance arrangements but has yet to confirm it.

Another Australian company, Sundance Resources—major investors being HSBC, JP Morgan, and Chinese conglomerate Hanlong Mining[380]—filed a **US$ 8.76 billion claim to the ICC against the Republic of Congo and secured litigation funding from Burford Asia Investments (Burford Capital) to cover all expenses of dispute and if necessary for its other ICC US$ 5.5 billion claim against Cameroon in the same mining area**.[381] Although the project was still in a pre-development phase, Sundance had invested US$ 260 million for the mining project in both countries.[382] The ICC panel is expected to issue a decision in late 2025.[383]

Midus Holding Limited, a UK mining corporation, announced it has secured litigation finance for its undisclosed ICSID claim against the Republic of Congo.

The highest known claim filed in response to the Republic of Congo's change in mining concessions is the UK company, Avima Iron Ore**.** Avima filed a **$US 27 billion** claim to the ICC after several years in the pre-development phase of the mining project.[384] The Congolese government alleges that Avima failed to pay royalties and has not met production expectations.[385] Although Avima has not announced a litigation funding agreement, it has likely contracted one, given that Clifford and Chance explored TPF for the other three cases.

The total sum of these claims surpasses US$ 40 billion, which may be three times the Republic of Congo's GDP—at US$ 15 billion in 2024.[386] Even if the country had unlawfully terminated the mining permits, the DCF method allows for the claimants to strip the country's and any government authority to choose new investors.[387]

The Chinese mining company to which the Republic of Congo granted the mining rights previously held by the claimants is Shanga Mining Development. Shanga—probably with the backing of China—has committed to invest US$ 18 billion in developing the Congolese mining industry. The investment will include the development of a railway,[388] a steel plant, and energy infrastructure.[389]

7. ISDS reforms embrace litigation funding

The legitimacy crisis of ISDS is too obvious to go unanswered. In response, ISDS institutions have addressed several issues in recent years, including litigation finance. However, corporate interests have prevailed through lobbying, resulting in only timid reforms.

Corporates control the narrative

Back in 2017, when initiatives to regulate third-party funding were first announced by the arbitration institutions, Woodsford Litigation Funding, a founding member of the lobby group ILFA, summed up the sentiment of the sector in a letter to ICSID:

"Those who call for regulation of the litigation funding industry might do well to recall the maxim "if it ain't broke, don't fix it."[390]

ILFA advocates for self-governance using 'best-practice principles'[391] and has strongly attacked any meaningful regulation. It responded to UNCITRAL's 2021 draft proposal, stating that it was "heavily influenced by certain academics with the support of various NGOs who cast doubt on the legitimacy of third-party funding in the ISDS context."[392] ILFA describes the ISDS system as inherently transparent and disputes that litigation finance aggravates the structural imbalance in ISDS.[393]

The corporations vehemently opposed any requirements for disclosure of the specifics of funding arrangements. The Corporate Counsel International Arbitration Group (CCIAG)—the association of corporate lawyers from multinational companies focused on international arbitration—justified keeping the terms of funding contracts secret, arguing that "they are not relevant to assessing a conflict of interest" and that flexible rules would enable "access to justice to those with insufficient resources".[394]

Furthermore, they even opposed the mere disclosure of the identity of third-party funders. Woodsford held that mandatory disclosure could have "significant disadvantages for funded parties" as it can give rise to "distracting satellite disputes," frivolous challenges to arbitrators, and unwarranted applications for the security of costs. Stressing that if disclosure had to be mandatory, then it should be **"to the tribunal only", i.e., not made public**.[395]

Of course, they promoted their stances with the usual argument that third-party funding enables "access to justice to those with insufficient resources."[396]

Countries follow suit

It is not only the funders and lawyers that push for embracing litigation finance in ISDS. Countries are strong supporters of litigation finance. For instance, Singapore—a major arbitration hub—argued that automatic disclosure of funding agreements "could lead to a regulatory chill on third-party funding."[397] In fact, only a few countries have advocated for its prohibition,[398] such as Argentina, which called for the prohibition of claims trading.[399] This stance is reflected in the 2018 BiT between Argentina and the United Arab Emirates (UAE), where third-party funding and claim trading are prohibited.[400]

Major ISDS institutions adopt similar rules on third-party funding

As a result, ICSID, ICC and UNCITRAL have embraced third-party funding while ignoring insurance and claims trading.

The ISDS institutions have folded to the demands of the LFFs of limiting mandatory 'disclosure' of the identity only—not the terms—and only to the arbitral institution and the respondent state—not the public.

However, **none of these ISDS institutions have adopted specific enforcement mechanisms to ensure claimants comply in informing tribunals of any funding arrangements.** Instead, they rely on general provisions that provide that tribunals may consider non-cooperative behaviour when allocating costs.

ICC 2021 Rules	**Article 11(7)** demands that parties inform of the identity of any third-party funder.[401] **Article 3(1)** establishes that all communications are only to be sent to the other party, each arbitrator, and the secretariat.[402]
ICSID 2022 Rules	**Rule 12** establishes that a party shall notify the name and address of its third-party funder to ICSID's Secretary General.[403]
UNCITRAL Working Group III Draft version September 2024	**Draft Provision 12** requires the disclosure of the funder's identity and—only if required by the tribunal—the terms of the funding arrangement.[404]

UNCITRAL has been in an ongoing amendment process through Working Group (WG) III with no established date of conclusion. There were discussions of applying a more 'restrictive model,' prohibiting third-party funding, except if the claimant meets certain 'access to justice' or 'sustainable development' criteria.[405] However, discussions quickly veered to embrace the ISDS claims market.

The fact that there is no obligation to disclose the terms of the agreement will continue to invite arbitration panels to incorrectly assume that funding arrangements cover adverse costs, such as in *South American Silver Limited v. Bolivia*, where the panel rejected Bolivia's petition to disclose the funding arrangement in order to verify this assumption.[406] Furthermore, disclosure of funding agreements is necessary to assess the level of influence the funders have over the disputes.

A Code of Conduct for Arbitrators... If both parties agree

Burford Capital, in its 2018 comments to WG III, asserted that the threat of a conflict of interest is "more theoretical than real," as there has been no arbitration with a successful challenge of an arbitrator or the award based on conflicts of interest involving an LFF.[407]

Burford neglects that transparency is necessary to identify conflicts of interest and that the low standards of ISDS institutions and the longstanding normalisation of conflicting relationships are major obstacles to disqualifying arbitrators on these grounds.

UNCITRAL and ICSID drafted the 2024 'Code of Conduct for Arbitrators in International Investment Dispute Resolution' to address the "perceived" lack of independence of arbitrators. **The code recommends arbitrators ask the disputing parties to disclose any third-party funders involved**

in the dispute.[408] In turn, the arbitrator is obliged to disclose any business or close personal relationship with funders backing the dispute.[409] The code also addresses the long-standing issue of “multiple-hatting” by prohibiting arbitrators from serving in multiple roles simultaneously in any other proceeding.[410] While **the new Code of Conduct** is a step forward in addressing arbitrators’ conflicts of interest, it **lacks enforcement, as it is applicable only upon the agreement of disputing parties on a case-by-case basis and does not provide sanctions for non-compliance.**[411]

Ultimately, any regulation of litigation finance that allows investors to treat the already unjust ISDS system as a marketplace to profiteer over taxpayer money is, by no stretch of the imagination, a fair system of justice.

8. Conclusion

ISDS lost its legitimacy long ago. This report demonstrates how big finance has further exploited this unjust system through LFFs to profiteer from public wealth.

The LFFs—in collaboration with elite law firms—have corrupted the system by:

Incentivising claims—often frivolous—through third-party funding, insurance, and claims trade arrangements, turning ISDS claims into a speculative market betting against sovereign states.

Exacerbating conflicts of interest by buying and partnering with elite arbitration law firms, hiring arbitrators as investment managers, and dealing with arbitrators in various other ways.

States are left to defend the rights of their people against market bias arbitrators in a system fuelled by large financial interests. Consequently, the ISDS claims market erodes environmental and social rights and exacerbates the wealth grabbing by corporations to the detriment of public interests.

Yet—as is common in late neoliberalism—states are complicit in promoting large corporate interests, embracing the financialisation of international investment law.

Nevertheless, social mobilisation holds the potential to pressure states into ending this injustice and reclaiming the public interest.

A way forward

ISDS is inherently unfair and should be dismantled. Reform attempts have failed to provide an improved system. Therefore, countries should:

1. Conduct audits of all their investment protection treaties and suspend the possibility for foreign companies to file Investor-State lawsuits for the duration of the audit.
2. Withdraw from the ICSID Convention and eliminate all ISDS mechanisms by systematically renegotiating or terminating treaties that include ISDS provisions.
3. Replace ISDS with appropriate national and regional state-to-state dispute mechanisms that:
    - Require the exhaustion of domestic legal remedies whenever possible.
    - Prohibit any third-party profiteering from international investment claims, effectively ending the investor-state claims market.
    - Prioritize human rights, livelihoods, decent labor conditions, and the protection of ecosystems and natural resources over corporate interests, putting an end to wealth grabbing.
    - Ensure countries have the right to regulate in order to expand social and environmental protections, strengthening public sovereignty over resources and eliminating regulatory chill.
    - Appoint permanent public judges with no corporate bias, following strict qualifications, thereby eliminating arbitrators' conflicts of interest.
    - Guarantee full transparency to the public, removing opacity in investor-state disputes.
    - Promote the active participation of populations affected by the investor's activities.
4. Refrain from signing new treaties with investment protection provisions, and instead support the development of a Binding Treaty on Business and Human Rights at the UN level.

Endnotes

1 Global ISDS Tracker (December 2023) ISDS cases database. https://www.globalisdstracker.org/database/.

2 Alshahrani, S.M. (2020) What should we know about the origins of international investment law? *International Journal of Legal Information*, 48(3):122-131. http://dx.doi.org/10.1017/jli.2020.27

3 Puerta, S. and Samples, T. (2022) Investment law's transparency gap. *Cornell International Law Journal*, 55: 9-60, p. 21. http://dx.doi.org/10.2139/ssrn.3897078

4 Hodgson, M., Kryvoi, Y. and Hrcka, D. (2021) *2021 Empirical Study: Costs, Damages and Duration in Investor-State Arbitration*. London: British Institute of International Comparative Law and Allen & Overy, p. 11. https://www.biicl.org/documents/136_isds-costs-damages-duration_june_2021.pdf

5 Ibid. p. 12.

6 Pauwelyn, J. (2015) The rule of law without the rule of lawyers? Why investment arbitrators are from Mars, trade adjudicators from Venus. *The American Journal of International Law*, 109(4): p. 791. https://doi.org/10.5305/amerjintelaw.109.4.0761.

7 Hodgson, M., Kryvoi, Y. and Hrcka, D. (2021) op. cit. p. 32.

8 https://www.newyorkconvention.org/english

9 Dafe, F. and Williams, Z. (2020) Banking on courts: financialization and the rise of third-party funding in investment arbitration. *Review of International Political Economy*, 28(5): 1362-1384. https://doi.org/10.1080/09692290.2020.1764378

10 Herbert Smith Freehills. (2024, March 8). Honduras denounces the ICSID convention. Retrieved January 14, 2025, from https://www.herbertsmithfreehills.com/notes/publicinternationallaw/2024-03/honduras-denounces-the-icsid-convention

11 https://unctad.org/publication/world-investment-report-2023

12 Caillaud B. and Lambert-Mogiliansky, A. (2024). Pro-business arbitration with ISDS (pre-print), p. 5. https://shs.hal.science/halshs-03763380/document.

13 Global ISDS Tracker, 7 November 2024. https://www.globalisdstracker.org/database/.

14 https://investmentpolicy.unctad.org/investment-dispute-settlement/advanced-search

15 Hodgson, M., Kryvoi, Y. and Hrcka, D. (2021) *op. cit.* p. 5.

16 Ibid.

17 Global ISDS Tracker, op. cit.

18 Brower, C.N. (2019) State parties in contract-based arbitration. *ITA in Review*, 1(2), pp. 108, 115. https://itainreview.org/articles/Fall2019/state-parties-in-contract-based-arbitration.html.

19 See ibid. and: Puerta, S. and Samples, T, (2022) Investment law's transparency gap. *Cornell International Law Journa*l, 55: 9-60, p. 15. http://dx.doi.org/10.2139/ssrn.3897078

20 Brower (2019) op cit.

21 ICC (2024) *ICC dispute resolution 2023 statistics*, p. 6. https://iccwbo.org/wp-content/uploads/sites/3/2024/06/2023-Statistics_ICC_Dispute-Resolution_991.pdf

22 Alexianu, M. (2024). Petersen v. Argentina and the drawbacks of U.S. litigation against foreign sovereigns. Harvard International Law Journal. https://journals.law.harvard.edu/ilj/2024/04/petersen-v-argentina-and-the-drawbacks-of-u-s-litigation-against-foreign-sovereigns/.

23 Pauwelyn (2015), op. cit.

24 UNCTAD (31 December 2023) Investment Policy Hub Home, Investment Dispute Settlement Navigator. https://investmentpolicy.unctad.org/investment-dispute-settlement?status=1.

25 Ibid.

26 Eberhardt, P. and Olivet, C. (2018). Modern pirates: How Arbitration lawyers help corporations seize national assets and limit state autonomy. *American Journal of Economics and Sociology*, 77(2), 279-329, p. 288, https://doi.org/10.1111/ajes.12223.

27 Schacherer, S. (2018) 'International Investment Law and Sustainable Development - Key cases from the 2010s'. Winnipeg: International Institute for Sustainable Development (IISD), p. 9. https://www.iisd.org/system/files/publications/investment-law-sustainable-development-ten-cases-2010s.pdf.

28 Drahozal, C. R. (2016) 'Empirical Findings on International Arbitration: An Overview', in T. Schultz and F. Ortino (eds.), *Oxford Handbook on International Arbitration* p. 32. Oxford: Oxford University Press. http://dx.doi.org/10.2139/ssrn.2888552

29 Sherry Xin Chen & Kirrin Hough (2019) Researching Third-Party Funding in Investor-State Dispute Settlement. GlobaLex. NYU Law. https://www.nyulawglobal.org/globalex/Third-Party_Funding_Investor-State_Dispute_Settlement.html.

30 https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf, p. Jackson, R. H. L. J. (2009). *Review of civil litigation costs: Final report*. The Stationery Office, p. 123-124. https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf.

31 Dafe and Williams (2020), op.cit., p. 8.; see also: https://omnibridgeway.com/litigation-finance#section-6

32 Dafe and Williams (2020), op.cit., p. 13.

33 Dafe and Williams (2020), op.cit., p. 13.

34 NYU School of Law. (2023, February 3). *Emerging trends in third-party funding. Panel 2: International Arbitration*, min. 7:20. https://www.law.nyu.edu/centers/civiljustice/Emerging-Trends-in-Third-Party-Funding.

35 Dafe and Williams (2020), op.cit., p. 5.

36 Global Arbitration Review. (2024). GAR 100 survey 2024. Global Arbitration Review. https://globalarbitrationreview.com/survey/gar-100/2024.

37 See: Guven, B. Joseph, F., Lockhart, K. and Garcia, M. R. (2020) 'Regulating Third-Party Funding in Investor-State Arbitration Through Reform of ICSID and UNCITRAL Arbitration Rules: Holding global institutions to their development mandates'. Boston, MA: Boston College Law School Legal Studies Research Paper No. 627; and Anderson, A.M. and Beaumont, B. (eds.) (2021) *The Investor-State Dispute Settlement System: Reform, replace or status quo*? Alphen aan den Rijn: Kluwer Law International, p. 292; and Dafe and Williams (2020) op. cit. p. 14.

38 TheJudge. (2014, April 15). Mistakes to avoid when approaching third party funders. Global Arbitration Review. https://www.thejudgeglobal.com/mistakes-to-avoid-when-approaching-third-party-funders/.

39 Dafe and Williams (2020), op.cit., p. 13.

40 Guven et al. (2020), op.cit.; Anderson and Beaumont (2021), op. cit.

41 Saulnier et al. (2021), op. cit. p. 4.

42 Bloomberg Law (2021) *Litigation Finance Survey 2021*, p. 6. Available at: https://aboutblaw.com/0hh

43 Simson, C. (2020) 'Third-party funders' business is booming during pandemic. *LAW 360*. https://www.law360.com/articles/1261213/third-party-funders-business-is-booming-during-pandemic.

44 Dalma Capital. (2023). Litigation funding to double in five years as asset class becomes mainstream. https://dalmacapital.com/litigation_funding_to_double_in_five_years_as_asset_class_becomes_mainstream

45 Harbour Litigation Funding. (2025). Social responsibility. https://www.harbourlitigationfunding.com/about-us/social-responsibility/

46 Kalyanpur, N. and Newman A.L. (2020) *The Financialization of International Law*. Cambridge: Cambridge University Press, p. 13.

47 Panlilio, W. (2024, March 14). The use of disputes finance in international mining disputes. LCM Finance. https://lcmfinance.com/publications/the-use-of-disputes-finance-in-international-mining-disputes/

48 Panthera Resources (2024). Funding Confirmation Notice. https://www.italaw.com/sites/default/files/case-documents/italaw181523.pdf

49 Fasken Martineau DuMoulin LLP. (2024). Panthera Resources PLC retains Fasken in its dispute under the Australia-India Bilateral Investment Treaty, against the Republic of India. https://www.italaw.com/sites/default/files/case-documents/italaw181521.pdf

50 Panthera Resources (2024) Notice of Arbitration. https://www.italaw.com/sites/default/files/case-documents/italaw182047.pdf.

51 Panthera Resources PLC. (2018, August 21). Bhukia prospecting licence application update (RNS Number: 3941Y). Research Tree. https://www.research-tree.com/newsfeed/article/bhukia-prospecting-licence-application-update-818381

52 Panthera Resources PLC. (n.d.). Stock information. https://pantheraresources.com/investors/stock-information/

53 The International Consortium of Investigative Journalists. (2025). Offshore Leaks Database. https://offshoreleaks.icij.org/nodes/80037198

54 Arnott, C. (2019, October 12). London arbitration roundtable: Part II. Burford Capital. https://www.burfordcapital.com/insights-news-events/insights-research/london-arbitration-roundtable-part-ii/

55 Often referred to as legal finance, litigation funding, arbitration finance, or even third-party funding, understood in a broader sense than set out in this section.

56 Tamlander, M. (2020) Proposed regulation of third-party funding in Investor-State Dispute Settlement. *Helsinki Law Review*, 1: 74-87, p. 77. https://doi.org/10.33344/vol14iss1

57 ICSID, Proposed Amendments to the Regulations and Rules for ICSID Convention Proceedings, 20 January 2022, p. 33. https://icsid.worldbank.org/sites/default/files/publications/rule_amendment_proposals_convention.pdf

58 Claussen, K. (2020) The international claims trade. *Cardozo Law Review*, 14: 1743-1803, p. 1758. https://perma.cc/6Y4K-CAHD

59 Claussen, op.cit., p. 1760.

60 Most literature uses the term 'assignment' of claims, see for instance, Goh (2018). For 'transfer' and 'restructuring' see Kirtley, W. L. (2009) The transfer of treaty claims and treaty-shopping in Investor-State Disputes. *The Journal of World Investment & Trade*, 10(3): 427-461. https://www.international-arbitration-attorney.com/wp-content/uploads/the-transfer-of-treaty-claims-and-treaty-shoppingin-investor-state-disputeswilam-lawton-kirtley.pdf ; see also Claussen (2020) op. cit. footnote 6.

61 Claussen, op. cit., p. 1760.

62 Only on two occasions did a state receive third-party funding: A competing oil company funded *RSM v Grenade*, and a philanthropy foundation funded *Philip Morris v Uruguay*.

63 NYU School of Law. (2023, February 3). Emerging trends in third-party funding. Panel 2: International Arbitration, min. 15-21. https://www.law.nyu.edu/centers/civiljustice/Emerging-Trends-in-Third-Party-Funding

64 Tamlander (2020), op. cit., p. 77.

65 Brekoulakis, S. and Rogers, C. (2019) 'Third-party financing in ISDS: A Framework for Understanding Practice and policy'. Academic Forum on ISDS Concept Paper 2019/11, pp. 6-7. https://www.jus.uio.no/ior/english/research/projects/copiid/academic-forum/papers/papers/13-rogers-brekoulakis-tpf-isds-af-13-2019-version-2.pdf. See also: Brooke Guven & Lise Johnson (2019) The Policy Implications of Third-Party Funding in Investor-State Dispute Settlement. https://scholarship.law.columbia.edu/sustainable_investment_staffpubs/8

66 Catalano, C. (2024, September 11). How can Burford help clients quantify legal risk? Burford Capital. https://www.burfordcapital.com/eu/insights-news-events/insights-research/how-can-burford-help-clients-to-quantify-legal-risk/.

67 Kalyanpur and Newman (2020), op. cit., p.5.

68 Energy Transition Minerals Ltd. (2024). Company profile: ETM. Market Index. https://www.marketindex.com.au/asx/etm.

69 Voller, L., & Sorthvid, B. (2023, May 10). Mining company gives Greenland an ultimatum: Green light for controversial mine or pay 15 billion DKK in compensation. Danwatch. https://danwatch.dk/en/mining-company-gives-greenland-an-ultimatum-green-light-for-controversial-mine-or-pay-15-billion-dkk-in-compensation/.

70 Obbekær, M., Voller, L., & Tybjerg, J. (2021, March 26). Toxic substance from Kvanefjeld in Greenland may contaminate drinking water and rivers. Danwatch. https://danwatch.dk/giftigt-stof-fra-kvanefjeld-i-groenland-kan-forurene-drikkevand-og-elve-2/.

71 Voller, L., Obbekær, M., & Tybjerg, J. (2021, April 7). New Greenlandic leader on Kvanefjeld: "You have to listen to the people, and the people have spoken, it won't come to anything". Danwatch. https://danwatch.dk/ny-groenlandsk-leder-om-kvanefjeld-man-skal-lytte-til-folket-og-folket-har-talt-det-bliver-ikke-til-noget/.

72 Plesner, & Clifford Chance. (2023, July 19). Greenland Minerals v. Greenland & Denmark: Claimant's statement of claim. https://www.italaw.com/sites/default/files/case-documents/180123.pdf.

73 Voller, L., Obbekær, M., & Tybjerg, J. (2021, April 7). New Greenlandic leader on Kvanefjeld: "You have to listen to the people, and the people have spoken, it won't come to anything". Danwatch. https://danwatch.dk/ny-groenlandsk-leder-om-kvanefjeld-man-skal-lytte-til-folket-og-folket-har-talt-det-bliver-ikke-til-noget/.

74 Government of Greenland. (2022, April 28). The ban on uranium. Naalakkersuisut. https://govmin.gl/da/2022/04/forbuddet-mod-uran/.

75 Plesner, & Clifford Chance, para. 1517.

76 Voller, L. (2023, May 10). Mining company gives Greenland an ultimatum: Green light for controversial mine or pay 15 billion DKK in compensation. Danwatch. https://danwatch.dk/en/mining-company-gives-greenland-an-ultimatum-green-light-for-controversial-mine-or-pay-15-billion-dkk-in-compensation/.

77 Plesner, & Clifford Chance, para. 3.

78 Hechler, D. (2017, September 18). Civil justice playbook: A new kind of litigation funding. Corporate Counsel Business Journal. https://www.inhouseops.com/2017/09/civil-justice-playbook-new-kind-litigation-funding/#more-2410.

79 TheJudge (2024). After-the-Event (ATE) insurance. https://www.thejudgeglobal.com/after-the-event-ate-insurance/

80 Guven and Johnson (2019), op. cit., p. 4.

81 Hechler, D. op. cit.

82 Omni Bridgeway (2023) *Annual Report 2023*, p. 91. https://www.annualreports.com/Company/omni-bridgeway-limited

83 Ibid.

84 Ibid., p. 88.

85 Miller. (n.d.). After the event insurance. https://www.miller-insurance.com/what-we-do/professional-and-financial-risks/after-the-event-insurance.

86 Woodsford Litigation Funding. (2023). *Litigation funding 2023: Full book*, p. 112. https://woodsford.com/wp-content/uploads/2023/02/LexGTDT-Litigation-Funding-2023-Full-book.pdf.

87 TheJudge. (2017, July 11). TheJudge's client defeats security for cost application in landmark ruling in ICSID case. https://www.thejudgeglobal.com/en-ca/thejudges-client-defeats-security-cost-application-landmark-ruling-icsid-case/.

88 *Eskosol S.P.A. in Liquidazione v. Italian Republic* (ICSID Case No. ARB/15/50) Procedural Order No. 3 (Decision on Respondent's Request for Provisional Measures), (12 June 2017) para. 491. https://www.italaw.com/sites/default/files/case-documents/italaw8996.pdf.

89 Energy Charter Treaty. (n.d.). Eskosol S.p.A. in liquidazione v. Italy, ICSID Case No. ARB/15/50. http://dev.energychartertreaty.org/details/article/eskosol-spa-in-liquidazione-v-italy-icsid-case-no-arb1550/.

90 Kerčmar, J. (2018). Natural gas reservoirs on the oil-gas field Petišovci. Geologija, 61(2), 163-176. https://doi.org/10.5474/geologija.2018.011.

91 Enyo Law. (2020, July 23). Email and mail correspondence to the Prime Minister, Minister of Foreign Affairs, and Minister of the Environment and Spatial Planning of Slovenia. https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200723_ICSID-Case-No.-ARB2221_points-of-claim-1.pdf.

92 Total Slovenia News. (2019, July 17). Ascent Resources starts legal action over Petišovci gas field. ISDS Platform. https://isds.bilaterals.org/?ascent-resources-starts-legal&lang=es.

93 Ibid.

94 UNCTAD. (2022). Ascent Resources Plc and Ascent Slovenia Ltd v. Republic of Slovenia (ICSID Case No. ARB/22/21). Investment Policy Hub: Investment Dispute Settlement Navigator. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1252/ascent-v-slovenia.

95 Maček, S. R. (2022, April 7). Slovenia imposes blanket ban on fracking. Euractiv. https://www.euractiv.com/section/politics/short_news/slovenia-imposes-blanket-ban-on-fracking/.

96 Ascent Resources PLC. (2024, February 23). Update on ECT claim against the Republic of Slovenia. https://jusmundi.com/en/document/other/en-ascent-resources-plc-and-ascent-slovenia-ltd-v-republic-of-slovenia-press-release-of-ascent-resources-plc-on-update-on-ect-claim-against-the-republic-of-slovenia-friday-23rd-february-2024#other_document_37772.

97 Total Market Resources. (2024, February 6). If you don't buy an Ascent ticket, you can't win the raffle. https://total-market-solutions.com/2024/02/ascent-resources-plc-2/.

98 Directive 2011/92/EU, as amended by Directive 2014/52/EU. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0052&from=EN

99 Ascent Resources PLC. (2023, September 22). Press release of Ascent Resources Plc on After the Event (ATE) insurance. https://jusmundi.com/en/document/other/en-ascent-resources-plc-and-ascent-slovenia-ltd-v-republic-of-slovenia-press-release-of-ascent-resources-plc-on-after-the-event-ate-insurance-friday-22nd-september-2023#other_document_34604.

100 Ascent Resources PLC. (2024, February 23), op. cit.

101 Ron Fuchs v Georgia, ICSID Case No ARB/07/15, Award, para 691. https://www.italaw.com/sites/default/files/case-documents/ita0347.pdf. For commentary see: De Brabandere, E. and Lepeltak, J. (2012) Third-party funding in international investment arbitration. *ICSID Review*, 27(2): 379-398, p. 391. https://doi.org/10.1093/icsidreview/sis017.

102 Oil & gas field profile: Petišovci Unconventional Gas Field, Slovenia. Offshore Technology. https://www.offshore-technology.com/marketdata/oil-gas-field-profile-petisovci-unconventional-gas-field-slovenia/?utm_source=&utm_medium=20-113115&utm_campaign=&cf-view.

103 Claussen (2020), op. cit., p. 1746.

104 Ibid., p. 1760.

105 Ibid., p. 1752 (footnote 26).

106 For commentary on treaty shopping, see: Goh, N. (2018). The assignment of investment treaty claims: Mapping the principles. *Journal of International Dispute Settlement*, 10(1): 123-41. https://doi.org/10.1093/jnlids/idy029

107 Ibid., p. 1766

108 Ron Mannix is also the founder of the investment fund Coril Holdings, see: https://noalamina.org/general/item/2325-el-dueno-de-infinito-gold-es-un-filantropo-protector-del-ambiente

109 Vannessa Ventures Ltd., v. Venez., ICSID Case No. ARB(AF)04/6, Award, 121 (Jan. 16, 2013), para. 84. https://www.italaw.com/sites/default/files/case-documents/italaw1250.pdf

110 Ibid. para. 127.

111 Ibid. para. 235-236.

112 Claussen (2020), op.cit., p. 1776.

113 Salazar Ortuño, F.B. (2011) Movimientos Sociales en Torno al Agua en Bolivia: Privatización e insurrección social en la Guerra del Agua en Cochabamba. Cochabamba: Talleres Gráficos Kipus, p. 68. https://biblioteca.clacso.edu.ar/Bolivia/iese-umss/20171024050403/pdf_78.pdf

114 Ibid., p. 70

115 International Water Holdings B.V. (2000). Company information: Address, contact details, employee count... https://arenaria.home.xs4all.nl/water/IWHinfo.pdf.

116 Claussen (2020), op. cit., p. 1776.

117 NYU School of Law. (2023, February 3). *Emerging trends in third-party funding. Panel 2: International Arbitration*, min. 6:30. https://www.law.nyu.edu/centers/civiljustice/Emerging-Trends-in-Third-Party-Funding

118 Claussen (2020), op. cit., p. 1779.

119 Feldman, J., D'Angelo, N., Koch, L., & de Rochefort-Reynolds, A. (2023). The hidden economy of international arbitration: Opportunities for banks and investors in mining and resources companies. Norton Rose Fulbright. https://www.nortonrosefulbright.com/zh-hk/knowledge/publications/94fa7852/the-hidden-economy-of-international-arbitration.

120 Grigori Lazarev, Assignment of arbitral awards, December 12, 2016. http://arbitrationblog.practicallaw.com/assignment-of-arbitral-awards/

121 African Development Bank Group. (2025). African Legal Support Facility. African Development Bank Group. https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility.

122 See Clausen (2020), op.cit., pp. 1796-1797.

123 MarketScreener (2024) Rockhopper Exploration PLC. https://www.marketscreener.com/quote/stock/ROCKHOPPER-EXPLORATION-PL-4005463/company-shareholders/.

124 Carolina Piovano. "*Rockhopper v. Italy*: The Cost of the Energy Transition" 13 November 2023. https://jusmundi.com/en/document/publication/en-rockhopper-v-italy-the-cost-of-the-energy-transition

125 Wu, D. (2023, April 2). ICSID tribunal finds that Italy committed an unlawful expropriation under ECT's Art. 13(1). IISD. https://www.iisd.org/itn/en/2023/04/02/icsid-tribunal-finds-that-italy-committed-an-unlawful-expropriation-under-ects-art-131/.

126 Ibid.

127 Kouroutakis, A. (2022) Sunset Clauses in International Law and their Consequences for EU Law. European Union, p. 22. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703592/IPOL_STU(2022)703592_EN.pdf .

128 Carolina Piovano, op. cit.

129 Harbour. (2020, November). Commercial & investment treaty arbitration. Harbour Litigation Funding. https://www.harbourlitigationfunding.com/wp-content/uploads/2020/11/Harbour-Investment-Commercial-Treaty-Arbitration.pdf.

130 Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic, ICSID Case No. ARB/17/14. Para. 335. https://jusmundi.com/en/document/decision/en-rockhopper-exploration-plc-rockhopper-italia-s-p-a-and-rockhopper-mediterranean-ltd-v-italian-republic-final-award-wednesday-24th-august-2022

131 Considering EURIBOR rates averaging 3.5% in 2023 and 3.3% in 2024.

132 Maggiore, M. (2021, February 23). Giacomo Aiello, Italian State Attorney: "Private arbitration is becoming a Russian roulette". Investigate Europe. https://www.investigate-europe.eu/en/posts/italian-state-attorney-giacomo-aiello.

133 Dupuy, P.M. (2022, August 24). Opinion of Pierre-Marie Dupuy in Rockhopper v. Italy, ICSID Case No. ARB/17/14. Jus Mundi. https://jusmundi.com/en/document/opinion/en-rockhopper-exploration-plc-rockhopper-italia-s-p-a-and-rockhopper-mediterranean-ltd-v-italian-republic-opinion-of-pierre-marie-dupuy-wednesday-24th-august-2022.

134 Maggiore, M. (2021, February 23). Pierre-Marie Dupuy, arbitrator and lawyer: "There is a very strict control on the independence of arbitrators". Investigate Europe. https://www.investigate-europe.eu/posts/pierre-marie-dupuy.

135 In December 2023 Omni's portfolio value was at US$ 4.5 billion: https://omnibridgeway.com/docs/default-source/investors/reports/investment-portfolio-report-at-31-december-2023

136 Rockhopper Exploration PLC. (2023, December 20). Monetisation of arbitration award. https://rockhopperexploration.co.uk/2023/12/monetisation-of-arbitration-award/.

137 Ibid.

138 Authors' calculation from: Rockhopper Exploration PLC. (2023) Half-Rear Results, p. 4. https://rockhopperexploration.co.uk/wp-content/uploads/2023/09/RKH-interims-H1-2023.pdf.

139 Weber, R. F. (2023) The securities law disclosure conundrum for publicly traded litigation finance companies. *University of Michigan Journal of Law Reform,* 56(3): 699. https://repository.law.umich.edu/mjlr/vol56/iss3/3

140 https://investors.burfordcapital.com/news/news-details/2023/Burford-Capital-reports-full-year-2022-financial-results-profitable-growth-and-update-on-fair-value-accounting/default.aspx; Burford Capital. (2023, May 16). Burford Capital reports full-year 2022 financial results; profitable growth and update on fair value accounting. https://investors.burfordcapital.com/news/news-details/2023/Burford-Capital-reports-full-year-2022-financial-results-profitable-growth-and-update-on-fair-value-accounting/default.aspx and: Burford Capital. (n.d.). Christopher Bogart: Chief Executive Officer, New York, London. https://www.burfordcapital.com/about-us/our-team/christopher-bogart/.

141 Fintel. (2024). BUR - Burford Capital Limited stock: Stock price, institutional ownership, shareholders (NYSE). https://fintel.io/so/us/bur#:~:text=Largest%20shareholders%20include%20Mithaq%20Capital,Llc%2C%20and%20Columbia%20Funds%20Variable .

142 MacKinnon, J. (2019, October 23). On & beyond third-party funding: An interview with James MacKinnon. Burford Capital. https://www.burfordcapital.com/insights-news-events/insights-research/on-beyond-third-party-funding-an-interview-with-james-mackinnon/.

143 Burford Capital. (2020). Leading the way, today and for the long term: Burford Capital interim report 2020. U.S. Securities and Exchange Commission. https://www.sec.gov/Archives/edgar/data/1714174/000110465920110873/tm2032089d1_ex99-1.htm.

144 Burford Capital (2024, April 18) Latest Burford Quarterly Explores 15 Years of Growth and Evolution in Legal Finance. https://www.burfordcapital.com/insights-news-events/news-press-releases/burford-quarterly-legacy-edition/.

145 Burford Capital (2024, March 14) Burford Capital Reports Record 2023 Results. https://investors.burfordcapital.com/news/news-details/2024/Burford-Capital-Reports-Record-2023-Results/default.aspx.

146 Preska, L. A. (2023, September 15). Final judgment of the United States District Court for the Southern District of New York. Jus Mundi. https://jusmundi.com/en/document/decision/en-petersen-energia-inversora-s-a-u-petersen-energia-s-a-u-eton-park-capital-management-l-p-eton-park-master-fund-ltd-and-eton-park-fund-l-p-v-argentine-republic-and-ypf-s-a-final-judgment-of-the-united-states-district-court-for-the-southern-district-of-new-york-friday-15th-september-2023#decision_54619.

147 Initially, it had arranged to receive 70% of the proceeds but sold part of the entitlement to third parties.

148 Burford (2023, September 8) Burford Capital Statement on YPF Damages Ruling. https://www.burfordcapital.com/insights-news-events/news-press-releases/burford-capital-statement-on-ypf-damages-ruling/ ; Burford (2023, September 15) AP reports on the final judgment of $16.1 billion for the expropriation of YPF. https://www.burfordcapital.com/insights-news-events/news-press-releases/ap-on-final-judgment-in-ypf/.

149 Burford Capital (2023) *Burford Capital 2023 Annual Report*, p. ii. https://s201.q4cdn.com/169052615/files/doc_financials/2023/ar/2024-03-28-Burford-Capital-2023-Annual-Report-FINAL-1449672-1.pdf

150 Eleconomista. (2010, June 10). El empresario Ángel de Cabo compra Marsans y Teinver por 600 millones. https://www.eleconomista.es/empresas-finanzas/noticias/2217405/06/10/El-empresario-Angel-de-Cabo-compra-Marsans-y-Teinver-por-600-millones.html.

151 UNCTAD (2024) Investment Policy Hub, Investment Dispute Settlement Navigator. 2009 Teinver and others v. Argentina Autobuses Urbanos del Sur S.A., Teinver S.A. and Transportes de Cercanías S.A. v. Argentine Republic (ICSID Case No. ARB/09/1). https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/335/teinver-and-others-v-argentina.

152 ICSID, Teinver v Argentina, Case No. ARB/09/1, Dissenting Opinion of Kamal Hossain, p. 30. https://www.italaw.com/sites/default/files/case-documents/italaw9234.pdf

153 Burford Capital (2019, October 11) Burford sells Teinver investment for $107 million, a 736% return. https://www.burfordcapital.com/insights-news-events/news-press-releases/burford-sells-teinver-investment-for-107-million-a-736-return/.

154 International Centre for Settlement of Investment Disputes. (2019, May 29). Decision on Argentina's application for annulment: TEINVER S.A., Transportes de Cercanías S.A., and Autobuses Urbanos del Sur S.A. v. Argentine Republic (ICSID Case No. ARB/09/1), p. 56. https://www.italaw.com/sites/default/files/case-documents/italaw10552.pdf.

155 Zeus Capital Ltd. (2024, March 11). Result of placing of Rurelec shares by shareholder. London Stock Exchange. https://www.londonstockexchange.com/news-article/market-news/result-of-placing-of-rurelec-shares-by-shareholder/16372017.

156 Value of award estimated, including interest. StockMarketWire. (2014, February 3). Rurelec wins historic Bolivian compensation award. ISDS Platform. https://www.isds.bilaterals.org/?rurelec-wins-historic-bolivian&lang=fr.

157 Burford Capital. (2014, March 6). Burford receives $26m from innovative investment. https://investors.burfordcapital.com/financials/Regulatory-News/regulatory-news-details/2014/Burford-Receives-26m-From-Innovative-Investment-06-03-2014/default.aspx.

158 Burford Capital. (2022, June 21). 5 minutes with... Mick Smith. https://www.burfordcapital.com/insights-news-events/insights-research/5-minutes-with-mick-smith/.

159 For detailed account of the case see: Mertins-Kirkwood, H. and Smith, B. (2019) 'Digging for Dividends: The use and abuse of investor-state dispute settlement by Canadian investors abroad'. Ottawa: Canadian Centre for Policy Alternatives, p. 28. https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/04/Digging%20for%20dividends.pdf.

160 Burford Capital. (2018, December 19). Burford Capital secures funding for $1.6 billion in new litigation investments. https://investors.burfordcapital.com/news/news-details/2018/Burford-Capital-secures-funding-for-1.6-billion-in-new-litigation-investments/default.aspx.

161 Burford Capital. (2024, May 13). First quarter 2024 financial results, p. 5. https://s201.q4cdn.com/169052615/files/doc_financials/2024/q1/2024-05-13-Burford-Capital-1Q24-Results-Investor-Presentation-FINAL-1459782-1.pdf.

162 Strom, R. (2018, December 19). Sovereign wealth fund bets on litigation finance in $667M Burford deal. The American Lawyer. https://www.law.com/americanlawyer/2018/12/19/sovereign-wealth-fund-bets-on-litigation-finance-in-667m-burford-deal/?slreturn=20250114154518.

163 Fortress. (2024, May 15). Fortress Management and Mubadala complete acquisition of Fortress Investment Group. https://www.fortress.com/media/2024-05-15-fortress-management-and-mubadala-complete-acquisition-of-fortress-investment-group.

164 Packel, D. (2019, September 6). Fortress bets bigger on litigation funding with Vannin acquisition. The American Lawyer. https://www.law.com/americanlawyer/2019/09/06/fortress-bets-bigger-on-litigation-funding-with-vannin-acquisition/

165 Ibid.

166 Fortress (2023, December 31). Legal assets. https://www.fortress.com/what-we-do/asset-backed-finance/legal-assets

167 Torao, M. B. (2021, October 7). The ICSID tribunal in Infinito Gold v. Costa Rica upholds several claims but declines to award damages. The majority of the tribunal found breaches of the FET standard but damages too speculative. IISD. https://www.iisd.org/itn/en/2021/10/07/the-icsid-tribunal-in-infinito-gold-v-costa-rica-upholds-several-claims-but-declines-to-award-damages-the-majority-of-the-tribunal-found-breaches-of-the-fet-standard-but-damages-too-speculative/

168 Infinito Gold Ltd. v. Republic of Costa Rica, ICSID Case No. ARB/14/5, Award, para. 151. https://jusmundi.com/en/document/pdf/decision/en-infinito-gold-ltd-v-republic-of-costa-rica-award-thursday-3rd-june-2021

169 Mertins-Kirkwood, H., & Smith, B. (2019, April). Digging for dividends: The use and abuse of investor-state dispute settlement by Canadian investors abroad. Canadian Centre for Policy Alternatives, p.27. https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/04/Digging%20for%20dividends.pdf

170 Moore J. & Rocha Perez M (2019) Casino del Extractivismo. CIEL, Mining Watch Canada, Institute for Policy Studies, p. 24. https://www.ciel.org/wp-content/uploads/2019/05/CIEL-Casino-del-Extractivismo.pdf; and *Infinito Gold v. The Republic of Costa Rica*, ICSID Case No. ARB/14/5. (2021, June 3). Award, p.30. https://www.italaw.com/sites/default/files/case-documents/italaw16219.pdf

171 Spalding, R. (2024) 'Corporate Responses to Mining Resistance: Company Use of ISDS Mechanisms in Extractive Sector Conflicts'. Paper presented at the International Congress of the Latin American Studies Association in Bogotá, Colombia, 12-15 June, p. 24.

172 *Infinito Gold v. The Republic of Costa Rica*, ICSID Case No. ARB/14/5. (2021, June 3). Award, p.230-232. https://www.italaw.com/sites/default/files/case-documents/italaw16219.pdf

173 See: Lower Street. (2021, March 5). Walking away from a seven-figure salary: Richard Fields, Fields PLLC. Episode 15 of That One Case podcast. https://lowerstreet.co/podcasts/that-one-case?page=2; and: Aum13f (n.d) Juridica Investments Limited - Fund information and directors. https://aum13f.com/fund/juridica-investments-limited

174 See for instance: Eberhardt, P. and Olivet, C. (2012) *Profiting from injustice: How law firms, arbitrators and financiers are fuelling an investment arbitration boom*. Brussels & Amsterdam: CorporateEurope Observatory and the Transnational Institute, p. 59. https://www.tni.org/files/download/profitingfrominjustice.pdf.

175 See: Weber, R F (2023) The Securities Law Disclosure Conundrum for Publicly Traded Litigation Finance Companies, 56 U. MICH. J. L. REFORM 699, p. 751. https://doi.org/10.36646/mjlr.56.3.securities

176 LFDealmakers (2021) Speakers: Richard Fields. https://lf.dealmakersforums.com/richard-fields/

177 MSPA Claims 1, LLC & Brickell Key Investments LP. (2019, January 24). Second amended and restated claims proceeds investment agreement. Exhibit 10.27. https://www.sec.gov/Archives/edgar/data/1802450/000119312523012155/d427435dex1027.htm

178 Packel, D. (2020, February 14). After merger, IMF Bentham rebrands as Omni Bridgeway. Law. https://www.law.com/americanlawyer/2020/02/14/after-merger-imf-bentham-rebrands-as-omni-bridgeway/?slreturn=20240428043116

179 Omni Bridgeway (2023) Annual Report 2023, pp. 6-7. https://omnibridgeway.com/InvestorPresentations/omni-bridgeway-annual-report-2023/6/#zoom=true

180 Ibid., p. 17.

181 Ibid., p. 13, 15.

182 Omni Bridgeway (2023) ASX Announcement, 11 May 2023, Secondary market transaction in relation to Fund 1 entitlements. https://omnibridgeway.com/docs/default-source/investors/asx-announcements/secondary-market-transaction-in-relation-to-fund-1

183 Omni Bridgeway (n.d.) Capital Funding against African state. https://omnibridgeway.com/insights/case-studies/all-case-studies/case-study/case-studies/2020/05/28/capital-funding-against-african-state ; and Prokic, D. (2023, June 1). From Vancouver with love: Insights on the "Arbitration of Energy and Climate Change Disputes" from the Joint Young ICCA and YCAP Event. Kluwer Arbitration Blog. https://www.youngicca.org/vancouver-love-insights-arbitration-energy-and-climate-change-disputes-joint-young-icca-and-ycap

184 Omni Bridgeway. (2020, November 11). How growing corporate governance and global class actions may intersect. https://omnibridgeway.com/insights/blog/blog-posts/blog-details/global/2020/11/11/how-growing-corporate-governance-and-global-class-actions-may-intersect

185 GBC Oil Company Ltd (Cayman Islands) v. The Ministry of Infrastructure and Energy (Republic of Albania), The National Agency of Natural Resources (Republic of Albania), Albpetrol Sh.A (Republic of Albania), ICC Case No. 22676/GR. (2023, May 7). Final award, para. 1410. https://www.italaw.com/sites/default/files/case-documents/180110.pdf

186 Ibid., para. 1436.

187 *Montero Mining and Exploration Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/21/6

188 Montero Mining (n.d.) Board of Directors. https://monteromining.com/about-us/board-of-directors/

189 ICSID Case N° ARB(AF)/04/6 – *Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela*. 11. Decision on Jurisdiction, p. 11. https://jusmundi.com/fr/document/pdf/decision/en-vannessa-ventures-ltd-v-bolivarian-republic-of-venezuela-decision-on-jurisdiction-friday-22nd-august-2008

190 Montero Mining (2024, June 10) Montero provides hearing date for ICSID arbitration claim against the Government of Tanzania. https://jusmundi.com/fr/document/pdf/other/en-montero-mining-and-exploration-ltd-v-united-republic-of-tanzania-press-release-of-montero-mining-and-exploration-ltd-on-hearing-date-monday-10th-june-2024

191 Montero Mining and Exploration Ltd. (2021, January 8) Press release of Montero Mining and Exploration Ltd. on funding of arbitration claim. https://jusmundi.com/en/document/other/en-montero-mining-and-exploration-ltd-v-united-republic-of-tanzania-press-release-of-montero-mining-and-exploration-ltd-on-funding-of-arbitration-claim-friday-8th-january-2021#other_document_35507; Montero Mining and Exploration Ltd. (2024). Management's discussion and analysis for the three months ended March 31, 2024. https://monteromining.com/wp-content/uploads/2024/05/MON-Q1-2024-MDA-Final.pdf

192 Kapdi, N., & Parring, R. (2018, February 14). Amendments to the Mining Act in Tanzania. Dentons. Lexology. https://www.lexology.com/library/detail.aspx?g=f26f7200-ee53-4271-9560-2f9b64afb8d0

193 Tanzanian Commission for Human Rights and Good Governance (CHRAGG), Business and Human Rights Tanzania (BHRT), & International Peace Information Service (IPIS). (2019). Briefing on business & human rights in Tanzania, 2019 Quarter 3&4: July-December, p. 2. https://ipisresearch.be/wp-content/uploads/2020/05/2019Q3-4_BHRBriefing-Tanzania.pdf

194 Montero Mining and Exploration Ltd. (2023) Management's discussion and analysis for the year ended December 31, 2023, p. 9. https://monteromining.com/wp-content/uploads/2024/04/MON-MDA-Q4-2023-Final.pdf

195 LCM (2023) Annual Report and Financial Statements, p. 3. https://lcmfinance.com/wp-content/uploads/2023/10/LCM-Annual-Report-2023.pdf

196 Indiana Resouces (n.d.) Leadership Team. https://indianaresources.com.au/leadership-team/

197 Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK), and Nachingwea Nickel Limited (Tanzania) v. United Republic of Tanzania, ICSID Case No. ARB/20/38. (2023, July 14). Award, para. 393. https://www.italaw.com/sites/default/files/case-documents/180253.pdf

198 Indiana Resources Limited (2023, July 18) US$109.5m award against Tanzania. https://wcsecure.weblink.com.au/pdf/IDA/02687624.pdf

199 Market Screener. (2023, August 10). Indiana Resources Limited - Publication of ICSID award. ISDS Platform. https://isds.bilaterals.org/?indiana-resources-limited&lang=es

200 LCM (n.d.) Jonathan Moulds. https://lcmfinance.com/team-members/jonathan-moulds/

201 Cordina, A. (2021) Is it all that fishy? A critical review of the concerns surrounding third party litigation funding in Europe. *Erasmus Law Review*, 4: 270-280, p. 3. https://doi.org/10.5553/ELR.000211

202 Therium (n.d.) Therium Access. https://www.therium.com/therium-access/

203 See: Cove Capital (n.d.) Pini Althaus. https://www.covecapital.com.au/team/pini-althaus/

204 *Dominion Minerals Corp. v. The Republic of Panama*, ICSID (2016, March 29). Request for arbitration, p. 2. https://www.italaw.com/sites/default/files/case-documents/italaw7188.pdf

205 Market Screener (n.d) Domion Minerals. https://uk.marketscreener.com/quote/stock/DOMINION-MINERALS-COM-STK-1562265/news/DOMINION-MINERALS-COM-STK-USD0-0001-Dominion-Announces-the-Appointment-of-New-CEO-13122479/ ; OCMAL (2008, June 3) Solidarios Contra la Mina Cerro Chorcha. https://www.ocmal.org/4802/

206 Victor Benavides, resigned in 2015 in response to a case against him filed by the National Assembly based on the testimony of his former bodyguard who was at the time serving a prison sentence for kidnapping Benavides' mother, alleging corruption and paedophilia. The case has been since on hold. See: https://www.reuters.com/article/idUSKBN0OZ2KF/ ; https://www.tvn-2.com/segmentos-especiales/aqui-no-pasa-nada/caso-victor-benavides-cumplira-anos-video_8_1384506.html

207 Grupos NGOBES Solidarios Contra la Mina Chorcha. (2010, July 29). No mine on Cerro Chorcha. https://cerrochorcha.blogspot.com/

208 Martínez-Alier, J. (2023) Mesoamerica and the Caribbean: from Zacatecas to Neo Zapatismo, in *Land, Water, Air and Freedom* (pp.383-418). Cheltenham: Edward Elgar Online, p. 388. https://www.researchgate.net/publication/376495375_Mesoamerica_and_the_Caribbean_from_Zacatecas_to_Neo_Zapatismo.

209 Meléndez, J. (2012, February 6). Continúan las protestas indígenas contra un proyecto minero en Panamá. El País. https://elpais.com/internacional/2012/02/06/actualidad/1328482913_341134.html

210 Martínez-Alier (2023), op. cit., p. 388.

211 U.S. Securities and Exchange Commission. (2017). Form 10-K: Dominion Minerals Corp. annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2017. Commission File No. 000-52696, p. 15. https://www.sec.gov/Archives/edgar/data/1402747/000161577418006532/s111385_10k.htm

212 The dissenting opinion of Arbitrator Charles Poncet and many other case documents are not available.

213 UNCTAD (n.d.) Investment Policy Hub, Investment Dispute Settlement Navigator, Dominion Minerals v. Panama. https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/711/dominion-minerals-v-panama

214 https://www.harbourlitigationfunding.com/

215 Harbour (n.d.) Our History. https://www.harbourlitigationfunding.com/about-us/history/

216 Harbour (n.d.) Susan Dunn. https://www.harbourlitigationfunding.com/team/susan-dunn/

217 Harbour (2020, November). Commercial & investment treaty arbitration, p. 4. https://www.harbourlitigationfunding.com/wp-content/uploads/2020/11/Harbour-Investment-Commercial-Treaty-Arbitration.pdf

218 Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited v. Republic of Kenya (ICSID Case No. ARB/15/29) Procedural Order No. 4, p. 12. https://www.italaw.com/sites/default/files/case-documents/italaw7539.pdf

219 Lin, X. (2018, December 21). Kenya prevails in BIT arbitration: British investors' claims dismissed due to the absence of environmental impact assessment. IISD. https://www.iisd.org/itn/en/2018/12/21/kenya-prevails-in-bit-arbitration-british-investors-claims-dismissed-due-to-the-absence-of-environmental-impact-assessment-xiaoxia-lin/ ; also: Howie, R., & McPhee, L. (2021, August 12). Cortec v Republic of Kenya: Cautionary tale on local due diligence for international mining projects. Dentons Mining Law Blog. https://www.dentonsmininglaw.com/cortec-v-republic-of-kenya-cautionary-tale-on-local-due-diligence-for-international-mining-projects/

220 *Cortec Mining Kenya Limited, Cortec (Pty) Limited, and Stirling Capital Limited v. Republic of Kenya*, ICSID Case No. ARB/15/29, Award. (2018, October 22). https://www.italaw.com/sites/default/files/case-documents/italaw10051.pdf

221 Ibid., para. 389.

222 *Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited v. Republic of Kenya* Procedural Order No. 4 (Annulment Proceeding) Tribunal: Cavinder Bull (Member) Dorothy Udeme Ufot (Member) D. Brian King (President of the Ad Hoc Committee) 18 September 2020, p. 1. https://jusmundi.com/en/document/other/pdf/en-cortec-mining-kenya-limited-cortec-pty-limited-and-stirling-capital-limited-v-republic-of-kenya-proceural-order-no-4-annulment-proceeding-friday-18th-september-2020

223 Stulce, A. (n.d.). Funding international arbitration: Longford's role in resolving a high-stakes international dispute between Grenada and foreign investors. Longford Capital. https://www.longfordcapital.com/Portals/1/Documents/Longford_Funding_International_%20Arbitration_2023.pdf

224 Bacilio Amorrortu v The Republic of Peru, PCA Case No. 2020-11, Final Award on Costs, p. 8. https://jusmundi.com/en/document/pdf/decision/en-bacilio-amorrortu-v-republic-of-peru-i-final-award-on-costs-tuesday-25th-october-2022

225 Ezcurra, H., & Masnjak, D. (2022, October 7). No U-turns allowed: Bacilio Amorrortu v. Peru's award on jurisdiction. Kluwer Arbitration Blog. Asociación Latinoamericana de Arbitraje (ALARB). https://arbitrationblog.kluwerarbitration.com/2022/10/07/no-u-turns-allowed-bacilio-amorrortu-v-perus-award-on-jurisdiction/?output=pdf

226 *Bacilio Amorrortu v. The Republic of Peru*. Final award on costs, op. cit. p. 18.

227 Crystallex International Corporation (2010) *Annual Information Form for the year ended December 31, 2010*. 31 March 2011, p. 17. https://www.sec.gov/Archives/edgar/data/912500/000120445911000935/exhibit1-1.htm

228 ICSID (2016, April 4). *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/2): Award. https://www.italaw.com/sites/default/files/case-documents/italaw7194.pdf, see also: Gutiérrez, J. (2019, August 16). ¿Tuvo Crystallex derechos mineros sobre Las Cristinas como dijo la vicepresidenta? Efecto Cocuyo. https://efectococuyo.com/cocuyo-chequea/tuvo-crystallex-derechos-mineros-sobre-las-cristinas-como-dijo-la-vicepresidenta-cocuyochequea/

229 ICSID (2016, April 4). *Crystallex v. Venezuela*: Award, op. cit.

230 Ibid. p. 11, para. 44.

231 Ibid., p. 47, para. 195.

232 Ibid., p. 198, para 719.

233 LIBOR + 1%.

234 Schacherer, S. (2018, October 18). Crystallex v. Venezuela. IISD. https://www.iisd.org/itn/en/2018/10/18/crystallex-v-venezuela/

235 Parraga, M. (2024, June 10). Venezuela creditors with top priority in Citgo share auction. Reuters. https://www.reuters.com/business/energy/which-creditors-will-have-priority-citgo-share-auction-2023-07-27/

236 Hals, T. (2018, December 21). Insight - Want to sue Venezuela for millions? These firms can help, for a price. Reuters. https://www.reuters.com/article/idUSL1N1YP2AW/

237 Parraga, M., & McWilliams, G. (2024, January 8). US judge clears way for more Venezuela creditors to join Citgo auction. Reuters. https://www.reuters.com/business/energy/us-judge-clears-way-more-venezuela-creditors-join-citgo-auction-2024-01-08/

238 Corporate Europe Observatory, the Transnational Institute, & Friends of the Earth Europe/International. (2019, June). *Red carpet courts: 10 stories of how the rich and powerful hijacked justice*. Case study: Suing to Force Through a Toxic Goldmine: Gabriel Resources v Romania. https://www.tni.org/files/gabriel-resources-vs-romania.pdf

239 Mihai, C. (2024, March 11). Romania's top politicians in hot water, after country wins gold mining arbitration case. Euroactiv. https://www.euractiv.com/section/politics/news/romanias-top-politicians-in-hot-water-after-country-wins-gold-mining-arbitration-case/

240 Gabriel Resources. (2024, March 11). Corporate update. https://www.gabrielresources.com/wp-content/uploads/2024/03/GBU_Corporate_Financial_Update_110324.pdf

241 Wachter, K. (2016). Danube Watch 2/2016 - Tailing ponds: Still a risk in the Danube basin? ICPDR. https://www.icpdr.org/publications/danube-watch-2-2016-tailing-ponds-still-risk-danube-basin

242 WWF. (n.d.). Baia Mare cyanide spill. WWF. http://www.danube.panda.org/wwf/web/search/details.jsp?pid=131090

243 Csagoly, P. (Ed.). (2000, June). *The cyanide spill at Baia Mare, Romania: Before, during and after*. The Regional Environmental Center for Central and Eastern Europe. https://eecentre.org/wp-content/uploads/2019/06/Baia-Mare-cyanide.pdf

244 Simon, G. (2021, January 7). Will polluters ever pay? Industrial disasters from Baia Mare to Beirut. Eurozine. https://www.eurozine.com/will-polluters-ever-pay/

245 Maggiore, M. (2021, February 23). Giacomo Aiello, Italian State Attorney: "Private arbitration is becoming a Russian roulette". Investigate Europe. https://www.investigate-europe.eu/en/posts/italian-state-attorney-giacomo-aiello.

246 Langford, M., Behn, D. and Lie, R. H. (2017) The revolving door in international investment arbitration. *Journal of International Economic Law*, 20, 301-331, p. 323. https://doi.org/10.1093/JIEL%2FJGX018

247 Ibid., p. 309.

248 https://www.alexandrovlaw.com/

249 Langford et al. (2017), op. cit., p. 310.

250 Lie, R.H. (2022) 'The influence of law firms in investment arbitration', in D. Behn, O.K. Fauchald, and M. Langford (eds.) *The Legitimacy of Investment Arbitration: Empirical Perspectives*. Studies on International Courts and Tribunals (pp. 100-132). Cambridge: Cambridge University Press, p. 125.

251 Pauwelyn, J. (2015) The rule of law without the rule of lawyers? Why investment arbitrators are from Mars, trade adjudicators from Venus. *The American Journal of International Law*, 109(4), p. 791. https://doi.org/10.5305/amerjintelaw.109.4.0761

252 Hodgson and Campbell (2017), op. cit.

253 Hodgson et al. (2021), op. cit., p. 13.

254 ICSID (2022, July 1) Memorandum on the Fees and Expenses (2022). https://icsid.worldbank.org/services/cost-of-proceedings/memorandum-fees-expenses/2022.

255 Eberhardt and Olivet (2012), op. cit.

256 Ibid.

257 See: Brekoulakis and Catherine Rogers, op. cit. Reference 167; and: Goldstein M (2011) Should the Real Parties in Interest Have to Stand Up? 4 *Transnational Dispute Management*, p. 7.

258 Petyt P (2024, January 10) Insights on Portfolio Funding for Law Firms. Legal Funding Journal. https://legalfundingjournal.com/perspectives/insights-on-portfolio-funding-for-law-firms/

259 See: Willkie Farr & Gallagher LLP. (n.d.). International arbitration. https://www.willkie.com/capabilities/practices/litigation/international-arbitration; Willkie Farr & Gallagher LLP. (2022, August 29). Sergey Alekhin appointed to ICSID panel of arbitrators. https://www.willkie.com/news/2022/08/sergey-alekhin-icsid-panel-of-arbitrators

260 Doris, N. (2024, April 12). Quinn Emmanuel and Longford strike litigation funding agreement. Commercial Dispute Resolution. https://www.cdr-news.com/categories/third-party-funding/20477-quinn-emmanuel-and-longford-strike-litigation-funding-agreement

261 Merken S (2021, September 8) Mishcon de Reya teams up with litigation funder Harbour for new venture. Reuters. https://www.reuters.com/legal/legalindustry/mishcon-de-reya-teams-up-with-litigation-funder-harbour-new-venture-2021-09-08/

262 Petyt, op. cit.

263 Ibid.

264 Merken S. (2024, September 16) Litigation funder Burford eyes law firm investments, AI with Lenkner hire. Reuters. https://www.reuters.com/legal/legalindustry/litigation-funder-burford-eyes-law-firm-investments-ai-with-lenkner-hire-2024-09-16/

265 Arbitra (n.d.) Dana MacGrath. https://arbitra.co.uk/arbitrators-mediators/profile/dana-macgrath

266 Omni Bridgeway (2019, April 18) An international arbitration expert sees expanding frontiers for funding. https://omnibridgeway.com/insights/blog/blog-posts/blog-details/global/2019/04/18/international-arbitration-expert-sees-expanding-frontiers-for-funding

267 British Virgin Islands International Arbitration Centre (BVI IAC). (2021). Dana MacGrath - ARBITRATION LIFE with Janette and Hana, min. 24. YouTube. https://www.youtube.com/watch?v=FSX2uNYBP1s

268 ICC (2021) Arbitration Rules, Art. 11. https://iccwbo.org/wp-content/uploads/sites/3/2020/12/icc-2021-arbitration-rules-2014-mediation-rules-english-version.pdf

269 Arbitra op. cit.

270 BVI IAC op. cit., min. 26.

271 Omni Bridgeway (n.d.) Company and market insights from Annie Lespérance. https://omnibridgeway.com/insights/video-catalog/all-videos/video-details/company-and-market-insights-from-annie-lesp%C3%A9rance.

272 Legal500 (n.d.) Arbitration Chambers, John Beechey CBE. https://www.legal500.com/firms/34364-arbitration-chambers/global/lawyers/2951860-john-beechey-cbe

273 Carlevaris, A., Lévy, L., Mourre, A., & Schwartz, E. A. (Eds.). (2015). *International arbitration under review: Essays in honour of John Beechey*. ICC. https://2go.iccwbo.org/international-arbitration-under-review-essays-in-honour-of-john-beechey-ebook.html#description

274 Woodsford (2021, July 29) Public Submission to the UNCITRAL draft provisions on third-party funding, p. 6. https://woodsford.com/wp-content/uploads/2021/07/Woodsford_UNCITRAL_submission_Final.pdf

275 Woodsford (n.d) Simon Powell. https://woodsford.com/meet-the-team/simon-powell/

276 Dr. Rukia Baruti (2018) Profile. https://rukiabaruti.com/profile

277 Harbour (n.d) Nigel Jones KC. https://www.harbourlitigationfunding.com/team/nigel-jones-kc/

278 Benchwalk (n.d.) Ayse Yazır ACII. https://benchwalk.com/bench-walk-advisors-llc-litigation-financing-experts-team/ayse-yazir-acii

279 Lawdragon (2022, October 4) Interview with Ayse Yazir. https://benchwalk.com/linkedin-feed/lawdragon-ayse

280 https://istaw.com/about/

281 Some contemporary prominent examples are arbitrators Daniel Price (Sidley Austin) and Stanimir Alexandrov (Sidley Austin and Powell Goldstein), cited in Eberhardt, P. and Olivet, C. (2012).

282 Kamalinejad, H. (2022) 'Paradigm Shift in Investment Treaty Arbitration: Toward Stricter Control over the Qualifications and Conduct of Arbitrators', PhD dissertation, University of Victoria, p. 150-154, 176. https://dspace.library.uvic.ca/items/fcefb6b6-f3ac-4f86-a018-e31b35403783

283 Cited in Langford et al. (2017), op. cit., p. 322; cited in Sands, P. (2011) Conflict and conflicts in investment treaty arbitration: Ethical standards for counsel, in Brown, C. and Miles, K. (eds.) *Evolution in Investment Treaty Law and Arbitration* (pp. 19-41). Cambridge: Cambridge University Press.

284 For instance: https://litigationfundingforum.com/

285 Retired in 2020.

286 Ranked in Legal 500.

287 The ORG (n.d.) Anastasia Davis Bondarenko. https://theorg.com/org/fortress-investment-group-llc/org-chart/anastasia-davis-bondarenko ; Albitral Woman (2020, November 16) Anastasia Bondarenko Promoted to Managing Director at Vannin Capital. https://www.arbitralwomen.org/anastasia-bondarenko-promoted-to-managing-director-at-vannin-capital/

288 The Northern Miner (n.d) Edgewater spins out Ghanaian gold into Pinecrest. https://www.northernminer.com/news/edgewater-kinross-spin-ghana-gold-asset-into-pinecrest/1003080088/

289 Market Wired. (2015, October 21). Edgewater responds to Galician Government statements concerning its mining concessions at the Corcoesto Gold Project, Spain. Bilaterals. https://www.bilaterals.org/?edgewater-responds-to-galician

290 Eric De Brabandere and Daniel Peat (2024) Investment Arbitration Database: Case Number: PCA Case No. 2016-26 Corcoesto, S.A. v. Spain. Universiteit Leiden. https://investmentarbitrationdatabase.com/cases/corcoesto-v-spain

291 Pardo, M. (2018, March 20). Una multinacional minera vincula a la Xunta con la corrupción en una batalla legal que ya ha costado 600.000 euros públicos. El Diario. https://www.eldiario.es/galicia/politica/multinacional-recrudece-venganza-xunta-publicos_1_2214287.html

292 Mertins-Kirkwood and Smith (2019), op. cit., p. 46.

293 Ruiz Leotaud, V. (2020, April 26). UN tribunal rules against Canada's Edgewater in legal battle with Spain. Mining.com. https://www.mining.com/un-tribunal-rules-against-canadas-edgewater-in-legal-battle-with-spain/#:~:text=The%20United%20Nations%20Commission%20on,the%20northwestern%20region%20of%20Galicia

294 GBS Disputes (n.d.) Emmanuel Gaillard. https://www.gbsdisputes.com/team/emmanuel-gaillard/

295 Chen, Y. (2022) Third-Party Funding in International Arbitration: A transnational study of ethical implications and responses , PhD Dissertation. Erasmus University Rotterdam, p.119. https://pure.eur.nl/ws/portalfiles/portal/70021254/phd_thesis_yihua_chen_63614e95b253b.pdf.

296 Kamalinejad (2022), op. cit., pp. 69-70.

297 ICC International Court of Arbitration, Case No. 22676/GR, GBC Oil Company Ltd (Cayman Islands) vs. The Ministry of Infrastructure and Energy (Republic of Albania), The National Agency of Natural Resources (Republic of Albania), Albpetrol Sh.A. (Republic of Albania) para. 102-123. https://www.italaw.com/sites/default/files/case-documents/180110.pdf

298 For a detailed analysis see: Cleis, M. N. (2017) 'Disqualification Decisions under the ICSID Convention and Arbitration Rules, in *The Independence and Impartiality of ICSID Arbitrators*. Leiden: Brill Nijhoff. https://doi.org/10.1163/9789004341487_004

299 Langford et al. op. cit (2017), p. 324.

300 Kamalinejad (2022), op.cit., p. 68.

301 ICSID (2019, July 12) Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan, ICSID Case No. ARB/12/1, Award. para. 1858. https://www.italaw.com/sites/default/files/case-documents/italaw10737.pdf

302 Juan Carlos Boué, 'Lying with numbers' in international arbitration against states, Journal of International Dispute Settlement, Volume 15, Issue 1, March 2024, Pages 5–34, p. 14 https://doi.org/10.1093/jnlids/idae007

303 Kamalinejad (2022), op.cit., p. 79.

304 Ibid.

305 See story at: Baron, J. (2024, February 9). How two Irish businessmen almost took Nigeria for $11 billion. The New York Times. https://www.nytimes.com/2024/02/09/magazine/nigeria-corruption-michael-quinn-brendan-cahill.html

306 ibid.

307 Process and Industrial Developments Ltd. v. The Ministry of Petroleum Resources of The Federal Republic of Nigeria Final Award 31 January 2017, para. 112.https://jusmundi.com/en/document/decision/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-final-award-tuesday-31st-january-2017#decision_5289.

308 Pandid Media. (n.d.). Lismore Capital: The Cayman Islands firm with a majority stake in P&ID. https://nigeria-pandidcase.org/lismore-capital-the-cayman-islands-firm-with-a-majority-stake-in-pid/

309 https://www.nytimes.com/2024/02/09/magazine/nigeria-corruption-michael-quinn-brendan-cahill.html

310 See: The Federal Republic of Nigeria v Process and Industrial Developments Limited, Judgement [2023] EWHC 2638 (Comm), para. 579-583. https://www.judiciary.uk/wp-content/uploads/2023/10/Nigeria-v-PID-judgment.pdf

311 Ibid.

312 Thrasher (2018), op.cit., p. 8.

313 Guven and Johnson (2019), op. cit., p. 43.

314 National Association of Mutual Insurance Companies. (2011). Third-party litigation funding: Tipping the scales of justice for profit, p. 3. https://www.namic.org/wp-content/uploads/legacy/publicpolicy/1106_thirdPartyLitigation.pdf

315 *RSM Production Corporation v Saint Lucia*, ICSID Case No ARB/12/10, Decision on Saint Lucia's Request for Security for Costs dated August 13 (13 August 2014), Assenting reasons of Gavan Griffith, para 13.

316 Guven and Johnson (2019), op. cit., p. 24.

317 Thrasher (2018), op.cit., p. 8.

318 Burke Robertson, C. (2011) The impact of third-party financing on transnational litigation. 44 *Case Western Reserve Journal of International Law* 159, Case Research Paper Series in Legal Studies, p. 171 http://www.ssrn.com/link/case-legal-studies.html.

319 See Eberhardt, P. and Olivet, C. (2012) op. cit., p. 59.

320 Karabiyik, M.U. (2021) Remedying investor misconduct in investor-state arbitration through third-party funding. *Indian Review of International Arbitration* 15, p. 4. http://iriarb.com/Remedying%20Investor%20Misconduct%20in%20Investor-State%20Arbitration%20through%20Third-Party%20Funding%20-%20Dr.%20Uzeyir%20Karabiyik%20(1).pdf.

321 Garcia, F. J., Gargne, L., De Brabandere, E., Thrasher, R. D. and Park, W./ (2017) 'TPF and ISDS: A Public Comment on the Draft Report of the ICCA/Queen Mary Task Force on Third Party Funding in International Arbitration'. Law and Justice in the Americas Working Paper Series. 12, p. 2. https://core.ac.uk/download/pdf/200222506.pdf

322 Karabiyik (2021), op. cit., p. 4.

323 NYU School of Law. (2023, February 3). *Emerging trends in third-party funding. Panel 2: International Arbitration*, min. 11:00. https://www.law.nyu.edu/centers/civiljustice/Emerging-Trends-in-Third-Party-Funding.

324 Polonskaya, K. (2018). *Examining the mechanisms for dismissal of frivolous and abuse of process claims in the international investment regime: A case of failed legal transplant?* (Doctoral dissertation). Queen's University, Kingston, ON, p. ii. https://qspace.library.queensu.ca/server/api/core/bitstreams/f471fcd9-60f8-4939-ac09-ce31576c735c/content.

325 Ibid. p.20-24.

326 UNCTAD, Investment Dispute Settlement Navigator: full data release as of 31 July 2022, available at https://investmentpolicy.unctad.org/investment-dispute-settlement.

327 UNCTAD (2022), op.cit.

328 Guven, B., Johnson, L., Nikièma, S., & Uribe, D. (2021, September 14). From transparency to prohibition: UNCITRAL WGIII considers options to regulate third-party funding. IISD. https://www.iisd.org/itn/en/2021/09/14/from-transparency-to-prohibition-uncitral-wgiii-considers-options-to-regulate-third-party-funding/

329 Own assessment from UNCTAD, Investment Dispute Settlement Navigator: full data release as of 31 July 2022, available at https://investmentpolicy.unctad.org/investment-dispute-settlement.

330 Theodorou, J. (2024, March 19). Time to shine light on dark third-party litigation funding. R Street Institute. https://www.rstreet.org/commentary/time-to-shine-light-on-dark-third-party-litigation-funding/

331 Opfer, C. (2024, March 21). Burford notches win in quest to take over Sysco chicken lawsuits. Bloomberg Law. https://news.bloomberglaw.com/business-and-practice/burford-notches-win-in-quest-to-take-over-sysco-chicken-lawsuits

332 National Association of Mutual Insurance Companies. (2011), op. cit.,

333 Bought by Shell in 2016 for $52 billion.

334 BG Group PLC v. Republic of Argentina, 572 U.S. (2014). Roberts, C. J., dissenting. On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. [March 5, 2014] p.10. https://www.italaw.com/sites/default/files/case-documents/italaw3117.pdf

335 Maffett et al. (2023), op. cit., p. 5.

336 Ibid., p. 9.

337 Ibid., p. 21.

338 Pelc, K. J. (2017) What explains the low success rate of Investor-State Disputes. *International Organization*, 71: 559-583, p. 560.

339 Tienhaara, K. (2018) Regulatory chill in a warming world: The threat to climate policy posed by investor- state dispute settlement. *Transnational Environmental Law*, 7(2): 229–250. https://doi.org/10.1017/S2047102517000309 and Hagemann, T. (2022) The North-South Divide of Regulatory Chill: A Comparative Analysis of the Impact of Investor-State Dispute Settlement on Policy Makers in Developed and Developing Countries. *New York International Law Review*, 35(1): 27-47, p. 35. https://nysba.org/app/uploads/2022/07/New-York-International-Law-Review-Spring-2022-Vol.-35-No.-1.pdf?srsltid=AfmBOooMPkurymr4NkEhgxsasmioo3t4ZS2KRRrZ4qMbeAelr45Z6klj.

340 Crowell & Moring (2014) 'How Mining Companies Can Mitigate Risks and Protect their Investments, Part I: International Investment Agreements'. https://www.crowell.com/en/insights/client-alerts/how-mining-companies-can-mitigate-risks-and-protect-their-investments-part-i-international-investment-agreements.

341 Guven and Johnson (2019), op. cit.

342 Van Harten, G., and Scott, D. N. (2016) Investment treaties and the internal vetting of regulatory proposals: A case study from Canada. *Journal of International Dispute Settlement*, 7(1): 92-116. https://doi.org/10.1093/jnlids/idv031

343 Pelc, K.J. (2017), op. cit., p. 560. See also: Rao, W. (2013) 'Large Corporations and Investor-State Dispute Settlement'. Antonin Scalia Law School, George Mason University Law & Economics Research Paper Series, 23-07, p. 12. https://www.law.gmu.edu/pubs/faculty_working_paper_pdfs?fd=%25E5%2507V%253AY%2597T%25C7N6jAqmU0B90%253D

344 Maffett et al. (2023), op. cit., p. 6.

345 Maffett et al. (2023), op. cit., p. 5.

346 Calvert, J. and Tienhaara, K. (2023) Beyond 'once BITten, twice shy': defending the legitimacy of investor-state dispute settlement in Peru and Australia. *Review of International Political Economy*, 30(5): 1799-1823, p. 1813. https://doi.org/10.1080/09692290.2022.2134172.

347 Gross, S. G. (2003) 'Inordinate chill: BITS, non-NAFTA MITS, and host-state regulatory freedom: an Indonesian case study'. *Michigan Journal of International Law*, 893-960, p. 894. https://repository.law.umich.edu/mjil/vol24/iss3/11

348 Gunawan, Y. (2017) Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia, Halrev, 3(1), p. 17. pasca.unhas.ac.id/ojs/index.php/halrev/article/viewFile/948/220

349 ICSID, Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40) Annulment Proceeding Decision on the respondent's application to terminate the stay of enforcement of the award and request for security for costs, p. 6. https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C2261/DS11993_En.pdf

350 ICSID (2019, March 18). Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/14 and ARB/12/40): Decision on annulment, p. 21. https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C2723/DS11996_En.pdf

351 ICSID (2016, December 6). Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/14 and 12/40): Award, p.192-199. https://www.italaw.com/sites/default/files/case-documents/italaw7893.pdf.

352 Churchill Mining and Planet Mining v. Indonesia, 18 Mar 2019, ICSID Case No. ARB/12/40 and 12/14. Decision on Annulment. https://jusmundi.com/en/document/decision/en-churchill-mining-and-planet-mining-pty-ltd-v-republic-of-indonesia-annulment-proceeding-monday-15th-may-2017#decision_4585

353 Nicholas, H. (2020, May 13). With new law, Indonesia gives miners more power and fewer obligations. Mongabay. https://news.mongabay.com/2020/05/indonesia-mining-law-minerba-environment-pollution-coal/

354 Ank Santens, Silvia Marchili, Ricardo Cruzat Reyes (04 March 2022) Colombia update – Energy, mining and pension reform among priorities for 2022 Colombian presidential election front-runner. White & Case. https://www.whitecase.com/insight-alert/colombia-update-energy-mining-and-pension-reform-among-priorities-2022-colombian

355 Betancour Betancour, M. S. (2019) 'Producción minera, territorio y conflicto en Colombia. Retos globales y locales para la protección de los derechos humanos'. https://www.germanwatch.org/de/17220

356 Luciana GHIOTTO y Bettina MÜLLER (2023) ISDS en números. Colombia, un boom de demandas de inversores extranjeros. Transnational Institute (TNI) y el Colectivo de Abogados José Alvear Restrepo (CAJAR). https://www.tni.org/files/2023-05/ISDS_Colombia_MAY23.pdf

357 Center for International Environmental Law. (2016, March 14). Organizations condemn Eco Oro Minerals' warning that it could sue Colombia over efforts to protect water sources. Press Room. https://www.ciel.org/news/organizations-condemn-eco-oro-minerals-warning-that-it-could-sue-colombia-over-efforts-to-protect-water-sources/

358 See: Corporate Europe Observatory, the Transnational Institute, & Friends of the Earth Europe/International. (2019, June). *Red carpet courts: 10 stories of how the rich and powerful hijacked justice*. Case study: Golden profits undermine people's right to clean water: Eco Oro v. Colombia. https://10isdsstories.org/wp-content/uploads/2019/06/Eco-Oro-vs-Colombia.pdf

359 Sánchez Jaramillo, F. (2017, February 7). Colombia's resistance to Canadian mining interests is multi-faceted and fearless. rabble. https://rabble.ca/environment/colombias-resistance-to-canadian-mining-interests-multi-faceted-a/

360 Defensa Jurídica del Estado (2014, 16 July) Víctoria, Colombia no pagará ni uno de los mil millones reclamados por Eco Oro. https://www.italaw.com/sites/default/files/case-documents/italaw182006.pdf

361 Sands, P. (2024, April 4). Declaration on costs in Eco Oro Minerals Corp. v. Republic of Colombia (ICSID Case No. ARB/16/41). https://www.italaw.com/sites/default/files/case-documents/italaw182087.pdf

362 UNCTAD (2024) Investment Policy Hub, Investment Dispute Settlement Navigator. Advanced Search. https://investmentpolicy.unctad.org/investment-dispute-settlement/advanced-search

363 Freshfields Bruckhaus Deringer. (2022). International Arbitration: Top Trends 2022, p. 10. https://www.freshfields.com/490835/globalassets/our-thinking/campaigns/arbitration-top-trends-2022/international_arbitration_top_trends_2022.pdf

364 Oxford Business Group. (2024). Colombia grows FDI in the mining sector with new reforms and guidelines. https://oxfordbusinessgroup.com/reports/colombia/2019-report/economy/a-hard-bargain-the-administration-has-submitted-a-proposal-to-congress-to-reform-community-consultations-in-resource-extraction; see also https://www.andi.com.co/Uploads/PL-2019-N052S-_to_(participacion_ciudadana_proy_explotacion)_20190725.pdf, pp. 19-20.

365 Guven and Johnson (2019), op. cit., p. 25.

366 Jus Mundi. (2022, October 25). Bacilio Amorrortu v. Republic of Peru: Final award on costs, para. 23, https://jusmundi.com/en/document/pdf/decision/en-bacilio-amorrortu-v-republic-of-peru-i-final-award-on-costs-tuesday-25th-october-2022.

367 Correspondence between Burford Capital Limited and U.S. Securities and Exchange Commission on 26 January 2023. https://www.sec.gov/Archives/edgar/data/1714174/000171417423000004/filename1.htm.

368 The Federal Republic of Nigeria v Process & Industrial Developments Limited (Judgment), para. 591. https://www.judiciary.uk/wp-content/uploads/2023/10/Nigeria-v-PID-judgment.pdf

369

370 International Monetary Fund (2024) GDP, current prices Billions of U.S. dollars. https://www.imf.org/external/datamapper/NGDPD@WEO/VEN?zoom=VEN&highlight=VEN

371 World Bank Group (n.d.) GDP (current US$) - Greenland. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GL

372 PricewaterhouseCoopers (2016) Dispute perspectives: Discounting DCF? p. 3. https://www.pwc.co.uk/tax/assets/dispute-perspectives-discounting-dcf.pdf.

373 Litigation Capital Management Ltd. (2024, September 17). Full year audited results for the YE 30 June 2024. https://markets.ft.com/data/announce/full?dockey=1323-16668293-2HSPCBJ2CDDJENCSADF52O4JT1

374 The World Bank Group. (1992). *Legal framework for the treatment of foreign investment*, vol. III: Guidelines, Report to the Development Committee and guidelines on the treatment of foreign direct investment, p. 26. https://documents1.worldbank.org/curated/fr/955221468766167766/pdf/Guidelines.pdf; For more on the DCF model: Boué, J.C. (2024) 'Lying with numbers' in international arbitration against states. *Journal of International Dispute Settlement*, 15(1): 5-34. https://doi.org/10.1093/jnlids/idae007

375 Boué, op. cit., p.8.

376 PwC (2017) International Arbitration damages research 2017 update.

https://www.pwc.co.uk/forensic-services/assets/pwc-international-arbitration-damages-research-2017.pdf

377 Clifford Chance (2024) Joshua Banks. https://www.cliffordchance.com/people_and_places/people/lawyers/au/joshua-banks.html

378 SimplyWall. (n.d.). Equatorial Resources ownership. https://simplywall.st/stocks/au/materials/asx-eqx/equatorial-resources-shares/ownership

379 Equatorial Resources. (2024, June 6). Update on arbitration proceedings. https://wcsecure.weblink.com.au/pdf/EQX/02814844.pdf.

380 Sundance Resources. (2020, December 31). Investor relations. https://www.sundanceresources.com.au/irm/content/top-20-shareholders.aspx?RID=183&RedirectCount=1

381 Sundance Resources. (2023, April 15). Update on legal proceedings against Congo, Cameroon, and AustSino. https://www.sundanceresources.com.au/irm/pdf/1c87b1ba-6318-4f2a-8cfc-ddd90a977bbd/Update-on-Legal-Proceedings-against-Congo-Cameroon-and-AustSino.pdf

382 Ibid.

383 Sundance Resources. (2024, November 20). Update on Congo proceedings: ICC hearing completed. https://www.sundanceresources.com.au/irm/pdf/8a5f8d69-e319-4418-b27e-c9efd24df44c/Update-on-Congo-Proceedings.pdf

384 Swagath, B. V. (2021, June 8). Avima launches $27bn arbitration against Congo over licence dispute. NS Energy. https://www.nsenergybusiness.com/company-news/avima-27bn-arbitration-congo-republic/

385 Pibasso, A. M. (2021, March 22). Congo: Controversy over awarding of mining contracts. Kapital Afrik. https://www.kapitalafrik.com/2021/03/22/congo-controversy-over-awarding-of-mining-contracts/

386 IMF (2024) Congo, Republic of. https://www.imf.org/external/datamapper/profile/COG

387 One clear example (of many) of the impacts of the DCF model is in *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. Libya*, where the Tribunal awarded US $1 billion in damages for a 'theoretical' project where the investor had initially claimed a settlement of US $5 million. https://www.mondaq.com/india/arbitration-dispute-resolution/1075904/dcf-valuation-the-thin-line-between-use-and-abuse-in-investor--state-disputes-an-analysis-of-devas-v-india#_edn5

388 Ministry of Economy and Finance (2021, March 13) Mining Agreement signed in Congo. https://www.finances.gouv.cg/en/articles/mining-agreement-signed-congo

389 Energy capital Power (2022) The Congo. New Railway Project Underway. https://energycapitalpower.com/the-congo-new-railway-project-underway/.

390 Woodsford Litigation Funding. (2017, March 31). Response to consultation on ICSID rules. https://icsid.worldbank.org/sites/default/files/amendments/public-input/11.%20Woodsford%20Litigation%20Funding.pdf

391 International Legal Finance Association. (2024). International Legal Finance Association. https://ilfa.com

392 ILFA submission letter to UNCITRAL Secretariat, 30 July 2021. https://uploads-ssl.webflow.com/5ef44d9ad0e366e4767c9f0c/61088589e63c5979a9f22599_ILFA%20comments%20UNCITRAL%20WG%20III%20TPF%20Reform%20Proposals%20FINAL.pdf

393 Ibid.

394 CCIAG (2019) Investor-State Dispute Settlement (ISDS) Reform Submission by the Corporate Counsel International Arbitration Group (CCIAG) to UNCITRAL Working Group III 18 December 2019, p. 17. https://uncitral.un.org/sites/uncitral.un.org/files/cciag_isds_reform_0.pdf.

395 Woodsford Litigation Funding. (n.d.). Response to proposed amendments to the ICSID rules. https://icsid.worldbank.org/sites/default/files/amendments/public-input/WoodsfordLitigationFunding_Comments_1.2.19.pdf

396 CCIAG (2019), op. cit.

397 Singapore's written comments on draft provisions contained in A/CN.9/WG.III/WP.231, p. 4. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/comments_from_singapore.pdf

398 International Centre for Settlement of Investment Disputes (2019) Proposals for Amendment of the ICSID rules. Working Paper # 2 Volume 1 March 2019, para 127. https://icsid.worldbank.org/sites/default/files/amendments/Vol_1.pdf

399 ICSID, Compendium of Comments for Working Paper # 4, 23 March 2021. p. 18 https://icsid.worldbank.org/sites/default/files/amendments/Compendium%20of%20State%20Comments%20on%20Proposed%20Amendments%20to%20the%20ICSID%20Rules%20-WP%20%23%204%20-%20As%20of%202021.03.23.pdf . The same comments were also filed to UNCITRAL WG III: Comentarios de la República Argentina sobre el documento A/CN.9/WG.III/WP.231, p. 5. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/comentarios_argentina_wp.231.pdf , and: ICSID (2019, March). Proposals for amendment of the ICSID rules (Working Paper No. 2, Vol. 1). https://icsid.worldbank.org/sites/default/files/amendments/Vol_1.pdf

400 Argentina-United Arab Emirates Agreement for the Reciprocal Promotion and Protection of Investments (signed on 16 April 2018), Article 24. Online: https://edit.wti.org/document/show/ae056cf9-4278-4718-8981-63408218d642 (accessed: 10/10/2024).

401 International Chamber of Commerce. (2021). ICC arbitration rules 2021. https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/

402 Ibid.

403 https://icsid.worldbank.org/sites/default/files/documents/ICSID_Convention.pdf, rule 12, p. 75.

404 United Nations Commission on International Trade Law Working Group III (Investor-State Dispute Settlement Reform) Forty-ninth session Vienna, 23–27 September 2024, Possible reform of investor-State dispute settlement (ISDS) Draft provisions on procedural and cross-cutting issues, p. 8 https://documents.un.org/doc/undoc/gen/v24/047/09/pdf/v2404709.pdf.

405 United Nations Commission on International Trade Law Working Group III (Investor-State Dispute Settlement Reform) Forty-third session Vienna, 5–16 September 2022, Possible reform of investor-State dispute settlement (ISDS) Draft provisions on procedural reform, paras. 62-74, https://documents.un.org/doc/undoc/ltd/221/043/2e/pdf/2210432e.pdf

406 South American Silver Limited v. Bolivia, UNCITRAL, PCA Case No. 2013-15, Procedural Order No. 10, 11 January 2016, [80], p. 13. https://www.italaw.com/sites/default/files/case-documents/italaw7176.pdf.

407 Burford Capital. (2019, October 12). Comments on the proposed amendments to the ICSID rules. https://www.burfordcapital.com/insights-news-events/insights-research/comments-on-the-proposed-amendments-to-the-icsid-rules/

408 UNCITRAL (2024) Code of Conduct for Arbitrators in International Investment Dispute Resolution, para. 86. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2318824e-coc_arbitrators_ebook_11june.pdf.

409 Ibid., Article 11.

410 Ibid. Article 4.

411 Braulotte, T. (2024, March 25). UNCITRAL adopts a new code of conduct for arbitrators in international investment dispute resolution. https://www.linklaters.com/en/insights/blogs/arbitrationlinks/2024/march/uncitral-code-of-conduct.

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