

SWITZERLAND

Simon Vorburger and Simon Weber

PART I. THE THIRD-PARTY FUNDING LANDSCAPE

1. The TPF market in Switzerland

1.1. Please shortly describe the TPF market in your Jurisdiction.

Switzerland has a well-established history of third-party funding for relatively small court and administrative disputes, which has been provided via legal costs insurance and State-financed legal aid (see Question I.1.6, below).

Third-party funding arrangements for the financing of high-value court litigation or international arbitrations have not been common but have been the subject of increasing attention in recent years. The minimum value in dispute that funders require varies. Some funders may already fund a value in dispute of CHF 250,000, others require at least EUR 7,000,000.

Some questions regarding third-party funding, such as the legality of such arrangements and potential negative impacts on the attorney-client relationship, have been directly addressed and decided by the Swiss Federal Supreme Court. Since 2004, the Court has twice given the green light to the use of third-party funding of litigation in Swiss courts and, indirectly, in arbitration proceedings.¹ In parallel, awareness of third-party funding has been increasing. It now is regularly considered for international arbitrations but its use in the Swiss domestic market is still relatively small compared to other jurisdictions.

¹ Bundesgericht [BGer] [Swiss Federal Supreme Court] BGE 131 I 223, pp. 233–241; BGer January 22, 2015, 2C_814/2014, at 4.3.1–4.3.2.