



THIRD PARTY FUNDING IN ARBITRATION

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ABOUT US



The total value
of projects in which
our team
has been involved
in this region
exceeds 3 billion euro.

CINFRA DEVELOPMENT provides global consultancy in Infrastructure, Construction, Concessions - PPP and Real Estate fields in Central and Eastern Europe, focusing on Business Development, Engineering, Contract Management, Project Management, Technical Expertise for claims, Risk management - Loss Assessment, and M&A - Valuation of Companies and Investments.

We have the experience and expertise at every stage of the investment process: research of potential opportunities/ partners, feasibility studies, preparation of materials for the European Union to raise funds, and implementation (Project and Contract Management).

We also offer Interim Management for a specific Project/ Business for a limited time according to Client's needs, through our Senior Project and Contract Managers, including Legal and Financial advise through our Associates (senior experts) providing a global consultancy.

OUR FIELDS OF ACTIVITY

Cinfra Development has extensive experience in the following fields of activity



TRANSPORTATION
ROADS/ HIGHWAYS
RAILWAYS/ METRO
AIRPORTS
MARITIME WORKS



REAL ESTATE
OFFICE/ RESIDENTIAL BUILDINGS
WAREHOUSES
SUSTAINABLE CONSTRUCTION/ PASIVE HOUSES



ENVIRONMENT
WATER PROJECTS
WASTE MANAGEMENT



ENERGY
WIND AND SOLAR FARMS



INDUSTRY
FACTORIES
LOGISTIC PARKS

OUR SERVICES

Cinfra Development's experienced and dedicated team can help you with the following services

The image features a grid of six service cards, each with a background of light trails from a long-exposure photograph of a road at night. The cards are arranged in two rows of three. Each card contains a service name in bold white text and a brief description in smaller white text below it.

BUSINESS DEVELOPMENT GROW AND STRENGTHEN YOUR BUSINESS	VALUATION M&A VALUATION OF COMPANIES AND INVESTMENTS	PROJECT MANAGEMENT FROM BEGINNING TO END	CONTRACT MANAGEMENT CONTRACTS AND CLAIMS
THIRD-PARTY FUNDING IN ARBITRATION ARBITRATION FUNDING	INTERIM MANAGEMENT SHORT AND MEDIUM TERM RESOURCES TO COMPLETE YOUR TEAM	ENGINEERING TECHNICAL EXPERTISE	LOSS ASSESSMENT AND RISK MANAGEMENT

THIRD PARTY FUNDING IN ARBITRATION

Nowadays many contractors are involved in important disputes at their construction contracts, taking in consideration the usual breaches in the contracts by beneficiaries (lack of expropriation, construction permits or environmental permits, delay payments, absence of decisions... and so on) what generate extremely high extra-costs and consequently entitle the Contractors to important Claim Quantum.

Unfortunately Beneficiaries fail to recognize such entitlements so Contractors can only recover their prejudices through Arbitration procedure.

Arbitration taxes are expensive and it's a long process (2-4 years involving Lawyers and Technical Consultants) so some Contractors cannot afford all these costs of the procedure by themselves running the risk to not recover (prescription period must also be considered).

Third Party Funding is their best partner to face this complex and long way of Arbitration.

WHAT IS THIRD PARTY FUNDING?

Third party funding “litigation finance” is where someone who is not involved in arbitration provides funds to a party to that arbitration in exchange for an agreed return.

Typically, the funding will cover the funded party’s legal fees and expenses incurred in the arbitration. The funder may also agree to pay the other side’s costs and provide security for the opponent’s costs.

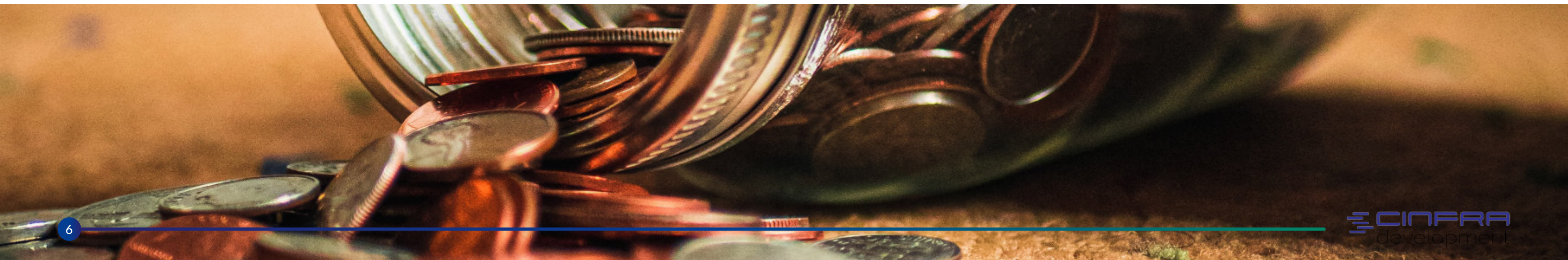
Funders will require good prospects of success. They will undertake their own separate analysis of the claim and only fund it if they have confidence in it and the way it is being advanced.

The funder will also want to know where assets are situated; enforcement risk is a key concern. If situated in jurisdictions where enforcement is difficult, that may deter some funders. Other considerations, including whether the target will fight to the bitter end, may also influence the funder.

The seat of the arbitration is important as that will determine whether funding is permitted under local law.

The place of enforcement will also be important as the fact of funding may be used to raise public policy arguments to frustrate enforcement.

Third-party funding may be provided by specialized third party funders, insurance companies, investment banks, hedge funds and even some specialized consultancy companies.



WHEN IS THIRD PARTY FUNDING APPROPRIATE?

If you are a construction related business you can definitively contact Cinfra if you have a claim related to Arbitration (domestic, international and bilateral investment treaty)

Most common Claims in Construction projects:

- Extension of time (Delay impact analysis)
- Disruptions
- Loss of profit
- Lack of payment (Lack of works certificates)
- Delay payments – Delay Interests rate
- Business interruption
- Execution of guarantees / Contract Termination

Recent innovations in the products available have made third party funding appropriate in more situations than was previously the case. However, if looking to fund on a one-off case basis, the following is a useful preliminary checklist:

- Arbitration funding is permitted by Romanian local laws
- Funders are generally looking for cases that involve damages / breach of contract and claims detailed above.
- Normally funding is available for damages assessed at more than 3-4 Mill EUR
- The funders will make their own separate analysis before signing an agreement.



ADVANTAGES AND DISADVANTAGES

A potential claimant may approach a funder for various reasons:

- **NECESSITY:** Arbitration can be expensive (especially International Arbitration). If a claimant does not have the means to pursue a meritorious claim, funding may well be its only option. If the claim is unsuccessful, the claimant has not supported any costs (funder carry on with all the costs)
- **RISK MANAGEMENT:** Claimants with the funds to arbitrate may want to lay off some of the risk associated with costly arbitration, and be prepared to give up a proportion of any recoveries to do so. It also enables a company to invest that money elsewhere. In addition, the funded party is relieved of costs pressures and cash-flow issues associated with the legal costs of the arbitration.
- **VALIDATION:** Funders are only interested in good claims. They will therefore conduct extensive due diligence and carry out their own analysis of the merits before agreeing to provide funding. This objective analysis may assist the claimant to shape its case strategy, and may also encourage early settlement once the other party is made aware that the claim has the backing of a funder.

However, there are also disadvantages to using third party funding:

- A successful claimant will generally have to pay a proportion of his or her recoveries to the funder.
- Costs can be incurred when packaging the case for presentation to a funder. These will have been wasted if the application for funding is unsuccessful.



APPROACHING A FUNDER

● PACKAGING THE CLAIM

Typically, a funder will require to Cinfra the following documentation:

- Key documents and evidence so that proper case analysis can be carried out either by in-house experts or external counsel.
- Any legal advice and opinions given by the legal team and counsel. This should cover both liability and quantum – the funder will need to be satisfied of the value of the claim.
- Information on the respondent's position. A funder will investigate this independently as it is crucial for them to be confident of recovery. However, useful information includes financial viability of the respondent, location of any assets, and their attitude towards arbitration.
- A detailed budget, including the number and cost of any expert witnesses likely to be required, and a timeline setting out the anticipated process up to the hearing.

The funder will then conduct extensive due diligence in order to satisfy itself of the merits of the case. Timing will depend on the complexity of the case.

● FUNDER'S RETURN

The way the return is calculated will vary between cases and funders. It could be calculated according to a fixed percentage share (per cent of recoveries to be determined), a multiple of the funding to be provided to cover the costs (usually a multiple of three or four), or a combination of both.



ISSUES TO CONSIDER WHEN DEALING WITH A FUNDER

PRIVILEGE AND CONFIDENTIALITY

A funder will need to be provided with confidential information as early as the “preliminary chat” stage. It is therefore sensible to enter into a non-disclosure agreement at this early stage.

EXCLUSIVITY

An interested funder may ask for exclusivity

SETTLEMENT

Litigation funding arrangements will usually contain provisions that deal with settlement and, in particular, the procedure by which the dispute will be settled in the event that the funded party and the funder do not agree.

REPORTING REQUIREMENTS

It will be only require limited reporting, usually on a quarterly basis or at key stages of the arbitration, but is an important aspect to clarify in early stage.

DISCLOSURE OF THE FUNDING AGREEMENT

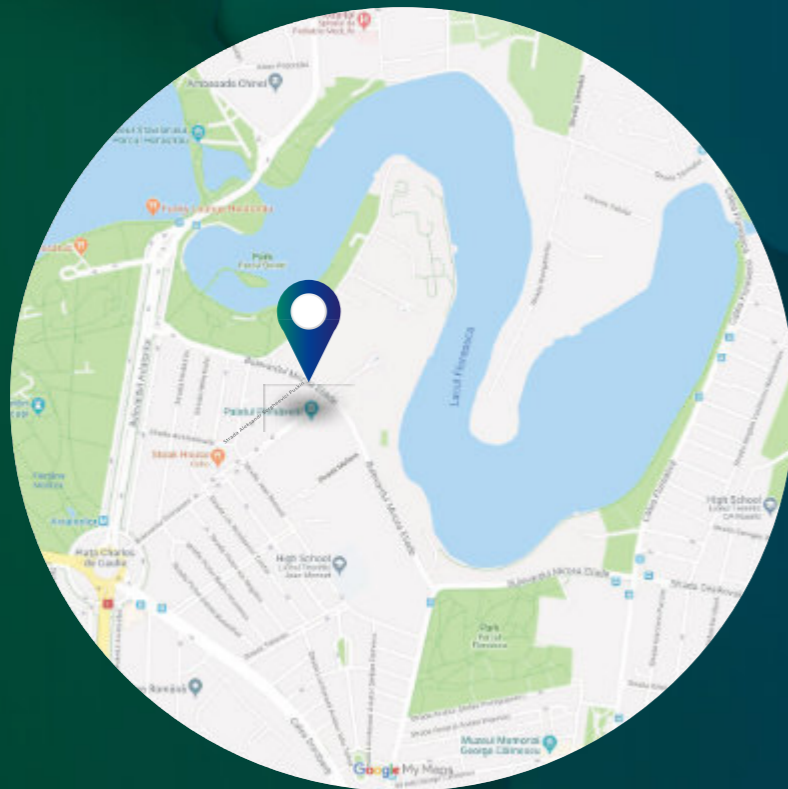
Disclosure of the funding arrangement will often benefit a funded party. The fact that a claim is funded demonstrates that an independent third party has faith in the merits of the claim and so its existence may encourage settlement. More importantly, disclosure at an early stage prevents the other party from raising conflicts arguments at the enforcement stage should the funded party prove successful.

CONTACT

HEADQUARTERS

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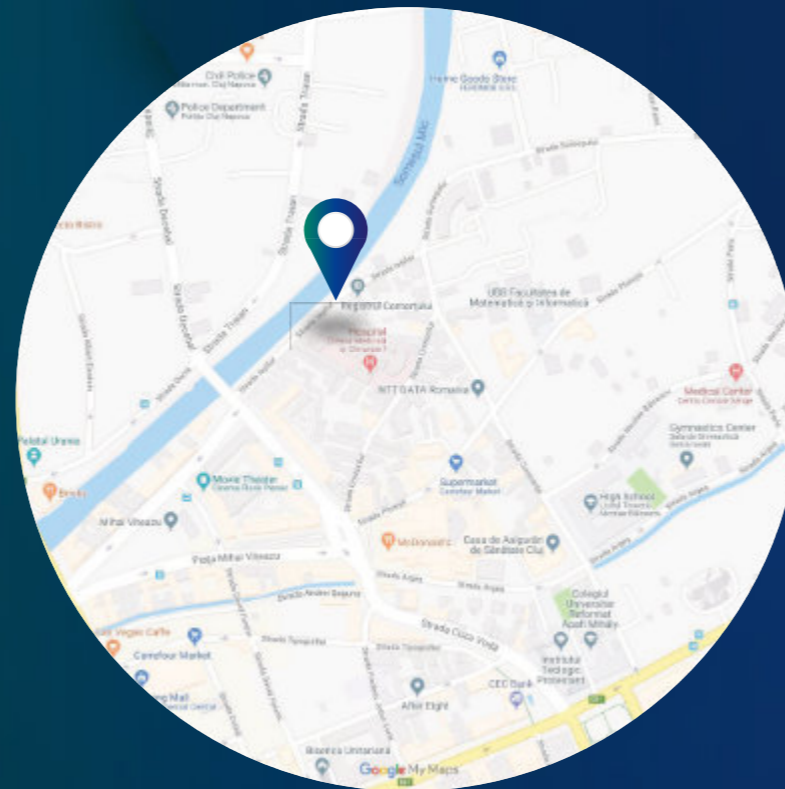
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