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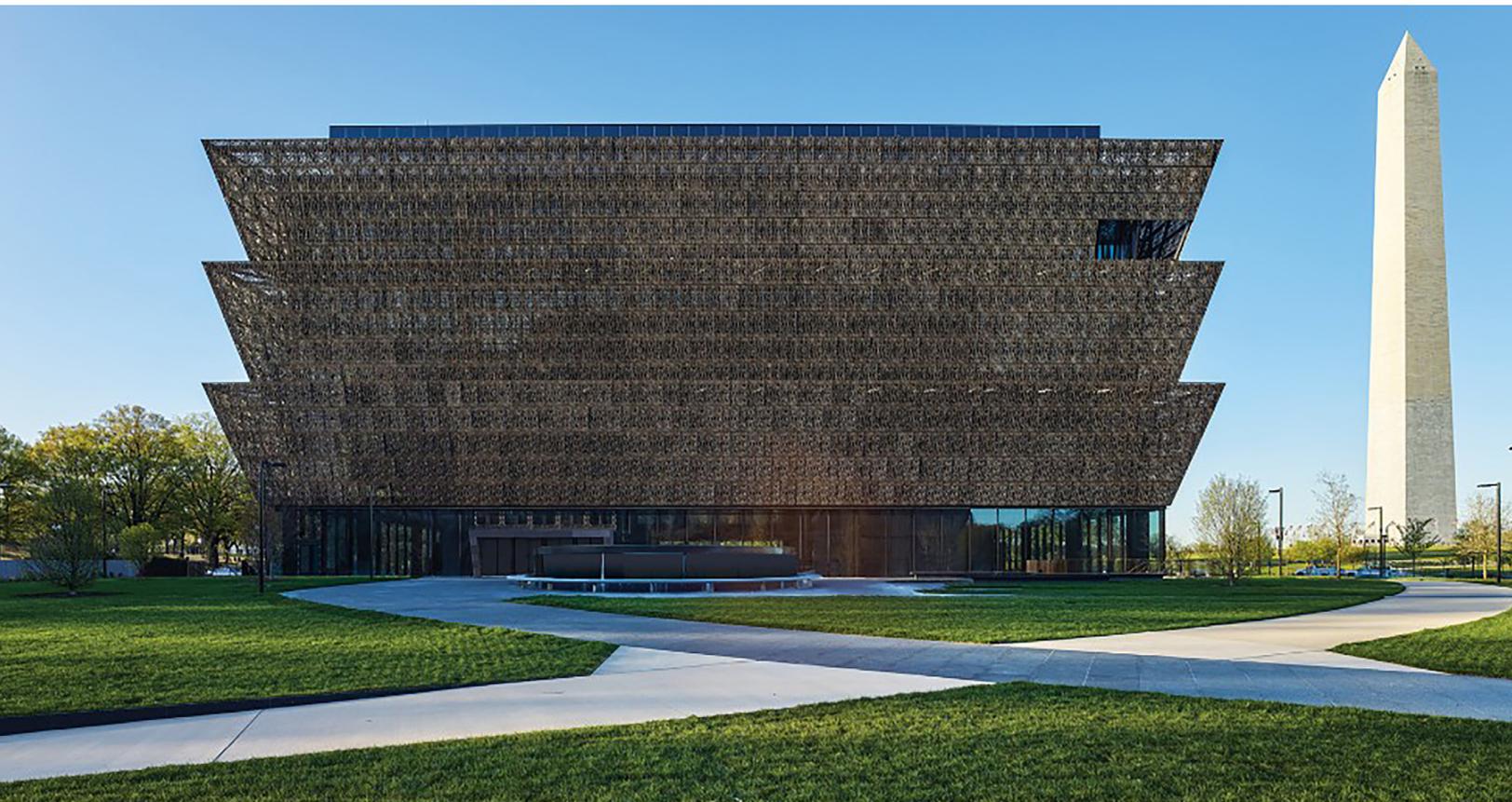
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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

14th Annual ITA-ASIL Conference

Third-Party Funding in International Arbitration: Legal & Ethical Considerations
Commentary on the Report of the ICCA/Queen Mary Task Force



14th Annual
ITA-ASIL Conference
Third-Party Funding in International
Arbitration: Legal & Ethical
Considerations

April 12, 2017
Hyatt Regency Capitol Hill
Washington D.C. • USA

Highlights

- Presentation of the ICCA-Queen Mary Task Force on Third Party Funding Report with its Co-Chairs Stavros Brekoulakis, William (Rusty) Park, and Catherine Rogers
- Keynote Address: *Third Party Funding: Perception and Reality*
- Defining “Third Party Funding”
- Legal-Ethical Concerns and Regulation of Third Party Funding
- Networking Luncheon
- Conference Co-Chairs: Prof. Stavros Brekoulakis, Queen Mary University of London, and Ruth Teitelbaum, Head of Underwriting, Tenor Capital Management Company, L.P., New York

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ITA is an Institute of
**THE CENTER FOR AMERICAN
AND INTERNATIONAL LAW**

Conference Co-Chairs

Prof. Stavros L. Brekoulakis
Queen Mary University of London
- Centre for Commercial Law
Studies, London, and Co-Chair of
the ICCA-Queen Mary Task Force
on Third Party Funding

Ruth Teitelbaum
Head of Underwriting
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*“Smart presenters providing
thoughtful, high-level content.”*

— 2016 Participant



2016 ITA-ASIL Conference

OVERVIEW

The ½-day ITA-ASIL Conference is presented annually in Washington, D.C. by the **ITA Academic Council** with the **American Society for International Law (ASIL)** immediately preceding the ASIL Annual Meeting. Scholarship is the hallmark of this conference, the papers from which are published in the law journal *World Arbitration and Mediation Review (WAMR)*.

International arbitration disputes are increasingly financed by parties who are not parties to the arbitration dispute. The financing of arbitration disputes through so-called “third party funders” has thus become a key component of international arbitration practice.

Third party funding raises a host of legal questions, such as the impact of third party funding arrangements on allocation of costs and security for costs applications. It also implicates important ethical considerations such as the extent of funders’ involvement in the arbitrator selection process or other aspects of a funded party’s case strategy and the potential for arbitrator conflicts of interest.

The increased resort to funding also comes at a time of heightened political debate and sensitivity over the use of international arbitration to resolve disputes between investors and sovereigns. Despite the increasing use of third party funding and the important questions it raises, regulation of third party funding in international arbitration is currently lacking.

Understanding third party funding for all of the practical, ethical and legal questions it raises is essential for the continued development and regulation of international dispute resolution.

ITA and ASIL have organized a lively program to enable participants to have an informed, open discussion and rigorous debate led by some of the leading experts in international arbitration and funding. The program will incorporate the findings of the ICCA-Queen Mary Task Force on Third Party Funding as a core part of the discussion and as a springboard for further debate.

8:00 REGISTRATION AND CONTINENTAL BREAKFAST

9:00 WELCOME AND INTRODUCTION

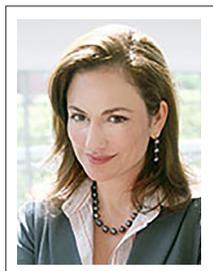
- **Abby Cohen Smutny**, ITA Chair, White & Case LLP, Washington, D.C.
 - **Lucinda A. Low**, President, ASIL, Steptoe & Johnson LLP, Washington, D.C.
-

9:05 KEYNOTE ADDRESS: THIRD PARTY FUNDING: PERCEPTION AND REALITY



Third party funding provokes concerns over the fair administration of justice. Are those concerns well-founded? While proponents argue that third party funding promotes access to justice, critics are concerned that it encourages unnecessary, and possibly vexatious, new claims. The Keynote Address will provide an account of the ICCA-Queen Mary Report on Third Party Funding and explain how it contributes to our understanding of third party funding, identifying some of the salient issues that remain unresolved and how third party funding impacts current ethical considerations and perceptions concerning fairness in international arbitration.

— **Prof. William (Rusty) W. Park**, Boston University School of Law, Boston, Co-Chair of the ICCA-Queen Mary Task Force on Third Party Funding



CONFERENCE COMMENTATOR:

— **Prof. Catherine A. Rogers**, Penn State Law and Queen Mary University of London, State College, Pennsylvania, and London, Co-Chair of the ICCA-Queen Mary Task Force on Third Party Funding

9:35 DEFINING “THIRD PARTY FUNDING”

Defining “third party funding” is one of the most challenging tasks underlying the debate concerning its regulation in cross-border disputes. Without a proper definition, it may be impossible for arbitrators and lawyers to understand their ethical obligations stemming from third party funding. This first session will therefore begin with an examination of the origins and breadth of TPF, the different types and products of arbitration funding, and how new forms of TPF differ from more traditional funding arrangements such as insurance, equity and risk management arrangements. With this understanding of how arbitration funding has evolved, the expert panelists will explore how it may further develop in the future, including consideration of how the definition impacts ethical considerations in international arbitration disputes.

MODERATOR AND INTRODUCTION: KEY FINDINGS OF THE ICCA-QM TASK FORCE FINAL REPORT

— **Ruth Teitelbaum**, Head of Underwriting, Tenor Capital Management Company, L.P., New York

PANELISTS:

— **Erika S. Levin**, Senior Vice President and General Counsel, The Judge Americas LLC, New York

— **Steve Jones**, Director, Major Risks Practice Dispute Resolution Practice, Arthur J. Gallagher, London

— **Prof. Maya Steinitz**, University of Iowa College of Law, Iowa City

10:45 BREAK

11:05 LEGAL-ETHICAL CONCERNS AND REGULATION OF THIRD PARTY FUNDING

In this session the speakers will debate some of the broader ethical considerations of third party funding, particularly with regard to potential conflict of interests between arbitrators and funders, as well as its relevance (if any) to the current backlash against international arbitration, particularly investment arbitration. Speakers will also explore the extent that current ethical rules impose limitations on third-party funding arrangements, current attempts to introduce new rules to regulate TPF, potential conflicts of interests between funders, law firms and arbitrators, and what these mean for the practice of international arbitration.

MODERATOR AND INTRODUCTION: KEY FINDINGS OF THE ICCA-QM TASK FORCE FINAL REPORT

— Prof. Stavros L. Brekoulakis, Queen Mary University of London, London

PANELISTS:

- Jeffery P. Commission, Senior Counsel, Vannin Capital, Washington, D.C.
- Lise Johnson, Head: Investment Law and Policy, Columbia Center on Sustainable Investment, New York
- Kim Rooney, Gilt Chambers, Hong Kong

12:15 CONCLUDING REMARKS

— Prof. Susan D. Franck, Chair, ITA Academic Council, American University Washington College of Law Washington, D.C.

12:20 NETWORKING LUNCHEON

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Conference papers will also be published in the 2017:3 issue of ITA's law journal, *World Arbitration and Mediation Review (WAMR)*.

For information and to register for the 11th ASIL Annual Meeting, April 12-15, 2017, also presented at the Hyatt Regency Capitol Hill Hotel, please visit: www.asil.org/annualmeeting.

ABOUT ITA AND ASIL



Institute for
**TRANSNATIONAL
ARBITRATION**

Established in 1986 as part of The Center for American and International Law (CAIL), ITA provides advanced education for arbitrators, advocates, judges, business executives, government officials and other professionals concerned with transnational arbitration of commercial and investment disputes. Through its programs, scholarly publications and membership activities, led by many of the top global experts and supported by many of the world's most actively engaged corporations, law firms and individual practitioners, ITA has become an important global forum on contemporary issues in the field of transnational arbitration. For more information, visit cailaw.org/ita.



ASIL is a nonprofit, nonpartisan, educational membership organization founded in 1906 and chartered by Congress in 1950. ASIL holds Category II Consultative Status to the Economic and Social Council of the United Nations and is a constituent society of the American Council of Learned Societies. Its mission is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. Learn more at asil.org.

REGISTRATION

14th Annual ITA-ASIL Conference Third-Party Funding in International Arbitration: Legal and Ethical Considerations

April 12, 2017
Hyatt Regency Capitol Hill • Washington, D.C.

Registration includes the conference, the conference materials and the networking luncheon.

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GENERAL INFORMATION

CANCELLATION POLICY: Tuition, less a \$50 cancellation fee will be refunded upon receipt of written cancellation received by March 29, 2017. E-mail cancellation notice to lgaspar@cailaw.org. After this date, no refunds, but substitution of attendees for this program will be permitted. Registrants not entitled to a refund will receive the course materials.

NONDISCRIMINATION POLICY: The Center for American and International Law does not discriminate on the basis of race, color, sex, religion, national origin, age, disability, veteran status or any other protected status in educational activities, scholarship programs or admissions.

MCLE CREDIT: This program is approved by the State Bar of Texas for 2.75 hours, including 1.0 hour of ethics. Course ID Number: 901368740. Credit hours for other states will vary and are subject to each state's approval and credit rounding rules.

For this conference, ITA will directly apply (if requested) for course accreditation in the following states: California, Minnesota, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas and Virginia. Some of these states may not approve a program for credit hours before the program occurs. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. ITA conferences are typically accredited by all mandatory CLE states.

