








Third party funding in International Arbitration

9 March 2018

What is third party funding?

A transaction through which a natural or legal person who is not a party to the dispute enters into an agreement with one of the disputing parties or its law firm in order to finance all or part of that party's costs of the proceedings, in return of a share of the winnings up to an agreed cap

Larger claims and greater arbitration costs

Average Time (from Request of Arbitration to Award)		4 years (3 years, 8 months)
Amounts claimed/recovered (excluding the Yukos v Russia case)		<ul style="list-style-type: none"> – Average claim: USD 719m – Average favourable award: USD 110m
Party Costs (i.e. fees and expenses of counsel, experts and witnesses)		<ul style="list-style-type: none"> – Average claimant costs: USD 6m – Average respondent costs: USD 4.85m
Tribunal Costs (i.e. arbitrators' fees/expenses and institutional charges)		<ul style="list-style-type: none"> – Average costs: USD 933k – Average ICSID costs: USD 920k – Average UNCITRAL costs: USD 1m
Recovering costs		The successful party recovers some portion of its costs in 51% of cases

Source: Matthew Hodgson and Alastair Campbell (Allen & Overy LLP), "Damages and Costs in Investment Treaty Arbitration Revisited" *Global Arbitration Review*, December 2017

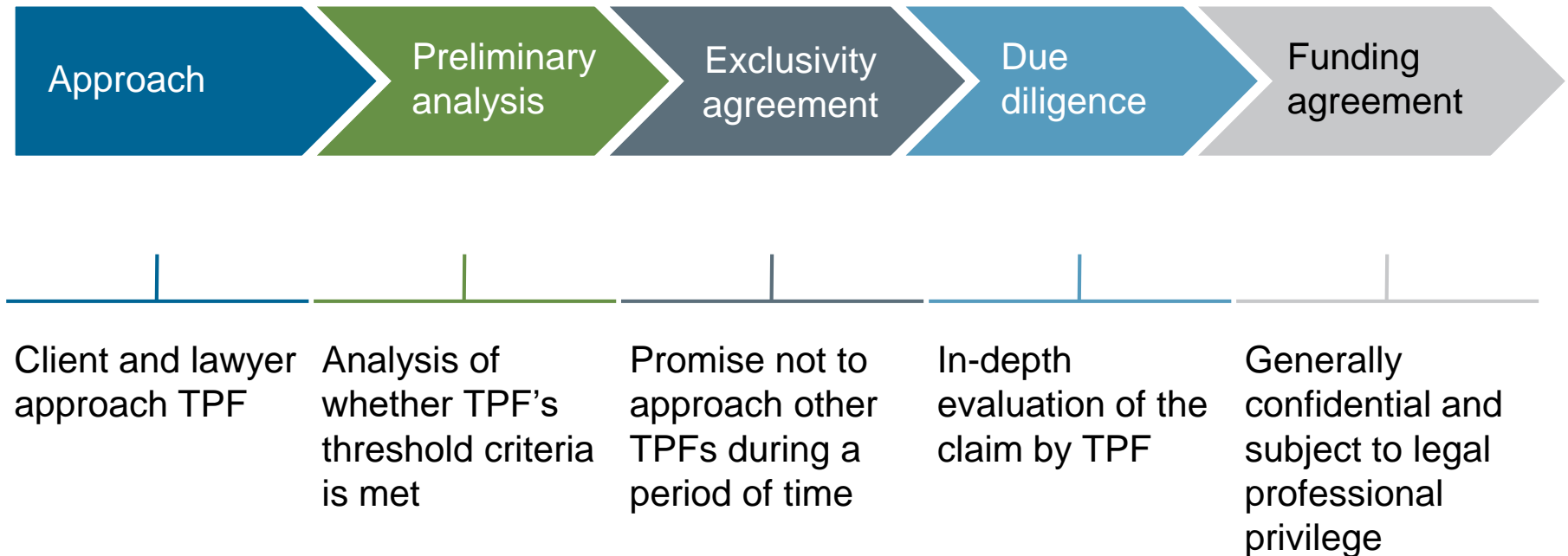
TPF in practice



Calunius Capital LLP (UK based funder) funded the ICSID arbitration claim brought by Rusoro Mining Limited against the government of Venezuela since 2012.

22 August 2016 - damages awarded against the Bolivarian Republic of Venezuela were US\$967.77 million plus pre and post-award interest which equates to in excess of circa. US\$1.2 billion

Funding agreement



Key issues



- Common TPF users
- Factors TPFs look at in a claim
- Factors in choosing TPF
- Legality of TPF across jurisdictions
- Ethical concerns / conflicts of interest
- Should TPF be regulated?
- TPF and awards on costs
- Security for costs
- What should a party do if it believes that the counterparty is in receipt of TPF?

What should a party do if it believes its counterparty is in receipt of third party funding?



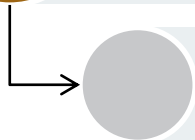
Ask the funded party to confirm whether it is funded



No answer: seek an order from the tribunal to disclose the existence of any TPF agreement



Non-funded party may see voluntary undertaking from the funder that it will bear the non-funded party's costs if it is successful



If funder opposes request – request Tribunal order for security for costs