

CCCL Guest Talk: The Regulation of Third-Party Funding: A Shift Away from the Light-Touch Approach?

On April 3, 2024, the Centre for Chinese and Comparative Law (CCCL) at City University of Hong Kong (CityUHK) hosted a guest talk featuring **Prof. Zhang Beibei**, Associate Professor at Shandong University. The lecture focused on the evolving regulatory landscape surrounding third-party funding (TPF), a practice that has become increasingly relevant as dispute resolution grows more complex and expensive.

The session was moderated by **Prof. Fang Meng**, Assistant Professor at the School of Law, CityUHK, while **Prof. Ding Chunyan**, Associate Dean of the School of Law and Associate Director of the CCCL, contributed as the discussant, enriching the dialogue with valuable insights.

Prof. Zhang Beibei is an accomplished scholar specializing in international commercial dispute resolution. She holds a doctorate in Private International Law from the University of Groningen and master's degrees from the China University of Political Science and Law and Stockholm University. She is the author of *Third-Party Funding for Dispute Resolution: A Comparative Study of England, Hong Kong, Singapore, the Netherlands, and Mainland China* (Springer, 2021). Her research has been widely published in leading academic journals, including the *Journal of World Trade* and the *Journal of International Arbitration*.

Prof. Zhang explored the diverging global approaches to regulating TPF. She highlighted two principal perspectives:

1. **Strict Regulation:** Exemplified by the UK Supreme Court's PACCAR decision, which equates TPF to damages-based agreements (DBAs), subjecting it to stricter rules under the Courts and Legal Services Act 1990.
2. **Light-Touch Regulation:** A more flexible approach that treats TPF as a distinct form of dispute financing, emphasizing transparency and minimal intervention.

Prof. Zhang discussed how the PACCAR decision has significantly impacted the enforceability of TPF agreements, necessitating their renegotiation to comply with DBA regulations in the UK. Meanwhile, countries like China are tightening regulations, as evidenced by recent Shanghai court rulings that invalidated TPF agreements in litigation.

This regulatory tightening raises several critical issues:

- **Judicial vs. Arbitral Divergence:** The growing reliance on arbitration to resolve TPF-related disputes risks inconsistent interpretations between judicial and arbitral bodies regarding the validity of TPF agreements.
- **Regulatory Arbitrage:** Disparities in global regulatory frameworks create opportunities for exploitation in the rapidly expanding TPF market.

Despite these challenges, Prof. Zhang emphasized the vital role of TPF in enhancing access to justice, particularly for claimants lacking the financial resources to pursue litigation or arbitration. TPF also serves as an effective risk allocation mechanism, with funders assuming the financial risks of disputes.

Prof. Zhang advocated for a balanced regulatory framework that combines strict and soft law mechanisms. She highlighted the importance of:

- Transparency: Funders should disclose financial interests and terms to mitigate conflicts of interest.
- Judicial Oversight: Courts should retain the authority to review funding agreements and adjust unreasonable provisions.

This enlightening session underscored the growing importance of regulatory clarity and consistency in the TPF industry. Prof. Zhang's insights offered attendees a comprehensive understanding of how TPF regulation is evolving globally and its implications for dispute resolution.



Prof. Fang Meng and Prof. Ding Chunyan



Prof. Zhang Beibei

