ARBITRATION ACT 2005

CODE OF PRACTICE FOR THIRD PARTY FUNDING 2026

IN exercise of the powers conferred by section 46D of the Arbitration Act 2005 *[Act 646]*, the Minister issues the following code of practice setting out the ethical practices and standards relating to the third party funding in which third party funders are ordinarily expected to comply:

Citation and commencement

1. (1) The code of practice may be cited as the **Code of Practice for Third Party Funding 2026**.

(2) The Code comes into operation on 1 January 2026.

Interpretation

2. (1) This Code shall be read together with Chapter 2, Part III of the Act in relation to third party funding.

(2) In this Code, unless the context otherwise requires –

"third party funder" means a person who is a party to a third party funding agreement who provides third party funding to the funded party and does not have an interest recognized by law in the arbitration of the funded party, other than under the third party funding agreement;

"third party funding" means a funding by a third party funder of all or part of the costs and expenses of the arbitration of the funded party made under a third party funding agreement in return for the third party funder receiving a financial benefit only if the arbitration is successful within the meaning of the third party funding agreement;

"third party funding agreement" means an agreement in writing for a third party funding between a funded party and a third party funder; and

"funded party" means a person who was or is a party, or is likely to be a party to an arbitration and is a party to a third party funding agreement.

Scope of Code

3. This Code shall apply to all third party funder and third party funding under the Act, in which the third party funding agreement is made on or after the date of commencement of Chapter 2, Part III of the Act.

Non-compliance with Code

4. (1) Any non-compliance with any of the provision of the Code shall not, in itself, render a third party funder liable to any action or legal proceedings.

(2) Notwithstanding subsection (1), any compliance or non-compliance with any of the provisions of the Code may be taken into account by any arbitral tribunal or court if such compliance or non-compliance is relevant to a question being decided by the arbitral tribunal or court.

Responsibilities for subsidiary and associated entity

5. (1) A third party funder shall accept responsibility for compliance with the Code by itself, its subsidiary, associated entity and any investment advisor acting as its agent.

(2) A third party funder shall inform the funded party as soon as practical, prior to the execution of a third party funding agreement:

(a) whether the third party funder is acting for and/or on behalf of its subsidiary or an associated entity in respect of third party funding; and

(b) whether the third party funder, its subsidiary or associated entity, as the case may be, will enter into the third party funding agreement with the funded party.

Promotional materials

6. A third party funder shall ensure its promotional materials are clear and not misleading.

Independent legal advice

7. (1) A third party funder shall take reasonable steps to ensure that the funded party is made aware, in writing, of the right to obtain independent legal advice on the terms of the third party funding agreement before its execution.

(2) The third party funder shall provide a reasonable opportunity for the funded party to seek independent legal advice on the terms of the third party funding agreement.

Third party funding agreement

8. The third party funding agreement shall stipulate, but not limited to the following terms:

(a) the name and contact details of the third party funder;

(b) the amount of funding to be provided to the funded party;

(c) the agreed financial benefit for the third party funder;

(d) a neutral, independent and effective dispute resolution mechanism for settlement of any dispute arising from or in relation to the third party funding agreement; and

(e) all matters required under Chapter 2, Part III of the Act and this Code.

Capital adequacy requirements

9. (1) A third party funder shall maintain access to a minimum of ten million ringgit of capital or the equivalent amount in foreign currency.

(2) A third party funder shall maintain access to adequate financial resources to meet the obligations of the third party funder, its subsidiary and associated entity in all third party funding, including the capacity to:

(a) pay all debts when they become due and payable; and

(b) cover aggregate funding liabilities under all of its third party funding agreements for a minimum period of 36 months.

(3) A third party funder shall accept a continuous obligation to disclose its capital adequacy, including notifying the funded party expeditiously if the third party funder reasonably foresees or believes that it is incapable of satisfying the capital adequacy requirements under subsection (1).

(4) A third party funder shall undertake to be audited annually by a national or internationally-recognised audit firm.

Conflicts of interest

10. (1) The third party funder shall maintain effective procedures to detect and resolve any conflicts of interest arising from or in relation to the activities undertaken by the third party funder and the third party funding agreement.

(2) The effective procedures under subsection (1) shall include:

(a) monitoring the third party funder's operations to identify and assess potential conflicts of interest;

(b) disclosing and resolving conflicts of interest to the funded party prior to concluding the third party funding agreement and on an ongoing basis throughout the third party funding relationship;

(c) effectively detecting and resolving any conflicting interests that may arise;

(d) protecting the interests of the funded party; and

(e) reviewing the compliance of the third party funding agreement with Chapter 2, Part III of the Act and this Code.

Confidentiality

11. The third party funder and the funded party shall observe and maintain the confidentiality and privilege protections for all information and documentation relating to the arbitral proceedings to the extent provided by the law.

Control and influence

12. (1) The third party funder shall not control or seek to influence the funded party or the funded party's legal representative to give conduct or settlement of the arbitral proceedings to the third party funder.

(2) The third party funder shall refrain from taking any actions that cause or likely to cause the funded party's legal representative to act in breach of professional duties.

Liability for costs

13. The third party funding agreement shall state the extent of liability of the third party funder to:

(a) meet any liabilities for adverse costs;

(b) pay any premium (including insurance premium tax) to obtain costs insurance;

(c) provide security for costs; and

(d) meet any other financial liability.

Termination of third party funding

14. (1) The third party funder shall not terminate the third party funding agreement, except in the following circumstances:

(a) the third party funder reasonably believes that the funded party is unlikely to succeed on the merits of the arbitral proceedings;

(b) the third party funder reasonably believes that there has been a material adverse change of the prospects of the funded party's success in the arbitral proceedings or recovery on success; or

(c) the third party funder reasonably believes that the funded party has committed a material breach of the third party funding agreement.

(2) Where the third party funder terminates the third party funding agreement, it shall remain liable for all funding obligations accrued to the date of termination, except where the termination is made under paragraph (1)*(c)*.

(3) Without prejudice to the agreement between the third party funder and the funded party, the funded party may terminate the third party funding agreement if it reasonably believes that the third party funder has committed a material breach of the third party funding agreement.

Complaints Procedure

15. (1) The third party funder shall maintain proper procedures to investigate, address and remedy complaints raised by the funded party in relation to the third party funding agreement.

(2) The third party funder shall take reasonable steps to inform the funded party, in writing, of the complaint procedures under subsection (1) on or before the third party funding agreement is made.

Due Diligence

16. Nothing in this Code shall prohibit a third party funder from conducting appropriate due diligence before the third party funding agreement is made or during the arbitral proceedings, as the case may be, including analysis of the laws, facts, witnesses, costs and progress of the proceedings.