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The Study on Extension of the Arbitral Agreement to Non-Signatories under Chinese Law

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Abstract

The extension of arbitration agreements to non-signatories arises from the genuine needs of parties and is a consequence of the intricate structure and process involved in commercial transactions. However, due to challenges to the rule of privity of contract, there are often debates surrounding the legality and rationality of this theory. In light of China's "Belt and Road" initiative, Chinese courts have shifted their stance on arbitration agreement extension from strict regulation to a more flexible approach. It aims to explore the potential and specific manifestation of extending arbitration agreements in future legislation in China by examining current legal regulations, analyzing relevant judicial cases, and evaluating scholarly theoretical disputes.

Keywords

Extension, Arbitration Agreement, Non-Signatories, China, Arbitration Law

1. Introduction

Parties' consent is the foundation of any international arbitration. Usually, this consent is expressed in an arbitration agreement, binding the formal signatories to the contract. In China, like the other jurisdictions with the well-established contract law principle of privity of contract, an arbitration agreement may only be enforced between signatories to the agreement. However, as economic interactions continue to evolve, the expansion of the arbitration clause is occurring at a subjective level. In certain specific instances, arbitral tribunals may also assume jurisdiction over non-signatories to the arbitration agreement (Stavros, 2010). Similar to other emerging economic powers, China is also moving towards a jurisdiction that favors arbitration under the Belt and Road initiative.

The Supreme People's Court of China has fostered a highly conducive judicial environment for the rapid advancement of the arbitration through the publication and implementation of an array of judicature documents, judicial interpretations, and paradigmatic cases in support of arbitration (Liu, 2018). In light of this trend, judiciaries are adopting more liberal approaches to uphold arbitration agreements that may have been considered invalid in the past, particularly in disputes concerning choice of law and the substance of the arbitration agreement (Helen, 2020).

The international arbitration is encountering several emerging challenges. Firstly, there has been a noticeable inclination towards litigation within the evolution of arbitration proceedings. For instance, the arbitration process has become increasingly intricate, with arbitrators assuming roles akin to judges and judicial interference in arbitration escalating as well. Secondly, limitations inherent in the arbitration process have resulted in diminished efficiency. Parties involved are burdened with mounting time costs and exorbitant arbitration fees. Thirdly, nations have enacted legislation that restricts data transfer, thereby augmenting uncertainties surrounding potential disruptions to international arbitration procedures. International arbitration remains the preferred choice for global entrepreneurs among the various methods available for resolving international business disputes. The success of international arbitration lies in the fact that it is an expression of individual rights such as the right to contract and the right to form relationships with others.

Numerous international practices have been observed in extending arbitration clauses to non-signatories, as exemplified by the Court of Arbitration of the International Chamber of Commerce (ICC) and the United States courts. Building upon these practices, both courts and arbitral tribunals have extended arbitration clauses to non-signatories based on various legal theories, including agency, implied consent, alter ego status (or veil-piercing), group of companies, estoppel, and guarantor relations (Gary, 2020). Due to domestic legal constraints, the application of certain aforementioned theories is precluded in Chinese arbitration cases. In China, the notion of extending the arbitration agreement to non-signatories has not yet garnered widespread consensus within both academic and practical realms. The recent legislative reforms have triggered intense debates on this matter. According to Chinese law, Chinese courts are authorized to conduct judicial review of arbitral awards in order to ascertain the validity of an arbitration agreement. The alteration in the court's policy regarding judicial review carries significant implications for future reforms in China's arbitration legislation.

This article aims to address the following aspects: Firstly, it provides an overview of the legal framework governing the extension of arbitration agreements to non-signatories under Chinese law. Secondly, it presents a comprehensive analysis of different judicial opinions on this matter in Chinese courts during judicial review cases. Thirdly, it examines and evaluates various perspectives put forth by Chinese scholars regarding the theory of extending arbitration clauses to

non-signatory parties. Lastly, considering the ongoing revision of China's Arbitration Law, it analyzes and predicts potential future developments in this area.

2. Overview of Chinese Legal Rules on the Validity of Arbitration Agreements

The Arbitration Law of the People's Republic of China (PRC Arbitration Law) was enacted in 1994 and has since undergone two amendments—one in 2009 and another in 2017. It is important to note that while the law does not explicitly cover extensions of arbitration clauses, it firmly establishes that such agreements are legally binding only upon those parties who have willingly entered into them. To offer additional clarification on this issue, the Supreme People's Court (SPC) issued its Interpretation concerning Some Issues on Application of the Arbitration Law in 2006, introducing two separate mechanisms for extending an arbitration clause. In 2018, the SPC issued Interpretation (IV) on Several Issues concerning the Application of the Insurance Law, which deals with the effect of arbitration agreements on insurance subrogation claims.

2.1. General Principle Governing the Enforceability of Arbitration Agreements

An arbitral tribunal's jurisdiction ratione personae is delimited by the arbitration agreement. The principle of privity of contract dictates that an arbitration agreement, similar to any other contractual arrangement, exclusively binds the contracting parties who have entered into the agreement. Consequently, it can be inferred that third parties are neither obligated by nor entitled to rely upon an arbitration agreement. Article 4 of the PRC Arbitration Law provides that commencing an arbitration must be based on a voluntarily concluded arbitration agreement. This principle is also established in various court decisions. The SPC issued a guiding case on the judicial review of arbitration in December 2022, wherein it was determined that the construction contract between the contractor and subcontractor contained a valid arbitration agreement. However, since the actual builder was not a party to this contract and did not enter into an arbitration agreement, they were not bound by its provisions[1]. The parties to an arbitration agreement must demonstrate a clear intention to enter into such an agreement, which shall only be binding upon the signatories and not extend to non-signatory parties.

2.2. Exceptional Rules for Arbitration Agreements Extended to Non-Signatories

Under Chinese law, the extension of an arbitration agreement to non-signatories is permissible only in the following circumstances: succession, assignment, and subrogation. In 2006, the SPC issued Interpretation concerning Some Issues on Application of the Arbitration Law, which delineates two categories of exten-

[1] Hunan Yueyang Intermediate People's Court (2018) Xiang Min Te No. 1.

sions for the arbitration clause. Firstly, in the event that an interested party undergoes a merger or division subsequent to concluding the arbitration agreement, the said agreement shall remain legally binding upon the successor with respect to its rights and obligations[2]. Secondly, if the rights and obligations of the creditor are wholly or partially transferred, the arbitration agreement shall remain valid for the transferee, unless otherwise agreed by the parties or expressly objected to by the transferee at the time of transfer, or if unaware of a separate arbitration agreement[3]. In 2018, the SPC issued Interpretation (IV) on Several Issues concerning the Application of the Insurance Law. The insurer initiating a subrogation claim shall be bound by an arbitration agreement, provided that such an agreement exists between the insured and a third party[4]. In 2020, the SPC issued Interpretation of the Application of the Relevant Guarantee System of the Civil Code. In cases where an arbitration clause is included in a master contract or a guaranty contract, disputes between the contracting parties specified in such arbitration clause shall be excluded from the jurisdiction of the court[5]. In 2023, the SPC issued Interpretation of Several Issues Concerning the Application of Title One General Provisions of Book Three Contracts of the Civil Code. The provision elucidates the correlation between subrogation and arbitration agreements. In the event that a creditor initiates a subrogation lawsuit, any objections raised by the debtor or opposing party to the presiding judge based on an existing arbitration agreement pertaining to the debt-claim relationship shall not be upheld by the court. However, if either party seeks arbitration regarding their debt-claim relationship prior to the initial hearing, the court may lawfully suspend the subrogation lawsuit[6].

The judicial interpretations issued by the SPC have become a crucial foundation and legal source for Chinese courts in adjudicating diverse cases. Furthermore, the SPC has released several documents with the nature of judicial interpretations, some of which pertain to extending the applicability of arbitration agreements to non-signatory situations. According to the 2019 Minutes of the National Courts' Civil and Commercial Trial Work Conference, the insurer is obliged to adhere to the arbitration agreement established between the insured and a third party prior to the occurrence of the insured event in cases of non-foreign disputes[7]. In 2021, the SPC issued the Minutes of the National Symposium on the Foreign-related Commercial and Maritime Trial Work of

[2]Article 8 of *Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law of the People's Republic of China.*

[3]Article 9 of *Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law of the People's Republic of China.*

[4]Article 12 of *Interpretation (IV) of the Supreme People's Court on Several Issues concerning the Application of the Insurance Law of the People's Republic of China.*

[5]Article 21 of *Interpretation of the Supreme People's Court of the Application of the Relevant Guarantee System of the Civil Code of the People's Republic of China.*

[6]Article 36 of *Interpretation by the Supreme People's Court of Several Issues Concerning the Application of Title One General Provisions of Book Three Contracts of the Civil Code of the People's Republic of China.*

[7]Article 98 of *the Minutes of the National Courts' Civil and Commercial Trial Work Conference.*

Courts, which related the determination of a dispute resolution method under the master contract and the subordinate contract. If the parties have respectively agreed on litigation or arbitration as two distinct methods of dispute resolution in both the master contract and the subsidiary contract, the determination of the dispute resolution method shall be based on the provisions stipulated in the specific contract. In cases where arbitration is agreed upon as the dispute resolution method in the master contract but no consensus has been reached regarding this matter in the subsidiary contract, unless both contracts involve identical parties, those involved solely in the subsidiary contract shall not be bound by the arbitration clause specified in the master contract[8].

3. Court Judgments and Opinions on the Extension of Arbitration Agreements to Non-Signatories

Due to the absence of comprehensive and well-structured institutional frameworks in legislation, Chinese courts often encounter persistent challenges. How should the court conduct judicial review of the awards made by foreign arbitration institutions in the mainland of China? In addition, in cases where certain arbitrators are explicitly agreed upon in the arbitration contract, there may be an expansion of the scope of judicial review beyond what is authorized by law. In such instances, how should the court handle this situation? Furthermore, certain arbitration contracts explicitly stipulate the expansion of the scope of judicial review, thereby granting authorization for the review of matters beyond what is permitted by law. How should the court address this issue? The Chinese courts frequently encounter the challenge of striking a delicate balance between respecting the autonomy of the parties and maintaining an orderly framework for judicial review. There exist divergent views among Chinese courts regarding extending arbitration agreements to non-signatories.

In their judicial practice, Chinese courts have exercised caution and conservatism in extending the scope of arbitration clauses (Chao, 2017). The enforceability of arbitration agreements extends to non-signatories and is circumscribed by specific circumstances. In the absence of explicit legal provisions, it would be inappropriate to apply the extension of the arbitration clause (Lin & Liao, 2023). In the case of China Pan Ocean Holding Group Co. Ltd. and Guo Wei's application for confirmation of the validity of the arbitration agreement, the judge's ruling states that the absence of an arbitration clause in the guarantee contract, despite its presence in the master contract, does not imply implicit acceptance by the guarantor or render the arbitration clause binding on the guarantee contract. Without explicit authorization from both parties and a corresponding expression of intent, an arbitration clause in a master contract cannot be extended to subordinate contracts[9].

In the case of Beijing Langxinming Environmental Protection Technology

[8]Article 97 of *the Minutes of the National Symposium on the Foreign-related Commercial and Maritime Trial Work of Courts*.

[9]Beijing Financial Court (BFC) (2022) Jing 74 Min Te No. 13.

Co., Ltd. for Non-Enforcement of an Award of the Shanghai Arbitration Commission, the judge invoked several rules for extending the arbitration clause, including those specified in the Interpretation of PRC Arbitration Law. Moreover, reliance was placed on the "Principle of Fair and Reasonable Expectation." The judges concluded that certain circumstances like company mergers and claim assignments warrant a reasonable deviation from written form requirements. It was established that when there is no conflicting agreement between parties or when an assignee explicitly objects or remains unaware of a distinct arbitration agreement, it becomes permissible to extend the master contract's arbitration clause to encompass non-signatory parties[10].

The Chinese courts have also strived to apply other internationally recognized theories in order to address the issue of extending the validity of an arbitration agreement to non-signatories. In the Case concerning the Application for Setting Aside of an Arbitral Award by Asia Pulp & Paper Co., Ltd., the judge invoked the "group of companies" on the issue of whether the disputed matters between the subsidiary and the counter party fell within the scope of the arbitration agreement between the parent company and the counter party. The judge conducted a comprehensive analysis of the control relationship between the parent and subsidiary, the extent of substantial involvement in the specific business, and the parties' consent to arbitration[11].

4. Theoretical Controversy over the Extension of Arbitration Agreements to Non-Signatories

Extensive international practice has been observed in expanding the application of arbitration clauses to non-signatory parties, encompassing various legal principles such as agency relationships, implied consent, alter ego status (or veil-piercing), group of companies doctrine, estoppel principles, and guarantor relations (Gary, 2020). The extension of the arbitration clause is a direct consequence of the continuous evolution of complex commercial legal relationships, garnering support from numerous scholars. It frequently arises in commercial disputes involving multiple contracts or parties to a transaction. To encompass a broader range of disputes under arbitration, many countries are increasingly adopting a permissive approach towards the validity scope of arbitration agreements. The transition from "restriction and strict supervision" to "encouragement and support" is widely recognized as a significant manifestation of the evolving attitudes towards arbitration. However, there remain some experts who maintain a relatively conservative perspective on the theoretical aspects concerning the expansion of the arbitration clause. The main reasons for this are as follows: the attributes of the litigation contract, the protection of procedural rights for third parties, the national judicial system, and the preservation of litigation order.

[10]Beijing First Intermediate People's Court (2020) Jing 01 Zhi Yi No. 70.
[11]Shanghai Maritime Court (2020) Hu 72 Min Te No. 2.

4.1. Opinions in Favor of the Extension of the Arbitration Clause

The extension of the arbitration clause is supported by some scholars from various perspectives.

Firstly, It has been argued that the validity of arbitration agreements and awards does not derive from the authorization of the law, but rather from the demands of commercial relations (Tian, 2021). The extension of the arbitration clause stems from the profound changes in social and economic life. It contributes to the realization of the parties' will to arbitrate and supports the settlement of disputes by arbitration (Liu, 2004). Secondly, arbitration proceedings may be initiated by or against a third person in many international arbitration practices, which have been recognized in the theory and practice of arbitration in various countries. Therefore, it is appropriate to adopt a relatively lenient attitude towards the extension of the arbitration clause (Yang & Wei, 2007). Thirdly, from the perspective of the development path of the commercial arbitration regime, the autonomy of the commercial arbitration system transcends some contractual principles and some limitations of judicial power. Recognition of the extension of the arbitration clause can meet the needs of the increasingly diversified development of commercial relations, and is an important manifestation of full respect for the autonomous choice of commercial subjects for dispute resolution (Nan, 2023). Fourthly, it is consistent with the inference of legal logic. The extension of the arbitration clause can be applied because the legal relationship between the non-signatory and the parties to the arbitration agreement is so close that the non-signatory cannot be unaware of the existence of the original arbitration agreement and is therefore presumed to be bound by its validity. The presumption is that a non-signatory to an arbitration agreement possesses knowledge of its existence and has given consent to it (Xiao & Luo, 2006). Furthermore, some experts offer theoretical support for the rationalization of extending the arbitration clause based on legal behavior theory and procedural choice theory (Chen, 2023).

4.2. Arguments for Limiting the Extension of the Arbitration Clause

It is undeniable that the expansion of arbitration agreements to non-signatory parties in a disorderly manner has the potential to jeopardize the legitimate rights and interests of such parties in certain circumstances. The extension of arbitration agreements to non-signatory parties has raised concerns among scholars.

4.2.1. Attributes of Litigation Contracts

The arbitration agreement, which arises from the parties' mutual consent to exercise their right of action, represents a prototypical contractual arrangement pertaining to claims. Consequently, the evaluation of the enforceability of such a contract necessitates an examination within the framework of procedural law. It should adhere to the fundamental tenet of "legally valid only when expressly

prescribed". The Civil Procedure Law imposes stringent restrictions on the formation and effectiveness requirements of litigation contracts, which are mandatory provisions (Wu, 2023). The right of action possesses the characteristic of public authority, with the state as its obligee. The act of applying for arbitration carries legal implications in terms of exhausting the right of action (Wu, 2015b). The principle of disposal rights is recognized by procedural law, which also imposes necessary limitations on the parties' freedom of will. Consequently, the exercise of disposal rights by the parties must be conducted "within the boundaries prescribed by law" (Wu, 2015b).

The litigation contract should be restricted by two key considerations: 1) ensuring that the party's right to choose the procedure remains within the bounds of minimum procedural protection requirements, without compromising the other party's procedural interests or impeding equal access to the litigation system for all; and 2) safeguarding that the party's freedom to enter into a litigation contract does not undermine procedural stability. Only by satisfying these prerequisites can the purpose of a litigation contract be aligned with achieving fair dispute resolution in civil litigation (Wu, 2015a).

4.2.2. Protection of Procedural Rights of Third Parties

The privity of arbitration agreements entails safeguarding the procedural rights of third parties, a matter of utmost significance that must not be arbitrarily expanded or interpreted. Otherwise, improper involvement in arbitration, imposition of participation obligations on third parties, or even unwarranted attribution of liability may occur. Therefore, it is imperative for legal provisions to clearly stipulate exceptions to the relativity of arbitration agreement effectiveness. This will enable parties to have reasonable expectations regarding dispute resolution methods and prevent disputes from arising (Wang, 2023).

4.2.3. Preservation of the National Judicial System and Order of Proceedings

When incorporating restrictive provisions regarding the right of action, it is essential for parties to consider the national judicial system and the procedural hierarchy. On one hand, the inclusion of a clause governing the right of action imposes limitations on contractual freedom; on the other hand, the extent of freedom granted by such a provision relies upon the efficacy of judicial authority. That is to say, the stronger the judicial power, the less freedom of arrangement of rights of action (Chao, 2017). Under the current judicial environment in China, the judicial power is still relatively strong with respect to the power of arbitration. The assessment and judgment of the extension of the arbitration clause should still be completed under the necessary judicial review and supervision.

4.3. Whether or Not a Uniform Criterion Should Be Made

Some scholars propose that it is imperative for the legislation to establish a comprehensive criterion in order to extend arbitration agreements to third parties (Wang, 2021). In order to safeguard the rights and interests of third parties

in arbitration, it is crucial to facilitate their active participation in the arbitration process while upholding the fundamental attributes of arbitration and enhancing efficiency in dispute resolution. Therefore, there is a need for clarification regarding the standard governing the extension of an arbitration agreement to third parties. Although various arbitration institutions have provided relatively comprehensive provisions on procedural matters concerning party joinder, there remains a significant gap when it comes to establishing a uniform standard for extending the effect of an arbitration agreement to a third party who has not expressly consented to arbitration. It is inappropriate for this void to be solely filled by arbitral rules issued by individual institutions; instead, it would be more appropriate to establish a universal standard at the level of arbitral law.

Other scholars argue that in order to ensure the vitality and attractiveness of international commercial arbitration, it is crucial to uphold party autonomy when considering the expansion of arbitration clauses. Legislation should refrain from excessive interference as it is unnecessary. The broadening of arbitration clauses deviates from the fundamental principle that regards the arbitration clause as the bedrock of arbitration. However, this practice occurs infrequently in reality and its permissibility should be determined based on specific circumstances. Therefore, it would be imprudent for legislation to impose stringent regulations on this matter (Chi, 2004).

Arbitration agreements, being typical litigation contracts, possess distinctive attributes in terms of nature and effect but still need to adhere to fundamental contract principles. It is crucial to respect the procedural options available to both signatories and non-signatories of arbitration agreements. While supporting arbitration and enhancing dispute resolution efficiency are important objectives, they should not overshadow the right to procedural choice. Therefore, legislative refinement should restrict the extension of arbitration clauses as an exception rather than a general rule. Courts, arbitral tribunals and other authorities have emphasized that non-signatories are only exceptionally bound by agreements to arbitrate and that reserve must be exercised in reaching this conclusion (Gary, 2020). Given the multitude of exceptional cases involved, relying solely on a generalized rule of judgment lacks rationality and may not yield an adequate solution. Adopting a typological approach would undoubtedly be more appropriate.

5. Legislative Changes and Direction of Development Regarding Arbitration

Through the development of legislative rules and judicial practice, it can be found that the attitude of Chinese courts towards the extension of the arbitration clause has evolved. The changes are manifested in two aspects: limited support and gradual expansion of inclusiveness.

5.1. Limited Support

The Supreme Court has upheld that the arbitration clause in the master contract

may be extended to the collateral contract only when the parties to the main and collateral contracts are the same. The Ministry of Justice issued the Arbitration Law (Amendment) (Exposure Draft) in 2021, which includes a rule dealing with the expansion of arbitration clauses in master and subordinate contracts. If the dispute involves a master and a collateral contract, and the arbitration agreement in the master contract and that in the collateral contract are inconsistent, the agreement in the master contract shall prevail. If there is no arbitration agreement in the collateral contract, the arbitration agreement in the master contract is valid for the parties to the collateral contract[12]. The rule has sparked a contentious debate in China. Ultimately, the Supreme Court rejected it for three reasons: it violated the principle of party autonomy, was inconsistent with the privity of contract, and infringed upon the principle of independence of arbitration clauses.

The master contract and the arbitration clause are distinct agreements that express different intentions. While the parties involved in both contracts may be the same, their contents are completely dissimilar, resulting in two separate legal relationships between them. In cases where there is no complete overlap between the parties to the master contract and those of a collateral agreement, some of these parties may not have agreed to resolve disputes through arbitration. However, if all parties involved in both contracts completely overlap, then they have already established a legal relationship wherein they agree to settle any disputes through arbitration. In such situations, it can be presumed that all parties intend for any dispute arising from performance under either contract to be resolved quickly and efficiently through arbitration (The Fourth Civil Trial Division of the Supreme People's Court, 2023).

5.2. Gradual Expansion of Inclusiveness

Chinese Courts have increasingly shown tolerance towards extending the validity of arbitration agreements to third-party entities. For example, changes in rules regarding subrogation rights now allow creditors with an existing arbitration agreement with debtors to assert this as a defense against subrogation actions.

According to Article 535 of the Civil Code, the enforcement of subrogation rights by a creditor can only be pursued through litigation in court, and there is no provision for asserting subrogation before an arbitration body. Divergent opinions exist regarding the course of action a creditor should take when faced with an arbitration agreement between the debtor and its counterparty. One perspective suggests upholding the efficacy of the arbitration agreement as a defense against exercising subrogation rights. In such cases, if jurisdictional objections are raised by the counter party, it would result in dismissal of the creditor's claim[13]. Conversely, another viewpoint argues against recognizing the validity of the arbitration agreement as a defense to exercising subrogation rights[14].

[12]Article 24 of the Arbitration Law (Amendment) (Exposure Draft).

[13]Beijing Higher People's Court (2020) JIng Min Zhong No. 94, Shandong Higher People's Court (2019) Lu Min Zhong No. 597, Shanghai Higher People's Court (2017) Hu MIn Xia Zhong No. 29.

[14]Supreme People's Court (2019) Zui Gao Fa Min Xia Zhong No. 73.

5.2.1. Denial of the Anti-Suit Effect of the Arbitration Agreement

The enforcement of subrogation rights has traditionally been interpreted by previous authorities as being exclusively pursued through "litigation," with arbitration agreements not considered a valid defense for debtors and counter parties. The provisions of the Civil Code align with Article 73 of the Contract Law, which establishes the exclusive jurisdiction of People's Courts for subrogation rights. However, procedural provisions for implementing subrogation rights are not outlined in the Civil Procedure Law. Therefore, relevant provisions from Judicial Interpretation (I) of the Contract Law still apply to determine jurisdiction over subrogation rights. Subrogation litigation falls within the jurisdiction of courts situated in the domicile of the counter party, thereby confining territorial jurisdiction to these specific courts and excluding other court jurisdictions as well as any arbitration agreement between creditors, debtors, and counter parties. Consequently, debtors and counter parties are precluded from employing this argument as a defense based on jurisdiction.

In addition, arbitration agreements should not impact subrogation actions for several reasons. Firstly, litigation is necessary to ensure equitable distribution of benefits among multiple creditors exercising their subrogation rights. Secondly, only through litigation can creditors effectively be prevented from abusing their subrogation rights and disrupting the claims process. Finally, providing a unified method for exercising subrogation rights, such as litigation, can prevent conflicts between various dispute resolution methods and facilitate successful debt dispute resolution. These factors underscore the significance of employing litigation in resolving disputes related to subrogation rights (Research Office of the Supreme People's Court, 2009).

5.2.2. Partial Recognition of the Anti-Suit Effect of an Arbitration Agreement

In 2023, a comprehensive interpretation was released by the SPC regarding the application of General Provisions from the Book on Contracts within China's Civil Code. This interpretation specifically addresses several issues related to subrogation rights and arbitration agreements. Article 36 of this interpretation clarifies the relationship between enforcing subrogation rights and arbitration agreements. The introduction of this rule marks the first formal recognition that an arbitration agreement in a subrogation lawsuit may possess a "defensive effect" under specific circumstances. In order to satisfy these conditions, two prerequisites must be met. Firstly, there should exist a pre-existing arbitration agreement pertaining to the debtor-relative relationship. Secondly, an application for arbitration concerning this relationship must have been submitted prior to the initial hearing. This amendment reflects a rational approach as it effectively safeguards both creditors' right to exercise subrogation and debtors' and counter parties' autonomy in selecting their preferred dispute resolution methods.

The court should strike a delicate balance between safeguarding the rights of

creditors and addressing the expectations of debtors and counter parties within the framework of arbitration proceedings. On one hand, it is imperative to uphold the integrity of the arbitration agreement; on the other hand, measures should be implemented to prevent any potential abuse that may hinder subrogation actions. Consequently, a creditor retains the prerogative to initiate a subrogation action against the debtor's counter party even if an arbitration agreement exists between them. However, in cases where either party has already commenced arbitration prior to the initial hearing, it is appropriate to temporarily suspend the subrogation action until after an arbitral award has been rendered. Conversely, if neither party had sought arbitration before this stage and subsequently argues that jurisdiction lies solely with an arbitrator due to an existing arbitration agreement, such claims should not find support from the court.

The aforementioned rule changes are in line with the Supreme Court's recent judicial policy of promoting arbitration, reflecting a more progressive and inclusive approach adopted by Chinese courts. However, it is important to note that this provision still has certain limitations. It serves as an authorizing provision for the court, granting discretionary power rather than mandating the suspension of subrogation proceedings. Therefore, the court has discretion to decide whether or not to suspend such proceedings. Further consideration and study are necessary to effectively monitor the legitimacy of the court's exercise of discretion.

6. Conclusion

The extension of the arbitration clause is a complex issue that necessitates meticulous consideration. Chinese courts are increasingly adopting a more open and tolerant approach towards the extension of arbitration agreements to non-signatories. It is highly likely that future legislative revisions in China will incorporate the rule of extending arbitration agreements to non-signatories, not by establishing a recognition rule for "arbitration third party" in the arbitration law, but rather by gradually integrating it into various substantive laws. When analyzing specific situations, it is crucial to shift focus from formalities to substantive aspects. For instance, factors such as the interconnection between multiple contracts, subjective intent of contracting parties, inferences drawn from their conduct, and the nature of their relationship should all be taken into account.

In the context of globalization, the role of courts in global governance is increasingly prominent. Traditionally, the management of foreign affairs and handling of foreign relations are generally entrusted to the government through administrative power, while the judiciary upholds fundamental principles of judicial respect and self-restraint in this regard. With continuous advancements in globalization, there have been profound changes in the relationship between private and public rights both domestically and internationally. Courts sometimes translate societal expectations and policy objectives into decisions aimed at

resolving or managing specific issues on an ongoing basis, reflecting a significant aspect of fulfilling de facto administrative functions. For instance, judicial policies that support international arbitration serve as a crucial element for fostering a favorable business environment. In the process of judicial review of arbitration rulings, Chinese courts demonstrate a progressive and adaptive approach towards globalization by allowing for a flexible interpretation of extending arbitration agreements to non-signatories, rather than imposing strict prohibitions.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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