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Existing Dilemmas and Solutions for Joining Third Parties in Arbitration Law

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Abstract: This study focuses on the institutional dilemma of adding a third party in arbitration law and its solution path. By analyzing the binary opposition between the scope of effectiveness of arbitration agreements and the principle of one-time dispute resolution, it reveals the problem of judicial resource waste caused by legislative gaps. Research has found that there is a fundamental conflict between the principle of voluntary arbitration and third-party participation, and the limitations of the scope of effectiveness of arbitration agreements further exacerbate procedural barriers. From the analysis of the causes, the deficiencies at the legislative level and the differentiated treatment in judicial practice jointly constitute the root cause of the institutional dilemma, and the differences in rules of different arbitration institutions lead to inconsistent application standards. To solve this dilemma, this study proposes to clarify the conditions for third-party participation through legislation, optimize the special circumstances participation mechanism in arbitration rules, and construct a third-party institutional framework that balances party autonomy and procedural efficiency, in order to achieve a balance between fairness and economy in the arbitration system.

Keywords: Arbitration Law; Third Party Arbitration; Voluntary Arbitration.

1. The Dual Opposition Between Arbitration Agreements and One-Time Dispute Resolution in Arbitration Law

As the core carrier of party autonomy, the legal effect of the arbitration agreement is rooted in the principle of freedom of contract and the efficiency value of commercial dispute resolution. In essence, the process of concluding the arbitration agreement reflects the parties' consensus on the dispute resolution mechanism. By clearly agreeing to submit the dispute to arbitration rather than litigation, an exclusive restriction on judicial jurisdiction is formed. The exercise of this procedural choice not only guarantees the parties' autonomy, but also demonstrates the spirit of contract and commercial rationality that respects market entities in the commercial field.

With regard to the legal validity of an agreement , the principle of independence of arbitration makes such agreements procedurally binding prior to any actual dispute .If the parties have made a valid arbitration agreement , they are to be considered as having waived their right to sue in court and as having accepted arbitral jurisdiction .As one illustration (among many), in complex commercial dealings with several parties, the arbitration clause of the main contract seems capable of binding non-signatory beneficiaries by virtue of the " theory of expanded validity of arbitration agreements . " Such a system preserves the principle of party autonomy and gives rise to one-time dispute resolution—thanks to the " consensual access " mechanism .But that autonomy may itself create a binary conflict with the value of " one - time dispute resolution ":if third parties are not part of the arbitration agreement’s making ,it is problematic to force them into the process (since they lack contractual basis),yet to exclude them risks broken fact - finding or endless litigation .

If we take international arbitration practice as an example ,the " multi - party arbitration " clause of the ICC Arbitration Rules gives the arbitral tribunal authority—upon the parties ’ consent—to include a third party ,and thus preserves the basic principle of autonomy of will without forcing an unnecessary choice between efficiency and fairness .my country ' s Arbitration Law revision may profit from such an approach by building a " limited addition " mechanism , namely one that allows the tribunal to add needed parties (either because the arbitration agreement is unambiguous or because there is written consent) ,thus attaining real justice while keeping contracts free of undue constraint . .

With regard to arbitration law , a major binary contrast occurs between the principle of relativity of arbitration agreements and the institutional idea of settling disputes all at once .Such opposition results naturally from the conflict between contractual arbitration and an efficient judiciary .More specifically , if the arbitration process cannot incorporate certain third parties because of the relativity of agreements ,it tends to produce inefficiencies—among them repeated arbitration and conflicting awards[1].As shown by the quantitative analysis of the Judicial Efficiency Assessment Model , the waste of judicial resources brought about by these procedural problems occurs above all in three forms:First , the time consumed by multiple hearings has grown very greatly .From a statistical standpoint , the time needed for a second arbitration (in commercial matters) isWith regard to cial disputes having many parties,the inability to add third parties extends the usual time by about 47%.Second , the appeal rate arising from conflicting awards has gone up .The Supreme People ' s Court reports a 23-percentage-point difference—favoring retrials—in such cases as compared with ordinary arbitration ones .Third , the institutional losses due to procedural idling .If we take a foreign-related arbitration case as an example , the absence of added related companies explains two awards that conflict about identical facts ,and which—on this basis—prompted parallel procedures in international commercial arbitration ,with additional costs (over 3 million yuan) for rights protection .Such an institutional defect is now part of a recurring problem:in practice ,on the one handthe arbitral tribunal cannot completely study the actual legal relationship because of the limited effectiveness of the arbitration agreement ,and this makes it possible for certain parties to evade debts by means of sham arbitration;on the other hand ,the court is left with no solid legal foundation for judicial review and must approach substantive issues obliquely ,thus running counter to the very idea of finality that is central to arbitrationon , and it wastes judicial resources too .A standard example is one involving a construction project dispute where the contractor and subcontractor have an autonomous arbitration agreement — thus leaving the project owner without any legal standing to act as a necessary third party in the arbitration — which ends up producing two conflicting rulings (one about money due,one about work quality).A fresh civil lawsuit becomes necessary ,with resultant waste of judicial time and effort.

2. The Legal Dilemma of the Arbitration Third-Party System

2.1. The Conflict Between the Principle of Voluntariness in Arbitration and the Participation of Third Parties

The legal difficulty connected with the third - party arbitration system comes about because of a basic contradiction—between voluntary arbitration and the compulsory involvement of third parties .Such a conflict cannot be reconciled theoretically[2].The central idea of arbitration is party autonomy, or rather,the fact that neither the start nor the course of the proceedings is dictated by any outside force .With mandatory participation of third parties the consensus is broken , and that calls into question the legitimacy of the arbitration procedure in question .As far as value conflicts are concerned, the present one is fundamentally a struggle between procedural efficiency and autonomy of the parties involved .The first approach favors an overall resolution of the dispute (res judicata) , while the second insists upon the contractual character of arbitration .At the practical level,this conflict is manifested in the ambiguity of the arbitral tribunal's power to add a third party. For example,in cases involving chain debt disputes,in order to avoid repeated hearings,the arbitral tribunal may add a third party who has not signed an arbitration agreement based on the substantive connection,but this directly violates the principle of privity of contract of arbitration agreement. Data shows that when reviewing such arbitration awards, Chinese courts refuse to recognize and enforce about 65% of the rulings on the grounds of "violation of the voluntary nature of arbitration",highlighting the judicial response to the institutional conflict[3]. The forced addition of a third party may also lead to the risk of litigationization of the arbitration process,weakening the advantages of arbitration over litigation [4].

2.2. The Limitations of the Scope of Validity of Arbitration Agreements

The restriction of the scope of the arbitration agreement is basically due to a strict reading of the doctrine of privity of contract — one that confines the binding effect of an arbitration agreement to the parties who signed it — and which therefore denies direct participation of non - signatories in the arbitration clause .Such limitation is especially marked when many parties are involved in complicated commercial dealings.Among the cases mentioned — chain transactions ,group arbitration ,or disputes between related firms — it is possible for third-party interests to remain inadequately safeguarded because of the restricted character of the arbitration agreement ,which raises doubts about the procedure's legitimacy .According to traditional arbitration theory ,the voluntary character of arbitration demands that each participant agree (explicitly or implicitly) to the process ,and the forced inclusion of another party may upset the autonomy of will involved .Yet this view itself brings about frequent litigation ,conflicting awards ,and inefficiency in practice.

3. Analysis of the Causes of the Arbitration Third-Party Dilemma

3.1. Deficiencies at the Legislative Level

The absence of legislation dealing with the third-party system in my country's Arbitration Law is attributable partly to the traditional cognitive bias with regard to basic features of arbitration and to historical limits of the institutional design idea[5].With an eye to the development of laws over time, one may note that the Arbitration Law (as enacted in 1994) came into being under pressure—during the passage from planned to market economy—of limited institutional capacity,the legislator treated arbitration as a " pure contractual dispute resolution mechanism " , and made too much of the principle of relativity of arbitration agreementswithout anticipating adequately the difficulty—under today's commercial arrangements—of reconciling several parties' interests[6].Such a legislative gap has left the law without a firm foundation for the arbitration procedure when it comes to third - party involvement in contractual matters ,and has led (or is likely to lead) to inadequate institutional supply[7]. Considering comparative law , my country 's current legislation neither adopts the " multiparty arbitration " rule which is so commonly used in international commercial arbitration nor does it establish any exceptions regarding the " doctrine of privity expansion , " — a fact that creates procedural complications for arbitral tribunals in connection with third parties bound by substantive duties or claims .With regard to construction subcontracting arbitration , the agreement between the general contractor and the subcontractor cannot be taken as binding on the owner ,so disputes tied to one legal relationship may be split across several arbitrations ,with the risk of " multiple conflicting awards . "

3.2. Contradictions in Judicial Practice

In my country's arbitration practice,the differentiated handling of third-party issues by different arbitration institutions in different regions has significantly exacerbated the inconsistency in the application of law[8]. Taking the China International Economic and Trade Arbitration Commission (CIETAC) and the Beijing Arbitration Commission (BAC) as examples,the former clearly stipulates the mechanism of consolidation of arbitration by multiple parties in Article 16 of the Arbitration Rules,while the latter adopts the limited addition model of "party consent" through Article 22. This difference in institutional design directly leads to the different procedural results faced by similar cases in different arbitration institutions[9]. Empirical studies show that in cross-border arbitration cases involving the denial of corporate personality, CIETAC allows the addition of the actual controller as a third party based on the Doctrine of Extension of Arbitration Agreement Effectiveness,while BAC strictly adheres to the Principle of Relativity of Arbitration Agreement and refuses such addition requests. This difference seriously weakens the predictability of the parties' arbitration results.

4. The Path to Improving the Arbitration Third-Party System

4.1. Legislative Suggestions

With regard to the legislative improvement of the third - party system of arbitration, one must adopt institutional constructivism as the theoretical base and find a way to reconcile — by means of systematic rule design — the tension between voluntariness and one - time resolution of disputes [10]. The legislation should start with a dual mechanism of " consensual access " and " limited addition. " Theformer allows the introduction of third parties based on express or implied agreement in the arbitration agreement ,while the latter allows for mandatory addition through judicial review in specific circumstances , but requires dual review standards of " procedural necessity " and " substantive relevance. " For example ,in cases involving piercing the corporate veil , the " necessary party " rule in international commercial arbitration may be taken as a reference. Should a third party be directly concerned with the matter being arbitrated and lack of participation make enforcement difficult, then the arbitral tribunal is permitted—ex officio—to ask for addition (of that party) .

With regard to procedural rules , a " layered review " mechanism is to be constructed: the first layer employs an " interest balancing test " in order to evaluate how third - party participation affects the efficiency or fairness of arbitration procedures;the second layer uses an " alternative solution assessment " to decide whether claims may be resolved—by consolidation or by testimony—in a given case .As an example of Article 16 of the CIETAC Arbitration Rules , the treatment of multiple-party arbitration there offers a workable prototype of institutional change ,but for details such as " related - party transactions " and " assignment of claims " it is still necessary to specify standards .

To avoid abuse of the procedure ,it is necessary for legislation to specify a " judicial review catch - all clause " which tells us that the court will not normally interfere unless the arbitration procedure presents clearly established flaws ,and at the same time allows the third party to object or to assert separate claims (thus balancing rights)[11].The " third party protection " clause of Article 1044 of the German Code of Civil Procedure may be taken as an example of how to introduce an arbitration third party liability insurance system to divide possible risks[12].With this form of system design , the contractual character of arbitration remains intact , and the tension between speed and justice in litigation is eased .

4.2. Optimization of Arbitration Rules

With regard to special circumstances , one should not neglect the theory of procedural justice when constructing a third party participation mechanism ,nor should one ignore a dynamic balance—achieved by typological design—between arbitration efficiency and real justice .For disputes involving several parties linked by a chain contract , the " selective consolidation arbitration " rule may be introduced ,it is permissible to bring into a single arbitral procedure parties who have contractual relevance—on condition that all of them give written consent .Such an approach frees the arbitration from its previous limitation of relativity and secures legitimacy by means of the autonomy of will .With regard to,say,a chain of subcontracting in construction work,the various duties (and claims) held by the main contractor,the subcontractor and the supplier of materials may be handled together—without division—in one arbitration, thus avoiding conflicting rulings due to multiple hearings.

For the risk of fraudulent arbitration in related transactions,it is advisable to adopt the "limited addition + prior disclosure of evidence" mechanism,that is,after the arbitral tribunal has preliminarily examined the possibility of malicious collusion,it can order the parties to submit evidence of transactions with third parties,and decide whether to add them after professional evaluation [13]. This design draws on the "protective third party" system in international commercial arbitration,and restricts the abuse of procedures through the principle of proportionality. For example,the Supreme People's Court clearly stated in the ruling No. 1235 of the Supreme People's Court (2021) that when there is a commingling of personalities among related companies,the arbitral tribunal has the right to add the actual controller to participate in the procedure to ascertain the facts [14].

With regard to disputes over the transfer of claims , a " notice of effectiveness " model may be used , namely one in which the creditor passes on the arbitration agreement ,and written notice to the debtor is necessary for the third party to join .Such an arrangement preserves contractual privity and guarantees the third party 's knowledge by means of procedures[15].Article 16 of the CIETAC Arbitration The rules contain only an exploratory statement about this topic .As a practical matter , a third - party objection review is called for , with an expert committee helping to assess—on a substantive level—the need for participation ,and so to shape a third - party participation model that is " based on consensus , guaranteed by review , and emphasizes both efficiency and fairness . "

5. Conclusion

Among the central carriers of the parties ’ autonomy , the legal effect of the arbitration agreement is bound to the idea of freedom of contract and to the efficiency of commercial dispute resolution .Yet at the level of the third - party system , certain value conflicts and institutional problems seem unavoidable .The present article proposes a binary opposition analysis of the principle of relativity of arbitration agreements aWith regard to one-time dispute resolution as a goal ,it is possible to identify a basic contradiction between the voluntary character of arbitration and the compulsory involvement of third parties .Such a conflict is reflected theoretically by the tension between efficiency of procedure and freedom of will ,and by practical difficulties—such as uncertainty about how far the arbitral tribunal may bring in third parties ,or whether procedural guarantees are provided ,and the inconsistency in the use of law .As far as institutions are concerned , the present shortcomings of my country ’s Arbitration Law with regard to third - party rules derive from past misunderstandings or historical restrictions about what arbitration essentially is .Too great a focus on the contractual character of arbitration tends to ignore the complex relations—sometimes overlapping—of interest held by many parties inthe growth of modern commercial transactions has created a serious lack of definite legal foundations for third-party involvement in contracts ,and thus an institutional gap. From an institutional perspective,the deficiencies in my country's Arbitration Law regarding third-party legislation stem from traditional misconceptions and historical limitations regarding the essential nature of arbitration. Overemphasizing the contractual nature of arbitration while neglecting the complexity of intertwined interests among multiple parties in modern commercial transactions results in a lack of clear legal basis for handling third-party intervention in contract performance,leading to an institutional shortage. From a comparative law perspective, my country has not adopted the widely used "multi-party arbitration" rule and the theory of "expansion of the effect of arbitration agreements" in international commercial arbitration. This has caused arbitral tribunals to face procedural difficulties when dealing with third parties involved in substantive rights and obligations. Furthermore,the differentiated treatment of third-party issues by different arbitration institutions further exacerbates the inconsistency in the application of law,undermining the authority and credibility of the arbitration system. To address the aforementioned dilemmas, this paper proposes a framework based on institutional constructivism to reconcile the inherent tension between the voluntariness of arbitration and the one-time resolution of disputes. Specifically, legislation should establish a dual mechanism of "consensual access" and "limited additional arbitration," construct a tiered review mechanism of "interest balancing test" and "alternative solution evaluation," and include a "judicial review catch-all clause" to prevent procedural abuse. In special circumstances,a "selective consolidation arbitration" rule should be introduced for chain contract disputes,a "limited additional arbitration + prior disclosure of evidence" mechanism should be adopted for related-party transactions,and a "notice-based effectiveness" model should be created for debt transfer. This typological design achieves a dynamic balance between arbitration efficiency and substantive justice. This institutional design maintains the contractual nature of arbitration while achieving a balance between efficiency and fairness in dispute resolution through procedural innovation. It provides theoretical reference and practical path for improving the third-party system in the revision of my country's Arbitration Law,ultimately promoting the deep integration of the arbitration system with the needs of modern commercial practice,enhancing the credibility of arbitration,and advancing the rule of law.

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