



*Arbitration
and non-signatories*

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The Starting Point

The Consensual Nature of
Arbitration

VS.

The Increasing Complexity of
Contractual Arrangements



The Starting Point

The "subjective scope" of
the arbitration agreement

VS.

The "extension" of the arbitration
agreement to non-signatories



Questions

- How far does an arbitration agreement encompass claims by or against a non-signatory party?
- How to deal with multiple but interdependent contracts?
- What “standards” should apply? In which “circumstances”?
- What role can play the UNCITRAL model law, the national laws or transnational rules?

Selected Situations of Extension

- By presenting an implied guarantee (Westland Helicopters Case)
- By virtue of agency representation (China National)
- By virtue of contractor and sub-contractor
- By a manifest intervention in the contract (X SAL, Y SAL and A)
- By applying the “group of companies” doctrine (Dow Chemical Case)
- By piercing the corporate veil
- By virtue of Estoppel principle (International Paper Case)

Manifest Intervention in the Contract

● **X S.A.L, Y S.A.L and A Vs. Z Sarl**

(ICC 2003 – Swiss Law and Lex Mercatoria)

- Extension of an arbitration agreement to a non-signatory (A) who was heavily involved in the operations of the two signatory Lebanese entities (X & Y) in a real estate construction contract with (Z).
- The behavior and role of the non-signatory in the phases of negotiating, performing the contract.
- The significant involvement of the non-signatory.
- The willful and manifest interference.

The Group of Companies Doctrine

- **Dow Chemical Company Vs. Isover Saint Gobain (ICC Case 4131 – 1982)**
- A Group of Companies may be regarded as a single legal entity
- The group constitutes one “economic” reality despite the “legal” independence.
- The parent company and its subsidiaries: the degree of control.
- “Vertical or horizontal extension” of the arbitration agreement.

Piercing the Corporate Veil /

Alter ego

- Position of the parent company and its subsidiary.
- Corporate form is used to effect fraud on a third party.
- Case where a subsidiary has signed an arbitration agreement on its own behalf but in fact its parent company is controlling and directing the subsidiary in respect of the contract which comprises an arbitration agreement.

The Principle of Estoppel

● **International Paper Case:**

- A party may be estopped from asserting that the lack of his signature on a contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him.

The State Contracts

- The State and the State-owned Entities
- The State and the inter-State Entities
- Extension of the arbitration agreement from the State to a State-owned or controlled entity and vice-versa
- Extension of the arbitration agreement from an inter-State entity to each State.

Plateau des Pyramides Case

- 1- From a State-owned entity to the State:
 - *Plateau des Pyramides* Case (ICC Case n. 3493) 1983
 - S.P.P.(Middle East) Ltd. Vs. Arab Republic of Egypt
 - SPP and EGOTH (Egyptian State-owned Co.) concluded a contract with ICC arbitration clause

Westland Helicopters Case

- 2- From an inter-State entity to the States:
- Westland Helicopters Ltd Vs. Arab Organization for Industrialization (AOI)
- AOI is an inter-state entity created by four States (Egypt, UAE, Qatar, Saudi Arabia)
- The arbitral tribunal compelled the four non-signatory States to arbitrate.

Conclusion: Road Map

- State Courts and Arbitral Tribunals tend to go through the following steps:
 - 1- The parties' actual or implied intent.
 - 2- The parties' legitimate and reasonable expectation in the light of the principle of good faith.
 - 3- The factual and true behavior of the non-signatory party and the sanction of any party's abuse of rights or fraud.



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Thank You

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