

Arbitration on the Transfer of Arbitration Agreements in the Context of Subrogation Rights

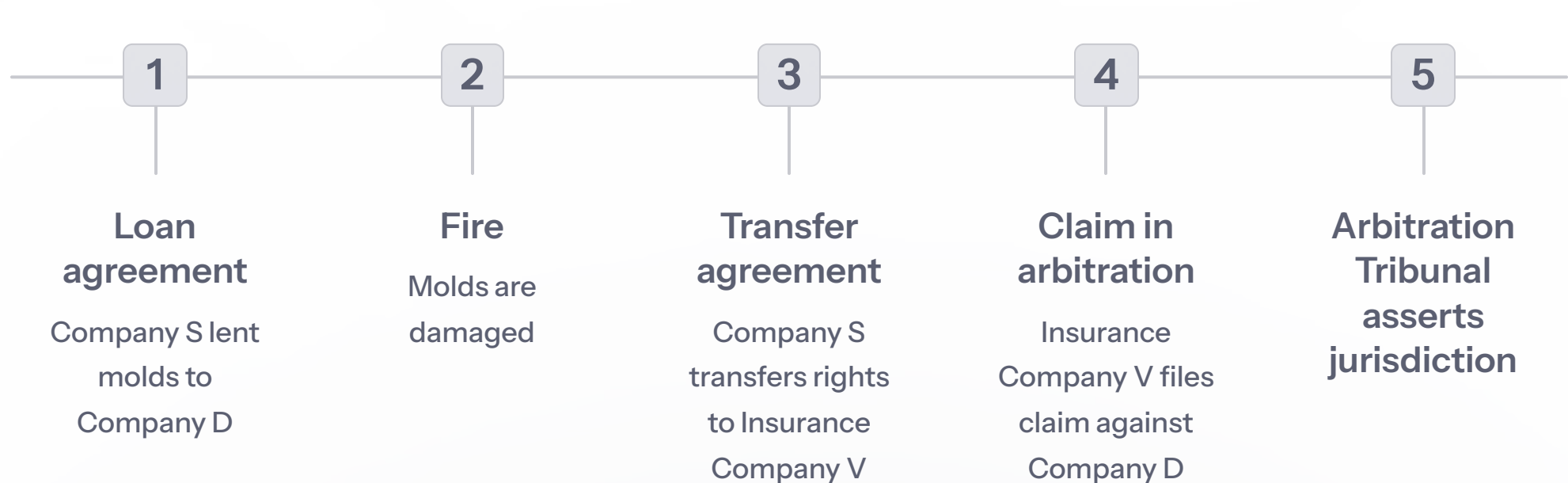
This case study analyzes an arbitration case in Vietnam concerning the transfer of arbitration agreements in the context of subrogation rights. It examines whether an insurance company, having acquired the right to claim damages from an insured party, can compel arbitration based on the original contract's arbitration clause, even without a direct agreement with the respondent.

Resource: <https://www.viac.vn/thu-tuc-trong-tai/086-%7C-chuyen-giao-quyen-yeu-cau-keo-theo-chuyen-giao-thoa-thuan-trong-tai-a229.html>

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Facts

Company S (Lender) lent molds to Company D (Borrower) under a loan agreement, which included an arbitration clause stipulating that disputes would be resolved through the Vietnam International Arbitration Centre (VIAC). A fire damaged the molds. Company S transferred its right to claim compensation for the damages from Company D to Insurance Company V under a transfer agreement. Subsequently, Insurance Company V filed a claim in arbitration against Company D, seeking compensation for the damages. The Arbitration Tribunal asserted its jurisdiction over the case.



Issue

Does the transfer of the right to claim damages through subrogation from one party (the original contracting party) to another (the insurance company) also transfer the arbitration agreement contained in the original contract, allowing the subrogee (the insurance company) to pursue arbitration even though it has no direct arbitration agreement with the respondent (the borrower)?

Holding

The Arbitration Tribunal ruled that when rights arising from a contract containing an arbitration agreement are transferred from one party to another, the arbitration agreement is also transferred, allowing the transferee to enforce the arbitration clause.



Reasoning

The Arbitration Tribunal based its decision on several legal provisions:

1. **Arbitration Agreement in Writing (Article 16 of the 2010 Commercial Arbitration Law):** An arbitration agreement is considered valid if the parties refer to a contract containing such an agreement. The loan agreement between Company S and Company D contained an arbitration clause, and although Insurance Company V did not directly enter into this agreement, it stepped into the shoes of Company S by virtue of the transfer of rights.
2. **Civil Code Provisions on Transfer of Rights (Article 309 of the 2005 Civil Code and Clause 2, Article 365 of the 2015 Civil Code):** These provisions state that the transfer of the right to claim does not require the consent of the obligated party (Company D in this case), unless otherwise agreed.
3. **Resolution No. 01/2014 (Clause 3, Article 7):** This resolution confirms that when there is a transfer of rights arising from a contract containing an arbitration agreement, the arbitration agreement remains effective for both the transferee and the transferor. As a result, the arbitration clause in the loan agreement extended to the relationship between Insurance Company V (the transferee) and Company D (the transferor).

Legal Principles

Arbitration Agreements Can Be Transferred

Arbitration agreements within a contract are transferrable along with the rights and obligations under that contract. If the right to claim under a contract is assigned or transferred, the arbitration clause transfers with it, binding the transferee and the obligor to arbitration.

Subrogation in Insurance Law

Subrogation allows an insurer, after indemnifying the insured, to assume the rights of the insured, including the enforcement of arbitration agreements or other contractual provisions, to recover losses from third parties responsible for the damage.

Lessons for Practice

1

Contracts and Future Parties

When entering into contracts that include arbitration clauses, businesses must understand that these clauses may bind not only the original parties but also future parties through assignment, transfer, or subrogation. A party acquiring rights under a contract (such as an insurance company after subrogation) can enforce the arbitration agreement, even against parties with whom they have no direct contractual relationship.

2

Validity and Enforceability

In cases involving the transfer of rights, whether through subrogation or otherwise, the arbitration agreement remains valid and enforceable unless explicitly excluded. This applies to both the transfer of the right to claim and the transfer of obligations.

3

Clarity and Predictability

Businesses should also consider including specific provisions in contracts to address the implications of subrogation and the continued applicability of arbitration agreements in the event of a transfer of rights or obligations. This would provide greater clarity and predictability in future dispute resolution.

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