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Abstract:

This paper analyses grounds for binding non-signatory companies by an arbitration agreement signed by another company from the same group of companies. It discusses certain doctrines created by state courts and arbitral tribunals to fill the gap in domestic regulations. Among them there is a group of companies doctrine, equitable estoppel and connected with it good faith doctrine as well as piercing the corporate veil. Purposes of these doctrines may seem similar, however, prerequisites as well as effects of their application are different. The most frequently used criteria include abuse, circumvention or violation of law or rules of equity as well as acting and behaving like a party to the contract that the company has not signed. The criterion of the purpose of law is also important. At the same time, a necessary condition is the existence of strong corporate connections between a company that has not signed the contract and at least one of the formal parties to the contract as well as significant under-capitalization of a subsidiary company. Binding non-signatory related companies on the basis of these doctrines may lead to the attribution of legal or contractual obligations or to assigning responsibility for actions or intentions. This may result in the assignment of obligations or liability of the company to its shareholder or vice versa, as well as relativisation of the separateness between two related companies that are not in the relationship of domination or dependence. The doctrines discussed in the paper aim at protecting the law against abuse and avoiding unfair decisions. Excessive vagueness of the prerequisites for their application may, however, lead to legal uncertainty and, as a result, threaten the security of trade. Therefore, such premises need to be defined as precisely as possible on the basis of objective criteria.