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On the Legal Application of Foreign-related Format Contracts from the Perspective of Consumer Protection



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Abstract: This paper makes theoretical analysis and practical discussion on foreign-related format contracts, and holds that the protection of consumers' rights and interests in foreign-related format contracts develops slowly from the perspective of consumer protection. This paper intends to analyze the reasons why consumers are in a natural weak position from the contradiction arising from the legal application of foreign-related format contracts. Although the appearance of foreign-related format contracts is in line with the trend of economic development, and it can not be banned unreasonably, the success of consumer rights protection is the foundation for the continuous improvement of the economic situation. Therefore, while protecting consumers, the impact on foreign-related format contracts should have a positive value orientation that can give consideration to substantive justice and conflict justice, and implement the guiding principle of protecting the interests of the weak.

Keywords: Foreign-related format contract; Protection of consumers' rights and interests; Applicable law of foreign-related civil legal relations

1. Overview of consumer protection and foreign-related format contracts

This chapter discusses the essence of consumer protection, which is to protect the trust interests of members of society for many times and daily social consumption behaviours, and to enhance consumer confidence, so as to achieve the purpose of stimulating economic and social progress. The close relationship between consumer protection and foreign-related format contracts is directly reflected in the transaction conditions and behaviours that serve the international commercial process. The word foreign-related is interpreted in the literal sense, mainly referring to the foreign-related factors contained in the contract, and this foreign-related nature can make the standard contract get in touch with the application of laws of other countries or regions. With the prosperity and development of international commercial activities, more standardized foreign-related format contracts appear in more transactions closely following the opening of the consumer market, such as cooperation agreements that are required to be checked by default in order to obtain users' payment permission and personal identification information in online shopping. How to better safeguard consumers' rights and interests in such frequent situations is something that this paper needs to discuss.

2. Legal application of foreign-related format contracts

2.1 The risk of asymmetric jurisdiction intensifies.

Asymmetric jurisdiction refers to the right of choice

the contract to choose jurisdiction is restricted. Because the seller already has the purpose of strengthening its dominant position in the foreign-related format contract, the seller can put itself in a favourable position of the jurisdiction in the pre-drafted contract terms, which will aggravate the risk of asymmetric jurisdiction. This kind of risk of asymmetric jurisdiction is hidden, and consumers may bear this risk unwittingly, which is enough to show that the weak position of consumers in foreign-related format contracts deserves attention. In international commercial practice, PayPal, a third-party payment system in the United States, once stipulated in its user agreement that it could only choose the Singapore court or the court where PayPal is located in case of disputes. This asymmetric jurisdiction risk can maximize their own interests, and at the same time, it is intended to discourage consumers' enthusiasm for rights protection through high rights protection costs (Wei, 2018).

2.2 The phenomenon of node specialization is enhanced.

The user agreement of Microsoft Windows XP software sold in China will be governed by the laws of Washington State of the United States stipulated in the agreement. Any claims for breach of contract or other disputes arising from the agreement will be settled by the American Arbitration Association in Washington State of the United States according to international arbitration rules. If the user who needs to install does not agree with the user agreement, the software can not be installed normally. It can be seen that the parties who occupy a dominant position in foreign-related format contracts not only take the initiative to choose their own jurisdiction subjects but also take the initiative to grasp their own jurisdiction laws. Although the software can be installed at multiple or different virtual addresses, thus breaking through the user's consent or rejection of the agreement and producing objective foreign-related regional connection

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given to one party in a contract so that it can choose and bring a lawsuit within the scope of a competent court or arbitration institution, while the right of the other party to

(Qiao & He, 2007), the foreign-related format contract can take the civil legal relationship appearing in the conflict norms as the factual basis for applying other countries' laws, and the connection point that actually reflects the connection between the civil relationship and other countries' laws is specifically set. That is to say, no matter whether the foreign-related connection is strengthened or weakened, the connection point will be given an exclusive appearance by accepting the specialization of the connection point in the foreign-related format contract, which will further reduce the demand space for consumers to put forward reasonable softening of the connection point according to the principle of closest connection. Therefore, consumer protection will be weakened or even restricted (Xu, 2016).

2.3 Marginalization of applicable law

The choice of law clause is a special clause in the contract. If the choice of law clause in the foreign-related format contract is not clearly marked, its legal effect will be doubted. In this case, the judge's discretion will play a major role, which may lead to the marginalization of the application of applicable law. Under normal circumstances, the application of applicable law needs to be guided by conflict norms, and the connection point is established. Finally, the specific substantive norms that stipulate the rights and obligations of the parties can be determined, possibly through the adverse reaction of one or more forum countries applying foreign laws according to their own conflict norms. However, the judge has the right and possibility to choose the laws of other countries at his discretion, and the situation that the laws of other countries may not protect the consumer cannot be completely ruled out. Although a judge's discretion does not absolutely weaken consumer protection, it is not necessarily the best choice to avoid the marginalization of applicable law from the perspective of consumer protection.

3. Contradictions in the application of foreign-related civil laws

According to the principle of autonomy of will in a contract, the parties can choose the applicable law of the contract by agreement, but the autonomy of will in foreign-related format contracts has limitations. The reason is that the principle of autonomy of will in foreign-related format contracts is not allowed to violate the mandatory provisions in the applicable law, and the other party only makes the decision of acceptance or rejection (Xu, 2005).

In addition, there are liability problems in foreign-related format contracts. Mainly reflected in the following aspects.

First, it is controversial whether this foreign-related format contract can be defined as a consumer contract. If one of the parties in a foreign-related format contract can be recognized as a consumer, there is no doubt that the contract is both a foreign-related format contract and a consumer contract. However, the right to choose the applicable law of foreign-related format contracts is not in the hands of consumers, and the parties in a favourable position may not choose to apply the law of consumers' habitual residence. When considering the situation of obviously unfair when concluding a contract, the party providing the foreign-related format contract should fulfil its reasonable obligation of prompt, and subjectively, it has no intention to evade the legal provisions beneficial to consumers.

Second, if there is a problem with the goods or services, there is a dispute about whether the tort liability or the product liability should be investigated. From the single-word meaning, the scope of infringement is larger than and can include product liability, and how to distinguish between infringement liability and product liability depends on whether the contract itself conforms to the large scope of infringement liability or the small scope of product liability. What kind of responsibility should be investigated for this foreign-related format contract can also be set in advance in the contract.

4. The influence of consumer protection on foreign-related format contracts

In the practice of private international law, it is always difficult to balance substantive justice with conflicts and disputes, especially in the application of foreign-related format contracts, where the rights of both parties are unequal. In particular, consumers are in a weak position and need special protection from conflict rules. In order to balance substantive justice, foreign-related format contracts should be required to be responsible for protecting the parties' right to review and their obligation to prompt risks. This is a conditional constraint on the principle of party autonomy, and a guarantee and support for the principle of the closest relationship. The protection of the interests of the weak in private international law echoes the rules of the protection of the interests of the weak in substantive law. Therefore, although the foreign-related format contract is a convenient way to conclude the development of international business, it should not be an exception to the principle of the protection of the interests of the weak.

Conflict of Interest

The authors declare that they have no conflicts of interest to this work.

References

- Wei, Q., (2018). Research on the Validity of Mandatory Arbitration Clause in Cross-Border Consumer Contracts[J]. *Journal of Law*, 39(05), 122-130
- Qiao, S.T., & He, Q.S. (2007). The Effectiveness of Arbitration Clauses in Electronic Format Contracts—An Example of Microsoft Software End User License Agreements in the Chinese Consumer Market[J]. *Wuhan University International Law Review*, 7(02), 85-95
- Xu, X.J. (2016). On Application Of Law Of The Third-party Cross-border Electronic Payment Disputes — — In The View Of Consumers Protection[J]. *Citizenship and Law (Law Edition)*, 29(06), 29-32
- Xu, J. K. (2005). Conflict Law Regulations on International Standard Contract—From Analysis of the Clause of Law Application[J]. *Tribune of Political Science and Law (Journal of China University of Political Science and Law)*, 23(01), 181-188.

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