

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2025, 5	Decision date:	2 January 2025	Res judicata: No (complaint pending – BGH, I ZB 9/25)
Court:	Higher Regional Court of Frankfurt am Main (OLG Frankfurt)			
Case No. :	26 SchH 1/23 Case No. other instances: I ZB 9/25 (German Federal Court of Justice, BGH)			
Keywords:	Third-party effect of arbitration clause, framework supply agreement, affiliated companies, contract interpretation, conduct of parties, contract for benefit of third parties			
Key legal provisions:	Section 328 German Civil Code (BGB) Sections 133, 157 German Civil Code (BGB) Section 1031 German Code of Civil Procedure (ZPO) Section 1040 German Code of Civil Procedure (ZPO)			

Higher Regional Court of Frankfurt am Main extends arbitration clause in framework supply agreement to third parties

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On 2 January 2025, the Higher Regional Court of Frankfurt am Main (OLG Frankfurt) ruled that an arbitration clause in a framework supply agreement extends to third parties in the sense of Section 328 German Civil Code (BGB). By means of supplementary contract interpretation and based on the conduct of the parties, the court confirmed that the arbitration clause need not explicitly address its applicability to third parties.

Facts

The applicant, a pharmaceutical manufacturer based in China, entered into a long-term framework supply agreement ("FSA") with X AG in 2007. The FSA explicitly extended its applicability to affiliated companies of X AG allowing them to purchase products under its terms. The respondents, affiliates of X AG, placed purchase orders for several pharmaceuticals under the FSA. The FSA included an arbitration clause which was amended several times after its conclusion.

In 2018, the respondents discovered a contamination in the pharmaceuticals purchased under the FSA which led to a large-scale product recall and financial losses. Subsequently, the respondents initiated arbitration proceedings against the applicant seeking damages and indemnification for alleged contractual breaches. The applicant challenged the jurisdiction of the arbitration tribunal, arguing that the respondents were not bound by the arbitration clause of the FSA as they were no direct parties to the FSA.

After initiating arbitration proceedings, the applicant and X AG agreed in December 2020 to amend the arbitration clause in the FSA and agreed for disputes to be referred to the International Chamber of Commerce, with Frankfurt am Main as seat of arbitration and English and Mandarin as languages of arbitration.

In a preliminary ruling in 2022, the arbitral tribunal affirmed its jurisdiction over the respondents' claims. The applicant contested this ruling, seeking a declaration that the arbitral tribunal lacked jurisdiction before the OLG Frankfurt.

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Key findings

The OLG Frankfurt dismissed the applicant's request for a declaration of the arbitral tribunal's lack of jurisdiction. The court found that the FSA constitutes a "genuine contract for the benefit of third parties" pursuant to Section 328 BGB, explicitly granting affiliated companies of X AG enforceable rights to place purchase orders under its terms. Depending on the circumstances of the individual case and purpose of the contract, two contracting parties may confer rights a third party pursuant to Section 328 BGB.

The court interpreted the FSA in light of the parties' intent pursuant to Sections 133 and 157 BGB and the overarching contractual structure. The court emphasized that respondents' purchase orders, although not explicitly referencing the FSA, were inherently linked to it. The arbitration clause was deemed applicable to the respondents' claims, as they arose directly from the contractual framework established in the FSA. The court found that the FSA's terms demonstrated a clear intention to extend the arbitration clause to affiliates. An explicit reference to the arbitration clause was not strictly required for its applicability to a third party, given the explicit provisions of the FSA – particularly its definitions of "purchaser" and "affiliate" – and the parties' conduct.

The court also emphasized that the extension of the arbitration clause to a third party does not constitute an impermissible burden as long as the third party's rights under the agreement are sufficiently clear and established.

Additionally, the court confirmed that the form requirements for arbitration agreements under Section 1031 ZPO are satisfied. The court did not require the respondents to conclude a separate written arbitration clause given that the FSA itself complies with the formal requirements set forth in Section 1031 ZPO.

The OLG Frankfurt has outlined the significance of the parties' conduct during a long-term supply agreement. By applying extensive analytical methods, the court held that the framework supply agreement was a genuine contract for the benefit of third parties pursuant to Section 328 BGB, which does not strictly require explicit provisions extending the arbitration clause to third parties.

Comment

The decision outlines the importance of thorough arbitration clause drafting and highlights the vital role of the parties' conduct in interpreting such clauses within multi-party constellations. The "evergreen" in German rulings based on Sections 133, 157 BGB – "the principle of supplementary contract interpretation taking into account all circumstances of the individual case" – lead to the court's ruling that explicit reference is not necessarily required for a third-party applicability of an arbitration clause.

For multinational supply chains, this decision highlights the enforceability of arbitration clauses beyond the signatory parties, potentially broadening the scope of disputes subject to arbitration. Companies should carefully draft their framework agreements to clearly delineate the rights and obligations of third-party beneficiaries concerning arbitration.