Analysis of Legal Issues Related to Debt Accession Determination

Donglin Peng*

The 11th Research Institute of China Electronics Technology Group Corporation, Beijing, China

*Corresponding author, e-mail: pengdl11suo@sina.com

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Abstract: *The provisions of the Civil Code of the People's Republic of China on the debt accession system are of great significance and make up for the deficiencies of the contract law. However, due to the small number of provisions and the complexity of judicial practice, it does not reduce the difficulties and confusion in the application of the law. The most important reason for the confusion and difficulties in the application of the law is the unclear recognition of the system of debt accession. Therefore, the recognition of debt accession is crucial. On the one hand, it is necessary to focus on the internal aspects, including the analysis of concepts and constituent elements, and on the other hand, it is necessary to focus on the external aspects, distinguishing between systems that are similar to it, in order to reduce confusion.*

Key words: *Debt Accession; Joint and Several Liability Guarantee; Third Party Substitute Performance; Manifestation*

Introduction

On January 1, 2021, the Civil Code came into force, marking the successful completion of the codification of the first law named after a code in the new China. The Civil Code has introduced significant reforms and innovations in many aspects, and the inclusion of debt is an important aspect (Wang, 2021). Prior to the Civil Code, debt accession was only a doctrinal concept (Zhao, 2005), but Article 552 of the Civil Code formalized the debt accession system in the form of a new system, which made up for the deficiencies of China's contract legislation. In fact, the debt accession system has been widely used long before the Civil Code came into force, and there are many disputes involving debt accession in judicial practice. How to determine whether it is debt accession, what types of debt accession, and how to distinguish debt accession from guarantee and third-party substitution are the key points and difficulties in judicial practice. The Civil Code only determines the debt accession system in the form of law and makes a simple provision, but the problems that plague the practical circles are still not solved. Therefore, the exploration and clarification of the debt accession system is still a key point and difficulty to be further studied and overcome in practice and theoretical circles.

Overview of the Legal Regime for Debt Accession

The Concept of Debt Accession

Debt accession is also known as concurrent debt assumption. Although debt accession has been widely used in practice and studied in theoretical circles, and the Civil Code also provides for it, there is no clear and unified concept of debt accession so far, which is one of the important reasons for the confusion of its application in practice. However, there have been people in the theoretical and practical circles exploring what debt accession is and trying to define it accurately and reasonably.

In the theory, there are different opinions on the concept of debt accession, but the essence is similar. Zhang Guangxing believes that debt accession is a way of debt assumption in which the debtor does not leave the debt relationship, but a third party joins the debt relationship and shares the debt with the debtor (Zhang, 1997). According to Shi Shangkuan, debt accession is the concurrent assumption of debt, which is a contract that is based on the valid establishment of another person's debt, and the third person, for the purpose of guarantee, newly assumes a debt with the same content as the debt at the time it is assumed (Shi, 2000).

In judicial practice, since there are more and more disputes involving debt accession, some people's courts have defined debt accession based on the needs of practice. The 42nd meeting of the Judicial Committee of Jiangsu High People's Court held on September 23, 2005 pointed out that "debt accession refers to the third party reaching a tripartite agreement with the creditor and the debtor or the third party reaching a two-party agreement with the creditor or the third party unilaterally promising to the creditor that the third party will perform the debtor's debt, but at the same time not releasing the debtor from the obligation to perform the debt The way to assume". When interpreting the issue of debt joining, the Civil Second Chamber of the Supreme People's Court identified debt joining as the third party's promise or agreement with the creditor to repay the debtor's debt, forming a pattern of joint repayment of debt by the third party and the debtor. The above definitions of the debt joining system are based on past legal provisions, theoretical development and judicial practice. With the continuous progress of theory and practice and the incorporation of the debt joining system in the Civil Code, it is necessary to define the debt joining in line with the current actual situation. Combined with Article 552 of the Civil Code and the opinion of the Supreme Court, I believe that debt joining refers to: in the same lawful and valid debt relationship, in the case that the original debtor does not leave the debt relationship, the third party joins the debt relationship by way of agreement with the debtor or unilateral promise to the creditor, and after notifying the creditor, becomes the new debtor to assume joint and several liability with the original debtor Debt assumption method.

Constituent Elements of Debt Accession

The valid establishment of the original debt relationship. This is a prerequisite for debt accession. The original debt must be legally valid, otherwise the debt-debt relationship has no legal effect, and it cannot constitute debt accession. For example, in the civil judgment of the second trial of the dispute between Zhao Fuping and Xue Liya over the sales contract, the "sales contract relationship" formed between Xue Liya and the appellee was fraudulent and coercive, and the contract was invalid, and the People's Court held that based on the invalid legal relationship, it could not constitute a valid The People's Court held that the invalid legal relationship could not constitute a valid debt accession.

The original debt is transferable. Second, the original debt is a transferable debt and is performable by the

debt joiner. Common debts that are not transferable are: debts with exclusive nature, debts stipulated by law or agreed by the parties that can only be performed by both parties.

The accessionist has the intention of debt accession. The meaning expression is of great importance to the civil legal act, and the joiner of debt accession must have the meaning expression of accession. In the civil judgment of the second trial of the construction contract dispute between Meijian Building Systems (China) Co., Ltd. and Qinghai Mingrui Real Estate Development Co., Ltd., the People's Court then held that there must be an explicit intention of the third party to jointly assume the debt with the debtor to constitute debt accession. There are express implied expressions of intent, and according to the Civil Code, the expression of intent to join the debt is made in an express manner, either by agreement with the debtor or by expressing the willingness to join the debt to the creditor.

Not to make the consent of the creditor a constituent element. Prior to the enactment of the Civil Code, there were different views on whether the consent of the creditor was required for debt accession. Article 552, which states that "the creditor does not expressly reject it within a reasonable period of time," means that such an assumption of debt does not require the express consent of the creditor, because the status of the original debtor is not changed, but only the addition of a new debtor does not affect the interests of the creditor, so the express consent of the creditor is not required. This is more in line with the intention and interest of the parties (Xiao, 2020).

Comparison of Debt Accession and Related Legal Systems

The debt accession system is independent and cannot be replaced by the related legal system (). However, in the principles of civil law as well as in judicial practice, the debt accession system has certain similarities with many systems, which can lead to confusion in application, especially with the joint and several liability guarantee system. Therefore, it is necessary to clarify the difference between the debt accession system and these systems.

Accession of Debt and Several Liability Guarantee

Theoretical distinction between debt accession and joint and several liability warranties. Guarantees are divided into general guarantees and joint and several liability guarantees. The most central difference between general warranty and joint and several liability warranty is whether the guarantor has the right of first defense. In the Second Civil Judgment on Business Trust Dispute between China Urban Construction Holding Group Limited and Anxin Trust Company Limited, the Supreme People's Court held that "guarantee, especially joint and several guarantee liability, is the same as debt accession in the sense that it aims to guarantee the original debtor's debt. It is more difficult to distinguish between the two in the case where the creditor and the assignee have reached an agreement to establish the accession of debt. However, in practice there is still a need and a criterion for the distinction."

In fact, theoretically speaking, the two are not difficult to distinguish. First of all, the nature is different, the debt accession has independence while the joint and several liability guarantee has subordination (Huang,

2002). Secondly, the identity of the third party is different. The result of debt accession is to perform the debt of the original debtor as its own debt, while the result of joint and several liability guarantee is to provide guarantee for the debt, and the joint and several liability guarantor is not the debtor. Once again, the period of liability performance is different. The joint and several liability guarantee applies the provisions of the guarantee period, and if the creditor does not request the guarantor to assume the guarantee liability during the guarantee period, the guarantor will no longer assume the guarantee liability. In contrast, there is no period of accession of debt, and the debtor assumes the liability of the debtor as an independent debtor from the beginning of accession. Finally, there is also a difference in the formal elements, as the guarantee must be in writing but there are no formal requirements for the accession of the debt.

The distinction between debt accession and joint and several liability guarantee in practice - the meaning is clear and the meaning prevails. Ltd. v. Pizhou Hanhua Trade Co. Ltd. and Xuzhou Antaisun Real Estate Development Co. Ltd. in a dispute over construction contract, the Supreme People's Court, in discussing the issue of whether Antaisun should be jointly liable for the payment of construction money and interest owed by Pizhou Hanhua, stated that: the letter of guarantee issued by Antaisun to China Construction Seventh Bureau II The Letter of Guarantee issued by Antai Shun to CCBC II stated that Antai Shun was willing to assume joint and several liability for all the responsibilities and obligations of Pizhou Hanhua as agreed in the construction contract, but the letter did not indicate that Antai Shun had the intention to join the debt. However, the letter did not state that the company had the intention to join the debt. The second company of CCB7 claimed that the act of issuing the Letter of Guarantee by Antaisun was an act of debt joining, which lacked factual and legal basis. It can be seen that the Supreme People's Court believes that the accession of debt must be expressed, and if there is no accession of debt, it cannot be recognized as accession of debt.

In practice, when the meaning is unclear and indistinguishable - interpretation of meaning takes precedence. Although theoretically it is easy to see the difference between the two, in judicial practice the distinction between the two is difficult because not every party can understand the difference between the two in daily life, and not every written document involving the two can clearly distinguish the nature of the two. In the event of a dispute, especially when the written document does not clearly indicate which is which, it is a major problem in judicial practice to deal with if one party claims to be a debt accession and the other party claims to be a joint and several liability guarantee. However, the Civil Code does not deal with these.

The civil legal act is the act of civil subject to establish, change or terminate the civil legal relationship through the intention, the intention has an extremely important role for the civil legal act. When the meaning is unclear, the interpretation of the meaning should be carried out first, which is also the embodiment of the principle of private law autonomy. The interpretation of the expression of meaning with a relator shall be determined in accordance with the words used, taking into account the relevant provisions, the nature and purpose of the act, custom and the principle of good faith. The intention of the parties is the key to distinguish the accession of a debt from a guarantee. According to German scholar Dirk Rochilds, the distinction between guarantee and accession of debt should first be based on the intention of the parties, and in case of doubt, it should be determined by interpretation (Wang, 2021).

In judicial practice, the people's courts also focus on the interpretation of the parties' meanings. In the civil

judgment of the first instance of the loan contract dispute between Zhang Fan and Huinuo Commercial Management (Wuhan) Co. Hao Jianpei and Zhou Xie provided guarantees for the other two loans, Zhang Fan also claimed that the three of them were liable for the guarantees, the five related loans occurred in the same year and the commitment letter was made for the five loans as a whole, etc., the court held that the parties' intention when signing the repayment commitment letter should be a guarantee rather than a debt accession.

The actual economic interest relationship in the interpretation of the meaning. In the interpretation of the parties' expressions of intent, it should be based on the interpretation of the meaning of the text and the comprehensive use of the system interpretation, purpose interpretation, customary interpretation and the principle of good faith and credit, etc., to explore whether the third party has the intention of jointly assuming the debt with the debtor, in order to determine the real contracting purpose of the third party (Liu, 2021). In interpreting the meaning of the third party, various aspects should be taken into consideration, such as whether the third party has the intention to pay the debt for the debtor, whether the performance of the debt has an actual economic benefit relationship to the third party, whether there is joint actual performance between the parties, whether there is an order of performance of the obligations of the third party and the debtor, etc. But according to the more typical adjudication documents in China in recent years, the economic interest relationship is an extremely important reference factor for the interpretation of the meaning.

In the civil judgment of the second trial of the dispute between Qujing Taian Construction Engineering Co., Ltd, Chuxiong Zhaoshun Real Estate Development Co., Ltd and Yunnan Stacking Xin Trade Co., Ltd, the court's decision is that if the nature of the parties' meaning and behavior is unknown, the legal relationship should be determined according to the contractual agreement and the interest relationship between the parties, as the general theory and jurisprudence of German civil law holds that the accession of debt The accession should be based on the fact that the acceding party has its own, direct economic interest. In other words, the accession of debt can be recognized only when the third party participates in the actual economic interest of itself.

In the civil judgment of the second trial of the business trust dispute between China Urban Construction Holding Group Co., Ltd. and Anxin Trust Co., Ltd., the Supreme People's Court held that: when the intention of the parties is unclear, a comprehensive judgment should be made in the light of the specific circumstances, such as the act of undertaking mainly for the benefit of the original debtor, it can be recognized as a guarantee, and when the bearer has a direct and actual interest, it can be recognized as debt accession.

When the explanation of thinking is not applicable - presumption rule.Although theoretically it is easy to see the difference between the two, in judicial practice the distinction between the two is difficult because not every party can understand the difference between the two in daily life, and not every written document involving the two can clearly distinguish the nature of the two. In the event of a dispute, especially when the written document does not clearly indicate which is which, it is a major problem in judicial practice to deal with if one party claims to be a debt accession and the other party claims to be a joint and several liability guarantee. However, the Civil Code does not deal with these.

Debt Accession and Third-Party Substitute Performance

Third-party substitution refers to the legal act of having a third party perform the payment obligation to the creditor on behalf of the debtor in the course of contract performance.

Theoretical distinction between debt accession and third-party substitute performance. In terms of legal status, the subject of the debt in the third person's substitution does not change, the parties to the contract are still the original creditor and debtor, and the third person is not a party to the contract, which is different from the debt accession; in terms of liability, in the third person's substitution, if the third person does not perform the debt or performs it improperly, the third person will not bear the liability for breach of contract, but in the case of debt accession, the accession will As to whether the creditor can request the third party to perform the debt, in the accession of debt, the creditor can request the acceder to perform the debt, but in the third party's substitute performance, according to the principle of relativity of debt, the creditor can only request the debtor but not the third party to perform the debt.

The practice involves disputes between the two. Although the two are easy to distinguish in theory, disputes involving them in practice are still more complicated. Taking a case of equity transfer contract as an example, different views emerged among courts at various levels as to whether Company B should bear the responsibility of repayment. The court of first instance held that the promise of Company B belonged to the promise of a third party outside the contract to assume the debtor's obligation to the creditor in the contract, and should be recognized as debt accession. The court of retrial held that the amount Company B had promised to pay to the creditor was the remaining equity transfer amount. Since there was no equity transfer relationship between Company B and the creditor, Company B had no obligation to pay the equity transfer amount. The reason for its payment is based on the agreement of the Supplementary Agreement, and Article 2 of the Supplementary Agreement has agreed that the capital increase money delivered by Company B to Company A should be given priority to repay the so-called equity investment money (i.e. equity transfer money) owed by Company A to the creditors. It can be seen that the payment of the remaining equity transfer amount to the creditors promised by Company B in the Payment Agreement is actually the performance of the payment obligation to the creditors on behalf of Company A.

In summary, when the distinction between debt accession and third party performance on behalf of the unclear, it also involves the interpretation of the meaning expression, which should likewise be based on the interpretation of the context, combined with the system interpretation, purpose interpretation, customary interpretation and the principle of good faith and other comprehensive analysis, to explore the real contracting purpose of the third party, and finally determine whether it needs to bear the relevant civil liability to the creditor for breach of contract and so on.

Debt Accession in Practice

Sign, Stamp and Seal on the Original Payment Document

In judicial practice, it is very controversial and difficult to reach a consensus on which type of dispute belongs

to debt joining. In summary, there are both written and unwritten forms of debt accession. In practice, there is no strict requirement that debt accession must be in written form, which is one of the differences between debt accession and guarantee emphasized before.

In the first instance civil judgment of Ren Yongqian and Lu Shaogang, Liang Guangyu labor contract dispute, the People's Court held that: the defendant Liang Guangyu signed and stamped on the note, should be regarded as Liang Guangyu to the defendant Lu Shaogang to transfer the debt to his act of recognition, the plaintiff in this case Ren Yongqian and the outsider Lu Jingming did not explicitly refuse, in line with the debt accession.

In the civil judgment of the first instance of civil lending dispute between Xiang Hua and Qiu Dezhi and Li Liangling, the People's Court held that: the defendant Jiaxin Agricultural Company's stamped act is the act of debt joining, and shall bear joint and several liability for settlement according to law.

Additional Commitment Documents with Debt Accession Effect

Ltd. and Fu Minzhi and Xun Jiangran in the first instance civil judgment of the dispute over the financial loan contract, the People's Court held that: the parties, as persons of full civil capacity, should know the legal consequences of the signature, and their signatures on the joint borrower's undertaking means that they have the intention to join the debt.

Ltd. and Liu Liang, the People's Court held that: the "Housing Lease Contract" in question was a true expression of the parties' intention, and the content of the contract did not violate the mandatory provisions of laws and administrative regulations, so it should be confirmed as legal and valid. The parties agreed to terminate the contract, the defendant Liu Liang for the plaintiff issued a note for the act should be recognized as its debt to the amount owed to join the act.

In the plaintiff building materials company and the defendant communication company, Liu Bixiang, Liu Chen sales contract, debt accession dispute civil judgment, also because the defendant Liu Bixiang and Liu Chen on the defendant communication company owed the plaintiff building materials company to the name of the debtor issued a note, was found to constitute debt accession.

No Written Document, but there is a Voluntary Expression of Joint Liability

Ltd. and Zhang Hao, Urumqi Zhongyishengda Industrial Development Co., Ltd. in the civil judgment of the second trial of the dispute over the housing lease contract, the People's Court held that Zhang Hao did not dispute the joint responsibility with Qixin Naiyao during the trial, and agreed to take responsibility in the first and second trial, which was a self-admitted debt accession.

In the case of Sun Baorong and Yang Huanxiang, Langfang Yujing Real Estate Development Co., Ltd.'s capital increase dispute , the parties also voluntarily assumed responsibility in the lawsuit and were considered by the People's Court as debt accession.

Further Improvements are Needed for the Debt Accession System

The addition of the debt accession system is the outstanding highlight of the Civil Code, which responds to the needs of the rich civil and commercial practice and has positive legislative and practical significance. However, as we can see from the above discussion, the debt accession system involves multiple legal relationships among multiple subjects, which is inevitably overstretched by a single legal provision and still relies on the subjective initiative of judges in practice, which inevitably leads to confusion in the application and interpretation of the law, so the debt accession system needs to be further improved. Not only the recognition of debt accession needs to be clarified, but also other aspects of debt accession need to be supplemented in order to meet the needs of the development of practice (Li, 2016).

First of all, the constitutive elements of the debt accession system should be clarified. The constitutive elements are the first reference to judge whether the legal relationship is debt accession in practice, and are also the important aspects to distinguish from the legal relationships such as guarantee and third party performance. The clarity of the constituent elements is the premise and guarantee of the debt joining system in its infancy.

Second, the debtor's rights, such as the right of defense, especially the right of objection, should be clearly stipulated. The Civil Code only provides that a third party may join a debt by unilateral promise, but does not elaborate on whether the debtor has the right to refuse in such a case.

Once again, the more controversial issues should be responded to in order to avoid the opinion on the application of the law. For example, whether a third party has the right of recovery against the original debtor after assuming the liability for satisfaction. One view is that the right of recovery is enjoyed, but the bearer has no right to recover from the original debtor if the debt is settled knowing that the debt has passed the statute of limitations or the debt relationship is extinguished due to other reasons. Another view is that the right of recovery is not enjoyed, and the third party, as an independent civil subject, should know the nature, quantity and subordination of the debt when he/she expresses his/her intention to join the debt, and should be deemed to be jointly and severally liable for all debts incurred when he/she does not explicitly exclude a certain type of debt burden (Gao & Huang, 2017).

Conclusion

Finally, the judicial interpretation should be introduced and updated with the development of practice and the exploration of the debt accession system, so as to keep pace with the times. When legislating the debt accession system, it is true that general and principled provisions should be considered first to make the legislation highly capping, but with the continuous accumulation of practical experience, it is necessary to make up for the lag of the debt accession system legislation in the form of judicial interpretation.

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