

Research Article

# The Spillover Effect of the Arbitration Agreement to Third Parties: An Analytic Study in Jordanian Legislation

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**Abstract:** In essence, grounded in the doctrines of contractual freedom and *pacta sunt servanda*, every contracting entity is obligated to perform the duties stipulated within its agreement. Yet, the intensification of global commercial operations and large-scale economic initiatives has given rise to complex mega-projects, which often require the formation of several mutually dependent contracts. These contracts are usually intertwined through their subject matter, underlying cause, temporal coordination, and management by interconnected corporate entities. Such developments have prompted increasing criticism of the absolute application of this principle within the commercial arbitration sphere. Accordingly, this research seeks to delineate the personal scope of arbitration agreements and examine the justification for extending their applicability to non-signatory parties. To fulfil this purpose, the study employed a normative legal methodology, relying on both primary legal texts and relevant secondary materials. The findings indicate that implementing the doctrines of joinder and intervention plays a pivotal role in harmonising the interests of litigants and third parties alike. These mechanisms serve as vital procedural instruments within the arbitration framework, designed to overcome potential obstacles that could impede the arbitration process, in a manner analogous to litigation procedures. They also facilitate the expansion of the arbitration's personal reach, thereby aligning the dispute's scope with practical exigencies. The study ultimately advances several recommendations aimed at remedying the deficiencies observed in existing arbitration legislation governing commercial contract disputes. Chief among these is the adoption of joinder and intervention principles to ensure the equitable protection of the rights and interests of external stakeholders and to reinforce the pursuit of justice. Furthermore, the research advocates for the insertion of a new provision into the Jordanian Arbitration Law empowering arbitral tribunals to authorise the inclusion or participation of third parties in arbitration proceedings when deemed appropriate.

**Keywords:** Arbitration Agreement, Third Parties, Jordanian Legislation, Arbitral Tribunal

## 1. Introduction

A contract represents a legally enforceable arrangement established between two or more parties through mutual consent, and grounded in the doctrine of *pacta sunt servanda*, which requires each party to honour the commitments undertaken. Once properly constituted, a contract generates binding rights and duties exclusively applicable to its signatories, generally excluding non-signatory persons in line with the principle of privity of contract [1]. Nevertheless, the global expansion of commerce and the proliferation of large-scale, multifaceted projects involving networks of interrelated contracts have prompted debate over whether arbitration agreements may extend beyond the signatories to encompass third parties whose rights or obligations are intrinsically linked to the underlying contractual relationship [2].

Whenever an obligation exists, corresponding civil liability arises, whether derived from contract or tort. To resolve disputes among contracting parties, arbitration has emerged as a preferred mechanism, surpassing traditional litigation due to its distinctive advantages. These include adherence to the principles of justice and equity, the protection of confidentiality to preserve the parties' reputations and prevent information disclosure, and the promotion of continued business relations even amid disputes. Arbitration also ensures faster dispute resolution compared to court proceedings. Moreover, the ability to select arbitrators possessing integrity, independence, and technical competence constitutes a defining feature, fostering confidence and efficiency by reducing procedural delays [3].

Arbitration further allows flexibility in determining its form—whether legally binding or advisory, private or institutional, national or transnational—as well as in setting parameters such as the venue, duration, and language of proceedings. Judicial intervention is generally

confined to a supportive and supervisory role, limited to ensuring procedural propriety and the enforceability of awards, thereby preserving the balance and functionality between arbitration and the judicial system. A principal distinction separating arbitration from conventional court litigation lies in the autonomy granted to the parties to appoint impartial, independent, and expert arbitrators, which enhances trust and mitigates unnecessary procedural stagnation [4]. Parties also enjoy wide discretion to define the type of arbitration—ad hoc or institutional, domestic or international—along with determining procedural aspects such as location, language, and timeline.

Arbitration has consequently evolved into the dominant method of dispute settlement in commercial dealings due to its neutrality, confidentiality, adaptability, and procedural efficiency compared with judicial litigation [5]. Parties are empowered to decide the number and qualifications of arbitrators, the applicable procedural rules, and the logistics of where and how arbitration takes place. Such autonomy is essential to sustaining confidence in the process and preventing procedural stagnation, as arbitrators are selected based on their impartiality, independence, and expertise. Accordingly, judicial authority typically remains restricted to oversight functions, ensuring that arbitral awards conform to public policy requirements and procedural fairness [6]. In Jordan, the increasing reliance on arbitration for resolving commercial and investment disputes has been reinforced by the enactment of the Jordanian Arbitration Law No. 31 of 2001, later amended by Law No. 41 of 2018, which is largely based on the UNCITRAL Model Law on International Commercial Arbitration. This legislative framework accommodates both domestic and international arbitration and includes provisions concerning the jurisdiction of arbitral tribunals, the reparability of arbitration clauses, and the judicial enforcement of arbitral awards [7]. However, the statute remains silent on whether an arbitration agreement may legally encompass

non-signatories lacking explicit consent. This legislative gap becomes particularly problematic within complex contractual arrangements—such as joint ventures, consortiums, or corporate groups—where third parties may possess intertwined financial or legal interests that render them functionally part of the contractual network.

Accordingly, this study aims to examine the personal scope of arbitration agreements under Jordanian law and to assess the necessity of extending such agreements—commonly referred to as the spillover effect—to non-signatory participants. It also seeks to identify potential categories of third parties who might legitimately be involved in arbitral proceedings and to analyse the legal implications of their inclusion. Addressing this issue is crucial to promoting procedural equity, safeguarding the rights of all parties concerned, and ensuring coherence between Jordan's arbitration regime and the broader international legal order.

## 2. Literature Review

### 2.1 Legal Personality and Financial Liability (Patrimony)

Legal personality constitutes the cornerstone of the legal understanding of personhood, granting individuals and entities the capacity to possess rights, undertake obligations, and engage in civil and commercial relations. Both natural persons and juridical entities—such as corporations, associations, and institutions—enjoy this legal capacity, enabling them to sue and be sued, to contract, and to hold property distinct from that of their members [8]. Closely aligned with this notion is the concept of patrimony, referring to the collection of an individual's or organisation's financial rights and liabilities. Patrimony embodies a person's or entity's legal and economic capacity, encompassing all assets and obligations that serve as a general guarantee to creditors [9].

Within traditional civil law, patrimony has historically been understood through the personalist theory, which views patrimony as inseparable from the individual who holds it. Under this approach, each person possesses a single, indivisible patrimony that cannot be separated from their legal identity. This model promotes judicial predictability and preserves the unity of debtor liability. Conversely, the appropriation theory interprets patrimony as a group of assets designated for a specific purpose, independent of the legal personality of its holder [2]. According to this interpretation, multiple patrimonies may coexist, each dedicated to distinct legal or commercial objectives—such as business operations, public-interest funds, or trusts. While this theory offers adaptability suitable for contemporary economic realities, critics caution that it may fragment liability and diminish creditor protection [10]. Recent academic contributions advocate for a hybrid framework that reconciles the personalist and appropriation perspectives.

Peroni [10] observes that such a synthesis maintains a general patrimony inherent to the individual, yet permits the creation of distinct patrimonies when justified by economic or functional necessity. This hybrid understanding has gained relevance in modern economies characterised by limited liability companies, investment structures, and project-specific entities. The Jordanian Civil Code reflects the personalist principle, particularly in Article 365, which stipulates that all of a debtor's property guarantees their obligations. Nonetheless, contemporary Jordanian legal interpretation acknowledges exceptions that accommodate commercial practices involving the allocation of assets for defined purposes [8]. In arbitration law, the concept of patrimony assumes significant importance, as it delineates the contours of liability in contractual and financial disputes. As noted by Shehata [1], a key issue arises when the patrimonial interests of a non-signatory are closely connected to those of a contracting party—raising the question of whether that third party should participate in, or benefit from, the arbitration agreement. This dilemma is particularly evident in multi-entity commercial frameworks such as corporate groups, joint ventures, or consortia, where different entities contribute resources towards a unified economic objective. From a practical standpoint, multi-party arbitration may broaden the scope of proceedings beyond the original signatories to ensure procedural coherence and equitable resolution where financial interdependence exists.

Hence, patrimony plays a pivotal role in defining the extent to which an arbitration agreement may apply to third parties—the so-called spillover effect. It establishes the financial and legal boundaries of responsibility and provides a theoretical foundation for extending arbitration beyond the limits of explicit consent when the financial interests of multiple parties are interlinked. Ultimately, patrimony forms the basis of civil liability and serves as the conceptual bridge connecting individual rights with collective commercial obligations within the framework of modern arbitration [1; 2].

### 2.2 Multiplicity of Persons in the Sources of Obligation

The phenomenon of plurality in the sources of obligation arises when two or more individuals share rights or duties stemming from one or

multiple interconnected legal relationships. These rights and obligations may originate from contractual agreements, unilateral acts, tortious conduct, or statutory provisions. The involvement of several parties often complicates the allocation and performance of corresponding rights and responsibilities. Traditionally, civil law conceptualises obligations as bilateral—linking a single creditor to a single debtor. However, modern commercial realities such as partnerships, joint ventures, and consortium agreements typically involve multiple actors mutually dependent on one another, giving rise to what legal scholarship identifies as joint or solidary obligations [9].

The principles of solidarity serve to ensure the effective execution of business relationships and the protection of creditor interests within complex legal frameworks. In civil law systems, debtors bound in solidarity are each liable for the entire obligation, allowing the creditor to claim full performance from any one of them [11]. In contrast, solidarity among creditors entitles each to demand the complete performance of an obligation, while fulfilment to one creditor releases the debtor from liability to all. Nevertheless, the presumption of solidarity varies across jurisdictions. Under Jordanian law, solidarity in civil obligations arises only where expressly stipulated by the parties or mandated by statute, whereas in commercial matters, it is generally presumed to uphold transactional confidence [12]. This dual framework harmonises the pursuit of fairness with the pragmatic demands of commerce.

Multiplicity may also result from legal mechanisms such as the assignment of rights, delegation of obligations, agency relationships, or guarantee contracts, which expand the circle of individuals sharing or benefitting from a single duty. In the sphere of commercial arbitration, distinctions between signatories and third parties frequently blur. Al Zoubi [7] notes that in multi-contract arrangements—such as those involving subcontractors or suppliers—the performance of one agreement often depends on another, rendering the contracts interdependent components of an integrated legal-economic system. Restricting arbitration solely to the contracting parties in such scenarios risks inconsistent or fragmented resolutions. Archengolts and Okhlopkova observe that the development of international arbitration has embraced a functional interpretation of contractual relationships, recognising the economic unity of complex, multi-party transactions. This orientation has also influenced Jordanian arbitral practice, which increasingly supports the participation of additional parties in arbitration where mutual interests or obligations exist. Likewise, Anafi and Omoyeni [2] contend that when multiple contracts form part of a cohesive framework—such as within corporate groups or franchise networks—the extension of arbitration to non-signatories may be warranted on grounds of economic interdependence and implied consent.

Jordanian judicial authorities have begun acknowledging this practical reality, progressively aligning with comparative legal approaches that emphasise substantive connections over formal distinctions. Extending arbitration clauses to affiliated or related entities enhances procedural efficiency and mitigates inconsistent outcomes, particularly in cases involving indivisible liabilities or interlinked performances. Consequently, the multiplicity of obligation sources reflects not only the structural complexity of modern commerce but also the necessity for a holistic interpretative approach towards arbitration agreements [7]. Recognising the plurality of persons within obligations thus provides a doctrinal foundation for understanding the spillover of arbitration agreements. It supports the inclusion of non-signatory parties in arbitral proceedings to uphold fairness, procedural consistency, and substantive justice where rights and duties are interdependent. This progression illustrates the adaptive evolution of Jordanian arbitration law, which, while rooted in classical contract doctrines, continues to evolve in response to the realities of multiparty commerce and contemporary international arbitration practice [5].

### 2.3 Civil Liability

Civil liability constitutes a fundamental pillar of private law, representing the legal obligation of an individual or entity to provide compensation to another for harm caused by a breach of duty. This liability may arise under two distinct categories: contractual and tortious. Contractual liability stems from the violation of obligations agreed upon within a contract, while tortious liability originates from wrongful acts occurring independently of any contractual arrangement. In both cases, three cumulative elements must be established—fault, damage, and the causal nexus between them [13]. The doctrine of civil liability thus aims to re-establish the equilibrium disturbed by wrongful behaviour, ensuring that injured parties receive adequate redress and that the stability of the legal order is maintained.

Within contractual settings, liability emerges when a party fails to fulfil agreed terms or delivers defective performance. This concept is a cornerstone of legal and commercial relations, where predictability and accountability underpin economic confidence. Conversely, tortious liability arises in the absence of a contractual bond, as in negligence or unlawful

interference with another's contractual rights. Contemporary legal analysis increasingly recognises the overlap between these two branches, particularly in intricate commercial environments where breaches in one contract may trigger consequences across interconnected relationships [14]. The interrelation of agreements and actors complicates the apportionment of responsibility and raises the question of whether non-signatory entities can share liability or be drawn into arbitration proceedings.

According to *Anafi and Omoyeni* [2], multi-party commercial frameworks such as consortia, subcontracting chains, or franchise networks illustrate how the conduct or omissions of one participant may directly affect the legal and financial interests of others. When such parties are excluded from arbitration because they are not formal signatories, inconsistencies in sanctions and incomplete remedies may arise. Consequently, arbitral tribunals and courts have progressively adopted a more flexible interpretative approach, extending arbitration clauses to encompass non-signatories where there exists a sufficient connection through participation, benefit, or control. This pragmatic evolution promotes procedural harmony and mitigates the risk of fragmented determinations of liability. Comparative jurisprudence demonstrates a discernible movement in arbitration law towards substantive justice and away from rigid formalism. As *Shehata* [1] observes, arbitral practices in the Middle East increasingly acknowledge the economic and functional integration of affiliated entities. This recognition is evident in situations where a third party's behaviour suggests implicit consent to arbitration or where their financial interests are inseparable from those of the contracting parties. Similarly, *Archengolts and Okhlopkova* [5] highlight that international arbitral tribunals have formulated doctrines such as the "group of companies" and "implied consent," enabling both liability and procedural participation to align more closely with the operational realities of contemporary commerce.

Under Jordanian law, the Civil Code No. 43 of 1976 provides that any person who, through fault, inflicts harm upon another is legally bound to provide reparation, whether the source of such liability arises from contractual or tortious grounds. However, in disputes emerging from integrated and interdependent commercial undertakings, strict adherence to the doctrine of privity becomes increasingly impractical. *Al Zoubi* [7] observes that Jordanian arbitral practice, influenced by evolving international standards, empowers arbitral tribunals to interpret contractual and extra-contractual norms with flexibility to secure equitable outcomes. This interpretative adaptability aligns arbitration with the overarching rationale of civil liability, ensuring that accountability extends to all parties whose actions have contributed to the harm, irrespective of their formal contractual status. Accordingly, the domains of civil liability and arbitration converge through their mutual pursuit of justice, procedural efficiency, and economic equilibrium. Arbitration, by accommodating the participation of all materially affected actors, strengthens both the binding nature of civil obligations and the fairness of adjudicative processes. This synthesis represents an advanced evolution in Jordanian legal thought and international arbitral doctrine, transforming civil liability from a traditional bilateral construct into an effective framework for managing multifaceted and multi-party commercial disputes within a unified procedural setting [2; 13].

### 3. Method

To achieve the objective of this research, which examines the personal scope of arbitration agreements and the necessity of extending such agreements to non-signatory parties, a secondary qualitative research design was adopted. The study employed a normative legal methodology, reflecting its doctrinal and analytical nature within legal scholarship. Data for the analysis were gathered from both primary and secondary legal sources. Primary materials comprised relevant statutes, legislative instruments, and regulatory frameworks governing arbitration within Jordan. Secondary materials encompassed scholarly writings, journal publications, academic books, legal commentaries, reports, and media analyses addressing arbitration and related doctrines. The electronic databases utilised for sourcing these materials included LexisNexis, HeinOnline, Westlaw, among others. Collected data were examined through content analysis to identify and interpret legal principles and thematic patterns pertinent to the study's focus.

### 4. Findings and Discussion

To respond to the formulated research questions, the outcomes of this study are organised into four principal sections. The first section examines the personal scope of arbitration agreements from the standpoint of legal jurisprudence. The second section explores the spillover effect of such agreements on third parties with reference to legislative provisions. The third section analyses the statutory framework governing the extension of arbitration agreements to non-signatories, while the fourth section

considers the judicial perspective on this extension. Additionally, the study provides a detailed discussion on the impact of arbitration agreements upon third parties in accordance with the procedural rules adopted by recognised arbitration institutions.

#### 4.1 Section One: The Personal Scope of the Arbitration Agreement in Light of Jurisprudence

The personal scope of an arbitration agreement concerns the identification of those individuals or entities who fall within its binding effect—that is, who are obliged to arbitrate and who may legitimately rely upon the arbitration clause. According to the classical doctrine of privity, only the contracting parties who have expressly consented to arbitration, namely the signatories, are bound by such an agreement. This interpretation represents what is commonly termed the subjective approach [15]. Conversely, an alternative perspective, frequently referred to as the objective approach, recognises that within the context of complex commercial transactions, including multi-tiered supply chains, corporate conglomerates, and third-party collaborations, entities that are not formal signatories may nonetheless maintain a sufficient connection to the contract or its execution. Consequently, such entities might be deemed either bound by or entitled to invoke the arbitration agreement [16].

The increasing prevalence of intricate, multi-entity business arrangements has encouraged a shift in legal reasoning. Courts and arbitral tribunals are increasingly willing to determine whether non-signatories have implicitly consented to arbitration, participated in contract performance, or derived benefits from the agreement to such an extent that excluding them from arbitration would be inequitable or contrary to commercial logic [17]. As a result, delineating the personal dimension of an arbitration clause has become a sophisticated and essential task for arbitral tribunals and courts alike. It entails a detailed examination of consent, contractual interrelationships, performance participation, and broader legal doctrines. Accordingly, this section first revisits the concept of privity of contract, then clarifies the notion of a third party (non-signatory), and finally discusses the legal conditions under which an arbitration agreement may extend its effect to non-signatories.

##### 4.1.1 The Principle of the Privity of the Contract

Privity of contract is a legal doctrine that establishes that the rights and obligations arising from a contract are confined to the parties who have consented to it—that is, those who have clearly expressed their intention to be bound. Under this principle, a contract can be enforced only among its signatories and cannot impose duties or confer rights upon individuals or entities who are not parties to it [15; 18]. Within the context of arbitration, this principle signifies that only the signatories to an arbitration clause can generally be compelled to arbitrate matters covered by that agreement. The doctrine of privity originates from classical contract theory and the maxim *pacta sunt servanda*, meaning that agreements must be honoured. It reinforces the autonomy of contracting parties, asserting that they are bound solely by the obligations they have voluntarily undertaken. Consequently, an arbitration agreement traditionally applies only to those whose mutual consent forms the basis of the contractual relationship [18].

Within this framework, a third party refers to any individual who has not entered into the contract with either of the contracting parties or who has neither succeeded nor been assigned rights or obligations under it. Such individuals generally lack the legal capacity to claim benefits or assume responsibilities arising from the contract [19]. Nonetheless, certain exceptions to strict privity are recognised. These include situations where a contract is expressly made for the benefit of a third party (third-party beneficiary contracts) or where a contracting party acts as an agent or representative on behalf of another entity [20]. For instance, although arbitration clauses are ordinarily governed by the privity rule, various legal systems and scholarly writings acknowledge that particular legal constructs—such as agency relationships, corporate group structures, or doctrines like the lifting of the corporate veil—may justify extending the effect of an arbitration agreement to non-signatories in specific cases [15]. Given the complexity of defining who qualifies as a third party and determining the extent of a contract's reach, courts and arbitral tribunals across jurisdictions have developed a range of evaluative factors, such as conduct, control, benefit, and participation, to establish the limits of privity [21].

##### 4.1.2 The Spill Over Effect on the Contract

The foundation of contract law rests upon the principle that parties possess the freedom to decide whether to enter into an agreement and to determine its terms, with mutual consent serving as a cornerstone. According to the maxim *pacta sunt servanda*, once a valid contract is formed, it becomes binding and enforceable upon the parties who have

entered into it. However, in recent decades, the strict individualism underlying this traditional notion—that contractual obligations are confined solely to the signatories—has been challenged by the intricate structures of modern commercial operations, which frequently involve multi-layered contracts, corporate conglomerates, and interconnected supply chains. Under certain conditions, arbitral tribunals and legal scholars have recognised that arbitration agreements may extend to non-signatories who are materially engaged in the contractual relationship containing the arbitration clause [22].

This extension has been described as the spillover effect, whereby the influence of a contract, including its arbitration clause, extends beyond the original parties to those who, though not signatories, have participated in, benefited from, or been affected by the contractual arrangement. For instance, this may occur when a non-signatory is actively involved in the negotiation, performance, or termination of the contract, or forms part of a corporate group sharing the associated commercial risks and benefits [3]. Accordingly, arbitral tribunals and courts may examine whether a non-signatory has implicitly consented to arbitration through conduct, performance, or receipt of benefit, or whether doctrines such as estoppel, the group of companies principle, or alter ego may be invoked to bind them [22]. In scenarios where, contractual obligations are indivisible or performance is interdependent—such as in large-scale projects involving multiple interrelated contracts—it is often commercially logical to include non-signatories within the scope of the arbitration agreement. Excluding them could undermine the coherence and purpose of the broader contractual framework.

## 4.2 Section Two: The Spillover Effect of the Arbitration Agreement to Third Parties in Light of Legislation

This section examines three illustrative cases in which the effect of an arbitration agreement extends to third parties. It further outlines the relevant legislative framework and the institutional arbitration rules that govern such extensions, clarifying how legal and procedural mechanisms support the inclusion of non-signatories within the ambit of arbitration agreements.

### 4.2.1 The Effect of the Contract and the Effect of the Arbitration Agreement

The core principle underlying contractual validity and enforceability mandates that every party must fulfil the obligations established within the contract. In certain circumstances, this obligation may also extend to individuals or entities that are not formal signatories to the agreement. The following section examines several cases illustrating instances where the contractual effect has been extended to non-signatory parties.

#### 4.2.1.1 General Successor

A general successor refers to an individual or entity that assumes the rights and obligations of a predecessor, either wholly or partially, in financial or property matters, such as an heir inheriting an estate alongside other heirs [23]. Consequently, the contractual effects arising from agreements executed by the predecessor are transferred to the successor, who thereby assumes the role of a party to those agreements, unless the contract's nature or an explicit legal provision indicates otherwise. Nevertheless, certain circumstances prevent the extension of contractual effects from a predecessor to a successor. These include instances where the contract or arbitration clause expressly limits such transfer, where the agreement's nature or subject matter is non-transferable, or where legislation prohibits transfer, such as in an agency relationship that terminates upon the death of the principal. According to *Fraterman* [24], private disputes are ordinarily subject to the jurisdiction of conventional courts; however, this may not necessarily remain the case following succession. In the context of legal persons, a general successor inherits the full spectrum of rights and obligations of the predecessor [25]. Under civil law principles, succession is considered an ongoing process. For example, in the event of a corporate merger, the arbitration clause continues to bind the new entity, as both the merging and resultant companies are deemed legal successors, inheriting all contractual rights and duties of the merged entities.

#### 4.2.1.2 Special Successor

In general, under the law of contracts, succession involves the transfer of property rights from one party to another, which may occur in two forms: universal or singular succession. In universal succession, all rights and obligations are transferred, whereas in singular succession, only specific rights are conveyed [26]. A special successor thus refers to an individual or entity that acquires particular contractual rights or obligations rather than inheriting all the rights and duties of the predecessor. When a contract establishes personal rights linked to an asset later transferred to a

special successor, those rights are transferred concurrently with the asset, provided that they constitute one of its appurtenances and the successor was aware of these rights at the time of transfer [12].

Accordingly, the extension of contractual and arbitral effects in cases involving a special successor depends on several conditions: the predecessor's contract must predate that of the successor; the right in question must be inherent to the asset transferred; and the successor must have knowledge of the rights arising from the predecessor's contract at the time of transfer. This principle is applied in arbitration agreements and in the assignment of rights [12]. The assignment of rights entails the transfer of a creditor's claim from one party (the assignor) to another (the assignee), who then becomes the new creditor with respect to the debtor. Similarly, in the assignment of debt, the burden of the obligation, including all associated elements, is transferred from the original debtor to a new debtor, known as the assignee, in relation to the creditor. Thus, the extension of the contractual and arbitral effects in cases involving a special successor requires that the predecessor's agreement precede that of the successor, that the right be integral to the asset transferred, and that the successor be aware of these rights at the time of transfer. This principle is particularly relevant to subcontractors, who, despite being non-signatories to the original agreement, may succeed the principal in specific aspects of the contract—especially in cases involving contracts intended for a defined purpose.

### 4.2.2 Undertaking on Behalf of a Third Party

If an individual undertakes that a third party will perform a specific obligation, the third party is generally not bound by that undertaking. Should the third party decline to perform, the promisor is then responsible for either fulfilling the obligation personally or compensating the contracting party. Such contractual arrangements serve to safeguard third parties from adverse externalities while providing them with legitimate legal recourse [27]. However, when the third party subsequently agrees to the undertaking, their consent becomes effective only from the moment it is given, unless there is clear evidence—explicit or implicit—that the agreement should retroactively apply to the time of the initial undertaking.

For example, in a jointly owned property sale contract, if one co-owner promises to obtain the consent of the other co-owner, the agreement becomes effective once that consent is given. Nevertheless, the co-owner making the promise cannot unilaterally bind their partner, as a contract cannot impose obligations on a third party without their consent. If the partner refuses to agree, the promisor is required either to carry out the obligation personally or to compensate the third party with whom they entered into the contract [12]. Under Jordanian legislation, a third party may be recognised as having rights arising from a contract even without being a direct party to it. The contract may still produce effects consistent with the will of the contracting parties, and the beneficiary is deemed to possess a direct right under the established terms [28]. This interpretation reinforces the legal principle permitting stipulations made for the benefit of a third party within contractual arrangements.

### 4.2.3 Stipulation for the Benefit of a Third Party (*Stipulatio Alteri*)

The promisor may include a clause in a contract made with a third party that benefits another individual, referred to as the beneficiary. This clause grants the beneficiary a direct legal right, even though they are not a party to the contract [28]. A common example of this arrangement is found in insurance contracts, where the insured and the insurer agree to provide benefits to a designated beneficiary.

#### 4.2.3.1 Creditors of the Contracting Parties to the Arbitration Agreement

A contract may be structured to confer benefits upon a third party, whereby the debtor becomes obligated to the beneficiary. Such arrangements play an essential role in facilitating economic exchange and stability. Within this framework, two distinct obligations coexist: the debtor's (promisor's) duty toward the creditor (promisee) and the creditor's (promisee's) obligation toward the third party (beneficiary) [29]. Consequently, the effect of an arbitration agreement may extend to the personal creditors of the contracting parties, as they hold a general right of security over the debtor's assets. This right allows creditors to challenge any actions by the debtor that may undermine their security, including through direct and indirect claims such as the *actio pauliana* or simulation actions aimed at proving that a debtor fraudulently transferred assets to evade obligations. A further illustration of the arbitration agreement's extension arises within contractual groups where project performance requires multiple interconnected contracts of different types and stages—such as construction, technology transfer, and supply agreements—each involving numerous subcontractors performing specialised components of the overall project. *Mishra and Aithal* [30] observed that arbitration

contracts offer a practical and cost-effective means for resolving construction-related disputes. Nonetheless, when arbitral awards are not effectively enforced, their impact diminishes, often resulting in significant project delays. Therefore, strong emphasis is placed on ensuring the enforceability of arbitral awards to guarantee the successful completion of such complex projects.

#### 4.2.3.2 Parties to an Arbitration Agreement Within a Corporate Group Framework

An effective legal framework must be established to address corporations comprising multiple companies that, while legally independent, remain economically interdependent [31]. This relationship often exists in a hierarchical structure, such as between a parent company and its subsidiaries, or where unified decision-making reflects shared objectives and mutual economic interests. However, legal responses to this issue have not been uniform. Neither judicial nor arbitral rulings have consistently confirmed whether arbitration agreements should be extended to all entities within a corporate group. In certain instances, courts have chosen to disregard arbitral awards, reaffirming the primacy of state court jurisdiction and stressing the necessity of mutual consent to arbitration [32]. According to one view, an arbitration agreement cannot be imposed on a company that did not sign the contract, even if it participated in pre-contractual negotiations or belonged to the same corporate group. This position is grounded in the principle of the legal independence of corporate entities. Conversely, another perspective advocates a more flexible approach to extending arbitration agreements, drawing on factors such as shared intent, apparent consent, and the economic interdependence that characterises group structures.

### 4.3 Section Three: The Legislative Framework for Spilling Over the Effect of Arbitration Agreements to Third Parties

The arbitration agreement, as a contractual instrument, adheres to the general principles governing the sources of obligations, both in its legal nature and structural composition. This raises a central question: can its effects extend beyond the traditional rule of privity? Many international conventions remain silent on this issue, while legal systems in Jordan, Egypt, and France similarly lack explicit provisions addressing the extension of arbitration agreements to third parties [33]. Conversely, some legislative systems have provided guidance on the matter. For instance, the Lebanese Code of Civil Procedure stipulates that third parties may not intervene in arbitral disputes unless expressly authorised by the parties involved [34]. Likewise, under the Dutch Code of Civil Procedure, extending arbitration to third parties requires a formal amendment of the arbitration agreement, with written consent from all parties, thereby incorporating those third parties into the agreement. Various challenges arise in this context, such as the omission of the applicable law chosen by the parties, uncertainty surrounding private international law provisions, and the absence of specific references to governing procedural rules [35]. The UNCITRAL Arbitration Rules, however, permit the inclusion of third parties under certain procedural and consensual conditions [36].

In English law, the circumstances allowing such an extension are notably restricted and narrowly interpreted by the courts [37]. Although the enactment of the Rights of Third Parties Act 1999 marked a significant departure from the strict principle of privity in contract law [6], its application in arbitration remains limited. It is also important to distinguish between judicial litigation and arbitration in terms of personal scope. Judicial litigation, governed by codified procedural laws, is inherently broader and more generalised. In contrast, arbitration is confined to the will of the parties, who determine the subject matter, applicable law, and the composition of the tribunal. This restriction, coupled with arbitration's confidential and expeditious nature, makes third-party intervention relatively rare [38]. Although not expressly prohibited, both subrogation and intervention in arbitration proceedings are uncommon. Arbitration statutes—unlike civil procedure laws—often omit provisions governing joinder and intervention, as observed in Jordanian, Egyptian, and French legislation. In Jordan, while the arbitral award is regulated, the framework for third-party participation remains insufficiently clear [39].

When parties specify the applicable procedural law, issues of intervention or joinder are resolved either under the civil procedure rules of the chosen jurisdiction [12] or through the procedural regulations of the relevant arbitration institution, each serving as the procedural reference for the tribunal. Intervention is a procedural mechanism through which a third-party requests to join an ongoing dispute to protect their legal interests or support an existing party to prevent harm from the judgment's outcome [40]. The intervener must not already be a litigant, nor a general or specific successor to any party, though they may act in their own interest or in support of another. There are two primary forms: principal (or offensive)

intervention, where the third party becomes an independent litigant; and supportive (or joining) intervention, where the third party supports one side without assuming full party status [41]. The supportive intervener cannot take any action contrary to the party they support, such as withdrawing the case, as their role remains subordinate to the principal proceedings.

Joinder, on the other hand, refers to the compulsory inclusion of a third party in an existing dispute—whether by court order, party request, or statutory requirement, such as in guarantee claims or document disclosure obligations. Notably, Article 22 of the UAE Federal Arbitration Law No. 6 of 2018 authorises an arbitral tribunal to permit the joinder or intervention of a third party upon request, provided that the individual is a party to the arbitration agreement and that all parties, including the newcomer, are afforded an opportunity to present their case [42]. Moreover, Article 202(b) of the Jordanian Civil Code stipulates that contractual obligations extend not only to express terms but also to implications derived from law, custom, and the nature of the transaction. This provision supports the inclusion of related contracts—such as subcontracts or supplementary agreements—within the scope of arbitration when they are necessary for fulfilling the principal contract. Thus, when a dispute arises involving interdependent contractual obligations, the arbitration clause should logically extend to all contracts that form part of the same commercial framework.

### 4.4 Section Four: The Framework for Spilling Over the Effect of the Arbitration Agreement to Third Parties in Light of the Judiciary

Although the Jordanian legislator has not explicitly addressed the extension of arbitration disputes, as previously discussed, the judiciary has evolved alongside developments in this area. In this context, the overarching principle of *pacta sunt servanda* underscores the binding nature of contracts and their connection to the administrative authority's power to amend. It also highlights the importance of maintaining contractual stability [43]. Despite this principle, judicial and doctrinal interpretations have acknowledged circumstances in which the arbitration agreement may extend to additional parties. These exceptions include cases involving a general or special successor, unity of economic activity, joint debtors, assignment of rights or debts, and undertakings established for the benefit of third parties. Moreover, the extension may apply in instances of collective contracts, guarantees, or situations motivated by equity or public interest. According to Shehata [1], the Egyptian Court of Cassation has recognised the corporate group doctrine as an effective legal foundation for broadening the reach of an arbitration agreement to encompass non-signatory entities within the same corporate group. Nevertheless, the criterion for extending the scope of an arbitration agreement from one contract to another between the same parties depends on the presence of an unbreakable or inseparable link connecting the two agreements. The study also examined the transfer of arbitration agreements in cases of comprehensive corporate succession, such as merger, inheritance, or transformation, where ownership of the dissolved entity's assets, rights, obligations, and contracts passes entirely to the successor or inheriting entity. Unless otherwise limited by explicit clauses within the arbitration agreement, the assignee thereby becomes a bound party to it.

### 4.5 Spill over: The Effect of the Arbitration Agreement on Third Parties in Light of the Rules of Arbitration Institutions

The arbitral tribunal serves as the competent authority responsible for addressing the defences presented by both the claimant and the respondent from the commencement of the arbitration proceedings, while assessing its own jurisdiction. The tribunal may also accept a delayed defence if the delay is considered justified or supported by reasonable cause. The participation of a third party in the proceedings requires the approval of the arbitral tribunal and must be supported by the intervener's legitimate interest, provided that their involvement does not introduce new factual grounds that could result in a plea of lack of jurisdiction [44]. Either party may amend or expand its claims or defences or submit additional evidence during the proceedings, unless the tribunal determines that such action would unduly delay the resolution of the dispute. The tribunal also possesses jurisdiction over all matters related to experts, including the termination of their mandate, the rejection of their reports, or the acceptance of their findings in whole or in part. The principle of competence-competence empowers the arbitral tribunal to assess and affirm its own jurisdiction, thereby reinforcing party autonomy and providing an efficient mechanism that minimises procedural delays and costs. This principle is recognised under both the English Arbitration Act and the UNCITRAL Model Law [45].

International arbitration institutions demonstrate differing approaches to interlocutory claims, particularly concerning the right to request

intervention or joinder, the timing of such requests (before or after the tribunal's formation), and the authority responsible for deciding on them—whether the arbitral tribunal or the arbitration institution. The London Court of International Arbitration (LCIA) follows a conservative approach, prohibiting third-party intervention without mutual consent of the parties [46]. Joinder, however, requires only the consent of the party requesting it and the party being joined, remaining under the tribunal's authority without the institution's involvement, and without reconstituting the tribunal.

Conversely, the Singapore International Arbitration Centre (SIAC) adopts a more flexible position, permitting third-party intervention upon the request of any party or at the initiative of the SIAC itself. Before the tribunal is formed, the SIAC holds competence to decide such requests; thereafter, the arbitral tribunal assumes authority, with the possibility of reconstituting the tribunal, as the institution retains the power to withdraw appointed arbitrators. Consent may be collective or determined on a prima facie basis. The International Chamber of Commerce (ICC), by contrast, maintains a balanced approach, combining procedural flexibility with legal rigour. It prohibits third-party intervention but allows the inclusion of a new party with the consent of all existing parties after the tribunal has been constituted, with reconstitution permitted in certain circumstances [47].

Similarly, the arbitration panel of the Gulf Cooperation Council Commercial Arbitration Centre has ruled that "arbitration proceedings are fixed in both their personal and substantive scope, and intervention or joinder in the dispute is impermissible due to their contractual nature" [48]. Supporters of this approach emphasise the principle of freedom of will, restricting participation strictly to what the parties have agreed upon, and rejecting analogies with civil litigation procedures, which operate under binding general rules independent of party consent. Moreover, the role of the arbitral tribunal fundamentally differs from that of a judge conducting judicial review, as the tribunal's authority is derived exclusively from the parties' agreement. Additionally, the extension of an arbitration agreement's effect to related contracts may also apply in cases involving an undertaking for the benefit of a third party. If such a third party accepts the undertaking, the effect takes hold from the moment of issuance. This can be seen in subcontracting arrangements where the owner's approval of the primary contractor's selection of a specific subcontractor is required, thereby linking the subcontract to the original contractual framework.

## 5. Conclusion

The arbitration agreement constitutes a foundational element of the arbitration framework. It is therefore vital for parties engaged in drafting such agreements—whether incorporated as an arbitration clause within a broader contract or established as an independent agreement—to define explicitly their stance regarding the inclusion or exclusion of third parties within its scope. Although Jordanian legislation does not expressly regulate the extension of the arbitration agreement's effect to non-signatories, the Court of Cassation has addressed the issue in relation to joinder and intervention under certain circumstances. Nonetheless, extending the effect of an arbitration agreement to third parties requires the fulfilment of specific objective conditions. The findings of this study reveal that the extension of arbitration agreements to third parties has been considered in several judicial cases, indicating that not all contractual relationships are confined to two parties, as in typical bilateral agreements. In many instances, contracts transcend the original signatories through mechanisms either directly or indirectly recognised by the legislature. This highlights the necessity of giving due consideration to other individuals or entities with a legitimate interest in the contract's performance, even if they are not formal signatories. Their participation in disputes between the contracting parties, or their permitted intervention, contributes to the resolution of the matter and supports the broader pursuit of justice. Furthermore, when contracts are executed by multiple legal entities operating collectively toward a shared objective, these entities are often treated as a unified structure. Within this context, it becomes reasonable that the arbitration agreement should extend to encompass supporting and associated parties (non-signatories) whose participation is instrumental in achieving the intended contractual purpose. This principle is particularly relevant in cases involving groups of companies, where economic and functional interdependence justifies the collective treatment of all related entities under the same arbitration framework.

## 6. Recommendations

Considering the findings discussed above, the following recommendations are proposed:

A new provision should be incorporated into the Jordanian Arbitration Law empowering the arbitral tribunal to authorise the participation or intervention of a third party in arbitration proceedings. This may occur either at the request of one of the disputing parties or at the request of the intervening party, provided that all parties, including the third party, are

afforded an opportunity to present their views. This participation should not be contingent upon the third party being a signatory to the arbitration agreement. Such an amendment would align the Jordanian framework with the provisions of the UAE Federal Arbitration Law No. 6 of 2018.

A bylaw should be introduced within the Arbitration Law requiring all parties to provide written disclosure of any agreements associated with the disputed contract, including financing arrangements or connections with natural or legal persons. This should encompass a comprehensive list of stakeholders, such as legal persons who previously held executive or managerial roles within relevant companies and later resigned, in order to identify those directly or indirectly affected by the arbitration. Arbitrators should also be obliged to disclose any relationship or interest involving these individuals or entities.

Confidentiality provisions should not be used as a means to obscure the identities of individuals or entities directly or indirectly involved in the contract under dispute. Similarly, confidentiality should not prevent disclosure of the essential terms of related agreements where such disclosure is necessary to identify or prevent potential conflicts of interest.

The rights and obligations of the original disputing parties should be extended to include the intervening party. Accordingly, arbitration clauses should be amended to enable intervening parties to challenge arbitral awards and to ensure a fair redistribution of arbitration costs among all participants, including those who intervene in support of one of the parties.

The adoption of the procedural framework applied by the SIAC is recommended. This approach broadens the scope of arbitration to permit third-party participation, either upon the request of an existing party or upon the third party's own initiative. The competent authority before the arbitral tribunal is constituted would be the arbitration centre itself, whereas, after its constitution, such authority would rest with the tribunal. Furthermore, this model allows for the reconstitution of the arbitral tribunal when necessary, thereby enhancing procedural flexibility and fairness.

## 7. Research Implications

The findings of this study contribute significantly to the existing body of literature by enhancing the understanding of the arbitration agreement's implications for the personal creditors of contracting parties. Particular attention is given to the creditor's right to a general guarantee over the debtor's assets, which encompasses various legal mechanisms designed to safeguard the creditor from any actions by the debtor that could diminish this guarantee. Furthermore, the outcomes of this research are expected to encourage Jordanian lawmakers to consider drafting specific legislation addressing the inclusion and participation of third parties within the arbitration process. The study also underscores the importance of fostering stronger collaboration between the Jordanian government and international arbitral institutions to ensure the effective protection of all parties' rights. In this context, establishing a specialised law enforcement and arbitral authority would be an essential step towards strengthening the efficiency, credibility, and enforcement of arbitration in Jordan.

## 8. Limitations and Future Research

This study is subject to several limitations. First, it relies exclusively on secondary qualitative data, which may affect the overall depth and robustness of the findings. Second, the research scope is limited to arbitration laws and procedures within the Jordanian context, a focus influenced by the researcher's own academic and contextual orientation. Third, the study adopts a cross-sectional design, analysing data from a specific period rather than over time, which restricts the ability to observe changes or developments in arbitration practices. For future research, it is recommended to incorporate primary qualitative data gathered from policymakers, legal practitioners, and arbitration experts to identify gaps and areas for reform within Jordanian arbitration legislation. Comparative analyses between Jordanian and United Kingdom arbitration frameworks could further enhance understanding of legal convergence and divergence. Additionally, adopting a longitudinal approach in future studies would allow for a more dynamic assessment of the evolution and effectiveness of arbitration laws over time.

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