

**DUE PROCESS AS A LIMIT TO BINDING
NON-SIGNATORIES TO ARBITRATION
AGREEMENTS IN INTERNATIONAL
COMMERCIAL ARBITRATION: WITH SPECIAL
FOCUS ON BINDING NON-SIGNATORIES
WITHIN CORPORATE GROUPS**

*Eric Chin-Ru Chang**

ABSTRACT

Binding non-signatories to arbitration agreements has always been a complex and difficult issue, and has been extensively discussed in past literature. However, less focus has been placed on the procedural aspect of this issue. Due process is an essential requirement of an enforceable award and the basic guarantee of procedural fairness to the parties. Binding non-signatories creates multiple due process concerns, hence, it would be beneficial to explore the issue of non-signatories under the lens of due process. This article identifies the due process issues that may arise from the binding of non-signatories. In particular, this article places special focus on due process issues that may arise from binding non-signatories within corporate groups, such as under the group of companies and veil piercing doctrines. Based on the findings in the examination of due process, this article proposes that due process can serve as a potential limit to the binding of non-signatories. The arbitrators have a duty to ensure the due process rights of the

* LL.M. student of National Taiwan University. This article was presented in the “2021 Taipei International Conference on Arbitration & Mediation” held by the Chinese Arbitration Association, Taipei (CAA) and the Asian Center for WTO & International Health Law and Policy (ACWH). The author wishes to thank Professor Tsai-yu Lin, Professor Hong-Lin Yu, and Professor Tsai-fang Chen for their support and valuable advice. The author also extends his gratitude to the anonymous reviewer. All errors are my own. The author can be reached at: r08a21084@ntu.edu.tw.

parties. In cases where there exist conflicts of due process rights, the arbitrators should balance the due process rights between the parties, thereby ensuring that the minimum requirements of due process are satisfied. By doing so, due process can serve as a limit to binding non-signatories to arbitration agreements in international commercial arbitration.

KEYWORDS: *non-signatories, arbitration agreement, due process, New York Convention, group of companies, Dow Chemical, veil piercing, alter ego*