

# Research on the Statutory Termination of Third-party Interest Contracts

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**Abstract:** *The third-party interest contract is not a typed contract, which breaks through the principle of contract relativity and enables the third party to obtain benefits from it, which is a major breakthrough in the legislation of the Civil Code of the People's Republic of China. However, in practice, there are unclear subjects of the right to rescind, unclear rules for exercising it, and unclear legal effects. In this regard, it should be made clear that the subject of the statutory right of rescission is only the parties to the contract, the third party does not enjoy the statutory right of rescission, the third party shall be notified when exercising the right of rescission, and the third party shall not be liable for the termination of the contract for reasons other than that of the third party, and the third party shall be granted an independent litigation status to protect its legitimate rights and interests. Improve the effectiveness of the system in practice, and while improving China's third-party interest contract system, promote China's economic development and maintain social stability.*

**Keywords:** *Third-party Interest Contract; Statutory Termination; Third Person*

## 1. Introduction

### 1.1. Background

The third party interest contract is not a type of contract, the third party interest contract is established for the purpose of obtaining benefits for the third party, and it breaks through the principle of contract relativity, including the third party in the contract, and the third party enjoys some of the rights of creditors in the contract. With the rapid development of China's economy, third-party interest contracts have appeared more and more frequently in the economic field and daily life, attracting more and more attention.<sup>[1]</sup>

Before the promulgation of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code"), China did not clarify the rules for third-party interest contracts. Although article 64 of the original Contract Law of the People's Republic of China (hereinafter referred to as the original "Contract Law") clearly stipulates that if the contract stipulates that the debtor shall perform its contractual obligations to a third party, but the debtor does not perform or fails to perform in accordance with the contract, the debtor shall bear the liability for breach of contract. However, only the debtor bears the relevant liability for breach of contract to the creditor, so it can be inferred that the clause provides only for a contract of non-genuine third-party interest.

On New Year's Day 2021, the Civil Code came into force, an event that marked a milestone in the process of rule of law in our country, and our country has since entered the era of the Civil Code. Article 522 of the Civil Code clearly establishes the system of genuine third-party interest contracts (hereinafter referred to as third-party interest contracts), which is the beginning of China's third-party interest contracts in the legal system, which plays a very important role in balancing the interests of the parties to the contract and the third party, and also plays a very important role in establishing a sound third-party interest contract regulation system.<sup>[2]</sup>

Article 522 of the Civil Code is divided into two paragraphs, the second paragraph is a new content, which creatively clearly stipulates the genuine third-party interest contract, and establishes the third-party interest contract in the form of legal provisions. Paragraph 2 stipulates that the rights enjoyed by the third party in accordance with the law in the third-party interest contract: the right to refuse, the right to claim performance and the right to claim relief for breach of contract, and other rights that originally belonged to the creditor.

This innovative measure of the Civil Code provides a legal basis for third parties to protect their own rights and interests, and the number of cases related to third-party interest contracts will increase significantly in the future. However, this provision is not perfect, and article 522 stipulates the rights enjoyed by third parties in the third party interest contract on the substance, such as the exclusive third party right of the right to refuse, and the rights of some creditors, such as the right to claim damages. However, for a contract, it is impossible to achieve the purpose of the contract, and there are many cases of contract changes, but Article 522 does not regulate the content of contract changes. In particular, with regard to statutory revocation, the subject of the revocation, the restrictions imposed and the legal effects brought about by the statutory rescission are not stipulated, leaving a certain legislative gap. And by sorting out the relevant laws and regulations of the Civil Code, although there are relevant provisions on the statutory rescission of contracts in the contract part, there is no set of effective norms for third-party interest contracts. Third-party interest contracts are different from ordinary civil contracts, and the provisions on contract rescission cannot be directly copied, and the legal rules related to third-party interest contracts do not involve statutory rescission, making it difficult to provide legal guidance for judicial practice.

### ***1.2. "Trilateral relationship" and its analysis***

The three parties involved in the third-party interest contract all have relationships with each other or are based on law, morality or contract. The creditor and the debtor are linked by a compensation relationship, based on the basic contract under the third-party interest contract; The creditor and the third party are linked by a consideration relationship, based on legal provisions, commercial activities or obligations arising from morality; The debtor and the third party are linked by a performance relationship, which is based on the payment based on the third party's interest contract. Whether it is the consideration relationship, the performance relationship or the compensation relationship, it is fully reflected in the third-party interest contract. And there is no high or low relationship between the three or which relationship corresponds to a kind of priority. Of the three relationships, two are based on a third-party interest contract, and the remaining one is based on a civil relationship or other relationship other than a third-party interest contract. Therefore, there is a certain legal relationship between the third-party interest contract and other civil contracts or disputes in the circulation of rights. For this relationship, we believe that it is not necessary to completely analyze, but only to study the position of the three relationships in the third-party interest contract.

#### ***1.2.1. Consideration relationship***

The creditor and the third party are the consideration, and the formation of the relationship is the factor that promotes the existence of the third-party interest contract, and the validity of the third-party interest contract and the consideration relationship do not affect each other. The consideration relationship reflects why the creditor wants to transfer its rights to the debtor to a third party, which takes various forms, mainly including the following points: (1) statutory obligations, such as supervision and education obligations between schools and students. For example, in order to better fulfill its obligations, schools have signed agreements with bookstores to provide learning materials for students' use. (2) Moral reasons, such as entering into a third-party interest contract with another person in order to fulfill a morally based commitment. (3) Settlement relationship, which is the most common in commercial activities, in order to shorten the flow of funds and improve commercial efficiency, the creditor signs a third-party interest contract with the debtor, agreeing that the third party will receive the payment of the debtor to achieve the purpose of reducing commercial costs.[3]

The above are the three more common consideration relationships, which may also arise due to infringement and other reasons in daily life. In addition, there is a labor relationship, which can also lead to the creation of a consideration relationship.[4]

#### ***1.2.2. Compensatory relationship***

The compensation relationship between the creditor and the debtor is embodied in the third-party interest contract signed between the creditor and the debtor, and it is also the reason why the debtor pays the subject matter to the third party, that is, the subject matter delivered to the creditor is transferred to the third party. Since a third-party interest contract is not a fixed type of contract, the type of contract based on a compensatory relationship is not fixed. The third-party interest contract can be a two-service contract, such as a sales contract, a custody contract, a lease contract, a contracting contract, etc.; It can also be a single contract, such as a gift contract, a loan contract for a restored property, etc. And these contracts can be paid or unpaid.

Academic views on the "compensatory relationship" are not the same. Some scholars believe that the compensation relationship should not exist in a gratuitous contract, because at this time the debtor has not received "compensation" in the actual sense, so the "compensation relationship" can only exist in a paid contract. However, some scholars believe that compensation is not necessarily material compensation, as intangible property, such as reputation and honor, can be regarded as compensation. As long as the debtor believes that it has benefited from the contract, whether material or not, it may be deemed to have received "compensation".[5]

### ***1.2.3. Fulfillment of the relationship***

The relationship between the debtor and the third party is based on a third-party interest contract, which is linked by a third-party interest contract, and the third party receives payment from the debtor, so the relationship between the two is a performance relationship. However, it should be made clear that although the debtor needs to perform the payment to a third party, due to the relativity of the contract, the contractual relationship does not include a third party. Therefore, there is no contractual relationship between the third party and the debtor, and there is no moral constraint. It can be said that the relationship between the two is one-sided and relatively loose. If the above two relationships are lost or invalid, the performance relationship loses the basis for existence, and the debtor can defend a third party or debtor in this regard, and those who have already performed can use the right of relief to protect their rights and interests.[6]

It should be noted that although the relationship between the debtor and the third party is relatively loose, the third party has developed trust after agreeing to the benefits set by the third party interest contract, and may make preparations based on this, in order to protect the third party's trust interests, the debtor also needs to perform the obligations stipulated in the contract, and the third party also has the right to claim payment. The right to claim payment is included in the performance relationship, which is really the key to distinguishing a genuine third-party interest contract from a genuine third-party interest contract.

## **2. The dilemma of legal termination of the contract of genuine third-party interests**

In order to get rid of the dilemma of statutory termination of the genuine third-party interest contract, the problems existing in the third-party interest contract should be analyzed. From the above, we can know that there are three existing problems in third-party interest contracts, namely, unclear subject of rescission, unclear rules of exercise and unclear legal effects.[7]

### ***2.1. The subject of the release is unknown***

When a contract cannot be performed or the parties to the contract breach cause the contract to be unable to be realized, then it involves the issue of rescission of the contract, and the most important issue of rescission of the contract is who has the legal right to rescind the contract.[8]

With the rapid development of the market economy, the pursuit of efficiency is becoming more and more common, and in practice, most civil contracts and commercial contracts may adopt the arrangement of legal relationship of third-party interest contracts. The use of third-party interest contracts can not only promote the contract process, simplify the flow of funds, and improve the efficiency of civil and commercial matters, but also meet the needs of contract practice. However, when a third-party interest contract faces the issue of rescission, the subject of rescission is not clear.

For ordinary civil and commercial contracts, there are only two parties to the contract and no third party is involved, and the statutory right of rescission in this case only exists between the creditor and the debtor. However, as a third-party interest contract involving the interests of a third party, the rights and interests of the contract are tied to the third party, so the norms on contract rescission in the Civil Code cannot be directly applied.

For the subject of statutory rescission of a third-party interest contract, the most important thing to consider is that when the third party expresses its acceptance of the terms of the contract, the rights of the third party are protected at the legal level, and the creditor and the debtor can still rescind the contract for legal reasons. Just as the principle of "no one shall enter into a contract for others", in a third-party interest contract, can the creditor and the debtor rescind the contract to restrict the interests of the third party? At the same time, if there is a fundamental breach of contract, and it can be clearly inferred that the third party is unlikely to benefit from the contract, can the third party be given the right to rescind the contract? For the above situation, China's laws have not made clear provisions to protect the realization

of the rights and interests of third parties, and there is no consensus in the academic community, so it is easy to cause disputes in practice.[9]

## ***2.2. The rules for exercise are unclear***

In the procedure for exercising the statutory right of rescission, if the parties to the contract decide to rescind the contract through consensus, from the perspective of protecting the interests of the third party, the decision to rescind the contract should be based on the consent of the third party as the condition for taking effect? If it is a unilateral statutory right of discharge by the creditor or the debtor, should the notice of discharge also be served on a third party? If the third party is not required to agree to rescind the contract, does one party need to serve the notice of rescission to the third party in addition to sending the notice of rescission to the other party?

As for the exercise of rules, in the final analysis, it is a question of how to protect the rights and interests of third parties. Whether the third party has the right to know and the right to agree to rescission in the third-party interest contract are the main factors that make the exercise rules unclear. What role the third party plays in the contract directly determines the rights of the third party.

As for the exercise of the rules, the insurance field is covered. According to Article 15 of the Insurance Law of the People's Republic of China (hereinafter referred to as the "Insurance Law"), under normal circumstances, after the insurance contract is established, the applicant can terminate the insurance contract, but the insurer cannot rescind the contract. According to Article 17 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Insurance Law of the People's Republic of China (2020 Amendment). In general, the insured does not need to notify the insurer and the beneficiary of the contract when rescinding the contract. Both of the above two laws and regulations open restrictions on the act of the insured to rescind the contract, without the knowledge and consent of the insurer and the beneficiary, and do not protect the interests of the third party too much, but return to the contract itself, believing that the existence of the third party does not affect the right of the parties to the contract to rescind the contract. However, this is only a provision in the insurance contract and is not included in the scope of the Basic Law. Moreover, the contract termination in the insurance law does not stipulate whether it is agreed or statutory termination, so there is still some normative space on this issue.[10]

## ***2.3. The legal effect is unclear***

What kind of legal consequences will be caused after the termination of the contract, there are still certain legislative gaps in China's Civil Code. Although China's Civil Code stipulates some circumstances after the termination of the contract, such as restitution, return of unjust enrichment and compensation for damages, there is no provision for third-party interest contracts.

As far as a third-party interest contract is concerned, the third party only has rights and does not assume obligations in the contractual relationship. The debtor pays to a third party rather than a creditor, so the third party may have received part of the subject matter from the debtor before the contract is dissolved. If the contract is rescinded, will the debtor exercise its right to remedy against the creditor or claim against the third party who actually received it in order to preserve its own interests? And is the subject matter in the possession of a third party unjust enrichment? Can the parties to the contract claim restitution? Finally, if damage is caused due to breach of contract, how should the parties to the contract and the third party assert their rights?

There is no clear answer to the above questions in the current law. Since the legal relationship of a third-party interest contract is more complex than an ordinary contract, after the contract is rescinded, conflicts are more likely to arise in the process of liquidating rights and obligations, and similar disputes exist in practice. For example, in the unjust enrichment dispute between Zhangjiajie Yinzhou Building Materials Co., Ltd. and Qin Ling, the plaintiff Qin Ling disputed whether the insurance money paid by the insurance company chosen by the defendant Yinzhou Building Materials Co., Ltd. to provide insurance for employees was unjust enrichment, and took it to court.

Based on the above analysis, there are many difficulties in the practice of third-party interest contracts. For the needs of practice, it is necessary to improve it.

### **3. Suggestions for the statutory termination and improvement of third-party interest contracts**

Third-party interest contracts are increasingly being used in practice. Almost all commercial contracts can establish a third-party interest clause, on the one hand, to reduce commercial costs, on the other hand, to promote the speed of capital flow. It provides assistance for China's economic development, and at the same time has a significant role in promoting the improvement of people's living conditions, educational conditions, medical conditions, etc., and is a powerful force to help the country revitalize and enterprises to flourish. By improving the third-party interest contract, especially the statutory termination, the role of the market entity can be better played and the degree of market freedom can be improved. At the same time, the main body determines the validity of the contract according to its own wishes, which is conducive to opening up the market and expanding the scale of business, which has an obvious role in promoting China's construction of an economic power and an economic power. Therefore, in order to better apply it in practice, it is necessary to continuously improve the problems encountered in the practice of third-party interest contracts.

#### ***3.1. Clarify the qualifications of the subject of termination of the third-party interest contract***

In the scope of statutory rescission, the most core issue is the subject of the right to statutory rescission. If the subject of the exercise of rights is unknown, it will inevitably lead to confusion in the exercise of rights. At the same time, the determination of the right holder of the statutory right of rescission through provisions will help the parties to the contract and the third party to form the expectation of synergy before the conclusion of the contract, so as to take certain actions against the contract and protect their rights.

Returning to the third-party interest contract itself, as a party to the contract, the creditor inevitably enjoys the statutory right of rescission. Although in a third-party interest contract, the third party ultimately receives the subject matter, but based on the relativity of the contract, the third party has never broken through its own status to join the contractual relationship. Therefore, the creditor has a statutory right of rescission in accordance with the law.

Generally speaking, the statutory right of rescission enjoyed by the non-breaching party is a right granted by law, and its purpose is to protect the legitimate rights and interests of the non-breaching party. However, in recent years, due to the impact of the epidemic, contracts cannot be completed, and more and more contracts are being used to achieve the purpose of the contract. But in essence, there is no such thing as a defaulting party. Therefore, based on this phenomenon, the debtor can conditionally exercise its statutory right of discharge. Because if the debtor is prohibited from rescinding the contract across the board, on the one hand, it is not conducive to solving the problem, and on the other hand, it is also a waste of social resources, and the interests of the two parties cannot be well balanced. Therefore, in order to solve the above problems, the right of termination should be granted to the method of breach of contract under specific conditions, so as to balance justice and fairness.

Whether a third party has a statutory right of rescission has been controversial in academic circles. On the one hand, some people believe that the core of the third-party interest contract is the third party, which is a contract formed for the direct benefit of the third party, so the third party should be given the legal right of rescission; On the other hand, some scholars emphasize that the third party has the right to receive payment in the contract, but does not assume reciprocal obligations, the third party plays a purely beneficial role in the contract, and the rescission of the contract does not cause any loss to the third party, so the third party should not be eligible for the statutory right of rescission.

On this issue, it is generally believed that third parties should not have a statutory right of rescission for the following reasons.

First of all, from the perspective of the parties to the contract, the subject of the third-party interest contract is only the creditor and the debtor, although the object of the subject matter of the contract is the third party, it does not mean that the third party exists in the contractual relationship. Therefore, if a third party is given the legal right of rescission, it will change the entire direction of the contract and terminate the contractual relationship.

Secondly, starting from the implication requirement, the third party enjoys rights and benefits in the third party interest contract, but does not assume the obligations corresponding to the rights. Even if obligation, it is an obligation attached to the exercise of rights, such as receipt or notification. Therefore, the third party does not have an obligation to pay reciprocally in the contract. When the debtor fails to perform the contract or fails to perform its obligations as required by the contract, it is the creditor, not

the third party, who is relieved of reciprocal payment. Therefore, the third party is not implicated in the third party's interest contract, so it cannot exercise the statutory right of rescission.

Based on the above analysis, the subjects exercising the statutory right of rescission of the third-party interest contract are the creditor and the debtor, and the third party should be restricted from exercising the statutory rescission right.

### ***3.2. Establish rules for the exercise of the statutory right of rescission of third-party interest contracts***

After clarifying the subject of the exercise of the statutory right of rescission, it is necessary to further establish the rules for the exercise of the statutory rescission right to better guide the parties in exercising the statutory rescission right.

Where the exercise of the rights of a party affects a third party, the third party may obtain relief through consultation or litigation. Therefore, in order to protect the legitimate rights of the parties and promote the efficient and orderly operation of commercial activities, it is necessary to appropriately restrict the exercise of the statutory right of rescission by the parties to lend, allowing the parties to rescind the contract according to their own wishes within the scope prescribed by law, and this act does not require the consent of a third party.

However, the rights of third parties should also be guaranteed in the contract. The parties shall be informed of the decision to rescind the contract, that is, the subject exercising the statutory right of rescission shall fulfill its obligation to notify the third party, so that the third party can remedy its rights through consultation, litigation, etc. It can be seen from this that the importance of the parties' performance of the notification obligation can ensure that the information of rescission of the contract can be notified to the third party at the first time, and can also provide a legal basis for the third party to exercise remedies. Therefore, it should be made clear that the parties may rescind the contract according to their own wishes, but the notice of rescission of the contract should be served to the parties together, and if the third party has objections to this, it may negotiate with the parties to the contract or protect its legitimate rights and interests through the court and arbitration institutions.

### ***3.3. Clarify the legal effects of the exercise of the statutory right of rescission***

Although in the process of exercising the right of rescission, the protection of the interests of the parties has always been emphasized, but the third party directly receives payment, and its expected benefits should also be placed at the same level of protection. Although the contract is eventually terminated, the third party cannot suffer great harm as a result, and the interests of the third party should be protected on the basis of due process, otherwise it will be contrary to the purpose of the third party's interest contract.

#### ***3.3.1. Substantive law norms***

After the contract is rescinded, even if the third party has received payment or received partial payment, the third party does not need to bear the obligation to restore the original state, and the debtor should claim restitution from the creditor. Moreover, the relevant provisions on unjust enrichment do not apply to the third party's possession of the subject matter, and the debtor should claim the return of unjust enrichment from the creditor. Based on the consideration relationship between the creditor and the third party, the third party is not required to return the subject matter received to the creditor, unless the consideration relationship no longer exists. If the contract is rescinded due to reasons attributable to a third party, the creditor or debtor may claim damages against the third party, but the right to claim damages shall be limited to the rights that the third party can enjoy based on the contract. If it is caused by the creditor, the third party can exercise the right to damages against the creditor according to the consideration relationship, or may claim damages based on the contract itself. If the contract is rescinded due to the debtor's breach of contract, the third party may claim from the debtor that the original benefits and the consideration paid to obtain the expected benefits are to restrict the exercise of the right to claim damages. And after a third party claims against the debtor, the creditor may not claim compensation from the debtor again for the same fact, unless the creditor has suffered losses due to the debtor's breach of contract.

#### ***3.3.2. Procedural law norms***

The foregoing regulates the remedies under the statutory termination of third-party interest contracts through substantive law, but substantive justice needs procedural norms to assist in its implementation.

Therefore, in order to truly protect the interests of all parties and recover losses through timely and effective remedies when their own rights and interests are damaged, it is necessary to make necessary provisions in procedural law to ensure the realization of substantive justice.

In procedural norms, the most important is the status of the subject of litigation of third parties. According to article 64 of the original Contract Law, a third party cannot file a claim, so in the era of contract law, if the rights and interests of a third party are damaged, either there is no way to sue or participate in the litigation as a third party without independent claim, and the third party cannot independently file a lawsuit as the plaintiff. For example, in the case of property dispute between Li 1 and Yang after divorce, after Li 2 and Yang divorced, it was agreed in the divorce agreement that the vehicle involved in the case would be owned by Li 1, but the vehicle was still under Yang's control after the divorce, and Li 1 filed a lawsuit with the court to request Yang to return the purchase price. In the end, the court ruled to dismiss Li 1's claim, on the grounds that Li 1 was not a party to the divorce agreement, but was only a third party, and could not file a lawsuit against Yang in his own name.

However, now that we have entered the era of the Civil Code, since the Civil Code gives the third party the status of the subject of litigation, it should also give the third party the right to independently litigate in terms of procedure, so that the rights of the third party can be better protected. Specifically, it gives the third party the right to appeal, counterclaim and withdraw the lawsuit, that is, the legal status of the plaintiff. Or allow a third party to participate in the litigation procedure as a third party with independent right to claim, so as to fully express the claim and safeguard its legitimate rights and interests.

#### 4. Conclusion

The third party benefit contract is used more and more widely, from simple insurance contract, civil contract to complex commercial contract, can be seen in the third party benefit contract. The third party benefit contract runs through every aspect of our daily life, almost all fields can see the third party benefit contract figure. The third party benefit contract can not only promote the process of commercial activities and accelerate the flow of funds, but also make up for the defects of general civil contracts to a certain extent. The stipulation of the third party's interests in the contract not only has a different stipulation to the contract rights and obligations of both parties, but also gives the third party the right to profit from the contract. This has a decisive impact on both parties to the contract and the third party. How to regulate the third party benefit contract, and determine the conditions, methods and objects of the exercise of the legal right of termination of the third party benefit contract, as well as other influencing factors related to the exercise of the legal right of termination, should be thoroughly studied. To provide institutional and principled guidance for the development of the rule of law and the problems arising in the judicial practice. Therefore, we should perfect the third party benefit contract in practice, improve implementation condition, ensure implement guarantee mechanism, and establish and improve the third party benefit contract system with our country's characteristics, so as to promote economic development and social stability of our country.

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