

Illegal Subcontracting and its Legal Regulation

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Abstract: This article focuses on subcontracting partly and subcontracting wholly in the concept of building regulations, and discusses illegal subcontracting partly and illegal subcontracting wholly, which are common engineering violations. Illegal subcontracting partly and illegal subcontracting wholly are unique terms in different countries. Therefore, by comparing the legal regulations of the two behaviours both at home and abroad, so as to indicate the advantages and disadvantages of the corresponding regulations. Finally, we can find out how our country should improve. At the same time, this article also discusses the dilemmas caused by illegal subcontracting in specific practical situations, such as empty regulations, different rules in different places, and doubtful contract validity, and finally puts forward corresponding improvement countermeasures from three perspectives of legislation, supervision and legal awareness.

Keywords: Illegal Subcontracting partly, Illegal Subcontracting wholly, Contract Effectiveness, Legal Dilemma

1. Introduction

With the development of China's economic strength, the prosperity of the basic construction industry is an indispensable manifestation of the development of national strength. In recent years, housing collapses caused by the quality of housing, resulting in death and major disasters, have frequently occurred. The investigation report after the accident always finds out that it contains illegal subcontracting partly, illegal subcontracting wholly and other acts. Due to the construction of the building has gone through many aspects of coordination, approval, procedures, the author tries to compare the similarities and differences with overseas construction laws, and find details that can be improved, by clarifying the legal regulations on illegal subcontracting in construction projects. Finally, the purpose of putting forward corresponding countermeasures is achieved.

2. Illegal Subcontracting Partly and Related Concepts

2.1 Outsourcing and contracting

Within the scope of this paper, outsourcing and contracting are unique terms within the scope of construction engineering. Outsourcing refers to the act that the developer (contractor) combines or divides the survey, design, construction and other aspects of the construction project into several items during the conclusion of a construction project contract, and assigns them to a (general) contractor for completion. Contracting refers to the act that the contractor undertakes the corresponding responsibility for the performance of the construction contract, completes the corresponding task, and obtains the corresponding profit.

Outsourcing and contracting are expressions for different subjects of the same act (signing a contract). Within the legal scope, both outsourcing and contracting are subject to corresponding legal constraints and supervision by relevant departments.

2.2 Subcontracting partly and Subcontracting wholly

After contracting the construction project, the general contractor needs to subdivide the construction project into parts. The general contractor's act of contracting a part of the construction project to a contractor with corresponding qualifications is called subcontracting partly. After subcontracting partly, the general contractor and the subcontractor shall bear joint and several responsibilities for quality and

safety. In addition, unlike other easily confused subcontracting wholly, subcontracting wholly means that after contracting the project, the contractor transfer the contracted project construction tasks to a third party, the assignor withdraws from the on-site contracting relationship, and the assignee becomes the other party to the contract.

There are also many specific situations of subcontracting wholly, which can be roughly divided into subcontracting wholly procedures and subcontracting wholly facts. For example, the general contractor does not perform the corresponding management obligations, but only collects "management fees" from the actual construction unit, and the actual construction purchase equipment, which is also known as subcontracting wholly. Since subcontracting wholly can easily make the qualification review useless, and cause low quality and damage to the rights and interests of developers, Article 28 1 of my country's "Construction Law" clearly states that subcontracting wholly should be considered an illegal act.

2.3 Illegal subcontracting partly

The illegal subcontract refers to illegal acts in the subcontracting process, including:

- (1) The general contracting unit will subcontract partly the construction project to individual;
- (2) The general contracting unit will subcontract partly the construction project to units that do not have corresponding qualifications or safety production licenses;
- (3) There is no agreement in the general contract, and the contracting unit will be completed by other units of the partial construction project;
- (4) Construction general contracting units will be bracket the construction of the construction project body structure to other units;
- (5) The subcontracting unit will subcontract wholly its contracting construction project;
- (6) Professional subcontracting units are divided into part of the non-labor operation in the professional project of its contract;
- (7) In addition to the labor subsidiary, the labor subcontracting is charged, and the main building materials, turnover materials and large and medium-sized construction machinery equipment are charged;
- (8) Other illegal subcontracting behaviors stipulated by laws and regulations.

The top two illegal activities are more likely to understand among them, and the third illegal methods is because the general contracting is not completely unsatisfactory. The main part of the building should only be constructed by the general contractor, and the general contractor is not responsible for the rest. Article 4 is called "layers of subcontracting partly" or "layers of subcontracting wholly", which is the act that the subcontractor does not assume the responsibility for construction, and in turn subcontracts or subcontracts the project to a third-party unit. Because the illegal acts of Article 3 may lead to the lack of general contracting responsibility for the safety of the main body of the building, the illegal acts of Article 4 may lead to loss of economic profits, and the layers of exploitation will eventually lead to a large difference between the construction project and the original construction project contract, and the quality is also poor, which will ultimately damage the rights and interests of developers and users.^[1]

3. Regulation of Illegal Subcontract Partly in Current Law

3.1 China's legislative status

The law of architectural area is huge, and the legal documents promised by each level are intricate, and there are even contradictions. From the main body of the issuance of the corresponding regulations, it can be divided into:

- (1) Construction law developed by the National People's Congress and its Standing Committee;
- (2) Construction administrative regulations issued by the State Council;
- (3) Construction department regulations issued by the construction administrative department or jointly issued with other departments of the State Council;
- (4) Local construction regulations made by the provincial, municipalities, the people's congress of the Autonomous Region and the Standing Committee;

(5) Local construction regulations issued by the people's governments of all parts.

In specific judicial practice, cases involving illegal subcontracting partly of construction projects can often be linked to civil laws such as the Property Rights Section and Contract Section of the Civil Code, or the Tendering and Bidding Law of the People's Republic of China.

The "Construction Law", "Tendering and Bidding Law", "Civil Code" Contract Section, etc. have all made prohibitive provisions on illegal subcontracting partly, and due to economic and historical problems, the punishment and crackdown on illegal subcontracting partly varies from region to region.

Most of the relevant legal regulations revolve around whether the subject complies with the regulations, whether the contract is valid, the manifestations of illegality, and the mechanism of joint and several liability. The specific manifestations of illegal subcontracting partly, mentioned above, are constantly supplemented and expanded. In the process of mutual complementation of legislation, corresponding policies have been gradually improved.

3.2 China's overseas legislation status

The foreign building legal rules is relatively comprehensive and the system is perfect. For example, Germany's architectural legal system has experienced a long evolution. Through hundreds of years of history, construction laws and regulations composed of basic law, federal building laws and regulations, state constitutions, state construction laws and regulations, and administrative regulations. Whether it is Germany's legal system, the United States' "*International Building Codes*", the British "*Building regulations in the United Kingdom*" or the European Structure Design Standards *Eurocodes* issued by the EU, Have certain integrity and normative.

Among them, the subcontracting issues involved in this article are more common in countries. For example, in the United States, only the qualifications of construction companies, building quality supervisors, auditors, etc., and the law will allow "layer subcontracting" behavior. Not only that, Germany also recognizes the layered subcontracting is a specializing in the professionalism of building strength. It can be specially made by the layered subcontracting, so that the quality of the project is improved.

Hong Kong and Macao have the "Guidelines for Project Sub-contracting", which is a local building code. "Project subcontracting" is another name for subcontracting partly under the construction contracting system. There are also two forms of "judgment in a judgment" and "judgment by level" in the construction contract system. " Judgment in a judgment" refers to the behavior of "illegal subcontracting" stipulated by Chinese law, and " judgment by level" refers to the behavior of "subcontracting at different levels" or even "dismemberment subcontracting" stipulated by Chinese law.

3.3 Comparison of relevant regulations at home and abroad

Through the comparison of domestic laws and existing regulations, we can find a very interesting fact, that is, the "illegal subcontract" behavior recognized in our country is actually legal existence in the abroad law. So we should give priority to the rationality and benefits of "layer subcontract" and "subcontract wholly" behavior, and find why such behavior rationality is recognized, and then discuss why such a "reasonable rule" is not feasible.

3.3.1 The advantages of "layer subcontract" and "subcontract wholly"

3.3.1.1 Refining division of labor makes project specialization

"Layer subcontract" is a case in which a complex project is divided again, and the corresponding professional team is constructed. "Subcontract wholly" is the use of the company's management to send the relevant project to the right person to save the total overhead of relevant companies, and play the advantages of the corresponding company.

3.3.1.2 Prevent small construction companies from being unemployed

The construction industry and regional economic development is related to the situation. If the regional economic development is poor, the unemployment rate is high, it may fall into suspension, resulting in sustained economic situation. In this economic development, the cost of construction industry is relatively high, the capital flow is long, and the cost of manpower is huge. Therefore, the smaller building construction team is most likely to be disbanded by the wave of unemployment trends. The reasonable "layer subcontract" will divide the project into smaller tasks, making small companies to find

projects and provide guarantees for the company's survival. At the same time, for small and medium-sized construction companies that have already signed a subcontract agreement, it is easy to have difficulty in economic winter, and it is easy to stop, and the work is delayed, and even the situation that does not work. The second layered subcontracting is allowed to provide SMEs to provide elastic opportunities, allowing companies to find new third parties in operation difficulties, not only provide survival opportunities, but will also reduce the overall work of the overall project to the lowest.

3.3.1.3 Managing small engineering units is more convenient

In practice, behaviors like dismembering and subcontracting can make the division of target projects more refined, and the corresponding parts corresponding to the responsibilities and expenses of the construction company will be less. In the actual construction process of the subcontracting company, if the funds are sufficient, the subcontracting company will settle according to each detail in the construction process, and make more reasonable construction progress, building materials purchase, overall plan, etc. This can lead to better construction benefits, and promote the construction of corresponding construction companies.

3.3.2 Disadvantages of "layer subcontract" and "subcontract wholly"

3.3.2.1 Exploiting economic profits

In the process of multiple contracting and subcontracting of construction projects, the superior company also deducts a part of the "management fee". In practice, it can be understood that the superior company uses its qualifications to bid for the cost of the corresponding project, and it can also be considered as the accrued profits set aside by the respective company. If the subcontracting process is complicated, and multiple companies continue to deduct the corresponding management fees from the contract signed by the general contracting company, it will inevitably lead to a reduction in the amount left for the actual construction company to use. The inability to purchase compliant building materials will eventually lead to poor construction quality and safety cannot be guaranteed normally.

Since the superior contract company is not involved in the construction of the construction project due to the contract and procedures in the link, the superior contract company does not participate in the construction of the project entity. At the same time, it will also be delegated to the increase in cost. The funds that ultimately flow into the actual construction company are reduced by layer subcontracting. The quality of building quality is more difficult to guarantee.

3.3.2.2 Avoid supervision to escape taxes

In actual operation, layer subcontracting generally passes some "invisible contract", making the actual illegal subcontracting being masked by formal procedures on behalf of the formalities. Such contracts do not have corresponding legal effects, but should pay the income tax will be subject to the corresponding company, thereby causing national tax assets loss. At the same time, this invisible contract can avoid the corresponding audit mechanism. The auditors of the superior company will inevitably be more stringent and careful if the relevant reviews of the relevant reviews will result in the results of the construction party without corresponding qualifications, thus harm The live safety of the corresponding user.

Since this invisible contract is usually circumvented by management procedures, other matters have been avoided, and it is not in the overall construction process, so it is difficult to monitor the verification of this type of contract.

3.3.3 The illegal application of "reasonable" behavior

In summary, the author believes that the corresponding illegal subcontracting, the transfer behavior should be identified as illegal in the current building market in my country. The reason is as follows:

3.3.3.1 Undertake company capacity is uneven

Due to the problems left over by history, companies with many project contracting qualifications have correspondingly strong capital and often have a certain state-owned capital background. In contrast, many architectural design companies with insufficient capital but possessing technology are often not qualified to undertake the project as the general contractor of the project. It is difficult to obtain the corresponding qualifications of construction companies, and the companies that have obtained the qualifications have various practical problems, which make it difficult to coordinate the whole project harmoniously. Therefore, it is more profitable to actually seek certain benefits than to complete the management and distribution process which leads to current chaos of illegal subcontracting.

3.3.3.2 Procedural link vulnerability

Although Articles 28, 29, etc., clearly make regulations for the corresponding subcontracting provisions, but there is still a way to evade the supervision by bribery, refusing to perform a ruling. "7 · 12" Suzhou hotel collapse is a major safety accident in recent years. Among them, the developer Suzhou Siji Kaiyuan Catering Management Service Co., Ltd. has been packaged until the construction of construction, Suzhou Chucai Construction Engineering Co., Ltd., The personal demolition team that is illegally submitted to the non-qualified Liu, and the corresponding architect of the construction party is not equipped with the corresponding qualifications. These violations were exposed until the building collapse entered the accident investigation stage. The reconstruction project has not reviewed the review and approval of the relevant reconstruction project. The construction map has not been reviewed by third-party audit agencies. Through the bribery means of developers and some illegal methods, the project starts to build in the absence of audit and blocking, and finally In the case where the building structure is severely damaged, the incident occurred.

My country's specifications for contracting and subcontracting systems, in fact, to achieve the purpose of supervising the market by using the nature of the relevant state organs. The audit in the overall process is actually considered multifaceted by building quality, construction, construction engineering security, rationality. Complete marketization of the building contract packages will result in the crowd of regulatory resources, and the audit process is complicated, and the corresponding capital flow restrictions cannot be resolved, so complete marketization is not feasible.

3.3.3.3 Evading supervision by invisible contract

There is a well-known case in the layer subcontract, which is the illegal subcontracting case of Qingdao Metro Project in Gezhouba. This is also exposed by the actual construction company of the final assembly. There is a large number of yin and yang contracts in the construction industry, hidden contracts, such contracts lead to difficult for supervision, and the corresponding accidents have been inflated. If the corresponding subcontracting policy can cause the review of such contracts, the complexity is increased, and the problem of damage to building quality is still unavailable, and it is fundamentally unable to solve the most fundamental quality problems of my country's building production.

4. Legal Dilemma Caused by Illegal Subcontracting

4.1 Legal regulations are formalistic

According to our overview of domestic law regulations, the provisions of illegal subcontract in legal provisions can be said to be more complete. However, in the actual situation, the two sides of the illegal subsidiaries often reach the relevant interest community, so they will not tell each other, so that the corresponding investigation is very difficult; at the same time, with the country, the region has introduced more The law stipulates that the number of cases of illegal subcontracting does not seem to be reduced as laws and regulations. Fu Xiangyu's statistics on the illegal subsidiary cases of the courts of the courts in 2014 to 2019 in the "Research on the Legal Issues of Construction Engineering", and the 2014 review of 7,154, the 2015 review is 10,945, 2016 is 15,544, 2017 were 21,513, 24,433 in 2018, 24,288 in 2019. Through the author follow-up query, the number of related cases has indeed sustain high, and there is no significant decrease. Therefore, the practical operability of the relevant legal strips remains to be discussed, and such legal provisions have not been provided on the paper, it seems to be helpful for the real situation.

4.2 All localities have conflicts

Due to the huge system of regulations in the building, the relevant supplemental policies issued by the local area have different autumn, and the implementation is different. Liu Chunxi, "Research on the Legal Countermeasures of Construction of my country Construction Project" The Senior People's Court of Shandong Province on a number of questions in the trial of constructing project contract disputes, the "Jiangsu Provincial High Court" in the Jiangsu Provincial High Court has been clearly pointed out in the "Senior People's Court of Jiangsu Province in 2001" The contractor did not receive the construction license did not affect the effectiveness of the contract, and the two contradict each other, similar cases were incompetent.

The country is not the same for the punishment of corresponding illegal acts, and the corresponding free discretion is wider. The punishment of the project contractor shall order correct, confiscate illegal

income, and shall be fined, and order to suspend business and rectify, reduce the qualification level, and then revoke the qualification certificate, and the interval is quite broad. Although the amount of 0.5% ~ 1% of the total project is usually taken as a fine amount in judicial practice, the corresponding broad judgment is given to the vast decision space of all local courts, which provides new opportunities for the rent. In addition, the revocation of the qualification certificate is not cured. After the original company logs out, the new company is re-registered and the corresponding qualification certificate can also perfectly circumvent the corresponding punishment mechanism.

In summary, due to the provisions of the localities and the laws of the law, there is no clear guidance for the penalty, similar cases will have the corresponding "different judgments" in the court.

4.3 Contract effectiveness

In the "Interpretation of the Supreme People's Court on the Application of Legal Issues Applicable to Construction Project Disputes", the contract is clearly suggested that the contracts and illegal contracts and illegal contracts should usually be identified as invalid, but in practice, there are also a variety of new dilemma.

If the construction contract construct is invalid, it can be treated in accordance with the contractual acceptance of the completion of the project completion acceptance or acceptance after the completion of the project completion acceptance or acceptance.

For contracts between contractors and contractors in illegal subcontracting cases, it is often identified as an effective contract, which is as follows:

(1) Because the contract is qualified in the contract, the contractor has corresponding contractual qualifications, and illegal subcontracts usually occur after the contract is signed;

(2) The contract-issuing party cannot prove that he colluded with the contractor, knowing that the contractor illegally subcontracted but did not stop it. In this case, the contract-issuing party is also the party whose legal interests have been infringed. Claiming that the contract is invalid is not conducive to the protection of the contract-issuing party's rights, and the contract-issuing party cannot claim liability for breach of contract against the contractor which is subcontracted illegally.

For contracts between contractors and subcontractors in illegal subcontracting cases, it is often identified as invalid, even if the subcontractors have corresponding qualifications, the reasons are as follows:

(1) "Interpretation of the Supreme People's Court on the application of legal issues for the application of construction contract disputes in construction projects" clearly put forward, whether it is illegal subcontracting partly, subcontracting wholly, and hanging, such contracts should be handled in effect;

(2) Even if the division of the subcontractor has the corresponding qualification, the construction company violates the corresponding legal provisions. From the legislative perspective, illegal bracketing behavior is contained in the main reasons, even if there is a qualified company to undertake specific construction projects, it is still unavailable to avoid the reducing of objective building investment in objective buildings that are fundamentally caused. If only considering acceptance is quite comparable to construction, it is not considered that the corresponding company has drawn huge profits through illegal subcontracting behavior, and such considerations are lack of fairness, and they have also objectively endangered the quality of engineering quality.

In short, due to the "Civil Code" contract, "Architectural Law", although the illegal subcontracting are prepared, it is not defined according to the existing actual situation, resulting in the corresponding definition ambiguous two, which is not special. The specified situation has caused the number of corresponding cases in recent years without falling.^[2]

5. Illegal Subcontracting

5.1 Illegal subcontracting issues from legislative angles

5.1.1 Improved specific legal details

Based on the above, we can find that there are many imperfections in the corresponding laws and regulations, whether in terms of the nature of illegal subcontracting or the corresponding punishment

mechanism, although there are judicial interpretations issued by the Supreme Law and local high courts in terms of specific operations. The issued documents serve as the basis for interpretation, but they are contradictory and the legal principles are unclear.

The author believes that in the specific legislative link, in addition to the specific definitions of the relevant provisions, the corresponding judgment cases are given, and it is also necessary to strictly determine the responsibilities of all parties from the overall process, and to pursue multiple parties.

5.1.2 Improve penalties and reduce free discretion

In the legal formulation of corresponding penalties, the legislature should fully consider the huge economic profits of contracting companies and outsourcing. The consideration is low, and the penalty is loose, the responsible person is not imposed, and the amount of punishment from 0.5% ~ 1% is very necessary. It is necessary to punish the pain, the pain, and improve the corresponding illegal punishment. Fundamentally reduce the chance of crime. In addition, it is necessary to consider the free discretion of the corresponding penalty. The setting of discretion itself also needs to follow certain penalties, and this is not given in accordance with the highest law, so the sub-court is easy to punish the specific discretion, and ultimately make illegal acts have not been punished. It provides the corresponding power ignites, which may cause unfair results. Therefore, the legislature is necessary to regulate the corresponding legal strips and give more details.

5.2 Solving illegal subcontracting issues from the perspective of supervision

5.2.1 Strengthen the actual process sampling and add relevant report rewards system

In the actual production process, which company is made by the specific construction project, whether it has the corresponding qualifications, whether or not the contractor or the subcontractor in the process can be identified through frequent visits and inquiry. At the same time, the corresponding contract signing should be registered in the relevant departments. In addition to the need to check the qualifications in the relevant departments, the relevant departments must pay close attention to the flow of the company's personnel, funding, and take a regular spot check to carefully study whether the corresponding project has a illegal subcontracting. The phenomenon of class.

The supervisory department can also add corresponding report reward systems, moderately encourage the corresponding insists to report illegal binders. The corresponding judicial interpretation of the highest method has also stated that the actual construction person sued the subscriber, and the illegal subcontractors' situation people's court should accept. This is also the protection of the actual construction party rights, and further, the relevant department can set a report mechanism to add strength to the health and good construction engineering ecological environment through the comprehensive supervision of the project.

5.2.2 Take the "labour contractor" registration system

The term "labour contractor" is actually a representation of a small-scale construction engineering team that does not have corresponding qualifications but has the corresponding manpower, and today, the labour contractor team has a lot. On the one hand, due to the difficulty of obtaining the qualification, the labour contractor team is unknown corresponding to the corresponding process or is difficult to handle; on the other hand, it is because this can escape supervision, from avoiding tax payment, accepting supervision for the survival of the unit team. Therefore, the supervisory department should actively guide the labour contractor team to introduce the corresponding construction qualifications and existing laws and regulations, and encourage the team to actively declare the qualifications. At the same time, the supervisory department needs to register, and the project has a probably understanding of the movement of the unit team, thus achieving the purpose of monitoring the construction market.^[3]

5.2.3 Improve the supervision strategy

Among the formal processes of construction engineering construction, supervision is the cooperation between multi-sectors, and jointly supervise the quality and safety of a construction project under multi-sectoral coherent. But even in the introduction of third parties (construction drawing approval), from the process of specification procedures, there is still a large amount of illegal outsourcing, and the illegal subcontracts will appear. These phenomena are questioning to the relevant departments, whether the corresponding supervision will be valid. The relevant departments should also reflect, in the relatively complete system, why still can skip all processes, illegal outsourcing, and subcontracting. And, even if the wrong acts appear, the relevant departments are also difficult to regulate the remediation, and

ultimately can only make certain administrative punishments to the already built buildings. The final result is nothing more than a fine of not painful punishment.

Therefore, the relevant departments need to fully improve the corresponding supervision strategies from the execution angle, engage in the characteristics of the relevant organs in front, things, and after the third perspective, establish a more complete monitoring mechanism, achieving multi-angle, all-round supervision.

5.3 Solving illegal subcontracting issues from legal awareness

5.3.1 Construction Company

Construction companies should have legal responsibility and illegal awareness, and should not be able to make unique driving power with profits. However, it is difficult to break the corresponding dilemma only from a conscious perspective. Many companies have a deep capital background, which may not understand the corresponding penalties, so relevant departments can actively spread the construction law, regularly organize legal qualification review activities, regularly check, and assess the legal departments of the construction company.

5.3.2 Government Departments

The relevant departments can not only increase the punishment, but also the corresponding tax reduction, the welfare treatment policy actively encourages the legal compliance of the company to produce life. The relevant departments should also have the corresponding sense of responsibility and mission. It is clear that their responsibilities are closely related to the lives of the people. From the morality of their own work value, so as to avoid bribery, escape review supervision, etc., reduce the illegal behavior of ignition.

6. Conclusions

The national government, the relevant departments have a high degree of importance to the harm, economic losses, and rights recovery of the building collapsed production safety accident. In addition to the "7 · 12" Suzhou hotel collapse, there are many major production safety accidents in the "8 · 29" Linfen Hotel collapse, and the commonality of these accidents is that the construction procedures, the procedures are not rigorous, illegal, illegal contract, illegal Subcontracting, related personnel are not understanding that the basic common sense of building structures, casual construction, construction and construction party qualifications; local regulatory authorities can not monitor management in time, follow-up rectification, complicated quality monitoring procedures, huge cost, and places to quantify it Assessment. In the final analysis, it is the complex building regulation, which has a wide range of regulations. The local performance is high, the procedures are not strict, and the supervision is weak; the local people build and remodel at will.

In this regard, although the Ministry of Housing and Construction issued a number of rules to remedy, the relevant departments of all localities are also active on their testing, reconstruction, and demolition, but in the specific implementation effect, the number of corresponding cases does not decrease. It can be seen that more coordination is still required for the implementation of the rules in the building system, completed together, the only thing that can be determined is that fairness, just, open building markets will cut the interests of all interest, but they can provide a safe for the people. Can trust the living space.

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