

A Comparative Analysis of the Right of Recourse between Co-Guarantors

Rongxin Zeng¹

¹ School of Law, Shanghai University of Political Science and Law, Shanghai, China

Correspondence: Rongxin Zeng, School of Law, Shanghai University of Political Science and Law, Shanghai, China. E-mail: zrxshupl@163.com

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Abstract

This paper examines a crucial aspect of the legal framework governing the rights of recourse between co-guarantors. It focus on the Chinese context while drawing insightful comparisons with France, Germany, and the United States. A comprehensive analysis of the pertinent provisions of the Civil Code of the People's Republic of China and the Supreme People's Court interpretations reveals inconsistencies and ambiguities that necessitate further examination. To enhance the discourse, the paper contrasts Chinese regulations with those of France, Germany, and the United States, elucidating disparate approaches and potential best practices. This comparative analysis not only identifies the strengths and weaknesses of China's current stance but also suggests avenues for improvement. By examining foreign legal systems, the study identifies areas where Chinese law could be refined to better align with international standards and principles of fairness. The findings emphasize the necessity for the establishment of a more coherent and equitable legal framework in China, one that provides clear and unambiguous guidelines for co-guarantors seeking recourse. It is recommended that steps be taken to address the discrepancies identified and to advocate for reforms that promote legal clarity and enhance the protection of co-guarantors' rights. The paper concludes with a recommendation for comprehensive legislative reform, emphasizing the importance of balancing the interests of all parties involved in co-guarantee arrangements in order to foster a more robust and internationally compatible legal environment.

Keywords: co-guarantors, recourse rights, legal framework, comparative analysis, CCC

1. Introduction

The right of recourse between co-guarantors represents a pivotal yet nuanced area of legal inquiry, situated within the intricate web of international legal frameworks. This study presents a comprehensive examination of the legal framework that governs the rights of recourse between co-guarantors, with a particular focus on the Chinese context. The study is enhanced by a comparative analysis of the practices in France, Germany, and the United States, with the objective of identifying potential avenues for improvement and reform.

This research was initiated in response to the observation of inconsistencies and ambiguities within Chinese judicial precedents, which highlighted the necessity for a comprehensive understanding and clarification of the rules governing mutual recourse rights between co-guarantors. A review of judicial decisions at various levels of Chinese courts has revealed inconsistencies and ambiguities in existing legislation, which have prompted a closer examination of the Civil Code of the People's Republic of China ("CCC") and the Supreme People's Court's (SPC) interpretations (Zhang, 2023). These documents provide the basis for the legal framework, yet they are not without complexities and areas of uncertainty.

This study makes comparisons with the legal systems of France, Germany, and the United States with the objective of identifying the most effective practices and innovative solutions that can inform and enrich the Chinese legal landscape. Each country offers a distinctive perspective on the treatment of co-guarantor rights, reflecting their respective legal traditions and economic philosophies. The comparative analysis serves as a conduit, establishing a discourse on the relative merits and shortcomings of disparate legal systems.

This study has two principal objectives. The initial objective is to provide an analysis of the current state of Chinese legislation concerning co-guarantor rights, identifying areas of ambiguity and potential conflict. Secondly, through a comparative analysis, the study aims to put forth constructive recommendations for reform, advocating for a

legal framework that is both coherent and equitable, in alignment with international standards and promoting fair treatment of all parties involved in co-guarantee agreements.

In essence, the objective of this study is to establish a connection between theoretical concepts and practical applications, between legal traditions and innovative approaches, and between domestic legislation and international standards. It is anticipated that the findings will serve as a catalyst for legislative improvements, ensuring that the rights of recourse between co-guarantors are based on principles of justice, efficiency, and fairness.

2. Review of Chinese Legal Provisions On the Right of Recourse between Co-Guarantors

With regard to the question of whether the guarantors can recover from each other, it can be observed that Chinese legislation has undergone a process of evolution. By undertaking a detailed examination of the language and intent of the different legal provisions, it is our objective to identify and elucidate the complexities and potential ambiguities that have given rise to judicial interpretations and subsequent clarifications. Indeed, the interplay between the CCC and the judicial interpretations serves to illustrate the dynamic nature of Chinese law (Zhao, 2008). The evolution of the legal landscape is driven by the necessity to adapt to changing economic conditions, technological advancements, and international legal trends. In the context of co-guarantor rights, this means that China must achieve a delicate equilibrium between upholding traditional legal principles enshrined in the CCC and embracing contemporary legal innovations (Cao, 2023). Incorporating insights from legal scholars and economists, such as He Jian's analysis of the efficiency gains associated with well-defined recourse rights, the SPC's interpretations seek to achieve a balance between legal formalism and economic realism (He, 2021). By acknowledging the economic implications of co-guarantor relationships and the role of recourse rights in promoting fair and efficient debt recovery, the SPC's interpretations contribute to the broader discourse on guarantee law reform in China. Such an approach encourages the creation of a legal environment that not only adheres to established legal principles but also fosters economic stability and growth.

2.1 Confirmation of the Right of Recourse between Co-Guarantors in Pre-Civil Code Era

Article 12 of the Security Law (1995) stated that in the absence of an agreement, the guarantor who assumes the guarantee liability shall have the right to recourse from the debtor and the right to require co-guarantors to assume the corresponding share of the right. Articles 38 and 75 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Security Law of the People's Republic of China (the "Interpretation of Chinese Security Law"), reaffirmed the fundamental principles of the Security Law upon its enactment on 13 December 2000.

Article 176 of the Property Law, which entered into force in 2007, entitled the guarantor of a mixed guarantee the right to recourse from the debtor after having assumed the guarantee liability. However, it did not provide clear provisions regarding the right of recourse between co-guarantors. Article 178 of the Property Law states that "in the event of inconsistency between the provisions of this law and those of the security law, the later shall prevail." From the perspective of legal interpretation, the provisions of the Security Law and its judicial interpretation shall apply in the absence of related provision in the Property Law. Therefore, following the enactment of the Property Law, the guarantor who has assumed the guarantee liability is entitled to recourse against the co-guarantors. Nevertheless, this certainty has been complicated by a legal document issued by the SPC in November 2019, entitled "Minutes of the Working Conference on Civil and Commercial Trials of the National Courts". Article 56 of the Minutes stated that the people's court will not support a guarantor's right of recourse against other co-guarantors after having assumed the guarantee liability, unless the guarantors have agreed in the guarantee contract that they have the right of recourse from each other.

2.2 Reticence of CCC on the Right of Recourse between Co-Guarantors

Article 700 of the CCC, which entered into force on 1 January 2021, stipulates that "Once a surety has assumed the guarantee liability, unless otherwise agreed by the parties, the surety has the right to indemnification against the debtor within the scope of his guarantee liability, and may enjoy the right of the creditor against the debtor, provided that the creditor's interests shall not be harmed." This article sets forth the fundamental principles that govern the rights of recourse of a guarantor. It is clear that a guarantor, having assumed the guarantee liability has the right to recourse against the debtor within the scope of his assumed liability, and may enjoy the right of the creditor against the debtor.

However, the aforementioned provisions of the CCC is not without its complexities in terms of the right of recourse between co-guarantor. In the one hand, the requirement imposed by Article 293 of CCC for co-guarantors to exhaust their remedies against the principal debtor's collateral before seeking recourse from other co-guarantors has been a contentious issue. This stipulation is intended to prevent co-guarantors from circumventing the primary

obligor and to ensure that the principal debtor bears the initial burden of repayment. However, it is possible that this could inadvertently create obstacles for co-guarantors seeking timely and effective recourse. Conversely, Article 700 deletes the provision in Article 12 of the Guarantee Law regarding the right to recourse between co-guarantors, and is entirely silent on the right to recourse between co-guarantors, particularly with regard to the specifics of contribution distribution in the absence of clear contractual stipulations. Although the intention of legislation is to promote fairness and predictability, the lack of clarity in certain provisions may result in ambiguity and inconsistency in application. This leaves room for interpretation regarding the circumstances under which recourse rights can be exercised.

The Interpretation of the SPC of Applying the Security-related Rules of the Chinese Civil Code (“Interpretation of Security-related Rules”), which entered into force on 1 January 2022, offers supplementary guidance on the application of Article 700. However, the judicial interpretations, while aiming to provide clarity, occasionally introduce new layers of complexity. Article 13 of the Interpretation of Security-related Rules stipulates that “in the event of two or more third parties guaranteeing the same debt, and should the guarantors agree on mutual recovery and sharing, and the guarantor who has assumed responsibility for the guarantee request the other guarantors to share according to the aforementioned agreement, the people's court shall support the request. In the event that the guarantors consent to assume joint and several guarantees or to recover from one another but do not agree on the distribution of the recovered funds, the guarantors shall apportion the unrecovered portion of the guarantee in proportion to their respective commitments. In the event that two or more third parties have guaranteed the same debt and have not reached an agreement regarding mutual recovery or joint and several guarantees, but have signed, sealed, or fingerprinted the same contract, and the guarantor who has assumed responsibility for the guarantee requests that the other guarantors share proportionately the portion of the debt that cannot be recovered from the debtor, the people's court shall support the request. In all cases except those specified in the preceding two paragraphs, the people's court shall not support the request of a guarantor who has assumed the responsibility for the guarantee that the other guarantors share the portion that cannot be recovered from the debtor.” This provision is of paramount importance, as it establishes the fundamental basis for the exercise of recourse rights, emphasizing the importance of contractual stipulations. This highlights the legal expectation that co-guarantors should enter into agreements that clearly define their obligations and the mechanisms for recourse in the event of default by the principal debtor or other co-guarantors. In the absence of agreement related to the right of recourse between co-guarantors, a guarantor having assumed the responsibility for the guarantee has no right of recourse against co-guarantors. Some authors also support this point of view (Gao, 2023).

Moreover, the provisions of the CCC do not explicitly address scenarios involving insolvency or cross-border co-guarantee arrangements.

Articles 23 and 24 of the Interpretation of Security-related Rules elucidate the implications of insolvency among creditors, debtors and guarantors. However, the text does not mention the right of recourse between co-guarantors, and therefore does not provide guidance on how to handle cases where a co-guarantor becomes insolvent, affecting the distribution of recourse rights between co-guarantors. The treatment of insolvency between co-guarantors remains also a contentious issue, especially in cases where the insolvency of one co-guarantor significantly alters the financial landscape for the remaining co-guarantors (Wang, 2023). The lack of clear mechanism for dealing with insolvency situations can give rise to legal uncertainty and impede the effective enforcement of recourse rights.

Cross-border co-guarantee arrangements introduce a further layer of complexity, which the SPC's interpretations seek to address. In light of the growing number of international transactions, it is imperative that the SPC elucidate the principles governing the resolution of disputes involving co-guarantors from different jurisdictions. This entails underscoring the importance of upholding the choice of law clauses within co-guarantee agreements and the need for courts to apply international legal norms when adjudicating such disputes. In order to achieve this, the SPC must seek to promote legal certainty and predictability in cross-border co-guarantee relationships, facilitating more efficient resolution processes and fostering confidence among international parties. The absence of a unified international standard for co-guarantor rights further complicates matters, necessitating careful navigation by legal practitioners and courts alike.

An economic analysis further demonstrates the inefficiencies and potential disincentives created by the current legal framework. He Jian's work underscores the importance of well-defined and enforceable recourse rights in fostering responsible lending practices and enhancing overall economic stability. However, the intricacies and ambiguity inherent to the Chinese legal system may dissuade co-guarantors from entering into agreements, thereby limiting access to credit and potentially impeding economic growth.

2.3 *Faltering Position of Chinese Courts on the Recourse Rights between Co-Guarantors*

In order to initiate our analytical study, it is necessary to gain an understanding of the judicial landscape of China and to identify those cases that have had the most significant impact upon the rights of co-guarantors in the higher court system. These cases, originating from the Supreme People's Court and various provincial high courts, serve as pivotal milestones, exemplifying the progression and interpretation of legal principles pertaining to co-guarantor relationships.

One such pivotal case is the "Zhao Heng and others v. HuaShang Company Guarantee Dispute over right of recourse" (Case number: (2020) Jing 03, Second instance of Civil procedure, No. 1038), which addressed the allocation of responsibility following the default of a primary borrower. In this case, HuaShang, had fulfilled its obligation as a co-guarantor and sought recourse from Zhao Heng and Xu Zhe, other co-guarantors who had failed to contribute to the debt repayments on a proportionate basis. In its judgment, the Court held that if more than one guarantor is appointed for the same debt, the guarantor shall assume the guarantee liability in accordance with the guarantee share agreed in the guarantee contract. If there is no agreement on the share of the guarantee, the creditor may require each guarantor to assume the guarantee liability within the scope of its guarantee. The guarantor who has fulfilled his guarantee obligation may only recover from the debtor, but not from the other guarantors who have not fulfilled their guarantee obligations. Unless the guarantors agree in the guarantee contract that they can recover from each other. The Court therefore underscored in this case the importance of contractual stipulations and the principle of equity in determining the extent of recourse rights between co-guarantors in such cases. Huizhou Intermediate People's Court of Guangdong Province held the same position on this point in the judgment "Huizhou Yihai Co., Ltd. v. Guo Yaoming, Huizhou Yujing Co., Ltd. And others" (Case number: (2020) Yue 13, First-instance of Civil Procedure, No. 186). These cases all highlighted the necessity for clear and explicit terms within co-guarantee agreements, emphasizing that in the absence of such provisions, the distribution of financial burdens could be open to judicial discretion, often resulting in outcomes that may not fully align with the expectations of the parties involved. While there are some others dissenting cases. In the case "Gu Zhengkang and Ronghua Auto Co., Ltd. v. Hubei Huicheng Co., Ltd." (Case number: (2017) Supreme Court Civil Retrial Procedure, No. 137), the SPC held that Article 176 of the Property Law only provides that the third party providing the guarantee in a mixed guarantee has the right of recourse from the debtor after assuming the guarantee liability, but does not clarify whether the guarantors can recover from each other. Article 38 of the Interpretation of Chinese Security Law provides that "If the parties have not agreed on the scope of the guarantee or the scope of the security in rem, or if the agreement is unclear, the guarantor who has assumed the guarantee liability may recover from the debtor or require the other guarantors to liquidate their share of the liability". This clearly confirms that the guarantors in a mixed guarantee have a right of recourse against co-guarantors. In the absence of provisions in the Property Law and the clear provisions of the Interpretation of Chinese Security Law, it is clear that the guarantor assuming the guarantee liability had a right of recourse against the co-guarantors. Foshan Intermediate People's Court of Guangdong Province follows the SPC's position in its judgement "Foshan Bosheng Co., Ltd. v. Guangdong Tianshi Holding Co., Ltd." (Case number: (2022) Yue 06, Second instance of Civil procedure, No.1590).

The other significant case, "Heruihuifeng Co., Ltd. v. Jinding leasing Co., Ltd." (Case number: (2022), Jing 03, Second instance of Civil procedure, No. 3364), addressed the interplay between the rights of co-guarantors and the insolvency of one of the guarantors. The ruling handed down by the court in this case provides insight into the difficulties encountered when attempting to enforce recourse rights against co-guarantors who have become insolvent. This case study highlights the necessity for the implementation of mechanisms to address such scenarios, which may include the establishment of a reserve fund or insurance schemes to mitigate the risks associated with insolvency. This is crucial for the protection of the interests of co-guarantors who fulfil their obligations, ensuring that they are not disproportionately burdened by the insolvency of their counterparts.

These cases, among others, have been pivotal in influencing the development of legal precedent concerning the rights of co-guarantors in China. These cases illustrate the complexities and nuances encountered in the practical application of legal principles, thereby revealing gaps and inconsistencies in the existing legal framework. Furthermore, they illustrate the dynamic nature of co-guarantor legislation, which is influenced by a range of factors including economic conditions, the specifics of contractual agreements and international legal trends.

From an economic perspective, these cases also have notable implications. As Issouf Soumaré, Fabien Youbissi, and Michel Gendron (2011) observe in their article, the sensitivity of co-guarantors to changes in project assets or their own financial conditions can significantly impact the exercise and efficacy of recourse rights. This sensitivity is heightened in uncertain economic climates, where fluctuations in asset values and financial stability can alter the risk profile of co-guarantors, which in turn can affect the dynamics of recourse rights. It is therefore evident

that a stable and predictable legal environment is of the utmost importance in fostering confidence between co-guarantors, thereby enabling them to make informed decisions about their commitments and potential liabilities.

Furthermore, the economic analysis by He Jian (2021) emphasizes the role of recourse rights in optimizing the allocation of responsibilities and enhancing overall efficiency in co-guarantee agreements. He posits that well-defined and enforceable recourse rights can act as a deterrent against strategic default, encouraging co-guarantors to monitor and manage risks proactively. This, in turn, contributes to the stability and resilience of the financial system, as it encourages the adoption of responsible lending and borrowing practices.

In light of these legal and economic implications, the judicial precedents analyzed in this section highlight the urgent need for legislative reform in China. The discrepancies and inconsistencies revealed by these cases indicate the necessity for a legal framework that is more closely aligned with international standards and principles of fairness. This requires a comprehensive review of existing laws and regulations governing co-guarantor rights, with a view to introducing amendments that promote legal clarity, enhance the protection of co-guarantors' rights, and facilitate the efficient resolution of disputes.

In conclusion, the legal significance and implications of these precedents serve as a call to action for policymakers, legal practitioners, and scholars alike. By engaging in a critical dialogue on the strengths and weaknesses of the current legal framework, stakeholders can work towards the creation of a more coherent and equitable legal environment for co-guarantor rights in China. This endeavour is not merely academic, it is also essential for fostering a legal culture that supports economic growth, encourages investment, and upholds the rule of law.

3. Comparative Analysis with France, Germany, and the United States

Venturing into the comparative analysis, this section embarks on an exploratory journey through the legal landscapes of France, Germany, and the United States, with a particular focus on the rights of recourse between co-guarantors. Each jurisdiction offers a unique perspective, shaped by historical legal traditions, economic philosophies, and societal values. By closely examining the specific mechanisms, principles in each jurisdiction, this section seeks to elucidate the underlying rationale and effectiveness of their respective frameworks, offering valuable insights for potential reform in the governance of co-guarantor relationships.

3.1 Right of Recourse in France, Germany and the United States

3.1.1 France: Solidarity and Equitable Distribution

In France, the Civil Code represents a fundamental pillar of the legal system, reflecting a pronounced commitment to safeguarding individual rights and promoting contractual autonomy. This approach is also evident in the way that co-guarantors' rights are treated. In such cases, recourse between co-guarantors is viewed through the lens of personal entitlements and the equitable distribution of liabilities. The principles of solidarity and fairness between co-guarantors are firmly embedded within the Civil Code. The legal framework places an emphasis on the equitable distribution of financial burdens, thereby ensuring that no single co-guarantor is disproportionately impacted by the debt. Furthermore, it encourages co-guarantors to seek recourse from one another. This approach is enshrined in Article 2312 of the French Civil Code (Article 2033 in the version of 1804), which stipulates that co-guarantors have the right to claim contribution from each other in proportion to their respective shares of the guaranteed debt. This approach thus prioritizes the protection of co-guarantors' rights, and fosters a sense of shared responsibility and fairness between co-guarantors, thereby reinforcing the social contract that underpins the French legal system.

In a judgement handed down on 21 November, 1973, the Court of Cassation ruled that the waiver by the surety of their recourse against the principal debtor did not result in the loss of their right to exercise a recourse against their co-guarantors (Cass. 1ère civ. 21 nov. 1973, n°70-13.061). Furthermore, French jurisprudence has consistently upheld the importance of clear and unambiguous contractual stipulations regarding the exercise of recourse rights. The judicial decisions that have been handed down have served to reinforce the notion that co-guarantors should engage in careful and meticulous negotiations and documentation of their obligations, with a view to ensuring that their recourse rights are defined and enforceable. This emphasis on contractual clarity is not only consistent with the fundamental principles of contract law but also serves to enhance predictability and fairness in the distribution of responsibilities.

3.1.2 Germany: Systematic Regulation and Collective Responsibility

Germany is renowned for its meticulously detailed civil code, the Bürgerliches Gesetzbuch (BGB). Additionally, it provides a meticulous and systematic framework for the governance of co-guarantor relationships. Article 425 of the BGB outlines the exercise of recourse rights, specific procedures and criteria for the distribution of liabilities between co-guarantors, and underscores the importance of clarity and predictability in the allocation of

responsibilities. This reflects a systematic approach to legal regulation. This systematic approach ensures that co-guarantors are fully aware of their rights and obligations, thereby fostering legal certainty and efficiency in the resolution of disputes.

In contrast to the French legal tradition, which places significant emphasis on individual rights, the German legal system places a strong emphasis on the orderly resolution of disputes and collective responsibility. This encourages co-guarantors to act in the interest of the group as a whole, rather than solely pursuing individual entitlements. This approach is reflected in the provisions of the BGB, which require co-guarantors to contribute to the debt in proportion to their agreed-upon shares, unless otherwise specified in the co-guarantee agreement. The collective responsibility inherent in co-guarantee agreements is designed to maintain the integrity of such arrangements, ensuring that all parties fulfil their obligations and contribute to the financial stability of the arrangement.

3.1.3 United States: Flexibility and Contractual Freedom

The United States, with its federal structure and common law tradition, presents a mosaic of state laws that vary in their approach to governing co-guarantor relationships and in their treatment of co-guarantor rights. While there is no single federal law that governs co-guarantor relationships, the Uniform Commercial Code (UCC), which has been adopted in varying degrees by most states, provides a degree of uniformity in commercial transactions. However, the specific treatment of co-guarantor rights varies significantly across states. This variability is reflective of the American legal system's emphasis on contractual freedom and the ability to tailor agreements to suit the needs of the parties involved.

Section 3-415 of the UCC addresses the rights of recourse between co-guarantors, thereby allowing for flexibility in the allocation of responsibilities based on the specific terms of the co-guarantee agreement. This flexibility is a defining feature of the American legal system, and is designed to accommodate the diverse economic and legal contexts in which co-guarantee agreements are formed, promoting innovation and adaptability in commercial practices. However, this flexibility can also result in discrepancies in the treatment of co-guarantor rights across different states. Consequently, it is essential to exercise caution when drafting and executing co-guarantee agreements, as disparities in treatment can give rise to legal complexities and uncertainties for co-guarantors operating across multiple jurisdictions.

3.2 *Insights and Recommendations for China*

A comparative analysis of co-guarantor relationships in France, Germany, and the United States reveals a spectrum of approaches, each tailored to the unique legal and economic environments of these countries. France's emphasis on solidarity and equitable distribution, Germany's focus on systematic regulation and collective responsibility, and the United States' commitment to flexibility and contractual freedom, all offer valuable lessons for China's legal reform.

This diversity offers valuable lessons for legal reform in China. It suggests that a balanced approach, incorporating elements of clarity, equity, and flexibility as demonstrated by the comparative analysis, could enhance the effectiveness and fairness of co-guarantor laws.

Adopting a more systematic approach akin to Germany's BGB could enhance the predictability and efficiency of China's legal framework, ensuring that co-guarantors have a clear road-map for seeking recourse. Concurrently, integrating the principles of solidarity and equitable distribution from France could strengthen the fairness of co-guarantor relationships, preventing any single party from being unduly burdened by the debt. Moreover, the United States' emphasis on contractual freedom and flexibility could prompt China to adopt a more adaptable legal framework, thereby enabling co-guarantors to adapt their agreements to the particular requirement of their transactions. Such an approach would not only promote innovation in commercial practices but also would align with the evolving nature of co-guarantee arrangements in a globalized economy.

In light of the insights gained from the comparative analysis, we put forth a series of targeted reforms with the aims of enhancing the coherence and equity of China's legal framework governing co-guarantor rights:

Firstly, the Exhaustion Requirement should be clarified and simplified. It is recommended that the requirement for co-guarantors to first exhaust remedies against the principal debtor be clarified and simplified in order to reduce delays and costs. It is imperative that clear guidelines be established to facilitate the process of seeking recourse from other co-guarantors, thereby ensuring that legal barriers do not impede the timely enforcement of rights.

Secondly, the establishment of a robust mechanism for the handling of insolvency is required. It is recommended that a more detailed and robust mechanism be developed to address insolvency between co-guarantors. This encompasses the establishment of reserve funds or insurance programme to mitigate the risks associated with insolvency, thereby ensuring the continued enforceability of recourse rights even in instances of financial distress.

Thirdly, there is a need to harmonize cross-border arrangements. It would be beneficial to pursue the harmonization of cross-border co-guarantee arrangements through the development of international standards or guidelines. Such an approach would respect the legal traditions of the various participating jurisdictions while promoting consistency and predictability, facilitating more straightforward resolution processes and fostering confidence among international parties.

Fourthly, the objective is to streamline the legal processes for enforcement. The administrative burdens associated with enforcing recourse rights should be reduced, and streamlined legal processes should be implemented to ensure that co-guarantors can efficiently seek contribution from their counterparts. This encompasses the simplification of documentation requirements and the improvement of court procedures.

Fourthly, the promotion of legal education and awareness is essential. In order to supplement the legislative reforms, it is imperative to facilitate enhanced legal education and awareness among co-guarantors, legal practitioners, and judges. It is recommended that workshops, seminars, and training programmes be organized with the objective of disseminating knowledge about co-guarantor rights and obligations. This would foster a legal culture that supports the effective implementation of reforms.

By addressing these issues, China can move closer to achieving a legal framework for co-guarantor rights that is both coherent and equitable, aligning with international standards and promoting a more stable and resilient financial ecosystem. This, in turn, will foster greater confidence among investors and lenders, thereby contributing to sustained economic growth and development.

4. Conclusion

The comparative analysis conducted in this study has illuminated the strengths and weaknesses of the rule governing the right of recourse between co-guarantors in France, Germany and the United States, providing valuable guidance for reform in China. The CCC places significant emphasis on the importance of contractual freedom and the role of judicial interpretation. This amalgamation of legal traditions reflects China's distinctive legal history and its ongoing endeavors to integrate international legal principles into its domestic legal framework. China, with its evolving legal system, has the opportunity to learn from these diverse perspectives to refine its rules governing co-guarantors.

By adopting a balanced approach that incorporates elements of clarity, equity, and flexibility, China should explicitly confirm the right of recourse between co-guarantors, thereby enhancing the effectiveness and fairness of its legal framework governing the co-guarantors. The recommended reforms are designed to create a legal environment that is not only coherent and equitable but also responsive to the needs of a dynamic economy. This endeavour is crucial for fostering a legal culture that supports economic growth, encourages investment, and upholds the rule of law, thereby positioning China as a leader in guarantee law reform and international legal compatibility and fostering a legal environment that supports economic growth, encourages investment, and upholds the rule of law.

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