

Research on the System of Beneficiary Ratification of Negotiorum Gestio: Reconstruction of Interpretative Theory of Article 984 of the Civil Code

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Abstract. Article 984 of the Civil Code stipulates the beneficiary ratification system, but the terms are relatively broad, leaving a large room for interpretation. In order to give full play to the system utility of the Civil Code, realize the integration of norms before and after, and reduce the difficulty of judicial application, it is necessary to clarify the contents of the system with the theory of interpretation. There are many modes of beneficiary ratification system in comparative law and different theoretical explanations. The analysis of this Article by the interpretive theory should be based on the balance of interests between the administrator and the beneficiary, and on the basis of clarifying the nature and object of ratification, the specific application of entrustment provisions in the beneficiary ratification system should be explored.

Keywords: Negotiorum Gestio; Beneficiary Ratification; Entrustment Stipulations; Balance of Interests.

1. Raise of the Question

The legislative value of the regulation of negotiorum gestio in the *Civil Code* is to maintain the balance of interests between the administrator and the beneficiary, which should not only protect the interests of those who help others, but also reduce the risk of damage caused by uninvited intervention of every person. In view of the relatively sound provisions of negotiorum gestio in the Civil Code, the research in the field of negotiorum gestio in the Chinese mainland academic circle has basically changed from legislative theory to explanatory theory, mainly focusing on the classification of negotiorum gestio and the analysis of its constituent elements. However, the academic circle pays less attention to the ratification system of negotiorum gestio, and the related research is scarce. This system is stipulated in Article 984 of the Civil Code [1]. This article establishes a bridge between negotiorum gestio administration and entrustment contract, and at the same time, fully protects the subjective will of administrators. However, this article has also met with a cold reception in judicial practice. For reasons, on the one hand, the Civil Code has only been implemented for a short time, and the relevant provisions have not been fully applied in practice. On the other hand, the effect of ratification stipulated in this article is to apply the provisions of the entrustment contract, but there are many doubts and interpretable spaces, and the practical departments are "at a loss" about the application of this article. [2]

Under the background that relevant provisions have been made in the Civil Code, solving the difficult problems of beneficiary ratification system in Article 984 is helpful to improve the doctrinal framework of negotiorum gestio and unify the application of law. At the same time, the close combination of negotiorum gestio administration and entrustment contract is conducive to promoting the consistency of the provisions before and after in the Civil Code and enhancing the interaction among chapters. Because Germany, Switzerland and Taiwan, China have comprehensive structures of the ratification system of negotiorum gestio, and in some respects they are similar to the legislative model of China, this paper intends to combine the provisions and theories of comparative law, clarify the nature, object of beneficiary ratification, and focus on how to properly introduce the relevant provisions of the entrustment contract within the framework of negotiorum gestio, so as to promote the consistency of internal logic and internal and external rules of negotiorum gestio, and provide theoretical guidance for judicial practice.

2. Overview of the Issues on Beneficiary Ratification

The answers to all deep-seated questions are based on the clarity of basic questions. To discuss the deep-seated issues related to beneficiary ratification in negotiorum gestio, we must respond to the basic issues of beneficiary ratification, including the nature, object, independence, time point, exceptions of ratification, which will be launched one by one below.

2.1. Nature of Beneficiary Ratification

There are still disputes about the nature of negotiorum gestio ratification system in Article 984, especially on whether ratification is the right of formation. Many scholars believe that ratification is the right of formation according to Swiss theory [3], but according to the position of China's judicial organs, the ratification by beneficiaries is a unilateral declaration of intent to receive [4]. Article 424 of Swiss Debt Law and Articles 683 and 684 of German Civil Code stipulate that beneficiary ratification has the nature of right of formation [5], and China's Civil Code and Taiwan Province's "Civil Law" are different from the above-mentioned comparative law legislation based on the right of formation, which is manifested in the proviso of Article 984 of the Civil Code and the exclusionary provisions of Article 178 of the Taiwan Province's "Civil Law", and its doctrinal application has aroused extensive discussion and controversy [6].

To address this, this paper tends to support the existing position of China's judicial organs on this issue. On the one hand, the theory of right of formation holds that when the beneficiary clearly expresses ratification of the administration behavior or its results, this means that once it reaches the administrator and takes effect, the legal relationship between the two parties will undergo substantial changes. This theory highlights the beneficiary's right to adjust the legal relationship by unilateral expression of will, thus completely denying the view that ratification is regarded as a promise to the administrator's offer, and at the same time excluding the possibility of changing the content of the debt of negotiorum gestio. [7] However, according to Article 984 of the Civil Code, the administrator has the right to deny the beneficiary's ratification effect through his own expression of will. This seems to be contrary to the basic principle of the right of formation, because the right of formation usually has legal effect without the participation of the other party, so the interpretation method of Swiss theory does not apply to Article 984 of the Civil Code. On the other hand, the exercise effect of the right of formation is to make the civil legal relationship happen, change and destroy, while the legal effect produced by the beneficiary's ratification will not change the essence of the debt of negotiorum gestio, but only draw up some effects of the entrustment contract in the internal rules, which is not in line with the Swiss right of formation theory. Therefore, this theory cannot be applied to the interpretation of Article 984 of the Civil Code, and the nature of beneficiary ratification is only a unilateral expression of will, not the exercise of the right of formation.

2.2. The Object of Ratification

There are three types of objects of ratification in theory and legislative cases: the first is real negotiorum gestio and unreal negotiorum gestio, which are adopted by Italy. Article 2032 of the Italian Civil Code stipulates that even if the administrator does not have the intention of managing affairs, the beneficiary can still ratify his behavior. Shi Shangkuan agrees with this. [8] The second is limited to real negotiorum gestio, including legitimate negotiorum gestio and non-legitimate negotiorum gestio, and most scholars hold this view [9]. Scholars in Taiwan, China hold the same interpretation of Article 178 of the "Civil Law" [10]. The third type is limited to the non-legitimate negotiorum gestio, which is adopted by Germany. Article 677 of the German Civil Code stipulates that the negotiorum gestio must conform to the interests of the beneficiaries [11], and Article 684 points out that the act of ratification against the administrator is not in line with the wishes of the beneficiary, that is, the object of ratification is the non-legitimate negotiorum gestio. Once the negotiorum gestio is ratified by the beneficiary, it will be transformed into the legitimate negotiorum gestio, and a few scholars also hold this view that the negotiorum gestio is in line with the beneficiary's intention and there is no need for ratification [12].

This paper holds that the object of ratification is limited to real negotiorum gestio, which is also determined by the legislative interpretation[13]. Unreal negotiorum gestio includes misinformation administration and illegal administration, which should be excluded. In misinformation administration, administrators mistake other people's affairs for their own affairs and manage them. In illegal administration, although administrators know that they are managing other people's affairs, they still manage them as their own affairs. In both cases, administrators lack the awareness and manage other people's affairs, which should not be encouraged by the law, and the internal logic of applying the entrustment provision is still consistent, but ratification itself cannot change the intention of administrators and is suspected of forcing administrators to conclude contracts. Therefore, ratification has no room for application in unreal negotiorum gestio. Unreal negotiorum gestio is not negotiorum gestio in essence, it is only a fiction on the legislative level, and its claim basis is not negotiorum gestio, but infringement and unjust enrichment, so it is not appropriate to directly apply the ratification provisions in negotiorum gestio. In addition, it is not necessary to ratify the legitimate negotiorum gestio, which is actually an acknowledgement of the "implementation" of administration. From the point of view of interest balance, if we cannot ratify the negotiorum gestio, the administrator who is legitimate may be in a worse position than the administrator who is not legitimate, because some entrustment provisions can protect the favorable position of the administrator and are in line with the intention of encouraging the society to help each other.

2.3. Independence of the ratification system

The beneficiary ratification system stipulated in Article 984 has the significance of independent existence, and there is no cross-regulation with Article 980. Article 980 is the effect of illegitimate negotiorum gestio, and Article 984 is the effect of beneficiary recognition. The two have their own ways and there is no conflict.

(1) The specific content of Article 980 and 984

There is still controversy about the definition of the content of Article 980 of the Civil Code. Some scholars explain that this article violates the true meaning of the beneficiary but objectively gains benefits, which is only applicable to the illegitimate negotiorum gestio [14]. Some explanations and theories point out that the provisions on negotiorum gestio in the contract only adjust the real negotiorum gestio, but for the sake of fairness, the provisions on real negotiorum gestio can be applied to illegal administration [15]. Some scholars also argue that the provisions of this article are not only applicable to the illegitimate negotiorum gestio, but also to all kinds of unreal negotiorum gestio[16]. There are also scholars who apply this article to the illegitimate negotiorum gestio and illegal administration, which has a deterrent effect on illegal administration [17]. This paper holds that the third interpretation scheme should be applied to the definition of the content of this article, which is applicable to the illegitimate negotiorum gestio and illegal administration. The positioning of this article should be combined with the provisions of Article 979 of the Civil Code. The first paragraph of Article 979 stipulates the constituent elements and legal consequences of the negotiorum gestio, and the second paragraph is the exception of the legitimate negotiorum gestio. The wording in Article 980's applicable circumstances is "the circumstance that does not belong to the provisions of the preceding article", that is, the administrator lacks the administration meaning and the real meaning of the administrator and the beneficiary is contrary to the public order and good customs, which means that it is unreal negotiorum gestio and the illegitimate negotiorum gestio. However, in judicial practice, misinformation administration, as a kind of atypical negotiorum gestio, has hardly appeared in disputes involving negotiorum gestio. Therefore, it is not necessary to apply negotiorum gestio in this case, and it should not be included in the adjustment scope of Article 980. As for the illegal administrator, he should deprive the administrator of the administration income when he knows that a certain business belongs to others but manages it as his own business without authorization, as a warning and deterrent to intentional infringement. For this reason, it is reasonable to include it in the provisions of Article 980. In Article 980, "the beneficiary enjoys the administration interest" should be interpreted as "the beneficiary claims to enjoy the administration interest" in order to give the

beneficiary the right to choose[18] to ensure that the negotiorum gestio system can operate more fairly and reasonably. When the beneficiary chooses not to claim benefits, there is no legal basis for property transfer between the beneficiary and the administrator.

Article 984 of the Civil Code stipulates the ratification system in negotiorum gestio. The significance of the ratification system is to make the administrator's benefits have legal reasons and exclude the application of the unjust enrichment rule. Combined with the above discussion, for the benefit measurement, the object of ratification is real negotiorum gestio, and the non-real negotiorum gestio is not included. The effect is to supplement and optimise the relationship between the rights and obligations of the administrator and the beneficiaries by referring to the application of the provisions of the contract of entrustment retroactively to the beginning of the administration of the affairs in the absence of any other expression of meaning on the part of the administrator. Ratification can correct the defect of the meaning of illegitimate negotiorum gestio, change the basis of claim, and produce the effect of illegal resistance at the level of "undertaking" of administration. It can also make the administrator who is suitable for the law in a more favorable position, resulting in the effect of illegal obstruction at the "implementation" level of administration.

(2) Interpretation of conflict between Articles 980 and 984

Some scholars believe that the beneficiary's claim to "enjoy the administration interest" (Article 980) is one of the cases ratified by Article 984, and the administration interest ultimately belongs to the beneficiary [19]. Some scholars also put forward different opinions. He thinks that the administration interest is the inherent right enjoyed by the beneficiary, which is not the same as ratification [20]. Some scholars also argue that there is confusion in the application of Articles 980 and 984, and Article 984 has no value [21]. In the comparative law, Article 177 (corresponding to Article 980 in Chinese mainland) and Article 178 (corresponding to Article 984 in Chinese mainland) of the "Civil Law" in Taiwan Province, China, are facing the same controversy. Wang Zejian, a scholar in Taiwan Province, China, believes that when the negotiorum gestio violates the intention of the beneficiary when managing affairs, if the beneficiary chooses to advocate the administration interests, it will produce the effect that negotiorum gestio is ratified [22]. Su Yongqin thinks that the ratification system has no practical significance, and it can be replaced by other systems, such as unauthorized agency and reminder from the other party, and suggests deleting the ratification provisions in Article 178[23]. There are similar situations in Article 423 (corresponding to Article 980 in Chinese mainland) and Article 424 (corresponding to Article 984 in Chinese mainland) of the Swiss Debt Law. According to relevant Swiss theories, Article 423 is applicable to unreal negotiorum gestio and Article 424 is applicable to real negotiorum gestio, and both of them have the effect of ratification.

In this paper, it is argued that claiming administration interests is not the same as ratification, and Articles 980 and 984 have their own meanings. On the one hand, the applicable objects of the two articles are different. Article 980 is aimed at illegitimate negotiorum gestio and illegal administration, while article 984 is aimed at real negotiorum gestio, and neither article can fully cover the application object of the other article. On the other hand, they have different legal effects. When the beneficiary advocates the administration interests of the illegitimate negotiorum gestio, the illegitimate negotiorum gestio will not automatically change into the legitimate negotiorum gestio. Whether the illegal administrator can enjoy the similar claim right as the legal administrator mainly depends on the will of the beneficiary, that is, whether the beneficiary is willing to enjoy such administration benefits[24]. It is necessary to strictly distinguish between the meaning of the beneficiary claiming administration interests and the meaning of ratifying administration affairs. If the beneficiary only expresses his wish to benefit from the administration, but fails to ratify the administration itself, it shall be handled in accordance with Article 980. At this point, the beneficiary shall compensate the administrator appropriately within the limits of the administration interests, and the provisions of Article 984 shall not apply. It should be considered that Article 984 has independent significance. On the one hand, it can make up for the lack of agency right by unauthorized agency, which will be discussed in detail in following chapters. On the other hand, it makes the relationship between the rights and obligations between the administrator and the beneficiary more clear, realizes the balance

of interests between them, and makes the administrator in a more favorable position, and the position of the legal administrator is better than that of the illegal administrator, which is in line with the value orientation of fairness and justice.

2.4. Time point of ratification

Article 984 of the Civil Code states that the time point is "beneficiary's ratification afterwards". According to the literal interpretation, ratification occurs afterwards, that is, after the negotiorum gestio ends, which is mainly related to matters such as property return and damages, and usually does not involve the administrator's obligation to continue administration, timely notice and wait for instructions. However, it is explained that the beneficiary's ratification means the beneficiary's authorization to the administrator to continue to manage his own affairs, which is never limited to "afterwards"[25]. The academic circle basically hold a negative attitude towards this statement. Wu Xunxiang pointed out that the time of ratification is limited to the "afterwards", which is mainly based on the fact that the core of the negotiorum gestio system is not to standardize the behavior of administrators, but to focus on the issue of property return and interest balance. Article 984 should be interpreted literally, which is mainly related to the liquidation level and should not be extended to other categories[26]. Yi Jun believes that the time for the beneficiary's ratification is after the administration affairs are completed[27]. From the perspective of comparative law, Article 178 of the "Civil Law" of Taiwan, China does not specify the time of ratification, so some scholars in Taiwan advocate that the beneficiary's ratification can be done not only after the end of the administration affairs, but also during the administration affairs.

This paper holds that Article 984 of China's Civil Code absorbed the essence of Article 178 of China's Taiwan Province "Civil law" when it was formulated, and skillfully set the time point of "afterwards" to make up for the ambiguity of the time point of ratification in the original provisions. This design is by no means redundant, but has substantial legal effect. Expanding "afterwards" to "in the process" at will belongs to expanding interpretation and is also a purpose interpretation. Karl Larenz pointed out that although there are many standards for legal interpretation, these standards should follow a certain order of application, among which literal interpretation is the most important. If it fails, we can resort to systematic interpretation, historical interpretation and purpose interpretation[28]. Therefore, expanding the time point from "afterwards" to "in the process" violates the general method of legal interpretation. In addition, the extension of the expression "afterwards" to "in the process" may be confused with the application of the entrustment contract, because both of them have the effect of authorization, which will inevitably lead to confusion in the application of the law. Therefore, it is appropriate to strictly limit the time point of ratification after the event.

2.5. Exceptions in ratification

Article 984 of the *Civil Code* stipulates that the ratification system of negotiorum gestio has the effect of applying the entrustment provisions back to the beginning of administration affairs, unless the administrator indicates otherwise. The interpretation scheme of this proviso has caused some controversies. Some scholars believe that there is an error in the expression of this proviso, and the correct expression should be "unless the beneficiary expresses otherwise", so as to limit the retroactivity of the beneficiary's ratification[29]. Some scholars have put forward different opinions, and think that a more reasonable explanation should be "unless the parties have other intentions", that is, the parties exclude the application of the entrustment provisions by agreement or limit their retroactive application effect[30]. Some scholars point out that the expression of the proviso "unless otherwise indicated by the administrator" is different from "unless otherwise agreed by the parties" and should be divided into two situations: "the administrator simply refuses to ratify" and "other contract terms apply"[31].

This paper holds that "unless otherwise indicated by the administrator" is different from "unless indicated in contrary by the administrator" and "unless otherwise agreed by both parties", which means that the effect of "otherwise indicated by the administrator" is not limited to the case of

opposing the application of the entrustment provisions, nor does it mean that both parties have a large space for autonomy of will. The specific connotation and legal effect of the proviso in Article 984 should be classified as follows: from the literal point of view, "otherwise indicated by the administrator" covers not only whether the relevant provisions of the entrustment contract are applicable, but also whether the relevant provisions of the entrustment contract can be applied back to the initial stage of administration affairs. In order to respect the autonomy of the administrator's will, the law restricts the beneficiary's dominance to a certain extent, so as to maintain the balance of interests between the two parties: the administrator can choose whether to apply the entrustment provisions, and if he refuses to apply the entrustment provisions, he will continue to apply the general provisions of negotiorum gestio. The administrator can also choose when to apply the entrustment provisions. This treatment can not only achieve the effect of giving the administrator appropriate space for autonomy of will, but also will not make the space for autonomy of will between the administrator and the beneficiary too large, confusing the debt of negotiorum gestio with the debt of contract.

3. Effect of Beneficiary Ratification of Negotiorum Gestio

From the perspective of comparative law, when the beneficiaries of negotiorum gestio ratify it afterwards, there are three different modes of legal application: the first is to apply the provisions of negotiorum gestio, the second is to lead to the application of specific entrustment provisions, and the third is to draw up the provisions of entrustment. China's *Civil Code* clearly stipulates that the relevant entrustment provisions shall apply, that is, the first mode shall be excluded. Whether to adopt the second or third mode is controversial in theory, which will be discussed below.

3.1. The choice of mode in comparative law

There is no provision in Roman law in pre-classic period that makes the debt of negotiorum gestio applicable to the entrustment contract. At most, it can be interpreted as the agreement between the administrator and the beneficiary to establish the entrustment contract according to the specific circumstances, and the opposite provision appeared in post-classic period. In order to avoid the improper benefits of the administrator of illegitimate negotiorum gestio, most countries in the continental law system that inherit Roman law have stipulated the beneficiary ratification system, which is connected with the entrustment regulation or the legitimate negotiorum gestio[32]. From the perspective of comparative law, the application of law after the beneficiary's ratification mainly presents three modes: adopting the regulation of legitimate negotiorum gestio, causing the applicable entrustment regulation and drafting the applicable entrustment regulation[33], which will be elaborated in detail below. The first mode is to apply the provisions of the legitimate negotiorum gestio. This is reflected in the Draft of Common Reference Framework of European Civil Law, for details, see paragraph 1 (b) of Article V.-1:101. If the beneficiary admits the intervention without undue delay, and this does not bring any adverse impact to the administrator, then the relevant provisions of negotiorum gestio shall apply. The second is that ratification leads to the application of specific applicable entrustment provisions. This practice is mainly based on legislative technical considerations and has no fictional significance. The German legal system adopts this model. According to the second paragraph of Article 684 of the German Civil Code, if the administration affairs are ratified by the beneficiary, the administrator enjoys the right of claim stipulated in Article 683. Article 683 stipulates that when the administrator is not at fault in the administration affairs, he can ask for reimbursement of the expenses like the trustee. This shows that ratification is only related to the entrustment effect of the administrator's claim for expenses. The third mode is to draft and apply the applicable entrustment provisions after ratification. Article 424 of the Swiss Debt Law, Article 2032 of the Italian Civil Code and Article 178 of the "Civil Law" of Taiwan, China all have similar provisions: If negotiorum gestio is ratified by the beneficiary, the provisions on appointment shall apply to the rights and obligations between the beneficiary and the administrator. Some scholars have pointed out that the reason for this model is that negotiorum gestio, which needs to be recognized

by beneficiaries, often focuses on improved transaction administration. In this situation, the two sides are not limited to one-time short-term communication, but need to establish a lasting and continuous interactive relationship[34].

3.2. The legal effect of Article 984 of the Civil Code

The effect of beneficiary's ratification stipulated in Article 984 of the *Civil Code* should be interpreted as the drafting and application of the applicable entrustment provisions. The following sections will discuss the legitimacy of this explanation scheme, and explain the value orientation of the entrustment provisions in the drafting and application of negotiorum gestio, as well as the application mode of specific provisions.

1. The legitimacy of the choice of the applicable mode for the drafting of the entrustment provisions

Article 984 of China's *Civil Code* adopts the third mode, that is, the relevant provisions of the entrustment contract are applied. However, regarding the practical application effect of it, there are divergences in academic circle: whether to transform the relationship of negotiorum gestio into the relationship of entrustment contract, or to draw up the terms of entrustment contract in the internal relationship between beneficiaries and administrators while maintaining the essence of negotiorum gestio. On this issue, Shi Shangkuan argued that the entrustment provisions should be applied within the scope permitted by the nature of negotiorum gestio[35]. Wu Xunxiang believes that because there is no real contractual relationship between the beneficiary and the administrator, Article 984 has not completely drawn up the effect of ratification, and the nature of negotiorum gestio remains unchanged[36]. Wang Zejian, Yi Jun and Wang Yang hold the same view, arguing that a contract can only be established if both parties agree, and the fact of negotiorum gestio cannot be transformed into a debt of intent just according to the wishes of one party[37]. Some scholars hold the opposite view. Zheng Yubo believes that once the beneficiary ratifies the negotiorum gestio, negotiorum gestio will be transformed into a principal-agent relationship[38]. Wang Liming claims that the actual effect of beneficiary ratification is that the beneficiary and the client reach an agreement to establish an entrustment contract[39].

This paper holds that the entrustment rule is only a fiction in the ratification system of negotiorum gestio, and the essence of negotiorum gestio will not change, otherwise it will shake the status of negotiorum gestio as an independent legal debt in Article 118 of the *Civil Code*. On the one hand, the application of the provisions of the entrustment contract is not to draw up an entrustment contract relationship based on consensus, but to apply the provisions of the entrustment contract internally in negotiorum gestio. Also, there is no offer and commitment to conclude the entrustment contract in essence in the beneficiary ratification system. In this, the administration intention is not an offer, because the offer is an expression of intention, the administration intention does not need to be expressed, nor does it pursue specific legal consequences, and there is no intention to conclude a contract. The beneficiary's ratification is not a promise, and the promise is based on the existence of the offer. If the offer does not exist, then the promise does not exist. On the other hand, negotiorum gestio has no mandatory requirement for the administrator and beneficiary in terms of civil capacity, and in the entrustment contract, the parties must have full civil capacity, which determines that the two cannot be transformed. From the perspective of value, the administrator may be willing to help the beneficiary out of trouble, but he has no intention of becoming a party to the contract. Negotiorum gestio is different from appointment, and administration can be terminated to a certain extent[40].

2. The value choice for the drafting and application of entrustment provisions

In principle, the beneficiary's ratification will result in the application of entrustment provisions, but whether all entrustment provisions can be applied to the negotiorum gestio ratification system is not specified in the law, and according to the nature of entrustment system, at least some entrustment provisions cannot be applied to negotiorum gestio administration system, for example, the right of arbitrary rescission stipulated in Article 933. There is also a part of the entrustment regulations that

are in a position of application and non-application, and need to resort to academic explanation. In order to make the application of the law internally unified, the interpretation of the proposed application of the entrustment provisions should have a unified value orientation, or basic principles.

First of all, ensure that the administrator is not at a disadvantage because of ratification. Ratification is the unilateral expression of the beneficiary's will, and the beneficiary has the dominant power to a great extent. Without the promise of the administrator, the administrator should not impose heavier obligations on the administrator, that is, the administrator should not fall into a more unfavorable position because of the beneficiary's ratification, otherwise it will inhibit the administrator's expectation for ratification, which runs counter to the original intention of the ratification system of negotiorum gestio. There are three different influences on the administrator in the entrustment regulations: favorable, unfavorable and neutral. In principle, the clauses beneficial to the administrator should be applied unless the administrator voluntarily chooses to give up, which can ensure the interests of the administrator and respect his autonomy. On the other hand, the clauses that are unfavorable to the administrator should be excluded from application, and the basis of the right of claim will not change. At the same time, no additional obligations should be added to the administrator without the consent of the administrator. When the entrustment rule has the same effect as the negotiorum gestio rule, and it does not adversely affect the interests of the administrator, if there are no other exceptions, the entrustment rule is still applicable.

Secondly, properly balance the interests between the administrator and the managed. On the one hand, the good intention of selfless care for the interests of beneficiaries without legal basis should be protected, thus promoting the formation of a good atmosphere of mutual assistance and love in society. On the other hand, beneficiaries should also be protected from interference in their own affairs against their wishes[41]. Although the provisions beneficial to the administrator should be applied in principle, if there are provisions beneficial to the administrator that endow the administrator with responsibilities, taking into account the interests of the beneficiaries, this part of responsibilities certainly cannot be exempted, unless the administrator abandons the application of this favorable provision, such as agreeing on remuneration after the beneficiary's ratification, the provisions of paid entrustment should be applied, and the administrator should bear abstract negligence responsibilities, so as to make his responsibilities relative to profits, which will be discussed below.

3. Specific rules for drafting and applying the entrustment provisions

(1) Right of claim for remuneration

Most countries have not stipulated the right to claim compensation for negotiorum gestio, but there is some controversy in academic circle. Some scholars believe that negotiorum gestio is an altruistic behavior, and administrators do not aim at profit, so the right to claim remuneration should not be stipulated[42]. Moreover, the remuneration must be based on the agreement, and ratification cannot replace the agreement[43]. Some scholars also argue that the remuneration can be agreed between the administrator and the beneficiary, and the case should be judged in practice[44]. Giving administrators the right to claim remuneration as a reward can strengthen the social significance of the negotiorum gestio system, not only protecting their own interests, but also seeking social interests[45]. At the level of comparative law, it is generally said in Taiwan, China that whether the administrator has the right to claim remuneration should be judged according to the specific circumstances, and the administrator can claim remuneration only if the administration behavior belongs to the administrator's professional work and can usually get remuneration[46]. Article V.-3: 102 of the Model Draft of the European Civil Code also clearly points out that administrators have the right to ask the beneficiaries for remuneration when carrying out professional administration activities.

Therefore, according to the legislative experience of comparative law, the administration affairs can be divided into professional administration affairs and non-professional administration affairs. Career administration affairs refer to the affairs that administrators manage by using their professional knowledge and skills, and this profession generally has a certain entry threshold. Non-professional

administration affairs refer to the affairs that administrators manage without giving full play to their professionalism. This paper holds that the right of professional administrators to claim remuneration is justified. On the one hand, from the perspective of the balance of rights and obligations between administrators and beneficiaries, professional administrators actually assume higher administration obligations and should enjoy more rights, because the rights of claiming remuneration for necessary expenses are the same as those of ordinary administrators, so they should be given preferential treatment in remuneration. On the other hand, in today's fine division of labor, beneficiaries prefer professional administrators to manage affairs. Under normal circumstances, professional administrators are deemed to have remuneration, so it is not against their expectations to make beneficiaries pay remuneration. So, how should we structure the basis of this right of claim? According to Article 928 of the *Civil Code*, the remuneration of the trustee shall be based on prior agreement. However, in negotiorum gestio, because there is no such agreement between the parties, the right to claim remuneration cannot be structured by agreeing on a paid entrustment contract. Nonetheless, Article 510 of the *Civil Code* points out that when there is no clear agreement on remuneration, it can be determined by referring to the trading habits in the industry. Article IV.D-2:102 of the *Model Draft of the European Civil Code* also deals with similar problems, which stipulates that if the affairs handled by the trustee fall within the scope of his profession, it is presumed to be paid if no remuneration agreement is made. Occupational negotiorum gestio itself has no previous remuneration agreement, but there are trading habits that can determine remuneration. The right to claim remuneration can be structured by inferring paid entrustment contracts, and it can also promote the balance of rights and obligations between administrators and beneficiaries. To sum up, professional administrators have the right to claim compensation, while non-professional administrators do not.

(2) Degree of duty of care

In the civil law system, there are three kinds of duty of care standards: the duty of care of ordinary people, the same duty of care as that of handling their own affairs, and the duty of care of kind administrators. The responsibilities corresponding to the lack of the above duty of care are gross negligence liability, concrete negligence liability and abstract light negligence liability[47]. Article 981 states that the duty of care of the administrator is "the method that is beneficial to the beneficiary shall be adopted". First of all, the duty of care is not the duty of care of ordinary people. Because negotiorum gestio is an act of unauthorized interference in other people's affairs, in order to encourage social mutual assistance, can this act be out of the violation of the law[48]. Based on the balance of interests, the interests of beneficiaries should also be guaranteed within a certain range, so the standard of duty of care for negotiorum gestio should not be lowered to a too low level. Secondly, the duty of care is not the same as the duty of care to handle one's own affairs. Although keeping administrators' duty of care at a low level can promote the formation of social mutual help atmosphere, the formation of this atmosphere actually depends on many factors, such as economic factors, educational level and others. Therefore, the lower level of duty of care still plays a limited role in encouraging, which is not conducive to protecting the interests of beneficiaries. Finally, according to the context, "adopting the method beneficial to the beneficiary" should be interpreted as the duty of care of a kind administrator, whose function is to promote the administrator to treat the administration affairs cautiously and realize the balance of interests between the administrator and the beneficiary.

After the beneficiary's ratification, the provisions of the duty of care in the entrustment contract shall apply on the premise of not putting the administrator in a disadvantageous position and maintaining the balance of interests between the two parties. According to the first paragraph of Article 929, in the gratuitous entrustment, the trustee does not receive remuneration, and his duty of care is the same as that of handling his own affairs, and he bears specific light negligence. In paid entrustment, the trustee has the right to ask for remuneration, and his duty of care is that of a kind administrator, and he bears the responsibility of abstract light liability for negligence. However, just because the duty of care entrusted for free is lighter, the administrator's duty of care cannot be completely transformed into the abstract light liability of negligence, because according to the above analysis, professional

administrators have the right to claim remuneration, while non-professional administrators do not. If the provisions of free entrustment are consistent, for example, although professional administrators have the right to claim remuneration, they are only responsible for gross negligence, which will cause a significant imbalance between the interests of administrators and beneficiaries. In view of this, it is necessary to distinguish different responsibilities according to whether the administrator has the right to claim remuneration. In other words, professional administrators who have the right to claim remuneration should follow the provisions of paid entrustment, and their duty of care is the duty of care of kind administrators, bearing abstract light liability of negligence. Non-professional administrators without right to claim remuneration refer to the provisions of unpaid entrustment, and their duty of care is the same as that of handling their own affairs, and they bear specific light liability for negligence. This distinction helps to inspire more people to participate in the administration of other people's affairs.

(3) Rules for reimbursement of necessary expenses and compensation for damages

The reimbursement rules for the necessary expenses of negotiorum gestio are stipulated in Article 979. After the beneficiary ratifies, the provisions of the entrustment contract, that is, the "necessary expenses and interest" stipulated in the second sentence of Article 921, shall apply. In fact, the meaning of the necessary expenses stipulated in Article 979 is "expenses reasonably incurred for administration purposes", that is, if the expenses are used to maintain the status quo, they are necessary expenses, including the interest arising therefrom[49]. Therefore, whether or not to apply the rules of reimbursement of expenses by the principal stipulated in Article 921 has no substantial effect concerning interest on the administrator, but the provisions of Article 921 are more specific and constitute the basis for the administrator to request the necessary expenses from the beneficiary after ratification.

The damage compensation rule of negotiorum gestio stipulates in Article 979 that "if the administrator suffers losses in administration affairs, he may request the beneficiary to give appropriate compensation", that is, no matter which party is responsible for the losses, the administrator may request appropriate compensation from the beneficiary, but the compensation is limited to the degree of "appropriate". After ratification by the beneficiary, the provisions of Article 930 of the Civil Code can be applied [50]. In short, if the loss is attributable to the trustee, it may not claim damages from the client. On the contrary, the client should make full compensation in principle. By contrast, as far as the undertaking of liability is concerned, the situation in which Article 979 is applicable can cover the situation in Article 930, and it is more beneficial to the administrator without taking "not attributable to the administrator" as the necessary condition. As far as the amount of undertaking liability is concerned, the amount of compensation stipulated in Article 930 is larger than that stipulated in Article 979, which is more beneficial to the administrator. Therefore, whether to apply the provisions of Article 979 or Article 930 should be judged in specific cases, and the most favorable norms for administrators should be selected for application.

(4) The third party's right to claim for debt undertaking

Because the administrator may enter into a contract with a third party in order to manage affairs, the interests of the administrator, the beneficiary and the third party may be intertwined in negotiorum gestio. In the case of no ratification by the beneficiary, based on the relativity of the contract, the third party can only ask the administrator to pay off the debt in principle, and the administrator will recover from the beneficiary. After the beneficiary's ratification, if the relevant provisions of the applicable entrustment contract are referred to, including Articles 162, 925 and 926, then the third party has the right to directly demand the beneficiary to repay the debt, and the administrator is freed from this responsibility chain[51]. The above provisions are beneficial to the administrator and should be applied. Article 162 stipulates the explicit agency in direct agency, that is, the agent carries out civil legal acts in the name of the principal within the scope of agency authority, and its influence directly affects the principal. Article 925 is about anonymous agency in direct agency, that is, although the trustee concludes a contract with a third party in his own name, but the third party knows the existence

of the principal, the effect of the act still belongs to the principal. Article 926 deals with indirect agency, that is, the trustee concludes a contract with a third party in his own name but the third party does not know it, and the effect of this behavior does not reach the principal. The ratification of the beneficiary has the function of making up for the lack of agency right, and its consequence is equivalent to the administrator signing a contract with a third party after obtaining the authorization of the beneficiary. The effects of the above provisions are as follows: If the administrator signs a contract in the name of the beneficiary, then the third party can directly claim the debt from the beneficiary. If the administrator concludes the contract in his own name, but the third party knows the existence of the beneficiary, then the third party may also request the beneficiary to bear the debt. If the third party does not know the existence of the beneficiary, then it can only ask the administrator to bear the debt, unless the beneficiary exercises the right to interfere or the third party apply the right of selection to break through the relativity of the contract.

4. Conclusion

Article 984 of the *Civil Code* stipulates the beneficiary ratification system, which makes up for the omission of the previous negotiorum gestio system and encourages mutual help among members of society. However, this provision only points to the entrustment provisions in general, and it is not clear which entrustment provisions are applicable and the degree of application. China's negotiorum gestio ratification system needs to be clear about the following contents: the nature, object, time point, exceptions and so on. The beneficiary's ratification system is independent. When applying the entrustment provisions after beneficiary's ratification, we should make a trade-off, insist on ensuring the balance of interests between the administrator and the beneficiary, and apply the value choice of rules beneficial to the administrator to avoid the confusion of the basis of the right of claim, which can provide some reference for judicial practice. Undoubtedly, with the accumulation of judicial practice experience, the rights and obligations of the parties in negotiorum gestio will be clearer, and the specific application of the ratification provisions of negotiorum gestio will be mature and perfect.

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