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Interpretation of the Supreme People's Court on Certain Issues concerning the Application of the Contracts Law of the People's Republic of China (Part 1)

Interpretation of the Supreme People's Court on Certain Issues concerning the Application of the Contract Law of the People's Republic of China (I)

Fa Shi (1999) No.19

The Interpretation of the Supreme People's Court on Certain Issues concerning the Application of the Contract Law of the People's Republic of China (I), adopted at the 1090th session of the Judicial Committee of the Supreme People's Court on 1 December 1999, is hereby promulgated, effective on 29 December 1999.

19 December 1999

Interpretation of the Supreme People's Court on Certain Issues concerning the Application of the Contract Law of the People's Republic of China (I)

(Adopted at the 1090th session of the Judicial Committee of the Supreme People's Congress on 1 December 1999, with document number Fa Shi [1999] No.19)

In order to correctly handle cases of contract disputes, the following interpretation on certain issues concerning the application of the Contracts Law by the people's courts is hereby issued in accordance with the Contracts Law of the People's Republic of China (hereinafter referred to as the Contract Law):

1. APPLICATION AND SCOPE OF THE LAW

Article 1.

Where a dispute over a contract concluded after the implementation of the Contract Law is brought to a people's court, the provisions of the Contract Law shall apply. Where a dispute over a contract concluded before the implementation of the Contract Law is brought to the people's court, unless otherwise provided by this Interpretation, the laws in force at that time shall apply; but if there was no relevant applicable law at that time, relevant provisions of the Contract Law may apply.

Article 2.

Where a contract is concluded before the implementation of the Contract Law, but the period of time for performance stipulated in the contract goes beyond the date of the implementation of the Contract law or the period of time for performance is a period after the implementation of the Contract Law, disputes over the performance of the contract shall be governed by the relevant provisions of Chapter 4 of the Contract Law.

Article 3.

In deciding the validity of a contract concluded before the implementation of the Contract Law, a people's court shall apply the Contract Law if the contract is invalid under the laws in force at the time of conclusion but is valid under the Contract Law.

Article 4.

After the implementation of the Contract Law, a decision affirming the invalidity of a contract by a people's court shall be made in accordance with laws formulated by the National People's Congress and its Standing Committee and administrative regulations formulated by the State Council; such a decision must not be made on the basis of local regulations (difangxing fagui) and government rules (xingzheng guizhang).

Article 5.

Where a people's court re-tries a case on which a ruling of final adjudication had been rendered before the implementation of the Contract Law, the Contract Law does not apply.

2. TIME LIMIT**Article 6.**

Where the facts of infringement upon the rights of a disputing party to a technology contract occurred before the implementation of the Contract Law, and a period of more than one year between the date the party concerned knew or should have known his/her rights having been infringed upon and the date of the implementation of the Contract Law has lapsed, no legal protection shall be provided by the people's court; if such a period is less than a year, the time limit for filing a law suit shall be two (2) years.

Article 7.

Where the facts of infringement upon the rights of a disputing party to a contract for technology import and export occurred before the implementation of the Contract Law, and a period of more than two (2) years between the date the party concerned knew or should have known his/her rights having been infringed upon and the date of the implementation of the Contract Law has lapsed, no legal protection shall be provided by the people's court; if such a period is less than two (2) years, the time limit for filing a law suit shall be four (4) years.

Article 8.

The period of "one year" as stipulated in Article 55 and the period of "five years" as stipulated in Article 75 and in the second paragraph of Article 104 of the Contract Law cannot be extended and the provisions on suspension, discontinuation or extension of time limit for filing a law suit do not apply.

3. VALIDITY OF CONTRACTS**Article 9.**

Where, in accordance with provisions in the second paragraph of Article 44 of the Contract Law and provisions of laws and administrative regulations, a contract may only become effective upon approval or approval and registration, and the parties concerned have not yet completed the approval procedures or the approval and registration procedures before the conclusion of court debates in the court of first instance, the people's court shall affirm that the contract is not effective; where laws or administrative regulations require that a contract shall undergo registration formalities but do not provide that the contract shall only become effective upon its registration, the failure of the parties concerned in carrying out

registration procedures shall not invalidate the contract, and the ownership of the subject matter of the contract and other rights in rem may not be transferred.

Provisions in the preceding paragraph are applicable to circumstances such as the modification, assignment and rescission of a contract as provided in paragraph 2 of Article 77, Article 87 and paragraph 2 of Article 96 of the Contract Law.

Article 10.

Where a contract is entered into by the parties outside their scope of business operation, the people's court shall not thereupon make it invalid, except where the aforesaid contract entered into involves the operation of a business which is restricted by the State or is subject to special permission of the State, or which is prohibited by laws or administrative regulations.

4. RIGHTS OF SUBROGATION

Article 11.

An obligee who brings an action under the right of subrogation in accordance with the provisions of Article 73 of the Contract Law shall meet the following conditions:

- (1) the obligatory rights of the obligee over the obligor are lawful;
- (2) the obligor is negligent in exercising his or her matured obligatory rights and thus causes damage to the interests of the obligee;
- (3) the obligatory rights of the obligee are matured; and
- (4) the obligatory rights of the obligor are not exclusive obligatory rights enjoyed by the obligor personally.

Article 12.

The "exclusive obligatory rights enjoyed by the obligor personally" as provided in the first paragraph of Article 73 of the Contract Law refer to the rights to request for payment based on the relationship of maintenance, dependency, support and inheritance, the rights to request for labour remuneration, retirement allowance, aged pension, disability pension or pension for the family of the deceased, settlement allowance, life insurance, personal injury compensation and other similar rights.

Article 13.

The phrase "an obligor is negligent in exercising his/her matured obligatory rights and thus causes damage to the interests of the obligee" as stipulated in Article 73 of the Contract Law refers to a situation in which the obligor neither performs his/her matured obligation to the obligee nor asserts, by means of litigation or arbitration, claims for his/her own matured obligatory rights against his/her obligor which involves money payment, and as a result the obligee is unable to realise his/her matured obligatory rights.

Where a secondary obligor (ie. the obligor of an obligor) asserts that the obligor is not negligent in exercising his/her obligatory rights, he/she shall bear the burden of proof.

Article 14.

Where an obligee brings an action of subrogation in accordance with the provisions of Article 73 of the Contract Law, the people's court of the defendant's domicile, shall have the jurisdiction over the case.

Article 15.

Where an obligee, having already brought an action to the people's court against the obligor, brings an action of subrogation to the same people's court against the secondary obligor, if the case accords with the provisions of Article 13 of this Interpretation and satisfies the conditions for litigation as provided in Article 108 of the "Civil Procedure Law of the People's Republic of China", the case shall be filed for handling; if the case does not accord with the provisions of Article 13 in this Interpretation, the obligee shall be notified to bring a separate action against the secondary obligor in the people's court in a place where the secondary obligor has residence.

The people's court which handles an action of subrogation shall, before the ruling over the action taken by the obligee against the obligor becomes effective, suspend the action of subrogation in accordance with the provisions of Article 136(5) of the "Civil Procedure Law of the People's Republic of China".

Article 16.

Where an obligee brings an action of subrogation to the people's court against the secondary obligor but does not list the obligor as a third party, the people's court may make the obligor a third party.

Where two or more obligees bring actions of subrogation against the same secondary obligor, the people's court may consolidate the cases for adjudication.

Article 17.

In an action of subrogation, if the obligee requests the people's court to adopt protective measures over the secondary obligor's property, he/she must provide corresponding property as security.

Article 18.

In an action of subrogation, a defence of the secondary obligor against the obligor may be asserted against the obligee.

During the proceeding of a subrogation litigation, if the obligor objects to the obligatory rights asserted by the obligee and the objection is established by examination and investigation, the people's court shall render an order to terminate the obligee's action.

Article 19.

Where an obligee in an action of subrogation wins the case, the court costs shall be borne by the secondary obligor, which shall be paid as a priority from the obligatory rights realised.

Article 20.

Where an obligee brings an action of subrogation against a secondary obligor and the right of subrogation is affirmed by the people's court after adjudication, the secondary obligor shall perform the obligations to the obligee, and the relationship of rights and obligations between the obligee and the obligor and between the obligor and the secondary obligor shall be extinguished correspondingly.

Article 21.

In an action of subrogation, if the amount of claims made by the obligee in exercising his/her right of subrogation is in excess of the amount of debts owed by the obligor or in excess of the amount of debts owed by the secondary obligor to the obligor, the part in excess shall not be supported by the people's court.

Article 22.

In an action of subrogation, if the obligor brings a law suit against the secondary obligor for the obligatory rights which are over and above the amount for the subrogation rights claimed by the obligee, the people's court shall notify the obligee to bring a separate action in the people's court which has jurisdiction over the case.

Where a law suit taken by an obligor meets the prescribed conditions, a people's court shall accept the case, and the people's court which handles the obligor's law suit shall terminate the case in accordance with the law before the ruling over the action of subrogation comes into effect.

5. RIGHT OF ANNULMENT**Article 23.**

An action brought under the right of annulment by an obligee in accordance with the provisions of Article 74 of the Contract Law shall be handled by the people's court in the place where the defendant has residence.

Article 24.

Where an obligee brings an action under the right of annulment in accordance with the provisions of Article 74 of the Contract Law and lists only the obligor as the defendant but does not include the beneficiaries or the assignee as the third parties, the people's court may make the beneficiaries or the assignee as the third parties.

Article 25.

Where an obligee brings an action under the right of annulment in accordance with provisions of Article 74 of the Contract Law requesting the people's court to annul the obligor's act of abandoning his or her matured obligatory rights or transferring property, the people's court shall adjudicate the part asserted by the obligee, and the obligor's act shall be deemed invalid from the beginning if it is annulled in accordance with law.

Where two or more obligees make the same obligor as the defendant and bring actions of annulment over the same subject matter, the people's court may consolidate the cases for adjudication.

Article 26.

The necessary expenses such as lawyers' fees and travel costs incurred by the obligee in exercising the right of annulment shall be borne by the obligor; third parties shall appropriately share the costs if they are also at fault.

6. THIRD PARTY IN THE ASSIGNMENT OF CONTRACT**Article 27.**

Where a dispute between an obligor and an assignee over the performance of the contract is brought to a people's court after the obligee assigned his/her contractual rights, and the obligor makes a demur to the obligee's right, the obligee may be made a third party.

Article 28.

Where a dispute between an assignee and an obligee on the performance of a contract is brought to a people's court after the obligor assigned his/her contractual obligations with the consent of the obligee, and the transferee makes a demur to the obligor's rights, the obligor may be made a third party.

Article 29.

Where one party to a contract assigns his/her rights and obligations under the contract to an assignee with the consent of the other party, if a dispute between that other party and the assignee over the performance of the contract is brought to a people's court, and that other party makes a demur to the contractual rights and obligations, the assignor may be made a third party.

7. COINCIDENCE OF CLAIMS**Article 30.**

Where an obligee has made its choice when bringing a legal action in a people's court in accordance with provisions of Article 122 of the Contract Law, and, before the court hearing of the first instance is opened, modifies his/her claims, the people's court shall permit the modification. If the opposing party objects to the jurisdiction and such an objection is established by examination and investigation, the people's court shall dismiss the legal action.



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