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**Interpretation of the Supreme People's Court on Several Issues Concerning
Application of the "Contract Law of the People's Republic of China" (2)**

Interpretation of the Supreme People's Court on Issues Concerning the Application of the Contract Law of the People's Republic of China (II)

Fa Shi [2009] No. 5

The Interpretation of the Supreme People's Court on Issues Concerning the Application of the Contract Law of the People's Republic of China (II), adopted at the 1,462nd session of the Judicial Committee of the Supreme People's Court on 9 February 2009, is hereby promulgated, effective on 13 May 2009.

24 April 2009

Interpretation of the Supreme People's Court on Issues Concerning the Application of the Contract Law of the People's Republic of China (II)

(Adopted at the 1,462nd session of the Judicial Committee of the Supreme People's Court on 9 February 2009)

For the purpose of presiding over cases arising from contract dispute justly and in accordance with the provisions of the PRC, Contract Law (Contract Law), the issues relating to the application of Contract Law by the People's Courts is hereby explained.

I — EXECUTION OF CONTRACT

Article 1 If the relevant parties are in dispute arising from the formation of a contract, the People's Courts shall in general find the formation valid where the names of the relevant parties, the subject matter and the quantity concerned can be ascertained, except where it is otherwise provided under other provisions of the law or agreed between the relevant parties.

If any other content other than those provided in the aforesaid provision is missing from a contract, and the relevant parties are unable to reach an agreement, the People's Courts shall depend on the relevant provisions such as Articles 61, 62 and 125.

Article 2 If a contract has not been formed in writing or in oral form by the relevant parties, but the intention of entering into a legal relationship from both parties can be ascertained by their civil conducts, then the People's Courts may find that the contract has been formed in "other means" according to Clause 1 of Article 10 of the Contract Law, except where it is otherwise provided under other law.

Article 3 If anyone offers a reward by a public announcement to anyone who performs a certain duty, and an offeree asks for reward by the offerer upon performance of the duty, the People's Courts shall find

for such a claim, except where the offer of award falls under the provisions of Article 52 of the Contract Law.

Article 4 If a contract is entered into in writing, and the venue where the signing has taken place written in the contract is inconsistent with the venue where the contract was actually signed or sealed, the People's Courts shall find that the venue where the signing has taken place is the venue provided in the contract. If no venue is implied or conditioned in the contract, and the relevant parties have signed or sealed the contract in different places, the People's Courts shall find that the last place where the contract was signed or sealed to be the execution venue.

Article 5 If the relevant parties form a contract in writing, they shall sign or affix their seals on the contract. Where a relevant party has marked his/her finger print on the written contract, the People's Courts shall find that the contract is legally binding as one that has been signed or sealed.

Article 6 If a party has produced a standard form contract containing exemption or liability limitation clause, the party shall use special mark such as a note or a sign or such typeface to raise the awareness of the other party at the time of the signing and he/she shall explain the clause as requested by the other party. Where this is the case, the People's Courts shall validate the clause in accordance with the provision of "reasonableness " under Article 39 of the Contract Law.

The party that produce the standard form shall bear the burden of proof and show that he/she has made reasonable declaration and fulfilled his/her obligation to explain.

Article 7 Unless it is against the laws or breaches administrative regulations, the People's Courts may accept "trade customs" under the Contract Law:

(1) Any mode of operation that is commonly adopted at the location where the transaction took place or within a certain domain or industry and that was known or should have been known by the other party at the time of executing the contract; or

(2) The mode of operation customarily adopted by both relevant parties.

In relation to "trade custom", the claimant replying on it shall bear the burden of proof.

Article 8 Where the validity of a contract shall only take effect upon seeking approval or registered in accordance with relevant law or administrative regulations, and the party, that is under the duty to proceed with the application for approval or registration, fails to proceed with the application for approval or application for registration in accordance with the requirement of the law or administrative regulation, this shall fall within the case of "any other conduct that breaches the principle of integrity and good faith" under Clause 3 of Article 42 of the Contract Law, and the People's Courts shall find that the other party shall proceed with the relevant formalities according to the specific circumstances of the case and the petition of the other party. And the relevant party shall bear the duty to compensate all losses in relation to all the expenses arising therefrom and any actual losses incurred by the other party.

II — VALIDITY OF CONTRACT

Article 9 Where the party which provides any standard form contractual term is in breach of the provisions of indication and interpretations under Clause 1 of Article 39 of the Contract Law, causing the other party to be unaware of any term that exclude or restrict his/her liability, the People's Courts shall find for the other party's claim to set the exemption/limited clause aside.

Article 10 Where the party which provides any standard form contractual term is in breach of Clause 1 of Article 39 of the Contract Law, and falls within the provision under Article 40 of the Contract Law, the People's Courts shall find such standard form contractual term to be invalid.

Article 11 According to Articles 47 and 48 of the Contract Law, ratification shall take effect upon arriving at the other party and the contract shall take effect upon execution.

Article 12 Where an agent who has no power of agency enters into a contract in the name of the principal, the principal shall be deemed to have ratified the contract upon performing any of the obligations under the contract.

Article 13 After the principle has, in accordance with the provision of Article 49 of the Contract Law, borne all the obligations that will have arisen where the agency authorisation is effective, he/she may claim from the agent who has no such authorisation all the losses that he/she has suffered as a result of the agent's conduct.

Article 14 "Mandatory provisions" under the provision of Clause 5 of Article 52 of the Contract Law refers to the provisions specifically addressing the validity of contracts.

Article 15 Where a seller enters into multiple sale and purchase contracts in respect of the same subject matter, and the contracts do not contain any of the vitiating factors under Article 52 of the Contract Law, the People's Courts shall find for the purchaser or recipient where the purchaser or recipient cannot obtain ownership of the subject matter as agreed in the contract and pursues the default obligations of the seller.

III — PERFORMANCE OF CONTRACT

Article 16 The People's Courts may, according to the circumstances of a case, list any third party provided under Articles 64 and 65 as a third party who is not entitled to any independent claim, however the courts shall not list such a person as the defendant of the contract dispute case or as any third party who is entitled to independent claim.

Article 17 Where a creditor is to initiate subrogation litigation and name a relevant party who is abroad as the defendant, the People's Courts shall clarify their jurisdiction in accordance with Article 241 of the PRC, Civil Procedure Law.

Article 18 Where a debtor gives up any right to further credit yet to fall due, or gives up on any guarantee for securing the debt, or willfully extend the performance period of credit that is due, thereby causing damages to the creditor, and the creditor initiates litigation for rescission in accordance with the provision of Article 74 of the Contract Law, the People's Courts shall support such a claim.

Article 19 In relation to "a price which is manifestly and unreasonably low" under Article 74 of the Contract Law, the People's Courts shall confirm relying on the judgment of a local general operator, taking into account also the guidance price of the price regulatory authorities or the market transaction price at the time and at the locality where the transaction took place, as well as other relevant factors for overall consideration.

Where the transaction price does not reach 70% of the guidance price of the price regulatory authorities or the market transaction price at the time and at the locality where the transaction took place, then in general it can be regarded as a price which is manifestly and unreasonably low. In relation to a transaction price which exceeds 30% of the guidance price of the local price regulatory authorities or the market transaction price, then in general it can be regarded as a price which is manifestly and unreasonably high.

Where a debtor acquires someone's asset at a price which is manifestly and unreasonably high, the People's Courts may rescind such acquisition in accordance with the petition of the creditor taking into account also the provision of Article 74 of the Contract Law.

Article 20 Where the payment of a debtor is not enough to settle all the indebtedness owed to the same credit which is the aggregate of different amounts of debt of the same nature, settlement of the debt which is due shall be given priority. Where several amounts of debt are due, settlement of the debt which is

unsecured or the debt which has the lowest amount of security shall be given priority. Where the secured amounts are the same, settlement of the debt which is more onerous shall be given priority. Where the burdens are equally onerous, settlement of the debt shall be made in the order of their due dates. Where they are due on the same date, settlement shall be made in their respective proportion. Except where the creditor and the debtor have agreed on the settlement of debt or the order of settlement.

Article 21 A debtor shall pay interest and costs in addition to the principal amount of debt. Where his/her payment is not enough to cover all the indebtedness, and the relevant parties have not made any agreement, the People's Courts shall settle the indebtedness in accordance with the following order:

(1) the relevant costs of actualising the indebtedness;

(2) interest;

(3) principle debt.

IV — TERMINATION OF THE OBLIGATIONS UNDER CONTRACT

Article 22 Where one of the relevant parties, in breach of the obligation under Article 92 of the Contract Law, causes losses to the other party, and the other party claims compensation for actual losses, the People's Courts shall support such a claim.

Article 23 In relation to any indebtedness which is due and may be offset under Article 99 of the Contract Law, and it is agreed between the relevant parties that the indebtedness shall not be offset, the People's Courts shall affirm that the agreement is effective.

Article 24 Where a relevant party disputes the dissolution of a contract or the offset of any indebtedness provided under Articles 96 and 97 of the Contract Law, and raise the dispute and initiate litigation with a People's Court after the expiry of the limitation period agreed, the People's Court shall not support such a claim. Where the relevant parties have not agreed on the limitation period for raising dispute and litigation is only initiated with a People's Court over three months after the service of notification for contract resolution or offset of indebtedness, the People's Court shall not support such a claim.

Article 25 Where a debtor delivers the subject matter of the contract or the proceeds from the sale or auction of the subject matter of the contract to an escrow authorities in accordance with provisions of Article 101 of the Contract Law, the People's Courts shall find that escrow is established.

Where escrow is established, the debtor shall be deemed to have performed the repayment obligation to the extent of the money escrowed.

Article 26 Where any significant change in the objective environment has taken place after the formation of a contract which could not have been foreseen by the relevant parties at the time of entering into the contract, and does not belong to any commercial risk occasioned by any force majeure cause, rendering the continual performance of the contract manifestly unfair to the relevant party or rendering it impossible to realise the goal of the contract, the People's Court shall confirm whether the contract shall be varied or dissolved in accordance with the principle of justice taking into account the actual circumstance, where a relevant party petitions a People's Court to vary or dissolve the contract.

V — DEFAULT LIABILITY

Article 27 Where a relevant party petitions a People's Court by way of counterclaim or defense to adjust the liquidated damages in accordance with Clause 2 of Article 114 of the Contract Law, the People's Court shall support such claim.

Article 28 Where a relevant party petitions a People's Court to increase the liquidated damages in accordance with Clause 2 of Article 114 of the Contract Law, the increased liquidated damages shall not exceed the actual losses occasioned. Where a relevant party claims from the other party again for compensation of losses after the liquidated damages has been increased, the People's Court shall not support such claim.

Article 29 Where a relevant party asserts that liquidated damages agreed is too high and petitions for reasonable adjustment, the People's Courts shall rule on the basis of the actual losses, taking into consideration comprehensive factors such as the performance of the contract, the extent of culpability of the relevant party, and the anticipated benefits etc, and adjust in accordance with the principles of justice and integrity and good faith.

Where the liquidated damages agreed by the relevant parties exceeds the actual losses by 30%, then in general it may be found that the liquidated damages is "excessively higher than the actual losses" as provided under Clause 2 of Article 114 of the Contract Law.

VI — SUPPLEMENTARY PROVISION

Article 30 In relation to any dispute arising from any contract formed after the Contract Law has taken effect, where the judicial proceeding has not come to an end after these Interpretations has taken effect, then these Interpretations shall apply. Where the judicial proceeding has come to an end before these Interpretations have taken effect and the relevant party applies for retrial or it is determined that the case be retried according to the judicial supervision process, these Interpretations shall not apply.



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