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**Interpretations of Supreme People's Court on Several Issues Pertaining to Application of the Insurance Law of the People's Republic of China (II)**

The Interpretations of Supreme People's Court on Several Issues Pertaining to Application of the "Insurance Law of the People's Republic of China" (II) has been passed by the 1577th Session of the Judicial Committee of the Supreme People's Court on 6 May 2013, is hereby promulgated and shall be effective 8 June 2013.

31 May 2013

For the purposes of proper trial of insurance contract dispute cases, pragmatic protection of the legitimate rights and interests of the parties concerned, pursuant to the provisions of the Insurance Law of the People's Republic of China, the Contract Law of the People's Republic of China, the Civil Procedural Law of the People's Republic of China, etc, taking into account the actual trial practice, interpretations on issues relating to application for the relevant law stipulated in the Insurance Law for general provisions in insurance contract are hereby made as follows:

**Article 1** For property insurance, where an insurance subject is insured by different policyholders, upon occurrence of an insured event, and the insured claim insurance payout based on their insurance contract within the scope of their insurable interests, the People's Court shall support the claim.

**Article 2** For personal insurance, where an insurance contract is rendered invalid as a result of the policyholder having no insurable interests over the insured and the policyholder asserts that the insurer refunds the insurance premiums following deduction of the corresponding handling fees, the People's Court shall support the assertion.

**Article 3** Where a policyholder or his/her agent did not sign or affix seal personally at the time of execution of the insurance contract, and the insurer or its agent signs or affix seal on behalf instead, the insurance contract shall not take effect for the policyholder. However, where the policyholder has paid the insurance premiums, the payment shall be deemed as ratification of signing or affixation of seal.

Where the insurer or its agent has filled in the insurance policy document on behalf and upon signing or affixation of seal by the policyholder as confirmation, the contents filled in on behalf shall be deemed as expression of true intent of the policyholder, except where there is evidence to prove that the insurer or its agent falls under the descriptions stipulated in relevant provisions of Article 116 and Article 131 of the Insurance Law.

**Article 4** Where an insurer has accepted an insurance slip submitted by a policyholder and collected the insurance premiums, but has yet to indicate underwriting intent, when an insured event occurs, and the insured or the beneficiary requests that the insurer bears compensation or payout liability pursuant to the insurance contract, the People's Court shall support the claim if the underwriting criteria are satisfied; where the underwriting criteria are not satisfied, the insurer shall not bear insurance liability but shall return the insurance premiums collected.

Where an insurer asserts that the underwriting criteria are not satisfied, it shall bear the burden of proof.

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**Article 5** Upon conclusion of an insurance contract, information of the insurance subject or the insured of which the policyholder should be aware shall fall under the contents "which should be notified truthfully" by the policyholder stipulated in the first paragraph of Article 16 of the Insurance Law.

**Article 6** The notification obligation of a policyholder shall be limited to the scope and contents enquired by the insurer. Where the parties concerned have any dispute over the scope and contents of the enquiry, the insurer shall bear the burden of proof.

Where an insurer cites a policyholder's violation of the truthful notification obligation for general clauses set out in the questionnaire for the insurance slip to request for rescission of contract, the People's Court shall not support the request, except where such general clauses have specific contents.

**Article 7** Where an insurer is or should be aware, upon conclusion of an insurance contract, that the policyholder has not performed the truthful notification obligation, but collects the insurance premiums, and then asserts for rescission of contract pursuant to the provisions of the second paragraph of Article 16 of the Insurance Law, the People's Court shall not support the assertion.

**Article 8** Where an insurer has not exercised the right to rescind the contract and directly cites the existence of circumstances stipulated in the fourth paragraph and the fifth paragraph of Article 16 of the Insurance Law to refuse to make compensation, the People's Court shall not support the assertion, except where the parties concerned have otherwise reached a consensus on refusal of compensation and validity of insurance contract.

**Article 9** Disclaimer clauses on deductibles, franchise, payout ratio or disclaimer or mitigation of insurer liability in a template contract provided by an insurer may be deemed as "clauses on disclaimer of insurer liability" stipulated in the second paragraph of Article 17 of the Insurance Law.

Clauses on an insurer's right to rescind a contract in the event of violation of statutory or agreed obligation(s) by the policyholder or the insured shall not fall under "clauses on disclaimer of insurer liability" stipulated in the second paragraph of Article 17 of the Insurance Law.

**Article 10** Where an insurer include prohibitions in laws and administrative regulations as disclaimer events for disclaimer clauses in an insurance contract and upon highlighting of such clauses by the insurer, the policyholder, the insured or the beneficiary cites that the insurer has not performed the obligation of specific explanation and asserts that such clauses are invalid, the People's Court shall not support the assertion.

**Article 11** Upon conclusion of an insurance contract, where the insurer has highlighted clauses on disclaimer of insurer liability in an insurance contract on the insurance slip or insurance policy document or any other insurance certificate by way of words, font size, symbol or any other clear marking to bring to the policyholder's attention, the People's Court shall deem that the insurer has performed the reminder obligation stipulated in the second paragraph of Article 17 of the Insurance Law.

Where an insurer has provided written or verbal explanation of the concept, contents and legal consequences of the relevant clauses in an insurance contract on disclaimer of insurer liability to the policyholder in a manner which can be understood by ordinary people, the People's Court shall deem that the insurer has performed the obligation of specific explanation stipulated in the second paragraph of Article 17 of the Insurance Law.

**Article 12** Where an insurer has highlighted and provided specific explanation via webpage, audio clip, video clip, etc for clauses on disclaimer of insurer liability in an insurance contract concluded online and via telephone, etc, the People's Court may deem that the insurer has performed the obligation of reminder and specific explanation.

**Article 13** An insurer shall bear the burden of proof that it has performed the obligation of specific explanation.

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Where a policyholder has signed or affixed seal on the relevant document or confirmed via any other manner that the insurer has performed the obligation of specific explanation required by the second paragraph of Article 11 of these Interpretations, the insurer shall be deemed to have performed the said obligation, unless there is evidence to prove that the insurer has not performed the obligation of specific explanation.

**Article 14** Where the contents in an insurance contract are inconsistent, the following rules shall apply:

(1) where the insurance slip is inconsistent with the insurance policy document or any other insurance certificate, the insurance slip shall prevail. Where the inconsistencies are explained by the insurer and agreed by the policyholder, the contents stated in the insurance policy document or any other insurance certificate signed and acknowledged by the policyholder shall prevail;

(2) where the non-template clauses are inconsistent with the template clauses, the non-template clauses shall prevail;

(3) where the dates recorded on an insurance certificate are different, the later date shall prevail; and

(4) where there is a handwritten version and a printed version of an insurance certificate, the handwritten contents signed and sealed by both parties shall prevail.

**Article 15** The 30-day approval period stipulated in Article 23 of the Insurance Law shall commence on the date on which the insurer first received a claim application and the date of the relevant proof and materials provided by the policyholder, the insured or the beneficiary.

Where an insurer asserts that the period for which the policyholder, the insured or the beneficiary provides supplementary proof and materials is deducted, the People's Court shall support the assertion. The period to be deducted shall commence on the date on which the notification made by the insurer pursuant to the provisions of Article 22 of the Insurance Law is served on the policyholder, the insured or the beneficiary and up to the date on which the relevant supplementary proof and materials provided by the policyholder, the insured or the beneficiary pursuant to the requirements of the notification are served on the insurer.

**Article 16** An insurer shall exercise insurance subrogation in its own name.

Pursuant to the provisions of the first paragraph of Article 60 of the Insurance Law, the limitation of action for insurer subrogation shall commence on the date on which subrogation is obtained.

**Article 17** Where the interpretation for non-insurance terminology in the template clauses of an insurance contract provided by an insurer satisfies professional significance or does not satisfy professional significance but is beneficial to the policyholder, the insured or the beneficiary, the People's Court shall recognise.

**Article 18** For traffic accident confirmation letters, fire accident confirmation letters, etc prepared by the administrative authorities pursuant to the provisions of the laws, the People's Court shall examine pursuant to the law and confirm the corresponding probative force, except where it can be subverted by evidence to the contrary.

**Article 19** Upon occurrence of an insured event, where the insured or the beneficiary files a lawsuit against the insurer, the insurer cites that the insured or the beneficiary has not demanded the third party to bear liability to support its defence for not bearing insurance liability, the People's Court shall not support the assertion.

Upon occurrence of an insured event for property insurance, where the insured files a lawsuit for the balance of its losses after obtaining compensation from the third party and requests compensation from the insurer, the People's Court shall accept the lawsuit pursuant to the law.

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**Article 20** Where a branch of an insurance company which is established pursuant to the law and holds a business licence falls under the definition of any other organisations stipulated in Article 48 of the Civil Procedural Law of the People's Republic of China, it can be named as a party in an insurance contract dispute lawsuit.

**Article 21** These Interpretations shall apply to insurance contract dispute cases pending final judgment upon implementation of these Interpretations; these Interpretations shall not apply to cases which have completed trial prior to implementation of these Interpretations but for which the parties concerned have applied for re-trial or which are subject to re-trial pursuant to trial supervision procedures.



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