

Interpretations the Supreme People's Court of Certain Issues Concerning the Application of the Contract Law of the People's Republic of China(part One)

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"The Supreme People's Court's Interpretations of Certain Issues Concerning the Application of the Contract Law of the People's Republic of China(part One)" is adopted at the 1090th Session of the Adjudication Committee of the Supreme People's Court on December 1, and is promulgated now, this law will be effective as of December 29, 1999.

Pursuant to The Contract Law of the People's Republic of China (hereinafter the "Contract Law"), and with a view to facilitating the proper adjudication of contractual disputes, we hereby promulgate the following interpretations of certain issues concerning the application of the Contract Law by People's Courts:

I. Scope of Application of the Law

Article 1 Where a suit is brought to a People's Court in respect of a dispute arising out of a contract formed after the operative date of the Contract Law, the provisions of the Contract Law shall apply; where a suit is brought to a People's Court in respect of a dispute concerning a contract formed before the operative date of the Contract Law, except otherwise provided herein, the provisions of the law in effect at the time shall apply, provided that if the law in effect at the time did not provide for such matter, the relevant provision of the Contract Law may apply.

Article 2 Where a contract was formed before the operative date of the Contract Law, but the prescribed time limit for performance extends beyond, or commences after, the operative date of the Contract Law, if a dispute arises out of its performance, the relevant provisions of Chapter Four of the Contract Law shall apply.

Article 3 In determining the validity of a contract formed before the operative date of the Contract Law, if application of the law in effect at the time leads to its invalidation, but application of the Contract Law leads to affirmation of its validity, the People's Court shall apply the Contract Law.

Article 4 After the Contract Law became operative, a People's Court may only invalidate a contract in accordance with laws adopted by the National People's Congress or its Standing Committee, or administrative regulations adopted by the State Council, and may not invalidate a contract in accordance with any local statutes or administrative rules.

Article 5 Where a People's Court re-adjudicates a case on which a final judgment has been rendered, the Contract Law does not apply.

II. Time Limit for Action

Article 6 In a dispute arising out of a technology contract, where infringement of the right of a party occurred before the operative date of the Contract Law, if there was a lapse of more than one year between the date on which the party knew

or should have known that its right was infringed and the operative date of the Contract Law, the People's Court will no longer enforce such right; where the lapse was less than one year, the time limit during which the party may bring a suit shall be two years.

Article 7 In a dispute arising out of a technology import/export contract, where infringement of the right of a party occurred before the operative date of the Contract Law, if there was a lapse of more than two years between the date on which the party knew or should have known that its right was infringed and the operative date of the Contract Law, the People's Court will no longer enforce such right; where the lapse was less than two years, the time limit during which the party may bring a suit shall be four years.

Article 8 The time period of "one year" set out in Article 55, and the time period of "five years" set out in Article 75 and Paragraph 2 of Article 104 of the Contract Law are fixed, and are not subject to the rules governing the suspension, termination or extension of time limit for action.

III. Validity of Contracts

Article 9 Where as set forth in Paragraph 2 of Article 44 of the Contract Law, the relevant law or administration regulation provides that the effectiveness of a certain contract is subject to completion of the relevant approval procedure, or the relevant approval and registration procedures, if before completion of court debate by the parties in the trial of first instance, the parties still fail to carry out the relevant approval procedure, or approval and registration procedures, as the case may be, the People's Court shall rule that the contract has not yet taken effect; if the relevant law or administration regulation requires that a certain contract be registered without subjecting its effectiveness to such registration, then failure to effect registration shall not impair the effectiveness of the contract, provided that such failure constitutes an impediment to the conveyance of title to, or such other real right in, the subject matter of the contract.

In the case of amendment, assignment or termination of a contract as set forth in Paragraph 2 of Article 77, Article 87, and Paragraph 2 of Article 96 of the Contract Law, the provisions of the previous Paragraph apply.

Article 10 Where the parties entered into a contract the subject matter of which was outside their scope of business, the People's Court shall not invalidate the contract on such ground, except where conclusion of the contract was in violation of state restriction concerning, or licensing requirement for, a particular business sector, or in violation of any law or administrative regulation prohibiting the parties from participation in a particular business sector.

IV. Subrogation

Article 11 Where an obligee is to bring a suit of subrogation pursuant to Article 73 of the Contract Law, the following conditions shall be met:

- (1) The obligee's creditor's right against the obligor is lawful;
- (2) The obligor's delay in exercising the creditor's right due to it has caused harm to the obligee;
- (3) The creditor's right of the obligor is due;
- (4) The creditor's right of the obligor is not exclusively personal to it.

Article 12 As referred to in Paragraph 1 of Article 73, a creditor's right exclusively personal to the obligor means a claim for alimony, child support,

parental support or succession, or, a claim for wage, retirement pension, old age pension, death benefits, relocation allowance or life insurance, or, a personal injury claim.

Article 13 The article "Where the obligor delayed in exercising its creditor's right against a third person that was due, thereby harming the obligee" in Article 73 of the Contract Law refers to the following circumstance: The obligor fails to render performance which is due to the obligee, and further, it has failed to enforce a creditor's right which is due to it and which involves the payment of money against an obligor either through a suit in court or through arbitration, thereby frustrating the obligee's realization of the creditor's right due to it.

Where the secondary obligor (i.e. the obligor of the original obligor) denies that the obligor has delayed in exercising its creditor's right due to it, the secondary obligor bears the burden of proof.

Article 14 Where an obligee brings a suit of subrogation pursuant to Article 73 of the Contract Law, jurisdiction shall vest in the People's Court in the place where the defendant is domiciled.

Article 15 Where after bringing a suit against an obligor to a People's Court, an obligee brings a suit of subrogation against a secondary obligor to the same court, if such suit complies with the provisions of Article 13 hereof as well as the conditions for bringing a suit set forth in Article 108 of the Civil Procedural Law of the People's Republic of China, the court shall accept such suit; where such suit does not comply with Article 13 hereof, the court shall direct the obligee to bring a separate suit to the People's Court in the place where the secondary obligor is domiciled.

Before judgment on the suit brought by the obligee against the obligor takes legal effect, the People's Court adjudicating the suit of subrogation against the secondary obligor shall stay such suit in accordance with Item (5) of Article 136 of the Civil Procedural Law of the People's Republic of China.

Article 16 Where in a suit of subrogation brought to a People's Court, an obligee names only the secondary obligor as the defendant without also naming the original obligor as an interested third person, the People's Court may add the original obligor as an interested third person.

Where in suits of subrogation brought separately by two or more obligees, the same secondary obligor is named as the defendant, the People's Court may combine the suits for adjudication.

Article 17 In a suit of subrogation, if the obligee petitions the People's Court for preservative measure against the assets of the secondary obligor, it shall provide appropriate financial assurance.

Article 18 In a suit of subrogation, the secondary obligor may, in respect of the obligee, avail itself of any defense it has against the original obligor. In a suit of subrogation, where the obligor raises a defense against the obligee's claim, if the People's Court affirms the defense, it shall dismiss the suit brought by the obligee.

Article 19 In a suit of subrogation, if the obligee prevails, the court fee shall be borne by the secondary obligor, and shall be paid in priority out of the proceeds from the enforced creditor's right.

Article 20 Where an obligee brings a suit of subrogation against a secondary obligor, and the People's Court affirms the subrogation, the secondary obligor shall perform the payment obligation, whereupon the respective obligee-obligor relationships between the obligee and the obligor, and between the obligor and the secondary obligor, are discharged accordingly.

Article 21 In a suit of subrogation, where the amount in subrogation claimed by

the obligee exceeds the amount owed by the obligor or the amount owed to the obligor by the secondary obligor, the People's Court shall not enforce the claim to the extent the claimed amount exceeds the actual amount.

Article 22 In a suit of subrogation, if the obligor also brings a claim against the secondary obligor for the difference between the amount owed to it and the amount in subrogation claimed by the obligee, the People's Court shall direct the obligor to bring a separate suit to the People's Court with the proper jurisdiction.

Where such suit brought separately by the obligor meets the legally prescribed conditions, the People's Court shall accept such suit; the People's Court accepting the suit brought by the obligor shall stay such suit in accordance with the law pending the legal effectiveness of the judgment on the suit of subrogation.

V. Cancellation Right

Article 23 Where an obligee brings a suit to enforce its cancellation right pursuant to Article 74 of the Contract Law, jurisdiction shall vest in the People's Court in the place where the defendant is domiciled.

Article 24 If in a suit to enforce its cancellation right pursuant to Article 74 of the Contract Law, the obligee only names the obligor as the defendant without also naming the beneficiary or the assignee as an interested third person, the People's Court may add such beneficiary or assignee as an interested third person.

Article 25 Where an obligee brings a suit to enforce its cancellation right pursuant to Article 74 of the Contract Law and petitions the People's Court for cancellation of the obligor's act of waiving its creditor's right or transferring its property, the People's Court shall adjudicate the case to the extent of the amount claimed by the obligee, and if the obligor's act is canceled in accordance with the law, such act is of no effect.

Where suits on the same subject matter are filed separately by two or more obligees to enforce their respective cancellation rights, and the same obligor is named as the defendant, the People's Court may combine the suits for adjudication.

Article 26 The necessary expenses incurred by the obligee in enforcing its cancellation right, such as attorney's fee and travel expenses, shall be borne by the obligor; where the interested third person was also at fault, it shall share such expenses as appropriate.

VI. Interested Third Person in Case of Assignment of Contracts

Article 27 If subsequent to the obligee's assignment of its contractual right, a suit is brought to a People's Court in respect of a dispute between the obligor and the assignee which arose from the performance of the contract, and the obligor raises a defense against the contractual right of the obligee, it may name the obligee as an interested third person.

Article 28 If with the consent of the obligee, the obligor has delegated its contractual obligation, and subsequently a suit is brought to a People's Court in respect of a dispute between the obligee and the delegatee which arose from the performance of the contract, and the delegatee, in defense against the obligee, avails itself of the obligor's right against the obligee, it may name the obligor as an interested third person.

Article 29 If with the consent of the other party, a party concurrently assigned its contractual rights and delegated its contractual obligations to an assignee, and subsequently a suit is brought to a People's Court in respect of a dispute between the other party and the assignee which arose from the performance of the contract, and the other party raises a defense in respect of the rights and obligations under the contract, it may name the obligor as an interested third person.

VII. Merger of Claims

Article 30 Where at the time the obligee brought a suit to a People's Court, it made an election of claim in accordance with Article 122 of the Contract Law, and subsequently it changes its election, if the change is made before the commencement of hearing in the trial of first instance, the People's Court shall allow such change. In the event the other party objects to the jurisdiction of the court and such objection is sustained, the People's Court shall dismiss such suit.

