

## **Explanations by the Supreme People's Court on Several Issues Regarding the Application of the Contract Law**

(Adopted at the 1090th meeting of the Trial Committee of the Supreme People's Court on December 1, 1999)

The following published is the Interpretation on Several Issues Regarding the Application of the Contract Law of the People's Republic of China Made by the Supreme People's Court (I) adopted at the 1090th. It shall take effect on 29 December 1999. (29 December 1999)

To facilitate correct trial of cases on contract disputes based on the Contract Law of the People's Republic of China (hereafter refers to as the Contract Law), the following interpretations are made on several issues regarding the application of Contract Law by the people's courts:

### **I. Scope of Application**

#### **Article 1**

If a dispute on a contract established after the implementation of the Contract Law is brought to the people's court, the Contract Law shall apply. If the dispute brought to the people's court is on a contract established before the implementation of the Contract Law, the original legal provisions shall apply except that the Interpretation provides otherwise; where there was no original legal provision, relative stipulations in the Contract Law may apply.

#### **Article 2**

Where a contract is established before the implementation of the Contract Law, while the period of performance agreed by the parties overpasses the date of implementation of the Contract Law or the period of performance commences after the implementation of the Law, a dispute derived from the performance of the contract shall be governed by relative provisions of Chapter 4 of the Contract Law.

#### **Article 3**

On deciding the validity of a contract by the people's court, if a contract established before the implementation of the Contract Law is void according to the original legal stipulations but valid according to the Contract Law, the Contract Law shall apply.

#### **Article 4**

After the Contract Law takes effect, on determining the invalidity of a contract, the people's court shall follow laws promulgated by the National People's Congress and its Standing Committee and administrative regulations adopted by the State Council instead of local regulations and regulations passed by various departments and commissions of the State Council.

### **Article 5**

Where the people's court conducts a retrial on a case upon which a final decision has been made before the implementation of the Contract Law, the Contract Law shall not apply.

## **II. Limitation of Action**

### **Article 6**

In case the fact that the right of a party to a technology contract is damaged takes place before the implementation of the Contract Law, and the period from the date on which the party knows or ought to know that his right has been damaged to that of the implementation of the Contract Law exceeds one year, his right is not protected by the People's Court. If the said period is less than one year, the limitation of action for that party is two years.

### **Article 7**

In case the fact that the right of a party to a technology import and export contract is damaged takes place before the implementation of the Contract Law, and the period from the date on which the party knows or ought to know that his right has been damaged to that of the implementation of the Contract Law exceeds two years, his right is not protected by the people's court. If the said period is less than two years, the limitation of action for that party is four years.

### **Article 8**

The "one year" in Article 55 and "five years" in Article 75 and Paragraph 2 Article 104 of the Contract Law are unalterable time limits and not subject to suspension, interruption and extension of limitation of action.

## **III. Validity of Contract**

### **Article 9**

Where according to Paragraph 2 of Article 44 of the Contract Law, approval or approval and registration is a prerequisites for the effectiveness of a contract, and the parties fail to get approval or approval and registration before the end of the court debate in first instance trial, the contract may be decided as void by the people's court. Where a law or administrative regulation requires a contract to be registered, but does not stipulate that such a contract shall take effect upon registration, the party's omission to register does not affect the validity of the contract and the ownership and other property rights on the subject matter of the contract shall not be transferred.

Cases on modification, assignment and revocation of contracts provided in Paragraph 2 Article 77, Article 87 and Paragraph 2 Article 96 of the Contract Law shall be handled according to the preceding Paragraph.

#### **Article 10**

A contract concluded exceeding the business scope of either party shall not be decided as void by the people's court except that the party has violated State restrictions, franchising and other prohibitive law or administrative regulations on business operation.

### **IV. Subrogation**

#### **Article 11**

The obligee who brings a litigation on subrogation according to Article 73 of the Contract Law shall meet the following conditions:

- (1) the obligee has a lawful right against the obligor
- (2) the obligor's omission to claim's right against a third party has damaged the interests of the obligee
- (3) the obligor's right is due
- (4) the obligor's right is in nature not exclusively personal

#### **Article 12**

A right exclusively belonging to the obligor in Paragraph 1 Article 73 of the Contract Law means the right to claim payment based on the relationship of support, rear, maintenance and inheritance and right to claim remuneration, retirement pay, old age pension, pensions for the disabled and for survivors, disposition fee, life insurance and compensation for physical injury etc.

#### **Article 13**

The sentence "Where the obligor is indolent in exercising its due right, and thus damages the interests of the obligee" in Article 73 means the obligor neither performs his due obligation to the obligee nor claims his due monetary right from his obligor through litigation or arbitration, and thus the obligee's due right is not satisfied.

Where the secondary obligor (the obligor of the obligor) claims that the obligor was not indolent in exercising its due right, the secondary obligor shall bear the responsibility of producing evidence.

#### **Article 14**

A litigation for subrogation brought by the obligee according to Article 73 of the Contract Law shall be under the jurisdiction of the people's court where the defendant has his domicile.

**Article 15**

Where the obligee brings a litigation for subrogation against the secondary obligor after he has brought a suit against the obligor to the same people's court, the case shall be accepted in case Article 13 of this Interpretation and conditions for action prescribed by Article 108 of the Civil Procedure Law of the People's Republic of China are satisfied; If provision in Article 13 of the Interpretation is not satisfied, the obligee shall be notified to bring another litigation to the people's court in the residential place of the secondary obligor.

The people's court accepting the litigation for subrogation shall before the decision on the litigation brought by the obligee against the obligor takes effect, suspends the litigation for subrogation according to Item 5 Article 136 of the Civil Procedure Law of the People's Republic of China.

**Article 16**

Where the obligor has not been listed as a third party in the litigation for subrogation brought by the obligee against the secondary obligor, the People's court accepting the case may add the obligor as the third party.

Where two or more obligees respectively bring a suit on subrogation against the secondary obligor, all the suits may be tried in combination by the people's court.

**Article 17**

Where in the litigation for subrogation, the obligee requests the people's court to adopt preservation measures on the property of the obligor, he shall provide guaranty.

**Article 18**

In litigation for subrogation, the secondary obligee may claim against the obligee of his plead against the obligor.

Where in litigation for subrogation, the obligor raises a disagreement against the right of the obligee, the people's court may dismiss the suit brought by the obligee if the disagreement is reasonable.

**Article 19**

Where the obligee wins the case on subrogation, the litigation fees shall be borne by the secondary obligor and paid in priority from the realized obligatory right.

**Article 20**

Where in the litigation for subrogation brought by the obligee against the secondary obligor, the people's court through trial decides that a right to subrogation exists, the obligation between the obligee and the obligor, and that between the obligor and the second obligor shall be extinguished upon the secondary obligor's performance of

obligation of the obligee.

#### **Article 21**

Where in litigation for subrogation, the amount requested by the obligee in exercising his right of subrogation exceeds the obligation borne by the obligor or that of borne by the secondary obligor to the obligor, the exceeding part shall not be held by the people's court.

#### **Article 22**

Where the obligor during the litigation for subrogation, brings another action against the secondary obligor on the exceeding amount paid to the obligee in the obligee's excising his right of subrogation, the obligor shall be notified by the people's court to bring a new suit to a people's court having jurisdiction.

If relevant legal stipulations are satisfied, the suit brought by the obligor shall be accepted by the people's court. The people's court, which has accepted the suit brought by the obligor, shall suspend the case according to law till decision on the litigation for subrogation takes effect.

### **V. Revocation**

#### **Article 23**

A litigation for revocation brought by the obligee according to Article 74 of the Contract Law shall be under the jurisdiction of the people's court where the defendant has his domicile.

#### **Article 24**

Where the beneficiary or assignee has not been listed as a third party in the litigation for revocation brought by the obligee against the obligor, the People's court accepting the case may add the beneficiary or assignee as the third party.

#### **Article 25**

Where according to Article 74 of the Contract Law, the obligee brings a litigation to request the people's court to revoke the obligor's act of renouncing his right or transferring his property, once the court through hearing the claim of the obligee, grants a revocation according to law, the obligor's act shall be void at its beginning.

Where two or more obligees respectively bring a suit on revocation concerning the same subject matter and against the same obligor, all the suits may be tried in combination by the people's court.

#### **Article 26**

Necessary expenses such as Lawyer's fee, travel expense etc incurred by the obligee

in exercising his right of revocation shall be borne by the obligor; the third party if at fault shall bear part of the expenses accordingly.

## **VI. Third Party in the Assignment of Contract**

### **Article 27**

Where after the obligee has assigned his rights under the contract and a dispute between the obligor and the assignee concerning the performance of contract is brought to the people's court, the court may add the obligee as the third party if the obligor raises a protest against the rights of the obligee.

### **Article 28**

Where after the obligor has assigned his obligations under the contract with agreement of the obligee a dispute between the assignee and the obligee on the performance of contract is brought to the people's court, the court may add the obligor as the third party if the assignee raises a protest concerning the right of the obligor against the obligee.

### **Article 29**

Where after one party has assigned both his rights and his obligations under the contract a dispute between the other party and the assignee concerning the performance of contract is brought to the people's court, the court may add the assignor as the third party if the other party raises a protest concerning the rights or duties under the contract.

## **VII. Concurrence of Claims**

### **Article 30**

Where the obligee has made a choice in bringing the suit to the people's court according to Article 122 of the Contract Law however modifies his claim before the first instance trial commences, his modification shall be permitted. Where a disagreement on jurisdiction raised by the other party is held by the court through examination, the suit shall be dismissed.