



CHINA LEGAL BRIEFING 96

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1. *National*

Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Dispute over Contracts on Undertaking Construction Projects

最高人民法院于审理建设工程施工合同纠纷案件适用法律问题的解释

【Issued By】 Supreme People's Court

【Subject】 Construction Contract

【Promulgated on】 October 25th 2004

【Effective From】 January 1st 2005

【Source】 www.court.gov.cn

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- TAX

Prepared in accordance with General Principles of Civil Law, Contract Law, Law on Tendering and Bidding, Law on Civil Litigation, this judicial interpretation mainly deal with circumstances of contract invalidity and their legal effects, the right to rescind the contracts and relevant legal consequences, default of contractual obligations, and disputes over completion dates and payment.

Construction contracts are void in one of the following circumstances in accordance with Article 52 (5) of Contract Law:¹

- The contractor has not obtained qualification needed for construction enterprises or acted beyond the grade of its qualification;
- the actual contractor without qualification has borrowed qualification from and act in the name of a construction enterprise holding such qualification;
- the construction project which should have been contracted through bidding has not been so contracted, or the success in the bidding is invalid.

Even if the construction contract is void, the contractor may claim the agreed construction costs, provided that the project has passed the completion inspection. Where the project has not passed the completion inspection in the event of contract being void, the developer is entitled to request the contractor to bear the repair costs if the project after repair has passed the completion inspection. If, however, after repair the project is still not able to pass the completion inspection, the contractor is not entitled to claim the agreed construction costs.

The developer may apply for termination of the contract where one of the following circumstances occurs to the contractor:

- The contractor will not discharge his material contractual obligations, either by express notification or inferred from his conducts;
- the project is not completed within the agreed time-limit and fails to be completed within the reasonable grace period granted by the developer;
- the quality of the completed project is not able to meet relevant standards and the contractor refuses to make repair;
- the contractor illegally sub-contracts parts or the whole of the project.

¹ Article 52 of Contract Law 1999 provides:

A contract shall be null and void under any of the following circumstances:

..

(5) Violating the compulsory provisions of the laws and administrative regulations.

The contractor may terminate the contract where one of the following circumstances occurring to the developer renders the contractor unable to conduct construction work and the developer keeps in default within reasonable period after notification:

- The developer fails to pay for the costs of the project;
- the building materials and relevant equipments provided by the developer are not able to meet compulsory standards.

Several Provisions on the Promotion of Security for Construction Contracts in Real Estate Development Projects

关于在房地产开发项目中推行工程建设合同担保的若干规定

【Issued By】 Ministry of Construction

【Subject】 Security for Construction Contracts

【Promulgated on】 August 6th 2004

【Effective From】 August 6th 2004

【Source】 www.cin.gov.cn

The regulation, enacted to regulate conducts of the participants in construction market and reduce commercial risks, applies to real estate development projects (including establishment of new projects, refurbishment and expansion of existent projects) the contract value of which is over RMB 10 million. It may also apply to other construction projects by analogy.

The security referred to in this regulation is divided to four groups, the details of which may be explained by the following chart:

<i>Category</i>	<i>Secured Debts</i>	<i>Beneficiary</i>	<i>Security Forms</i>
Bidding Security ("投标担保")	Obligation to Take Part in the Bidding	The Party Issuing Tender Notices	Cash Guarantee
Security for the Payment Made by the Owner for Construction Costs ("业主工程款支付担保")	Obligation of the Owner to Pay Construction Costs to the Contractor	The Contractor	Guarantee
Security for Discharging Contractual Obligations by the Contractor ("承包商履约担保")	Obligation Imposed Upon the Contractor by the Construction Contract	The Owner of the Project	Guarantee
Security for the Payment Made by the Contractor ("承包商付款担保")	Obligation of the Contractor to Make Payments to Sub-contractors, Suppliers of Materials and Equipments, and Construction Workers	<ul style="list-style-type: none"> ➤ Sub-contractors ➤ Suppliers of Materials and Equipments ➤ Construction Workers 	Guarantee

The guarantor for construction contracts shall be qualified financial institutions engaging in banking business and specialized guarantee companies registered in the PRC. So far as guarantee companies concerned, their overall outstanding guarantee shall not exceed 10 times of their net assets, and a single guarantee shall not exceed 50% of their net assets.

Interim Measure for the Administration of Stock Investments of Insurance Institutional Investors

保险机构投资者股票投资管理暂行办法

【Issued By】 China Insurance Regulatory Commission

【Subject】 Stock Investment

【Promulgated on】 October 24th 2004

【Effective From】 October 24th 2004

【Source】 www.circ.gov.cn

This regulation, enacted in accordance with Insurance Law and Securities Law, contains the following parts in addition to general rules and final clauses: qualification and eligibility, investment scope and ratio, asset depository, prohibited acts of insurance institutional investors, risk control, and administration and supervision.

Insurance Institutional Investors ("Investors") for the purpose of this regulation refer to insurance companies and insurance asset companies that meet the conditions laid down by China Insurance Regulatory Commission (CIRC) and engage in stock investment. Stock investment made by insurance group companies and insurance controlling companies is also subject to this regulation.

Stock Investment for the purpose of this regulation refers to investment in stocks and convertible corporate bonds made by insurance companies or their agents (insurance asset management companies).

Insurance asset companies automatically obtain qualification for stock investment without any prior approval. However, they can only use funds from insurance companies instead of their own funds to make stock investment. Insurance companies may directly make stock investment or authorize insurance asset management companies to make investment on their behalf. In either case, however, approval from the CIRC is required.

The Investors may make stock investment either at the primary market or at the secondary market. Their investment choices are limited to ordinary RMB shares, convertible corporate bonds, and other instruments as may be specified by China Securities Regulatory Commission (CSRC). The shares held by the Investors shall not exceed 30% of the ordinary RMB shares of that company. Moreover, custodians shall be appointed for the stock investment made by the Investors.

The Investors shall not invest in the following ordinary RMB shares:

- Those have been granted "Special Treatment" ("ST") and "Special Treatment Warning the Risk of Termination of Listing" ("*ST") by the stock exchanges or those have been terminated from being listed;
- those the prices of which have increased 100% in the past 12 months;

- those in respect of which manipulation suspiciously exists;
- those the issuers of which have been rendered Refusal to Make Opinions or Opinions with Reservation by accounting firms over their financial statements during the immediate past year;
- those the issuers of which have disclosed significant performance decay, huge loss or expected huge loss;
- those the issuer of which have disclosed that they are under investigation of the supervisory bodies or they were imposed severe penalties by the supervisory bodies during the immediate past year;
- other shares as may be specified by the CSRC.

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