



## I. Legal News

### SPC Releases Interpretations (□) on Issues Concerning the Application of Law in the Trial of Construction Project Contract Dispute

The Supreme People's Court ("SPC") has recently issued the Interpretations (II) on Issues Concerning the Application of Law in the Trial of Construction Project Contract Dispute Cases (the "Interpretations"), which will enter into force as of February 1, 2019.

According to PRC Contract Law, a construction project contract refers to a contract whereby a contractor performs the construction of a project and an employer pays the price (the "Employer"). The Interpretations illustrates some dispute issues arising from the construction project contract, concerning validity, settlement and priority right, etc.

The following points deserve special attention:

- (1) In case the actual losses incurred by a void construction project contract are hard to confirm, the determination of the amount of compensation can refer to the quality standard, construction period, the agreed payment time, and other factors set out in the contract.
- (2) Where an entity or individual without relevant qualifications signs a construction project contract in the name of a qualified construction enterprise, the Employer shall have the right to claim that the qualification lender shall, together with the party using its qualifications, bear joint liability for compensating losses incurred from the substandard quality of the construction project.
- (3) Contractor has the priority right for claiming compensation from the conversion or auction price of the project if the Employer fails to pay the price after reasonable urging, provided the construction project satisfies the quality standards.
- (4) For the benefit of workers, the actual constructor has the right of subrogation. It means that if the subcontractor or illegal contracting party neglects to exercise of claiming their due debts from the Employer, the constructor is entitled to file a law suit directly for claiming such debt. Further, when the actual constructor makes its claims by considering the Employer as the defendant, the people's court shall in the meanwhile add the subcontractor and illegal contracting party as the third parties in the case.

(<http://www.court.gov.cn/fabu-xiangqing-137931.html>)

## II. Hot Topic

### President of ZJS Express Was Fined 2.24 Million Yuan for Breach of Non-Competition Agreement

On November 28, 2018, Anxun Logistics Co., Ltd. ("Anxun") won a lawsuit against its ex-employee Liu Dongtun ("Liu") who was the president of Beijing ZJS Express Co., Ltd. ("ZJS"), and in consequence, Anxun was awarded RMB 2.24 million yuan on the grounds that Liu breached the non-competition and agreement signed between Anxun and Liu. In the non-competition agreement, Liu undertakes that, within the term of the non-competition agreement (from October 19, 2015 to December 31, 2018), without consent of Anxun, he shall not work for any other competitive employer producing products of the same or similar category or engaging in business of the same category, no matter whether he received salary or not from the competitive employer.

On November 4, 2016, Liu resigned from his position in Anxun and Anxun requested Liu to continue to perform the non-competition agreement; however, Liu started to work in ZJS on November 28, 2016 without considering the non-competition restrictions. Although Liu alleged that (1) There is no competitive relationship between ZJS and Anxun and (2) Anxun had not paid him the non-competition compensation, the court still held that Liu breached the non-competition agreement and shall pay Anxun liquidated damages amounting to RMB 2.24 million yuan.

The Court ruled in favor of Anxun for the following reasons:

- (1) The business scope of an enterprise as well as the day-to-day operations of an enterprise shall be taken into consideration when determining whether a competitive relationship exists. By checking them, the court figured out that Anxun and ZJS conduct similar transportation business; thus, a competitive relationship exists between Anxun and ZJS.
- (2) Liu is liable for not receiving non-competition compensation from Anxun. According to the law, the employee shall receive non-competition compensation from the employer upon termination of the labor contract. Employee can also be discharged of non-competition restrictions if the employer fails to pay compensation for three months. However, in this case, Liu worked in a competitive enterprise only few days after his resignation, thus, considering Liu's breach of agreement, ZJS is exempted to pay the compensation.

([http://news.jcrb.com/jszx/201811/t20181128\\_1934543.html](http://news.jcrb.com/jszx/201811/t20181128_1934543.html)  
<https://news.163.com/18/1130/00/E1QP641100018AOP.html>)

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