

Circular on Printing and Issuing the Interim Procedures for the Administration of Latent Defects Insurance for Construction Projects that is Permitted not to Engage Supervising Company

Jing Jian Fa [2020] No. 257

To all district commissions of housing and urban-rural (municipal) development, and the Development and Construction Bureau of the Beijing Economic-Technological Development Area, all district planning & natural resources sub-bureaus, all district financial offices, all relevant insurance institutions, and related entities,

In order to implement the *Regulation of Beijing Municipality on Optimizing Doing Business Environment*, further improve and optimize the doing business environment of Beijing Municipality, standardize the insurance system for potential defects in construction projects for which it is permitted not to engage supervising company, deepen and improve the project quality management and control system based on risk management, we hereby print and issue to you the *Interim Procedures for the Administration of Latent Defects Insurance for Construction Projects hat is Permitted Not to Engage Supervising Company*. Please enforce it accordingly.

Beijing Municipal Commission
of Housing and Urban-Rural
Development

Beijing Local Financial Supervision
and Administration Bureau

Beijing Municipal Commission
of Planning and Natural
Resources

Beijing Office of China Banking
and Insurance Regulatory
Commission

September 9, 2020

Interim Procedures for the Administration of Latent Defects Insurance for Construction Projects that is Permitted Not to Engage Supervising Company

Chapter I General Provisions

Article 1 In order to further improve and optimize the doing business environment of Beijing Municipality, advance the reform of delegating powers, improving regulation and optimizing services, and deepen and improve the project quality management and control system based on risk management, we hereby formulate these Measures in light of the actual conditions of Beijing Municipality in accordance with the *Construction Law of the People's Republic of China*, the *Insurance Law of the People's Republic of China*, the *Contract Law of the People's Republic of China*, the *Regulations on the Quality of Construction Projects of Beijing*, the *Regulation of Beijing Municipality on Optimizing Doing Business Environment*, the *Interim Management Measures for Latent Defect Insurance for Residential Projects Quality in Beijing* and other relevant laws and regulations.

Article 2 For the purpose of these Procedures, "Construction Project that is Permitted Not to Engage Supervising Company" refers to: any new project, reconstruction and extension project or internal decoration project with non-government investment (except underground space development projects and special construction projects) that meets the low-risk level, has an above-ground floor area of no more than 10,000 square meters and a building height of no more than 24 meters, and has a single function and simple technical requirements; the public utility project (excluding school, theatre or sports venue) with total investment not more than RMB 30 million; the residential complex developed in tracts with construction area not more than 50,000 square meters; the real estate development project without government investment or bank loan.

For the purpose of these Procedures, “Insurance for Latent Defect in Construction Project” (hereinafter referred to as the “Defect Insurance”) refers to the insurance, insured by the project owner, from an insurance company according to relevant insurance terms, according to which the insurance company shall compensate against any damage to the insured project arising out of any latent defect to the extent of the insurance coverage and within the insurance period.

For the purpose of these Procedures, “Insurance for Latent Defect in Construction Project that is Permitted Not to Engage Supervising Company” refers to that with respect to a construction project that is permitted not to engage supervising company, the project owner may purchase insurance for latent defects from an insurance company, and the insurance company shall commission a risk management agency to manage the construction project.

For the purpose of these Procedures, “Latent Defect in Construction Project” refers to non-compliance with working drawings, design documents, construction standards or relevant contracts arising out of survey, design, construction, supervision, construction materials, components, equipment or otherwise, which has not been discovered during final inspection, but is exposed during use.

For the purpose of these Procedures, “the Insured” refers to the project owner.

Article 3 With respect to a construction project that is permitted not to engage supervising company, the legal responsibilities of supervising company for quality and safety shall be borne by the project owner.

Article 4 The defect insurance system shall be implemented for construction projects that is permitted not to engage supervising company in Beijing Municipality. The entities which engage in, supervise, or manage the insurance for latent defect in construction project for which it is permitted not to engage supervising company within the jurisdiction of Beijing Municipality shall abide by these Procedures.

Chapter II Insurance Coverage and Liabilities

Article 5 The basic coverage of the insurance for latent defect in construction project that is permitted not to engage supervising company shall be the foundation and main structure of the project, as well as insulation, waterproofing, etc. The specific coverage shall be implemented in accordance with provisions of the *Unified Standard for Constructional Quality Acceptance of Building Engineering* (GB 50300).

- i. Defects in the foundation and main structure include: 1. Overall or partial collapse; 2. Differential settlement not allowed by the design specifications generated by the foundation; 3. Cracks, deformations, breakages, and fractures affecting structural safety in the foundation and main structural parts; 4. Cracks, deformations, breakages, and fractures affecting the safety in use of such suspended components as balcony, canopy, cornice and air conditioning board; 5. Quality defects such as the external wall peeling, collapse and other quality defects affecting the safety in use; 6. Other potential defects in the foundation and main structural parts affecting the project quality and structural safety.
- ii. Defects in thermal insulation and waterproof works include: 1. Damage or peeling of insulation layer of the enclosure structure; 2. Waterproof leakage in underground, roof and toilet; 3. Leakage in external wall (including the junction between external window and external wall); 4. Leakage in other parts with waterproof requirements.
- iii. Defects in other works include: Defects in building decoration engineering, building water supply and drainage and heating engineering, ventilation and air conditioning engineering, building electrical engineering, intelligent building engineering, building energy conservation engineering, elevator engineering, etc. The project owner may, based on the actual conditions of the construction project, agree upon the coverage of insurance with the insurance company.

Article 6 The period of the Defect Insurance insured by the project owner is 10 years for the foundation and main structure, 5 years for insulation and waterproof works, and 2 years for other works. The insurance liability shall commence on the second anniversary of the date when the construction project passes the final inspection.

The project owner shall be responsible to repair any defect occurring as of the date when the construction project passes the

final inspection till the date of commencement of the insurance liability. If the construction project is to be put into use after expiration of the insurance period, the project owner shall inform the insurance company to conduct acceptance 15 days prior to the putting into use of the project; if any defect is found, the project owner shall assume compensation liabilities.

The insurance company shall perform the warranty responsibility during the insurance coverage and the insurance period agreed in the insurance contract; with respect to the scope and period of repair beyond the coverage and period stipulated in the insurance contract, relevant laws, regulations and standards of the State and Beijing Municipality shall prevail.

Article 7 The entities relevant to survey, design, construction, supervision, ready-mixed concrete production, construction, and supply of pre-cast components as well as their personnel are encouraged to cover project quality liability insurance.

If the project quality liability insurance has been insured by the builder, the project owner shall not retain quality guarantee deposit.

It is encouraged to cover the Defect Insurance, erection all risks insurance, entity liability insurance, etc. at the same time, so as to reduce the project quality risks in an all-round manner.

Article 8 Any defect arising out of any of the following circumstances is not within the coverage of insurance liability:

(i) Quality defects caused by abnormal use in violation of the relevant requirements of *Operating Instructions for Housing Construction* or beyond its intended purpose, increases the load above the design standard, arbitrarily demolishes and rebuilds its load-bearing structure of housing without authorization, arbitrarily changes the location of equipment, or otherwise misuses it; (ii) Quality defects caused by the fault of any third party other than the owner or user of the project; or (iii) Quality defects caused by force majeure as stipulated in the relevant contract.

Article 9 The project owner shall inform the relevant entities participating in the construction in writing of the information about the Defect Insurance and clarify their obligations of cooperating with the insurance company in carrying out project quality risk assessment.

Chapter III Application and Underwriting

Article 10 In order to ensure the Defect Insurance, the project owner shall sign a written insurance contract with the insurance company before going through the construction permit procedures and pay the lump-sum insurance premium agreed in the contract.

An insurance policy is issued for each construction project as a subject matter of insurance. The maximum limit of compensation borne by the insurance company under this policy is the amount of insurance recorded in the policy.

The insurance company shall formulate the implementation plan for project quality risk assessment, insurance notification, emergency plan for insurance claims and others, and shall attach them to the insurance contract after confirmation by the project owner.

Article 11 In accordance with the laws, regulations and relevant regulations, the insurance company shall formulate the insurance clauses and premium rates in a fair and reasonable manner based on the degree of construction engineering risks, the complexity of engineering technology, the qualification and integrity of entities and enterprises participating in the construction, risk management requirements, historical data of claims, and reinsurance market conditions. The insurance company shall also be legally liable for the insurance clauses and premium rates.

The insurance company shall calculate the insurance premium based on the budgeted total cost of construction and installation works, and the project owner shall pay the insurance expenses stipulated in the contract in a timely manner.

Deductible expenses are not applicable to the defect insurance for foundations and main structure of the project, as well as insulation and waterproofing works. The deductible expenses for other works are agreed upon by the project owner and the insurance company in the insurance contract.

Article 12 The insurance company shall, according to relevant provisions, file the insurance clauses or premium rates of the Defect Insurance with the insurance supervision and management department. Where it is necessary to amend the insurance clauses or premium rates, the insurance company shall file the amended clauses or rates according to relevant provisions.

The insurance company shall strictly implement the approved insurance clauses and premium rates.

Article 13 The insurance company shall formulate the *Notification of Latent Defects Insurance for Project Quality*, which includes the insurance coverage, insurance period, starting time of insurance liability, process of insurance claims, the department responsible for insurance claims and its contact information as well as the obligation of notification about the change of the policy holder or the owner, etc, and shall deliver the said Notification to the project owner when the construction project is delivered.

Article 14 After the insurance contract comes into effect, if the project owner is dissolved or goes bankrupt in accordance with law, and the premium has been paid in full, the insurance company shall bear the insurance liability as stipulated in the insurance contract.

If the ownership of the buildings is transferred during the insurance period, the assignee of the subject matter of insurance shall inherit the rights and interests of the project owner under this policy.

Article 15 The project owner shall select an insurance company with sufficient registered capital, adequate comprehensive solvency, strong risk management ability, high-quality services of underwriting and claims, a certain experience in defects insurance underwriting and good credit.

The insurance company may choose to underwrite independently or through a consortium based on its own claim settlement capability or the management ability of the project owner.

Chapter IV Project Quality Risk Management

Article 16 The implementation plan of project quality risk assessment formulated by the insurance company shall include the specific implementation scope, implementation plan, key nodes and key processes of the project quality risk assessment, as well as specific matters and notification obligations that require the collaboration of the project owner.

Article 17 After the defects insurance contract is signed, the insurance company shall entrust the agency for management of construction project quality risks (hereinafter referred to as the "Risk Management Agency") to implement risk management.

The Risk Management Agency shall manage the project construction with reference to the *Guideline of Beijing Municipality for Project Quality Risk Management Agencies Concerning Insurance of Latent Defects in Residential Projects (Trial)*.

Article 18 The social intermediary agencies such as construction project-related industry associations, supervision companies and whole-process project consulting agencies are encouraged to actively participate in implementation of the defects insurance system to give full play to their professional roles.

Chapter V Insurance Claims

Article 19 The insurance company shall conduct claim settlement with reference to the *Specifications of Beijing Municipality for Claim Settlement Concerning Insurance of Latent Defects in Residential Projects (Trial)*.

Chapter VI Legal Liability

Article 20 The relevant entities responsible for survey, design, construction, supervision, ready-mixed concrete production, and construction materials, building prefabricated components and equipment supply in accordance with the laws, regulations or contract agreement shall not be exempted from their due legal liabilities because the Defect Insurance is covered by the project owner.

After the insurance company fulfills its compensation obligations for losses arising out of the quality defects as stipulated in the defects insurance contract, it has the right to exercise the right of subrogation to claim against the relevant entities responsible for quality defects according to the law, and the project owner and related responsible entities shall cooperate with it.

Article 21 If the relevant entities and their personnel engaged in defects insurance violate the current laws, regulations, standards, and the relevant provisions of the Procedures, they shall be investigated and punished by competent departments in charge of housing and urban-rural development, planning & natural resources and insurance, and local finance management departments in accordance with statutory duties and responsibilities.

Chapter VII Supplementary Provisions

Article 22 The competent departments in charge of housing and urban-rural development, planning & natural resources and insurance, and local finance management departments shall strengthen the guidance and services for policies related to Defect Insurance.

Article 23 With respect to residential projects, relevant provisions of the *Interim Management Measures for Latent Defect Insurance for Residential Projects Quality in Beijing* (Jing Zheng Ban Fa [2019] No. 11) shall be enhanced.

Article 24 These Procedures shall come into effect from November 1, 2020.

(This document is publicly published.)