

Document of the General Office of Shanghai Municipal People's Government

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Circular of the General Office of Shanghai Municipal People's Government on Forwarding the Implementation Opinions on Enhancing Inherent Defects Insurance for the Quality of Commercial Housing and Government-subsidized Housing of Three Departments including the Municipal Commission of Housing Urban-Rural Development

To all District People' s Governments, Commissions,

Offices and Bureaus of the Municipal Government:
The Implementation Opinions on Enhancing
Inherent Defects Insurance for the Quality of
Commercial Housing and Government-subsidized
Housing of the Municipal Commission of Housing
Urban-Rural Development, Municipal Local Financial
Supervision and Administration Bureau, Shanghai
Resident Bureau of China Banking and Insurance
Regulatory Commission has been approved by the
municipal government, it' s now hereby forwarded to
you for your conscientious implementation.

The General Office of Shanghai Municipal
People' s Government

March 14, 2019

(This document is for public release)

Implementation Opinions on Enhancing Inherent Defects Insurance for the Quality of Commercial Housing and Government-subsidized Housing

Article 1 (Purposes and Basis)

In order to establish and enhance the mechanism in protecting construction projects against risk, to improve the construction quality and to effectively safeguard the legitimate rights and interests of project owners, in pursuant to *Construction Law of the People's Republic of China, Insurance Law of the People's Republic of China, Regulations on the Administration of Quality and Safety of Construction Projects, Regulations of Shanghai Municipality on the Administration of Construction Market* and other related laws and regulations, this Implementation Opinions is enacted.

Article 2 (Definition)

The term inherent defects insurance for the quality of construction projects (hereinafter referred to as "inherent defects insurance for construction quality") in this Implementation Opinions refers to the insurance which is purchased by the housing developers, and the insurers of which assume indemnity obligations and cover the physical damage of the insured buildings caused by inherent construction quality defects within the scope of the coverage and within the insurance period according to the agreed insurance clauses.

The housing mentioned in previous article includes commercial housing, government-subsidized housing and any other buildings within the same area of property management.

The inherent defects in this Implementation Opinions refer to the quality defects exposed in use which are the results of construction quality not conforming to the compulsory standards and the

agreement of the contract and caused by design, materials, construction and other factors.

The policy holders in this Implementation Opinions refer to the developers.

The owners in this Implementation Opinions refer to owners of housing or other construction projects and shall be the beneficiaries and claimants of insurance policy.

Article 3 (Scope of Application)

The inherent defects insurance for construction quality shall be implemented for government-subsidized housing and commercial housing in Shanghai. In the land transfer contracts for housing projects in the above scope, inherent defects insurance for construction quality shall be listed among the conditions of land transfer.

Article 4 (Insurance Coverage and Period)

The basic coverage of inherent defects insurance for housing projects includes:

(I) Foundation works and structural works

1. Total or partial collapse;
2. Differential settlement beyond design specification ;
3. Collapse (including falling off) of cantilever components such as balconies, awnings and eaves, and exterior walls, or it occurs cracks, damages and breakages affecting the safety of use.
4. Cracks, deformations, damages and breakages occur in the parts of main load-bearing structure which affect the safety of the structure.
5. Other situations stipulated by the state and the municipal laws, regulations, rules and compulsory standards for construction projects.

(II) Thermal insulation and waterproofing works

1. Thermal insulation works of enclosure structure
2. Roof waterproofing works
3. Leakage control for toilets, rooms, doors and windows, and exterior walls which have waterproofing requirement.

An insurance period of ten years is for the above (I), and a period of five years for (II).

The start of insurance period is two years after the construction projects covered by the inherent defects insurance complete the filing of construction completion. The defects occurred within the two years after the projects complete the filing of construction completion shall be rectified by the construction contractors.

The following items are provided by the insurance companies as additional coverage options of insurance services for the developers.

(I) Decoration works (including full and partial decorations, wall surfaces, plastering layers of ceilings and other sub-divided work items);

(II) Electrical works, plumbing works, equipment installation;

(III) Works of heating and cooling system.

The insurance period for the above (I) to (III) is two years, and starts two years after the insured projects covered by inherent defects insurance complete the filing of construction completion.

If the possessions of houses are delivered after the insurance period is over, the developers should notify insurance companies and owners 15 days before the day of delivery, if quality defects are found, the developers should assume the liability for compensation. Within six months after the day of delivery, the owners should take inspections on construction quality covered by the insurance, if

quality defects are found, the insurance companies should assume the indemnity liability.

Article 5 Exceptions of Insurance Liability

The quality defects caused by the owners or a third party, or by force majeure, do not belong to the insurance liability stipulated in this Implementation Opinions.

Article 6 (Premium Calculation)

The base number for calculating the premium of inherent defects insurance for construction quality is the total cost of construction and installations of a construction project. The developers who purchase the inherent defects insurance for construction quality should list the premium in the estimated construction cost and construction budget.

The specific insurance rate of inherent defects insurance for construction quality should be based on the risk levels of construction projects, qualifications

and credit levels of construction-related entities and requirements of risk management, together with consideration of insurance market, and the rate shall be agreed in the insurance contract. For companies with high-level qualification and good records, the insurance companies may offer discounted insurance rate.

Article 7 (Insurance Clauses and Rate Approval)

Insurance clauses and rate should be approved by insurance regulatory department. Insurance clauses should also get the consent by the municipal department of housing and urban-rural construction administration.

The insurance rate of government-subsidized housing should be estimated by the municipal department of housing and urban-rural construction administration based on the quality, insurance and claims of the projects, and determined by related departments and insurance companies all together.

The deductible of inherent defects insurance for construction quality, of which the date of inception starts within the effective period of this Opinions, should be zero.

Article 8 (Buying an Insurance)

The developers who purchase inherent defects insurance for construction quality should clearly put it in the construction contracts.

The construction companies are encouraged to buy liability insurance for their construction works.

If the construction companies buy liability insurance and cover the maintenance obligations for a period of two years after the projects complete the filing of construction completion, the developers should not request the construction companies to deposit construction quality guarantee.

Article 9 (Insurance Method)

The inherent defects insurance for construction quality adopts coinsurance method

A primary insurance company of a coinsurance must meet the following requirements:

(I) The registered capital of an insurance company should reach CNY 5 billion;

(II) The solvency ratio in the past three years is not less than 150%.

(III) Strong risk management capabilities, well-established organization structure, and high-quality insurance claims service;

(四) 应当具有建设工程质量潜在缺陷保险承保经验。

(IV) With experience in insuring inherent defects insurance for construction projects.

The multiple insurers of a coinsurance should conform to the coinsurance requirements of insurance clauses, rate, claims service and information platform.

The insurance companies as co-insurers shall be determined through the public tender organized by the Municipal Commission of Housing and Urban-rural Development, Municipal Local Financial Supervision and Administration Bureau.

Article 10 (Insurance Contract)

Before requesting for construction permits, a developer should sign an inherent defects insurance contract for construction quality with insurance companies, and pay a one-time agreed insurance premium (including a risk management fee not higher than 30% of the premium)

One construction project as one subject matter has one insurance policy, the coverage should cover the insured housing and other buildings within the same property management area, the maximum amount of indemnity that insurance companies undertake under this policy is the sum insured specified in the policy.

Article 11 (Risk Management)

After an inherent defects insurance contract for construction quality is signed, insurance companies should hire a risk management agency for the construction quality and safety (hereinafter referred to as “risk management agency”) and qualified engineering professionals to conduct risk management for the matters of insurance liability. Construction companies and supervising companies should be cooperative and facilitate the risk management and not hinder the work.

Risk management agency and engineering professionals should conduct inspections according to the insurance coverage. There should be an inspection report on each inspection, the content of a report includes defective quality issues found, corresponding opinions on treatment and advice.

Risk management agency and engineering professionals should provide a final inspection report after the project completes, in which it should be clearly stated the defective quality issues found and

rectification, and provide risk appraisal of the matters of insurance liability.

Risk management agency and engineering professionals should provide the inspection reports and the final inspection report to the insurance companies and the developers.

When a developer receives the inspection reports and the final inspection report, it should oblige the construction company repair the defective quality issues in time.

The supervising company should supervise the construction company to conduct defects rectification, if the construction company refuses to repair or doesn't completely repair, the supervising company should report to the developer. The supervising company should not give consent to relevant procedure of inspection and acceptance before the construction company completes the rectification.

When there is dispute on quality defects among parties of design, construction and risk management agency, they may commission a construction quality appraisal agency recognized by the parties to make an appraisal.

Article 12 (Termination of Insurance Contract)

Those who have government-subsidized housing and commercial housing insured by the inherent defects insurance for construction quality should not terminate the insurance contracts in compliance with the agreement.

If insurance companies state that there exist serious quality defects in the project in the final inspection report and there isn't tangible repair to the defects, the developer should not give consent to the procedure of inspection and acceptance to end the construction.

Article 13 (Transfer of Rights and Interests)

If the ownership of housing and other construction projects is transferred within the insurance period, the transferee of the insured subject matter receives the rights and interests that the transferor holds in the insurance policy.

Article 14 (Notice to Owners)

The insurance companies should compile *Notice Letter of Inherent Defects Insurance for Housing*, in which it is clearly set out insurance liability, coverage, period and claim application process.

When an owner takes over a house, the developer should provide the owners with the *Notice Letter of Inherent Defects Insurance for Housing*, together with a *Quality Guarantee Letter of Newly Built House* and *Newly Built House Manual*.

Article 15 (Claim Application)

Within the insurance period, if an owner thinks the house has quality defects, he or she may make claim

application to insurance company or to the commissioned property services company or other professional services agency.

Article 16 (Claim Settlement Process)

Insurance companies should set up convenient claim settlement process, accept owners' claim applications and organize site investigation and repair.

Insurance companies may commission property services companies or other professional services agencies to accept owners' claim applications, conduct site investigation and organize repair.

Article 17 (Indemnity Verification)

Insurance companies or a professional services agency such as property services company commissioned by insurance companies should have the site investigated within two days after receiving claim application. Insurance companies or professional services agency such as property services

company authorized by insurance companies should conduct verification within seven days after receiving claim application; when the situation is complicated, the verification should be made within thirty days and notified to the owner.

If it is covered in the insurance liability, insurance companies should fulfill the indemnity obligation within seven days after an indemnity agreement is reached with the insured.

If it isn't covered in the insurance liability, insurance companies should issue Notice Letter of Indemnity Rejection to the owners within three days after verification is made and explain the reasons.

Insurance companies should formulate standardized claim process to protect the rights and interests of the insured and report to the insurance regulatory department.

Article 18 (Dispute Appraisal)

If an owner has a dispute over whether an issue is under insurance liability, he or she may co-commission with the insurance company a qualified third-party appraisal agency to conduct appraisal.

If the appraisal result shows that a defect is covered in the insurance liability, the appraisal cost shall be borne by the insurance company; if the appraisal result shows that a defect isn't covered in the insurance liability, the appraisal cost shall be borne by the applicant.

Article 19 (Emergency Repair)

For claims that influence daily life and fall within the scope of insurance liability, insurance companies or professional services agencies such as property service companies entrusted by insurance companies shall organize maintenance within the agreed time limit after receiving claims, and complete on-site investigation at the same time.

Article 20 (Subrogation)

Due to laws and regulations or contractual agreements, the responsible parties such as design companies, construction companies and suppliers of equipment and materials shall bear legal liability, and shall not be exempted from liability when the developers buy inherent defects insurance for construction quality.

A developer should agree on the rights and obligations of each other by signing agreement with an insurance company.

Insurance companies have the obligations to compensate for the loss of quality defects stipulated in the inherent defects insurance for construction quality. Insurance companies have the right to subrogate the responsible party(ies) for quality defects according to the laws, the policy holders and the relevant liable parties should cooperate.

Article 21 (Information Platform)

Insurance companies should set up an information platform for inherent defects insurance for construction quality, all insurers should input the insurance information, risk management information and claim information etc. on the platform, analyze the statistics of risk management and claims, and report regularly to housing and urban-rural construction administrative department and insurance regulatory department.

Article 22 (Intermediate Agency)

Trade associations related to construction industry and other intermediate agencies should play a role in implementing inherent defects insurance for construction quality and other construction insurances.

Article 23 (Others)

When other construction projects buy inherent defects insurance for construction quality, this Implementation Opinions may be taken as reference.

The inherent defects insurance is encouraged to be comprehensively implemented with contractors' all risks insurance, liability insurances of construction-related parties, to holistically reduce construction quality risks.

Article 24 (Effective Date)

This Implementation Opinions comes into effect on the date of printing and issuance, and shall be effective until 31 January, 2024.

Shanghai Municipal Commission of Housing
Urban-Rural Development

Shanghai Municipal Local Financial Supervision
and Administration Bureau

Shanghai Resident Bureau of China Banking and
Insurance Regulatory Commission

February 26, 2019