

## Opinions of the Supreme People's Court on Certain Issues Concerning the Application of the Civil Procedure Law of the People's Republic of China

Promulgating Institution: Supreme People's Court  
Document Number: Fa Fa [1992] No. 22  
Promulgating Date: 07/14/1992  
Effective Date: 07/14/1992  
Validity Status: Revised  
Revision History:

(Adopted at the 528th Session of the Judicial Committee of the Supreme People's Court on July 14, 1992)

In order to correctly apply the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Civil Procedure Law"), according to the provisions of the Civil Procedure Law and the actual experience in court trials, we put forward the following opinions for people's courts at various level in their trial practice.

### 1. Jurisdiction

(1) For the purpose of Item (1) of Article 19 of the Civil Procedure Law, a significant foreign-related case shall mean a foreign-related case with a disputed subject that is very large, or with complicated facts, or with numerous litigants living abroad.

(2) Patent dispute cases shall be under the jurisdiction of intermediate people's court determined by the Supreme People's Court.

Maritime cases and maritime trade cases shall be under the jurisdiction of maritime courts.

(3) High people's courts of all provinces, autonomous regions, and municipalities directly under the Central Government may, in accordance with the provisions of Item (2) of Article 19 and Article 20 of the Civil Procedure Law, and based on the actual situation of their respective locality as well as the circumstances such as the complexity of the facts, the amount of the subject matter, and the degree of influence of a case in the locality, raise opinions on the hierarchy-based jurisdiction over the first instance cases in the area of their respective jurisdiction and refer the opinions to the Supreme People's Court for approval.

(4) The place of domicile of a citizen refers to the place of the household registration of the citizen; the place of domicile of a legal person refers to the principal place of business of the legal person or the place where the principal business office of the legal person is located.

(5) The place of habitual residence of a citizen refers to the place where the citizen has resided continuously for over one year after he or she left the place of his or her domicile until the filing of the lawsuit except for the place for hospitalization of the citizen.

(6) Where the urban household registration of the defendant is cancelled, the jurisdiction of the case shall be determined according to Article 23 of the Civil Procedure Law; Where the urban household registrations of both of the parties concerned are cancelled, the case shall be under the jurisdiction of the people's court at the place of the defendant's residence.

(7) Where the party concerned, after changing his or her household registration, fails to make a new household registration, the case shall be under the jurisdiction of the people's court at the place of his or her habitual residence, if any. In the absence of such place of habitual residence, the case shall be under the jurisdiction of the people's court at the place of his or her original household registration if it is less than one year after the change, and shall otherwise be under the jurisdiction of the people's court at the place of his or her residence if it is more than one year after the change.

(8) Where both of the parties concerned are undergoing re-education through labor, the action shall be under the jurisdiction of the people's court at the place of the original domicile of the defendant. Where the defendant has undergone re-education through labor for more than one year, the action shall be under the jurisdiction of the people's court at the place where the defendant is undergoing re-education through labor.

(9) Where the several defendants in a case involving claims for overdue alimony are domiciled in different areas of jurisdiction, the case may be under the jurisdiction of the people's court at the place of the plaintiff's domicile.

(10) A case involving dissatisfaction with designation of guardianship or change of guardianship shall be under the jurisdiction of the people's court at the place of domicile of the ward.

(11) With regard to a divorce action filed by a non-serviceman against a serviceman, if the serviceman is not a civil serviceman, the action shall be under the jurisdiction of the people's court at the place of the plaintiff's domicile.

Where both of the parties to a divorce action are servicemen, the action shall be under the jurisdiction of the people's court at the place of the defendant's domicile or the place where the organization above the level of a regiment to which the defendant belongs is located.

(12) Where either the husband or the wife leaves the place of domicile for more than one year and the other party files an action for divorce, the action shall be under the jurisdiction of the people's court at the place of the plaintiff's domicile. Where both the husband and the wife leave the place of domicile for more than one year and one of the parties files an action for divorce, the action shall be under the jurisdiction of the people's court at the place of the defendant's habitual residence; in the absence of the habitual residence, the case shall be under the jurisdiction of the people's court at the place where the plaintiff resides at the time of filing the action.

(13) Where an overseas Chinese who got married in China and settled abroad files a divorce action with a people's court because the court of the nation of his or her residence refuses to accept the action on the grounds that a divorce action should be under the jurisdiction of the court at the place where a marriage was contracted, the divorce action shall be under the jurisdiction of the people's courts at the place where the marriage was contracted or the place of the last residence of one of the parties concerned.

(14) Where a overseas Chinese who got married and settled abroad files a divorce action with a people's court because the court of the nation of his or her residence refuses to accept the action on the grounds that a divorce action should be under the jurisdiction of the court of the nation of nationality, the divorce action shall be under the jurisdiction of the people's courts at the place of the original domicile or the place of the last residence of one of the parties concerned.

(15) With regard to a divorce action involving Chinese citizens as both parties with one residing abroad and one residing in China, the people's court at the place of residence of the party residing in China shall have the jurisdiction over the action regardless of which party files the action with a people's court. Where the party residing abroad files an action with the court of the nation of his or her residence and the party residing in China files an action with a people's court, the people's court accepting the case shall have jurisdiction over the case.

(16) With regard to a divorce action involving Chinese citizens as both parties who are present but not settled abroad and filed by either of the parties with a people's court, the people's court at the place of the original domicile of either the plaintiff or the defendant shall have the jurisdiction over the case.

(17) An action filed by a partnership or a partnership association formed by citizens without any business office shall be under the jurisdiction of the people's court at the place where the defendant is registered. Where, in the absence of registration, the defendants are not located in the same area of jurisdiction, the people's court at the place of domicile of each of the defendants shall have jurisdiction over the case.

(18) An action concerning a contract dispute shall be under the jurisdiction of the people's court at the place of the defendant's domicile in the event that the contract has not been performed actually and neither of the parties concerned is domiciled at the place where the contract is performed as agreed.

(19) Where both the parties concerned agree on the place of delivery in the purchase and sale contract, the place of delivery of goods agreed upon in the contract shall be the place of performance of the contract. Otherwise, the place of performance shall be determined according to the way of goods delivery. If the goods are delivered to the destination by the seller himself/itself, the place where the goods arrive shall be the place of performance. If the goods are delivered by the buyer collecting them himself/itself the place where the goods are collected shall be the place of performance. If the goods are delivered through consigned shipment, or are delivered through the way

for delivering lumber or coal, the place where the goods are shipped shall be the place of performance.

If the actual place of performance of a purchase and sale contract is different from the place of delivery agreed upon in the contract, the actual place of performance shall be the place where the contract is performed.

(20) For a toll processing contract, the place of processing shall be deemed to be the place where the contract is performed unless otherwise specified in the contract.

(21) The place where the leased articles are used shall be the place where a property lease contract or a financial lease contract is performed unless the contract specifies otherwise regarding the place of performance.

(22) For a compensation trade contract, the place where the party accepting the investment performs the primary obligations shall be the place where the contract is performed.

(23) The agreement in a written contract mentioned in Article 25 of the Civil Procedure Law refers to a clause concerning the jurisdiction by agreement in the contract or an agreement on choice of jurisdiction reached by the parties before the institution of the action.

(24) Where the parties to a contract fail to reach a clear agreement on choice of jurisdiction, or choose two or more people's courts from those stated in Article 25 of the Civil Procedure Law such agreement on choice of jurisdiction shall be invalid and the jurisdiction shall be determined in accordance with Article 24 of the Civil Procedure Law.

(25) An action concerning a dispute over an insurance contract shall be under the jurisdiction of the people's court at the place of the defendant's domicile, the place where the vehicle is registered, the destination, or the place where the insured event occurred if the insured subject matter is a vehicle or the goods being transported.

(26) The place of payment of a negotiable instrument as provided in Article 27 of Civil Procedure Law refers to the place of payment specified in the negotiable instrument. Where a negotiable instrument fails to specify the place of payment, the place of domicile or the principal place of business of the drawee (including a paying agent) shall be deemed as the place of payment of the negotiable instrument.

(27) A basic people's court at the domicile of the debtor shall have jurisdiction over the application for a payment order which meets the provisions of Article 22 of the Civil Procedure Law.

(28) The place of infringement mentioned in Article 29 of the Civil Procedure Law shall include the place where the infringement is committed and the place where the consequences of infringement occur.

(29) The people's courts at the place of the manufacture of the products, the place of the sale of the products, the place of infringement, and the place of the defendant's domicile have jurisdiction over an action involving personal damage or property damage caused to another person by infringing products.

(30) Disputes over railway transport contracts and tortious disputes in connection with railway transport shall be under the jurisdiction of railway transport courts.

(31) The application for pre-litigation property preservation shall be filed by a party concerned to the people's court of the place where the property is located.

After a people's court has adopted pre-litigation property preservation, the applicant may file an action, if any, with the people's court adopting the pre-litigation property preservation or any other competent people's court.

(32) Where a party concerned fails to file an action within the statutory period after applying for pre-litigation property preservation, and an action arises from the property loss caused by such failure to the respondent, the action shall be under the jurisdiction of the people's court taking the property preservation measures.

(33) With regard to an action over which two or more people's courts have jurisdiction, the people's court that first initiates the case shall not transfer the case to the other people's court with jurisdiction.

A people's court shall not initiate a case if, prior to the initiation, it discovers that another people's court with jurisdiction has already initiated the case. If a people's court, after initiating a case, discovers that another people's court with jurisdiction has already initiated the case, the people's court shall render a decision to transfer the case to the people's court which has already initiated the case.

(34) After a people's court has accepted a case, its jurisdiction over the case shall not be affected by the change of the place of domicile or habitual residence of any party concerned.

(35) After a competent people's court has accepted a case, it shall not, for the reason of change of administrative division, transfer the case to a people's court that has jurisdiction as a result of the change. Where a case is appealed after judgment, or is taken for review according to adjudication supervision procedures, the case shall be tried by the people's court at higher level of the first instance people's court. Where the court of second instance remands a case for a new trial or the people's court at higher level orders a retrial of a case, the court of first instance shall conduct the new trial or retrial of the case.

(36) According to Paragraph 2 of Article 37 of the Civil Procedure Law, when two people's courts have disputes over jurisdiction and report the case to the people's court at their common higher level for designation of the jurisdiction after failing to reach an agreement through consultation, the intermediate people's court of the prefecture or municipality shall designate the jurisdiction forthwith in case both courts are the basic people's courts within the same prefecture or municipality; the high people's court in the province, autonomous region, or the municipality directly under the Central Government shall designate the jurisdiction in case both courts are within the same province, autonomous region or the municipality directly under the Central Government; in the event that two courts are in different provinces, autonomous regions, or the municipalities directly under the Central Government and the high people's courts of the two provinces, autonomous regions, or the municipalities directly under the Central Government fail to reach an agreement through consultation, the Supreme People's Court shall designate the jurisdiction forthwith.

When a case is reported to the people's court at higher level for designation of jurisdiction in accordance with the provisions of the preceding paragraph, the report shall be done level by level.

(37) Where the people's court at higher level designates the jurisdiction in accordance with Article 37 of the Civil Procedure Law, it shall notify in writing the people's court reporting the case and the people's court designated to exercise the jurisdiction. The people's court reporting the case shall, after receiving the notice, inform the parties concerned of the designation in a timely manner.

## 2. Participants in Actions

(38) The chief in charge of a legal person shall be the legal representative of the legal person. Where the legal person does not have the chief in charge, the deputy chief in charge of the work shall act as the legal representative. If a legal person has a board of directors, the chairman of the board of the directors shall act as the legal representative; if the legal person does not have the chairman of the board of the directors, the person in charge authorized by the board of directors shall act as the legal representative of the legal person.

Other organizations that are not qualified as legal persons shall be represented by their principal responsible persons.

(39) Where there is change of the legal representative of a legal person during the course of an action, the new legal representative shall proceed with the action, and the identification documents of the new legal representative shall be submitted to the people's court. The act of litigation of the former legal representative shall be valid.

The provisions herein are also applicable to litigation in which other organizations participate.

(40) Other organizations specified in Article 49 of the Civil Procedure Law refer to organizations incorporated in accordance with the law with specific organizational departments and properties but without the qualification of a legal person, including:

(a) Wholly privately owned enterprises and partnership organizations that are registered and granted business licenses in accordance with the law;

(b) Partnership joint operation enterprises that are registered and granted business licenses in accordance with the law;

- (c) Sino-foreign cooperative joint venture enterprises, Sino-foreign equity joint venture enterprises and wholly foreign-owned enterprises that are registered and granted business licenses in China;
- (d) Social organizations that are registered and granted social organization registration certificates upon the approval of the departments of civil affairs;
- (e) Branch offices that are set up by legal persons in accordance with the law and granted business licenses;
- (f) Branch offices that are set up by the People's Bank of China and all professional banks throughout the country;
- (g) Branch offices that are set up by the People's Insurance Company of China nationwide;
- (h) Township enterprises, neighborhood enterprises, and village-run enterprises that are registered and granted business licenses upon verification and approval; and
- (i) Other organizations that meet the requirements specified herein.

(41) Where a branch that is not established by a legal person pursuant to the law or a branch without obtaining a business license although legally established is involved in an action, the legal person establishing the branch shall be the party to the action.

(42) Legal persons or other organizations shall be deemed to be the parties to actions arising out of the duty-related or authorized acts of their personnel.

(43) If a sole proprietor, individual partnership or privately-owned enterprise is affiliated to a collective enterprise and conducts production and business operation in the name of such collective enterprise, in the course of action, such sole proprietor, individual partnership, or privately owned enterprise and the collective enterprise to which it is affiliated shall be co-litigants.

(44) Where a party concerned dies during the litigation and the party has an heir, a decision shall be made to suspend the proceedings. The people's court shall timely notify the heir to take up the action as a party concerned. The procedural acts having been performed by the decedent shall be binding upon the heir taking up the action.

(45) Where an employee of a sole proprietor, rural contractual operation household, or partnership organization causes damage to another person while carrying out the activities of production and operation as specified in the employment contract, the employer shall be the party concerned.

(46) In an action involving a sole proprietor, the party concerned shall be the registered proprietor as indicated in the business license of the sole proprietor. If a sole proprietor has a shop name, the registered shop name shall be stated in the legal documents.

Where the registered proprietor in the business license is different from the actual business operator, the proprietor and the actual business operator shall be co-litigants.

(47) All partners in an individual partnership shall be co-litigants in an action. Where the individual partnership has a shop name that is registered upon verification and approval in accordance with the law, the registered name shall be stated in the legal documents. All the partners may appoint representatives and shall issue a written appointment to such appointed representatives.

(48) Where a dispute between the parties concerned is arbitrated by an arbitration institution or mediated by a people's mediation committee and either of the parties files an action with a people's court due to dissatisfaction with the arbitration or mediation, the other party shall be deemed the defendant.

(49) Where a legal person or any other organization, which should have been registered but has not been, conducts civil activities in the name of a legal person or any other organization, or where another person conducts civil activities in the name of the legal person or any other organization, or where a legal person or any other organization conducts civil activities in its name after having been terminated in accordance with the law, the person subject to direct liability shall be the party concerned.

(50) Where enterprise legal persons are merged, the enterprise formed after the merge shall be the party to the disputes resulting from the civil activities conducted before the merger. Where an enterprise legal person is divided, the enterprises existing after the division shall be the parties to the

dispute resulting from the civil activities conducted before the division.

(51) If an enterprise legal person is cancelled without being liquidated, the liquidation organization shall be deemed as the party concerned if there is a liquidation organization; or the organization making the decision of the cancellation shall be deemed as the party concerned if there is no liquidation organization.

(52) In the case of borrowing a business introduction letter, special seal for contract, stamped blank written contract, or bank account, the lender and borrower shall be deemed as co-litigants.

(53) With regard to an action involving disputes over a warranty contract, where the obligee claims its rights against both the warrantor and the warrantee, a people's court shall list the warrantor and the warrantee as co-defendants; where the obligee files an action only against the warrantor, a people's court shall notify the warrantee that it should participate in the action as a co-defendant, except where the warranty contract clearly states that the warrantor shall bear the joint and several liability. If the obligee files an action only against the warrantee, the people's court may only list the warrantee as the defendant.

(54) In an action involving inheritance, where the action is filed by some of the heirs, a people's court shall notify other heirs to participate in the action as the co-plaintiffs; where the notified heirs are unwilling to participate in the action but fail to expressly waive their substantive rights, the people's court shall list them as the co-plaintiffs.

(55) The principal and the agent bearing joint and several liability shall be deemed as the co-litigants.

(56) Where damage is caused by any other person to a jointly owned property right and an action is filed by some of the joint right owners, the other joint right owners shall be listed as co-litigants.

(57) Where the parties that must participate in an action fail to do so, a people's court shall, in accordance with Article 119 of the Civil Procedure Law, notify the parties to participate in the action; a party concerned may also apply to the people's court for involving such parties in the action. A people's court shall conduct an examination of the application filed by a party concerned, and shall decide to reject an application that is not justified, and shall notify, in writing, the parties covered by the application to participate in the action if the application is justified.

(58) When adding parties to a joint action, a people's court shall notify other parties. Any party that should be added as a plaintiff but has expressly waived its substantive rights may not be added; any party that is unwilling to participate in the action but refuses to waive its substantive rights shall still be added as a co-plaintiff and its failure to participate in the action shall not affect the people's court in its trial of the case and rendering of judgment in accordance with the law.

(59) For the purposes of Article 54 and Article 55 of the Civil Procedure Law, a party consisting of numerous persons generally refers to a party composed of more than ten persons.

(60) Where a party consists of numerous persons and the number of the persons is determined upon the filing of the action, all of the persons may elect their common representative or some of the persons may elect their own representative; the persons who fail to elect their own representatives may, in a necessary joint action, participate in the action themselves, or, in the case of a common joint action, file separate actions.

(61) According to Article 55 of the Civil Procedure Law, where a party concerned consists of numerous persons and the number of the persons is not specific upon the filing of the action, the persons shall elect representatives. Where the persons fail to do so, the people's court may propose representatives and consult with the party. If consultation fails, the people's court may appoint representatives from the persons filing the action as a party.

(62) The number of representatives stated in Articles 54 and 55 of the Civil Procedure Law shall be between two and five, and each of the representatives may authorize one or two persons as agents ad litem.

(63) When a people's court has accepted a case in accordance with Article 55 of the Civil Procedure Law, it may issue a public notice to notify the claimants to register with the people's court. The time period of the public notice shall be determined based on the specific case but shall be no less than 30 days.

(64) Any party concerned to be registered with a people's court in accordance with Article 55 of the Civil Procedure Law shall prove its legal relationship with the other party concerned and the damage it has suffered. Any party concerned that fails to prove such relationship and damage shall not be registered, and the party may file a separate action. The decision of the people's court shall be enforced within the scope of the registration.

Where a claimant who has not been registered with a people's court files an action during the period of limitation of action and the people's court determines that the claim is tenable, a decision shall be made that the ruling or decision the people's court has rendered shall be applicable to such action.

(65) A third person with independent claim shall have the right to present a claim and state the facts and grounds and to become a party concerned. A third person without an independent claim may apply or be notified by the people's court to participate in the action.

(66) In an action, a third person without independent claim shall have the litigation rights and obligations of a party concerned and the third person without independent claim that shall bear civil liability according to a judgment shall have the right to file an appeal. However, such third person has no right to raise opposition to the jurisdiction over the case in the first instance and has no right to waive or modify the claims or to apply to withdraw the action.

(67) In an action, the guardian of the person having no capacity for civil conduct or having limited capacity for civil conduct is the agent ad litem of the person. Where no guardian is determined in advance, the persons with qualifications of guardianship may determine the guardian through consultation. If consultation fails, a people's court shall designate one of them as the agent ad litem in the action. Where a party has no guardian as prescribed in Paragraphs 1 and 2 of Article 16, or Paragraph 1 of Article 17 of the General Principles of the Civil Law, a people's court may designate the organization concerned prescribed in Paragraph 4 of Article 16 or Paragraph 3 of Article 17 therein as the agent ad litem during the action.

(68) In addition to lawyers, close relatives of a party concerned, persons recommended by relevant social organizations or by the employer of the party concerned, the party concerned may also appoint any other citizen to act as his or her agent ad litem.

Persons having no or limited capacity for civil conduct, or who may impair the interests of the principal, or be deemed by a people's court to be inappropriate to act as an agent ad litem shall not be allowed to act as agents ad litem.

(69) An agent ad litem shall not have the right to recognize, waive, or modify claims, to reach settlement, to make a counterclaim, or to file an appeal on behalf of his or her principal if the power of attorney concerned only indicates "general power of attorney" without any specific authorization.

### 3. Evidence

(70) A people's court shall designate more than two persons to collect and investigate evidence jointly. Investigation materials shall be affixed with the signature or seal of the investigators, the persons under investigation, and recorders.

(71) A people's court shall issue receipt for the evidence provided by the parties concerned, indicating the name of the evidence, the time it is received, the number of copies and the number of pages thereof, which shall be affixed with the signature or seal of the judge or court clerk.

(72) Evidence shall be presented before the court for court debate and examination by the parties concerned. With regard to any evidence that should be kept confidential pursuant to the law, a people's court may, according to the specific circumstances, determine whether or not to have such evidence presented at a court session. Where it is necessary for the evidence to be presented at a court session, such evidence shall not be presented at a public court session.

(73) According to Paragraph 2 of Article 64 of the Civil Procedure Law, people's courts shall be responsible for the investigation and collection of the following evidences:

- (a) Evidences that cannot be collected by the party concerned or the agent ad litem thereof themselves due to objective reasons;
- (b) Evidences that the people's court believes need to be appraised or inspected;
- (c) Evidences provided by the party concerned are contradictory and cannot be affirmed; and

(d) Other evidences that the people's court believes shall be collected by itself.

(74) During an action, the parties concerned shall be responsible for providing evidence for their respective allegations. However, in the following infringement actions, if the defendant denies the infringement facts claimed by the plaintiff, the defendant shall bear the burden of proof:

(a) Patent infringement actions arising out of patent for invention of a new method of manufacturing products;

(b) Tort actions resulting from personal damage caused by highly dangerous operations;

(c) Actions involving damage arising out of environmental pollution;

(d) Tort actions arising out of personal damage caused by collapse, falling-off, and drop of a building, other installation, or any object laid or hanging on a building;

(e) Tort actions arising out of personal damage caused by breeding animals; and

(f) Actions wherein the defendant shall bear the burden of proof as prescribed in certain legal provisions.

(75) The parties do not need to provide evidence for the following facts:

(a) One party concerned clearly admits the case facts and litigation claims stated by the other party;

(b) Commonly known facts and the law of nature and theorem;

(c) Another fact that may be presumed from the provisions of law or known facts;

(d) Facts confirmed by the legally effective rulings of people's courts; and

(e) Facts certified by effective documents of notarization.

(76) Where a party is unable to provide evidence for the moment, the people's court shall, according to the actual circumstance, require the party to present evidence within a reasonable time limit. If the party indeed has difficulty in providing evidence within the designated time limit, it may apply for an extension with the people's court before the expiration thereof. The extended time limit shall be determined by the people's court.

(77) The certification documents provided by the relevant organization to a people's court according to Article 65 of the Civil Procedure Law shall be affixed with the signature or seal of the person-in-charge of the organization, and the seal of the organization.

(78) Copies of evidentiary materials shall not be taken as the basis for ascertaining facts if the provider refuses to present the original document or the clue to original document, and there are no other materials to verify the evidence, and the other party refuses to admit the evidence.

#### 4. Time Period and Service

(79) According to Paragraph 2 of Article of the Civil Procedure Law, each time period calculated by days in civil procedures shall start on the following day.

(80) Where a plaintiff is ordered to make a correction due to the incompleteness of the complaint's contents, the period of initiation of a case as provided for in Article 112 of the Civil Procedure Law shall commence from the day after the corrected complaint is submitted to the relevant people's court. With regard to a case transferred by a people's court at a higher level to a people's court at a lower level, or by a basic people's court to a relevant people's tribunal, for acceptance, the period of initiation of the case shall commence from the day after the people's court or tribunal with which the action is filed receives the complaint.

(81) Litigation documents served on any legal person or any other organization shall be affixed with the signature or seal of the legal representative of the legal person, the principal person-in-charge of the organization, or the person of an office, a receiving and dispatching office, a duty office, etc. in charge of receiving documents. Where such legal person or organization refuses to sign or seal for receipt, the documents may be served by being left at the provided address.

(82) Where the person to be served refuses to accept a litigation document and the representative of the relevant basic organization or the employer of the person and other witnesses are unwilling to sign or seal the acknowledgment of service, the document shall be deemed as having been served if the

person serving the document states the situation in the acknowledgment of service and leaves the litigation document at the domicile of the person to be served.

(83) Where the person to be served has an agent ad litem, a people's court may serve a document on the person or on his agent ad litem.

Where a person to be served appoints an agent ad litem to receive documents on his or her behalf and the documents are served on the agent ad litem, the documents may be served by being left at the address of the agent ad litem.

(84) A mediation statement shall be directly served on the party concerned, and may not be served by being left at the address provided. Where the party concerned fails to sign for receipt of service himself with a justified reason, the person designated by the party to receive documents may sign for receipt.

(85) Service by post shall be accompanied by an acknowledgement of service. Where the date of receipt indicated on the receipt of a registered letter is different from that on the acknowledgement of service or the acknowledgement of service is not returned, the date of receipt indicated on the receipt of the registered letter shall be deemed to be the date of service.

(86) When a people's court entrusts another people's court with the service of documents, the entrusting court shall issue a letter of entrustment accompanied by the litigation documents to be served as well as the acknowledgment of service. The date of receipt stated by the person to be served in the acknowledgement of service shall be the date of service.

(87) According to Articles 81 and 82 of the Civil Procedure Law, when a litigation document is forwarded by relevant organization, the date of receipt indicated on the acknowledgement of service by the person to be served shall be the date of service.

(88) In the case of service by public notice, a public notice may be posted in the public notice column of the people's court and of the original place of domicile of the person to be served or may be published in a newspaper. Where there are special requirements for the method of service by public notice, the public notice shall be made in the required method. A document shall be deemed to have been served at the expiration of the time period for public notice.

(89) Where the duplicate copy of a complaint or appeal petition is served by public notice, an explanation shall be made concerning the main points of the complaint or appeal, the time limit for the person to be served to file a defense statement, and the legal consequences of the person's failure to file the defense statement within the time limit. Where a summons is served by public notice, an explanation shall be made concerning the place of the court hearing, the time the person to be served is required to appear before the court and the legal consequences of the person's failure to appear before the court as scheduled. Where a written judgment or decision is served by public notice, an explanation of the main contents of the judgment or decision shall be made, and an explanation of the rights and time limit for filing appeal and the court with which the appeal is to be filed shall be made in addition in the case of a first instance judgment or decision.

(90) Where, when a people's court pronounces the judgment on a fixed date, a party refuses to sign for receipt of the written judgment or decision, the service shall be deemed to have been effected, and the party's refusal shall be stated in the record of pronouncement of the judgment.

## 5. Mediation

(91) Where a people's court has accepted a case and believes, after examination, that the legal relationship and facts in the case are clear, it may mediate the case directly with the consent of the parties concerned.

(92) When trying civil cases, a people's court shall conduct mediation in accordance with the principles of voluntariness and lawfulness. Where one party concerned or both parties concerned are reluctant to conduct a mediation, the people's court shall render a judgment on a timely basis.

Where a people's court tries a divorce case, a mediation shall be conducted. However, mediation shall not be pending for a long time without resolution.

(93) Where a party concerned is unable to appear before court to participate in the mediation conducted by a people's court, the party's agent ad litem may, with its special authorization,

participate in the mediation, and may sign the mediation agreement if reached.

Where, due to special circumstances, a party to a divorce case is unable to appear before court to participate in the mediation, a written opinion shall be presented unless the party is unable to express his or her own will.

(94) With regard to a divorce case involving a person having no capacity for civil conduct, his or her agent ad litem shall proceed with the litigation. Where the agent ad litem reaches an agreement with the other party and requires a written judgment, a written judgment may be made according to the agreement.

(95) Where a party concerned refuses to sign for receipt of the mediation statement, the mediation statement shall not become legally effective and the people's court shall, on a timely basis, notify the other party.

(96) Where a mediation agreement fails to be served on both parties concerned before court, the date on which a party concerned signs for receipt thereof later shall be the effective date of the mediation statement.

(97) With regard to a case involving a third party without independent claims, a people's court shall obtain the consent of such third party if it needs to determine in the mediation the obligations of such third party and the mediation statement shall be served on such third party as well. The people's court shall render a judgment in a timely manner if the third party repudiates before the service of the mediation statement.

## 6. Property Preservation and Early Enforcement

(98) Where, according to Articles 92 and 93 of the Civil Procedure Law, a court orders the applicant to provide guarantee when taking pre-litigation property preservation or taking property preservation during litigation, the amount of the guarantee to be provided shall be equivalent to that of the preservation as requested.

(99) Where a people's court takes preservation measures regarding seasonal commodities, fresh and live commodities, perishable items, or other items unsuitable for long-term storage, the court may order the party concerned to dispose them on a timely basis, and the price thereof shall be kept by the people's court. Where necessary, the people's court may sell the items and preserve the price thereof.

(100) When taking property preservation measures of sealing up or detaining property, a people's court shall take proper custody of the sealed-up or seized property. Neither a party concerned, a relevant organization or an individual responsible for taking the custody, nor the people's court may use the property.

(101) Where a people's court adopts property preservation measures concerning real property or specific movable property (such as a vehicle or ship, etc.), the court may take the property preservation measures by detaining the relevant ownership certificate and notifying the relevant ownership registration department not to handle the procedures for the transfer of the property concerned. It may also seal up or detain such property when necessary.

(102) A people's court may take property preservation measures against a mortgaged or retained item. However, the mortgagee or the lienee shall have priority to payment.

(103) With regard to a case appealed by a party concerned for dissatisfaction with the judgment in first instance, where a party concerned is found to commit acts such as transferring, concealing, selling or damaging the property and the adoption of property preservation measures becomes necessary before the people's court of second instance receives the case as submitted, property preservation measures shall be taken by the people's court of first instance according to the application of a party concerned or according to its power. The decision of the people's court of first instance on property preservation shall be submitted to the people's court of second instance.

(104) A people's court may take property preservation measures of the debtor's due proceeds, restrict the debtor from withdrawal thereof, and notify the relevant organization to assist the enforcement.

(105) Where the debtor's property fails to satisfy the request for preservation but the debtor has due creditor's rights against a third person, a people's court may, on the basis of the creditor's application,

make a decision prohibiting the third person from repaying the debt to the debtor concerned in the case. Where the third person submits a request to repay the debt, the property or price shall be placed in escrow with the people's court.

(106) The early enforcement specified in the Civil Procedure Law shall be adopted by a people's court after the case is accepted and before the judgment of last resort is rendered. Early enforcement shall be restricted to the party's claims, and shall be limited to the urgent needs of the party's life and production operation.

(107) The urgent circumstances provided for in Item (3) of Article 97 of the Civil Procedure Law shall include the circumstances:

- (a) Where the infringement needs to be ceased and/or the obstacle needs to be removed immediately;
- (b) Where an act needs to be ceased immediately;
- (c) Where the price used for purchase of production materials and/or tools needs to be returned immediately; and
- (d) Where a claim is made for the insurance compensation needed for resuming production and business operation.

(108) Where a people's court has taken property preservation measures, no organization may, during the property preservation period, cancel the property preservation measures unless the people's court making the decision of the preservation cancels the measures by itself or a people's court at higher level decides to cancel the measures.

(109) The preservation of the property in litigation shall remain in force until the effective legal document is enforced. Where, in the course of proceedings, the preservation measures need to be cancelled, a people's court shall, on a timely basis, render a decision to cancel the preservation measures.

(110) Where a party concerned is dissatisfied with a decision of property preservation and files an application for review, the people's court shall conduct a review on a timely basis. Where the decision is correct, the court shall notify the party of the rejection of its application. Where the decision is inappropriate, the court shall render another decision to amend or cancel the original decision.

(111) Where a people's court has carried out the early enforcement, and the applicant, subject to the legally effective judgment, is required to return the benefit obtained from the early enforcement, the provisions of Article 214 of the Civil Procedure Law shall apply.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where a people's court has carried out the early enforcement, and the applicant, subject to the legally effective judgment, is required to return the benefit obtained from the early enforcement, the provisions of Article 210 of the Civil Procedure Law shall apply.")

## 7. Compulsory Measures against Obstruction to Civil Procedure

(112) The defendant who is required to appear before court as specified in Article 100 of the Civil Procedure Law shall refer to a defendant who bears the obligation of maintenance, support, or child support and whose failure to appear before court makes it impossible to ascertain the facts of the case.

Where the agent ad litem of a minor causing damage to the State, collectives, or any other person is required to appear before court, but refuses to appear before court without a justified reason after being served with summons twice, the people's court may summon the agent by force.

(113) A warrant for summon by force shall be required for summon by force, and shall be served directly on the person to be summoned by force. Before summoning by force, the consequences of refusal to appear before court shall be explained to the person to be summoned by force. Where the person still refuses to appear before court after being criticized and educated, the person may then be summoned before court by force.

(114) Where, in accordance with the provisions of Article 101 and Article 102 of the Civil Procedure Law, a people's court needs to detain a participant in an action or any other person, the approval of the

president of the court shall be required, a written decision on detention shall be prepared, and the detainee shall be sent by the judicial police into the custody of the local public security authority.

(115) Where the person is not located in the area of jurisdiction of the people's court making the decision of detention, the people's court shall send personnel to the people's court of the place where the detainee is located, and request the latter court for assistance with enforcement. The entrusted people's court shall, on a timely basis, send personnel to assist with the enforcement. Where the detainee applies for review or admits and corrects his wrongdoings during the period of detention, and it is necessary to lift the detention in advance, the entrusted people's court shall pass the matter on, or make proposals regarding the matter, to the entrusting people's court. A decision shall be made by the entrusting people's court after examination.

(116) Where the measure of detention needs to be adopted immediately in the urgent circumstances of making uproar in or rushing at a courtroom, or of resistance against performance of official duties with violence, threat or any other means, etc., such measure may be taken and reported to the president of the court for the formalities of approval immediately after the detention. Where the president believes the detention is inappropriate, the detention shall be lifted.

(117) Where a detainee admits and corrects his wrongdoings during the period of detention, a people's court may order the person to sign a statement of repentance and lift the detention in advance. To lift the detention in advance, the approval by the president of the court shall be required and a written decision for lifting the detention in advance shall be made to be delivered to the public security authority responsible for custody for enforcement.

(118) A fine and/or detention specified in Articles 101 and 102 of the Civil Procedure Law may be applied separately or concurrently.

(119) A fine and/or detention may not be applied continuously to the same act of obstructing civil procedure. Where another act of obstructing civil procedure occurs, a people's court may impose another fine or detention.

(120) According to Article 106 of the Civil Procedure Law, the provisions of Article 104 and Article 105 of the Civil Procedure Law shall apply where a people's court imposes a fine and/or detention on an organization or individual that illegally takes another person into custody or illegally detains another person's property for the purpose of recovering the debt.

(121) Where person that has been imposed with a fine and/or is detained is dissatisfied with the decision of the fine and/or detention and applies for review, a people's court at higher level shall, within five days after receiving the application for review, render a decision and shall notify the people's court at lower level and the party concerned of the review result.

(122) Where, during the review, the people's court at higher level believes the compulsory measure is inappropriate, it shall prepare a written decision, and cancel or amend the decision on the detention and/or fine made by the people's court at lower level. Where the circumstance is urgent, it may issue the decision within three days after a verbal notice.

(123) Where a party concerned commits any of the following, the matter may be handled in accordance with the provisions of Item (6) of Paragraph 1 of Article 102 of the Civil Procedure Law:

(a) After the legal document has become legally effective, concealing, transferring, selling, or damaging the property, making it impossible for a people's court to carry out the enforcement;

(b) Obstructing or resisting the enforcement by a people's court with violence, threat, or any other means; or

(c) Having the ability, but refusing, to perform the legally effective written judgment, decision, mediation statement or payment order of a people's court.

(124) Where the relevant organization commits any of the following, a people's court may handle the matter in accordance with the provisions of Article 102 of the Civil Procedure Law:

(a) Without authorization, transferring or lifting freezing of the deposit that has been frozen by a people's court;

(b) Obstructing judicial personnel from making inquiry of, freezing, or transferring bank deposits with violence, threat, or any other means; or

(c) After receiving the notice of a people's court for assistance in enforcement, providing the party concerned with the relevant information and assisting the party concerned in transferring and concealing property.

(125) Where relevant person shall be subject to criminal liability according to Article 101 of the Civil Procedure Law, the trial organization trying the concerned case shall directly make a judgment. Prior to the judgment, the party concerned shall be allowed to state his opinions or entrust a defender to make defense.

(126) Where relevant person shall be subject to criminal liability according to Item (6) of Paragraph 1 of Article 102 of the Civil Procedure Law, the criminal tribunal of the people's court may directly accept the case and make a judgment.

(127) Where relevant person shall be subject to criminal liability according to Items (1) to (5) of Article 102 and Article 106 of the Civil Procedure Law, the provisions of the Criminal Procedure Law shall apply.

## 8. Litigation Fees

(128) Where an application is filed with the people's court for pre-litigation property preservation according to Article 93 of the Civil Procedure Law, litigation fees shall be paid in accordance with Item (2) of Article 8 of the Measures for Litigation Fee Collection by People's Courts.

(129) No case acceptance fee shall be paid in advance for a case tried in accordance with Article 55 of the Civil Procedure Law. The payment thereof shall be made by the losing party on the basis of the amount of the lawsuit subject when the case is closed.

(130) According to Paragraph 4 of Article 55 of the Civil Procedure Law, an unregistered claimant that files an application with the people's court for enforcement shall pay fees for application for enforcement in accordance with Item (1) of Article 8 of the Measures for Litigation Fee Collection by People's Courts.

(131) Where a people's court makes a decision to refuse the acceptance of a case, the party concerned does not need to pay litigation fees. If the party concerned is dissatisfied with the decision and files an appeal, the litigation fees shall be paid in accordance with Item (3) of Article 5 of the Measures for Litigation Fee Collection by People's Courts.

(132) Where an application is filed with a people's court for a payment order in accordance with the provisions of Article 189 of the Civil Procedure Law, an application fee of RMB100 shall be paid for each case. Where an urge and supervision procedure is concluded due to the debtor's objection, the application fee shall be borne by the applicant. Where the debtor does not raise any objection, the application fee shall be borne by the debtor.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where an application is filed with a people's court for a payment order in accordance with the provisions of Article 191 of the Civil Procedure Law, an application fee of RMB100 shall be paid for each case. Where an urge and supervision procedure is concluded due to the debtor's objection, the application fee shall be borne by the applicant. Where the debtor does not raise any objection, the application fee shall be borne by the debtor.")

(133) Where the creditor files a separate action after the urge and supervision procedure has terminated, the court costs shall be paid in accordance with the Measures for Litigation Fee Collection by People's Courts.

(134) Where an application is filed with a people's court for a public notice for claim assertion in accordance with the provisions of Article 193 of the Civil Procedure Law, an application fee of RMB100 shall be paid for each case. The fees for the application and the public notice shall be borne by the applicant.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where an application is filed with a people's court for a public notice for claim assertion in

accordance with the provisions of Article 195 of the Civil Procedure Law, an application fee of RMB100 shall be paid for each case. The fees for the application and the public notice shall be borne by the applicant.")

(135) Where an action is filed with a people's court in accordance with the provisions of Article 196 and Article 198 of the Civil Procedure Law, the case acceptance fee shall be paid in accordance with Item (4) of Article 5 of the Measures for Litigation Fee Collection by People's Courts.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where an action is filed with a people's court in accordance with the provisions of Article 198 and Article 200 of the Civil Procedure Law, the case acceptance fee shall be paid in accordance with Item (4) of Article 5 of the Measures for Litigation Fee Collection by People's Courts.")

(136) Where an application is filed with a people's court for bankruptcy and debt repayment in accordance with Article 199 of the Civil Procedure Law, the advance payment of the case acceptance fee is not required and the bankruptcy fees shall be appropriated from the bankruptcy property.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(137) With regard to a retrial case initiated by the people's court according to its powers or a retrial case brought up upon the protest lodged by the people's procuratorate, the party concerned does not need to pay litigation fees.

(138) With regard to the enforcement under entrustment, the entrusted people's court shall not collect any fee from the entrusting people's court. The cost actually incurred in the enforcement shall be charged according to the Measures for Litigation Fee Collection by People's Courts.

## 9. First Instance Ordinary Procedure

(139) Where an action is not in compliance with the requirements of acceptance, the relevant people's court shall render a decision to refuse to accept the action. Where, after the case is initiated, the action is discovered to be not in compliance with the requirements of acceptance, the people's court shall render a decision to reject the action.

A written decision on refusal of acceptance of an action shall be signed by the judicial officers and the court clerk that are responsible for the examination and initiation of the case. A written decision on rejection of an action shall be signed by the judicial officers and the court clerk that are responsible for the trial of the case.

(140) Where a party's complaint contains words of vituperation and personal attack to the extent that the service of a duplicate thereof is likely to intensify the dispute between the parties and is unhelpful for solving the case, the people's court shall persuade that party to make a practical and realistic correction. In the event of refusal to make such correction, the duplicate of the complaint may be served.

(141) With regard to a case over which the court concerned has no jurisdiction, the court concerned shall notify the plaintiff to file an action with a competent people's court. Where the plaintiff insists on filing an action, the court concerned shall render a decision to refuse to accept the action. Where, after the initiation of a case, the court concerned discovers that it has no jurisdiction, the court concerned shall transfer the case to a competent people's court.

(142) With regard to a case in which a decision is made to refuse to accept an action or to reject it, where the plaintiff files a new action, and the new action complies with the requirements for filing an action, a people's court shall accept the action.

(143) Where a plaintiff is required to pay the case acceptance fee in advance but fails to do so, a people's court shall notify the plaintiff to make the advance payment. Where, after being notified or if the plaintiff's application for a reduction, deferment or exemption of payment is not approved by a people's court, the plaintiff still fails to make the advance payment, the people's court shall make a decision that the action is deemed to have been withdrawn automatically.

(144) Where, after a party concerned withdraws an action or a people's court deems an action to have been withdrawn, the party files a new action based on the same claim, the people's court shall accept the action.

With regard to a divorce case in which the plaintiff withdraws an action or the action is deemed to have been withdrawn, where the plaintiff files a new action within six months without new development or new grounds, the action may not be accepted with reference to the provisions of Item (7) of Article 111 of the Civil Procedure Law.

(145) According to Item (2) of Article 111 of the Civil Procedure Law, where the parties concerned have agreed upon an arbitration clause in their written contract or have reached a written arbitration agreement after a dispute arises, and one of the parties files an action with the relevant people's court, the people's court shall render a decision to refuse to accept the action and inform the plaintiff to apply to an arbitration institution for arbitration, except where the arbitration clause or agreement is invalid or has expired or its contents are unclear to the extent that performance of it is impossible.

(146) Where an arbitration institution chosen by the parties in an arbitration clause or agreement does not exist or the matter chosen to be arbitrated is beyond the authority of the arbitration institution, the people's court shall have the right to accept either party's action in accordance with the law.

(147) With regard to a civil action that is accepted on account that the arbitration clause or agreement is invalid or has expired or its contents are unclear to the extent that performance of it is impossible, the people's court with which it is filed shall make a decision concerning jurisdiction if the defendant submits an objection to its jurisdiction.

(148) A people's court shall be deemed to have jurisdiction where a party fails to announce the existence of an arbitration agreement when filing an action with the people's court and, after acceptance by the people's court, the other party responds to the action and submits its answer.

(149) The people's court shall accept an action where a patient or his or her relatives have no objection to the medical accident conclusion made by a medical accident technical evaluation board but files the action with the people's court and solely requests the medical organization to make compensation for the economic losses arising from the medical accident.

(150) With regard to a divorce case in which the divorce is denied in a judgment, or the parties become reconciled through mediation, or a case in which an adoption relationship is maintained through mediation, if the defendant files an action to a people's court, the action shall not be restricted by the requirements provided for in Item (7) of Article 111 of the Civil Procedure Law.

(151) Where the whereabouts of either wife or husband are unknown and the other party files an action with a people's court requesting divorce only without a declaration that the person whose whereabouts are unknown is missing or dead, the people's court shall accept the case and serve the litigation documents on the person whose whereabouts are unknown by public notice.

(152) With regard to a case involving the payment of alimony, maintenance, or child support, if, after a judgment or decision becomes legally effective, a party files a new action requesting an increase or decrease of the payment on the basis of new circumstances or new grounds, the people's court shall accept the action as a new case.

(153) Where a party concerned files an action after the period of limitation of action has expired, the people's court shall accept the action. If, after acceptance, the people's court discovers there is no cause for suspension, discontinuance, or extension, the people's court shall render a decision to reject the claims.

(154) Trade secrets mentioned in Article 66 and Article 120 of the Civil Procedure Law mainly refer to technical secrets, business intelligence and information, etc., such as the industrial and commercial secrets that the parties concerned are reluctant to publicize including manufacturing processes, formulae, trading contacts, sale channels, etc.

(155) Where a people's court tries a case in accordance with the ordinary procedure, the parties shall be served with a summons three days prior to the court hearings. Agent ad litem, witness, expert witness, inspector, and interpreter or translator shall be notified in writing to appear before the court. Where a party or any other participant is at another locality, the necessary time on the road shall be given.

(156) After a case is accepted and before the court debate is concluded, if the plaintiff presents additional claim, and/or the defendant files a counterclaim, and/or a third party makes a claim related to the case, and such claims may be consolidated in one trial, the people's court shall conduct a consolidated trial.

(157) With regard to a divorce case involving a party having no capacity for civil conduct, the agent ad litem of the party shall appear in court; if the agent ad litem cannot appear in court, the people's court shall, after ascertaining facts, make a judgment in accordance with the law.

(158) Where the agent ad litem of the party having no capacity for civil conduct has been served with a summons but refuses, without justified reason, to appear before the court, the action shall be deemed to have been withdrawn with reference to the provision of Article 129 of the Civil Procedure Law if the party is the plaintiff, or a default judgment shall be made with reference to the provision of Article 130 of the Civil Procedure Law if the party is the defendant.

(159) Where a third party with an independent claim has been served with a summons by a people's court but refuses, without any justified reason, to appear before court, or without the court's permission, leaves the courtroom during the trial, with regard to this third party, the action shall be deemed to have been withdrawn by reference to the provisions of Article 129 of the Civil Procedure Law.

(160) Where, after a third party with an independent claim participates in an action, the plaintiff applies for withdrawal of the action and the people's court approves the plaintiff's withdrawal, a separate action shall be conducted with the third party with an independent claim as the plaintiff and the plaintiff and defendant in the original case as the defendants.

(161) With regard to a case in which a party concerned applies for withdrawal of an action, if the party commits a violation of the law which is required to be handled in accordance with the law, the people's court may disapprove the withdrawal of the action or is allowed not to deem the action as having been withdrawn.

(162) The trial of a case shall not be affected where a third person without an independent claim has been served with a summons by a people's court but refuses to appear before the court without justified reasons, or leaves the courtroom during the court hearing without the court's permission. A third person without an independent claim that shall bear civil liability according to the judgment of the people's court shall have the right to file an appeal.

(163) Where, after a judgment of the court of first instance is pronounced, the people's court of original instance discovers that the judgment contains an error and a party files an appeal within the appeal period, the people's court of first instance may present the opinion that the original judgment contains an error and report it to the people's court of second instance, and the case shall be tried by the people's court of second instance according to the second instance procedure. Where no party files an appeal, the case shall be tried according to the trial and adjudication supervision procedure.

(164) The trial period mentioned in Article 135 of the Civil Procedure Law refers to the period from the day following the initiation of a case through the day of pronouncing a judgment or of service of a mediation statement, provided that the period of public notice, evaluation, trial of an objection to jurisdiction, or handling of a dispute over jurisdiction between people's courts shall not be included.

(165) Where a written ruling of the court of first instance and an appealable written decision cannot be served on both parties at the same time, the appeal periods shall commence from the day following their respective receipt of the written ruling and the written decision.

(166) The clerical errors as mentioned in Item (7) of Paragraph 1 of Article 140 of the Civil Procedure Law shall refer to miswriting and miscalculation of legal words, omission and miscalculation of the court fees and other clerical errors.

(167) When the cause of suspension of the proceedings is eliminated and the proceedings are resumed, it is unnecessary to cancel the original decision. The decision on suspension of the proceedings shall become invalid forthwith after the people's court notifies or permits the parties to continue with the action.

## 10. Summary Procedure

(168) For the purposes of Article 142 of the Civil Procedure Law, the "facts are evident" shall mean

that the parties make basically consistent statements about the facts relating to the dispute and are able to present reliable evidence to the extent that the people's court is able to ascertain the facts and distinguish right from wrong without investigation and evidence collection. The "rights and obligations are definite" shall mean that it is definite which party assumes the liabilities and which one has the rights. The "disputes are trivial" shall mean that the parties have no disagreement in principle over the right and wrong of the case, the liabilities and the subject matter of the action.

(169) If the whereabouts of the defendant is unknown when the action is filed, the summary procedure shall not be applied for trial.

(170) With regard to cases tried according to the summary procedure, the trial period shall not be extended. Where, in the course of the trial, it is discovered that the particulars of the case are complicated and the case needs to be tried according to the ordinary procedure, the case may be tried by the collegiate panel in accordance with the ordinary procedure and both parties concerned shall be informed in a timely manner. The trial period shall commence from the day following the initiation of the case.

(171) Where the ordinary procedure has been adopted for trying a case, no summary procedure may be used instead, regardless of whether or not the circumstances have changed during the trial.

(172) When applying the summary procedure to try a case, a people's court shall inform the defendant, verbally or in writing, of the contents of the complaint, and summon the parties concerned and witnesses verbally or with other simple and convenient methods. When a single judge conducts the trial, a court clerk shall take the minutes of the trial, and the judge shall not both conduct the trial and take the minutes at the same time. Where a case is closed, the judgment shall be pronounced publicly in accordance with the provisions of Article 134 of the Civil Procedure Law.

(173) The written ruling, decision or mediation statement prepared by the people's tribunal must be affixed with the seal of the basic people's court, in which case the seal of the people's tribunal shall not be used in substitution.

(174) With regard to a case remanded for a new trial or retried in accordance with the trial and adjudication supervision procedure, the summary procedure shall not be applied for trial.

(175) With regard to a case that is tried in accordance with the summary procedure, the case files shall include the following materials:

- (a) Complaint or written records of the oral pleading;
- (b) Statement of answer or written records of the oral answer;
- (c) Power of attorney, if another person is appointed as the agent ad litem of the party;
- (d) Necessary evidence;
- (e) Written records on inquiry of the parties concerned;
- (f) Written records on trial (including mediation);
- (g) Written ruling, decision, mediation statement, or mediation agreement;
- (h) Written records on service and pronouncement;
- (i) Statement on the enforcement; and
- (j) Receipt for the litigation fees.

## 11. Second Instance Procedure

(176) Where both parties concerned and the third party each file an appeal, they are all appellants.

(177) Where one or some of the necessary co-litigants file an appeal, the matter shall be handled as follows:

- (a) If the appeal involves a disagreement on the sharing of rights and obligations with the other party, without involving the interests of the other co-litigants, the other party shall be the appellee, and the status of the co-litigants who do not file the appeal shall be determined according to their litigation status in the original instance;
- (b) If the appeal involves only a disagreement on the sharing of rights and obligations among the

co-litigants, without involving the interests of the other party, the co-litigants who do not file the appeal shall be the appellees, and the status of the other party shall be determined according to their litigation status in the original instance; and

(c) If the appeal involves the disagreement on the sharing of rights and obligations with the other party and also among the co-litigants, the other litigants who do not file the appeal shall all be the appellees.

(178) Where, when a judgment of the court of first instance is pronounced or a written ruling or decision is served, the party concerned orally expresses its desire to file an appeal, the people's court shall inform the party concerned of the statutory period for filing an appeal petition. Where the party concerned fails to file an appeal petition within the statutory appeal period, it shall be deemed not to have filed an appeal.

(179) The agent ad litem of a party having limited or no capacity for civil conduct may file an appeal on behalf of that party.

(180) Where a people's court of the second instance discovers an error in the original judgment regarding the issues not covered in the appeal when reviewing the relevant facts and the application of the law relating to the appellant's appeal according to Article 151 of the Civil Procedure Law, the error shall be corrected.

(181) Where a people's court of second instance discovers that a people's court of first instance is under one of the following circumstances where the statutory procedures are violated to the extent that the correct judgment of the case is likely to have been affected, the people's court of second instance shall, in accordance with Item (4) of Paragraph 1 of Article 153 of the Civil Procedure Law, render a decision to cancel the original judgment and to remand the case to the people's court of original instance for a new trial:

(a) The judicial officers or court clerks who try the case should withdraw from the case but fail to do so;

(b) The judgment is rendered without a court hearing;

(c) With regard to a case tried in accordance with ordinary procedure, the default judgment is rendered without the parties concerned being served with a summons; or

(d) Other circumstances where the statutory procedures are seriously violated.

(182) Where the people's court of original instance fails to conduct trial and render a judgment regarding a claim raised by a party concerned in the first instance, the people's court of second instance may, based on the principle of voluntariness of the parties, conduct mediation and may remand the case for a new trial if the mediation fails.

(183) Where a party having to participate in an action fails to participate in the first instance, the people's court of second instance may, based on the principle of voluntariness of the parties, conduct mediation and may remand the case for a new trial if the mediation fails. The written decision to remand the case for a new trial shall not list any party that shall be joined in the action.

(184) Where, during the proceedings in the second instance, the plaintiff in the original instance presents an additional independent claim or the defendant in the original instance files a counterclaim, the people's court of second instance may, based on the principle of voluntariness of the parties, conduct mediation with respect to the additional claim or the counterclaim, and inform the party concerned to file separate action if the mediation fails.

(185) With regard to a case appealed after the court of first instance renders judgment denying divorce, the people's court of second instance may mediate the case together with the issues of child support and property based on the principle of voluntariness of the parties if it believes a judgment to approve the divorce should be made. Where the mediation fails, the case shall be remanded for a new trial.

(186) Where a people's court of second instance believes that a case tried by a people's court according to the second instance procedure shall not be accepted by a people's court, the people's court of second instance may directly make a decision to cancel the original judgment and to reject the action.

(187) Where the people's court of second instance ascertains that the decision on refusal of acceptance made by the people's court of first instance contains an error, the people's court of second instance shall instruct the people's court of first instance to initiate and accept the case while canceling the original decision. Where the people's court of second instance ascertains that the decision on rejection of an action made by the people's court of first instance contains an error, the people's court of second instance shall instruct the people's court of first instance to try the case while canceling the original decision.

(188) With regard to the following cases, the people's court of second instance may, in accordance with the provisions of Article 152 of the Civil Procedure Law, render an immediate ruling or decision:

(a) A case in which a ruling is made regarding a refusal to accept the action, rejection of the action, or objection to the jurisdiction in the first instance;

(b) A case in which the appeal made by a party is obviously untenable;

(c) A case in which the facts are clearly ascertained but the law is not correctly applied in the judgment of the court of original instance; and

(d) A case in which the original ruling violates the statutory procedures to the extent that the correct ruling in the case is likely to be affected and that it is necessary to remand the case for a new trial .

(189) In the second instance procedure, if a legal person or any other organization, as a party concerned, is divided, the people's court may directly list the legal person or other organization resulting from division as co-litigants; where the legal person or other organization is merged, the legal person or other organization resulting from the merger shall be listed as a party concerned. It is not necessary to remand the case to the court of original instance for retrial.

(190) Where, in the second instance procedure, the party applies for withdrawal of the appeal , the application shall not be approved if the people's court, upon review, believes that the ruling of the court of first instance actually contains an error, or that both parties collude and damage the interests of the State or of the collective, the public interest , or another individual's lawful rights and interests.

(191) If, in the second instance, the parties concerned reach a settlement agreement, a people's court may, on the basis of the request of the parties concerned, examine the settlement agreement reached by the parties concerned and prepare a mediation statement and serve it on the parties concerned. Where an application is filed for withdrawing the action due to the settlement, and an examination proves that the application satisfies the requirements for withdrawing the action, the people's court shall approve.

(192) A people's court of second instance may pronounce a judgment by itself, or entrust the people's court of original instance or the people's court at the place where a party concerned is located to pronounce the judgment on its behalf.

## 12. Special Procedure

(193) Where, during the proceedings, an interested party of a party concerned alleges that the party concerned is mentally ill, and makes a request to declare that the party has limited or no capacity for civil conduct, the interested party shall file an application with the relevant people's court. The people's court that accepts the action shall initiate the case for trial according to the special procedure, and the original proceedings shall be suspended.

(194) With regard to a case involving declaration of a person being missing, a people's court may, on the basis of an applicant's request, check up the property of the person whose whereabouts are unknown and designate a property manager during the proceedings. Where, after the period of a public notice expires, the people's court renders a ruling to declare the person as missing, it shall, at the same time, designate a custodian of the missing person's property pursuant to Paragraph 1 of Article 21 of the General Principles of the Civil Law.

(195) After a custodian of a missing person's property is designated by a people's court, if the custodian applies for change of the custody, the people's court shall conduct a trial by reference to the provisions of the Civil Procedure Law relating to the special procedures. If the application is tenable, a decision shall be rendered to cancel the applicant's custodianship, and at the same time another property custodian shall be designated. If the application is untenable, a decision shall be rendered to reject the application. Where any party with an interest in the missing person applies for change of

custody, the people's court shall inform the interested party that an action shall be filed against the formerly designated custodian as defendant, and shall try the action according to the ordinary procedure.

(196) After a people's court renders a ruling declaring a citizen to be missing, if an interested person applies to the people's court for a declaration of the death of the missing person, the people's court shall accept such application provided that it has been four years since the day after the person goes missing. The judgment of declaration of the person as missing shall be regarded as the certificate of the citizen as being missing. A public notice shall be issued during the trial in accordance with the provisions of Article 168 of Civil Procedure Law.

(197) Where, with regard to a case involving determination of a property as ownerless, a claim is submitted for the property during the period of the public notice, the people's court shall render a decision to terminate the special procedures and notify the applicant to file a separate action and try the action in accordance with the ordinary procedures.

(198) Any designated guardian who is dissatisfied with the designation shall file an action with a people's court within 30 days after receiving a notice. At a trial, if the people's court believes that the designation is not inappropriate, it shall make a decision to reject the action; if the designation is inappropriate, it shall make a ruling to rescind the designation, and designate a new guardian simultaneously. The written ruling shall be served on the complainant, the original designating organization, and the guardian designated in the ruling.

### 13. Adjudication Supervision Procedure

(199) Where the president of a people's court at any level discovers an error in a legally effective ruling or decision rendered by the court concerned and the judicial committee determines to conduct a retrial through discussion, a decision shall be made to suspend the enforcement of the original ruling or decision.

(200) Where the Supreme People's Court discovers an error in a legally effective ruling or decision rendered by a local people's court at any level, or where a people's court at a higher level discovers an error in a legally effective ruling or a decision rendered by a people's court at a lower level, the suspension of enforcement of the original ruling or decision shall be clearly stated in the decision that the Supreme People's Court or the aforesaid people's court at a higher level take over the case for review or instruct the people's court at a lower level to conduct a retrial; in an emergency, a verbal notice of suspension of the enforcement may be made to the people's court responsible for the enforcement provided that a written decision shall be sent within ten days of the verbal notice.

(201) With regard to a case regarding which a decision is rendered in accordance with the adjudication supervision procedure to retry the case or to bring the case up for trial, the people's court that retries the case or brings the case up for trial shall, when rendering a new ruling or decision, determine whether or not to cancel, amend or sustain the original ruling or decision. Where a mediation statement is reached, the original ruling or decision shall be regarded as having been canceled after the mediation agreement is served.

(202) With regard to a case regarding which the second instance people's court renders a ruling or decision, if the people's court at a higher level shall instruct a court for retrial, the second instance people's court shall be instructed to conduct the retrial.

(203) The agent ad litem of a party having limited or no capacity for civil conduct may file an application for retrial on behalf of that party.

(204) Where a party applies for a retrial with regard to a legally effective mediation statement, the provisions of Article 182 of the Civil Procedure Law shall apply, and the application shall be filed within two years after the mediation statement becomes legally effective.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where a party applies for a retrial with regard to a legally effective mediation statement, the provisions of Article 184 of the Civil Procedure Law shall apply, and the application shall be filed within two years after the mediation statement becomes legally effective.")

(205) Where an application for retrial is filed with a people's court at the next higher level and the people's court believes, upon examination, that the application meets the requirements provided for in Article 179 of the Civil Procedure Law, the people's court may instruct the people's court at a lower level to retry the case, or may take it over for review.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(206) A people's court shall, upon receipt of the application filed by a party concerned, conduct an examination. Where the people's court deems that the application falls under the circumstances of application for retrial after examination, it shall, after the case is initiated, render a decision to terminate the execution of the original judgment, and notify both the parties concerned in a timely manner. Otherwise, it shall reject the application with a notice.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(207) A party concerned shall not apply for a retrial of a case which is tried pursuant to debt recovery procedure, claim assertion public notice procedure, enterprise legal person's bankruptcy and debt repayment procedure, or a case in which the original judgment is sustained after being tried pursuant to the adjudication supervision procedure.

(208) If a decision denies or rejects an action, the parties concerned may file an application for retrial.

(209) With respect to an application for retrial regarding property division in divorce cases, if it involves properties that have already been divided in the judgment, the people's court shall examine the application pursuant to the provisions of Article 179 of the Civil Procedure Law and initiate the case for retrial provided that it meets the requirements thereof; or, if it involves properties jointly owned by both the husband and wife which have not been dealt with in the judgment, the people's court shall notify the parties concerned to file a separate lawsuit.

(210) With regard to a case taken over for review, or retried by a people's court according to the second instance procedure, where the people's court discovers, in the course of trial, that the original ruling of the court of first or second instance violates the statutory procedure, the people's court may handle the case according to the particular circumstances:

(a) If the people's court does not believe that the case meets the requirements of acceptance provided for in the Civil Procedure Law, the people's court shall make a decision to cancel the ruling of the court of first or second instance and reject the action; or

(b) If the statutory procedure is violated in the people's court provided for in Article 181 of these Opinions to the extent that the correct ruling or decision in the case is likely be affected, the people's court shall make a ruling to cancel the ruling of the court of first or second instance and remand the case to the people's court of original instance for new trial.

(211) With regard to a case retried according to the adjudication supervision procedure, where a people's court discovers that the original ruling of the court of first or second instance omits a party concerned that shall participate in the case, the people's court may, on the basis of the principle of voluntariness of the parties, conduct mediation. Where that mediation fails, the people's court shall make a decision to cancel the ruling of the court of first or second instance and remand the case to the people's court of original instance for new trial.

(212) The time limit of two years specified in Article 182 of the Civil Procedure Law is a peremptory period, which shall commence from the day the ruling or decision becomes legally effective.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The time limit of two years specified in Article 184 of the Civil Procedure Law is a peremptory period, which shall commence from the day the ruling or decision becomes legally effective.")

(213) With regard to a retrial case tried in accordance with the first instance procedure or second instance procedure, provisions of Article 135 and Article 159 of the Civil Procedure Law shall be

applicable thereto. The trial period shall commence from the next day after the date on which the decision to retry the case is rendered.

(214) The provisions of Article 192 of these Opinions shall apply to adjudication supervision procedure.

#### 14. Urge and Supervision Procedure

(215) Where the application for a payment order filed by a creditor with a people's court meets the following requirements, the people's court shall accept the application and shall, within five days of receiving the application, notify the debtor:

- (a) The requested payment is money, or negotiable securities such as bills of exchange, promissory notes, check, shares, bonds, treasuries, and transferable deposit receipt;
- (b) The requested money or negotiable securities to be paid has matured and the amount thereof is definite, and the facts and evidence on which the request is based is clearly specified;
- (c) The creditor does not have the equivalent payment obligation;
- (d) The payment order can be served on the debtor.

Where the application does not meet the abovementioned requirements, the court shall notify the applicant of the refusal of acceptance.

(216) After a people's court accepts an application, an examination shall be conducted by a single judge alone. Where, after examination, the application is believed untenable, the people's court shall make a decision within 15 days to reject the application and the decision is unappealable.

(217) Where, before a people's court issues a payment order, the applicant withdraws its application, the people's court shall render a decision to terminate the urge and supervision procedure.

(218) Where the debtor is not within the territory of China, or where the debtor is within the territory of China but the whereabouts thereof are unknown, the urge and supervision procedure shall not be applicable.

(219) The payment order shall specify therein the following particulars:

- (a) Basic information of the creditor and the debtor, such as their names;
- (b) Type and quantity of money or negotiable securities payable by the debtor;
- (c) Time limit for repaying debt and raising objections;
- (d) The legal consequences of the debtor's failure to raise an objection within the statutory period.

The payment order shall be signed by the judge and court clerk, with the seal of the people's court affixed thereto.

(220) If a debtor refuses to accept the payment order that is served on him or her in person, the people's court may deem the service effected by leaving the payment order at the domicile of the debtor.

(221) According to Article 192 of the Civil Procedure Law, where a debtor submits a written objection within the statutory period, the people's court shall, without examining whether the objection is tenable or not, directly make a decision to terminate the urge and supervision procedure. Where the debtor has no objection to the debt itself but only alleges an inability to pay, the effectiveness of the payment order shall not be affected. A debtor's verbal objection shall be invalid.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "According to Article 194 of the Civil Procedure Law, where a debtor submits a written objection within the statutory period, the people's court shall, without examining whether the objection is tenable or not, directly make a decision to terminate the urge and supervision procedure. Where the debtor has no objection to the debt itself but only alleges an inability to pay, the effectiveness of the payment order shall not be affected.")

(222) The written decision on rejecting the payment order application as prescribed in Article 191 of

the Civil Procedure Law and the written ruling on terminating the urge and supervision procedure as prescribed in Article 192 of the Civil Procedure Law shall be signed by the judge and court clerk, with the seal of the people's court affixed thereto.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The written decision on rejecting the payment order application as prescribed in Article 193 of the Civil Procedure Law and the written ruling on terminating the urge and supervision procedure as prescribed in Article 194 of the Civil Procedure Law shall be signed by the judge and court clerk, with the seal of the people's court affixed thereto.")

(223) Where, after receiving a payment order, a debtor fails to submit a written objection within the statutory period, but files an action with another people's court, the effectiveness of the payment order shall not be affected.

(224) Where, after the termination of the urge and supervision procedure, the creditor files an action, the action shall be accepted by a competent people's court.

(225) The provisions of Article 219 of the Civil Procedure Law shall be applicable to the period for a creditor to file an application with a people's court for the enforcement of a payment order.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The provisions of Article 215 of the Civil Procedure Law shall be applicable to the period for a creditor to file an application with a people's court for the enforcement of a payment order. ")

#### 15. Claim Assertion Public Notice Procedure

(226) For the purpose of Article 193 of the Civil Procedure Law, the negotiable instrument holder shall refer to the last holder thereof before the negotiable instrument is stolen, lost or damaged.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "For the purpose of Article 195 of the Civil Procedure Law, the negotiable instrument holder shall refer to the last holder thereof before the negotiable instrument is stolen, lost or damaged.")

(227) A people's court shall, upon receipt of the application for claim assertion public notice, immediately conduct an examination and decide whether or not to accept it. Where, after examination, the people's court deems the application meets the requirements of acceptance, it shall issue a notice of its acceptance, and in the meantime, notify the drawee to suspend the payment; otherwise it shall render a decision to reject the application within seven days.

(228) The public notice issued by the people's court on the acceptance of the application in accordance with Article 194 of the Civil Procedure Law shall specify the following contents:

- (a) Name of the applicant for the claim assertion public notice;
- (b) Type of the negotiable instrument, face value, drawer, holder, endorser etc.;
- (c) Period for claim assertion;
- (d) Legal consequences of assigning the rights of negotiable instrument or the interested party's failure to assert the claim during the period of claim assertion.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The public notice issued by the people's court on the acceptance of the application in accordance with Article 196 of the Civil Procedure Law shall specify the following contents:

- (a) Name of the applicant for the claim assertion public notice;
- (b) Type of the negotiable instrument, face value, drawer, holder, endorser etc.;
- (c) Period for claim assertion;

(d) Legal consequences of assigning the rights of negotiable instrument or the interested party's failure to assert the claim during the period of claim assertion.")

(229) The notice shall be posted on the bulletin board column of the people's court and published in relevant newspapers or other mass media. Where there is a stock exchange at the locality of the people's court, the public notice shall also be posted in the stock exchange.

(230) Where, during the period of a claim assertion public notice, an interested party asserts a claim to a people's court, the people's court shall make a decision to terminate the claim assertion public notice procedure.

(231) Where an interested party asserts the claim, the people's court shall notify such interested party to present the negotiable instrument to the court, and shall also notify the applicant for the claim assertion public notice to check the negotiable instrument during the designated period. Where the negotiable instrument on the basis of which the applicant files an application for claim assertion public notice is different from the negotiable instrument presented by the interested party, the people's court shall render a decision to reject the claim assertion of the interested party.

(232) Where no claim is asserted during the period of claim assertion or a claim assertion is rejected, the applicant for the claim assertion public notice shall, within one month of the day the period of claim assertion expires, request the people's court to render a ruling. In the event of failure to apply for rendering of the ruling, the claim assertion public notice procedure shall be terminated.

(233) After a judgment has become effective, the applicant for claim assertion public notice shall, in accordance with the judgment, have the right to request payment from the drawee.

(234) Where the procedure of claim assertion public notice is applied in trying a case, the case may be tried by a single judge alone; where a judgment is to be made for declaring the negotiable instrument invalid, a collegiate panel shall be formed for trial.

(235) Where an applicant for a claim assertion public notice withdraws the application, the withdrawal shall be submitted prior to the claim assertion public notice. Where the application is withdrawn during the period of the claim assertion public notice, the people's court may, without hearing, make an immediate decision to terminate the claim assertion public notice procedure.

(236) Where a people's court notifies a drawee to suspend the payment according to Article 194 of the Civil Procedure Law, the notification shall comply with the relevant provisions for property preservation. Where, upon receipt of the notice to suspend payment, the drawee refuses to suspend the payment, in addition to taking mandatory measures pursuant to Article 102 and Article 103 of the Civil Procedure Law, the drawee shall still bear the obligation of the payment after a judgment is rendered.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where a people's court notifies a drawee to suspend the payment according to Article 196 of the Civil Procedure Law, the notification shall comply with the relevant provisions for property preservation. Where, upon receipt of the notice to suspend payment, the drawee refuses to suspend the payment, in addition to taking mandatory measures pursuant to Article 102 and Article 103 of the Civil Procedure Law, the drawee shall still bear the obligation of the payment after a judgment is rendered.")

(237) Where, after a people's court has terminated the claim assertion public notice procedure in accordance with Article 196 of the Civil Procedure Law, the applicant for the claim assertion public notice or the claimant files an action with the people's court, the jurisdiction shall be determined in accordance with the provisions of Article 27 of the Civil Procedure Law.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where, after a people's court has terminated the claim assertion public notice procedure in accordance with Article 198 of the Civil Procedure Law, the applicant for the claim assertion public notice or the claimant files an action with the people's court, the jurisdiction shall be determined in accordance with the provisions of Article 27 of the Civil Procedure Law.")

(238) The written ruling on terminating the claim assertion public notice procedure as prescribed in Article 196 of the Civil Procedure Law shall be signed by the judge and the court clerk, with the seal of the people's court affixed.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The written ruling on terminating the claim assertion public notice procedure as prescribed in Article 198 of the Civil Procedure Law shall be signed by the judge and the court clerk, with the seal of the people's court affixed.")

(239) Where an interested party files an action with a people's court in accordance with Article 198 of the Civil Procedure Law, the people's court may, according to the dispute over negotiable instrument, conduct the trial in accordance with the ordinary procedure.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where an interested party files an action with a people's court in accordance with Article 200 of the Civil Procedure Law, the people's court may, according to the dispute over negotiable instrument, conduct the trial in accordance with the ordinary procedure.")

#### 16. Enterprise Legal Person's Bankruptcy and Debt Repayment Procedure

(240) Enterprise legal person's bankruptcy and debt repayment procedure shall apply to collective enterprises, joint operation enterprises, private enterprises, and Sino-foreign equity joint venture enterprises, Sino-foreign cooperative joint venture enterprises and wholly foreign-owned enterprises established within the territory of China.

If the parties to a joint operation are all enterprises owned by the whole people, the enterprise legal person's bankruptcy and debt repayment procedure shall not apply to the bankruptcy thereof.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(241) The creditor shall have the priority of payment against its mortgaged items and other secured property. If the mortgagee or the owner of the other secured property requests the priority of payment after the bankruptcy and debt repayment case is accepted and before the bankruptcy is declared, it shall be subject to the approval by the people's court.

If the price of the mortgaged item or other secured property is insufficient to repay the secured debt in full amount, the difference shall be listed as bankruptcy credit.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(242) After accepting a bankruptcy case, a people's court shall form a collegiate panel for the trial.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(243) The bankruptcy announcement issued by a people's court according to Article 200 of the Civil Procedure Law shall be publicized in a newspaper, which shall specify the following:

- (a) Time when the case is initiated;
- (b) Creditors of the bankruptcy case;
- (c) Period and place for claiming creditor's right, and legal consequences for failure to claim within the specified period; and
- (d) The date and place where the first creditors' meeting will be held.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December

18, 2008, this article has been declared repealed.)

(244) After a people's court accepts a bankruptcy application, other civil enforcement proceedings and property preservation procedure against the debtor must be suspended.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(245) After a people's court accepts a bankruptcy case, it shall notify the account opening bank of the debtor to suspend the settlement business of the debtor. The account opening bank paying the necessary expenses for maintaining the normal production and operation of the debtor shall be subject to the permission of the people's court.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(246) Where a people's court has formed a bankruptcy liquidation organization according to Article 201 of the Civil Procedure Law, the organization shall propose a plan on handling and distributing the bankruptcy property, which shall be subject to the adoption at the creditors' meeting through discussion and may be enforced only after it is reported to the people's court for a decision.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(247) The plan on handling and distributing the bankruptcy property discussed at the creditors' meeting shall be subject to adoption by over half of the creditors with voting rights present at the meeting, whose creditor's right must account for over half of the total unsecured creditor's right. A draft settlement agreement must be subject to adoption by such creditors who hold over two thirds of the total unsecured creditor's right.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(248) A settlement agreement specified in Article 200 of the Civil Procedure Law shall contain the following:

- (a) Source of the property for repaying the debt;
- (b) Method for repaying the debt; and
- (c) Time limit for repaying the debt.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(249) During the safekeeping, clean-up, appraisal, handling and distribution of the bankruptcy property, the liquidation organization shall report its work to the people's court on a conscientious basis, and accept the supervision of the people's court and the creditors' meeting.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(250) After the distribution of bankruptcy property is complete, the bankruptcy liquidation organization shall request the people's court to make a decision on terminating the bankruptcy procedure. After the bankruptcy procedure is closed, unpaid debt shall no longer be repaid.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(251) After the bankruptcy procedure is closed, the bankruptcy liquidation organization shall complete deregistration with the original registration authority of the bankruptcy enterprise.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(252) The people's court shall decide in the form of orders in handling all bankruptcy and debt repayment cases. Except for decisions rejecting the bankruptcy application against which the parties concerned may file an appeal, all other decisions shall be unappealable.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(253) When trying bankruptcy and debt repayment cases, the people's court may apply the provisions of Chapter 19 of the Civil Procedure Law, and may also use the relevant provisions of the Enterprise Bankruptcy Law of the People's Republic of China (Trial) as references.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

#### 17. Enforcement Procedure

(254) The subject of compulsory enforcement shall be property or an action. Where a party concerned refuses to perform the legally effective ruling, decision, mediation statement, or payment order, the people's court shall issue a written notice of enforcement to the party. Where the person subject to enforcement still fails to conduct the performance within the period stated in the written notice of enforcement, the compulsory enforcement shall be carried out.

(255) With regard to a legally effective payment order, the enforcement shall be carried out by the people's court that prepared the payment order.

(256) For the purposes of Paragraph 2 of Article 207 of the Civil Procedure Law, other legal documents that shall be enforced by a people's court shall include arbitration awards and documents of the creditor's rights rendered enforceable by a notary organ.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this paragraph is revised to read, "For the purposes of Paragraph 2 of Article 201 of the Civil Procedure Law, other legal documents that shall be enforced by a people's court shall include arbitration awards and documents of the creditor's rights rendered enforceable by a notary organ.")

Other legal documents shall be enforced by a people's court at the place where a person subject to enforcement domiciles or the property of the person subject to enforcement is located. Where a party concerned files an application for enforcement with the abovementioned people's courts respectively, the people's court that first accepts the application shall carry out the enforcement.

(257) The suspension of enforcement provided for in Article 208 of the Civil Procedure Law shall be limited to the scope of the property involved in the objection raised by an outside party according to that article. The enforcement concerning other property of the person subject to enforcement shall not be suspended. Where the reasons for the objection are untenable, a notice shall be given to reject the objection.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The suspension of enforcement provided for in Article 204 of the Civil Procedure Law shall be limited to the scope of the property involved in the objection raised by an outside party according to that article. The enforcement concerning other property of the person subject to enforcement shall not be suspended. Where the reasons for the objection are untenable, a notice shall be given to reject the objection.")

(258) Where the enforcement officers, in enforcing a ruling, decision, or mediation statement rendered by their court, discover that the ruling, decision, or mediation statement contains an error, they shall prepare a written opinion and report the same to the president of their court for examination

and settlement. Where the enforcement officers, in enforcing a ruling, decision, or mediation statement rendered by a court at a higher level, discover that the ruling, decision, or mediation statement contains an error, they may, subject to the approval of the president of their court, prepare a written opinion and report the same to the court at a higher level for examination and settlement.

(259) Where a person or property subject to enforcement is not in the place where the people's court responsible for the enforcement is located, that court may entrust a local people's court to carry out enforcement on its behalf, or may directly go to that place and carry out the enforcement. If it directly goes to that place for enforcement, the people's court responsible for the enforcement may request the local people's court to assist in the enforcement. The relevant local people's court shall assist in the enforcement as requested.

(260) When rendering entrusted enforcement, the entrusting court shall issue a letter of entrustment and effective legal documents (duplicates). The letter of entrustment shall specify the specific requirements of enforcement.

(261) After receiving a letter of entrustment, the entrusted people's court shall have no power to conduct a substantive examination of the effective legal document subject to entrusted enforcement. Where, in the course of enforcement, the entrusted people's court discovers that the legal documents supporting the enforcement contain an error, it shall inform the entrusting people's court in a timely manner.

(262) The entrusted court shall carry out the enforcement strictly according to the provisions of the effective legal documents and the requirements of the entrusting court. If it is necessary for the debtor to change the time, term, and method of performance of his debts, the entrusted court shall obtain the consent of the enforcement applicant and inform the entrusting court of the status of the change in a timely manner.

(263) If it is necessary to suspend or terminate enforcement, the entrusted court shall notify, through a letter, the entrusting court of the suspension or termination, and the entrusting court shall make a decision. During the period, the enforcement may be suspended temporarily. The entrusted court may not render a decision to suspend or terminate the enforcement without approval.

(264) In the course of entrusted enforcement, where an outside party raises an objection to the subject matter of the enforcement, the entrusted people's court shall inform the entrusting people's court of the objection by letter, and the entrusting people's court shall inform the outside party of its rejection of the objection or make a decision to suspend the enforcement. During such period, the enforcement shall be suspended temporarily.

(265) Pursuant to Paragraph 2 of Article 210 of the Civil Procedure Law, the court at the next higher level of the entrusted people's court shall, after receiving the entrusting people's court's request to instruct the enforcement, instruct in writing the entrusted people's court to carry out the enforcement within five days, and inform the entrusting people's court of the information in a timely manner.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this paragraph is revised to read, "Pursuant to Paragraph 2 of Article 206 of the Civil Procedure Law, the court at the next higher level of the entrusted people's court shall, after receiving the entrusting people's court's request to instruct the enforcement, instruct in writing the entrusted people's court to carry out the enforcement within five days, and inform the entrusting people's court of the information in a timely manner.")

The entrusted people's court shall, after receiving the written instruction of the court at the next higher level, carry out the enforcement forthwith, and shall report the circumstances of the enforcement to the court at the next higher level and inform the entrusting court of such circumstances.

(266) Where one party fails to perform or fully perform a settlement agreement reached by both parties voluntarily in the course of enforcement and the other party applies for the enforcement of the original effective legal documents, the people's court shall resume the enforcement provided that the performed part of the settlement agreement shall be deducted. Where the settlement agreement is fully performed, the people's court shall refuse to resume the enforcement.

(267) The time limit for the enforcement application set forth in Article 219 of the Civil Procedure Law shall be applicable to the application for resuming the enforcement of the original legal

documents. Where the time limit for enforcement application is suspended due to a settlement agreement reached in the course of enforcement, the time limit shall be calculated continuously as of the last day of the performance period as specified in the settlement agreement.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "The time limit for the enforcement application set forth in Article 215 of the Civil Procedure Law shall be applicable to the application for resuming the enforcement of the original legal documents. Where the time limit for enforcement application is suspended due to a settlement agreement reached in the course of enforcement, the time limit shall be calculated continuously as of the last day of the performance period as specified in the settlement agreement.")

(268) Where a people's court decides to temporarily suspend the enforcement pursuant to Article 212 of the Civil Procedure Law, the period for staying the enforcement shall be consistent with the guarantee period, if any, provided that the longest shall not exceed one year. Where a person subject to enforcement or guarantor transfers, conceals, sells, or destroys the property for guarantee, the relevant people's court may resume the compulsory enforcement.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where a people's court decides to temporarily suspend the enforcement pursuant to Article 208 of the Civil Procedure Law, the period for staying the enforcement shall be consistent with the guarantee period, if any, provided that the longest shall not exceed one year. Where a person subject to enforcement or guarantor transfers, conceals, sells, or destroys the property for guarantee, the relevant people's court may resume the compulsory enforcement.")

(269) With regard to a guarantee for enforcement set forth in Article 212 of the Civil Procedure Law, the person subject to enforcement may provide property to the people's court as the guarantee, or a third party may provide the guarantee. Where the property is provided as guarantee, a letter of warranty shall be submitted. Where the guarantee is provided by a third party, a letter of guarantee shall be submitted. The guarantor shall have the capacity to perform or bear, on behalf of the person subject to enforcement, the compensation liabilities.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "With regard to a guarantee for enforcement set forth in Article 208 of the Civil Procedure Law, the person subject to enforcement may provide property to the people's court as the guarantee, or a third party may provide the guarantee. Where the property is provided as guarantee, a letter of warranty shall be submitted. Where the guarantee is provided by a third party, a letter of guarantee shall be submitted. The guarantor shall have the capacity to perform or bear, on behalf of the person subject to enforcement, the compensation liabilities.")

(270) Where the person subject to enforcement fails to perform its obligations after the expiry of the time limit for enforcement stay that has been decided by a people's court, the people's court may directly enforce the property for security or make a decision to enforce the guarantor's property provided that the enforcement of the guarantor's property shall be limited to the part of the property on which the guarantor shall perform its obligations.

(271) According to Article 213 of the Civil Procedure Law, in the course of enforcement, if a legal person or any other organization that is subject to enforcement is divided or merged, its rights and obligations shall be assumed by the legal person or other organization formed after the change. Where a legal person or any other organization that is subject to enforcement is cancelled, if there is a successor to its rights and obligations pursuant to the provisions of the relevant substantive laws, a decision may be made to deem the successor as the person subject to enforcement.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "According to Article 209 of the Civil Procedure Law, in the course of enforcement, if a legal

person or any other organization that is subject to enforcement is divided or merged, its rights and obligations shall be assumed by the legal person or other organization formed after the change. Where a legal person or any other organization that is subject to enforcement is cancelled, if there is a successor to its rights and obligations pursuant to the provisions of the relevant substantive laws, a decision may be made to deem the successor as the person subject to enforcement.")

(272) Where other organizations are unable to perform their obligations determined in legal documents, the people's courts may render a decision to enforce the property of the legal person or citizen bearing the liability to the organization in accordance with the law.

(273) Where, in the course of enforcement, the legal person or other organization that is subject to enforcement changes its name, the people's court may make a decision to deem the legal person or other organization existing after the name change as the person subject to enforcement.

(274) Where a citizen who is the person subject to enforcement dies and his heirs to his estate do not give up succession, the relevant people's court may render a decision to change the person subject to enforcement and the heirs shall repay the debts within the scope of the estate. Where the heirs give up the succession, the relevant people's court may directly carry out enforcement concerning the estate of the person subject to enforcement.

(275) Where, after the enforcement of other legal documents is completed by a people's court according to relevant provisions of the law, the legal documents are cancelled by the relevant authorities, the provisions of Article 214 of the Civil Procedure Law shall be applied upon the application of the parties concerned.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where, after the enforcement of other legal documents is completed by a people's court according to relevant provisions of the law, the legal documents are cancelled by the relevant authorities, the provisions of Article 210 of the Civil Procedure Law shall be applied upon the application of the parties concerned. ")

(276) During the enforcement, if the person subject to enforcement that has enterprise legal person status cannot repay the due debts, the people's court may, upon the application by the creditor or the debtor, announce the person subject to enforcement bankrupt in accordance with the law.

(277) With respect to an award made by an arbitration institution, if a part of the matters arbitrated under the award is within the scope of the arbitration agreement but the remaining part exceeds such scope, the people's court shall decide to deny the enforcement of the part exceeding the scope of the arbitration agreement.

(278) In accordance with Paragraphs 2 and 3 of Article 217 of the Civil Procedure Law , the parties may, after a people's court decides to deny the enforcement of an arbitration award, reach a new, written arbitration agreement to apply for arbitration or file an action with a people's court.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "In accordance with Paragraphs 2 and 3 of Article 213 of the Civil Procedure Law , the parties may, after a people's court decides to deny the enforcement of an arbitration award, reach a new, written arbitration agreement to apply for arbitration or file an action with a people's court.")

(279) A people's court shall issue a notice of enforcement specified in Article 220 of the Civil Procedure Law within ten days of receiving an application for enforcement. In the written notice of enforcement, the people's court shall, in addition to ordering the person subject to enforcement to perform the obligation specified in the legal document concerned, notify the person subject to enforcement to assume the interest for delayed performance or delayed performance fine provided for in Article 232 of the Civil Procedure Law.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "A people's court shall issue a notice of enforcement specified in Paragraph 1 of Article 216 of

the Civil Procedure Law within ten days of receiving an application for enforcement. In the written notice of enforcement, the people's court shall, in addition to ordering the person subject to enforcement to perform the obligation specified in the legal document concerned, notify the person subject to enforcement to assume the interest for delayed performance or delayed performance fine provided for in Article 229 of the Civil Procedure Law.")

(280) A people's court may directly make inquiries to a bank or its operation office, savings office, credit cooperative, or any other organization dealing with savings deposits about the deposits of a person subject to enforcement, or may directly freeze or transfer the deposits of the person subject to enforcement. A court in another place may directly make inquiries to the bank or its operation office, savings office, credit cooperative, or any other organization dealing with savings deposits at the place where the person subject to enforcement is domiciled, or the place the property subject to enforcement is located about the part of the deposits relating to the obligations of the person subject to enforcement, or may directly freeze or transfer that part of the deposits of the person subject to enforcement, which does not require any document relating to the formalities issued by the local people's court.

(281) When it is necessary for a people's court to sell the property of a person subject to enforcement during the enforcement, the people's court may deliver the property to the relevant organization for sale, or sell the property directly. If the property is sold by the people's court directly, the people's court shall consult the relevant authorities such as the pricing authority for opinions on the price before the sale and the valuation and the pricing shall be fair and reasonable.

The people's court or its staff shall not purchase or receive the property to be sold.

(282) With regard to the property of the person subject to enforcement that has been sealed up or frozen by a people's court during the enforcement in accordance with Articles 221 and 223 of the Civil Procedure Law, no organization including any other people's court may seal up or freeze the concerned property repeatedly or lift the freezing of the property without approval. Violator of the above provisions shall be punished in accordance with Article 102 of the Civil Procedure Law. Where the property of the person subject to enforcement cannot satisfy all the repayment requirement of the enforcement applicant, the provisions of Article 204 of the Civil Procedure Law may be used as a reference during enforcement.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "With regard to the property of the person subject to enforcement that has been sealed up or frozen by a people's court during the enforcement in accordance with Articles 218 and 220 of the Civil Procedure Law, no organization including any other people's court may seal up or freeze the concerned property repeatedly or lift the freezing of the property without approval. Violator of the above provisions shall be punished in accordance with Article 102 of the Civil Procedure Law.")

(283) According to Article 231 of the Civil Procedure Law, if a party concerned fails to perform an act specified in a legal document, and the act can be performed only by the person subject to enforcement, a people's court may handle the matter according to Item (6) of Paragraph 1 of Article 102 of the Civil Procedure Law.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "According to Article 228 of the Civil Procedure Law, if a party concerned fails to perform an act specified in a legal document, and the act can be performed only by the person subject to enforcement, a people's court may handle the matter according to Item (6) of Paragraph 1 of Article 102 of the Civil Procedure Law.")

(284) If the subject matter of enforcement is a specific object, enforcement shall be carried out against the original object. If the original object no longer exists, compensation shall be made at an equivalent amount.

(285) Where the person subject to enforcement conceals the property in the course of enforcement, the relevant people's court shall, in addition to applying Article 102 of the Civil Procedure Law, order

the person subject to enforcement to hand in the concealed property or to make compensation with the equivalent amount of money. If the person subject to enforcement refuses to do so, the people's court may take compulsory enforcement concerning other property of the person subject to enforcement according to the value of the property subject to enforcement, or take measures to search and recover the concealed property.

(286) When a people's court searches, according to Article 227 of the Civil Procedure Law, a person subject to enforcement and the domicile thereof or the place where his property is concealed, the search shall comply with the following requirements:

- (a) The time limit for performance specified in an effective legal document has expired;
- (b) The person subject to enforcement does not perform its obligations determined in the legal document; and
- (c) It is deemed that an act of concealing the property is committed.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this paragraph is revised to read, "When a people's court searches, according to Article 224 of the Civil Procedure Law, a person subject to enforcement and the domicile thereof or the place where his property is concealed, the search shall comply with the following requirements:

- (a) The time limit for performance specified in an effective legal document has expired;
- (b) The person subject to enforcement does not perform its obligations determined in the legal document; and
- (c) It is deemed that an act of concealing the property is committed.")

The search officers shall, according to relevant regulations, wear uniform and present a search warrant and their identification cards.

(287) Any person unconnected with the search shall be forbidden to enter the scene of search when a people's court carries out the search. Where the object of the search is a citizen, the person subject to enforcement or his adult family member, the personnel of a basic organization shall be notified to be present. Where the object of the search is a legal person or any other organization, its legal representative or the principal person-in-charge shall be notified to be present, and, if it has a higher-level competent department, the relevant personnel of the higher-level department shall be notified to be present. In the event of refusal to be present, the search shall not be affected.

The search of a woman's body shall be conducted by a female enforcement officer.

(288) Where property that shall be detained in accordance with the law is discovered in the course of search, the property shall be handled according to Paragraph 2 of Article 224 and Article 226 of the Civil Procedure Law.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where property that shall be detained in accordance with the law is discovered in the course of search, the property shall be handled according to Paragraph 2 of Article 221 and Article 223 of the Civil Procedure Law.")

(289) In conducting a search, a written record of the search shall be made, and it shall be signed or sealed by the search officers, the person subject to search, and other persons present at the search. If they refuse to sign or seal the written record, the refusal shall be stated in the written record of search.

(290) Where a legal person or other organization holds the property or negotiable instrument that shall be delivered as designated in a legal document but refuses to do so after the relevant people's court has sent a notice for assistance with enforcement, the relevant people's court may carry out compulsory enforcement and may apply Article 103 of the Civil Procedure Law for the handling thereof.

(291) Where the relevant organization or individual holds the property or negotiable instrument that

shall be delivered as designated in a legal document but the property or negotiable instrument is destroyed or lost due to the negligence of the holder, the relevant people's court may order the holder to make compensation. Where the holder refuses to make compensation, the relevant people's court may carry out compulsory enforcement based on the value of the property or the negotiable instrument subject to enforcement.

(292) Where, in the course of enforcement, a people's court is required to handle the formalities for transferring the relevant property ownership certificates or licenses, such as real property certificate, land certificate, mountain forest ownership certificate, patent certificate, trademark certificate, or vehicle licenses, the people's court may handle the formalities pursuant to Article 230 of the Civil Procedure Law.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where, in the course of enforcement, a people's court is required to handle the formalities for transferring the relevant property ownership certificates or licenses, such as real property certificate, land certificate, mountain forest ownership certificate, patent certificate, trademark certificate, or vehicle licenses, the people's court may handle the formalities pursuant to Article 227 of the Civil Procedure Law. ")

(293) Where a person subject to enforcement delays the performance, the interest incurred during the delay of performance and the fine imposed for the delayed performance shall be calculated from the next day after the expiry of the time period of performance specified in the relevant written ruling, decision, or any other legal document.

(294) For the purposes of Article 232 of the Civil Procedure Law, the interest on debts double paid for the delay of performance shall mean doubling the debt interest calculated at the highest interest rate of the bank loan in the same time period.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "For the purposes of Article 229 of the Civil Procedure Law, the interest on debts double paid for the delay of performance shall mean doubling the debt interest calculated at the highest interest rate of the bank loan in the same time period.")

(295) Where a person subject to enforcement fails to perform his obligations to make the non-monetary payment within the time period specified in a judgment, decision or other legal document, the person shall pay a fine for delay of performance regardless of whether or not losses are caused to the enforcement applicant. Where losses are caused, the person shall compensate the enforcement applicant at the doubled value of the losses. Where no losses are caused, the fine for delay of performance shall be determined by the relevant people's court according to the specific facts of the case.

(296) Where a creditor requests a people's court to continue to carry out enforcement according to Article 233 of the Civil Procedure Law, the request shall not be subject to the time limit as specified in Article 219 of the Civil Procedure Law.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where a creditor requests a people's court to continue to carry out enforcement according to Article 230 of the Civil Procedure Law, the request shall not be subject to the time limit as specified in Article 215 of the Civil Procedure Law.")

(297) In the case of the person subject to enforcement being a citizen or other organization, where the other creditors of the person subject to enforcement who have gained the grounds for enforcement or instituted lawsuits discover that the property of the person subject to enforcement is not sufficient for repayment of all the debts, these creditors may apply to the people's court for participation in the distribution of the property.

(298) When applying for participation in distribution, an applicant shall submit a written application.

The written application shall specify the facts and grounds concerning the participation in distribution and the incapability of the person subject to enforcement to repay all the debts, accompanied by the grounds for enforcement.

An application for participation in distribution shall be made after the commencement of enforcement procedure and before the completion of the enforcement of the property of the person subject to enforcement.

(299) If the person subject to enforcement is a citizen or other organization, during the enforcement of property wherein other creditors who have gained the grounds for enforcement request to participate in property distribution, the property of the person subject to enforcement shall be used to make repayment according to the order specified in Article 204 of the Civil Procedure Law. If the property is insufficient to repay debts in the same sequential group, distribution may be made at an appropriate proportion. The person subject to enforcement shall continue to discharge the remaining debts. If the creditors discover that the person subject to enforcement has other properties, they may request enforcement with the people's court at any time.

(According to the Decision of the Supreme People's Court on the Repeal of the Relevant Judicial Interpretations Promulgated Prior to the End of 2007 (the Seventh Batch) promulgated on December 18, 2008, this article has been declared repealed.)

(300) When a person subject to enforcement is unable to repay the debts but is entitled to due creditor's rights against a third party, a people's court may, upon an application of an enforcement applicant, notify the third party to repay the debts to the enforcement applicant. Where the third party has no objection to the debts but fails to repay the debts within the time limit specified in the notice, the people's court may carry out compulsory enforcement.

(301) Subject to the approval of the enforcement applicant and the person subject to enforcement, the property of the person subject to enforcement may, without the procedures of auction or sale, be valued and priced, and directly delivered to the enforcement applicant as compensation for debts. The person subject to enforcement shall continue to discharge the remaining debts.

(302) Where the property of a person subject to enforcement is unable to be auctioned or sold, a people's court may, upon consent of the enforcement applicant, value and price the property and deliver the property to the enforcement applicant for repayment of debts or to the enforcement applicant for management. If the enforcement applicant refuses to accept or manage the property, the property shall be returned to the person subject to enforcement.

(303) Where the person subject to enforcement or any other person interferes with the enforced subject matter after the enforcement is completed by a people's court, the people's court may adopt measures to eliminate the interference and impose punishment according to Article 102 of the Civil Procedure Law. Where the interference causes losses to the enforcement applicant or any other person, the person incurring the losses may file a separate action.

## 18. Special Provisions on Foreign-Related Civil Litigations

(304) With regard to civil cases, where one party or both parties concerned are foreigners, stateless persons, or foreign enterprises or organizations, or where the legal facts of the establishment, change, and termination of legal relationship between parties concerned occur abroad, or where the subject matter of action is in a foreign country, such cases are foreign-related civil cases.

(305) According to Articles 34 and 246 of the Civil Procedure Law, if a case is under the jurisdiction of the people's courts in the People's Republic of China, the parties concerned are not allowed by written agreement to choose courts in other countries to have jurisdiction except for the choice of arbitration by agreement.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "According to Articles 34 and 244 of the Civil Procedure Law, if a case is under the jurisdiction of the people's courts in the People's Republic of China, the parties concerned are not allowed by written agreement to choose courts in other countries to have jurisdiction except for the choice of arbitration by agreement. ")

(306) With regard to a case over which the people's courts of the People's Republic of China and the foreign courts both have jurisdiction, if one party files an action with a foreign court while the other party files an action with a people's court in the People's Republic of China, the people's court may accept the case. After the judgment is rendered, the foreign court or the parties concerned shall not be allowed to apply to the people's court for the recognition and execution of a ruling or decision rendered by the foreign court for the case concerned, except as otherwise specified in the international treaties acceded to or concluded by both parties.

(307) Where a people's court serves the complaint or summons on a defendant living outside the territory of China by way of a public notice and the defendant fails to respond to the lawsuit by the expiration of the time period of the public notice, the people's court shall make a ruling by default and serve the ruling by making a public notice according to Item (7) of Article 247 of the Civil Procedural Law. The first-instance ruling shall take effect if the party concerned does not lodge an appeal after a 30-day appeal period commencing from the from the day following the end of six months after the ruling is served on such defendant by making public notice.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "Where a people's court serves the complaint or summons on a defendant living outside the territory of China by way of a public notice and the defendant fails to respond to the lawsuit by the expiration of the time period of the public notice, the people's court shall make a ruling by default and serve the ruling by making a public notice according to Item (7) of Article 245 of the Civil Procedural Law. The first-instance ruling shall take effect if the party concerned does not lodge an appeal after a 30-day appeal period commencing from the from the day following the end of six months after the ruling is served on such defendant by making public notice.")

(308) The party of foreign nationality in a foreign-related civil action may either entrust a person of his own nationality to act as his agent ad litem or may entrust a lawyer of his own nationality to serve as his agent ad litem by acting as a non-lawyer. As entrusted by his national citizens, an official of the foreign embassy or consulate in China may serve as the agent ad litem in his own name without enjoying the diplomatic privileges and immunities during the proceeding.

(309) With regard to foreign-related civil litigations, in the event that a citizen of a foreign country, as a party concerned therein, is not in the territory of China, such foreign country's embassy or consulate in China may authorize its officials to, in the capacity of diplomatic representatives, appoint a Chinese lawyer or Chinese citizen to serve as the agent ad litem of the said party concerned.

(310) Where, in foreign-related civil actions, both parties reach an agreement through mediation, a mediation statement shall be prepared and issued. Where the parties concerned request the court to issue a written judgment, the people's court may prepare a written judgment pursuant to the content of the agreement and serve the judgment on the parties.

(311) Where both parties live inside and outside of China respectively, the time period for the party living inside China to appeal the ruling and decision made by the first instance court shall be the time period provided in Article 147 of the Civil Procedure Law, while for the party living outside of China, that shall be 30 days. Where neither of the two parties files an action upon the expiration of the time period, the judgment or ruling rendered by the first instance court shall take effect.

(312) The provisions of Article 145 to 148 and Article 277 and 278 of these Opinions shall apply to foreign-related litigation proceedings.

(313) With regard to an arbitration award made by a foreign-related arbitration institution in China, if one party concerned fails to perform the award and the other party applies with the people's court for enforcement, the relevant provisions of Chapter 28 of the Civil Procedure Law shall apply.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, " With regard to an arbitration award made by a foreign-related arbitration institution in China, if one party concerned fails to perform the award and the other party applies with the people's court for enforcement, the relevant provisions of Chapter 27 of the Civil Procedure Law shall apply.")

(314) An applicant that applies with the people's court for enforcing an arbitration award made by a foreign-related arbitration institution of China must submit a written application, and attach thereto the original copy of the award. If the applicant is a foreign party, the written application must be prepared in Chinese.

(315) If the person subject to enforcement argues, when a people's court compulsorily enforces an arbitration award of a foreign-related arbitration institution, that there exists any of the circumstances specified in Paragraph 1 of Article 260 of the Civil Procedure Law, the enforcement of the award may be suspended after the person subject to enforcement has provided a property guarantee. The people's court shall examine the defense of the person subject to enforcement and make a decision on denying the enforcement or rejecting the defense according to the examination results.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "If the person subject to enforcement argues, when a people's court compulsorily enforces an arbitration award of a foreign-related arbitration institution, that there exists any of the circumstances specified in Paragraph 1 of Article 258 of the Civil Procedure Law, the enforcement of the award may be suspended after the person subject to enforcement has provided a property guarantee. The people's court shall examine the defense of the person subject to enforcement and make a decision on denying the enforcement or rejecting the defense according to the examination results.")

(316) The dissolution or termination of a foreign-related economic contract shall not affect the force of arbitration clauses in the contract. If one party concerned files an action with the people's court on the ground that the foreign-related economic contract containing arbitration clauses is dissolved or terminated, such an action shall not be accepted.

(317) According to Article 258 of the Civil Procedure Law, where a Chinese foreign-related arbitration institution refers a party's application for property preservation to a people's court for its judgment, the people's court may examine the application and decide whether or not to apply the property preservation measures. If the people's court decides to apply property preservation measures, it shall order the applicant to provide a guarantee, and shall decide to dismiss the application in the event that the applicant fails to provide a guarantee.

(Note: According to the Decision of the Supreme People's Court on Adjusting Ordinal Numbers of Articles of the "Civil Procedure Law of the People's Republic of China" Cited in Documents Including the Judicial Interpretation promulgated on December 16, 2008, this article is revised to read, "According to Article 256 of the Civil Procedure Law, where a Chinese foreign-related arbitration institution refers a party's application for property preservation to a people's court for its judgment, the people's court may examine the application and decide whether or not to apply the property preservation measures. If the people's court decides to apply property preservation measures, it shall order the applicant to provide a guarantee, and shall decide to dismiss the application in the event that the applicant fails to provide a guarantee.")

(318) With regard to an application of a party concerned filed with a competent intermediate people's court in the People's Republic of China for the recognition and enforcement of a legally effective ruling or decision rendered by a foreign court, if the country of the foreign court and the People's Republic of China have neither concluded or jointly acceded to an international treaty nor do they have reciprocity relations, the party concerned may file an action with the people's court and a ruling for enforcement shall be rendered by a competent people's court.

(319) Where a court of a country having neither judicial assistance agreement nor reciprocity relations with China directly requests a court in China for judicial assistance without adopting diplomatic channels, the court in China shall reject the request with an explanation.

(320) In the event that a party concerned uses a written ruling or decision of a people's court in China in a place outside the territory of China, if the people's court is required to certify the legal force and effect of the ruling or decision or the foreign court requires the people's court in China to certify the legal force or effect of the written ruling or decision, the people's court of China that has rendered the said ruling or decision may issue a certificate in its own name.