

Interpretations of the Supreme People's Court on Applicability of the Civil Procedure Law of the People's Republic of China

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The Supreme People's Court
January 30, 2015

Zhu Shi [2015] No. 5
The Interpretations of the Supreme People's Court
on Applicability of the Civil Procedure Law of the People's Republic of China
(adopted by the Judicial Committee of the Supreme People's Court at its 1636th session
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Table of Contents

Chapter 1: Jurisdiction
Chapter 2: Recusal
Chapter 3: Litigation Participants
Chapter 4: Evidence
Chapter 5: Time Limit and Service of Process
Chapter 6: Mediation
Chapter 7: Preservation and Advance Enforcement
Chapter 8: Enforcement Measures for Obstruction of Civil Litigations
Chapter 9: Litigation Fees
Chapter 10: Ordinary Procedures of First Instance
Chapter 11: Summary Procedures
Chapter 12: Small Claim Litigation in Summary Procedures
Chapter 13: Litigations for Public Interests
Chapter 14: Litigations by Third Parties for Cancellation
Chapter 15: Litigations of Objections to Enforcement
Chapter 16: Procedures of Second Instance
Chapter 17: Special Procedures
Chapter 18: Procedures for Trial Supervision
Chapter 19: Procedures for Urging Performance
Chapter 20: Procedures of public summons for exhortation
Chapter 21: Procedures for Enforcement
Chapter 22: Special Provisions on Foreign-Related Civil Procedures
Chapter 23: Supplementary Provisions

The Decision on Amendment to the Civil Procedure Law of the People's Republic of China is reviewed and adopted by the Standing Committee of the 11th National People's Congress at its 28th session on August 31, 2012. These Interpretations are formulated in accordance with the amended Civil Procedure Law, by taking into account the actualities of civil adjudication and enforcement of the people's courts.

Chapter 1: Jurisdiction

Article 1 Major foreign-related cases referred to in Paragraph 1 of Article 18 of the Civil Procedure Law includes cases with disputed subject matter at a huge amount, complicated cases, cases involving numerous parties on one side, and other cases with significant influence.

Article 2 Disputes over patents shall be subject to the jurisdiction of the intellectual property courts, or the intermediate people's courts or basic people's courts specified by the Supreme People's Court.

Maritime cases shall be governed by the maritime courts.

Article 3 Domicile refers to the place where the residence of a citizen is registered in the case of a citizen, or the place where the principal office is located in the case of a legal entity or other organizations.

In the absence of principal office of a legal entity or other organizations, its domicile shall be its registered address.

Article 4 The habitual residence of a citizen shall be the place where he had lived for 12 consecutive months or more after leaving his/her domicile and before filing of a lawsuit, except the place where he is hospitalized.

Article 5 A Lawsuit filed against an individual partnership or partnered consortium without an office shall be governed by the people's court in the location where the defendant is registered. Where the defendants are not registered and domiciled in different jurisdictions, each of the people's courts in the locations where such defendants are domiciled shall have the jurisdiction.

Article 6 Where the defendant's residence registration is canceled, the jurisdiction shall be determined under Article 22 of the Civil Procedure Law; where both the plaintiff and defendant are canceled of their residence registrations, the people's court in the location where the defendant resides shall have the jurisdiction.

Article 7 Where a party has not registered his/her residence after relocation, the people's court in the location of his/her habitual residence shall have the jurisdiction, or in the absence of habitual residence, the people's court in the location where his/her original residence registration is made shall have the jurisdiction.

Article 8 Where both parties are in detention or being imposed of compulsory correctional measures, the people's court in the location of the defendant's original domicile shall have the jurisdiction. Where the defendant has been detained or imposed of compulsory education measures for more than one year, the people's court in the location where the defendant is detained or imposed of compulsory education measures shall have the jurisdiction.

Article 9 Where defendants of cases relating to recourses of alimony, child-support payment, or maintenance fees are domiciled in different jurisdictions, the people's court in the location where the plaintiff is domiciled shall have the jurisdiction.

Article 10 Cases concerning objection to specified guardianship or changing guardianship may be governed by the people's court in the location where the ward is domiciled.

Article 11 Civil cases to which both parties are soldiers or military entities shall be governed by a military court.

Article 12 Cases in which either husband or wife has left their domicile for more than one year and the husband or wife, who still lives in their original domicile, files a lawsuit for divorce may be governed by the people's court in the location where the plaintiff is domiciled.

Cases in which both husband and wife have left their domicile for more than one year and either husband or wife files a lawsuit for divorce shall be governed by the people's court in the location of the defendant's habitual residence or, in the absence of habitual residence, the defendant's residence when the lawsuit is filed.

Article 13 In the case of overseas Chinese married in China and residing abroad, the lawsuit for divorce filed by the party concerned shall be governed by the people's court in the location where they were married or where either husband or wife last resided in China, if any court in their residing country refuses to accept such filing on the ground that such case shall be governed by the court where they were married.

Article 14 In the case of overseas Chinese married and residing abroad, the lawsuit for divorce filed by the party concerned shall be governed by the people's court in the location where either husband or wife was originally domiciled or last resided in China, if any court in their residing country refuses to accept such filing on the ground that such case shall be governed by the court in the country of their nationality.

Article 15 In the case of a married couple of Chinese citizens with a party living in China and the other living abroad, the lawsuit for divorce filed by either party may be governed by the people's court in the location where the party living in China is domiciled. Where the party files a lawsuit with a court in the country of his/her residence and the other party living in China files a lawsuit with the people's court, the people's court which accepts the filing shall have the jurisdiction.

Article 16 In the case both parties are Chinese citizens and are living abroad but not settled there, the lawsuit filed for divorce by either party shall be governed by the people's court in the location where the plaintiff or defendant was originally domiciled.

Article 17 In the case of both parties of a divorced couple are Chinese citizens settling abroad, the lawsuit filed for division of their properties in China shall be governed by the people's court in the location where their major properties are located.

Article 18 Where the place of performance is agreed in a contract, such place shall be the place of contract performance.

In the absence of any agreement on the place of contract performance or in the case of ambiguous agreement, the place of contract performance shall be the place where the party receives monetary payment, if the disputed subject matter is monetary payment; or the place where the real estate is located, if the disputed subject matter is delivery of real estate; or the place where the obligation is to be performed, in the case of other disputed subject matters. In the case of any contract concerning immediate settlement, the place of contract performance shall be the place where the transaction is made.

Where a contract is not actually performed and neither party thereto is domiciled in the place of performance agreed upon thereunder, the people's court in the location where the defendant is domiciled shall have the jurisdiction.

Article 19 The place of contract performance for any property leasing contract or financial leasing contract shall be the place where the leased property is used; unless otherwise agreed upon under such contract.

Article 20 The place of contract performance for any sales contract executed by means of information network for delivering the subject matter through information network shall be the place where the purchaser is domiciled; the place of contract performance for any contract, of which the subject matter is delivered by other means, shall be the place where the goods is received; unless otherwise agreed upon under such contract.

Article 21 Any lawsuit filed in connection with any dispute over a property insurance contract shall be governed by the people's court in the location where the transportation means is registered, in the location of transportation destination, or in the location where the insurance accident occurred, if the subject matter of such insurance is any transportation means or goods in transit.

Any lawsuit filed in connection with dispute over a personal insurance contract may be governed by the people's court in the location where the insured is domiciled.

Article 22 Jurisdiction over any lawsuit filed in connection with dispute over record of shareholder register, request for changing company registration, shareholder's right to information, company resolution, merger of companies, split-up of company, capital reduction of company, or capital increase of company shall be determined in accordance with provisions set forth in the Civil Procedure Law.

Article 23 Subject to the provisions set forth in Article 21 of the Civil Procedure Law, any application filed by a creditor for payment warrant shall be governed by the basic people's court in the location where the debtor is domiciled.

Article 24 *Locus delicti commissi* referred to in Article 28 of the Civil Procedure Law includes the place where the tort or offense is committed and the place where results of such tort or offense occurred.

Article 25 The place where the tort or offense in respect of information network is committed includes the place where the information facilities such as computer by which the alleged tort or offense is committed and the place where results of such tort or offense occurred, including the domicile of the infringed.

Article 26 The people's court in the location where the product is manufactured or sold or the service is offered or in the *locus delicti commissi* or in the location where the defendant is domiciled shall have jurisdiction over any lawsuit filed in connection with property or personal damage arising from inferior quality of such product or service.

Article 27 A lawsuit, which is filed by the respondent or an interested party for the loss resulting from the failure of filing a lawsuit or an arbitration by a party concerned within statutory time limit after applying for pre-litigation preservation, shall be governed by the people's court that takes such measures of preservation.

A lawsuit, which is filed by the respondent or an interested party for the loss resulting from filing of a lawsuit or an arbitration by a party concerned within statutory time limit after applying for pre-litigation preservation, shall be governed by the people's court that accepts such filing or takes such measures of preservation.

Article 28 Dispute over real estate referred to in Paragraph 1 of Article 33 of the Civil Procedure Law means any dispute over real rights resulted from right confirmation, partition, or neighboring relations in connection with real estates.

In the case of disputes over contracts for rural land contracting management, house lease, and engineering construction, as well as sales of policy-related house, the jurisdiction shall be determined in accordance with provisions applicable to disputes over real estates.

The location of a real estate shall be the place recorded in the register of such real estate, if registered; or the place where it is actually located, if not registered.

Article 29 Written agreement referred to Article 34 of the Civil Procedure Law includes clauses concerning agreement jurisdiction contained in any written contract or written agreement executed for the choice of jurisdiction prior to litigation.

Article 30 The jurisdiction shall be determined under the jurisdiction agreement by which the governing court may be determined when a lawsuit is filed, or in accordance with relevant provisions of the Civil Procedure Law if the jurisdiction cannot be determined by such agreement.

Where two or more people's courts having actual relation with a dispute are stipulated in a jurisdiction agreement, the plaintiff may file a lawsuit with any of such people's courts.

Article 31 Where a business operator executes a jurisdiction agreement with consumers with standard clauses but fails to remind such consumers by reasonable means, the people's court shall uphold consumers' claim for invalidation of such jurisdiction agreement.

Article 32 Where a jurisdiction agreement stipulates that the people's court in the location where a party thereto is domiciled and such party changes his/her/its domicile after execution thereof, the agreed people's court in the location where such party was domiciled upon the execution thereof shall have jurisdiction, unless otherwise agreed by the parties concerned.

Article 33 In the case of contract assignment, the jurisdiction agreement contained in such contract shall inure to the assignee, except that the assignee has no knowledge about the existence of such jurisdiction agreement upon such assignment, or that the jurisdiction is otherwise agreed by the parties concerned and by the original opposite party to such contract.

Article 34 In the case of the existence of a jurisdiction agreement, the jurisdiction over a property dispute arising from cohabitation or occurring after the release of marriage or adoption relationship between the parties concerned may be determined in accordance with Article 34 of the Civil Procedure Law.

Article 35 Where a party concerned fails to respond to a lawsuit upon the expiry of time limit for response, the people's court finding that the present case is beyond its jurisdiction prior to the commencement of first instance session shall refer the case to the people's court with jurisdiction.

Article 36 Where there are two or more people's courts having jurisdiction over a lawsuit, the people's court that first accepts the case may not refer the same to the other people's court with jurisdiction. Any people's court, prior to putting such case on file, finding that any case has been put on file by other people's court with jurisdiction, may not concurrently put such case on file; any people's court, after putting any case on file, finding that such case has been put on file by other competent people's court, shall refer such case to the people's court that has put such case on file first.

Article 37 Upon acceptance of any case, the jurisdiction of the accepting people's court will not be affected by the change of the domicile or habitual residence of any party concerned.

Article 38 Upon acceptance of any case, the people's court with jurisdiction may not refer the case to other people's court with jurisdiction after such change on grounds of change of administrative region. Appeal cases and cases taken over for review in accordance with the procedure for trial supervision shall be heard by the superior people's court of the people's court that originally heard the cases; cases ordered to retrial or remanded for trial anew by the superior people's court shall be retried or tried anew by the people's court that originally heard

the cases.

Article 39 The jurisdiction may not be changed on account of any counterclaim and/or addition or change of claims filed by the party concerned, if a people's court is determined to have jurisdiction after examination of any opposition to such jurisdiction, except that such determination is against hierarchy-based jurisdiction or exclusive jurisdiction.

As to cases remanded by a people's court for trial anew or retrial in accordance with procedures applicable to the first-instance session, the people's court will not examine any opposition to jurisdiction as filed by any party concerned.

Article 40 Subject to Paragraph 2 of Article 37 of the Civil Procedure Law, where two people's courts file a request with their common superior people's court for designation of jurisdiction after the failure of negotiation on the dispute over their jurisdiction, the jurisdiction shall be immediately designated by the intermediate people's court of the prefecture or city, if both people's courts are basic people's courts within the same prefecture or city; or by the higher people's court of the province, autonomous region, or municipality directly under the Central Government, if both people's courts are within the same province, autonomous region, or municipality directly under the Central Government; or by the Supreme People's Court, if both people's courts are within different provinces, autonomous regions, or municipalities directly under the Central Government, and the relevant higher people's courts failed to settle such dispute after negotiation.

Request for designation of jurisdiction referred to in the immediately preceding paragraph shall be made level by level.

Article 41 A people's court shall render a ruling on designation of jurisdiction in accordance with Paragraph 2 of Article 37 of the Civil Procedure Law.

The subordinate people's court shall suspend hearing any case for which the request for designation of jurisdiction is filed with its superior people's court. Where the subordinate people's court has made any judgment or ruling for any case prior to the ruling on designation of jurisdiction, its superior people's court shall revoke such judgment or ruling while making the ruling on designation of jurisdiction.

Article 42 A people's court may, prior to court hearing, refer the following civil cases of first instance to its subordinate people's court for trial in accordance with Paragraph 1 of Article 38 of the Civil Procedure Law:

- (1) lawsuits concerning any debtor in bankruptcy proceedings;
- (2) lawsuits with a large number of parties concerned and which is inconvenient; and
- (3) other lawsuits as determined by the Supreme People's Court.

Prior to referral of any case to its subordinate people's court, the people's court shall request for approval by its superior people's court. Upon the approval by its superior people's court, the people's court shall make a ruling to refer the case to its subordinate people's for trial.

Chapter 2: Recusal

Article 43 A judicial officer shall voluntarily recuse himself/herself and the parties concerned may apply for the recusal of a judicial officer, if:

- (1) the judicial officer is a party concerned to the present case or a close relative of a party concerned to the present case;
- (2) the judicial officer or the judicial officer's close relative has an interest in the present case;
- (3) the judicial officer has been a witness, expert witness, defender, agent ad litem or interpreter of the present case;
- (4) the judicial officer is a close relative of the agent ad litem in the present case;
- (5) the judicial officer or the judicial officer's close relative holds any shares or equities in a party concerned, which is a non-listed company, to the present case; or
- (6) the judicial officer has an interest in a party concerned to or agent ad litem of the present case that will be likely to prejudice the impartiality in the trial.

Article 44 The parties concerned may apply for the recusal of a judicial officer, if:

- (1) the judicial officer takes entertainment invitation from a party concerned and the person such party entrusted, or take part in any activity at the cost by such party concerned;
- (2) the judicial officer demands or accepts any property or other interests from a party concerned to the present case or the person such party entrusted;
- (3) the judicial officer meets a party concerned to the present case or its agent ad litem in violation of the established rules;
- (4) the judicial officer recommended or introduced an agent ad litem for a party concerned to the present case or introduce to any lawyer or other persons the opportunity to be an agent ad litem in the present case;
- (5) the judicial officer borrows any money or property from a party concerned to the present case or the person entrusted by such party; or
- (6) there is any other improper acts that will be likely to prejudice the impartiality of trial.

Article 45 Judicial officers participated in the trial of the present case in a judicial proceeding may not participate in the trial of the present case in other proceedings.

Where a case remanded for trial anew enters into second-instance session after being ruled by the court of first instance, the member of the collegiate panel in the original trial of second instance is not limited by the immediate preceding paragraph.

Article 46 The president or judicial committee shall decide on the recusal of any judicial officer who shall voluntarily recuse himself/herself but failed to do so and the party concerned also failed to apply for the recusal of such judicial officer.

Article 47 The people's court shall, pursuant to laws, inform the parties concerned of the right to apply for recusal of any member of the collegiate panel, sole judge, or clerk.

Article 48 Judicial officers referred to in Article 44 of the Civil Procedure Law include president, vice president(s), members of judicial committee, chief judges, deputy chief judges, judges, assistant judges, and people's jurors participating in the trial of the present case.

Article 49 Clerks and executors shall also subject to relevant provisions on the recusal of a judicial officer.

Chapter 3: Litigation Participants

Article 50 The legal representative of a legal entity shall be the one registered under laws, unless otherwise prescribed by laws. The legal representative of a legal entity that is exempted from registration shall be the principal person-in-charge or, if absent, the deputy person-in-charge presiding over daily operation.

The people's court may allow the new legal representative to represent the legal entity to participate in the litigation, if the legal representative of a legal entity is changed without completing registration formalities.

The principal persons-in-charge of other organizations shall be their legal representatives.

Article 51 In the case of change of the legal representative of a legal entity during the litigation, the new legal representative shall resume such litigation and submit a new certificate of legal representative to the people's court. Litigation activities proceeded by the former legal representative shall remain valid.

The preceding paragraph shall be applicable to the litigation participated by other organizations.

Article 52 Other organizations referred to in Article 48 of the Civil Procedure Law mean any duly established organization with certain organizational structures and assets, but not qualified as a legal entity, including:

- (1) any sole proprietorship enterprise that has registered and obtained business license under laws;
- (2) any partnership that has registered and obtained business license under laws;
- (3) any Sino-foreign joint venture enterprise or foreign-invested enterprise that has registered and obtained Chinese business license under laws;
- (4) any branch or representative office of duly established social groups;
- (5) any branch of duly established legal entities that have obtained business license;
- (6) any branch of duly established commercial banks, policy banks, and non-banking financial institutions that have obtained business license;
- (7) any village/township enterprise and neighborhood community enterprise that has registered and obtained business license under laws; and
- (8) other organization that complies with the provisions set forth in this Article.

Article 53 Where a branch is not set up under laws by a legal entity, or is set up under laws by a legal entity, but fails to obtain a business license, the legal entity setting up the branch shall be the party concerned.

Article 54 In the case that civil activities are carried out by way of affiliation, if a party concerned requests that both the affiliating party and the affiliated party to take civil liabilities

under laws, the affiliating party and the affiliated party shall be the co-litigants.

Article 55 Where one party to a case deceases during litigation and it is necessary to wait for the party's successor to indicate whether or not to participate in the litigation, the people's court shall render a ruling to suspend the litigation. The people's court shall promptly notify the successor to participate in the proceedings as a party thereto, and the litigation activities already conducted by the decedent shall be binding on the successor who participates in the proceedings.

Article 56 The legal entity or other organization shall be the party concerned, if its personnel causes damage to others in his/her duty performance.

Article 57 Where a labor service provider causes any damage to others during its service and the damaged party files a lawsuit, the party accepting such labor services shall be the defendant.

Article 58 Where a dispatched personnel causes any damage to others in his/her performance of duty during the labor dispatching period, the employer accepting the labor dispatching arrangements shall be the party concerned. Where a party to such a case requests the labor dispatching entity to assume liabilities, the labor dispatching entity shall be a co-defendant.

Article 59 In litigation involving an individually-owned business, the business operator recorded on the business license of such individually-owned business shall be the party concerned. If the individually-owned business has a trade name, the trade name on its business license shall be the name of the party concerned and, at the same time, the basic information about the business operator of the individually-owned business with such trade name shall also be provided.

Where the business operator recorded on the business license and the actual business operator are not the same, both shall be the co-litigants.

Article 60 In litigation involving an individual partnership that has not registered and obtained its business license under laws, all of its partners shall be the co-litigants. The trade name of an individual partnership that has been approved for registration under laws, if any, shall be indicated in legal instruments. All partners may elect a representative and shall issue a statement on election to the elected representative.

Article 61 After any dispute between parties are settled in an agreement through mediation by the people's mediation committee, if either party fails to perform such mediation agreement, and the other party files a lawsuit with the people's court, the party failing to perform such agreement shall be taken as the defendant.

Article 62 The following party shall be the party concerned:

(1) the party that conducts civil activities in the name of any legal entity or other organizations

which has not registered as required;

(2) the party that conducts civil activities in the name of the principal without power of attorney, beyond the scope of its power of attorney, or after termination of power of attorney, except that the opposite party has grounds to believe that such party has right of agency; or

(3) the party that conducts civil activities in the name of any legal entity or other organizations that is terminated under laws.

Article 63 In the case of any dispute arising from civil activities before merger of several business entities, the existing enterprise after merger shall be the party concerned; in the case of any dispute arising from civil activities before split-up of any business entity, the existing enterprises after split-up shall be the co-litigants.

Article 64 In the case of dissolution of any business entity, the business entity prior to liquidation and cancellation under laws shall be the party concerned; where it is canceled without liquidation under laws, its shareholders, originators, or contributors shall be the party concerned.

Article 65 In the case of lending business referral letters, special seals for contract, blank contract affixed with seal, or bank account, the lending entity and the borrower shall be the co-litigants.

Article 66 In the case of any lawsuit filed in connection with a guarantee contract, the people's court shall take the guarantor and the guaranteed as the co-defendants, if the creditor claims for right against both the guarantor and the guaranteed. Where the guarantee contract is of general guarantee and the creditor files a lawsuit only against the guarantor, the people's court shall inform the guaranteed of participation in the litigation as a co-defendant; where the creditor files a lawsuit only against the guaranteed, the guaranteed may be taken as the sole defendant.

Article 67 Where a person having no capacity for civil acts or a person with limited capacity for civil acts causes damage to others, such person and his/her guardian shall be the co-defendants.

Article 68 In the case of any civil dispute between a village committee or village group and others, the village committee or the village group with independent assets shall be the party concerned.

Article 69 In the case of any lawsuit filed in connection with infringement upon remains, skeletal remains, name, portraits, reputation, honor, and privacy of a deceased person, the close relatives of such deceased person shall be the party concerned.

Article 70 Where there are some successors filing an inheritance lawsuit, the people's court shall inform the rest successors of participation in the litigation as the co-plaintiffs; where the informed successors are reluctant to participate in the litigation without expressly waiving their

substantive rights, the people's court shall still take such successors as a co-plaintiff.

Article 71 Where a plaintiff files a lawsuit against the principal and the agent for joint and several liabilities, the principal and the agent shall be taken as the co-defendants.

Article 72 In the case of any lawsuit filed by some co-owners in connection with infringement upon their right to common property, the rest co-owners shall be taken as the co-litigants.

Article 73 Where a party concerned that is required to jointly participate in a litigation fails to do so, the people's court shall inform such party of participation in accordance with Article 132 of the Civil Procedure Law; such party may also apply to the people's court for participation. The people's court shall examine the application so filed. If the reasons for the application are not tenable, the people's court shall rule to refuse the application; otherwise, it shall inform in writing the additional party of participation in the litigation.

Article 74 In the case of addition of parties concerned as the participants in any co-litigation, the people's court shall inform other parties of such addition. Where any party to be added as a plaintiff has expressly waived his/her/its substantive right, such party may be exempted from being added as a plaintiff; any party that is reluctant to participate in litigation and is not willing to waive his/her/its substantive right shall still be added as a co-defendant and his/her/its absence will not affect the trial and the lawful judgment made by the people's court.

Article 75 "A large number of people" referred to in Article 53, Article 54, and Article 199 of the Civil Procedure Law means ten or more people in general.

Article 76 Subject to Article 53 of the Civil Procedure Law, where the exact number of "a large number of people" of one side is ascertained upon filing of a lawsuit, a common representative may be elected by all of the parties concern of this side or respective representatives may also be elected by some parties concerned of this side; parties failing to elect their representatives may participate in a mandatory joint litigation on their own or file a separate lawsuit in an ordinary joint litigation.

Article 77 Subject to Article 54 of the Civil Procedure Law, where the exact number of "a large number of people" cannot be ascertained upon filing of a lawsuit, the representative shall be elected by the parties concerned. Where the parties concerned fail to elect their representatives, the people's court may propose a candidate among such parties concerned and negotiate with such parties concerned for the final decision; if failed, the people's court may appoint representatives for such parties concerned that file the lawsuit.

Article 78 The number of representatives referred to in Article 53 and Article 54 of the Civil Procedure Law shall be two to five, and each representative may entrust one or two agents ad litem.

Article 79 As for the case accepted in accordance with Article 54 of the Civil Procedure Law,

the people's court may issue an announcement, informing right holders of registration with the people's court. The announcement period shall be determined according to the particularities and, in no event, may be less than 30 days.

Article 80 Right holders registering with the people's court in accordance with Article 54 of the Civil Procedure Law, shall prove their legal relation with the counter-party and the damage they sustained; otherwise, they may not be registered but may file a separate lawsuit. The judgment and/or ruling of the people's court shall be enforced among the registered parties. In the case of lawsuit filed by any right holder that has not registered, the people's court shall rule that the existing judgment and/or ruling is applicable to such right holder, if its claim holds ground as deemed by the people's court.

Article 81 Subject to Article 56 of the Civil Procedure Law, any third party with right to file an independent claim may become a party concerned by submitting litigation claims and relevant facts and grounds; the third party without such right may participate in litigation by application or after being informed by the people's court.

In the case that the third party that has not participated in the first instance session files an application for participation in the second instance session, the people's court may grant its permit.

Article 82 During the litigation of first instance, the third party without right to file an independent claim may neither oppose to the jurisdiction, nor waive or change the claim, or apply for withdrawing the lawsuit; however, it may file an appeal if it is ruled to take civil liabilities.

Article 83 During litigation, the guardian of a person without civil capacity or with limited civil capacity shall be his/her statutory agent. The guardian of the said person, if not determined in advance, may be determined through negotiation among all persons with guardianship; otherwise, it shall be appointed by the people's court for taking part in litigation as the statutory agent. In the absence of any guardian referred to in Paragraph 1 and Paragraph 2 of Article 16 and Paragraph 1 of Article 17 of the General Principles of the Civil Law, the party concerned may appoint the relevant organizations referred to in Paragraph 4 of Article 16 and Paragraph 3 of Article 17 of the General Principles of the Civil Law as his/her statutory agent.

Article 84 The party concerned may not appoint any person without civil capacity or with limited civil capacity or other persons who cannot serve as agents ad litem as his/her agent ad litem.

Article 85 Subject to Subparagraph (2) of Paragraph 2 of Article 58 of the Civil Procedure Law, the spouse, lineal relatives, collateral relatives within three generations, relatives of the party by affinity and marriage, and other relatives who are related to the party by family support or maintenance of the party concerned may act as his/her agent ad litem in the name of the close relative of such party.

Article 86 Subject to Subparagraph (2) of Paragraph 2 of Article 58 of the Civil Procedure Law, the employee having employment relationship with the party concerned may act as his/her agent ad litem in the name of the employee of such party.

Article 87 Subject to Subparagraph (3) of Paragraph 2 of Article 58 of the Civil Procedure Law, where any social organization recommends a citizen to serve as an agent ad litem, the following conditions shall be satisfied:

- (1) the social organization is a non-profit business entity that has registered under laws or is exempted from registration under laws;
- (2) the principal is a member of such social organization, or the party concerned domiciles within the area where such social organization conducts activities;
- (3) the agent service is included in the business scope of the articles of association of such social organization; or
- (4) the recommended citizen is the person-in-charge of, or employee with lawful employment relationship with, such social organization.

Upon the recommendation of the All-China Patent Agents Association, a patent attorney may act as an agent ad litem in a case relating to patent dispute.

Article 88 In addition to submitting a power of attorney in accordance with Article 59 of the Civil Procedure Law, the agent ad litem shall also submit the following relevant materials to the people's court in accordance with following provisions:

- (1) in the case of a lawyer, the practice certificate of lawyer and certificate materials issued by his/her law firm;
- (2) in the case of a basic legalist, the practicing certificate of legalist, referral letter issued by his/her basic legal service agency, and evidentiary materials proving that the party concerned is within its jurisdiction;
- (3) in the case of a close relative of the party concerned, the identity certificate and evidentiary materials proving such relation;
- (4) in the case of an employee of such party concerned, the identity certificate and evidentiary materials proving the lawful employment relation with the party concerned;
- (5) in the case of a citizen recommended by the community in which the party concerned lives or employer of the party concerned, the identity certificate, recommendation letters, and evidentiary materials proving that the party concerned belongs to such community or employer; and
- (6) in the case of a citizen recommended by a relevant social organization, the identity certificate and evidentiary materials complying with Article 87 hereof.

Article 89 The power of attorney to be submitted by the party concerned to the people's court shall be delivered prior to the commencement of court hearing. The agent ad litem may not acknowledge, waive, or change claim, reconcile with the other party, or file a counterclaim or appeal for the party concerned, if the power of attorney only indicates "general power of attorney" without specific authorization.

In the case of any case subject to a summary procedure, the agent ad litem may be appointed orally at the court and the appointment shall be included in the written transcripts by the

people's court, if both parties concerned present in the court at the same time to commence a court session.

Chapter 4: Evidence

Article 90 A party concerned shall furnish evidence to prove the facts on which its own claims are based or on which its refutation of the opposite party's claims is based, unless otherwise prescribed by law.

Where a party concerned fails to furnish any evidence to prove the claimed facts or where the evidence so furnished is insufficient to prove the claimed facts prior to the pronouncement of a judgment, the party having the burden of proof shall be liable for unfavorable consequences.

Article 91 Unless otherwise prescribed by law, the people's court shall determine the burden of proof between the parties concerned in line with the following principles:

- (1) A party concerned who claims that a certain legal relationship exists shall have the burden of proof relating to the basic facts for the establishment of the legal relationship; and
- (2) A party concerned who claims that a certain legal relationship has changed or terminated, or that its rights have been infringed upon shall have the burden of proof relating to the basic facts for the change or termination of the legal relationship, or the infringement upon its rights.

Article 92 Where a party concerned expressly admits any unfavorable facts against itself during court session, or in the written complaint, bill of defense, statement of representation and other written materials, the opposite party is not required to produce evidence to prove such facts.

The preceding paragraph on self-admission shall not apply to facts that shall be investigated by people's courts ex officio, such as facts involving identity relationship, national interests, and public interests.

In the case of any discrepancy between self-admitted facts and facts ascertained upon investigation, the competent people's court shall not recognize the self-admitted facts.

Article 93 A party concerned is not required to produce any evidence to prove the following facts:

- (1) The laws of nature and theorems or laws;
- (2) Facts of common knowledge;
- (3) Facts that can be inferred by law;
- (4) Facts that are inferred from known facts and daily life experience;
- (5) Facts that have been ascertained by legally-binding judgments/rulings rendered by people's courts;
- (6) Facts that have been ascertained by final arbitration awards rendered by arbitration institutions; and
- (7) Facts that have been verified by valid notary documents.

The facts referred to in Subparagraph (2) to Subparagraph (4) of the preceding paragraph shall be proved if a party concerned has sufficient evidence to the contrary to refute the same.

The facts referred to in Subparagraph (5) to Subparagraph (7) of the preceding paragraph

shall be proved if a party concerned has sufficient evidence to the contrary to overturn the same.

Article 94 For the purpose of Paragraph 2 of Article 64 of the Civil Procedure Law, evidence that cannot be collected by a party concerned and the agent ad litem thereof on their own due to objective reasons shall include:

- (1) Evidence kept by relevant State departments which the party concerned and the agent ad litem thereof are not entitled to access and retrieve;
- (2) Evidence involving State secrets, trade secrets or personal privacy; and
- (3) Other evidence that the party concerned and the agent ad litem thereof are unable to collect on their own due to objective reasons.

The party concerned and the agent ad litem thereof may, prior to the expiration of the time limit for producing evidence, apply to the competent people's court in writing to request the latter to investigate and collect the evidence that they are unable to collect on their own due to objective reasons.

Article 95 A people's court shall not approve an application from a party concerned for the investigation and collection of evidence that falls under any of the following categories: evidence that is irrelevant to the facts pending proof; evidence that is of no use in proving the facts pending proof; or, other evidence for which investigation and collection are unnecessary.

Article 96 For the purpose of Paragraph 2 of Article 64 of the Civil Procedure Law, evidence considered necessary by a people's court for the hearing of a case shall include:

- (1) Evidence that points to possible damage to national interests or public interests;
- (2) Evidence that involves identity relationship;
- (3) Evidence that involves litigations prescribed by Article 55 of the Civil Procedure Law;
- (4) Evidence that points to the possibility that the parties concerned may have maliciously colluded with each other to prejudice the legitimate rights and interests of others; and
- (5) Evidence that involves procedural matters, such as adding parties concerned ex officio, suspending litigation proceedings, terminating litigation proceedings, and recusal.

With the exception of the provisions in the preceding paragraph, people's courts shall investigate and collect evidence on application by a parties concerned.

Article 97 The investigation and collection of evidence by a people's court shall be conducted jointly by two or more officers. The parties conducting the investigation, the parties being investigated and the parties recording the investigation shall affix their signatures, fingerprints or seals onto the investigation documents.

Article 98 A party concerned that intends to apply for the preservation of evidence under Paragraph 1 of Article 81 of the Civil Procedure Law may submit such an application in writing prior to the expiration of the time limit for producing evidence.

Where the preservation of evidence may cause losses to others, the competent people's court shall order the applicant to provide proper security.

Article 99 A people's court shall determine the time limit for the parties concerned to produce evidence in the pretrial preparation phase. The time limit for producing evidence may be negotiated by the parties concerned, and shall, then be approved by the people's court.

The time limit for producing evidence as determined by a people's court shall be no less than 15 days for a second-instance case under ordinary procedure, or no less than ten days for a second-instance case where the parties concerned provide new evidence.

Where a party concerned, upon expiration of the time limit for producing evidence, applies to provide evidence for refuting the evidence already provided, or applies to submit correction/supplementary materials for defects in terms of the sources, forms and other aspects of the evidence already provided, the competent people's court may determine the time limit for producing evidence again at its direction, in which case the time limit so determined is not bound by the preceding paragraph.

Article 100 A party concerned that intends to apply for an extension of the time limit for producing evidence, shall submit such an application in writing to the competent people's court prior to the expiration of the time limit for producing evidence.

Where the reasons for the application are reasonable, the people's court shall approve the application and appropriately extend the time limit for producing evidence, and notify such to the other parties concerned. The extended time limit for producing evidence shall be applicable to the other parties concerned.

Where the reasons for the application are not reasonable, the people's court shall not approve the application, and shall notify such to the applicant of the same.

Article 101 Where a party concerned provides evidence after the expiration of the time limit for producing evidence, the competent people's court shall order the party concerned to explain the reasons for the delay, and may, where necessary, require the party concerned to provide appropriate evidence for such delay.

A party concerned shall not be deemed to exceed the time limit for producing evidence if evidence is provided after the expiration of the time limit for producing evidence due to objective reasons, or if the counter-party raises no objection to evidence provided after the expiration of the time limit for producing evidence.

Article 102 A people's court shall not admit the evidence provided by a party concerned after the expiration of the time limit for producing evidence if the delay is due to willful misconduct or gross negligence of the party concerned. Nevertheless, the people's court shall admit the evidence if it is related to the basic facts of the case at hand, but shall reprimand or fine the party concerned in accordance with Article 65 or Paragraph 1 of Article 115 of the Civil Procedure Law.

A people's court shall admit the evidence provided by a party concerned after the expiration of the time limit for producing evidence if the delay is not due to willful misconduct or gross negligence of the party concerned, and the people's court shall reprimand the party concerned.

A people's court may uphold the claim by one party concerned that the opposite party shall compensate the following additional fees and expenses incurred by the former due to the

provision of evidence by the latter after the expiration of the time limit for producing evidence: transportation fees, accommodation expenses, expenses for meals, incomes lost due to loss of working hours, expenses for witnesses to testify in court and other necessary expenses.

Article 103 Evidence shall be presented in court sessions, and be cross-examined by the parties concerned. Evidence not cross-examined by the parties concerned shall not be taken as the basis for ascertaining the facts of the case at hand.

Evidence admitted by the parties concerned in the pretrial preparation phase shall be deemed as evidence that has been cross-examined after the judges give description of the admission during court sessions.

Evidence that involves State secrets, trade secrets or personal privacy, or evidence that shall be kept confidential by law shall not be cross-examined in an open manner.

Article 104 A people's court shall organize the parties concerned to cross-examine a piece of evidence by focusing on the authenticity and legitimacy of the evidence and the relevance thereof to the facts pending proof, and to explain and debate on whether the evidence has probative force and the extent of its probative force.

A piece of evidence that is able to reflect the real situations of the case at hand, related to the facts pending proof, and in compliance with the law in terms of its source and form shall be admitted as the basis for ascertaining the facts of the case.

Article 105 A people's court shall, under statutory procedures, conduct comprehensive and objective examination of evidence, and according to provisions of law, judge whether a piece of evidence has probative force and the extent of its probative force, by logical reasoning and daily life experience, and then make public the reasons for, and the results of, such judgment.

Article 106 Evidence formed or obtained by serious infringement upon the legitimate rights and interests of others, in violation of prohibitive provisions under the law or in grave breach of public order and customary practices shall not be admitted as the basis for ascertaining the facts of the case at hand.

Article 107 The facts admitted by one party during litigation proceedings out of compromise for reaching a mediation or settlement agreement may not be used as evidence against the said party in subsequent lawsuits, unless otherwise prescribed by law or agreed upon by all the parties concerned.

Article 108 If the competent people's court, through examination of the evidence provided by a party bearing the burden of proof and in light of relevant facts, is convinced that it is highly likely that the facts to be proved by such evidence have occurred, the people's court shall find that such facts do exist.

Where one party concerned provides evidence to refute the facts claimed by the party bearing the burden of proof, the competent people's court shall find that the facts pending proof do not exist if, through examination of the said evidence and in light of relevant facts, the people's court is of the opinion that the authenticity of such facts is uncertain.

The provisions otherwise prescribed by law on the standards to be reached before facts pending proof can be deemed as proved, shall prevail.

Article 109 Where a party concerned provides proofs for facts of fraud, duress or malicious collusion, or proofs for facts of an oral will or gift, the competent people's court shall find that such facts do exist as long as the proofs convince the people's court that the possibility that the facts pending proof have occurred is beyond reasonable doubt.

Article 110 Where a people's court deems it necessary, it may require a party concerned to appear in court in person to accept the querying on relevant facts of the case at hand, and may require the party to sign a written undertaking before querying him/her.

The written undertaking shall contain the contents that the party concerned shall make truthful statements that he/she is willing to be subject to punishments if false statements are made. The party concerned shall affix his/her signature or fingerprint onto the written undertaking.

Where the party bearing the burden of proof refuses to appear in court, refuses to accept querying or refuses to sign the written undertaking, and the facts pending proof lack the support of other evidence, the competent people's court shall not uphold the facts claimed by the party concerned.

Article 111 For the purpose of Article 70 of the Civil Procedure Law, the circumstances where a party has real difficulty in submitting the original of a piece of documentary evidence shall include:

- (1) Where the original of the documentary evidence is lost, extinguished or damaged;
- (2) Where the original of the documentary evidence is under the control of the opposite party who refuses to submit the same despite being so legally notified;
- (3) Where the original of the documentary evidence is under the control of others who are entitled not to submit the same;
- (4) Where it is inconvenient to submit the original of the documentary evidence due to its excessive length or volume; or
- (5) Where the party bearing the burden of proof is unable to obtain the original of the documentary evidence even after applying to the people's court for investigating and collecting the evidence or by other means.

Under any of the circumstances prescribed in the preceding paragraph, the people's court shall, by taking into account other evidence and the specific circumstances of the case at hand, review and judge whether the reproduction of the relevant piece of documentary evidence may be admitted as the basis for ascertaining the facts of the case at hand.

Article 112 Where a piece of documentary evidence is under the control of the opposite party, the party bearing the burden of proof may, prior to the expiration of the time limit for producing evidence, apply to the competent people's court in writing to request the latter to order the opposite party to submit the said evidence.

Where the reasons for the application are reasonable, the people's court shall order the opposite party to submit the piece of documentary evidence, and the expenses so incurred shall be borne by the applicant. Where the opposite party refuses to submit such evidence

without justified reason, the people's court may find that the facts contained in the documentary evidence as claimed by the applicant are true.

Article 113 The competent people's court may, in accordance with Article 111 of the Civil Procedure Law, fine or detain a party concerned who holds a piece of documentary evidence if the said party destroys the documentary evidence or commits other acts that make the documentary evidence unavailable for the purpose of impeding the use of the same by the opposite party.

Article 114 The matters recorded in the instruments prepared by State organs or other organizations with social management functions within their respective scope of duties shall be presumed to be true, unless there is sufficient evidence to the contrary. Where necessary, people's courts may require the organs or organizations that have prepared relevant instruments to verify the authenticity of such instruments.

Article 115 The evidence materials submitted by an entity to the competent people's court shall be signed or sealed by the person in charge of the entity and the persons involved in the preparation of the evidence materials, and be stamped with the seal of the entity. The people's court may investigate and verify the evidence materials produced by the entity, with the entity itself and the persons involved in the preparation of the evidence materials. Where necessary, the people's court may require such persons to testify in court.

Where the entity and the persons involved in the preparation of the evidence materials refuse to accept the investigation and verification by the people's court, or where the persons involved in the preparation of the evidence materials refuse to testify in court without justified reason, the evidence materials shall not be taken as the bases for ascertaining the facts of the case at hand.

Article 116 Audio-visual materials shall include audio recordings and video recordings.

Electronic data shall refer to information generated or stored in electronic media through e-mails, electronic data interchange, online chatting histories, blogs, micro-blogs, mobile text messages, electronic signatures, domain names, etc.

Audio recordings and video recordings stored in electronic media shall be governed by the provisions on electronic data.

Article 117 A party concerned that intends to apply for having a witness testify in court shall submit such an application prior to the expiration of the time limit for producing evidence.

Under any of the circumstances prescribed by Paragraph 1 of Article 96 herein, the competent people's court may, ex officio, notify the relevant witness to testify in court.

A witness may not testify in court without being notified by the competent people's court, unless agreed upon by both parties concerned and allowed by the people's court.

Article 118 The necessary expenses incurred for transportation, accommodation, meals, etc. by a witness prescribed by Article 74 of the Civil Procedure Law for fulfilling the obligations of testifying in court shall be calculated according to the standards on travel expenses and

allowances for staff members of government organs and public institutions. The loss of income suffered by such a witness due to the loss of working hours shall be calculated according to the national average daily wage of employees in the preceding year.

Where a people's court allows an application for having a witness testify in court, it shall notify the applicant to prepay the expenses for the witness to testify in court.

Article 119 Before a witness testifies in court, the competent people's court shall inform the witness of his/her obligations to testify truthfully and the legal consequences of perjury, and order the witness to sign a written undertaking, except where the witness is a person without civil capacity or with limited civil capacity.

The provisions herein on the signing of written undertakings by the parties concerned shall apply to the signing of written undertakings by witnesses.

Article 120 A witness who refuses to sign the written undertaking shall not be allowed to testify, and shall bear the related expenses on his/her own.

Article 121 A party concerned that intends to apply for appraisal may submit such application prior to the expiration of the time limit for producing evidence. The application shall not be approved by the competent people's court if the matters under application for appraisal are unrelated to the facts pending proof, or are of no use in proving the facts pending proof.

Where the people's court approves the appraisal application submitted by the party concerned, it shall organize the parties to determine a duly-qualified appraiser through consultation. Where consultation between the parties fails, the people's court shall designate a duly-qualified appraiser.

Where the conditions for investigation and collection of evidence ex officio are satisfied, the people's court shall entrust appraisal ex officio, and designate a duly-qualified appraiser after consulting the parties concerned.

Article 122 A party concerned may, subject to Article 79 of the Civil Procedure Law, submit an application prior to the expiration of the time limit for producing evidence to have one to two persons with expertise to appear in court to cross-examine appraisal opinions on behalf of the party concerned, or to express opinions on the professional issues involved in the facts of the case at hand.

The opinions expressed in court sessions by persons with expertise on professional issues shall be deemed as statements made by the party concerned.

Where the competent people's court approves the application by the party concerned, the related expenses shall be borne by the party making the application.

Article 123 A people's court may query the persons with expertise who appear in court. Upon permission by the people's court, a party concerned may query the persons with expertise who appear in court. The persons with expertise who appear in court upon separate applications by different parties concerned may cross-examine each other on relevant issues involved in the case at hand.

Persons with expertise shall not participate in court hearing activities other than those

involving professional issues.

Article 124 Where a people's court deems it necessary, it may inquest physical evidence or a scene ex officio or upon application by the parties concerned. The people's court shall protect the privacy and dignity of others during the inquisition.

The people's court may require appraisers to participate in the inquisition, and may, where necessary, require the appraisers to conduct appraisal during the inquisition.

Chapter 5: Time Limit and Service of Process

Article 125 Subject to Paragraph 2 of Article 82 of the Civil Procedure Law, the time limit in civil litigations that commences from a certain hour shall commence from the next hour, while the time limit that is calculated by day, month or year shall commence from the next day.

Article 126 The time limit for putting a case on file as prescribed by Article 123 of the Civil Procedure Law shall commence from the day immediately following the day when the plaintiff who is notified to make correction/supplement to the written complaint due to the lack of certain contents thereof submits the corrected/supplemented written complaint to the competent people's court. As regards a case handed down by a superior people's court to a subordinate people's court for filing, the said time limit shall commence from the day immediately following the date of receipt of the written complaint by the people's court that accepts the lawsuit.

Article 127 The period of six months prescribed by Paragraph 3 of Article 56 and Article 205 of the Civil Procedure Law, and by Article 374, Article 384, Article 401, Article 422 and Article 423 herein, as well as the period of one year prescribed by Article 223 of the Civil Procedure Law are fixed time limits which are not governed by the provisions on the suspension, interruption and extension of time limits.

Article 128 A case for retrial that is heard under first-instance or second-instance procedures shall be governed by Article 149 or Article 176 of the Civil Procedure Law in terms of the time limit for hearing. The time limit for hearing shall commence from the day immediately following the day when this case for retrial is put on file.

Article 129 Where a case is under application for retrial, the competent people's court shall complete the review of the application within three months from the date of acceptance thereof, provided that the period for announcement, the period during which the parties concerned reach settlement, etc. shall not be included in the review period. Where the review period needs to be extended under exceptional circumstances, the extension shall be subject to the approval of the president of the people's court.

Article 130 Where litigation instruments are served on legal persons or other organizations, the legal representatives of the legal persons, the main responsible person of such organizations, or the persons responsible for receiving mails of their offices, mailrooms, duty rooms, etc. shall

acknowledge the receipt of the litigation instruments with their signatures or seals. Where the said persons refuse to acknowledge the receipt of the litigation instruments with their signatures or seals, service by retention where the litigation instruments are deemed as served after being delivered to the recipients' domiciles shall apply.

For the purpose of Article 86 of the Civil Procedure Law, representatives of relevant grass-roots organizations and employers may be the staff members of the residents' committee or villagers' committee at the domicile of the party on whom relevant instruments are served, and the staff members of the employer of the party on whom relevant instruments are served.

Article 131 Where a people's court serves litigation instruments directly, it may notify the party concerned to obtain such instruments from the people's court in person. Where the party concerned arrives at the people's court, but refuses to sign the acknowledgment of receipt, the litigation instruments shall be deemed as served. Relevant judges or court clerks shall note down the situations of the service on the acknowledgment of receipt, and affix their signatures thereon.

A people's court may directly serve litigation instruments on a party concerned in places other than the domicile thereof. Where the party concerned refuses to sign the acknowledgment of receipt, the litigation instruments shall be deemed as served once the service process is recorded by photographing, video-taping or other means. Relevant judges or court clerks shall note down the situations of the service on the acknowledgment of receipt, and affix their signatures thereon.

Article 132 Where a party on whom legal instruments are to be served has an agent ad litem, the competent people's court may serve such instruments either on the said party or on the agent ad litem thereof. Where the party on whom legal instruments shall be served has appointed the agent ad litem thereof as the party responsible for receiving such instruments, the provisions on service by retention shall be applicable when the legal instruments are served on the agent ad litem.

Article 133 A mediation statement shall be served directly on the parties concerned in person, and shall not be served by way of retention, i.e. by being left at the domiciles of the parties concerned. Where a party concerned is unable to acknowledge the receipt of the mediation statement due to certain reasons, the person who is designated by the party concerned to be responsible for receiving the mediation statement may acknowledge the receipt.

Article 134 Subject to Article 88 of the Civil Procedure Law, if a people's court entrusts another people's court to serve litigation instruments on its behalf, the entrusting people's court shall issue a power of attorney, and attach thereto the litigation instruments to be served and the acknowledgment of receipt. The date of receipt signed on the acknowledgment of receipt by the party on whom the litigation instruments are served shall be the date of service.

Where a people's court entrusts another people's court to serve litigation instruments on its behalf, the people's court entrusted shall serve the litigation instruments within ten days upon receipt of the power of attorney and the litigation instruments.

Article 135 Service by electronic means may be performed via such media as fax, e-mail, mobile communications and other specific systems that enable real-time receipt.

For the purpose of Paragraph 2 of Article 87 of the Civil Procedure Law, the date on which relevant instruments reach the specific system of the party on whom the instruments are served shall be the date on which the instruments are shown as successfully sent in the corresponding system of the relevant people's court, provided that if the party on whom the instruments are served furnishes evidence to prove that the date on which the instruments reach its specific system is inconsistent with the date on which the instruments are shown as successfully sent in the corresponding system of the people's court, the date on which such instruments reach the specific system of the said party as proved by the latter shall prevail.

Article 136 A party on whom relevant instruments are to be served shall confirm his/her/its consent to service by electronic means in the written confirmation on the address for service of instruments.

Article 137 Where a party concerned has not changed the address for service of instruments in writing when lodging an appeal, applying for retrial or applying for enforcement, the address for service of instruments confirmed during first-instance proceedings may be taken as the address for service of instruments during procedures of second-instance, procedures for trial supervision or procedures for enforcement.

Article 138 When legal instruments are to be served by public announcement, announcements may be posted in the bulletin board of the relevant court and at the domicile of the party on whom the legal instruments shall be served. Alternatively, announcements may be published on newspapers, via information networks and on other media. The date of announcement shall be the date of the last announcement posted or published. Service of legal instruments by public announcement shall be conducted in the manner prescribed by relevant special requirements, if any. The legal instruments shall be deemed as served upon expiration of the announcement period.

Where a people's court serves legal instruments by posting an announcement at the domicile of the party on whom the legal instruments shall be served, it shall record the posting process by photographing, video-taping, etc.

Article 139 Reasons shall be provided when legal instruments are served by public announcement. When the duplicate of a written complaint or written appeal is served by public announcement, the key points of the complaint or appeal, the deadline for the party on whom the duplicate of the written complaint or written appeal is served to respond, and the legal consequences of the failure to respond by the prescribed deadline shall be stated. When a summons is served by public announcement, the time and venue for the party on whom the summons is served to appear in court and the legal consequences of the failure to appear in court on time shall be stated. Where a written judgment/ruling is served by public announcement, the main contents of the judgment/ruling shall be stated, and if the party on whom the written judgment/ruling is served is entitled to appeal, his/her/its right of appeal, the

time limit for lodging an appeal, and the people's court to which the appeal shall be lodged shall also be stated.

Article 140 Service of legal instruments by public announcement shall not apply to cases under summary procedures.

Article 141 When a people's court pronounces its judgment/ruling on a fixed date previously notified to the party concerned, and the party concerned refuses to acknowledge the receipt of the written judgment/ruling by signature, the judgment/ruling shall be deemed as served, and the people's court shall note down relevant situations in the transcript for pronouncing the judgment/ruling.

Chapter 6: Mediation

Article 142 Upon the acceptance of a case, a people's court may directly conduct mediation after obtaining the consent of both parties thereto, if it is of the opinion upon examination that the legal relationship involved in the case is straight-forward and the facts of the case are clear.

Article 143 Mediation shall not be conducted for cases that fall under any of the following circumstances: cases under special procedures, procedures for urging the performance or procedures for public notice for declaration of rights; cases for confirming marriage or other identity relationships; or, other cases that cannot be mediated based on their nature.

Article 144 Where a people's court, during the hearing of a civil case, finds that the parties thereto maliciously collude with each other and attempt to use settlement or mediation to infringe upon the legitimate rights and interests of others, the people's court shall handle the situations in accordance with Article 112 of the Civil Procedure Law.

Article 145 During the hearing of a civil case, the competent people's court shall conduct mediation in a voluntary and lawful manner, and shall promptly render a judgment/ruling if either party or both parties thereto firmly refuse mediation.

A people's court shall conduct mediation in the hearing of a divorce case, but shall refrain from letting mediation drag on for a long time without reaching a solution.

Article 146 During the hearing of a civil case by the competent people's court, the mediation process shall not be made public, unless public disclosure is agreed by the parties concerned. The contents of a mediation agreement shall not be made public, unless the competent people's court deems public disclosure really necessary for the purpose of protecting national interests, public interests and the legitimate rights and interests of others.

The person presiding over mediation and all mediation participants shall keep confidential the mediation process and the State secrets, trade secrets, personal privacy and other information not suitable to be disclosed that come to their knowledge during the mediation process, unless such process and information shall be disclosed for the purpose of protecting national interests,

public interests and the legitimate rights and interests of others.

Article 147 Where a party to the case at hand is unable to appear during the mediation of the case by the competent people's court, the agent entrusted thereby may participate in the mediation upon the party's special authorization, and the mediation agreement reached could be signed by the entrusted agent.

Where a party to a divorce case is genuinely unable to appear for mediation due to extraordinary circumstances, he/she shall provide written opinions unless he/she is unable to express his/her will.

Article 148 Where the parties concerned, after reaching an agreement upon settlement or mediation of their own motion, request the competent people's court to prepare a written judgment in accordance with the settlement or mediation agreement, the people's court shall not permit such.

A divorce case involving a person without civil capacity shall be litigated by his/her statutory agent. Where the statutory agent reaches an agreement with the opposite party and requests for a written judgment to be issued, the competent people's court may prepare the written judgment according to the agreement reached.

Article 149 Where a mediation statement shall come into legal effect only after being signed by the parties concerned, its effective date shall be the date on which the party concerned who is the last to receive the mediation statement acknowledges the receipt thereof by signature.

Article 150 During the mediation of a civil case, the competent people's court shall obtain the consent of a third party who is not entitled to lodge independent claims if the said third party needs to assume liabilities. Where the said third party reneges before the relevant mediation statement is served thereon, the people's court shall render a judgment/ruling on the civil case in a timely manner.

Article 151 Subject to Subparagraph (4) of Paragraph 1 of Article 98 of the Civil Procedure Law, if the parties concerned agree that a mediation agreement shall come into legal effect once it is signed or sealed, after examination and confirmation by the competent people's court, the mediation agreement shall be recorded in written transcripts or be attached to case files, and shall come into legal effect once it is signed or sealed by the parties concerned, the judges concerned, and the court clerks concerned.

Under the circumstances prescribed in the preceding paragraph, if the parties concerned request a mediation statement to be prepared, the competent people's court may, after examination and confirmation, prepare a mediation statement and deliver the same to the parties concerned. The refusal by a party concerned to receive the mediation statement shall not affect the validity of the mediation agreement reached.

Chapter 7: Preservation and Advance Enforcement

Article 152 When a people's court takes pre-litigation preservation measures or litigation

preservation measures in accordance with Article 100 or Article 101 of the Civil Procedure Law, the people's court shall issue a written notice if it intends to order an interested party or a party concerned to provide security.

An interested party that applies for pre-litigation preservation is required to provide security. An interested party that applies for pre-litigation preservation of property shall provide security equivalent to the amount under its application for preservation, and if there is any exceptional circumstance, may be handled by the competent people's court at its discretion. Where an interested party applies for pre-litigation preservation of actions, the amount of security shall be determined by the competent people's court according to the specific circumstances of the case at hand.

Where the competent people's court takes preservation measures during litigation proceedings either ex officio or upon application, it shall, depending on the specific circumstances of the case at hand, decide whether the party concerned shall provide security as well as the amount of the security.

Article 153 When taking preservation measures with regard to seasonal items, fresh items, perishable items and other items unsuitable for long-term storage, a people's court may order the party concerned to promptly dispose of such items, with the proceeds so obtained being kept by the people's court; and, where necessary, the people's court may sell such items and keep the proceeds obtained.

Article 154 When taking measures to seal up, seize or freeze assets during property preservation, a people's court shall properly keep the assets sealed up, seized or frozen. The people's court may designate the party against whom the preservation measures are taken, to be responsible for the safekeeping of the assets that are not suitable to be kept by the people's court, and may entrust others or the preservation applicant with the safekeeping of such assets if they are not suitable to be kept by the party against whom the preservation measures are taken.

Where secured assets under the control of the security interest holder are sealed up, seized or frozen, such assets shall generally be kept by the security interest holder. If such assets are kept by the competent people's court, the right of pledge or lien shall not be extinguished due to the preservation measures taken.

Article 155 Where an asset has been designated by the competent people's court to be kept by the party against whom preservation measures are taken, if the continued use of the asset has no significant impact on the value thereof, the party against whom preservation measures are taken may be allowed to continue using the asset. The assets kept by the people's court itself or by other entrusted parties or the preservation applicant shall not be used by the people's court and the other said parties.

Article 156 The methods and measures used by a people's court for property preservation shall be governed by the provisions on enforcement procedures.

Article 157 A people's courts may take property preservation measures against items

subject to mortgage, pledge or lien, and this shall not affect priority rights to receive repayment enjoyed by mortgagees, pledgees or lien holders.

Article 158 A people's court may take property preservation measures against the proceeds receivable by a debtor upon maturity, restrict the debtor from withdrawing such proceeds, and notify relevant entities to provide assistance during enforcement.

Article 159 Where the assets of the debtor of a case are insufficient to meet the request for preservation, but the debtor holds matured claims against other parties, the competent people's court may, according to the application by the creditor of the case, render a ruling that such other parties shall not repay their debts to the debtor of the case. Where such other parties require to repay the debts, the people's court shall keep the assets or amounts repaid in escrow on behalf of the debtor.

Article 160 Where a party concerned files a lawsuit to a competent people's court other than the people's court that takes pre-litigation preservation measures, the people's court that takes pre-litigation preservation measures shall hand over the formalities of the preservation measures to the people's court that accepts the lawsuit. The ruling on pre-litigation preservation shall be deemed as rendered by the people's court that accepts the hand-over.

Article 161 As regards a case of appeal lodged by a party concerned on the ground of objections to the first-instance judgment, if preservation measures must be taken before the people's court of second instance receives the submitted case due to the activities of a party to transfer, conceal, sell or damage assets, the people's court of first instance shall take preservation measures according to the application by the party concerned or ex officio. The preservation ruling rendered by the people's court of first instance shall be submitted to the people's court of second instance in a timely manner.

Article 162 Where the people's court of second instance renders a ruling to renew the preservation measures taken by the people's court of first instance or to take new preservation measures, the people's court of second instance may take measures on its own, or entrust the people's court of first instance to take the measures.

Where the people's court that re-hears a case renders a ruling to renew the original preservation measures or to take new preservation measures, the said people's court may take the measures on its own, or entrust the people's court that originally hears the case or the court of enforcement to take the measures.

Article 163 The creditor of a case may apply to the court of enforcement for taking preservation measures after the relevant legal instrument has come into effect but before enforcement procedures commence, if the failure to apply for preservation will render the binding legal instrument unenforceable or difficult to enforce due to emergencies such as the transfer of assets by the opposite party. Where the creditor fails to apply for enforcement within five days upon the expiration of the performance period specified in the legal instrument, the relevant people's court shall lift the preservation measures taken.

Article 164 Competent people's courts shall, subject to the law, take measures to seal up, seize, or freeze the security assets provided by preservation applicants or others.

Article 165 After a people's court has rendered a ruling to take preservation measures, no entity may lift the preservation measures during the period of preservation, unless such measures are lifted by the people's court that renders the preservation ruling of its own motion or are lifted by a decision of its superior people's court.

Article 166 Under any of the following circumstances, a people's court shall render a ruling to lift preservation after having rendered a ruling to take preservation measures:

- (1) Where preservation is erroneously implemented;
- (2) Where the preservation applicant withdraws its application for preservation;
- (3) Where the filing of action or the claims of the preservation applicant are dismissed by a binding judgment/ruling; or
- (4) Where there are any other circumstances under which the people's court is of the opinion that preservation shall be lifted.

Where preservation measures taken by way of registration are to be lifted, the competent people's court shall issue a notice for providing assistance during enforcement to the relevant registration authority.

Article 167 Where the party against whom property preservation measures are to be taken provides other security assets that are of equivalent value and are more convenient to enforce, the competent people's court may render a ruling to change the subject matter for preservation to the security assets provided by the said party.

Article 168 Once enforcement procedures commence, a preservation ruling that is not canceled or lifted by the relevant people's court subject to the law shall automatically be converted to the measures of seal-up, seizure or freezing during enforcement, in which case the period of such measures shall be calculated on a continuous basis, and the court of enforcement is not required to prepare a new written ruling, unless the period of seal-up, seizure or freezing expires.

Article 169 Advance enforcement prescribed by the Civil Procedure Law shall be taken by a people's court after accepting a case but before rendering a final judgment thereon. Advance enforcement shall be limited to the scope of the claims of the party concerned, and be limited to the urgent needs of the party concerned in daily life or production and operation.

Article 170 For the purpose of Subparagraph (3) of Article 106 of the Civil Procedure Law, there is an emergency:

- (1) Where infringement needs to be immediately stopped, or obstruction needs to be immediately eliminated;
- (2) Where a certain act needs to be immediately stopped;
- (3) Where insurance benefits urgently needed for resuming production or operation need to be

recovered;

(4) Where social insurance funds or social assistance funds need to be immediately returned;
or

(5) Where the failure to immediately return relevant funds will seriously affect the daily life or production and operations of right holders.

Article 171 A party concerned that has objections to the ruling on preservation or advance enforcement may apply to the people's court that renders the relevant ruling for reconsideration within five days upon receipt of the written ruling. The said people's court shall review the application for reconsideration within ten days upon the receipt thereof. Where the relevant ruling is correctly rendered, the said people's court shall dismiss the application by the party concerned; and where the relevant ruling is improper, the said people's court shall modify or cancel the original ruling.

Article 172 Where an interested party applies for reconsideration on the ground of objections to the ruling on preservation or advance enforcement, the people's court that renders the relevant ruling shall process the application in accordance with Article 108 of the Civil Procedure Law.

Article 173 After advance enforcement by a people's court, if the applicant for advance enforcement shall return the benefits obtained as a result of advance enforcement according to a legally binding judgment, Article 233 of the Civil Procedure Law shall apply.

Chapter 8: Enforcement Measures for Obstruction of Civil Litigations

Article 174 For the purpose of Article 109 of the Civil Procedure Law, defendants who are required to appear in court shall refer to defendants who bear the obligations of maintenance or family support for younger or elder family members, and defendants whose absence from court sessions will make it impossible to ascertain the circumstances of the cases at hand. A people's court may summon by force a plaintiff who refuses to appear in court without justified reason after being served with two summons, if the basic facts of the case at hand cannot be ascertained in the absence of the plaintiff.

Article 175 A bench warrant shall be issued to summon a party by force, and shall be served directly on the party. Before a party is summoned by force, the consequences of refusing to appear in court shall be explained to the party, and the party may be summoned by force to appear in court if he/she still refuses to do so after reprimand.

Article 176 Where a litigation participant or any other party commits any of the following acts, the competent people's court may deal with the situations in accordance with Article 110 of the Civil Procedure Law:

(1) Where the litigation participant or the said party engages in audio-recording, video-taping or photographing activities without permission;

(2) Where the litigation participant or the said party broadcasts live hearing activities by mobile

communication means or other means without permission; or

(3) Where the litigation participant or the said party otherwise disturbs the court order, and obstructs the proceedings of hearing activities.

Under any of the circumstances prescribed in the preceding paragraph, the people's court may temporarily seize the devices used by the litigation participant or the said party for audio-recording, video-taping, photographing or broadcasting hearing activities, and order the litigation participant or the said party to delete relevant contents. Where the litigation participant or the said party refuses to delete, the people's court may take necessary measures to compulsorily delete relevant contents.

Article 177 The decision to reprimand a party or order a party to leave the courtroom shall be made by the collegiate panel or the sole judge of the case at hand. The details of the reprimand or the violations of the law committed by the party who is ordered to leave the courtroom shall be recorded in the transcripts of court sessions.

Article 178 Where a people's court intends to take the measure of detention in accordance with Article 110 through to Article 114 of the Civil Procedure Law, the proposed detention measure shall be subject to approval by the president of the people's court, and the people's court shall make a written decision on detention, after which judicial police officers shall hand over the person to be detained to the local public security organ for custody.

Article 179 Where the person to be detained is not within the jurisdictions of the people's court that makes the detention decision, the said people's court shall send officers to the people's court at the domicile of the person to be detained to request the latter to provide assistance during enforcement, in which case the entrusted people's court shall promptly send officers to provide assistance during enforcement. Where the person detained applies for reconsideration or admits and corrects his/her wrongdoings during the period when he/she is detained, as a result of which detention needs to be lifted ahead of schedule, the entrusted people's court shall convey relevant situations or give advice to the entrusting people's court, and the latter shall make a decision upon review.

Article 180 The competent people's court shall notify the family members of a detained person within 24 hours after he/she is detained. Where notice is genuinely unable to be given by the prescribed deadline, or where the family members cannot be reached upon notification, the competent people's court shall record relevant situations in writing.

Article 181 Where a person needs to be detained immediately under emergencies such as where the person causes uproar or riot in the courtroom, uses violence, threat or other means to resist the performance of official duties, etc., a report may be made to the president of the relevant people's court for going through the formalities for approval of detention immediately after the person is detained. The president of the people's court shall lift the detention if he/she is of the opinion that the person is improperly detained.

Article 182 Where a detained person admits his/her wrongdoings and shows repentance

during the period when he/she is detained, the competent people's court may order the said person to write a statement of repentance, and lift detention ahead of schedule. Where detention is to be lifted ahead of schedule, the proposed early lift shall be reported to the president of the people's court for approval, and the people's court shall issue a written decision on early lift of detention, and hand over the same to the public security organ that takes custody of the detained person for performance.

Article 183 The measures of fines and detention prescribed by Article 110 to Article 113 of the Civil Procedure Law may be applied separately or concurrently.

Article 184 The measure of fines or detention taken against the same act that obstructs civil litigation proceedings shall not be applied continuously. Where a new act obstructing civil litigation proceedings occurs, the competent people's court may impose a new fine or take the measure of detention again.

Article 185 Where a person who is fined or detained applies for reconsideration on the ground of objections to the decision on fines or detention, the application for reconsideration shall be made within three days upon receipt of the relevant written decision. The competent superior people's court shall make a decision within five days upon receipt of the reconsideration application, and notify the relevant subordinate people's court and the parties concerned of the reconsideration results.

Article 186 Where a superior people's court, during reconsideration, is of the opinion that a certain compulsory measure is improper, it shall prepare a written decision to cancel or change the decision on detention or fines made by the relevant subordinate people's court. In the case of an emergency, the superior people's court may issue the written decision within three days after giving an oral notice.

Article 187 For the purpose of Subparagraph (5) of Paragraph 1 of Article 111 of the Civil Procedure Law, activities whereby a person uses violence, threat or other means to hinder the performance of duties by judicial staff members shall include:

- (1) Where the person causes uproar or lingers in the premises of a people's court, and refuses to follow the warnings given by the judicial staff members;
 - (2) Where the person intentionally damages or grabs the legal instruments or seal-up marks of a people's court;
 - (3) Where the person causes uproar in, or charges at, the scene where official duties are performed, and besieges or detains the persons who conduct enforcement or provide assistance during enforcement;
 - (4) Where the person damages, grabs or seizes case materials, vehicles for performance of duties, other apparatuses for performance of duties, or the official uniforms and documents of the officers who perform duties;
 - (5) Where the person uses violence, threat or other means to hinder the judicial staff members from inquiring about, sealing up, seizing, freezing, transferring, auctioning off, or selling assets;
- and

(6) Where the person otherwise uses violence, threat or other means to hinder the judicial staff members from performing duties.

Article 188 For the purpose of Subparagraph (6) of Paragraph 1 of Article 111 of the Civil Procedure Law, activities whereby a person refuses to perform a legally binding judgment or ruling rendered by a people's court shall include:

- (1) Where the person conceals, transfers, sells or destroys assets or transfers assets gratis, transacts assets at obviously unreasonable prices, waives matured creditors' rights, provides security for others free of charge, etc. after the relevant legal instrument comes into legal effect, making the people's court unable to enforce the legal instrument;
- (2) Where the person conceals, transfers, destroys or disposes of assets that have been provided as security to the people's court without the latter's permission;
- (3) Where the person engages in consumption activities in violation of the order issued by the people's court on restricting extravagant consumption;
- (4) Where the person is capable of performance, but refuses to fulfill the obligations determined in the binding legal instrument according to the enforcement notice issued by the people's court; and
- (5) Where the person is an individual who is under obligations to provide assistance during enforcement, but refuses to assist upon receipt of the notice issued by the people's court for providing assistance during enforcement.

Article 189 Where a litigation participant or any other party commits any of the following acts, the competent people's court may deal with the situations in accordance with Article 111 of the Civil Procedure Law:

- (1) Where the litigation participant or the said party files a lawsuit or participates in litigation proceedings by fraudulently using another person's identity;
- (2) Where the litigation participant or the said party is a witness who gives false testimony after signing the written undertaking, hindering the hearing of the case at hand by the people's court;
- (3) Where the litigation participant or the said party forges, conceals, destroys or refuses to submit important evidence pertaining to the capabilities of the person subject to enforcement to fulfill obligations, hindering the people's court from ascertaining the property status of the person subject to enforcement;
- (4) Where the litigation participant or the said party unfreezes, without authorization, the assets frozen by the people's court; or
- (5) Where the litigation participant or the said party tips the parties concerned off upon receipt of the written notice issued by the people's court for providing assistance during enforcement, and assists the parties concerned to transfer or conceal assets.

Article 190 For the purpose of Article 112 of the Civil Procedure Law, the legitimate rights and interests of others shall include the legitimate rights and interests of the parties not involved in the case at hand, national interests and public interests.

Where a third party files a lawsuit for revocation subject to Paragraph 3 of Article 56 of the Civil Procedure Law, if it is found upon examination that the parties to the original lawsuit have

maliciously colluded with each other to engage in fictitious litigation, the competent people's court shall deal with the situations in accordance with Article 112 of the Civil Procedure Law.

Article 191 Where an entity commits any of the acts prescribed by Article 112 or Article 113 of the Civil Procedure Law, the competent people's court shall impose fines on the entity, and may fine or detain the primary person-in-charge of the entity or its personnel subject to direct liabilities. Where criminal offenses are constituted, criminal liabilities shall be investigated legally.

Article 192 Where a relevant entity commits any of the following acts upon receipt of the written notice issued by a people's court for providing assistance during enforcement, the people's court may deal with the situations in accordance with Article 114 of the Civil Procedure Law:

- (1) Where the said entity allows the person subject to enforcement concerned to engage in extravagant consumption activities;
- (2) Where the said entity allows the person subject to enforcement concerned to leave Mainland China;
- (3) Where the said entity refuses to stop processing the formalities for the transfer of relevant licenses and certificates for property rights, the registration of ownership changes, the examination and approval of planning, etc.; or
- (4) Where the said entity delays the assistance for enforcement on the ground that it needs to request for internal instructions, go through internal examination and approval, or follow internal rules, etc.

Article 193 When a people's court imposes a fine on an individual or entity, it shall determine the appropriate amount of the fine within the limits specified in Paragraph 1 of Article 115 of the Civil Procedure Law according to the nature, circumstances and consequences of the acts committed by the individual or entity to obstruct civil litigation proceedings, the level of local economic development, the amount of the subject matter of the lawsuit at hand, and other relevant factors.

Chapter 9: Litigation Fees

Article 194 Case acceptance fee is not required to be prepaid for a case heard in accordance with Article 54 of the Civil Procedure Law, and shall instead be paid by the losing party after the closing of the said case based on the value of the subject matter.

Article 195 Where a case enters litigation proceedings upon the expiration of the relevant payment order, the creditor concerned shall make good the case acceptance fee in accordance with the Measures for the Payment of Litigation Fees.

Where a creditor files a separate lawsuit after the relevant payment order is revoked, the creditor shall pay litigation fees in accordance with the Measures for the Payment of Litigation Fees.

Article 196 Where a people's court changes the outcomes of the original judgment, ruling or mediation, it shall, at the same time, decide on the assumption of the litigation fees for the original hearing in the relevant written judgment/ruling.

Article 197 Where the subject matter of a lawsuit are securities, the value of the subject matter shall be calculated in accordance with the rules on securities trading and according to the closing prices of such securities on the last trading day immediately preceding the date of lawsuit filing by the party concerned, the market prices of such securities on the very day of lawsuit filing by the party concerned or the amount set forth in such securities.

Article 198 Where the subject matter of a lawsuit are houses, land parcels, trees, vehicles, vessels, artifacts and other particular items or intellectual property rights whose value is difficult to determine at the time of lawsuit filing, the competent people's court shall clearly explain to the plaintiff the litigation risks of claiming an excessively high or low value, and determine the value of the subject matter based on the value claimed by the plaintiff.

Article 199 Where a case heard under summary procedures is converted to being heard under ordinary procedures, the plaintiff thereto shall make good the case acceptance fee within seven days upon receipt of the notice for payment of litigation fees issued by the competent people's court.

Where the plaintiff unjustifiably fails to make payment in full and by the prescribed deadline, the lawsuit shall be deemed as being withdrawn, and the litigation fees already collected shall be refunded in half.

Article 200 Litigation fees for civil lawsuits concerning debtors in bankruptcy proceedings shall be paid in accordance with the standards applicable to property cases, with the exception of labor dispute cases.

Article 201 Where a case has both property-related claims and non-property claims, litigation fees shall be paid according to the standards applicable to property-related claims. Where there are multiple property-related claims in a case, litigation fees shall be calculated and paid on an aggregated basis. Where the claim of a case contains multiple non-property claims, litigation fees shall be paid according to the standards applicable to a single case.

Article 202 Where the plaintiff, the defendant and a third party of a case file separate appeals, they shall prepay the second-instance case acceptance fee respectively according to their own appeal requests.

Where multiple parties of the same side to a case jointly lodge an appeal, the second-instance case acceptance fee shall only be prepaid on one occasion. Where multiple parties of the same side to a case file separate appeals, such parties shall prepay the second-instance case acceptance fee respectively according to their own appeal requests.

Article 203 A party concerned that is jointly and severally liable shall share the burden of litigation fees if it is the losing party.

Article 204 As regards a case under which an application is made to realize security interest, if the competent people's court renders a ruling to auction off or sell the assets provided as security, the application fee shall be borne by the debtor or the guarantor concerned; and, if the competent people's court renders a ruling to dismiss the application, the application fee shall be borne by the applicant.

Where the applicant files a separate lawsuit, the application fee already paid thereby may be deducted from the case acceptance fee.

Article 205 Where the competent people's court takes compulsory enforcement measures after rendering a ruling to auction off or sell assets provided as security, the application fee for enforcement shall be charged according to the amount involved in enforcement.

Article 206 A people's court that decides to charge the case acceptance fee for a case at half of the applicable rate may only reduce the said fee by half once.

Article 207 After a judgment comes into effect, the competent people's court shall refund the prevailing party the litigation fees that have been prepaid but shall not be borne thereby, and such litigation fees shall be paid by the losing party to the competent people's court, unless the prevailing party voluntarily assumes such fees or agrees to receive the payment of such fees directly from the losing party.

The competent people's court may take compulsory enforcement measures if the parties concerned refuse to pay litigation fees.

Chapter 10: Ordinary Procedures of First Instance

Article 208 Upon receipt of a written civil complaint submitted by a party concerned, a people's court shall register and put the case on file if the written civil complaint is in compliance with Article 119 of the Civil Procedure Law, and does not fall under any of the circumstances specified in Article 124 thereof; and, where the people's court is unable to determine on the spot whether the conditions for filing of action are satisfied, it shall accept the materials for the filing of the lawsuit, and issue a written acknowledgment with the date of receipt indicated.

Where relevant necessary materials need to be supplemented, the people's court shall promptly inform the party concerned, and shall decide whether to put the case on file within seven days after the party concerned has supplemented all relevant materials.

The people's court shall render a ruling to dismiss the filing of action if it finds, after putting the case on file, that the conditions for filing of action are not satisfied or that the case falls under any of the circumstances specified in Article 124 of the Civil Procedure Law.

Article 209 A case may be deemed as having a definite defendant if the name, domicile and other information of the defendant as provided by the plaintiff thereto is specific and clear enough to distinguish the defendant from others.

Where the information of a defendant as listed in a written complaint is insufficient to identify

the definite defendant, the competent people's court may inform the plaintiff thereto to make correction/supplement. If the definite defendant is still unable to be determined after correction/supplement by the plaintiff, the people's court shall render a ruling on non-acceptance of the lawsuit.

Article 210 Where a plaintiff hurls abuse and makes personal attacks in the written complaint, the competent people's court shall inform the plaintiff to revise the written complaint before filing a lawsuit.

Article 211 Where a people's court has no jurisdiction over a case, it shall inform the plaintiff thereto to file the lawsuit to the competent people's court. Where the plaintiff insists on filing the lawsuit with the first-mentioned people's court, the said court shall render a ruling on non-acceptance of the case. Where a people's court finds that it has no jurisdiction over a case after putting the case on file, it shall transfer the case to the competent people's court.

Article 212 Where the plaintiff to a case for which a ruling on non-acceptance or dismissal of the filing of action has been previously rendered files a lawsuit again, the competent people's court shall accept the new lawsuit if it satisfies the conditions for filing of action and does not fall under any of the circumstances prescribed by Article 124 of the Civil Procedure Law.

Article 213 Where a plaintiff who is required to prepay the case acceptance fee fails to make prepayment, the competent people's court shall notify the plaintiff to make prepayment, and shall render a ruling to treat the case at hand as being withdrawn if the plaintiff still fails to make prepayment after being so notified or after its application for reduction or waiver of the case acceptance fee or for the deferred payment thereof is not approved.

Article 214 The competent people's court shall accept a new lawsuit filed by a plaintiff after the plaintiff has withdrawn a previous lawsuit filed based on the same claims or after the previous lawsuit is treated by the competent people's court as being withdrawn.

Where a divorce case is withdrawn by the plaintiff thereto or is treated as being withdrawn, and the plaintiff subsequently files a new divorce case within six months in the absence of any new circumstances and reasons, the new divorce case shall not be accepted by reference to Subparagraph (7) of Article 124 of the Civil Procedure Law.

Article 215 Subject to Subparagraph (2) of Article 124 of the Civil Procedure Law, where the parties concerned already have an arbitration clause in their written contract, or have reached a written arbitration agreement after disputes occur, the competent people's court shall inform the plaintiff who files a lawsuit thereto to apply for arbitration to the relevant arbitration institution, and shall render a ruling on non-acceptance of the lawsuit if the plaintiff insists on filing the lawsuit, except where the arbitration clause or arbitration agreement is not established, is invalid, has lapsed or is unenforceable due to ambiguous contents.

Article 216 Prior to the commencement of the first court session, if the defendant to a civil

case raises objections to the acceptance of the civil case on the ground of having a written arbitration agreement, the competent people's court shall conduct review.

Where any of the following circumstances is found upon review, the competent people's court shall render a ruling to dismiss the filing of the lawsuit:

(1) Where the relevant arbitration institution or a competent people's court has confirmed the validity of the arbitration agreement;

(2) Where the parties concerned have not raised any objection to the validity of the arbitration agreement prior to the commencement of the first hearing session by the relevant arbitration tribunal; or

(3) Where the arbitration agreement meets the requirements of Article 16 of the Arbitration Law, and does not fall under any of the circumstances prescribed by Article 17 thereof.

Article 217 Where the whereabouts of a person are unknown, and the spouse thereof files a lawsuit to the competent people's court to demand divorce without applying for declaring the said person as missing or dead, the competent people's court shall accept the lawsuit, and serve litigation instruments on the person whose whereabouts are unknown by way of public announcement.

Article 218 After the judgment/ruling on a case of claiming maintenance, alimony or support fees comes into legal effect, if one party thereto files a new lawsuit to request for increase or reduction of relevant fees due to new situations or new grounds, the competent people's court shall accept the lawsuit as a new case.

Article 219 The lawsuit filed by a party concerned beyond the limitation for filing of action shall be accepted by the competent people's court. If the opposite party raises defense on the ground of limitation after case acceptance, the people's court shall render a judgment to dismiss the claims of the plaintiff if it finds the defense substantiated after hearing.

Article 220 For the purpose of Article 68, Article 134 and Article 156 of the Civil Procedure Law, trade secrets shall refer to production processes, formulas, trade links, purchase and sales channels, and other technical secrets, business intelligence and information that the parties concerned are unwilling to disclose.

Article 221 Where the parties concerned file separate lawsuits against a dispute that occurs based on the same facts to the same people's court, the said people's court may combine the lawsuits in hearing.

Article 222 Where a plaintiff directly lists a third party in the written complaint, the plaintiff shall be deemed as applying to the competent people's court for adding the third party in litigation proceedings. Whether to notify the third party to participate in litigation proceedings shall be decided by the competent people's court upon review.

Article 223 Where a party concerned both raises objections on jurisdiction and issues defense with regard to the contents of the relevant written complaint during the period for

submitting the statement of defense, the competent people's court shall review the objections on jurisdiction in accordance with Paragraph 1 of Article 127 of the Civil Procedure Law. Where the party concerned issues defense or statements, or lodges a counterclaim, with regard to the substantive aspects of the case without raising objections on jurisdiction, the party concerned may be found as responding to the case in accordance with Paragraph 2 of Article 127 of the Civil Procedure Law.

Article 224 Subject to Subparagraph (4) of Article 133 of the Civil Procedure Law, a people's court may prepare for the hearing of case by organizing the exchange of evidence, holding a pretrial conference, etc. upon the expiration of the period for response.

Article 225 Depending on the specific circumstances of a case, the competent people's court may include the following aspects in a pretrial conference:

- (1) To make clear the plaintiff's claims and the defendant's defense;
- (2) To examine and handle the application made by a party concerned for adding or modifying claims, the counterclaim lodged by a party concerned, as well as the claims related to the case that are raised by a third party;
- (3) To decide to investigate and collect evidence upon the application by a party concerned, entrust appraisal, require the party concerned to provide evidence, conduct inquisition, and take evidence preservation measures;
- (4) To organize the exchange of evidence;
- (5) To summarize the focus of disputes; and
- (4) To conduct mediation.

Article 226 A people's court shall, according to the claims and the defense of the parties concerned, as well as the situations of the exchange of evidence, summarize the focus of disputes and consult the parties concerned on the summarized focus of disputes.

Article 227 Where a case is to be heard according to ordinary procedures, the competent people's court shall summon the parties concerned by summons three days prior to the commencement of court sessions. In the case of agents ad litem, witnesses, appraisers, examiners and interpreters of the case to appear in court by written notices, they shall be notified of presence in writing. Where the parties concerned or other litigation participants are in places other than the domicile of the people's court, necessary transit time shall be set aside.

Article 228 Court hearing shall focus on the facts disputed by the parties concerned, evidence, the application of law and other central issues.

Article 229 Where a party concerned, during court hearing, raises different opinions on the facts and evidence acknowledged thereby in the pretrial preparation phase, the competent people's court shall order the party concerned to explain the reasons therefor, and may order the party concerned to provide corresponding evidence where necessary. The people's court shall conduct examination in light of the litigation capacity of the party concerned, the evidence

available and the specific circumstances of the case at hand. If the reasons provided by the party concerned are substantiated, they may be included in the focus of disputes for hearing.

Article 230 A people's court may combine court investigation and court debate depending on the specific circumstances of the case at hand and after obtaining the consent of the parties concerned.

Article 231 Where a party concerned presents new evidence in court, the competent people's court shall deal with relevant situations in accordance with Paragraph 2 of Article 65 of the Civil Procedure Law and relevant provisions herein.

Article 232 Where after the acceptance of a case but before the conclusion of court debate, the plaintiff adds a new claim, the defendant lodges a counterclaim, or a third party raises a claim related to the case, the competent people's court shall conduct joint hearing if joint hearing is practicable.

Article 233 The parties to a counterclaim shall be limited to the scope of the parties to the original lawsuit.

The competent people's court shall combine the hearing of the original lawsuit and a counterclaim if the claims of the original lawsuit and the counterclaim are based on the same legal relation and serve as causes and effects to each other, or if the claims of the original lawsuit and the counterclaim are based on the same facts.

Where the counterclaim falls under the exclusive jurisdiction of another people's court, or where the counterclaim is unrelated to the facts or grounds on which the subject matter and claims of the original lawsuit are based, the people's court shall render a ruling on non-acceptance of the counterclaim, and inform the party that lodges the counterclaim to file a separate lawsuit.

Article 234 As regards a divorce case involving a person without civil capacity, the statutory agent thereof shall appear in court; and, where the statutory agent is unable to appear in court, the competent people's court shall render a judgment in accordance with the law on the basis of ascertaining relevant facts.

Article 235 Where the statutory agent of a party without civil capacity unjustifiably refuses to appear in court after being served with summons, if the said party is a plaintiff, the competent people's court shall treat the case as being withdrawn by reference to Article 143 of the Civil Procedure Law; and, if the said party is a defendant, the competent people's court shall render a default judgment by reference to Article 144 of the Civil Procedure Law. Where necessary, the people's court may summon the statutory agent to appear in court by force.

Article 236 Where a third party who is entitled to lodge independent claims unjustifiably refuses to appear in court after being served with summons by the competent people's court, or where the said third party leaves the courtroom during litigation proceedings without court permission, the competent people's court shall treat the case at hand as being withdrawn by

reference to Article 143 of the Civil Procedure Law.

Article 237 Where the plaintiff to a lawsuit applies for withdrawing the lawsuit after a third party who is entitled to lodge independent claims participates in litigation proceedings, after the competent people's court allows the plaintiff to withdraw the lawsuit, litigation proceedings shall continue where the third party who is entitled to lodge independent claims shall be the plaintiff to a separate case, and the plaintiff and defendant to the original lawsuit shall be the defendants to this separate case.

Article 238 As regards a case for which the party concerned applies for withdrawal or which may be treated as being withdrawn in accordance with the law, if the party concerned has committed violations of the law which need to be dealt with in accordance with the law, the competent people's court may decide not to approve the withdrawal of the case or not to treat the case as being withdrawn.

Where the plaintiff to a lawsuit applies for withdrawing the lawsuit upon the conclusion of court debate, the competent people's court may decide not to approve the said application if the defendant thereto objects.

Article 239 The competent people's court that allows the plaintiff to the original lawsuit to withdraw the lawsuit shall continue to hear the counterclaim, but shall approve the application, if any, made by the defendant to withdraw the counterclaim.

Article 240 The refusal of a third party who is not entitled to lodge independent claims to appear in court after being served with summons by the competent people's court, or the withdrawal of the said third party from the courtroom during litigation proceedings without court permission shall not affect the hearing of the case at hand.

Article 241 Where the defendant to a lawsuit unjustifiably refuses to appear in court after being served with summons, or leaves the courtroom during litigation proceedings without court permission, the competent people's court shall commence court hearings as scheduled or continue with court hearings, and may render a default judgment in accordance with the law after hearing the claims of the parties concerned who are present in court, based on the claims and defenses by both sides, the evidence already submitted and other litigation materials.

Article 242 Where, after the judgment on a first-instance case is pronounced, the people's court that originally hears the case finds errors in the judgment and the party concerned appeals during the appeal period, the people's court that originally hears the case may issue opinions that the original judgment is erroneous, and submit the same to the people's court of second instance which shall hear the case according to second-instance proceedings; and, if the parties concerned lodge no appeal, the errors in the judgment shall be dealt under trial supervision procedures.

Article 243 For the purpose of Article 149 of the Civil Procedure Law, the hearing period of a case shall refer to the period from the date when the case is put on file to the date when the

judgment/ruling on the case is pronounced or the mediation statement is served, excluding the period of announcement, the period for appraisal, the period during which the parties concerned reach settlement, and the period during which the objections on jurisdiction as raised by a party concerned are heard and the disputes over jurisdiction between and among people's courts are handled.

Article 244 Where a written judgment/ruling that is appealable cannot be served on both parties at the same time, the appeal period shall commence from the date when each party respectively receives the written judgment/ruling.

Article 245 For the purpose of Subparagraph (7) of Paragraph 1 of Article 154 of the Civil Procedure Law, clerical errors shall refer to writing errors or calculation errors in legal instruments, the omission or miscalculation of certain litigation fees, etc.

Article 246 When litigation proceedings resume upon the elimination of the circumstances based on which a ruling to suspend proceedings has been rendered, the original ruling is not required to be canceled, and shall cease to be effective once the competent people's court notifies or approves the parties concerned to continue the litigation proceedings.

Article 247 Where a party concerned files a new lawsuit against the matters which have already been litigated during litigation proceedings or after the judgment/ruling thereon comes into effect, repeated filing of action shall be constituted if the following conditions are satisfied: (1) Where the previous lawsuit and the subsequent lawsuit have the same parties concerned; (2) Where the previous lawsuit and the subsequent lawsuit have the same subject matter; and (3) Where the previous lawsuit and the subsequent lawsuit have the same claims, or where the claims of the subsequent lawsuit negate the substantive aspects of the judgment/ruling on the previous lawsuit.

Where the subsequent lawsuit filed by the party concerned falls under the circumstance of repeated filing of action, the competent people's court shall render a ruling on non-acceptance of the lawsuit, and, where the lawsuit has already been accepted, shall render a ruling to dismiss the filing of action, unless otherwise prescribed by laws or judicial interpretations.

Article 248 Where new facts occur after a judgment/ruling comes into legal effect, and the party concerned files a new lawsuit, the competent people's court shall accept the new lawsuit in accordance with the law.

Article 249 The transfer of the civil rights and obligations in dispute during litigation proceedings shall not affect the eligibility and status of the parties concerned as the parties to litigation. The legally binding judgment/ruling rendered by the competent people's court shall be binding on the transferees.

Where a transferee applies to participate in litigation proceedings in the capacity of a third party who is not entitled to lodge independent claims, the competent people's court may allow the application. Where a transferee applies to replace the party concerned in litigation proceedings, the competent people's court may decide whether to allow the application

depending on the specific circumstances of the case at hand, and may add the transferee as a third party who is not entitled to lodge independent claims if the application is not allowed.

Article 250 Where a people's court allows a transferee to replace the party concerned in litigation proceedings in accordance with Article 249 herein, the people's court shall render a ruling to change the party concerned.

After the party concerned is changed, litigation proceedings shall continue with the transferee as the new party concerned, and the original party concerned shall withdraw from the litigation. The litigation activities already completed by the original party concerned shall be binding on the transferee.

Article 251 Where the competent people's court renders a ruling during second-instance proceedings to revoke the first-instance judgment on a case and remand the case for retrial, if a party concerned applies for changing or adding claims, or lodges a counterclaim, or if a third party raises claims related to the case at hand, Article 140 of the Civil Procedure Law shall apply.

Article 252 Where the competent people's court renders a ruling during retrial proceedings to revoke the original judgment/ruling on a case and remand the case for retrial, if a party concerned applies for changing or adding claims, or lodges a counterclaim, the competent people's court shall allow the relevant application or the filing of the counterclaim under any of the following circumstances:

- (1) Where the people's court that originally hears the case has rendered a default judgment without summoning the party concerned in accordance with the law, which affects the exercise of litigation rights by the party concerned;
- (2) Where a new party to the lawsuit is added;
- (3) Where the subject matter of the lawsuit is extinguished or changed, which makes the original claims unachievable; or
- (4) Where the claims applied to be changed or added, or the counterclaim lodged, by the party concerned cannot be resolved under separate lawsuits.

Article 253 As regards a case whose judgment is pronounced in court, unless the parties concerned request the written judgment/ruling to be sent by post in court, the competent people's court shall inform the parties concerned or their agents ad litem of the time and venue to collect the written judgment/ruling and the legal consequences of the failure to collect the same by the prescribed deadline. The foregoing situations shall be recorded in writing.

Article 254 Citizens, legal persons or other organizations that apply for accessing a legally binding written judgment/ruling shall submit such applications to the people's court that renders the legally binding judgment/ruling. Such an application shall be made in writing, and shall contain the specific case number or the names of the parties concerned.

Article 255 A people's court shall process an application for accessing a written judgment/ruling separately under the following circumstances:

- (1) Where the written judgment/ruling has been made public via information networks, the people's court shall guide the applicant to access the same on its own;
- (2) Where the written judgment/ruling has not been made public via information networks, and the application meets relevant requirements, the people's court shall promptly provide convenient services for the applicant to access the same;
- (3) Where the written judgment/ruling has not yet come into legal effect or has lost legal effect, the people's court shall not provide access thereto, and shall notify the applicant of the same;
- (4) Where the written judgment/ruling has come into legal effect but is not rendered by the people's court, the people's court shall inform the applicant to submit the application to the people's court that renders the legally binding judgment/ruling; and
- (5) Where the application involves contents concerning State secrets, trade secrets or personal privacy, the people's court shall not allow the application, and shall inform the applicant of the same.

Chapter 11: Summary Procedures

Article 256 For the purpose of Article 157 of the Civil Procedure Law, the facts of a simple civil case shall be deemed as clear if the parties thereto make largely the same statements on the facts in dispute, and are able to provide appropriate evidence, as a result of which the facts can be ascertained without the investigation and collection of evidence by the competent people's court; the relationship of rights and obligations of a simple civil case shall be deemed as clear if both the party who shall be liable and the party who is entitled to relevant rights can be clearly distinguished; and, the disputes of a simple civil case shall be deemed as not major if the parties thereto have no difference in the nature of principles in terms of the right and wrong of the case, the assumption of liabilities and the subject matter of the case in their disputes.

Article 257 A case that falls under any of the following circumstances is not eligible for summary procedures:

- (1) Where the whereabouts of the defendant are unknown when the case is filed;
- (2) Where the case is remanded for retrial;
- (3) Where one side to the case has a large number of parties;
- (4) Where trial supervision procedures are applicable to the case;
- (5) Where the case involves national interests or public interests;
- (6) Where the case is a lawsuit filed by a third party to change or revoke a binding judgment, ruling or mediation statement; or
- (7) Where the case is otherwise unsuitable for summary procedures.

Article 258 As regards a case heard according to summary procedures, if the parties concerned agree to the continued application of summary procedures after the expiration of the hearing period, the hearing period of the case may be extended upon approval of the president of the competent people's court, provided that the extended hearing period may not exceed six months in total.

Where the competent people's court finds that the case is complicated and needs to be

converted to be heard under ordinary procedures, it shall render a ruling prior to the expiration of the hearing period, and notify both parties concerned in writing of the members of the collegiate panel and relevant matters.

Where a case is converted to be heard under ordinary procedures, its hearing period shall commence from the date when the case is put on file by the competent people's court.

Article 259 Both parties to a case may apply to the competent people's court in terms of the way by which court sessions are convened, in which case the people's court shall decide on whether to allow such applications. Upon consent by both parties to a case, court sessions may be convened by using audio-visual transmission technology and by other means.

Article 260 A case that is already being heard according to ordinary procedures shall not be converted to be heard under summary procedures after the commencement of court sessions.

Article 261 Where a case is heard under summary procedures, the competent people's court may summon both parties concerned, notify witnesses and serve litigation instruments other than written judgments/rulings by oral message, phone call, mobile phone short text message, fax, e-mail and other simple and convenient means.

The competent people's court shall not render a default judgment if the notice on the opening of court sessions which is served by simple and convenient means is not confirmed as received by the parties concerned or cannot be proved as received by the parties concerned by other evidence.

Where a case is heard under summary procedures, the relevant judge shall be the sole judge for hearing and rendering judgments, while the court clerk shall be responsible for recording.

Article 262 The written judgments/rulings and mediation statements prepared by a people's tribunal shall be affixed with the seal of the relevant primary-level people's court. The seal of the people's tribunal shall not be used to replace the seal of the relevant primary-level people's court.

Article 263 Where a case is heard under summary procedures, its case files shall include the following materials:

- (1) The written complaint or the transcripts of the oral complaint;
- (2) The bill of defense or the transcripts of the oral response;
- (3) Identity proofs of the parties concerned;
- (4) The power of attorney for entrusting agents to participate in litigation proceedings or the transcripts of the oral power of attorney;
- (5) Evidence;
- (4) Transcripts for querying the parties concerned
- (7) Transcripts of hearing (including mediation);
- (8) The written judgment, written ruling, mediation statement or mediation agreement;
- (9) Transcripts for the service of legal instruments and the pronouncement of judgment;
- (10) Enforcement;
- (11) Receipts of litigation fees; and

(12) Where the case is heard in accordance with Article 162 of the Civil Procedure Law, the written notices given on the application of relevant procedures.

Article 264 The agreement, if any, reached by both parties to a case for adopting summary procedures in accordance with Paragraph 2 of Article 157 of the Civil Procedure Law shall be raised before the commencement of court sessions. If such an agreement is raised orally, relevant information shall be recorded in transcripts which shall be confirmed by both parties with their signatures or fingerprints.

Where both parties to a case prescribed by Article 257 herein agree to adopt summary procedures, the competent people's court shall not approve the agreement.

Article 265 Where a plaintiff files a lawsuit orally, the competent people's court shall accurately record the names, gender, employers, domiciles, contact details and other basic information of the parties concerned, the claims raised, the facts and grounds provided, etc. in transcripts, and the plaintiff shall affix his/her/its signature or fingerprint onto such transcripts after finding no error upon verification. The competent people's court shall issue receipts for the evidence materials submitted by the parties concerned.

Article 266 The time limit for producing evidence for a case under summary procedures shall be determined by the competent people's court. Alternatively, the said period may be determined by the parties concerned upon reaching consensus after consultation and upon approval by the competent people's court, but shall not exceed 15 days. Where the defendant to the said case requests to issue bill of defence, the competent people's court may determine a reasonable period of response after obtaining the consent of the defendant.

The competent people's court shall inform both parties to the case of the time limit for producing evidence and the dates of court sessions, and explain to the parties concerned the legal consequences of producing evidence beyond the prescribed deadline and refusing to appear in court. Both parties shall affix their signatures or fingerprints onto the acknowledgments of receipt for the transcripts and summons of court sessions.

Where both parties have indicated that neither the time limit for producing evidence nor the period of response is needed, the competent people's court may forthwith convene a court session to hear the case or determine the dates of court sessions.

Article 267 Where a case is heard under summary procedures, the competent people's court may make pretrial preparations in a simple and convenient manner.

Article 268 Where a party concerned has not entrusted any lawyer or grass-roots legal service worker as an agent in litigation proceedings, the competent people's court may, during court hearing, provide the party concerned with necessary explanations or descriptions on relevant information concerning recusal, self-admission, burden of proof, etc., and appropriately remind the party concerned to correctly exercise litigation rights and fulfill litigation obligations during court hearing.

Article 269 Where a party concerned raises objections on the application of summary

procedures to a case, the competent people's court shall render a ruling to convert the case to be heard under ordinary procedures if the objections are found substantiated upon review; and, if the objections are not substantiated, the competent people's court shall verbally inform the party concerned, and record relevant information in transcripts.

Where the case is converted to be heard under ordinary procedures, the competent people's court shall notify both parties in writing of the members of the collegiate panel and relevant matters.

Evidence is not required to be produced and cross-examined again with regard to the facts already confirmed by both parties before the case is converted to be heard according to ordinary procedures.

Article 270 Where a case heard under summary procedures falls under any of the following circumstances, the competent people's court may, in preparing the written judgment, written ruling or mediation statement, appropriately simplify the sections of the facts ascertained or the grounds for the judgment/ruling:

- (1) Where the parties concerned reach a mediation agreement, and a civil mediation statement needs to be prepared;
- (2) Where one party concerned expressly recognizes all or part of the claims of the opposite party;
- (3) Where one party concerned requests the people's court to simplify relevant contents in the written judgment/ruling, and the people's court is of the opinion that the request is justified, applicable if the case involves trade secrets or personal privacy; or
- (4) Where both parties concerned agree that the sections of the facts ascertained or the grounds for the judgment/ruling may be simplified.

Chapter 12: Small Claim Litigation in Summary Procedures

Article 271 When hearing a small-claim lawsuit, the competent people's court shall apply Article 162 of the Civil Procedure Law, and render a final and binding judgment upon first instance.

Article 272 For the purpose of Article 162 of the Civil Procedure Law, annual average wage of employed persons of a province, autonomous region or municipality directly under the Central Government in the preceding year shall refer to the published annual average wage of employed persons of the province, autonomous region or municipality directly under the Central Government in the preceding year. Prior to the annual average wage of employed persons in the preceding year is published, the annual average wage of employed persons in the most recent year that has been published shall be adopted.

Article 273 Maritime courts may hear small-claim maritime or maritime commercial lawsuits. The value of the subject matter of such a lawsuit shall be not more than 30% of last year's annual average wage of employed persons in the province, autonomous region or municipality directly under the Central Government at the domicile of the maritime court or a dispatched tribunal thereof that actually accepts the lawsuit.

Article 274 A case involving monetary payment shall be heard according to the procedures applicable to small-claim lawsuits if it falls under any of the following circumstances:

- (1) Where the said case involves disputes over a purchase and sale contract, loan contract or leasing contract;
- (2) Where the said case involves disputes over maintenance, alimony or support fees, in which the identity relationship is clear, and the disputes are only over the amount, time or ways of payment;
- (3) Where the said case involves disputes over compensation for traffic accidents and other personal injuries, in which the liabilities are clear and the disputes are only over the amount, time or ways of payment;
- (4) Where the said case involves disputes over a contract on the supply and use of water, electricity, gas or heating;
- (5) Where the said case involves bank card disputes;
- (6) Where the said case involves labor contract disputes, in which the labor relationship is clear and the disputes are only over the amount, time or ways of payment of labor remunerations, medical expenses for work-related injuries, economic compensation or damages;
- (7) Where the said case involves disputes of a labor service contract, in which the labor service relationship is clear and the disputes are only over the amount, time or ways of payment of labor service remunerations;
- (8) Where the said case involves disputes over property management, telecommunications or other service contracts; or
- (9) Where the said case involves other monetary payment disputes.

Article 275 A case that falls under any of the following circumstances is not eligible to be heard according to the procedures applicable to small-claim lawsuits:

- (1) Where the case involves disputes over the affirmation of personal relationship or property rights;
- (2) Where the case involves foreign-related civil disputes;
- (3) Where the case involves intellectual property disputes;
- (4) Where the case involves disputes that need to be assessed or appraised, or involves objections on pre-litigation assessment or appraisal results; or
- (5) Where the case involves other disputes that are not suitable to be resolved under the procedures where a final and binding judgment shall be rendered upon first instance.

Article 276 Upon acceptance of a small-claim lawsuit, a people's court shall inform the parties concerned of the hearing organization and hearing period of such cases, the standards for the payment of litigation fees for such cases, the fact that final and binding judgments on such cases shall be rendered upon first instance and other relevant matters.

Article 277 The time limit for producing evidence for a small-claim lawsuit shall be determined by the competent people's court. Alternatively, the said period may be determined by the parties concerned upon reaching consensus after consultation and upon approval by

the competent people's court, but shall generally not exceed seven days.

Where the defendant to the said lawsuit requests to issue bill of defense, the competent people's court may determine a reasonable period of response on the basis of obtaining the consent of the defendant, subject to a maximum of 15 days.

Where the parties concerned state that neither the time limit for producing evidence nor the period of response is needed after appearing in court, the competent people's court may forthwith convene a court session to hear the small-claim lawsuit.

Article 278 Where a party concerned raises objections on the jurisdiction of a small-claim lawsuit, the competent people's court shall render a ruling thereon. Such ruling shall come into effect once rendered.

Article 279 After accepting a small-claim lawsuit, if the relevant people's court finds that the said lawsuit fails to satisfy the conditions for filing of action prescribed by Article 119 of the Civil Procedure Law, it shall render a ruling to dismiss the filing of action. Such ruling shall come into effect once rendered.

Article 280 Where a case no longer satisfies the conditions for small-claim lawsuits after a party concerned applies for adding or modifying claims, lodges a counterclaim, adds a party to the case, etc., the case shall be heard in accordance with other provisions as to summary procedures.

Where the case prescribed in the preceding paragraph shall be heard under ordinary procedures, the competent people's court shall render a ruling to convert the case to be heard under ordinary procedures.

Evidence is not required to be produced and cross-examined again with regard to the facts already confirmed by both parties before the case is heard in accordance with other provisions as to summary procedures or is heard under ordinary procedures.

Article 281 A party concerned shall raise objections, if any, on the case at hand being heard as a small-claim lawsuit to the competent people's court prior to the commencement of court sessions. Where the objections are substantiated upon examination by the people's court, the case at hand shall be heard in accordance with other provisions as to summary procedures; and, where the objections are not substantiated, the people's court shall inform the party concerned, and record relevant information in transcripts.

Article 282 The written judgment/ruling on a small-claim lawsuit may be simplified to mainly record the profiles and claims of the parties concerned, the main body of the judgment/ruling, etc.

Article 283 In the absence of applicable provisions herein, people's courts shall apply other provisions as to summary procedures when hearing small-claim lawsuits.

Chapter 13: Litigations for Public Interests

Article 284 Where the authorities and relevant organizations prescribed by the Environmental Protection Law, the Law on the Protection of Consumer Rights and Interests and other applicable laws file public interest lawsuits in accordance with Article 55 of the Civil Procedure Law against acts that pollute the environment, infringe upon the legitimate rights and interests of a large group of consumers, or damage public interests, competent people's courts shall accept such lawsuits as long as they satisfy the following conditions:

- (1) There are definite defendants;
- (2) There are detailed claims;
- (3) There is preliminary evidence that public interests are damaged; and
- (4) Such lawsuits are within the scope of civil lawsuits acceptable by people's courts, and fall under the jurisdictions of the lawsuit-accepting people's courts.

Article 285 Unless otherwise prescribed by laws or judicial interpretations, a public interest lawsuit shall be governed by the intermediate people's court in the place where the infringing act takes place or at the domicile of the defendant.

A public interest lawsuit filed due to marine environmental pollution shall be governed by the maritime court at the place where the pollution occurs, the place where the damage takes place, or the place where pollution prevention measures are taken.

Where separate public interest lawsuits are filed to two or more people's courts against the same infringing act, the people's court that is the first to put such lawsuits on file shall have jurisdiction. Where necessary, jurisdiction shall be designated by the common superior people's court of all the people's courts to which such lawsuits are filed.

Article 286 A people's court shall inform relevant competent administrative departments in writing within ten days upon the acceptance of a public interest lawsuit.

Article 287 After a people's court has accepted a public interest lawsuit, other organs and relevant organizations that are eligible to bring lawsuits in accordance with the law may apply to the people's court for participating in litigation proceedings prior to the commencement of court sessions. Where their applications for participating in litigation proceedings are allowed, the people's court shall list such organs and organizations as co-plaintiffs.

Article 288 The acceptance of a public interest lawsuit by the competent people's court shall not affect a victim of the same infringing act from filing a lawsuit in accordance with Article 119 of the Civil Procedure Law.

Article 289 In a public interest lawsuit, the parties thereto may reach settlement, and the competent people's court may conduct mediation.

After the parties to a public interest lawsuit reach a settlement or mediation agreement, the competent people's court shall announce the settlement or mediation agreement. The announcement period shall not be less than 30 days.

Upon expiration of the announcement period, the competent people's court shall issue a

mediation statement if it finds upon review that the settlement or mediation agreement is not against public interests; and, where the settlement or mediation agreement is against public interests, the competent people's court shall not issue any mediation statement, and shall continue to hear the lawsuit and render a judgment/ruling in accordance with the law.

Article 290 Where the plaintiff to a public interest lawsuit applies for withdrawing the said lawsuit upon the conclusion of court debate, the competent people's court shall not allow the application.

Article 291 After the judgment/ruling on a public interest lawsuit comes into legal effect, if other organs and relevant organizations that are eligible as plaintiffs in accordance with the law file separate public interest lawsuits against the same infringing act, relevant people's courts shall render rulings on non-acceptance of such lawsuits, unless otherwise prescribed by laws or judicial interpretations.

Chapter 14: Litigations by Third Parties for Cancellation

Article 292 A third party that intends to file a lawsuit to revoke a legally binding judgment, ruling or mediation statement shall file such a lawsuit to the people's court that renders the binding judgment, ruling or mediation statement within six months from the date when it knows or should know that its civil rights and interests are being infringed upon, and provide evidence materials in support of any of the following circumstances:

- (1) Where the third party fails to participate in litigation proceedings due to reasons not attributable thereto;
- (2) Where all or part of the contents of the legally binding judgment, ruling or mediation statement are erroneous; or
- (3) Where the contents of the legally binding judgment, ruling or mediation statement are erroneous and infringe upon the third party's civil rights and interests.

Article 293 The competent people's court shall send the written complaint and evidence materials submitted by a third party to the opposite party within five days upon the receipt thereof, and the opposite party may provide written opinions within ten days upon receipt of the written complaint.

The competent people's court shall examine the written complaint and evidence materials submitted by the third party and the written opinions of the opposite party. Where necessary, the competent people's court queries both parties.

Where the conditions for filing of action are satisfied upon review, the competent people's court shall put the case on file within 30 days as of receipt of the written complaint. Where the conditions for filing of action are not satisfied, the competent people's court shall render a ruling on non-acceptance of the case within 30 days as of receipt of the written complaint.

Article 294 A people's court shall form a collegiate panel and convene court sessions to hear a case filed by a third party to revoke a binding judgment, ruling or mediation statement.

Article 295 For the purpose of Paragraph 3 of Article 56 of the Civil Procedure Law, the failure of a party to participate in litigation due to reasons not attributable thereto shall refer to the circumstances where the party is not a party concerned as listed in a binding judgment, ruling or mediation statement, and the party is not at fault or not at obvious fault, including:

- (1) Where the party did not know the relevant lawsuit, and therefore did not participate in litigation;
- (2) Where the party did not participate in litigation because its application for participation was not approved;
- (3) Where the party knew the relevant lawsuit, and was unable to participate in litigation due to objective reasons; or
- (4) Where the party did not participate in litigation due to other reasons not attributable thereto.

Article 296 For the purpose of Paragraph 3 of Article 56 of the Civil Procedure Law, part or all of the contents of a judgment, ruling or mediation statement shall refer to the main body of the judgment or ruling, or the results in the mediation statement that deal with the civil rights and obligations of the parties concerned.

Article 297 A people's court shall not accept a lawsuit filed by a third party to revoke a binding judgment, ruling or mediation statement under any of the following circumstances:

- (1) Where the case in question is handled according to special procedures, procedures for urging performance, procedures for public notice of declaration of rights, bankruptcy procedures or other non-litigation procedures;
- (2) Where the third party intends to revoke contents concerning identity relationship in a judgment, ruling or mediation statement that invalidates, cancels or dissolves a marriage, , or etc.;
- (3) Where an unregistered right holder prescribed by Article 54 of the Civil Procedure Law files a lawsuit to revoke a binding judgment/ruling on a case litigated by representatives; or
- (4) Where a victim of the acts detrimental to public interests as prescribed by Article 55 of the Civil Procedure Law files a lawsuit to revoke a binding judgment/ruling on a public interest lawsuit.

Article 298 Where a third party files a lawsuit to revoke a binding judgment, ruling or mediation statement, the competent people's court shall list the third party as the plaintiff, and the parties to the binding judgment, ruling or mediation statement as the defendants, provided that a third party who is not entitled to lodge independent claims as listed in the binding judgment, ruling or mediation statement shall still be listed as a third party if it is not required to assume liabilities thereunder.

Article 299 Once a lawsuit filed by a third party to revoke a binding judgment, ruling or mediation statement is accepted, if the plaintiff thereto provides corresponding guarantee to claim for the suspension of enforcement, the competent people's court may approve the claim.

Article 300 A people's court shall, upon trial, deal with a claim by a third party to revoke all or part of the contents of a legally binding judgment, ruling or mediation statement separately

according to the following circumstances:

(1) Where the said claim is tenable, and all or part of the claims for affirming the third party's civil rights are substantiated, the people's court shall change the erroneous contents of the original judgment, ruling or mediation statement;

(2) Where the said claim is tenable, but the claims for affirming all or part of the third party's civil rights are not substantiated, or the third party has not made a claim for affirming its civil rights, the people's court shall revoke the erroneous contents of the original judgment, ruling or mediation statement; and

(3) Where the said claim is not tenable, the people's court shall dismiss the same.

The party concerned who has objections may appeal against the judgment/ruling rendered subject to the preceding paragraph.

The contents of the original judgment, ruling or mediation statement that have not been changed or revoked shall remain valid.

Article 301 During the trial of a lawsuit filed by a third party to revoke a binding judgment, ruling or mediation statement, if a people's court renders a ruling to re-try the binding judgment, ruling or mediation statement, the people's court that accepts the said lawsuit filed by the third party shall render a ruling to include the claims submitted by the third party in retrial procedures. Nevertheless, if there is evidence that the parties to the original lawsuit have maliciously colluded with each other to damage the legitimate rights and interests of the third party, the people's court shall first hear the lawsuit filed by the third party to revoke the binding judgment, ruling or mediation statement, and render a ruling to suspend the retrial proceedings.

Article 302 Where the claims of a third party that has filed a lawsuit to revoke a binding judgment, ruling or mediation statement are included in retrial procedures for hearing, the competent people's court shall deal with the lawsuit in accordance with the following circumstances:

(1) Where the lawsuit is heard according to first-instance procedures, the people's court shall hear the claims of the third party at the same time, and the judgment so rendered is appealable; and

(2) Where the lawsuit is heard according to second-instance procedures, the people's court may conduct mediation; where no agreement is reached upon mediation, the people's court shall render a ruling to revoke the original judgment, ruling or mediation statement, and remand the case to the court of first instance for trial anew during which the third party shall be listed.

Article 303 If the enforcement of a binding judgment, ruling or mediation statement is not suspended after a third party has filed a lawsuit to revoke the same, the court of enforcement shall review the objections to enforcement as raised by the third party in accordance with Article 227 of the Civil Procedure Law. Where the third party objects to the ruling that dismisses its objections to enforcement, and applies for the retrial of the original judgment, ruling or mediation statement, the people's court shall not accept such retrial application.

Where a party not involved in the present case objects to the ruling rendered by a people's

court that dismisses its objections to enforcement, and is of the opinion that the original judgment, ruling or mediation statement is erroneous and infringes upon its legitimate rights and interests, the said party shall apply for retrial in accordance with Article 227 of the Civil Procedure Law. If the said party files a lawsuit that falls within the scope of lawsuits filed by third parties to revoke binding judgments, rulings or mediation statements, the lawsuit shall not be accepted by a people's court.

Chapter 15: Litigations of Objections to Enforcement

Article 304 Subject to Article 227 of the Civil Procedure Law, if a party not involved in the present case or a party to the present case objects to a ruling on the objections to enforcement, and files a lawsuit of objections to enforcement to a people's court within 15 days upon being served with the said ruling, the lawsuit so filed shall be governed by the court of enforcement.

Article 305 Where a party not involved in the present case files a lawsuit of objections to enforcement, the following conditions shall also be satisfied in addition to the requirements of Article 119 of the Civil Procedure Law:

- (1) The application by the said party for objections to enforcement has been rejected by a people's court in a ruling;
- (2) The said party has clear claims to exclude the subject matter subject to enforcement from being enforced, and the claims are not related to the original judgment/ruling; and
- (3) The said party files the lawsuit within 15 days upon being served with the ruling on the objections to enforcement.

The people's court shall decide whether to put the lawsuit on file within 15 days upon receipt of the written complaint.

Article 306 Where an applicant for enforcement files a lawsuit of objections to enforcement, the following conditions shall also be satisfied in addition to the requirements of Article 119 of the Civil Procedure Law:

- (1) Enforcement has been suspended by a ruling of the competent people's court after a party not involved in the present case has applied for objections to enforcement;
- (2) The applicant for enforcement has clear claims to continue the enforcement of the subject matter subject to enforcement, and the claims are not related to the original judgment/ruling; and
- (3) The said party files the lawsuit within 15 days upon being served with the ruling on the objections to enforcement.

The people's court shall decide whether to put the lawsuit on file within 15 days upon receipt of the written complaint.

Article 307 Where a party not involved in the present case files a lawsuit of objections to enforcement, the applicant for enforcement shall be the defendant. Where the person subject to enforcement opposes to the objections to enforcement raised by the party not involved in the present case, the person subject to enforcement shall be the co-defendant; and, where the person subject to enforcement does not oppose to the objections to enforcement raised by the

party not involved in the present case, the person subject to enforcement may be listed as a third party.

Article 308 Where an applicant for enforcement files a lawsuit of objections to enforcement, the party not involved in the present case shall be the defendant. Where the person subject to enforcement objects to the claims of the applicant for enforcement, the person subject to enforcement and the party not involved in the present case shall be co-defendants; and, where the person subject to enforcement does not object to the claims of the applicant for enforcement, the person subject to enforcement may be listed as a third party.

Article 309 Where an applicant for enforcement does not file a lawsuit of objections to enforcement with regard to a ruling that suspends the enforcement of the present case, and the relevant person subject to enforcement files a lawsuit of objections to enforcement, the competent people's court shall inform the person subject to enforcement to file a separate lawsuit.

Article 310 A people's court shall hear a lawsuit of objections to enforcement according to ordinary procedures.

Article 311 Where a party not involved in the present case or an applicant for enforcement files a lawsuit of objections to enforcement, the party not involved in the present case shall bear the burden of proof that it is entitled to civil rights and interests concerning the subject matter subject to enforcement that are sufficient to exclude the subject matter from being enforced.

Article 312 Upon trial, the competent people's court shall handle a lawsuit of the objections to enforcement filed by a party not involved in the present case separately according to the following circumstances:

(1) Where the party not involved in the present case is entitled to civil rights and interests concerning the subject matter subject to enforcement that are sufficient to exclude the subject matter from being enforced, the competent people's court shall render a judgment that the subject matter shall not be enforced; and

(2) Where the party not involved in the present case does not have civil rights and interests concerning the subject matter subject to enforcement that are sufficient to exclude the subject matter from being enforced, the competent people's court shall render a judgment to dismiss the claims filed by the said party.

Where the party not involved in the present case also submits claims to the people's court for affirming its rights, the people's court may render a judgment/ruling thereon at the same time of rendering a judgment under any of the foregoing circumstances.

Article 313 Upon trial, the competent people's court shall handle a lawsuit of the objections to enforcement filed by an applicant for enforcement separately according to the following circumstances:

(1) Where the relevant party not involved in the present case does not have civil rights and

interests concerning the subject matter subject to enforcement that are sufficient to exclude the subject matter from being enforced, the competent people's court shall render a judgment to approve the enforcement of the subject matter; and

(2) Where the relevant party not involved in the present case is entitled to civil rights and interests concerning the subject matter subject to enforcement that are sufficient to exclude the subject matter from being enforced, the competent people's court shall render a judgment to dismiss the claims of the applicant for enforcement.

Article 314 Where the competent people's court renders a judgment on a lawsuit of the objections to enforcement filed by a party not involved in the present case that the subject matter subject to enforcement shall not be enforced, the previous ruling on objections to enforcement shall become invalid.

Where the competent people's court renders a judgment on a lawsuit of the objections to enforcement filed by an applicant for enforcement that the subject matter subject to enforcement shall be enforced, the previous ruling on objections to enforcement shall become invalid, and the court of enforcement may resume enforcement upon application by the applicant for enforcement or ex officio.

Article 315 During the period when a lawsuit of the objections to enforcement filed by a party not involved in the present case is being heard, the competent people's court shall not dispose of the subject matter subject to enforcement. Where the relevant applicant for enforcement requests the people's court to continue the enforcement and provides corresponding guarantee, the people's court may approve the request.

Where the person subject to enforcement of a case maliciously colludes with a party not involved in the case to hinder enforcement proceedings by raising objections to enforcement or filing a lawsuit of objections to enforcement, the competent people's court shall handle relevant situations in accordance with Article 113 of the Civil Procedure Law. The relevant applicant for enforcement whose rights and interests are damaged as a result of such hindrance may file a lawsuit to demand compensation from the person subject to enforcement or the party not involved in the present case.

Article 316 After the competent people's court has rendered a ruling to suspend the enforcement of the subject matter subject to enforcement, if the relevant applicant for enforcement fails to file a lawsuit of objections to enforcement within the time limit prescribed by law, the competent people's court shall lift the enforcement measures taken against the said subject matter within seven days upon the expiration of the time limit for filing of action.

Chapter 16: Procedures of Second Instance

Article 317 Where both parties to a case and a third party of the case file appeals, they shall all be listed as appellants. The competent people's court may determine the litigation status of the parties concerned during second-instance proceedings ex officio.

Article 318 For the purpose of Article 166 and Article 167 of the Civil Procedure Law, the

opposite parties shall include the appellee and other parties to the original proceedings.

Article 319 Where one person or certain persons among the co-litigants of a mandatory joint litigation appeal, the appeal shall be handled separately according to the following circumstances:

(1) Where the appeal is only against the sharing of rights and obligations with the opposite parties, and is not related to the interests of other co-litigants, the opposite parties shall be the appellees, and the parties of the same side that have not appealed shall be listed according to their respective litigation status in the original proceedings;

(2) Where the appeal is only against the sharing of the rights and obligations between and among the co-litigants, and is not related to the interests of the opposite parties, the parties of the same side that have not appealed shall be the appellees, and the opposite parties shall be listed according to their respective litigation status in the original proceedings; and

(3) Where the appeal is against the sharing of rights and obligations between both sides and between and among the co-litigants, all other parties that have not appealed shall be the appellees.

Article 320 Where a party concerned states orally that it will appeal when the first-instance judgment is pronounced or when the first-instance written judgment/ruling is served, the competent people's court shall inform the party that it shall submit a written appeal within the statutory appeal period. The party concerned shall be deemed as having not appealed if no written appeal is submitted within the statutory appeal period. Where the party concerned has submitted a written appeal, but fails to pay the appeal fees within the specified time limit, the appeal shall be treated as being voluntarily withdrawn.

Article 321 The statutory agent of a person without civil capacity or with limited civil capacity may file an appeal on behalf of the said person.

Article 322 Where a party to an appeal deceases or is terminated, the competent people's court shall notify the party that succeeds to its rights and obligations to participate in litigation subject to law.

Where litigation proceedings need to be terminated, Article 151 of the Civil Procedure Law shall apply.

Article 323 The people's court of second instance shall hear an appeal by focusing on the claims of appeal submitted by the parties concerned.

The people's court of second instance shall not hear an appeal if the parties concerned have not raised any claim, unless the first-instance judgment is in violation of the prohibitions under the law, or damages national interests, public interests or the legitimate rights and interests of others.

Article 324 Where court sessions are to be convened for the hearing of an appeal, the people's court of second instance may make pre-hearing preparations in accordance with Subparagraph (4) of Article 133 of the Civil Procedure Law.

Article 325 Under any of the following circumstances, the threshold of grave violation of statutory procedures as prescribed by Subparagraph (4) of Paragraph 1 of Article 170 of the Civil Procedure Law may be deemed as being reached:

- (1) Where the composition of the judicial organization is unlawful;
- (2) Where a judicial officer who shall subject to recusal has not been recused;
- (3) Where a person without litigation capacity fails to have his/her statutory agent to participate in litigation on his/her behalf; or
- (4) Where the parties concerned are deprived of their rights to debate in violation of law.

Article 326 Where the people's court that originally hears a case fails to hear or render a judgment on the claims already raised by a party concerned during first-instance proceedings, the people's court of second instance may conduct mediation of such claims if the parties voluntarily agree to mediation, and shall remand the case for retrial if mediation fails.

Article 327 Where a party concerned who must participate in litigation proceedings or a third party who is entitled to lodge independent claims did not participate in the first-instance proceedings, the people's court of second instance may conduct mediation of the present case if the parties concerned voluntarily agree to mediation, and shall remand the case for retrial if mediation fails.

Article 328 During second-instance proceedings, if the plaintiff to the original proceedings adds an independent claim or the defendant to the original proceedings lodges a counterclaim, the people's court of second instance may conduct mediation of the newly-added claim or the counterclaim if the parties concerned voluntarily agree to mediation, and shall inform the relevant parties to file a separate lawsuit if mediation fails.

Where both parties agree that both the newly-added claim or counterclaim and the original case shall be heard by the people's court of second instance, the people's court of second instance may render a judgment/ruling thereon at the same time.

Article 329 After an appeal is lodged against a divorce case that is not allowed by the first-instance judgment, if the people's court of second instance is of the opinion that a divorce judgment shall be rendered, it may conduct mediation of the divorce case together with the issues of child-raising and property if both parties voluntarily agree to mediation, and shall remand the divorce case for retrial if mediation fails.

Where both parties agree that both the newly-added claim or counterclaim and the original case shall be heard by the people's court of second instance, the people's court of second instance may render a judgment/ruling thereon at the same time.

Article 330 Where a people's court is of the opinion that a case shall not be accepted by any people's court subject to law when hearing the case according to second-instance procedures, the people's court of second instance may directly render a ruling to revoke the original judgment/ruling, and dismiss the filing of action.

Article 331 Where a people's court, during the hearing of a case according to second-instance procedures, is of the opinion that the acceptance of the case by the people's court of first instance is in violation of the provisions on exclusive jurisdiction, the people's court of second instance shall render a ruling to revoke the original judgment/ruling, and refer the case to a competent people's court.

Article 332 Where the people's court of second instance of a case finds upon investigation that the ruling on non-acceptance of the case as rendered by the people's court of first instance is erroneous, it shall, at the same time of revoking the original ruling, instruct the people's court of first instance to accept the case and put the same on file. Where the people's court of second instance of a case finds upon investigation that the ruling on dismissing the filing of action as rendered by the people's court of first instance is erroneous, it shall, at the same time of revoking the original ruling, instruct the people's court of first instance to hear the case.

Article 333 The people's court of second instance is not required to convene a court session to hear an appeal subject to Article 169 of the Civil Procedure Law if the appeal falls under any of the following circumstances:

- (1) Where the appeal is lodged on the ground of objections to the ruling on non-acceptance of the case, objections to jurisdiction of the case, or dismissal of the filing of action;
- (2) Where the claims of appeal raised by the party concerned are obviously untenable;
- (3) Where the facts ascertained in the original judgment/ruling are clear, but the application of law is erroneous; or
- (4) Where the original judgment is in grave violation of statutory procedures and the case needs to be remanded for retrial.

Article 334 Where the conclusion of the original judgment/ruling is correct despite defects in the facts ascertained therein or the application of law thereto, the people's court of second instance may, after rectifying such defects in the judgment/ruling, uphold the original judgment/ruling subject to Subparagraph (1) of Paragraph 1 of Article 170 of the Civil Procedure Law.

Article 335 For the purpose of Subparagraph (3) of Paragraph 1 of Article 170 of the Civil Procedure Law, basic facts shall refer to the facts that have a substantive impact on the conclusion of the original judgment/ruling, such as the facts for determining the eligibility of the parties concerned, the nature of the present case, civil rights and obligations, etc.

Article 336 During second-instance proceedings, if the legal entity or another organizations that is a party concerned undergoes split-up, the competent people's court may directly list the existing legal entities or organizations after split-up as co-litigants; and, where the legal entity or another organizations that is a party concerned undergoes merger, the competent people's court shall list the existing legal entity or organization after merger as the party concerned.

Article 337 Where a party concerned applies for withdrawing the appeal during

second-instance proceedings, the competent people's court shall not approve the application if upon review it is of the opinion that the first-instance judgment is indeed erroneous, or that the parties concerned have maliciously colluded with each other to damage national interests, public interests or the legitimate rights and interests of others.

Article 338 Where the plaintiff to the original proceedings applies for withdrawing the lawsuit during second-instance proceedings, the competent people's court may approve the application if other parties consent to the application and the application is not detrimental to national interests, public interests and the legitimate rights and interests of others. Where the application for withdrawal is approved, the people's court shall, at the same time, render a ruling to revoke the first-instance judgment/ruling.

the plaintiff to the original proceedings files a lawsuit again after withdrawing a previous lawsuit during second-instance proceedings, the competent people's court shall not accept the subsequent lawsuit.

Article 339 Where the parties concerned reach a settlement agreement during second-instance proceedings, the competent people's court may, upon request by the parties concerned, review the settlement agreement reached by the two parties, and prepare a mediation statement which shall be served on the parties concerned; and, where the relevant party applies for withdrawing the appeal after reaching settlement, the people's court shall approve the application if the conditions for withdrawal of lawsuits are satisfied upon review.

Article 340 The people's court of second instance of a case may pronounce a judgment on the case either by itself or by entrusting the people's court that originally heard the case or the people's court at the domicile of a party concerned.

Article 341 A people's court that hears an appeal against a ruling shall render a final ruling within 30 days as of filing of the second-instance case. If the hearing period needs to be extended under special circumstances, the extension shall be subject to approval by the president of the people's court.

Article 342 The litigation activities conducted by a party concerned during first-instance proceedings shall still be binding on the party concerned during second-instance proceedings. Where a party concerned intends to overturn its litigation activities conducted during first-instance proceedings, the competent people's court shall order the party concerned to explain reasons, and shall not support the litigation activities to be overturned if the reasons provided are not tenable.

Chapter 17: Special Procedures

Article 343 In a case where an application is made to declare a person missing or dead, the competent people's court may, upon request by the relevant applicant, clean up the properties of the person whose whereabouts are unknown, and designate the administrator of such properties during the hearing of the case. Where the people's court renders a judgment to

declare the person missing after the expiration of the announcement period, it shall also designate the custodian of the properties of the missing person in accordance with Paragraph 1 of Article 21 of the General Principles of the Civil Law.

Article 344 If the custodian of the properties of a missing person has been designated by the competent people's court, but such custodian applies for being replaced, the application shall be heard by reference to the provisions on special procedures of the Civil Procedure Law. Where the reasons for the application are tenable, the competent people's court shall render a ruling to cancel the applicant's status as the custodian, and designate another custodian of properties; and, if the reasons for the application are untenable, the competent people's court shall render a ruling to dismiss the application.

Where another interested party of the missing person applies for replacement of the custodian, the competent people's court shall inform the said interested party to file a lawsuit by listing the originally designated custodian as the defendant, and shall hear the lawsuit so filed according to ordinary procedures.

Article 345 After a people's court has rendered a judgment to declare a citizen missing, if an interested party of the missing citizen applies to a people's court for declaring the said citizen dead, the people's court shall accept the application if the citizen has been missing for at least four years upon the date when he/she is declared missing. The judgment declaring the citizen missing shall serve as the proof that the citizen is missing. The people's court shall still publish announcements in accordance with Article 185 of the Civil Procedure Law in hearing the application for declaring the missing citizen dead.

Article 346 Where multiple interested parties that meet relevant requirements of law apply for declaring a person missing or dead, such interested parties shall be listed as co-applicants.

Article 347 An announcement for searching for a person whose whereabouts are unknown shall contain the following statements:

- (1) That the respondent shall report his/her detailed address and contact information to the court that has accepted the application for declaring him/her missing or dead within the prescribed time limit; otherwise, the respondent will be declared missing or dead; and
- (2) That whoever has knowledge of the status quo of the respondent shall report the situations that he/she knows to the court that has accepted the application for declaring the respondent missing or dead within the announcement period.

Article 348 After the competent people's court has accepted a case for declaring a person missing or dead, if the applicant withdraws the application before a judgment is rendered, the people's court shall render a ruling to terminate the case, unless other interested parties that meet relevant requirements of law join litigation proceedings and request the people's court to continue hearing.

Article 349 During the proceedings of a lawsuit, if an interested party of a party to the lawsuit requests the competent people's court to declare the party as having no or only limited

civil capacity on the ground that the party suffers from mental illness, the interested party shall submit an application to the people's court that has accepted the lawsuit, and the latter shall put the application on file for hearing according to special procedures, in which event the proceedings of the original lawsuit shall be suspended.

Article 350 In a case for determining a proper as having no owner, if a party raises a claim on the property during the announcement period, the competent people's court shall render a ruling to terminate special procedures, and inform the applicant to file a separate lawsuit which shall be heard according to ordinary procedures.

Article 351 A designated guardian who objects to the designation shall raise objections to the competent people's court within 30 days upon receipt of the relevant notice. After hearing, if the people's court is of the opinion that the designation is not improper, it shall render a ruling to dismiss the objections; and, if the designation is improper, the people's court shall render a judgment to revoke the designation, and otherwise designate another guardian. The written judgment shall be served on the person who raises the objections, the originally designated entity and the guardian newly designated in the judgment.

Article 352 In a case where an application is made for finding a citizen as having no or only limited civil capacity, the competent people's court may designate another relative as the respondent's agent if the respondent has no close relative. Where the respondent has no relative at all, the competent people's court may designate a close friend of the respondent as his/her agent upon the consent of the respondent's employer or the residents' committee or village committee at the domicile of the respondent, and if the close friend agrees to act as the respondent's agent.

Where the respondent has no agent that meets the requirements of the preceding paragraph, the respondent's employer, or the residents' committee or village committee or the relevant civil affairs department at the domicile of the respondent shall act as his/her agent.

The respondent may have only one agent, or two agents that are of the same priority.

Article 353 To apply for judicial affirmation of a mediation agreement, both parties to the mediation agreement shall submit an application to the basic people's court or people's tribunal at the location of the relevant mediation organization either in person or by entrusting agents that meet the requirements of Article 58 of the Civil Procedure Law.

Article 354 Where two or more mediation organizations are involved in mediation, all the basic people's courts at the location of the participating mediation organizations shall have jurisdiction over an application for judicial affirmation of the relevant mediation agreement.

Both parties to the mediation agreement may jointly apply to the basic people's court at the location of one of the mediation organizations. Where both parties jointly apply to the basic people's courts at the location of two or more mediation organizations, the people's court that is the first to put the application on file shall have jurisdiction.

Article 355 The application by a party concerned for judicial affirmation of a mediation

agreement may be made in writing or orally. Where the party concerned makes the application orally, the competent people's court shall record the application in transcripts, and the party concerned shall affix his/her/its signature, fingerprint or seal thereon.

Article 356 A party concerned that applies for judicial affirmation of a mediation agreement shall submit to the competent people's court the mediation agreement, the evidence that mediation is presided over by relevant mediation organizations, and property rights certificates and other materials related to the mediation agreement, and shall provide the identity, domicile, contact and other basic information of both parties to the mediation agreement.

Where the party concerned fails to submit the aforesaid materials, the people's court shall require the party concerned to make good the required materials by the prescribed time limit.

Article 357 Where the application by a party concerned for judicial affirmation of a mediation agreement falls under any of the following circumstances, the relevant people's court shall render a ruling on non-acceptance thereof:

- (1) Where the said application is beyond the scope of acceptance of people's courts;
- (2) Where the said application is beyond the jurisdiction of the people's court that has received the application;
- (3) Where the said application is for affirming the invalidity, validity or termination of a marriage, parent-child relationship, adoption relationship or any other identity relationship;
- (4) Where the said application involves the application of other special procedures, the procedures for public notice of declaration of rights or bankruptcy procedures in trial; or
- (5) Where the mediation agreement involves the affirmation of property rights or intellectual property rights.

The relevant people's court shall render a ruling to reject the application filed by the party concerned if it finds, after accepting the application, that the application falls under any of the foregoing circumstances where it shall not be accepted.

Article 358 When reviewing relevant circumstances, the competent people's court shall notify both parties to the mediation agreement in question to be jointly present to verify the present case.

Where the people's court, upon review, is of the opinion that the statements or evidential materials provided by the parties concerned are insufficient, incomplete or doubtful, it may require the parties to supplement the statements or evidential materials within the prescribed time limit. Where necessary, the people's court may verify relevant situations with the mediation organization concerned.

Article 359 Where a party concerned withdraws the application for judicial affirmation of a mediation agreement before a ruling on affirming the mediation agreement is rendered, the competent people's court may issue a ruling to approve the withdrawal of the said application. Where a party concerned unjustifiably fails to supplement statements or evidential materials within the prescribed time limit, or refuses to accept questioning, the people's court may treat the application as being withdrawn.

Article 360 Where a mediation agreement is found to fall under any of the following circumstances upon review, the competent people's court shall render a ruling to reject the application for judicial affirmation of the mediation agreement:

- (1) Where the mediation agreement is in violation of any compulsory provisions of law;
- (2) Where the mediation agreement is detrimental to national interests, public interests or the legitimate rights and interests of others;
- (3) Where the mediation agreement is against public order and morals;
- (4) Where the mediation agreement is against the principle of voluntariness;
- (5) Where the contents of the mediation agreement are unclear; or
- (6) Where the mediation agreement falls under any other circumstances where it cannot be judicially affirmed.

Article 361 For the purpose of Article 196 of the Civil Procedure Law, security interest holders shall include mortgagees, pledgees and lien holders, while other parties entitled to request for the realization of security interests shall include mortgagors, pledgers, debtors whose properties are pledged, and owners of property.

Article 362 Cases to realize the pledges of rights that are accompanied by bills, warehouse receipts, bills of lading or other certificates of rights may be governed by the people's courts at the location where the holders of the certificates of rights are domiciled. Cases to realize the pledges of rights without certificates of rights shall be governed by the people's courts at the places where the pledges are registered.

Article 363 Cases to realize security interests that fall under the jurisdictions of special people's courts such as maritime courts shall be governed by the special people's courts.

Article 364 In the event that the same creditors' right has multiple collaterals which are in different locations, if the relevant applicant files an application with all the competent people's courts involved for realizing security interests separately, such people's courts shall accept the applications subject to law.

Article 365 Subject to Article 176 of the Property Law, in the event that the creditors' right in question is secured by both properties and guarantors, if the parties concerned have agreed in advance on the order for realizing security interests, the relevant people's court shall render a ruling on non-acceptance of an application for realizing security interests if the said application is against the said agreement, and shall accept the application in the absence of such agreement or clear agreement.

Article 366 If there are multiple security interests on the same property, the fact that a security interest that have been registered earlier is not yet realized shall not affect a security interest holder who ranks later in registration order to apply to the competent people's court for realizing its security interest.

Article 367 To apply for realizing security interests, an applicant shall submit the following

materials:

- (1) A written application, which shall clearly record the names, contacts and other basic information of the applicant and the respondent, the applicant's specific requests, and facts and grounds;
- (2) Materials proving the existence of security interests, including the principal contract, the guarantee contract, mortgage registration certificates or certificates of other rights, certificates of the pledges of rights or certificates of pledge registration;
- (3) Materials proving that the conditions to realize security interests have been satisfied;
- (4) Descriptions of the status quo of the properties provided as guarantee; and
- (5) Other materials deemed necessary by the competent people's court.

Article 368 Upon acceptance of an application for realizing security interests, a people's court shall serve on the respondent concerned the duplicate of the written application, the notice on the right to raise objections and other instruments within five days.

The respondent shall raise objections, if any, to the people's court within five days after receipt of the notice from the people's court, and shall at the same time explain the reasons therefor, and provide appropriate evidential materials.

Article 369 A case to realize security interests may be reviewed by a sole judge, provided that if the value of the property provided as guarantee exceeds the monetary jurisdiction of basic people's courts, a collegiate panel shall be formed to review the case.

Article 370 In reviewing a case to realize security interests, a people's court may inquire the applicant, respondent, as well as interested parties, and where necessary, may conduct investigation of relevant facts ex officio.

Article 371 A people's court shall review a case to realize security interests from the following perspectives: the validity, term and performance of the relevant principal contract; whether the security interests are effectively instituted; the scope of the properties provided as guarantee; the scope of the secured creditors' rights; whether the conditions for realizing the security interests are satisfied, such as whether the secured debt have reached the repayment period; whether the application for realizing security interests damages the legitimate rights and interests of others.

The objections, if any, raised by the respondent or interested parties concerned shall be reviewed by the people's court at the same time.

Article 372 After review, the competent people's court shall process an application for realizing security interests separately according to the following circumstances:

- (1) If the parties concerned have no substantive dispute over the realization of security interests, and the conditions for realizing security interests are satisfied, the people's court shall render a ruling to approve the auction or sale of the properties provided as guarantee;
- (2) Where the parties concerned have substantive disputes over certain aspects of the realization of security interests, the people's court may render a ruling to approve the auction or sale of the properties provided as guarantee with regard to the uncontested aspects; and

(3) Where the parties concerned have substantive disputes over the realization of security interests, the people's court shall render a ruling to reject the application, and inform the applicant to file a lawsuit with the competent people's court.

Article 373 After a people's court has accepted an application for realizing security interests, if the applicant concerned applies for preservation of the properties provided as guarantee, the people's court may process the latter application in accordance with the provisions on litigation preservation under the Civil Procedure Law.

Article 374 Where a party to, or an interested party of, a judgment/ruling rendered according to special procedures is of the opinion that the said judgment/ruling is erroneous, the said party may raise objections to the people's court that renders the judgment/ruling. If the people's court, upon review, finds that the objections are tenable or partially tenable, it shall render a new judgment/ruling to revoke or change the original judgment/ruling; and, if the objections are untenable, the people's court shall render a ruling to dismiss the same.

Where a party concerned has objections to a ruling rendered by a people's court to affirm a mediation agreement or allow the realization of security interests, the party concerned shall raise such objections within 15 days as of receipt of the said ruling. An interested party that has objections in this regard shall raise the objections within six months from the date when it knows or ought to know that its civil rights and interests are infringed upon.

Chapter 18: Procedures for Trial Supervision

Article 375 In the case a party deceases or is terminated, its successor of rights and obligations may apply for retrial according to provisions of Article 199 or Article 201 of the Civil Procedure Law.

In the case a party concerned transfers the creditors' rights affirmed in a judgment or mediation statement to another party after the judgment or mediation statement coming into force, the people's court having jurisdiction shall not accept such application for retrial filed by the transferee based on the transferee's objection to the judgment or mediation statement.

Article 376 A large numbers of people of one party as set forth in Article 199 of the Civil Procedure Law shall include citizens, legal entities and other organizations.

A case wherein both parties are citizens as set forth in Article 199 of the Civil Procedure Law shall refer to a case in which both the plaintiff and the defendant are citizens.

Article 377 The party concerned shall submit the following materials to apply for retrial:

- (1) The written retrial application and the duplicates thereof with the number corresponding to that of respondents and of other parties of first instance;
- (2) The identity certificate of the applicant for retrial, if the applicant is a natural person; or the business license, organizational code certificate, and the identity certificate of its legal representative or principal person-in-charge, if the applicant is a legal entity or other organizations; in the event the application is filed by an entrusted person, the power of attorney and the identity certificate of such entrusted person shall be submitted;

- (3) The written judgment, written ruling or mediation statement of first instance; and
 - (4) Main evidence and other information reflecting the basic facts of the case.
- Materials set forth in Subparagraph (2), Subparagraph (3) and Subparagraph (4) in the foregoing paragraph may be copies certified to be identical with the originals.

Article 378 Written retrial application shall indicate the following items expressly:

- (1) Basic information of the applicant and the respondent of the retrial, and of the other parties of first instance;
- (2) Name of the people's court of first instance, and the case number of the written judgment/ruling of first instance;
- (3) Specific requests for retrial;
- (4) Statutory circumstances under which the retrial application is made, and the detailed facts and grounds.

The written retrial application shall state specific people's court to which the retrial is applied. The retrial applicant shall affix his/her/its signature, fingerprint or seal onto the written retrial application.

Article 379 Regarding a case in which a large number of people of one party involved or in which both parties are citizens, if the parties concerned apply for retrial respectively to the people's court of first instance and the superior people's court, the people's court of first instance shall accept the retrial applications if the parties concerned failed to reach an agreement upon negotiation.

Article 380 The parties concerned to a case that has been tried according to special procedures, procedures for urging performance, procedures of public notice for declaration of rights, bankruptcy procedures or any other non-litigation procedures shall not apply for retrial.

Article 381 A party concerned who regards the legally binding ruling on non-acceptance of a case or dismissal of the filing of action being erroneous may apply for retrial of the ruling.

Article 382 In the case the parties concerned apply for retrial of the issues on division of properties in a divorce case, if the retrial application involves properties that have been divided in the original judgment, the people's court having jurisdiction shall review the application according to Article 200 of the Civil Procedure Law, and rule to conduct retrial if the application meets the conditions for retrial; and, if the retrial application involves joint properties of the spouse that have not been dealt with in the original judgment, the people's court shall inform the parties concerned to institute a separate litigation.

Article 383 The people's court having jurisdiction shall not accept the retrial application made by a party concerned under any of the following cases:

- (1) A new application submitted after the previous retrial application is rejected;
- (2) Retrial application regarding a judgment/ruling rendered after retrial; or
- (3) A new application submitted after the relevant people's procuratorate has decided not to put forward procuratorial suggestions on retrial or not to launch a protest with regard to the

previous retrial application by the applicant.

Under the cases set forth in Subparagraph (1) or Subparagraph (2) in the preceding paragraph, the people's court shall inform the party concerned that it may apply to the relevant people's procuratorate for the latter to submit procuratorial suggestions on retrial or to launch a protest, unless the judgment/ruling in question is rendered upon retrial after the relevant people's procuratorate has already issued the procuratorial suggestions on retrial or has launched a protest.

Article 384 An application for the retrial of a legally binding mediation statement shall be submitted within six months after the mediation statement comes into legal force.

Article 385 A people's court shall, within five days upon receiving a written retrial application and other materials that satisfy relevant conditions, send the notice of acceptance to the retrial applicant, and send the notice to respond to a litigation, the duplicate of the written retrial application and other materials to the respondent and to the other parties of first instance.

Article 386 Upon accepting an application for the retrial of a case, the people's court having jurisdiction shall review the causes for retrial claimed by the party concerned according to Article 200, Article 201 and Article 204 of the Civil Procedure Law and other relevant provisions.

Article 387 In the case new evidence provided by the relevant retrial applicant are sufficient to prove that the basic facts ascertained in the original judgment/ruling are erroneous or that the conclusions of the original judgment/ruling are erroneous, the circumstances set forth in Subparagraph (1) of Article 200 of the Civil Procedure Law shall be determined as being established.

Regarding the evidence that meets the requirements in the preceding Paragraph, the people's court having jurisdiction shall order the retrial applicant to explain the reasons for providing such evidence beyond the specified time limit. If the retrial applicant refuses to explain reasons or the reasons provided are not tenable, the people's court shall deal with the relevant situations according to Paragraph 2 of Article 65 of the Civil Procedure Law and Article 102 herein.

Article 388 In the case any new evidence produced by retrial applicant is proven to fall into any of the following circumstances, the reasons for submitting such evidence beyond the time limit specified may be determined as tenable:

- (1) Evidence having existed prior to the conclusion of the court hearing of first instance and being discovered after the conclusion of the said proceeding, due to objective causes;
- (2) Evidence having been discovered prior to the conclusion of the court hearing of first instance, and being inaccessible or impossible to be provided within the time limit specified due to objective causes;
- (3) Evidence formed subsequent to the conclusion of court hearing of first instance, based on which the retrial applicant could not file a separate litigation.

In the case the evidence submitted by the retrial applicant has been produced during the first

trial, but the people's court that originally tried the present case did not organize cross-examination of the evidence and did not admit the evidence as the basis for judgment/ruling, the reasons provided by the retrial applicant for submitting the evidence beyond the specified time limit shall be deemed as tenable, unless the people's court that originally tried the case has decided not to admit the evidence according to Article 65 of the Civil Procedure Law.

Article 389 In the case a party concerned has, in the cross-examination process during the first trial, refused to express opinions regarding the main evidence based on which the facts in the original judgment/ruling are ascertained, or failed to express any cross-examination opinions of evidence, such evidence shall not be deemed as falling under the circumstances of not being cross-examined as set forth in Subparagraph (4) of Article 200 of the Civil Procedure Law.

Article 390 In the case any of the following circumstances results in the erroneous conclusions of a judgment/ruling, the application of law by the original judgment/ruling shall be found as indeed erroneous as set forth in Subparagraph (6) of Article 200 of the Civil Procedure Law:

- (1) The laws applied are apparently inconsistent with the nature of the present case;
- (2) The determination of civil liabilities is clearly in breach of the agreements between the parties concerned or in violation of laws;
- (3) Laws that have invalidated or that have not yet come into force are applied;
- (4) Provisions on the retroactivity of laws are violated;
- (5) Rules on the application of law are violated; or
- (6) The application of law is clearly contrary to legislative intent.

Article 391 The parties concerned shall be deemed to have been deprived of the right to debate as set forth in Subparagraph (9) of Article 200 of the Civil Procedure Law, if in the court session of first instance:

- (1) The parties concerned are disapproved to express their debate opinions;
- (2) The court sessions fail to be convened to try the present case despite being so required;
- (3) The duplicate of the written complaint or written appeal is served in violation of laws, due to which causes the parties concerned are unable to exercise their right to debate; or
- (4) The parties concerned have been otherwise deprived of their right to debate illegally.

Article 392 Litigation claims stated in Subparagraph (11) of Article 200 of the Civil Procedure Law shall include first-instance litigation claims and second-instance appeal claims, unless the party concerned has not appealed against the fact that the first-instance judgment/ruling has omitted certain litigation claims or is beyond litigation claims.

Article 393 Legal instruments set forth in Subparagraph (12) of Article 200 of the Civil Procedure Law shall include:

- (1) A legally binding written judgment, written ruling or mediation statement;
- (2) A legally binding arbitration award;

(3) A notarized instrument on creditors' rights that is subject to enforcement.

Article 394 The fact that judicial officers have committed acts of corruption and bribery, practiced favoritism for personal gains or perverted the law in the trial of the present case, as set out in Subparagraph (13) of Article 200 of the Civil Procedure Law, shall mean that the judicial officers have committed such acts that have been affirmed in any effective criminal legal instruments or decisions on disciplinary sanctions.

Article 395 The people's court having jurisdiction shall rule to retry a case if the causes for retrial claimed by the party concerned could hold ground, and the conditions for applying for retrial as set out in the Civil Procedure Law and these Interpretations are satisfied.

The people's court having jurisdiction shall rule to reject any application for retrial if the causes for retrial claimed by the party concerned could not hold ground, or if the party concerned applies for retrial beyond the statutory time limit for applying for retrial or out of the scope of statutory causes for retrial, or the retrial application otherwise fails to meet the conditions for applying for retrial as set out in the Civil Procedure Law and these Interpretations.

Article 396 In the case the people's court having jurisdiction decides to re-try a legally binding judgment, ruling or mediation statement pursuant to law, and if the enforcement needs to be suspended according to Article 206 of the Civil Procedure Law, the people's court shall state in the ruling on retrial that the enforcement of the original judgment, ruling or mediation statement shall be suspended; and, under an emergency, the people's court may orally notify the people's court responsible for enforcement of the ruling on suspension of enforcement, and issue a written ruling within ten days thereafter.

Article 397 A people's court may decide whether to question the parties concerned in light of the needs for reviewing the present case. In the case any new evidence exists which may overturn the original judgment or ruling, the people's court shall question the parties concerned.

Article 398 In the case the respondent and the other parties of first instance also apply for retrial pursuant to law during the retrial application review period, the people's court having jurisdiction shall list them both as retrial applicants, and review their causes for retrial at the same time. In such event, the review period shall be re-calculated. If the causes for retrial claimed by an applicant from either side are tenable upon review, the people's court shall rule to initiate retrial procedure. If none of the causes for retrial claimed by the applicants from both sides are tenable, the people's court shall altogether rule to reject the retrial applications.

Article 399 In the case the retrial applicant applies to the competent people's court for entrusting appraisal or inquisition during the retrial application review period, the people's court shall not approve the application.

Article 400 In the case the retrial applicant intends to withdraw its application for retrial during the retrial application review period, the competent people's court shall rule to decide whether

to approve the withdrawal.

In the case the retrial applicant, without justifiable reasons, refuses to accept questioning after being summoned by summons, the retrial application may be treated as being withdrawn.

Article 401 In the case the competent people's court has approved the withdrawal of a retrial application or has treated a retrial application as being withdrawn, and the relevant retrial applicant again applies for retrial, the people's court shall not accept the new application, unless the new application is made within six months after the retrial applicant knows or ought to know that any of the circumstances set forth in Subparagraph (1), Subparagraph (3), Subparagraph (12) or Subparagraph (13) of Article 200 of the Civil Procedure Law exists.

Article 402 The competent people's court shall rule to terminate the retrial application review process if during such review period:

(1) The retrial applicant deceases or is terminated, and there is no successors of its rights and obligations or the successor of its rights and obligations has declared to waive the retrial application expressly;

(2) In a lawsuit relating to payment, the respondent who bears payment obligations deceases or is terminated, and there is neither any property available for enforcement nor any party who shall succeed to the respondent's obligations;

(3) The parties concerned have reached a reconciliation agreement which has been performed fully, except for the fact that the parties thereto state in the agreement that they will not waive the right to apply for retrial;

(4) Another party applies for retrial in the name of a party concerned without authorization;

(5) The people's court that originally tried the present case or the superior people's court has already ruled to conduct retrial; or

(6) Any of the circumstances set forth in Paragraph 1 of Article 383 herein exists.

Article 403 A collegiate panel shall be formed to try a retrial case in court sessions except for any of the following circumstances: the case is tried according to second-instance procedures; there are special circumstances; or the parties concerned have fully expressed their opinions by other means and have agreed in writing that no court session needs to be convened for retrial.

Retrial case meeting the conditions for default judgment may be subject to default judgment.

Article 404 A people's court that convenes court sessions to try a case on retrial basis shall conduct retrial proceedings separately in light of the following circumstances:

(1) For cases re-tried upon application of a party concerned, the retrial applicant shall first state retrial requests and the reasons, subsequent to which the respondent shall deliver response and defense, and the other parties of first instance shall state their opinions;

(2) For cases re-tried arising from a protest, the department that launches the protest shall first read out the written protest, then the party that have applied for the protest to be lodged shall make statements, finally the respondent shall deliver response and defense, and other parties of first instance shall state their opinions;

(3) For cases to be retried by the people's court ex officio, if there is a petitioner, the petitioner

shall first state its retrial requests and the reasons, after which the respondent shall deliver response and defense, and other parties of first instance shall state their opinions;

(4) For cases to be re-tried by the people's court ex officio, if there is no petitioner, the plaintiff or the appellant of first instance shall first make statements, after which other parties of first instance shall state their opinions.

Under any of the circumstances stated in Subparagraph (1) to Subparagraph (3) of the foregoing Paragraph, the people's court shall require the party concerned to clarify its retrial requests.

Article 405 A people's court shall conduct the retrial in light of the retrial requests. It may dismiss any retrial requests beyond the litigation claims in the first instance, or may inform the party concerned to institute a separate litigation if such retrial requests beyond the litigation claims in the first instance meet the conditions for instituting a separate litigation.

If the retrial requests proposed by the respondent and other parties of first instance prior to the conclusion of court debate meet the requirements of Article 205 of the Civil Procedure Law, the people's court shall hear such retrial requests at the same time.

In the case the people's court finds after retrial that a legally binding judgment/ruling impairs national interests, public interests or the legitimate rights and interests of others, the people's court shall try the legally binding judgment/ruling at the same time.

Article 406 The competent people's court may rule to terminate the retrial procedures if any of the following circumstances occurs during the retrial period:

(1) The relevant retrial applicant applies for withdrawal of its retrial requests during the retrial period, which is approved by the people's court;

(2) The retrial requests are treated as being withdrawn if the relevant retrial applicant has, without justifiable reasons, refused to appear in court upon being summoned by summons, or has left the courtroom during proceedings without permission of the court;

(3) The relevant people's procuratorate withdraws the protest; or

(4) Any of the circumstances set forth in Subparagraph (1) to Subparagraph (4) of Article 402 herein exists.

In the case the people's court rules to re-try a case due to the protest launched by the relevant people's procuratorate, and the party that applies for the protest to be lodged falls into any of the foregoing circumstances, the people's court shall rule to terminate the retrial procedures, if the national interests, public interests or the legitimate rights and interests of others are not prejudiced.

Upon termination of the retrial procedures, the enforcement in respect of the original binding judgment which the people's court has previously ruled to suspend shall automatically resume.

Article 407 A people's court shall uphold the original judgment/ruling if upon retrial it is of the opinion that the facts ascertained in the original judgment/ruling are clear and that the application of law is correct; and, if the conclusions of the original judgment/ruling are correct despite of flaws in terms of fact-finding or application of law, the people's court shall uphold the original judgment/ruling after correction of the retrial judgment/ruling.

In the case the conclusions of the original judgment/ruling are erroneous due to errors in the

fact-finding or law application, the people's court shall make a new judgment/ruling, revoke the original judgment/ruling or alter the original judgment/ruling pursuant to law.

Article 408 Regarding a case re-tried pursuant to second-instance procedures, if, after trying, the competent people's court regards the conditions for filing the lawsuit set forth in the Civil Procedure Law are not satisfied or that the circumstances for non-acceptance of lawsuits set forth in Article 124 of the Civil Procedure Law are constituted, the people's court shall rule to revoke both the first-instance and the second-instance judgments of the case, and dismiss the filing of the lawsuit.

Article 409 After ruling to re-try a case concluded by a mediation statement, a people's court shall conduct retrial proceedings separately in light of the following circumstances:

(1) The causes proposed by the party concerned that the mediation is against the principle of voluntariness are not tenable, and the contents of the mediation statement are not in violation of mandatory provisions of law, the people's court shall rule to reject the retrial application; and (2) The reasons claimed in the protest launched, or procuratorial suggestions on retrial issued, by the relevant people's procuratorate that mediation is detrimental to national interests or public interests are not tenable, the people's court shall rule to terminate the retrial procedures. Under any of the foregoing circumstances, enforcement of the mediation statement which the people's court has previously ruled to suspend shall automatically resume if continued enforcement is necessary.

Article 410 In the case the plaintiff of first instance applies for withdrawing the litigation during the retrial procedure, the competent people's court may approve the application if other parties consent to the withdrawal and the withdrawal is not detrimental to national interests, public interests or the legitimate rights and interests of others. In the case the withdrawal application is approved by a ruling, the people's court shall at the same time revoke the original judgment. In the case the plaintiff of first instance files a litigation again after withdrawing a previous litigation during the retrial proceedings, the competent people's court shall not accept the subsequent filing.

Article 411 In the case a new judgment is rendered after retrial due to any new evidence submitted by a party concerned, and such new evidence has not been promptly produced during first trial due to fault of the retrial applicant or the party concerned that applies for procuratorial supervision, the competent people's court shall uphold the requests of the respondent and other parties concerned for compensation for the additional expenses in terms of transportation, accommodation and catering, income loss due to loss of working hours and other necessary expenses incurred thereby.

Article 412 In the case certain parties concerned appear in court and reach a mediation agreement, and the remaining parties concerned make no written representation, the competent people's court shall state the situation in its judgment in details. In the case the contents of the mediation agreement are not in violation of law and not detrimental to the legitimate rights and interests of other parties concerned, the people's court may affirm the

mediation agreement in the body of the judgment.

Article 413 The competent people's court shall accept such protest launched by a people's procuratorate pursuant to law against a legally binding judgment, ruling or mediation statement that is detrimental to national interests or public interests, or such procuratorial suggestions on the retrial of such a judgment, ruling or mediation statement after discussion and decision by the procuratorial committee of a people's procuratorate.

Article 414 In the case a people's procuratorate launches a protest against a legally binding judgment or a ruling on non-acceptance or rejection of the filing of action pursuant to law, the competent people's court shall accept the protest, unless the judgment/ruling in question is not subject to procedures for trial supervision, such as a judgment/ruling rendered according to special procedures, procedures for urging performance, procedures of public notice for declaration of rights or bankruptcy procedures, and a judgment/ruling to release marriage relationship.

Article 415 In the case a people's procuratorate launches a protest against, or issues procuratorial suggestions on the retrial of a retrial judgment/ruling that is obviously erroneous according to Subparagraph (3) of Paragraph 1 of Article 209 of the Civil Procedure Law, the people's court having jurisdiction shall accept such protest or procuratorial suggestions.

Article 416 In the case a local people's procuratorate at any level, upon the application filed by a party concerned, issues procuratorial suggestions on the retrial of a binding judgment/ruling to the people's court at the same level, the latter shall accept such suggestions when the following conditions are satisfied:

- (1) The written procuratorial suggestions on retrial, the written application filed by the party concerned of first instance, and relevant evidential materials have been submitted;
- (2) The judgment/ruling referred to in such retrial suggestions is a judgment/ruling that can be re-tried according to the Civil Procedure Law and these Interpretations;
- (3) The written procuratorial suggestions on retrial set out that the judgment/ruling in question falls under the circumstances set forth in Paragraph 2 of Article 208 of the Civil Procedure Law;
- (4) The requirements of Subparagraph (1) and Subparagraph (2) of Paragraph 1 of Article 209 of the Civil Procedure Law are met; and
- (5) Such procuratorial suggestion has been discussed and adopted by the procuratorial committee of the people's procuratorate.

In the case not all of the requirements in the preceding paragraph have been satisfied, the people's court may suggest the people's procuratorate to make correction/supplement or withdraw the procuratorial suggestions. If the people's procuratorate fails to make correction/supplement or withdraw the procuratorial suggestions, the people's court shall inform the people's procuratorate of the non-acceptance of such procuratorial suggestion on retrial by letter.

Article 417 In the case a people's procuratorate, upon the application filed by a party

concerned, launches a protest against a binding judgment/ruling, the people's court having jurisdiction shall render a ruling to re-try the said judgment/ruling within 30 days once the following conditions have been satisfied:

- (1) The written protest, the written application filed by the party concerned of first instance, and relevant evidential materials have been submitted;
- (2) The judgment/ruling protested against can be re-tried according to the Civil Procedure Law and these Interpretations;
- (3) The written procuratorial suggestions on retrial set out that the judgment/ruling in question falls under the circumstances set forth in Paragraph 2 of Article 208 of the Civil Procedure Law;
- (4) The requirements of Subparagraph (1) and Subparagraph (2) of Paragraph 1 of Article 209 of the Civil Procedure Law are met.

In the case not all of the requirements of the preceding paragraph are met, the people's court may suggest the people's procuratorate to make correction/supplement or withdraw the protest. If the people's procuratorate fails to make such correction/supplement or withdraw the protest, the people's court may render a ruling on non-acceptance of the protest.

Article 418 In the case, upon the retrial application of the party concerned being rejected by a superior people's court in a ruling, a people's procuratorate launches a protest against the original judgment, ruling or mediation statement based on the causes fallen into the scope set forth in Subparagraph (1) to Subparagraph (5) of Article 200 of the Civil Procedure Law, the people's court having accepted the protest may refer the case to the people's court at the next lower level for retrial.

Article 419 Upon receiving procuratorial suggestions on retrial, a people's court shall form a collegiate panel to conduct review within three months, during which if the people's court found the original judgment, ruling or mediation statement to be indeed erroneous and needs to be re-tried, it shall rule to conduct retrial according to Article 198 of the Civil Procedure Law, and shall notify the parties concerned accordingly. If after review the people's court decides not to conduct the retrial, it shall issue a written reply to the people's procuratorate.

Article 420 In the case a people's court shall try a case that is ruled to be re-tried due to any protest launched, or procuratorial suggestions issued, by a people's procuratorate, the people's court shall not be affected by its previous ruling of rejecting the retrial application filed by the party concerned.

Article 421 To convene court sessions to try the protest launched against a case, the competent people's court shall notify the relevant people's procuratorate, the parties concerned and other litigation participants three days prior to the commencement of court sessions. The people's procuratorate at the same level as the people's court or the people's procuratorate that launches the protest shall dispatch staff to attend the court sessions. The relevant people's procuratorate shall submit to the people's court any information it has investigated and verified with the parties concerned or parties not involved in the present case during its performance of legal supervision responsibilities, and provide explanations thereon

for the people's court. Such information shall be cross-examined by both parties concerned.

Article 422 A party concerned that is required to participate in the litigation of a case jointly with other parties thereto failing to attend such litigation due to causes not attributable to itself or its agent ad litem may, pursuant to Subparagraph (8) of Article 200 of the Civil Procedure Law, apply for the retrial of the case within six months upon being aware of or ought to be aware of such situation, except for the situations set forth in Article 423 herein.

In the case the competent people's court ruled to re-try the case upon the application filed by a party concerned as aforesaid, and such retrial was conducted according to the first-instance procedures, the people's court shall add the party concerned as a party to the retrial proceedings, and render a new judgment/ruling; and, if such retrial shall be conducted according to the second-instance procedures, and the parties concerned are unable to reach any agreement through mediation, the people's court shall revoke the original judgment/ruling, and remand the case for trial anew during which the party concerned shall be added as a party to the proceedings of trial anew.

Article 423 Pursuant to Article 227 of the Civil Procedure Law, if a party not involved in the present case opposes to the ruling that rejects its oppositions on enforcement, and regards the original judgment, ruling or mediation statement being erroneous and detrimental to its civil rights and interests, such party may, within six months as of receipt of the ruling on objection to enforcement, apply for retrial to the people's court that have made the original judgment, ruling or mediation statement.

Article 424 Pursuant to Article 227 of the Civil Procedure Law, after the people's court having jurisdiction has ruled on the retrial of a case, if a party not involved in the case becomes a party to a mandatory joint litigation, the people's court shall deal with the situations according to Paragraph 2 of Article 422 herein.

In the case the party not involved in the case is not a party to a mandatory joint litigation, the people's court shall only try the contents of the original judgment, ruling or mediation statement that impair the said party's civil rights and interests. After trying, if the party's retrial requests are tenable, the people's court shall revoke or change the original judgment, ruling or mediation statement; and, if the party's retrial requests are not tenable, the people's court shall uphold the original judgment, ruling or mediation statement.

Article 425 Article 340 herein shall be applicable to the procedures for trial supervision.

Article 426 In the case a party concerned applies for the retrial of the judgment/ruling of a small claim lawsuit to the people's court that originally tried the said lawsuit on the ground of causes set forth in Article 200 of the Civil Procedure Law, the said people's court shall accept such application. If the causes for applying for retrial are tenable, the people's court shall rule to conduct retrial and form a collegiate panel for such retrial. The judgment/ruling rendered after retrial is not appealable by the parties concerned.

In the case the party concerned applies to the people's court that originally tried the small-claim lawsuit for retrial on the ground that the present case shall not be tried as a

small-claim lawsuit, the said people's court shall accept the retrial application. If the causes for applying for retrial are tenable, the people's court shall rule to conduct retrial and form a collegiate panel for such retrial. The judgment/ruling rendered after retrial is appealable by the parties concerned.

Chapter 19: Procedures for Urging Performance

Article 427 In the case two or more people's courts have jurisdiction upon a case, a creditor may apply to any of such competent basic people's courts for a payment order.

In the case a creditor applies to two or more basic people's courts having jurisdiction for a payment order, such case shall be subject to the jurisdiction of the people's court that is the first to put the case on file.

Article 428 Upon receiving the written application from a creditor for a payment order, the competent people's court may order the creditor to make correction/supplement within the prescribed time limit if it deems the written application failing to meet relevant requirements. The people's court shall inform the creditor of the acceptance or non-acceptance of the said application within five days as of the receipt of the materials for correction/supplement.

Article 429 The competent basic people's court shall accept the application for payment order and notify the creditor within five days as of the receipt thereof, in case the application for a payment order submitted by the creditor satisfies the following conditions:

- (1) The application is for the payment of monetary amount, or bills of exchange, promissory notes, checks, stocks, bonds, treasury bills, negotiable certificates of deposit or any other marketable securities;
- (2) The monetary amount or marketable securities for which payment is requested have become due and are in fixed amount, and the creditor has clearly stated in the written application the facts and evidence based on which the request is made;
- (3) The creditor has no equivalent payment obligation;
- (4) The debtor involved is within China and is not missing;
- (5) The payment order can be served on the debtor;
- (6) The people's court that receives the written application has jurisdiction; and
- (7) The creditor has not applied to a people's court for pre-litigation preservation.

In the case any of the foregoing paragraph is not met, the people's court shall notify the creditor of the non-acceptance of its written application for a payment order within five days as of the receipt thereof.

A basic people's court is not bound by the amount of creditors' rights in accepting cases for applying for payment orders.

Article 430 A people's court shall designate a sole judge to review the application for a payment order after the acceptance thereof, who shall rule to reject the application if:

- (1) The applicant is ineligible as a party thereto;
- (2) The supporting documents on the payment of monetary amount or marketable securities contain no agreement on the payment of overdue interest or liquidated damages or indemnity

while the creditor involved insists on the payment of the same;

(3) The monetary amount or marketable securities required of payment are illegal gains;

(4) The monetary amount or marketable securities required of payment have not become due or are not in fixed amount.

A people's court, after acceptance of the application for a payment order, shall rule to reject such application within 15 days as of the acceptance thereof, if it finds that the said application fails to satisfy the conditions for acceptance of application as set forth herein.

Article 431 In the case a debtor rejects to receive a payment order served upon him/her, the relevant people's court may serve the said payment order by retention.

Article 432 A people's court shall rule to terminate the procedures for urging performance whereby any payment order already issued shall automatically become invalid if:

(1) The relevant creditor involved instituted a litigation regarding the same creditor-debtor relationship after the acceptance of the application for a payment order by the people's court;

(2) The payment order is unable to be served upon the debtor involved by the people's court within 30 days as of the issuance of such payment order;

(3) The creditor withdraws the application before the debtor receives the payment order.

Article 433 In the case a debtor fails to raise any written opposition within the statutory time limit after receiving a payment order, and instead he/it institutes a litigation to another people's court, the validity of the payment order shall not be affected thereby.

The debtor shall be deemed as having not raised any opposition if it fails to do so within the statutory time limit.

Article 434 In the case a creditor, on the basis of the same creditor-debtor relationship, raises multiple payment requests to a debtor in the same application submitted for a payment order, the oppositions, if any, raised by the debtor against one or some of the payment requests shall not affect the validity of the remaining requests.

Article 435 In the case a creditor, on account of the same creditor-debtor relationship, proposes payment requests against two or more debtors regarding divisible debts, the oppositions, if any, raised by one or several of such debtors shall not affect the validity of the remaining requests.

Article 436 A payment order issued against the principal debtor of guaranteed debt is not binding upon the guarantor involved therein.

In the case the creditor involved institutes a litigation separately against the guarantee relationship, the payment order shall get invalidated as of the date when the competent people's court accepts such litigation.

Article 437 In the case any written opposition raised by a debtor falls into any of the following circumstances upon formality review, the people's court having jurisdiction shall determine that the opposition hold grounds, and rule that the procedures for urging performance should be

terminated, and in this event, the relevant payment order shall become invalid automatically:

- (1) Such written opposition falls into circumstances set forth herein under which the application for a payment order shall not be accepted;
- (2) Such written opposition falls into circumstances set forth herein under which the application for a payment order shall be rejected by a ruling;
- (3) Such written opposition falls into circumstances set forth herein under which the procedures for urging performance shall be terminated by a ruling; or
- (4) The people's court reasonably suspects that the conditions for issuing a payment order have been satisfied.

Article 438 In the case a debtor proposes no opposition to the debt but only states the fact that it lacks repayment capability, or only proposes to delay the debt repayment period or to change debt repayment manners, the validity of the relevant payment order shall not be affected thereby.

In the case the oppositions are found groundless upon review, the relevant people's court shall rule to reject the oppositions.

Any oral opposition proposed by a debtor shall be invalid.

Article 439 In the case a debtor requests to withdraw its oppositions before the people's court having jurisdiction rules to terminate the procedures for urging performance or reject the oppositions, the people's court shall approve the withdrawal.

The debtor's renegeing on its request to withdraw the said oppositions shall not be upheld by the people's court

Article 440 Subsequent to a payment order being declared invalid, if the party having applied for the payment order does not agree to institute a litigation, it shall propose with the people's court having accepted its application accordingly within seven days as of its receipt of the ruling on terminating the procedures for urging performance.

The fact that the party having applied for the payment order does not agree to institute a litigation shall not affect the said party from launching a lawsuit to other people's courts having jurisdiction.

Article 441 Subsequent to a payment order being declared invalid, if the party having applied for the payment order fails to state to the people's court having accepted its application for the payment order, within seven days as of its receipt of the ruling on terminating the procedures for urging the performance of liabilities, that it does not agree to institute a litigation, the said party shall be deemed as instituting a litigation to the said people's court.

Under the foregoing situation, the date on which a creditor submits its application for a payment order shall be the date when the creditor files a litigation with the people's court having jurisdiction.

Article 442 The time limit for a creditor to apply to the people's court having jurisdiction for enforcing a payment order shall be subject to Article 239 of the Civil Procedure Law.

Article 443 In the case the president of a people's court deems that a legally binding payment order issued by the people's court shall be revoked due to any error ascertained therein, the president shall submit the case to the judicial committee of the people's court for discussion and decision, after which the president may rule to revoke the payment order and reject the application submitted by the relevant creditor.

Chapter 20: Procedures of public summons for exhortation

Article 444 A bill holder set forth in Article 218 of the Civil Procedure Law shall refer to the final holder of the stolen, lost or destroyed bill.

Article 445 Immediately upon receiving an application of public notice for declaration of rights, the people's court shall review and determine whether to accept the application. In the case the people's court determines that such application satisfies the conditions for acceptance, it shall inform the applicant for the acceptance and notify the payer concerned to stop payment. In the case the people's court discovers that such application fails to satisfy the conditions for acceptance, it shall rule to reject the application within seven days as of the receipt thereof.

Article 446 In the case the application for public notice for declaration of rights has been submitted for a lost bill, the people's court shall determine whether to accept such application in light of the stubs of the bill, photocopies of the lost bill, certificate of the drawer on the issuance of such bill, certificate of the applicant on lawfully acquiring such bill, the bank notice that the bill is lost and payment shall be stopped, and certificate of police reports and other evidence.

Article 447 A public notice issued by the people's court in accordance with Article 219 of the Civil Procedure Law shall cover the following items:

- (1) Name of the applicant for the public notice;
- (2) Type and number, par value, drawers, endorsers, holders, payment term and other information of the bill, and the type and number, scope of right, right holders, parties under obligation, vesting dates and other information of other certificates of rights for which an application for public notice for declaration of rights may be proposed;
- (3) The period for the declaration of rights;
- (4) Legal consequences of the interested party's failure to declare the transfer of the bill and other certificates of rights during the aforesaid public notice period.

Article 448 The aforesaid public notice shall be publicized on relevant newspaper or any other media, and shall be pasted in the bulletin board of the people's court on the same day. Such public notice shall also, on the same day, be publicized in the stock exchange, if any, at the place where the people's court is located.

Article 449 The public notice shall be maintained for a period no less than sixty days, and the expiry of such period shall be no earlier than fifteen days subsequent to the payment date of the bill subjecting to public notice for declaration of rights.

Article 450 In the case an interested party declares its right after the expiry of declaration period and prior to the rendering of a judgment by the people's court, Paragraph 2 and Paragraph 3 of Article 221 of the Civil Procedure Law shall apply.

Article 451 In the case of declaration of rights by an interested party, the people's court shall notify the interested party to produce its bill and inform the applicant for public notice for the declaration of rights to review such bill within the specified time limit. The people's court shall rule to reject the application filed by the interested party in case of any discrepancy between the bill under an application filed by the applicant for public notice for declaration of rights and the bill produced by the said interested party.

Article 452 In the case no declaration of rights was made or all such declarations have been rejected during the time limit specified, the applicant for public notice for declaration of rights shall, within one month after the expiry of the specified time limit, apply to the competent people's court to render a judgment. The procedures for public notice for declaration of rights shall be terminated in the event the applicant for public notice for declaration of rights fails to apply for such judgment.

The competent people's court shall notify the applicant for public notice for declaration of rights and the payer about the ruling of terminating the procedures for public notice for declaration of rights.

Article 453 The applicant for public notice for declaration of rights shall be entitled, on the basis of the judgment rendered by the competent people's court, to request the payer to make payment as of the effective date of the judgment.

The competent people's court shall accept the litigation filed by the aforesaid applicant with respect to the rejection of the payer on payment, if such litigation meets the conditions set forth in Article 119 of the Civil Procedure Law.

Article 454 The case to be tried in accordance with the procedures of public notice for may be handled by a sole judge; provided however, that a collegiate panel shall be formed for the trial of invalidation of the bill subjecting to the procedures of public notice for declaration of rights.

Article 455 Any withdrawal of the application for initiating the procedures of public notice for declaration of rights by the applicant shall be made prior to the initiation of the said procedures. In the case the applicant proposes the said withdrawal in the course of the procedures, the competent people's court may directly rule to terminate the procedures.

Article 456 The provisions on property preservation shall be complied with, if the people's court, pursuant to Article 220 of the Civil Procedure Law, notifies the payer involved to stop payment. The payer involved rejecting to stop payment after the receipt of the notice from the competent people's court for stopping payment shall, in accordance with Article 111 and Article 114 of the Civil Procedure Law, be subject to enforcement, and shall bear the payment

obligations after the rendering of judgment by the competent people's court.

Article 457 In the event, after the termination of the procedures for public notice for declaration of rights by the competent people's court in accordance with Article 221 of the Civil Procedure Law, the applicant initiating the procedures or the applicant declaring rights files a litigation with the people's court, such litigation shall, if arising from the dispute on bill rights, be subject to the jurisdiction of the people's court at the location of bill payment or the defendant's domicile; or if arising from disputes unrelated to bill rights, shall be subject to the jurisdiction of the people's court at the location of the defendant's domicile.

Article 458 Written ruling prepared in accordance with Article 221 of the Civil Procedure Law to terminate the procedures for public notice for declaration of rights shall be signed by the competent judge and court clerk, and be affixed with the seal of the competent people's court.

Article 459 In the case any interested party files a litigation with the people's court in accordance with Article 223 of the Civil Procedure Law, the people's court having jurisdiction may try the case as bill-related disputes under general procedures.

Article 460 Justifications as set forth in Article 223 of the Civil Procedure Law shall include the following situations:

- (1) The interested party fails to learn about the public notice due to incidents or force majeure;
- (2) The interested party fails to learn about the public notice due to restriction of personal freedom, or fails to declare rights by itself or by its entrusted agent though it has learned about the public notice;
- (3) The application falls out of the scope subjecting to the procedures for public notice for declaration of rights;
- (4) The competent people's court fails to issue a public notice or fails to release a public notice in line with the statutory manner;
- (5) Other objective causes causing the failure of the interested party to declare rights with the competent people's court prior to the rendering of judgment.

Article 461 In the event the interested party applies to the competent people's court for revoking the judgment on invalidation of the bill according to Article 223 of the Civil Procedure Law, it shall list the applicant initiating the procedures for public notice for declaration of rights as the defendant.

In the case the interested party applies for ascertaining it as the lawful holder of the bill only, the people's court shall indicate the ruling clearly in the judgment that the judgment on invalidation of the bill shall be revoked once the competent people's court rendered a judgment that the said interested party shall be the rightful holder of the bill.

Chapter 21: Procedures for Enforcement

Article 462 The ruling of realizing security interests and of affirming mediation agreement, and the payment order that have come into legal force shall be enforced by the people's court having issued the ruling or the payment order, or by the people's court of the same level with

the said court, at the location of property subjecting to enforcement.

For the judgment under which any property is determined as having no owner, the people's court having rendered the judgment shall put such property under the State or collective ownership.

Article 463 Legal instruments that have come into force may be applied by a party concerned for enforcement by the competent people's court if:

- (1) The legal instrument has stated clearly the right holders and the party bearing obligations;
- (2) The legal instrument has stated clearly the contents relating to payment.

In the case the legal instrument determines that the contract shall be continued for performance, the detailed content of continued performance shall be clarified therein.

Article 464 Any opposition regarding the subject matter under enforcement as filed by a party not involved in the present case pursuant to Article 227 of the Civil Procedure Law shall be proposed prior to the completion of the enforcement procedure relating to such subject matter.

Article 465 Any opposition regarding the subject matter under enforcement as filed by a party not involved in the present case shall be handled as follows upon review:

- (1) The opposition shall be rejected in case interests of the interested party in the subject matter under enforcement are insufficient to exclude the enforcement;
- (2) The opposition shall be suspended in case interests of the interested party in the subject matter under enforcement are sufficient to exclude the enforcement.

The competent people's court shall not, within fifteen days upon the service of the ruling rejecting the opposition filed by the party not involved in the present case, dispose of the subject matter under enforcement.

Article 466 In the case the applicant for enforcement and the person subject to enforcement reach any settlement agreement whereby the applicant requests for suspending the enforcement or for withdrawing the application for enforcement, the people's court may accordingly rule to suspend or terminate the enforcement.

Article 467 In the case any party involved fails to perform or fails to completely perform the settlement agreement voluntarily reached by it with the other party involved in the enforcement process, and the other party applies to the competent people's court for execution of the original legal instrument that have come into force, the competent people's court shall resume the enforcement with the amount that have been paid in the prior enforcement process deducted. The competent people's court shall not resume the enforcement in case the settlement agreement has been fully executed by parties involved therein.

Article 468 Provisions in Article 239 of the Civil Procedure Law on the time limit for applying for enforcement shall be observed for the application for resuming the enforcement of the original legal instrument that have come into force. In the case the time limit for applying for enforcement have been stopped due to the settlement agreement reached in the enforcement process, such time limit shall be recalculated from the last day of the performance period

agreed in the settlement agreement.

Article 469 In the case of stay of enforcement determined by the people's court according to Article 231 of the Civil Procedure Law, and if the guarantee shall be subject to certain time limit, the period of stay of enforcement shall be consistent with that of the guarantee, and shall be no longer than one year under whatever circumstances. The people's court may resume the enforcement in the case the person subject to enforcement or guarantor has been found to shift, conceal, sell off or destroy guaranteed property during the period of stay of enforcement.

Article 470 Any guarantee for enforcement to be provided to the competent people's court according to Article 231 of the Civil Procedure Law may be a security of property provided by the person subject to enforcement or any other person, or be a warranty provided by any other person. Such guarantor shall be capable of performing obligations or bearing compensation liabilities on behalf of the person subject to enforcement.

Any person providing a warranty for enforcement as aforesaid shall issue a written warranty to the court of enforcement and deliver the duplicate of such warranty to the applicant for enforcement. In the case the person subject to enforcement or any other person shall provide a security of property, relevant procedures shall be gone through with reference to relevant provisions of the Property Law and the Guarantee Law.

Article 471 In the case the person subject to enforcement fails to perform obligations at the expiry of the time limit set out by the competent people's court for stay of enforcement, the competent people' court may directly enforce the properties for security, or may rule to enforce the properties owned by the guarantor; provided that the enforcement of the guarantor's properties shall be limited to that necessary for the guarantor to perform its obligations.

Article 472 In the case the legal entity or other organizations as the person subject to enforcement in an enforcement process gets split-up or merged as set forth in Article 232 of the Civil Procedure Law, the competent people's court may rule to determine that legal entity or other organizations existing after the said change shall be regarded as the person subject to enforcement. In the case the legal entity or other organizations as the person subject to enforcement in an enforcement process is canceled and its rights and obligations are succeeded by others according to relevant substantive laws, the successor of the said rights and obligations may be ruled by the competent people's court as the person subject to enforcement.

Article 473 In the case other organizations, during the enforcement, fails to perform the obligations determined in the effective legal instrument, the competent people's court may rule to enforce the properties of other legal entity or citizen bearing obligations to the said other organizations according to law.

Article 474 In the case the legal entity or other organizations as an person subject to enforcement has its name changed during the enforcement, the competent people's court may rule to take the changed legal entity or other organizations as the person subject to

enforcement.

Article 475 In the case the citizen as an person subject to enforcement deceases and the inheritors inheriting the citizen's estates has not waived the right of inheritance, the competent people's court may rule to change the person subject to enforcement and cause the inheritors to assume the repayment liabilities within the scope of inheritance; in the event the inheritors waived the right of inheritance, the competent people's court may directly enforce the estates of the person subject to enforcement.

Article 476 In the case, after the completion of enforcement of other legal instruments specified in laws to be enforced by the people's court, such other legal instruments were canceled by relevant authorities or organizations according to law, Article 233 of the Civil Procedure Law shall apply upon the application filed by a party concerned.

Article 477 In the case any part of issues contained in the award of competent arbitration institution falls into circumstances set forth in Paragraph 2 and Paragraph 3 of Article 237 of the Civil Procedure Law, the competent people's court may rule that such part shall not be subject to enforcement.

In the case the part not be subject to enforcement as ruled by the competent people's court is inseparable with the remaining part in the award, the competent people's court shall rule that such award shall not be subject to enforcement.

Article 478 In the case the competent people's court ruled that, in accordance with paragraph 2 and paragraph 3 of Article 237 of the Civil Procedure Law, any arbitration award shall not be subject to enforcement, and a party concerned proposes any opposition of or requests for review on such ruling, the competent people's court shall not accept such proposal or request. In this event, the parties concerned may reach a written arbitration agreement again on the civil dispute, or may file a litigation with the competent people's court.

Article 479 In the case any person subject to enforcement, during the enforcement, applies any arbitration proceeding to affirming any party uninvolved in the case as the right holder of or dividing to such party uninvolved the property sealed up, seized or frozen by the competent people's court, the enforcement undertaken by the competent people's court shall not be affected thereby.

Any party uninvolved in the case may propose oppositions, if any, in accordance with Article 227 of the Civil Procedure Law.

Article 480 The notarized instrument on creditors' right may be found indeed erroneous pursuant to Paragraph 2 of Article 238 of the Civil Procedure Law if:

- (1) Such notarized instrument on creditors' right falls into the scope of instruments that shall not be subject to enforcement;
- (2) Notarization process specified in laws has been seriously violated, such as the situation that the person subject to enforcement fails to attend the notarization in person or by its agent;
- (3) Content of the notarized instrument on creditors' right is inconsistent with facts or violates the mandatory provisions in laws;

(4) The notarized instrument on creditors' right contains no provisions that the person subject to enforcement accepts enforcement if it fails to perform obligations or fails to fully perform obligations.

The competent people's court may render a ruling that the notarized instrument on creditors' rights shall not be subject to enforcement if it determined that such instrument may violate public interests.

In the case it is ruled that the notarized instrument on creditors' right shall not be subject to enforcement, the parties concerned, and the interested parties in the subject matter under notarization may file a litigation on the disputes relating to creditors' right.

Article 481 Any request raised by a party concerned that arbitration award or notarized instrument on creditors' right shall not be subject to enforcement shall be submitted to the competent people's court prior to the completion of enforcement.

Article 482 The competent people's court shall issue the notice of enforcement within ten days as of the receipt of the application for enforcement or enforcement sheet handed over.

The notice of enforcement shall urge the person subject to enforcement to perform the obligations determined in the legal instrument, in addition to which the notice shall indicate that the person subject to enforcement shall bear the interest for delay performance or delay performance fees as specified in Article 253 of the Civil Procedure Law.

Article 483 The people's court shall accept the application for enforcement submitted by the applicant for enforcement beyond the time limit specified for submitting such application. In the case the person subject to enforcement raises oppositions on the time limit of application which is ascertained by the competent people's court as tenable, the competent people's court may render a ruling not to initiate the enforcement process.

In the case the person subject to enforcement has fully or partially performed obligations and thereafter requests for revocation of the enforcement by the excuse that it has no knowledge on the expiry of the time limit set out for the application for enforcement, the competent people's court shall not uphold such request.

Article 484 In the case any person subject to enforcement or the legal representative, person-in-charge or actual controller thereof shall be subject to investigation and questioning, and the aforesaid parties unjustifiably reject to be present at site after lawful summoning, the competent people's court may summon the parties to be present at site by force.

The competent people's court shall promptly investigate and question the party summoned by force, and the investigation and questioning shall last for no more than eight hours. Under complicated cases when the party summoned by force may be subject to detention measures, the investigation and questioning shall last for no more than twenty-four hours.

In the case the competent people's court summons any party by force beyond its jurisdiction, it may summon the party by force to the local people's court at the location of the party involved, in which event the local people's court shall provide relevant assistance.

Article 485 The people's court shall have the right to inquire about the identity information and property information of an person subject to enforcement, in which case the entity and

individual holding such information shall observe the written notice of providing assistance for enforcement issued by the competent people's court.

Article 486 The people's court shall not dispose of the property subjecting to enforcement without completing the seal-off, seizure or freezing formalities; Regarding banking deposits and other properties which can be subject to direct deduction and transfer, the ruling rendered by the people's court on deduction and transfer shall have identical legal force with freezing.

Article 487 The people's court may freeze the banking deposits of an person subject to enforcement for no longer than one year, and seal up or seize the movable properties of an person subject to enforcement for no longer than two years, and seal up immovable properties or freeze other property right for no longer than three years.

In the case the applicant for enforcement applies for extending the aforesaid time limit, the people's court shall go through extension formalities of seal-up, seizure and freezing prior to the expiration thereof; provided that the extension period shall not exceed that set out in the preceding paragraph

The people's court may go through extension formalities of seal-up, seizure and freezing ex officio.

Article 488 In the case the competent people's court shall auction off the properties of the person subject to enforcement during enforcement as set forth in Article 247 of the Civil Procedure Law, the people's court may organize the auction on its own, or may entrust duly qualified auction agency to conduct the auction.

In the case a duly qualified auction agency is entrusted to conduct auction, the people's court shall supervise the auction activities.

Article 489 In the case any site shall be inspected or surveyed for the purpose of auction evaluation, the people's court may order the person subject to enforcement and the party under obligations to assist enforcement to provide cooperation. The people's court may inspect or survey any site by force if the person subject to enforcement or the party under obligations to assist in enforcement rejects to cooperate.

Article 490 In the case the people's court shall sell the properties of the person subject to enforcement during enforcement, it may turn the properties to relevant entity for sales or sell the properties on its own.

The people's court or its staff shall not be the buyer of or transferee to the properties to be sold.

Article 491 With the consent of the applicant for enforcement and the person subject to enforcement and without prejudice to the lawful rights and interests of other creditors as well as public interests, the people's court may directly convert the properties of the person subject to enforcement into monetary amount without auction or sales, and deliver the same to the applicant for enforcement to offset debts. In this event, the remaining debts, if any, shall continue to be repaid by the person subject to enforcement.

Article 492 In the case the properties of the person subject to enforcement cannot be auctioned off or sold, the people's court may convert such properties into monetary amount and deliver the same to the applicant for enforcement for offsetting debts or for management, with the consent of the applicant for enforcement and without prejudice to the lawful rights and interests of other creditors as well as public interests. In the case the applicant for enforcement rejects to accept or manage the monetary amount, the said amount shall be returned to the person subject to enforcement.

Article 493 In the case a deal is reached through auction or a ruling is rendered in accordance with statutory procedures to use the properties to offset debts, the ownership of the subject matter shall be transferred at the time when the ruling of the deal reached after auction, or the ruling on using the properties to offset debts, is served upon the buyer of the properties or the creditor who accepts the properties for offsetting debts.

Article 494 In the case the subject matter to be enforced is a particular item, the original item shall be enforced. In the case such original item has indeed extinguished or been damaged, compensation may be made by converting the particular item into monetary amount upon the consent of both parties.

In the case both parties concerned fail to reach an agreement on making compensation by converting the particular item into monetary amount through negotiation, the competent people's court shall terminate enforcement, in which case the applicant for enforcement may file a separate lawsuit.

Article 495 In the case any other person holds the property or bill/certificate specified to be delivered in the effective legal instrument, and rejects to deliver the same upon the notice of the competent people's court on assistance for enforcement pursuant to Paragraph 2 and Paragraph 3 of Article 249 of the Civil Procedure Law, the competent people's court may enforce and may deal with the case in accordance with Article 114 and Article 115 of the Civil Procedure Law.

In the case of any destruction or loss of such property or bill/certificate when held by other person, Article 494 of these Interpretations shall be referred to.

In the case any other person claims to lawfully hold the aforesaid property or bill/certificate, he/it may propose the opposition according to Article 227 of the Civil Procedure Law.

Article 496 In the case the person subject to enforcement conceals properties, accounting books and other data in the course of enforcement, the competent people's court may handle the situation according to Subparagraph (6) of Paragraph 1 of Article 111, in addition to which the competent people's court may order the person subject to enforcement to turn over such concealed properties, accounting books and other data. The competent people's court may take measures to search for such properties, accounting books and other data if the person subject to enforcement rejects to turn over the same.

Article 497 Search officers shall be dressed as required, and shall produce search warrants

and work certificates.

Article 498 The people's court shall prohibit unrelated person from being present at the search site in the course of search. The people's court shall notify the person subject to enforcement or his/her adult family members and the relevant grassroots organizations (by dispatching personnel) of presenting at site if the party to be searched is a citizen; or shall notify the legal representative or principal person-in-charge of the party of presenting at site, if the party to be searched is a legal entity or other organizations. The search process shall not be affected if the party to be searched rejects to be present at site.

A woman's body shall be searched by female enforcement officers.

Article 499 Paragraph 2 of Article 245 and Article 247 of the Civil Procedure Law shall apply in the case of any properties that shall be sealed up or seized being discovered during the search.

Article 500 Search transcripts shall be made for a search, and the search officers, the party being searched and other parties presenting at the search site shall affix the appropriate signature, fingerprint or seal on the transcripts. Any rejection of affixing signature, fingerprint or seal shall be recorded in the transcripts accordingly.

Article 501 The competent people's court may rule to freeze the due and payable debt to which the person subject to enforcement has the creditor's right against another party, and notify the said another party to perform such debt to the relevant applicant for enforcement.

In the case the said another party proposes any opposition to the due and payable debt and the applicant for enforcement applies with competent people's court for the enforcement of the part involved in opposition, the competent people's court shall not uphold such application. If any interested party proposes any opposition to the due and payable debt, the competent people's court shall handle the situation pursuant to Article 227 of the Civil Procedure Law.

The competent people's court shall not uphold the said another party if the latter denies any due and payable debt ascertained in the effective legal instrument.

Article 502 The competent people's court may follow Article 251 of the Civil Procedure Law if it shall go through transfer formalities of relevant property ownership certificates/licenses including real estate ownership certificate, land certificate, forest ownership certificate, patent certificate, trademark certificate, vehicle and vessel license etc. in the course of enforcement.

Article 503 In the case the person subject to enforcement fails to perform the obligation of conduct determined in an effective legal instrument and such obligation may be completed by other person, the people's court may select and designate other person to perform such obligations on behalf of the person subject to enforcement. The person so be selected and designated by the people's court shall be eligible if the relevant laws or administrative regulations have imposed any restrictions on the eligibility. If necessary, the people's court may determine by tendering process the person to perform the obligation of conduct on behalf of the person subject to enforcement.

The applicant for enforcement may recommend a eligible person to perform the obligation of conduct, or may apply for performing such obligation of conduct by itself, in which case the people's court may determine whether to uphold the application at its discretion.

Article 504 The people's court will determine the amount of fees payable for the performance of the obligation of conduct on behalf of the person subject to enforcement, which shall be due and payable by the person subject to enforcement in advance within the time limit specified by the people's court. In the case the person subject to enforcement fails to pay such amount in advance, the people's court may conduct enforcement on such amount.

After the completion of the performance on behalf of the person subject to enforcement, the person subject to enforcement may inspect and copy the list of fees and main vouchers or certificates.

Article 505 In the case the person subject to enforcement fails to perform the obligation of conduct determined in a binding legal instrument and such conduct shall only be performed by the person subject to enforcement, the people's court may deal with the situation pursuant to Subparagraph (6) of Paragraph 1 of Article 111 of the Civil Procedure Law.

In the case the person subject to enforcement still fails to perform the obligation of conduct during the time limit specified by the people's court, the people's court may deal with the situation again pursuant to Subparagraph (6) of Paragraph 1 of Article 111 of the Civil Procedure Law.

Article 506 In the case the person subject to enforcement delays performance, the amount of interest accrued during the late performance period or the late performance fees shall be calculated from the expiration date of the performance period specified in the effective judgment, ruling or other legal instruments.

Article 507 The person subject to enforcement failing to perform the non-monetary payment obligations during the time limit specified in judgment, ruling or other legal instruments shall pay late performance fees regardless of any loss caused to the applicant for enforcement. In the case of any loss caused, the person subject to enforcement shall compensate the applicant for enforcement in double for loss resulted; in the event no loss has been generated, the amount of late performance fees may be determined by the people's court in light of detailed circumstances of the case.

Article 508 In the case the person subject to enforcement is a citizen or other organizations and, upon the commencement of the enforcement process, other creditors of the person subject to enforcement having acquired basis for enforcement found that properties of the person subject to enforcement are insufficient to repay the debt in full, the said other creditors may apply to the people's court for participating in distribution.

Creditors enjoying priority of or holding security interest on the property sealed up, seized or frozen by the people's court may directly apply for participating in the distribution and claim the priority right to receive repayment.

Article 509 To apply for participating in distribution, the applicant shall submit a written application, which shall indicate clearly the facts and reasons of participating in distribution and of the failure of the person subject to enforcement to repay debts in full, and shall attach the grounds for enforcement.

Application for participating in distribution shall be filed after the start-up of the enforcement process and prior to the completion of enforcement upon the properties of the person subject to enforcement.

Article 510 The amount acquired from the enforcement process shall, after deducting fees paid for enforcement and repaying the debts with priority, be repaid to all the ordinary creditors according to the ratio of the amount of their respective creditor's right to the total amount under all applications for participating in distribution. The remaining debt after the foregoing repayment process, if any, shall continue to be repaid by the person subject to enforcement. Creditors may apply to the people's court for enforcement upon discovering any other properties of the person subject to enforcement.

Article 511 In the case multiple creditors apply for participating in distribution of the properties subject to enforcement, the people's court of enforcement shall prepare properties distribution plan and serve the same upon the said multiple creditors and the person subject to enforcement involved. Any opposition of the said creditors or the person subject to enforcement involved shall be proposed to the people's court of enforcement within fifteen days as of the receipt of such plan.

Article 512 In the case the aforesaid creditors or person subject to enforcement involved raised any written opposition to the distribution plan, the competent people's court shall notify those creditors and person subject to enforcement that have not raised oppositions.

In the case creditors and person subject to enforcement that have not raised oppositions fail to raise any objection within fifteen days upon receiving the notice set forth in the preceding paragraph, the people's court of enforcement shall amend the distribution plan in light of the said written oppositions in the preceding paragraph and perform the distribution. In the case the creditors and person subject to enforcement that have not raised oppositions raise any objection within the fifteen days period, the people's court shall inform the creditors and person subject to enforcement having raised oppositions, in which case the creditors and person subject to enforcement having raised oppositions may, within fifteen days upon receiving such notice, file a lawsuit with the people's court of enforcement and list the said creditors and person subject to enforcement raising objections as defendants. The people's court of enforcement shall perform the distribution in line with the original distribution plan, if the creditors and person subject to enforcement having raised oppositions fail to file a lawsuit as aforesaid.

In the case any distribution shall be made during litigation, the people's court of enforcement shall set aside the amount equivalent to that of the debt in dispute.

Article 513 During the enforcement, if the a business entity as the person subject to enforcement falls under the situations set forth in Paragraph 1 of Article 2 of the Enterprise

Bankruptcy Law, the people's court of enforcement shall, with the consent of one of the applicants for enforcement or of the person subject to enforcement, rule to suspend the enforcement on the person subject to enforcement, and refer the documents relating to the enforcement to the people's court at the location where the person subject to enforcement is domiciled.

Article 514 The people's court at the location where the person subject to enforcement is domiciled shall, within thirty days as of the receipt of the aforesaid relevant documents, inform the court of enforcement of the ruling whether to accept the bankruptcy case. If the people's court at the location where the person subject to enforcement is domiciled determines not to accept the bankruptcy case, it shall return relevant documents to the court of enforcement.

Article 515 In the event the people's court at the location where the person subject to enforcement is domiciled rules to accept the bankruptcy case, the court of enforcement shall cancel the preservation measures on the properties of the person subject to enforcement. In the case the people's court at the location where the person subject to enforcement is domiciled rules that the person subject to enforcement shall be bankrupt, the court of enforcement shall rule to terminate the enforcement against the person subject to enforcement.

The court of enforcement shall rule to resume the enforcement if the people's court at the location where the person subject to enforcement is domiciled determines not to accept the bankruptcy case.

Article 516 In the case the party concerned disagrees to refer the case to bankruptcy process or the people's court at the location where the person subject to enforcement is domiciled rejects to accept the bankruptcy case, the court of enforcement shall use the properties acquired from sell-off operation in enforcement to, upon deducting fees for enforcement and repaying the debt with priority, repay the general creditors by the order of properties seal-off, seizure and freezing during the property preservation and enforcement process.

Article 517 In the case a creditor applies to the people's court for continuous enforcement pursuant to Article 254 of the Civil Procedure Law, such application shall not subject to the time limit on application for enforcement set forth in Article 239 of the Civil Procedure Law.

Article 518 The people's court may impose punishment upon the person subject to enforcement failing to perform the obligations determined in binding legal instrument, in addition to which the people's court may, in light of the severity of the circumstance, list the person subject to enforcement in the list of dishonest persons subject to enforcement and circulate the information on the person subject to enforcement failing to perform obligations or to fully perform obligations to the employer of the person subject to enforcement, credit information service institutions and to other relevant authorities.

Article 519 In the case no properties are found available for enforcement upon property investigation, the people's court may rule to terminate the enforcement with the signature of

the applicant for enforcement, or with the review and verification of the collegiate panel formed by the court of enforcement as well as the approval of the president of the court of enforcement.

In the case, after the termination of the enforcement pursuant to the preceding paragraph, the applicant for enforcement discovers any properties of the person subject to enforcement available for enforcement, it may apply for enforcement again. Such application for enforcement shall not be subject to the time limit specified for application for enforcement.

Article 520 In the case, after the termination of the enforcement due to the withdrawal of the application by the applicant for enforcement, the party concerned applies again for enforcement within the time limit prescribed for application for enforcement in Article 239 of the Civil Procedure Law, the people's court shall accept such application.

Article 521 In the case, within six months after the termination of the enforcement, the person subject to enforcement or other interested parties impairs the subject matter under enforcement, the people's court may remove such impairment upon application, in addition to which the people's court may also impose a punishment pursuant to Article 111 of the Civil Procedure Law. In the case such impairment results in other losses to the creditors in the enforcement or to other interested parties, such creditors or interested parties suffered thereby may file a litigation otherwise.

Chapter 22: Special Provisions on Foreign-Related Civil Procedures

Article 522 The people's court may determine a case as foreign-related civil case if:

- (1) One or both parties concerned are foreigners, stateless persons, or foreign enterprises or organizations; or
- (2) The habitual residences of one or both parties concerned are beyond the territory of the People's Republic of China; or
- (3) The subject matter is located beyond the territory of the People's Republic of China; or
- (4) The legal facts generating, altering or terminating civil relations occur beyond the territory of the People's Republic of China; or
- (5) Other situations based on which the case can be regarded as a foreign-related case.

Article 523 A foreigner intending to participate in a litigation shall produce to the people's court his/her passport and other documents to prove his/her identity.

A foreign enterprise or organization intending to participate in a litigation shall produce to the people's court its identity certificates, which shall be notarized by the notary public in the country of domicile of the foreign enterprise or organization and be certified by the embassy/consulate of the People's Republic of China in the said foreign country, or be subject to certification formalities set forth in the relevant treaties signed by and between the People's Republic of China and the said foreign country.

The person representing a foreign enterprise or organization to participate in litigation shall submit to the competent people's court evidence to prove that he has the authority to participate in the litigation as a representative. Such evidence shall be notarized by the notary

public in the country of domicile of the foreign enterprise or organization and be certified by the embassy/consulate of the People's Republic of China in the said foreign country, or be subject to certification formalities set forth in the relevant treaties signed by and between the People's Republic of China and the said foreign country.

The "country of domicile" referred in this Article shall mean the country of incorporation and registration of the foreign enterprise or organization, and may also refer to a third country in which the foreign enterprise or organization has handled business registration formalities.

Article 524 In the case notarization and certification formalities shall be gone through in accordance with Article 264 of the Civil Procedure Law and Article 523 herein, but the country of domicile of the foreign party involved has no diplomatic relations with the People's Republic of China, then relevant documents may be notarized by a notary public in the country of domicile of the foreign party first, then be certified by the embassy/consulate in the said country of the third country that has diplomatic relations with the People's Republic of China, and thereafter be certified by the embassy/consulate of the People's Republic of China in the said third country.

Article 525 In the case a foreigner or the representative of a foreign enterprise or organization signs any power of attorney to entrust agents for civil lawsuit in the presence of a judge of the people's court, such procedure and force thereof shall be recognized and ratified by the people's court.

Article 526 In the case a foreigner or the representative of a foreign enterprise or organization signs any power of attorney within the boundary of the People's Republic of China to entrust agents for civil lawsuit, and such entrustment has been notarized by a notary public in the People's Republic of China, the people's court shall recognize and ratify such procedure and force thereof.

Article 527 In the case the party concerned submitted any written document made in foreign language to the people's court, it shall submit Chinese translation of such document at the same time.

In the case the parties concerned disagree on a Chinese translation, they shall jointly entrust a translation institution to provide a translated version. The people's court may determine such translation institution at its discretion if the parties concerned fail to reach an agreement on the selection of translation institution.

Article 528 A foreign party in a foreign-related civil lawsuit may entrust an individual from his/her/its country as the agent at litem, or entrust a lawyer in his/her/its country to act as the agent at litem in the name of non-lawyer. Officials from the embassy/consulate of a foreign country in China may, with the entrustment of a citizen of such foreign country, act as the latter's agent ad litem in his/her personal capacity; provided that such official shall not enjoy any diplomatic or consular privilege and immunity during litigation.

Article 529 An official from the embassy/consulate of a foreign country in China may, in the

name of a diplomatic representative, and with the authorization of such embassy/consulate and under the situation when a citizen of such foreign country who is a party to a foreign-related civil lawsuit is not in the territory of the People's Republic of China, retain a lawyer or a citizen of the People's Republic of China to act for the foreign citizen during the civil proceedings.

Article 530 The people's court shall prepare and issue a mediation statement in a foreign-related civil lawsuit, if both parties therein reached an agreement upon mediation. In the case both parties in the case require for a written judgment, the people's court shall prepare the written judgment in light of the said agreement and serve upon both parties concerned.

Article 531 The parties involved in a dispute arising out of foreign-related contract or property interests may select as the competent court, in written form, the foreign court at the domicile of the defendant, the foreign court at the place of contract performance, the foreign court at the place of execution of a contract, the foreign court at the domicile of the plaintiff, the foreign court at the place where the subject matter is located, the foreign court at the *locus delicti commissi*, or the foreign court of other locations with actual connection with the dispute.

For the case subjecting to exclusive jurisdiction of the court in the People's Republic of China in line with Article 33 and Article 366 of the Civil Procedure Law, the parties concerned shall not select a foreign court as the competent court through agreement, provided however, that they may select an arbitration institution by agreement.

Article 532 The people's court may dismiss the filing of a lawsuit by the plaintiff and inform the plaintiff to bring the lawsuit with a more convenient foreign court if the following situations have been satisfied at the same time:

- (1) The defendant raised the request that the case shall be handled by a more convenient foreign court, or proposed oppositions to the jurisdiction;
- (2) The parties concerned have no agreement on selecting a court of the People's Republic of China as the competent court;
- (3) The case is subject to no exclusive jurisdiction of the court in the People's Republic of China;
- (4) The case involves no interests of the nation, citizens, legal entities or other organizations in the People's Republic of China;
- (5) Main facts in dispute in the case has not occurred within the boundary of the People's Republic of China, and the case shall not be governed by laws of the People's Republic of China, due to which the people's court may confront substantial difficulties in terms of ascertaining facts and applying laws when trying the case;
- (6) A foreign court enjoys exclusive jurisdiction upon the case and would try the case in a more convenient manner.

Article 533 If a case may be governed by a court of the People's Republic of China and a foreign court at the same time, the people's court may accept such case if one party involved in the case bring a lawsuit with the foreign court while the other party involved bring a lawsuit

with a court of the People's Republic of China. In the case a foreign court applies for or one party concerned requests the acceptance and enforcement of a judgment or ruling rendered by the foreign court, after a written judgment on the case has been issued by the competent people's court, the people's court shall not approve the same, unless otherwise specified in the international treaties jointly concluded or acceded to by both the People's Republic of China and the foreign country.

The people's court shall not accept the lawsuit brought about by the parties concerned with respect to a dispute, if the judgment or ruling on such dispute made by a foreign country has been accepted by the people's court.

Article 534 The people's court shall serve the litigation instruments by announcement to a party concerned that has no domicile within the territory of the People's Republic of China. In the case the said party fails to respond to the litigation after the expiry of the announcement period and the people's court rendered a default judgment, the people's court shall still serve the written judgment/ruling upon the party concerned according to Subparagraph(8) of Article 267 of the Civil Procedure Law. In the event the parties involved in the case fail to appeal upon the expiry of the thirty-day appeal period as from the expiry of three months' announcement period, the first-instance judgment shall come into legal force.

Article 535 In the case a foreigner or the representative or principal person-in-charge of a foreign enterprise or organization is in the territory of the People's Republic of China at the time of service of the litigation instruments by the people's court, such litigation instruments may be served upon such foreign natural person, or the legal representative or principal person-in-charge of such foreign enterprise or organization.

The principal person-in-charge of a foreign enterprise or organization shall include the directors, supervisors and officers of the enterprise or organization.

Article 536 In the case service by post is allowed in the country of domicile of the party on whom the litigation instruments will be served, the competent people's court may serve the litigation instruments by post.

Litigation instruments served by post shall have an acknowledgement of receipt attached. In the case the party on whom the litigation instruments are served signs in the mail receipt instead of the said acknowledgement of receipt, the litigation instruments shall be deemed to have been served, and the date signed on the mail receipt shall be the date of service.

In the case no evidence of successful service is received in three months as of the service of the litigation instruments by post, and no successful service can be confidently ascertained based upon existing situations, the litigation instruments shall be deemed as unsuitable to be served by post.

Article 537 In the case the competent people's court serves the litigation instruments on a party concerned by announcement during first-instance, it may directly serve the litigation instruments on the party concerned by announcement during second-instance, unless the people's court is able to serve such litigation instruments by other means than service by announcement.

Article 538 Regarding the time limit for instituting appeals against a judgment/ruling rendered by the people's court of first instance, the time limit set forth in Article 164 of the Civil Procedure Law shall apply to a party concerned who has a domicile within the territory of the People's Republic of China, and the time limit set forth in Article 269 of the Civil Procedure Law shall apply to a party concerned who has no domicile within the territory of the People's Republic of China. In the case no appeal is instituted upon expiration of the time limit for appeal applicable to both parties, the judgment/ruling rendered by the people's court of first instance shall come into legal force.

Article 539 The time limit during which the competent people's court reviews the application filed by a party for retrial of a foreign-related civil case is not bound by the provisions of Article 204 of the Civil Procedure Law.

Article 540 The party applying to the competent people's court for enforcing an arbitration award rendered by a foreign-related arbitration institution of the People's Republic of China shall submit a written application, and attach thereto the original of the written arbitration award. In the case the applicant is a foreign party, the written application shall be submitted in Chinese.

Article 541 In the case the competent people's court enforces an arbitration award rendered by a foreign-related arbitration institution, and the person subject to enforcement raises defense on the grounds of the existence of any of the circumstances set forth in Paragraph 1 of Article 274 of the Civil Procedure Law, the people's court shall review the defense raised by the person subject to enforcement and render a ruling on enforcement or non-enforcement based on the review results.

Article 542 In the case a foreign-related arbitration institution of the People's Republic of China, in accordance with Article 272 of the Civil Procedure Law, submits the application for preservation filed by a party concerned to the competent people's court for a ruling thereon, the people's court may review the said application, and render a ruling on whether to take preservation measures. The people's court shall order the applicant to provide guarantee, if it rules to take preservation measures, and shall rule to reject the application if the applicant fails to provide guarantee.

An applicant that applies for the preservation of evidence may not provide guarantee, if upon review, the people's court regards that no guarantee needs to be provided.

Article 543 To apply to the competent people's court for recognition and enforcement of an effective judgment/ruling rendered by a foreign court, the applicant shall submit a written application and attach thereto the original of the effective judgment/ruling rendered by the foreign court or the duplicate thereof that is certified to be true and the Chinese translations thereof. In the case the judgment/ruling rendered by the foreign court is a default judgment/ruling, the applicant shall also submit documents to prove that the foreign court has summoned the relevant parties pursuant to law, except that the judgment/ruling has provided

clear explanations on this issue.

Provisions specified in the international treaties concluded or acceded to by the People's Republic of China on the submission of documents shall apply.

Article 544 In the event that a party concerned applies to a competent intermediate people's court of the People's Republic of China for recognition and enforcement of an effective judgment/ruling rendered by a foreign court, in the absence of any international treaty concluded by and between or jointly acceded to by the country of domicile of the foreign court and the People's Republic of China, and in the absence of any reciprocal relationship between the same, the said intermediate people's court shall rule to reject the application, unless the party concerned applies to the people's court for recognizing an effective divorce judgment rendered by the foreign court.

Where the application for recognition and enforcement is rejected by a ruling, the party concerned may file a lawsuit with the competent people's court.

Article 545 Where a party to an arbitration award rendered by a temporary arbitration tribunal outside the territory of the People's Republic of China applies to a people's court for recognition and enforcement of the same, the people's court shall deal with the application in accordance with Article 283 of the Civil Procedure Law.

Article 546 In the event an effective judgment/ruling rendered by a foreign court or a foreign arbitration award needs to be enforced by a court of the People's Republic of China, the party concerned shall apply to the competent people's court for recognition of the said judgment/ruling or arbitration award in the first place. The people's court shall enforce the said judgment/ruling or arbitration award in accordance with Part 3 of the Civil Procedure Law after rendering a ruling to recognize the same upon review.

In the case a party concerned only applies for recognition of effective judgment/ruling rendered by a foreign court or a foreign arbitration award and does not apply for enforcement at the same time, the competent people's court shall only review and render a ruling on whether to recognize the said judgment/ruling or arbitration award.

Article 547 The time limit set forth for a party to apply for recognition and enforcement of an effective judgment/ruling rendered by a foreign court or a foreign arbitration award shall be governed by Article 239 of the Civil Procedure Law.

In the case a party concerned only applies for recognition of an effective judgment/ruling rendered by a foreign court or a foreign arbitration award and does not apply for enforcement at the same time, the time limit for applying for enforcement shall be re-calculated from the date when the ruling rendered by the people's court on the application for recognition comes into force.

Article 548 The people's court shall form a collegiate panel to review a case for recognition and enforcement of an effective judgment/ruling rendered by a foreign court or a foreign arbitration award.

The people's court shall serve the written application on the respondent who may state its

opinions.

The ruling rendered by the people's court upon review shall come into legal force once served.

Article 549 In the case a court of a country that has no any judicial assistance treaty or reciprocal relationship with the People's Republic of China directly requests a people's court to provide judicial assistance without going through diplomatic channels, the people's court shall reject the request, and explain the reasons therefor.

Article 550 In the case a party concerned needs to use a written judgment/ruling rendered by a court of the People's Republic of China outside the territory of the People's Republic of China, and requests the relevant court of the People's Republic of China to prove the legal force of the said judgment/ruling, or if a foreign court requires the relevant court of the People's Republic of China to prove the legal force of the latter's written judgment/ruling, the court of the People's Republic of China that renders the judgment/ruling may issue relevant certificates in its own name.

Article 551 The people's courts may refer to the special provisions on foreign-related civil procedures when trying civil lawsuits involving the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan region.

Chapter 23: Supplementary Provisions

Article 552 The Opinions on Several Issues concerning the Application of the "Civil Procedure Law of the People's Republic of China" promulgated by the Supreme People's Court on July 14, 1992 shall be simultaneously repealed with effect from the promulgation and implementation of these Interpretations. Judicial interpretations previously promulgated by the Supreme People's Court shall cease to be effective if they are inconsistent with these Interpretations.

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