

# Civil Procedure Law

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## Part One General Provisions

### Chapter I The Aim, Scope of Application and Basic Principles

Article 1 The Civil Procedure Law of the People's Republic of China is formulated on the basis of the Constitution and in the light of the experience and actual conditions of our country in the trial of civil cases.

Article 2 The Civil Procedure Law of the People's Republic of China aims to protect the exercise of the litigation rights of the parties and ensure the ascertaining of facts by the people's courts, distinguish right from wrong, apply the law correctly, try civil cases promptly, affirm civil rights and obligations, impose sanctions for civil wrongs, protect the lawful rights and interests of the parties, educate citizens to voluntarily abide by the law, maintain the social and economic order, and guarantee the smooth progress of the socialist construction.

Article 3 In dealing with civil litigation arising from disputes on property and personal relations between citizens, legal persons or other organizations and between the three of them, the peoples' courts shall apply the provisions of this Law.

Article 4 Whoever engages in civil litigation within the territory of the People's Republic of China must abide by this Law.

Article 5 Aliens, stateless persons, foreign enterprises and organizations that bring suits or enter appearance in the people's courts shall have the same litigation rights and obligations as citizens, legal persons and other organizations of the People's Republic of China.

If the courts of a foreign country impose restrictions on the civil litigation rights of the citizens, legal persons and other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall follow the principle of reciprocity regarding the civil litigation rights of the citizens, enterprises and organizations of that foreign country.

Article 6 The people's courts shall exercise judicial powers with respect to civil cases.

The people's courts shall try civil cases independently in accordance with the law, and shall be subject to no interference by any administrative organ, public organization or individual.

Article 7 In trying civil cases, the people's courts must base themselves on facts and take the law as the criterion.

Article 8 The parties in civil litigation shall have equal litigation rights. The people's courts shall, in conducting the trials, safeguard their rights, facilitate their exercising the rights, and apply the law equally to them.

Article 9 In trying civil cases, the people's courts shall conduct conciliation for the parties on a voluntary and lawful basis; if conciliation fails, judgments shall be rendered without delay.

Article 10 In trying civil cases, the people's courts shall, according to the provisions of the law, follow the systems of panel hearing, withdrawal, public trial and the court of second instance being that of last instance.

Article 11 Citizens of all nationalities shall have the right to use their native spoken and written languages in civil proceedings.

Where minority nationalities live in aggregation in a community or where several nationalities live together in one area, the people's courts shall conduct hearings and issue legal documents in the spoken and written languages commonly used by the local nationalities.

The people's courts shall provide translations for any participant in the proceedings who is not familiar with the spoken or written languages commonly used by the local nationalities.

Article 12 Parties to civil actions are entitled in the trials by the people's courts to argue for themselves.

Article 13 The parties are free to deal with their own civil rights and litigation rights the way they prefer within the scope provided by the law.

Article 14 The people's procuratorates shall have the right to exercise legal supervision over civil proceedings.

Article 15 Where an act has infringed upon the civil rights and interests of the State, a collective organization or an individual, any State organ, public organization, enterprise or institution may support the injured unit or individual to bring an action in a people's court.

Article 16 The people's conciliation committees shall be mass organizations to conduct conciliation of civil disputes under the guidance of the grass-roots level people's governments and the basic level people's courts.

The people's conciliation committee shall conduct conciliation for the parties according to the Law and on a voluntary basis. The parties concerned shall carry out the settlement agreement reached through conciliation; those who decline conciliation or those for whom conciliation has failed or those who have backed out of the settlement agreement may institute legal proceedings in a people's court.

If a people's conciliation committee, in conducting conciliation of civil disputes, acts contrary to the law, rectification shall be made by the people's court

Article 17 The people's congresses of the national autonomous regions may formulate, in accordance with the Constitution and the principles of this Law, and in conjunction with the specific circumstances of the local nationalities, adaptive and supplementary provisions. Such provisions made by an autonomous region shall be submitted to the Standing Committee of the National People's Congress for approval; those made by an autonomous prefecture or autonomous county shall be submitted to the standing committee of the people's congress of the relevant province or autonomous region for approval and to the Standing Committee of the National People's Congress for the record.

## Chapter II Jurisdiction

### Section 1 Jurisdiction by Forum Level

Article 18 The basic people's courts shall have jurisdiction as courts of first instance over civil cases, unless otherwise provided in this Law.

Article 19 The intermediate people's courts shall have jurisdiction as courts of first instance over the following civil cases:

- (1) major cases involving foreign element;
- (2) cases that have major impact on the area under their jurisdiction; and
- (3) cases as determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts.

Article 20 The high people's courts shall have jurisdiction as courts of first instance over civil cases that have major impact on the areas under their jurisdiction.

Article 21 The Supreme People's Court shall have jurisdiction as the court of first instance over the following civil cases:

- (1) cases that have major impact on the whole country; and
- (2) cases that the Supreme People's Court deems it should try.

### Section 2 Territorial Jurisdiction

Article 22 A civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court of the place where the defendant has his domicile; if the place of the defendant's

domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of his habitual residence. A civil lawsuit brought against a legal person or any other organization shall be under the jurisdiction of the people's court of the place where the defendant has his domicile.

Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit.

Article 23 The civil lawsuits described below shall be under the jurisdiction of the people's court of the place where the plaintiff has his domicile; if the place of the plaintiff's domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of the plaintiff's habitual residence:

- (1) those concerning personal status brought against persons not residing within the territory of the People's Republic of China;
- (2) those concerning the personal status of persons whose whereabouts are unknown or who have been declared as missing.
- (3) those brought against persons who are undergoing rehabilitation through labour; and
- (4) those brought against persons who are in imprisonment.

Article 24 A lawsuit brought on a contract dispute shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or where the contract is performed.

Article 25 The parties to a contract may agree to choose in their written contract the people's court of the place where the defendant has his domicile, where the contract is performed, where the contract is signed, where the plaintiff has his domicile or where the object of the action is located to exercise jurisdiction over the case, provided that the provisions of this Law regarding jurisdiction by forum level and exclusive jurisdiction are not violated.

Article 26 A lawsuit brought on an insurance contract dispute shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or where the insured object is located.

Article 27 A lawsuit brought on a bill dispute shall be under the jurisdiction of the people's court of the place where the bill is to be paid or where the defendant has his domicile.

Article 28 A lawsuit arising from a dispute over a railway, road, water, or air transport contract or over a combined transport contract shall be under the jurisdiction of the people's court of the place of dispatch or the place of destination or where the defendant has his domicile.

Article 29 A lawsuit brought on a tortious act shall be under the jurisdiction of the people's court of the place where the tort is committed or where the defendant has his domicile.

Article 30 A lawsuit brought on claims for damages caused by a railway, road, water transport or air accident shall be under the jurisdiction of the people's court of the place where the

accident occurred or where the vehicle or ship first arrived after the accident or where the aircraft first landed after the accident, or where the defendant has his domicile.

Article 31 A lawsuit brought on claims for damages caused by a collision at sea or by any other maritime accident shall be under the jurisdiction of the people's court of the place where the collision occurred or where the ship in collision first docked after the accident or where the ship at fault was detained, or where the defendant has his domicile.

Article 32 A lawsuit instituted for expenses of maritime salvage shall be under the jurisdiction of the people's court of the place where the salvage took place or where the salvaged ship first docked after the disaster.

Article 33 A lawsuit brought for general average shall be under the jurisdiction of the people's court of the place where the ship first docked or where the adjustment of general average was conducted or where the voyage ended.

Article 34 The following cases shall be under the exclusive jurisdiction of the people's courts herein specified:

- (1) a lawsuit brought on a dispute over real estate shall be under the jurisdiction of the people's court of the place where the estate is located;
- (2) a lawsuit brought on a dispute over harbour operations shall be under the jurisdiction of the people's court of the place where the harbour is located; and
- (3) a lawsuit brought on a dispute over succession shall be under the jurisdiction of the people's court of the place where the decedent had his domicile upon his death, or where the principal part of his estate is located.

Article 35 When two or more people's courts have jurisdiction over a lawsuit, the plaintiff may bring his lawsuit in one of these people's courts; if the plaintiff brings the lawsuit in two or more people's courts that have jurisdiction over the lawsuit, the people's court in which the case was first entertained shall have jurisdiction.

### Section 3 Transfer and Designation of Jurisdiction

Article 36 If a people's court finds that a case it has entertained is not under its jurisdiction, it shall refer the case to the people's court that has jurisdiction over the case. The people's court to which a case has been referred shall entertain the case, and if it considers that, according to the relevant regulations, the case referred to it is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not independently refer the case again to another people's court.

Article 37 If a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for special reasons, a superior people's court shall designate another court to exercise jurisdiction.

In the event of a jurisdictional dispute between two or more people's courts, it shall be resolved

by the disputing parties through consultation; if the dispute cannot be so resolved, it shall be reported to their common superior people's court for the designation of jurisdiction.

Article 38 If a party to an action objects to the jurisdiction of a people's court after the court has entertained the case, the party must raise the objection within the period prescribed for the submission of defence. The people's court shall examine the objection. If the objection is established, the people's court shall order the case to be transferred to the people's court that has jurisdiction over it; if not, the people's court shall reject it.

Article 39 The people's courts at higher levels shall have the power to try civil cases over which the people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer civil cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.

If a people's court at a lower level that has jurisdiction over a civil case as court of first instance deems it necessary to have the case to be tried by a people's court at a higher level, it may submit it to and request the people's court at a higher level to try the case.

### Chapter III Trial Organization

Article 40 The people's court of first instance shall try civil cases by a collegial panel composed of both judges and judicial assessors or of judges alone. The collegial panel must have an odd number of members.

Civil cases in which summary procedure is followed shall be tried by a single judge alone.

When performing their duties, the judicial assessors shall have equal rights and obligations as the judges.

Article 41 The people's court of second instance shall try civil cases by a collegial panel of judges. The collegial panel must have an odd number of members.

For the retrial of a remanded case, the people's court of first instance shall form a new collegial panel in accordance with the procedure of first instance.

If a case for retrial was originally tried at first instance, a new collegial panel shall be formed according to the procedure of first instance; if the case was originally tried at second instance or was brought by a people's court at a higher level to it for trial, a new collegial panel shall be formed according to the procedure of second instance.

Article 42 The president of the court or the chief judge of a division of the court shall designate a judge to serve as the presiding judge of the collegial panel; if the president or the chief judge participates in the trial, he himself shall serve as the presiding judge.

Article 43 When deliberating a case, a collegial panel shall observe the rule of majority. The

deliberations shall be recorded in writing, and the transcript shall be signed by the members of the collegial panel. Dissenting opinions in the deliberations must be truthfully entered in the transcript.

Article 44 The judicial officers shall deal with all cases impartially and in accordance with the law.

The judicial officers shall not accept any treat or gift from the parties or their agents ad litem.

Any judicial officer who commits embezzlement, accepts bribes, engages in malpractice for personal benefits or who perverts the law in passing judgment shall be investigated for legal responsibility; if the act constitutes a crime, the offender shall be investigated for criminal responsibility according to the law.

#### Chapter IV Withdrawal

Article 45 A judicial officer shall of himself withdraw from the case, and the parties thereto shall be entitled to apply orally or in writing for his withdrawal in any of the following circumstances:

- (1) he being a party to the case or a near relative of a party or an agent ad litem in the case;
- (2) he being an interested party in the case; or
- (3) he having some other kind of relationship with a party to the case, which might affect the impartiality of the trial.

The above provisions shall also apply to clerks, interpreters, expert witnesses and inspection personnel.

Article 46 In applying for the withdrawal, the party shall state the reason and submit the application at the beginning of the proceedings; the application may also be submitted before the closing of arguments in court if the reason for the withdrawal is known to him only after the proceedings begin.

Pending a decision by the people's court regarding the withdrawal applied for, the judicial officer concerned shall temporarily suspend his participation in the proceedings, with the exception, however, of cases that require the taking of emergency measures.

Article 47 The withdrawal of the presiding judge who is president of the court shall be decided by the judicial committee; the withdrawal of judicial officers shall be decided by the court president; and the withdrawal of other personnel by the presiding judge.

Article 48 The decision of a people's court on an application made by any party for withdrawal shall be made orally or in writing within three days after the application was made. If the applicant is not satisfied with the decision, he may apply for reconsideration which could be granted only once. During the period of reconsideration, the person whose withdrawal has been

applied for shall not suspend his participation in the proceedings. The decision of a people's court on the reconsideration shall be made within three days after receiving the application and the applicant shall be notified of it accordingly.

## Chapter V Participants in Proceedings

### Section 1 Parties

Article 49 Any citizen, legal person and any other organization may become a party to a civil action.

Legal persons shall be represented by their legal representatives in the litigation. Other organizations shall be represented by their principal heads in the proceedings.

Article 50 Parties to an action shall have the right to appoint agents, apply for withdrawals, collect and provide evidence, proffer arguments, request conciliation, file an appeal and apply for execution.

Parties to an action may have access to materials pertaining to the case and make copies thereof and other legal documents pertaining to the case. The scope of and rules for consulting and making copies of them shall be specified by the Supreme People's Court.

Parties to an action must exercise their litigation rights in accordance with the law, observe the procedures and carry out legally effective written judgments or orders and conciliation statements.

Article 51 The two parties may reach a compromise of their own accord.

Article 52 The plaintiff may relinquish or modify his claims. The defendant may admit or rebut the claims and shall have the right to file counterclaims.

Article 53 When one party or both parties consist of two or more than two persons, their object of action being the same or of the same category and the people's court considers that, with the consent of the parties, the action can be tried combined, it is a joint action.

If a party of two or more persons to a joint action have common rights and obligations with respect to the object of action and the act of any one of them is recognized by the others of the party, such an act shall be valid for all the rest of the party; if a party of two or more persons have no common rights and obligations with respect to the object of action, the act of any one of them shall not be valid for the rest.

Article 54 If the persons comprising a party to a joint action is large in number, the party may elect representatives from among themselves to act for them in the litigation. The acts of such representatives in the litigation shall be valid for the party they represent. However, modification or waiver of claims or admission of the claims of the other party or pursuing a

compromise with the other party by the representatives shall be subject to the consent of the party they represent.

Article 55 Where the object of action is of the same category and the persons comprising one of the parties is large but uncertain in number at the commencement of the action, the people's court may issue a public notice, stating the particulars and claims of the case and informing those entitled to participate in the action to register their rights with the people's court within a fixed period of time.

Those who have registered their rights with the people's court may elect representatives from among themselves to proceed with the litigation; if the election fails its purpose, such representatives may be determined by the people's court through consultation with those who have registered their rights with the court.

The acts of such representatives in the litigation shall be valid for the party they represent; however, modification or waiver of claims or admission of the claims of the other party or pursuing a compromise with the other party by the representatives shall be subject to the consent of the party they represent.

The judgments or written orders rendered by the people's court shall be valid for all those who have registered their rights with the court. Such judgments or written orders shall apply to those who have not registered their rights but have instituted legal proceedings during period of limitation of the action.

Article 56 If a third party considers that he has an independent claim to the object of action of both parties, he shall have the right to bring an action.

Where the outcome of the case will affect a third party's legal interest, such party, though having no independent claim to the object of action of both parties, may file a request to participate in the proceedings or the people's court shall notify the third party to participate. A third party that is to bear civil liability in accordance with the judgment of the people's court shall be entitled to the rights and obligations of a party in litigation.

## Section 2 Agents ad Litem

Article 57 Any person with no legal capacity to engage in litigation shall have his guardian or guardians as statutory agents to act for him in a lawsuit. If the statutory agents try to shift responsibility as agents ad litem upon one another, the people's court shall appoint one of them to represent the person in litigation.

## Article 58

A party to an action, or statutory agent may appoint one or two persons to act as his agents ad litem.

A lawyer, a near relative of the party, a person recommended by a relevant social organization

or a unit to which the party belongs or any other citizen approved by the people's court may be appointed as the party's agent ad litem.

Article 59 When a person appoints another to act on his behalf in litigation, he must submit to the people's court a power of attorney bearing his signature or seal. The power of attorney must specify the matters entrusted and the powers conferred. An agent ad litem must obtain special powers from his principal to admit, waive or modify claims, or to compromise or to file a counterclaim or an appeal.

A power of attorney mailed or delivered through others by a citizen of the People's Republic of China residing abroad must be certified by the Chinese embassy or consulate accredited to that country. If there is no Chinese embassy or consulate in that country, the power of attorney must be certified by an embassy or a consulate of a third country accredited to that country that has diplomatic relations with the People's Republic of China, and then transmitted for authentication to the embassy or consulate of the People's Republic of China accredited to that third country, or it must be certified by a local patriotic overseas Chinese organization.

Article 60 A party to an action shall inform the people's court in writing if he changes or revokes the powers of an agent ad litem, and the court shall notify the other party of the change or revocation.

Article 61 A lawyer who serves as an agent ad litem and other agents ad litem shall have the right to investigate and collect evidence, and may have access to materials pertaining to the case. The scope of and rules for consulting materials pertaining to the case shall be specified by the Supreme People's Court.

Article 62 In a divorce case in which the parties to the action have been represented by their agents ad litem, the parties themselves shall still appear in court in person, unless they are incapable of expressing their own will. A party who is truly unable to appear in court due to a special reason shall submit his views in writing to the people's court.

## Chapter VI Evidence

Article 63 Evidence shall be classified as follows:

- (1) documentary evidence;
- (2) material evidence;
- (3) audio-visual material;
- (4) testimony of witnesses;
- (5) statements of the parties;
- (6) expert conclusions; and
- (7) records of inspection.

The above-mentioned evidence must be verified before it can be taken as a basis for ascertaining a fact.

Article 64 It is the duty of a party to an action to provide evidence in support of his allegations.

If, for objective reasons, a party and his agent ad litem are unable to collect the evidence by themselves or if the people's court considers the evidence necessary for the trial of the case, the people's court shall investigate and collect it.

The people's court shall, in accordance with the procedure prescribed by the law, examine and verify evidence comprehensively and objectively.

Article 65 The people's court shall have the right to make investigation and collect evidence from the relevant units or individuals; such units or individuals may not refuse to provide information and evidence.

The people's court shall verify the authenticity, examine and determine the validity of the certifying documents provided by the relevant units or individuals.

Article 66 Evidence shall be presented in court and cross-examined by the parties concerned. But evidence that involves State secrets, trade secrets and personal privacy shall be kept confidential. If it needs to be presented in court, such evidence shall not be presented in an open court session.

Article 67 The people's court shall take the acts, facts and documents legalized by notarization according to legal procedures as the basis for ascertaining facts, unless there is evidence to the contrary sufficient to invalidate the notarization.

Article 68 Any document submitted as evidence must be the original. Material evidence must also be original. If it is truly difficult to present the original document or thing, then reproductions, photographs, duplicates or extracts of the original may be submitted.

If a document in a foreign language is submitted as evidence, a Chinese translation must be appended.

Article 69 The people's court shall verify audio-visual materials and determine after their examination in the light of other evidence in the case whether they can be taken as a basis for ascertaining the facts.

Article 70 All units and individuals who have knowledge of a case shall be under the obligation of giving testimony in court. Responsible heads of the relevant units shall support the witnesses to give testimony. When it is truly difficult for a witness to appear in court, he may, with the consent of the people's court, submit a written testimony.

Any person who is incapable of expressing his will properly shall not give testimony.

Article 71 The people's court shall examine the statements of the parties concerned in the light of other evidence in the case to determine whether the statements can be taken as a basis for

ascertaining the facts.

The refusal of a party to make statements shall not prevent the people's court from ascertaining the facts of a case on the basis of other evidence.

#### Article 72

When the people's court deems it necessary to make an expert evaluation of a problem of a technical nature, it shall refer the problem to a department authorized by the law for the evaluation. In the absence of such a department, the people's court shall appoint one to make the expert evaluation.

The authorized department and the experts designated by the department shall have the right to consult the case materials necessary for the evaluation and question the parties and witnesses when circumstances so require.

The authorized department and the experts it designated shall present a written conclusion of the evaluation duly sealed or signed by both. If the evaluation is made by an expert alone, the unit to which the expert belongs shall certify his status by affixing its seal to the expert's conclusion.

Article 73 When inspecting material evidence or a site, the inspector must produce his credentials issued by a people's court. He shall request the local grass-roots organization or the unit to which the party to the action belongs to send persons to participate in the inspection. The party concerned or an adult member of his family shall be present; their refusal to appear on the scene, however, shall not hinder the inspection.

Upon notification by the people's court, the relevant units and individuals shall be under the obligation of preserving the site and assisting the inspection.

The inspector shall make a written record of the circumstances and results of the inspection, which shall be duly signed or sealed by the inspector, the party concerned and the participants requested to be present.

Article 74 Under circumstances where there is a likelihood that evidence may be destroyed or lost, or difficult to obtain later, the participants in the proceedings may apply to the people's court for preservation of the evidence. The people's court may also on its own initiative take measures to preserve such evidence.

### Chapter VII Time Periods and Service

#### Section 1 Time Periods

Article 75 Time periods shall include those prescribed by the law and those designated by a people's court. Time periods shall be calculated by the hour, the day, the month and the year. The hour and day from which a time period begins shall not be counted as within the time

period. If the expiration date of a time period falls on a holiday, then the day immediately following the holiday shall be regarded as the expiration date. A time period shall not include travelling time. A litigation document that is mailed before the deadline shall not be regarded as overdue.

Article 76 In case of failure on the part of a party to an action to meet a deadline due to force majeure or for other justified reasons, the party concerned may apply for an extension of the time limit within 10 days after the obstacle is removed. The extension applied for shall be subject to approval by a people's court.

## Section 2 Service

Article 77 A receipt shall be required for every litigation document that is served and it shall bear the date of receipt noted by the signature or seal of the person on whom the document was served.

The date noted on the receipt by the person on whom the document was served shall be regarded as the date of service of the document.

Article 78 Litigation documents shall be sent or delivered directly to the person on whom they are to be served. If that person is a citizen, the documents shall, in case of his absence, be receipted by an adult member of his family living with him. If the person on whom they are to be served is a legal person or any other organization, the documents shall be receipted by the legal representatives of the legal person or the principal heads of the other organization or anyone of the legal person or the other organization responsible for receiving such documents; if the person on whom they are to be served has an agent ad litem, the documents may be receipted by the agent ad litem; if the person on whom they are to be served has designated a person to receive litigation documents on his behalf and has informed the people's court of it, the documents may be receipted by the person designated.

The date put down in the receipt and signed by the adult family member living with the person or whom the litigation documents are to be served, or by the person responsible for receiving documents of a legal person or any other organization, or by the agent ad litem, or the person designated to receive documents shall be deemed the date of service of the documents.

Article 79 If the person on whom the litigation documents are to be served or the adult family member living with him refuses to receive the documents, the person serving the documents shall ask representatives from the relevant grass-roots organization or the unit to which the person on whom the documents are to be served belongs to appear on the scene, explain the situation to them, and record on the receipt the reasons of the refusal and the date of it. After the person serving the documents and the witnesses have affixed their signatures or seals to the receipt, the documents shall be left at the place where the person on whom they are to be served lives and the service shall be deemed completed.

Article 80 If direct service proves to be difficult, service of litigation documents may be

entrusted to another people's court, or done by mail. If the documents are served by mail, the date stated on the receipt for postal delivery shall be deemed the date of service of the documents.

Article 81 If the person on whom the litigation documents are to be served is a serviceman, the documents shall be forwarded to him through the political organ of the unit at or above the regimental level in the force to which he belongs.

Article 82 If the person on whom the litigation documents are to be served is in imprisonment, the documents shall be forwarded to him through the prison authorities or the unit of reform through labour where the person is serving his term.

If the person on whom the litigation documents are to be served is undergoing rehabilitation through labour, the documents shall be forwarded to him through the unit of his rehabilitation through labour.

Article 83 The organization or unit that receives the litigation documents to be forwarded must immediately deliver them to and have them receipted by the person on whom they are to be served. The date stated on the receipt shall be deemed the date of service of the documents.

Article 84 If the whereabouts of the person on whom the litigation documents are to be served is unknown, or if the documents cannot be served by the other methods specified in this Section, the documents shall be served by public announcement. Sixty days after the public announcement is made, the documents shall be deemed to have been served.

The reasons for service by public announcement and the process gone through shall be recorded in the case files.

## Chapter VIII Conciliation

Article 85 In the trial of civil cases, the people's court shall distinguish between right and wrong on the basis of the facts being clear and conduct conciliation between the parties on a voluntary basis.

Article 86 When a people's court conducts conciliation, a single judge or a collegial panel may preside over it. Conciliation shall be conducted on the spot as much as possible.

When a people's court conducts conciliation, it may employ simplified methods to notify the parties concerned and the witnesses to appear in court.

Article 87 When a people's court conducts conciliation, it may invite the units or individuals concerned to come to its assistance. The units or individuals invited shall assist the people's court in conciliation.

Article 88 A settlement agreement reached between the two parties through conciliation must

be of their own free will and without compulsion. The content of the settlement agreement shall not contravene the law.

Article 89 When a settlement agreement through conciliation is reached, the people's court shall draw up a conciliation statement. The conciliation statement shall clearly set forth the claims, the facts of the case, and the result of the conciliation. The conciliation statement shall be signed by the judge and the court clerk, sealed by the people's court, and served on both parties. Once it is receipted by the two parties concerned, the conciliation statement shall become legally effective.

Article 90 The people's court need not draw up a conciliation statement for the following cases when a settlement agreement is reached through conciliation:

- (1) divorce cases in which both parties have become reconciled after conciliation;
- (2) cases in which adoptive relationship has been maintained through conciliation;
- (3) cases in which the claims can be immediately satisfied; and
- (4) other cases that do not require a conciliation statement.

Any settlement agreement that needs no conciliation statement shall be entered into the written record and shall become legally effective after being signed or sealed by both parties concerned, by the judge and by the court clerk.

Article 91 If no agreement is reached through conciliation or if either party backs out of the settlement agreement before the conciliation statement is served, the people's court shall render a judgment without delay.

## Chapter IX Property Preservation and Advance Execution

Article 92 In the cases where the execution of a judgment may become impossible or difficult because of the acts of either party or for other reasons, the people's court may, at the application of the other party, order the adoption of measures for property preservation. In the absence of such application, the people's court may of itself, when necessary, order the adoption of measures for property preservation.

In adopting property preservation measures, the people's court may enjoin the applicant to provide security; if the applicant fails to do so, his application shall be rejected.

After receiving an application, the people's court must, if the case is urgent, make an order within 48 hours; if the order for the adoption of property preservation measures is made, the execution thereof shall begin immediately.

Article 93 Any interested party whose lawful rights and interests would, due to urgent circumstances, suffer irretrievable damage without immediately applying for property preservation, may, before filing a lawsuit, apply to the people's court for the adoption of property preservation measures. The applicant must provide security; if he fails to do so, his application shall be rejected.

After receiving an application, the people's court must make an order within 48 hours; if the court orders the adoption of property preservation measures, the execution thereof shall begin immediately.

If the applicant fails to bring an action within 15 days after the people's court has adopted the preservation measures, the people's court shall cancel the property preservation.

Article 94 Property preservation shall be limited to the scope of the claims or to the property relevant to the case. Property preservation shall be effected by sealing up, distraining, freezing or other methods as prescribed by the law. After the people's court has frozen the property, it shall promptly notify the person whose property has been frozen. The property that has already been sealed up or frozen shall not be sealed up or frozen for a second time.

Article 95 If the person against whom the application for property preservation is made provides security, the people's court shall cancel the property preservation.

Article 96 If an application for property preservation is wrongfully made, the applicant shall compensate the person against whom the application is made for any loss incurred from property preservation.

Article 97

The people's court may, upon application of the party concerned, order advance execution in respect of the following cases:

- (1) those involving claims for alimony, support for children or elders, pension for the disabled or the family of a decedent, or expenses for medical care;
- (2) those involving claims for remuneration for labour; and
- (3) those involving urgent circumstances that require advance execution.

Article 98 Cases in which advance execution is ordered by the people's court shall meet the following conditions:

- (1) the relationship of rights and obligations between the parties concerned is clear and definite, and denial of advance execution would seriously affect the livelihood or production operations of the applicant; and
- (2) the person against whom the application for advance execution is made is capable of fulfilling his obligations.

The people's court may enjoin the applicant to provide security; if the applicant fails to do so, his application shall be rejected. If the applicant loses the lawsuit, he shall compensate the person against whom the application is made for any loss of property incurred from the advance execution.

Article 99 If the party concerned is not satisfied with the order made on property preservation or execution, he may apply for reconsideration which could be granted only once. Execution of the order shall not be suspended during the time of reconsideration.

## Chapter X Compulsory Measures Against Obstruction of Civil Proceedings

Article 100 If a defendant is required to appear in court, but, having been served twice with summons, still refuses to do so without justified reason, the people's court may constrain him to appear in court by a peremptory writ.

Article 101 Participants and other persons in the court proceedings shall abide by the court rules. If a person violates the court rules, the people's court may reprimand him, or order him to leave the courtroom, or impose a fine on or detain him. A person who seriously disrupts court order by making an uproar in the court or rushing at it, or insulting, slandering, threatening, or assaulting the judicial officers, shall be investigated for criminal responsibility by the people's court according to the law; if the offence is a minor one, the offender may be detained or a fine imposed on him.

Article 102 If a participant or any other person in the proceedings commits any one of the following acts, the people's court shall, according to the seriousness of the act, impose a fine on him or detain him; if the act constitutes a crime, the offender shall be investigated for criminal responsibility according to law.

- (1) forging or destroying important evidence, which would obstruct the trial of a case by the people's court;
- (2) using violence, threats or subornation to prevent a witness from giving testimony, or instigating, suborning, or coercing others to commit perjury;
- (3) concealing, transferring, selling or destroying property that has been sealed up or distrained, or property of which an inventory has been made and which has been put under his care according to court instruction, or transferring the property that has been frozen;
- (4) insulting, slandering, incriminating with false charges, assaulting or maliciously retaliating against judicial officers or personnel, participants in the proceedings, witnesses, interpreters, evaluation experts, inspectors, or personnel assisting in execution;
- (5) using violence, threats or other means to hinder judicial officers or personnel from performing their duties; or
- (6) refusing to carry out legally effective judgments or orders of the people's court.

With respect to a unit that commits any one of the acts specified above, the people's court may impose a fine on or detain its principal heads or the person who are held actually responsible for the act; if the act constitutes a crime, investigations for criminal responsibility shall be made according to the law.

Article 103 Where a unit which is under an obligation to assist in investigation and execution commits any one of the following acts, the people's court may, apart from enjoining it to perform its obligation, also impose a fine:

- (1) refusing or obstructing the investigation and collection of evidence by the people's court;

- (2) refusing by banks, credit cooperatives or other units dealing with savings deposit, after receiving a notice for assistance in execution from the people's court, to assist in inquiring into, freezing or transferring the relevant deposit.
- (3) refusing by the unit concerned, after receiving a notice for assistance in execution from the people's court, to assist in withholding the income of the party subject to execution, in going through the formalities of transferring the relevant certificates of property rights or in transferring the relevant negotiable instruments, certificates, or other property; or
- (4) refusing to provide other obligatory assistance in the execution.

With respect to a unit that commits any one of the acts specified above, the people's court may impose a fine on its principal heads or the persons who are held actually responsible for the act. The people's court may also put forward a judicial proposal to the supervisory organ or any relevant organ for the imposition of disciplinary sanctions.

Article 104 A fine on an individual shall not exceed Renminbi 1,000 yuan. A fine on a unit shall not be less than 1,000 yuan and shall not exceed 30,000 yuan.

The period of detention shall not be longer than 15 days.

The people's court shall deliver detained persons to a public security organ for custody. The people's court may decide to advance the time of release, if the detainee admits and mends his wrongdoings.

Article 105 Constrained appearance in court, imposition of a fine or detention shall be subject to the approval of the president of the people's court.

A peremptory writ shall be issued for constraining appearance in court.

A decision in writing shall be made for the imposition of a fine or detention. The offender, if dissatisfied with the decision, may apply to a people's court at a higher level for reconsideration which could be granted only once. The execution of the decision shall not be suspended during the time of reconsideration.

Article 106 Decision on the adoption of compulsory measures against obstruction of proceedings shall be made only by the people's court. Any unit or individual that extorts repayment of a debt by illegal detention of a person or illegal distraintment of property shall be investigated for criminal responsibility according to the law, or shall be punished with detention or a fine.

## Chapter XI Litigation Costs

Article 107 Any party filing a civil lawsuit shall pay court costs according to the rules. For property cases, the party shall pay other fees in addition to the court costs.

Any party that has genuine difficulty in paying litigation costs may, according to the relevant rules, apply to the people's court for deferment or reduction of the payment or for its exemption.

Particulars for payment of litigation costs shall be laid down separately.

## Part Two Trial Procedure

### Chapter XII Ordinary Procedure of First Instance

#### Section 1 Bringing a Lawsuit and Entertaining a Case

Article 108 The following conditions must be met when a lawsuit is brought:

- (1) the plaintiff must be a citizen, legal person or any other organization that has a direct interest in the case;
- (2) there must be a definite defendant;
- (3) there must be specific claim or claims, facts, and cause or causes for the suit; and
- (4) the suit must be within the scope of acceptance for civil actions by the people's courts and under the jurisdiction of the people's court where the suit is entertained.

Article 109 When a lawsuit is brought, a statement of complaint shall be submitted to the people's court, and copies of the statement shall be provided according to the number of defendants.

If the plaintiff has genuine difficulty in presenting the statement of complaint in writing, he may state his complaint orally; the people's court shall transcribe the complaint and inform the other party of it accordingly.

Article 110 A statement of complaint shall clearly set forth the following:

- (1) the name, sex, age, ethnic status, occupation, work unit and home address of the parties to the case; if the parties are legal persons or any other organizations, their names, addresses and the names and posts of the legal representatives or the principal heads.
- (2) the claim or claims of the suit, the facts and grounds on which the suit is based; and
- (3) the evidence and its source, as well as the names and home addresses of the witnesses.

Article 111 The people's court must entertain the lawsuits filed in conformity with the provisions of Article 108 of this Law. With respect to lawsuits described below, the people's court shall deal with them in the light of their specific circumstances:

- (1) For a lawsuit within the scope of administrative actions in accordance with the provisions of the Administrative Procedure Law, the people's court shall advise the plaintiff to institute administrative proceedings;
- (2) If, according to the law, both parties have on a voluntary basis reached a written agreement to submit their contract dispute to an arbitral organ for arbitration, they may not institute legal proceedings in a people's court. The people's court shall advise the plaintiff to apply to the arbitral organ for arbitration;

- (3) In case of disputes which, according to the law, shall be dealt with by other organs, the people's court shall advise the plaintiff to apply to the relevant organ for settlement;
- (4) With respect to cases that are not under its jurisdiction, the people's court shall advise the plaintiff to bring a lawsuit in the competent people's court;
- (5) With respect to cases in which a judgment or order has already taken legal effect, but either party brings a suit again, the people's court shall advise that party to file an appeal instead, except when the order of the people's court is one that permits the withdrawal of a suit;
- (6) with respect to an action that may not be filed within a specified period according to the law, it shall not be entertained, if it is filed during that period.
- (7) In a divorce case in which a judgment has been made disallowing the divorce, or in which both parties have become reconciled after conciliation, or in a case concerning adoptive relationship in which a judgment has been made or conciliation has been successfully conducted to maintain the adoptive relationship, if the plaintiff files a suit again within six months in the absence of any new developments or new reasons, it shall not be entertained.

Article 112 When a people's court receives a statement of complaint or an oral complaint and finds after examination that it meets the requirements for acceptance, the court shall place the case on the docket within seven days and notify the parties concerned; if it does not meet the requirements for acceptance, the court shall make an order within seven days to reject it. The plaintiff, if not satisfied with the order, may file an appeal.

## Section 2 Preparations for Trial

Article 113 The people's court shall send a copy of the statement of complaint to the defendant within five days after docketing the case, and the defendant shall file a defence within 15 days from receipt of the copy of the statement of complaint.

When the defendant files a defence, the people's court shall send a copy of it to the plaintiff within five days from its receipt. Failure by the defendant to file a defence shall not prevent the case from being tried by the people's court.

Article 114 The people's court shall, with respect to cases whose acceptance has been decided, inform the parties in the notification of acceptance and in the notification calling for response to the action of their relevant litigation rights and obligations of which the parties may likewise be informed orally.

Article 115 The parties shall be notified within three days after the members of the collegial panel are determined.

Article 116 The judicial officers must carefully examine and verify the case materials and carry out investigations and collection of necessary evidence.

Article 117 The personnel sent by a people's court to conduct investigations shall produce their

credentials before the person to be investigated.

The written record of an investigation shall be checked by the person investigated and then signed or sealed by both the investigator and the investigated.

Article 118 A people's court may, when necessary, entrust a people's court in another locality with the investigations.

The entrusting people's court shall clearly set out the matters for and requirements of the entrusted investigations. The entrusted people's court may on its own initiative conduct supplementary investigations.

The entrusted people's court shall complete the investigations within 30 days after receiving the commission in writing. If for some reason it cannot complete the investigations, the said people's court shall notify the entrusting people's court in writing within the above-mentioned time limit.

Article 119 If a party who must participate in a joint action fails to participate in the proceedings, the people's court shall notify him to participate.

### Section 3 Trial in Court

Article 120 Civil cases shall be tried in public, except for those that involve State secrets or personal privacy or are to be tried otherwise as provided by the law.

A divorce case or a case involving trade secrets may not be heard in public if a party so requests.

Article 121 For civil cases, the people's court shall, whenever necessary, go on circuit to hold trials on the spot.

Article 122 For civil cases, the people's court shall notify the parties and other participants in the proceedings three days before the opening of a court session. If a case is to be tried in public, the names of the parties, the cause of action and the time and location of the court session shall be announced publicly.

Article 123 Before a court session is called to order, the court clerk shall ascertain whether or not the parties and other participants in the proceedings are present and announce the rules of order of the court.

At the beginning of a court session, the presiding judge shall check the parties present, announce the cause of action and the names of the judicial officers and court clerks, inform the parties of their relevant litigation rights and obligations and ask the parties whether or not they wish to apply for the withdrawal of any court personnel.

Article 124 Court investigation shall be conducted in the following order:

- (1) statements by the parties;
- (2) informing the witnesses of their rights and obligations, giving testimony by the witnesses and reading of the written statements of absentee witnesses;
- (3) presentation of documentary evidence, material evidence and audio-visual material;
- (4) reading of expert conclusions; and
- (5) reading of records of inspection.

Article 125 The parties may present new evidence during a court session.

With the permission of the court, the parties may put questions to witnesses, expert witnesses and inspectors.

Any request by the parties concerned for a new investigation, expert evaluation or inspection shall be subject to the approval of the people's court.

Article 126 Additional claims by the plaintiff, counterclaims by the defendant and third-party claims related to the case may be tried in combination.

Article 127 Court debate shall be conducted in the following order:

- (1) oral statements by the plaintiff and his agents ad litem;
- (2) defence by the defendant and his agents ad litem;
- (3) oral statement or defence by the third party and his agents ad litem;
- (4) debate between the two sides.

At the end of the court debate, the presiding judge shall ask each side, first the plaintiff, then the defendant, and then the third party, for their final opinion respectively.

Article 128 At the end of the court debate, a judgment shall be made according to the law. Where conciliation is possible prior to the rendering of a judgment, conciliation efforts may be made; if conciliation proves to be unsuccessful, a judgment shall be made without delay.

Article 129 If a plaintiff, having been served with a summons, refuses to appear in court without justified reasons, or if he withdraws during a court session without the permission of the court, the case may be considered as withdrawn by him; if the defendant files a counterclaim in the mean time, the court may make a judgment by default.

Article 130 If a defendant, having been served with a summons, refuses to appear in court without justified reasons, or if he withdraws during a court session without the permission of the court, the court may make a judgment by default.

Article 131 If a plaintiff applies for withdrawal of the case before the judgment is pronounced, the people's court shall decide whether to approve or disapprove it.

If withdrawal of the case is not allowed by an order of the people's court, and the plaintiff,

having been served with a summons, refuses to appear in court without justified reasons, the people's court may make a judgment by default.

Article 132 Under any of the following circumstances, the trial may be adjourned:

- (1) the parties concerned and other participants in the proceedings required to appear in court fail to do so for justified reasons;
- (2) any party concerned makes an extempore application for the withdrawal of a judicial officer; or
- (3) it is necessary to summon new witnesses to court, collect new evidence, make a new expert evaluation, new inspection, or to make a supplementary investigation; or
- (4) other circumstances that warrant the adjournment.

Article 133 The court clerk shall make a written record of the entire court proceedings, which shall be signed by him and the judicial officers.

The court record shall be read out in court, or else the parties and other participants in the proceedings may be notified to read the record while in court or within five days. If they consider that there are omissions or errors in the record of their own statements, the parties or other participants in the proceedings shall have the right to apply for rectifications. If such rectifications are not made, the application shall be placed on record in the case file.

The court record shall be signed or sealed by the parties and other participants in the proceedings. Refusal to do so shall be put on record in the case file.

Article 134 The people's court shall publicly pronounce its judgment in all cases, whether publicly tried or not.

If a judgment is pronounced in court, the written judgment shall be issued and delivered within ten days; if a judgment is pronounced later on a fixed date, the written judgment shall be issued and given immediately after the pronouncement.

Upon pronouncement of a judgment, the parties concerned must be informed of their right to file an appeal, the time limit for appeal and the court to which they may appeal.

Upon pronouncement of a divorce judgement, the parties concerned must be informed not to remarry before the judgment takes legal effect.

Article 135 A people's court trying a case in which the ordinary procedure is followed, shall conclude the case within six months after docketing the case. Where an extension of the period is necessary under special circumstances, a six-month extension may be allowed subject to the approval of the president of the court. Further extension, if needed, shall be reported to the people's court at a higher level for approval.

#### Section 4 Suspension and Termination of Legal Proceedings

Article 136 Legal Proceedings shall be suspended in any of the following circumstances:

- (1) one of the parties dies and it is necessary to wait for the heir or heiress to make clear whether to participate or not in the proceedings;
- (2) one of the parties has lost the capacity to engage in litigation and his agent ad litem has not been designated yet;
- (3) the legal person or any other organization as one of the parties has dissolved, and the successor to its rights and obligations has not been determined yet;
- (4) one of the parties is unable to participate in the proceedings for reasons of force majeure;
- (5) the adjudication of the case pending is dependent on the results of the trial of another case that has not yet been concluded; or
- (6) other circumstances that warrant the suspension of the litigation.

The proceedings shall resume after the causes of the suspension have been eliminated.

Article 137 Legal proceedings shall be terminated in any of the following circumstances:

- (1) the plaintiff dies without a successor, or the successor waives the right to litigate;
- (2) the decedent leaves no estate, nor any one to succeed to his obligations;
- (3) one of the parties in a divorce case dies; or
- (4) one of the parties dies who is a claimant to alimony, support for elders or children or to the termination of adoptive relationship.

## Section 5 Judgment and Order

Article 138 A judgment shall clearly set forth the following:

- (1) cause of action, the claims, facts and cause or causes of the dispute;
- (2) the facts and causes as found in the judgment and the basis of application of the law;
- (3) the outcome of adjudication and the costs to be borne; and
- (4) the time limit for filing an appeal and the appellate court with which the appeal may be filed.

The judgment shall be signed by the judicial officers and the court clerk, with the seal of the people's court affixed to it.

Article 139 If some of the facts in a case being tried by the people's court are already evident, the court may pass judgment on that part of the case first.

Article 140 An order in writing is to be made in any of the following conditions:

- (1) refusal to entertain a case;
- (2) objection to the jurisdiction of a court;
- (3) rejection of a complaint;
- (4) property preservation and advance execution;
- (5) approval or disapproval of withdrawal of a suit;
- (6) suspension or termination of legal proceedings;
- (7) correction of errata in the judgment;

- (8) suspension or termination of execution;
- (9) refusal to enforce an arbitration award;
- (10) refusal to enforce a document of a notary office evidencing the rights of a creditor and entitling him to its compulsory execution;
- (11) other matters to be decided in the form of an order in writing.

An appeal may be lodged against an order in writing in Item(1), (2) and (3) mentioned above.

An order in writing shall be signed by the judicial officers and the court clerk, with the seal of the people's court affixed to it. If it is issued orally, the order shall be entered in the record.

Article 141 All judgments and written orders of the Supreme People's Court, as well as judgments and written orders that may not be appealed against according to the law or that have not been appealed against within the prescribed time limit, shall be legally effective.

### Chapter XIII Summary Procedure

Article 142 When trying simple civil cases in which the facts are evident, the rights and obligations clear and the disputes trivial in character, the basic people's courts and the tribunals dispatched by them shall apply the provisions of this Chapter.

Article 143 In simple civil cases, the plaintiff may lodge his complaint orally.

The two parties concerned may at the same time come before a basic people's court or a tribunal dispatched by it for a solution of their dispute. The basic people's court or the tribunal it dispatched may try the case immediately or set a date for the trial.

Article 144 In trying a simple civil case, the basic people's court or the tribunal dispatched by it may use simplified methods to summon at any time the parties and witnesses.

Article 145 Simple civil cases shall be tried by a single judge alone and the trial of such cases shall not be bound by the provisions of Articles 122, 124, and 127 of this Law.

Article 146 The people's court trying a case in which summary procedure is followed shall conclude the case within three months after placing the case on the docket.

### Chapter XIV Procedure of Second Instance

Article 147 If a party refuses to accept a judgment of first instance of a local people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days after the date on which the written judgment was served.

If a party refuses to accept a written order of first instance of a local people's court, he shall have the right to file an appeal with a people's court at the next higher level within 10 days after the date on which the written order was served.

Article 148 For filing an appeal, a petition for the purpose shall be submitted. The content of the appeal petition shall include the names of the parties, the names of the legal persons and their legal representatives or names of other organizations and their principal heads; the name of the people's court where the case was originally tried; file number of the case and the cause of action; and the claims of the appeal and the reasons.

Article 149 The appeal petition shall be submitted through the people's court which originally tried the case, and copies of it shall be provided according to the number of persons in the other party or of the representatives thereof.

If a party appeals directly to a people's court of second instance, the said court shall within five days transmit the appeal petition to the people's court which originally tried the case.

Article 150 The people's court which originally tried the case shall, within five days after receiving the appeal petition, serve a copy of it on the other party, who shall submit his defence within 15 days from the receipt of such copy. The people's court shall, within five days after receiving the defence, serve a copy of it on the appellant. Failure by the other party to submit a defence shall not prevent the case from being tried by the people's court.

After receiving the appeal petition and the defence, the people's court which originally tried the case shall, within five days, deliver them together with the entire case file and evidence to the people's court of second instance.

Article 151 With respect to an appealed case, the people's court of second instance shall review the relevant facts and the application of the law.

Article 152 With respect to a case on appeal, the people's court of second instance shall form a collegial panel to conduct the trial. After verification of the facts of the case through consulting the files, making investigations and questioning the parties, if the collegial panel considers that it is not necessary to conduct a trial, it may make a judgment or a written order directly.

The people's court of second instance may try a case on appeal at its own site or in the place where the case originated or where the people's court which originally tried the case is located.

Article 153 After trying a case on appeal, the people's court of second instance shall, in the light of the following situations, dispose of it accordingly:

(1) if the facts were clearly ascertained and the law was correctly applied in the original judgment, the appeal shall be rejected in the form of a judgment and the original judgment shall be affirmed;

(2) if the application of the law was incorrect in the original judgment, the said judgment shall be amended according to the law;

(3) if in the original judgment the facts were incorrectly or not clearly ascertained and the evidence was insufficient, the people's court of second instance shall make a written order to set aside the judgment and remand to case to the original people's court for retrial, or the people's court of second instance may amend the judgment after investigating and clarifying the facts; or

(4) if there was violation of legal procedure in making the original judgment, which may have affected correct adjudication, the judgment shall be set aside by a written order and the case remanded to the original people's court for retrial.

The parties concerned may appeal against the judgment or written order rendered in a retrial of their case.

Article 154 The people's court of second instance shall decide in the form of orders in writing all cases of appeal against the written orders made by the people's courts of first instance.

Article 155 In dealing with a case on appeal, a people's court of second instance may conduct conciliation. If an agreement is reached through conciliation, a conciliation statement shall be made and signed by the judicial officers and the court clerk, with the seal of the people's court affixed to it. After the conciliation statement has been served, the original judgment of the lower court shall be deemed as set aside.

Article 156 If an appellant applies for withdrawal of his appeal before a people's court of second instance pronounces its judgment, the court shall decide whether to approve the application or not.

Article 157 In the trial of a case on appeal, the people's court of second instance shall, apart from observing the provisions of this Chapter, follow the ordinary procedure for trials of first instance.

Article 158 The judgment and the written order of a people's court of second instance shall be final.

Article 159 The people's court trying a case on appeal shall conclude the case within three months after docketing the case. Any extension of the period necessitated by special circumstances shall be subject to the approval of the president of the court.

The people's court trying a case on appeal against a written order shall, within 30 days after docketing the case for second instance trial, make a written order which is final.

## Chapter XV Special Procedure

### Section 1 General Provisions

Article 160 When the people's courts try cases concerning the qualification of voters, the

declaration of a person as missing or dead, the adjudgment of legal incapacity or restricted legal capacity of a citizen and the adjudgment of a property as ownerless, the provisions of this Chapter shall apply. For matters not covered in this Chapter, the relevant provisions of this Law and other laws shall apply.

Article 161 In cases tried in accordance with the procedure provided in this Chapter, the judgment of first instance shall be final. A collegial panel of judges shall be formed for the trial of any case involving the qualification of voters or of any major, difficult or complicated case; other cases shall be tried by a single judge alone.

Article 162 If a people's court, while trying a case in accordance with the procedure provided in this Chapter, finds that the case involves a civil dispute over rights and interests, it shall make a written order to terminate the special procedure and inform the interested parties to otherwise institute an action.

Article 163 A people's court trying a case in which special procedure is followed shall conclude the case within 30 days after placing the case on the docket or within 30 days after expiration of the period stated in the public notice. Any extension of the time limit necessitated by special circumstances shall be subject to the approval of the president of the court, excepting, however, a case concerning the qualification of voters.

## Section 2 Cases Concerning the Qualification of Voters

Article 164 If a citizen refuses to accept an election committee's decision on an appeal concerning his voting qualification, he may, five days before the election day, bring a suit in the basic people's court located in the electoral district.

Article 165 After entertaining a case concerning voting qualification, a people's court must conclude the trial before the election day.

The party who brings the suit, the representative of the election committee and other citizens concerned must participate in the proceedings.

The written judgment of the people's court shall be served on the election committee and the party who brings the suit before the election day; other citizens concerned shall be notified of the judgment.

## Section 3 Cases Concerning the Declaration of a Person as Missing or Dead

Article 166 With respect to a citizen whose whereabouts are unknown for two years in full, if the interested party applies for declaring the person as missing, the application shall be filed with the basic people's court in the locality where the missing person has his domicile.

The application shall clearly state the facts and time of the disappearance of the person missing as well as the motion; documentary evidence from a public security organ or other relevant

organs concerning the disappearance of the citizen shall be appended to the application.

Article 167 With respect to a citizen whose whereabouts are unknown for four years in full or whose whereabouts are unknown for two years in full after an accident in which he was involved, or with respect to a citizen whose whereabouts are unknown after such an accident, and, upon proof furnished by the relevant authorities that it is impossible for him to survive, if the interested party applies for declaring such person as dead, the application shall be filed with the basic people's court in the locality where the missing person has his domicile.

The application shall clearly state the facts and time of the disappearance as well as the motion; documentary evidence from a public security organ or other relevant organs concerning the disappearance of the citizen shall be appended to the application.

Article 168 After entertaining a case concerning the declaration of a person as missing or dead, the people's court shall issue a public notice in search of the person missing. The period of the public notice for declaring a person as missing shall be three months, and that for declaring a person as dead shall be one year. Where a citizen's whereabouts are unknown after an accident in which he was involved and, upon proof furnished by the relevant authorities that it is impossible for him to survive, the period of the public notice for proclaiming such person as dead shall be three months.

On the expiration of the period of the public notice, the people's court shall, depending on whether the fact of the missing or death of the person has been confirmed, make a judgment declaring the person missing or dead or make a judgment rejecting the application.

Article 169 If a person who has been declared missing or dead by a people's court reappears, the people's court shall, upon the application of that person or of an interested party, make a new judgment and annul the previous one.

#### Section 4 Cases Concerning the Adjudgment of Legal Incapacity or Restricted Legal Capacity of Citizens

Article 170 An application for adjudgment of legal incapacity or restricted legal capacity of a citizen shall be filed by the citizen's near relatives or any other interested party with the basic people's court in the locality where the citizen has his domicile.

The application shall clearly state the fact and grounds of the citizen's legal incapacity or restricted legal capacity.

Article 171 After accepting such an application, the people's court shall, when necessary, have an expert evaluation of the citizen of whom the determination of legal incapacity or restricted legal capacity is sought; if the applicant has already provided an evaluation conclusion, the people's court shall examine such conclusion.

Article 172 In the trial by the people's court of a case for the determination of legal incapacity

or restricted legal capacity of a citizen, a near relative of the citizen shall be his agent, the applicant being excluded. If the near relatives of the citizen shift responsibility onto one another, the people's court shall appoint one of them as agent for the citizen. If the citizen's condition of health permits, the people's court shall also seek the opinion of the citizen on the matter.

If, through the trial, the people's court finds that the application is based on facts, a judgment of legal incapacity or restricted legal capacity of the citizen shall be made; if the court finds that the application is not based on facts, it shall make a judgment rejecting the application.

Article 173 If, upon the application of a person who has been determined as one of legal incapacity or restricted legal capacity or upon the application of his guardian, the people's court confirms that the causes of that person's legal incapacity or restricted legal capacity have been eliminated, a new judgment shall be made annulling the previous one.

#### Section 5 Cases Concerning the Determination of Property as Ownerless

Article 174 An application for determining a property as ownerless shall be filed by a citizen, legal person or any other organization with the basic people's court in the place where the property is located.

The application shall clearly state the type and quantity of the property and the grounds on which the application for determining the property as ownerless is filed.

Article 175 The people's court shall, after accepting such an application and upon examination and verification of it, issue a public notice calling on the owner to claim the property. If no one claims the property one year after the issue of the public notice, the people's court shall make a judgment determining the property as ownerless and turn it over to the State or the collective concerned.

#### Article 176

If, after a property has been determined by a judgment as ownerless, the owner of the property or his successor appears, such a person may file a claim for the property within the period of limitation specified in the General Principles of the Civil Law. The people's court shall, after examination and verification of the claim, make a new judgment, annulling the previous one.

#### Chapter XVI Procedure for Trial Supervision

Article 177 If the president of a people's court at any level finds definite error in a legally effective judgment or written order of his court and deems it necessary to have the case retried, he shall refer it to the judicial committee for discussion and decision.

If the Supreme People's Court finds definite error in a legally effective judgment or written order of a local people's court at any level, or if a people's court at a higher level finds some

definite error in a legally effective judgment or written order of a people's court at a lower level, it shall respectively have the power to bring the case up for trial by itself or direct the people's court at a lower level to conduct a retrial.

Article 178 If a party to an action considers that there is error in a legally effective judgment or written order, he may apply to the people's court which originally tried the case or to a people's court at the next higher level for a retrial; however, execution of the judgment or order shall not be suspended.

Article 179

If an application made by a party meets any of the following conditions, the people's court shall retry the case:

- (1) there is sufficient new evidence to set aside the original judgment or written order;
- (2) the main evidence on which the facts were ascertained in the original judgment or written order was insufficient;
- (3) there was definite error in the application of the law in the original judgment or written order;
- (4) there was violation by the people's court of the legal procedure which may have affected the correctness of the judgment or written order in the case; or
- (5) the judicial officers have committed embezzlement, accepted bribes, done malpractices for personal benefits and perverted the law in the adjudication of the case.

The people's court shall reject the application that meets none of the conditions specified above.

Article 180 With respect to a legally effective conciliation statement, if evidence furnished by a party proves that the conciliation violates the principle of voluntariness or that the content of the conciliation agreement violates the law, the party may apply for a retrial. If the foregoing proves true after its examination, the people's court shall retry the case.

Article 181 With respect to a legally effective judgement on dissolution of marriage, neither of the two parties shall apply for retrial.

Article 182 Application for a retrial made by a party must be submitted within two years after the judgment or written order becomes legally effective.

Article 183 When a decision is made to retry a case in accordance with the procedure for trial supervision, the execution of the original judgment shall be suspended by a written order which shall be signed by the president of the court with the seal of the people's court affixed to it.

Article 184 With respect to a case pending retrial by a people's court in accordance with the procedure for trial supervision, if the legally effective judgment or written order was made by a court of first instance, the case shall be tried in accordance with the procedure of first instance, and the parties concerned may appeal against the new judgment or order; if the legally effective judgment or written order was made by a court of second instance, the case shall be

tried in accordance with the procedure of second instance, and the new judgment or written order shall be legally effective; if it is a case which was brought up for trial by a people's court at a higher level, it shall be tried in accordance with the procedure of second instance, and the new judgment or written order shall be legally effective.

The people's court shall form a new collegial panel for the purpose of the retrial.

Article 185 If the Supreme People's Procuratorate finds that a legally effective judgment or written order made by a people's court at any level involves any of the following circumstances, or if a people's procuratorate at a higher level finds that a legally effective judgment or written order made by a people's court at a lower level involves any of the following circumstances, the Supreme People's Procuratorate or the people's procuratorate at a higher level shall respectively lodge a protest in accordance with the procedure for trial supervision:

- (1) (1)the main evidence for ascertaining the facts in the previous judgment or written order was insufficient;
- (2) there was definite error in the application of the law in the previous judgment or written order ;
- (3) there was violation by the people's court of the legal procedure which may have affected the correctness of the judgment or written order; or
- (4) the judicial officers have committed embezzlement, accepted bribes, done malpractice for personal benefits and perverted the law in the trial of the case.

If a local people's procuratorate at any level finds that a legally effective judgment or written order made by a people's court at the corresponding level involves any of the circumstances specified above, it shall refer the matter to the people's procuratorate at a higher level with the request that a protest be lodged by the latter in accordance with the procedure for trial supervision.

Article 186 Cases in which protest was made by the people's procuratorate shall be retried by the people's court.

Article 187 When a people's procuratorate decides to lodge a protest against a judgment or written order made by a people's court, it shall make the protest in writing.

Article 188 The people's court shall, in retrying a case in which protest was lodged by a people's procuratorate, notify the procuratorate to send representative to attend the court session.

## Chapter XVII Procedure for Hastening Debt Recovery

Article 189 When a creditor requests payment of a pecuniary debt or recovery of negotiable instruments from a debtor, he may, if the following requirements are met, apply to the basic people's court that has jurisdiction for an order of payment:

- (1) no other debt disputes exist between the creditor and the debtor; and

(2) the order of payment can be served on the debtor.

The application shall clearly state the requested amount of money or of the negotiable instruments and the facts and evidence on the basis of which the application is made.

Article 190 After the creditor has submitted his application, the people's court shall within five days inform the creditor whether it accepts the application or not.

Article 191 After accepting the application and upon examination of the facts and evidence provided by the creditor, the people's court shall, if the rights and obligations relationship between the creditor and the debtor is clear and legitimate, issue within 15 days after accepting the application, an order of payment to the debtor; if the application is unfounded, the people's court shall make an order to reject it.

The debtor shall, within 15 days after receipt of the order of payment, clear off his debts or submit to the people's court his dissent in writing.

If the debtor has neither dissented from nor complied with the order of payment within the period specified in the preceding paragraph, the creditor may apply to the people's court for execution.

Article 192 The people's court shall, on receiving the dissent in writing submitted by the debtor, make an order to terminate the procedure for hastening debt recovery and the order of payment shall of itself be invalidated. The creditor may bring an action in the people's court.

#### Chapter XVIII Procedure for Publicizing Public Notice for Assertion of Claims

Article 193 Any holder of a bill transferable by endorsement according to the law may, if the bill is stolen, lost, or destroyed, apply to the basic people's court of the place where the bill is to be paid for publication of public notice for assertion of claims. The provisions of this Chapter shall apply to other matters for which, according to the law, an application for publication of a public notice for assertion of claims may be made.

The applicant shall submit to the people's court an application which clearly states the main contents of the bill such as the face amount, the drawer, the holder, the endorser, and the facts and reasons in respect of the application.

Article 194 The people's court shall, upon deciding to accept the application, notify the payer concerned in the meantime to suspend the payment, and shall, within 3 days, issue a public notice for the interested parties to assert their rights. The period of the public notice shall be decided at the discretion of the people's court; however, it shall not be less than 60 days.

Article 195 The payer shall, upon receiving the notification by the people's court to suspend the payment, do so accordingly till the conclusion of the procedure for publicizing public notice for assertion of claims.

Within the period of the public notice, assignment of rights on the bill shall be void.

Article 196 Interested party or parties as claimants shall report their claims to the people's court within the period of the public notice.

After receiving the report on the claims by interested party or parties, the people's court shall make a written order to terminate the procedure for publicizing public notice for assertion of claims, and notify the applicant and the payer.

The applicant or the claimants may bring an action in the people's court.

Article 197 If no claim is asserted, the people's court shall make a judgment on the basis of the application to declare the bill in question null and void. The judgment shall be published and the payer notified accordingly. As of the date of publication of the judgment, the applicant shall be entitled to payment by the payer.

Article 198

If an interested party for justified reasons was unable to submit his claim to the people's court before the judgment is made, he may, within one year after the day he knows or should know the publication of the judgment, bring an action in the people's court which has made the judgment.

Chapter XIX Procedure for Bankruptcy and Debt Repayment of Legal Person Enterprises

Article 199 If a legal person enterprise has suffered serious losses and is unable to repay the debts at maturity, the creditors may apply to a people's court for declaring the debtor bankrupt for debts to be repaid; the debtor may likewise apply to a people's court for declaring bankruptcy for debts to be repaid.

Article 200 After making an order to declare the initiation of the bankruptcy and debt repayment proceedings, the people's court shall notify the debtor and the known creditors within ten days and also make a public announcement.

Creditors who have been notified shall, within 30 days after receiving the notice, and those who have not been notified shall, within three months after the date of the announcement, lodge their claims with the people's court. Creditors who fail to lodge their claims during the respective periods shall be deemed to have abandoned their rights.

Creditors may organize a creditors' meeting to discuss and approve of a formula for the disposition and distribution of bankrupt property, or for a composition agreement.

Article 201 The people's court may appoint a liquidation commission formed by relevant state organs and persons concerned. The liquidation commission shall take charge of the custody of the bankrupt property, its liquidation, assessment, disposition and distribution. The liquidation

commission may also engage in necessary activities of a civil nature according to the law.

The liquidation commission shall be responsible and report its work to the people's court.

Article 202 If the legal person enterprise and the creditors reach a composition agreement, the people's court shall, after approving the agreement, make a public announcement of it and terminate the bankruptcy and debt repayment proceedings. The composition agreement shall be legally effective as of the date of the public announcement.

Article 203 With respect to the property mortgaged or otherwise used as security for bank loans or other obligations, the bank and other creditors shall have priority in the repayment of debts as regards the property mortgaged or used as security for other kinds of obligations. If the money value of the property mortgaged or used as security for other kinds of obligations exceeds the amount of loans secured, the surplus shall go to the bankrupt property for debt repayment.

Article 204 After deduction of bankruptcy proceedings expenses from the bankrupt property, first repayment shall be made in the following order of priority:

- (1) wages and salaries of staff and workers and labour insurance expenses that are owed by the bankrupt enterprise;
- (2) taxes owed by the bankrupt enterprise;
- (3) claims by creditors in the bankruptcy proceedings.

Where the bankrupt property is insufficient to meet the repayment claims of the same order of priority, it shall be distributed on a pro-rata basis.

Article 205 The debt repayment of a bankrupt legal person enterprise shall be under the jurisdiction of the people's court of the place where the legal person enterprise is located.

Article 206 The provisions of the Law of the People's Republic of China on Enterprise Bankruptcy shall apply to bankruptcy and debt repayment of enterprises owned by the whole people.

The provisions of this Chapter shall not apply to non-legal person enterprises, individual businesses, leaseholding farm households and partnerships by private individuals.

## Part Three Procedure of Execution

### Chapter XX General Provisions

Article 207 Legally effective judgments or written orders in civil cases, as well as the parts of judgments or written orders that relate to property in criminal cases, shall be executed by the people's court of first instance.

Other legal documents which are to be executed by a people's court as prescribed by the law

shall be executed by the people's court of the place where the person subjected to execution has his domicile or where the property subject to execution is located.

Article 208 If, in the course of execution, an outsider raises an objection with respect to the object subjected to execution, the execution officer shall examine the objection in accordance with the procedure prescribed by the law. If the reasons for the objection are untenable, the objection shall be rejected; if otherwise, execution shall be suspended with the approval of the president of the court. If definite error is found in the judgment or the written order, it shall be dealt with in accordance with the procedure for trial supervision.

Article 209 Execution work shall be carried out by the execution officer.

When carrying out a compulsory execution measure, the execution officer shall produce his credentials. After the execution is completed, the execution officer shall make a record of the particulars of the execution, and have it signed or sealed by the persons concerned on the scene.

The basic people's court and the intermediate people's court may, when necessary, establish execution organs, whose functions shall be defined by the Supreme People's Court.

Article 210 If a person or property subjected to execution is in another locality, the people's court in that locality may be entrusted with the carrying out of the execution. The entrusted people's court shall begin the execution within 15 days after receiving a letter of entrustment and shall not refuse to do so. After the execution has been completed, the entrusted people's court shall promptly inform the entrusting people's court, by letter, of the result of the execution. If the execution has not been completed within 30 days, the entrusted people's court shall also inform the entrusting people's court, by letter, of the particulars of the execution.

If the entrusted people's court does not carry out the execution within 15 days after receiving the letter of entrustment, the entrusting people's court may request the people's court at a higher level over the entrusted people's court to instruct the entrusted people's court to carry out the execution.

Article 211 If in the course of execution the two parties become reconciled and reach a settlement agreement on their own initiative, the execution officer shall make a record of the contents of the agreement, and both parties shall affix their signatures or seals to the record.

If either party fails to fulfil the settlement agreement, the people's court may, at the request of the other party, resume the execution of the legal document which was originally effective.

Article 212 In the course of execution, if the person subjected to execution provides a guaranty, the people's court may, with the consent of the person who has applied for execution, decide on the suspension of the execution and the time limit for such suspension. If the person subjected to execution still fails to perform his obligations after the time limit, the people's court shall have the power to execute the property he provided as security or the property of the guarantor.

Article 213 If the citizen subjected to execution dies, his debts shall be paid off from the deceased estate; if a legal person or any other organization subjected to execution dissolves, the party that succeeds to its rights and obligations shall fulfil the obligations.

Article 214 After the completion of execution, if definite error is found in the executed judgment, written order or other legal documents resulting in the annulment of such judgment, order or legal documents by the people's court, the said court shall, with respect to the property which has been executed, make a written order that persons who have obtained the property shall return it. In the event of refusal to return such property, compulsory execution shall be carried out.

Article 215 The provisions of this Part shall be applicable to the execution of the conciliation statement as drawn up by the people's court.

#### Chapter XXI Application for Execution and Referral

Article 216 The parties concerned must comply with legally effective judgments or written orders in civil cases. If a party refuses to do so, the other party may apply to the people's court for execution, or the judge may refer the matter to the execution officer for enforcement.

The parties concerned must comply with the conciliation statement and other legal documents that are to be executed by the people's court. If a party refuses to do so, the other party may apply to the people's court for enforcement.

Article 217 If a party fails to comply with an award of an arbitral organ established according to the law, the other party may apply for execution to the people's court which has jurisdiction over the case. The people's court applied to shall enforce the award.

If the party against whom the application is made furnishes proof that the arbitral award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, make a written order not to allow the enforcement:

- (1) the parties have had no arbitration clause in their contract, nor have subsequently reached a written agreement on arbitration;
- (2) the matters dealt with by the award fall outside the scope of the arbitration agreement or are matters which the arbitral organ has no power to arbitrate;
- (3) the composition of the arbitration tribunal or the procedure for arbitration contradicts the procedure prescribed by the law.
- (4) the main evidence for ascertaining the facts is insufficient;
- (5) there is definite error in the application of the law; or
- (6) the arbitrators have committed embezzlement, accepted bribes or done malpractice for personal benefits or perverted the law in the arbitration of the case;

If the people's court determines that the execution of the arbitral award is against the social and public interest, it shall make an order not to allow the execution.

The above-mentioned written order shall be served on both parties and the arbitral organ.

If the execution of an arbitral award is disallowed by a written order of the people's court, the parties may, in accordance with a written agreement on arbitration reached between them, apply for arbitration again; they may also bring an action in a people's court.

Article 218 If a party fails to comply with a document evidencing the creditor's rights made enforceable according to the law by a notary office, the other party may apply to the people's court which has jurisdiction over the case for execution. The people's court applied to shall enforce such document.

If the people's court finds definite error in the document of creditor's rights, it shall make an order not to allow the execution and serve the order on both parties concerned as well as the notary office.

Article 219 The time limit for the submission of an application for execution shall be one year, if both or one of the parties are citizens; it shall be six months if both parties are legal persons or other organizations.

The above-mentioned time limit shall be calculated from the last day of the period of performance specified by the legal document. If the legal document specifies performance in stages, the time limit shall be calculated from the last day of the period specified for each stage of performance.

Article 220 The execution officer shall, after receiving the application for execution or the writ of referral directing execution, send an execution notice to the person subjected to execution, instructing him to comply within the specified time. If the person fails to comply accordingly, compulsory execution shall be carried out.

## Chapter XXII Execution Measures

### Article 221

If the person subjected to execution fails to fulfil according to the execution notice the obligations specified in the legal document, the people's court shall be empowered to make inquiries with banks, credit cooperatives or other units that deal with savings deposit into the deposit accounts of the person subjected to execution, and shall be empowered to freeze or transfer his deposits; however, the inquiries, freezing or transfer of the deposits shall not exceed the scope of the obligations to be fulfilled by the person subjected to execution.

The people's court shall, in deciding to freeze or transfer a deposit, make a written order and issue a notice for assistance in execution. Banks, credit cooperatives or other units that deal with savings deposit must comply with it.

Article 222 If the person subjected to execution fails to fulfil according to the execution notice

the obligations specified in the legal document, the people's court shall be empowered to withhold or withdraw part of the income of the person subjected to execution, for the fulfillment of his obligations. However, it shall leave out the necessary living expenses for the person subjected to execution and his dependant family members.

The people's court shall, when withholding or withdrawing the income, make a written order and issue a notice for assistance in execution. The unit in which the person subjected to execution works, banks, credit cooperatives or other units that deal with savings deposit must comply with the notice.

Article 223 If the person subjected to execution fails to fulfil according to the execution notice the obligations specified in the legal document, the people's court shall be empowered to seal up , distraint, freeze, sell by public auction, or sell off part of the property of the person subjected to execution for the fulfilment of his obligations. However, it shall leave out the necessities of life for the person subjected to execution and his dependant family members.

The people's court shall make an order for the adoption of the measures specified in the preceding paragraph.

Article 224 When the people's court seals up or distrains a property, it shall, if the person subjected to execution is a citizen, notify him or an adult member of his family to appear on the scene; if the party subjected to execution is a legal person or any other organization, it shall notify its legal representatives or its principal heads to be present. Their refusal to appear on the scene shall not hinder the execution. If the person subjected to execution is a citizen, his unit or the grass-roots organization of the place where his property is located shall send a representative to attend the execution.

An inventory of the sealed-up or distrained property must be made by the execution officer and, after the inventory has been signed or sealed by the persons on the scene, a copy of it shall be given to the person subjected to execution. If the person subjected to execution is a citizen, another copy may be given to an adult member of his family.

Article 225 The execution officer may commit the sealed-up property to the person subjected to execution for safekeeping, and the person shall be held responsible for any losses incurred due to his fault.

Article 226 After a property has been sealed up or distrained, the execution officer shall instruct the person subjected to execution to fulfil, within the prescribed period, the obligations specified in the legal document. If the person has not fulfilled his obligations upon expiration of the period, the people's court may, in accordance with the relevant legal provisions, entrust the relevant units with selling by public auction or selling off the sealed-up or distrained property. Articles which are prohibited from free trading by the State shall be delivered to and purchased by the relevant units at the price fixed by the State.

Article 227 If the person subjected to execution fails to fulfil his obligations specified in the

legal document and conceals his property, the people's court shall be empowered to issue a search warrant and search him and his domicile or the place where the property was concealed.

In adopting the measure mentioned in the preceding paragraph, the president of the people's court shall sign and issue the search warrant.

Article 228 With respect to the property or negotiable instruments specified for delivery in the legal document, the execution officer shall summon both parties concerned and deliver them in their presence or the execution officer may forward them to the recipient, who shall sign and give a receipt.

Any unit concerned that has in possession the property or negotiable instruments shall turn them over to the recipient in accordance with the notice of the people's court for assistance in execution, and the recipient shall sign and give a receipt.

If any citizen concerned has in possession the property or negotiable instruments, the people's court shall notify him to hand them over. If he refuses to do so, compulsory execution shall be carried out.

Article 229 Compulsory eviction from a building or a plot of land shall require a public notice signed and issued by the president of a people's court, instructing the person subjected to execution to comply within a specified period of time. If the person subjected to execution fails to do so upon the expiration of the period, compulsory execution shall be carried out by the execution officer.

When compulsory execution is being carried out, if the person subjected to execution is a citizen, the person or an adult member of his family shall be notified to be present; if the party subjected to execution is a legal person or any other organization, its legal representatives or principal heads shall be notified to be present; their refusal to be present shall not hinder the execution. If the person subjected to execution is a citizen, his work unit or the grass-roots organization in the locality of the building or the plot of land shall send a representative for attendance. The execution officer shall make a record of the particulars of the compulsory execution, with the signatures or seals of the persons on the scene affixed to it.

The people's court shall assign personnel to transport the property removed in a compulsory eviction from a building to a designated location and turn it over to the person subjected to execution or, if the person is a citizen, to an adult member of his family; if any loss is incurred due to such person's refusal to accept the property, the loss shall be borne by the person subjected to execution.

Article 230 In the course of execution, if certain formalities for the transfer of certificates of property right need to be gone through, the people's court may issue a notice for assistance in execution to the relevant units, and they must comply with it.

Article 231 If the person subjected to execution fails to perform acts specified in a judgment or

written order or any other legal document according to the execution notice, the people's court may carry out compulsory execution or entrust the task to a relevant unit or other persons, and the person subjected to execution shall bear the expenses thus incurred.

Article 232 If the person subjected to execution fails to fulfil his obligations with respect to pecuniary payment within the period specified by a judgment or written order or any other legal document, he shall pay double interest on the debt for the belated payment. If the person subjected to execution fails to fulfil his other obligations within the period specified in the judgment or written order or any other legal document, he shall pay a charge for the dilatory fulfillment.

Article 233 After the adoption of the execution measures stipulated in Articles 221, 222 and 223 of this Law, if the person subjected to execution is still unable to repay the debts, he shall continue to fulfil his obligations. If the creditor finds that the person subjected to execution has any other property, he may at any time apply to the people's court for execution.

### Chapter XXIII Suspension and Termination of Execution

Article 234 The people's court shall make a written order to suspend execution under any of the following circumstances:

- (1) the applicant indicates that the execution may be postponed;
- (2) an outsider raises an obviously reasonable objection to the object of the execution;
- (3) a citizen as one of the parties dies and it is necessary to wait for the successor to inherit the rights of the deceased or to succeed to his obligations;
- (4) a legal person or any other organization as one of the parties dissolves, and the party succeeding to its rights and obligations has not been determined; or
- (5) other circumstances occur under which the people's court deems the suspension of execution necessary.

Execution shall be resumed when the circumstances warranting the suspension of execution have disappeared.

Article 235 The people's court shall make a written order to terminate execution under any of following circumstances:

- (1) the applicant has withdrawn his application;
- (2) the legal document on which the execution is based has been revoked;
- (3) the citizen subjected to execution dies and there is no estate that may be subjected to execution, nor anyone to succeed to his obligations;
- (4) the person entitled to claim alimony or support for elders or children dies;
- (5) the citizen subjected to execution is too badly off to repay his debts, has no source of income and has lost his ability to work as well; or
- (6) other circumstances occur under which the people's court deems the termination of execution necessary.

Article 236 A written order to suspend or terminate execution shall become effective immediately after being served on the parties concerned.

## Part Four Special Provisions for Civil Procedure of Cases Involving Foreign Element

### Chapter XXIV General Principles

Article 237 The provisions of this Part shall be applicable to civil proceedings within the territory of the People's Republic of China in regard to cases involving foreign element. Where it is not covered by the provisions of this Part, other relevant provisions of this Law shall apply.

Article 238 If an international treaty concluded or acceded to by the People's Republic of China contains provisions that differ from provisions of this Law, the provisions of the international treaty shall apply, except those on which China has made reservations.

Article 239 Civil actions brought against a foreign national, a foreign organization or an international organization that enjoys diplomatic privileges and immunities shall be dealt with in accordance with the relevant law of the People's Republic of China and the provisions of the international treaties concluded or acceded to by the People's Republic of China.

Article 240 The people's court shall conduct trials of civil cases involving foreign element in the spoken and written language commonly used in the People's Republic of China. Translation may be provided at the request of the parties concerned, and the expenses shall be borne by them.

Article 241 When foreign nationals, stateless persons or foreign enterprises and organizations need lawyers as agents ad litem to bring an action or enter appearance on their behalf in the people's court, they must appoint lawyers of the People's Republic of China.

Article 242 Any power of attorney mailed or forwarded by other means from outside the territory of the People's Republic of China by a foreign national, stateless person or a foreign enterprise and organization that has no domicile in the People's Republic of China for the appointment of a lawyer or any other person of the People's Republic of China as an agent ad litem must be notarized by a notarial office in the country of domicile and authenticated by the Chinese embassy or consulate accredited to that country or, for the purpose of verification, must go through the formalities stipulated in the relevant bilateral treaties between China and that country before it becomes effective.

### Chapter XXV Jurisdiction

Article 243 In the case of an action concerning a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the People's Republic of China, if the contract is signed or performed within the territory of the People's Republic of China, or if the object of the action is located within the territory of the People's Republic of China, or if the defendant has distrainable property within

the territory of the People's Republic of China, or if the defendant has its representative office within the territory of the People's Republic of China, the people's court of the place where the contract is signed or performed, or where the object of the action is, or where the defendant's distrainable property is located, or where the torts are done, or where the defendant's representative office is located, shall have jurisdiction.

Article 244 Parties to a dispute over a contract concluded with foreign element or over property rights and interests involving foreign element may, through written agreement, choose the court of the place which has practical connections with the dispute to exercise jurisdiction. If a people's court of the People's Republic of China is chosen to exercise jurisdiction, the provisions of this Law on jurisdiction by forum level and on exclusive jurisdiction shall not be violated.

Article 245 If in a civil action in respect of a case involving foreign element, the defendant raises no objection to the jurisdiction of a people's court and responds to the action by making his defence, he shall be deemed to have accepted that this people's court has jurisdiction over the case.

Article 246 Actions brought on disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, or Chinese-foreign contractual joint ventures, or Chinese-foreign cooperative exploration and development of the natural resources in the People's Republic of China shall fall under the jurisdiction of the people's courts of the People's Republic of China.

#### Chapter XXVI Service and Time Periods

Article 247 A people's court may serve litigation documents on a party who has no domicile within the territory of the People's Republic of China in the following ways:

- (1) in the way specified in the international treaties concluded or acceded to by both the People's Republic of China and the country where the person on whom service is to be made resides;
- (2) by making the service through diplomatic channels;
- (3) with respect to the person on whom the service is to be made and who is of the nationality of the People's Republic of China, service may be entrusted to the embassy or consulate of the People's Republic of China accredited to the country where the person resides;
- (4) by making the service on the agent ad litem who is authorized to receive the documents served;
- (5) by serving the documents on the representative office established in the People's Republic of China by the person on whom the service is to be made or on his branch office or business agents there who have the right to receive the documents;
- (6) by making service by mail if the law of the country where the person on whom the service is to be made resides so permits; in the event that the receipt of delivery is not returned six months after the date on which the documents were mailed, and that circumstances justify the assumption that service has been made, the service shall be

- deemed completed upon the expiration of the said time period; and
- (7) by making service by public notice, if none of the above-mentioned methods can be employed. The service shall be deemed completed six months after the date on which the public notice was issued.

Article 248 If a defendant has no domicile within the territory of the People's Republic of China, the people's court shall serve a copy of the statement of complaint on the defendant and notify him to submit his defence within 30 days after he receives the copy of the statement of complaint. Extension of the period requested by the defendant shall be at the discretion of the people's court.

Article 249 If a party who has no domicile within the territory of the People's Republic of China is not satisfied with a judgment or written order made by a people's court of first instance, he shall have the right to file an appeal within 30 days from the date the written judgment or order is served. The appellee shall submit his defence within 30 days after receipt of a copy of the appeal petition. If a party who is unable to file an appeal or submit a defence within the period prescribed by the law requests an extension of the period, the people's court shall decide whether to grant it.

Article 250 The period for the trials of civil cases involving foreign element by the people's court shall not be restricted by the provisions of Articles 135 and 159 of this Law.

#### Chapter XXVII Property Preservation

Article 251 The parties to an action may, in accordance with the provisions of Article 92 of this Law, apply to the people's court for property preservation.

Interested parties may, in accordance with the provisions of Article 93 of this Law, apply to the people's court for property preservation before an action is brought.

Article 252 After a people's court makes an order granting property preservation before litigation, the applicant shall bring an action within 30 days. If he fails to bring the action within the period, the people's court shall cancel the property preservation.

Article 253 After the people's court makes an order granting property preservation, if the party against whom the application is made provides a guaranty, the people's court shall cancel the property preservation.

Article 254 If the application is wrongfully made, the applicant shall compensate the party against whom the application is made for losses incurred from the property preservation.

Article 255 If the property to be preserved by a people's court needs supervision, the court shall notify the unit concerned to be responsible for the supervision, and the party against whom the application is made shall bear the expenses.

Article 256 The order to cancel the preservation issued by a people's court shall be carried out by an execution officer.

## Chapter XXVIII Arbitration

Article 257 In the case of a dispute arising from the foreign economic, trade, transport or maritime activities of China, if the parties have had an arbitration clause in the contract concerned or have subsequently reached a written arbitration agreement stipulating the submission of the dispute for arbitration to an arbitral organ in the People's Republic of China handling cases involving foreign element, or to any other arbitral body, they may not bring an action in a people's court.

If the parties have not had an arbitration clause in the contract concerned or have not subsequently reached a written arbitration agreement, they may bring an action in a people's court.

Article 258 If a party has applied for property preservation measures, the arbitral organ of the People's Republic of China handling cases involving foreign element shall refer the party's application for a decision to the intermediate people's court of the place where the party against whom the application is made has his domicile or where his property is located.

Article 259 In a case in which an award has been made by an arbitral organ of the People's Republic of China handling cases involving foreign element, the parties may not bring an action in a people's court. If one party fails to comply with the arbitral award, the other party may apply for its enforcement to the intermediate people's court of the place where the party against whom the application for enforcement is made has his domicile or where his property is located.

Article 260 A people's court shall, after examination and verification by a collegial panel of the court, make a written order not to allow the enforcement of the award rendered by an arbitral organ of the People's Republic of China handling cases involving foreign element, if the party against whom the application for enforcement is made furnishes proof that:

- (1) the parties have not had an arbitration clause in the contract or have not subsequently reached a written arbitration agreement;
- (2) the party against whom the application for enforcement is made was not given notice for the appointment of an arbitrator or for the inception of the arbitration proceedings or was unable to present his case due to causes for which he is not responsible;
- (3) the composition of the arbitration tribunal or the procedure for arbitration was not in conformity with the rules of arbitration; or
- (4) the matters dealt with by the award fall outside the scope of the arbitration agreement or which the arbitral organ was not empowered to arbitrate.

If the people's court determines that the enforcement of the award goes against the social and public interest of the country, the people's court shall make a written order not to allow the

enforcement of the arbitral award.

Article 261 If the enforcement of an arbitral award is disallowed by a written order of a people's court, the parties may, in accordance with a written arbitration agreement reached between them, apply for arbitration again; they may also bring an action in a people's court.

#### Chapter XXIX Judicial Assistance

Article 262 In accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity, the people's courts of China and foreign courts may make mutual requests for assistance in the service of legal documents, in investigation and collection of evidence or in other litigation actions.

The people's court shall not render the assistance requested by a foreign court, if it impairs the sovereignty, security or social and public interest of the People's Republic of China.

Article 263 The request for the providing of judicial assistance shall be effected through channels provided in the international treaties concluded or acceded to by the People's Republic of China; in the absence of such treaties, they shall be effected through diplomatic channels.

A foreign embassy or consulate accredited to the People's Republic of China may serve documents on its citizens and make investigations and collect evidence among them, provided that the laws of the People's Republic of China are not violated and no compulsory measures are taken.

Except for the conditions provided in the preceding paragraph, no foreign organization or individual may, without the consent of the competent authorities of the People's Republic of China, serve documents or make investigations and collect evidence within the territory of the People's Republic of China.

Article 264 The letter of request for judicial assistance and its annexes sent by a foreign court to a people's court shall be appended with a Chinese translation or a text in any other language or languages specified in the relevant international treaties.

The letter of request and its annexes sent to a foreign court by a people's court for judicial assistance shall be appended with a translation in the language of that country or a text in any other language or languages specified in the relevant international treaties.

Article 265 The judicial assistance provided by the people's courts shall be rendered in accordance with the procedure prescribed by the laws of the People's Republic of China. If a special form of judicial assistance is requested by a foreign court, it may also be rendered, provided that the special form requested does not contradict the laws of the People's Republic of China.

Article 266 If a party applies for enforcement of a legally effective judgment or written order made by a people's court, and the opposite party or his property is not within the territory of the People's Republic of China, the applicant may directly apply for recognition and enforcement to the foreign court which has jurisdiction. The people's court may also, in accordance with the relevant provisions of the international treaties concluded or acceded to by China, or with the principle of reciprocity, request recognition and enforcement by the foreign court.

If a party applies for enforcement of a legally effective arbitral award made by an arbitral organ in the People's Republic of China handling cases involving foreign element and the opposite party or his property is not within the territory of the People's Republic of China, he may directly apply for recognition and enforcement of the award to the foreign court which has jurisdiction.

Article 267 If a legally effective judgment or written order made by a foreign court requires recognition and enforcement by a people's court of the People's Republic of China, the party concerned may directly apply for recognition and enforcement to the intermediate people's court of the People's Republic of China which has jurisdiction. The foreign court may also, in accordance with the provisions of the international treaties concluded or acceded to by that foreign country and the People's Republic of China or with the principle of reciprocity, request recognition and enforcement by a people's court.

Article 268 In the case of an application or request for recognition and enforcement of a legally effective judgment or written order of a foreign court, the people's court shall, after examining it in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity and arriving at the conclusion that it does not contradict the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and social and public interest of the country, recognize the validity of the judgment or written order, and, if required, issue a writ of execution to enforce it in accordance with the relevant provisions of this Law; if the application or request contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security and social and public interest of the country, the people's court shall not recognize and enforce it.

Article 269 If an award made by a foreign arbitral organ requires the recognition and enforcement by a people's court of the People's Republic of China, the party concerned shall directly apply to the intermediate people's court of the place where the party subjected to enforcement has his domicile or where his property is located. The people's court shall deal with the matter in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity.

Article 270 This Law shall go into effect as of the date of promulgation, and the Civil Procedure Law of the People's Republic of China (for Trial Implementation) shall be abrogated simultaneously.