

# APPENDIX

## PEOPLE'S COURT EXECUTION RULES\*

(Discussion Draft)

### CHAPTER ONE: GENERAL PRINCIPLES

Article 1. In accordance with the relevant provisions of the People's Republic of China Law on Civil Procedure, the People's Republic of China Law on Administrative Litigation, and the People's Republic of China Law on Court Organization, and taking into account the practice of execution work in our country, these rules are formulated in order to uphold the dignity of the law, to effectively guarantee the lawful rights and interests of citizens, legal persons, and other organizations, and to maintain normal social and economic order.

ARTICLE 2. Execution is a judicial action carried out by the people's court in accordance with legal procedures in which it uses the coercive power of the state to coerce a person under a duty to perform that duty, and causes a legally effective document to be put into practice.

The people's court exercises execution power independently in accordance with the provisions of law and is not subject to the interference of any administrative organ, social group, or individual.

ARTICLE 3. People's courts at all levels may establish execution chambers as necessary. The execution chamber is constituted of one chamber president and several chamber vice presidents, execution officers, clerks, and court police.

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\* This appendix contains the author's translation of a set of execution procedures circulated to participants at the Second National Conference on Execution Work of Intermediate-Level People's Courts in Provincial Capitals held in Fuzhou in June 1992. I do not know the source of these draft rules (other than as noted above) or the degree to which they are in any sense officially approved. Given the circumstances of their distribution, however, it seems likely that courts needing guidance in some area regarding which formal law and policy were silent might turn to these rules as an alternative to simply making it up as they went along. These rules are probably an attempt to put in one place particular rules that show up in several different documents. Some of the provisions here are clearly from the same source as provisions in Supreme People's Court, *Guanyu Shiyong "Zhonghua Renmin Gongheguo Minshi Susong Fa" Ruogan Wenti de Yijian* [Opinion Concerning Several Issues in the Application of the "Civil Procedure Law of the People's Republic of China"], ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO [PEOPLE'S REPUBLIC OF CHINA SUPREME PEOPLE'S COURT GAZETTE], No. 3, 1992 (Sept. 20), at 70.

All footnotes represent my own commentary and are not in the original document.

ARTICLE 4. Execution work is carried out by execution officers with the participation of clerks or court police.

ARTICLE 5. The collegiate system should be used where the case is complex, where it is necessary to adopt severe coercive measures, or where there is a ruling from an arbitration organ to be executed. The collegiate panel (*heyi ting*) shall be made up of three or five execution officers.

The court president or the chamber president shall appoint one execution officer to serve as execution chief. Where the court president or the chamber president is a member of the collegiate panel, the court president or the chamber president shall serve as the execution chief.

When the collegiate panel assesses cases, the minority should follow the majority in the event of disagreement, but the opinions of the minority should be entered into the minutes. The minutes shall be signed by the members of the collegiate panel. Legal documents shall bear the signature of the members of the collegiate panel and the clerk and shall bear the court's seal.

ARTICLE 6. Execution work must observe the following fundamental principles:

- (1) It must be based on documents that have taken legal effect;
- (2) Coercive measures are to be combined with persuasion and education;
- (3) The object of execution is to be limited;
- (4) Execution is to be cooperative;
- (5) The lawful rights and interests of the parties are to receive effective protection.

ARTICLE 7. Judges and assistant judges of courts at all levels may as necessary double as execution officers upon nomination by the court president and discussion and approval by the adjudication committee.

ARTICLE 8. Execution officers shall carry out the system of recusal according to law, applying the provisions of Articles 45, 46, and 48 of the People's Republic of China Law on Civil Litigation. The recusal of a court president serving as execution chief shall be decided on by the adjudication committee. The recusal of a chamber president, vice president, or execution officer shall be decided on by the court president. The recusal of clerks and court police shall be decided on by the president of the execution chamber.

ARTICLE 9. Relevant units and individuals must cooperate in execution in accordance with the notice issued by the people's court. They may not refuse, interfere, or obstruct.

ARTICLE 10. In their execution work, inferior courts must accept<sup>1</sup> the supervision of superior courts. A superior court has the right to correct or to annul improper or erroneous execution measures undertaken by an inferior court.

ARTICLE 11. If in the course of execution a third party not involved in the case raises an objection regarding the object of execution and produces evidence, the execution officer should investigate and verify. When the third party's claim respecting the object of execution is well-founded, the execution officer shall report to the chamber president who shall approve the suspension of execution. When the third party's claim is not well-founded, he shall be notified of its rejection.

ARTICLE 12. If, in the course of execution, the execution debtor<sup>2</sup> is temporarily unable to pay, the people's court may decide to temporarily delay execution if the execution debtor posts a guarantee with the people's court and the applicant for execution<sup>3</sup> agrees. The term of the temporary delay shall normally not exceed one year. If the execution debtor engages in acts to transfer or destroy the property he has pledged, or the guarantor engages in acts to transfer or destroy the property he has put up as a guarantee while the guarantee is in effect, the people's court shall reinstate coercive execution.

ARTICLE 13. After the people's court has investigated and verified the [proposed] execution guarantee, it shall in accordance with the provisions of Article 140, Paragraph 1, Item 11 of the People's Republic of China Law on Civil Procedure issue a ruling permitting the guarantee. The ruling specify the scope of the guarantee, the period for execution of the guarantee, liability for the guarantee, etc.

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1. The printed text has *fucong* (obey or follow) here, but it has been overwritten to read *jieshou* (accept), which is more idiomatic.

2. Literally, the "executee" (*bei zhixing ren*): the person against whom execution is carried out.

3. For example, the plaintiff.

The ruling permitting the guarantee shall be signed by the execution officer and the clerk and shall bear the court's seal. It shall take effect upon delivery to the guarantor and both parties.

If the execution debtor does not carry out his duty within the time period, the people's court should in accordance with the ruling [permitting the guarantee] levy on the property of the guarantor.

ARTICLE 14. If in the course of execution the legal document upon which execution is based is changed or annulled according to law, the people's court should undertake reverse execution (*zhixing huizhuan*) in accordance with the newly effective legal document. Reverse execution should be newly docketed (*chongxin li'an*) and should use the rules of procedure applying to execution.

ARTICLE 15. Reverse execution shall use one of the following methods:

- (1) In the case of funds, a return of the funds;
- (2) In the case of property, a return of the original item of property;
- (3) Where the original item of property cannot be returned, its monetary value may be set off against the debt;
- (4) Where the object of execution has generated value, that value should be returned along with the object.

ARTICLE 16. Registration procedures should be undertaken for the docketing and the conclusion of execution cases. A detailed record should be kept of the course of execution. When it is impossible to make a record because of an emergency situation, an explanation should be appended afterwards.

Upon the conclusion of the case, the clerk should bind the materials into a file and assign it a unique filing number. Materials shall be filed in the following order, from earliest to latest in time within each class of materials:

- (1) Table of contents for the file;
- (2) Approval form for acceptance of the case;
- (3) Application for execution, transferred (*yisong*)<sup>4</sup> execution document, entrusted (*weituo*) execution document and attached

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4. See articles 20 and 29 regarding transferred execution. The term refers to a case sent to the execution chamber at the initiative of the chamber that issued the judgment, instead of at the initiative of a party.

- letters, or letter of assignment (*jiaoban hanjian*),<sup>5</sup> as well as a receipt for the fee for the application for execution;
- (4) The legal document that is the basis for execution;
  - (5) Record of investigation upon review of the case and execution plan;
  - (6) Execution notice(s) and summons(es);
  - (7) Interrogation records, investigation records, and relevant evidentiary documents;
  - (8) Minutes of the collegiate panel's assessment and minutes of the adjudication committee's discussion;
  - (9) Execution ruling(s) and record of composition; record of sealing, distraint, search, and other measures of coercive execution; and record of coercive execution;
  - (10) Original draft of public announcements; original draft of orders for legal procedures such as sealing, distraint, search, freezing, and levying; lists; receipts; and procedures related to lifting previously imposed measures;
  - (11) Instruments submitted (*jiaofu de piaojia*) and evidentiary materials;
  - (12) Document of decision (*jueding*) to impose a fine, warrant for compulsory appearance, and document of decision to impose detention;
  - (13) Receipts for expenditures incurred in the course of execution;
  - (14) Document of ruling of suspension of execution document of ruling of termination of execution, and document of ruling of denial of execution;
  - (15) Reports and requests for instruction related to execution of the case;
  - (16) Proof of delivery of various legal documents<sup>6</sup> and letters back and forth;
  - (17) Report on the conclusion of the case;
  - (18) Table of miscellaneous notes;
  - (19) Envelope for miscellaneous materials.<sup>7</sup>

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5. See article 22 regarding assigned execution.

6. One character is obscured in the printed text, but this appears to be the meaning of the phrase.

7. This refers to a large envelope to be used for holding documents that are not suitable for binding directly into the case file.

## CHAPTER TWO: BASIS FOR EXECUTION AND JURISDICTION OVER EXECUTION

Article 17. Execution by the people's court shall be on the basis of the following:

- (1) A judgment, ruling, mediation document, or order for payment (*zhifu ling*) in a civil, economic, or administrative case, or a judgment or ruling in a criminal case that calls for execution against property, that has been issued by a people's court and has become legally effective;
- (2) A ruling or mediation document issued by an arbitration organ that has become legally effective and with respect to which the law permits an application to a people's court for enforcement;
- (3) A document for the recovery of a debt or of property issued by a notarial organ that has become legally effective and with respect to which the law permits an application to a people's court for enforcement;
- (4) A fine or disposition decision issued by an administrative organ that has become legally effective and with respect to which the law permits an application to a people's court for enforcement;
- (5) A ruling and execution order issued by a people's court that acknowledges and agrees to cooperate in the execution of the judgment or ruling of a foreign court;
- (6) A ruling issued by a people's court that acknowledges and agrees to cooperate in the execution of the ruling of a foreign arbitration organ.

ARTICLE 18. A legal document issued by a people's court according to law that has become legally effective shall be executed by the people's court of first instance. Execution in foreign-related cases shall be undertaken by an intermediate-level people's court. Rulings calling for advance execution (*xianyu zhixing*) and for the safeguarding of property (*caichan baoquan*) shall be executed by the people's court that issued the ruling.

ARTICLE 19. A legal document issued by an administrative organ, an arbitration organ, or a notarial organ that has become legally effective shall be executed by the people's court of the place of the execution debtor's

residence or of the place where the property to be executed against is located.

ARTICLE 20. When a people's court discovers that a case it has accepted for execution is not within its jurisdiction, it should transfer it to the people's court having jurisdiction for execution. The transferee court may not transfer the case again on its own. Where there is a genuine difference of opinion over jurisdiction, it may report to its superior people's court requesting an assignment of jurisdiction (*zhiding guanxia*).

ARTICLE 21. Where there is a dispute over jurisdiction, it shall be resolved through discussions between the two parties to the dispute or their superior courts. Where the matter cannot be resolved through discussions, the matter shall be reported to the parties' common superior people's court for an assignment of jurisdiction.

Where for special reasons it is difficult or impossible for a people's court to exercise jurisdiction, it may report to its superior people's court for an assignment of jurisdiction.<sup>8</sup>

ARTICLE 22. A superior people's court has the power to execute a case within the jurisdiction of an inferior court.<sup>9</sup> It may also assign a case within its own jurisdiction to an inferior court for execution. Where an inferior people's court deems special reasons to exist with respect to an execution case within its jurisdiction and the case needs to be executed by a superior court, it may report to its superior court requesting that the court execute the case.

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8. This rule is supported by Chengdu Shi Zhongji renmin Fayuan (Chengdu Intermediate-Level People's Court), *DIZHI HE KEFU DIFANG BAOHU ZHUYI DE TANTAO (AN EXPLORATION INTO RESISTING AND OVERCOMING LOCAL PROTECTIONISM)* 12 (1992) (unpublished manuscript on file with author), which proposes that inferior courts should have the power to ask superior courts to take over execution if they find it difficult. Superior courts should also have the power to draw up cases to their own jurisdiction when they discover that inferior courts are not executing properly.

9. "Superior" and "inferior" here refer (although the text is not unambiguously clear) to direct relationships and not to collateral relationships. Thus, a basic-level court in Province A is not, in this sense, inferior to an intermediate-level court in Province B.

### CHAPTER THREE: APPLICATION FOR EXECUTION, TRANSFERRED EXECUTION, AND ENTRUSTED EXECUTION

Article 23. Where one party refuses to carry out [the acts prescribed in] a legal document that has become legally effective, the other party may apply to a people's court according to law for execution.

ARTICLE 24. Execution cases must meet the criteria stated below in order to be accepted by the people's court.

(1) Depending on the source of the case, there should be an application for execution, a transferred execution document, or an entrusted execution document. Where it is genuinely difficult to make a written application for execution, a written record of the request shall be made by the reception personnel. That record shall be appended to the case file after being signed or sealed by the applicant.

(2) The legal document upon which execution is based is lawful and effective, and states clearly and specifically what is to be paid or given over (*geifu*).

(3) The application is made within the legally stipulated period, and the execution fee is paid in advance as stipulated.

(4) [The case] is within the jurisdiction of the people's court. If the above criteria are not met, the applicant, transferor, or entrusting court should be promptly notified of the need for supplementation, or else notified within seven days that the case has been rejected and the reasons therefor.

ARTICLE 25. The applicant for execution may entrust an agent to apply for execution. In such a case, the people's court must be provided a letter of entrustment signed or sealed by the applicant that sets forth the matter entrusted and the scope of the entrustment.

An entrustment of the right to dispose of substantive matters should be made by means of a special letter of entrustment.

ARTICLE 26. Where the application for execution is in a foreign-related case, the people's court may order the applicant for execution to explain the reason for the application and to supply information about the application for execution abroad or about property of the execution debtor abroad or in China, along with relevant proofs and evidentiary materials.

ARTICLE 27. Where the application for execution is made after the time limit for such applications, the people's court shall not provide protection [*sic*]. Voluntary execution by a party is not subject to the time limit for application for execution.

ARTICLE 28. If there is evidence to prove that, within the time period for application for execution, the obligee (*quanli ren*) pressed the obligor (*yiwu ren*) to carry out his duty and the obligor manifested his intention to do so, or the obligee was unable to exercise his right of demand because of *force majeure* or other obstacles, the time period for application for execution shall be suspended. Calculation of the time period shall resume as of the day the reason for the suspension no longer exists.

Article 29. Where one party refuses to carry out its duty, the following cases may in accordance with procedure be transferred for execution whether or not the other party has applied for it: legal documents that have become legally effective and that require the payment of support for aged relatives (*shanyang fei*), spousal support<sup>10</sup> (*fuyang fei*), support for minors (*fuyu fei*), consolation payments (*fixu jin*), medical expenses, and compensation for labor; legal documents in criminal cases that call for execution against property; rulings of an adjudication chamber that call for preservation of property or advance execution; and legal documents that the judge believes should be transferred according to law for execution because they involve key matters of the state economy and national well-being (*guoji minsheng*) and if not executed will cause great harm to the state or the collective.

ARTICLE 30. Transferred execution should be carried out by the judge filling out a transferred execution form that states the reason for the transferred execution, the matters involved, and the object of execution, as well as the basic circumstances of the execution debtor, his ability to carry out his duty, etc. At the same time, it should note the year (*niandu*) of the legal document upon which execution is based and the case file number, as well as appending a copy. Where necessary, all materials from the case file should be sent over.

The transferred execution form should be sent to the execution chamber after being reported to the court president by the adjudication

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10. The term used here is sometimes used to include support payments to an elder sibling who has raised the party and has lost the ability to labor.

chamber and approved by him. Transferred execution is not subject to the time limits applying to applications for execution.

ARTICLE 31. Where the execution debtor or the property to be executed against is in another region [outside the court's geographical jurisdiction] (*waidi*), the other region's people's court may be entrusted with execution. The court may also directly send its own personnel [to the other region] to execute. It may also request the other region's people's court to assist in enforcement (*xiezhū zhixíng*), and the other region's people's court may not refuse, make excuses, or do a superficial job (*fúyán*).

ARTICLE 32. After execution has been entrusted, the entrusted court may as necessary directly issue rulings according to law concerning freezing or levying (*huábo*) on bank accounts, confiscating or garnishing of the portion of the execution debtor's income that should be used to fulfill his duty, and sealing up, distraining, freezing, auctioning (*páimài*), or selling off (*biānmài*) the portion of the execution debtor's property that should be used to fulfill his duty.

ARTICLE 33. After entrusting execution [to another court], if the entrusting court still dispatches persons to execute, it should take the initiative in notifying the entrusted court and work together in execution.

ARTICLE 34. If the entrusted people's court has a disagreement [with the entrusting court] regarding legal document whose execution has been entrusted to it, it should, within 10 days, communicate by letter to the entrusting people's court a request that it investigate the matter. The entrusting people's court should, within 10 days of receiving the request, reply to the entrusted people's court. If it requests that execution be continued, the entrusted people's court should promptly execute. If the entrusted court still disagrees [with the entrusting court], it can report the situation to the entrusting people's court's superior people's court, but it may not delay execution of the matters entrusted to it.

ARTICLE 35. If the entrusting court has not received a notice of the results of execution from the entrusted court within [thirty?]<sup>11</sup> days of sending the letter of entrustment and the legally effective document, it may request the

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11. A character is obscured in the printed text precisely at this point. It is clear that the number of days is a multiple of 10 — possibly 30.

superior people's court of the entrusted<sup>12</sup> people's court to order to entrusted people's court to execute [the document].

ARTICLE 36. The superior people's court of the entrusted people's court should, within five days of receiving the request from the entrusting people's court, order the entrusted people's court to execute [the document], and should reply to this effect to the entrusting people's court.

ARTICLE 37. If the entrusting people's court has not, within 20 days of submitting a request to the superior people's court of the entrusted people's court for the issuance of an order to execute, received notification from the said court that the order to execute has been issued, it may submit a request to the superior people's court of the said court, and that superior people's court must promptly issue an order to execute.

ARTICLE 38. If the entrusted people's court still has not executed 10 days after receiving an order to execute from its superior court, the superior court [of the court]<sup>13</sup> entrusted with execution may directly dispatch personnel to execute, and moreover report the refusal of the entrusted court to execute. Where the circumstances are serious, those directly responsible shall be held to account.

ARTICLE 39. If in the process of execution a [third] party not involved in the case raises an objection regarding the object of execution,<sup>14</sup> the entrusted court should, after informing the entrusting people's court and [receiving the results of that court's] investigation, either notify [the third party] that the objection has been rejected or else make a ruling suspending execution.

ARTICLE 40. Where the entrusted people's court finds the existence of circumstances requiring the suspension or termination of execution, it should promptly notify the entrusting people's court for investigation and disposition of the matter by that court. The entrusted people's court may

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12. The characters translated "entrusted" are unclear, but this is the only translation that makes sense in context.

13. The words in brackets do not appear in the text, but were probably left out inadvertently.

14. For example, claims an interest in an asset that the court intends to deliver to the plaintiff.

not of its own accord make a ruling for the suspension or termination of execution.

ARTICLE 41. The application for execution, the transferred execution form, and the entrusted execution form should all set forth the natural circumstances (*ziran zhuangkuang*),<sup>15</sup> matters, and requests of the applicant and the execution debtor, and should as far as possible provide the bank account number(s) and financial circumstances of the execution debtor.

ARTICLE 42. Cases entrusted for enforcement by a court from another region (*waidi fayuan*)<sup>16</sup> should be promptly docketed and registered. When it is found that the matters entrusted are not clear or that [necessary] procedures have not been completed, the entrusting people's court should be promptly notified so that it can explain or supplement. It is not permitted [simply] to reject the entrustment.

#### CHAPTER FOUR: COMMENCEMENT OF EXECUTION

Article 43. Upon the docketing of the case by the people's court, the execution officer(s) should promptly familiarize themselves with the circumstances of the case and issue a notice of execution to the execution debtor ordering him to perform his duty within a fixed period of time, failure to do which will result in coercive execution (*qiangzhi zhixing*). The period of time allowed for the performance of the duty should not (*bu yi*)<sup>17</sup> exceed one month.

ARTICLE 44. Decisions issued by a people's court regarding civil sanctions or fines may be coercively executed where the sanctioned or fined person refuses to perform the duty or pay the sum required.

ARTICLE 45. If the execution debtor has not performed his duty to pay a sum of money within the period stipulated in the legal document, then from the day following the expiration of the period onward, the interest on the delayed payment of the debt should be doubled. Where the execution

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15. This term probably means name, sex, age, ethnicity, and other personal characteristics.

16. It is not clear how a case for entrusted execution could come from a court *other* than from another region; when a case is sent up or down the hierarchy for execution, that is called transferral (*yisong*), not entrustment (*weitu*).

17. More literally, "it is not appropriate". This formulation merely states a hortatory principle, not a strict rule.

debtor is a citizen (*gongmin*),<sup>18</sup> the interest rate to be doubled should be the rate for bank savings deposits on that day. Where the execution debtor is a legal person or other organization, the interest rate to be doubled should be the highest bank lending rate at the time.

ARTICLE 46. If the execution debtor has not performed another duty [aside from the duty to pay a sum of money] within the period stipulated in a judgment, ruling, or other legal document, he should pay a penalty for late performance. Where the object of performance can be given a monetary value, the amount of that penalty shall be twice that value (*an shuangbei zhifu*). Where the object of performance cannot be given a monetary value, the penalty for delayed performance shall be calculated according to the actual loss (*shiji sunshi*)<sup>19</sup> suffered by the applicant or the creditor.

ARTICLE 47. In the case of a debt instrument (*zhaiquan wenshu*) that has been given the effect of coercive execution by a notarial organ according to law, the scope of the application for execution includes the entire amount of the debt that appears on the face of the instrument as well as interest or late charges that should be borne by the debtor because of his failure to pay the debt. An amount already paid shall be subtracted from the entire amount of the debt.

Notarized debt instruments for which application for execution may be made to a people's court are limited to documents seeking repayment of a debt or the return of an object that have been given the effect of coercive execution in accordance with the provisions of Article 4, Paragraph 10 of the People's Republic of China Interim Regulations on Notaries.

ARTICLE 48. When in the course of execution it appears that, in accordance with the facts and the provisions of relevant laws, rules, and policies, the bearer of the duty [to perform] should be changed, the matter should be handled in accordance with the procedure set forth below.

- (1) Where the legal document was issued by a people's court, the matter should be handled according to law by the chamber that originally adjudicated the matter.

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18. By "citizen" the text means natural person, as opposed to legal person.

19. "Actual loss" in Chinese contract doctrine does not include economic losses, such as opportunity costs.

(2) If a party does not agree with a ruling to change the bearer of the duty, he may apply to the people's court that made the ruling for a single review. Execution shall not be stopped during the period of the review. The review shall be undertaken by the adjudication chamber that issued the ruling. If upon review it is found that the ruling was genuinely erroneous, the matter should be handled according to the procedures for adjudication supervision. Where the application for review is groundless, the applicant should be notified of its rejection.

(3) Where the legal document to be executed was issued by an arbitration organ, and it is considered that the execution debtor should be changed, the execution chamber of the people's court shall constitute a panel (*heyi ting*) to investigate the matter and report to the court president. Upon the approval of the court president, it shall issue a ruling suspending execution. The ruling should be sent to the arbitration organ and the applicant [for execution], and the applicant informed that he may apply to the arbitration organ to change the obligor (*yiwu ren*). After the change, the obligee (*quanli ren*) may apply to the people's court for the resumption of execution. If an application for resumption of execution is not made within the legally stipulated period, execution of the original case shall be terminated.

(4) Where the legal document [to be executed] was issued by a superior people's court in a final adjudication, the court responsible for execution should report its suggestions in writing to the superior court for investigation and disposition by that court.

ARTICLE 49. Where the execution debtor is a citizen or another organization, if another creditor of the execution debtor discovers after the commencement of execution that the assets of the execution debtor are insufficient to meet all his debts, he may apply to the people's court of the area where the execution debtor's assets are located to participate in distribution.

ARTICLE 50. To apply to participate in distribution, the applicant should make a written application setting forth the nature of the obligation, the amount, and the facts and reasons upon which the application is based, as well as appending the debt instrument.

An application to participate in distribution should be made within two months from the time of commencement of execution. If the application is not made within that period, the applicant shall not be eligible to participate in the current distribution.

ARTICLE 51. If in the course of execution the execution debtor is unable to pay debts that have come due and meets the conditions for bankruptcy, the procedure for the repayment of debts by enterprise legal persons in bankruptcy should be used, and the matter adjudicated by the people's court of the place of the execution debtor. Other procedures being undertaken against the property of the execution debtor should be terminated according to law.

ARTICLE 52. If in the course of execution the parties reach a composition agreement (*zixing hejie dacheng xieyi*), the execution officer should make a written record of the contents of the agreement to be signed or sealed by the parties. The two parties may also make their own agreement and give it to the execution officer to be appended to the case file.

ARTICLE 53. An execution composition must be a voluntary act of the parties and their manifestation of intent must be genuine. The content of the composition may not violate state laws or policies and may not harm the lawful rights and interests of the state, the collective, or another person.

ARTICLE 54. Where the execution debtor does not perform or does not completely perform the composition agreement and the applicant requests the resumption of execution in accordance with the terms of the original legally effective document, the people's court should resume execution. Where the execution debtor has already begun performing, however, and the applicant requests the resumption of execution in accordance with the terms of the original legally effective document because he has had second thoughts, the people's court shall deny permission.

ARTICLE 55. If in the course of execution the execution debtor is genuinely without sufficient funds to perform his duty and wishes to pay the debt in kind, then with the agreement of the applicant the court should permit it.<sup>20</sup>

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20. It is not clear why this provision is necessary, since the creditor can always permit the debt to be paid this way. Perhaps it is a signal that such an approach is favored and that the court should attempt to persuade the creditor to go along with it.

The agreement to pay the debt in kind shall be appended to the case file or shall be noted by the people's court in the case file.

ARTICLE 56. Execution composition shall not be used in administrative cases and administrative dispositions or decisions to impose a fine that an administrative organ has applied according to law to have executed.

ARTICLE 57. Except where the applicant for execution agrees to delayed execution, execution of a case should normally be complete within three months of the docketing of the case by the execution chamber of the people's court, and the execution of important and difficult (*yinan*) cases may not take longer than six months. The period for execution of cases that are to be executed in stages shall be calculated separately for each stage.

Where because of special circumstances execution cannot be completed within six months, the court president may permit an appropriate extension of the period for execution upon presentation of a report stating the reasons.

#### CHAPTER FIVE: EXECUTION MEASURES

Article 58. Where the execution debtor is able to perform but refuses to do so, the execution officer should resolutely adopt coercive execution measures. Execution measures should be lawful and well-founded, procedures should be complete, and methods appropriate.

ARTICLE 59. With respect to execution cases that have a great influence or that could cause the exacerbation of contradictions, an execution plan should be drawn up. After study and consideration by a panel, it shall be reported to the court president for examination and approval before being put into effect.

When necessary, the court president shall submit the matter to the Adjudication Committee for discussion and decision. When execution is taking place, the court president should go personally to the site to direct operations. Court police should also be dispatched to take part, or the public security organs may be requested to dispatch personnel to take part.

ARTICLE 60. The chief coercive execution measures of the people's courts are the following:

- (1) Freezing, levying, or garnishing the savings deposits or labor income of the execution debtor;

- (2) Sealing, distraining (*kouya*), selling off, or auctioning the execution debtor's property;
- (3) Forcibly searching of the execution debtor, his residence, or the place where his property is hidden;
- (4) Forcing<sup>21</sup> the execution debtor to hand over property or certificates specified in a legal document;
- (5) Forcing the execution debtor to move out of a building or to leave land;
- (6) Forcing the execution debtor to perform an act stipulated in a legal document.

ARTICLE 61. The people's court may directly investigate, freeze, and levy on the execution debtor's deposits at a bank or credit society. It does not need the consent of the [administratively] superior bank. A people's court from another region may directly investigate, freeze, and levy on deposits at a bank in the place where the execution debtor or his assets are located. It does not need the consent of the local people's court or to have [that court] attend to procedures on its behalf. The local bank or credit society must cooperate in these measures. It may not refuse or block by removing funds for loans that have come due or loan interest or any other reason. Refusal to cooperate shall be dealt with under the provisions of Article 103 of the People's Republic of China Law on Civil Procedure.

ARTICLE 62. When a people's court investigates the deposits of an execution debtor at a bank, credit society, or other unit in the business of holding savings, it should present an official letter to which is appended the legally effective document from the case. The bank, credit society, or other unit in the business of holding savings must do as requested.

ARTICLE 63. When freezing an execution debtor's bank deposits, the amount frozen may not exceed the amount of the obligation that the execution debtor should perform. If the amount on deposit on the day [of the freezing] is less than the amount of the object of execution, the court may instruct the bank, credit society, or other unit in the business of holding savings to freeze future income from the execution debtor until the amount frozen reaches the amount of the object of execution. It is not

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21. It is not clear here how the court forces the execution debtor to perform the desired action.

permitted, however, to freeze the execution debtor's entire bank account without limit.

In freezing deposits, the people's court may not freeze special-use funds in the execution debtor's bank account where the use of such funds is stipulated by the state — for example, national defense expenses, state treasury funds, expenses for specific scientific research projects, and disaster relief funds — unless the execution debtor has used these to hide funds.

ARTICLE 64. When levying on the savings of the execution debtor, the funds should normally be transferred directly into the account of the applicant for execution or the creditor. When because of special circumstances it is necessary to transfer the funds for temporary deposit or distribution to the court's bank account, the interest earned during the period of temporary deposit should belong to the creditor.

ARTICLE 65. The people's court may not freeze deposits in an execution debtor's bank account for longer than six months. If it is necessary to prolong the freezing beyond that time, procedures for prolonging the freeze should be undertaken at the bank before the expiration of the period. The failure to carry out such procedures before the expiration of the period shall be deemed a lifting of the freeze.

ARTICLE 66. The people's court may directly confiscate (*kouliu*) or garnish (*tiqu*) income from labor sufficient to satisfy the execution debtor's duty that is held at the execution debtor's work unit, bank, credit society, or other unit in the business of holding savings. The execution debtor's work unit, bank, credit society, etc. must handle [the matter as the court instructs]. The people's court should, however, leave an amount sufficient to cover the necessary daily expenses of the execution debtor and his dependents, such amount not to be greater than the average standard of living for an ordinary citizen in the area.

ARTICLE 67. When the people's court adopts the coercive measures of sealing or distraining property, it [shall] request the execution debtor to come to the site and to sign or seal the list of sealed or distrained property. Refusal by the execution debtor to come or to sign or seal the list shall not affect execution, but the signature or seal of another person at the site is necessary.

ARTICLE 68. Property of the execution debtor sealed up or distrained by the people's court should normally be of a value equivalent to that of the duty to be performed by the execution debtor.

When sealing up or distraining the execution debtor's property, [the court] should attach a sealing strip, and may also order the execution debtor to safeguard and use the property, but not to sell, transfer, or destroy it. Distrained articles should be kept in safekeeping by the people's court, and may also be entrusted to relevant departments for safekeeping, but they may not be used.

Perishable items that are sealed up or distrained should be promptly turned over to relevant departments for disposition or sale, after which the price received shall be safeguarded.

ARTICLE 69. When the people's court seals up or distrains motorized vehicles or immovable property, it should at the same time order the execution debtor to hand over relevant documents of ownership (operating license, vehicle license, or ownership certificate). Where it is necessary to sell off, auction, or set off the property against a debt, the people's court shall issue a Notice of Assistance in Execution (*xiezhu zhixing tongzhi shu*) requesting the relevant unit or organ to undertake the procedures for transfer of the ownership documents.

If the party refuses to hand over the documents, the people's court should make him bear legal liability for obstructing execution or turn the matter over to the public security organs and then declare the documents void before seeking assistance in execution and undertaking the procedures for transfer.

ARTICLE 70. When the people's court seals up or distrains property, it must check off the items one by one and make a list in two copies. After the list has been signed or sealed by a person at the site, one copy shall be delivered to the execution debtor or an adult family member and the other copy shall be kept in the case file. Refusal by the execution debtor to accept the list shall not affect execution.

When sealing up vehicles, buildings, boxes, cabinets, and closets, items inside should be individually listed and registered so that they may be appropriately disposed of.

ARTICLE 71. When sealed up or distrained property that the execution debtor has been ordered to safeguard is damaged through his negligence,

the execution debtor shall be liable.<sup>22</sup> If [the execution debtor] conceals, transfers, sells, or damages the property, the matter shall be handled according to Article 102 of the People's Republic of China Law on Civil Procedure.

ARTICLE 72. Property of the execution debtor that the people's court sells or auctions according to law can only be property that has already been sealed up or distrained by the people's court.

Staff of the people's court and their families may not purchase [such property].

ARTICLE 73. When the people's court sells off property of the execution debtor, the suggestions of relevant departments such as those concerned with prices may be sought regarding the issue of price. The price set should be fair and reasonable.

ARTICLE 74. When the people's court auctions property of the execution debtor, it may hand the property over to the relevant unit for auction in places where there is an auctioning body; where there is no auctioning body, it shall carry out the auction itself.

ARTICLE 75. The people's court should issue a notice of auction prior to an auction. The notice should specify the names, types, and special characteristics of the items to be auctioned, the reason for the auction, the time and place of the auction, and the time limit within which money must be paid. Where immovable property is being auctioned, its location should be specified.

ARTICLE 76. When the people's court auctions property according to law, it should in keeping with the principle of reasonableness auction in stages from high to low.<sup>23</sup>

ARTICLE 77. When a deal in an auction is reached, goods and money should be exchanged in full simultaneously. The auctioned article may also be delivered after the price has been paid in full. It is not permitted for any amount to be owing. Where it is permitted to pay in installments, the

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22. It is not clear what purpose this sentence serves, since the debtor is already liable for the full amount of the debt.

23. I have been unable to ascertain the meaning of this phrase.

period for payment should be strictly limited. The buyer should provide to the people's court a written promise to pay in installments, and a guarantor may provide a guarantee at the same time. If the buyer does not make timely payments, the people's court may make a ruling for coercive execution against the property of the buyer or of the guarantor.

Where the price received at auction is higher than the object of execution, the excess shall be returned to the execution debtor after subtracting the costs of auctioning.

Property that cannot be sold at auction<sup>24</sup> may be returned to the execution debtor. Execution shall be resumed when conditions are appropriate.

ARTICLE 78. When the people's court decides to adopt measures of freezing, levying, confiscation, garnishing, sealing up, distraining, selling off, or auction, it should make a ruling. The ruling shall be signed by the execution officer and the clerk and bear the court's seal.

When freezing or levying on, or confiscating or garnishing, the execution debtor's [bank] deposits or income, the court should at the same time issue a ruling and a Notice of Assistance in Execution to the relevant units.

ARTICLE 79. [Bank] deposits or property of the execution debtor that have been frozen, sealed up, or distrained by the people's court may not be doubly frozen, sealed up, or distrained by any unit or department.

When another court requests to execute against the same piece of property, if the execution debtor is genuinely without any other property against which to execute, the court that first took the [execution] measure may handle the matter with reference to (*canzhao*)<sup>25</sup> the provisions of Article 204 of the People's Republic of China Law on Civil Procedure. If in the course of execution there is a dispute between courts, it shall be adjusted and settled by their superior courts(s).

ARTICLE 80. In the course of execution, a people's court may, in order to investigate and clarify the execution debtor's holdings of cash and property as well as evidence related to execution, carry out a search of the execution debtor's person, articles of property, residence, and other places where

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24. For example, property that nobody wants to buy.

25. The use of "with reference to" (*canzhao*) as opposed to "according to" (*yizhao* or *genju*) implies that the stated provision does not apply directly to the subject matter in question.

property might be concealed. If the execution debtor refuses to be searched, the execution officer may where he deems it necessary conduct a forcible search (*qiangzhi soucha*).

ARTICLE 81. Searches by a people's court must meet the following conditions:

- (1) There is a legal document that has become effective and the period for performance stated within it has expired;
- (2) The execution debtor does not perform the duty specified in the legal document;
- (3) The execution debtor conceals property and has no other property. The search order shall be issued by the court president. Search personnel must carry identification on their person and must show the search order. The search order should state a time limit within which it is to be used, and is to be returned after use.

ARTICLE 82. It is forbidden for unrelated persons to enter the site of a search when the people's court is carrying one out. Where the object of the search is a citizen (*gongmin*)<sup>26</sup>, the execution debtor or an adult family member should be notified, and the basic-level organization<sup>27</sup> should be notified and told to send someone to the site.<sup>28</sup> Where the object of the search is a legal person or other organization, the legal representative or the chief responsible person should be notified and told to come to the site. Where the unit concerned has a superior administrative department in charge of it (*shangji zhuguan bumen*), relevant personnel of the department in charge should be notified and told to come to the site as well. Refusal to come to the site shall not affect the search.

ARTICLE 83. Body searches of women should be carried out by female court staff.

ARTICLE 84. The people's court should make a written record of the circumstances of the search, to be signed or sealed by the person searched

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26. As before, "citizen" here refers to natural as opposed to legal persons. There is nothing to suggest that it means Chinese nationals as opposed to foreigners.

27. For example, the neighborhood committee.

28. This is for the purpose of providing a witness.

or by another person present at the site. If the person searched or his family refuse to sign or are not present, this fact should be noted in the record.

ARTICLE 85. Property discovered by a people's court in the course of a search should be distrained or sealed up according to law. If a ruling [for distraint or sealing up] cannot be made in time, it should be made within 48 hours. Distrained property shall be dealt with according to the provisions of Article 224, Paragraph 2 and Article 226 of the People's Republic of China Law on Civil Procedure.

ARTICLE 86. If, after the legal document upon which execution is based becomes effective, the execution debtor gives a security interest in (*diya*) the object of execution, the security interest shall be void, and the people's court may undertake execution measures against the security.

ARTICLE 87. If, after the people's court issues a Notice of Assistance in Execution, a relevant unit possessing articles of property or certificates that a legal document specifies are to be handed over refuses to hand them over, the court shall coercively execute, and may handle the matter according to the provisions of Article 103 of the People's Republic of China Law on Civil Procedure.

ARTICLE 88. If relevant units or individuals damage or destroy articles of property or certificates in their possession, the possessor may be ordered to pay compensation. If the possessor refuses to pay compensation, the people's court may make a ruling for coercive execution according to the actual value of the article of property or certificate to be executed against.

ARTICLE 89. The term "certificates" (*zhengzhao*) in Article 230 of the People's Republic of China Law on Civil Procedure refers to building ownership certificates, land [use] certificates, certificates of ownership of mountains and forests, patents, trademark certificates, vehicle licenses, grain ration coupons, industrial and commercial business licenses, and other documents evidencing rights over immovable property and specified types of movable property.

ARTICLE 90. Coercive execution may be used against an execution debtor who refuses to perform a duty that a legal document specifies he should perform. [The court] may also entrust a relevant unit or person to perform the act, with the expenses to be borne by the execution debtor. Where it is

not convenient to coercively execute and the act cannot be performed by a substitute, the court shall make a ruling requiring the execution debtor to compensate the other party for his losses.

ARTICLE 91. When executing against a specified object, execution should be against the original object. If the original object no longer exists, compensation may be paid for its value.

ARTICLE 92. When the people's court coercively requires the moving from or the tearing down of a building or the vacating of a parcel of land, an announcement over the signature of the court president should be issued prior to execution instructing the execution debtor to perform the duty within a stated period of time, failing which coercive execution will be used.

ARTICLE 93. When coercively requiring the moving out of a building, [the court] should first ascertain that the execution debtor has a place to live or is able to move elsewhere before carrying the measure out. If this is not so, execution may be delayed or suspended. When coercively requiring the vacation of a parcel of land, if no judgment has been made regarding fixtures on the land, the matter should be returned to the chamber that adjudicated the case for resolution of the issue of fixtures. During this time, execution shall be delayed.

Articles of property in the building or on the land being executed against shall be handed over by the execution officer to the execution debtor or an adult family member. The execution debtor shall bear any losses incurred as a result of refusal to accept such articles. Buildings or land that the execution debtor is forced to leave shall be promptly handed over to the applicant.

ARTICLE 94. When the people's court coercively requires the moving from or the tearing down of a building or the vacating of a parcel of land, it should notify the execution debtor's work unit and basic-level organization that they should send someone to participate. It should [also] notify the execution debtor or an adult family member that they should come to the site. Refusal to come to the site shall not affect execution.

ARTICLE 95. The actual costs of execution shall be borne in their entirety by the execution debtor. If the execution debtor refuses to bear the costs, the court may coercively execute.

## CHAPTER SIX: COERCIVE MEASURES AGAINST OBSTRUCTION OF EXECUTION

Article 96. A people's court may employ a coercive summons on an execution debtor who without a proper reason twice refuses a summons requiring him to come to the court or to a specified place.

ARTICLE 97. If an execution debtor, a legal representative, or another person commits one of the following acts, the people's court may, in accordance with the seriousness of the circumstances, impose a fine or detention; where the circumstances constitute a crime, the person shall be made criminally liable:

- (1) Openly showing contempt for the law and refusing to execute a judgment, ruling, mediation, or execution notice of a people's court, or a Notice of Assistance in Execution, a decision to impose a fine, or any other legal document that has become effective and should be executed;
- (2) Concealing, transferring, selling off, or damaging property that has been sealed up or distrained according to law, or tearing up notices, sealing strips, or legal documents of a people's court;
- (3) Obstructing execution officers in the performance of their duty by means of violence, threats, or other methods;
- (4) Obstructing execution by the use of methods such as colluding with and stirring up others to humiliate, curse, slander, threaten, and surround and beat execution officers; damaging or seizing execution tools, the clothing of execution officers, and other equipment; and creating a big disturbance and attacking the place of execution;
- (5) Instigating, bribing, or intimidating a person who has a duty to assist in execution or another person into falsifying evidence and [thereby] confusing the execution process.

ARTICLE 98. When a people's court imposes a fine on a legal person or other organization in accordance with the provisions of Articles 102 and 103 of the People's Republic of China Law on Civil Procedure, it may also apply coercive measures designed to remove obstructions [to execution] against its chief responsible person or the persons directly responsible [for the obstruction].

When a legal person, other organization, or individual refuses to pay a fine, [the court] may handle the matter in accordance with Article 102, Paragraph 1, Item 5 of the People's Republic of China Law on Civil Procedure.

ARTICLE 99<sup>29</sup>. When a bank or credit society colludes with the execution debtor to transfer deposits already frozen by the people's court, or of its own accord and without the permission of the people's court takes funds that have been frozen by the people's court or lifts the freeze, [the persons responsible]<sup>30</sup> shall be fined and [*sic*] detained according to law.

ARTICLE 100. When the people's court imposes detention, it should be carried out by judicial police (*sifa jingcha*). The decision imposing detention should be delivered along with the execution debtor to the local public security organ for guarding. Where the detainee is outside the locality, then the detention decision should be approved by the superior court, after which the court may send personnel to carry it out directly with assistance in holding [the detainee] in custody from personnel sent by the people's court of the area [where the detainee is located]. The court may also entrust the people's court of the area [where the detainee is located] to execute by substitution. The entrusted people's court should have its judicial police deliver the entrustment letter, the detention decision, and the detainee together to the public security organ of that place for guarding. The court and public security organs of that place must execute.

If for some special reason it is not convenient to hold the detainee in that area, he may be detained in a neighboring region. In that case, however, the people's court of the neighboring region should assist in handling the matter, and the special reasons requiring detention in another region should be clearly stated.

ARTICLE 101. When in the course of execution the people's court meets with an emergency situation such that it is necessary to impose detention but there is no time to seek the approval of the court president, it may within 24 hours of the imposition of detention report to the court president and make up (*buban*) the approval procedures. If the president of the

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29. This article is translated according to the revisions handwritten over the printed text. They do not change the substance of the text.

30. The text does not contain any reference to persons, but obviously institutions cannot be detained.

executing court deems the detention improper, it should be lifted immediately.

ARTICLE 102. If the detainee does not accept the detention, he may apply for a single review from the superior people's court [of the court imposing the detention]. The application for review should be made within three days of receipt of the detention decision. The superior court should notify the detainee of the results of its review within five days of receiving the application. Execution [of the detention decision] shall not be stopped during the period of review.

ARTICLE 103. If the superior court finds that the imposition of detention by the inferior court was improper, it should immediately instruct the inferior court to rectify the error. If the inferior court refuses to rectify the error, the superior people's court may issue a decision annulling the detention decision of the inferior people's court.

ARTICLE 104. Coercive summonses, fines, and detention must be approved by the court president.

In the case of a coercive summons, the court should issue a [written] coercive summons note (*juchuan piao*).

Fines and detention should be imposed by means of a decision (*juedingshu*). Fines and detention may be used together or separately. The period for detention shall not exceed 15 days.

ARTICLE 105. When the people's court uses a coercive summons or detention and meets with resistance, it may as circumstances dictate employ instruments of coercion (*xieju*).<sup>31</sup>

ARTICLE 106. The crime of refusing to obey judgments and orders of a people's court stipulated in Article 157 of the Criminal Law of the People's Republic of China is a crime of disrupting the orderly administration of society. It is a minor crime that occurs in the course of coercive execution and that is prosecuted by the people's court on its own without the need for investigation [by the procuracy]. In accordance with the provisions of Article 13 of the Criminal Procedure Law of the People's Republic of China and the [joint] Notice on the Implementation of the

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31. This would include guns, clubs, handcuffs, electric stun batons, etc.

Provisions of the Criminal Procedure Law Regarding the Scope of Jurisdiction Over Cases issued by the Supreme People's Court, the Supreme People's Procuracy, and the Ministry of Public Security (Fa Yan Zi, No. 28, 1979), such cases are within the jurisdiction of the people's court and are directly accepted by it; there is no need for a [private] plaintiff or [public] prosecutor.<sup>32</sup>

ARTICLE 107. When in accordance with the provisions of Article 102 of the People's Republic of China Law on Civil Procedure it is necessary to seek criminal liability for relevant persons for refusing to execute judgments and rulings, the people's court may decide to detain or arrest, obtain materials and evidence relevant to the crime, and report to the court president, who shall pass the matter to the Adjudication Committee for discussion and decision. [The case] shall then be passed for adjudication to the criminal chamber of the court having jurisdiction. During adjudication the court shall directly present the facts and evidence of the crime. The defendant may appoint a defender to defend him. The people's court, after hearing the statement of the defendant, shall make a judgment based on the facts and the provisions of relevant law.

ARTICLE 108. The objective elements making up the crime of refusing to execute judgments and rulings are not limited solely to violence and threats; as long as the execution debtor has the ability to perform the duty, does not perform it within the time period stipulated by the people's court, after the expiration of such period commits further acts refusing and obstructing coercive measures by the people's court, and the circumstances are serious, then criminal liability may be attached.

ARTICLE 109. If in the course of execution, the execution debtor or another person commits acts of humiliation (*wuru*), slander (*feibang*), frame-up (*wuxian*), hooliganism (*liumang*), or injurious assault (*shanghai*), and the circumstances are serious, he shall be made criminally liable.

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32. This article has a special procedural significance. Chinese criminal law allows for certain classes of minor crimes to be prosecuted without the need for investigation or any other involvement by the procuracy. The way in which the crime of refusal to execute court judgments should be prosecuted has been the subject of debate in China. If the court acts as both prosecutor and judge and the procuracy is not involved, it resembles the contempt sanction of the common law much more than it resembles similar defined crimes in civil law systems.

## CHAPTER SEVEN: SUSPENSION AND TERMINATION OF EXECUTION

Article 110. The people's court should make a ruling suspending (*zhongzhi*) execution if one of the following circumstances arises in the course of execution:

- (1) The circumstances provided for in Article 234 of the Civil Procedure Law of the People's Republic of China are present;
- (2) The matters in the legal document upon which execution is based are not clearly set forth, and it is necessary to issue a supplementary ruling;
- (3) It is decided under the procedure for adjudication supervision to bring up (*tishen*) or readjudicate (*zaishen*) the case;
- (4) The legal document upon which execution is based or the object of execution are connected with another case in the process of being adjudicated or executed and it is necessary to wait for the conclusion of the other case or it is necessary to execute together with the other case;
- (5) During the period in which the people's court is reviewing a petition [for retrial], the complexity of the circumstances of the case make it temporarily difficult to decide whether or not to grant a retrial (*zaishen*), and continued execution might make reverse execution difficult or impossible;
- (6) A people's court has already accepted the bankruptcy case of the execution debtor;
- (7) The whereabouts of the execution debtor have remained unknown for over a year or he has been sent to reform through labor or reeducation through labor because of unlawful acts or crimes, and he has no property to be executed against;
- (8) The execution debtor has met with an accident, natural disaster, etc.

ARTICLE 111. A ruling suspending execution should clearly set forth the reason for the suspension, be signed by the execution officer and the clerk, and bear the court's seal. The ruling shall take effect immediately upon delivery to the parties, and execution procedures thereupon cease.

When the execution officer delivers the ruling, he should inform the applicant [for execution] that he may at any time provide the people's court with relevant information such as that regarding the ability of the execution debtor to repay. The execution officer should also be familiar with relevant

information such as that regarding the ability of the execution debtor to repay, and [may] exercise his power to resume execution at any time.

ARTICLE 112. Execution shall be resumed after the disappearance of the circumstances necessitating suspension. The resumption of execution may be at the initiative of the execution officer or upon the application of the party.

The resumption of execution does not require the redocketing of the case or the issuance of another ruling.

ARTICLE 113. The people's court should make a ruling terminating (*zhongjie*) execution if one of the following circumstances arises in the course of execution:

- (1) The circumstances provided for in Article 235 of the People's Republic of China Law on Civil Procedure are present;
- (2) An enterprise legal person ceases to exist and genuinely lacks both the ability to repay and someone who is jointly liable;
- (3) Debts that remain unpaid after the completion of bankruptcy proceedings for the execution debtor are no longer repayable;
- (4) The duties under a composition agreement (*hejie xieyi*) arrived at voluntarily by and between the parties have been performed.

ARTICLE 114. The ruling terminating execution should clearly set forth the reason for the suspension, be signed by the execution officer and the clerk, and bear the court's seal. The ruling shall take effect immediately upon delivery to the parties.

ARTICLE 115. The execution officer should make a written report whenever execution is suspended or terminated. After report to and approval by the court president, a ruling shall be issued.

ARTICLE 116. When it is necessary to suspend or terminate execution of judgments, rulings, and mediations that are the result of a final adjudication by a people's court of second instance or of cases that a superior court has delegated (*jiaoban*) for execution, the execution officer should make a report containing his proposals regarding the suspension or termination to the execution chamber of the court of second instance or the superior court [as applicable]. The ruling shall be issued after [that chamber] has noted its ideas and filed the report for its records.

ARTICLE 117. When an entrusted people's court finds that the execution of an entrusted case should be suspended or terminated, it should issue a written report to the entrusting people's court requesting it to make a ruling.

#### CHAPTER EIGHT: EXECUTION COSTS

Article 118. The fee for the application for execution should be paid by the applicant to the people's court at the time the application for execution is made, except where the law provides that no fee need be paid. If the fee is not paid in advance, the people's court shall issue a written notice to pay in advance.

If the applicant has not paid the fee within seven days of receiving the notice to pay issued by the people's court and has not provided a proper reason, he shall be deemed to have withdrawn the application for execution.

ARTICLE 119. If it is genuinely difficult for the applicant to pay the execution application fee in advance, he may apply to the people's court for a reduction, postponement, or waiver of the fee. Whether or not to grant such an application shall be decided by the people's court after investigation.

ARTICLE 120. Fees for the application for execution are as follows: where the amount to be executed or its value is 10,000 *yuan* or less, 50 *yuan* is payable for each item; a fee of 0.5% is payable on the portion that exceeds 10,000 *yuan* up to 500,000 *yuan*; a fee of 0.1% is payable on the portion that exceeds 500,000 *yuan*.

The amount shall be calculated in separate stages for successive portions of the amount to be executed, and the fee payable shall be the total of the fees so calculated.

For example, if the amount to be executed is 600,000 *yuan*, the execution application fee is 2,600 *yuan*, calculated as follows: 50 *yuan* for the first 10,000 *yuan*; 2,450 *yuan* representing 0.5% of the 490,000 *yuan* that is between 10,000 *yuan* and 500,000 *yuan*; and 100 *yuan* representing 0.1% of the 100,000 *yuan* that is the amount over 500,000 *yuan*. The execution application fee that should be paid is 50 *yuan* + 2,450 *yuan* + 100 *yuan* = 2,600 *yuan*.

ARTICLE 121. The execution application fee and the actual costs of execution shall be paid by the execution debtor. The people's court should notify the execution debtor in writing that he is to pay.

Where the applicant voluntarily advances the actual costs of execution, the amount should be paid back to him by the people's court from the amount paid by the execution debtor for the actual costs of execution<sup>33</sup> unless the applicant voluntarily bears the costs or waives [his right to be repaid].

ARTICLE 122. Where the execution debtor refuses to pay the costs of execution, the people's court may levy them coercively. It may also take the costs from the amount of money recovered.

The entrusted court shall be paid for the actual costs of execution of a case that was entrusted for execution from a court outside the locality.

ARTICLE 123. Actual costs of execution include expenses of testing (*kanyan*), appraisal (*jianding*), price-setting, translation, and posting notices; the cost of hiring workers, loading and unloading, transport, and renting vehicles as well as warehousing charges, safekeeping charges, and building maintenance and repair charges; expenses of substitute performance of an act; expenses for copying legal documents and evidentiary materials; and other expenses that the people's court considers should be paid.

ARTICLE 124. After the completion of execution, the people's court should deliver to the parties a written notice containing a detailed itemization of the execution expenses and the amount to be borne by the parties. Relevant instruments shall be made part of the file for the record. The parties shall settle their account for execution charges with the people's court on the basis of receipts for amounts paid and legal documents. Overpayments shall be returned and underpayments shall be made up.

ARTICLE 125. If a party disagrees with the method used by the people's court to calculate execution costs, it may request a review (*fuhe*) by the people's court. If there is genuinely an error, the people's court should rectify it.

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33. One character in the printed text is obscured here, but this seems to be the meaning.

ARTICLE 126. People's courts at all levels should establish and perfect a strict system for the receipt of execution fees. Legally stipulated and unified receipts should be used when receiving fees. As for charges for the actual expenses of execution, the amount of money and the amount shown on the receipt for expenses and receipts should be the same.

ARTICLE 127. Execution application fees and case acceptance fees shall be administered in a unified way (*tongyi guanli*) by the people's court. The actual expenses of execution shall be paid out and recovered by the execution chamber and administered separately.

#### CHAPTER NINE: SUPPLEMENTARY RULES

Article 128. These rules shall apply to the execution problems of foreign nationals, stateless persons, and foreign enterprises and organizations after a decision (*caijue*)<sup>34</sup> of a people's court. Where the courts of a foreign country treat the citizens, enterprises, and organizations of our country differently from citizens, enterprises, and organizations of that country, the people's courts shall handle the matter in accordance with the principle of reciprocity.

ARTICLE 129. These rules shall go into effect for trial purposes on \_\_\_\_\_, 1991.<sup>35</sup>

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34. This is almost certainly an error for "judgment" (*panjue*).

35. Date missing in original.

