

Sui Zhong Fa (2018) No. 208

Notice on Issuing the Several Provisions of Guangzhou Intermediate People's Court on Property Liquidation in Enforcement Procedures (for Trial Implementation)

To all grass-roots courts and all departments of this court,

The *Several Provisions of Guangzhou Intermediate People's Court on Property Liquidation in Enforcement Proceedings (for Trial Implementation)* were discussed and adopted by the 24th Judicial Committee on June 13, 2018, and are hereby distributed to you. Please implement them in light of the actual situation

Guangzhou Intermediate People's Court
June 15, 2018

Several Provisions of Guangzhou Intermediate People's Court on Property Liquidation in Enforcement Procedures (for Trial Implementation)

These Provisions are formulated in order to regulate the enforcement procedure, improve the efficiency of enforcement, and promptly dispose of property subject to enforcement, in accordance with the *Civil Procedure Law of the People's Republic of China*, the *Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, the *Provisions of the Supreme People's Court on Auction and Sale of Properties in Civil Enforcement Proceedings by People's Courts* and the *Provisions of the Supreme People's Court on Several Issues in the Network Judicial Auction by People's Courts*, in light of the work of the people's courts in this municipality.

1. Conditions and Preparation for Initiating Property Liquidation

1.1. The property mentioned in these Provisions includes immovable property such as land use right, house, etc.; movable property such as means of transportation, machinery and equipment, products, raw materials, etc.; property rights such as equity, investment interests, fund shares, trust beneficial interest, intellectual property rights, etc.

1.2. The property subject to enforcement shall not be disposed of without seizure, distraintment or freezing (hereinafter referred to as "Seizure").

1.3. In principle, the property subject to enforcement should first be disposed of by the first seizure court. However, a creditor's right that has entered the enforcement procedure of another court has a prior security right or priority over the seized property. If the seized property has been more than 60 days after the date of the first seizure, and the first seizure court has not issued an auction notice or entered the sale procedure on the seized property, the prior creditor's rights enforcement court may demand that the seized property be transferred for enforcement.

If a party applies for property preservation in a lawsuit, and the property preservation court fails to dispose of the preserved property more than one year after the date when the first seizure is adopted, the second seizure and enforcement court may, except that the preserved property is a disputed object, require the property preservation court to transfer the preserved property for enforcement.

1.4. Before initiating property liquidation, it is necessary to investigate the ownership, possession and use of the property and to collect relevant information.

1.5. Before initiating property liquidation, an enforcement notice on the immovable property, machinery and equipment should be posted in the place where the property is located to explain the situation of seizure, and urge the relevant creditors to declare rights.

1.6. After the property meets conditions for liquidation, the people's court shall notify the parties of the negotiation for the market price of the property within 15 working days after the date when the property meets conditions for liquidation.

2 Determination of Market Valuation of the Property subject to Enforcement

2.1. Where a judicial auction is required for the property subject to enforcement, the market price may be determined by the parties through negotiations. The market price determined through negotiations must be made public before it can be used as the basis for the

enforcement court to determine the reserve price of the auction.

2.2. If the parties fail to reach an agreement on the market price within five working days, or if it is unable to negotiate because the whereabouts of the person subject to enforcement are unknown, the market price of the property subject to enforcement shall be determined as follows:

2.2.1. The price, taxation, land or housing authority has market price statistics standards for Housing and vehicle, it can be determined by an inquiry to relevant departments;

2.2.2 If it cannot be determined by inquiry, but related property has had a more mature and comprehensive market trading environment, it can be determined by the network big data assessment system.

2.3. The land use right shall be entrusted to a qualified assessment institution for price assessment; the market price of property rights such as equity, investment interests, trust beneficial interest, intellectual property rights, etc., shall be entrusted to a qualified assessment institution for assessment if the parties cannot determine through consultation, and it cannot be determined by inquiry.

2.4. If the market value of the property subject to enforcement is determined by an inquiry to the relevant departments, the search result shall be screenshot (or photographed) for record, and the search methods and results shall be notified in writing to the parties for their comments.

No assessment fee or other charges are required to determine the market price of the property subject to enforcement by means of inquiry.

2.5. Where the market price of the property subject to enforcement is determined by the network big data assessment system, a written assessment report shall be generated for record, and the pricing methods and results shall be notified in writing to the parties for their comments.

2.6. If a party or other interested party raises a written objection to the method and result of determining the market price of property by an inquiry to the relevant department or through the network big data assessment system, the enforcement court shall deal with it in accordance with Article 225 of the *Civil Procedure Law of the People's Republic of China* and the relevant judicial interpretations.

If an outsider raises a written objection to the market price agreed on by the parties, the enforcement court shall entrust a qualified assessment institution to conduct price assessment of the property subject to enforcement.

2.7. If the parties fail to reach consensus on the market price of the property subject to enforcement, and the enforcement court is unable to determine the market price by an inquiry to the relevant departments or through the network big data assessment system, the enforcement court shall entrust a qualified assessment institution to conduct price assessment.

3 Entrustment of Assessment

3.1. The assessment institution shall be publicly and randomly selected by the enforcement court from qualified institutions.

For the assessment of property outside the province's jurisdiction, the parties may agree on an assessment institution. Should no agreement be reached through consultations, it shall be handled ex officio by the enforcement court. A reassessment is generally conducted by the original assessment institution, except where such reassessment is performed by unqualified assessment institution and assessors, or through seriously unlawful assessment procedure.

3.2. In case of bulky property, the enforcement court may, depending on the circumstances of the case, entrust two or more assessment institutions to jointly assess it.

In the case of small low-value property, the enforcement court may entrust the

assessment by means of bundling.

3.3. Where the property subject to enforcement is required to be assessed, the enforcement officer shall submit it to the judicial entrustment administration department:

3.3.1. Letter on Transfer of Assessment;

3.3.2. Entrusted Assessment Transfer Form

3.3.3. Property Status Questionnaire and related information, in case of real estate, it is necessary to clarify whether it is occupied, and provide information on whether it is leased; in case of land use rights, it is necessary to determine whether the things immovably attached to the land need to be assessed together;

3.3.4. List of property to be assessed and ownership information;

3.3.5. Legal documents for enforcement measures against the property subject to enforcement.

The judicial entrustment administration department shall examine to make sure whether the formalities are complete, whether the contents of the entrustment are clear, and whether the materials submitted meet the requirements. If the material is deficient or unclear and cannot be corrected, it shall be returned within 3 working days after the approval of the head of the department.

3.4. After selecting an assessment institution, the judicial entrustment administration department shall issue a power of attorney to the assessment institution. The power of attorney shall include the following:

3.4.1. Name, location and quantity of the subject matter;

3.4.2. Assessment requirements and period;

3.4.3. Payment of assessment fee.

In addition, the information on ownership and financial status of the property subject to enforcement, legal documents for enforcement measures against the property subject to enforcement, and other necessary information for assessment should be provided in accordance with the specific requirements of the entrusted assessment.

3.5 The assessment institution shall complete the following work after receipt of the assessment entrustment letter and assessment information:

3.5.1. Issue an assessment prepayment letter to the enforcement court within 3 days;

3.5.2. Carry out on-site investigation of the subject matter within 10 days, if necessary;

3.5.3. Generally, the assessment should be completed within 30 days, and the difficult and complex cases should be completed within 60 days. If the assessment cannot be completed within the specified period due to some reasons, the assessment institution shall, within 5 days before the expiration of the period, give the reasons in writing and apply to the court for the suspension of the calculation of the entrustment period.

3.6. If the assessment institution requests the court to assist during the assessment, the enforcement court shall give assistance.

3.7. The assessment report submitted by the assessment institution to the enforcement court shall include the following:

3.7.1. An accurate description of the overview of the subject matter, such as ownership, location, quantity, defects, etc.

3.7.2. A photocopy of the ownership information of the subject matter, a photo of the current situation, the assessment entrustment letter, and a photocopy of the letter to agree to suspend or resume the entrustment period;

3.7.3. The assessment results;

3.7.4. The basis, methodology and process of the assessment;

3.7.5. With the stamp of assessment institution and signed by the assessors, and a photocopy of the qualification certificate;

3.7.6. Other circumstances that should be stated.

If the assessment report cannot be issued due to the lack of materials, the inability to inspect the site, and the failure of the parties to pay the relevant fees without proper reasons, the assessment institution shall make a written statement.

3.8. The enforcement court shall, within 5 working days after receipt of an assessment report issued by the assessment institution, serve the assessment report to the parties and other interested parties.

Where the whereabouts of the person subject to enforcement or other interested parties are unknown, such service may be done by appropriate means, such as requesting the close relatives of the person subject to enforcement to forward it, posting it in the place where the property subject to enforcement is located, or the natural village or the public ground of the community where the person subject to enforcement is located, or mailing it to the domicile of the person subject to enforcement as stated in the effective legal document, without public announcement.

3.9. If a party or other interested party objects to the assessment report, it shall submit a written objection to the enforcement court within 7 days upon receipt of the assessment report. The assessment institution shall, within 10 days after receipt of the written objection forwarded by the enforcement court, review the objection and submit a written opinion.

After the written review opinion issued by the assessment institution is served to the parties, its assessment price can be used as the basis for the court to determine the auction reserve price. If a party or other interested party has evidence that the assessment institution or assessor does not possess the corresponding assessment qualification or the assessment procedure is seriously illegal and applies for reassessment, the collegial panel shall decide whether or not to approve it.

3.10. The validity period of the assessment report shall be determined by the period specified in the report. When the auction commences, the expiration of the validity period of the assessment report shall not affect the subsequent auction, sale and the paying-a-debt-in-kind assets procedures. However, if the auction time is too long or the market changes substantially, a reassessment shall be conducted, and the auction shall be conducted at the reassessment price.

If the assessment report has expired, but the applicant and the person subject to enforcement have no objection to it, the enforcement court may still determine the auction retention price according to the assessment report.

3.11. The applicant shall, within 5 days upon receipt of the payment notice issued by the enforcement court, pay in advance a portion of the assessment fee (50% of the estimated price or workload) to the assessment institution, and the balance shall be preferentially deducted by the enforcement court from the price of the auction, sale or the paying-a-debt-in-kind assets. In case of auction, sale or the paying-a-debt-in-kind assets for the assessed property subject to enforcement, the assessment fee shall be calculated at the transaction price or the price of the paying-a-debt-in-kind assets.

Where the property subject to enforcement is required to be assessed in the enforcement of a case involving the payment of alimony, support for children or elders, a case of civil action subordinated to criminal lawsuit or a criminal case, the assessment fee shall not be prepaid, and shall be preferentially deducted by the enforcement court from the price of the auction, sale or the paying-a-debt-in-kind assets and paid to the assessment institution.

If the enforcement court decides to suspend or revoke the entrustment of the assessment, and the assessment institution has not actually carried out the assessment work before such suspension or revocation, it shall refund the received assessment fee.

If the deal in an auction or sale for the assessed property subject to enforcement is

unsuccessful, and the applicant or other enforcement creditors have not applied for the paying-a-debt-in-kind assets, the assessment institution shall not refund the assessment fee or charge any other fee.

If the applicant refuses to prepay the assessment fee without justified reasons, the enforcement court shall revoke the assessment entrustment.

3.12. If the assessment institution commits any one of the following acts, the enforcement court may revoke the assessment entrustment, and impose a warning, suspension of entrustment or delisting on it according to the seriousness of the act:

3.12.1. Refusing or delay to accept an entrustment without justified reasons and having no written statement;

3.12.2. Failure to complete the assessment without justified reasons;

3.12.3. The assessment results clearly deviate from the facts and there is evidence that violates the assessment criteria;

3.12.4. Sub-entrusting without the consent of the court;

3.12.5. having no qualification which accords with the entrustment matter but accepts the entrustment;

3.12.6. Being punished by industry associations for violating industry regulations;

3.12.7. Striking deals between power and money by offering bribes, giving gifts, etc., and seeking unjust benefit;

3.12.8. Viciously collaborating with the parties or other persons concerned;

3.12.9. Other circumstances where the enforcement court considers that the assessment entrustment should be revoked.

4. Judicial Auction

4.1. If the enforcement court disposes of property through auction, it shall adopt the method of network judicial auction, except where laws, administrative regulations and judicial interpretations stipulate that it must be disposed of by other means, or it is not appropriate to dispose of property by means of network auction.

Where a property is appraised by entrusted auction or other means, it shall be subject to the approval of the head of the enforcement court.

4.2. If a property is appraised by entrusted auction, it shall be subject to the *Provisions of the Supreme People's Court on Auction and Sale of Properties in Civil Enforcement Proceedings by People's Courts* and *Several Provisions of the Supreme People's Court on the Entrustment of Assessments and Auctions by the People's Courts*, where a network judicial auction is adopted, it shall be subject to the *Provisions of the Supreme People's Court on Several Issues in the Network Judicial Auction by People's Courts*.

4.3. Where a network judicial auction is adopted, the auction announcement, bidding instructions and bidding rules shall be published, and the auction announcement shall, in the form of words, pictures or videos, indicate the ownership, possession, use and defects of the property, the taxes on the delivery and ownership transfer of the property to be auctioned, and the delivery of the subject matter to be auctioned, etc.

If the market price of the property subject to enforcement is agreed on by the parties, the enforcement court shall make a special statement in the auction announcement.

4.4. During an auction, the matters concerning the starting price and t price reduction, the bid price increase, the amount of deposit, the bidding qualification of the owners of first refusal and their order, overall or split auction shall be determined by the collegial panel.

The range of price markup shall be determined in strict accordance with the Document (Fa Ming Zhuan (2017) No. 253) issued by the Supreme People's Court.

4.5. Within 10 days after payment of the auction transaction price, the enforcement

officer shall make a written ruling on auction transaction and serve it to the buyer, the parties and the ownership transfer registration authority.

5. Auxiliary Work of Network Judicial Auction

5.1. If a network judicial auction is adopted, the enforcement court may entrust a social institution or organization with the auxiliary work of the auction.

5.2. The scope of the auxiliary work of network judicial auction shall include:

5.2.1. Presenting the text, and videos or photos of the property to be auctioned;

5.2.2. Displaying the property to be auctioned, receiving consultation, leading inspection, sealing samples, etc.

5.2.3. Carrying out the appraisal, inspection, assessment, audit, storage, custody and transportation of the property to be auctioned; and

5.2.4. Other auxiliary works that could be commissioned.

5.3. The enforcement court shall select the assisting agencies according to the principle of fair competition and merit-based selection, and no more than three assisting agencies are selected for the same period in principle.

5.4. When transferring the case of the network judicial auction to an assisting agency, the enforcement court shall also transfer the relevant materials of the auction, and issue a power of attorney, which shall include:

5.4.1. Client;

5.4.2. Legal procedures for the disposal of property by network judicial auction and related matters to be completed;

5.4.3. Detailed requirements for the auxiliary work; and

5.4.4. Other matters that need to be clarified.

5.5. If the assisting agency accepts the entrustment, it shall issue a confirmation letter to the enforcement court, or its professional personnel assigned to the court shall sign the power of attorney.

After accepting the entrustment, the assisting agency shall, in principle, send personnel to the enforcement court for the auxiliary work of network judicial auction.

5.6. The enforcement court may refer the following matters to the personnel of the assisting agency:

5.6.1. After accepting the entrustment of the auxiliary work of auction, the preliminary draft such as auction announcement, sale announcement, bidding notice and auction target description shall be completed and submitted to the enforcement officer for examination and approval

5.6.2. Post the auction notice at the place where the property is to be enforced, survey the auction target, and make the written description, video or photo of the property to be auctioned and submit them to the enforcement officer for examination and approval.

5.6.3. To offer advice to potential bidders and arrange for display of auction target during the auction;

5.6.4. To display and introduce the auction target for potential bidders on the spot, instructing the potential bidders to go through the relevant formalities to participate in the auction on the display date of the auction target, and reporting the result to the enforcement officer;

5.6.5. To assist in the examination of the bidder's eligibility for bidding and to report it to the enforcement officer;

5.6.6. To notify the parties and the owners of first refusal, or publish the notice in the network judicial auction platform, in writing or in other manner capable of confirming receipt,

within 3 days prior to the release of the auction announcement;

5.6.7. To carry out the appraisal, inspection, assessment, audit, storage, custody and transportation of the property subject to enforcement; and

5.6.8. Other ancillary works of network judicial auction that the enforcement court considers that may be done by the personnel of the assisting agency.

5.7. The costs for the auxiliary work of network judicial auction shall be borne by the person subject to enforcement, and preferentially deducted from the transaction price.

If the transaction price of a network judicial auction is less than 10,000 yuan (inclusive), the costs for the auxiliary work shall be 100 yuan; if the transaction price is more than 10,000 yuan, the costs shall be paid at 1% of the transaction price, but the costs shall not cumulatively exceed 10,000 yuan.

5.8. If a case involves multiple properties, the costs shall not cumulatively exceed 100,000 yuan.

5.9. If the network judicial auction fails, and the applicant or other enforcement creditors accept the payment of the debt with the failed property, the costs for the auxiliary work of network judicial auction shall be paid at a rate not exceeding 500 yuan per case. If the person subject to enforcement is unable to pay in time, the applicant or other enforcement creditors who accept the payment of the debt with the failed property shall pay it.

5.10. If the network judicial auction fail, and the applicant or other enforcement creditors refuse the payment of the debt with the failed property, the assisting agency shall not charge any fee.

5.11. The charge for each property is a fixed lump sum and the assisting agency may not claim any additional charges.

5.12. If the enforcement court decides to postpone, suspend or withdraw a network judicial auction after the auxiliary work of the network judicial auction is accepted, the assisting agency shall not charge a fee.

If the enforcement court resumes the network judicial auctions, the assisting agency shall continue to collect fees at the rate specified in these Provisions.

5.13. After completing the auxiliary work of the network judicial auction, the assisting agency may apply for the payment of the costs for the auxiliary work of network judicial auction. The enforcement court shall pay the corresponding fee within 10 working days after the date when it conducts reviews to confirm that the entrusted matters have been completed.

5.14. The executive board of the enforcement court shall be responsible for instructing their work and day-to-day management of the assigned personnel of the assisting agency.

The assisting agency must establish a close labor relation and conclude a labor contract with the assigned personnel, and the enforcement court shall not be held responsible for any disputes between the assisting agency and the assigned personnel.

The enforcement court shall have the right to request in writing the assisting agency to replace the assigned personnel who are not competent for the auxiliary work of network judicial auction, and the assisting agency shall replace the personnel within 7 days after receipt of the written request.

5.15. An assisting agency and its shareholders, staff and close relatives should withdraw according to the relevant provisions of court staff withdrawal (including the withdrawal stipulated in laws, regulations and judicial interpretations) during the network judicial auction.

5.16. An assisting agency and its shareholders, staff and close relatives shall not commit the following acts:

5.16.1. Obtaining the auxiliary work of network judicial auction by improper means;

5.16.2. Refusing or returning the entrusted auxiliary work of network judicial auction

without justified reasons;

5.16.3. Not complying with the rules and regulations of the court, or obeying the work arrangement, management and supervision from the court;

5.16.4. Arranging for the personnel who are not competent for the auxiliary work of network judicial auction to engage in the auxiliary work;

5.16.5. Organizing or participating in the bid-rigging, together-conspired bidding and other illegal acts in the auxiliary work of network judicial auction;

5.16.6. Bidding or entrusting others to bid for the property to be auctioned, which is related to their auxiliary work of network judicial auction;

5.16.7. Disclosing to a third party or making public the information collected and materials provided by the court during the service without authorization;

5.16.8. Subcontracting the auxiliary work of network judicial auction to other institutions, organizations or individuals without authorization;

5.16.9. Having access to the network of the enforcement court and operating the case handling system of the enforcement court without permission;

5.16.10. Failure to charge the costs for the ancillary work of network judicial auction according to the provisions;

5.16.11. Giving feasts and presenting to court staff or committing other dishonest acts; and

5.16.12. Committing other illegal and undisciplined acts.

5.17 If the enforcement court finds that the assisting agency and its assigned personnel commit any of the following acts, it may order correction, suspend the service or terminate the entrustment, as the case may be:

5.17.1. The assisting agency and its assigned personnel have violated Articles 5.15 and Article 5.16 of these Provisions; and

5.17.2. The assigned personnel of the assisting agency have not performed their duties in accordance with Article 5.6 of these Provisions.

5.18. If an assisting agency violates the provisions of laws, regulations and judicial interpretations in the auxiliary work of network judicial auction and causes a state compensation, the assisting agency shall be investigated for responsibility for damage. If the assisting agency and its personnel are suspected of violating the law or discipline, they shall be transferred to the relevant department for handling according to law.

6. Supplementary Provisions

6.1. Liquidation of property subject to enforcement by people's courts at both levels in Guangzhou shall be subject to these Provisions. If there are new provisions by laws, regulations and judicial interpretations of the Supreme People's Court, those new provisions shall prevail.

6.2. The power to interpret these Provisions shall remain with Guangzhou Intermediate People's Court.

6.3. These Provisions are to be implemented on a trial basis as of the date of issuance.