

**Notice of Guangzhou Intermediate People's Court on
Printing and Distributing the *Measures for the
Implementation of Property Disposal in Bankruptcy
Proceedings (for Trial Implementation)***

Sui Zhong Fa [2020] No. 29

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

Approved by the leaders of this court, the Measures for the Implementation of Property Disposal in Bankruptcy Proceedings (for Trial Implementation) are hereby issued to you for implementation.

Guangzhou Intermediate People's Court
February 25, 2020

Measures for the Implementation of Property Disposal in Bankruptcy Proceedings (for Trial Implementation)

These Measures are formulated in order to standardize bankruptcy proceedings, dispose of the debtor's property in a timely and efficient manner, maximize the value of the debtor's property, protect the legitimate rights and interests of the parties, and safeguard the socialist market economic order and public interests, in accordance with the *Law of the People's Republic of China on Enterprise Bankruptcy* (hereinafter referred to as the "Enterprise Bankruptcy Law") and the *Notice of the Supreme People's Court on the Minutes of National Court Bankruptcy Trial Meeting*, and in light of the actualities of bankruptcy trials in this municipality.

1. The term "debtor's property" as mentioned in these Measures refers to all properties that belong to the debtor when the bankruptcy application is accepted and the properties obtained by the debtor during the period from acceptance of the bankruptcy application to the conclusion of the bankruptcy proceedings, including deposits, cash; immovable property such as land use rights, housing; movable property such as means of transportation, machinery and equipment, products and raw materials; and property rights such as equity, investment interests, fund shares, trust beneficial interest and intellectual property rights.

2. The disposal of a debtor's property shall follow the principle of maximizing the value, taking account of the efficiency of disposal. Where the operating value of an enterprise can be maintained through the overall disposal of the enterprise, priority should be given to the application of the overall disposal method, so as to avoid the split sale of the debtor's property as far as possible, maximize the economic value of the debtor's property, and protect the legitimate rights and interests of creditors and debtors.

3. The administrator shall, immediately upon receipt of the written appointment decision by the people's court, carry out the survey and takeover of the debtor's property, seals, books and documents, as well as the registration and examination of the creditor's rights.

4. The administrator shall promptly complete the takeover of the debtor's property, seals, books and documents, and report to the people's court in writing after the completion of the takeover. If the administrator fails to complete the takeover upon expiration of the declaration period of the creditor's rights, it shall report to the people's court in writing for the current situation of the takeover and the reasons for the failure to take over in full.

Where the relevant personnel of the debtor or other persons refuse to hand over to the administrator such materials as property, seals, books and documents, or have other acts that prevent the administrator from performing its duties, the administrator may request the people's court to take such necessary measures as search, compulsory extraction, compulsory delivery, etc. The enforcement department of the court accepting the bankruptcy case should assist the bankruptcy tribunal in its implementation, if necessary.

The administrator shall timely input the case information, including the property situation, into the administrator's work platform of the National Enterprise Bankruptcy Information Networks, and regularly disclose the progress of the bankruptcy liquidation.

5. The bankruptcy tribunal may, upon application by the administrator, inquire and control the debtor's deposits, vehicles and other means of transportation, real estate, securities and foreign investment through the court enforcement inquiry and control system, to improve the efficiency of inquiry and control.

The bankruptcy tribunal shall, within three days after the date of approval of the administrator's application, transfer to the enforcement department of its court the written ruling for accepting the bankruptcy application and the written civil ruling, and the enforcement department shall complete within five days upon receipt, and provide the bankruptcy tribunal with a list of property inquiry and control. The bankruptcy tribunal shall provide the administrator with the list of property inquiry and control within three days upon receipt.

6. The enforcement department shall, through the court enforcement inquiry and control system, inquire and control the deposits, vehicles and other means of transportation, real estate and securities of the executed person before transferring the bankruptcy case to the bankruptcy tribunal for examination, and record the property inquiry and control in the file.

The enforcement department shall transfer materials, property investigation, property inquiry and control in strict accordance with Article 10 of the *Guiding Opinions of the Supreme People's Court on Several Issues concerning the Transfer of Enforced Cases to Bankruptcy Examination*. If the transferred materials are incomplete or incorrect, the bankruptcy tribunal may request the enforcement department to make up and correct them, and the enforcement court shall make up and correct them within ten days. Such period is not included in the bankruptcy examination period.

If the bankruptcy tribunal needs to consult other case materials in the enforcement proceedings or entrust the enforcement department to handle property disposal according to law, the enforcement department shall provide assistance and cooperation.

7. The starting price of the auction for property disposal shall be determined by resolution of the creditors' meeting, which may also authorize the administrator to determine the starting price on its own.

In general, the administrator shall propose a reference price for the property disposal for the creditors' meeting to determine the starting price. The administrator may determine the reference price by means of targeted inquiry, network inquiry and entrusted evaluation according to the *Provisions of the Supreme People's Court on Several Issues concerning the Determination of the Reference Prices for Disposition of Property by the People's Courts*.

If the reference price could not be determined through targeted inquiry, network inquiry and entrusted evaluation, or if the entrusted evaluation cost were too high, the administrator might evaluate according to the market transaction price and financial data.

8. The selection and operation rules of intermediary institutions involving auction, audit, appraisal and evaluation shall be proposed by the administrator and

submitted to the creditors' meeting for approval. Where the creditors' meeting is unable to make an effective resolution, the provisions of the enforcement proceedings concerning auction, audit and evaluation shall be applied. If it is necessary to initiate auction, audit, appraisal and evaluation before the first creditors' meeting, the administrator may, on the basis of openness, fairness and impartiality, propose a plan and implement it with the approval of the people's court.

The auction, audit, appraisal and evaluation in reorganization and settlement proceedings may be treated alike by making reference to the provisions of the preceding paragraph.

9. The administrator shall agree in advance with an intermediary institution on the time limits and consequences for completing the evaluation, appraisal and audit work. If the intermediary institution fails to complete the corresponding work according to the agreed time limit without justified reasons, the administrator shall have the right to entrust it separately, and the original intermediary institution shall refund the paid fees or not collect any fee. The administrator shall promptly report to the people's court on the completion of the work by the intermediary institution.

10. For an intermediary institution that fails to complete the audit, appraisal and evaluation work within the agreed time limit without justified reasons, the administrator may make recommendations to the people's court and submit the corresponding factual basis. If the people's court considers it necessary to deal with it, it may issue judicial suggestions and give disciplinary measures, such as deducting credit points as a warning, suspension of entrustment and removal from the list of intermediary agencies entrusted by the judiciary, in accordance with the *Provisions of Guangzhou Intermediate People's Court concerning Judicial Entrustment*.¹¹ Where an evaluation, appraisal or audit report that has been completed in the compulsory liquidation proceedings or the enforcement proceedings is still within the validity period, no evaluation, appraisal or audit is required in the bankruptcy proceedings.

If the evaluation, appraisal or audit report exceeds the validity period by less than one year, the administrator may entrust the original intermediary institution to issue a supplementary report or make a statement, unless otherwise resolved by the creditors' meeting. If the evaluation, appraisal or audit report exceeds the validity period by more than one year, the administrator may entrust the original intermediary institution to evaluate, appraise or audit again, unless otherwise resolved by the creditors' meeting.

12. After the resolution of the creditors' meeting, the administrator may sell off or distribute the bankruptcy property through internal bidding, contractual transfer, and paying-a-debt-in-kind-assets, except where the laws and regulations prohibit such disposal. If the proceeds from the selling off are not expected to be enough to cover the sell-off cost, the administrator may waive the sell-off disposal of the bankrupt property upon resolution of the creditors' meeting.

13. Where the administrator disposes of the debtor's material property as stipulated in Article 69 of the Enterprise Bankruptcy Law, it shall make a property management or sell-off scheme in advance and submit it to the creditors' meeting for a vote. If the creditors' meeting fails to approve such scheme, the administrator shall not dispose of it. The administrator shall, in accordance with Article 69 of the

Enterprise Bankruptcy Law, report to the creditors' committee or the people's court in writing ten days in advance before the disposal is made. The creditors' committee may, in accordance with Article 68(2) of the Enterprise Bankruptcy Law, require the administrator to make a corresponding explanation of the disposal or provide the relevant documents.

The creditors' committee shall have the right to request the administrator to rectify it if the committee considers that the disposition by the administrator is not in accordance with the property management or sell-off scheme adopted by the creditors' meeting. If the administrator refuses to rectify it, the creditors' committee may request the people's court to make a ruling.

If the people's court considers that the disposal by the administrator is not in accordance with the property management or sell-off scheme adopted by the creditors' meeting, it shall order the administrator to stop the disposal. The administrator shall rectify or submit it to the creditors' meeting for re-voting, and implement it after approval.

14. A single creditor is entitled to access to the debtor's financial and business information necessary to participate in the bankruptcy proceedings, such as the debtor's property status report, the resolution of the creditors' meeting, the resolution of the creditors' committee, the administrator's supervision report, etc. If the administrator fails to provide it without justified reasons, the creditor may request the people's court to make a ruling, and the people's court shall make a ruling within five days.

The creditor shall fulfill the obligation of confidentiality or sign a confidentiality agreement according to law. If the afore-mentioned information is related to trade secrets, and the creditor shall deal with it in accordance with relevant laws if it is related to state secrets.

15. A creditor who has a security right over the debtor's specific property may at any time submit to the administrator a preferential right of redress for the disposal of the particular property, and the administrator shall promptly sell off, and may not refuse it on the ground that it should be resolved at the creditors' meeting, except where a separate disposal of the secured property would reduce the overall value of the bankruptcy property. The proceeds from the auction or sell-off of the collateral shall give priority to the repayment of the creditor's rights of the owner of right of secured property after payment of the auction or sell-off expenses.

16. The debtor's property shall be sold off by means of network auction, unless otherwise resolved by the creditors' meeting.

The debtor's property shall be sold off through other means if otherwise stipulated by the laws, administrative regulations and judicial interpretation or if it is not suitable for network auction.

If the proceeds from the auction are not expected to be enough to cover the auction costs, they may be sold off at reduced price or distributed in kind, subject to the resolution of the creditors' meeting.

17. The administrator shall dispose of the debtor's property in its own name through the network auction platform according to law, and subject itself to the supervision of the creditors' meeting.

18. Where the debtor's property is disposed of by means of network auction,

the administrator shall specify the network auction in the property sell-off scheme, and submit it to the creditors' meeting for discussion and vote.

A network auction plan should generally include the following:

- 18.1. The debtor's property disposed of through a network auction;
- 18.2. The selected network auction platform;
- 18.3. The time of the auction, the starting price or the manner in which it is determined, the amount or proportion of the deposit, the method and period of payment of the deposit and the auction money;
- 18.4. The increase and decrease of bid price, the bidding qualification of the preemptive right and the order thereof, the whole or split auction method, the number of auctions, the announcement period and the disposal method after the unsuccessful auction, etc.;
- 18.5. Other matters resolved by the creditors' meeting.

The administrator shall explain to the creditors' meeting the taxes and other expenses that may arise from the auction of the debtor's property.

If the administrator deems it necessary, it may submit the sub-items of Paragraph 2 of this article to the creditors' meeting for vote.

19. The list of judicial auction network service providers determined and published by the Supreme People's Court shall be selected for a network auction platform.

20. Where the debtor's property is disposed of by overall auction, the assets may be divided into several asset packages according to asset attributes after the auction fails; or the overall asset package and the scattered asset package may be auctioned simultaneously by setting different purchase conditions.

21. In order to improve the efficiency of property disposal, the property sell-off scheme may specify the number of auction failure before sell-off, or make clear that the debtor's property can be realized through multiple online auctions

22. The deposit amount to be paid by the bidder shall in principle be determined within 5% to 20% of the starting price.

23. The administrator shall perform the following duties in connection with the network auction of the debtor's property:

23.1. To identify and express, in the form of words, pictures or videos, the ownership, nature and use, encumbrance, subordinated obligation, possessive use, location structure, ancillary facilities, finishing and decoration, known defects, unpaid taxes and preemptive rights of the auction property, which affect the interests of the bidders involved in possession, use and the price value of the subject matter;

23.2. To produce and release auction announcements and other information, and independently release auction via the network auction platform;

23.3. To notify the owners of right of first refusal in accordance with the laws, regulations and judicial interpretation;

23.4. To handle and assist in going through the procedures of property delivery and ownership transfer;

23.5. If the market value of the debtor's property is negotiated or determined by the parties, the administrator shall make a special explanation in the auction announcement;

23.6. Other duties that should be performed by the administrator according to law.

24. In order to improve the efficiency of the disposal of the debtor's property, the administrator may, with the approval of the creditors' meeting, employ a third-party social service organization to produce written descriptions, photographs or videos of the auction property, display the auction property, receive advice, and guide the sample inspection.

The necessary costs of employing a third-party social service institution shall be included in the bankruptcy expenses and reviewed by the creditors' meeting.

25. The administrator shall publicly announce before network auction. The announcement period for the first auction shall not be less than fifteen days, and the announcement period after the auction failure shall not be less than seven days. The announcement should also be published via the network auction platform, the National Enterprise Bankruptcy Information Disclosure Platform and Guangzhou intelligent bankruptcy trial system, and may be published by other media according to the case.

The auction announcement shall include information on auction property, starting price, deposit, bidder's condition, known defects of auction property, related rights and obligations, legal liability, auction time, network platform, the court trying the bankruptcy case, name and contact information of administrator.

26. The administrator shall publicize the following information through the network auction platform, the National Enterprise Bankruptcy Information Disclosure Platform and the Guangzhou intelligent bankruptcy trial system on the date of auction announcement:

- 26.1. Auction announcement;
- 26.2. Written descriptions, photographs or videos of the current situation of the auction property;
- 26.3. Auction time, starting price and bidding rules;
- 26.4. Auction deposit, payment method and account of auction money;
- 26.5. The subject of right of first refusal and its nature;
- 26.6. Notification or failure to notify the known owners of right of first refusal;
- 26.7. The mode of property delivery, transfer procedures of property ownership and tax burden; and
- 26.8. Other matters that should be publicized and explained.

If the online auction has been decided to be performed, the administrator may decide to postpone or suspend the online auction if there is a justifiable reason, but it shall timely report to the creditors' committee. If no creditors' committee is established, it shall timely report to the people's court. If it is necessary to continue the auction after the expiration of the period for suspending the auction or the reasons for suspending the auction does not exist, the auction shall be resumed within five days

28. If no bidder makes a bid during the online auction bidding period, the auction will be suspended. If it is necessary to auction again after a failed auction in accordance with the resolution of the creditors' meeting, the administrator shall, within seven working days upon the auction failure, restart the online auction procedure again, except under special circumstances.

29. If the buyer repents after the auction is completed, the deposit paid shall not be refunded and shall be included in the property of the debtor. The margin shall in turn be used to pay for the cost losses incurred in the auction and to make up for the difference between the re-auction price and the original auction price. If the amount of the guarantee deposit is insufficient to cover the aforesaid expenses and price difference, the administrator may claim from a non-paying bidder.

If a new auction is conducted after bidder default, the original buyer shall not be allowed to participate in the bidding.

30. After the auction is completed, the online auction platform will automatically generate a confirmation letter and publicly disclose it, in which the identity of the actual buyer, bidding code and other information will be specified. Upon the application of the administrator, the people's court may issue a closing auction confirmation ruling.

31. The buyer shall pay the auction price to the account of the administrator or the account of the people's court trying bankruptcy cases within the time limit fixed by the auction announcement. The administrator shall reserve in the auction money, declare and pay the relevant taxes to be borne by the seller.

32. The administrator shall assist the buyer in the formalities of delivery, license change, and ownership transfer of auction property, and may apply to the people's court for assistance if necessary.

33. Where a creditors' meeting decides to establish a creditors' committee, it may, in accordance with Article 68(1)(iv) of the Enterprise Bankruptcy Law, and in the form of a resolution of the creditors' meeting, entrust the creditors' committee with its function and power as stipulated in Article 61(1)(ii), 61(1)(iii) and 61(1)(v). The creditors' meeting shall not grant general authorization to entrust the creditors' committee with all functions and powers.

34. If the administrator fails to perform its duties and causes losses to creditors, debtors or third parties when disposing of the debtor's property, it shall be liable for compensation under law.

35. In disposing of the debtor's property without any relevant provisions to follow, the administrator may refer to the *Provisions of the Supreme People's Court on Auction or Sell-off of Properties in the Civil Enforcement Proceedings by People's Courts*, the *Several Provisions of the Supreme People's Court on the Entrustment of the Appraisal, Auction and Disposal by People's Courts*, and the *Provisions of the Supreme People's Court on Several Issues of the Network Judicial Auction by People's Courts*.

36. If relevant personnel of a debtor or other person commits any one of the following acts, which would obstruct the trial of a case by the people's court, the people's court may, on the basis of the case, impose a fine on or detain the person; if the act constitutes a crime, the offender shall be investigated for criminal responsibility according to law:

36.1. Intentionally making false statement or reply to the people's court, the administrator or the creditors' meeting;

36.2. Submitting to the people's court or the administrator any untrue statement regarding property status, inventory of debts, inventory of creditor's

rights, financial and accounting reports, the payment of employees' wages and social insurance expenses, books and documents, or forging other important evidences;

36.3. Concealing, transferring, destroying or refusing to surrender the debtor's property, seals, account books, documents or other important evidences;

36.4. Other circumstances prescribed by law and judicial interpretation.

37. Where the liquidation group disposes of the corporate property in a compulsory liquidation case, these Measures shall apply.

38. These Measures shall take effect from the date of issuance, and the power of interpretation shall be vested in the Guangzhou Intermediate People's Court.