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PRC ENTERPRISE BANKRUPTCY LAW: KEY DEVELOPMENTS AND ENHANCEMENTS SINCE 2017

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In 2017, Professor Xu Yang Guang and Alan Tang jointly authored their INSOL technical paper entitled "PRC Enterprise Bankruptcy Law and Practice in China: 2007 to a Record-Breaking 2017", which analysed key issues and practices relating to the implementation of the Enterprise Bankruptcy Law of the People's Republic of China (EBL) in its first 10 years of operation.

Since that time, there have been significant new legislative, judicial, policy and practical developments in relation to bankruptcy in China. In this update to their original paper, "PRC Enterprise Bankruptcy Law: Key Developments and Enhancements Since 2017", the authors address these issues in detail.

The paper sets out the findings of the recent review of the EBL by the law enforcement inspection team of the NPC Standing Committee. It also provides a detailed synopsis of the judicial interpretations, meeting minutes and opinions issued by the Supreme People's Court, developments in the use of specialist bankruptcy and liquidation courts, the use of technology in bankruptcy cases, legislative provisions for the bankruptcy of financial institutions, cross-border insolvency cases and issues, and the development of personal bankruptcy in Shenzhen Special Economic Zone and Zhejiang Province. The authors also set out the key features that will form part of an intended revision of the EBL in the near future, including a bankruptcy process for MSMEs and substantive consolidation in group bankruptcy cases.

The extensive research and practical insights provided in this paper will be of great benefit to INSOL's members in seeking to understand the bankruptcy regime in China and the issues and trends likely to shape the future development of domestic and cross-border insolvency practice in China.

INSOL expresses its sincere thank you to the authors for their time and expertise in writing this paper.

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1. Prologue and synopsis

2022 saw the 15th anniversary of the implementation of the Enterprise Bankruptcy Law of the People's Republic of China (EBL).[1]

On the EBL's 10th anniversary of implementation in 2017, the authors[2] jointly contributed an INSOL publication, "PRC Enterprise Bankruptcy Law and Practice in China: 2007 to a Record-Breaking 2017" (2017 Paper), which reported on and discussed the institutional formulation, implementation and practices of the EBL, drawing on case statistics up to 2016.

Since then, new developments, practices and achievements have emerged. This paper summarises these developments and further considers the way forward under six headings:

- statistics of bankruptcy cases;
- legislative efforts on bankruptcy law reform;
- judicial efforts on the enforcement of the EBL;
- bankruptcy for financial institutions;
- cross-border bankruptcy; and
- pilot programmes for personal bankruptcy.

In section 4.1, detailed findings of the law enforcement inspection team of the NPC Standing Committee are set out. These include various problems noted in the course of the past 10 years or so, as well as counter-measures considered to be required and proposed to combat these problems. This lays the groundwork for section 4.2 (revision of the EBL) as well as the rest of this paper.

Section 5.1 sets out eight judicial interpretations, five meeting minutes and three opinions issued by the Supreme People's Court (SPC). Sections 5.2 and 5.3 introduce the specialist bankruptcy and liquidation courts, as well as the extensive use of IT techniques in bankruptcy case administrations.

Section 6 summarises existing legislation for the bankruptcy of financial institutions, as well as reporting on selected cases in recent years. It closes with discussion on a draft revision of the EBL as well as related legislation.

Section 7 reports on selected recent outbound and inbound cross-border cases and issues, including the 2021 minutes on mutual recognition of Mainland China and Hong Kong SAR cases, as well as underlying thoughts in the drafting of Chapter 15 of the revised EBL.

Section 8 briefly sets out the legal framework and experience of personal bankruptcy in the Shenzhen Special Economic Zone, as well as the innovative centralised personal debt and asset disposal model adopted in Zhejiang Province and elsewhere.

PRC legislation and related government papers are written in Chinese only. Because of inherent structural and contextual differences in the Chinese and English languages, translations for these Chinese Government originated documents used herein are based on those provided by China Law Info[3] (北大法律英文网) and may not follow a typical English writing style. Where no "official" translations are available, those used in this paper are the authors' own best-effort unofficial translations.

Additionally, the PRC Government and court systems and practices are drastically different from those in the Western world. Thus, references to such procedures and practices (e.g. the "Government-Court Link"), including the underlying philosophies and concepts, may differ from those elsewhere.

Highlights of key points of discussion / findings in this paper are:

- the number of bankruptcy cases exceeded 17,000 in 2019;
- the presentation of detailed findings of the NPC Standing Committee in relation to the operation of the EBL, with proposed measures for improvements;
- the current EBL is being revised (to include, *inter alia*, financial institutions and personal bankruptcies);
- judicial interpretations, opinions and judicial policies promulgated by the SPC are essential to harmonising judicial standards and setting working guidelines for courts. Relevant provisions, replies, meeting minutes and opinions (as defined below) have been listed out for reference;
- enhanced, integrated, digitised IT techniques have been deployed in bankruptcy case administration, with the setting up of three inter-linked data / communication platforms: (i) the National Enterprise Bankruptcy Information Disclosure Platform; (ii) the Working Platform of Judges for Enterprise Bankruptcy Cases; and (iii) the Working Platform of Bankruptcy Administrators for Enterprise Bankruptcy Cases. By putting online the

1 The EBL (for trial implementation) was promulgated in 1986 and implemented in 1988.
2 Together with Professor Wang Xin Xin (王欣新), also of the Law School of Renmin University of China.
3 An operation affiliated to the Law School of Peking University.

entire bankruptcy administration procedures, the Beijing Bankruptcy Court reduced bankruptcy costs to 5.52% of bankruptcy assets as a whole;

- 16 specialist liquidation and bankruptcy courts have been established with over 400 trained professional bankruptcy judges. Over 150 administrator associations have been set up with over 5,700 administrators registered with over 310 courts nationwide;
- not less than three banks and six insurance companies at city levels have entered bankruptcy procedures;
- there have been three inbound and nine outbound cross-border insolvency cases reported, with specific reference to article 5 of the EBL. The Hong Kong Court has adopted a pragmatic approach in recognising bankruptcy proceedings from the PRC. Recent mega-restructuring cases like Hainan Airlines involve extensive cross-border issues; and
- personal bankruptcy has started to be practised (effectively on a trial basis) in Shenzhen Special Economic Zone and judicial practices of the centralised liquidation of personal assets to satisfy debts have developed in Zhejiang, Jiangsu and other provinces.

We hope this paper will provide a meaningful update reference for international experts to understand the implementation of the bankruptcy law of China in recent years.[4]

2. Introduction

In the context of China's market economic reform, "supply-side" structural reform and advancement and optimisation of its business environment generally, it has been observed that the EBL (and bankruptcy practice) has gradually become operationally more "acceptable",[5] as vividly demonstrated by theoretical and practical perspectives.

From a theoretical perspective, the China Bankruptcy Law Symposium (中国破产法论坛) and Bankruptcy Law Collections (破产法文库), which were established by bankruptcy law academics and experts, have become influential thought leaders in the realms of bankruptcy law and practice. One of the top bankruptcy law research institutions in China, the Bankruptcy Law Research Centre of Renmin University of China (中国人民大学破产法研究中心), and the Beijing Bankruptcy Law Society (北京市破产法学会) have organised 13 (almost annual)[6] sessions of the China Bankruptcy Law Symposium in Beijing. This is considerably the largest conference in scale within China,[7] with renowned top-quality speakers with major influence within the country, hitting the records of more than 1,500 delegates taking part in one single session.

Furthermore, the Bankruptcy Law Collections, jointly published by the Bankruptcy Law Research Centre of Renmin University of China and the Beijing Bankruptcy Law Society, are divided into different series, including Academic (学术著作), Forum (论坛文集), Practical Guide (实务指引) and Classic Translation (经典译著) (of overseas publications). More than 60 books on bankruptcy law and practice have been published by a top publisher, Law Press China, for these Collections. For the annual China Bankruptcy Law Symposium, in excess of 1,000 contributions were received in each of the recent years, and only the best ones were chosen to be published as conference papers. These findings, analyses and discussions from theoretical research and experiences from bankruptcy practices throughout China have facilitated significant developments of bankruptcy law in China.

From a practical perspective, the institutionalisation and implementation of the bankruptcy law regime has captured much attention in the community. The Communist Party of China and the Chinese Government are putting more emphasis on establishing the rules of law in bankruptcy administrations, highlighting the vital role of bankruptcy in "supply-side" structural reform and optimisation of the business operating environment. The World Bank's Business Enabling Environment (BEE) has included "Business Insolvency"[8] in its top ten grade-1 indicators. Meanwhile, all levels of the Chinese Government also take "the handling of bankruptcy cases" as a key assessment indicator of the business climate in China. The marketisation, legal institution, professionalisation and information technology utilisation (digitisation) in implementing the EBL have become significant development trends and benchmarks. The Government-Court Link mechanism (meaning the collaboration between government and courts in handling bankruptcy cases) and the establishment and institutionalisation of bankruptcy administrator associations have become more mature. More importantly, the promulgation of the "Reform Plan for Accelerating Improvement of the Exit System for Market Participants"[9] (加快完善市场主体退出制度改革方案) in June 2019 as top-level legislation has provided concise directions and specified requirements for the reform and development of the exit system (including bankruptcy law) for market participants in China. Also, revision of the EBL has recently become an important task of the legislative authorities.

4 If more information is required on the annual development of the bankruptcy law of China, please follow the official WeChat account "China Bankruptcy Law Forum" of the Bankruptcy Law Research Center of Renmin University of China and the Beijing Bankruptcy Law Society, and search for "Annual Summary of Bankruptcy law of China" (中国破产法年度总结). To understand the 2021 annual summary of Bankruptcy law of China, you may also refer to Xu Yangyang (徐阳光): "2021 Annual Summary of Bankruptcy Law in Mainland China"(中国大陆地区破产法2021年度总结), published in the 47th issue of the "Yuedan Financial Law Journal" (月旦财经法杂志) (May 2022).

5 Against the background of "bankruptcy" being stigmatised and having a negative connotation in Chinese culture.

6 As affected by the COVID-19 pandemic in recent years.

7 There are also numerous similar conferences held throughout China at provincial and municipal levels.

8 See World Bank "Pre-Concept Note Business Enabling Environment (BEE)", 4 February 2022, available at: https://www.worldbank.org/content/dam/doingBusiness/pdf/BEE-Pre-Concept-Note---Feb-8-2022.pdf

9 The "Reform Plan for Accelerating and Improving the Exit System of Market Entities" (加快完善市场主体退出制度改革方案) was issued by the National Development and Reform Commission, the Supreme People's Court, the Ministry of Industry and Information Technology, the Ministry of Civil Affairs, the Ministry of Justice, the Ministry of Finance, the Ministry of Human Resources and Social Security, the People's Bank of China, the State-owned Assets Supervision and Administration Commission, the State Administration of Taxation, the State Administration for Market Regulation, the China Insurance Regulatory Commission and the China Securities Regulatory Commission. For the full text of the document, see: http://www.gov.cn/xinwen/2019-07/16/5410058/files/bbaef6612fed4832b70a122b39f1d5bd.pdf.

3. Statistics of bankruptcy cases

China places great importance on the thorough implementation of the EBL, the institutionalisation of a well-established bankruptcy legal system, the enhancement of bankruptcy capabilities by proper judicial protection and promoting eligible enterprises to enter bankruptcy procedures in accordance with the EBL. Such implementation measures have attained positive achievements. The number of completed bankruptcy cases annually from 2017 to 2021 exceeded 17,000 in 2019 and remained at over 10,000 in 2020 and 2021 (see Table 1a and Table 1b below). Compared with the previous year, the number of cases completed in 2020 has dropped significantly. Though there are no specific reasons stated by Government officials, the authors consider that modified procedures of the courts to face the challenges brought about by the COVID-19 pandemic (as discussed below) may have impacted on the number of new cases (and also for 2021). These specific judicial policies affected not only the progress of "case acceptance", but also the efficiency of handling and concluding existing cases.

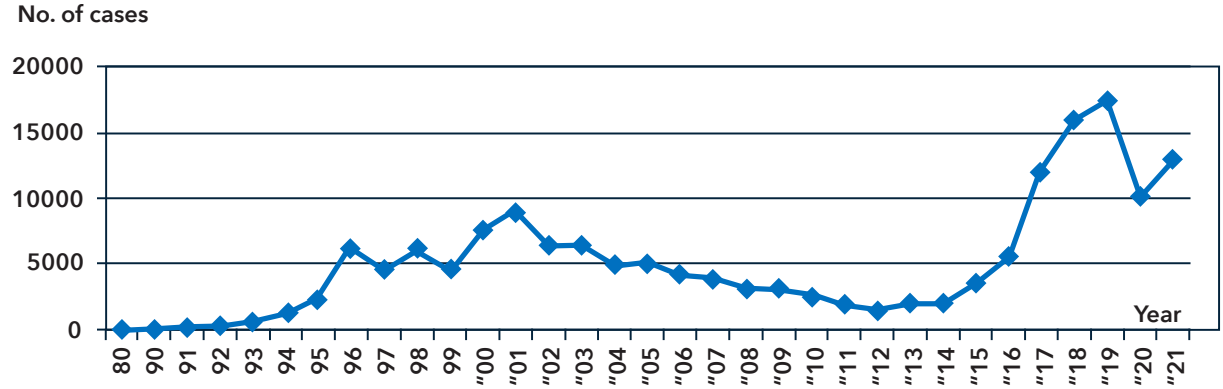
Table 1a: Number of completed enterprise bankruptcy cases in China by year (2017-2021)

Year	2017	2018	2019	2020	2021
Number of cases	12,000+	16,000+	17,399	10,132	14,000+

Source of statistics: Annual Report of the Supreme People's Court

For completeness, the number of cases from 1988 to 2016 as reported in the 2017 Paper, including cases before 2007 under the EBL (Trial Implementation), are also reproduced as follows:

TABLE 1B: ANNUAL NUMBER OF CORPORATE BANKRUPTCY CASES IN CHINA (1989 - 2021)



From a chronological perspective, the number of bankruptcy cases per year after the implementation of the EBL (Trial Implementation) in 1988 was insignificant, reaching close to 10,000 cases following the Asian Financial Crisis in the late 1990s. Since 2012, China has expedited the establishment and improvement of the remedial and exit system for market entities, with a rapid increase in the number of bankruptcy cases. Meanwhile, the number of bankruptcy cases from 2017 to 2020 being accepted and concluded accounted for 54% and 41% respectively of the total number of cases since the implementation of the EBL in 2007.

With regard to types of enterprises subject to bankruptcy, formerly delinquent stated-owned enterprises have completed a centralised exit plan. Private-owned enterprises now account for the vast majority and approximately 90% of the total number of cases in 2020. According to "big data" analysis, the public is generally supportive of the effectiveness of the implementation of the EBL since 2020, with 92% of the public (sampling basis) expressing their satisfaction on bankruptcy-related issues.

Three provinces in China take up on average the largest number of cases. In 2021, Guangdong Province completed a total of 7,067 enterprise bankruptcy and compulsory liquidation cases. Zhejiang Province and Jiangsu Province had over 3,282 and 3,769 cases respectively. The following observations may explain why the majority of bankruptcy cases in China take place in these three provinces:

- these are well-developed provinces located in the coastal regions of East China, which are also the pioneer provinces for development since the introduction of China's market economy reform and opening up policies in the late 1970s, taking leading positions of gross domestic product;
- they have a dynamic market climate for innovative entrepreneurship and diversified enterprises; and
- the ideological and conceptual developments of these three provinces are at the forefront. In practice, the governments of these three provinces all prioritise efforts in the handling of bankruptcy cases while their courts have established a group of professional judges specialising in bankruptcy cases. The Government-Court Linkage (as discussed below) system for bankruptcy cases is well-established.

4. Legislative efforts on bankruptcy law reform

The National People's Congress (NPC) and its Standing Committee (NPC Standing Committee), the highest legislature of China, has put much emphasis and focus on the reform and improvement of the bankruptcy regime. Apart from carrying out enforcement inspections on the implementation of the EBL, they have also incorporated revision of the EBL into their current legislative plans. Different types of bankruptcy administration, including personal bankruptcy, financial institutions bankruptcy, consolidation of bankruptcy of affiliated enterprises, pre-packed reorganisation and cross-border bankruptcy, are also the key focus areas of the new legislature. The Chinese Government has been keen to take proactive steps to promote and encourage effective implementation of the EBL, often by promulgation of policy papers, regulations and directions at suitable levels of government and / or the judiciary.

4.1 Enforcement inspections by the NPC Standing Committee on implementation of the Enterprise Bankruptcy Law

In August 2021, the law enforcement inspection team of the NPC Standing Committee published the "Report on Inspection of the Implementation of the Enterprise Bankruptcy Law of the People's Republic of China" (关于检查<中华人民共和国企业破产法>实施情况的报告). This report comprises four parts, as set out below.[10]

4.1.1 Achievements attained from the implementation of the EBL

- Promotion and enhancement of public awareness of bankruptcy law

  (a) Promoting the jurisdiction of bankruptcy law – through organising expert lectures, public advertisements, establishing WeChat accounts, convening quiz contests and more, China seeks to actively promote the market-oriented legal concepts of bankruptcy, lead the public to accurately understand enterprise bankruptcy, form consensus on the authority of the rules of law for bankruptcy, and continue to optimise the legal environment of bankruptcy law.

  (b) Reinforcing the ability of market entitles to understand and make use of bankruptcy law – various strategies have been put in place to facilitate market entities to understand the bankruptcy law system, such as publishing white papers on bankruptcy trials, publicising significant bankruptcy cases, convening lectures on bankruptcy rulings and (as appropriate) encouraging professional lawyers to provide tailor-made services to distressed enterprises. The EBL has gradually been accepted and recognised by society, as evidenced by the enhanced use of the bankruptcy regime by distressed enterprises and an increase in the proportion of debtor enterprises voluntarily applying for bankruptcy.

  (c) Raising theoretical research levels in bankruptcy law – since the implementation of the EBL, various research institutions in bankruptcy law have been established by major national universities, which have launched an array of research projects with high-quality research findings and outcomes and played a positive role in advancing the practice of bankruptcy law.

- Efforts in improving and consolidating the bankruptcy regime

  (a) Improving the judicial system and policies – the SPC has issued a judicial interpretation (see below) on the issues applying to the EBL and has promulgated a series of judicial policies to provide a proper legal basis on the determination of bankruptcy cases, such as strengthening the SPC's capability to handle bankruptcy cases, enhancing the efficiency of bankruptcy trials, facilitating the direct transfer (conversion) of debt enforcement cases to bankruptcy procedures, and implementing cross-border bankruptcy.

  (b) Consolidating bankruptcy policies – the National Development and Reform Commission (NDRC), the SPC and other authorities have jointly formulated various policies such as "Reform Plan on Accelerating the Improvement of the Exit System for Market Entities" (加快完善市场主体退出制度改革方案) in 2019 and "Opinions on Promoting and Safeguarding the Lawful Performance of Duty by Trustees in Bankruptcy Proceedings and Further Optimising the Business Environment"(关于推动和保障管理人在破产程序中依法履职进一步优化营商环境的意见), which lend convincing support for the implementation of the EBL.

  (c) Setting up a practicable system for bankruptcy through local governments – there have been approximately 475 ancillary statutes and policy documents promulgated in relation to bankruptcy. However, in recent years, the EBL has underpinned judicial interpretation and policies, together with the back up by ancillary statutes and regulative policy papers.

10 See "Report of the Law Enforcement Inspection Team of the Standing Committee of the National People's Congress on Inspection of the Implementation of the Enterprise Bankruptcy Law of the People's Republic of China"(全国人民代表大会常务委员会执法检查组关于检查<中华人民共和国企业破产法>实施情况的报告), 18 August 2021, available at: http://www.npc.gov.cn/npc /kgfb/202108/0cf4f41b72fe4ddeb3d536dfe3103eb3.shtml.

- Improvements on coordination and planning

  (a) Assisting the orderly exit of state-owned enterprises – China remains eager to assist state-owned enterprises with operational difficulties to exit the market orderly.

  (b) Facilitating reorganisation procedures – China ought to actively facilitate enterprises that are in distress but that have market prospects and that align with industry-based policies to enter reorganisation procedures. This aims to assist such enterprises to enhance their industrial position, improve corporate governance and achieve re-development of those businesses, and to foster "supply-side" structural reform.

  (c) Achieving efficiency in the handling of bankruptcy cases – the State Council and local governments have taken the minimisation of operating costs of the bankruptcy system as an essential part of optimising the business environment generally. The relevant government authorities have joined with the courts to set up coordination mechanisms to resolve issues which arise from the bankruptcy process, including court fees for kick-starting the procedures, the disposal of tax claims, credit restoration and deregistration of enterprises. According to the Business Environment Assessment of the World Bank, China's ranking in the efficiency of handling bankruptcy cases has risen from 82nd in 2013 to 51st in 2020.

  (d) Stabilising risks emanating from enterprise bankruptcy – governments and courts at all levels have thoroughly abided by the COVID-19 pandemic preventive and control measures, actively promoting online bankruptcy trials and utilising the remedial functions of the bankruptcy system, with the goals of easing the difficulties encountered by distressed enterprises, stabilising the supply chain, defending legitimate labour rights and maintaining social harmony.

- Effective implementation of bankruptcy procedures

  Among the three types of bankruptcy administrations stipulated in the EBL, bankruptcy liquidation cases accounted for about 90%, whereas reorganisation and composition cases accounted for around 9% and less than 1% of total cases respectively. According to statistics of the NDRC, since the "disposal projects" on "zombie enterprise"[11] commenced in 2016, there have been more than 7,000 "zombie enterprises" which have been shut down, with a majority adopting the method of bankruptcy liquidation procedures. The reorganisation process (often involving out-of-court and / or pre-packed rescue arrangements) can strengthen the identification of high value enterprises and explore new models such as "buy-out reorganisation" (出售式重整), which has helped resolve the debt crisis of major enterprises in a timely and cost-effective manner. Composition cases mostly involved micro enterprises.

  China is also exploring the establishment of a personal bankruptcy system (see below).

- Strengthening the professionalism and set-up of bankruptcy judicial capabilities

  Measures taken include:

  (a) Formation and strengthening of bankruptcy institutions – at present, 16 specialist bankruptcy sub-courts, close to 100 liquidation tribunals and joint collegial judicial panels have been established nationwide to handle bankruptcy-related cases.

  (b) Improving the professionalism of bankruptcy judges – a total of over 400 judges with exceptional performance are currently engaged as specialist bankruptcy judges.

  (c) Promoting the establishment and improvement of the bankruptcy administrator system – 28 Higher People's Courts and 284 Intermediate People's Court have together compiled registers of administrators comprising 5,060 institutional administrators and 703 personal administrators. More than 150 administrators' associations have been established in different cities and municipalities to raise the professional capabilities of administrators nationwide.

  (d) Use of advanced information technology – the SPC has established separate platforms providing consolidated information for enterprise bankruptcy and reorganisation cases, and working platforms for judges (courts) and administrators respectively. Courts at all levels have also promoted online filing and acceptance of creditors' claims, convening creditors' meetings, asset distribution, and supervision of administrators to increase the efficiency and transparency of the bankruptcy trials. The bankruptcy court of Beijing has implemented an entire online process for bankruptcy cases, reducing the proportion of bankruptcy costs to 5.52% of the bankruptcy assets.

11 Practically inactive, non-operating, abandoned and "dead" enterprises.

4.1.2 *Problems encountered during implementation of the EBL*

- Willingness to exit the market through bankruptcy is still weak

  Many enterprises that satisfy bankruptcy conditions have not opted for bankruptcy to exit. In 2020, the number of enterprises deregistered nationwide was 3 million, of which only 3,908 were deregistered following bankruptcy, accounting for only about 0.1%. There are three main concerns for filing bankruptcy applications:

  (a) Concerns and worries of enterprises – failed enterprises are reluctant or afraid of filing the application.

  (b) Concerns and worries of local governments – especially for sizeable enterprises, the influence on local general economic development, employment and social stability.

  (c) Insufficient capacity and motives of primary level courts in handling bankruptcy cases – practice and expertise in bankruptcy ruling is generally insufficient. These primary level courts lack qualified teams and some of the judges are less than capable of handling bankruptcy cases – these have generally lowered incentives of accepting new bankruptcy cases.

- Weaknesses in the execution of bankruptcy procedures

  (a) Difficulties in initiating bankruptcy procedures – articles 7, 8 and 10-14 of the EBL precisely stipulate the procedures for filing and accepting bankruptcy cases by courts. However, in practice, it is common that bankruptcy applications are eventually not accepted, or the time taken for acceptance has exceeded the statutory time limit.

  (b) Time-consuming – the time taken for bankruptcy procedures is generally long and with substantial variations for cases and between different courts.

  (c) Difficulties in lifting asset preservation measures – once the court has accepted the bankruptcy application, all existing preservation measures taken against the debtor's assets should be lifted while enforcement actions by creditors should be suspended. Some government enforcement agencies have wrongly taken the view that bankruptcy reorganisation is not a formal liquidation procedure and refuse to release the assets seized by creditors during reorganisation or composition.

  (d) Difficulties in converting enforcement to bankruptcy procedures – the process in transferring (converting) these cases is unclear and lacks precise provisions on the conditions of transfer and detailed procedures. There are significant discrepancies between regions in these transfer cases.

- Immature bankruptcy administrator system

  There are several general (but major) factors affecting the quality of administrators in handling bankruptcy cases:

  (a) Personal abilities and attributes of the administrators may not adapt to the case needs.

  (b) There are no standardised requirements and procedures for setting up the local registers of bankruptcy administrators.

  (c) There is room for improvement for the selection and appointment of administrators for specific cases.

  (d) There are uncertainties in relation to the remuneration of administrators.

  (e) The supervision of administrators can be further strengthened.

  According to "big data" analysis, disputes arising from or concerning administrators in 2020 recorded a year-on-year increase by 44.1%, which is far from the 4.7% increase in bankruptcy cases within the same period.

- Inadequacies in optimising the functions of reorganisation

  (a) Insufficient protection of creditor rights – often, the formulation of a reorganisation plan fails to fully consider the opinions of creditors. Courts may make a cram-down ruling that infringes upon the rights and interests of the creditors. The reorganisation plan may fail due to the subjective disagreement of the debtor on enforcement of the reorganisation plan. Uncertainties exist for the resumption of security rights during the reorganisation period. Lack of requirements for administrators to report, or for creditors to exercise their rights, have resulted in a lack of protection over creditors' rights to know, to vote and to supervise.

(b) Inadequate support from financial institutions on reorganisation plans – noting that their debts cannot be fully secured or repaid, financial institutions are not eager to vote at creditors' meetings. There are also complicated and time-consuming procedures for the internal approval of any reorganisation plan. Policies for the disposal of bankruptcy assets are not compatible with the diverse needs of these financial institutions in dealing with distressed claims.

(c) Insufficient protection of investors' rights and interests – there is insufficient protection for new investors. It is unclear as to whether their initial investments would constitute a preferential debt if the enterprise turned into liquidation.

(d) Insufficient incentives in the tax system – in order to combat tax evasion through bankruptcy, the tax authorities consider that the debt under waiver for a debtor in the reorganisation shall be subject to income tax. It becomes difficult for the reorganised enterprise to bear its tax burden within the specified time limit – this may even lead to failure of the reorganisation plan.

(e) Non-deletion of negative public information set before the reorganisation of enterprises – according to regulations such as the Regulation on the Administration of Credit Investigation Industry (征信业管理条例) and Interim Regulation on Enterprise Information Disclosure (企业信息公示暂行条例), preservation and use of negative information relating to the restructured enterprise may continue forever. Reorganised enterprises will continue to be adversely affected by such pre-reorganisation negative public information.

- Ineffective implementation of "Government-Court" link mechanism

  Enterprise bankruptcy requires coordination of the government and the court. Although a majority of regions have issued official policy papers relating to the "Government-Court" Link mechanism, improvements in terms of its operation are required as follows:

  (a) Improving courts' coordination on bankruptcy cases – a bankruptcy procedure involves issues concerning financial security, employee settlement, tax disposal, policy aid and social stability. It is difficult for the court to coordinate and handle each of these issues on its own.

  (b) Improving government coordination on the administration of bankruptcy cases – in essence, bankruptcy cases involve multiple government departments handling administrative matters, but coordination by a particular unit specialising in bankruptcy affairs management is lacking.

  (c) Streamlining procedures of deregistering enterprises in bankruptcy – though policies have specified the requirements for the deregistration of liquidated enterprises, there are issues that still hinder such procedures, including:

  – additional requirements imposed for summary deregistration cases;

  – not recognising the deregistration application filed by the bankruptcy administrator;

  – not processing the application from the enterprise with its business certificate lost; and

  – not permitting deregistration of pledged or frozen equity in shares.

  (d) Removing obstacles to tax deregistration / clearance – Central Government policies stipulate that on completion of the court liquidation procedures, the tax authority shall write off the "tax debt" and immediately issue a tax clearance certificate. Local tax authorities often refuse to issue the tax clearance certificate for various reasons. According to a "big data" report referring to more than one million counts of public opinion on enterprise bankruptcy, 26% of these report difficulties with resolving tax-related issues.

  (e) Enhancing cross-region coordination on handling bankruptcy cases – major difficulties exist in cases involving issues concerning cross-region courts and governments within the PRC. There are inconsistencies in the understanding and handling of matters concerning creditor rights, the release of asset preservation orders, unfreezing bank accounts and lifting consumption restrictions.

4.1.3 Causes of the problems

- Insufficient understanding of the role and functions of the EBL

  Traditional social concepts and inherent cultural thinking have cast taboos and prejudice against bankruptcy. There is insufficient understanding of the positive role of the bankruptcy process and the importance of the fair protection of creditors' rights. Financial institutions (mostly state-owned) have complicated the internal decision process, often relying on implicit government guarantees, and they are not proactive in initiating (or even responding) to any reorganisation or liquidation procedures in a timely manner.

  General understanding of the optimisation of resource allocation and how bankruptcy can facilitate the remedial reorganisation of enterprises is insufficient. Some would label reorganisation a complicated process with high expenditure, which is only applicable to large enterprises.

- Immature market-oriented bankruptcy mechanism

  With the deepening of economic reform and the strengthening of the social security system, bankruptcy administration has gradually changed from a policy approach (with direct administrative intervention) to a market and legally based approach, requiring close cooperation between courts and governments to meet market needs.

  Yet, some local governments consider that enterprise bankruptcy is a matter for the courts only.

- Judicial drawbacks

  Judicial drawbacks result in the failure to meet market needs for proper bankruptcy administration. There is no commensurate constitution of proper judicial capacity for bankruptcy cases, with a shortage of qualified judges to handle the assigned cases in some courts. Newly-formed bankruptcy courts have only a short history.

  Judges responsible for bankruptcy cases generally have strong legal expertise. However, they lack the specific economic and financial knowledge and commercial experience required in dealing with major and complex bankruptcy cases.

  Court internal systems and technical support are not effective. Issues relating to the set-up of the bankruptcy trial arrangements and the online / network information-based case handling platform, the relationship between the bankruptcy court and other courts and the judge's personal performance appraisal system all remain to be improved.

- Systemic shortcomings in preventing and combating debt evasion

  At present, there are systemic shortcomings causing erosion in the commercial credit environment in implementing bankruptcy. Some enterprises take advantage of the loopholes in the bankruptcy system and maliciously transfer assets with minimal (or even without any) consideration. Solvent enterprises attempt to settle their debts only on a *de minimis* basis and even evade debts.

  There is no practical mechanism to punish debt evasion. Laws for bankruptcy-related offences often set a narrow scope with little flexibility and with light penalties. Additionally, the interaction with relevant civil, commercial and criminal laws and procedures is unclear. In practice, bankruptcy-related fraud cases often end up with only civil economic relief but without adopting a criminal approach to enhance the deterrent effect.

  Diverse social credit search and report systems have been established in different regions, but with prominent information segmentation problems. A standard and integrated code of practice, with cross-system support and coordination for the "big platform, big data, big system" is still not in place.

- Provisions of the EBL not adaptive to new circumstances

  Rapid economic and social developments in recent years have rendered some provisions of the EBL unable to cope or meet practical market needs. There are also problems of inconsistency between other laws and the EBL, with sometimes overlapping or even contradicting provisions.

4.1.4 Measures for improving implementation of the EBL

To counter the many problems noted above, the Central Committee of the Chinese Communist Party has decided to deploy and promote the in-depth implementation of bankruptcy law. The political standing of the EBL needs to be enhanced, as a critical part of the national "14th Five-Year Plan". Policy synergy will be strengthened with accelerating formulation, optimisation and implementation of policies, judicial interpretation and introducing bankruptcy practices incorporated with both market and legal concepts. The promotion of bankruptcy law and practice to business enterprises and the community will also continue.

Measures are designed to optimise bankruptcy procedures and improve the effectiveness of bankruptcy administration. Courts must now accept bankruptcy cases in strict accordance with the law and ensure that the subject enterprises either undergo the bankruptcy reorganisation system or liquidation (e.g. for "zombie enterprises"). Also, the time limit requirements stipulated by the EBL should be strictly complied with. Specialist bankruptcy courts have been set up in cities that have strong demands for bankruptcy cases, with commensurate measures to improve the appraisal and reward system for bankruptcy courts and judges.

Through unifying the standards, conditions and procedures for setting up the registers of bankruptcy administrators in different regions, and allowing qualified administrators to practise across regions, adequate supply for professional administrators would be ensured.

The State Council will establish a supervision department to set up a national association of bankruptcy administrators, with a view to optimising the standards, methods and procedures for the selection, appointment and replacement of bankruptcy administrators in case allocations. Emphasis will be placed on accountability for administrators, enhancing the transparency and creditors' rights to supervise administrators. Likewise, the remuneration of administrators should be at a reasonable level. State-sponsored funds will also be set up to cover basic remuneration and expenses for administrators in handling cases with insufficient assets.

The State Council has emphasised the importance of the coordination of administrative matters via departments responsible for the Government-Court Link mechanism in handling bankruptcy affairs.

It is now required that policies relating to the disposal of pledged equity in shares and the unfreezing of equity interests should be streamlined, while the relevant rules and procedures concerning the deregistration of enterprises in bankruptcy as stipulated in the "Regulation on the Administration of the Registration of Market Participants" (市場主體登記管理條) should be fully implemented and complied with.

Relevant government departments are encouraged to assist administrators in performing their statutory duties such as tracing, controlling, taking over and disposing of the debtors' properties, opening and closing bank accounts (for the case administration), performing investigations and the lifting of asset preservative orders.

Preferential tax policies in support of enterprises in bankruptcy should be widely publicised and fully implemented. Studies on the tax exemption of enterprises in reorganisation should also be coordinated. Rules and regulations for administrative penalties, tax preservative measures and tax enforcement after the completion of the reorganisation plan should adapt to the features of enterprises in bankruptcy.

Additionally, relevant negative records of creditors' security rights and debts of enterprises should be removed from the public after their reorganisation. The National Enterprise Bankruptcy Reorganisation Case Information Website (全国企业破产重整案件信息网), the National Enterprise Credit Information Announcement System (国家企业信用信息公示系统), the credit website of the PRC (信用中国网站) and the financial credit information database (金融信用信息基础数据库) should allow access to share updated information relating to the status of enterprises in bankruptcy and related personnel.

Authorities for market supervision and tax, the People's Bank and the judicial enforcement departments should also process the application for credit restoration in time, while authorities should guide financial institutions to provide support and funding to reorganised enterprises under the fundamental principles of market economy.

Measures should be introduced to combat debt evasion behavior. Similarly, steps should be taken to strengthen the protection of wages and social security for employees of enterprises in bankruptcy and ensure that the law and stipulations relating to the protection of employees' rights and interests are fully implemented. For example, the mechanism for employees and labour union representatives taking part in creditors' meetings and creditors' committee should be further improved and social security and social assistance should play a prominent role in the redeployment of employees of enterprises in bankruptcy.

If any aspects of the enterprise bankruptcy legal system are found to be not meeting operational needs during law enforcement inspections, they should be revised as soon as possible. Laws for the bankruptcy of natural persons, financial institutions and listed companies should be drafted with comprehensive research and reasoning so that they can respond to practical needs and there should be connection and coordination between the EBL and other relevant laws.

4.2 Revision of the EBL

The NPC Standing Committee is working on the further development and improvement of the bankruptcy legislation in China. Apart from further wider promotion of the EBL and tackling the many existing problems noted above, the NPC Standing Committee is taking steps to revise the EBL on a comprehensive basis. Measures are being formulated for introducing the bankruptcy of natural persons, financial institutions and listed companies as well as the EBL's interplay with other laws, including expediting the promulgation of associated laws and regulations to ensure sustainable improvement of the bankruptcy legal framework.

In September 2021, the Finance and Economics Committee of the NPC (NPC Finance and Economics Committee) expanded the team responsible for the revision of the EBL and invited Professors Wang Xinxin (王欣新)[12], Xu Yangguang (徐阳光) and Li Shuguang (李曙光)[13] to join the EBL Amendment Working Group. Since then, this Amendment Working Group has accelerated the legislative work, identified the key difficult issues in the revision of the EBL, held closed sessions of legislative seminars with stakeholders and thereafter formulated the "Second Draft of the Amended Enterprise Bankruptcy Law". The authors of this paper are of the understanding that revision of China's EBL will focus on the following key issues:

- Adjustments to the scope of the EBL – the Civil Code of the People's Republic of China (中华人民共和国民法典) applies to for-profit legal persons, non-profit legal persons, special legal persons and natural persons. At present, the EBL is applicable only to for-profits legal persons and unincorporated organisations, including sole proprietorships and partnerships. Revision of the EBL would require consideration of whether natural persons, professional service organisations without the status of a legal person, non-profit legal persons and special legal persons should also be included in its scope.

- Bankruptcy procedures – it is expected that there would be an overall optimisation of the bankruptcy procedures. More importantly, serious consideration is being given to the formulation of special bankruptcy rules for small, medium and micro enterprises, so as to provide more efficient and convenient bankruptcy (summary) procedures for most market players. The "Legislative Recommendations on Insolvency of Micro and Small Enterprises" passed by the United Nations Commission on International Trade Law (UNCITRAL) in 2021 is expected to be an important reference in this regard.

- Reorganisation – rules of reorganisation would likely take into account the experience of international out-of-court reorganisation negotiations and the pre-packed system and improve the process and standards for the formulation and approval of reorganisation plans.

- Bankruptcy administrator system – article 24 of the EBL states that "the post of bankruptcy administrator may be assumed by a liquidation committee comprised of the relevant [government] departments and organs or by such social intermediary agencies as a law firm, an accounting firm or an insolvency liquidation firm that have been established according to law. The People's Court may, according to the real status of a debtor and upon consulting the opinions of the relevant social intermediary agencies, designate the relevant personnel who have a good command of specialties and have obtained the practice qualification for bankruptcy administrators." Since the implementation of EBL in 2007, there have been only a few cases of appointments of government officials to form a "liquidation committee" acting as the case bankruptcy administrator. The majority of the appointments were of intermediary professional agencies. The scope and type of intermediary agencies acting as the bankruptcy administrator may need to be expanded. The setting up of a nation-wide association for bankruptcy administrators is being considered. The appointment and remuneration of administrators are also essential issues to be addressed.

- Consolidation of group bankruptcy cases – China's legislation does not currently deal with the consolidation of insolvency cases for group companies. The SPC has set general guidelines in judicial policy documents. In practice, there have been a number of cases involving substantive consolidation in the bankruptcy of group companies. The recent review of bankruptcy legislation has established a special chapter particularly for substantive consolidation in bankruptcy, mainly focusing on the judgment standards of substantive consolidation and stipulating the review procedures and the jurisdiction rules for the same. The revision also plans to specify the rules of non-substantive consolidation in bankruptcy cases that involve the reorganisation procedures coordinated by member companies of the same group. Notably, once the personal bankruptcy system has been established, substantive consolidation in bankruptcy will not only exist in the context of associated and related enterprises, but also between these enterprises and their natural person owners.

  Other key issues of the recent legislation include the bankruptcy of financial institutions and cross-border bankruptcy (as discussed below).

12 Professor of Renmin University, Beijing.
13 Professor, University of Politics and Law, Beijing.

5. Judicial efforts on enforcement of the EBL

The SPC, being the highest judicial authority of China, has emphasised the implementation of the EBL by promulgating judicial interpretations, setting up specialised judicial bodies and establishing a digital information-sharing and processing platform.

5.1 Legal institutionalisation: promulgation of judicial interpretations and judicial policies

Judicial interpretations and judicial policies promulgated by the SPC are essential to the setting and harmonisation of judicial standards. During the period from 2007 to 2021,[14] these judicial interpretations and judicial policies[15] have concerned mainly three issues, which are outlined below.

5.1.1 Bankruptcy administrator system

One day before the implementation of the EBL in 2007, the SPC promulgated the "Provisions of the Supreme People's Court on Designating the Administrator during the Trial of Enterprise Bankruptcy Cases" (No.8 [2007] of the SPC) (最高人民法院关于审理企业破产案件指定管理人的规定) 法释〔2007〕8 and the "Provisions of the Supreme People's Court on Determination of the Administrator's Remunerations" (No.9 [2007] of the SPC) (最高人民法院关于审理企业破产案件确定管理人报酬的规定) 法释〔2007〕9号, with authorisation under the EBL.

These two documents have formed the basis for appointing bankruptcy administrators and determining their remuneration in bankruptcy cases. At present, pertinent courts in China have established a local register of bankruptcy administrators, including qualified law firms, accounting firms, insolvency liquidation firms and other intermediary agency administrators, as well as a register of personal administrators. Administrators for most bankruptcy cases are generally determined randomly on a roster basis. For the bankruptcy of financial institutions such as commercial banks, securities firms and insurance companies which would have significant influence nationwide, the bankruptcy administrator will be selected and determined through open competition. The remuneration of administrators will be determined by the court through a regressive ratio based on the total value of assets realised.

5.1.2 Understanding and application of the EBL

- The "Provisions (I) of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China" (最高人民法院关于适用《中华人民共和国企业破产法》若干问题的规定) promulgated in 2011 has set out specific provisions on the application and acceptance of bankruptcy cases, and there are two points to be highlighted. The first is "when receiving the application for bankruptcy by the People's Court, it shall issue to the applicant a written certificate of receipt of the application, with the supporting evidence". The second is "litigation costs of a bankruptcy case shall be paid from the debtor's assets in accordance with article 43 of the EBL. If the debtor raises an objection to the bankruptcy application on the grounds that the applicant has not paid the requisite litigation fees in advance, the People's Court shall not support such an objection".

- The "Provisions (II) of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China" (最高人民法院关于适用《中华人民共和国企业破产法》若干问题的规定) promulgated in 2013 has focused on the provisions to handle debtors' assets, including the definition of bankruptcy asset, the rights of revocation and set-off in bankruptcy.

- The "Provisions (III) of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China" (最高人民法院关于适用《中华人民共和国企业破产法》若干问题的规定) promulgated in 2019 focuses on the exercise and protection of creditors' rights, such as ensuring the submission of claims, adjudication review, creditors' meetings, the relationship with the creditors' committee of inspection and protection of creditors' general rights to know.

- The "Reply of the Supreme People's Court on Dealing with Applications for Bankruptcy of Debtors with Unknown Whereabouts or Financial Status"[16] (最高人民法院关于债权人对人员下落不明或者财产状况不清的债务人申请破产清算案件如何处理的批复) published in 2008 has clarified that these applications shall be accepted in accordance with the EBL, and irrespective of whether the debtor can provide to the People's Court relevant materials including statements of its financial status or lists of creditors and debtors.

14 Article 5 of the "Provisions of the Supreme People's Court on Judicial Interpretation Work" (revised in 2021) (最高人民法院关于司法解释工作的规定) (2021年修订) formulated by the Supreme People's Court of China stipulates: "The judicial interpretations issued by the Supreme People's Court shall have full legal force", and article 6 stipulates: "Judicial interpretations may be made in five forms, namely, interpretation, provision, rule, reply and decision. Judicial interpretations on the specific application of a certain point of law, or the application of law for cases of a certain category, or to deal with a certain kind of issues shall be made in the form of interpretation. Judicial interpretations on formulation of scope or opinions with reference to spirit of legislation shall be made in the form of provision. Judicial interpretations on operational procedures of People's Courts shall be made in the form of rule. Judicial interpretations on the requests for instructions on the application of law in specific cases by the Higher People's Courts or the Military Court of the PLA shall be made in the form of reply. The amendment or abolishment of judicial interpretations shall be made in the form of decision."

15 To assist readers in fully understanding the judicial interpretation of the bankruptcy law of China, this paper will systematically introduce all judicial interpretations and judicial policies since the implementation of the EBL.

16 Unofficial English translation.

- The "Reply of the Supreme People's Court on Dealing with the Liquidation of Insolvent Non-State Schools"[17](最高人民法院关于对因资不抵债无法继续办学被终止的民办学校如何组织清算问题的批复) published in 2010 specifies that liquidation of non-state schools follows the procedures specified in the EBL, and debts shall be settled in the order stipulated in article 59 of "The Regulations on the Implementation of the Non-State Education Promotion Law of the People's Republic of China" (中华人民共和国民办教育促进法).
- The "Reply of the Supreme People's Court on Whether Sole Proprietorships Can be Liquidated by Reference to Applicable Provisions of the Enterprise Bankruptcy Law"[18] (最高人民法院关于个人独资企业清算是否可以参照适用企业破产法规定的破产清算程序的批复) published in 2016 specifies that "given a sole proprietorship is unable to settle its due debts, is insolvent to settle all of its debts or obviously lacking capability of clearing off its debts, it may commence the insolvency liquidation procedures in accordance with the provisions of the Enterprise Bankruptcy Law"[19].
- The "Provisions of the Supreme People's Court on the Disclosure of Information on Enterprise Bankruptcy Cases (for Trial Implementation)" (最高人民法院关于企业破产案件信息公开的规定(试行)) promulgated in 2016 is the most important document to facilitate and promote information technology in bankruptcy administrations. For instance, article 1 stipulates "the Supreme People's Court shall set up the National Enterprise Bankruptcy Reorganisation Case Information Website (全国企业破产重整案件信息网), hereinafter referred to as the "Bankruptcy Reorganisation Case Information Website", with the information about the trial procedure for bankruptcy cases (including cases concerning bankruptcy reorganisation, insolvent liquidation and composition in bankruptcy) and the information related to the bankruptcy procedure such as announcements, legal instruments and information about debtors to be uniformly released on it. People's Courts and the bankruptcy administrators appointed by People's Courts shall timely disclose the information related to the bankruptcy procedure on the Bankruptcy Reorganisation Case Information Website."

  Article 7, clause 2 stipulates that "the announcements by the People's Court or administrators for bankruptcy cases on the Bankruptcy Reorganisation Case Information Website shall have legal effect." Article 9 stipulates that "after the real-name registration on the Bankruptcy Reorganisation Case Information Website, an applicant can apply for online bankruptcy case filing appointment and submit the electronic file of related materials. After due consideration of the application, the People's Court shall notify the applicant to attend court to file the formal application."

5.1.3 *Meeting minutes relating to bankruptcy work*

"Meeting minutes" are the most important judicial interpretation and policy documents issued by the SPC. These meeting minutes (for meetings and discussions either among judges within the SPC and / or with different groups of mostly government stakeholders) are directive, instructive and consultative. They play a prominent function in harmonising adjudication standards, formulating and implementing public policies and filling legal loopholes. The main reason for the SPC adopting meeting minutes to resolve legal issues instead of judicial interpretations is that meeting minutes can effectively coordinate the SPC's relationship with other government authorities, improve judicial capacity and remedy functional flaws of the judicial interpretation system.[20]

Since the implementation of the EBL in 2007, key meeting minutes on bankruptcy-related matters issued are as follows:

- The "Summary of Minutes of the Symposium on the Trial of Cases of Compulsory Liquidation of Companies" (最高人民法院关于审理公司强制清算案件工作座谈会纪要) issued in 2009 has provided guiding principles for courts to handle compulsory liquidation cases and solve the problems of dove-tailing compulsory liquidation procedures into bankruptcy procedures. According to the "Company Law of the People's Republic of China" (中华人民共和国公司法) and its judicial interpretations, "the People's Court shall accept an application filed by a creditor, shareholder, director or any interested party to appoint a designated liquidation group to conduct liquidation of a company under the following circumstances: (1) the company has been dissolved but cannot establish in time a liquidation group to conduct liquidation; (2) though a liquidation group has been established, the liquidation procedure is deliberately postponed; and (3) the liquidation is not in accordance with law and may seriously damage the interests of creditors or shareholders".[21] The liquidation initiated under any of these circumstances is regarded as a compulsory liquidation under the Company Law. This is a judicial procedure related to but different from insolvent bankruptcy liquidation under the EBL.[22]

- The "Summary of Minutes of the Symposium on the Trial of Cases concerning Bankruptcy Reorganisation of Listed Companies" (最高人民法院关于审理上市公司破产重整案件工作座谈会纪要) issued in 2012 records the consensus between the SPC and the China Securities Regulatory Commission (CSRC). Noting wide public interest in listed companies, these meeting minutes provide guiding principles for issues such as jurisdiction, application and acceptance of a reorganisation plan, information confidentiality and information disclosure. Two points of particular note are:

17 Unofficial English translation.
18 Unofficial English translation.
19 Unofficial English translation.
20 See Peng Zhongli (彭中礼): "Study on the Minutes of the Supreme People's Court Meeting"《最高人民法院会议纪要研究, in Legal Science, Issue 5, 2021.
21 See Supreme People's Court: "Summary of Minutes of the Symposium on the Trial of Cases of Compulsory Liquidation of Companies " (No.52 [2009] of the Supreme People's Court) (关于审理公司强制清算案件工作座谈会纪要) 法发〔2009〕52号.
22 A compulsory liquidation procedure is based on the premise of clearing all debts in full, while the aim of bankruptcy liquidation is to clear off the debts in a certain order for insolvent companies on a *pari passu* basis. If the liquidation group considers that the company's assets are insufficient to clear off the debts when compiling the lists of assets and liabilities, it shall first negotiate with the creditors to formulate a debt settlement plan to clear off the debts in accordance with the provisions of the Company Law to avoid the costly and long, drawn-out bankruptcy liquidation procedures. If the creditors cannot reach consensus on a debt settlement plan, the liquidation group applies to the People's Court for the declaration of bankruptcy in accordance with the provisions of the Company Law and the Enterprise Bankruptcy Law.

- bankruptcy reorganisation cases involving listed companies are relatively sensitive, as they not only concern the interests of employees and secondary market investors, but also communication and coordination between local governments and the securities regulatory authorities. Therefore, before a court decides to accept the application for bankruptcy organisation of a listed company, relevant materials should be first submitted through the court hierarchy to the SPC for review; and

- for draft reorganisation plans involving administrative licensing procedures of the securities regulatory authorities, the People's Court that has accepted the reorganisation case should first initiate the consultation mechanism with the CSRC with the aid of the SPC. The SPC will deliver the related materials to the CSRC, which will arrange their Expert Advisory Committee for Merger, Acquisition and Restructuring of Listed Companies (上市公司并购重组专家咨询委员会, the EAC) to study the reorganisation plan. The EAC will adopt the same examination standards of the Listed Company Merger and Reorganisation Examination Committee (上市公司并购重组审核委员会) to study the plans involving administrative licensing procedures and provide its expert advice. The People's Court shall refer to such expert advice and conclude the ruling on whether the draft reorganisation plan may be approved.

- The "Minutes of the National Court Work Conference on Bankruptcy Trials" (全国法院破产审判工作会议纪要) issued in 2018 are the first meeting minutes specifically focusing on bankruptcy administrations. These minutes outline provisions on nine major issues with a total of 50 clauses, covering: (i) the overall requirements of bankruptcy administration; (ii) professionalism in bankruptcy administration; (iii) improvement of the bankruptcy administrator system; (iv) the reorganisation system; (v) affiliated enterprise bankruptcy; (vi) insolvent bankruptcy liquidation; (vii) dove-tailing of enforcement procedures into bankruptcy procedures; (viii) digitisation of bankruptcy information technology; and (ix) cross-border bankruptcy.[23] Presently, the substantive consolidation in bankruptcy procedures involving affiliated enterprises and related coordination practices are operating in accordance with the provisions in these meeting minutes. It is observed that the model legislative documents of UNCITRAL for dealing with group liquidations have effectively been manifestly applied in this regard.

- The "Minutes of the National Courts' Civil and Commercial Trial Work Conference" (全国法院民商事审判工作会议纪要) issued in 2019 addressed the previous controversial issues in both civil and commercial judicial proceedings generally and recorded consensus after consultation with relevant stakeholders. These minutes seek to harmonise judicial approaches, regulate the discretionary powers of judges and enhance the openness, transparency and predictability of civil and commercial trials, thus improving judicial credibility. In particular, article 10, which deals with "disputes in bankruptcy administrations", emphasises that: (i) bankruptcy cases should be accepted in a timely manner according to law; (ii) measures / orders for preservation of debtors' assets should be lifted in a timely manner after commencement of bankruptcy procedures; (iii) proper process should be put in place to retain the debtor's management; (iv) there should be protection of the legitimate rights and interests of secured creditors; (v) the practice of pre-packed reorganisation should be encouraged; and (vi) there should be dove-tailing of bankruptcy liquidation procedures into the general enterprise liquidation procedures.[24]

- The "Minutes of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy Proceedings Between the Courts of the Mainland and of the Hong Kong Special Administrative Region" (最高人民法院与香港特别行政区政府关于内地与香港特别行政区法院相互认可和协助破产程序的会谈纪要) issued in 2021 record the consensus reached with the Government of the Hong Kong Special Administrative Region (HKSAR) in relation to mutual recognition of and assistance given to bankruptcy (insolvency) proceedings between initially three designated pilot courts in Mainland China and HKSAR. The specific implementation details of these minutes are discussed below.

5.1.4 *Judicial guiding opinions on bankruptcy trial work*

- The "Guiding Opinions on Several Issues Concerning the Transfer of Enforcement Cases for Bankruptcy Examination" (最高人民法院关于执行案件移送破产审查若干问题的指导意见) issued in 2017 aim to promote and regulate the conversion of enforcement cases to bankruptcy liquidation. Enforcement courts should note and enhance facilitation of this conversion after identifying the debtor's insolvency in enforcement procedures, but only with consent from both the debtor and creditor seeking enforcement. Failing this consensus or any formal application to commence bankruptcy, the enforcement court shall follow the provisions of article 516 of the "Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China" (最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释), whereby debt settlement from assets of the debtor shall be on a "first-come-first-served" basis. The People's Court shall not support claims of other creditors seeking enforcement by participating in any asset allocation arrangements.[25]

23 See Supreme People's Court: "Minutes of the National Court Bankruptcy Trial Work Conference" (No.53 [2018] of the Supreme People's Court) (全国法院破产审判工作会议纪要) 法〔2018〕53号.
24 See Supreme People's Court: "Minutes of the National Court Civil and Commercial Trial Work Conference" (No.254 [2019] of the Supreme People's Court) (全国法院民商事审判工作会议纪要) 法〔2019〕254号.
25 See Supreme People's Court: "Guiding Opinions on Several Issues Concerning the Transfer of Enforcement Cases for Bankruptcy Examination" (No.2 [2017] of the Supreme People's Court) (关于执行案件移送破产审查若干问题的指导意见) 法发〔2017〕2号.

- The "Opinions of the Supreme People's Court on Promoting the Lawful and Efficient Trial of Bankruptcy Cases"[26] (最高人民法院关于推进破产案件依法高效审理的意见) issued in 2020 aim to improve the efficiency of bankruptcy cases and reduce the costs of bankruptcy procedures. Specific measures have been deployed, including:

  - optimising announcement and court acceptance procedures – for example, "if there is any matter that needs to be notified or informed, the People's Court or bankruptcy administrator may notify or inform the creditor, debtor and other interested parties by telephone, short messages, faxes, emails, instant messaging, communication groups or other simple means capable of confirming the receipt of notification";[27]

  - improving on ways of securing assets and investigating the debtor's affairs – for example, "the bankruptcy administrator shall take over the property, seals, account books, documents and other materials of the debtor in a timely manner. If the debtor refuses to transfer such materials, the People's Court may, upon the application of the bankruptcy administrator or according to its own authority, impose a fine upon the directly responsible person and make a decision on specific items that the debtor should transfer and a time limit for the transfer. If the debtor fails to perform the obligations specified in the decision, the People's Court may, according to the relevant provisions concerning enforcement procedures in the Civil Procedure Law, take necessary measures such as search and mandatory delivery to enforce the decision";

  - improving the efficiency of convening and voting in creditors' meetings – for example, "in addition to onsite voting, the creditors' meeting may take a vote by offsite means such as in writing, by faxes, short messages, emails, instant messaging or communication groups";

  - establishing summary procedures for simple cases – specifically, "for bankruptcy liquidation and settlement cases in which the relationship between claims and debts is clear, the status of the debtor's property is clear and the case is simple, the People's Court may apply the expedited hearing method"; and

  - strengthening coercive measures and crack down on debt evasion.[28]

- The "Guiding Opinions on Several Issues of Properly Hearing Civil Cases Involving the COVID-19 Pandemic (II)" (最高法院关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见(二))[29] issued in 2020 introduced special provisions for the handling of bankruptcy cases during the pandemic. For example, if a creditor filed an application for bankruptcy against an enterprise that was unable to settle its outstanding debts due to the impact of the pandemic or related preventive and control measures, the People's Court was required to actively encourage the debtor to negotiate with creditors and explore alternative ways of extinguishing the basis for the bankruptcy application, such as introducing instalment plans, extending the debt repayment period and varying contractual terms. Further, the parties could also adopt out-of-court composition, out-of-court reorganisation and pre-packed reorganisation procedures. In evaluating the eligibility for bankruptcy application, the People's Court was also required to take into account whether the financial hardship of the enterprise originated from the pandemic or related Government preventive and control measures.

  For enterprises with profitable operations before the outbreak of the pandemic, but that faced insolvency due to operational problems or cash flow difficulties caused by impact of the pandemic, the court was required to comprehensively assess the enterprise's ability to clear off its debts, considering vital factors such as operating capacity and the general market prospects of the industry. This was designed to prevent a viable enterprise from entering bankruptcy simply due to temporary insolvency in a specific period. For those enterprises that were already in hardship before the outbreak of pandemic, and whose production and operations deteriorated further due to impact of the pandemic, the People's Court was directed to accept the bankruptcy application in a timely manner to ensure the elimination of inefficient operations and efficient resources reallocation.

  For enterprises already in bankruptcy reorganisation, if the proposed reorganisation plan could not be submitted on time owing to the impact of the pandemic, such as inability of bringing in new investors or carrying out due diligence and negotiation, the People's Court was permitted to consider the progress of reorganisation on the application of the debtor or administrator, and determine an exempt period of not more than six months from the specified period pursuant to article 79 of the EBL.

26 See Shanghai High People's Court: "Opinions of the Supreme People's Court on Promoting the Lawful and Efficient Trial of Bankruptcy Cases" (No.14 [2020] of the Supreme People's Court). Retrieved from https://www.hshfy.sh.cn/shfy/web/xxnr_yshj.jsp?pa=aaWQ9MjAyMjYyNzAmeGg9MSZsbWRtPUxNMTIxNAPdcssPdcssz&zd=

27 Translation from the Shanghai Higher People's Court

28 See Supreme People's Court: "Opinions on Promoting Legal and Efficient Trial of Bankruptcy Cases" (No.14 [2020] of the Supreme People's Court) (关于推进破产案件依法高效审理的意见) 法发〔2020〕14号.

29 See Supreme People's Court: articles 17, 18, and 20 of the "Guiding Opinions on Properly Trialing Civil Cases Involving the New Coronary Pneumonia Epidemic in Accordance with the Law (2)" (No.17 [2020] of the Supreme People's Court) (关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见(二)) 法发〔2020〕17号.

5.2 Specialisation: formation of liquidation courts and bankruptcy tribunals

Establishing specialised institutions and personnel for bankruptcy trials are key milestones and achievements made by the SPC in promoting the implementation of bankruptcy law.

- Promoting the formation of specialised bankruptcy trial institutions – the SPC has requested the Intermediate People's Courts of provincial capital cities and sub-provincial cities to set up liquidation sub-courts and bankruptcy tribunals as soon as possible. With reference to local demand, courts at other levels may also set up these liquidation sub-courts and bankruptcy tribunals or a collegiate joint panel of judges, and provide training to professional bankruptcy judges, in order to meet the needs of bankruptcy cases.[30] Since January 2019, the SPC has approved the set-up of specialised liquidation sub-courts and bankruptcy tribunals within major courts in the eastern, central and western regions. As of 31 August 2022, China has established 16 bankruptcy liquidation sub-courts, nearly 100 bankruptcy tribunals and specialised collegiate panels to handle bankruptcy cases. Details of these 16 bankruptcy liquidation sub-courts are set out in Table 2 below.

Table 2: List of Bankruptcy Liquidation Sub-Courts in China (as of 31 August 2022)

No	NAME OF SUB-COURT	SUPERVISING COURT	PROVINCE	REGION	ESTABLISHMENT DATE
1	Shenzhen Bankruptcy Court	Shenzhen Intermediate People's Court	Guangdong	East China	14 Jan 2019
2	Beijing Bankruptcy Court	No. 1 Intermediate People's Court of Beijing Municipality	Beijing	North China	30 Jan 2019
3	Shanghai Bankruptcy Court	No. 3 Intermediate People's Court of Shanghai Municipality	Shanghai	East China	1 Feb 2019
4	Tianjin Bankruptcy Court	No. 2 Intermediate People's Court of Tianjin Municipality	Tianjin	North China	19 Dec 2019
5	Guangzhou Bankruptcy Court	Guangzhou Intermediate People's Court	Guangdong	South China	20 Dec 2019
6	Wenzhou Bankruptcy Court	Wenzhou Intermediate People's Court	Zhejiang	East China	28 Dec 2019
7	Chongqing Bankruptcy Court	No. 5 Intermediate People's Court of Chongqing Municipality	Chongqing	Southwest China	31 Dec 2019
8	Hangzhou Bankruptcy Court	Hangzhou Intermediate People's Court	Zhejiang	East China	31 Dec 2019
9	Jinan Bankruptcy Court	Jinan Intermediate People's Court	Shandong	East China	15 Apr 2020
10	Qingdao Bankruptcy Court	Qingdao Intermediate People's Court	Shandong	East China	22 Apr 2020
11	Nanjing Bankruptcy Court	Nanjing Intermediate People's Court	Jiangsu	East China	12 Jun 2020
12	Xiamen Bankruptcy Court	Xiamen Intermediate People's Court	Fujian	East China	18 Aug 2020
13	Suzhou Bankruptcy Court	Suzhou Intermediate People's Court	Jiangsu	East China	18 Dec 2020
14	Chengdu Bankruptcy Court	Chengdu Intermediate People's Court	Sichuan	Southwest China	9 Apr 2021
15	Haikou Bankruptcy Court	Haikou Intermediate People's Court	Hainan	South China	27 Dec 2021
16	Changchun Bankruptcy Court	Changchun Intermediate People's Court	Jilin	Northeast China	21 Jun 2022

30 See Supreme People's Court: "Work Plan for Establishing Liquidation and Bankruptcy Tribunals in Intermediate People's Courts" (No.209 [2016] of the Supreme People's Court) (关于在中级人民法院设立清算与破产审判庭的工作方案) 法〔2016〕209号.

- Optimum allocation of bankruptcy cases – the SPC has emphasised that allocation of bankruptcy cases to courts should be determined by reference to the number and complexity of the cases in question and the resources of respective courts. For large and complex cases, the Higher People's Court may allocate them to the Intermediate People's Court, and not the Basic People's Court. Basic People's Courts would focus on simple cases where summary procedures may be adopted.

- Establishing a scientific performance appraisal system – the SPC has fostered the improvement of a performance appraisal system for liquidation and bankruptcy cases (and judges) in nationwide courts. Appraisal should be premised on judiciary principles, and avoid a simple comparison between bankruptcy cases with other non-bankruptcy cases and hence the evaluation standard. Thus, "the performance appraisal standard should be scientifically determined on the basis of respecting judiciary principles and rules. For instance, suitable adjustments may be made to the 'normal' appraisal standards. Alternatively, specific standards may be set for bankruptcy judges as for judges of the enforcement department or general departments."[31] Such adjustments may be determined by reference to the types of cases, such as liquidation cases without assets, liquidation cases with assets, reorganisation cases and composition cases. Moreover, different adjustments may also apply to different stages of the cases, and considering factors like number of creditors and whether the case involves any affiliated enterprise in bankruptcy.[32] At present, there is no nationwide standard for performance appraisal of bankruptcy courts or judges.

5.3 Information technology: establishment of a Bankruptcy Reorganisation Case Information Website and promotion of application of information technology

- Establishing nationwide information platforms such as the Bankruptcy Reorganisation Case Information Website (全国企业破产重整案件信息网) – these platforms are developed by the SPC, with support from experts from the Bankruptcy Law Research Center of Renmin University of China and the Beijing Bankruptcy Law Society. There are three interlinked platforms: (i) the National Enterprise Bankruptcy Information Disclosure Platform (全国企业破产重整案件信息互联网); (ii) the Working Platform of Judges for Enterprise Bankruptcy Cases (破产案件法官工作平台); and (iii) the Working Platform of Bankruptcy Administrators for Enterprise Bankruptcy Cases (破产管理人工作平台).[33] The National Enterprise Bankruptcy Information Disclosure Platform is an internet-based information platform that publishes relevant information concerning bankruptcy cases. Data is sourced from the working platforms of judges and bankruptcy administrators for enterprise bankruptcy cases. Potential investors may access the information of the debtor's enterprises from this platform, including business updates and their requirements for new investment, and interact with the case bankruptcy administrators. Creditors, debtors and shareholders or other relevant parties of the case may file bankruptcy applications, submit claims, file objection applications and participate and vote in creditors' meetings online. The working platforms of judges and bankruptcy administrators also constitute an arena for their communication on and for specific cases.

- Supporting local courts in developing and establishing information platforms with multiple functions – courts in different regions have comprehensively promoted online platforms for filing creditors' claims, convening creditors' meetings, adjudicating claims and supervising administrators' work and accounts, which have effectively increased the efficiency of handling bankruptcy cases. For example, by promoting the entire bankruptcy procedures online in the Beijing Bankruptcy Court, bankruptcy costs were reduced to 5.52% of the bankruptcy assets as a whole. Bankruptcy courts in Shenzhen, Xiamen and 11 other cities have established different integrated digitised publication platforms with intelligence assistance and sharing mechanisms, and also management systems providing multiple functions including arranging training sessions for judges and bankruptcy administrators.

  In particular, from 2020, the SPC-designated pilot Yuhang People's Court (in the city of Hangzhou), working through Alibaba's online platform "Dingding" (余杭法院破产管理钉平台), started to hold creditors' meetings for bankruptcy reorganisation cases. This was the first integration of the judicial blockchain and technology of the "Dingding" platform. For the first year of trial, eight creditors' meetings were held, involving more than 3,000 creditors. During the pandemic outbreak in February 2020, three online creditors' meetings were held in a single week. The average duration for each meeting was only 30 minutes, with 100% creditors' participation and 100% voting.

- Promoting the online auction of bankruptcy assets – the judicial practice of an online auction to dispose of bankruptcy assets originated from the experience of Zhejiang Province in 2012. In 2016, the SPC promulgated the "Provisions of the Supreme People's Court on Several Issues Concerning Online Judicial Sale" (关于人民院网络司法拍卖若干问题的规定). Article 1 stipulates that "for the purpose of these provisions, 'online judicial sale' means the act whereby People's Courts publicly dispose of property by online electronic bidding through the internet auction platform according to the law". Under the Provisions, online judicial enforcement sales also became applicable to the online auction of bankruptcy assets. Further, article 47 of the "Minutes of the National Court Work Conference on Bankruptcy Trials" requires adaptation to the development of information technology and the disposal of bankruptcy assets through online auction channels. Additionally, in 2018, the SPC promulgated 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" (关于人民法院确定财产处置参考价若干问题的规定). Article 2 stipulates that "the People's Court may determine the reference price for asset disposal by reference to bargaining between related parties, targeted enquiries, online enquiries or via agents' valuations."[34]

31 Unofficial English translation.
32 See the General Office of the Supreme People's Court: "Notice on Separate Performance Evaluation of Compulsory Liquidation and Bankruptcy Cases" (Fa Ban [2019] No. 49) (关于强制清算与破产案件单独绩效考核的通知) 法办〔2019〕49号.
33 All three platforms may be accessed from outside of China.
34 Unofficial English translation.

At present, Alibaba Auction and JD Auction have become the online judicial auction platforms being recognised by the SPC. Online auction discipline has been shaped by the attributes of fairness, openness and transparency. As a result, diversified types of assets involved in bankruptcy auctions are attracting more international bidders. Remarkably, in 2018, the Shenzhen Intermediate People's Court auctioned off three Boeing 747 aircraft on the Alibaba platform, with an aggregate consideration of RMB 467 million. SF Express, a domestic logistics giant in China, purchased two of these three aircraft, while the remaining one was purchased by an Israel freight company. This mega bankruptcy sale was reported in the Western media, including by BBC.

Additionally, in 2019, with the aid of the Shenzhen Bankruptcy Administrator Association, a Hong Kong trustee-in-bankruptcy[35] adopted the bankruptcy asset disposal method of the Shenzhen Intermediate People's Court, and auctioned off five Hong Kong specialised car registration numbers (being bankruptcy assets) on the Alibaba auction platform, at a price of RMB 600,000. The pre-auction notices, auction terms and whole bidding process was real-time online and fully transparent. This marks the first cross-border bankruptcy asset disposal in the Mainland by way of online auction.[36]

6. Bankruptcy of financial institutions

6.1 Bankruptcy legislation for financial Institutions

Comparing the EBL promulgated in 2016 with the "People's Republic of China Enterprise Bankruptcy Law (Trial Implementation)" introduced in 1986, the scope of the law has widened to explore bankruptcy legislation for financial institutions. A bankruptcy regime for financial institutions will provide orderly exit for financial institutions in operational difficulties, play a vital role in eradicating financial risks, strengthen the financial industry and promote national economic development.[37]

According to the article 134 of the EBL, "where such financial institutions as a commercial bank, securities company or insurance company is under any of the following circumstances as prescribed in article 2 of the present Law, the financial supervision organ under the State Council shall file an application with the People's Court for revival or insolvency liquidation of the financial institution. Where the financial supervision organ under the State Council adopts, according to law, such measures as takeover and custody to a financial institution carrying major business risks, it may apply with the People's Court for suspending the procedures for civil action or execution, wherein the said financial institution is the defendant or party against whom a judgment or order is being enforced. Where a financial institution is under bankruptcy, the State Council may, according to the present Law and other relevant laws, formulate the corresponding measures for implementation."

This is the first legislation relating specifically to the bankruptcy of financial institutions in China. The implications are as follows:

- commercial banks, securities firms and insurance companies that meet the criteria of bankruptcy, and which satisfy the requirements for financial institutions, may be declared bankrupt under the bases set in article 2 of the EBL;
- the relevant financial regulatory agency of the State Council may file an application for reorganisation or liquidation of financial institutions;
- pursuant to the provisions in article 38 of the "Banking Supervision Law" (银行业监督管理法), article 64 of the "Law of Commercial Bank" (商业银行法), article 145 of the "Law of Insurance" (保险法), article 143 of the "Law of Securities" (证券法) and article 26 of the "Law on Securities Investment Fund" (证券投资基金法), the relevant financial regulatory agency of the State Council may take over financial institutions facing a credit crisis or having fundamental operating risks, and apply to the People's Court to terminate existing litigation and enforcement procedures against the relevant financial institutions; and
- financial institution bankruptcy cases are generally highly complex and specific in nature. It is not plausible to enable their smooth exit by only applying the provisions of the EBL. In this regard, the State Council is expected to formulate more specific implementation measures in accordance with both the EBL and other applicable legislation.

In 2008, the State Council promulgated the "Regulations on Risk Disposal of Securities Companies" (证券公司风险处置条例), which introduced specific provisions on "disposal methods" of distressed securities companies such as rectification, custodianship, taking over and administrative reorganisation, revocation, insolvency liquidation and reorganisation. These provisions have consolidated the experiences in custodianship and disposal of the securities concerned, establishing the principle that regulatory agencies and government departments may directly intervene under special circumstances by introducing administrative regulations, and craft the pattern and path of future reorganisation in the securities industry. In addition, the State Council has also established the Securities Investor Protection Funds (中国证券投资者保护基金) for the securities sector, the Insurance Protection

35 Mr. Alan Tang (邓忠华), one of the authors of this paper, in his capacity as trustee-in-bankruptcy of a Hong Kong bankrupt.
36 See "The First Cross-Border Auction: The Fate of Five Hong Kong Licence Plates - An Interpretation of the Legal Considerations Behind the First Cross-Border Auction", available at: https://cj.sina.com.cn/articles/view/1831591892/6d2bdfd402000paqu.
37 See Zhang Shijun (张世君): "Theoretical Exploration and Institutional Construction of Bankruptcy of Chinese Financial Institutions" (中国金融机构破产的理论探索与制度构建), Law Press, 2017, p 53.

Fund (中国保险保障基金) for the insurance sector and the Deposit Insurance Fund (中国存款保险基金) for the banking sector. The State Council subsequently established the "Deposit Insurance Regulation" (存款保险条例) in 2014. These are the necessary institutional guarantee bases for the bankruptcy of financial institutions.

In April 2022, the People's Bank of China published "Financial Stability Law of the People's Republic of China (draft consultation paper)"[38] (中华人民共和国金融稳定法(草案征求意见稿)). The draft paper has summarised the effective practices in tackling and preventing major financial risks of Chinese financial institutions, making reference to international experiences in preventive measures against these risks. The draft paper also emphasises that the Financial Stability Law should build solid institutional protection in preventing and defusing major financial risks.[39]

Article 23 of the draft consultation paper states that, "in order to deal with financial risks, the relevant 'disposal' department may, in accordance with the law, facilitate reorganisation, taking over, custodianship, revocation, or application for bankruptcy, thus allowing the distressed financial institutions to resume normal operation or exit smoothly and orderly."[40] Article 33 of the draft paper also stipulates that "creditors and related stakeholders may seek a review by the risk disposal implementing authority, in the event they consider that the dividend return received or available from the risk disposal implemented by the financial management department of the State Council is lower than what they would have received from the insolvent liquidation of the financial institution in question. If the creditors or stakeholders are still not satisfied with the review, they can appeal to the People's Court and seek compensation."[41] In short, the "Financial Stability Law" (金融稳定法) is meant to safeguard investors from systematic and regional financial risks, and is also expected to become the overall framework for the bankruptcy of China's financial institutions.

6.2 Judicial practices in the bankruptcy of financial institutions

There were not many cases of financial institutions facing distress in the first 10 years since the implementation of the EBL in 2007; and cases of financial institutions entering bankruptcy were even rarer. However, in the last five years, the number of financial institution distress cases has increased. In May 2019, the People's Bank of China and the China Banking and Insurance Regulatory Commission (CBIRC) jointly issued an announcement that the CBIRC would take over Baoshang Bank Company Limited (包商銀行股份有限公司) (BSB) for a year, as BSB was observed to be facing serious credit risks and the taking over was intended to protect the legitimate rights of depositors and other customers in accordance with the provisions in the "Law on People's Bank of China" (中国人民银行法), the "Banking Supervision Law" (银行业监督管理法) and the "Law of Commercial Bank" (商业银行法). In November 2020, the Beijing No.1 Intermediate People's Court accepted an application for the insolvent liquidation of BSB and eventually declared its bankruptcy in February 2021. The bankruptcy administration of BSB has since been concluded.[42]

In 2020, the CBIRC announced the takeover of Tianan Property Insurance Company Limited (天安财产保险股份有限公司), Huaxia Life Insurance Company Limited (华夏人寿保险股份有限公司), Tianan Life Insurance Company Limited (天安人寿保险股份有限公司), Yi An Property & Casualty Insurance Company Limited (易安财产保险股份有限公司), New Times Trust Company Limited (新时代信托股份有限公司) and New China Trust Company Limited (新华信托股份有限公司). Among these, Yi An Property & Casualty Insurance Company Limited has since filed an application for reorganisation with the Beijing Financial Court, on the ground that the company is unable to settle due debts and is prima facie insolvent.

In relation to that application, the Beijing Financial Court observed that Yi An, being one of the four online insurance companies, has the advantages of a flat management structure and light-asset operations. At the same time, the scale of its assets and liabilities should enable the company to improve its solvency with limited capital. Additionally, the CBIRC has in principle approved Yi An to enter bankruptcy reorganisation. Therefore, the Beijing Financial Court determined that Yi An should have certain reorganisation value with a possibility of revival and the reorganisation plan should be accepted.[43]

Additionally, in 2022, the CBIRC issued an announcement that the Commission was in principle agreeable to putting Liaoyang Rural Commercial Bank Company Limited (辽阳农村商业银行股份有限公司) and Liaoning Taizhe Rural Bank Company Limited (辽宁太子河村镇银行股份有限公司) into bankruptcy procedures.

These examples are only some of many.

The recent revision of the EBL intends to establish a special chapter for the bankruptcy of financial institutions, in order to ensure these distressed enterprises would be rescued from distress and exit the market in an orderly manner and under institutional protection. The "Reform Plan for Accelerating Improvement of the Exit System for Market Participants" (加快完善市场主体退出制度改革方案) has stipulated the goal of establishing and improving the market-oriented exit mechanism for financial institutions, which specifically includes:

38 Unofficial English translation.
39 See Li Shuguang (李曙光) and Zhou Chen (周陈): "The Basic Law of the Long-Term Financial Stability Mechanism" (金融稳定长效机制的基本法), China Finance, Issue 8, 2022, p 53.
40 Unofficial English translation.
41 Unofficial English translation.
42 Beijing No. 1 Intermediate People's Court (2020), Jing 01 Po No.270(1) "Civil Ruling" (北京市第一中级人民法院(2020)京01破270号之一(民事裁定书).
43 Beijing Financial Court (2022) Jing 74 Po Shen No. 1 "Civil Ruling" 北京金融法院(2022)京74破申1号 (民事裁定书).

- improving procedures for the market-oriented exit of financial institutions – specifically, revision of the relevant laws and regulations, identifying the procedures and mechanisms for taking over, reorganisation and bankruptcy in the exit process, setting the goal to explore and establish an exit system with multi-level exit paths for financial institutions and emphasising the functions of deposit insurance protection systems;

- improving the system of transferring financial institutions' assets, debts and businesses – this is premised upon the deposit insurance system and insurance security fund, securities investor protection funds and trust protection funds to further improve the transfer of business and contracts such as savings deposit contracts, insurance contracts, securities business contracts, asset management business contracts and trusts during the exit of financial institutions; and

- establishing a risk warning and disposal system for financial institutions – notably, specifying the conditions that will trigger the risk disposal and formulation of the proposal for risk disposal by enriching the toolkit for risk disposal and building a well-developed information sharing system. This also includes improving the market-oriented exit system of financial institutions with a loss sharing mechanism, with express stipulation that unsecured creditors and shareholders should bear the loss prior to accessing and utilising public funds.[44]

Therefore, the authors believe that, with the maturing of legislation in bankruptcy of financial institutions, the corresponding judicial practice will be enriched and enhanced.

7. Cross-border bankruptcy

7.1 Institutional formulation of cross-border bankruptcy

Provisions in the EBL have provided fundamental principles for cross-border bankruptcy. Article 5 stipulates:

Once the procedure for bankruptcy is initiated according to this Law, it shall come into effect in respect of the debtor's property outside of the territory of the People's Republic of China. Where a legally effective judgment or ruling made on a bankruptcy case by a court of another country involves a debtor's property within the territory of the People's Republic of China and the said court applies with or requests the People's Court to recognise and enforce it, the People's Court shall, according to the relevant international treaties that China has concluded or acceded to or on the basis of the principle of reciprocity, conduct examination thereof and, when believing that the said judgment or ruling does not violate the basic principles of the laws of the People's Republic of China, does not jeopardise the sovereignty and security of the State or public interests, and does not undermine the legitimate rights and interests of the creditors within the territory of the People's Republic of China, decide to recognise and enforce the judgement or ruling.

Further, article 49 of the "Minutes of the National Court Work Conference on Bankruptcy Trials" (全国法院破产审判工作会议纪要) issued by the SPC in 2018 stipulates:

> Cross-border bankruptcy is premised upon the principle of reciprocity. When the People's Court is handling cross-border bankruptcy cases, it is necessary to properly resolve the legal conflicts and contradictions, reasonably determine proper jurisdiction for these cases and, under the strict principle of equal protection of similar creditors' claims, coordinate the balance between the interests of both foreign and Chinese creditors and reasonably protect preferential creditors' claims such as employee claims and government taxes.
>
> In order to strengthen the cooperation between the court and bankruptcy administrators in cross-border bankruptcy and promote a healthy development of international investment, active participation in and promoting negotiations and signing of international treaties on cross-border bankruptcy and exploring new ways to promote reciprocal relationships should be encouraged.[45]

Article 50 stipulates:

> For rightful protection and balancing of interests and rights in cross-border bankruptcy cases, cross-border cooperation should be carried out in accordance with the provisions of article 5 of the Enterprise Bankruptcy Law. Upon the People's Court recognising the judgment and ruling of bankruptcy cases made by foreign courts, the debtors can thereafter make use of their assets in China to fully settle the debts owed to PRC preferential creditors, such as secured creditors, employees, social security and outstanding taxes. Any remaining assets will be distributed in accordance with the provisions of the pertinent foreign legislation.[46]

The above provisions have already clarified the basic principles of cross-border bankruptcy from the PRC's perspective. However, the provisions are too abstract to meet genuine needs in judicial practice. To this end, the "Reform Plan for Accelerating Improvement of the Exit System for Market Participants" (加快完善市场主体退出制度改革方案) introduced in 2019 has emphasised "improving on the rules for cross-border bankruptcy and bankruptcy of affiliated enterprises, and promoting the resolution of problems concerning cross-border bankruptcy and bankruptcy of related complex entities."[47]

44 See the "Reform Plan for Accelerating the Improvement of the Exit System for Market Entities" (Fa Gai Cai Jin [2019] No. 1104) issued by 13 entities including the National Development and Reform Commission and the Supreme People's Court, Part V "Improving the Exit System for Special Types of Market Entities and Exits in Specific Fields" (加快完善市场主体退出制度改革方案) 发改财金〔2019〕1104号 第五部分"完善特殊类型市场主体退出和特定领域退出制度".
45 Unofficial English translation.
46 Unofficial English translation.
47 Unofficial English translation.

The recent revision of the EBL is expected to add a designated Chapter 15 for cross-border bankruptcy. UNCITRAL has published the "Model Law on the Recognition and Enforcement of Bankruptcy-Related Judgments with Guide to Enactment" (贸易法委员会关于承认和执行与破产有关判决的示范法附颁布指南) and the "Model Law on the Bankruptcy of Enterprise Groups" (贸易法委员会企业集团破产示范法). These have become crucial reference points in the legislation on cross-border bankruptcy in China. Indeed, such model legislation sets out a conceptual framework for international cooperation and a basis to balance a country's own judicial system and practical interests with international practices (which could be diverse). These models are not definitive in nature. In designing and establishing a country's own cross-border bankruptcy regime, focus should be placed on factors affecting localisation (and these provisions should be embraced with flexibility) and adapting applicable concepts in an indigenous manner.[48]

Significantly, as noted above, on 14 May 2021, the SPC and the HKSAR Government issued the "Minutes of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy Proceedings Between the Courts of the Mainland and of the Hong Kong Special Administrative Region" (关于内地与香港特别行政区法院相互认可和协助破产程序的会谈纪要), hereinafter referred to as the 2021 Minutes. This has since marked the establishment of a cooperation mechanism and platform for cross-border bankruptcy between Mainland China and the HKSAR at an institutional level.

To refine and implement the 2021 Minutes, the SPC further promulgated the "Opinions on Launching the Pilot Programme of Recognition of and Assistance to Bankruptcy Proceedings in the Hong Kong Special Administrative Region" (关于开展认可和协助香港特别行政区破产程序试点工作的意见) in 2021, hereafter referred to as the Pilot Opinions, based on the EBL and Civil Procedure Law. Likewise, the Department of Justice of Hong Kong also simultaneously issued the "Procedures for a Mainland Administrator's Application to the Hong Kong SAR Government for Recognition and Assistance Practical Guide" (Practical Guide).

The pronouncement of the 2021 Minutes, Pilot Opinions and Practical Guide is regarded as a significant milestone in cross-border bankruptcy cooperation between Mainland China and HKSAR since the implementation of the EBL. According to the 2021 Minutes and Pilot Opinions, the SPC has designated the People's Courts in Shanghai, Xiamen and Shenzhen to: (i) undertake pilot work of recognising and assisting compulsory liquidation, creditors' voluntary liquidation and schemes of arrangement cases in Hong Kong; (ii) keep close communication on mutual recognition and assistance in the judicial practice of bankruptcy procedures; (iii) resolve relevant issues through consultation; (iv) continue to improve relevant mechanisms; and (v) gradually expand the pilot areas.

Under the Practical Guide, bankruptcy administrators in Mainland China may apply to the HKSAR High Court for recognition of and assistance in the bankruptcy liquidation, reorganisation and composition and their capacity as administrator in accordance with the EBL.

7.2 Cross-border bankruptcy cases

From 2017 to 2022, a number of cross-border bankruptcy cases have developed. For example, in 2019, the United States District Court for the Southern District of New York recognised the bankruptcy of Reward Scientific and Technological Industry Group Company Limited (洛娃科技集团), administered by the Beijing Chaoyang People's Court, and allowed the bankruptcy administrator from China to dispose of the company's assets and affairs in the United States.

In 2020, the High Court of the HKSAR recognised the bankruptcy of CEFC Shanghai International Group Limited (上海华信国际集团有限公司), administered by the Shanghai No.3 Intermediate People's Court, and also Shenzhen Everich Supply Chain Company Limited (深圳市年富供应链有限公司), administered by the Shenzhen Intermediate People's Court.

Furthermore, the High Court of Singapore in 2020 recognised the bankruptcy case of Jiangsu Sainty Marine Company Limited (江苏舜天船舶发展有限公司), administered by the Nanjing Intermediate People's Court.

There are also examples involving the bankruptcy reorganisation of large PRC enterprises, all with cross-border issues – for instance, since 2021, Hainan Airlines Holding Company Limited (海南航空集团有限公司), Peking University Founder Group Company Limited (北大方正集团有限公司), Huachen Energy Company Limited (华晨能源), Jiangsu Dewei Advanced Materials Company Limited (江苏德威新材料股份有限公司) and Tsinghua Unigroup Company Limited (清华紫光集团有限公司).

At the same time, and pursuant to the 2021 Minutes, the liquidators of Hong Kong based Samson Paper Holdings Limited (Samson Paper) (森信洋纸有限公司) filed an application with the Shenzhen Intermediate People's Court in August 2021, and were subsequently granted recognition on 15 December 2021, thus becoming the first ever case on record granting recognition by a court in China.[49] To secure Samson Paper's assets in Mainland China, including its wholly-owned subsidiary in Shenzhen, properties and accounts receivables, the liquidators requested the High

48 See Jin Chun (金春): "Recognition and Assistance in Foreign Insolvency Proceedings: Interpretation and Legislation", "Politics and Law Forum", No. 3, 2019, p 152 (外国破产程序的承认与协助：解释与立法).

49 Although the Foshan Intermediate People's Court of Guangdong Province accepted the case of B&T Ceramic Group s.r.l Company Limited's application for recognition and enforcement of the bankruptcy judgment of the Italian court as early as 2001, and directly recognised the legal effect of the bankruptcy judgment made by the Italian court, the judgment by the Italian court was not based on the relevant rules of bankruptcy law (i.e. article 5 of the EBL). Despite this fact, it is noted that the judicial agreement between China and Italy also contains the content of mutual recognition of civil judgments. Therefore, the Foshan court has neglected the differences between bankruptcy procedures and general civil procedures in granting recognition in this case. There are many similar cases of pre-2007 recognition to the effect that the foreign insolvency appointment taker has due and proper authority to represent the foreign enterprise (say as a shareholder in a PRC enterprise) in the PRC.

Court of the HKSAR to issue a "Letter of Request for Judicial Assistance Under the Pilot Measure in Relation to the Recognition of and Assistance to Insolvency Proceedings in the Hong Kong Special Administrative Region" (根据认可和协助香港特别行政区破产程序试点方案发出的司法协助请求函) and requested the Shenzhen Intermediate People's Court to recognise and assist with the winding-up procedures of Samson Paper. A number of key issues were analysed in this case:

- the legitimacy of the foreign bankruptcy procedures;
- identification and determination of the debtor's centre of main interest (COMI);
- the nature of cross-border bankruptcy procedures – these do not concern only a stand-alone civil or commercial legal relationship, but also a consolidated practical legal relationship intertwined with procedural content; and
- the core values of cross-border bankruptcy in recognition and relief – noting the legal effects of providing judicial assistance, rather than embarking on any enforcement process, and with judicial assistance ranging from matters relating to payment, restrictions on paying off particular creditors, and with pertinent stipulations not only targeting debtors, but also other interested stakeholders.[50]

In a judgment made in June 2023 in the case of Trinity International Brands Limited [HCMP480/2023] in Hong Kong, it was reported that the Shanghai (No. 3) Intermediate People's Court had also granted an application for recognition by the joint liquidators of Hong Kong Fresh Water International Group Ltd. (香港浩泽国际集团有限公司), pursuant to the mechanism set in the 2021 Minutes."

In another case, the Xiamen Maritime Court recognised the judicial administration procedures involving a Singaporean entity. On 11 August 2021, the judicial manager of Singapore XiHe Holding (Pte) Limited (XiHe) and Singapore XinBo Shipping (Pte) Limited (XinBo) filed an application with the Xiamen Court for the recognition of his position and capacity to act for these companies. In particular, XiHe provided the order from the Supreme Court of Singapore to prove that XiHe was put under judicial management, whereupon the judicial manager was also appointed. However, XiHe could not provide any evidence proving the reciprocal relationship (between the PRC and Singapore) brought by the recognition and enforcement of the judicial manager's appointment by the Xiamen Court.

Nevertheless, the Xiaman Court was of the opinion that Singapore judicial management procedures are similar to bankruptcy procures in the PRC, and that the office of judicial manager is likewise similar to the office of bankruptcy administrator. The Xiamen Court therefore determined that recognition and assistance should be given to the judicial manager in accordance with the provisions of article 5, clause 2 of the EBL. According to these provisions, the premise of the recognition of foreign bankruptcy procedures is the presence of a reciprocal relationship between China and Singapore.

On 18 August 2021, in Civil Ruling (2020) Min 72 Min Chu No. 334 (闽72民初334号), the Xiamen Court emphasised the use of dual standards of reciprocity determination – with factual reciprocity being the principal standard and presumed reciprocity being the supplement. Thus, the Ruling adopts the situation of recognition and enforcement of bankruptcy judgments between the two countries as the factual basis for reciprocity determination, which cannot be related to other civil or commercial matters. If the parties concerned fail to provide information on the recognition and enforcement of bankruptcy judgments between the two countries, the People's Court should be responsible for such investigations as part of its functions and powers, and shall not determine the matter solely on the grounds that the parties cannot provide relevant evidence.[51]

On 16 September 2021, the Hong Kong High Court granted another order for recognition of the administrators of HNA Group Co Ltd (HNA), under bankruptcy reorganisation as ordered by the Hainan Higher People's Court in February 2021. HNA operated out of Hainan Province and its businesses spanned from aviation and property investment to golf courses, operating within the group more than 3,000 companies across the world and with liabilities exceeding US $150 billion.

Although Hainan was not one of the three pilot cities under the 2021 Minutes and Pilot Opinions, Mr Justice Harris in Hong Kong referred to his earlier decision in *Re CEFC Shanghai International Group Limited*, in which he considered the relevant principles extensively in the context of the first application by a Mainland administrator for formal recognition in Hong Kong, noting that "reciprocity is not a requirement of common law recognition and assistance in Hong Kong". Therefore, he ruled that:

> It may be that the Hainan Province Higher People's Court would not recognise Hong Kong insolvency proceedings and liquidators, [but this] is not of itself a bar to the Hong Kong court granting recognition at the request of the Hainan court. If there is an issue concerning whether or not it is appropriate for a court in the Mainland other than one of the three specified courts to apply for recognition and assistance, that seems to me to be a matter for the Supreme People's Court. It is not of itself a consideration to be taken into account by the Hong Kong court in determining whether or not to grant recognition and assistance.

50 See Cao Qixuan (曹启选) and Ye Langhua (叶浪花): "The Practical Development and Path Exploration of my country's Cross-border Bankruptcy: From the Perspective of the Trial of the First Hong Kong Bankruptcy Procedure Recognition and Assistance Case in China" (我国跨境破产的实践发展和路径探索——以全国首例香港破产程序认可和协助案的审理为视角), Applicable Law, No. 3, 2022, No. 147-149.

51 Xia Xianpeng (夏先鹏) and Yu Yixuan (余怡璇): "Reciprocity Review in Application for Recognition of Foreign Bankruptcy Judgments" (申请承认外国破产裁判中的互惠审查), in People's Justice, No. 23, 2022.

Court appointed "soft-touch" provisional liquidators of offshore companies (who are tasked to only restructure the company in question while management remains in the hands of its directors) began to seek recognition and assistance from the Hong Kong Court from around 2018, essentially to stay local insolvency proceedings. Recognition orders were granted in cases like re Z-Obee Holdings Ltd in 2018, Hsin Chong Group Holdings Ltd in 2019 and Moody Technology Holdings Ltd in 2020. In re China Bozza Development Holdings Limited in 2021, the Hong Kong Court started to doubt the "Z-Obee" technique (to obtain a de facto moratorium of insolvency and related creditor actions in Hong Kong) when it was viewed as just a way to avoid liquidation in Hong Kong to the detriment of local creditors.

In 2022, in the case of Re Global Brands Group Holding Limited [HCMP644/2022], Mr Justice Harris criticised the "Z-Obee" technique and endorsed the principles of COMI for the Hong Kong Court to assess whether recognition and assistance should be given to foreign insolvency proceedings. These are similar principles as enshrined in the UNCITRAL Model Law on Cross Border Insolvency (noting that Hong Kong is not a signatory). In this case, recognition sought and granted was as "a matter of practicality" and limited to the liquidator's authority as the lawful agent of debtor and seeking "managerial assistance" to receive and transfer bank balances out of Hong Kong.

Incumbent Companies Judge in Hong Kong, Madam Justice Linda Chan confirmed and adopted these COMI principles in Re Guangdong Overseas Constuction Corporation in her Decision made in May 2023 [HCMP453/2023]. In this same Decision, she made specific reference to the 2021 Minutes, Pilot Opinions and Practical Guide and also confirmed the practice of rendering recognition and assistance to administrators of bankruptcy proceedings in PRC cities other than the three pilot cities stipulated in the 2021 Minutes / Pilot Opinions, as was applied in the HNA case. Where appropriate, she considered that the Practical Guide would also apply to bankruptcy cases from other non-pilot cities in the PRC.

The Hong Kong Court has ruled in the re *Global Brands* case that the "soft-touch provisional liquidation" adopted in various "letter box jurisdictions" would circumvent supervision of the insolvency proceedings for the companies concerned under proper COMI jurisdiction. Thus, application for recognition and assistance by the Hong Kong Court was rejected in re *GTI Holdings Ltd* in 2022 [HCCW51/2020], when the Companies Judge laid severe criticisms on the conduct of the Joint Official Liquidators in making the application. In *FDG Electric Vehicles Ltd* in 2021, the Court declined to grant any "automatic moratorium". Recognition applications were also declined in re *Rare Earth Magnesium Technology Group Holdings Ltd* in 2022 and also re *Up Energy Develoment Group Limited*.

The Hong Kong Court is very stringent with winding-up foreign incorporated companies in Hong Kong. Under the common law recognition principles and taking the place of incorporation as the most appropriate forum for insolvency proceedings, the Court of Final Appeal in Hong Kong endorsed earlier decisions in other cases which set three basic principles / core requirements in this regard in the *Re Kam Leung Sui Kwan vs. Kam Kwan Sing (Yung Lee Holding Limited)* case in 2015 [FACV4/2015]:-

- there must be sufficient connection with Hong Kong;
- there must be a reasonable possibility that the winding-up order will benefit those applying for it; and
- the Court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets.

Re *China Huiyuan Juice Group Limited* in 2021, and *Shangdong Chenming Paper Holdings Ltd* in 2022 are recent cases confirming the second core requirements. The Court of Final Appeal ruled in the *Shangdong* case that "the commercial pressure … of the winding up petition … is a benefit that the creditor may derive from the winding up procedures".

In January 2023, the Beijing No.1 Intermediate People's Court formally gave recognition and assistance to a German liquidator. This case involved Insolvenz der Aachen Rheinland Co Ltd ("LION GmbH",德国亚琛莱茵有限公司破产案), which was put in bankruptcy in 2011 by the German court (德国亚琛地方法院). LION had purchased a property in Beijing. The Beijing Bankruptcy Court accepted the application on 21 November 2022, which was announced on the National Enterprise Bankruptcy Reorganisation Case Information Website on the same day. The court hearing (physical and online) took place on 30 November 2022. After making reference to a letter of confirmation from the German court, and as supported by expert opinion from a major PRC university on German bankruptcy law, the court granted an order for recognition and assistance on 16 January 2023.

Recent overall judicial practices reflect that courts in Mainland China and Hong Kong have adopted a more open attitude on cases seeking cross-border bankruptcy recognition and relief. On the issue of whether to recognise the legal effects of foreign bankruptcy procedures, courts will no longer rely solely on factual reciprocity; instead, presumed reciprocity would be an important consideration. Further, recognition includes not only recognition of the foreign bankruptcy proceedings, but also the recognition of the position and capacity of the cross-border foreign bankruptcy administrator (i.e. the insolvency appointment taker).

In terms of relief, the foreign insolvency appointment taker assumes the position and powers of a bankruptcy administrator in China. However, in terms of the types and levels of specific assistance to be provided, or whether legal effects of the whole foreign bankruptcy proceedings are recognised, these issues are still unclear and would require clarification. During the revision of EBL, the NPC is expected to examine and establish more specific rules relating to these cross-border issues.

8. Pilot programmes for personal bankruptcy

At present, China does not have a nationwide personal bankruptcy regime. Since 2021, Shenzhen has become a pilot Special Economic Zone to test personal bankruptcy cases. At the same time, Zhejiang, Jiangsu, Shandong, Sichuan and other provinces have all undertaken some form of judicial practice for the settlement and disposal of personal debts on some collective and centralised basis, which have given practical effects similar to the personal bankruptcy regime.

8.1 Implementation of the Shenzhen personal bankruptcy system

The 2019 "Reform Plan for Accelerating Improvement of the Exit System for Market Participants" (加快完善市场主体退出制度改革方案), referred to above, advocates "promoting the establishment of a natural person bankruptcy system step by step"; and "absolving the liability of guaranteed debts of natural persons arising from enterprise bankruptcy by lawful discharge of such debts; promoting and establishing the lawful discharge of qualified consumption liabilities of natural persons; and eventually establishing a comprehensive personal bankruptcy system."[52]

In August 2020, the NPC Standing Committee of the Shenzhen Special Economic Zone approved and promulgated the "Regulations of the Shenzhen Special Economic Zone on Personal Bankruptcy" (深圳经济特区个人破产条例), which is an important achievement in promoting and establishing the natural person bankruptcy regime in the PRC. Based on research of the authors, from the date of implementation of the Regulations (i.e. 1 March 2021) to 22 August 2021, the Shenzhen Bankruptcy Court received a total of 1,271 bankruptcy applications. Of these cases, 642 interviews were conducted by judges and 67 interviews by officers of the Shenzhen Bankruptcy Affairs Management Office (深圳市破产事务管理署).[53] A total of 137 personal bankruptcy applications were considered, 100 bankruptcy court hearings were conducted, 23 applications were rejected, 17 applications were withdrawn and 60 applications were formally accepted, with a total of 126 bankruptcy cases having been concluded in the period.

Three cases are highlighted below:

- on 14 May 2021, the Shenzhen Bankruptcy Court made the first ruling rejecting a personal bankruptcy application. This case has provided an opportunity to define the acceptance criteria or standards for personal bankruptcy cases, revealing that the People's Court adopts strict standards to examine the applicant's reasons for bankruptcy in order to prevent abuse arising from bankruptcy procedures;[54]
- on 19 July 2021, the Shenzhen Bankruptcy Court ruled on completion of the bankruptcy reorganisation procedures of a person with the surname Liang. This is the first personal bankruptcy case accepted and now concluded in Shenzhen. The case serves as a vivid example demonstrating to the public that the personal bankruptcy regime has such valuable functions as clearing off debts in a fair manner and rescuing individuals from financial distress. Such procedures are premised upon humanistic care, encouragement in innovation and toleration of business failure. It also shows that the People's Courts are confident in and capable of handling personal bankruptcy cases and striking a balance between the interests of debtors, creditors and society as a whole;[55] and
- in July 2021, the Shenzhen Bankruptcy Court ruled to accept the bankruptcy composition of a personal debtor with surname Wei. In this case, the court also entrusted the Shenzhen Bankruptcy Affairs Management Office to organise mediation. The Office assisted the debtor in drafting a proposed settlement agreement, ensuring that 100% of the principal would be paid off, waiving all interest and costs and allowing the spouse of the debtor to jointly settle the debts over a period of 54 months. At the mediation meeting convened by the Office, the proposed settlement agreement was approved unanimously. Ultimately, the Shenzhen Bankruptcy Court gave formal approval of Wei's settlement agreement and terminated the composition procedures.[56] This is the first personal bankruptcy case of "entrusted composition" involving a third party (the Shenzhen Bankruptcy Affairs Management Office) and is definitely an institutional innovation in personal bankruptcy procedures, as compared with enterprise bankruptcy.

  Shenzhen also emphasises the institutionalisation of ancillary operations. The "Regulations of Shenzhen Special Economic Zone on Personal Bankruptcy" stipulate the setting up of a specialised quasi-court department for the management of bankruptcy affairs.

52 Unofficial English translation.
53 This is a quasi-judicial association established to work on personal bankruptcy cases.
54 See Xu Yangyang (徐阳光): "Determining Inadmissibility Rules to Prevent Abuse of Bankruptcy Procedures" (厘定不予受理规则 防止滥用破产程序), People's Court News, 16 July 2021, 2nd edition.
55 See Zhang Yan (张燕), "Professor Xu Yangyang of the Law School of Renmin University of China: Shenzhen case will become an important reference for national personal bankruptcy legislation" (中国人民大学法学院教授徐阳光：深圳案例将成全国个人破产立法重要参考), in Shenzhen Special Economic Zone News, 20 August 2021, page A2.
56 Civil Ruling Letter of Shenzhen Intermediate People's Court, (2021) Yue 03 Po No. 365 (Part 7) 广东省深圳市中级人民法院民事裁定书，(2021) 粤03破365号 (个7) 之一

The Shenzhen Bankruptcy Affairs Management Office was established on 1 March 2021, which is the first official institution responsible for the management of personal bankruptcy affairs nationwide. According to the Regulations, there are eight principal duties and functions for this Office: (i) before the bankruptcy application, provide consultation and assistance services to debtors; (ii) after the application has been processed, register and publish case administration information; (iii) assist in investigations in bankruptcy fraud; (iv) establish the mechanism coordinating bankruptcy affairs between government departments; (v) during the period of bankruptcy administration or enforcement of reorganisation, supervise the enforcement process; (vi) in terms of management of bankruptcy administrators, establish the register of bankruptcy administrators; (vii) nominate suitable personnel as case administrators as required by the court; and (viii) manage the appointment, duties and remuneration of the administrators.[57]

At present, the Shenzhen Bankruptcy Affairs Management Office has formulated regulating documents on appointing personal bankruptcy administrators and the registration of personal bankruptcy information and has attained substantial achievements in carrying out its responsibilities.

8.2 Judicial practices of the centralised disposal of personal debts in Jiangsu, Zhejiang and other regions

In the Shenzhen Special Economic Zone, "honest but unfortunate" debtors may be given an opportunity to discharge their personal liabilities under the newly promulgated personal bankruptcy regime. Despite the lack of similar legislation elsewhere, there is high demand for personal bankruptcy on a wider national basis. Those "honest but unfortunate" debtors in financial hardship and having lost their capability of refinancing or restarting their businesses will, to a certain extent, curb the vitality of social investment and hinder social and economic development. In this context, and on the basis of exploring the establishment of a personal bankruptcy regime, the Zhejiang Province judiciary has established a centralised personal debt and asset disposal system in different pilot cities.

According to the "Zhejiang Court Personal Debt Liquidation (Personal Bankruptcy) Work Report" (浙江法院个人债务集中清理(类个人破产)工作报告) issued by the Zhejiang Higher People's Court in December 2020, major courts in Zhejiang started to explore establishing a personal bankruptcy regime as early as 2018. These courts have also actively launched the pioneer work of establishing personal bankruptcy institutions to handle cases of centralised personal debt and asset disposal, as characterised by the substantial functions of personal bankruptcy. Innovative exit paths for enforcement cases that cannot be successfully completed by enforcement courts are also being considered and tested. As of 30 September 2020, the Province has accepted a total of 237 cases of centralised disposal of personal debts / assets. Among these cases, five were associated with the enterprise bankruptcy cases of their respective owners. According to limited statistics, total debts disposed of were approximately RMB 200 million as of 30 September 2020, with an average repayment rate of 16.53%. According to the authors' latest research and understanding, from January to June 2022, Zhejiang Province accepted a total of 214 cases of centralised personal debt disposal – 206 of these cases have been concluded with settlement achieved in 51 cases.

The exploratory work of Zhejiang's judicial practice in the centralised disposal of personal assets and repayment of debts has set a good example. Other regions are now also exploring the personal bankruptcy regime and this trend has gained much momentum. Other governments have issued policy papers to follow suit in this regard.[58]

57 See Li Ruizhong (李锐忠) et al.: "The "Pilot Shenzhen Model" of the Personal Bankruptcy System" (个人破产制度试点的"深圳模式"), published in "Democracy and Legal Weekly" No. 22, 2022, p 29.

58 These documents include: 13 August 2019, "Implementation Opinions on Centralised Liquidation of Personal Debts (Trial)" issued by the Wenzhou Intermediate People's Court (No.45 of Wenzhou Intermediate People's Court [2019]) (关于个人债务集中清理的实施意见(试行)) 温中法〔2019〕45 号; 10 July 2019, "Minutes of the Joint Meeting of Governments and Courts on Corporate Financial Risk Disposal" (企业金融风险处置工作府院联席会议纪) issued by the Office of Wenzhou Municipal People's Government; April 2020, "Minutes of the Joint Conference of Governments and Courts to Explore the Establishment of a Public Official Manager System in the Work of Centralised Liquidation of Personal Debts" (在个人债务集中清理工作中探索建立公职管理人制度的府院联席会议纪要) issued by the Office of Wenzhou Municipal People's Government; 26 April 2019, "Trial Procedures for Transferring from Execution Procedures to Personal Debt Settlement Procedures (Interim)" issued by the Intermediate People's Court of Taizhou City (No.73 of Taizhou Intermediate People's Court [2019]) (执行程序转个人债务清理程序审理规程(暂行)) 台中法[2019]73号; "Implementation Opinions on Personal Debt Reorganisation (Trial)" issued by the Suichang People's Court (关于个人债务重整的实施意见(试行); 28 April 2020, "Implementation Opinions on the Centralised Liquidation of Personal Debts (Trial)" issued by the Longquan City People's Court (No.16 of Longquan People's Court [2020]) (关于个人债务集中清理的实施意见)(试行) 龙法〔2020〕16号; 30 April 2020, "Implementation Opinions on the Centralised Liquidation of Personal Debts (Trial)" issued by the Jinyun People's Court (No.33 of Jinyuan People's Court [2020] (关于个人债务集中清理的实施意见(试行)) 缙法〔2020〕33号; 22 May 2020, "Procedures for the Trial of Transferring Execution Procedures to Personal Debt Liquidation Procedures (Trial Implementation)" issued by the Jingning She Autonomous People's Court (No.32 of Jingning She Autonomous People's Court [2020]) (关于执行程序转个人债务清理程序审理规程(试行)) 景法〔2020〕32号; 12 October 2020, "Implementation Opinions on Personal Debt Reorganisation Procedures (Trial)" issued by the Lishui Intermediate People's Court (No. 119 of Lishui Intermediate People's Court [2020]) (关于个人债务重整程序的实施意见(试行) 丽中法〔2020〕119号; 16 June 2020, "Implementation Measures for Personal Bankruptcy Reconciliation (Trial)" (个人破产和解实施办法(试行)) issued by the People's Court of Longmatan District, Luzhou City; 5 March 2020, "Regarding Opinions on the Collective Liquidation of Personal Debts (for Trial Implementation)" issued by the People's Court of Gaoqing County, Shandong Province (No.8 of People's Court of Gaoqing County, Shandong Province [2020] (关于企业破产中对有关个人债务一并集中清理的意见(试行)) 高法发〔2020〕8号; 21 October 2019, "Several Provisions on the Liquidation of Personal Debts (for Trial Implementation)" issued by the People's Court of Wujiang District, Suzhou City (No.101 of the People's Court of Wujiang District, Suzhou City [2019]) (关于个人债务清理的若干规定(试行)) 吴法〔2019〕101号.

9. Closing remarks

When the Enterprise Bankruptcy Law (Trial Implementation) was first put into practice in 1988, and throughout the many years to 2015, there was relatively insignificant progress in terms of implementation and practice of that law in China. With continuous hard efforts from the Government, the judiciary, academics and practitioners in the PRC, we are beginning to see a very clear trend of development in both academic advancement and wide and extensive practice of the bankruptcy regime throughout China. The insolvency / bankruptcy profession involving judges, academics and practitioners has witnessed phenomenal growth in the past 10 years or so. Traditional cultural stigma in relation to bankruptcy has given way to the commercial reality of bankruptcy being an indispensable element of rapid development of the market economy. In 2007 when the EBL was implemented for business enterprises only, who would have predicted China formally introducing a regime of personal bankruptcy in 2021?

With China embracing more and more extensive development in market economy and international trade partnership, it is the belief of the authors that cross-border insolvency issues involving China will, sooner or later, take centre stage in international insolvency circles. The Revised Enterprise Bankruptcy Law (to be promulgated) may be a stepping-stone in this regard.

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