Ep.87 China's Enterprise Bankruptcy Law and UNCITRAL Working Group V

Intro Music: INSOL international, in conjunction with the Early Researcher Academics Committee, presents INSOL Talks.

Shuai Guo (SG) (00.23): Good afternoon, Madam Joubin-Bret, distinguished guest. Thank you all for joining this panel on insolvency law. My name is Shuai Guo, associate professor at China University of Political Science and Law. It is a great honour for me to moderate such a distinguished panel, which will discuss the ongoing revision of the Chinese Enterprise Bankruptcy law and the work of UNCITRAL Working Group V. This panel is part of UNCITRAL 60th anniversary Asia-Pacific Days Seminar "China's engagement with UNCITRAL: practices and prospects" held at the campus of CUPL. Taking this opportunity, I also expressed my sincere congratulations to UNCITRAL 60th anniversary. For the record, as the Chair of INSOL Early Research Academic Sera, today's discussion will also be recorded as one episode of INSOL Talks and will be published on the international website.

Before we begin, please allow me to briefly introduce our distinguished speakers. Professor Jingxia Shi is the Wuyu Zhang Chair Professor at the Renmin University of China and an internationally renowned scholar of inational insolvency law and more broadly, international economic law.

Professor Xiahong Chen, a former colleague of mine at CUPL Bankruptcy Law and Restructuring Research Centre, is a specialist insolvency lawyer who has recently joined Tianjin University as an outstanding young professor. Once again, thank you both for joining us today.

To begin with, Professor Shi, you have been deeply involved in Chinese national insolvency legislation and practice. Could you briefly walk us through the history and development of Chinese cross-border insolvency law and its relationship to UNCITRAL Model Laws?

Jingxia Shi (JS) (01.58): Thank you very much, Professor Guo. It's my great pleasure to join this interesting discussion. Yes, I have been involved in the development of Chinese cross-border insolvency law for more than two decades, both in legislation and in practice. To answer your question, I would describe this development in four stages.

The first is a period before the 2006 Enterprises Bankruptcy Law (EBL), when cross-border cases arose without a specific statutory framework. The second stage is the adoption of Article 5 of 2000 EBL. The third stage is a gradual development of judicial and commercial practice, including the 2021 Mainland-Hong Kong SAR cooperation mechanism on cross-border insolvency. The fourth stage is a current revision of the EBL, which gives us an opportunity to build a more concrete system in this regard. Let me explain these stages through or in combination with some of my own experience

The first stage is the first bankruptcy legislation adopted in 1986 on a trial basis, applied to state owned enterprises and contained no specific provision on cross-border insolvency. However, as China's economy became more closely connected with international markets, cross-border insolvency problems began to arise. The absence of legislation did not mean the absence of cross-border insolvency cases. One case that had a particular impact on me was the property of Guangdong International Trust and Investment Corporation, or GITIC. In 2001, the Hong Kong High Court recognized the GITIC bankruptcy proceedings conducted by the Guangdong High

People's Court. I served as one of the PRC law expert witnesses in that case. It was one of my earliest encounters with the practical reality of cross-border insolvency. For an expert witness, the task was mainly to explain domestic law in a way that enables a foreign court to decide issues before it. That experience also brings the limitation of domestic law into sharper focus. A proceeding may begin in one jurisdiction, but its effectiveness may depend on decisions taken in another jurisdiction. Assets, creditors and legal consequences do not necessarily remain within the borders of the country where the proceeding begins.

Second stage at the end of 2000, I became involved in drafting the legislation that ultimately became the 2006 EBL, including what is now Article 5. At that time, actually, the 1997 UNCITRAL Model Law on Cross-Border Insolvency and the European Insolvency Regulation were already important references. We understood that cross-border insolvency required rules on recognition, relief, cooperation and coordination. Unfortunately, for a variety of reasons, what we were ultimately able to include was only one article. Therefore, Article 5 was a important beginning, but also a compromise.

Looking back, I regard that as its essential limitation. A judgment normally determines a particular dispute, and insolvency proceeding is an ongoing collective process involving many creditors and potentially many jurisdictions. Recognizing that process is only the beginning, courts must then consider interim protection, stays of individual enforcement, access to information, the powers of foreign representatives and coordination with other proceedings. But Article 5 did not provide a complete answer to these questions. Therefore, I have a particular sense of both attachment and regret concerning this article. Attachment, because it established the first express statutory basis for cross-border insolvency in Mainland China. Regret because we knew even at that time that a single article could not provide the system that practice would eventually require or need.

The third stage has been the gradual development of practice. Chinese courts have become a little bit more open in recent years to recognizing and assisting foreign insolvency proceedings. Examples include the recognition of a Singapore appointed insolvency representative by the Xiamen Maritime Court, the recognition of a German insolvency proceedings by Beijing Bankruptcy Tribunal, and the recognition of a Japanese civil rehabilitation proceeding by Shanghai Bankruptcy Tribunal, to just name a few.

The most important institutional development during this stage was the 2021 mechanism for mutual recognition of, and assistance to insolvency proceedings between Mainland China and Hong Kong SAR. So Shenzhen, Shanghai and Xiamen were designated as pilot cities for applications concerning Hong Kong insolvency proceedings. The mechanism introduced the concepts familiar from modern international insolvency law, including the centre of main interest, COMI recognition, relief and cooperation.

For example, the first case recognized in Mainland China of Hong Kong proceedings was something paper which demonstrates that this mechanism could work in practice. However, in the other direction, Hong Kong courts have recognized quite a much more Mainland proceedings, including the reorganization of Peking University founder Group and Hainan Island Group, reorganization cases and etc.. Hong Kong's common law recognition jurisdiction also operates independently of the Mainland pilot framework. This is an important feature of the relationship and helps explain why cooperation in the two directions has not developed in exactly the same way.

Also, during this period, I have been involved mainly as a PRC law expert in several major offshore restructurings, liquidations, and related disputes involving Chinese corporate groups, including Sunak, Country Garden Pub, Tsinghua Unigroup and Hainan Island, etc.. I also currently serve as one of the three members of the Committee of Inspection in the Evergrande liquidation appointed by Hong Kong High Court. These rules offer different perspectives as an expert witness help a foreign court or tribunal understand the content and operation of related PRC law. As a member of the Committee of Inspection, I see the practical administration of a major liquidation. Together, these experiences have reinforced my view that cross-border insolvency has become part of the basic legal infrastructure for Chinese enterprises participating in the global economy.

My work in offshore restructuring such as Sunak and the Country Garden has also highlighted the importance of examining cross-border effectiveness carefully. Approval of a restructuring in one jurisdiction does not automatically answer every question concerning its effect elsewhere. I mean, in other jurisdictions, the treatment of debt guarantees and other obligations must be considered against the relevant governing laws and jurisdictions in which implementation may be required. So explaining PRC law to an overseas court is therefore closely connected with the practical question of whether the restructuring can achieve its intended result or outcome.

This experiences together have changed the way I view legislative reform. Recognition, cooperation and coordination are not simply topics for, just for academic discussion. They actually affect whether assets can be preserved, whether a restructuring can be implemented and whether creditors can receive an orderly distribution in the preceding. The 2021 mechanism is an important bridge, but China's wider cross-border insolvency needs now extend well beyond what a limited cooperation framework can actually cover.

This brings me to the fourth stage, the current revision of the EBL. 20 years after Article 5 was adopted, the scale and the complexity of Chinese cross-border insolvency practice have far exceeded what one provision can handle. The key question is now what kind of system China should build?

My participation in UNCITRAL Working Group V as part of the CCPIT delegation, has strengthened my view that the 1997 Model Law offers the best basic framework. Its value lies in the relationship between access, recognition, relief and cooperation coordination. It also gives the court and insolvency representatives a common structure within which different legal systems can work together while retaining appropriate safeguards. For myself, the connection between legislation and practice is direct. My involvement began with cases such as GITIC and the drafting of Article 5. Subsequent experience in major restructurings and liquidation has repeatedly shown why a more complete framework is necessary. The current revision gives us this opportunity to complete a task that remained unfinished in 2006. I hope China will use this opportunity to establish a system firmly connected with the UNCITRAL model law. I will stop here. Thank you.

SG (14.28): Thank you, Professor Shi. Next. Professor Chen. As a member of the Expert Committee on amendment to the Chinese Enterprise Bankruptcy Law, could you share with us the latest developments in the amendment process? Thank you.

Xiahong Chen (XC) (14.43): Yes. Thank you very much, Professor Shuai Guo for your kind invitation. It's a great honour for me to have been involved in the ongoing reform of Chinese insolvency law. As for the latest developments in Legislative process. The second draft of the amended the Enterprise Bankruptcy Law was released for public consultation in September

2026. This provides us with a clearer picture of the current direction of the reform and the key features of Chinese future Cross-Border Insolvency framework.

I would like to make a brief introduction about the background firstly. China's enterprise bankruptcy law was enacted in 26, and committee votes in 27. Under the EBL 26, its principle and only provision of cross-border insolvency is Article 5, which addresses two fundamental issues, the extraterritorial effect of Chinese insolvency procedures and the recognition and enforcement of foreign insolvency judgments and rulings. Although Article 5 of EBL 26 established a statutory basis for cross-border cooperation, it did not create a comprehensive framework for the recognition of foreign procedures. The powers of foreign insolvency representatives, court-to-court cooperation, and the coordination of concurrent procedures.

Over the past two decades, China's increasing integration into the global economy has made these questions more pressing. Chinese companies have expanded their investment and operations abroad. At the same time, foreign enterprises have accumulated substantial assets, creditors and business interests within China. When these aspects include financial distress, insolvency proceedings can no longer be confined to the jurisdiction in which the debtor is incorporated or has its principal place of business.

Against this background, the revision of Chinese Enterprise Bankruptcy Law has an important opportunity to reconsider our approach to cross-border insolvency. So the first draft of the revised law was submitted for legislative first reading in September 2025. A second draft was released in 2026. The latest draft contains a dedicated chapter entitled Cross-Border Insolvency and Judicial Cooperation, comprises seven articles from article 189 to 195. Although relatively concise, this chapter represents an important development in China's statutory framework for cross-border insolvency.

So now I would like to make a further introduction about the new mechanism for China's future cross-border resource system. Compared with the 2025 drafts, the new draft deletes some of already existing provisions, introduces several noteworthy changes with more new provisions. First, article 189 expressly confirms that Chinese insolvency procedures have effect over the debtors assets located outside China. It also authorizes Chinese insolvency administrators to seek recognition of Chinese procedures and assistance from foreign courts.

Second, article 190 expands the jurisdiction of Chinese courts of debtors domiciled abroad. Chinese courts may open insolvency procedures where the debtor has assets in China, has a closed connection with China, all where Chinese jurisdiction would better protect creditors interests.

Third article 191 removes the previous requirements to examine whether foreign law contains discriminatory provisions before foreign debtors and creditors may participate in Chinese insolvency proceedings.

Fourth, article 192 sets up two preconditions, existence of international treaties on the basis of principle of reciprocity for the Chinese courts and foreign courts to mutually request recognition of insolvency procedures and provide necessary assistance.

Fifth, article 193 retains the centre of main interest, or COMI, as the jurisdiction standard for recognition for resolved procedures.

Sixth, article 194 provides a role for coordinated distributions in concurrent service procedures. A creditor who had already received a distribution abroad could not receive further payments in

China until other creditors of the same rank have received an equivalent percentage. This is substantially consistent with the principle embodied in Article 32 of the UNCITRAL Model Law.

Finally, article 195 further confirmed that, the application of Civil Procedure law, which provides that in cross-border resource cases matters not provided for in this law shall be governed by the relevant provisions of Civil Procedure Law of the People's Republic of China concerning foreign relations relating to civil procedures. Taken together, these provisions demonstrate that the new Chinese draft incorporates several important concepts of a model cross-border insolvency law.

SG (20.55): Thank you very much, Professor Chen. Thank you both again. Now, let me move to our second round of questions, which is addressed to both of our distinguished professors, Professor Shi and Professor Chen. Uh, looking ahead, in your view, how could UNCITRAL's work further support the development of Chinese insolvency law? And conversely, how might Chinese experience contribute to UNCITRAL's future agenda? For example, the updated MLCBI guide and development of Preventive Restructuring Frameworks. Thank you.

JS (21.27): Thank you again, Professor Guo. Um, building on the first round of question, I would describe the future relationship between China and UNCITRAL as a two way process. China certainly can benefit from the accumulated experience and the Model Law. While Chinese courts, administrators, practitioners and scholars can contribute lessons from the cases they are handling. My own experience has made me appreciate both sides of that relationship.

Let me first begin with the current legislative opportunity. The second review draft of the 2006 Enterprise Bankruptcy Law contains a separate chapter, which is Chapter 14, on cross-border Insolvency. Of course, dedicated chapter is an important step forward, however, my concern is that it still lacks a clear underlying legislative philosophy. In particular, it has not made the fundamental choice to adopt the 1997 UNCITRAL Model Law as a basic framework for the Chinese regime in this regard. This is more than a question of borrowing several like particular provisions from the Model Law. I think the Model Law provides a connected architecture. Access for foreign Representatives. Recognition of foreign main and non-main proceedings. Preventional and post recognition relief. Cooperation between courts and representatives. And coordination of a concurrent or parallel proceedings.

Those components should be understood together. Otherwise, there is a risk that a longer chapter, even if it is a dedicated, dedicated chapter will still reproduce the limitations of Article 5, with recognition still approached mainly through the traditional logic of foreign, civil and commercial judgments. This issue is especially clear from practice and administrator who obtains recognition may still need the information, asset preservation measures or cooperation with other courts or representatives.

Creditors also need clarity about the consequences of recognition and the protection available to them. So legislation should make those next steps possible and predictable. It should also distinguish assistance to a foreign proceeding from the separate question of just giving effect to particular judgments or restructuring outcomes.

Therefore, I hope UNCITRAL, especially Working Group V and the Secretariat can provide further technical guidance during this reform. Comparative experience would be valuable, on COMI, the scope of relief, creditor protection and direct judicial cooperation and etc.. The Model Laws Guide to enactment and interpretation, together with experience from implementing jurisdictions, can also help Chinese law makers understand how the framework operates as a whole and where adaption may be appropriate.

China, in turn, has experience that can enrich UNCITRAL work as well. For example, the Mainland-Hong Kong mechanism provides an example of adapting international insolvency concepts within the framework of one country, two system. Major Chinese enterprises group cases also raised questions about the relationship between integrated businesses, separate corporate entities and proceedings in several jurisdictions. Those are issues that many legal systems face, even though the structures and commercial circumstances differ from, um, from them.

I would also welcome continued Chinese participation in Working Group V's work on applicable law, preventive restructuring, and the digital aspects of insolvency. Questions of asset tracing and recovery are particularly relevant to the larger corporate failures we are seeing in, in recent years. Recognition has limited practical value if a representative cannot obtain information, preserve assets and recover value for, for creditors. Preventive restructuring raises related question as well about when intervention should begin and how an early restructuring can operate across borders.

Let me conclude, 20 years ago, when we drafted Article 5, we and understood that one article was not enough. We now have both a rich body of Chinese practice and much more international experience, from UNCITRAL to, to learn from. Therefore, I hope the present revision of EBL will bring those experiences together, and that China's continuing engagement with UNCITRAL, particularly Working Group V, will support a more effective system of cross-border insolvency cooperation. Thank you for giving me this opportunity to discuss this very intriguing questions.

SG (22.56): Over to you, Professor Chen.

XC (22.28) Okay. Well, as we know, the UNCITRAL Model Law on Cross-border Insolvency establishes a general framework built around four essential elements: access, recognition, relief and cooperation. It seeks to facilitate the coordination of insolvency proceedings across jurisdictions while respecting differences in national insolvency laws. Clearly, the 2026 Chinese draft incorporates elements of this framework, but there are still several important differences that I would like to bring your attention.

In other words, it is equally important to recognize that the draft does not simply reproduce the UNCITRAL Model Law. The first concerns reciprocity. Under article 193 of the draft, recognition of a foreign insolvency proceedings remain subject to the principle of reciprocity. By contrast, the UNCITRAL Model Law does not impose this reciprocity as a general condition for recognition. This raises an important question: how should reciprocity be understood and applied in cross-border insolvency cases, particularly where there is no previous judicial precedent, established reciprocity recognition between the two jurisdictions.

The second concerns judicial discretion. Article 193 of the 2026 draft provides that a Chinese court may recognize a foreign insolvency proceeding if the statutory requirements are satisfied. It is very interesting that the 2025 draft uses a more mandatory formulation. The addition of the words "may" in the 2026 draft expressly introduces discretion into the recognition decision itself.

Under the Article 17 of the UNCITRAL Model Law, by comparison, qualifying for procedures should be recognized when the prescribed conditions are satisfied, subject to the applicable safeguards. This raises a further question should judicial discretion primarily concern relief granted after recognition rather than recognition decision itself.

The third difference concerns the distinction between foreign main and non-main proceedings. Article 193 of the Chinese draft explicitly provides for recognition of proceedings commenced in

the debtors COMI jurisdiction. However, it does not establish a separate framework for recognition of foreign non-main proceeding commenced in a jurisdiction where the debtor has an establishment. This is particularly relevant to the multinational enterprise with operations and assets across several jurisdictions.

The fourth difference concerns the protection of domestic creditors. Article 193 requires specific priority claims within China to be fully satisfied before remaining domestic assets may be distributed, following recognition of a foreign insolvency proceeding. This prohibition reflects a legislative concern with protection of certain domestic claims. But it also raises questions about how domestic priority laws should interact with international coordination of its overseas assets.

Finally, the Chinese draft does not establish a detailed framework for provisional relief, automatic stay following recognition, direct communication between calls or coordination between concurrent procedures. These mechanisms are central features of the UNCITRAL Model Law now. Although the 2026 draft incorporates several Model Law concepts, I think it does not yet provide the same comprehensive procedural framework. In the future, it is still further needed to for more communication of ideas, understanding of mechanism or the UNCITRAL Model Law better, and established sufficient mutual trust to balance Chinese roles and International insolvency standards. Thank you, Professor Shuai Guo.

SG (32.39): Thank you very much. Before closing our discussion, I would like to extend my heartfelt thanks to both panellists for sharing their insights and expertise. This has been truly engaging, informative discussion, and I'm confident that the audience has gained valuable perspectives. And I hope the same holds true for distinguished UNCITRAL delegates today. As we conclude today's conference, I would like to add one final remark. As the leading international organization in the field of international commercial law, UNCITRAL has greatly shaped the legislative and judicial practice around the world, including China. As Chinese scholars, we very much hope to contribute more Chinese wisdom to international rulemaking in the years to come. Thank you all very much.

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