

# Legal 500

## Country Comparative Guides 2025

**China**

**Restructuring & Insolvency**

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in China.

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# China: Restructuring & Insolvency

## 1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

In China, mortgages can be established on immovable properties. Mortgages, pledges, and statutory liens can be established on movable properties.

A mortgage on immovable property is formed and effective upon registration, and an unregistered mortgage does not enjoy priority in its enforcement. A mortgage on movable property is effective against third parties upon registration, and an unregistered mortgage cannot be enforced against bona fide third parties. According to the judicial interpretation of the Supreme People's Court of China, if a movable property mortgage contract is entered into but no mortgage registration is completed, and the mortgagor becomes bankrupt, the mortgagee shall have no priority to receive payment from the mortgaged property. A pledge is effective only when the possession of the pledged property is transferred to the pledgee, failing which the pledge will not be formed. A lien is established by the operation of law and requires that the lien holder has already in lawful possession of the debtor's movable property when the debtor fails to perform the matured debt.

## 2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

In bankruptcy proceedings, security interests take priority over tax claims and employee claims within the value of the collateral, but the current Enterprise Bankruptcy Law provides an exception in its supplementary provisions, stating that employee claims arising before the date of promulgation of the law (August 27, 2006) take priority over security interests. During the reorganization, the exercise of security interests shall be suspended, except where there is a possibility of damage to the collateral or a significant reduction in its value. However, if there is evidence that the collateral is necessary for the reorganization and the administrator or the debtor-in-possession provides security or compensation corresponding to the reduction in value, the exercise of

security interests shall still be suspended. During the suspension of the exercise of security interests, if the secured party requests the resumption of the exercise of such interests, it shall file a request with the people's court, which shall review the matter. In bankruptcy liquidation and composition proceedings, the secured party may assert its right at any time to dispose of the collateral and receive priority repayment from the proceeds, except where the disposal of the collateral would reduce the value of other bankruptcy assets and thus an overall disposal is required. In bankruptcy cases involving real estate companies, the claims of consumer homebuyers and the statutory priority right for construction payments take precedence over security interests.

In addition, bankruptcy law only stipulates that security interests shall be suspended during the reorganization, but does not specify how the value of the collateral should be determined when security interests are not exercised. In judicial practice, there are significant differences in the valuation standards chosen between market value and liquidation value, and no consensus has been reached.

## 3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

In China, enterprises can be rescued through bankruptcy reorganization proceedings, bankruptcy composition proceedings, or out-of-court restructuring proceedings.

For bankruptcy reorganization proceedings, in addition to the two conditions that are the same as those for bankruptcy liquidation and composition, namely that the debtor is unable to repay its matured debts and its assets are insufficient to repay all of its debts, and that the debtor is unable to repay its matured debts and clearly lacks the ability to repay them, reorganization may also be implemented if the debtor is clearly likely to lose its ability to repay its debts. It should also be noted that in practice the court will usually also examine the debtor's

reorganization value and feasibility when reviewing a reorganization application.

Creditors' meetings should vote on the reorganization plan in classes. If any voting class fails to approve the plan, a second vote may be conducted. If all voting classes approve the reorganization plan, the plan is deemed approved, and the court will review and issue a ruling to approve it. If any voting class fails to approve the plan after two votes, the debtor or administrator may apply to the court for cram-down. The core standard for cram-down is that the repayment rate for ordinary claims in the reorganization proceedings should not be lower than the repayment rate under the liquidation assumption at the time the reorganization plan was submitted for approval. However, the Supreme People's Court emphasizes that cram-down powers should be used with caution. When cram-down is used, if creditors are divided into multiple classes, at least one voting class must approve the reorganization plan, and the repayment amount that opponents in each voting class can obtain must not be less than the amount they could obtain under bankruptcy liquidation proceedings. After the court approves the reorganization plan, the debtor will be responsible for implementing the plan, and the administrator will supervise the debtor's implementation.

China's Bankruptcy Law stipulates two management models during the reorganization period: one is for the administrator to manage the property and business affairs; the other is for the debtor (debtor-in-possession), with the approval of the people's court, to manage the property and business affairs independently under the supervision of the administrator. If the administrator manages the property and business affairs, it may appoint the debtor's management personnel to be responsible for the business affairs.

Under the model where the administrator manages the property and business affairs, the administrator plays a central role in the reorganization proceedings, while under the model where the debtor manages the property and business affairs (debtor-in-possession), the administrator acts as a supervisor and the debtor plays a central role. In the reorganization proceedings, the debtor is also required to assist the administrator in investigating and taking over the property and examining claims. The court appoints the administrator, guides and supervises the administrator, and decides on the administrator's remuneration. The approval of the reorganization plan and debtor-in-possession, confirmation of the list of claims, and termination of bankruptcy proceedings all require a court ruling. The court is not only the central arbiter of legal matters, but also frequently involved in a wide range of administrative

tasks, such as coordination with other courts and administrative agencies, in order to ensure the success of the reorganization. Creditors participating in the proceedings have the right to file claims and receive distributions based on confirmed claims, and also have the right to be informed about the reorganization proceedings. Creditors may participate in voting on matters such as the reorganization plan, decisions to continue or cease the debtor's operations, and the replacement of the administrator by attending creditors' meetings. At times, creditors may become new sources of financing during the reorganization, and at other times they may act as restructuring investors. However, in general, the extent of creditors' participation in the reorganization proceedings and their role therein remain somewhat limited.

The composition agreement will be enforced after being approved by a vote of the creditors' meeting and approved by the court, and will be binding on both the debtor and all composition creditors. Regarding out-of-court restructuring proceedings, China has not yet established a systematic set of legal rules. However, the Chinese government supports and encourages the exploration of out-of-court restructuring, and financial regulatory authorities have issued relevant documents on establishing a financial creditors' committee system and leveraging the role of such committees in out-of-court restructuring. In practice, there have been cases where large enterprises applied out-of-court restructuring proceedings, and discussions and research on out-of-court restructuring have shown signs of increasing in recent years. The prepackaged-reorganization system, which is widely studied and applied in China, is an organic combination of out-of-court restructuring proceedings and bankruptcy reorganization proceedings. In a separate out-of-court reorganization proceeding, after a debtor falls into financial difficulties, it usually initiates commercial negotiations and consultations with creditors, investors, and other interested parties on its own, and the restructuring plan is established and implemented through an out-of-court restructuring agreement signed by the debtor and the interested parties. Due to the principle of contractual privity, an out-of-court restructuring agreement only binds the parties to the agreement, so creditors have relatively greater autonomy in the proceedings, and sometimes creditors also become new sources of financing during the restructuring process.

#### 4. Can a debtor in restructuring proceedings obtain new financing and are any special

### **priorities afforded to such financing (if available)?**

Debtors can obtain new financing during bankruptcy reorganization proceedings. According to the legislation, two types of protection can be provided for new financing. On the one hand, new loans can be secured by property collateral during the reorganization. On the other hand, new loans can be treated as debts for common benefits, which takes priority over tax claims and employee claims. However, new loans that can obtain the above-mentioned protection are limited to those incurred for the debtor's continued business operations. Although they have the above-mentioned priority protection, new loans cannot take priority over claims that have been secured by the debtor's property before the new loans.

### **5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?**

The legislation of China clearly stipulates that in bankruptcy reorganization proceedings, the rights of creditors against the guarantors and other joint-and-several-liability debtors of the debtor at issue shall not be affected by the reorganization plan. In reorganization proceedings, non-debtors parties shall not be exempt from litigation, and the litigation rights of right-holders against non-debtors parties shall not be affected by the reorganization proceedings.

### **6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?**

In bankruptcy reorganization proceedings, the administrator notifies creditors to file their claims and exercises powers such as examining claims and voting on the reorganization plan through the creditors' meeting. The creditors' committee is established by a vote of the creditors' meeting, and in practice, the administrator typically proposes whether to establish a creditors' committee. The advisory fees incurred by the creditors' committee or creditors in hiring advisors on their own must be borne by them.

### **7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to**

### **open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?**

Grounds for bankruptcy exist for a debtor if the debtor is unable to repay its matured debts, is insolvent, or clearly lacks the ability to repay its debts. Chinese law does not impose an obligation on the debtor's management to initiate bankruptcy proceedings. However, pursuant to the relevant provisions of the revised Company Law of the People's Republic of China (2023 Revision), which took effect on July 1, 2024, when a company is legally dissolved and undergoes liquidation, the directors serve as the liquidation obligors. If the liquidation obligors fail to timely fulfill their liquidation obligations and cause losses to the company or creditors, they shall bear liability for compensation.

In the proceeding of company's dissolution, if the liquidation committee composed of directors finds that the company's assets are insufficient to settle its debts after the committee has cleared the company's assets, prepared the balance sheet, and compiled the property list, it shall apply to the people's court for bankruptcy liquidation in accordance with the law.

### **8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?**

Bankruptcy proceedings include bankruptcy liquidation, reorganization, and composition. In bankruptcy liquidation and composition proceedings, the administrator manages the debtor's enterprise; in reorganization proceedings, the administrator manages the enterprise as a general rule, but with the court's approval, the debtor may manage its property and business affairs under the administrator's supervision. Bankruptcy proceedings are judicial proceedings conducted under the guidance and supervision of the court; the administrator is appointed by the court, exercises their duties independently in accordance with the law, and is subject to supervision; creditors exercise their rights through the creditors' meeting or the creditors' committee (the first creditors' meeting decides whether to establish a creditors' committee); relevant persons of the debtor have a duty to cooperate; the shareholders of the debtor have the right to apply to the people's court for the reorganization of the debtor when the debtor is subject to bankruptcy liquidation



proceedings initiated by creditors. Additionally, if the draft reorganization plan involves adjustments to the interests of the shareholders, they have the right to vote on such adjustment proposals.

There is no explicit statutory time limit for bankruptcy cases. In practice, some courts set internal time limits of one, two, or three years based on the complexity of the bankruptcy case. For small, simple bankruptcy cases, courts are also exploring the use of simplified procedures to conclude cases within six months. Among these, bankruptcy cases involving "no assets, no accounting records, and missing company personnel" are required to be concluded within three months. For example, the Shanghai High People's Court requires that general bankruptcy cases be concluded within twelve months and simplified bankruptcy cases be concluded within six months. The Shenzhen Intermediate People's Court requires that cases subject to expedited proceedings be concluded within six months from the date of filing, and other bankruptcy cases be concluded within two years from the date of filing, except in cases where an extension is requested due to special circumstances such as complex and difficult case circumstances. The Beijing High People's Court requires that bankruptcy cases subject to expedited proceedings generally be concluded within six months from the date of the ruling to accept the case, and bankruptcy cases involving "no assets, no accounting records, and missing company personnel" generally be concluded within three months from the date of the ruling to accept the case. If there are special circumstances preventing the case from being concluded within the specified time limit, an extension of the trial period may be applied for once. The Intermediate People's Court of Hanjiang City stipulates that general bankruptcy cases shall in principle be concluded within two years, with appropriate extensions allowed in special circumstances, but not exceeding three years; the trial period for bankruptcy cases involving "no assets to be liquidated" shall be concluded within three months.

### **9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?**

After the court accepts a bankruptcy petition, any judicial seizures relating to the debtor's property shall be lifted, enforcement proceedings shall be suspended, and any civil litigation or arbitration that has commenced but not

yet been concluded shall be suspended and resumed after the administrator takes control of the debtor's property. Bankruptcy proceedings commenced under the Bankruptcy Law of China have effect on the debtor's property outside China, so the suspension of enforcement proceedings should have extraterritorial effect, but it is necessary to obtain recognition from foreign courts.

### **10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?**

Creditors other than employees participate in the bankruptcy proceedings by filing claims with the court-appointed administrator. Employee claims do not need to be filed and are investigated by the administrator. According to the provisions of the China's Bankruptcy Law, the creditors' meeting shall also include trade union representatives who shall express their opinions on relevant matters. The relevant personnel of the debtor, namely the debtor's legal representative and the debtor's financial managers and other operational managers (upon court decision), should assume obligations of cooperation and assistance, information provision, and ancillary obligations in the bankruptcy proceedings. Among these, the obligations of cooperation and assistance undertaken by the debtor's relevant personnel refer to (1) the proper safekeeping of property, seals, ledgers, documents, and other materials under their possession and management, and (2) compliance with the requirements of the people's court and the administrator and truthfully answering inquiries. The obligation to provide information refers to attending creditors' meetings and truthfully answering creditors' inquiries. The ancillary obligations refer to not leaving the place of residence without the permission of the people's court, and not assuming the position of director, supervisor, or senior officers of another enterprise. In China's bankruptcy reorganization proceedings, creditors' meetings are divided into secured creditor class, employee creditor class, tax creditor class, and unsecured creditor class based on the type of claim, to vote on the draft reorganization plan. The court may, when necessary, decide to establish a small creditor class within the unsecured creditor class to vote on the draft reorganization plan. If more than half of the creditors in the same voting class attending the meeting agree to the draft reorganization plan, and the amount of claims they represent accounts for two-thirds or more of the total claims in that class, the draft reorganization plan will be deemed approved by that class. If the draft reorganization plan involves adjustments to the rights of

shareholders, a shareholder class should also be established to vote on such matters. When all voting classes approve the draft reorganization plan, the reorganization plan will be deemed approved.

**11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?**

Bankruptcy estates are distributed in the following order after paying bankruptcy expenses and debts for common benefits: (1) employee claims, (2) social security claims and taxes, and (3) ordinary claims. Penalties for tax arrears incurred before the bankruptcy case is accepted are classified as general claims, while penalties incurred thereafter are not considered bankruptcy claims. Secured creditors have the right to priority repayment for specific assets. In terms of subordinate claims, according to the judicial guidelines of the Supreme People's Court of China, punitive claims such as civil punitive damages, administrative fines, and criminal fines, as well as claims arising from the improper use of related party relationships between affiliated entities, are subordinate to other general claims in terms of repayment.

**12. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?**

The administrator has the right to request the people's court to revoke any of the following acts committed by the debtor: (1) gratuitous transfer of property, transactions at obviously unreasonable prices, provision of property collateral for unsecured debts, early repayment of debts not yet due, or waiver of claims within one year prior to the acceptance of the bankruptcy petition, and (2) repayment of individual claims within six months prior to the acceptance of the bankruptcy petition.

According to the The Bankruptcy Law of China, The following acts concerning the debtor's property are void: (i) Hiding or transferring property to evade debts; (ii) Creating fictitious debts or acknowledging untrue debts. The right to avoid the above acts is exercised by the administrator, who files an application with the court that

accepted the bankruptcy petition, naming the debtor as the defendant and the beneficiary as the third party. The Bankruptcy Law of China does not explicitly stipulate the statute of limitations for bankruptcy avoidance. If an avoidance right is successfully exercised, the debtor's act shall be deemed void ab initio upon the avoidance. The interests of third parties shall be restored to the state prior to the debtor's act being avoided.

**13. How existing contracts are treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?**

Pursuant to the provisions of the Enterprise Bankruptcy Law, after the people's court accepts a bankruptcy petition, the administrator has the power to decide whether to terminate or continue to perform contracts concluded prior to the acceptance of the bankruptcy petition but not yet fully performed by both the debtor and the counterparty, and shall notify the counterparty accordingly. If the administrator fails to notify the counterparty of its decision within two months from the date of acceptance of the bankruptcy petition, or fails to respond within thirty days from the date of receipt of the counterparty's notice, the contract shall be deemed terminated. If the administrator decides to continue performing the contract, the counterparty shall perform its obligations, provided, however, that the counterparty has the right to request the administrator to provide security. If the administrator fails to provide security, the contract shall be deemed terminated.

Accordingly, if the contract continues to be performed, the original terms of the contract, including contract termination, retention of title, and mutual offset of debts, shall remain valid, and the parties to the contract shall continue to perform their obligations under the contract. Other parties shall have no direct right to terminate the contract.

**14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are**

### pre-packaged sales possible?

According to the relevant provisions of the Enterprise Bankruptcy Law, in bankruptcy proceedings, the sale of property shall be conducted through auction, but the creditors' meeting may pass a resolution to dispose of assets by means other than auction. In China, the auction of bankruptcy estate is generally conducted through online auction, with "open bidding" as its basic principle and rule. In general, creditors are not allowed to bid with their claims.

In bankruptcy auctions, the purchaser of the property acquires only the property itself, excluding any liabilities or the debtor's equity interests. Therefore, in general, such a property acquisition transaction does not give rise to separate obligations arising from sources other than the property itself. In judicial practice, to ensure the continuity of operations and the stability of employee employment, the overall disposal of bankruptcy estate may require the acquirer to assume additional obligations such as employee employment. For assets subject to security measures, such measures may be released by discharging the debt (including through auction proceeds, in accordance with a reorganization plan, or under a composition agreement) or by providing security acceptable to the creditors. Otherwise, the acquirer generally has no right to release the security without the creditors' consent.

Furthermore, in Chinese judicial practice, there is no such thing as pre-packaged sales as found in US or UK bankruptcy law practice.

### 15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

Directors, supervisors, and senior officers generally have a duty of loyalty and diligence when managing distressed enterprises, specifically including:

1. Not using their authority to obtain abnormal income from the enterprise or encroach on the enterprise's property;
2. Not engaging in void or acts as defined in the Enterprise Bankruptcy Law, including:
  1. Void acts: concealing or transferring property to

evade debt, fabricating debt, or acknowledging false debt.

2. Revocable acts: (a) gratuitous transfer of the debtor's property, transactions at obviously unreasonable prices, providing property collateral for unsecured debts, prepaying debts before they become due, or waiving claims, all of which occurred within one year prior to the people's court accepting the bankruptcy petition; or (b) repaying any individual claims within six months prior to the people's court accepting the bankruptcy petition, if the debtor is unable to repay matured debts, and its assets are insufficient to repay all debts or it clearly lacks the ability to repay debts.
3. Not assisting shareholders in withdrawing capital contributions:
4. Not taking any actions that result in the debtor's financial status becoming unclear or in the loss of the debtor's main assets, account books, important documents, etc.

In the aforementioned circumstances, directors, supervisors, and senior officers shall bear liability for compensation. In addition, if the directors, supervisors, or senior officers of an enterprise violate their duties of loyalty and diligence, resulting in the bankruptcy of the enterprise, in addition to bearing liability for compensation, they shall not serve as directors, supervisors, or senior officers of any enterprise for three years from the date of termination of the bankruptcy proceedings. Currently, there is no liability insurance for the aforementioned responsible persons in practice.

### 16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

In the event of enterprise bankruptcy, directors or other shareholders may be held legally liable if they breach their fiduciary duty of loyalty and diligence to the enterprise, and such breach is causally related to the enterprise's bankruptcy. Otherwise, their business operations will not be subject to liability. Therefore, if directors or other shareholders are liable, such liability will not be exempted due to the initiation of bankruptcy liquidation or reorganization proceedings.

For the circumstances under which directors may be held liable, please see details in Question 15 above.

**17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?**

Currently, China has not adopted the Model Law on Cross-Border Insolvency. China recognizes foreign insolvency proceedings primarily based on the principle of reciprocity. Positive conditions include that (1) the judgment or ruling must be a final and binding decision issued by a foreign court; and (2) it must involve property located within China that requires enforcement by Chinese courts. Negative conditions include that (1) it must not violate the fundamental principles of Chinese law; (2) it must not harm China's national sovereignty, security, or public interest; and (3) it must not harm the legitimate rights and interests of Chinese creditors. As cross-border bankruptcy practices continue to develop, China has "gradually adopted an increasingly open judicial attitude toward interpreting the principle of reciprocity, evolving from factual reciprocity to legal reciprocity to presumed reciprocity." In recent years, China has recognized bankruptcy proceedings from Germany, Japan, the British Virgin Islands, and other foreign jurisdictions.

It is worth noting that in May 2021, the Supreme People's Court of China issued the Opinions on Carrying Out the Pilot Work for Recognition and Assistance in Bankruptcy Proceedings of Hong Kong Special Administrative Region, which specifically stipulates the recognition of Hong Kong Special Administrative Region bankruptcy proceedings in mainland China. The procedures and standards stipulated in the pilot opinions mainly include:

1. Bankruptcy proceedings are limited to collective insolvency proceedings, excluding individual's bankruptcy proceedings;
2. The centre of main interests of the debtor shall have been in the Hong Kong Special Administrative Region continuously for at least 6 months;
3. The debtor's principal assets in the Mainland are in a pilot area (Shanghai, Xiamen, Shenzhen);
4. No fraud, violation of the basic principles of the law of the Mainland or offending of public order or good morals exists.

5. If the above conditions (1) to (4) are met, the Hong Kong liquidator may submit an application to the courts in Shanghai, Xiamen, or Shenzhen. After announcing the application and conducting a procedure for interested parties to raise objections, the Mainland court may rule to recognize the Hong Kong liquidator's status, allow the Hong Kong liquidator to perform duties, and provide relevant relief measures (such as suspension of enforcement proceedings).

**18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.**

N/A

**19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?**

No. According to the relevant provisions of the Civil Code on corporate legal persons, corporate legal persons include legal persons that meet the capital requirements specified by China, have articles of association, organizational structures, and premises, are capable of independently assuming civil liability, and have been approved and registered by the competent authorities of China, as well as the Sino-foreign joint ventures, Sino-foreign cooperative ventures, and wholly foreign-owned enterprises established within the territory of the People's Republic of China that meet the conditions for legal person status, and have been approved and registered by the administrative authorities for industry and commerce of China in accordance with the law, and have obtained Chinese legal person status. Therefore, corporate legal persons refer to Chinese legal persons.

The Enterprise Bankruptcy Law of China applies to corporate legal persons. In the absence of special provisions in the Bankruptcy Law of China, the term "corporate legal person" here also refers to a Chinese legal person.

**20. How are groups of companies treated on the**



**restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?**

When hearing enterprise bankruptcy cases, the people's courts should respect the independence of corporate legal personality and adhere to the principle of independently assessing the causes of bankruptcy for affiliated corporate entities and applying separate bankruptcy procedures. However, when there is a high degree of confusion between the legal personalities of affiliated corporate entities, the cost of distinguishing the assets of each affiliated corporate entity is too high, or such distinction would severely impair the fair repayment interests of creditors, the people's courts may exceptionally apply the substantive consolidation of affiliated corporate entities for bankruptcy proceedings. When multiple affiliated corporate entities all have grounds for bankruptcy but do not meet the conditions for substantive consolidation, the people's court may, upon the application of the relevant parties, coordinate the proceedings of multiple bankruptcy cases. Based on the needs of procedural coordination, the people's courts may comprehensively consider factors such as the efficiency of bankruptcy proceedings, the sequence of bankruptcy petitions, the scale of member liabilities, and the location of the core controlling entity's headquarters, and designate a single court under the jurisdiction of a common higher court to centrally handle the cases. In current judicial practice, cases involving substantive consolidation of bankruptcy or coordinated proceedings generally designate the same administrator.

**21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?**

Currently, China has not adopted the Model Law on Cross-Border Insolvency. However, with the advancement of economic globalization, particularly in the context of China's in-depth implementation of the Belt and Road Initiative, it is believed that China will draw upon the Model Law on Cross-Border Insolvency while incorporating its own judicial practices to strike a delicate balance between strengthening international cooperation in cross-border insolvency and addressing the practical interests of its domestic judicial system.

**22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?**

It has been 19 years since the current Enterprise Bankruptcy Law of the People's Republic of China was promulgated in 2006. China's economy is steadily moving towards a new stage of high-quality development and building a high-level socialist market economy system, which places higher demands on the accuracy of market resource allocation and the optimization of operational efficiency. The current Enterprise Bankruptcy Law of the People's Republic of China has issues such as being mismatched with the actual development of enterprises and the handling of personal debts. The revision of the Enterprise Bankruptcy Law has been included in the National People's Congress Standing Committee's 2025 legislative work plan. The Bankruptcy Law will be revised and improved in the direction of "improving the enterprise bankruptcy mechanism and exploring the establishment of a personal bankruptcy system".

**23. Is your jurisdiction debtor or creditor friendly and was it always the case?**

The legislative purpose of China's Bankruptcy Law has always been to fairly settle debts and claims, protect the legitimate rights and interests of creditors and debtors, and maintain the order of the socialist market economy. Although the Bankruptcy Law does not explicitly state the principle of maximizing creditors' interests, it reflects a greater inclination toward protecting creditors' interests through specific provisions such as creditors' meetings, avoidance rights, set-off rights, and exemption rights. In bankruptcy reorganization proceedings, the establishment of a contributor voting group and its voting system reflect the bankruptcy reorganization system's focus on protecting the rights and interests of debtors and their contributors (shareholders). However, in practice, cases where debtors' applications to manage their own assets and business affairs are approved are relatively rare, making the system more creditor friendly.

**24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?**

According to the provisions of China's Bankruptcy Law,

employee claims, after secured claims, are the first to be settled, followed by social security claims and tax claims. If the government or a third party advances employee claims prior to the commencement of bankruptcy proceedings to protect employee interests, such claims may be prioritized for settlement in accordance with the order of priority for employee claims during the bankruptcy proceedings. Since the implementation of the current Enterprise Bankruptcy Law, the government or political factors are no longer the dominant or decisive factors in bankruptcy proceedings. Bankruptcy cases are adjudicated in accordance with the principles of the rule of law and marketization. The government primarily plays a positive role in bankruptcy proceedings by providing financial and policy support. Courts emphasize the role of the "government-court coordination mechanism" in adjudicating corporate bankruptcy cases. The government coordinates multiple departments and entities to work together, playing a coordinating role in property investigation, tax handling, employee rights protection, and resolving petition-related issues. Additionally, some local governments provide financial assistance for administrator fees or actively resolve employee claims of bankrupt enterprises through government's wage arrears protection mechanisms.

## 25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

In recent years, China has made significant progress in bankruptcy proceedings, with a substantial increase in the number of bankruptcy cases accepted. Through the adjudication of corporate bankruptcy cases, courts have

helped resolve overcapacity issues, clear out zombie enterprises, and establish and improve bankruptcy adjudication mechanisms, thereby significantly promoting and optimizing China's business environment. In the World Bank's Doing Business rankings, China's ranking for resolving insolvency improved from 82nd in 2013 to 51st in 2020. However, there are still some challenges in practice: (1) It is difficult to initiate reorganization proceedings, as courts conduct strict reviews of the feasibility of reorganization for bankrupt enterprises, resulting in a low application rate for reorganization proceedings. Additionally, the timing for bankrupt enterprises to enter reorganization proceedings is relatively late, and the success rate of reorganization is also low; (2) China has actively explored the pre-reorganization system in judicial practice, but the Bankruptcy Law lacks supporting regulations, and the coordination between out-of-court and in-court restructuring systems needs to be further improved; (3) Supporting administrative systems related to bankruptcy proceedings, such as tax-related matters and credit repair, need to be improved. For these issues, we would like to propose the following recommendations: (1) Relax the review of reorganization applications to allow distressed enterprises to enter reorganization proceedings earlier and more frequently to resolve their debts; (2) Clearly recognize pre-reorganization and other out-of-court restructuring procedures in the Enterprise Bankruptcy Law to ensure a smooth transition between out-of-court and in-court restructuring systems; (3) Enhance and improve the design of the "government-court coordination" mechanism to establish, through institutional arrangements, the coordinated support functions of various administrative agencies related to bankruptcy proceedings, thereby ensuring the efficient and high-quality advancement of bankruptcy procedures.

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