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## A ‘Great Leap Forward’? Or a ‘Leap in the Dark’? What Happens When the New Chinese Enterprise Insolvency Law Meets US Courts?

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### I. Introduction – a new law for a new century

China’s economic ‘Great Leap Forward’ of the late 1950s has been eclipsed by exploding, market-oriented growth over the last 25 years. That growth has, in turn, given rise to a new and potentially far more significant ‘great leap’: a new, radically transformed insolvency law.

The new ‘Enterprise Insolvency Law of the People’s Republic of China’ (EIL)<sup>2</sup> represents 12 years’ effort to address growing concerns for the long-term vitality of China’s economy – including a voracious demand for foreign capital inflows, economic and political commitments stemming from China’s accession to the World Trade Organisation, and lenders nervous over a previously ‘broken’ method of resolving business insolvencies and protecting creditors’ rights.<sup>3</sup>

China’s expanding economy has steadily integrated with the sophisticated market economies and capital markets of North America and Europe. Today, Chinese, European, and American firms are frequently bound together in a complex web of business assets, contractual relationships, and obligations spanning multiple jurisdictions. The prospective failure of Chinese firms is therefore a matter of international concern.

When Chinese firms fail, what effect will China’s new EIL have upon the cross-border administration of assets, claims, and litigation likely to arise out of PRC insolvency proceedings? This article is a brief, preliminary effort to address that question, with particular emphasis on the EIL’s potential effect in the US legal system.

### A. Overview of the new PRC Enterprise Insolvency Law

The EIL represents – literally – a new chapter in Chinese legislative reform. Viewed as a process, the new law provides two ‘tracks’, where – once an application is filed and accepted by the People’s Court – the debtor’s case proceeds through (i) liquidation (the ‘default’ track); or (ii) reorganisation or composition (see Fig. 1).

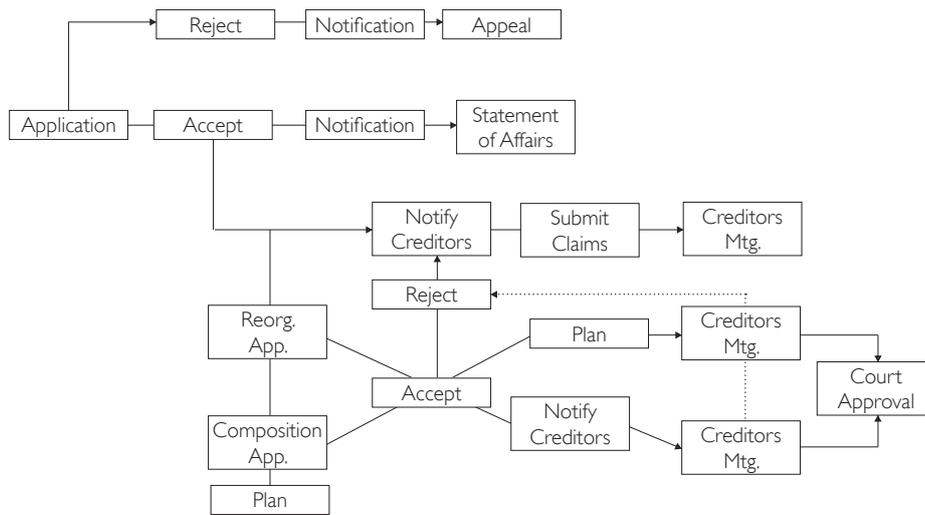
The new EIL’s substantive provisions suggest a number of preliminary observations:

- True to its policy objectives, the new EIL appears to emulate insolvency schemes already in place in jurisdictions with sophisticated credit economies (viz., England and the US).
- The new EIL appears designed to attract foreign investment – particularly secured credit.
- Under the perceived operation of the new EIL, Creditors’ Meeting attendees appear to hold significant influence.
- Officers, Directors, and managers of debtor firms face potentially significant strictures and liabilities.
- All parties have – at least theoretically – greater access to insolvency proceedings than under prior law, which required specific government permission and was administered provincially.
- The new EIL appears to contemplate and facilitate US-style ‘corporate rescue’ procedures.

### Notes

- 1 The author wishes to thank the Hon. Samuel L. Bufford, United States Bankruptcy Court (Central District of California), a member of the International Insolvency Institute, and Richard Yang, Esq., also a member of the International Insolvency Institute and partner in the Law Offices of Jiahe, Beijing, People’s Republic of China, for their very helpful comments and written materials in the preparation of this article. The views and opinions expressed here (and any errors or omissions) are the author’s own.
- 2 All quotations from the EIL are derived from an English-language translation provided by the Bankruptcy Law and Restructuring Research Center of China University of Politics and Law and supervised by Professor Li Shuguang, September 2006. <[www.insol.org/pdf/EnterpriseInsolvChina.doc](http://www.insol.org/pdf/EnterpriseInsolvChina.doc)> (1 October 2007).
- 3 For a brief summary of prior law, see L. Xinzhen, ‘Outdated Bankruptcy Law Upgraded,’ *Beijing Review* [30 April 2004] <[www.bjreview.cn/EN/200430/Business-200430\(B\).htm](http://www.bjreview.cn/EN/200430/Business-200430(B).htm)> (‘Upgrade’) (1 October 2007). See also S. Li, ‘The Significance Brought by the Drafting of the New Bankruptcy Law to China’s Credit Culture and Credit Institution from a Perspective of Bankruptcy Law’ presented at Forum on Asian Insolvency Reform, New Delhi, India, 3-5 November 2004, at pp. 2-3. <[www.oecd.org/dataoecd/1/45/33930345.pdf](http://www.oecd.org/dataoecd/1/45/33930345.pdf)> (1 October 2007).

Fig. 1: A 'Process-Based Overview of the New EIL



- Where 'corporate rescue' is not an option, the new EIL's liquidation procedures suggest the possibility of more bankruptcy asset sales – a staple of modern US insolvency proceedings.
- The comprehensive scope and novelty of the new law will raise, in any anticipated case, practical questions over the perceived technical competence and predictability of both (i) the presiding People's Court; and (ii) the designated administrator.

**B. Gauging the new PRC Enterprise Insolvency Law's potential impact on insolvency proceedings in the US**

China is home to an estimated 7 million or more private firms.<sup>4</sup> When those firms face failure, the growing nexus between Chinese firms and their European and American counterparts should raise important legal questions for US practitioners:

- Could an adverse ruling against my client in PRC insolvency proceedings be enforced in US Courts?
- Could US-based litigation involving my client be dismissed in favor of claims or other litigation in a PRC proceeding?
- Could a PRC administrator obtain authorisation to administer assets in the US under the new EIL?

The answers to these questions depend, in part, on the application to China's new EIL of US principles of

'comity'. The balance of this article is devoted to (i) a discussion of US-based 'comity' principles; and (ii) their potential application to the operative provisions of the new EIL.

**II. Back to the future? The doctrine of comity as developed in US case law**

**A. Historical definition**

Globalisation is not new: over a century ago, emerging markets, comparatively free immigration and information and capital flows gave rise to what has been termed the 'first age of globalization.'<sup>5</sup> US courts of the period sought to facilitate international trade by preserving, where possible, the sanctity of rulings rendered in foreign tribunals as those rulings pertained to US citizens involved in international transactions. This was achieved through the case law doctrine of 'comity'.

As expressed by the US Supreme Court, 'comity' is that 'recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation'.<sup>6</sup> Applied case-by-case over ensuing decades, comity – briefly stated – is a judicial 'balancing act' involving 'due regard both to international duty and convenience and to the rights of persons protected by its own laws'.<sup>7</sup> Modern US courts have recognised the '[a]cts of foreign governments purporting to have

**Notes**

4 Upgrade (noting that as of 2004, '[i]n China, there are ... over 7 million non-state-owned enterprises.').  
 5 D. Yergin and J. Stanislaw, *Commanding Heights: The Battle for the World Economy*, (Free Press, NY 2002, (Rev'd. Ed.)) 384-86, 388, 401.  
 6 *Hilton v Guyot*, 159 U.S. 113, 163-64 (1895).  
 7 *Somportex, Ltd. v Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. Pa. 1971), *cert. denied*, 405 U.S. 1017, 31 L. Ed. 2d 479, 92 S. Ct. 1294(1972); *see also Hilton v Guyot*, 159 U.S. at 164.

extraterritorial effect' when those acts are consistent with US law and policy.<sup>8</sup>

### B. Three types of modern 'comity' recognised by US courts

Such judicial recognition is commonly extended through:

- 'Prescriptive Comity': '[T]he respect sovereign nations afford each other by limiting the reach of their laws.'<sup>9</sup>
- 'Judicial Comity': The principle whereby courts 'decline to exercise jurisdiction over matters appropriately adjudged elsewhere.'<sup>10</sup>
- 'Substantive Comity': Requested recognition and/or enforcement, in US courts, of non-US orders or proceedings, or of non-US law.

This article will focus primarily on anticipated requests, by Chinese administrators, for (i) abstention, by US courts, over disputes or case administration matters (viz., 'judicial' comity); and/or (ii) recognition and/or enforcement, by US courts, of substantive rulings (viz., 'substantive' comity).

### C. The modern commercial importance of a nineteenth-century case law doctrine

As in the late nineteenth century, the doctrine of comity today serves a basic requirement of international business: it ensures, wherever possible, predictability – through minimised legal risk – regarding the rights and obligations of parties to international transactions. Consequently, 'comity is particularly appropriate where ... the court is confronted with foreign bankruptcy proceedings',<sup>11</sup> and economic risk threatens an enterprise. The legislative reform evinced by China's new EIL warrants a reconsideration of how, if at all, comity may be applied vis-à-vis transactions involving one of the world's largest twenty-first century market economies.

#### I. The application of comity in cross-border insolvency proceedings

In cross-border litigation, comity often serves to address litigation tactics. The doctrine has been applied offensively (i.e., to recognise or enforce in the US courts a ruling obtained in another jurisdiction);<sup>12</sup> as well as defensively (i.e., to preserve the continuity of dispute adjudication in another jurisdiction, as opposed to in a US court).<sup>13</sup> In cross-border insolvency proceedings, the doctrine has historically been applied in a number of procedural contexts, including:

- Recognition of a foreign discharge;<sup>14</sup>
- Recognition of determinations in foreign proceedings;<sup>15</sup>

### Notes

- 8 *Allied Bank Intern. v Banco Credito Agricola de Cartago*, 757 F.2d 516, 522 (2d Cir. 1985).
- 9 *Hartford Fire Ins. v California*, 125 L. Ed. 2d 612, 113 S. Ct. 2891, 2920 (1993) (Scalia, J., dissenting).
- 10 *Hartford Fire Ins.*, 113 S. Ct. at 2920. See also *In re Spanish Cay Co., Ltd.*, 161 B.R. 715, 725 (Bankr. S.D. Fla. 1993) (citing *Cunard Steamship Co., Ltd. v Salen Reefer Services AB*, 773 F.2d 452, 458 (2d Cir.1985) ('American courts have consistently recognized the interest of foreign courts in liquidating or winding up the affairs of their own domestic business entities')).
- 11 *Allstate Life Insurance Co. v Linter Group Limited*, 994 F.2d 996, 999 (2d Cir. 1993).
- 12 *Se, e.g., Somportex, Ltd. v Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. Pa. 1971), cert. denied, 405 U.S. 1017, 31 L. Ed. 2d 479, 92 S. Ct. 1294(1972) (English distributor obtained default judgment against American manufacturer in English court; secondary action to enforce judgment upheld by US District Court and Third Circuit Court of Appeals on grounds of comity).
- 13 *Allstate Life Insurance Co. v Linter Group Limited*, 994 F.2d 996, 999 (2d Cir. 1993) (American litigants with claims pending in Australia brought American securities law claims in US District Court against Australian company, its corporate parent and subsidiaries, their respective liquidators in Australian receivership proceedings, and certain Australian banks for company's public offering of 'Senior Subordinated Debentures'; US District Court for the Southern District of New York granted defendants' motions to dismiss on grounds of comity and *forum non conveniens*).
- 14 *Canada S. R. Co. v Gebhard*, 109 U.S. 527, 537 27 L. Ed. 1020, 3 S. Ct. 363(1883) (upholding binding effect of Canadian corporation's discharge); *Cornfeld v Investors Overseas Services, Ltd.*, 471 F. Supp. 1255 (S.D.N.Y. 1979), *aff'd without op.*, 614 F.2d 1286 (2d Cir. N.Y. 1979) (same).
- 15 *Fleeger v Clarkson Co.*, 86 ER.D. 388, 393 (N.D. Tex. 1980) (on motions to dismiss a shareholder derivative suit alleging that a settlement agreement affecting a corporation's right in Texas oil and gas leases was the product of unfair dealing by a Canadian receiver, dismissal was appropriate on comity grounds because '[p]laintiff voluntarily purchased shares in a Canadian corporation which put him on notice that his rights as a shareholder would be construed according to Canadian law'); *In re Banco de Descuento*, 78 B.R. 337, 339, 16 Bankr. Ct. Dec. (CRR) 459 (Bankr. S.D. Fla. 1987) (comity required granting a liquidator's petition and administration of the estate in Ecuador because the US entity 'voluntarily determined to provide financing for Ecuadorian transactions, guaranteed by a bank organized and operating under Ecuadorian law', but further requiring maintenance in the United States of the assets and property at issue pending an assessment of 'whether the General Law of Banks of the Republic of Ecuador, as applied, provides fair treatment to United States creditors') (emphasis in original).

- Suspension or dismissal of an insolvency proceeding that has served its purpose;<sup>16</sup>
- Respecting a non-US judgment;<sup>17</sup>
- Staying or dismissing a lawsuit in favor of an insolvency proceeding in another country;<sup>18</sup> and
- Harmonising case administration in the US with case administration in another country.<sup>19</sup>

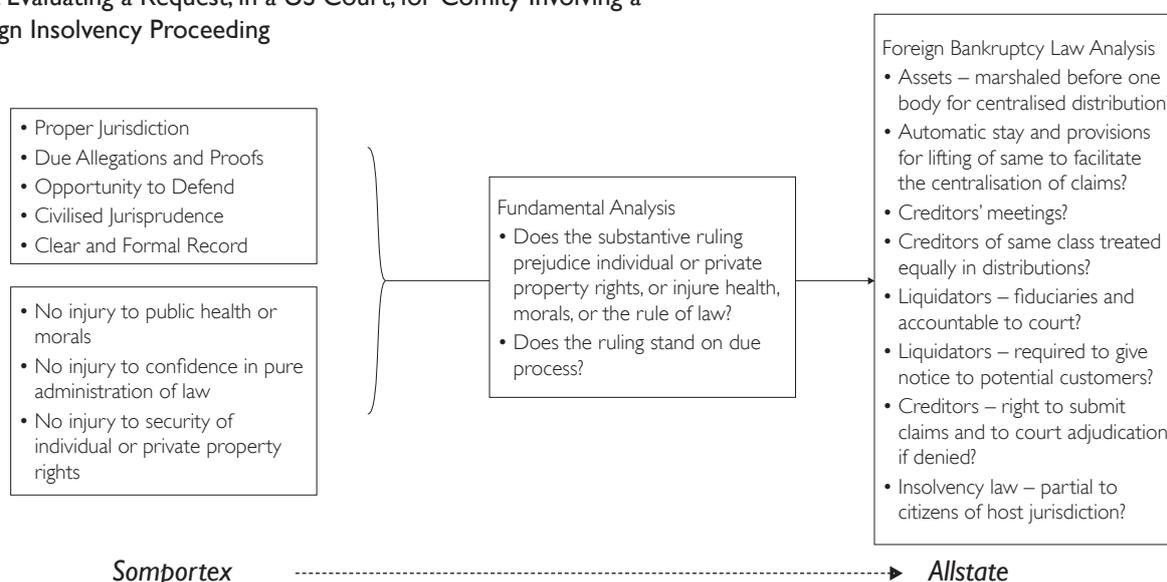
**D. When are US courts likely to grant a request for comity?**

The analysis suggested by the decisions cited above is comprised of two basic steps (see Fig. 2).

Substantively, the court must assure itself that (i) the request does not prejudice individual personal or private property rights in a manner considered antithetical to American jurisprudence; and (ii) the request satisfies basic standards of due process.<sup>20</sup>

Procedurally, the court must then determine whether the request arises within an insolvency scheme which approximates US law.<sup>21</sup>

**Fig. 2: Evaluating a Request, in a US Court, for Comity Involving a Foreign Insolvency Proceeding**



**Notes**

- 16 *In re Axona Int'l Credit & Commerce, Ltd.*, 88 B.R. 597 *aff'd*, 115 B.R. 442 (S.D.N.Y. 1990), *appeal dismissed*, 924 F.2d 31 (2d Cir. N.Y. 1991) (suspending foreign debtor's involuntary Chapter 7 case and ordering turnover of assets of estate to Hong Kong liquidators for distribution in primary Hong Kong winding-up proceeding).
- 17 *Victrix S.S. Co., S.A. v Salen Dry Cargo A.B.*, 825 F.2d 709 (2d Cir. N.Y. 1987) (deferring to rulings in debtor's Swedish bankruptcy proceeding as to enforcement of arbitration award and money judgment based on maritime claims entered against debtor in England, and further awarding attorneys' fees for wrongful attachment in the United States).
- 18 *Kenner Products Co., etc. v Societe Fonciere et Financiere Agache-Willot*, 532 F. Supp. 478 (S.D.N.Y. 1982) (deferring to French bankruptcy court in action against the debtor).
- 19 *In re Petition of Brierley*, 145 B.R. 151, 164 (Bankr. S.D.N.Y. 1992) (granting petition for ancillary case commenced in US in connection with multiple related English and American insolvency proceedings: 'Lurking in all transnational bankruptcies is the potential for chaos if the courts involved ignore the importance of comity. As anyone who has made even a brief excursion into this area of insolvency practice will report, there is little to guide practitioners or the judiciary in dealing with the unique problems posed by such bankruptcies. Yet it is critical to harmonize the proceedings in the different courts lest decrees at war with one another result. In this spirit of comity and to the essential end of coordinating the American and British cases, Judge Hoffmann and I have approved in the MCC case a protocol pursuant to which among many other things I have recognized as corporate governance of MCC the joint administrators whom he appointed and he has granted standing to the examiner with expanded powers whom I appointed').
- 20 *Somportex*, 435 F.2d at 440-41, 443.
- 21 *See Allstate*, 994 F.2d at 999 (citing *Cumard*, *supra*, 773 F.2d at 459-60; *In re Gee*, 53 B.R. 891, 903 (Bankr.S.D.N.Y.1985).

## 1. Is the relief requested 'consistent' with US law?

The key to comity is policy and procedural consistency across jurisdictions: the law *as written* must be generally consistent across jurisdictions; so also must be the law *as applied*.<sup>22</sup>

Is the new EIL sufficiently consistent with US law to support requests for comity? The law *as written* appears to emulate in many respects the form of US and English law; *as applied*, however, it may produce differing results – either because of differing 'insolvency cultures',<sup>23</sup> or because a lack of supporting regulations and other factors may render the new law's effect uncertain.<sup>24</sup>

However, some latitude for differences exists. American case law repeatedly affirms that comity does not require a 'mirror image' of US insolvency law.<sup>25</sup> Instead, comity is appropriate when the relief requested arises out of a foreign insolvency scheme that is 'close enough' to US law.

## 2. How close is 'close enough'?

Is China's new EIL 'close enough' for comity? The following decisions, culled from both 'common-law' and 'civil law' jurisdictions, illustrate the precision by which US courts measure the difference between another jurisdiction's insolvency scheme, and its application, and their own:

- *Claims adjudication. New Line Int'l Releasing, Inc. v Ivex Films, S.A.*<sup>26</sup> (US film company's District Court suit against insolvent Spanish distributor dismissed on grounds of comity, despite apparent differences

in procedures and remedies for resolution of executory contract disputes).

- *Notice to potential claimants. In re Enercons Virginia, Inc.*<sup>27</sup> (alleged lack of notice to banks not sufficient to deny comity to Italian court's *Ex Parte* order appointing trustee of Italian debtor's estate for purposes of filing claims in American case).
- *Automatic stay. Allstate*<sup>28</sup> (non-'automatic' nature of stay under Australian proceedings not sufficient to warrant denial of comity).
- *General 'common law' similarity. Lindner Fund, Inc. v Polly Peck Int'l PLC*,<sup>29</sup> ('Comity is regularly accorded to bankruptcy proceedings in sister common-law jurisdictions because there is a presumption that such proceedings are fair and comport with American notions of due process.')

Despite China's lack of a shared 'common-law' tradition, and the EIL's present lack of enabling regulations,<sup>30</sup> the law's extensive reform may bring it 'close enough', on a case-by-case basis, for deference in US courts.

## E. Chapter 15 of the US Bankruptcy Code: 'statutory comity'?

In 2005, the US Congress passed, and President Bush signed into law, significant changes to the US Bankruptcy Code – including an entirely new chapter devoted to the recognition of foreign insolvencies and the provision of 'ancillary' relief in US bankruptcy courts.<sup>31</sup> Section 1509 of that chapter requires that

## Notes

22 *In re Banco de Descuento*, 78 B.R. 337, 340 (Bankr. S.D. Fla. 1987) (Distinguishing between the General Law of Banks of the Republic of Ecuador *as written*, and the same law *as applied* to United States creditors.)

23 R. White, 'Modernization and Harmonization: China's 2006 Bankruptcy Law' (2007) 16 J. Bankr. L. & Prac. 3 Art. 5 at n. 31 ('Currently, there are three primary "bankruptcy systems" or "structures" utilized in the world today: American and British common law (about 45% of world jurisdictions, representing 35% of world population and 46% of world GDP); the Napoleonic group, derived from French law (about 25%, representing 34% of world population and 35% of world GDP); and the Roman-Germanic group (about 10%, including Russia). The remaining bankruptcy cultures in the world include: Islamic (3%); mixed systems that draw pieces of law from different groups (5%, which includes China and Japan, that have Roman-Germanic leanings); and incomplete new systems (6%, for example, Vietnam's new bankruptcy system)').

24 See, e.g., L. Meng and L. Vassiliou, 'China's New Bankruptcy Law: A Long-Awaited Compromise', (January 2007) *Current Trends in Insolvency Law*, at <www.dlapiper.com/china's\_new\_bankruptcy> ('the effectiveness of the New Bankruptcy Law remains uncertain, especially at the enforcement level') (1 October 2007).

25 See, e.g., *Allstate*, 994 F.2d at 999: ('[T]here is no requirement that Australian liquidation proceedings be identical to United States bankruptcy proceedings.');

*In re Axona Int'l Credit & Commerce, Ltd.*, 88 B.R. 597, 610 (Bankr. S.D.N.Y. 1988), *aff'd*, 115 B.R. 442 (S.D.N.Y. 1990), *appeal dismissed*, 924 F.2d 31 (2d Cir. N.Y. 1991) (examining Hong Kong insolvency law) ('Comity does not require the laws of different jurisdictions to be *identical*. Instead, the "foreign law must abide by standards of fundamental fairness.');

*In re Brierly*, 145 B.R. 151, 166 (Bankr.S.D.N.Y.1992) ('Nothing dictates that the foreign law be a carbon copy of our law....'); *Lindner Fund, Inc. v Polly Peck Int'l PLC*, 143 B.R. 807, 810 (Bankr.S.D.N.Y.1992) ('Foreign proceedings need not be identical to those under the Bankruptcy Code').

26 140 B.R. 342, 345-46 (S.D.N.Y. 1992).

27 812 F.2d 1469, 1473 (4th Cir. 1987).

28 99 F.2d at 999.

29 143 B.R. 807, 810 (S.D.N.Y. 1992).

30 Local practitioners anticipate that China's Supreme People's Court will soon publish detailed enabling regulations, thereby addressing this issue.

31 See 11 U.S.C. §§ 1501, *et seq.*

foreign representatives seeking comity in other US courts pursuant to Chapter 15 first obtain a certificate of recognition from the bankruptcy court.<sup>32</sup> Regarding requests for comity, section 1509(b)(3) provides:

‘If the [bankruptcy] court grants recognition [of a foreign proceeding], and subject to any limitations that the court may impose consistent with the policy of this chapter – ... (3) a court in the United States shall grant comity or cooperation to the foreign representative.’<sup>33</sup>

What ‘policies’ does the statute refer to?

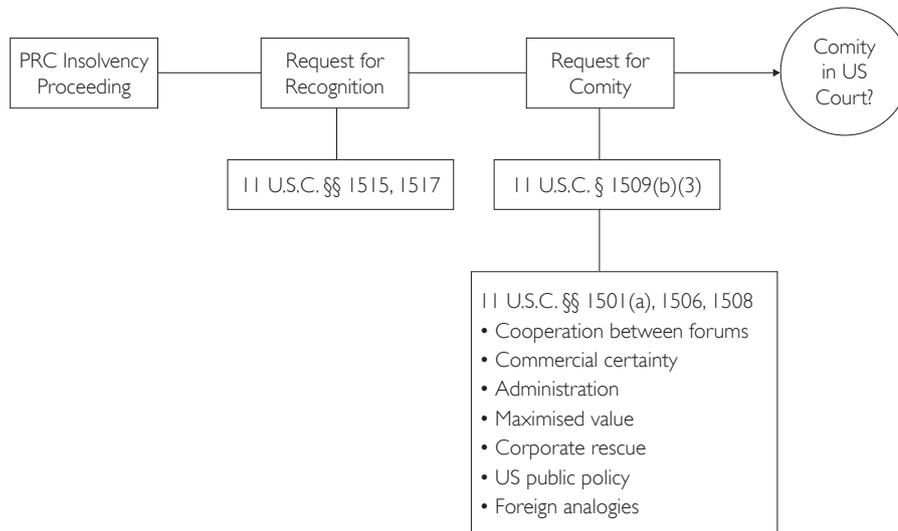
- Section 1501(a) recites that the Chapter is to foster: (i) international cooperation; (ii) commercial certainty; (iii) administration; (iv) maximised value; and (v) corporate rescue.<sup>34</sup>

- Section 1506 narrowly construes contrary ‘US public policy’.<sup>35</sup>

Thus, new US bankruptcy law appears to indicate that once recognition of a foreign proceeding has been obtained, questions of comity raised in an ancillary proceeding should be answered in the affirmative, subject to the limits of policies articulated in Chapter 15. This approach appears consistent with requests for deference made under prior law (11 U.S.C. § 304(b)), which ‘expresse[d] Congressional recognition of an American policy favoring comity for foreign bankruptcy proceedings.’<sup>36</sup> (See Fig. 3.)

Within this context of recognition and comity, the following comparative analysis of China’s EIL and the present US Bankruptcy Code is presented.

Fig. 3: Requests for Comity in US Ancillary Proceedings



**Notes**

32 11 U.S.C. § 1509(c).  
 33 11 U.S.C. § 1509(b)(3) (emphasis supplied).  
 34 See 11 U.S.C. § 1501(a). ‘The section incorporates the preamble and policy objectives of the Model Law on Cross-Border Insolvency (‘Model Law’) promulgated by the United Nations Commission on International Trade Law (‘UNCITRAL’) at its Thirtieth Session on May 12-30, 1997.’ H.R. REP. 109-31(I), 105-06 (April 14, 2005).  
 35 See 11 U.S.C. § 1506. ‘This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word “manifestly” in international usage restricts the public policy exception to the most fundamental policies of the United States.’ H.R. REP. 109-31(I), 109 (April 14, 2005).  
 36 See *In re Manning*, 236 B.R. 14 (Bankr. 9th Cir., 1999) (quoting *Remington Rand Corporation-Delaware v Business Sys. Inc.*, 830 F.2d 1260, 1271 (3d Cir.1987)).

### III. Points of intersection between the US Bankruptcy Code and the new PRC Enterprise Insolvency Law – a comparative analysis

The following summary compares the new EIL's operative provisions, and that of US bankruptcy law:

#### A. Case commencement

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Application	Commenced by 'application' – submitted to People's Court either by creditors (involuntary case) <sup>37</sup> or by debtor (voluntary case). <sup>38</sup>	Resembles US involuntary proceedings <sup>39</sup> rather than more typical US voluntary proceedings. Lack of guidance regarding what constitutes 'acceptable' application may trigger significant litigation at outset of case.	Shareholders retaining 10% or more of corporation's registered shares may apply for reorganisation, <sup>40</sup> as may debtors and creditors; only debtor may apply for composition. <sup>41</sup> Different implementation procedures are applicable to financial institutions. <sup>42</sup>
Insolvency Test	Potentially confusing test for insolvency as prerequisite for filing. Article 2 suggests both 'balance sheet' and 'liquidity' insolvency tests, <sup>43</sup> though this not completely certain. <sup>44</sup>	No 'solvency' test requirement for voluntary case; only 'modified' insolvency requirement for commencement of involuntary cases. <sup>45</sup>	Debtors may need to demonstrate clear insolvency on both bases prior to acceptance – may be too late to reorganise. Creditors seeking to commence 'involuntary' reorganisation have less stringent standard. <sup>46</sup>
'Gap Period'	7-day window from receipt of notice of creditor's commencement of case in which to contest application. <sup>47</sup>  Subsequent to acceptance of petition, People's Court has 15 days in which to notify creditors – only debtor or qualifying equity holder may submit application for reorganisation during that time.	By US standards, comparatively narrow window in which to seek reorganisation.	This period tactically critical: debtor may (i) contest filing; (ii) consent to liquidation; (iii) seek reorganisation; <sup>48</sup> or (iv) request composition. <sup>49</sup> Given potential size and complexity of some enterprises, 'gap period' may not be nearly sufficient time to evaluate viability of reorganised business.

#### Notes

37 EIL, Art. 7.

38 EIL, Art. 70.

39 11 U.S.C. § 303.

40 EIL, Art. 70.

41 EIL, Art. 95.

42 Where the prospective debtor is a financial institution or an insurance company, the relevant authority of the State Council may apply for their restructuring or bankruptcy – either under the EIL or under other, relevant laws. See Art. 134. However, the same article provides further that '[t]he insolvency of financial institutions shall be dealt with pursuant to the implementation measures formulated by the State Council in conformity with this law and provisions of relevant laws.' According to local practitioners, what this means, in practical effect, is that the State Council will designate appropriate implementation measures – and, that, in the absence of such implementation measures, there will be no insolvency proceedings under the EIL involving major financial institutions.

43 EIL, Art. 2 ('unable to pay off debts falling due and its asset fails to meet the debts or it obviously lacks of liquidity').

44 Some practitioners have read this test in the conjunctive: viz. (a) 'unable to pay off debts falling due and (b) its asset fails to meet the debts or it obviously lacks of liquidity'. Others have read it in the disjunctive: (a) 'unable to pay off debts falling due and its asset fails to meet the debts or (b) it obviously lacks of liquidity'. Under any reading, it is unclear under the EIL what constitutes an 'obvious lack of liquidity'.

45 See 11 U.S.C. § 303(h)(1) (authorising commencement of a contested involuntary case only if 'the debtor is generally not paying such debtor's debts as such debts become due').

46 EIL, Art. 7 (authorising application by creditors '[w]here the debtor is unable to pay off debts falling due'). The EIL appears to provide no guidance regarding the required magnitude of such debts.

47 EIL, Art. 10. The same article further provides the People's Court 10 days thereafter in which to rule on a contested petition.

48 EIL, Art. 70.

49 EIL, Art. 95.

<i>Topic</i>	<i>Summary of EIL Provisions</i>	<i>US Law Comparison</i>	<i>Notes</i>
Acceptance and Appointment of Administrator	Administrator appointed upon acceptance of application. <sup>50</sup>	Trustee appointed automatically upon commencement of Chapter 7 case; appointment by motion in Chapter 11 case.	Administrator: Agent of creditors? <sup>51</sup> Of People's Court? <sup>52</sup> Of debtor? <sup>53</sup> Nature of Administrator's role appears dependent, at least in part, on nature of proceeding.

## *B. Infrastructure and value preservation*

### *I. Administration and procedure*

<i>Topic</i>	<i>Summary of EIL Provisions</i>	<i>US Law Comparison</i>	<i>Notes</i>
Types of Proceedings	Reorganisation, liquidation, and composition. <sup>54</sup>	US law recognises only reorganisation and liquidation.	Composition procedure under EIL may facilitate 'small business' reorganisation or 'pre-packaged' reorganisations in which all creditors consent.
Venue Selection	Authorised only where debtor 'domiciled' <sup>55</sup>	US law authorises venue where debtor's property, place of business, or corporate residence found. <sup>56</sup>	
Responsibility and Liabilities of Management and Administrator	Management appears personally liable for safeguarding rights and interests of employees from time of application until acceptance of case. <sup>57</sup> Further personal liability for directors', supervisors', senior managers' violation of fiduciary duties. <sup>58</sup> Further penalties accrue for (i) failure to attend creditors' meeting, <sup>59</sup> (ii) failure to provide documentation, <sup>60</sup> and (iii) acts leading to avoidance actions. <sup>61</sup> Criminal liability attaches for specified acts. <sup>62</sup> Once appointed, administrator also appears to assume general fiduciary role. <sup>63</sup>		
Other Strictures On Debtor's Management	Debtor's 'relevant personnel' cannot leave jurisdiction without prior People's Court approval. <sup>64</sup> Penalties attach if this provision violated. <sup>65</sup>	Management's burdens are considerably more onerous under EIL than under US Code. <sup>66</sup>	

#### **Notes**

50 EIL, Art. 13.

51 EIL, Art. 69.

52 EIL, Art. 26.

53 EIL, Art. 73.

54 EIL, Art. 7.

55 EIL, Art. 3.

56 11 U.S.C. 109(a).

57 EIL Art. 6.

58 EIL, Art. 125.

59 EIL, Art. 126.

60 EIL, Art. 127.

61 EIL, Art. 128.

62 EIL, Art. 129.

63 EIL, Art. 130.

64 EIL, Art. 15.

65 EIL, Art. 129

66 EIL, Art. 15, 73, 74.

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Automatic Stay Provisions	Prior to acceptance of case, no stay. Once accepted, debtor entitled to stay of execution, attachment, etc. <sup>67</sup> Debtor also enjoys brief stay of existing litigation, <sup>68</sup> but <i>only</i> until Administrator assumes control. <sup>69</sup> Thereafter, creditors with pending actions can liquidate their claims, but cannot collect once their claims are reduced to judgment. <sup>70</sup> Similar restrictions limit rights of secured creditors <sup>71</sup> and capital contributors <sup>72</sup> during reorganisation proceeding. <sup>73</sup> Once application accepted, all new civil cases involving debtor must be brought before People's Court presiding over debtor's case. <sup>74</sup>	EIL provides some automatic relief, but limited both in scope and in duration by comparison to 'automatic stay' provisions of US law.	
Creditors' Meetings	In liquidation, first meeting held between 1 and 3 months from publication of ruling of acceptance; <sup>75</sup> in reorganisation, first meeting held within 30 days of submission of reorganisation (i.e., 'rectification') draft plan (itself due 6 to 9 months after acceptance of reorganisation application). <sup>76</sup>  Detailed provisions describe formation of creditors' meetings and committees, and provide powers such as ability to weigh in on management decisions affecting debtor's business, and power to review and approve administrator's fees. <sup>77</sup>  Statutory framework of EIL suggests that <i>all</i> creditors may participate – including secured creditors.	Creditors' role and powers appear far broader than that of creditors' committees formed under US law. <sup>78</sup> Joint participation of secured and unsecured creditors in creditors' meetings marked difference from common US practices. <sup>79</sup>	EIL appears to provide for no oversight of conduct of creditors' meetings or to formation of Committees. <sup>80</sup>  EIL provides no guidance on whether or under what circumstances Committee may hire counsel, or whether fees would be administrative expenses. <sup>81</sup>

### Notes

67 EIL, Art. 19.

68 EIL, Art. 20.

69 EIL, Art. 13, 22.

70 EIL, Art. 44.

71 EIL, Art. 75.

72 EIL, Art. 77.

73 Though execution on liens appears prohibited, there is no apparent stay on the creation or perfection of liens; likewise, it is unclear as to whether secured creditors may exercise self-help during liquidation.

74 EIL, Art. 21.

75 EIL, Art. 45, 62.

76 EIL, Art. 79, 84.

77 EIL, Art. 60, 61 (chairmanship, functions and duties of creditors' meetings); Art. 67, 68 (formation of creditors' committee, functions and duties); Art. 69 (review of administrator's acts); Art. 65 (unresolved issues re: management, distribution, or conversion plan subject to People's Court review); Art. 66 (ability to appeal People's Court's rulings re: management, conversion, or distribution plan).

78 *See, e.g.*, 11 U.S.C. § 1103.

79 *See* 11 U.S.C. § 1102(a).

80 This apparent lack of oversight is in contrast to US practice, where the law requires that creditors' meetings be convened and supervised by the Office of the US Trustee – itself an agency operating under the auspices of the US Department of Justice – and where Creditors' Committees are likewise appointed by the US Trustee. *See* 11 U.S.C. §§ 341(a), 1102.

81 EIL, Art. 41, 43.

<i>Topic</i>	<i>Summary of EIL Provisions</i>	<i>US Law Comparison</i>	<i>Notes</i>
'Ordinary Course' Business Operations	Upon acceptance and appointment of administrator; Court pre-approval for decisions regarding continuation of debtor's business, for certain 'non-ordinary course' business operations, or for business shut-down required prior to convening first creditors' meeting. <sup>82</sup>	From commencement of case, trustee (or Debtor-in-Possession) authorised to operate business. <sup>83</sup> 'Non-ordinary-course' operations – including cessation of business – requires Court approval at any time. <sup>84</sup>	
'Adequate Protection' and Post-Petition Financing	Post-petition financing authorised under certain circumstances. <sup>85</sup>	No 'priming' rights to post-petition lenders; <sup>86</sup> consequently, viability of post-petition lending under EIL appears more limited than under US law.	EIL unclear as to whether and under what circumstances court approval required for (i) determination and provision of 'adequate security'; and/or (ii) valuation and payment of 'substitute security'. <sup>87</sup>
Intellectual Property Rights	'Intellectual property rights' transfer specifically contemplated by EIL. <sup>88</sup>	US precedent in some jurisdictions restricts transfer – and even debtor's assumption – of non-exclusive patent licences. <sup>89</sup>	
Creditors' Voting	Voting on resolutions at creditors' meetings based on allowed claims only; disputed claims cannot vote, except in case of temporary allowance. <sup>90</sup>	Somewhat analogous to reorganisation voting procedures under Chapter 11. <sup>91</sup>	
Conversion from Reorganisation to Liquidation	Conversion provisions at Art. 78. May be put forth either by 'managers' of concern, or by other 'interested parties'.	Analogous to those set forth at 11 U.S.C. § 1112(b).	
Termination (i.e., Case Closure or Dismissal)	Applicable to liquidations. Mandated where (i) no distribution; or (ii) conclusive distribution. <sup>92</sup>		

### Notes

82 EIL, Art. 26, 69.

83 11 U.S.C. § 1108.

84 11 U.S.C. § 363(b).

85 EIL, Art. 37.

86 *Cf.* 11 U.S.C. § 364(d).

87 EIL, Art. 37; *see also* Art. 75.

88 EIL, Art. 69(2). The statute also contemplates the transfer of 'tenure' and 'mining rights'.

89 *See, e.g., In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999) (non-exclusive patent licence could not be assumed or assigned without the patent holder's consent) *Cf. Institut Pasteur, et al. v Cambridge Biotech Corporation*, 104 F.3d 489 (1st Cir. 1997) (restricting licencor's 'veto power', based on a close analysis of specific transactional facts).

90 EIL, Art. 59.

91 *Cf.* 11 U.S.C. §§ 1126(a); 502(c).

92 EIL, Art. 120.

## 2. Defining and augmenting the estate

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Debtor's Estate Defined	'Debtor's property': that held by debtor 'when insolvency case accepted and acquired after acceptance of case [and] before termination of insolvency proceeding'. <sup>93</sup>	<i>Cf.</i> 11 U.S.C. § 541(a)(1), defining debtor's estate, with narrow exceptions, as 'all legal or equitable interests of debtor in property as of commencement of case'.	Under EIL, what constitutes 'property'? Legal property interest? Equitable property interest? Both?
Post-Acceptance Transfers	No unauthorised post-acceptance transfers. <sup>94</sup>	<i>Cf.</i> 11 U.S.C. § 549(a).	
'Turnover' Provisions	Required turnover of debtor's property held by others; 'indemnification' provisions for failure to comply. <sup>95</sup>	<i>Cf.</i> 11 U.S.C. § 542(a), (b).	
Fraudulent Transfers	Administrator may 'revoke' certain transfers. <sup>96</sup>	<i>Cf.</i> 11 U.S.C. § 548(a). Unlike US law, there appears to be no 'insolvency' requirement for one-year 'look-back' period to which this statute applies.	Substantial insider transfers are frequently reported feature of business failures. <sup>97</sup> If so, fraudulent transfer litigation may be significant feature of PRC insolvencies.
Preferential Transfers	Administrator may 'rescind' creditor preferences made within 6 months of proceeding.	<i>Cf.</i> 11 U.S.C. § 547(b) (providing for 'avoidance' of preferential transfers). No liquidation 'benchmark' prerequisite for recovery under EIL, <sup>98</sup> sole defense appears to be demonstration that payment 'beneficial to debtor's property' – somewhat analogous to American 'new value' defense. <sup>99</sup> EIL's 'reach-back' provision approximately twice as long as that available under US law. <sup>100</sup>	
Capital Calls	Administrator has right to make 'capital calls' from equity holders. <sup>101</sup>		This provision should be anticipated by parties seeking to invest in concerns that may one day be administered under EIL.
Recovery Of Property Not Debtor's	Owner of property debtor-occupied, but not debtor's, may take it back. <sup>102</sup>	As above, no indication of what 'property' not debtors: viz., No indication of whether debtor must retain any 'legal' or 'equitable' title or interest – and, if so, how such property must be treated.	

## Notes

93 EIL, Art. 30.

94 EIL, Art. 16.

95 EIL, Art. 17.

96 EIL, Art. 31.

97 See PriceWaterhouseCooper (Hong Kong), 'China's Proposed New Bankruptcy Law: The Practical Implications' *Industry Watch* (December 2004) at p.8. A copy is on file with the author.

98 See 11 U.S.C. § 547(b)(5).

99 See 11 U.S.C. 547(c)(4).

100 See 11 U.S.C. 547(b)(4)(A) (providing a 90-day 'reach-back').

101 EIL, Art. 35.

102 EIL, Art. 38, 76.

Topic	Summary of EIL Provisions	US Law Comparison	Notes
'Reclamation'	Goods 'under delivery' and not paid for may be recovered. <sup>103</sup>	<i>Cf.</i> 11 U.S.C. § 546(c).	
Off-Sets	Creditors with 'off-sets' applicable against debtor may do so without violating recovery provisions of Art. 17. <sup>104</sup>	<i>Cf.</i> 11 U.S.C. 553(a), (b).	

### 3. Executory contracts

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Executory Contracts	<p>EIL addresses contracts that are 'executory' in nature.<sup>105</sup></p> <p>Administrator has 60 days in which to determine whether or not to 'dissolve' or 'accept' contract – at which time, 'dissolution' automatic.</p> <p>'Acceptance' requires administrator's performance guaranty.</p>	<p><i>Cf.</i> 11 U.S.C. § 365(a), but note:</p> <p>(i) no post-petition performance required during 60-day 'window' for 'dissolution' or acceptance, as for non-residential leases under US law;<sup>106</sup></p> <p>(ii) dissolution <i>automatic</i> within 60 days – without extension – unless otherwise accepted by administrator;<sup>107</sup></p> <p>(iii) no indication of what happens in event of post-acceptance default (viz., whether administrative liabilities will arise);</p> <p>(iv) no cap on lease termination damages;<sup>108</sup></p> <p>(v) no court approval required for acceptance; unclear whether <i>debtor</i> ever empowered to deal with executory contracts in reorganisation (viz., where debtor has been authorised to operate business as described in Art. 73, discussed below).</p>	<p>Timing of 'automatic dissolution' provisions effectively leaves administrator with sole authority – and responsibility – for decisions to 'accept' or 'dissolve.'</p> <p>Difficulty of business decision 'accept' or 'dissolve' very great where</p> <p>(i) large enterprise or complex reorganisation;</p> <p>(ii) requirement of 'guaranty' for 'acceptance';<sup>109</sup></p> <p>(iii) potential liability for hasty 'dissolution' and resulting breach of 'due diligence' by administrator.<sup>110</sup></p>

#### Notes

103 EIL, Art. 39.

104 EIL, Art. 40.

105 EIL, Art. 18 (referring to contracts that are 'underperformed' by the debtor)

106 *Cf.* 11 U.S.C. § 365(d)(3).

107 *Cf.* 11 U.S.C. § 365(d)(4) (providing for automatic termination after 120 days, subject to one 90-day extension). Note further that under the EIL, the decision to 'dissolve' the contract (or to 'accept' the contract with an attendant performance guaranty) may be triggered earlier by the counter-party, upon 30 days' notice.

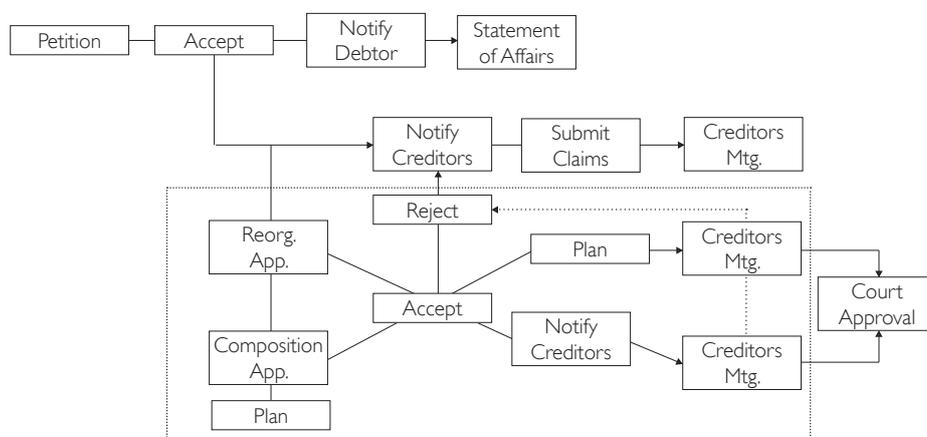
108 *Cf.* 11 U.S.C. § 502(b)(6).

109 EIL, Art. 18.

110 EIL, Art. 130.

C. Reorganisation and composition

Fig. 4: Reorganisation and Composition under PRC EIL



I. Reorganisation

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Commencement	Application filed by creditor; debtor; or equity holder with 10% or more of debtor's registered capital. <sup>111</sup>	See comments above re: case commencement.	
'Debtor-in-Possession' Operation	Request to operate under existing management acceptable any time 'during Reorganisation period'. <sup>112</sup>  Where request granted, administrator must return property to debtor's possession. <sup>113</sup>  Alternatively, administrator may remain in charge, but may employ debtor's management and other personnel to manage business. <sup>114</sup>	Reverse of Chapter 11: debtor begins 'in possession,' but may be displaced by trustee. <sup>115</sup>	
Plan Drafting	Party controlling business – administrator or debtor – drafts and proposes plan. <sup>116</sup>	Cf. 11 U.S.C. § 1121. Creditors have no power to draft or submit plan.	Will inability to come to terms over proposed plan lead to applications for 'debtor-take-back' of business?
Plan Contents	Described at Art. 81.	Cf. 11 U.S.C. § 1123.	
Plan Timing	6 months from date of approval of application (extendable for 3 additional months 'on justifiable ground'). <sup>117</sup>	Cf. 11 U.S.C. § 1121.	

Notes

111 EIL, Art. 70.  
 112 EIL, Art. 73.  
 113 EIL, Art. 73. Cf. 11 U.S.C. § 543(b). Not surprisingly, there is local sentiment that 'turning the reigns' back over to the debtor's management after the acceptance of an insolvency application will be detrimental to creditors' interests.  
 114 EIL, Art. 74.  
 115 Cf. 11 U.S.C. § 1104.  
 116 EIL, Art. 80.  
 117 EIL, Art. 79.

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Plan Voting	<p>At first creditors' meeting, held within 30 days of receipt of reorganisation draft plan.<sup>118</sup></p> <p>Art. 82 provides specified plan 'voting classes'<sup>119</sup> – creditors who fail to vote are ignored.<sup>120</sup> Certain 'social insurance premiums' exempted from plan treatment, and likewise from voting.<sup>121</sup> Equity can participate to extent its rights are affected.<sup>122</sup></p> <p>Unanimous acceptance required; thereafter People's Court approval required within 40 days.<sup>123</sup></p>	In-person or 'by proxy' attendance apparently required. <sup>124</sup> Cf. 11 U.S.C. § 1125(a) (contemplating mail balloting).	
Art. 87: 'Cram-Down'	<p>Used where unanimous plan approval <i>not</i> obtained from creditors.</p> <p>Proponent first required to negotiate with dissenting class, then conduct second vote.</p> <p>If second vote fails to achieve adoption by dissenting class, approval of plan over dissenting class objection nevertheless attainable within 30 days of application if plan meets requirements of Art. 87(1) – (6).</p>	<p>Cf. 11 U.S.C. § 1129(b).</p> <p>How will People's Court construe 'fair' and 'fair and impartial' as used in Art. 87(4) and (5)? US 'cram-down' standards emphasise 'absolute priority' rule (viz., no receipt of distribution by junior class unless all senior classes have been paid in full) in determining what is 'fair and equitable'.<sup>125</sup></p>	
Plan Implementation	Plan implemented upon approval, under Administrator's supervision. <sup>126</sup>	Cf. 11 U.S.C. § 1142.	EIL appears to make no provisions for post-approval plan amendments; however, 'supervision term' may be extendable upon application by Administrator. <sup>127</sup>
Plan Default	<p>Debtor's reorganisation terminated.<sup>128</sup></p> <p>Any security provided for implementation remains in effect. Partially paid creditors may retain distributions; however, they must wait until others of similar priority are 'caught up' before receiving further distributions.<sup>129</sup></p>		

### Notes

118 EIL Art. 84.

119 Cf. 11 U.S.C. § 1122 (providing parameters for classification of claims).

120 EIL Art. 84.

121 EIL, Art. 83.

122 EIL, Art. 85. Under the 'absolute priority' rule applicable to reorganisations under US law, equity is commonly 'wiped out' – and, therefore, deemed automatically to have rejected the plan. See 11 U.S.C. §§ 1126(g); 1129(b)(2)(B)(ii).

123 EIL, Art. 86.

124 EIL Art. 59.

125 11 U.S.C. § 1129(b).

126 EIL, Art's. 89, 90.

127 EIL, Art. 91.

128 EIL, Art. 93.

129 EIL, Art. 93. See EIL, Art. 104 for similar treatment of creditors in case of failed 'composition.'

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Conclusion	Administrator submits report to People's Court, reviewable by 'interested parties', at conclusion of plan's 'supervision term'.		
Effect of Implemented Plan	Plan binding on creditors and on debtor – and all relevant claims and interests are to be treated under its terms. <sup>130</sup>  Full performance exempts debtor from obligation to pay treated debts that are reduced or paid in conformity with Plan. <sup>131</sup>	Cf. 11 U.S.C. §§ 1141(d), 1144. Discharge immediate upon confirmation, subject to revocation for fraud within 180 days.	

## 2. Composition

Topic	Summary of EIL Provisions	US Law Comparison	Notes
Nature of Proceeding	Alternative to reorganisation. Same application period applies – and draft composition agreement must be submitted concurrent with application for same. <sup>132</sup>  People's Court rules on composition plan's acceptability <i>before</i> its submission to creditors' meeting. <sup>133</sup>  No specifically articulated statutory standards for approval; only 'satisf[action] [of] requirements provided for in this Law.'  Secured creditors may exercise their rights against collateral upon plan's acceptance. <sup>134</sup>	No analogous procedure under US law. Chapter 11 provides some 'streamlined' procedures for approval of 'small-business' plans and approval of 'pre-packaged' plans of reorganisation; however, confirmation standards remain unchanged.	Lack of statutory standards for approval appears to leave significant discretion in People's Court.
Voting	Acceptable by one-half or more of creditors present at creditors' meeting, holding two-thirds or greater of total unsecured claims amount. <sup>135</sup>		
Final Approval	Required after acceptance. <sup>136</sup>		
Implementation	Similar to those applicable to reorganisation plan. <sup>137</sup>		
Default	Consequences similar to reorganisation plan default. <sup>138</sup>		

### Notes

- 130 EIL, Art. 92.  
131 EIL, Art. 94.  
132 EIL, Art. 95.  
133 EIL, Art. 96.  
134 EIL, Art. 96.  
135 EIL, Art. 97.  
136 EIL, Art. 98.  
137 EIL, Art. 102.  
138 EIL, Art. 104.

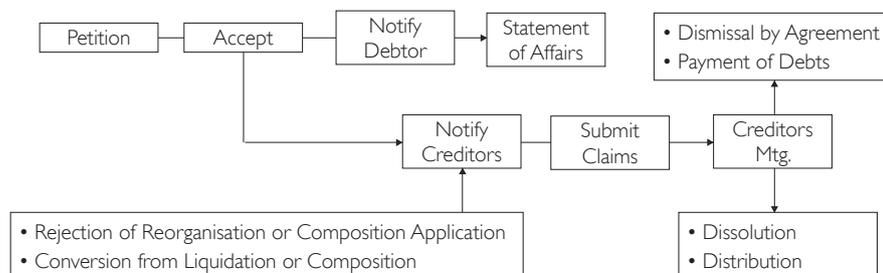
Topic	Summary of EIL Provisions	US Law Comparison	Notes
Termination for Fraudulent Procurement	Where applicable, previously paid creditors may retain distributions insofar as such distributions are made <i>pro rata</i> with other creditors in subsequent liquidation. <sup>139</sup>		
Effect of Implemented Plan	Similar to those applicable to implemented reorganisation plan. <sup>140</sup>		

### D. Liquidation

Liquidation is the ‘default’ procedure upon acceptance of a case and the commencement of insolvency proceedings. Once commenced, a liquidation may be averted either by: (i) unanimous agreement between

debtor and creditors (in the absence of formal composition application, and subject to approval by the People’s Court);<sup>141</sup> or (ii) third party security or payment for the debtor’s obligations, or payment of such obligations in full by the debtor.<sup>142</sup>

Fig. 5: Liquidation under PRC EIL



Topic	Summary of EIL Provisions	US Law Comparison	Notes
Procedure Upon Approval	Declaration of bankruptcy must be served on debtor within 5 days of approval; announcement and notification to creditors within 10 days of same. <sup>143</sup>		
Disposition Plan	Administrator’s ‘disposition plan’ submitted to creditors’ meeting for approval <sup>144</sup> -disputes adjudicated by People’s Court. <sup>145</sup>		
Disposition Method	Auction sale. <sup>146</sup>	Cf. 11 U.S.C. § 363(f). EIL makes no provisions for ‘free and clear’ sales – a staple of US proceedings. <sup>147</sup>	Will administrators be able to obtain optimal returns at auction for debtor’s assets?

### Notes

- 139 EIL, Art. 103.
- 140 EIL, Art. 106.
- 141 EIL, Art. 105.
- 142 EIL, Art. 108.
- 143 EIL, Art. 107. See also Art. 14 (requiring notification of known creditors ‘within 15 days after the ruling of acceptance’).
- 144 EIL, Art. 111.
- 145 *Ibid.* (referring to Art. 65, ¶1 (itself referring to Art. 61(8), (9)).
- 146 EIL, Art. 112.
- 147 Cf. 11 U.S.C. § 363(f).

## I. Claims, priorities, and distributions

<i>Topic</i>	<i>Summary of EIL Provisions</i>	<i>US Law Comparison</i>	<i>Notes</i>
Scheduled Liabilities	Debtor to provide initial statement; <sup>148</sup> final scheduling done by administrator. <sup>149</sup>		
Claims Filing	Described by Art. 49. Late-filed claims are dealt with as prescribed at Art. 56.		
Bar Date	In Court's discretion, subject to statutory parameters. <sup>150</sup>  First creditors' meeting within 15 days of bar date. <sup>151</sup>	Possible Difference in Practice:  Administrator may be hard-pressed to evaluate all filed claims within 15 days – particularly when dealing concurrently with possible administrative insolvency and/or stabilisation of debtor's business.  Art's. 57, 58, 59 provide that only creditors with allowed claims can vote at meeting, while Art. 58 appears to provide creditors' meeting with some ability to dispute challenged claims.  Whenever claims are challenged, dynamics of claims voting and 'disposition plan' approval process may push claims adjudication to 'front end' of case.	
Disputed Claims	Adjudicated by People's Court. <sup>152</sup> Administrator must reserve for distributions pending their resolution, <sup>153</sup> and must distribute same within 2 years after termination of insolvency proceeding. <sup>154</sup>		
Secured Creditors	Entitled to 'payment in priority over debtor's specific asset.' <sup>155</sup> 'Labor claims' (as construed by Article 113) accrued and outstanding as of law's effective date (viz., 1 June 2007) are 'grandfathered' and may be satisfied from debtor's 'specific assets prior to secured claims enjoyed by secured creditors stated in Article 109.' <sup>156</sup>		
Administrative Expenses	Categories set forth at Art. 41.	<i>Cf.</i> 11 U.S.C. § 503(b). No apparent cap on wage payments. <sup>157</sup>	
Priority Claims	Prescribed by Art. 113(2).	No apparent cap on taxes. <sup>158</sup>	

**Notes**

- 148 EIL, Art. 48.  
149 EIL, Art. 57.  
150 EIL, Art. 45.  
151 EIL, Art. 62.  
152 EIL, Art. 58.  
153 EIL, Art. 117.  
154 EIL, Art. 119.  
155 EIL, Art. 109.  
156 EIL, Art. 132.  
157 EIL, Art. 42(4). *See also* Art. 113(1).  
158 EIL, Art. 113(2).

<i>Topic</i>	<i>Summary of EIL Provisions</i>	<i>US Law Comparison</i>	<i>Notes</i>
Additional Distributions	Additional distributions recoverable within 2 years through: (i) additional avoidance recoveries per Art's. 31, 32, 33, 36; or (ii) additional recoveries from debtor. <sup>159</sup>		
Uncollected Distributions	<i>Escheat</i> to state. <sup>160</sup>		Creditors must monitor case closely to ensure distributions are not missed.

**Notes**

159 EIL, Art. 128.  
160 EIL, Art. 118.

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