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# THE BASICS OF RESTRUCTURING AND INSOLVENCY LAW IN MAINLAND CHINA

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## Disclaimer

The contents of this publication are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice for your particular circumstances should always be sought separately before taking any action based on this publication. Information provided is accurate as at August 2020.

# 1. Introduction

We have published this guide as a roadmap for investors, practitioners and others with an interest in the practice of restructuring and insolvency in Mainland China. Offshore stakeholders have historically been cautious in engaging in onshore insolvency processes. With (i) the advent of dedicated bankruptcy courts in the PRC and (ii) the move towards closer cross-border collaboration between courts in insolvency matters (particularly between Hong Kong and Mainland China), it is becoming more important to understand how PRC restructuring and insolvency law and practice works.

On 1 June 2007, the PRC Enterprise Bankruptcy Law (the “**EBL**”) came into effect.<sup>1</sup> The EBL is the key source of bankruptcy law for enterprises in China (state-owned or otherwise, including foreign-invested enterprises).<sup>2</sup> It also applies to other non-enterprise entities (such as partnerships, branch offices or representative offices).<sup>3</sup>

The EBL governs three principal bankruptcy procedures, being liquidation, reorganisation and compromise. Sections 2 to 5 of this guide analyse these bankruptcy procedures in detail.

The types of security and means of enforcement available to creditors are discussed in Section 6.

Section 7 will explore the potential liabilities of directors and creditors.

Financial institutions (such as banks, securities firms and insurance companies) will be subject to a separate set of laws which have yet to be fully implemented by the State Council. Section 8 sets out recent developments in this area.

There is currently no specific personal bankruptcy law in the PRC. Trial cases are being run in the Intermediate Courts in Wenzhou

and Taizhou based on local guidelines. Section 9 sets out details of the test personal bankruptcy regime.

Section 10 describes the operation of cross-border insolvency laws in the PRC.

Section 11 discusses other recent developments.

In this guide we use the terms ‘bankruptcy’, ‘restructuring’ and ‘insolvency’ interchangeably to refer to ‘corporate’ bankruptcy issues. We use the phrase ‘personal bankruptcy’ where we are referring to individuals.

<sup>1</sup> Passed by the Standing Committee of the 10th National People’s Congress of the People’s Republic of China on 27 August 2006, available at <http://en.pkulaw.cn/display.aspx?cgid=c169182ebd58903ebdfb&lib=law>

<sup>2</sup> Article 2 of the EBL

<sup>3</sup> Article 135 of the EBL



## 2. Restructuring and insolvency procedures

The EBL covers three types of bankruptcy procedure:

- bankruptcy liquidation (“**Liquidation**”);
- reorganisation (“**Reorganisation**”); and
- settlements with creditors (“**Compromise**”), (together, the “**EBL Procedures**”).

The Reorganisation and Compromise procedures are more debtor-friendly as the debtor company is permitted to continue to run as a business after the Reorganisation or Compromise.

No more than one of the EBL Procedures can be used at the same time. However, parties can begin with one EBL Procedure and later choose another EBL Procedure. For example, parties can opt for a Liquidation and then later decide to opt for a Reorganisation (and vice versa) and a Liquidation can later change to a Compromise. However, once the debtor company is declared bankrupt, a Liquidation cannot be converted into a Reorganisation or Compromise.

In addition to the EBL Procedures, the EBL also provides other useful insolvency tools, including:

- automatic stays on creditor actions;
- claw-backs;
- cram-downs; and
- the appointment of a court-designated administrator.

However, a number of these concepts and related provisions in the EBL are yet to be fully tested in practice.

The practice of bankruptcy law under the EBL is also supplemented by judicial interpretations<sup>4</sup> from the Supreme People’s Court (the “**SPC**”) and the publication of non-binding (but persuasive) guidance cases.<sup>5</sup> Local provincial courts also have the power to issue detailed bankruptcy rules in accordance with the EBL and the guidance cases of the SPC.

In the sections that follow, we go through each of the three EPL Procedures (Liquidation, Reorganisation and Compromise) in detail.

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4 There are three parts to the Provisions of the Supreme People’s Court about Several Issues Concerning the Law of the People’s Republic of China on Enterprise Bankruptcy (the “SPC Interpretations of EBL”). Part 1 is available at <http://en.pkulaw.cn/display.aspx?cgid=c6775597d0864b2cbdfb&lib=law>; Part 2 is available at <http://en.pkulaw.cn/display.aspx?cgid=a63621ef74c5a742bdfb&lib=law>; Part 3 is available at <http://en.pkulaw.cn/display.aspx?cgid=a1ea2ed95ba8a1ddbdfb&lib=law>

5 Guidance cases are published from time to time, eg, the SPC published 10 typical bankruptcy cases in 2018, available in Chinese at <http://www.court.gov.cn/zixun-xiangqing-83792.html>

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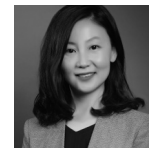


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# Notes

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