CONTEMPORARY ISSUES OF CHINA'S CROSS-BORDER INSOLVENCY LAW FROM THE PERSPECTIVE OF THE UNCITRAL MODEL LAW

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I INTRODUCTION

As a famous CEO said, "Capitalism without insolvency is like Christianity without hell."[1] It has very clearly described the actual operational function for a sound and mature capital market. With no insolvency law, the operating business environment cannot be considered as being safe and trusted by investors. China's international investment and trade have been growing day by day, implying that China enterprises need an improved and relatively sound regime in cross-border insolvency law to meet the challenges when they are financially in a difficult situation. It is generally considered as an excellent mark and is considered significant based on the evaluation index from the World Bank. "However, China has been slow to offer a mature market-exit solution to failing businesses at home and abroad. Nor has it adopted the UNCITRAL Model Law on Cross-Border Insolvency."[2]

In recent years, due to the competition between and among the big economies, the world economy has seriously been influenced. Some

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1 Editorial "An Industry in Turbulence" *LA Times* (Los Angeles, 6 December 2002) 2, at 16 (quoting former Eastern Airlines CEO Frank Borman).

2 Didi Hu "Cross-Border Insolvency Regime in China: Finding the Most Pragmatic Interim Solution for Globalized Companies under Localized Practices" (2018) 92 Am Bankr LJ 523 at 523.

transnational companies have apparently faced possible or potential insolvency, while some are in the process of insolvency. In addition, to add insult to injury, due to the fast spread of COVID-19, the economic and financial situation is getting worse and causing more enterprises of different shapes and sizes to fail and leave the market by winding up. To face the challenges arising out of the current internationally difficult financial situation, China's Enterprises Insolvency Law 2006 (EBL) is arguably slow and unable to effectively deal with cross-border insolvency cases.

Article 5 of EBL went into effect in 2007 and "is the only provision addressing the extraterritorial effect of Chinese court decisions that wind up companies situated in China and the inbound petitions seeking recognition of foreign insolvency orders."[3] From a comparative perspective, although China has stipulated clauses on recognition and enforcement of the cross-border insolvency cases, the basic principles, applicable objects, public policies, and standards for protecting the interests of domestic creditors in art 5 of China's EBL, look relatively simple and abstract. Moreover, it lacks a description of some issues such as cross-border insolvency jurisdiction, application of the law, and parallel insolvency proceedings. "The uncertainty on cross-border insolvency under Chinese insolvency law has adverse effects on both inbound foreign investments and Chinese companies that are expanding overseas."[4]

It is thus not competent enough to improve the effectiveness of case trials. "However, the absence of a set of reasonably designed cross-border insolvency rules is not a neglected question anymore, given the dramatic change in international relations."[5] In 2018, the Supreme People's Court (SPC) proclaimed the Minutes of the National Courts' Meeting on Insolvency Adjudication (SPC Minutes), rendering it much easier for the recognition and enforcement of foreign insolvency judgments. Nonetheless, the current level of legislation in China's insolvency law lags behind the UNCITRAL Model Law on Cross-Border Insolvency (Model Law), which is incompatible with China's current economic situation.

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3 Ibid.

4 Liu Mingkang "Towards a better future for Chinese insolvency law: problems and potential" (2017) ICCLR 28(12) 443-452 at 446.

5 Li Xiaolin "Reforming Chinese Cross-Border insolvency Law during a Trade War: Has the Supreme People's Court Provided a Satisfying Answer?" (2019) 49 Hong Kong LJ 1057 at 1057–58.

It demands a much deeper study of the Model Law and the experiences and lessons from other developed countries that have already adopted the Model Law. Therefore, judging from the above statements, it is both necessary and significant to discuss and examine art 5 of EBL and probe the feasibility of adopting the Model Law in China in the future. In addition:[6]

> The Model Law regime(s) is international soft law and states are free to implement it in different ways. Therefore, this gives China ample space to take account of special Chinese characteristics and tailor the adoption to local Chinese conditions.

Article 5 of EBL is both vague and uncertain on the enforceability of foreign insolvency judgments in China. What is more, "it fails to incorporate the UNCITRAL Model Law, which provides a framework for international cooperation in insolvency proceedings and has been adopted by many countries including the US."[7]

This paper explores the feasibility of adopting the Model Law by China, resolving the challenges faced by the legislators on recognising and enforcing foreign judgments by looking at the experiences and lessons from those countries that had already adopted and applied the Model Law. As there are some inherent but serious problems with EBL, some issues may not be sufficiently discussed and solved without referring to the Model Law.

This paper is divided into five Parts. Part II introduces art 5 of EBL, and the defects and issues from the academic perspective are examined. Part III explores the Model Law and presents its legislative background, content, purpose and characteristics. It also considers the situation of the United States, the experiences and lessons of adoption as a guideline for reference by China. Part IV analyses the challenges faced by the EBL and the advantages and disadvantages if China adopts the Model Law. The final Part concludes with a proposal to amend art 5 of China's EBL.

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6 Chuiyi Wei, Gerard McCormack, Xian Huang "Chinese Characteristics and Universalist Insolvency Ideals" (2020) 50 Hong Kong LJ 1183.

7 Liu Mingkang, above n 4.

II ARTICLE 5 OF CHINA'S EBL AND MODIFIED TERRITORIALISM

A Article 5 of EBL

Cross-border insolvency is also named transnational insolvency or international insolvency, which implies that insolvency concerns foreign factors. In other words, it means that creditors, debtors or insolvent assets are in more than two countries or jurisdictions. It also means "any form of process or solution, including liquidation, reorganisation, or restructuring processes, concerning commercial entities or financial institutions that have a cross-border presence (for example, assets, creditors, branches, or subsidiaries)."[8] Model Law defines it as a "foreign proceeding" in art 2(a):

> a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.

Different countries have various original legislative intents, choice of value and regulations designed due to different economic cultures, social policy and legal tradition, and the conflicts of interests of multiple sectors, which usually have an influence on whether to recognise the jurisdiction of foreign courts, and whether a foreign insolvency proceeding may be recognised and assisted by home country accordingly.[9] All the foregoing issues cannot be properly resolved unless judicial cooperation and reconciliation of different countries occur, which is the just purpose of the Model Law to promote the potential cooperation to the greatest extent.[10] That

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8 Irit Mevorach "Modified Universalism as Customary International Law" (2018) 96 Tex L Rev 1403 at 1436.

9 James Potts QC, Conor McLaughlin "What's in a name? The UNCITRAL Model Law on Cross-Border Insolvency and the case of solvent companies" (2020) 31(8) ICCLR 447 at 462.

10 In its Preamble, the Model Law sets out to promote five key objectives, which include the following:

Co-operation between courts and competent authorities of the jurisdictions involved in cross-border insolvency. Dr Hamiisi Junior Nsubuga "The call for harmonisation of cross-border insolvency laws to enable cross-border filing and litigation in the East African Community" (2019) ICCLR 30(12) 659-668 at 662.

is, whether one country's court would want to recognise and assist the petition from the foreign court.

Article 5 of China's EBL is the only clause that recognises foreign insolvency judgments and orders, though no case has arisen in China yet. Article 5 states as follows:[11]

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

Under art 5, the requirements for China to recognise foreign cross-border insolvency are the international treaties concluded or acceded to and the principle of mutual benefit among them. The principle of reciprocity is differentiated into presumption reciprocity and substantial reciprocity. Substantial reciprocity is also explained as "positive reciprocity" while presumption reciprocity is "negative reciprocity."[12] Based on EBL, China applies *de facto* reciprocity, which is positive reciprocity, and recognises the validity of the foreign law and the judgments taking effect provided that the other party gives the same treatment to China. In other words, China's court will not recognise the foreign judgment unless the former has previously recognised China's judgments.

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11 Law of the People's Republic of China on Enterprise insolvency 2007 <https://www.doc88.com/p-3126101699878.html> accessed 23 July 2021.

12 Jay Lawrence Westbrook "Theory and Pragmatism in Global Insolvency: Choice of Law and Choice of Forum" (1991) 65 Am Bankr LJ 65.

In addition, under art 5, the object of the existing cross-border insolvency recognition and assistance is merely limited to the insolvency of foreign court judgments and rulings. As to whether the ruling which has not yet taken legal effect and the ruling derived from the insolvency proceedings belongs to the scope of recognition, there are no other provisions in EBL so far, although most of the countries in the world are amenable to both the foreign legally effective ruling and insolvency proceedings. In practice, in the mainland of China, from beginning to end, insolvency proceedings are dominated by the court; therefore, only the insolvency court judgment or written order can be recognised.[13] However, foreign insolvency proceedings are not necessarily dominated by the court because plenty of legally authorised administrative institutions are included as well. The decisions made by such institutions have not been covered by art 5 of EBL at all.

Moreover, not all the legally effective judgments from foreign countries can be recognised and given relief according to art 5. The foreign court's adjudication must be from a country having jointly concluded or acceded to a common international treaty with China. Only in this way can the requirements from art 5 for the protection of the state judicial sovereignty and the legitimate rights and interests of creditors within the territory of China be satisfied. That is, no common treaty, no recognition.

B Modified Universalism

Obviously, the above provisions take the popular stance against the extreme protection of local interests. In accordance with the theory of modified universalism, which is currently widely accepted by the world, the court may conditionally recognise and enforce foreign insolvency judgments and adjudication of insolvency law on the basis of treaty or reciprocity. Under modified universalism:[14]

> a main insolvency proceeding will be opened in the "home" country of the debtor, however, defined. Main proceedings will then be supplemented by ancillary or secondary proceedings in other countries. Modified universalism recognises the national interest in protecting sovereignty and does not provide

13 Jay Lawrence Westbrook "A Global Solution to Multinational Default" (2000) 98 Mich L Rev 2296.

14 Chuiyi Wei, Gerard McCormack, Xian Huang "Chinese Characteristics and Universalist Insolvency Ideals" (2020) 50 Hong Kong LJ 1183.

for the unity and universal effects of the main insolvency proceedings. It stresses cooperation but leaves discretion to domestic courts to decide whether to recognise foreign judgments and to provide relief based on due regard for domestic creditors and national policies.

Article 5 uses the modified universality principle to deal with these challenges.[15] The legal confirmation of modified universalism has released the signal that China will protect the rights and interests of investors in accordance with the rules of the market economy, which is an important attempt to integrate cross-border insolvency legislation with international standards. It is a breakthrough of historical significance and also provides a legal basis for China's insolvency proceedings to obtain recognition and assistance outside the region. However, there have been some deficiencies or inadequacies in art 5, causing a lot of discussions from both legal professionals and academics, though the modified territorialism has been acknowledged and applied by the legislation of China's EBL.

C Deficiencies and Criticism of Article 5

1 Deficiencies

Unfortunately, there are quite a few criticisms arising from academics, judges and lawyers since the enacting of art 5 of EBL, though its improvements have not been denied.[16]

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15 Zhiyong Fan, Yangguang Xu "Wo Guo Kuajing Pochan Zhidu De Guifan Pingxi Yu Wanshan Lujing: Yi Kuajing Pochan Pingxing Moshi Wei Zhongxin" [The Standard Evaluation and Improvement Path of China's Cross-Border Insolvency System: In Perspective of the Parallel Pattern of Cross-Border Insolvency] (2021) Fujian Shifan Daxue Xuebao [Journal of Fujian Normal University] No 2 General No 227 at 96-108.

16 Charles D Booth "The 2006 PRC Enterprise Insolvency Law: The Wait Is Finally Over" (2008) 20 Singapore Academy LJ 275 at 313-314; Guangjian Tu and Xiaolin Li "The Chinese Approach toward Cross-Border insolvency Proceedings: One Progressive Step Ahead" (2015) 24 International Insolvency Review 57 at 62-64; Rebecca Parry and Nan Gao "The Future Direction of China's Cross-Border Insolvency Laws, Related Issues and Potential Problems" (2018) 27 International Insolvency Review 5 at 12-13; Emily Lee "Problems of Judicial Recognition and Enforcement in Cross-Border Insolvency Matters between Hong Kong and Mainland China" (2015) 63 AJCL 439 at 461; Xiaolin Li "Reforming Chinese Cross-Border insolvency Law During a Trade War: Has the Supreme People's Court Provided a Satisfying Answer?" (2019) 49 Hong Kong LJ 1057 at 1087.

2 *Deficiencies of substantial reciprocity*

As mentioned above, however, the adoption of substantial reciprocity as the recognition requirement under art 5 means China seldom takes the initiative to offer foreign benefits based on the principle of reciprocity. Although it reflects that China attaches great importance to national interests and national property benefits, the excessively conservative approach means China shows an inactive attitude towards the recognition and assistance of the foreign petitions and loss of international cooperation, reducing the probability for foreign debtors to petition for recognition and assistance before China's courts, in fear of being refused or because they lack trust in China's EBL. Accordingly, China's creditors' benefits and interests have been jeopardised.[17] With an international perspective of substantial reciprocity, it is easy for countries to evade their responsibilities, running seriously against the spirit of international cooperation.

3 *Limitation of recognition*

Under art 5, the object of existing cross-border insolvency recognition and assistance is limited to the insolvency of foreign court judgments and rulings, while most of the countries in the world apply the concept of foreign insolvency proceedings. Therefore, the expression of foreign insolvency judgment and ruling on the object of recognition does not distinguish the recognition of the effectiveness of foreign insolvency proceedings from the recognition of other insolvency judgments. This leads to the unclear recognition of what to recognise and what the corresponding relief measures are in practice.[18]

In addition, the recognition conditions remain in the civil procedure law relating to reciprocity and public policy requirements, in the lack of foreign insolvency proceedings jurisdiction review and due process requirements.[19] Although the current legislation has noted the importance of the protection of

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17 In Hyeon Kim "Legal Implications of Hanjin Shipping's Rehabilitation Proceeding" (2017) 47 Hong Kong LJ 915 at 932.

18 Xianchu Zhang and Charles D Booth "Beijing's Initiative on Cross-Border Insolvency: Reflections on a Recent Visit of Hong Kong Professionals to Beijing" (2001) 31 Hong Kong LJ 312 at 323.

19 Emily Lee "Problems of Judicial Recognition and Enforcement in Cross-Border Insolvency Matters between Hong Kong and Mainland China" (2015) 63 Am J Comp L 439 at 461.

creditors' interests in the judicial assistance of cross-border insolvency, it has not made clear the criteria and basis for its determination, causing differences in the understanding of such cases and harming the legitimate rights and interests of domestic creditors in judicial practice. The insolvency law is different from other general laws, as, in addition to preserving the insolvency property, it includes insolvency property liquidation and the recognition and assistance of the transfer of insolvency administrator rights. The lack of relief measures in art 5 has thus reduced the transparency and predictability of the rules concerned.

4 The awkwardness of Hanjin's case and criticism of article 5

What is mentioned above makes the recognition of cross-border insolvency in China narrow and clumsy, and inflexible in proceedings, resulting in the difficulty of avoiding a debtor's individual repayment and illegally disposing of the property during the process of insolvency. This renders the situation of the recognition and assistance of cross-border insolvency in China more rough. To a considerable extent, the simplification of legislation has affected its function and purpose of promoting cross-border insolvency judicial cooperation, which is why there have been very few cases petitioning for recognition and assistance under art 5 of EBL since it has been released.

Hanjin's case is a good example in point. In reality, numerous complaints have arisen out of art 5 of EBL due to its lack of detailed arrangements and interpretations either by law or by the China Supreme Court (CSC). For example, art 5 does not work effectively in practice. What is worse, after taking the case from South Korea, Hanjin in the end chose not to petition for recognition and assistance in China's court at all in fear of being ignored and not having cooperation from China's courts due to art 5 of EBL, which provides that a foreign insolvency proceeding will not be recognised and enforced without having a reciprocity policy with China.[20] With this result, China's creditors in the Hanjin case suffered many losses since they had no

20 Shi Jingxia & Huang Yuanyuan "Kuajie Pochan Zhong De Chenren Yu Jiuji Zhidu: Jiyu Hanjin Pochan An De Guancha Yu Fengxi" [The Recognition and Relief in Cross-Border Insolvency: A Perspective from Hanjin Shipping Co] (2017) Zhongguo Renmin Daxue Xuebao [Journal of Renmin University of China] No 2 34 at 35.

chance to engage the insolvency proceedings, let alone recover their legal apportion of the arrears.

On the other hand, China unfortunately lost an excellent opportunity to have the EBL applied in practice.[21] Professor Xu argues that:

> A healthy and open attitude of the cross-border insolvency regime in China will represent an important step towards a more reliable, transparent and efficient financial system for the benefit of both domestic and international creditors and debtors.

Xu thinks that Hanjin should have applied for recognition in China as there is a lot of economic interest in it. Hanjin's refusal "…indicates his pessimistic attitude towards Chinese cross-border insolvency regime, a view that is likely to be shared by other foreign creditors and administrators."[22]

III THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

A Brief Introduction to the UNCITRAL Model Law

The UNCITRAL Model Law was set up at the 30th Session of the United Nations Commission on International Trade Law, held in Vienna on 30 May 1997. Since this law was promulgated, 51 jurisdictions of the 48 countries have adopted legislation on cross-border insolvency based on the Model Law, including the United Kingdom, the United States, Australia, South Korea, New Zealand, Japan and Singapore.[23] Although the Model Law is non-mandatory or soft law, it is the result of multi-country discussions and deliberations. It is also a response to the confusion and anxiety in international trade and investment caused by the issues arising from cross-border insolvency.

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21 Ling Zhang "Woguo Kuajing Pochanfa Lifa De Wanshan: Mubiao, Kuangjia Yu Guize" [The Legislative Improvement of China's Cross-Border Insolvency Law: Objective, Framework and Rules] (2021) Zhongyang Minzu Daxue Xuebao [Journal of Minzu University of China] Vol 48 General No 254 150, at 157.

22 Jingchen Xue "Maritime Cross-Border Insolvency in China" (2020) 29(1) International Insolvency Review 118 at 137.

23 According to the documents of Secretariat of the United Nations Commission on Trade Law, a total number of 46 countries and 48 jurisdictions has adopted the legislation based on the Model Law since it was promulgated <https://uncitral.un.org/zh/texts/insolvency/modellaw/cross-borderinsolvency> accessed 3 September 2020.

The states adopting the Model Law should be governed by it because it helps to effectively solve the problems arising out of cross-border insolvency law in each state. It is conducive to unification to a certain extent and provides a blueprint and reference for future progress and reforms on issues of cross-border insolvency. Nonetheless, the insolvency legal system is restricted by different national conditions such as historical traditions, trading customs and practices, economic conditions and so on, which may have a different scope of legal application accordingly. Thus, on deciding whether to adopt the Model Law, some of the states have reserved some clauses, while others have adopted the law almost entirely.[24] However, being selective may be common since no single country has exactly the same insolvency law system as the others due to their different history, customs and cultural background.

B Purpose and Scope of the Model Law

The Model Law is a procedural private international law instrument with a goal set out concisely in its preamble.[25] The purpose of this law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

(a) cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) protection and maximisation of the value of the debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

In other words, the Model Law was not to harmonise national insolvency laws but to provide an institutional framework for cross-border judicial

24 The author specifically mentions that the US regulations are different because in recent years, the Sino-US trade war was described as a major event in China's economic circles in recent years; it has continued since 2018 and has had a significant impact on our economy.

25 Paul J Omar "The UNCITRAL model law on cross-border insolvency" (1999) 10 (8) ICCLR 242 at 248.

cooperation in insolvency to coordinate the conflicts of insolvency laws in the whole world. In terms of content, the Model Law sets up foreign representatives and foreign creditors in domestic insolvency programmes, recognises the conditions of foreign insolvency proceedings, provides association measures on foreign insolvency proceedings and the representatives of a foreign court and foreign cooperation, the parallel coordination of insolvency proceedings, and a systematic and complete legal framework. In fact, the Model Law provides a comprehensive legal basis for cross-border insolvency judicial cooperation in the world, which is its paramount purpose.

On the judicial cooperation system, the Model Law demonstrates the method of the parallel insolvency pattern recognition and puts forward the concept of main insolvency proceedings and the assistant insolvency proceedings, giving a demanding definition of the relevant standards. For instance, the main insolvency process sequence is the place where the debtor interests' centre is located, and the court there may initiate the insolvency process, while the non-main insolvency process is the place where the debtor runs its business, and the court there may start the non-main insolvency process. Although both the courts have extraterritorial effect, there are differences in relief measures. The main insolvency proceedings should become the centre of judicial assistance. Different countries chose different modes of judicial assistance when adopting the Model Law. The legal framework provided by the Model Law and the concept of main insolvency proceedings has been widely recognised, which has strongly promoted the unification of cross-border insolvency legislation.[26]

C Academic Issues on Function of Model Law

Academics also have different viewpoints on the function of the Model Law. Andrew B Dawson thinks that even if a country has adopted the Model Law, there is still an issue that courts are likely to defect from the law's language and purpose, even when local interests are not at stake. It is the interpretative differences between the domestic insolvency law and the Model

26 Michael Tsimplis "Modified universalism and cross-border insolvency of shipping companies" (2020) 5 JBL at 346-367.

Law that may lead some courts to depart from the Model Law.[27] In addition, courts may diverge from the Model Law due to their style of case management. Because the cross-border insolvency proceeding is still relatively novel, courts may use the same interpretative method in the cross-border cases as they use in the traditional insolvency cases.

Irit Metreveli believes that the Model Law cannot fully create a predictable regime of cross-border insolvency due to the fact that it does not address how foreign cross-border insolvency judgments should be enforced within local jurisdictions and thus has led to inconsistent enforcement of foreign insolvency judgments. In 2018, she investigated recent trends in cross-border corporate insolvency rules and practices, planning to provide a normative framework founded on the emerging norms of "modified universalism".[28] She made a comment later on in 2021, with the help of the Guide, that articulating clearly the policies and goals of the Model Law, and suggested methodological approaches consistent with those aims. The Guide may help assist courts to manage cross-border cases more consistently.[29]

Elizabeth Buckel also thinks that the Model Law was developed to encourage international cooperation in cross-border insolvency proceedings. It aims to foster cooperation between foreign States, provide legal certainty for trade and investment, protect and maximise the value of a debtor's assets, and fairly administer the interests of creditors and other interested parties, including the debtor. In any case, the public policy exception may be considered as a door to allow courts to deny recognition or relief to a foreign proceeding if the proceeding is "manifestly contrary" to the public policy of the enacting country.[30]

Emille Ghio has expressed a reasoned argument that the traditional and predominantly American debate on the theory of universalism and territorialism is out of date in the EU, and a new framework theory which is

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27 Gregor Baer "Towards an International Insolvency Convention: Issues, Options and Feasibility Considerations" (2016) 17 Bus L Int'l 5 at 25.

28 Irit Mevorach "The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps" (2018) 29(10) ICCLR 640 at 643.

29 Andrew B Dawson "The Problem of Local Methods in Cross-Border Insolvencies" (2015) 24(5) J Bankr L & Prac NL, art 6.

30 Elizabeth Buckel "Curbing Comity: The Increasingly Expansive Public Policy Exception of Chapter 15" (2013) 44 Geo J Int'l L 1281 at 1310-11.

"tailored to address its own particular issues and needs should be re-examined and re-designed".[31] Gerard McCormack and Wan Wai Yee think the Model Law adopts a "modified universalist" principle. They evaluate the basic paradigm of cross-border insolvency cooperation as reflected in the Model Law, and treat the Model Law as a potential vehicle for harmonisation, though with some inherent limits while facilitating such cross-border cooperation.

By summarising and comparing the former academics' views, cross-border cooperation between States has been interpreted at three levels: the first level is the state which extends cooperation or assistance either by recognising the authority of a foreign insolvency representative to speak for the debtor or giving the insolvency representative standing before the domestic courts. The second level is the foreign representative may request certain orders, which may involve a greater or lesser amount of automaticity. The third level is a foreign order that may be enforced in the course of the foreign insolvency proceedings, requiring a contractual counterparty or defendant to pay a sum of money or to restore the property to a debtor. They believe that the Model Law has totally applied the first two levels of cooperation between States and partially illustrated the third level of cooperation.

The Model Law originally aimed to provide a framework for countries to adopt for the benefit of both creditors and debtors. The framework of the Model Law would increase consistency by recognising foreign insolvency proceedings and foreign court judgments that grant relief to foreign creditors and representatives, who would gain access to local courts in countries where their debtor's assets are located:[32]

> Thus, to the maximum extent possible, the Model Law facilitates the optimal management of cross-border insolvency so as to benefit debtors, creditors, and other stakeholders, as well as the economies in which these stakeholders' function.

Although Gerard McCormack and Wan Wai Yee acknowledge the advantages for adopting the Model Law and the "moderate success" achieved

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31 Emille Ghio "Cross-border insolvency and rescue law theory: Moving away from the traditional debate on universalism and territorialism" (2018) 29(12) ICCLR 713 at 728.

32 Gerard McCormack & Wan Wai Yee "The UNCITRAL Model Law on Cross-Border Insolvency Comes of Age: New Times or New Paradigms?" (2019) 54 Tex Int'l LJ 273 at 275.

by it, they cautiously state that "...it would be unwise to assume that the future path of cross-border insolvency law is, or should, all be, towards the path of further harmonisation." and that "[w]e live in a complex, variegated world and future harmonisation endeavours must take these realities into account".[33]

D Other Countries Experiences in Adoption of Model Law

So far, there is an increase in the number of countries that have adopted the Model Law, including many of China's trading partners. The adoption of the Model Law reflects the degree to which a country's cross-border insolvency system is in line with international standards. Moreover, the legislative objectives and basic system of the Model Law are in line with the needs of the development of investment and trade in various countries against the background of economic globalisation and in line with the actual situation of China as a major two-way investment country.

1 USA

In a global review of the countries with insolvency law, it is easily found that most Anglo-American law countries have already adopted the Model Law partially or wholly. In America, Chapter 15 of the United States Code (the "Insolvency Code") was enacted in 2005, with a view to "fostering the orderly administration of cross-border restructurings." It:[34]

> provides for and encourages unprecedented cooperation among the courts of different jurisdictions in an effort to provide a coordinated approach to administering the assets of a debtor with a business presence that transcends country borders. It also creates access to US courts for foreign debtors once a foreign insolvency proceeding has been recognised by allowing foreign representatives to apply directly to a US court for appropriate relief. By establishing objective eligibility requirements for recognition, Chapter 15 fosters predictability and reliability that could not have been achieved under its predecessor statute.

America has chosen to adopt almost the full version of the Model Law in its Chapter 15 of the Insolvency Code, while other countries have their own

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33 Ibid.

34 Peter M Gilhuly, Kimberly A Posin, (Fnaa1) Adam E Malatesta (Fnaaa1) "Insolvency Without Borders: A Comprehensive Guide to the First Decade of Chapter 15" (2016) 24 Am Bankr Inst L Rev 47 at 48.

and different selections of the provisions of the Model Law. When American courts are interpreting Chapter 15, they try to "consider its international origin, and the need to promote an application of it. They also try to make it consistent with the application of similar statutes adopted by foreign jurisdictions". In enacting Chapter 15, the American Congress encouraged reliance on the UNCITRAL Guide, "which explain the reasons for the terms used and often cite their origins" and the sources of which are intended to "advance the crucial goal of uniformity of interpretation". In addition, Chapter 15 was enacted as part of "an effort by the United States to harmonise international insolvency proceedings for the benefit of American businesses operating abroad". It is intended to promote: cooperation between United States courts, trustees, examiners, debtors and debtors in possession and the courts and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; the protection and maximisation of the debtor's assets; and the facilitation of the rescue of financially troubled businesses.

What is more, Chapter 15 allows "foreign representatives" – foreign insolvency trustees and similar representatives – to access United States courts for the purpose of aiding another country's pending insolvency or insolvency proceeding. Such a process is the product of advanced and cooperative thinking. As enterprises grow unconfined by national borders, the laws of several countries can conflict and compete should the enterprise stumble and need financial help.[35]

Unfortunately, as discussed below, Chapter 15 contains some unique provisions, not found in the Model Law upon which it is based, that effectively bar foreign representatives in certain types of foreign proceedings from seeking or obtaining most forms of relief (not just Chapter 15 relief) in US courts. Thus, if a foreign proceeding does not qualify for recognition under Chapter 15, it precludes the foreign representative from obtaining comity or cooperation from any court in the US, and limits their rights in US courts to collecting or recovering claims or filing an involuntary petition against the debtor. This result would not occur in countries that have enacted

35 40 No 3 Insolvency Law Letter NL 1.

the Model Law as written because the Model Law, unlike Chapter 15, does not cut off a foreign representative's ability to seek comity or relief when the underlying foreign proceeding cannot be recognised. To date, however, US courts and commentators have not addressed the fact that Chapter 15 and the Model Law yield such different results.[36]

Among different countries, UK should be paid more attention since there is a similar legal system between Hong Kong and UK due to historical reasons. Studying the approaches and experiences of adopting the Model Law of the developed states will undoubtedly bring more benefits for China's amendments of EBL and plan for adoption of the Model Law. Thus, taking a detailed look at developed countries may well bring some new perspectives to China since China's Enterprise Insolvency Law's modification and amendment are on its way. Also, having a look at other developed countries and jurisdictions will bring more reference and fresh viewpoints since China is located in Asia, and the insolvency law of the countries such as Japan, Australia, South Korea, Hong Kong and Macau may also be necessarily examined when in need.

2 HK-China insolvency cases

The regional conflicts of laws or the inter-regional conflicts of laws between Hong Kong and mainland China are fairly different, although they cannot be considered as two countries since Hong Kong has inherited the common law from the UK due to historical reasons. Under the policy of "One Country, Two Systems", Hong Kong insolvency law undoubtedly follows the UK Insolvency Act of 1986. Therefore, all the foreign judgments on insolvent cases applying for judicial recognition and assistance from abroad in Hong Kong are dealt with by Hong Kong courts based on common law or statutes. What is more, art 5 of EBL does not include Hong Kong because it is not a foreign country based on art 153 of the Basic Law, and all Hong Kong matters are involved in Chinese sovereignty issues rather than external affairs. Thus, it is the case that the Model Law cannot be applied to Hong Kong. As is clearly pointed out by Emily Lee:[37]

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36 Alesia Ranney-Marinelli "Overview of Chapter 15 Ancillary and Other Cross-Border Cases" (2008) 82 Am Bankr LJ 269 at 270.

37 Emily Lee "Legal Pluralism, Institutionalism and Judicial Recognition of Hong Kong: China Cross-Border Insolvency Judgments" (2015) 45 Hong Kong LJ 331 at 339.

> In the context of the Model Law, the term "foreign" is used to describe a collective judicial or administrative proceeding in a "foreign State", which intrinsically excludes Hong Kong due to its status as a SAR within its sovereign, China.

Fortunately, the latest development of the insolvency cases which petitioned for judicial recognition and assistance before HK High Court by debtor's representatives from mainland China has expressed the new cooperative trend. Despite the substantive reciprocity law by art 5 of EBL, Justice Harris consistently and systematically approved two important and significant petitions for Hong Kong's judicial recognition and assistance in the past two years.[38] In Re CEFC Shanghai International Group Ltd (Huaxin), which is widely considered as a landmark case by academics, a petition for assistance by a debtor company registered in Shanghai was approved by Hong Kong High Court.

Shortly after Huaxin's case, the Hong Kong High Court made a similar decision and expressed the same viewpoint in Re The Liquidator of Shenzhen Everich Supply Chain Co.[39] In this stable and consistent manner, Hong Kong High Court has "reaffirmed its position".[40] It is reasonable to predict that the trend towards cooperating with mainland courts on insolvency cases by Hong Kong courts will continue unless the mainland courts give opposing feedback to Hong Kong courts' positive assistance. Thus, even under the Basic Law, the Model Law can be used as a frame of reference though it is not applicable between Hong Kong and mainland China since the Model Law is only "soft law".

IV THE FEASIBILITY OF ADOPTING THE MODEL LAW BY CHINA AND POSSIBLE REFORMS

A The Necessity for Adoption

In the past years, due to the short period since the promulgation of the Model Law, scholars at home still obviously have done little research and analysis on whether China should adopt the Model Law or not. A few scholars

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38 [2020] HKCFI 167.

39 [2020] HKCFI 965.

40 Chuyi Wei, Gerard McCormack, Xian Huang "Chinese Characteristics and Universalist Insolvency Ideals" (2020) 50 Hong Kong LJ 1183 at 1202.

have analysed the Model Law itself in-depth, such as its legislative background, legislative purpose, and the scope of the core theories and regulations involved.[41] Some have explored and studied the application of the Model Law in the United States, Japan, and the European Union to find out the practicality of the Model Law or its shortcomings.[42]

At the same time, some other researchers did their work based on the shortcomings and disadvantages of China's insolvency law and hope to get some insights from the Model Law [43] or made discussions from the perspective of the cross-border insolvency regime, the feasibility of the Model Law from the critical relationship between national autonomy and international unity, or from the perspective of the transactions between China and neighbouring countries. Based on the differences between the domestic and Hong Kong legal systems, Emily Lee conducted an in-depth analysis of China's Enterprise Insolvency Law, knowing its disadvantages and limitations, and provided suggestions for improving legislation assistance in cross-border insolvency between mainland China and Hong Kong.[44]

In addition, Prof Tu and Ms Li think that due to the choice of the territorialism approach adopted by art 5 of EBL, which is quite incompatible with China's policy of attracting foreign investment and trade, China's reputation has been ruined for having failed to protect and recover foreign bankrupt debtor's assets located within the territory of China. However, the decision of the TETG case made by SPC of China helps the foreign investors "see the dawn and have their confidence restored...". For, "foreign administrators will be able to take effective measures to investigate, protect

41 Ji Ligang, Xie Zhengshan "Meiguo Kuaguo Pochanfa De Zuixin Fazhan Ji Dui Woguo De Jiejian Yiyi" [An Essay on Current Development of USA's Cross-Border Insolvency Legislation and Its Enlightenment to China] (2011) 32(5) Jinan Xuebao [Jinan Journal] 15 at 22.

42 Ibid.

43 Zhang Ling "Kuajing Pochanfa Tongyihua Fangshi De Duoyuanhua [The Diversity of the Unification Mode of Cross-Border Insolvency Laws]' (2007) 25(4) Zhengfa Luntan [Politics and Law Forum] 142 at 151.

44 Lee Emily "Problems of Judicial Recognition and Enforcement in Cross-Border Insolvency Matters between Hong Kong and Mainland China" (2015) 63(2) American Journal of Comparative Law 439-465; University of Hong Kong Faculty of Law Research Paper No 2015/033 439 at 465.

and dispose of the bankrupt's assets located within the Chinese territory".[45] Didi Hu has expressed crucially constructive suggestions for the necessary improvement of EBL, which are listed as follows:[46]

(1) to allow ancillary insolvency proceedings in China;

(2) to clarify who may petition for recognition of a foreign insolvency judgment;

(3) to clearly guide as to which local Chinese court should handle the inbound recognition petition;

(4) to impose an automatic stay against any Chinese action against the debtor or its property;

(5) to clarify whether the jurisdictional provision for foreign-related cases in the Civil Procedure Law allows Chinese courts to open insolvency proceedings against offshore companies; and

(6) to provide that a Chinese court's recognition of foreign insolvency judgments would have legal effect only within China's territory.

Professor Ling Zhang believes that China had suffered a great deal of loss due to the definition of value ambiguity, unsystematic legislation, and simple rules without considering the special characteristics of judicial assistance of insolvency. To correct these legislative defects, the Model Law should be given full reference so as to set up a framework of judicial cooperation and regulate and evaluate the protection of creditors of foreign insolvency rules in the perspective of due process and fair participation.[47] Distinguished from other academics, Professor Cui Tiankai and others argue that China may adopt the Model Law as it is a soft law that could be adopted with modifications, and "[a]dopting the Model Law can improve certainty, access and fairness of treatment in the Chinese insolvency proceedings and

45 Guangjian Tu & Xiaolin Li "The Chinese Approach toward Cross-Border insolvency Proceedings: One Progressive Step Ahead" (2015) 24 Int Insolv Rev 57 at 66.

46 Didi Hu "Cross-Border Insolvency Regime in China: Finding the Most Pragmatic Interim Solution for Globalized Companies under Localized Practices" (2018) 92 Am Bankr LJ 523 at 523.

47 Ling Zhang "Woguo Kuajing Pochanfa Lifa De Wanshan: Mubiao, Kuangjia Yu Guize" [The Legislative Improvement of China's Cross-Border Insolvency Law: Objective, Framework and Rules] (2021) 48 Zhongyang Minzu Daxue Xuebao [Journal of Minzu University of China] General No 254 150 at 157.

encourage both inbound and outbound investments". What is more, he suggests that "effective implementation of the Model Law will depend on judicial interpretations of the domestic courts as guided by the Supreme People's Court".[48]

Voices from the judicature have also been heard. Mr Bingkun Ye, a presiding judge from Xiamen Intermediate Court, made a famous speech on "The Problems and Restructure of China's Cross-Border Insolvency Law"[49] in the 2019 Cross-Border Insolvency Forum, in which Mr Ye sharply pointed out the difficult situations China is currently facing for lack of detailed provisions and practical function for making full use of art 5.

Mr Minhai Liang, a senior partner from Ernst & Young Consulting, believes that it is absolutely necessary for China to establish the particular proceedings on insolvency recognition and enforcement so that China's business environments will be much improved to face the new global situation.[50]

However, this thesis shows that the issue is not whether to adopt the Model Law in China or not, but how to amend art 5 of the Enterprise Insolvency Law according to the Model Law. Obviously, adopting the Model Law can deepen and expand economic exchanges and trade with other adopted countries, which would be beneficial to fair competition of different countries under a unified system; thus, win-win cooperation would be achieved.[51] In addition, the Model Law can help China effectively fill the loophole of insolvency law as well as seek cooperative economic partners, bringing enormous economic benefit to China as a result.

B The Feasibility of Adopting the Model Law in China

The Model Law was expressly designed to be integrated into local insolvency law. UNCITRAL's Guide to Enactment of the UNCITRAL Model

48 Chuyi Wei, Gerard McCormack, Xian Huang "Chinese Characteristics and Universalist Insolvency Ideals" (2020) 50 Hong Kong LJ 1183 at 1202.

49 Bingkun Ye <https://www.sohu.com/a/339905524_689962> accessed 7 November 2020.

50 A speech given by Mr. Liang in workshop held in 2019, Suzhou, China. <https://www.sohu.com/a/341282601_689962> accessed 31 May 2020.

51 Yao Liu "A Research on the Legal Problems of International Cooperation on Cross-border insolvency: Taking Han Jin's insolvency as an Example" (2018) Research on Maritime Law of China' 105 at 112.

Law on Cross-Border Insolvency (the UNCITRAL Guide) urges countries to make at most only minor changes to the Model Law in the course of its adoption. Thus, the adoption of the Model Law generally requires the member states to make only narrow and limited departures from it.[52] Therefore, unfortunately, before adopting the Model Law, there is much to do to match the criteria of the Model Law, considering the current situation of art 5 of EBL. Fortunately, the amendments for meeting the requirements of the Model Law in China are on the way. However:[53]

> One thing must be clear that the improvement of the rules in the legislative reform of cross-border insolvency law in China should be the revision and supplement of the provisions under the guidance of legislative objectives and legal framework. Among them, there are not only the optimisation of the original rules but also the modification of the legislative blind spots under the guidance of the Model Law.

1 Protection of national creditors' interests

Under art 5 of the EBL, the language used is much more open and vague, not precise and likely to be concerned more about the "security and sovereignty of the country and social and public interests".[54] It seems to protect the interest of the state rather than the economic interests of the debtors and creditors involved in the insolvency proceedings, with the probability of jeopardising the goals of cooperation under the Model Law. Therefore, amending the EBL so as to provide the court with more specific guidance about the exercise of its discretion in enforcing foreign bankruptcy

52 Peter M Gilhuly, Kimberly A Posin, (Fnaa1) Adam E Malatesta (Fnaaa1) "Insolvency Without Borders: A Comprehensive Guide to the First Decade of Chapter 15" (2016) 24 Am Bankr Inst L Rev 47 at 50.

53 Ling Zhang "Woguo Kuajing Pochanfa Lifa De Wanshan: Mubiao, Kuangjia Yu Guize" [The Legislative Improvement of China's Cross-Border Insolvency Law: Objective, Framework and Rules] (2021) 48 Zhongyang Minzu Daxue Xuebao [Journal of Minzu University of China] General No 254 150 at 157.

54 Enterprise Bankruptcy Law (promulgated by the Standing Comm. Nat'l People's Cong, 27 August 2006, effective 1 June 2007) art 5.

judgments, will relieve the fears and worries of both investors and creditors. With the adoption of modified universalism, art 5 will enhance:[55]

> the ability of local courts to evaluate the fairness of the main case proceeding, to protect the interests of local creditors, and, in some cases, even assess whether compliance offends the country's public policy.

However, that is the nature of modified universalism, which focuses much on state interest outside of insolvency proceedings.

Article 5(2) of the EBL clearly stipulates that foreign insolvency judgments and rulings shall be recognised and enforced if they do not harm the legitimate rights and interests of creditors in the territory of China. Legislation should clarify the intention and refine the corresponding rules so as to enhance the transparency and certainty of the provisions for the protection of creditors' interests. Preventing Chinese creditors from being discriminated against and treated unfairly in the insolvency proceedings of foreign countries does not imply that foreign insolvency proceedings should "allocate and manage" the insolvency property according to the provisions of China's insolvency law. Therefore, under the Model Law, the understanding of legitimate interests should not be extended to differences in the provisions of entities under the insolvency law. It is the rules of due process and the rights of domestic creditors to participate in insolvency proceedings that are reviewed, and the rights of fair distribution and adequate protection are scrutinised.

2 To clarify the definition of foreign insolvency proceedings and foreign insolvency judgments

The objects of cross-border insolvency recognition and assistance are as follows: Firstly, the validity of the declaration of foreign insolvency. The recognised legal effect of the declaration is to suspend the litigation, the seizure and the enforcement against the debtor and their property so that the debtor's property can be preserved, and the individual payment of creditors be impeded. The property will be transferred to the foreign insolvency proceedings for unified management and distribution. Besides, the effectiveness of the judgment made by the foreign court in the trial of the

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55 Steven J Arsenault "Leaping over the Great Wall: Examining Cross-Border Insolvency in China under the Chinese Corporate Bankruptcy Law" (2011) 21 Ind Int'l & Comp L Rev 1 at 20.

insolvency case is directly derived from the insolvency proceedings related to the insolvency. Under art 5, only the validity of a foreign insolvency declaration can be recognised, while recognising a judgment related to insolvency is banned or not provided.

To adopt the standard of determination of the foreign insolvency proceedings in the Model Law and give a clear definition of the foreign insolvency proceedings from its perspective purpose and function is both necessary and feasible. Such an approach may prevent incorrect identification of the nature of insolvency proceedings in foreign countries due to the different insolvency systems. That is, the foreign insolvency process is a collective liquidation process in which the assets and affairs of a debtor are under unified control and supervision of a court or other agency and is initiated for the purpose of reorganisation or liquidation.[56] At the same time, it is also necessary to draw reasonably on the UNCITRAL Model Law on the Recognition and Enforcement of Insolvency Related Judgments to clarify the scope of the insolvency judgments that can be recognised and enforced.[57]

3 Proceedings for judicial assistance

Cross-border investment and trade provide convenient conditions for insolvency debtors to transfer their property, leading to greater risk of loss and impairment of their insolvency property in cross-border insolvency cases. Thus, the international community usually advocates that there should be no additional complicated and time-consuming procedure in the proceedings of a foreign insolvency representative's application for recognition in order to effectively prevent the loss of insolvency property. In general, the competent court is usually the intermediate People's Court, where the debtor's business or the main insolvency property is located. Legislation should clearly stipulate that the foreign insolvency representative, when filing an application, shall submit legal documents certifying the authenticity of the foreign insolvency proceedings and the foreign representatives. The proceedings and documentation should be kept as simple as possible provided that the representative's identity and qualifications can be ascertained so as to

56 [2020] HKCFI 167.

57 Ling Zhang "Woguo Kuajing Pochanfa Lifa De Wanshan: Mubiao, Kuangjia Yu Guize" [The Legislative Improvement of China's Cross-Border Insolvency Law: Objective, Framework and Rules] (2021) 48 Zhongyang Minzu Daxue Xuebao [Journal of Minzu University of China] General No 254 150 at 157.

facilitate their entry into the country to deal with insolvency matters. To follow the Model Law standard, the simpler it is, the better.

4 Relief rules

When it comes to the issue of assistance measures to be obtained in foreign insolvency proceedings, which is not stipulated in China's current legislation, the following aspects may be considered.

First, temporary relief measures should be considered carefully. After accepting the application for recognition, the court may decide to suspend the execution of the debtor's property to keep the debtor from disposing of the insolvency property for value preservation. In addition, the relief measures after recognition and the recognition and assistance of the status and power of the foreign insolvency administrator should be considered as well. After the court has decided on recognition, the individual proceedings against the debtor and his property should be suspended upon the application of the foreign insolvency agent, as should the suspension of execution of the debtor's property and the action for suspending the debtor's disposal of its property. The property of the debtor located in China may also be transferred to a foreign country for unified distribution in the insolvency proceedings. Besides, when the judicial assistance measures involve the management and disposal of the property and affairs of bankrupt enterprises, they are usually complicated and professional. Also, there are differences in the provisions of insolvency law of various countries on the authority of the insolvency administrator, so it is not appropriate to give general recognition. Therefore, if the foreign insolvency administrator system is similar to China, it can be given recognition and assistance in China.

V CONCLUSION

In theory and practice, it seems that there are no more arguments on whether or not China should adopt the Model Law since a great number of Chinese enterprises have been investing abroad, and a sound and effective cross-border law is highly demanded by a fair market, and absolutely necessary so that Chinese creditors and their representatives will be able to legally attend cross-border insolvency proceedings and collect the money that belonged to them when the enterprises or their subsidiaries abroad are involved in insolvency. Foreign investors in China would also feel safe and sound if there is a reasonable insolvency regime allowing them to cope with the insolvency proceedings when their investment is in a financial crisis.

Various sectors of the society have expressed their different opinions respectively and separately on both the possible amendments on art 5 and the feasibility for China to adopt the Model Law after analysing and studying the challenges which China is currently facing.[58]

In particular, since the COVID-19 outbreak started in 2019, many China state enterprises started facing the potential financial risks of being insolvent at home and abroad. For the time being, most scholars are seriously discussing whether China should adopt the Model Law in part or in full.[59] Adopting the Model Law may be the only choice if China intends to improve the business environment so that both foreign investors in China and Chinese investors abroad can benefit from the improved, though not perfect, cross-border insolvency regime. Nevertheless, how to adopt it is still a great issue for discussion.

As to the concern that adopting the Model Law may prejudice China's interests, Professor Meng has made a very good point. He argues that the logic of the Model Law is:[60]

> enlightened self-interest, which may accordingly curb the extent of cooperation under the Model Law. Recognition under Model Law is not the same as recognition of the foreign judgement in the general conflict of laws. It is not possible to prejudice China's interests simply because of the adoption of Model Law.

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58 Liu Yao "Research on the legal issues of international cooperation in cross-border insolvency in China--taking the insolvency of Hanjin as an example". Page 112 mentions, "In fact, whether China should join the Model Law has caused a wide range of discussion in the academic circle. The view represented by shipping enterprises holds that China should hesitate to join the Model Law."; "While the view in favour of accession to the Model Law is that the goal of it is to achieve cross-border insolvency cooperation on a global scale by expanding the scope of the adopted countries. Compared with the cross-border insolvency legislation of other countries, the Model Law is more neutral and universal".

59 Didi Hu "Cross-Border Insolvency Regime in China: Finding the Most Pragmatic Interim Solution for Globalized Companies under Localized Practices" (2018) 92 Am Bankr LJ 523 at 523.

60 Meng Seng Wee "The Belt and Road Initiative, China's Cross-Border Insolvency Law, and the UNCITRAL Model Law on Cross-Border Insolvency" (2020) 8 The Chinese Journal of Comparative Law 116 at 142.