1. Under general law

Cross-border insolvency procedures to be executed in China shall generally comply with a number of general principles. Under the Constitution of the People’s Republic of China, Articles 18 and 32, any foreign enterprise, economic organization and individual shall abide by the Chinese laws, and their lawful rights and interests shall be protected under Chinese laws and jurisdiction.

Chinese laws recognize international conventions and bilateral or multilateral treaties. China may offer or provide judicial assistance and cooperation to those countries that have participated in the conventions and treaties based on reciprocity.

On China’s accession to the WTO, China confirmed its commitments to follow its international treaties, perform its obligations and duties and implement the WTO Agreement by amending its current laws or making new laws and regulations. It will also establish, for administrative acts, a judicial review procedure in conformity with the WTO Agreement. China will adopt a more open attitude towards international cooperation and this will influence the laws and practice of cross-border insolvency.
China’s general attitude towards recognition and enforcement of foreign court judgments is:

- based on international treaties and bilateral agreements joined by China or on reciprocity, Chinese courts may, presuming that it will not impair the sovereignty and security nor jeopardize the social and public interest of China, recognize and execute foreign court judgments.
- Chinese courts may not recognize nor execute foreign court judgments and rulings in those cases over which Chinese courts have jurisdiction.
- after recognized or executed by Chinese courts, foreign court judgments and rulings may have equal effect with the Chinese court decisions.

2. Assisting legislation

The Chinese bankruptcy law system is comparatively complicated. The system is composed of the Bankruptcy Law for State Owned Enterprises, bankruptcy procedures for non-state owned enterprises, bankruptcy policies made by the central government and a series of local bankruptcy regulations. There have been no specific stipulations for international insolvency. Cross-border insolvency may generally apply the Civil Procedure Law and stipulations provided by the international treaties and bilateral judicial assistance agreements joined in by China.

The Civil Procedure Law and relevant bilateral judicial assistance agreements have made the following stipulations provided for the procedure of recognition and execution of foreign court rulings.

Requests for recognition or enforcement of foreign court judgments may be lodged with the People’s Courts (“Chinese courts”) that have the jurisdiction. Enterprise bankruptcy cases are administered by the People’s Court in the domicile of the debtor, determined by the location of the main business organization or office of the debtor. If the debtor has neither business organization nor office, the People’s Court of the location of the debtor’s registration may administer the case.

Recognition or execution of foreign court rulings may be requested either by the litigant or the foreign court in accordance with the international treaties, judicial assistance agreements or reciprocity entered or joined in by both its home country and China. Should there be not any international treaty or reciprocity agreement, the foreign court may request assistance through diplomatic means.

The litigant may also file a request to an intermediate People’s Court that has the jurisdiction for recognition or enforcement of the foreign court judgment. Should there be no international treaty, the litigant may bring an action to the People’s Court that has the jurisdiction.

After receiving the request, the Chinese court will review the request in accordance with the international treaties or agreements entered or joined in by China and the foreign country or on the basis of reciprocity. The review is only restricted to whether the foreign court judgment is in conformity with Chinese legal provisions or with the
terms and conditions for recognition and enforcement of foreign judgments confirmed in the judicial assistance agreements. Matters regarding findings of facts and application of law may not be reviewed.

Foreign court judgments may be recognized and executed by the Chinese courts if the following conditions are met:

- according to China law, the court that made the judgment shall have the jurisdiction over the case;
- according to the law of the country in which the judgment was made, the judgment has become effective;
- the lawful rights and interests of the litigants have been and are duly protected;
- Chinese courts have already arrived at a legally effective judgment on a case with the same litigants and the identical object of action; or the case is being heard by the Chinese courts; or the Chinese courts have recognized the judgment of a court of a third country and the judgment has become legally effective; and
- the judgment is in conformity with the principles of Chinese law and does not impair the Chinese sovereignty and security nor the Chinese social and public interest.

After reviewing, the court may decide to recognize the foreign court judgment and issue an enforcement order; or decide to deny recognition.

3. Insolvency practice

In respect of a foreign bankruptcy declaration that has become legally effective, a foreign administrator may need to take action in respect of bankruptcy property situated in China. In the absence of any judicial assistance agreement between China and the foreign country, the Chinese courts’ usual practice will permit the administrator to bring an action directly to the Chinese courts provided the foreign administrator and the insolvent accept the jurisdiction of Chinese courts. A foreign creditor requesting to seize property situated in China may be allowed, after negotiation and mediation, to realize his rights on his foreign debtor’s property in China by way of share transfer.

In respect of recognition of foreign bankruptcy procedures, the Chinese courts have, in some cases, recognized the validity of foreign bankruptcy procedures after permitting the foreign receiver and the local government to negotiate. (Re bankruptcy of the Nanyang Textile Trading Co., Ltd. (1983).

In some cases, however, the Chinese courts have refused to recognize the validity of foreign receivers and had shown a strong tendency to protect the Chinese creditors in dealing with the cases (Re Guangzhou Liwan Construction Co. Ltd. v. Euro-America China Property Ltd. and Re Bankruptcy of the Shenzhen branch of the Bank of Commerce and Credit International (BCCI) (1992).
In recent years, the Chinese courts in some areas have begun to recognise the legal effect of foreign bankruptcy procedures. For example, the Intermediate People’s Court in Fuzhou, Guangdong Province had made a civil order to recognize the legal effect of a bankruptcy judgment made by Italian courts in November 2001. (Docket No. 2000 (633) civil judgment).

4. Examples

On 10 January 1999, Guangdong International Trust and Investment Corp. (“GITIC”) and its subsidiaries GITIC Shenzhen, Guangdong International Leasing Corp. and Guangxin Enterprise Development Corp. petitioned the courts for bankruptcy. This is the first bankruptcy case in China that involved a large number of foreign creditors. Altogether 494 domestic and foreign creditors declared claims amounted to RMB ¥46.7 billion, of which more than 80% were foreign liabilities from many countries including the U.S, Japan, Switzerland, Germany, France, Spain and Hong Kong.

This case sought to protect foreign creditors in its procedure, in that:
- a committee of creditors was set up comprising domestic and foreign creditors who take turns to preside over creditor’s meetings;
- should any foreign creditor object to the rights confirmed by the liquidating committee, the court may review the ruling.

In a case relevant to GITIC, the Hong Kong courts recognized the legal effect of the bankruptcy procedure of GITIC by the Hong Kong High Court judgment No. 15651 (1999). The judgment was made on the basis of that the bankruptcy procedure of GITIC gave equitable treatment to all creditors.

On 28 February 2003, the GITIC bankruptcy procedure was determined after four years. After hearing by the Supreme Court of Guangdong Province, the Guangzhou Intermediate Court and the Shenzhen Intermediate Court, discharge rates for claims of GITIC and its subsidiaries, Guangxin Enterprise Development Corp, Guangdong International Leasing Corp. and GITIC Shenzhen were fixed respectively at 12.52%, 28%, 11.5% and 19.48%, which exceed the record discharge rate of 8% in China.

5. Proposed reforms

The latest draft of the New Bankruptcy Law prepared by the National People’s Congress in 2002 has for the first time provided for cross-border insolvency. The draft is yet to be ratified by the Chinese legislature. It stipulates in Article 8
- the liquidation, mediation and reorganization procedures commenced by the People’s Courts under this Law shall have legal effect over the property of the debtors both inside and outside China.
- the liquidation, mediation and reorganization procedures commenced outside the People’s Republic of China shall have legal effect over the property of debtors situated in the territory of the People’s Republic of China. The petitions of the litigants for enforcement of such procedures in China shall be awarded by the People’s Courts for permission.
the People’s Courts will refuse permission in the following circumstances:

– there is neither international agreements nor reciprocity between China and the foreign country;
– the foreign procedure acts contrary to Chinese social and public interests;
– there is substantial difference between the substantive provisions of the bankruptcy and other relevant laws of the foreign country and the Chinese Bankruptcy Law, and such difference may possibly impair the interests of the Chinese creditors.
– other factors that the People’s Courts hold to be taken into account.