



Liu, Z. and Zhang, C. (2021) Will the COVID-19 pandemic change Government's rescue strategy? The emergence of the supportive bankruptcy enforcement approach in China. *International Company and Commercial Law Review*, 32(4), pp. 234-251.

This is the Author Accepted Manuscript.

There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

<https://eprints.gla.ac.uk/224271/>

Deposited on: 22 October 2020

Enlighten – Research publications by members of the University of Glasgow
<http://eprints.gla.ac.uk>

Will the COVID-19 Epidemic Change Government's Rescue Strategy?: The Emergence of Supportive Bankruptcy Enforcement Approach in China

Ziyu Liu* & Dr Chi Zhang*

Abstract

Ever since the breakout of global financial crisis in 2008, the rescue strategy for troubled enterprises which are bankrupt or going to be bankrupt is one of major tools for the Chinese government to intervene market activities. However, such a kind of administrative and political corporate rescue approach has given rise to corporate rescue failures and exacerbated corporate performance. In order to cope with the serious economic downturn during the past decade, the Chinese government has been changing its corporate rescue strategies. The enforcement-to-bankruptcy transfer and debt-to-equity swap are innovated by the government to promote market-oriented enforcement of bankruptcy law comprehensively. What's more, the outbreak of COVID-19 since early 2020 is severely exacerbating China's economic distress, and therefore a series of more flexible and market-friendly rescue approaches are encouraged by the government and the court. Based on the observation of the development of bankruptcy law enforcement in China, it can be concluded that pragmatism will be favored by both the governmental officials and judges in the recent future, and the Chinese government's intervention will definitely be enhanced as well, but this will also be more economic-oriented, instead of political-driven.

1 Introduction

Since the global financial crisis took place in 2008, the rescue strategy for troubled enterprises which are bankrupt or going to be bankrupt is one of major tools for the Chinese government to intervene market activities. The failure of such a rescue in Taizhai which was arbitrarily intervened by local government shows the great importance of a more reasonable and justified approach, in line with the rule of market economy. The policies on enforcement-to-bankruptcy transfer (EBT) and debt-to-equity swap (DES) are two typical innovations with Chinese characteristics. Due to commercial cultural, bankruptcy refers to failure and loss of everything. The Chinese businessmen are reluctant to apply bankruptcy if their enterprises went troubled.

* Doctorate researcher, School of Law, The University of Hong Kong.

* Lecturer in Commercial Law, School of Law, The University of Glasgow.

For state-owned enterprises, the management performance aligns with career promotion. Bankruptcy may not only mean the end of political career but also bring civil or criminal legal liabilities. As a result, there are a large number of zombie companies in the market. The policy of enforcement-to-bankruptcy transfer is to eliminate them from the market and provide a legal and professional chance to reorganization, liquidation or settlement. It is an effective tool to maximize the interests of creditors and society as a whole, as the fair distribution and social stability will be fully taken into consideration. The practice of debt-to-equity swap is to prevent and resolve major financial risks of Chinese enterprises. In practice, the target of this approach has always been state-owned enterprises. The EBT and DES are viewed as product of the Chinese rescue strategy.

The outbreak of COVID-19 brings negative impacts not only on the global economy but also the Chinese market. In order to maintain social stability and prevent economic recession, the Chinese government will definitely intervene and rescue enterprises. However, different from the situation in the financial crisis of 2008, the governance techniques in China improved greatly. In the COVID-19 era, the Chinese government is going to stimulate the market's vitality, and the emphasis on significance of private enterprises will be placed. The EBT and DES will be adopted in an economic-oriented and market-driven approach.

Against such a background of economic recession, it is a good opportunity to systematically review the practical dimension of bankruptcy law in China, particularly a series of institutional innovations encouraged by the Chinese authorities will provide a special lens for scholars to look at the changing philosophy of the rescue strategies of the Chinese government in recent years.

This article is organized as below: the second section begins with a review of the active role of the Chinese local governments in corporate rescue, a detailed case study of Taizhinai rescue failure will show the connection between the plight of bankruptcy enforcement of Chinese enterprises and the distorted political accountability of local governments and its officials. The following two sections discuss the institutional functions of DES and EBT aiming to consider how and why these two supportive bankruptcy enforcement mechanisms are innovated and recognized by the Chinese authorities in the past decade, by which we examine the transition of the official attitudes towards bankruptcy in the context of the Chinese political economy. Based on the above analysis on the latest market-oriented reform of bankruptcy enforcement

in the country, we reach a series of concluding remarks on the micro relationship between the economic environment, political condition and transitional corporate rescue strategies in China with a particular focus on the recent practice of bankruptcy law during the COVID-19 pandemic.

2 The Failure of Governmental Rescue of the Chinese Enterprises: A Case Study on Taizhinai (2009)

2.1 Local Government and Corporate Rescue before the Debt-to-Equity Policy

Prior to the rise of the nowadays practice of Debt-to-Equity Swap (DES), corporate rescue has been adopted by the Enterprise Bankruptcy Law (2006), which is led by local people's courts. In practice, however, corporate rescue in China is never independently directed by judicial bodies. On the contrary, administrative power of local government always actively intervenes in reorganization procedure of the Chinese enterprises.

First of all, a basic and important fact is that local enterprises are very essential to local governments. For example, the leading local enterprises not only pay tax for local governments, but also retain the equity of held by local governments for state-owned enterprises. More importantly, protecting local enterprises can essentially promote local employment, which is very significant for maintaining social stability. Therefore, it can be imaged that the Chinese local governments heavily rely on local courts to safeguard their own interests in bankruptcy reorganization projects. In this case, bankruptcy administrators and judicial officials in bankruptcy reorganization procedure will act for the benefit of the corresponding government.¹

Secondly, it is a matter of concern that the impartiality of the judiciary is in doubt, especially with regard to local government authorities. Under the current Chinese judicial system, local people's congresses nominate judges of the courts and allocate budgets to the courts, which mainly depends on the income of local governments.² It is not uncommon for the government or relevant administrative agencies to exert political influence on judicial institutions when exercising judicial adjudication power. This is especially true in the case of bankruptcy of state-owned enterprises.³ In this case, the government either acts as the leader in charge of economic

¹ Weiping He, 'Shareholder Primary and Corporate Reorganization: A Comparison of US and Chinese Law' (2017) 5 (1) *The Chinese Journal of Comparative Law* 205.

² See detailed analysis from Tao Huang, *The Public-policy-oriented Court: the Institutional Evolution of the Judicial System of China's Financial Law* (Law Press 2013)

³ Bo Xie, 'The two-pronged model for control of corporate reorganisations under Chinese reorganisation procedure: application, problems and improvement' (2013) 24 (3) *International Company and Commercial Law Review* 104.

planning of the local society and markets or as the controlling shareholder of SOEs. This makes it very difficult for judges of local courts to decide whether to apply the law based on the market or to provide special protection for the administrative interests of the government to harm other creditors.⁴

In practice, Chinese enterprises should be led by the court when applying for bankruptcy reorganization, the local government mainly acts as a coordinator to balance the interests of all parties and assist the court in effectively promoting the procedure of reorganization. However, the fact is that there is not always government support to assist the courts. The local government has the discretion (but not the obligation) to support the personal reorganization handled by the court.⁵ As some empirical studies on practical matters in reorganization of the country has revealed, the local people's court commonly request and obtain a written guarantee from the local government, which must ensure that the local governments politically agree on the proposed reorganization project and provide effective and efficient administrative services when necessary. In fact, it is quite common that the judges of local courts are unwilling to accept any proposed reorganization projects without the governmental approval.⁶

In comparison to legal practice of corporate rescue in most jurisdictions, it is not surprising that the role of Chinese local governments always plays an active role. The above review not only illustrates the key role played by local governments in the corporate rescue procedure, but also highlights the degree to which the courts have to seriously consider and respect local governments' attitudes towards corporate reorganizations of local enterprises. In fact, this can be said to be consistent with the statutory objectives of the Enterprise Bankruptcy Law (2006), which clearly emphasizes protecting the socialist market economy and safeguarding the common interests of society.⁷ However, the abuse of political power of the Chinese local governments in bankruptcy law enforcement has given rise to failure of corporate rescue, which can be well illustrated by the case study of Taizinai Group (2009).

2.2 Case Study of Taizinai Group

⁴ Ibid.

⁵ Zinian Zhang and Roman Tomasic, 'Corporate Reorganization Reform in China: Findings from an Empirical Study in Zhejiang' (2016) 11 *Asian Journal of Comparative Law* 55.

⁶ Ibid.

⁷ Article 1, The Enterprise Bankruptcy Law (2006).

Although the Supreme People's Court of China (SPC) has required that civil disputes are prohibited to be criminalized by any governmental bodies without solid criminal evidence. In the past thirty years of bankruptcy law practice, however, almost all bankruptcy law cases of local enterprises have been led and intervened by local governments.⁸ A common result of the corporate reorganization is that before the public security investigation is completed, the local court has completely processed the enterprise assets without a judicial decision on whether it constituted a crime.⁹

Hunan Taizina Dairy Group Co., Ltd., one of the leading non-state dairy companies in China, was established in 1996. In order to finance the expansion of the business, Tuchun Lee, the founder of the group invited international investors¹⁰ to invest in Taizina Group in 2007. Subsequently, a syndicated loan in value of RMB 500m was lent from foreign and domestic commercial banks by the group's founder.¹¹

The breakout of global financial crisis in 2008 forced Taizina Group into serious financial plight. In January 2009, the Zhuzhou Municipal Government of Hunan Province. The local government established the High-tech Dairy Corporation and Mr Dibo Wen, the deputy director of the Zhuzhou Economic Development Zone Management Committee, was appointed as the chairman of this new corporation. After that, High-tech Dairy Corporation directly took over Taizina Group in the name of financial rescue of Taizina and keeping social stability.¹² Tuchun Lee, the founder and CEO of Taizina was forced by the local government and people's court to handed over the management to High-tech Dairy Corporation and Wendi Bo replaced the founder as the CEO of Taizina Group. Eventually, the company was forced to complete a so-called corporate rescue (reorganization) in 2010. Moreover, in order to seek for a scapegoat for the business failure of Taizina Group, its founder Tuchun Lee was 'criminally' detained by the local police office on suspicion of illegally absorbing public deposits.¹³ Ironically, the alleged crime was subsequently acquitted for lack of evidence.¹⁴

⁸ See Roman Tomasic and Zinian Zhang, 'The Political Determinants of Corporate Reorganization in China'. In: Antons, C, (ed.) *Routledge Handbook of Asian Law* (Routledge 2016) 125-146.

⁹ Ibid.

¹⁰ Morgan Stanley, Goldman Sachs and private equity firm Actis Capital bought 31% of Taizina registered in Cayman Islands with JP Morgan Chase at a price of US\$ 73 million. See Andrew Godwin, 'Corporate Rescue in Asia — Trends and Challenges' (2012) 34 (3) *Sydney Law Review* 163.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

In fact, the local government's very rough control over the company has been strongly opposed by all shareholders, all employees, and all creditors of bankrupt Taizilai Group. After the above government-led corporate rescue, tens of thousands of employees were laid off and the exhausted efforts to cultivate the national brand gradually declined. According to relevant financial reports, the performance of Taizilai has been far less than one-tenth of the glory period: in 2016, the re-organized company's operating income was only RMB 182 million and its net loss was as high as RMB 51.2 million.¹⁵

3 Debt-to-Equity Swap (DES): Institutional Innovation Hedging Credit Risk

3.1 Institutional Functions of DES

In recent years, as China's economy has entered into a period of transformation and upgrading, a large number of high-leverage or overcapacity enterprises have been merged and wound up, increasing pressure to prevent and hedge major financial risks. The People's Bank of China pointed out that due to multiple internal and external factors, some deep-seated contradictions accumulated in the Chinese economy have gradually been exposed. Commercial banking industry is the core component of the country's financial industry, therefore preventing and mitigating various risks such as credit risk, market risk, and liquidity risk are the key links for the banking system to prevent and resolve major risks. In addition, the policy objective of the DES is to solve the outstanding risks of high leverage ratios of Chinese enterprises, the rapid growth of debt scale, and the increasing debt burden of enterprises in recent years which is mainly based on commercial banks' claims on loans issued to enterprises.¹⁶

More importantly, with the negative impact of the COVID-19 pandemic on China's economy, the scale and value non-performing assets of the Chinese SOEs has been dramatically growing.¹⁷ Against this adverse situation, the Chinese SOEs must pay close attention to the disposal of bankruptcy and reorganization of non-performing assets. As an important risk disposal mechanism, bankruptcy regime is also applicable to commercial banks.¹⁸ Compared with ordinary enterprises, commercial banks are facing higher credit risk which may lead to banking

¹⁵ Ibid.

¹⁶ Changyin Han, 'Debt-to-Equity Arrangement for Commercial Banks in a Perspective of Bankruptcy Law: Discussion with Professor Xinxin Wang' (2017) (11) Law Science 52.

¹⁷ See Guangji Li and Rongzhou Lee, 'The Reform Bankruptcy Prevention Procedure for Commercial Banks' (2020) (4) South China Finance 118.

¹⁸ Ibid.

bankruptcy, if the increasing default debt is not properly and timely covered.¹⁹ Therefore, the DES as a corporate rescue mechanism should play a more positive role in market bailout during the current difficult time.

3.2 Practice of DES: Transaction Structures and Case Study

3.2.1 Transaction Structures

In practice, the typical DES can be categorized into two models: first, the most popular transactional structure of DES is as below: at the first stage, the institutional investor directly injects funds into the enterprise proposed to be rescued; after that, the invested enterprise will use the capital to repay creditors, commonly, the commercial banks.²⁰ The advantage of this transaction structure of DES is that the time-consuming and costly bargaining between the debtor and a large number of creditors can be prevented. Specifically, a private equity investment fund is generally established, through which the debtor company or its subsidiaries will be invested in shares, and exit will be realized by means of equity transfer and repurchase.²¹ In this model, the sources of funds are diversified, and the funds mainly flow to the subsidiaries with development potential of the parent company, instead of directly investing in the debtor itself.

The second typical DES transaction structure can be illustrated as below, which also includes two stages, namely takeover of debts and conversion of debt into equity. In this type of DES, China's four major financial asset management companies (AMCs)²² will take over non-performing loans from state-owned commercial banks. In other words, the credit risk of commercial banks will be substantially mitigated by the AMCs' payment at this stage. Afterwards, the AMCs will convert the debts into equity and then actively participate in the debtor's corporate governance. Once the profitability of the debtor has been substantially improved, the controlling shareholder of the debtor will repurchase the shares from the AMCs in a pre-agreed price.²³

¹⁹ See Hong Ouyang, 'The Different Approaches for Reorganizing the SOEs in Financial Distress' (2019) (7) *China Chief Financial Officer* 100.

²⁰ Dongpo Cao, 'The Marketised Debt-to-Equity in Practice: Current Situation, Causes and Reform' (2020) (4) *Journal of Financial Development Research* 38; Jian Li, 'The Market-oriented Debt-to-Equity Swap: Practice, Challenge and Reform' (2018) (7) *Financial Regulation Research* 16.

²¹ Dongpo Cao, 'The Marketised Debt-to-Equity in Practice: Current Situation, Causes and Reform' (2020) (4) *Journal of Financial Development Research* 38.

²² Currently, the Chinese government established four state-owned AMCs, namely China Huarong Asset Management Co., Ltd; China Cinda Asset Management Co., Ltd; China Great Wall Asset Management Co., Ltd; China Oriental Asset Management Co., Ltd.

²³ Jian Li, 'The Market-oriented Debt-to-Equity Swap: Practice, Challenge and Reform' (2018) (7) *Financial Regulation Research* 16.

According to data released by the National Development and Reform Commission (NDRC), as of, more than 200 companies have signed DES agreements by the end of 2019, which involves 26 industries, with a total debt of 2.4 trillion RMB.²⁴ The target companies in current practice of DES mainly are those large leading SOEs with high-level financial leverage, and the debtor enterprises involve steel, coal mining, nonferrous metals, shipbuilding and building materials industries.²⁵ Most of the debtors in DES projects are located in Shandong, Shanxi, Hebei and Shaanxi provinces where the economic development still overly depends on heavy industry.²⁶

3.2.2 Case Study: China Shipbuilding Industry Corporation (CSIC)

At the beginning of 2017, CSIC decided to adopt market-oriented DES project, when the shipbuilding industry was in a downturn and the debt ratio of shipbuilding enterprises was generally higher than 80%. At the same time, due to the pressure of controlling production capacity, it is necessary to raise funds without adding new projects, so market-oriented DES became a proper choice. To this end, CSIC has negotiated with eight investment institutions to increase the capital of China Heavy Industry's subsidiaries, Dachuan Heavy Industry and Wuchuan Heavy Industry, with a total investment amount of RMB 21.868 billion.²⁷

At the first stage, China Cinda Assets Management Corporation and China Oriental Assets Management Corporation directly takeover the debt of the debtor, and then increased their capital into the two subsidiaries of China Heavy Industry by converting the held debt into equity with a total investment amount of RMB 7.034 billion.²⁸ At the second stage, China State-owned Capital Venture Capital Fund, China State-owned Enterprise Structure Adjustment Fund, China Life Insurance (Group) Company, Huabao Investment Co., Ltd and China PingAn Assets Management Corporation increased their capital in cash with a total investment amount of RMB 14.834 billion, and all the increased capital was used to repay the debts of the debtor.²⁹

²⁴ Ji Sun and Wenting Zhang, 'The Pros and Cons of the Current Debt-to-Equity Practice' (2020) (7) China Finance 79.

²⁵ Ibid.

²⁶ Ibid.

²⁷ 'The First Successful Market-oriented Debt-to-Equity Project' (2019); Ning Yang, 'Debt-to-Equity in Reorganizing Enterprises and its Risk' (2020) (2) Special Zone Economy 102.

²⁸ Ibid.

²⁹ Ibid.

Owing to the particularity of military enterprises, new institutional shareholders can't get the board seats of CSIC, instead, they are allowed to participate in corporate governance as the controlling shareholders acting in concert.³⁰ In the process of this DES, CSIC also actively communicated with government for efficiently coordinating various interested parties in the transaction. In August 2017, CSIC completed the DES project, and all the capital increased was used to repay the bank loan. In the following step, China Heavy Industry gradually recover the profitability and then repurchased equity held by the eight strategic investors. Finally, China Heavy Industry successfully completed this market-oriented DES in March 2018.

3.3 Plight of DES and its relation with Chinese Politics: Justice or Injustice?

In order to ensure that DES can be carried out based on market-oriented principles and rule of law, it is essential to restrict the administrative intervention that undermine marketization and rule of law in the process of DES. From a practical perspective, strong governmental intervention of local authorities and courts are still the main factor undermining marketization promise of DES. At a policy level, judicial independence has been highlighted in corporate reorganization procedure, due to various reasons, however, the local courts are still reluctant to disobey the opinion on reorganization projects of the local government.³¹ Therefore, the main force that may undermine the marketization and legalization of DES comes from local governments, which is why the State Council repeatedly emphasize that local governments should not intervene in DES procedure. Taking into account the following facts: local governments may get many benefits from DES of local bad enterprises (such as avoiding bankruptcy of local enterprises, reducing debts, avoiding unemployment of employees, maintaining local economy and GDP, maintaining social stability, etc.)³².

The main format for local governments to intervene in corporate rescue cases is as below: First, local government officials are managers of liquidation groups and directly intervene in bankruptcy cases. The second step s to force the court to approve the corporate reorganization

³⁰ Ibid.

³¹ Xinxin Wang, 'Debt-to-Equity Swap in Reorganizing Commercial Banks' (2017) (2) *Journal of Renmin University of China* 2; Junfeng Wang, 'Research on Legal Problems of Financial Debt, Debt and Equity Swap in Bankruptcy and Reorganization' (2018) (4) *Economic Research Guide* 177; Fumin Wang, 'A Research on Debt-to- Equity Swap in Reorganization Procedure', Conference paper of The 12th Annual Conference on the Rise of Rule of Law in the Central China (2019).

³² Roman Tomasic and Zinian Zhang, 'The Political Determinants of Corporate Reorganization in China'. In C. Antons, (ed.) *Routledge Handbook of Asian Law* (Routledge 2016) 125-146.

plan.³³ The members of the reorganization administrators are governmental staff with political powers, therefore, the reorganization administrators are actually not responsible to the court, but to the local government. As a result, not only creditors' meeting but also judges can hardly supervise the operation of corporate reorganization in practice. Even if the creditors' committee employs intermediaries, they often choose local intermediaries who keep close relationship with the government, and hence it is difficult to play an independent role.³⁴

4 Enforcement-to-Bankruptcy Transfer (EBT)

4.1 Dilemma of “Too Much” on Enforcement Cases and “Too Few” on Bankruptcy Cases

The Chinese government implemented a stimulus plan through investing approximately US\$576 billion in domestic market, in order to maintain the stability and growth of its economic system during the global financial crisis of 2008.³⁵ China's state banks were the financial supporters which provided loans to SOEs which heavily carried out a large number of investment in infrastructure.³⁶ In recent years, with an increasing insolvent SOEs in implementing infrastructure projects which failed to produce interests and became zombie companies, the enforcement has become an increasing matter of concern and formed a vicious circle.³⁷ As these so-called zombie companies have obviously insufficient assets or even no asset to enforce and satisfy a successful judgment, involving complex distribution,³⁸ they increased and accumulated in the enforcement procedure. Also, these overstocked enforcement cases affected market efficiency and led to negative impression of judicial credibility.³⁹

At the same time, different from the sharp increase of enforcement cases, the number of bankruptcy cases is quite small. The Enterprise Bankruptcy Law was adopted in 2007 to fairly settle the credits and debts, safeguard the legitimate rights and interests of creditors and debtors, as well as maintain the market order of the socialist economy.⁴⁰ However, bankruptcy of zombie companies was rare. It is notable that, at the end of 2015, there were only 3,683 bankruptcy cases, in which 2,352 were adjudicated, including 366 reorganizations, while there

³³ Ru Chen, 'Debt-to-Equity Swap for Unlisted Corporations', Conference paper of The 12th Annual Conference on the Rise of Rule of Law in the Central China (2019).

³⁴ Tomasic and Zhang (n 32).

³⁵ Naomi Moore, F Mark Fucci and Jingli Jiang, *The Asia-Pacific Restructuring Review 2018* (Sep. 21, 2017), <https://globalrestructuringreview.com/insight/the-asia-pacific-restructuring-review-2018/1147549/china>, accessed July 6, 2020.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*; Hebei Court, *The Dilemma and Solution of Transfer from Enforcement to Bankruptcy*, <http://qhdzy.hebeicourt.gov.cn/public/detail.php?id=4207>, accessed July 6, 2020.

³⁹ *Ibid.*

⁴⁰ Enterprise Bankruptcy Law (2007), Article 1, <http://lawinfochina.com/Display.aspx?lib=law&Cgid=78895>.

were a large number of zombie companies among 62,000 state-owned firms which were incurring RMB1.3 trillion (\$183 billion) in losses.⁴¹

4.2 Institutional Functions

Even though enforcement procedure and bankruptcy procedure are both legal means of debt repayment, they are quite different with functions.⁴² One of the crucial differences lies in the principles in the way of realizing creditor's rights. According to the Article 516 of Interpretation of the Civil Procedure Law, the court of enforcement shall use the properties acquired from sell-off operation in enforcement to, upon deducting fees for enforcement and repaying the debt with priority, repay the general creditors by the order of properties seal-off, seizure and freezing during the property preservation and enforcement process.⁴³ That is to say, the order of repayment depends on the time of sealing up, detaining and freezing in the process of preservation and application for enforcement.⁴⁴ However, the prominent attention is paid to the fair distribution of all creditors' interests. Fairness and proportionality equality are essential principles of bankruptcy procedure.⁴⁵ In this case, all creditors are treated the same and are compensated equally regardless of the priority.⁴⁶ The dilemma of enforcement growth and bankruptcy atrophy has sacrificed the interests of creditors and debtors, making the enforcement more difficult.⁴⁷ In order to resolve this situation and make a response to the Supply-Side Structural Reform policy announced by President Xi Jinping in 2015 which aims to improve the efficiency of the SOEs and reduce zombie companies from the market,⁴⁸ bankruptcy law which could enable more effective deployment of assets and allow uneconomic companies to reorganize or liquidate came into the spotlight⁴⁹ and the innovation of EBT was developed.

⁴¹ Tianlei Huang, China is Only Nibbling at the Problem of "Zombie" State-owned Enterprises, <https://www.pjie.com/blogs/china-economic-watch/china-only-nibbling-problem-zombie-state-owned-enterprises>, accessed July 6, 2020.

⁴² Hebei Court, *supra* n 38.

⁴³ Interpretations of the Supreme People's Court on Applicability of the Civil Procedure Law of the People's Republic of China, Article 516. "In the case the party concerned disagrees to refer the case to bankruptcy process or the people's court at the location where the person subject to enforcement is domiciled rejects to accept the bankruptcy case, the court of enforcement shall use the properties acquired from sell-off operation in enforcement to, upon deducting fees for enforcement and repaying the debt with priority, repay the general creditors by the order of properties seal-off, seizure and freezing during the property preservation and enforcement process."

⁴⁴ *Ibid.*

⁴⁵ Hebei Court, *supra* n 38.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Dinny McMahon, 'The Anatomy of a Bankrupt State Firm's Liquidation' Marco Polo (26 September 2017), <https://macropolo.org/anatomy-bankrupt-state-firms-liquidation/> accessed July 6, 2020. Rebecca Parry and Yingxiang Long, China's Enterprise Bankruptcy Law: Building An Infrastructure Towards A Market-based Approach, *Journal of Corporate Law Studies* 20:1, 157-178, at 175.

⁴⁹ Moore, Fucci and Jiang, *supra* n 35.

The regulatory mechanism of EBT was legally established in the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law in 2015. If the enforcement court finds that an enterprise meets the conditions for bankruptcy in the process of execution, it shall suspend the execution procedure and transfer the case to the people's court of the place where the person subjected to execution has his domicile after obtaining the consent of one of the applicants or the person subjected to execution.⁵⁰ Then it was further specified in the Guiding Opinions on Several Issues concerning the Transfer of Enforcement Cases to Bankruptcy Examination which was issued by the Supreme People's Court (SPC) in January 2017, in order to smooth the transfer process.⁵¹ So far, the regulatory regime of EBT has been basically completed.⁵² If the property of the person subjected to execution is not enough to pay off all debts, all the transactions of that person can be strictly examined and investigated through the bankruptcy procedure.⁵³ When the EBT was formed, there has been a rapid growth of bankruptcy cases. The courts concluded 3,602 bankruptcy cases in 2016, representing an increase of 60.6 per cent from 2015.⁵⁴

The EBT is designed for two main purposes. First, the EBT provides a rescue strategy to market players to exit the market and reduce their losses and maintain the stability of the whole society.⁵⁵ For example, the debtor could get rid of being engaged in individual enforcement procedures for paying off debts. The social credit of debtor could be well-protected. For shareholders, they could be prevented from being involved in the loss-making companies. For the certain sustainable enterprise, it could enter the bankruptcy procedure to get professional examination, which could be guided to a much appropriate position in the market. For those legitimate creditors, their interests could be better protected as fair distribution is a compulsory requirement in the EBT. They could be treated and paid off in a fair and orderly way in the bankruptcy procedure, which eliminates the risks that their interests would be damaged by the debtor's individual repayment in the enforcement procedure.⁵⁶ Second, the EBT is conducive to improving the judicial performance and credibility. Most of the overstocked and long-pending enforcement cases would enter the bankruptcy procedure immediately and be resolved

⁵⁰ Civil Procedure Law (Amended in 2015), Article 513.

⁵¹ Parry and Long, *supra* n 48, at 172.

⁵² Xudong Liu and Xiaoyan Lu, The Function Perspective and System Construction of "Enforcement to Bankruptcy Transfer" under the Framework of Efficiency Principle, *Journal of Law Application* (2017) 11, at 51.

⁵³ Hebei Court, *supra* n 38.

⁵⁴ Moore, Fucci and Jiang, *supra* n 35.

⁵⁵ Hebei Court, *supra* n 38.

⁵⁶ *Ibid.*

effectively. The legal tool of EBT is also beneficial to avoid the vicious circle that the same effective legal document might fall into the situation of repeatedly filing cases and persisting for a long time.⁵⁷

4.3 Rationale of EBT

4.3.1 Commercial Culture: Reluctance to Bankruptcy Applications

According to the EBL which was adopted in 2007, the application of bankruptcy proceedings shall be filed by the debtor, the creditor and the person responsible for liquidation.⁵⁸ However, there have been few cases in which the parties actively apply for bankruptcy in recent years. Culture is one of crucial explanations, which has played a significant role in bankruptcy law. For the debtor, bankruptcy is condemned as a life of burden for generations to come due to the cultural tradition of non-forgiveness of debts,⁵⁹ which means that if a father owes a debt, his sons or grandsons would be responsible for it.⁶⁰ The person in the Chinese society who went bankrupt used to be viewed as a loser with “bad luck” or “broken fortune”.⁶¹ It is the cultural stigma of bankruptcy that affects the low numbers of voluntary applications by debtors. For the creditors, the dominant Confucianism in the Chinese culture encourages the balance and harmony of society, educating people that they should keep relationships (“guanxi”) rather than pursue court intervention in commercial activities. It seems immoral to force a debtor into compulsory bankruptcy.⁶² Due to the culture which commercial activities depends much on governmental intervention rather than legal tools, court is not the priority for creditors to protect their legitimate interests. The Chinese society was a historically low regard in judicial power.⁶³ Instead, people prefer to focus on “guanxi” to obtain their entitlements repayment.⁶⁴ Furthermore, most of creditors lack sufficient legal knowledge to effectively use the bankruptcy system and protect their legitimate rights and interests. The bankruptcy procedure is hard to be recognized as a legal tool which could give the enterprises a chance to be reborn.

⁵⁷ *Ibid.*

⁵⁸ Enterprise Bankruptcy Law.

⁵⁹ According to Chinese tradition, “debts incurred by the father shall be assumed by the son.” Will Fung, Policy-Oriented vs. Market-Oriented Bankruptcy: A Tour on the PRC New Enterprise Bankruptcy Law, 3 CHINA L. REP. 7 (2007); Roman Tomasic and Margaret Wang, The Long March Towards China's New Bankruptcy Law, in *Insolvency Law in East Asia* 93, 94 (Roman Tomasic ed., 2006); Arsenaault, Steven J., “The Westernization of Chinese Bankruptcy: An Examination of China's New Corporate Bankruptcy Law through the Lens of the UNCITRAL Legislative Guide to Insolvency Law,” *Penn State International Law Review* 27 (1) (2008), at 46.

⁶⁰ Pauline Ma, A New Chinese Bankruptcy System: Made for Business or for the State?, 11 *Austl. J. Corp. L.* 192 (2000), AT 205.

⁶¹ Stephen H. Diamond, The PetroChina Syndrome: Regulating Capital Markets in the Anti-Globalization Era, 29 *J. Corp. L.* 39 (2000), at 47.

⁶² Ma, *supra* n 60, at 205.

⁶³ Feng Chen, Chinese Bankruptcy Law: Milestones and Challenges, 31 *St. Mary's L. J.* 49 (1999), at 60.

⁶⁴ Ma, *supra* n 60, at 205.

In addition, the socialism and communism also leaves a great influence on attitudes of bankruptcy. The Chinese bankruptcy laws mainly focus on SOEs which serves as the major market players. The assets and interests of SOEs are condemned as state property. Even though central government has issued supporting policies to encourage bankruptcy filings, through establishing bankruptcy courts, training professional bankruptcy judges and lawyers, the voluntary applications of SOEs bankruptcy were rare. The leaders of SOEs are not only executive managers responsible for operational issues but also serve as political cadres, confronted by a host of laws, regulations and Communist Party rules. The bankruptcy of SOEs is generally viewed as leadership failure, which may end the political career of relevant leaders or even result in the Party disciplinary investigations or criminal liability. It is the fact that the law which would punish poor management performance places a significant burden on SOE managers and discourage managers and shareholders from seeking bankruptcy court relief and protection.⁶⁵

4.3.2 Governmental Intervention

Based on the commercial culture discussed above, governments are keen in intervening in the bankruptcy, especially in the bankruptcy of insolvent SOEs or large private enterprises in locality. To some degree, the bankruptcy of these firms represents a loss of face for the government.⁶⁶ One of motivations is that local governments are worried about losing fiscal revenues because of these large enterprises' bankruptcy. What is more, the bankruptcy of these large enterprises will result in unemployment. A large number of people would simultaneously lose their jobs. Social stability which is one of the most typical legislative goals of China's bankruptcy law would be affected by the bankruptcy. Therefore, in order to keep the insolvent firms sustainable, local governments preferred to provide subsidies and financial support through pressing local banks to continuously lend to them.⁶⁷ In the bankruptcy procedure, local governments have widely intervened to shield many insolvent companies from the formal bankruptcy.⁶⁸

⁶⁵ Regulations on Disciplinary Measures of the Communist Party of China (2003 version), Article 122; Jiamu Sun, Current Trends in China's Bankruptcy Filing, <https://www.jdsupra.com/legalnews/current-trends-in-china-s-bankruptcy-49571/>, accessed July 6, 2020.

⁶⁶ Ma, *supra* n 60, at 205.

⁶⁷ Huang, *supra* n 41.

⁶⁸ Mingkang Liu and Chuyi Wei, Towards a Better Future for Chinese Bankruptcy Law: Problems and Potential, Working Paper No. 62, at 2.

4.4 Case Study

Courts at various levels have spent huge efforts in grow experience in the bankruptcy field, and EBT became a common tool. In May 2015, Songhui Industry (Shenzhen) Co., Ltd. (hereinafter referred to as “Songhui”) which mainly deals in the production and wholesale of engineering plastics and plastic molds was forced to close for several reasons, such as poor management and broken capital chain, causing 1,384 cases in the enforcement procedure after litigation or arbitration. During the enforcement procedure, the Shenzhen Baoan District People’s Court (hereinafter referred to as the Baoan Court) found that there was no other property for enforcement, while the bank deposit of Songhui has 3,483,13 yuan and the auction value of its machinery and equipment could reach 1.62 million yuan. Because of the order of sealing up, it was hopeless for 459 employees to be compensated from the auction money and the enforcement procedure reached a deadlock. The court had a hard time balancing the employees’ interests in the enforcement filed by the 459 unpaid employees. On February 23, 2017, the Baoan Court transferred the enforcement case of Songhui to bankruptcy procedure. On April 5, 2017, the Shenzhen Intermediate People's Court of Guangdong Province (hereinafter referred to as the Shenzhen Intermediate People's Court) decided to accept Songhui’s bankruptcy case. After accepting Songhui’s bankruptcy liquidation application, Shenzhen Intermediate People's Court immediately issued an acceptance notice in the newspaper and appointed a manager to carry out the work according to the bankruptcy law. After a comprehensive investigation and review of the assets, liabilities, and operating conditions of Songhui by the manager, the serious insolvency of Songhui was confirmed with great liabilities up to 120.593 million yuan. On June 28, 2017, the Shenzhen Intermediate Court declared Songhui bankrupt according to law.

Based on the approved distribution plan of bankruptcy property, the bankruptcy property available for distribution is 1,624,364.48 yuan. The priority is paid to the bankruptcy expenses of 6,850,125.59 yuan, and the remaining 9,386,328.89 yuan is used to pay off the employee’s claims 11,347,789.79 yuan. On December 29, 2017, the Shenzhen Intermediate Court ruled to terminate Songhui’s liquidation procedures.⁶⁹ Since Songhui’s property is insufficient to pay off all claims, the conflict among creditors is fierce. In particular, the rights of 459 employees involved in this case is hard to balance. However, the difficulty has been addressed promptly. As a result, the success of EBT in Songhui case has digested 1,384 enforcement cases, put a

⁶⁹ China Court (2018), <https://www.chinacourt.org/article/detail/2018/03/id/3219365.shtml>

spare batch of machinery and equipment back into use, guided the labor resources of 459 employees to the market, which could also stimulate market vitality. It could be found that in this case, the employees' claims are the priority which were first compensated, in order to avoid risks of social stability and potential employee protest. Transferring the case from the enforcement to bankruptcy is proved to be an efficient way to effectively dissolve accumulated cases in enforcement, fairly protect legitimate rights and interests of relevant stakeholders.⁷⁰

5 Path Dependence? The Changing Role of the Chinese Government in Bankruptcy Law Enforcement

5.1 Towards Supportive and Market-oriented Corporate Rescue Approaches

Ever since the rescue failure of Taizilai group to date, owing to the serious downturn of economy during the recent decade, the Chinese government has been changing the rescue strategies of Chinese enterprises. The above analysis on the legal practice of ETB and DES shows that the Chinese government will continue to play a positive role in bankruptcy law practice. At the same time, we can also conclude that the business failure of enterprises and bankruptcy is no longer regarded as criminal nor immoral, instead, business failure is being accepted as a very normal phenomenon in market economy which is very common in each market economy country. The above study on the innovative practice of bankruptcy law in China also shows that promoting the efficiency of market exit mechanism for the failed business has been a political task for the governments at all levels. Against this macro background, the rescue failures like Taizilai have been dramatically reduced, as the officials of local governments are no longer under a very heavy political pressure when they deal with corporate rescue in the recent years.

At the same time, the epidemic is actually worsening China's declining economy. Therefore, Chinese governments at all levels have increasingly realized the irreplaceable importance of the private sector in developing the Chinese economy and safeguarding the national economic safety. Therefore, even the leading private companies go bankrupt in such a difficult time, the local government is changing their attitudes towards the private sector in corporate rescue to be more friendly than ever before and the local protectionism is also mitigated. Moreover, the criminalization of the entrepreneurs of insolvent companies is also prevented or even

⁷⁰ Jiamu Sun, Current Trends in China's Bankruptcy filings, <https://www.jdsupra.com/legalnews/current-trends-in-china-s-bankruptcy-49571/>, accessed July 6, 2020.

strictly prohibited by the highest authorities of the country, instead, those entrepreneurs are expected and encouraged by the courts and local government to continue the business.

However, it is overly optimistic to expect that the Chinese government's bailout measures will have a fully market-oriented progress at the legal level. Our above research also come to a clear conclusion that for both in the case of ETB or DES, the policy-oriented governmental intervention is still negatively impacting the efficiency and justice of corporate rescue in China. As we discussed in this article, the board members and senior managers in the SOEs actually is a part of China's political power system, and therefore the failure of the enterprises under their control means that they've breached their political responsibility in properly managing state-owned assets, and hence permit SOEs go bankruptcy will result in very serious adverse consequences to those management layer in the Chinese SOEs. Therefore, it is necessary to give the court independent power to apply ETB.

In terms of the DES, however, it can also be understood as Chinese authorities' large-scale legal practice aiming at hedging financial risk of stated-controlled banking system by means of investing state-owned capital into ordinary enterprises. Although the authorities have repeatedly emphasized that the DES should be carried out in market-oriented principle and government intervention must be minimized, it is not difficult to clearly see that the fundamental task of DES is political, that is, the credit risk of private enterprises should not be transferred into the state-owned financial system. Based on this, we have reason to believe that to a large extent, the nature of DES is still a legal technique for state-owned capital to promote nationalization of the leading private enterprises through state-owned asset management companies, even though the DES is market-oriented at a policy-level.

5.2 How the COVID-19 Accelerates the Evolution of Bankruptcy Enforcement in China

Instead of continuing to achieve remarkable growth in the past years, the Chinese economy would encounter challenges due to COVID-19 epidemic. From the perspective of international market, the global economy would perform considerably worse. The International Monetary Fund estimated that world output is expected to contract by 3%, with world trade down by 11% in 2020 and advanced economies performing the worst,⁷¹ which might trigger a new wave of

⁷¹ Sarah Tong, Li Yao, How Much Will the Chinese Economy Be Damaged by COVID-19?, <https://www.brinknews.com/how-much-is-the-chinese-economy-going-to-be-damaged-by-covid-19-coronavirus/>, accessed July 6, 2020.

production configuration and reinforce protectionist tendencies worldwide. Learning from the European difficulties of healthcare products in the COVID-19, countries might their production back home and shorten global supply chains to better manage risks. However, as the world's largest exporter, China heavily depends on production demand from external market. The China's domestic market has been severely affected by COVID-19. In the first quarter ending in March, the Chinese economy shrank 6.8%.⁷² During the early months in COVID-19, lockdowns were strictly imposed to control disease spread. Factories, shops, and travel were closed to contain the infection,⁷³ during which a large number of enterprises went bankrupt up to 460,000.⁷⁴ Small and medium-size of private enterprises which make up over 60% of GDP, are posed to suffer most. About 247,000 Chinese companies declared bankruptcy in the first two months of 2020.⁷⁵ It is hard for them to get financial support from big banks with central government bailouts.⁷⁶ Instead, they had to turn to shadow banks for loans.

Unfortunately, due to the risk of a resurgence of the virus outbreak, the possibility of another round of strict lockdowns still exists. The struggle to balance business resumption and disease control will be further prolonged.⁷⁷ In order to rescue enterprises and maintain economic stability, the Chinese government has made great efforts for economic recovery from epidemic recently.⁷⁸ For example, in order to encourage and stimulate domestic market, the Chinese government issued a new plan on infrastructure investment priorities has been issued, such as those in 5G information technology, those that help apply internet, big data, AI and other technologies to enhance traditional sectors, and those for scientific research and R&D activities,⁷⁹ and also provides consumption coupons and product-specific subsidies.

⁷² News Wires, China Drops GDP goal as Parliament Opens Amid Covid-19 Hit on Economy, <https://www.france24.com/en/20200522-china-drops-gdp-goal-as-parliament-opens-amid-covid-19-hit-on-economy>, accessed July 6, 2020.

⁷³ *Ibid.*

⁷⁴ Coronavirus: China's Economy Shrinks by 6.8% in Worst Downturn Since 1970, <https://www.euronews.com/2020/04/17/china-s-economy-in-worst-downturn-since-since-70s-in-virus-battle>, accessed July 6, 2020.

⁷⁵ Jiayun Feng, More Than 240,000 Chinese Companies Declare Bankruptcy in the First Two Months of 2020 (April 9, 2020), <https://supchina.com/2020/04/09/more-than-240000-chinese-companies-declare-bankruptcy-in-the-first-two-months-of-2020/>, accessed July 6, 2020.

⁷⁶ Charle Campbell, 'How Can I Get Through This?' The Impact of Coronavirus on China's Economy is only Just Beginning, <https://time.com/5824599/china-coronavirus-covid19-economy/>, accessed July 6, 2020.

⁷⁷ Tong and Yao, *supra* n 71.

⁷⁸ China Banking News, Private Companies Account for Record Share of Chinese Exports in April at over 51%, <http://www.chinabankingnews.com/2020/05/25/private-companies-account-for-record-share-of-chinese-exports-in-april-exceed-51/>, accessed July 6, 2020.

⁷⁹ *Ibid.*

The EBT has played a significant role for insolvent enterprises in the COVID-19. For example, Sichuan Southwest Medical Equipment Co., Ltd. (hereinafter referred to as Southwest) which is a professional enterprise integrating the development, production, sales, after-sales service and consultation of medical X-ray machines, have encountered difficulties due to market changes and the overall loss of the group since 2014, with direct liabilities of about 760 million yuan and guarantees of about 450 million yuan of creditors. There are more than 300 creditors known. In the enforcement process, Southwest made an application of EBT for fair compensation of all creditors. This EBT case was accepted in September 2019. However, after the outbreak of the COVID-19 epidemic, another company hoped to use the Southwest's clean workshop to produce protective masks, as the medical X-ray machine market continued to be active. After comprehensively analyzing the necessity and feasibility of resumption of production under the epidemic prevention and control, the court issued a written reply on the day of the application by Southwest on February 3, to agree the cooperation in the production of protective masks in the form of a dust-free workshop for a fee, and to resume the production and operation of medical X-rays. Since the resumption of production, Southwest has produced more than 2.3 million protective masks. The overseas orders for medical X-ray machines of nearly 1 million yuan are under negotiation. Due to the positive impact of the resumption of production in the COVID-19, two managers of Southwest have proposed to participate in the reorganization of intention and investment plan.⁸⁰

5.3 The Prospect of Bankruptcy Enforcement in China

5.3.1 The Relevance of Private Enterprises

As discussed above, the COVID-19 epidemic outbreak has a profound impact on Chinese economy. There are a number of heated discussions on the relationship between China's economic down and the epidemic.⁸¹ However, the latest official data shows a growth in the share of private enterprise in Chinese exports during the COVID-19 pandemic.⁸² Private enterprises accounted for a 51.7% share of the value of goods exports in the month of April, reaching at the highest level on record.⁸³ It could be suggested that private enterprises would play an increasing role in the Chinese market as its great vitality, to drive a reversal in growth falling a sharp to trade decline due to the negative impacts of COVID-19.⁸⁴ The recent trend of

⁸⁰ Shuguang Li, How to Serve the Overall Situation of Epidemic Prevention from the Perspective of the Typical Cases of the Supreme People's court (2020).

⁸¹ *Ibid.*

⁸² China Banking News, *supra* n 78.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

Chinese economic development has been criticized and viewed as a historical backdrop of “the state advancing while the private sector retreating”. However, the Chinese government has made efforts to address these concerns.⁸⁵ The President Xi met with private entrepreneurs in 2018 and Vice Premier Liu He articulated the government’s unwavering support for both the SOEs and the private sector.⁸⁶ The policies issued by the government, such as the State Council Opinion are aimed at giving private entrepreneurs confidence and affirms the important role of the private economy. After the COVID-19 outbreak, emphasis has been placed on private economy to revitalize the market. Li Keqiang has publicly advocated a stall economy to get the country’s derailed economy back on track.⁸⁷ As a response of Premier Li’s endorsement, 100,00 jobs were created overnight in Chengdu through properly regulated street vendors.⁸⁸ So far, over 27 cities have rushed to set up street stall zones. Some leading Internet companies such as Alibaba, Tencent and JD have also announced large-scale subsidy programs to support street vendors. If the success of Chengdu inspired by the government were broadly replicated, the stall economy could potentially produce more than five million new jobs and increase income by 15 billion RMB,⁸⁹ indicating a huge potential of private economy. The stall business ignited by the Chinese government points out a strategic shift in economy policy away from infrastructure-led growth and towards domestic consumption.

In addition, as discussed above, the disruption in global value chains and the reconfiguration of multinational’s production facilities away from China might pose challenges for Chinese economic development, domestic market becomes increasingly important. In order to continuously embark on economic reforms to enhance the economy’s resilience and make a response to the new initiative of improving the allocation of markets for various factors of production, including labor, land, capital, technology and data, announced in the April 2020, the well-supported private economy might also unleash new growth and prosperity in China.

5.3.2 Governmental Intervention

Governmental intervention exists not only in the establishment and operation of business, but also exists in the market exit phase. It could be predicted that bankruptcy in China will be

⁸⁵ Chiu-Ti Jansen, Will China Fulfill Its Commitment to the Private Sector After the COVID-19 Debacle? (Feb. 25, 2020) <https://www.capitalwatch.com/article-5073-1.html>, accessed July 6, 2020.

⁸⁶ *Ibid.*

⁸⁷ Li Yuan, China’s Street Vendor Push Ignites A Debate: How Rich Is It?, <https://www.nytimes.com/2020/06/11/business/china-street-vendors-stall-economy.html>, accessed July 6, 2020.

⁸⁸ Shining Tan, Can China’s Stall Economy Save Its Stalled Economy, <https://www.csis.org/blogs/trustee-china-hand/can-chinas-stall-economy-save-its-stalled-economy>, accessed July 6, 2020.

⁸⁹ *Ibid.*

continuously affected by government, in order to maximize positive outcomes. On March 31, 2020, the SPC released the second batch of National Court Service Guarantee Typical Cases of Civil and Commercial Resumption and Reinstatement during Epidemic Prevention and Control. All these cases selected by SPC are related to the outbreak of the epidemic⁹⁰ and indicates that bankruptcy trial will help to win the overall battle against the epidemic. All the major tools of bankruptcy have been used in these selected eight cases.⁹¹ Five reorganizations, one liquidation, one settlement, and one EBT were resolved. The fact that six of them were taken for rescue measures points out that liquidation is not the only choice for enterprises and there would be various consequences of bankruptcy. The feature of China's bankruptcy procedure in the COVID-19 era is to rescue troubled enterprises, especially those have the possibility of resuming production. The strategy of these bankruptcy cases demonstrates the possibility for the enterprise to be rescued by resuming production.⁹² Both of the EBT and other legal tools adopted to rescue enterprises shows that the government continues to play a significant role in rescuing enterprises, both in SOEs and private enterprises. Overall, this article argues that the overall direction of rescuing strategy is change much.⁹³

6 Conclusion

In this article we examine the changing policies and practice of bankruptcy law in China with a particular focus on the role of the local governments in enforcements. Generally speaking, the Chinese authorities' attitudes towards bankruptcy of enterprises is changing from politically sensitive to market-oriented and supportive as a response to the dramatical economic downturn during the past decade. Our analysis on Taizhai corporate rescue case illustrates how the conservative ideological and political background compels the local governments and courts to criminalize insolvency of leading enterprises in the country. This condition cannot be changed unless the role and status of bankruptcy is officially accepted by the supreme authority as a normal and non-political matter.

What's more, the EBT and DES as the two core institutional innovations in bankruptcy enforcement have been widely applied to promote economic efficiency of market-economy in the recent decade. The EBT aims to enhance competition within the market, to save social resources and to guarantee the interests of various creditors throughout the legal procedure of

⁹⁰ Li, *supra* n 80.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Jansen, *supra* n 85.

bankruptcy. Although the traditional Chinese commercial culture and local protectionism still impede the efficient application of the EBT, this still can be seen as a turn-point of politics of bankruptcy law in China. Similarly, we conclude that the introduction of market-oriented DES into the Chinese bankruptcy law practice is another example displaying that the politics of bankruptcy in China, at least at a policy-level, is changing positively during the past decade. However, the state-owned AMCs play a leading role in DES and the purpose of DES is to mitigate credit risk of state-owned commercial banks, therefore, the role of DES in relation to marketization of corporate reorganization is highly doubtful.

The breakout of COVID-19 is negatively impacting the economic development of every country in the world, China is not an exception. China's economic recession is and will continually be exacerbated by the pandemic, which means that the Chinese government must be very carefully and effectively deal with the increasing volume of corporate bankruptcy and strike a balance between respecting market competition and guaranteeing social stability. The recent leading case issued by the SPC shows that the enforcement of bankruptcy law in China is being more flexible and social than ever before. Based on this observation, we tend to reach a conclusion that pragmatism will be favored by both the governmental officials and judges in the recent future. The Chinese government's intervention will definitely be enhanced as well, but this will also be more economic-oriented, instead of political-driven.