

CHINA

Introduction

It is necessary to have an introductory note before dealing with the questionnaire, since the business and legal environment in China is significantly different from almost all other jurisdictions in the world. Under the so-called socialist market economy, the government has still maintained its control not only over the market development as a policy maker and market regulator, but also over many companies and enterprises as a stake owner. Such conflicting roles of the government have led to defective legislation, lax enforcement and various problems of corporate governance.

Presently, China does not have a uniform business enterprise law. The current framework sees dual-track legislation: on the one line there are enterprise laws that are adopted based on ownership classification, such as State-Owned Enterprises Law (1986), Urban Collective Enterprise Law (1991), Sino-Foreign Equity Joint Venture Law (1979 as amended in 2001), Sino-Foreign Contractual Joint Venture Law (1988 as amended in 2000), and Wholly Foreign Owned Enterprise Law (1986 as amended in 2000). On the other line, Company Law (1993 as amended in 1999), Partnership Enterprise Law (1997) and Sole Proprietorship Enterprise Law (1999) are also introduced into China. As a result, it seems impossible to find consistent rules governing directors' liabilities and to discuss them one by one within this project. Thus, this report will have its primary focus on the provisions of the Company Law and related regulations.

Moreover, the underdevelopment of the legal infrastructure in China has also hindered the modernization of the rules governing directors' liabilities. China enacted its first Enterprise Bankruptcy Law in 1986. But the Law may only be applicable to state-owned enterprises ("SOEs") and a considerable part has proved outdated today. In the Company Law, merely less than 10 articles are set out to deal with company bankruptcy, dissolution and liquidation. Although China has endeavoured to modernize its bankruptcy regime since 1994, the controversies on the technical issues, together with ideological difficulties still subject the enactment to uncertainty.¹ Consequently, both the enterprises and the judiciary have to heavily rely on the government policy and circular as the practical guidance. Further, as a socialist country with a strong civil law tradition, judicial decisions are neither systematically reported, nor followed as precedent. However, some cases are selectively reported in order to remedy the defective regime. As such, these judicial decisions may serve as indicators of development trend.

Against this backdrop, this report is made on the basis of the current law, government decrees, judicial interpretations of the Supreme People's Court, and certain ministry regulations. Despite the defective conditions, it is the authors' hope to reflect the current state of the legal framework in this regard and make a contribution to this world-wide comparative study.

QUESTION 1

¹ In 1995 a comprehensive draft of the uniform Bankruptcy Law was completed. However, the unripe social and legal conditions caused the draft to be shelved for a long time. The drafting process only resumed in 1998 and is now continuing. March 2004 saw the completion of a new draft by the drafting group and the enactment has been penciled down on the agenda of the national legislature. As such, it is expected that the draft will be adopted in the near future after some further revision.

1. The start and duration of the “twilight” period

Generally Article 35 of SOE Bankruptcy Law allows the avoidance power to be exercised to attack transactions of unfair preference or fraudulent transfer within six months prior to the period from the acceptance of the bankruptcy case by the People’s Court. These transactions include concealment or partition of assets of the debtor enterprise, transfer of assets without consideration, sales of assets below reasonable value, provision of security to unsecured debts, payment of pre-mature debts and giving up of the claims that the enterprise may exercise. Article 40 provides that the People’s Court shall recover the assets concerned if the unfair preference or fraudulent transfer is discovered within one year of the conclusion of the bankruptcy proceedings. Article 41 further stipulates administrative and even criminal liabilities against the responsible persons for the conducts listed above. These rules may also be applicable to other enterprises by the reference of the Civil Procedure Law of China by the People’s Court.²

However, given the developing stage of the Chinese bankruptcy law, the current rules seem to offer little definition of the “twilight period”. The defective corporate as well as the bankruptcy regime has created loopholes for insolvency fraud against the state or other creditors where the state-owned companies or enterprises are left as empty shells after the assets are transferred or pocketed by directors. In China as a transitional economy local government’s frequent involvement in bankruptcy proceedings to protect local assets from being taken by creditors of other jurisdictions has further complicated the situation. To combat the fraudulent bankruptcy practice, the State Council in a decree dated March 2, 1997 adopted certain measures, including disqualification of senior officers of a bankrupt SOE and imposition of administrative and even criminal liabilities. It is stated that the legal liability must be affixed once the fraudulent bankruptcy is found.³ On March 6, 1997 the Supreme People Court echoed the Central Government position by issuing a circular to the lower courts.⁴ In particular it is provided in Article 6 that any concealment, partition or transfer of assets of a SOE, either for no consideration or below value, payment of pre-mature debts or giving up of creditor’s rights shall be void and the assets concerned shall be recovered if the purpose of the conduct is to evade the debt obligation.

In 2001 the Supreme People’s Court issued another emergency notice requiring lower courts to take effective measures to prevent bankruptcy fraud.⁵ Article 6, for example, permits a People’s Court to avoid any security arrangements if the debtor unfairly creates security interest in favour of one creditor resulting in

² Due to the lack of applicable rules, the Supreme People’s Court in a judicial interpretation held that People’s Court may make reference to the provisions of the SOE Bankruptcy Law in hearing bankruptcy cases of other types of enterprises. The Opinions of the Supreme People’s Court on Issues Concerning Application of Civil Procedure Law of July 14, 1992.

³ Section 7 of the Supplementary Notice of the State Council on Issues Concerning Mergers and Bankruptcy of State Owned Enterprises in Certain Cities on a Trial Basis and Re-employment of Their Workers of March 2, 1997.

⁴ Notice of the Supreme People’s Court on Issues of Recent Concerns Concerning Trials of Enterprise Bankruptcy Cases of March 6, 1997.

⁵ Emergency Notice of the Supreme People’s Court Concerning Effective Prevention of Evasion of Debt Obligations by Debtors in Enterprise Bankruptcy and Transformation Proceedings of August 10, 2001.

infringement of lawful rights of others. These new rules, nonetheless, specify no limitation on the time frame. As a result, the avoidance power in these contexts may be exercised beyond the six-month period to attack fraudulent transactions. Hence, the start and end of the “twilight zone” are hardly defined and subject to the government policy guidance and judicial discretion.

The bankruptcy of Haerbin Purchasing Supply Centre in 1995 may serve a good example in this regard. In this case the Supreme People’s Court found that the Centre had withdrawn most of its capital before applied for bankruptcy of a wholesale market it established. Although the withdrawal took place beyond the reach of the avoidance power of six months, the Court allowed the recovery from the Centre according to Article 58 (1) of the General Principles of Civil Law, which states that a contract shall be void if it is used as a means for unlawful activity.⁶

Another development in this regard is a new set of Bankruptcy Law Interpretation of the Supreme People’s Court in 2002 (“the 2002 Supreme People’s Court Interpretations”),⁷ which introduces a new procedure to deal with potential wrong doing in practice. Article 12 of the new Interpretations provides that a bankruptcy petition by the debtor shall not be accepted if a People’s Court finds the debtor intends to evade his debt obligation with concealment and transfer of his assets. Article 14 mandates the court to dismiss the case after the petition has been accepted, if the court finds that the whereabouts of a large amount of the debtors’ assets are unknown and the debtor is unable to reasonably account for the disappearance. In these circumstances, the case may be transferred for criminal investigation. As a result, the period of the “twilight Zone” may not be certain at all.

As far as directors as individuals concerned, the 2002 Supreme People’s Court Interpretations further expand directors’ liabilities. According to Articles 41 and 42 of the Bankruptcy Law, a legal representative, such as chairman of the board of directors or the general manager of a SOE, and other responsible persons shall be subject to administrative and criminal liabilities for fraudulent or unfair transfer of the bankrupt assets as stipulated in Article 35 of the Law. Article 101 of the Supreme People Court Interpretations provides that the liquidation committee may take legal action for damages and compensation against the legal representative or other responsible persons caused by their violation of Article 35 of the Law. Apparently, such lawsuits are not subject to any “twilight zone”, but the statutory limitation under the Civil Procedure Law (normally two years).

To sum up, the current legal regime does not clearly define the “twilight zone” because the recent government and judicial circular apparently break through the provision of the SOE Bankruptcy Law. It should be further noted that directors of different types of enterprises may be subject to not only civil, but also administrative and criminal liabilities in China, particularly when state assets are involved. According to the 2002 Draft Bankruptcy Law of China, the avoidance period will be stretched from six months to one year counting from the date when the bankruptcy petition is accepted by the people’s court (Article 23). However,

⁶ The case was reported in the Second Economic Trial Division of the Jilin High People’s Court (compiled), *Applicable Laws and Documentation Format* (Jilin People’s Publishing House, 2000), at 51 (in Chinese).

⁷ Provisions of the Supreme People’s Court on Certain Issues Concerning Trials of Bankruptcy Cases of July 30, 2002.

Article 35 states that any concealment and unlawful distribution of debtor's property or assets, or fabrication of debts, shall be void, no matter taking place at what time. Article 36 empowers the bankruptcy administrator to recover such property and assets and Article 38 mandates recovery of abnormal income of directors from the debtor company or assets of the debtor taken by the directors. Both Articles 36 and 38 do not specify any time limits.

QUESTION 2

2. Actions potentially giving rise to liability for directors

As afore-discussed, the directors' liabilities vary in enterprises of different ownership. The current Company Law with five short articles articulating directors' duties and obligations is considered defective, not only for its over-simplicity,⁸ but also for its failure to use the crucial word of "fiduciary" to describe the directors' duties.⁹ Under the Company Law, directors and senior officers shall be liable for the damages to the company only if such damages are caused by their violation of the law, regulations or the company's article.¹⁰ As such, the Law fails to provide sufficient, to say the least, legal ground to institute actions of wrongful negligence, abuse of majority's power and transactions under value. Chapter 10 of the Law entitled Legal Liabilities only imposes administrative and criminal liabilities against directors' misappropriate the company's assets¹¹ and engagement in conflicting business.¹² Article 57 of the Law further disqualifies directors for three years for their personal responsibility for bankruptcy of the company they have served.

The Criminal Law of 1997 has some articles against directors for their unlawful profiteering by taking advantages of their positions,¹³ for making significant losses to the company by engaging in dealing with family members and friends,¹⁴ for their negligence resulting in a significant loss to the company,¹⁵ and for seeking their own benefit at the cost of the company.¹⁶ However, all these criminal penalties may only be applicable to cases involving state-owned companies and enterprises. Consequently, the legal means with their effect of deterrent are not available to private companies and firms against directors' wrong doing. Articles

⁸ See Articles 59-64 of the Company Law that are applicable to both limited liability companies and joint stock companies with limited liability.

⁹ Article 59 requires a director to follow the articles of the company, faithfully discharge his duties, to uphold the company's interests and not to seek any personal interest by taking advantage of his power and position in the company. However, some experienced lawyers believe the failure to impose fiduciary duty on directors is a sad mistake. See Nicholas C. Howson, "China's Company Law: One Step Forward, Two Steps Back? A Modest Complaint", *Columbia Journal of Asian Law*, No. 1 (1997), at 142-144.

¹⁰ Articles 63 and 118 of the Company Law.

¹¹ *Ibid.*, Article 214.

¹² *Ibid.*, Article 215.

¹³ Article 165 of the Criminal Law.

¹⁴ *Ibid.*, Article 166.

¹⁵ *Ibid.*, Article 167.

¹⁶ *Ibid.*, Articles 168 and 169.

271 and 272 of the Law also provide causes of actions against directors of all kinds of companies, but only limited to misappropriation.

In recent years independent director as a means to improve corporate governance of Chinese enterprises, particularly listed companies has been introduced into China. As a result, a new cause of action against independent directors has soon emerged. In 2001 the China Securities Regulatory Commission (“CSRC”) imposed fine against directors of Zhengzhou Baiwen Company after serious misrepresentation and insolvency were revealed. One of the independent directors lodged his appeal for reconsideration on the ground that his post was an honorary one and he did not participated in the company’s management, nor received any honorarium. The CSRC rejected his arguments and later the People’s Court dismissed his claim on the ground of statutory limitation. Although the court did not ruled on substantive matter, it has been widely agreed that the case will have significant impact in the directors’ duty and liabilities.¹⁷

The 2002 Supreme People’s Court Interpretations attempt to streamline the practice. Under Article 100, the legal representative of a bankrupt enterprise and other responsible persons shall face administrative or criminal liabilities for their unfair or fraudulent transfer of assets. Needless to say, the administrative penalties may only be imposed on those state cadres responsible for managing SOEs and state assets. Article 101, as aforementioned, subjects management of the bankrupt to civil liabilities for their violation of Article 35 of the Bankruptcy Law. Article 102 requires the People’s Court to transfer the information and materials to the state authority for criminal investigation if it finds that whereabouts of a large amount of enterprise assets are unknown in bankruptcy proceedings.

These rules clearly demonstrate that directors may face all administrative, criminal and civil liabilities in bankruptcy proceedings. These penalties are also included in Chapter 9 (Legal Liabilities) of the 2002 Draft of the Bankruptcy Law of PRC. However, the lack of supervision and enforcement has rendered the law not as harsh as it sounds in practice. In companies and other enterprises actions against directors’ dishonest trading and transactions would be more difficult simply because there is no detailed provisions on directors’ fiduciary duty, nor any rule defining and governing insolvent trading, false representation to company creditors and fraud in anticipation of dissolution.

On the other hand, the unsophisticated legal regime does not allow some defences that are commonly available in other jurisdictions. For example, the imposition of liabilities seems to only focus on the losses or damages to the company without paying sufficient attention to the knowledge or mental state of the director concerned. Worse yet, the underdevelopment of professional services, such as accounting and auditing may make a director more vulnerable in arguing his case for his business Judgment.

¹⁷ The case was reported and discussed in Feng Guo, Zhang Yan and Tao Guanghui (ed.), *Cases in China Securities Market*, People’s University of China Press, 2003, at 93-116 (in Chinese).

QUESTION 3

3. Other persons may be liable during the “twilight period”

Given the corporate structure and business environment, some other persons may also be liable due to their involvement with the company’s affairs during the “twilight zone”. First, China’s Company Law is based on German model with a supervisory board parallel with the board of directors as an organ to monitoring directors’ performance. As a result, a supervisor is treated virtually the same as a director in terms of legal liabilities. By the same token, the managers are also included into the same framework.¹⁸ As such, if supervisors and managers fail to carry out their legal duties, the same liabilities will be imposed.

As a socialist market economy, the government involvement in the operation of many companies and SOEs are still substantial. Consequently, certain state officials may become liable for their wrong doing with the enterprise concerned. Article 42 of the SOE Bankruptcy stipulates that if the upper-level government department is found mainly responsible for the bankruptcy of the enterprise concerned, the leaders of the department shall be disciplined. Where their negligence causes significant losses to the state, they may even be subject to criminal penalties.

Also in many cases bankrupt companies were established by the local government directly without sufficient capital to meet the minimum capital requirement of the law. Although the doctrine of “lifting the corporate veil” is not provided in the Chinese law today, the People’s Court in fact has repeatedly applied the rule in practice through judicial interpretation. For example, in Pin Ding Branch of Shaxi Oil Co. v The Oil Development Group of Bai City of Jilin, the Supreme People’s Court held that the defendant company’s veil should be pierced and the government office was liable to the extent of the registered capital on the finding that the company, without any of its own capital, was established by the local government and the company’s assets were later transferred to another firm formed by the same government office before a judgment was issued in favor of the creditor plaintiff.¹⁹

In addition to the management and responsible officials, the promoters and shareholders of a company shall be liable for failure to make their capital contribution or withdrawal of their capital contribution after the formation of the company. Article 25 of the Company Law requires all the shareholders to make their capital contribution in full before the establishment of the company. As a result, a shareholder shall be liable for the unpaid part of his capital contribution. In a bankruptcy case in 1995, a mainland company and a Hong Kong company

¹⁸ In all the articles of the Company Law examined above, directors, supervisors and managers are named together. In China, excessive concentration of power has been a serious problem of corporate governance where in a large number of companies, the chairmen of the board are also the general managers.

¹⁹ The case is reported in the Research Office of the Supreme People’s Court, *Collection of Judicial Interpretation of the Supreme People’s Court*, vol. 1 (1949-1993), (People’s Court Publishing House, 1994), at 1570-72 (in Chinese).

formed a joint venture in 1989 with a registered capital of US\$ 1.1 million. By 1993 the capital of the joint venture was raised to US\$2.4 million, but never fully paid. In 1995 the joint venture was in a bankruptcy proceeding, where the mainland company wanted to set off its claims against the joint venture with its unpaid capital. The Supreme People's Court instructed the High People's Court that in order to protect other creditors' lawful interests, the set-off request should be rejected.²⁰ Under Article 209 of the Company Law, a fine up to ten per cent of the fund withdrawn shall be imposed. In a serious case, criminal penalties may even be used.

Professionals who are involved in the company's affairs may be liable for their fraudulent conducts in practice, including the "twilight period". Article 219 of the Company Law stipulates that asset appraising and certifying firms may be fined, closed down and even subject to criminal liabilities for their issuing false documents. In case of negligent omission in appraising and certifying reports, fine, suspension of business and disqualification may be imposed.

The Commercial Bank Law prohibits a commercial bank from granting loans on a credit basis to its affiliate or granting other types of loans with preferential conditions.²¹ Further, the People's Bank of China as the central bank adopted the General Principles of Loan Granting in 1996. Chapter 11 in particular specifies administrative, civil and criminal liabilities against violations of the banking law and loaning procedures. In addition to subjecting the borrower to criminal penalties who intentionally embezzles the proceeds in way of bankruptcy, the responsible bank staff and any individual or entity that coerces the bank to issue the loan will be disciplined.

Indeed, the current law does not have many rules on the liability of a third party, except those discussed above. However, the very general and broad provision of the General Principles of Civil Law may always be relied on by the court in handling a third party dealing with a company with knowledge of its insolvency or in conspiracy with the company or its directors. For instance, Article 106 provides that a natural or legal person shall bear civil liabilities for his violation of other's property rights at fault. Article 73 of the 2002 Supreme People's Court Interpretations stipulates that the liquidation committee shall issue notice to debtors of the bankrupt enterprise and anyone who takes possession of the bankrupt's assets and ask them to repay their debts or return the assets concerned to the committee within specified time. If they neither settle the debt or return the assets, nor dispute the claim of the liquidation committee with reasonable grounds, the People's Court may enforce the claim upon the committee's application.

QUESTION 4

²⁰ The Reply of the Supreme People's Court to The High People's Court of Hubei on the Issue Whether Bankruptcy Claims Can Be Set Off with Unpaid Capital dated April 10, 1995; printed at Li Guoguang, Xi Xiaoming and Cao Shibing, "Correct Understanding of the 2002 Supreme People's Court Interpretations", Legal System Publishing House of China, 2002, at 369 (in Chinese).

²¹ Article 40 of the Commercial Bank Law of 1995.

4. Counterparties dealing with the company during the “twilight zone”

Generally, as discussed above transactions with the company within six months prior to the commencement of the bankruptcy may be vulnerable to the attack of avoidance power, and once a company is liquidated, it may not engage in any new operational activities.²² However, what constitute “new operational activities” are not defined in the law. In a reply in 2000, the Supreme People’s Court held that the bankrupt enterprise shall stop its operation once the bankruptcy declaration is made. However, it may continue its business operation up to the end of the bankruptcy proceeding if such operation is approved by the liquidation committee and reported to the People’s Court. Moreover, no contract will be valid in this period unless it is concluded by the liquidation committee and related to its function.

According to Article 18 of the 2002 Supreme People’s Court Interpretations, in order to improve the bankruptcy case handling and fill up the administrative vacancy in the period between the case acceptance by the People’s Court and the bankruptcy declaration is made resulting in the formation of the liquidation committee , an enterprise supervisory committee may be established. It will be responsible for verifying and liquidating assets and managing the business operation of the enterprise concerned in the practice.

Also under Article 24 of the SOE Bankruptcy Law, the liquidation group may conduct necessary civil activities in accordance with the law, including making decisions on whether to continue to perform contracts of the enterprise.²³ Thus, the counter-parties may still be able to deal with the company in the “twilight zone”. However, the current regime includes no specific definition in this regard.

Moreover, the SOE Bankruptcy Law allows an insolvent SOE to carry out reconsolidation within two years if its upper-level authority and the creditors’ meeting so agree. In the period of reconsolidation, the enterprise may continue its business operation subject to the supervision of the People’s Court and the creditors’ meeting as well as the state authority. However, the rescue process shall be terminated if the financial condition of the enterprise continues to deteriorate or the debtor commits unfair preference damaging the interest of creditors.²⁴ Based on these provisions, it seems likely that some counter-parties may continue to deal with the debtor enterprise subject to the permission of the liquidation committee, creditors’ meeting and the relevant state authority. In this regard, the only defence for the counter-parties for validating a transaction with the debtor enterprise would be that such continued dealing benefits the enterprise concerned.

²² Article 195 of Company Law.

²³ Article 55 of the Opinions of the Supreme People’s Court on Issues Concerning Implementation of the Enterprise Bankruptcy Law of November 7, 1991.

²⁴ See Chapter 4 of SOE Bankruptcy Law. Also, Chapter 5 of the Supreme People’s Court’s Opinions, *Ibid*.

QUESTION 5

5. Enforcement actions

According to Article 35 of the SOE Bankruptcy Law, the liquidation committee may petition to the People's Court to avoid the transaction of unfair preference or fraudulent transfer. The upper-level state department of the SOE concerned and the Ministry of Supervision is empowered to discipline the directors responsible for the unfair preference transactions or for losses of the SOE due to their negligence under Articles 41 and 42 of the Law. If the case proves to be very serious, they may further refer the case to the People's Procuratorate for criminal investigation. These organs may also handle the fraudulent bankruptcy cases according to the measures adopted by the State Council and the Supreme People's Court as discussed above.

For all the criminal liabilities as provided in the Company Law and the Criminal Law, it is no doubt that the People's Procuratorate shall bring the action against directors for their offences. However, in practice before the case reaches to that stage, many other state authorities may already get involved in deciding the nature of the case. For instance, the Disciplinary Committee of the Communist Party,²⁵ the State Asset Management Commission, the Ministry of Supervision, the State Auditing Administration, the State Administration of Industry and Commerce as the business registration authority and the relevant state department in charge of the SOE or company concerned may all participate in the investigation and put forward their opinions.

A company may have a cause of action against directors for breach of their legal duties and for violations of the law and regulations resulting in losses to the Company. The directors concerned shall compensate the company for the losses caused by their wrong-doing and further be accounted for the unlawful income they made by means of corruption, misappropriation, and conflict of interest dealing.²⁶

Based on the relationship between the directors and shareholders, the latter should be able to institute legal actions against directors' wrong doing. However, the Company Law includes no specific provision to enable shareholders' derivative action. Indeed, certain ministerial regulations entitle both the company and its shareholders to file legal actions against the directors for their violation of the articles of the company.²⁷ However, these rules have very limited applicability, applicable only to overseas listed companies. Moreover, currently most of

²⁵ Article 17 of Company Law allows activities of the Communist Party in a company.

²⁶ *Ibid.*, Articles 59 – 63, 118 and 123.

²⁷ For instance, Article 7 of the Requested Clauses for Articles of Association of Overseas Listed Companies jointly promulgated by the State Securities Commission and the State Economic Reform Commission on August 27, 1994 provides that the company or its shareholders may sue the directors based on the provisions of the articles association.

companies' articles are very simple and general, which may further hinder shareholders' actions. Further, lack of necessary substantive and procedural rules in this regard has troubled the People's Court in handling such cases. For example, in a widely reported case, a derivative action filed by a foreign shareholder against the chairman of the company could not be entertained by the People's Court.²⁸

There is no specific rule for a third party, such as a creditor, to sue directors for any wrong doing during the "twilight zone", the General Principles of Civil Law, such as Article 106 mentioned above, nonetheless, may always come to play a helpful role.

QUESTION 6

6. Remedies: orders available to the domestic court

As discussed above, the remedies for unfair preference and fraudulent trading during the period of the "twilight zone" can be grouped into three aspects: administrative, civil and penal.

Administrative liabilities: In a socialist market economy, administrative sanctions as a distinctive feature of the contemporary Chinese legal system, are more commonly used than in other jurisdictions.²⁹ With respect to unfair preference or fraudulent trading, the legal representative and the directly responsible persons of the bankrupt enterprise shall be subject to administrative sanctions under Article 41 of the SOE Bankruptcy Law, which may include fine, rank reduction, and dismissal. Further, according to article 100 of the 2002 Supreme People's Court Interpretation, when trying an enterprise bankruptcy case, the people's court discovers that the bankrupt enterprise's original legal representative or directly responsible person has any of the acts enumerated in Article 35 of the SOE Bankruptcy Law, it shall make a suggestion to the relevant department on imposing an administrative sanction upon the legal representative or directly responsible person. In case where he is suspected to have committed a crime, the people's court shall transfer the relevant materials to the relevant state organ for investigation.

Civil remedies mainly focus on (a) setting aside unfair preference or fraudulent transactions and recovery of the property concerned; and (b) holding responsible directors liable to the company.

During the "twilight zone", the liquidation committee, the company, the relevant state authorities, or the third party all has the right to certain extent to apply to the People's court to avoid the transaction and recover the property concerned. The

²⁸ For a comment of this case in English, see Xian Chu Zhang, "Practical Demands to Update the Company Law", *Hong Kong Law Journal*, part 2 (1998), at 248-260.

²⁹ Article 1 of SOE Bankruptcy Law states that the law is formulated in order to promote the development of the planned socialist commodity economy.

authorities in this regard include Article 35 of the SOE Bankruptcy Law; Articles 63, 118, 214 and 215 of the Company Law; Article 106 of the General Principles of Civil Law and relevant provisions adopted by the State Council and the Supreme People's Court as aforementioned. For example, article 101 of the 2002 Supreme People's Court Interpretation provides that where the bankrupt enterprise has any of the acts enumerated in Article 35 of the SOE Bankruptcy Law, and thus causing the enterprise properties unable to be recovered, and causing actual losses, the liquidation committee may bring a civil lawsuit against the bankrupt enterprise's original legal representative or directly responsible person and demand him to bear the civil liability for compensation. Article 63 of the Company Law mandates a director to pay compensation to the company for losses caused in violation of the law, administrative regulations and article of association of the company during performance of their duties. Under Article 118 of the Company, directors shall be responsible for the severe loss of the company caused by any resolution in violation of the law, administrative regulations and the article of association, causing severe damages to the company, unless they can prove their objection to the adoption of the resolution, which should be recorded in the minute of the board meeting.

The current legal rules also empower the People's Court as a state organ to take action by itself to recover the relevant assets. Article 40 of the SOE Bankruptcy Law, for example, stipulates that the People's Court shall recover the assets if the unfair preference transaction is discovered within one year of the conclusion of the bankruptcy proceeding and make distribution among the creditors in accordance with the priority order as provided by the law.

Penal remedies imposed on the directors of SOEs or state companies include fine, criminal detention, and imprisonment up to seven years for their self-dealing, gross negligence or seeking personal gains at the cost of the state firms.³⁰ However, these articles may only apply to state owned entities. However, under article 102 of the 2002 Supreme People's Court Interpretation, after acceptance of an enterprise bankruptcy case, if the people's court discovers that the enterprise has enormous amount of properties with their whereabouts unknown, it shall turn over the relevant information and materials on the suspected crime to the relevant state organ for investigation. It shall be noted that this provision applies to all enterprise legal person. In addition, articles 271 and 272 of the Criminal Law stipulate that the staff of a company may be penalized with confiscation of personal assets, criminal detention or imprisonment up to ten years if he takes advantages of his position to misappropriate the assets of the company.

Apart from the penalties mentioned above, disqualification may also be used as a punishment. For instance, pursuant to Article 103 of the 2002 Supreme People's Court Interpretation, the people's court may suggest to the relevant department that it restrict the main responsible persons of the bankrupt enterprise from re-establishing an enterprise, or prohibit them from holding the posts of company directors, supervisors or managers within a legal time limit. Article 57 of the Company Law stipulates that a person who served as a director of bankrupt enterprise or company and personally responsible for its insolvent liquidation due to poor management, shall not be appointed as a company director, supervisor

³⁰ Articles 165-169 of the Criminal Law.

and manager for three years of the date of the conclusion of the bankrupt proceedings.

QUESTION 7

7. Duty to co-operate

The SOE Bankruptcy Law and 2002 Supreme Court Interpretation set out the rules governing the directors' duty to cooperate with the liquidation committee during the liquidation period.

First, when the debtor enterprise submits the bankruptcy application, it shall explain the conditions of its losses and deliver relevant accounting books, a detailed list of liabilities and accounts receivable to the People's Court.³¹ The people's court shall, after acceptance of the enterprise bankruptcy case filed by a creditor, notify the debtor to submit to the people's court within 15 days the relevant accounting statements, the detailed list of claims and that of debts, the detailed list of enterprise assets, and other materials which the people's court requires to be submitted.³²

Second, Article 13 (3) mandates the legal representative of the debtor enterprise, namely the general director of the SOE or chairman of the board of the company, must attend the creditor's meetings and under the legal duty to answer the creditor's inquiries. If he refuses to attend, the People's Court may carry out a mandatory summon in accordance with the Civil Procedure Law.³³

Third, the legal representative of the bankrupt enterprise shall be responsible for the taking custody of the property, account books, documents, materials, seals, etc. of such an enterprise before they are handed over to the liquidation committee.³⁴ After deciding to accept an enterprise bankruptcy case, the people's court shall within ten days, publicize an announcement in the debtor's enterprise, requiring the debtor to preserve the enterprise properties well. The legal representative, the accountants and the property custodians of the bankrupt enterprise must stay behind for duty. At the same time, the debtor is forbidden to dispose of the enterprise's account books, documents, materials, seals, or conceal, secretly distribute, transfer or sell the enterprise properties without authorization. The debtor is also required to immediately cease repaying the debts, and not to pay any expenses without the permit of the people's court.³⁵

³¹ Article 8(2), SOE Bankruptcy Law.

³² Article 16, the 2002 Supreme Court Interpretation.

³³ Article 32 of the Opinions of the Supreme People's Court on Issues Concerning Implementation of the Enterprise Bankruptcy Law of November 7, 1991.

³⁴ Article 27, SOE Bankruptcy Law.

³⁵ Article 15, 37, 2002 Supreme People's Court Interpretation.

Fourth, before the conclusion of the bankruptcy proceedings, the legal representative of the bankrupt enterprise shall carry out the duties according to the requirements of the People's Court or the liquidation committee, and may not leave his position without authorization. The Supreme People's Court held that an offence may be committed if the legal representative leaves before the conclusion of the bankruptcy proceedings without authorization, or avoids his duties in any other ways, or refuses to carry out transfer procedure to the liquidation committee. The Court may impose fine, detention or other criminal penalties according to the severity of the conduct.³⁶

Fifth, after the bankruptcy order is made, the former legal representative of the bankrupt enterprise shall continue to be under a legal duty to organize the accountants of the enterprise to finalize all the account, other relevant people to make the detailed property list, and business staff to clear their business. Upon completion, the legal representative shall transfer all these work to the liquidation committee.³⁷

Finally, all the employees of the bankrupt enterprise may also under a legal duty to safeguard its assets during the liquidation. Once the bankruptcy case is accepted by the People's Court, it shall make a public notice to all the employees, requiring them to protect the enterprise assets and to prevent the account books, documents, materials and seals from being unlawfully disposed and the assets from being concealed, partitioned, transferred without consideration or sold below value.³⁸ Further, after the bankruptcy order is made, the People's Court may ask the legal representative and certain other staff from financial, statistical, warehouse and security departments to stay behind to take care of unfinished matters. Once the order is so made, they have no choice, but to follow.³⁹

In addition to the debtor enterprise and its staff, other persons or entities may also owe a duty to be cooperative during the liquidation process. Article 25 of the SOE Bankruptcy Law, for example, states that no unit or individual may illegally dispose of the property, account books, documents, materials, seals, etc. of a bankrupt enterprise. The debtors of a bankrupt enterprise and persons in possession of the property of the bankrupt enterprise shall repay their debts or deliver the property only to the liquidation committee. The debtor's bank of deposit is required, after the people's court decides to accept a bankruptcy case, to cease the settlement for the debtor and limit the bank account to the use by the liquidation team. The bank also shall not transfer the debtor's money for deducting the debts, unless otherwise permitted by the people's court in accordance with the law.⁴⁰

To some extent, the other people's court also has duty to cooperate with the court hearing the bankruptcy case. According to article 36 of the 2002 Supreme People's Court Interpretations, after bankruptcy declaration, in case where the

³⁶ *Supra note 33.*, Article 20.

³⁷ *Ibid.*, Article 54.

³⁸ *Ibid.*

³⁹ *Ibid.*, Article 49.

⁴⁰ Article 15, 34, 2002 Supreme People's Court Interpretation.

bankrupt enterprise's properties are sealed up, distrained or frozen in other civil procedures, the people's court that accepts the bankruptcy case shall immediately notify the people's court that takes the measure of sealing up, distraining or freezing the properties to cancel the measure, and handle the transfer formalities to the people's court that accepts the bankruptcy case.

As in many other areas, in the "twilight zone" the People's Court has a broad power to investigate into a dispute and to enforce duties to cooperate. Although the SOE Bankruptcy Law and the Company Law contain little specific provision in this regard, the rules of the Civil Procedure Law may always come to help. Under Chapter 10 of the Law, the People's Court may resort to compulsory measures to force relevant persons to appear before the Court, to participate in litigation and to assist the investigation.⁴¹ Article 65 of the Law provides that the People's Court is empowered to investigate into, and obtain evidence from, any entity or individual, who shall not refuse. Article 70 imposes a legal duty on any entity or individual who has knowledge of the relevant fact to testify before the Court. The latest version of the Draft Enterprise Bankrupt and Reorganization Law of the PRC has more specific provisions in the respect of mandatory cooperation in liquidation period. However, in China the underdeveloped evidence regime includes few rules on cooperation defense, such as privileged communication.

With regard to the applicable human rights law in the "twilight zone" period, not much can be specifically found from the current regime. Generally, the Chinese laws do not definitely address the concept of self-incrimination when it concerns with the privilege. Criminal Procedure Law of China explicitly stipulates that no person shall be found guilty without being tried by the People's Court,⁴² but the Law mandates all the suspects to truthfully answer all the investigation questions which are relevant to the case.⁴³ An unsatisfactory aspect is that to some extent, the defendant's right of accessing to lawyers is restricted during some periods.⁴⁴

Nevertheless, this does not mean that no human right law is available for criminal proceedings in China. As a whole, China has made a momentous progress in terms of protection of lawful rights of defendant which is incarnated in the Criminal Procedure Law and relevant laws and regulations. In addition to the relevant provisions in the Constitution Law,⁴⁵ to match with the aim to protect the citizens' personal rights, their property rights, democratic rights and other rights,⁴⁶ the

⁴¹ In particular, see Articles 100, 102 and 103 of the Law.

⁴² Article 12 of the Criminal Procedure Law.

⁴³ *Ibid.*, Article 93.

⁴⁴ Article 33 of the Criminal Procedure Law stipulates that the suspect may not appoint his lawyer until the Public Security Office has completed its investigation and has transferred the case to the People's Procuratorate for prosecuting.

⁴⁵ The Constitution of the People's Republic of China, adopted at the fifth session of the fifth National People's Congress on December 4, 1982, as amended in 1993 and 2004. Article 37 provided that freedom of the person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful detention or deprivation or restriction of citizens freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited. Article 38 further prohibits libel, false accusation or false incrimination directed against citizens by any means.

⁴⁶ Article 2 of the Criminal Procedure Law.

Criminal Procedure of Law contains several provisions that safeguard the fundamental rights.⁴⁷ A director may rely on these articles to protect his lawful rights.

With respect to the international convention relating to human rights, China became a signatory to the International Covenant on Civil and Political Rights in 1998. And some active preparatory measures have been taken to ratify this Covenant by the National People's Congress since 2003. Besides, China is also a member of United Nations Treaty Against Torture and some other conventions relating to the protection of human rights.

QUESTION 8

8. Appeals and limitation periods

Generally, according to Articles 135 and 137 of the General Principles of Civil Law the statutory limitation of civil actions shall be two years running from the time of infringement or the time the injured party knows or should know the infringement. This period in nature may be a variable period due to suspension⁴⁸ or interruption.⁴⁹ However, under Article 137 the People's Court shall not entertain a civil action if 20 years have passed since the infringement. The 20-year-period is in nature invariable period and no suspension or interruption applicable.

Bankruptcy laws and regulations also set out some limitations applicable to bankruptcy and liquidation proceedings. With respect to an unfair preference transaction by the bankruptcy enterprise discovered within one year of the conclusion of the bankruptcy proceedings, the People's Court shall recover the property and order repayment in accordance with Article 40 of the SOE Bankruptcy Law. The Draft Enterprise and Reorganization Law further extends this period to two years.⁵⁰

Moreover, as aforementioned the State Council and the Supreme Court have adopted some rules to recover assets of fraudulent transactions and to punish

⁴⁷ For example, a defendant shall have the right to defense, and the People's Courts shall have the duty to guarantee his defense under Article 11. See also Articles 12, 14, 32, 43, 46, 48, and 93 of the Criminal Procedure Law.

⁴⁸ According to Article 139 of the General Principles of Civil Law, a limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

⁴⁹ Article 140 of the General Principles of Civil Law provides that a limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfillment of obligations. A new limitation shall be counted from the time of the discontinuance.

⁵⁰ Pursuant to Article 147 of the Draft, within two years after the close of insolvency case, creditors may request the people's court to carry out additional distribution according to the distribution scheme if there are recovered property from unfair preference. In spite of this, additional distribution shall not be conducted in case where the amount of the property is too less to be distributed.

responsible persons without specific time limitation.⁵¹ Although these rules may be considered temporary measures against bankruptcy fraud in a transitional period from a planned economy to a market-oriented economy, they will have important impacts on many legal actions in the future.

Currently, there is no special limitation period applying to actions against directors and other officers in the SOE Bankruptcy Law and relevant legislation. As a result the normal limitation of civil and criminal actions shall be applied to these actions. At the same time, Chinese laws are silent in the time frame of the disqualification proceedings as well as its appeal procedures, although the Company Law stipulates disqualification mechanism against responsible directors and officers. As such, a set of detailed rules needs to be adopted to ensure the due process.

Where directors and other officers' acts constitute criminal offence, the limitation period prescribed in the Criminal Law of PRC shall apply. In accordance with article 87 of the Criminal Law of PRC, crimes are not to be prosecuted where the following periods have elapsed:

- In cases where the maximum legally-prescribed punishment is fixed-term imprisonment of less than five years, where five years have elapsed;
- In cases where the maximum legally-prescribed punishment is fixed-term imprisonment of not less than five years and less than ten years, where ten years have elapsed;
- In cases where the maximum fixed-term imprisonment is not less than ten years, where fifteen years have elapsed;
- In cases where the maximum punishment prescribed by the law is life-imprisonment or death, where twenty years have elapsed.⁵²

Thus, the legally-prescribed punishment periods should be firstly decided according to relevant articles in order to make the limitation periods applying to criminal actions against directors clear.

With respect to actions against directors, there is no specific provision governing their appeals. Thus, their appeals against the decision of the first instance court in civil and criminal proceedings shall be governed by the relevant procedure laws.

Under Article 147 of the Civil Procedure Law, if a party refuses to accept a Judgment of first instance of a local people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days after the date on which the written Judgment is served. Where a party refuses to accept a written order of first instance of a local people's court which normally is used to deal with procedural matters, he shall have the right to file an appeal with a people's court at the next higher level within 10 days after the date on which the written order is served.

⁵¹ See *supra* notes 3 and 4.

⁵² The period for prosecution is counted as commencing on the date of the crime. If the criminal act is of a continuous or continuing nature, it is counted as commencing on the date the criminal act is completed. See Article 89 of the Criminal Law.

If the defendant in a criminal proceeding refuses to accept a Judgment or order of first instance court, he shall have the right to appeal in writing or orally to the People's Court at the next higher level according to Article 180 of the Criminal Procedure Law. The time limit as set out in Article 183 of the Law for an appeal or a protest against a Judgment shall be ten days and the time limit for an appeal or a protest against a procedural order shall be five days. The time limit shall be counted from the day after the written Judgment or order is received.

An administrative proceeding may also be commenced by an enterprise against a government authority for unlawful interference with its business autonomy. The party concerned may first require the state department to reconsider its decision under the Administrative Reconsideration Law of 1999. Article 5 entitles the party to file an administrative action based on Administrative Procedure Law of 1989. According to article 38 of Administrative Procedure Law, If a citizen, a legal person or any other organization applies to an administrative organ for reconsideration, the organ shall make a decision within two months from the day of the receipt of the application, except as otherwise provided for by law or regulations. Anyone who refuses to accept the reconsideration decision may bring a suit before a people's court within 15 days from the day of the receipt of the reconsideration decision. If the administrative organ conducting the reconsideration fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law. The party may further appeal his case to the next higher level of the People's Court within 15 days after being served with the Judgment of the first instance court.⁵³

QUESTION 9

9. Foreign Corporations

"Foreign Corporation" is defined in Article 199 of the Company Law as "a corporation that is established according to foreign laws in a foreign jurisdiction". There is no laws or regulations specifically applicable to the bankruptcy liquidation of foreign corporations in China at present.

The Company Law fails to address any cross-border insolvency issue, but only briefly deals with winding up of branch of foreign companies. Article 203 provides that a branch of a foreign company shall not have a legal person status and the foreign company must be responsible for all the liabilities the branch incurred in China. Article 205 in particular states that liquidation in accordance with the law must be conducted when the foreign branch is withdrawn from China. The assets of the branch shall not be moved outside China before the completion of the liquidation.

⁵³ Article 58, Administrative Procedure Law of 1989.

Moreover, although there is no specific provision on whether transactions in the “twilight zone” applicable to foreign corporations, the rules of directors’ duties and responsibilities shall be generally applicable to the business operation of foreign companies in China. Further, Article 204 of the Company Law stipulates that a branch of foreign company shall abide by the laws and regulations of China and shall not harm the social public interests of the nation. It can be inferred from this article that directors of foreign companies may be held liable if they commit unfair preference or fraudulent trading causing damages to the creditors or the interests of China.

As far as foreign investment enterprises in China are concerned, the law treats them as Chinese legal entities since they are registered in China. Nonetheless, the sensitivity of foreign investment does see some special regulations. For example, the Ministry of Foreign Trade and Economic Cooperation (“MOFTEC”) promulgated the Liquidation Measures of Foreign Investment Enterprises on July 9, 1996, which is only applicable to foreign joint ventures and wholly foreign owned enterprises in China. According to Article 2, however, the Measures shall not govern insolvency liquidation. Despite its limited application, Article 28 copies the provision of the SOE bankruptcy Law concerning unfair preference. Article 46 further holds the investor liable for unfair preference by way of restitution and compensation.

The Civil Procedure Law, Chapter 19 governs the debt repayment and bankruptcy procedures of enterprise legal persons other than SOEs and companies. However, the entire chapter includes only 8 short articles and the Supreme People’s Court had to instruct the lower courts to make reference to the provisions of the SOE Bankruptcy Law when necessary.⁵⁴ It shall be noted that the 2002 Supreme Court Bankruptcy Interpretations apply to the bankruptcy of foreign investment enterprise (FIE) provided that FIE is a legal person. This greatly improves the hearing of FIE bankruptcy case as the previous provisions provided in Civil Procedure Law applicable to the bankruptcy of FIE are too simple to function in practice.

QUESTION 10

10. Insurance

Although China traditionally heeds much more attention to the property and life insurance, there has recently been a fast improvement on the professional liability insurance in China. After the professional liability insurance for lawyers and accountants was marketed as a new device to control business risks, Ping An Insurance Company launched the first insurance plan for company’s directors and

⁵⁴ Article 253 of the Opinions of the Supreme People’s Court on Issues Concerning Implementation of the Civil Procedure Law of July 14, 1992.

high officers in Chinese market in January 2002. Nevertheless, it seems that director and officer's liability insurance has not gained enough attention. Presently, only several listed companies have bought this insurance for their directors and high officers. No directors or officers have bought liability insurance for themselves thus far.

The unpopularity of liability insurance in China mainly relates to the current legal and business environment. Under the Company Law, directors are more considered to refer to a collective liability, rather than individuals. Also, the underdeveloped corporate governance and excessive government involvement may sound too risky for insurance firms to get into the area. In addition, the inadequacy of relevant insurance legislation gives rise to the difficulties in quantum of compensation concerning liability insurance.

In recent years, there are more and more independent directors (or outside directors) in listed companies required by the Chinese Securities Regulation Commission (CSRC), the watchdog of securities industry in China. Vast risk and limited remuneration makes it very necessary to have professional liability insurance for these independent directors to fulfil their duties to protect the minority shareholder's interests. Therefore, several listed companies became the buyers of professional liability insurance although most of companies still regard it unnecessary.

This landscape will be changing, particularly with the enhanced competition in Chinese insurance market as a result of WTO entrance. More and more foreign investment insurance company will introduce ripe and suitable product of professional liability insurance for directors and officers in China. And the improved corporate governance and decreased state ownership will also make this notion popular in the foreseeable future.

QUESTION 11

11. Incurring further credit and counter-party risks in dealing with a company during the "twilight period"

The SOE Bankruptcy Law and other legislations do not prohibit an enterprise from incurring further debts after entering into the "twilight zone" so long as they are not unfair preference or fraudulent transactions as prescribed in Article 35 of the Law or permitted by the relevant state authority, liquidation group or the People's Court if the debts are incurred after the commencement of the bankruptcy proceeding. In practice, many enterprises in financial distress rely on the projection of new funds to avoid bankruptcy. According to the SOE Bankruptcy Law and the Civil Procedure Law, insolvency of a debtor is primarily determined on a cash-flow

basis.⁵⁶ As a result, in case where the debtor is able to raise further fund by selling its assets or receiving emergency loan during the twilight period so as to avoid its being declared bankrupt in a short time, the transactions may not go against the spirit of the Laws. The Supreme People's Court in its judicial interpretation also allow the liquidation group to continue to honor any contract it wishes.⁵⁷ Based on the rules examined previously, the tests apparently focus on the fairness of the transaction terms and the authorization procedure.

In deciding the liability, the knowledge of a director concerned may also be relevant. It thus is necessary for a director to be continuously informed of the operational and financial conditions of the company so that he could decide an informed decision on whether or not to incur certain debts, especially when these debts are likely to be scrutinized in the "twilight zone". This is because the commencing date of the twilight light zone is not certain until the People's Court accepts the case.

Transactions with the enterprise other than unfair preference prescribed in Article 35 of the SOE Bankruptcy Law during the "twilight period" should be valid. The tests of fairness of the transaction and the necessary authorization procedure shall be equally considered by a third party while dealing with a company in the "twilight zone" period. Further, the recovery from these transactions by a third party will be negatively affected if he knows or should have known about this company's risky financial conditions.⁵⁸

In terms of the validity of contract entered into by the enterprise that is declared bankrupt and permitted to operate by the people's court before the termination of bankruptcy procedure, the Supreme Court in a reply stated that after being declared bankrupt by the people's court, the enterprise shall cease operation since the day of bankruptcy. If permitted by the liquidation team, the bankrupt enterprise may be engaged in business related to the liquidation work and in the name of the liquidation team. The liquidation team shall report this fact to the people's court. If the contract entered into by the bankrupt enterprise is not in the name of liquidation team or is not related to the liquidation, it shall be invalid.⁵⁹

⁵⁶ Article 3 of the SOE Bankruptcy Law provides that enterprises that, owing to poor operations and management that result in serious losses, are unable to repay debts that are due to shall be declared bankrupt. According to Article 199 of the Civil Procedure Law, if an enterprise as legal person is in serious losses and unable to repay the debts that are due, the creditors may apply to a people's court for declaring the debtor's bankruptcy repayment, the debtor may also file at a people's court to declare bankruptcy repayment. Although the bankruptcy reasons contained in these provisions are arguable and subject to criticism in China, they adopt in general the cash-flow test.

⁵⁷ Article 55 of the Opinions of the Supreme People's Court on Issues Concerning Implementation of the Enterprise Bankruptcy Law of November 7, 1991.

⁵⁸ There is no direct provision in this regard in the SOE Bankruptcy Law and the Company Law. But Article 130 of the Draft Bankruptcy and Reorganization Law provides that a set-off shall not apply if an obligor to the bankrupt obtains an obligatory claim against the bankrupt with the knowledge of the bankrupt's cessation of payment or application for bankruptcy. This means that the obligatory claim shall not be set-off and accordingly, the counter-party only could participate in the bankruptcy proceeding for the distribution.

⁵⁹ The reply of the People's Supreme Court on the Effect of Contract Entered into by the Enterprise That is Declared Bankrupt And Permitted to Operate by the People's Court Before the Termination of Bankruptcy Procedure, No. 43 (2000) Judicial Interpretation of the People's Supreme Court, adopted by the Judicial Committee in the 1138th conference, effective as of December 9, 2000.

Notes