

COMITÉ MARITIME INTERNATIONAL

International Working Group on Cross-Border Maritime Insolvency

QUESTIONNAIRE

SECTION I

CROSS-BORDER MARITIME INSOLVENCY ISSUES

Part 1 General Insolvency Principles Applicable to Foreign Creditors

1. Has your country adopted any specific rules on cross-border insolvency (such as the UNCITRAL Model Law or any specific domestic, bilateral or multilateral instrument)? If so, please provide a general description based on the topics discussed in this questionnaire.

No.

The only rule on cross-border insolvency is Article 5 of *Enterprise Bankruptcy Law of the PRC*, which is a recapitulative rule rather than a concrete one. It synoptically stipulates that “Once the procedure for bankruptcy is initiated according to this Law, it shall come into effect in respect of the debtor’s property outside of the territory of the People’s Republic of China.” There are no relevant stipulations on proceeding, bankruptcy administrator or some others.

However, China has entered into Convention on *Settlement of Investment Disputes between States and Nationals of Other States*. The convention, which is mainly about the constitution and operation of the Centre for Settlement of Investment Disputes, also deals with bankrupt problems.

Besides, Article 198 of *Company Law of the PRC* stipulates that “When a foreign company cancels its branch within China, such company must fully repay the debts

thereof in accordance with the law and carry out liquidation in accordance with the provisions hereof concerning company liquidation procedure. The company may not transfer the assets of such branch abroad prior to full repayment of its debts.” However the liquidation provision above is based on the *Company Law* rather than *Enterprise Bankruptcy Law*, thus the provision shall not be treated as stipulation regarding bankruptcy.

2. Do your laws recognize the standing of a foreign creditor or other person (such as a foreign flag authority of a locally domiciled shipowner or a foreign administrator of insolvency proceedings) to start or oppose an insolvency proceeding in respect of a local ship operator or in respect of assets located locally? If so, describe in detail those rights or restrictions upon such rights of such foreign entities which differ from those of local creditors, insolvency administrators or public authorities.

There are no relevant provisions on a foreign creditor or other person in *Enterprise Bankruptcy Law of the PRC* and its three judicial interpretations, nonetheless, Article 4 of *Enterprise Bankruptcy Law of the PRC* stipulates that “Where there are no provisions in this Law to govern the procedure for hearing a bankruptcy case, the relevant provisions of the Civil Procedure Law shall be applicable” and Article 5 of *Civil Procedure Law of the PRC* provides that “Foreign nationals, stateless persons, foreign enterprises, or organizations, which initiate or respond to lawsuits in courts, shall have the same litigation rights and obligations as the citizens, legal persons, or other organizations of the People’s Republic of China.” Thus a foreign creditor or other person should be permitted to start or oppose the mentioned insolvency proceeding and their rights should be same as local persons’.

In addition the principle of reciprocity in Paragraph 2, Article 4 of *Civil Procedure Law* should also be applicable.

3. Do your laws have a procedure for supervising the activities in your country of a foreign insolvency administrator?

With respect to a foreign insolvency administrator of insolvency proceedings in China, according to *Provisions of the Supreme Court on the Designation of Receivers in the Trial of Enterprise Bankruptcy Cases*, the foreign organization without any business establishment in local administrative region shall not be an administrator of local insolvency proceedings.

With respect to a foreign insolvency administrator of foreign insolvency proceedings, there are no provisions to supervise his activities in China.

Besides above conclusions, there are no further provisions relating to a foreign insolvency administrator. However, the insolvency administrators stipulated in chapter 3 of *Enterprise Bankruptcy Law* are not only including Chinese insolvency administrators, foreign insolvency administrators shall also be bound. Thus, the Article 22-29 of *Enterprise Bankruptcy Law* shall apply to a foreign insolvency administrator.

Enterprise Bankruptcy Law

Article 22 The administrator shall be designated by the court.

Where the creditors' meeting believes that the administrator cannot perform his duties according to law or impartially or is incompetent to fulfill his duties, the meeting may apply with the court for replacement.

The measures for designating administrators and determining their remunerations shall be formulated by the Supreme Court.

Article 23 An administrator shall perform his duties according to the provisions of this Law, report on his work to the court and be subject to supervision by the creditors' meeting and the creditors' committee.

The administrator shall attend the creditors' meetings as a non-voting participant, reporting on the performance of his duties and answering inquires.

Article 24 A liquidation team composed of persons of the departments or authorities concerned or a law firm, a certified public accountant firm, a bankruptcy liquidation firm

or any other public intermediary agency that is established according to law may serve as an administrator.

The court may, in light of the actual conditions of a debtor and after consulting with the public intermediary agency concerned, designate the person who has the necessary professional knowledge and has obtained the qualifications for the practice to serve as an administrator.

A person shall not serve as an administrator, if:

- (1) he has been subjected to criminal punishment for intentional offense;
- (2) his qualification certificate for the relevant practice has been revoked;
- (3) he has an interest in the case; or
- (4) the court deems it improper to have him serve as an administrator.

Where the administrator is served by an individual person, he shall purchase the responsibility insurance for the practice.

Article 25 An administrator shall perform the following duties:

- (1) taking over the property, seals, account books, documents and other data of the debtor;
- (2) investigating into the financial position of the debtor and preparing a report on such position;
- (3) deciding on matters of internal management of the debtor;
- (4) deciding on the day-to-day expenses and other necessary expenditures of the debtor;
- (5) deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business;
- (6) managing and disposing of the debtor's property;
- (7) participating in legal actions, arbitrations or any other legal procedure on behalf of the debtor;
- (8) proposing to hold creditors' meetings; and
- (9) performing other duties that the people's court deems that he should.

Where other provisions governing the duties of an administrator are stipulated in this Law, those provisions shall be applicable.

Article 26 If an administrator decides to continue or suspend the business operation of a debtor or if he intends to take any of the actions as specified by the provisions of Article 69 of this Law before the first creditors' meeting is held, the matter shall be subject to approval by the court.

Article 27 An administrator shall be hardworking in doing his duties, and shall perform his duties faithfully.

Article 28 An administrator may, upon approval by the court, employ the necessary workers.

The remuneration of an administrator shall be determined by the court. In case the creditors' meeting has objections to such remuneration, it shall have the right to raise them to the court.

Article 29 An administrator shall not resign his post without justifiable reasons. Resignation of an administrator shall be subject to approval by the people's court.

4. If an administrator is unwilling to pursue a claim by the insolvent ship operator, can foreign creditors apply to an insolvency tribunal for a transfer of the subject matter of the claim from the estate of the insolvent ship operator to a creditor or group of creditors?

No.

There are no special provisions for foreign creditors on the captioned matter according to Chinese law. According to Article 4 of *Enterprise Bankruptcy Law* and Article 5 of *Civil Procedure Law*, foreign creditors have the same litigation rights and obligations as local creditors.

According to Article 69 of *Enterprise Bankruptcy Law*, the situation that an administrator is unwilling to pursue a claim by insolvent ship operator belongs to subparagraph 8 and subparagraph 10, before doing that, the administrator shall report to the creditors' committee or to the court where there is no such creditors' committee. According to Article 26 of *Enterprise Bankruptcy Law*, if an administrator decides to continue or

suspend the business of a debtor or if he intends to take any of the actions as specified by the provisions of Article 69 before the first creditors' meeting is held, the matter shall be subject to approval by the court. According to Article 61 of *Enterprise Bankruptcy Law*, supervising the work of the administrator is one of powers of the creditors' meeting. Thus, supervising the administrator shall be one of powers of the creditors' meeting and the court.

The conclusions should be as follows:

- 1) The right of pursuing a claim by the insolvent ship operator shall be exercised by insolvency administrator, the right of supervising the activities of administrator shall be exercised by the court. According to relevant provisions such as Article 22 and Article 27 of *Enterprise Bankruptcy Law*, the creditors' meeting have the right to apply to the court for changing insolvency administrator if it is believed that the administrator cannot perform his duties properly.
- 2) According to Article 64 of *Enterprise Bankruptcy Law*, only where a creditor believes that a resolution adopted at a creditors' meeting is at variance with the provisions of law or undermines his interests, he may, within 15 days from the date when the resolution is made at the creditors' meeting, plead with the court to decide to revoke the resolution and order the creditors' meeting to have a resolution remade according to law. Any Creditor has no such legal right to plead a court directly for the purpose of transferring title to the subject matter, pro forma or de facto, to any creditor(s).
- 3) Any Creditor including foreign creditor has the right to bring a claim against the administrator to indemnify the loss, where he believes the administrator have waived a claim by the insolvent ship operator.
- 4) With respect to the followings, the provisions stipulated by law shall apply, the subject matter of the claim cannot be transferred also:
 - A. Where the administrator will waive the right of claim because of lack of money, he shall give notice to creditors; any creditor may request the administrator to pursue the claim if the creditor has paid the disbursement of claim.

- B. Where the administrator is unwilling to pursue the claim and the creditors' meeting approved that, the right of claim may be transferred to and creditor who paid for it.
- C. Where the administrator is unwilling to pursue the claim and the creditors' meeting approved that, the administrator could also distribute the right of claim to creditors. Any creditor has no priority over the subject matter of the claim by the insolvent ship operator, and the subject matter can't be transferred to any creditor.

Thus, under Chinese law, such application can't be frothed and permitted.

5. Do your laws permit foreign creditors to apply to a court for supervisory orders if they consider the administrator is acting inefficiently or wrongly? Describe the procedure generally.

Yes.

Firstly, according to Article 4 of *Enterprise Bankruptcy Law of the PRC* and Article 5 of *Civil Procedure Law of the PRC*, foreign creditors have the same litigation rights as local creditors.

Secondly, Paragraph 2, Article 22 of *Enterprise Bankruptcy Law of the PRC* stipulates "Where the creditors' meeting believes that the administrator cannot perform his duties according to law or impartially or is incompetent to fulfill his duties, the meeting may apply with the court for replacement", which stipulates the right to apply to a court for supervisory orders and the procedure.

6. Do your laws permit foreign creditors to commence legal proceedings against administrators if they consider the administrator has acted negligently or wrongly?

Yes.

Firstly, according to Article 4 of *Enterprise Bankruptcy Law of the PRC* and Article 5 of

Civil Procedure Law of the PRC, foreign creditors have the same litigation rights as local creditors.

Article 130 of *Enterprise Bankruptcy Law of the PRC* stipulates “Where an administrator fails to perform his duties diligently and faithfully, as is required by the provisions of this Law, the court may impose on him a fine according to law; and where losses are caused to a creditor, a debtor or a third party, the administrator shall bear the liability for compensation according to law.”

7. If a foreign creditor or claimant against a ship operator foresees it will suffer a loss or commercial disadvantage because of the appointment of a private receiver or the way the private receiver is acting, does such a foreign claimant have any legal remedies against the receiver, such as applying to a court for supervisory orders or to put the ship operator into bankruptcy?

There are no provisions regarding private receiver in China. That is to say any private receiver’s action has no legal support.

Part 2 Subject Matter or Territorial Jurisdiction

8. Do your laws permit assertion of insolvency jurisdiction generally over any asset of an insolvent ship operator domiciled in your country, regardless of the location of the asset within or outside your country? Please comment whether this scope of jurisdiction differs between a ship of your country's registry owned by persons domiciled in your country, or a ship of another flag owned by persons domiciled in your country.

Yes. Article 5 of *Enterprise Bankruptcy Law of the PRC* stipulates "Once the procedure for bankruptcy are initiated according to this Law, it shall come into effect in respect of the debtor's property outside of the territory of the People's Republic of China", which shows that the asset outside China shall be bound by insolvency proceedings in China, though it may be difficult to execute the property abroad.

Part 3 Notice to Foreign Creditors

9. Do any legal or procedural requirements have to be followed to ensure the insolvent ship operator or the insolvency administrator identifies all known foreign creditors?

Firstly, where the debtor cannot pay off his debts due, the creditor may make an application to the court for the debtor's reorganization or bankruptcy liquidation. According to Article 11 of *Enterprise Bankruptcy Law of the PRC*, where the court accepted an application for bankruptcy and served its decision on the debtor, the debtor shall, within 15 days from the date the decision is served, submit to the court statements on his financial position, a complete list of his debts, a complete list of his claims, the related financial statements and payment of his employees' wages and social insurance premiums.

According to Article 8, where a debtor makes an application, he shall submit to the court statements on his financial position, a complete list of his debts, a complete list of his claims, the related financial statements, a plan for employee arrangements and payment of his employees' wages and social insurance premiums.

All the submissions above are prima facie evidences to identify the known creditors.

Secondly, as of the time when the court accepts an application for bankruptcy, the creditor that enjoys the claims against the debtor may exercise his right and declares his claims. Article 49 stipulates that he shall make a written statement on the amount of his claims and on whether there is any property guaranty, and present the relevant evidence.

Finally, Article 14 of *Enterprise Bankruptcy Law of the PRC* provides that the court shall, within 25 days from the date it decides to accept an application for bankruptcy, it shall notify the creditors already known and announce its decision.

The following matters shall clearly be stated in the notification and announcement:

- (1) titles or names of the applicant and the defending party of the application;
- (2) the time when the court accepts the application for bankruptcy;
- (3) period, place and points for attention with respect to declaration of claims;
- (4) title or name of the administrator and the office address;
- (5) demand made by the administrator upon the debtors or property holders of the debtor for paying off the debts or delivering the property;
- (6) the time and place for the first creditors' meeting to be held; and
- (7) other matters that the court deems it necessary to notify of and announce.

10. Do your laws require administrators of insolvency proceedings to give notice of the proceedings to foreign creditors? As a general practice, how is such notice given to foreign creditors?

The notice of acceptance of application for bankruptcy and declaration of bankruptcy shall be given by the court rather than administrators to creditors (including foreign creditors), and announcement shall be given.

The notice of convening a creditors' meeting shall be given by the administrator to the known creditors (including foreign creditors) 15 days in advance.

Civil Procedure Law of the PRC, Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Decision of the Standing

Committee of the National Congress on Ratification of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, and Certain Provisions of the Supreme People's Court on Issues Concerning Service of Judicial Documents in Civil or Commercial Cases Involving Foreign Elements can be referred to the general means of notice in Chinese law.

11. Do your laws require administrators of insolvency proceedings to give notice of time bars for filing of claims to foreign creditors? As a general practice, how is such notice given to foreign creditors?

Yes, please refer to the answer to Question 10 (Article 14(3) of *Enterprise Bankruptcy Law of the PRC*).

12. If the insolvent business is a shipowner, do your laws require notice of insolvency proceedings to be given to the ship registrar for domestically registered vessels?

There are no relevant provisions in Chinese law.

13. Do your laws require notice of insolvency proceedings to be given to diplomatic or consular officials of the flag states of foreign registered vessels which are assets of a local insolvent ship operator?

No.

14. If a foreign creditor later learns of the existence of insolvency proceedings, is the foreign creditor permitted to file late claims or have a right to claim against any of the assets of the insolvent ship operator which have not yet been distributed to creditors?

Yes. According to Article 56 of *Enterprise Bankruptcy Law of the PRC*, the creditors including foreign creditors have a right to claim against the assets which have not yet

been distributed to creditors.

Part 4 Recognition of Foreign Claims

15. Please describe the conflict of laws rules for recognition of foreign maritime claims in insolvency proceedings. For example, if the claim is a maritime lien under the law of the place where the claim arose but not in the country where the insolvency proceeding is being conducted, will the insolvency administrator or tribunal recognize the foreign maritime lien?

There are three points of view regarding the application of law in respect of cross-border insolvency. First, law of the state in which bankruptcy is declared shall be applicable. The second standpoint is that law of the place of property shall be applicable. Thirdly, law of the country of creditors shall be applicable.

Article 3 of *Enterprise Bankruptcy Law of the PRC* provides that the bankruptcy proceeding shall be under the jurisdiction of the court where the relevant debtor is domiciled. Therefore, the insolvency administrator or tribunal will not recognize the foreign maritime lien.

16. Apart from the characterization and priority of claims, are there any other procedural differences in the handling of claims between those by foreign creditors and those by local creditors? With reference to the types of claims listed in the table, please describe any differences in detail.

There are no differences. Chinese law does not have specific provisions regarding the proceeding of claims made by foreign creditors. As to cross-border insolvency, only Article 5 of *Enterprise Bankruptcy Law of the PRC* provides general principles. We believe that the provisions regarding local creditors' claims stipulated in *Enterprise Bankruptcy Law of the PRC* is also applicable to foreign creditors.

17. Does your law recognize rights of claims to property rights, sale or enforcement given by

foreign law to particular types of creditors, such as, for example, to financial institutions or spouses for their entitlement to business property interests of the other spouse on separation or divorce?

Theoretically, the law by which debts are bound shall be deemed as proper law with regard to cross-border insolvency. Practically, Lex fori shall apply.

In particular, the law by which debts are bound shall apply relating to recognition of the existence of the debt, Lex fori shall apply relating to insolvency proceedings including order for payment of claims.

Bankruptcy claims mentioned in this question shall be deemed as common claims which have no priority. Thus, the rights of the creditor under foreign laws shall not be recognized under Chinese law.

18. Is the recognition of foreign arbitral awards for purposes of proof of claim in insolvency proceedings different from the recognition of foreign arbitral awards for general legal purposes? Please explain any differences.

They are different.

Foreign arbitral awards for purposes of proof of claim in insolvency proceedings could be used as proof without recognition procedure ruled by 1958 *New York Convention*. However, the credit of bankruptcy which the award proved shall be confirmed by the insolvency administrator, creditors' meeting and court.

Foreign arbitral awards for general legal purposes shall be recognized according to 1958 *New York Convention*.

19. If the insolvent ship operator is a state-owned enterprise, are there any differences in the rights or procedures available to a foreign creditor under your country's insolvency law?

There are no differences. Article 133 of *Enterprise Bankruptcy Law of the PRC* provides that any special matter in the bankruptcy of a state-owned enterprise within the time limit and scope as prescribed by the State Council before the present law comes into force shall be handled in accordance with the relevant provisions of the State Council. Such as *Circular of the State Council concerning the Bankruptcy of State-owned Enterprises in Some Cities*, *Supplementary Circular of the State Council on the Re-employment Issues Related to Pilot Merger and Bankruptcy of State-owned Enterprises and Workers in Several Cities* and so on. But after the expiration of the time limit, the state-owned enterprises' bankruptcy shall be bound by uniformly *Enterprise Bankruptcy Law of the PRC*.

Part 5 Recognition of Foreign Insolvency Proceedings

20. Do your laws permit the administrator of a foreign insolvency proceeding to publish notices of such proceedings in local news media or to communicate directly with local creditors concerning proofs of claim and payment of any recoveries in the insolvency proceedings? If there any legal restrictions on direct handling of claims by foreign administrators, please provide details.

(1) Quite possibly. There are no relevant provisions, in our opinion it will be ok in practice. Notices given by the administrator of a foreign insolvency proceeding are different with judicial documents. Foreign courts or administrators of a foreign insolvency proceeding shall not be entitled to service judicial documents. Foreign-related judicial documents shall be serviced to the party concerned through The Ministry of Foreign Affairs of the PRC, The Ministry of Foreign Justice of the PRC, the Supreme Court of the PRC and the local courts in accordance with bilateral-treaties or multilateral-treaties.

(2) There are no provisions relating to handing of claims by foreign administrators.

21. Will your country's courts recognize a request for the recognition of foreign insolvency proceedings?

- (1) There are three kinds of cross-border insolvencies: creditors' cross-border, debtors cross-border, debtor's properties cross-border. Chinese law provides cross-border insolvency of debtor's property cross-border insolvency, there are no provisions about the cross-border insolvency of creditors cross-border and debtors cross-border.
- (2) With respect to the recognition of cross-border insolvency which debtor's properties are in foreign countries, Chinese law provides the recognition of the judgment and ruling made by foreign courts only. Where a legally effective judgment or ruling made on a bankruptcy case by a court of another country involves a debtor's property within the territory of PRC and the said court applies to or requests the Chinese court to recognize and enforce it , the Chinese court will ,according to the relevant international treaties that PRC has concluded or acceded to or on the basis of the principle of reciprocity, conduct examination thereof and, decide to recognize and enforce the judgement or ruling subject to followings:

The target to recognize:

The judgment or ruling made by foreign courts with respect to debtor's property in foreign territory.

Recognition shall be subject to:

- a) It will not violate the basic principles of the laws of the people's republic of china
 - b) It will not jeopardize the sovereignty and security of the state or public interests
 - c) It will not undermine the legitimate rights and interests of the creditors with in the territory of the People's Republic of China
- (3) With respect to the recognition of foreign insolvency proceedings in process, there are no relevant provisions in Chinese law. It may not be recognized in practice unless conventions, bilateral treaties or multilateral treaties provide otherwise.

Enterprise Bankruptcy Law of the PRC Article 5 paragraph 2 : Where a legally effective judgment or ruling made on a bankruptcy case by a court of another country involves a debtor's property within the territory of the People's Republic of China and the said court applies with or requests the court to recognize and enforce it , the court shall ,according

to the relevant international treaties that China has concluded or acceded to or on the basis of the principle of reciprocity, conduct examination thereof and, when believing that the said judgment or ruling does not violate the basis principles of the laws of the people's republic of china, does not jeopardize the sovereignty and security of the state or public interests, does not undermine the legitimate rights and interests of the creditors with in the territory of the People's Republic of China, decide to recognize and enforce the judgement or ruling.

22. Will such a request be recognized if it comes directly from a foreign trustee in bankruptcy, liquidator or administrator, or does the request have to be in the form of a letter of request issued by the foreign bankruptcy tribunal?

In China, there are no provisions regarding the recognition of foreign insolvency proceedings in process. Both the party concerned or foreign court may apply to Chinese court for recognition and enforcement of foreign judgment or ruling.

(1) Where the party apply

- a) The Chinese courts may recognize and enforce the judgment or ruling after consideration if there are international treaties or principle of reciprocity.
- b) The Chinese courts shall not recognize and enforce the judgment or ruling after consideration if there are no international treaties nor principle of reciprocity.

(2) Where the foreign court apply

- a) The Chinese courts may recognize and enforce the judgment or ruling after consideration if there are international treaties or principle of reciprocity.
- b) The judgment or ruling may be recognized through diplomatic channels if there are no international treaties or principle of reciprocity.
- c) The judgment or ruling shall not be recognized if the foreign courts apply to Chinese court directly not through diplomatic channels if there are no international treaties or principle of reciprocity.

Civil Procedure Law of the PRC Article 265: If a legally effective judgment or ruling made by a foreign court seeks the recognition and enforcement of a court of the People's Republic of China, the party may directly apply to the intermediate court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement, or the foreign court may, according to the provisions of the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, request the recognition and enforcement of a court.

Civil Procedure Law of the PRC Article 266 : After a court of the People's Republic of China reviews an application or pleading for the recognition and enforcement of a legally effective judgment or ruling rendered by a foreign court according to the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, if the court considers that such a judgment or ruling does not contradict the basic principles of the laws of the People's Republic of China nor violates the national, social, and public interest of China, the court may render a ruling to recognize its force. Where the enforcement is necessary, the court may issue an order to enforce a foreign judgment according to the relevant provisions of this Law. If a legally effective judgment or ruling rendered by a foreign court contradicts the basic principles of the law of the People's Republic of China or the national, social, and public interest of China, the court shall reject the application of recognition and enforcement.

Opinions of the Supreme Court on Some Issues Concerning the Application of the Civil Procedure Law of the PRC Article 318: (free translation) Where the party apply to the intermediate court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement and there is no international treaties between People's Republic of China and the country which made the judgment or ruling, and there is no principle of reciprocity as well, the party may bring suit before Chinese court, and the Chinese court may make a judgment or ruling for enforcement.

Opinions of the Supreme Court on Some Issues Concerning the Application of the Civil Procedure Law of the PRC Article 319: (free translation) Where there are no international treaties nor principle of reciprocity, the foreign courts apply to Chinese court for judicial assistance directly, not through diplomatic channels , the Chinese court shall reject and give reasons.

23. What legal standards do your country's courts apply for the purpose of recognition of foreign insolvency proceedings? Please provide details.

Pursuant to *Enterprise Bankruptcy Law of the PRC* Article 5, once the procedure for bankruptcy is initiated according to this Law, it shall come into effect in respect of the debtor's property outside of the territory of the People's Republic of China.

After a court of the PRC reviews an application or pleading for the recognition and enforcement of a legally effective judgment or ruling regarding the recognition of foreign insolvency proceedings rendered by a foreign court according to the international treaties has concluded or acceded to by PRC or based on the principle of reciprocity, if the court considers that such a judgment or ruling does not contradict the basic principles of the laws of the PRC nor violates the national, social, and public interest of China, the court may render a ruling to recognize its force.

24. Do your laws have a procedure for a request for the recognition by a foreign insolvency administrator or insolvency court of a local insolvency proceeding? Are such requests generally made by the administrator or the insolvency court? Generally describe the procedure.

Please refer to the answer of question 22.

25. Can an administrator of insolvency proceedings request the courts of your country for assistance in obtaining recognition of insolvency proceedings of foreign insolvency administrators or foreign courts? Generally describe the procedure.

With respect to the recognition of ongoing foreign insolvency proceedings, there are no relevant provisions in China.

Generally, Chinese judicial assistance only includes the recognition and enforcement of foreign judgments, delivery of judicial documents and investigation and evidence collection, does not include recognition of ongoing foreign proceedings. However, the

application for recognition of ongoing foreign insolvency proceedings may be acceptable by Chinese court where the conventions or treaties provide otherwise.

Civil Procedure Law of the PRC Article 260: According to the international treaties concluded or acceded to by PRC or the principle of reciprocity, the courts of China and foreign courts may request each other's assistance in the service of legal documents, the investigation and collection of evidence, or other litigation actions.

If any matter requested by a foreign court for assistance would impair the sovereignty, security, or social and public interests of the People's Republic of China, the court shall refuse the request.

Civil Procedure Law of the PRC Article 92: If it becomes impossible or difficult to enforce a judgment because of the acts taken by one of the parties or for other reasons, the people's court may, upon the request of the other party, make an order to preserve the property. In the absence of such requests, the people's court may, when necessary, also order to adopt property preservation measures.

26. Will your courts enforce any compulsory transfer of a contractual obligation involving a vessel formerly owned by an insolvent ship operator, if this contractual obligation affects parties located in your country?

(1) The Chinese court shall designate an administrator when the court decides to accept an application for bankruptcy.

(2) With respect to the contract which concluded before the application for bankruptcy including the obligations attached the vessel, the administrator shall be entitled to determine whether to continue or cancel.

(3) The other party shall continue to carry out the contract if the administrator decided to continue, but the other party shall be entitled to get security from the administrator.

Enterprise Bankruptcy Law of the PRC Article 13: When the court decides to accept an application for bankruptcy, it shall designate an administrator at the same time.

Enterprise Bankruptcy Law of the PRC Article 18: After the court accepts an application for bankruptcy, the administrator shall have the right to decide to rescind or continue to perform a contract that is concluded before the acceptance yet remains to be fulfilled by both the debtor and the other party and shall notify the other party of his decision. Where the administrator fails to notify the other party within two months from the date when the bankruptcy application is accepted or to give any reply to the exhortation made by the other party with 30 days from the date the exhortation is made, the contract shall be deemed to be rescinded.

Where the administrator decides to continue the contract, the other party shall comply; however, the other party shall have the right to request the administrator to provide guaranty. Where the administrator refuses to do so, the contract shall be deemed to be rescinded.

27. Does your legal system have a procedure for the coordination of concurrent insolvency proceedings involving maritime assets insolvent ship operators or creditors in your country and abroad? Is this procedure set out in laws or regulations or has it been developed through practice of insolvency tribunals? Please provide details including any generally used precedent forms of procedural orders.

There are no relevant provisions in laws or regulations. And the number of the cross-border insolvent cases is limited. There used to be some cross-border insolvent cases without maritime factors in China, Chinese courts accepted the suit brought by party concerned where the other insolvency proceeding have been existed in foreign country in order to protect the interest of local party concerned according local government regulations, even though there are no relevant laws or administrative regulations. Nowadays, in practical area the situations that insolvency proceedings started before both foreign and domestic courts at the same period of time are more common. In 2007, *Enterprise Bankruptcy Law of the PRC* enacted, there is relevant provision in this law. The only one piece of provision shows that the Chinese government take the positive attitude to the cross-border insolvency; Chinese courts will recognize the cross-border insolvency judgment or ruling if the conditions are fulfilled. Thus, in the future, with respect to the cross-border insolvency proceedings have existed in foreign territory, the

Chinese proceeding similar may not to be started very easy.

28. Is your country a party to any bilateral or multilateral agreements for the coordination of multi country insolvency proceedings or the recognition of foreign insolvency proceedings? Please list such agreements.

China has not concluded any international treaties with respect to cross-border insolvency. The recognition and enforcement of cross-border insolvency proceedings shall be treated according to the international treaties regarding to recognition and enforcement of judgment or ruling. Now, the countries which have concluded treaties with China regarding recognition and enforcement of judgment or ruling are as follows:

- 1) Hong Kong
- 2) Tai Wan
- 3) Macao
- 4) Algeria
- 5) Brazil
- 6) Peru
- 7) Kuwait
- 8) Democratic People's Republic of Korea
- 9) United Arab Emirates
- 10) Korea
- 11) Argentina
- 12) Laos
- 13) Lithuania
- 14) Tunisia
- 15) Vietnam
- 16) Singapore
- 17) Uzbekistan
- 18) Tadzhikistan
- 19) Kyrgyzstan
- 20) Morocco
- 21) Cyprus
- 22) Hungary

- 23) Greece
- 24) Turkey
- 25) Thailand
- 26) Egypt
- 27) Spain
- 28) Cuba
- 29) White Russia
- 30) Kazakhstan
- 31) Ukraine
- 32) Russia
- 33) Bulgaria
- 34) Rumania
- 35) Mongolia
- 36) Belgium
- 37) France
- 38) Poland

Part 6 Need for Reform

29. Have any provisions of your insolvency law created legal uncertainty or difficulties in the administration of cross-border maritime insolvencies? Please refer to any legal commentary or case law.

Yes. The *Enterprise Bankruptcy Law of the PRC* does not have provisions concerning cross-border insolvency issues involving Hong Kong, Macao and Taiwan. However, these issues have taken place in practice, which resulted in some relevant disputes and created legal uncertainty. Such disputes exist in cross-border maritime insolvencies. In addition, *Enterprise Bankruptcy Law of the PRC* does not have detail stipulations about administration of cross-border maritime insolvencies as well, which resulted in difficulties in practice. All the problems mentioned above can be seen in the articles of the individuals such as attorney Yin Zhengyou, legal commentator Hu Jian and so on.

However, the general provisions in *Enterprise Bankruptcy Law of the PRC* have no uncertainty.

SECTION II

GENERAL MARITIME INSOLVENCY ISSUES

Part 7 General Insolvency Issues Applicable to Ship Operators and Maritime Property

30. Are ships registered in your country or ship operators incorporated in your country subject to insolvency laws of general application or do your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators?

There are no special stipulations relating to administration of the businesses of insolvent ship operators in Chinese law. *Enterprise Bankruptcy Law of the PRC* shall apply.

31. If your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators or ships under your registry as distinct from assets of commercial enterprises generally, please provide details of how these rules applying to ships or ship operators differ from general insolvency administration.

There are no special stipulations in Chinese law.

32. Is there a monetary or asset value threshold for the application of various forms of insolvency procedure? For example, is there a form of simplified insolvency administration for ship operators with assets of limited value?

The application of forms of insolvency procedure shall be decided by court, there are no relevant provisions relating to assets of limited value or asset value threshold to start an insolvency procedure.

33. Do rights to commence insolvency proceedings or insolvency procedures differ if the debtor ship operator is a natural person as distinct from a legal entity? Describe any differences generally.

Enterprise Bankruptcy Law of the PRC does not recognize the bankruptcy of a general natural person. However, *Partnership Law of the PRC* sets out that the partnership could be bankrupted.

34. If creditors are asserting claims against all or substantially all the assets of an insolvent ship operator, does this result in distinct or additional procedural or legal requirements?

The creditors shall declare their claims to the court within the time limit, there are no other special stipulations in addition to this.

35. Are insolvency procedures administered by courts of general jurisdiction, or by specialized courts or tribunals exercising commercial or insolvency jurisdiction?

There are no special procedures, insolvency procedures shall be administered by courts of general jurisdiction. *Enterprise Bankruptcy Law of the PRC* shall apply as long as it happens within the boundary of China.

The Article 3 provides that bankruptcy cases shall be under the jurisdiction of the Court at the place of the debtor's domicile.

Insolvency procedures shall be administered by the certain bankruptcy court; however there is no specialised independent bankruptcy court system in China. Usually, such courts belong to the civil division of a general court. Otherwise, the insolvency procedures shall be administered by commercial courts also belongs to the civil division.

36. Describe generally the threshold tests set out in your law for the status of insolvency.

According to the relevant provisions of *Enterprise Bankruptcy Law of the PRC*, both formal conditions and essential conditions should be satisfied to start a bankruptcy procedure in China. The formal conditions include bankruptcy application and related evidence, proper applicant and competent court. The essential conditions include that the

legal person lacks ability to pay off debts and so on. Especially the following conditions shall be satisfied:

According to the Article 2 and Article 7 of *Enterprise Bankruptcy Law of the PRC*, wherever an enterprise legal person is unable to pay off its debts due and his assets are not enough to paying off all the debts or is obviously insolvent, the debtor may put forward directly to a court for bankruptcy liquidation.

Wherever an enterprise legal person is unable to pay off its debts due, the creditors could put forward to the court for bankruptcy liquidation against the debtor.

When an enterprise legal person has been dissolved but not been liquidated or has not completed its liquidation, the person responsible for liquidation by force of law (generally include the enterprise shareholders, directors and top executives) should put forward to the Court for bankruptcy liquidation in their own name.

The financial regulatory authority of the State Council could lodge an application for bankruptcy liquidation of the financial institutions. Where a financial institution goes into bankruptcy, the State Council may, according to the provisions of this Law and other laws, formulate the measures for effecting bankruptcy.

During the period of reorganization, the administrator or the interested parties are entitled to start the bankruptcy procedure, should the conditions as following be satisfied:

- (1) if the management and financial conditions of the debtor continue to be deteriorating and there is a lack of possibility to rescue it;
- (2) if the debtor acts with fraud, decreasing the property of the debtor in bad faith, or other behaviors that apparently are disadvantageous to the creditors; or
- (3) if the behaviors of the debtor make the administrator unable to perform its functions.

After the conclusion of the compromise agreement, should the debtor refuses or is unable to pay off his debts according to the conditions prescribed in the compromise agreement, the creditors involved in the compromise may request the court to terminate the honoring of the compromise agreement and declare the debtor bankrupt.

37. If the threshold tests for insolvency proceedings in your country differ for a foreign ship operator with assets in your country which wishes to begin insolvency proceedings in your country, describe these differences in detail.

A foreign ship operator with assets in China shall not be permitted to begin insolvency proceedings in China, because the condition precedent to begin insolvency proceedings is that the respondent shall be an enterprise legal person which operated under Chinese law.

Where the foreign ship operator with asset in China has no permanent establishment in foreign countries, such insolvency proceedings might be permitted in China.

38. Do your laws permit a private creditor to obtain a court order to begin insolvency proceedings against a ship operator? If so, describe generally what facts or legal grounds the creditor must show to obtain such an order.

Yes. The Article 7 of *Enterprise Bankruptcy Law of the PRC* sets out that wherever a debtor is unable to pay off the debts due, its creditor may file an application for reorganization or bankruptcy liquidation of the debtors with the court.

39. Do your laws permit a public authority to obtain a court order or to exercise its own jurisdiction to begin insolvency proceedings against a ship operator other than procedures available to private creditors? If so, describe generally what are the factual or legal grounds for such public authority to begin such insolvency process?

According to *Enterprise Bankruptcy Law of the PRC*, financial regulatory authority may apply an application with the court for reorganization or bankruptcy liquidation of the financial institution such as commercial banks, securities companies and insurance companies. With respect to other enterprises including ship operators, the insolvency proceedings shall only be applied by creditors or insolvent debtors.

40. Does a ship operator have rights to defend or oppose an insolvency proceeding begun by

private creditors or public authorities? If so, describe generally what defences are available.

Yes, the Article 10 of *Enterprise Bankruptcy Law of the PRC* stipulates that where a creditor files an application for bankruptcy, the court shall, within five days from the date receiving the application, notify the debtor concerned. Where the debtor has objections to the application, he shall put forward his objections to the court within seven days from the date he received notification from the court. The court shall decide whether or not to accept the case within 10 days at the expiration of the period for raising objections.

There are not concrete provisions regarding defences.

41. Do your laws permit a ship operator to voluntarily begin an insolvency proceeding? If so, describe generally what facts or legal grounds a ship operator must demonstrate to begin voluntary insolvency proceedings.

Yes, according to Article 2 of *Enterprise Bankruptcy Law of the PRC*, where an enterprise legal person cannot pay off his debts due and his assets are not enough for paying off all the debts, or he apparently lacks the ability to pay off his debts, the debts shall be liquidated according to the provisions of this Law.

And Article 7, where a debtor is under the circumstances as specified in Article 2 of this Law, he may make an application to the court for reorganization, compromise or bankruptcy liquidation. Where the debtor cannot pay off his debts due, the creditor may make an application to the court for the debtor's reorganization or bankruptcy liquidation. Where an enterprise legal person has been dissolved but has not started or completed liquidation and he does not have enough assets to pay off his debts, the person responsible for liquidation according to law shall make an application to the court for bankruptcy liquidation.

42. Do creditors or any other persons with a legal standing (such as public authorities, shareholders or employees of a ship operator) have rights to oppose a ship operators' voluntary insolvency proceeding? If so, describe generally what classes of persons other

than creditors have such legal standing and what grounds of opposition are available.

With respect to ship operators' voluntary insolvency proceeding, consents of creditors are not mandatory required. However, competent authorities' comments shall be considered where the ship operator is state-owned.

Where a ship operator makes a voluntary insolvency application, he shall submit to the court a plan for employee arrangements. Comments of Workers Conference shall be taken into account where the ship operator is state-owned.

Creditors may apply to the court to reject ship operators' voluntary insolvency application, where the requirements of insolvency are not fulfilled.

43. Do your laws provide for a time bar for filing of claims in insolvency proceedings which is different from limitation periods or prescription for commencement of maritime claims generally? If insolvency proceedings have different time bars for filing of claims, are these time bars set out in legislation or are they decided by insolvency administrators or tribunals on a case-by-case basis?

Yes, the Article 45 of *Enterprise Bankruptcy Law of the PRC* stipulates that after accepting an application for bankruptcy, the court shall specify the time limit for a creditor to declare claims. Such time limit, calculated from the date when the court announces its acceptance of the application for bankruptcy, shall be not less than 30 days at least but not more than three months at the most. And Article 56 stipulates where a creditor fails to declare his claims within the time limit for declaration of claims as specified by the court, he may declare such claims afterwards before distribution of the bankruptcy property in the final installment. However, if the property has been distributed earlier, no more distribution shall be made to him. The expenses for examining and confirming the claims declared afterwards shall be borne by the party that makes such declaration.

44. Do your laws permit an insolvency administrator to carry on the ship operator's business for a temporary period in order, for example, to complete voyage or charter party

commitments?

Yes, Article 25 of *Enterprise Bankruptcy Law of the PRC* provides that an administrator shall perform the following duties... (5) deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business; (6) managing and disposing of the debtor's property....

45. Do your laws permit an insolvency administrator to disclaim or otherwise set aside future contractual obligations such as charter parties or contracts of affreightment?

Yes, according to Article 26 of *Enterprise Bankruptcy Law of the PRC*, if an administrator decides to continue or suspend the business operation of a debtor or if he intends to take any of the actions as specified by the provisions of Article 69 of this Law before the first creditors' meeting is held, the matter shall be subject to approval by the court.

46. Do your laws permit or require an insolvency administrator to compulsorily transfer contractual obligations such as contracts of affreightment or employment agreements with crew from the insolvent ship operator to the purchaser of the vessel from the estate of the insolvent owner?

There is no relevant stipulation in Chinese law.

Part 8 Acceleration of Remedies

47. Do your laws permit a creditor to contract for immediate repayment of an entire debt, such as future obligations under a ship mortgage, if a ship owner becomes insolvent?

According to Article 46 of *Enterprise Bankruptcy Law of the PRC*, all claims undue shall be deemed to be due at the time when the application for bankruptcy is accepted. Nevertheless, the creditor cannot get repayment until the end of liquidation. However, a creditor secured by the specific property of the bankrupt shall enjoy the priority in being

repaid with the specific property. (Refer to Article 109 of *Enterprise Bankruptcy Law of the PRC*)

48. If there are differences in the application of these laws to acceleration remedies by foreign creditors as distinct from local creditors, describe these differences in detail.

There are no differences.

Part 9 Classes of Claims and Creditors

49. Do your insolvency laws apply differently to differing types of claims or creditors? Please respond to this question using the attached table. For example, is a bank or financial institution permitted to enforce a ship mortgage by procedures outside of an insolvency which would not be available to a ship mortgagee other than a bank or financial institution?

According to Article 109 of *Enterprise Bankruptcy Law of the PRC*, A creditor secured by the specific property of the bankrupt shall enjoy the priority in being repaid with the specific property. The priority shall not be affected by different types of creditors. Creditors shall enjoy the priority as long as their claims are secured; there are no differences between financial institutions and other creditors.

50. Does the existence of an insolvency proceeding under your country's law alter the priority of creditors' claims against a ship owned or operated by an insolvent person? Please respond to this question with reference to the types of claims listed in the attached table.

Normally, the existence of an insolvency proceeding will not alter the priority of creditors' claims. That is because the owners enjoy the retake right and the secured creditors (including creditors secured by maritime lien, mortgage and lien) enjoy the exemption right during the insolvency proceeding, their priority of creditors' claims will

not alter because the ordinary creditors still rank behind them in the insolvency proceeding as the same in the normal civil procedure.

The only exception is criminal fines or administrative fines or penalties. According to Article 36, 60 of *Criminal Law* and Article 215 of *Company Law*, although the fines and penalties rank after the normal civil credits, it still has a chance to be repaid, however, in the insolvency proceeding, the fines and penalties will not be repaid because it does not belong to the insolvency credits.

Article 109 of *Enterprise Bankruptcy Law of the PRC* only regulates that a creditor secured by the specific property of the bankrupt shall enjoy the priority in being repaid with the specific property, but it does not specify the priority between the secured creditors.

51. If a shipowner commences proceedings to establish a limitation fund under the LLMC Convention or to establish a limitation fund under domestic law, describe the relationship between such fund and any insolvency proceedings involving that shipowner. For example, can creditors begin insolvency proceedings if a limitation fund has been established? Can an insolvent shipowner establish a limitation fund?

According to Article 214 of *China Maritime Code*, where a limitation fund has been constituted by a person liable, any person having made a claim against the person liable may not exercise any right against any assets of the person liable. So after the limitation fund has been constituted, creditors linking to the limitation fund shall not start any insolvency proceeding against the shipowner. However, other creditors shall still have the right to start the insolvency proceeding, and according to Article 10 of *Company Law*, the procedure concerning limitation fund shall be suspended, it can proceed after an administrator takes over the debtor's property.

There are no regulations concerning whether the insolvent shipowner can constitute a limitation fund or not.

Part 10 Proposals for Reorganization

52. Do your laws permit an insolvent ship operator to make a proposal for the reorganization of its business in which the ship operator would continue to operate into the future if the proposal is approved?

According to Article 70 and Article 71 of *Enterprise Bankruptcy Law of the PRC*, a debtor may directly apply with the court for having the debtor reorganized. Where upon examination, the court deems that an application for reorganization conforms to the provisions; it shall rule that the debtor should undergo reorganization and shall make the matter known to the public.

According to Article 73 of *Enterprise Bankruptcy Law of the PRC*, during the period of reorganization, the debtor may, through his application and upon approval granted by the court, manage his property and business operations on his own under the supervision of an administrator.

Ship operators may manage their businesses in ordinary way after the end of reorganization.

53. Do your laws permit such proposals to be conducted through private contractual arrangements between an insolvent ship operator and some of its creditors, or do such proposals need to be conducted under supervision of a court or with approval of all identifiable creditors?

No, in china, the reorganization must be approved by the court, the rectification plan should be approved by creditors and court, and the bankruptcy administer should supervise the implementation of the rectification plan. (Refer to Article 70、 71、 84、 85 、 86、 90 of *Enterprise Bankruptcy Law of the PRC*)

54. If it is lawful to conduct a proposal through private contractual arrangements, are such private contractual arrangements affecting a ship legally binding on other claimants against that ship who have not participated in such private contractual arrangements?

According to Article 79、 84、 86 of *Enterprise Bankruptcy Law of the PRC*, a debtor or bankruptcy administrator may submit a draft of the revival plan to the court and the creditors' meeting, and the court hold creditor's meeting .Where all the voting groups agree to a draft of revival plan, it shall be deemed that the plan is adopted. Within 10 days as of the day when a revival plan is adopted, a creditor or bankruptcy administrator shall file an application with the court for approving the revival plan. Where the court deems, upon examination, that the application complies with the present Law, it shall, within 30 days as of the day when the application is received, grant an approval, terminate the relevant procedures for revival and announce it as well.

So in China, revival plan must be drafted by the debtor or bankruptcy administrator, adopted by creditor's meeting and approved by the court. It is invalid if the revival plan is draft by contractual arrangement and not legally binding on other creditors.

55. If a proposal is required to be conducted under supervision of a court or approval of all known creditors, please provide a general description of the reorganization procedure.

According to Article 90 of *Enterprise Bankruptcy Law of the PRC*, the relevant bankruptcy administrator shall supervise the implementation thereof. Within the term for supervision, a debtor shall report the implementation of its revival plan as well as its financial status to the relevant bankruptcy administrator.

Article 91 stipulates that upon expiration of the term for supervision, a bankruptcy administrator shall submit a supervision report to the court. As of the day when a supervision report is submitted, a bankruptcy administrator's functions and duties shall be terminated.

Where a bankruptcy administrator submits a supervision report with the court, any interested party to the revival plan has the right to consult therewith.

So the revival plan is performed under the supervision of bankruptcy administrator、 court and creditors.

Enterprise Bankruptcy Law of the PRC chapter VIII Revival procedure

1) Application

- (1) Before the court accepts the application of bankruptcy, a debtor or creditor can apply for revival against the debtor.
- (2) After the court accepts the application of bankruptcy, the debtor or its capital contributor whose capital contribution makes up 1/10 or more of the debtor's registered capital may apply with the court for revival.

Where the court deems, upon examination, that an application for revival complies with the provisions of the present Law, it shall order the debtor to be revived and announce its decision as well.

In the duration of revival, a debtor may, upon filing an application and obtaining an approval from the court, manage its assets and business operation under the supervision of its bankruptcy administrator.

2) Formulation and Approval of a Revival Plan

- (1) A debtor or bankruptcy administrator may submit a draft of the revival plan to the court and the creditors' meeting. The court holds a creditor's meeting so as to vote the draft.
- (2) Where 1/2 or more of the creditors in a same voting group at the creditors' meeting agree to a draft of revival plan, representing 2/3 or more of the total amount of the creditor's right, it shall be deemed as an adoption of the draft of revival plan. Where all the voting groups agree to a draft of revival plan, it shall be deemed that the plan is adopted.
- (3) Where a draft of revival plan fails to be adopted and fails to be approved according to the provisions of Article 87 of the present Law, or where an adopted draft of revival plan fails to be approved, the court shall rule to terminate the procedures for revival and announce the debtor bankrupt.
- (4) A revival plan shall be implemented under the debtor's charge, Where a debtor fails to or refuses to implement a revival plan, the court may, upon request of the relevant bankruptcy administrator or interested party, terminate the implementation

of the revival plan and announce the debtor bankrupt. Where the court decides to terminate the implementation of a revival plan, the commitment of the relevant creditor on the adjustment of the creditor's right in the revival plan shall be invalidated. The liquidation for the relevant creditor when the revival plan is implemented remains effective and the creditor's right that has not been repaid shall be regarded as the credit of bankruptcy.

56. Are secured creditors of an insolvent shipowner subject to court orders approving a reorganization or compromise?

If the court approves reorganization, then according to Article 75(1) of *Enterprise Bankruptcy Law of the PRC*, during the period of reorganization, the exercise of the security right over the specific property of a debtor shall be suspended. However, in the case of possible damage or marked depreciation of value of the security, which may impair the secured creditor's right, the secured creditor may apply with the court for resuming the exercise of his security right.

If the court approves a compromise, then according to Article 96(2) of *Enterprise Bankruptcy Law of the PRC*, the creditor secured by the specific property of the debtor may exercise his right from the date when the court rules in favor of compromise.

57. Do your laws permit an insolvent ship operator to transfer an insolvency proceeding into a proceeding for reorganization or compromise?

Yes. According to Article 70(2) of *Enterprise Bankruptcy Law of the PRC*, Where a creditor applies for putting his debtor into bankruptcy liquidation, the debtor or his capital contributors whose capital contribution makes up one-tenth or more of the debtor's registered capital may, after the court accepts the application for bankruptcy and before it declares the debtor bankrupt, apply with the court for reorganization.

Part 11 Receiverships

58. Does your law permit a private creditor such as a ship mortgagee to take over the business of a ship operator or to sell part or all of its fleet or generally act to recover a debt without needing to commence insolvency proceedings for the benefit of all creditors?

According to Article 49 of *Enterprise Bankruptcy Law of the PRC*, Where a creditor declares his right; it shall make a written statement on the amount of the creditor's right and on whether there is any property guaranty. According to Article 61, one duty of creditors' meeting is to examining the creditors' right, including secured or unsecured right. So no matter if the creditor has property mortgage or not, he should declares his creditor's right.

According to Article 109, a creditor secured by the specific property of the bankrupt shall enjoy the priority in being repaid with the specific property. So the mortgaged property belongs to bankrupt's assets, the mortgagee has priority right, but he has no right to sell mortgaged property without supervision of the creditor's meeting and the court.

59. Does your law set out minimum requirements which a private receiver of an insolvent shipowner must follow such as giving notice to other registered ship mortgagees, the procedure for sale, etc.

There is no concept of private receiver but concept of administrator under Chinese Law, The administrator shall be designated by the court.

Enterprise Bankruptcy Law of the PRC has no provision about legal procedure which bankruptcy administrator should follow, only has provisions on its qualification and responsibility

According to Article 24, the post of bankruptcy administrator may be assumed by a liquidation group comprised of the relevant departments and organs or by such social intermediary agencies as a law firm, an accounting firm, a bankruptcy liquidation firm that have been established according to law.

The court may, according to the real status of a debtor and upon consulting the opinions of the relevant social intermediary agencies, designate the relevant personnel who have a good command of specialties and have obtained the practice qualification for bankruptcy administrators.

Under any of the following circumstances, one shall not assume the post of bankruptcy administrator:

- (1) Having been given a criminal punishment for deliberate crime;
- (2) Having been deprived of the relevant practice qualification certificate of related specialty;
- (3) Having any interest relation to the case; or
- (4) Being under any other circumstance where the court deems it improper to act as a bankruptcy administrator.

Where an individual assumes the post of bankruptcy administrator, he shall purchase the responsibility insurance.

According to Article 25 a bankruptcy administrator shall perform the following functions and duties:

- (1) Taking over the assets, seals as well as the account books and documents of the debtor;
- (2) Investigating into the financial status of the debtor and formulating the financial statements;
- (3) Deciding the internal management of the debtor;
- (4) Deciding the daily expenditure and other necessary expenditures of the debtor;
- (5) Deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business;
- (6) Managing and disposing of the debtors' assets;
- (7) Participating actions, arbitrations or any other legal procedures on behalf of the debtor;
- (8) Proposing to hold creditors' meetings; and
- (9) Performing any other functions and duties that the court believes it should perform.

In the case of any separate provision on the bankruptcy administrator's functions and duties in the present Law, it shall prevail.