

IPBA

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Journal

To Be Stronger: Bankruptcy Administrators in Domestic and Cross-Border Business



INTER-PACIFIC
BAR ASSOCIATION



IPBA 2027
Sydney

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The President's Message

Dear IPBA Members,

It is a profound honour to write my first message as President of an organisation we all care about so deeply. Having assumed this responsibility at the close of our Annual Conference in New Delhi, I find myself reflecting on the journey that has brought me here. But first, I would like to thank our Immediate Past President, Michael Chu, for his hard work and, more importantly, for his support and guidance during my year as President-Elect.

At some level, this is a full-circle moment. When I served as Chair of the Publications Committee, I worked closely with colleagues around the world to ensure that each edition of the Journal came together on time and with rigour, diversity, and resonance. That experience taught me what it takes to bring voices from across jurisdictions into one cohesive dialogue. The IPBA Journal is more than a publication: it is a space where practitioners from across continents share insights and developments. I welcome Scott Li as the new Chair and Frédéric Dal Vecchio as the Vice-Chair and wish them both a wonderful term.

The conference in New Delhi was a landmark gathering that brought together colleagues from more than 50 jurisdictions in the spirit of dialogue, learning, and celebration. It was a moment of personal pride to see India host such a vibrant exchange of ideas in an atmosphere of camaraderie. I will not attempt to capture its full richness here as the June 2026 issue of the Journal will provide a detailed account of the conference and the voices that made it so memorable.

As President of the IPBA, my foremost responsibility is to strengthen our identity as a truly global forum. The

Association has always been a bridge between diverse legal traditions, and I will continue the tradition by expanding that bridge, fostering dialogue across jurisdictions, encouraging collaboration between practitioners, and ensuring that our collective wisdom continues to shape the future of law. I intend to amplify the IPBA's spirit of mentorship by creating opportunities for younger members to contribute more, whether through workshops, publications, or leadership pathways, ensuring that the Association remains a place where emerging voices are heard alongside established ones, and where the energy of youth meets the wisdom of experience.

Inclusion and diversity are embedded in the Association's culture. We must encourage participation from jurisdictions that are less represented, highlight the experiences of women and minority lawyers, and ensure that our programmes reflect the richness of our membership. It is my duty to champion our intellectual capital by supporting and strengthening the Journal, our committees, and the working groups that are the backbone of the Association's thought leadership so that they continue to produce content of depth and relevance.

Finally, I would like to position IPBA not only as a professional association, but as a leader in shaping the future of law in Asia and beyond. My aspiration is that the IPBA will continue to be seen as a forum where our profession stands as an architect of resilience and cooperation, to engage our members with issues relevant to the evolving role of lawyers in society so that we can ensure that the IPBA is not simply reacting to change but actively guiding it.

Our strength lies in the depth of engagement of our members, the lifeblood of the IPBA. Each of us plays a role in enhancing this community. Do consider encouraging colleagues, especially younger lawyers and those from emerging jurisdictions, to join and experience the richness of our network. Contribute actively: write for the Journal, participate in committees, speak on panels, or mentor new members. These acts of engagement transform membership from a name on a list into a living, breathing community. We can also enhance membership by making the IPBA visible in our own professional circles, carrying the spirit of the IPBA through sharing our experiences at IPBA events, inviting peers to attend regional conferences, and highlighting the Association's thought leadership. Finally, membership is enhanced when we treat the IPBA as a family. By building friendships across borders, supporting one another in professional and personal journeys, and celebrating each other's achievements, we create a culture that is magnetic. People are drawn to communities where they feel valued, heard, and inspired.

New Delhi is already history and while Sydney is a year away, time flies. If you have not registered yet, do take advantage of the early bird rates for Sydney. President-Elect James Jung and his organising committee are pulling all the stops to make it a memorable event as we return to the Land Down Under after over two decades.

I am looking forward to this year, working closely with my good friends from whom I learn lessons of life every day.

Warm regards,

Priti Suri
IPBA President



The Secretary-General's Message

Dear Friends,

Spring is in the air (at least from where I am writing this) and I am a year into my function as Secretary-General of the Association, this being my fourth message to you.

With over 850 of you joining, it was a pleasure for me to have attended the New Delhi Annual Conference. What a magnificent event Priti Suri and her local host committee have put up. I am very grateful for you coming down in such huge numbers to Delhi, to show your appreciation for all the hard work done. It was my third time in Delhi (having been there during the previous conference and once having travelled the Golden Triangle with the family) and I must admit the city has evolved enormously.

The Aerocity complex as place to hold the conference was a perfect choice. All the conference activities nicely concentrated in the Pullman hotel with easy access from the various other hotels within walking distance removed the need for much intercity time-consuming (to put it mildly) travelling. The Gala Dinner at the Raffles was impressive. And then a Farewell party (even though formally dubbed a 'dinner') in pure Bollywood style ... we would not have expected anything else from our Indian friends with people dancing through the night led by no one else than our own Priti Suri, even though that was against her doctor's advice to rest her still-healing foot. The visits to Humayun's Tomb (with an unexpected private extra access to the otherwise closed museum) and Qutub Minar, led by Mr Chandrashekar Tampi, were a cherry on the cake and highly appreciated by

those that had the privilege of being able to attend them.

Allow me to welcome more in particular the new Officers who were appointed in Delhi: James Jung as our new President-Elect, warming up to organise the next annual conference in Sydney in April 2027; Doil Son as Deputy CTO; Manjula Chawla as Membership Committee Vice-Chair, Frédéric Dal Vecchio as Publications Committee Vice-Chair; and Mirella Lechna as Deputy Committee Coordinator. I look forward to working together with the Officers and the Council Members in further growing and strengthening our organisation. See you all in Ho Chi Minh City in September of this year for our next Mid-Year Regional Conference.

Scott Li has stepped into Olivia's shoes as Chair of the Publications Committee and in your hands you are holding his first work product. The theme in these economically challenging times could not have been better chosen: Bankruptcy Administrators in Domestic and Cross-Border Business. Clearly once more, it is one of these typical areas of legal practice where, in addition to differences in approach per jurisdiction as to the role of the bankruptcy process, due to the typically national nature of the legislation, national borders can hinder an orderly administration of an estate that typically is not limited to those same national borders. Our unique network of friends across the IPBA is there to help us out in such situations and I trust that you will enjoy reading the suggestions made in the various contributions as well as reach out to our membership across

the world whenever facing an issue in this respect.

And in the meantime, stay safe and healthy and enjoy life.

Best regards,

Jan Peeters
Secretary-General



Publications Committee Chair's Message

It is with a great sense of honour and humility that I address you for the first time as the newly appointed Chair of the Publications Committee for the Inter-Pacific Bar Association. Stepping into this role, I am acutely aware that I am following in the footsteps of a distinguished line of my predecessors who have dedicated their time and expertise to making our Journal the respected publication it is today.

I wish to begin by expressing my profound gratitude to my predecessors. The quality, depth and consistency of this Journal are a testament to their vision and hard work. I am particularly indebted to the immediate past Chair, now the IPBA Vice-President whose guidance during this transition has been invaluable. I also extend my heartfelt appreciation to the President Priti Suri, and Immediate Past President Michael Chu, whose unwavering support and diligence are the bedrock of our operations. Furthermore, their leadership of our Association provides the constant inspiration and framework that allows the Journal to thrive. To all former Publications Committee Chairs and Vice-Chairs, thank you for building such a strong foundation. I inherit a publication in excellent health and I am committed to building upon your legacy.

It is now my pleasure to introduce the March Issue of the IPBA Journal. In this edition, we have curated a selection of articles that reflect the dynamism and complexity in insolvency, but from another fresh point of view. As our members and authors from India, Spain and

China, to name just a few, navigate an increasingly interconnected and rapidly evolving business landscape, the role of this Journal is to serve as a beacon—providing insights, analysis and practical guidance.

In this issue, our readers will find a compelling exploration of cutting-edge legal topics. We feature a deep dive into the latest developments in cross-border insolvency business, from domestic practitioners to international collaborators, India's quest for a robust cross-border insolvency framework, and bankruptcy administrators in domestic and cross-border business in Japan. Our Did You Know? and Celebrations sections will also bring you new ideas from different jurisdictions.

This rich tapestry of content would not exist without the generosity and expertise of our contributors. To each author who has entrusted us with their work: thank you. Your willingness to share your knowledge and perspectives is the very lifeblood of this Journal. You are the reason our members can stay at the cutting edge of legal practice. Whether you are a seasoned practitioner from a leading firm or a rising star in the academic world, your contribution is deeply valued by the entire IPBA community.

As I embark on this journey as Chair, my goal is to ensure that the IPBA Journal remains your essential resource. I encourage you to read the articles within, engage with the ideas presented and consider sharing your own insights in a future edition. The strength of our Association lies in the collective wisdom of its members.

Thank you for your continued readership and support. I hope you find this March Issue both informative and thought-provoking.

Warm regards,

Scott Li

Chair, Publications Committee

Something New



Construction Contract Access in CEE: From Trusted Suppliers to Regional Fragmentation

Introduction

The concept of 'trusted suppliers' has emerged as a critical framework for managing access to sensitive contracts across major jurisdictions. In the US, trusted suppliers have formal status in defense and federal procurement through the Department of Defense Trusted Supplier Program, which provides certification for microelectronics/semiconductors to ensure secure and tamper-free supply chains tied to federal acquisition rules and national security exclusions. In the UK, trusted suppliers are embedded in procurement guidance (the Cabinet Office Sourcing Playbook), with the Ministry of Defence defining them as those vetted through national security

and integrity checks to build a secure, reliable, and resilient supplier base.

In the EU, while there is no single legal definition, the concept appears in policy documents for critical sectors (defense, energy, ICT), with the post-Kolin ruling creating a distinction between EU/GPA suppliers (implicitly trusted) and third-country suppliers whose access may be restricted.

Railway Construction Dispute Brings a Paradigm Shift

The original dispute in the Kolin case (C-652/22), followed by the so-called Romanian case (C-266/22 involving a Chinese contractor: CRRC Qingdao Sifang CO LTD), involved the Strabag v Kolin Inşaat dispute over a Croatian

railway construction project. It initially concerned fixing a bid after the submission date but strategically resulted in new boundaries for third-country access to public projects in the European Union.

The CJEU clarified that there is no guaranteed access for non-GPA entities and that contracting authorities must decide if third-country bidders may access procurement.

This created a paradigm shift: before Kolin, equal treatment did not have a geographical dimension and all bidders relied on EU procurement principles. After Kolin, access to EU construction projects for non-GPA contractors is up to the discretion of the project owner.



Poland	Contracts awarded to non-EU contractors		Share awarded to contractors from third countries	
	number of contracts	value of contracts	number of contracts	value of contracts
2022	61	€ 1,22 bn	13	€ 1,05 bn
2023	125	€ 0,60 bn	11	€ 0,44 bn
2024	141	€ 4,90 bn	10	€ 4,66 bn

However, implementation varies across Member States.

Poland's Restrictive Implementation

Poland responded with comprehensive legislation that entered into force on 9 September 2025. The default position establishes a general ban on third-country participation covering all forms of involvement: main contractor, consortium member, and subcontractor.

Contracting authorities can lift the ban through express provisions and have full discretion in tender documents to apply different evaluation standards, while third-country entities, even if allowed to participate, have no access to legal remedies. This prevents third-country contractors from challenging their exclusion, even when questions arise about proper classification as non-GPA entities.

CEE Regional Divergence: Minimal Legislative Response

Poland is one of the few CEE countries that responded to the Kolin judgment with legislation, alongside only Slovakia. Most countries in the region do not provide any dedicated legislation implementing the Kolin judgment, and in some of them (Czechia, Slovakia, Estonia, Croatia) guidelines were adopted to help contracting authorities organise procedures, when, as for now, discrimination on grounds of origin is allowed.

A comparative analysis shows different approaches across CEE countries: Poland implements legislation with a default ban and no legal remedies, while other countries like Czechia, Slovakia, Estonia, Bulgaria, Latvia, Lithuania, Slovenia, Hungary, and Croatia generally permit third-country contractors to access to EU procurement, which can only be limited by a specific contracting authority.

Market Impact and Strategic Implications

Poland's market data reveals significant third-country contractor involvement in public projects:

Given the protectionist narrative currently prevalent in public discourse, the legislation certainly aims to protect Polish contractors from competition from third countries. However, given disparities in technical and economic capacity, particularly in specialized construction technology, Poland's restrictive approach may paradoxically strengthen the position of major European construction firms rather than Polish companies in domestic tenders.

Conclusion

The post-Kolin CEE landscape reveals a fragmented approach to implementing the Court's guidance on third-country access to construction and infrastructure contracts. While Poland has chosen the most restrictive path with comprehensive

legislation and default exclusions, most regional peers have opted for flexibility through guidelines or minimal intervention. This divergence reflects different strategic priorities: Poland's focus on market control versus other countries' preference for maintaining procurement openness while preserving contracting authority discretion.

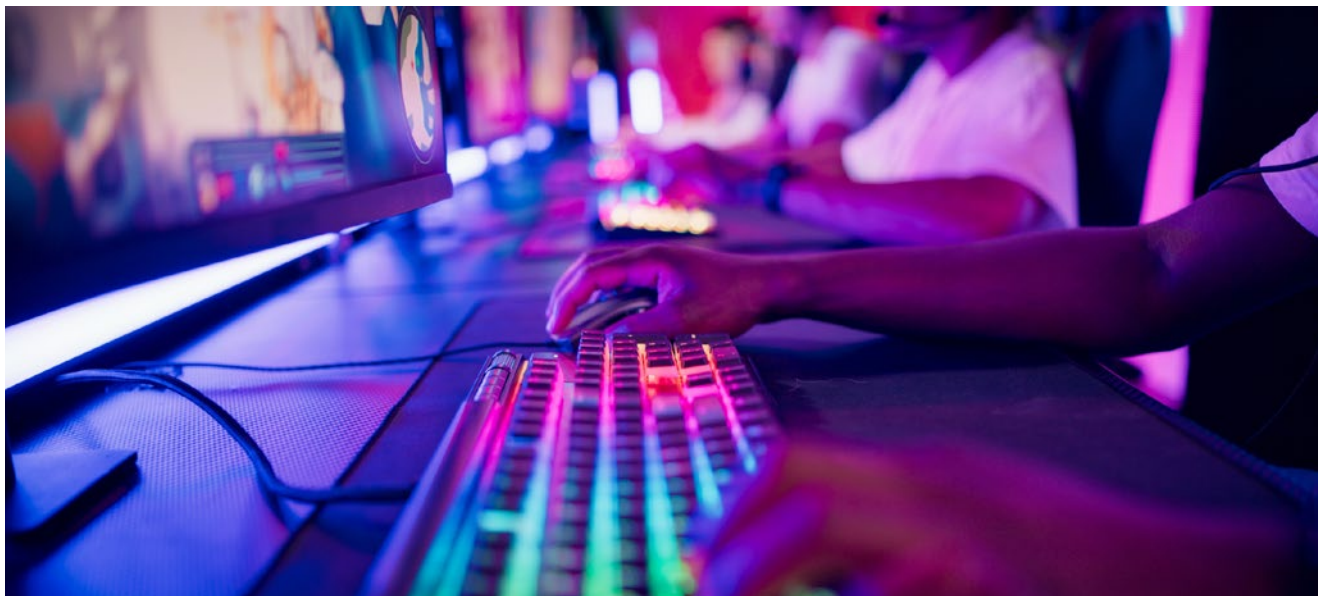
For international construction companies operating across the CEE region, understanding these varying national approaches will be crucial for strategic planning, as the trusted supplier concept continues to evolve in an increasingly security-conscious and politically charged procurement environment. The construction sector, with its significant infrastructure projects and technology transfer implications, sits at the heart of these evolving access restrictions.

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Level Up or Game Over? India's New Online Gaming Act—An Update



In an unanticipated move, the Indian Parliament enacted a new online gaming statute: the Promotion and Regulation of Online Gaming Act, 2025 ('Gaming Act') seeking to promote e-sports, regulate online social games and prohibit online money games ('RMGs'). While the law is yet to be implemented, the die is now cast and the sector has witnessed unprecedented overhauls, with leading stakeholders shutting down RMG offerings, evaluating pivots and restructuring options, handling retrenchment crisis, and a select few marching to the apex court for an adjudication on the constitutional validity of the Gaming Act.

The Gaming Act applies to the online gaming ecosystem in India as well as RMG offshore operators and service providers, and was motivated partly by the lack of a dedicated regulatory framework for strategic promotion and capacity building of the sector, and partly by the emergent need to protect users from financial and

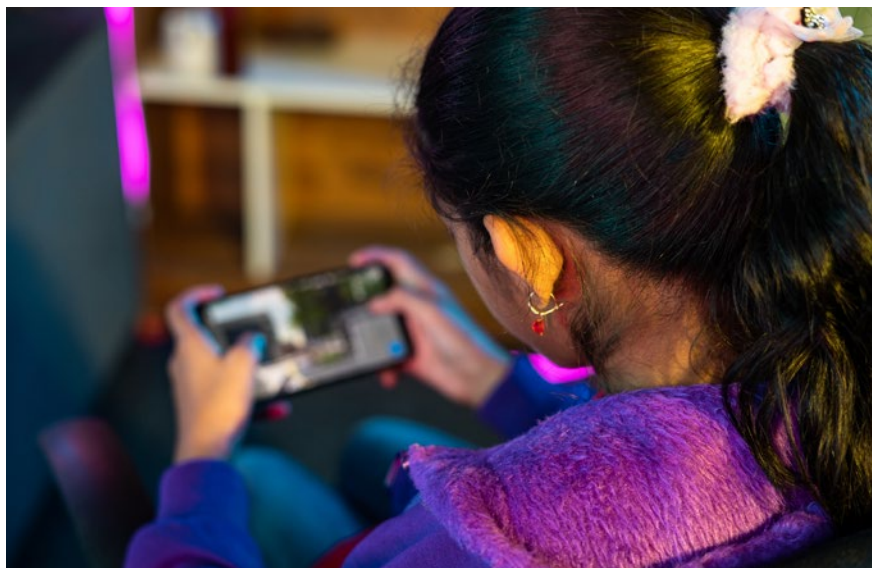
addiction harms among others, prevent illegal betting and gambling, ensure responsible gaming behaviour, prevent money laundering and tax evasion, public order and social welfare.

It classifies online games as e-sports, online social games and RMGs.

'E-sports' are defined as online games recognised under the National Sports Governance Act, 2025,¹ and registered under the Gaming Act: (1) where the outcome is solely determined by the player's skill such as physical dexterity, mental agility and strategic thinking; (2) that are structured as a multi-sports event; (3) are played in multi-player format between competing individuals or teams; (4) that do not involve betting, wagering or placing of 'other stakes' or an expectation of monetary gain on such bets, wagers or other stakes ('Wager'); (5) that may include payment of participation fees; and (6) that may provide for payout of performance-based prize money to players.² Notably, 'other stakes' has been defined rather

widely to include anything which is equivalent or convertible to money including in-game coins, credits and tokens that are directly or indirectly purchased by paying money.³ For the recognition and registration of e-sports, the Gaming Act prescribes that the Central Government ('CG') shall take steps such as formation of guidelines and standards for conducting e-sporting events, establishment of training academies and R&D centres, introducing incentive schemes and awareness campaigns, and coordinating with sporting federations for integration of e-sports into mainstream sporting policies and initiatives.⁴

'Online social games' are online games that are registered under the Gaming Act and (1) are not in the nature of e-sports or RMGs; (2) do not involve a Wager; (3) are offered and played for entertainment, recreational, and skill development purposes; (4) may allow access through payment of subscription or a one-time access



fee that is not akin to a Wager.⁵ For regulating and registering social games, the CG is expected to take necessary steps for increasing public access to safe and age-appropriate social gaming content, coordination with educational and recreational institution for broader digital engagement strategies and undertaking awareness programmes.⁶

'RMGs' are defined as any game of skill or chance, or both, played by users paying fees, depositing money or other stakes with an expectation of monetary gain or other enrichment in return thereof and hence, strikes against any Wager element. Overturning a plethora of judgments that upheld 'predominant' games of skill as distinct from gambling or mere games of chance (and consequently, permissible RMGs), the Gaming Act prohibits and criminalises all forms of RMGs and related services including offering, enablement, payment facilitation, and advertisement.⁷ The Gaming Act poses contravention with the ban as non-bailable offences with ability to arrest without warrants. This is in sharp contrast to the self-regulatory approach that was provided for under the 'stillborn' online gaming intermediary

amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Apart from laying out the eligibility and permissibility criteria for online games, the Gaming Act proposes the establishment of a new regulator ('Authority') tasked with the responsibilities to determine categorisation of games and their legality, registering permissible ones, issuing directions and guidelines, and grievance handling. Further, it vests the CG with sweeping powers to investigate, search and seize assets, and issue blocking orders for unlawful online gaming activities.

Conventionally, the Indian gaming ecosystem has been surrounded by heightened regulatory uncertainty with a steady surge in scrutiny and resultant enforcement actions, including issuance of show-cause notices to advertisers and payment service providers, regulatory attention on endorsement by public figures and social media influencers, issuance of blocking orders, and imposition of geo-blocking mandates. In the not-so-

distant past, the Indian government aggressively moved to impose indirect tax of 28 per cent on RMG operators, the legality of which remains *sub-judice* before the Supreme Court of India.⁸

With the Gaming Act being challenged as being unconstitutional on various grounds including legislative competence, arbitrariness, lack of proportionality, and breach of the fundamental right to practice any trade, profession or employment, its impact is being felt across the value chain including investors, operators, intermediary platforms, advertising companies, payment service providers and gamers. A blanket ban on the element of chance in game formats and use of algorithm-driven play formats for RMGs, pivot structures are likely to be complicated and expensive, but it may be apt to foresee an eventual extinction of RMGs in India as only being a matter of when rather than if. The e-sports and social games remain the only forms but it will be worthwhile to wait and watch the supplementing rules that are currently in the pipeline.

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Notes

¹ The National Sports Governance Act, 2025 was passed as a statute by the Indian Parliament on 18 August 2025 and is yet to be implemented.

² Promotion and Regulation of Online Gaming Act, 2025, s 2(1)(c).

³ *Ibid*, s 2(1)(j).

⁴ *Ibid*, s 3.

⁵ *Ibid*, s 2(1)(i).

⁶ *Ibid*, s 4.

⁷ *Ibid*, ss 5, 6, and 7.

⁸ Directorate General of GST Intelligence (HQS) & Ors v Gramskraft Technologies Pvt. Ltd. & Ors. SLP (C) No. 19366 – 19369/2023; please note that the final hearings have been completed in this matter and the ruling is reserved.



Navigating Cross-Border Insolvency Practices in Japan: Strategies for a 'Soft Landing'

This article examines the evolution of Japanese insolvency practice, tracing the significant paradigm shift from strict 'territorialism' to 'modified universalism' following the Heisei Insolvency Reforms. While the enactment of the Act on Recognition and Assistance for Foreign Insolvency Proceedings established a framework for cross-border cooperation based on the UNCITRAL Model Law, unique Japanese adaptations—such as the absence of an automatic stay—necessitate complex legal manoeuvring, including the use of parallel proceedings.

Beyond statutory analysis, this article highlights a critical practical challenge: the administration of foreign subsidiaries during a parent company's insolvency. In an era where distressed Japanese parent companies increasingly lack sufficient 'retreat funding', the risk of a 'disorderly retreat' for overseas units has escalated, threatening creditor value and corporate reputation. Drawing on recent case studies, the author argues that the modern trustee needs to evolve beyond a mere domestic administrator. Instead, the trustee needs to exercise diplomatic leadership, guiding local management toward orderly local filings to achieve a 'soft landing', thereby fulfilling their fiduciary duties in a globally interconnected economy.

Introduction: From Isolation to Cooperation—The Paradigm Shift in Japanese Insolvency Law

Historically, Japan's insolvency regime was grounded in strict 'territorialism'. Under the old Bankruptcy Act of 1922 (enacted in the 11th year of the Taisho era), Article 3 explicitly stated that 'a bankruptcy adjudication rendered in a foreign country shall not be effective against property located in Japan'. Conversely, this was interpreted to mean that a bankruptcy adjudication rendered in Japan had no extraterritorial effect on assets located overseas. While this regime emphasised the absolute nature of state sovereignty, practically speaking, it failed to prevent the dissipation of a distressed debtor's assets across borders, thereby severely undermining the principle of creditor equality.

However, with the globalisation of the economy, the adverse effects of this 'isolationist' territorialism became impossible to ignore. In response, Japan executed a drastic legislative overhaul known as the 'Heisei Insolvency Reforms' in the early 2000s. This included the enactment of the Civil Rehabilitation Act (1999), the Act on Recognition and Assistance for Foreign Insolvency Proceedings ('Recognition and Assistance Act') (2000), the amendment of the Corporate Reorganization Act (2002) and the comprehensive revision of the Bankruptcy Act (2004). Through these reforms, Japan abandoned strict territorialism and steered its course toward 'modified universalism'. Under current laws, Japanese insolvency proceedings are statutorily deemed to extend to assets located abroad (for example, Article 1 of the Bankruptcy Act). Nevertheless, it goes without saying that in the reality of private international law, for a Japanese trustee's authority to be effective in a foreign jurisdiction they must undergo 'recognition' proceedings in the courts of that jurisdiction.

Relationship with the UNCITRAL Model Law and the Structure of the Recognition and Assistance Act

The core of this paradigm shift is the Recognition and Assistance Act enacted in 2000. While this Act was formulated in accordance with the UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, Japan incorporated unique modifications during its implementation.

Most notably, Japan did not adopt the 'Automatic Stay' provision found in Article 20 of the UNCITRAL Model Law. Under the Model Law, recognition of a foreign main proceeding automatically triggers a stay on execution and other actions. However, Japan's Recognition and Assistance Act rejected this approach based on sovereignty considerations, fearing that unconditionally extending the effects of foreign proceedings

could harm the security of domestic transactions and the predictability of secured creditors. Consequently, in Japan, the mere 'recognition' of a foreign insolvency proceeding does not generate specific legal effects. Effective prohibition of debt collection activities is only secured when the court, upon reviewing the individual case, issues specific 'Discretionary Relief' (assistance orders), such as a stay order on compulsory execution, a comprehensive stay order or a prohibition of payment.

Parallel Proceedings in Cross-Border Practice and the Limits of Recognition

While the Recognition and Assistance Act provided a groundbreaking framework, practical challenges remain. A primary issue is whether the modification of rights (such as discharge of debt) in a foreign reorganisation plan extends to creditors within Japan. The Recognition and Assistance Act lacks explicit provisions to directly recognise and enforce the debt discharge effects of a foreign reorganisation plan. Therefore, it remains a matter of interpretative dispute whether the discharge effect of a foreign proceeding extends to contractual debts governed by Japanese law.

To eliminate this uncertainty and ensure the discharge of debt extends to Japan, practitioners often consider filing for 'Parallel Proceedings'. For instance, in the Azabu Building case (2006), Civil Rehabilitation proceedings were filed in Japan concurrently with Chapter 11 proceedings in the United States. By drafting and approving a rehabilitation plan in the Japanese proceeding that was substantially identical to the US plan, consistent debt restructuring was achieved in both jurisdictions.

Conversely, in the United States, courts are granted broad discretion regarding the scope of recognition under Chapter 15 of the US Bankruptcy Code. In the Elpida Memory case (2012), the reorganisation plan approved in the Japanese Corporate Reorganisation proceeding was recognised by the US court under Chapter 15, confirming its effect within the United States. This serves as a prime example of the progress in US judicial cooperation with Japanese proceedings.

Treatment of Overseas Subsidiaries and the Trustee's Fiduciary Duty

The discussion above pertains to the recognition of proceedings for a single legal entity. However, in modern multinational enterprises, it is common to operate through subsidiaries with independent corporate personalities established in various countries. When a Japanese parent company enters insolvency proceedings, the effect does not automatically extend to its

foreign subsidiaries, which are separate legal entities. The foreign subsidiary is treated merely as an 'asset (equity)' held by the parent company.

Nevertheless, the collapse of a parent company has immediate repercussions on the foreign subsidiary's cash flow and creditworthiness. In this scenario, the parent company's trustee (or Debtor-in-Possession) faces highly complex business judgement decisions regarding the subsidiary, while bearing the fiduciary duty to maximise returns for the parent company's creditors. Theoretically, if the parent company is a creditor of the subsidiary, it might consider aggressive debt collection. However, this not only carries a high risk of being subject to 'Preference Action' (avoidance) under local law but may also trigger the disorderly collapse of the subsidiary, causing significant damage to local business partners and employees. Furthermore, this could impair the 'Enterprise Value' of the subsidiary shares, which are assets of the parent company.

Shifting Economic Landscape: The Risk of 'Disorderly Retreat' Due to Funding Depletion

Particular attention must be paid to recent shifts in the economic background of insolvency practice. Looking back, even in cases requiring withdrawal from overseas bases, Japanese parent companies often retained sufficient 'Retreat Funding' (wind-down funding). Consequently, local labour debts and general trade debts were typically paid with parent company support, making chaotic situations relatively rare. It was an era where a 'clean retreat' was possible.

However, in recent years we increasingly see cases where the Japanese parent company itself is in severe financial distress and lacks the financial capacity to support an orderly withdrawal of overseas subsidiaries. As support from the parent ceases, there is a rise in cases where subsidiaries are forced into unprepared withdrawal or bankruptcy, dragging in local labour and trade creditors. Such a 'disorderly retreat' causes not only local turmoil but also damages the reputation of the entire corporate group and creates serious friction with local authorities and labour unions, which can ultimately become a significant obstacle to the parent company trustee's execution of duties.

'Soft Landing' Strategies for Orderly Exit

It is precisely because of these financial constraints that modern parent company trustees require sophisticated strategies to minimise chaos with limited resources. Rather than neglecting foreign subsidiaries, it often serves the maximisation of parent creditor interests for the parent trustee

to lead or support the filing of legal insolvency (or liquidation) proceedings based on local laws.

In a recent bankruptcy case involving an international television manufacturer in which the author is currently involved, we made a similar strategic decision. As the parent company (trustee), we urged the management of multiple foreign subsidiaries to transition to appropriate proceedings under local laws.

Theoretically, if local management opposes the filing, the parent company could exercise shareholder rights to dismiss directors and appoint new representatives to effectuate the filing—a hardline approach. However, finding replacement directors for a bankrupt entity is practically difficult. In the author's experience, by carefully explaining the legal liabilities and risks to local management, cooperation can usually be obtained, enabling an orderly filing.

Once filed, a court-appointed Liquidator or Trustee will administer the proceedings. Since the Japanese parent company holds the dual position of a 'creditor' (having claims against the subsidiary) and a 'shareholder' (holding 100 per cent equity), there is a potential conflict of interest with the local liquidator. However, from the perspective that the smooth progress of liquidation leads to the maximisation of dividends, it is rational to provide necessary information in a timely manner and build a cooperative relationship.

Thus, the modern bankruptcy trustee is required to be more than a mere enforcer of domestic law; they must possess the diplomatic acumen and strategic coordination skills to preserve the value of the cross-border corporate group and achieve a 'soft landing', minimising chaos across jurisdictions.



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F

rom Domestic
Practitioners to
International
Collaborators:
Challenges and
Strategies for Chinese
Bankruptcy Administrators



Drawing on hands-on experience in administering insolvency cases with cross-border elements, this article examines how Chinese bankruptcy administrators confront practical constraints once assets, creditors or proceedings extend beyond national borders. Focusing on authority limitations, parallel proceedings and information barriers encountered in practice, it explores how accumulated case experience can inform more workable models of cross-border cooperation.

Against the backdrop of deepening economic globalisation, the professional environment for Chinese bankruptcy administrators has expanded from a relatively clear domestic legal framework to the complex realm of cross-border collaboration. The present study adopts a dual perspective of domestic practice and cross-border cooperation to analyse the spectrum of challenges faced by Chinese bankruptcy administrators under different legal contexts, as well as their corresponding response strategies.

At the domestic level, under the administrator-led model established by the Enterprise Bankruptcy Law of the PRC, Chinese bankruptcy administrators have developed a professionally executed mechanism under judicial supervision, accumulating substantial experience in areas such as asset disposal and the implementation of restructuring plans. At the cross-border level, as the stock of Chinese outbound direct investment continues to grow and Chinese multinational corporations expand their overseas assets and revenue streams, cross-border insolvency cases are becoming increasingly prevalent. However, inadequate legal provisions and underdeveloped coordination mechanisms have emerged as primary constraints on the ability of administrators to fulfil their international functions.

The present study argues that Chinese bankruptcy administrators must simultaneously consolidate their domestic operational foundations and cultivate cross-border cooperation capabilities. Through institutional refinement, professional upgrading, and deep alignment with international norms, they can achieve a strategic transition from being 'faithful executors of domestic judicial procedures' to 'active collaborators in global insolvency governance'.

The Evolution of the Role of Chinese Bankruptcy Administrators and the Temporal Tensions Under a Dual Perspective

The Chinese institutional arrangement for bankruptcy administration originated with the administrator-led model established by the Enterprise Bankruptcy Law in 2007. As a design exhibiting significant institutional innovation within

the context of China's rule of law, this arrangement has, over the past decade, undergone continuous empirical testing and functional expansion through judicial practice. It has evolved from its initial exploratory procedural design into a professionalised mechanism that plays a pivotal role in facilitating the orderly exit of market entities, mitigating systemic risk and realising the value restructuring of distressed enterprises.

Under the current Chinese bankruptcy law framework, bankruptcy administrators, designated by the people's courts and independently performing their duties under judicial supervision, are vested with comprehensive authority over the debtor's assets and operational affairs. Their responsibilities encompass core functions within the administration of the bankruptcy process, including asset identification and disposal, assessment of operational value, clarification of creditor-debtor relationships and the design and implementation of restructuring plans. Functionally, bankruptcy administrators serve not only as procedural facilitators but also, in substantive terms, as coordinators of interests and discoverers of enterprise value. Essentially, within a framework of strong judicial oversight, they operate as 'surgical practitioners of debt relations' and 'reconstructors of corporate operational value', integrating public trust with market rationality.

However, when the perspective shifts from the relatively clear and well-defined domestic legal domain to the highly intertwined and multi-rule global economic network, the role of bankruptcy administrators becomes markedly more complex. Economic globalisation has not only reshaped the cross-border allocation of capital, technology and supply chains but has also accelerated the transmission and diffusion of risks across different legal jurisdictions. At present, the asset distribution, creditor structures and control relationships of large corporate groups often exhibit highly transnational and networked characteristics, with legal relationships no longer confined to a single country's bankruptcy law regime. In this context, bankruptcy procedures initiated and conducted solely within one

jurisdiction are often capable of addressing only localised aspects of group-wide risk, falling short of achieving systemic remedies for the transnational operational structure. This reality has gradually shifted the governance logic of bankruptcy procedures from the traditional 'territorial resolution' towards higher-order requirements of cross-jurisdictional coordination and maximisation of overall enterprise value.

At the practical level, Chinese bankruptcy administrators have already experienced first-hand the challenges brought about by this structural transformation in several representative cross-border insolvency cases. In cases involving overseas assets or multinational creditor structures, such as the case of CEFC China Energy Company Limited, administrators have had to address real-world issues, including the investigation of foreign assets, participation of foreign creditors and conflicts of laws across jurisdictions, all within the framework of existing domestic bankruptcy procedures. Consequently, the role of the administrator has been extended: from being a mere executor of domestic bankruptcy procedures, they have gradually become coordinators, negotiators, and even explorers of rules integration in cross-border insolvency matters. For example, in cases involving debtors' overseas assets, Chinese administrators often need to conduct asset investigations and value assessments indirectly through collaboration and negotiation with foreign insolvency representatives or local professional institutions. During restructuring procedures, administrators must also fully consider, at the plan design stage, the voting mechanisms of foreign creditors, the pathways for legal recognition and the impact of mandatory rules in different jurisdictions. This extension of roles highlights the increasingly prominent tension between the traditional bankruptcy law system, which is bounded by national sovereignty, and the global commercial reality created by cross-border capital flows.

Against this backdrop, the institutional positioning and functional boundaries of Chinese bankruptcy administrators have begun to exhibit a clear duality. On the one hand, they remain deeply embedded within domestic bankruptcy procedures grounded in judicial sovereignty, emphasising procedural certainty, court supervision and the equal protection of creditors—particularly the priority protection of domestic creditors' legitimate rights. On the other hand, the value objectives inherent in cross-border insolvency governance emphasise procedural coordination, information sharing and cross-jurisdictional resource

integration to maximise the collective interests of all creditors. The coexistence and collision of these two logics in concrete cases place administrators in a state of ongoing tension: they must faithfully discharge the procedural duties mandated by domestic law while simultaneously responding to the objective demands of cross-border commercial realities for efficiency, collaboration and flexibility.

Domestic Practice: Institutional Advantages and Internal Refinement of Chinese Bankruptcy Administrators

Evolution of the Legal Framework and Professionalisation

The establishment and development of the Chinese bankruptcy administration system have undergone a process of gradual transition from administrative dominance towards market-oriented professionalisation. The promulgation and implementation of the Enterprise Bankruptcy Law in 2007 systematically established, at the legislative level, the central role of bankruptcy administrators in insolvency proceedings for the first time, marking a fundamental shift in the operational logic of China's bankruptcy system. Article 24 of the Law explicitly provides that bankruptcy administrators may be appointed from law firms, accounting firms or insolvency liquidation firms. This institutional arrangement broke through the previously government-led or ad hoc liquidation-centred model, formally introducing a professional service provision mechanism into insolvency proceedings and laying an institutional foundation for the market-oriented operation of bankruptcy matters.

Building on this foundation, over more than a decade of judicial practice, China has gradually developed a relatively systematic framework for bankruptcy administrators. At the qualification and admission level, most high people's courts have established registers of bankruptcy administrators, regulating administrators through mechanisms such as public applications, comprehensive evaluations and dynamic adjustments. In certain jurisdictions, further exploration of hierarchical and categorised management models has been undertaken. Administrators are classified according to the complexity of cases, asset size and social impact, thereby achieving a precise match between case type and professional capacity. For example, the Shanghai High People's Court classifies administrators into three tiers—first, second, and third—corresponding to varying degrees of case complexity and risk. This institutional stratification promotes professional division of labour and capacity layering among administrators, enhancing the overall quality of bankruptcy case handling.

With regard to the responsibilities of administrators, the Supreme People's Court has continuously refined and clarified their rights and obligations through judicial interpretations and normative documents. Normative texts such as the 'Provisions of the Supreme People's Court on the Designation of Administrators in the Trial of Enterprise Bankruptcy Cases' and the 'Provisions of the Supreme People's Court on Determining the Remuneration of Administrators in Enterprise Bankruptcy Cases' establish a relatively complete institutional chain concerning the designation process, scope of duties, supervisory mechanisms and remuneration safeguards for administrators. In addition, the 'Summaries of the National Conference for Work of Courts on the Trial of Civil and Commercial Cases' (2019, hereinafter referred to as the 'Jiumin Minutes') further clarified administrators' investigative, supervisory and enforcement powers in restructuring proceedings, providing clearer and more operational judicial guidance for administrators exercising their authority in complex restructuring cases. The cumulative effect of these institutional provisions has gradually transformed bankruptcy administrators from 'procedural assistants' into key institutional actors within insolvency proceedings.

Expansion of Case Volume and Judicial Efficiency: From 'Quantitative Growth' to 'Qualitative Transformation'

As the bankruptcy system has become increasingly prominent within market exit mechanisms, both the number of bankruptcy cases filed and concluded in China have shown sustained growth. According to insolvency trial data released by the Supreme People's Court, in 2024, courts nationwide accepted 31,288 bankruptcy cases and concluded 30,398, surpassing 30,000 cases for the first time.¹ This milestone indicates that China's bankruptcy adjudication has entered a phase of regularised, high-volume operation. In this context, bankruptcy administrators, as the core professional executors within insolvency proceedings, constitute a fundamental pillar supporting the efficient functioning of the bankruptcy adjudication system.

The rapid increase in case volume has not only placed higher demands on the professional competence of administrators but has also compelled the industry to achieve systematic upgrades in organisational structure, team collaboration and project management. Faced with bankruptcy cases involving substantial asset scales, complex creditor structures and highly diverse stakeholders, a single practitioner can no

longer independently fulfil all professional responsibilities. Consequently, administrators have gradually developed towards team-based, project-oriented and specialised modes of operation, forming a multi-disciplinary practice model encompassing legal, financial, auditing, valuation and taxation expertise. This evolution has propelled the bankruptcy administration sector from an early stage of 'extensive expansion' to a phase of 'structural optimisation' emphasising professional capability and the quality of execution.

Equally noteworthy is the shift in case-handling efficiency, from merely pursuing the number of closures to placing increasing emphasis on procedural quality and substantive outcomes. In 2024, bankruptcy proceedings nationwide revitalised assets amounting to approximately RMB790.283 billion and settled debts totalling about RMB3,077.252 billion.² These figures not only reflect the practical function of insolvency proceedings in mitigating legacy financial risks but also indirectly attest to the critical role of administrators in preserving and enhancing asset value, maximising creditor interests and facilitating the reallocation of social resources. Compared with earlier liquidation-dominated practices, the proportion of restructuring and compromise procedures has steadily increased, making administrators' professional judgement and market-oriented operational capabilities key determinants of case outcomes.

At the operational level, Chinese bankruptcy administrators have gradually developed a series of practical mechanisms with distinct domestic characteristics, effectively enhancing transparency and efficiency within insolvency proceedings. First, in the investigation and recovery of assets, administrators make full use of information technology and inter-departmental collaboration mechanisms, establishing information-sharing channels with the People's Bank of China, market regulators, tax authorities and real estate registration offices. This has created a multi-dimensional asset monitoring network covering bank accounts, equity holdings, real estate and other significant asset types, significantly improving the detection and recovery of hidden assets. Second, the national bankruptcy asset online auction platform has become a standard tool for asset disposal, enhancing transparency and market participation through public bidding. This approach mitigates moral hazard risks while also increasing asset disposal premiums to a substantial extent. Third, in certain large-scale corporate restructuring cases, administrators have facilitated value regeneration of distressed enterprises by introducing

strategic investors, selling asset packages as a whole, or restructuring business operations, thereby transforming insolvency proceedings from 'passive liquidation' to 'active rescue'.

Multi-Dimensional Supervisory Mechanisms and Risk Control

To ensure that bankruptcy administrators perform their duties in accordance with the law, fairly and efficiently, China has gradually established a multi-dimensional and layered supervisory framework at the institutional level. Among these, judicial supervision by the courts constitutes the most central pillar of the system. Pursuant to Article 23 of the Enterprise Bankruptcy Law, administrators are accountable to the people's courts and must report on their work to the courts; concurrently, their conduct is subject to oversight by the creditors' meetings and creditors' committees. In judicial practice, courts across the country have generally implemented evaluation systems for administrators' performance, combining case-specific assessments with annual comprehensive reviews to dynamically appraise professional competence, work efficiency, risk management capability and professional ethics. The results of these evaluations are directly linked to the administration of the registry of administrators and qualifications for case appointments.

Creditor oversight constitutes another crucial dimension of the supervisory framework. As the supreme body representing the autonomy of creditor decision making within insolvency proceedings, creditors' meetings exercise substantive decision-making power over major actions of administrators. Key matters, including asset disposal plans, draft restructuring proposals and remuneration schemes, require approval through creditors' meetings. The creditors' committee, a standing body of the creditors' meeting, is entitled to request reports on the administrator's execution of duties at any time and to raise objections to the courts regarding any conduct deemed inappropriate. This arrangement not only safeguards creditors' rights to information and participation but also provides an effective procedural check on administrators' exercise of authority.

In addition to judicial and creditor supervision, industry self-regulatory mechanisms have gradually assumed a normative role. Since the establishment of China's first association for bankruptcy administrators in Guangdong in 2014, more than twenty provinces have now established similar associations. These professional organisations progressively enhance the

internal governance of the sector through measures such as formulating practice standards, organising professional training, conducting competency assessments, promoting professional liability insurance and mediating disputes arising from administrators' practice. To a certain extent, these mechanisms compensate for gaps in legal regulation and foster the standardisation and sustainable development of the bankruptcy administration profession.

Practical Challenges and Areas for Improvement in Domestic Practice

Despite the significant progress achieved by the Chinese bankruptcy administration system in domestic practice, several practical challenges remain that require timely attention.

First, regional disparities continue to be a prominent issue. Distinct differences exist between the eastern coastal regions and the central and western, less economically developed areas in terms of the size of the administrator workforce, professional competence, practical experience and the level of support provided by local courts. Such disparities not only affect the uniformity and quality of bankruptcy case handling but also, to some extent, limit the overall effectiveness of the bankruptcy system across the country.

Second, the boundaries of administrators' responsibilities still require further clarification. In practice, administrators often have to deal with numerous historical and legacy issues, including employee placement, unpaid taxes and fees, environmental liabilities and complex related-party transactions. In the absence of fully developed regulatory guidance, administrators may face unclear responsibility scopes and uncontrollable risks, potentially creating pressures of 'result-oriented accountability'. Although the Supreme People's Court has gradually addressed some contentious issues through guiding cases and judicial interpretations, there remains a need for a more systematic definition of reasonable duty boundaries and liability exemptions at the institutional level.

Finally, the mechanisms safeguarding administrators' professional practice require further strengthening. Currently, administrators' remuneration primarily derives from the debtor's estate, which may leave them inadequately compensated in cases where assets are insufficient or absent. Some regions have attempted to provide support through bankruptcy assistance funds or fiscal subsidies; however, these mechanisms still suffer from limitations

in coverage, stability and institutionalisation. In addition, administrators may face personal safety risks, reputational risks and potential damage to professional standing during the execution of their duties, which necessitates more comprehensive responses through institutional design.

Cross-Border Collaboration: Practical Challenges and Institutional Breakthroughs for Chinese Administrators

Background: The Simultaneous Rise of Global Chinese Corporate Footprints and Cross-Border Insolvency Risks

Chinese enterprises have entered a new phase of globalisation characterised by the simultaneous advancement of 'offshore asset deployment' and 'localised operations'. In 2024, Chinese overseas enterprises recorded sales revenue of US\$3.6 trillion, paid US\$82.1 billion in taxes to host jurisdictions, and employed 3.304 million local staff.³ The sheer scale of overseas assets and the continuous expansion of cross-border operations imply that associated debt, operational and insolvency risks are no longer confined to a single legal jurisdiction, but have assumed distinct global characteristics.

Within increasingly complex corporate group structures, the insolvency of a single overseas or domestic entity often triggers a rapid chain reaction affecting affiliated

enterprises, leading to cross-jurisdictional challenges in asset disposal, creditor repayment and procedural choice. Cross-border insolvency is therefore no longer a niche concern limited to a few large multinational corporations, but has gradually emerged as a systemic institutional risk inherent in the internationalisation of Chinese enterprises.

However, in contrast to the rapid pace of Chinese enterprises 'going global' at the level of real economy, the institutional responses and legal coordination in the field of cross-border insolvency have lagged noticeably. Both in terms of legislative provision and judicial practice—including procedural alignment and collaborative mechanisms—China's existing cross-border insolvency framework remains insufficiently attuned to the operational realities of globally integrated businesses. This institutional gap often amplifies cross-border insolvency risks when they materialise and directly increases the professional burden on front-line bankruptcy administrators.

Legal Obstacles: Insufficient Institutional Provision and the Rigidity of the 'Reciprocity Principle'

Under the current legal framework, the primary normative basis for cross-border insolvency cooperation in China remains the general provision set out in Article 5 of the Enterprise Bankruptcy Law. This article establishes three



fundamental conditions for recognising and assisting foreign insolvency proceedings: the reciprocity principle, protection of China's public interest, and safeguarding the legitimate rights of domestic creditors. However, the provision is drafted in highly general terms, lacking detailed guidance on the criteria for assessing reciprocity, the procedures for review, and the scope of assistance, which gives rise to considerable uncertainty in judicial application.

In 2019, the National Development and Reform Commission, together with thirteen other government departments, jointly issued the 'Plan to Accelerate the Reform of Market Exit Mechanisms'. This document, for the first time at the national level, explicitly called to 'improve cross-border and related-party bankruptcy rules to facilitate the resolution of cross-border and complex-entity insolvencies', marking the formal entry of cross-border bankruptcy issues into China's institutional reform agenda. Subsequently, in the ongoing revision of the Enterprise Bankruptcy Law, a dedicated chapter addressing cross-border insolvency cooperation has been incorporated in draft amendments. However, as of now, these amendments have not been formally enacted, and the relevant rules remain at the design stage.

At the level of judicial practice, the approach of Chinese courts to cross-border insolvency cases has evolved from a highly cautious stance towards a more limited openness. In recent years, as Chinese courts have developed a deeper understanding of cross-border commercial interactions and international insolvency cooperation, their judicial stance has begun to shift substantively.⁴ Cross-border insolvency cooperation has gradually moved from the earlier 'unidirectional output' observed in the Guangdong International Trust Investment Corp case—where Chinese insolvency proceedings were recognised by a Hong Kong court—towards a 'bidirectional flow' framework underpinned by judicial mutual trust.

Despite breakthroughs in judicial practice, at the institutional level, China's approach to the UNCITRAL Model Law on Cross-Border Insolvency ('the Model Law') remains comparatively conservative. To date, Mainland China has not systematically adopted the Model Law through either legislation or judicial interpretation. These differences in institutional choice further exacerbate conflicts in the application of law and procedural coordination in cross-border insolvency cases.

Challenges Faced by Chinese Bankruptcy Administrators: Restricted Powers and Professional Capability Gaps

For bankruptcy administrators operating at the frontline of cross-border insolvency cases, the aforementioned institutional constraints translate into a series of immediate and pressing professional challenges.

First, the scope of administrators' powers is significantly limited. Under current Chinese law, the statutory authority of bankruptcy administrators is generally confined to domestic territory. For debtor assets, accounts or operating entities located abroad, administrators typically lack the legal authority to investigate, take control of, or dispose of such property directly. They must instead rely on engaging local lawyers, accountants or other professional service providers, or on judicial assistance mechanisms to exercise control indirectly. This not only substantially increases case costs but also risks erosion of asset value due to protracted procedural timelines.

Second, the coordination of parallel proceedings presents particular difficulties in cross-border insolvency. When a debtor simultaneously enters insolvency proceedings in both China and foreign jurisdictions, domestic and foreign administrators or insolvency representatives exercise their powers independently within their respective jurisdictions, however, current legislation provides no clear framework or rules for cooperation. In practice, key issues—such as procedural coordination, asset allocation, and the order of creditor repayments—are often resolved through ad hoc negotiation and personal communication, rather than through institutionalised mechanisms. This undermines procedural efficiency and increases the potential for conflicts and uncertainty.

Third, information barriers and language differences constitute persistent challenges in cross-border insolvency management. Such cases typically involve legal documents, financial records and commercial contracts from multiple jurisdictions, resulting in significantly higher translation and communication costs than in domestic cases. More critically, differences in legal concepts, commercial practices and cultural norms between jurisdictions can easily lead to misinterpretation or misjudgement of key information. Consequently, cross-border insolvency administration is no longer solely a matter of legal application; it imposes heightened demands on administrators' overall capabilities. They must not only possess thorough knowledge of Chinese insolvency law,

but also be familiar with the Model Law framework, the insolvency regimes of key investment destination countries and regions, and demonstrate strong foreign language proficiency and cross-cultural negotiation skills.

Exploring Pathways for Institutional Breakthroughs

In response to the challenges outlined above, China has begun to pursue multi-layered explorations and initiatives in the development of its cross-border insolvency framework. At the legislative level, scholars and practitioners have widely advocated for the enactment of dedicated cross-border insolvency legislation or for the systematic inclusion of a dedicated chapter on cross-border insolvency in revisions to the Enterprise Bankruptcy Law. The draft revision of the Enterprise Bankruptcy Law released for public consultation in 2025 explicitly incorporates provisions on cross-border insolvency cooperation. Although these provisions remain largely principle-based, their significance lies in marking the substantive commencement of legislative efforts in this field.

At the level of judicial practice, the Supreme People's Court has been gradually harmonising judicial reasoning and standards through the issuance of guiding cases and the formulation of judicial interpretations. Several recently published guiding cases have addressed cross-border insolvency issues, providing relatively clear guidance on the recognition of the reciprocity principle, the focus of judicial review and procedural coordination. These measures contribute to enhancing the predictability and stability of recognising foreign insolvency proceedings in China.

Meanwhile, mechanisms for international judicial cooperation continue to deepen. Chinese courts actively engage with relevant countries, regions and international organisations in the field of cross-border insolvency. Judges have participated in meetings such as the Judicial Insolvency Network ('JIN') convened by the Supreme Court of Singapore, the Sino-French Legal and Judicial Exchange Week, the China-Japan-Korea Judges' Roundtable, and the Asian Insolvency Reform Forum, facilitating exchange on frontier and topical issues and fostering shared understanding. In addition, Chinese judges and practising insolvency professionals increasingly participate in professional bodies such as the International Insolvency Institute, learning from international best practices and continuously enhancing their capacity to handle complex cross-border insolvency cases.

In terms of professional capability development, forward-looking bankruptcy administration agencies and law

firms have begun to establish specialised cross-border insolvency teams. These teams build on expertise in Chinese insolvency law, systematically study the insolvency regimes of major trading partner countries and regions, and are capable of conducting legal communication at a professional level in foreign languages. Simultaneously, universities and research institutions have gradually introduced courses and research programmes on cross-border insolvency, providing institutional support for cultivating insolvency professionals with international vision and multidisciplinary competence.

Chinese Bankruptcy Administrators: Strategic Transformation from 'Domestic Practitioners' to 'International Collaborators'

Transformation of the Role of Administrators

In 2024, the number of concluded insolvency cases nationwide surpassed 30,000, signalling that the operation of China's bankruptcy legal framework has reached a relatively mature stage. At the same time, the continued expansion of overseas assets held by Chinese multinational corporations clearly indicates a rapidly growing demand for cross-border insolvency governance. At this historically significant juncture, the role of Chinese bankruptcy administrators is undergoing a profound and systematic strategic transformation. This shift is not merely a passive response to the pressures of globalisation; rather, it reflects, at a higher level, China's proactive engagement with the international commercial order, participation in the shaping of global rules and the pursuit of modernised economic governance through deliberate institutional and strategic choices.

Internal Drivers of the Strategic Transformation

After more than a decade of institutional evolution, the bankruptcy judicial reform centred on the bankruptcy administrator system has achieved remarkable progress, laying a solid foundation for this strategic transformation. Domestically, the administrator system has gradually matured from its initial exploratory arrangements into a crucial institutional fulcrum for mitigating systemic risks in a market-oriented and law-based manner. The relevant legal framework is now largely established, and a professional cadre of administrators has taken shape, performing irreplaceable functions in areas such as supply-side structural reform of services, targeted rescue of distressed enterprises, prevention of regional financial risks and protection of creditors' lawful rights and interests.

The evolution of the World Bank's assessment framework provides a representative lens through which to observe this internal driver. In the now-discontinued 'Doing Business' ('DB') reports, China's 'resolving insolvency' indicator improved markedly, rising from 78th place in 2015 to 51st in 2020. This significant improvement primarily reflects enhanced internal efficiency of insolvency proceedings, particularly in terms of case duration, cost control and asset realisation efficiency, closely associated with the optimisation of 'volume' and 'speed' in domestic bankruptcy administration.

However, the newly introduced 'B-READY' assessment system fundamentally shifts the evaluation logic of bankruptcy frameworks. The former resolving insolvency indicator has been upgraded to a broader 'commercial insolvency' metric, extending the focus beyond the efficiency of individual cases to encompass systemic and foundational factors such as the overall soundness of legal institutions, quality of public infrastructure, cross-border coordination capacity, digitalisation and green insolvency mechanisms. This 'dimensional upgrade' in international evaluation standards precisely highlights the current positioning of China's bankruptcy administrator system: while China has established an efficient 'domestic problem-solving engine' it still exhibits evident gaps in systemic governance capacity necessary to address emerging global, digital and green transition challenges. This structural gap constitutes the deepest internal impetus driving the strategic transformation of Chinese bankruptcy administrators from 'domestic practitioners' to 'international collaborators'.

External Drivers of the Strategic Transformation

The practical pressure for transformation also stems from the external environment arising from China's deep integration into the global economic system. With China's stock of outward direct investment exceeding US\$3.14 trillion and annual sales revenue of overseas enterprises reaching US\$3.6 trillion, the security, predictability and protection of Chinese capital abroad have become matters of macro-level national interest. In representative cross-border insolvency cases such as CEFC China Energy Company Limited, Chinese bankruptcy administrators have faced firsthand the geographical limitations of their legal powers, the coordination challenges posed by parallel insolvency proceedings and structural deficiencies in their professional capabilities within the international arena.

At the same time, the international insolvency governance system itself is undergoing rapid evolution. Emerging issues such as coordinated judicial mechanisms for corporate group insolvency, identification and realisation of digital assets and cryptocurrencies, prioritisation of environmental claims in insolvency proceedings and the design of 'green insolvency' frameworks in response to climate change are progressively shaping the frontier of global insolvency rulemaking. In this context, if Chinese bankruptcy administrators continue to operate solely within the domestic legal domain and traditional case-handling paradigms, they risk not only being unable to safeguard the lawful interests of Chinese enterprises and their creditors abroad, but also becoming institutionally voiceless in the formulation of new international insolvency rules.

Consequently, this strategic transformation is not merely a technical adjustment to existing challenges; it represents a crucial opportunity for Chinese bankruptcy administrators to anticipate evolving rules, participate in international institutional competition and enhance China's influence in the global legal discourse. This transformation carries both immediate practical significance and long-term strategic value.

Pathways for Transformation: Building an Integrated Domestic-International Collaborative System

The transition from a domestic expert to an international collaborator requires the systematic construction of an integrated, mutually reinforcing framework along three interdependent dimensions: institutional arrangements, professional capabilities, and operational platforms.

At the institutional level, short-term efforts should focus on promoting substantive alignment between domestic legislation and internationally recognised frameworks such as the UNCITRAL Model Law on Cross-Border Insolvency. During the revision of the Enterprise Bankruptcy Law, a dedicated chapter on cross-border insolvency should be added to specify the recognition, assistance and cooperation mechanisms for foreign insolvency proceedings, thereby enhancing predictability and legal certainty in judicial practice. Over the medium to long term, China should take a more proactive role in participating in and guiding the evolution of international insolvency rules. Leveraging multilateral cooperation mechanisms such as the Belt and Road Initiative, China can advocate and pilot regional arrangements for cross-border judicial cooperation, transforming its practical experience in

handling large and complex corporate group insolvencies, as well as using digital technologies to enhance procedural transparency and efficiency, into a replicable and scalable 'China Solution'.

At the capability level, the professional core of bankruptcy administrators requires systematic upgrading. Administrators should evolve from being 'specialised implementers' proficient in domestic bankruptcy law to becoming 'composite strategic actors' with an international legal perspective, cross-cultural communication and negotiation skills, knowledge of complex finance and corporate group governance, and a deep understanding of technological innovation and environmental protection issues.

At the industry level, professional qualification certification and continuing education programmes should be established for specialised areas such as cross-border insolvency, encouraging the formation of interdisciplinary teams spanning law, finance and technology. At the educational level, universities and research institutions should offer frontier courses on cross-border insolvency to cultivate a pool of internationally competitive future professionals.

Conclusion

Overall, the strategic transformation of Chinese bankruptcy administrators extends far beyond the enhancement of professional capabilities. This transition occurs against the broader backdrop of China's economic globalisation, which is shifting from a 'flow-based openness' driven by the circulation of goods and factors of production to an 'institutional openness' characterised by rules, regulations, governance mechanisms and standards. In this context, the transformation represents a concrete practice of fostering positive interaction between domestic and international legal orders. Through systematic institutional refinement, forward-looking capacity building and the establishment of open collaborative platforms, Chinese bankruptcy administrators are well-positioned to accomplish this transition.

In this process, bankruptcy administrators will not only continue to serve as the 'internal stabilisers' of China's economic operations, but are also poised to emerge as key 'external collaborators', contributing to global economic governance, offering expertise in insolvency law and upholding fairness and justice in international commerce.

Looking ahead, Chinese administrators are expected to play a pivotal role in shaping regional and international insolvency cooperation frameworks, promoting sustainable and technology-driven restructuring practices and actively participating in the formulation of global insolvency standards. This evolution will further enable China to build a higher-level, open economic system and to assume a more proactive and constructive role within the global governance framework, continuously injecting robust, rational and forward-looking legal capacity into both domestic and international commercial practices.

** Any reference to 'Hong Kong' or 'Hong Kong Special Administrative Region (HKSAR)' herein shall be construed as a reference to the 'Hong Kong Special Administrative Region of the People's Republic of China'.*

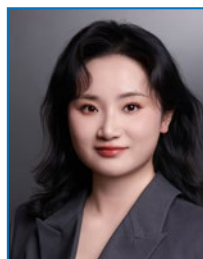
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G lobal Businesses, Borderless Insolvency: India's Quest for a Robust Cross-Border Insolvency Framework

Cross-border insolvency has emerged as a critical challenge in an increasingly globalised commercial environment where corporate entities often maintain assets, creditors and operations across multiple jurisdictions. While the Insolvency and Bankruptcy Code, 2016 introduced sections 234 and 235 to facilitate cooperation with foreign jurisdictions through reciprocal arrangements, these provisions have remained largely ineffective due to the absence of formal agreements. Consequently, courts and tribunals of India have occasionally relied on judicial innovation to address any cross-border insolvency disputes. This article focuses on the limitations of the existing framework and analyses recent policy developments, including the proposed introduction of section 240C under the Insolvency and Bankruptcy Code (Amendment) Bill 2025, which signals a gradual move towards a more coordinated cross-border insolvency framework in India.



Introduction

Globalisation has fundamentally altered the way businesses operate and how economic relationships are structured. Corporate activity today is rarely confined within national boundaries. A company incorporated in India may raise capital from overseas lenders, list debt instruments, maintain subsidiaries, own intellectual property in foreign jurisdictions, or hold liquid assets in international financial centres. Conversely, a foreign incorporated entity may conduct manufacturing operations in India, employ a significant workforce locally, borrow from Indian banks, and own immovable property within the territory. In such an interconnected commercial ecosystem, insolvency cannot be treated as a purely domestic affair; hence, it invariably raises questions such as which court/tribunal will have jurisdiction? When there are disputes, which territorial laws will apply? How will creditors be treated, and how will foreign insolvency professionals coordinate with their counterparts? The answers to these questions directly affect issues such as asset preservation, creditor confidence, and the overall integrity of the insolvency process.

The Insolvency and Bankruptcy Code 2016 ('IBC') was drafted with a vision to create a modern and consolidated framework for insolvency in India. Yet, when it came to cross-border insolvency, the provisions introduced in the IBC were skeletal, conditional, and largely ineffective. While sections 234 and 235 attempted to address the problem by empowering the Central Government to enter into reciprocal agreements with foreign countries and allowing adjudicating authorities to issue letters of request to foreign courts, in practice, these provisions did little to facilitate an effective cross-border framework.

Although the IBC is only about a decade old, the growing globalisation of business makes it necessary for India to develop a fully functional mechanism to address situations where assets or insolvency proceedings are spread across multiple jurisdictions. Such situations are not merely theoretical: Indian companies have found themselves embroiled in parallel proceedings in foreign jurisdictions. While in certain instances foreign courts have been willing to recognise Indian insolvency proceedings, the absence of a structured statutory framework has often created uncertainty. This legislative vacuum has compelled courts/tribunals to rely on judicial innovation rather than clear statutory guidance, thereby exposing gaps in India's legislative preparedness to address cross-border insolvency issues.

In this scenario, the recent introduction of the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 ('2025 Proposed Amendment Bill') offers a ray of hope as it seeks to pave ways to remedy this structural gap by laying the groundwork for a modern, rule-based, and internationally aligned system of cross-border insolvency.

Current Legal Framework Under Sections 234 and 235 of the IBC

While the IBC came into effect in May 2016, sections 234 and 235, which provide for a mechanism to deal with assets and proceedings extending beyond Indian territory, were notified on 1 April 2017. Section 234 authorises the Central Government to enter into bilateral agreements with foreign states to enforce provisions of the IBC. On the other hand, section 235 enables resolution professionals, liquidators or bankruptcy trustees to make applications to the adjudicating authority for a letter of request to foreign courts in cases where assets were located abroad.

While at first glance these provisions may appear forward-looking, their operation is entirely dependent upon the existence of reciprocal agreements between India and the foreign jurisdiction, which makes their applicability conditional. This means that unless India enters into formal treaties or agreements with foreign countries, the provision cannot be activated. As no comprehensive reciprocal arrangements have been notified by the Central Government to date, the cross-border provisions of the IBC remain dormant.

This has created a legal impasse in situations where creditors holding claims against an Indian company with assets located in foreign jurisdictions have no assurance whether the insolvency proceedings initiated in India would be recognised abroad. Similarly, a resolution professional seeking to collate and take control of the assets of a corporate debtor situated in a foreign jurisdiction may not have an effective legal mechanism to seek cooperation or assistance from foreign courts. Consequently, the absence of operational cross-border tools not only undermines the objective of value maximisation, one of the core principles of the IBC, but also adversely affects the interests of international lenders who would be left without clarity as to whether their rights would receive uniform protection across jurisdictions. In several instances, assets located abroad remain beyond the effective control of the insolvency process, while parallel proceedings in different jurisdictions run the risk of having inconsistent outcomes. Thus, the

existing framework, though well intentioned, proves to be both impractical and insufficient when confronted with global commercial realities.

Judicial Pragmatism Amid Legislative Silence

Understanding the practical issues in relation to the ineffectiveness and inadequacy of sections 234 and 235 of the IBC, the Indian courts and tribunals were compelled to adopt a pragmatic approach. Against this backdrop, the case of *Jet Airways (India) Limited v State Bank of India & Anor*¹ ('Jet Airways Case') perhaps stands as the most prominent example. In this case, Jet Airways, burdened with substantial debts, faced insolvency proceedings in India and at the same time bankruptcy proceedings, were initiated in a Dutch court on behalf of a European creditor. Initially, the National Company Law Tribunal ('NCLT') Mumbai asserted exclusive jurisdiction by effectively disregarding/nullifying the jurisdiction of the Dutch proceedings, thereby relying on the Centre of Main Interests ('COMI') doctrine. However, on appeal, the National Company Law Appellate Tribunal ('NCLAT') recognised the futility of relying on sections 234 and 235, since no reciprocal agreements existed and instead directed the Indian resolution professional and the Dutch administrator to negotiate a cooperation protocol.

This judicially crafted 'cross-border insolvency protocol' enabled the Dutch administrator to participate in Indian Committee of Creditors meetings as an observer and created a framework for sharing information. The protocol, though ad hoc, represented a landmark step in judicial innovation, marking India's first attempt at court-sanctioned cooperation in cross-border insolvency.

Another important development was the recognition of Indian insolvency proceedings by foreign courts. In the matter of *Re Compuage Infocom Ltd & Anor*² ('Re Compuage Case'), the Singapore High Court had to determine whether the Indian Corporate Insolvency Resolution Process qualified as a foreign proceeding under the UNCITRAL Model Law on Cross-Border Insolvency (1997) ('Model Law'). The court concluded that the NCLT, although a quasi-judicial body, functioned as a foreign court within the meaning of the Model Law. Thus, the Indian proceedings were recognised as a foreign main proceeding, observing India as the debtor's COMI. This judgment plays an important role as it demonstrated international confidence in the Indian insolvency framework.

Call for a Structured Framework

Recognising the urgent need for a robust cross-border insolvency framework, the Ministry of Corporate Affairs ('MCA') constituted the Insolvency Law Committee, which submitted its report titled 'Report of Insolvency Law Committee on Cross-Border Insolvency, October, 2018' ('2018 Report'). The 2018 Report strongly recommended the adoption of the Model Law, which was built upon four key principles: access, recognition, relief, cooperation, and coordination. The Model Law has also been adopted by several jurisdictions, including the United States, United Kingdom, Japan, South Korea, and Singapore.

As per the Model Law, the principle of Access ensures that foreign insolvency representatives and creditors may approach domestic courts directly to seek appropriate relief. Recognition, on the other hand, permits domestic courts to acknowledge foreign insolvency proceedings as either foreign main proceedings or foreign non-main proceedings, depending on the debtor's COMI. Relief allows courts to grant measures necessary to support the orderly and fair conduct of cross-border insolvencies and to assist foreign proceedings, while Cooperation and Coordination empower courts and insolvency representatives to cooperate and communicate directly with foreign courts and foreign representatives.

The 2018 Report observed that the reliance on reciprocal arrangements was impractical and inconsistent with global best practices as it is based on India adopting a reciprocity requirement, which means that Indian courts would recognise foreign proceedings only if the foreign country reciprocated. Accordingly, the 2018 Report emphasised the advantages of adopting the Model Law, noting that its implementation would help attract greater foreign investment, align India with internationally accepted insolvency practices, and provide a transparent and predictable mechanism for the recognition of foreign insolvency proceedings.

Thereafter, the MCA constituted the Cross-Border Insolvency Rules/Regulation Committee ('CBIRC Report') in June 2020. The Committee was primarily constituted to propose the rules and regulatory framework that would enable the implementation of Part Z of the IBC, as proposed by the 2018 Report. The Committee also examined the mechanisms required for implementation and, *inter alia*, recommended that all benches of the

National Company Law Tribunal should be vested with jurisdiction over cross-border insolvency cases involving Indian companies, while the Principal Bench in Delhi should handle cases involving foreign-incorporated entities. Further, the CBIRC Report proposed an authorisation system for foreign representatives, digital application formats, and a time-bound mechanism for the Insolvency and Bankruptcy Board of India to process such applications.

These reports collectively underscored a shift in policy thinking, that is, from reactive bilateralism to proactive harmonisation with international standards. They recognised that cross-border insolvency is not an exception, but an increasingly common reality, particularly in a developing economy integrated with global markets.

A Decisive Structural Shift: 2025 Proposed Amendment Bill

The introduction of the 2025 Proposed Amendment Bill is India's most decisive step towards reform. Clause 67 of the Bill seeks to insert a new section 240C in Part V of the IBC, which will empower the Central Government to prescribe rules relating to cross-border insolvency proceedings, for administering and conducting cross-border insolvency proceedings under the IBC, for such class or classes of debtors and corporate debtors as may be notified by the Central Government. It also provides that the rules made thereunder may provide that any of the provisions of the IBC or the Companies Act, 2013 shall apply with such exceptions, modifications, and adaptations, as may be required to administer and implement the provisions of the said section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section. Further, it mandates that, before the rules framed under the said section are issued, a draft of every rule proposed to be issued shall be laid down before each House of Parliament as per the procedure provided in the provision.

The proposed amendment empowers the Central Government to unilaterally frame rules that can harmonise Indian insolvency law with international standards to provide flexibility, since rules can be adapted to suit different categories of debtors. However, the success of this framework will depend heavily on how the rules are framed and implemented.

International Approaches to Cross-Border Insolvency

From an international perspective, jurisdictions such as the United States of America and Singapore have adopted a structured and comprehensive approach to cross-border insolvency by incorporating the Model Law into their domestic frameworks. In the United States, Chapter 15 of the US Bankruptcy Code facilitates direct access for foreign representatives, recognition of foreign proceedings and coordinated cooperation between courts, while safeguarding domestic public policy interests. Likewise, Singapore, through Part XI of the Insolvency, Restructuring and Dissolution Act 2018, has given statutory force to the Model Law (with modifications), ensuring legal certainty, efficient administration, creditor protection and business rescue in cross-border situations.

Both jurisdictions' adoption of the Model Law has helped create confidence among investors and creditors by assuring them that they will receive broadly similar procedural treatment in foreign jurisdictions as they would in their own. Consequently, if framed around the principles of the Model Law while incorporating appropriate safeguards for domestic interests, the 2025 Proposed Amendment Bill could provide the level of predictability required to signal India's intent to emerge as a reliable and credible jurisdiction for cross-border insolvency proceedings.

Balancing the Role Between Court, Creditors and Debtor

The current insolvency framework under the IBC is structured around a calibrated balance between the adjudicating authority, the Committee of Creditors and the corporate debtor. However, cross-border insolvency complicates this equilibrium. The court must supervise proceedings while respecting international comity. Creditors seek value maximisation and equitable distribution. The debtor retains procedural rights and an interest in coherent asset administration. The bankruptcy administrator/insolvency professional stands at the intersection of these interests. Thus, as an officer of the court, the bankruptcy administrator/insolvency professional must ensure compliance with statutory mandates. As facilitator of creditor decision making, the bankruptcy administrator/insolvency professional must implement commercially viable strategies. As custodian of the debtor's estate, the administrator must preserve asset integrity across jurisdictions. Thus, in cross-border cases,

this balancing function extends beyond national borders. Cooperation protocols, recognition orders and coordinated asset realisation must be undertaken transparently and consistently. Hence, the role and credibility of the bankruptcy administrator/insolvency professional become central to maintaining stakeholder confidence.

India's Quest for a Robust Cross-Border Insolvency Framework

India today stands at the threshold of a new era in insolvency law. By aligning itself with international best practices while safeguarding domestic priorities, it has the opportunity to create a cross-border insolvency framework that inspires confidence among creditors, investors, and foreign governments.

At the same time, the proposed reforms present several practical and structural challenges. One of the foremost concerns is the need to balance domestic and international interests. While a cross-border insolvency regime must encourage cooperation with foreign courts and recognise foreign proceedings, it must also ensure that the interests of Indian creditors are not compromised. The issue of reciprocity, although not expressly incorporated in the 2025 Proposed Amendment Bill, may reemerge during the rulemaking process under section 240C, raising important policy considerations regarding the recognition of foreign jurisdictions.

Further, institutional capacity also remains a critical concern. The NCLT is already confronted with a significant case load under the existing insolvency framework. The introduction of complex cross-border matters may place additional pressure on the tribunal system, necessitating specialised training, improved infrastructure, and potentially the creation of designated benches with expertise in international insolvency matters.

The effectiveness of the proposed framework will also depend substantially on the rules framed by the Central Government. While such flexibility allows for adaptability, it also raises questions about transparency and stakeholder participation. A consultative rulemaking process involving insolvency professionals, financial institutions, foreign investors and other stakeholders will therefore be essential to ensure that the framework is both practical and balanced.

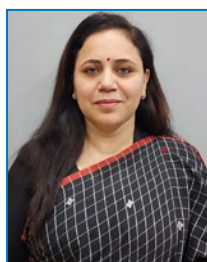
Finally, the credibility of the framework will also depend on its consistent and predictable implementation. If

these challenges are addressed promptly through careful institutional and regulatory design, India's cross-border insolvency framework can become an important step towards integrating the country more effectively into the global economic and financial system. Therefore, the success of these proposed reforms will not only shape the future trajectory of insolvency resolution in India but will also influence the country's ability to engage seamlessly with an increasingly interconnected global financial landscape.

Notes

¹ 2019 SCC OnLine NCLAT 1216.

² [2025] SGHC 49.



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After nearly two decades of association with some of the top law firms in India, Jyoti founded AJA Legal in 2019. She has represented some of the largest financial institutions, including banks and asset reconstruction companies as well as borrowers, before various judicial and quasi-judicial forums. Jyoti has acted for and advised all stakeholders in the insolvency landscape in India. She also has extensive experience in white-collar crime and corporate fraud matters and regularly advises and represents multinational and Indian corporations across diverse sectors in commercial litigation and arbitration.

The author would like to thank Nishi Agarwal for her assistance in writing this article.



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The Evolution of Subordinated Affiliated Claims in China's Bankruptcy Process: Examining China's Bankruptcy Law Through the Lens of Judicial Guidance Documents



This article traces the evolutionary path of the subordinated affiliated claims regime in China's bankruptcy proceedings, focusing on the pivotal role of judicial guidance documents. Against the backdrop of normalised bankruptcy cases, China's judicial practice has developed from localised experimentation to a unified national framework. The 2017 Chongqing Answers pioneered a typological approach, while the Supreme People's Court's 2018 National Summary established a nationwide principle that claims from the improper use of affiliate relationships are subordinated to ordinary unsecured claims. Subsequent local refinement, exemplified by Shanghai's principle-based adjudication, grants courts greater discretion for case-by-case analysis. This 'practice-first' model, operating outside formal statutory legislation, effectively unifies adjudicative standards, fills regulatory gaps and demonstrates the judiciary's agility in balancing legal stability with the need to address complex economic challenges in insolvency practice.

Introduction

As bankruptcy cases in China have entered a phase of normalisation, judicial practice has increasingly revealed instances where affiliated entities exploit procedural rules to secure unfair advantages, often at the severe expense of unaffiliated external creditors. In response to this growing challenge, a sophisticated legal framework for subordinating affiliated claims has gradually taken shape. Its evolution follows a clear and deliberate trajectory: from localised judicial experimentation, to the establishment of a unified national adjudicative principle, and finally to flexible

refinement at the local level. Uniquely, this entire system was constructed primarily through judicial guidance documents rather than formal statutory legislation, embodying China's pragmatic approach to balancing legislative prudence with the judiciary's urgent need to respond swiftly to emerging market complexities.

Local Precedent: The Chongqing Experiment

In 2017, the Chongqing Higher People's Court issued the 'Answers to Questions on Legal Issues in Adjudicating Bankruptcy Cases', known as the 'Chongqing Answers'.



This represented one of China's earliest normative documents to explicitly tackle the issue of affiliated claim subordination. Article 5 provided a concrete, typified list of applicable scenarios, including claims arising from defective capital contributions, illegal capital withdrawals, forced reliance on shareholder or de facto controller loans amid operational insolvency and unfair connected transactions designed to extract improper personal gains. This marked a crucial early attempt to operationalise the equitable subordination doctrine, or 'Deep Rock Doctrine', within China's legal context. Though not a formally citable legal basis in the dispositive section of judgments, this document laid down an indispensable factual and theoretical foundation for the subsequent development of unified national standards.

National Unification: The 2018 National Summary

A pivotal milestone was achieved in 2018 with the release of the Supreme People's Court's 'National Conference Summary on Bankruptcy Adjudication Work' ('National Summary'). Article 39 of this document established the first nationwide principle for handling such claims within the context of coordinated bankruptcy proceedings. It clearly stipulates that claims stemming from the improper use of affiliate relationships shall be subordinated to ordinary unsecured claims in the distribution sequence. Furthermore, it imposes a crucial additional restriction: such creditors are absolutely barred from asserting priority repayment rights based on security interests provided by other members of the affiliated enterprise group. Despite lacking strict statutory binding force as a formal judicial interpretation, this provision exerted significant de facto authority, effectively unifying fragmented adjudicative standards across all judicial jurisdictions in China.

Local Refinement: Principle-Based Adjudication in Shanghai

In the years following, local courts, notably Shanghai, integrated this overarching national principle into their own judicial guidelines. Article 182 of Shanghai's 2021 'Guidelines on Bankruptcy Adjudication Work' adopted the principle-based language of the National Summary. Unlike Chongqing's scenario-based list, Shanghai's approach grants judges greater judicial discretion. It encourages holistic, case-by-case analyses to determine what constitutes an 'improper use' of affiliation, mandating that courts fully consider the specific factual context, the inherent commercial logic of the transactions and the probative weight of the evidence presented. This nuanced shift expanded the scope of

subordinated claims to cover novel and complex scenarios, such as affiliated enterprises inducing the debtor to incur guarantee obligations within a critical period shortly before the initiation of bankruptcy proceedings.

Institutional Value of Judicial Guidance Documents

While these judicial guidance documents are not classified as formal sources of law in China, their institutional value within the bankruptcy system is irreplaceable. Practically, they serve to harmonise judicial practice across geographically and economically disparate regions, significantly enhancing the credibility of court decisions. Judges frequently reference these documents in the 'Court's Opinions and Reasoning' section to strengthen the persuasiveness of their legal analysis. Most importantly, they allow the judiciary to agilely fill regulatory gaps created by the relatively slow pace of formal legislative amendment. This 'practice-first, norms-follow' model exemplifies a defining feature of China's legal modernisation, preserving the stability and predictability of the formal legal system while empowering courts to adapt dynamically to the complexities of modern economic realities and evolving legal challenges.



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Ms Ming Dong joined JunHe in 2010. Her areas of expertise include restructuring and insolvency, dispute resolution and non-performing assets. She specialises in domestic and overseas legal issues including bankruptcy and restructuring, debt restructuring, insolvency liquidation, compulsory liquidation and voluntary liquidation. In the area of dispute resolution, Ms Dong has represented financial institutions such as banks, trusts, funds, bond trustee and asset management companies, in their corporate commercial litigation, arbitration, administrative litigation and multiple types of bankruptcy derivative litigation.

Did You Know?

Interesting Laws Around the World

Japan's Accession to the Singapore Mediation Convention—What Are the Unique Aspects?

You may know that Japan acceded to the Singapore Mediation Convention ('Convention') in 2024 as the first G7 country to ratify it. The Convention promotes the use of mediation, which is becoming increasingly important as an alternative to time-consuming and costly litigation and arbitration, by granting enforceability to settlement agreements resulting from international mediation. As of 26 March 2026, there were 59 signatories to the Convention, of which 20 have already ratified it, including Japan.

However, you probably may be unaware that Japan is one of the few countries that made an 'opt-in reservation'. Japan shall apply the Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

Japan deliberately decided to ratify the Convention earlier rather than later, but only on the basis of an opt-in reservation, which was not popular at that time.

What is the Background to That Choice?

When deliberations were made by the Arbitration Law Subcommittee

of the Legislative Council, there were concerns that if Japan ratified the Convention before other major economic powers, such as the US and the EU, Japanese parties may have disadvantages since, unlike the New York Convention on arbitration, the Convention does not permit a 'reciprocity reservation'; therefore, Japan would be required to enforce mediated settlement agreements in Japan, while non-signatory states

would not enforce them. Creating an 'opt-in' reservation was helpful to address those concerns.

Amendments to ADR Law to Provide for Enforceability of Settlement Agreements in Domestic Mediation

It should also be noted that Japan not only acceded to the Convention, which provides for enforceability of settlement agreements in international mediation, but also amended 'the Act on Promotion of Use of Alternative Dispute Resolution' ('ADR Act') to provide for enforceability of settlement agreements in certain categories of domestic mediation. While there were high demands for enforceability of settlement agreements in certain types of domestic mediation (for example, for child support), there were concerns about making settlement agreements in domestic mediation involving consumers and SMEs



enforceable, as those parties are typically not familiar with enforceability of mediated settlements.

Thus, the amended ADR Act provides that enforceability is granted only to mediated settlements made in mediation before mediation institutions that are certified under the ADR Act. The amended ADR Act also requires that an opt-in agreement be made in the mediation process rather than, say, an opt-in clause in a dispute resolution provision in a contract.

How the Opt-in Reservation Works

In the context of international mediation, you may wonder how the opt-in reservation would actually work, given that, as of now, not many countries have ratified the Convention. Perhaps the SIAC-SIMC Arb-Med-Arb Protocol would provide a good answer. Once the parties agree to settle in the mediation in the Arb-Med, the settlement agreement may be converted into a consent award, which would be enforceable under the New York Convention. If both parties are from the Singapore Convention states, there would be no need for a consent award. The opt-in reservation would make a party from a Convention state feel comfortable with agreeing to mediation without the fear that mediated settlement would be enforceable only in its country but not in the other party's country when it is a non-signatory.

Pro-Mediation Legislation and JIMC-Kyoto as an Ideal Venue for Mediation

In any event, Japan's decision to accede to the Convention earlier will help Japan to be seen as a pro-mediation country. The Japan

International Mediation Center in Kyoto ('JIMC'), which was established seven years ago, is the first and only mediation institution in Japan focused on international mediation, providing an ideal mediation venue in Kyoto, the quiet old capital of Japan, to parties in mediation under any rules. Japan amended its Foreign Attorneys Act in 2020 to allow foreign-qualified lawyers to represent clients in international mediation cases in Japan. With pro-mediation legislation and the attractive venue provided by the JIMC, Japan is expected to become one of the most preferred venues for international mediation.

Hiroyuki Tezuka

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Spain and the New Procedural Threshold: ADR as a Procedural Requirement

On 3 April 2025, Spain entered a new procedural era. With the entry into force of Organic Law 1/2025, recourse to an Appropriate Means of Dispute Resolution ('ADR') has become a mandatory gateway for most civil and commercial claims. The reform, designed to ease chronic judicial congestion, has ignited fierce debate among judges, scholars and practitioners alike. Is it a pragmatic solution to systemic delay, or a constitutional minefield restricting access to justice?

The Mandatory ADR Framework

Organic Law 1/2025 compels litigants to initiate—before filing suit—one of a set of out-of-court

procedures: mediation, conciliation, direct negotiation (with or without lawyers), confidential binding offers, neutral expert opinions, collaborative law processes, and other legally recognised mechanisms. The claim will not be procedurally admissible unless the plaintiff can show that an ADR attempt was started, or that a statutory exemption applies under Article 5.2 of the Law.

Comparative Perspective: Spain's Distinctive Approach

Many modern systems encourage or nudge parties towards ADR by offering cost incentives or sanctioning unreasonable refusals. Spain's reform is unusual because it converts ADR from an incentive into a jurisdictional gatekeeper; it is one of the most far-reaching statutory hooks making pre-litigation ADR effectively mandatory for access to ordinary civil process.

Enforcement Mechanisms and Sanctions

The statutory consequences are stark. A claim tendered to the court without satisfying the ADR precondition risks being declared inadmissible—that is, the court may refuse to hear the substantive case until the procedural prerequisite is met. The reform also introduces procedural sanctions for unjustified refusals to engage in ADR, including adverse cost consequences. Crucially, good faith underpins these pre-litigation negotiations: parties must engage honestly and constructively rather than merely performing a formalistic step. Where a party acts in bad faith—using ADR solely to delay or obstruct—courts may treat the ADR attempt as ineffective.

Early judicial interpretation has begun to clarify the boundaries of what

may be demanded of litigants. The Provincial Court of Barcelona recently held (Section 14, Auto 459/2025, 16 October 2025) that the mere offer of negotiation suffices to meet the ADR precondition; courts may not demand proof of an ‘intimate disposition’ to negotiate or require that the prelitigation communication include a substantive concession, as doing so would impermissibly condition access to justice on a waiver of rights. This signals a formalistic, low-threshold approach to compliance.

At the same time, commentary and early guidance from practitioners suggest that courts will distinguish between (1) a genuine failure to attempt ADR (constituting a substantive bar to admissibility); and (2) deficient proof of an attempt (a curable procedural defect) —an important practical difference for how parties should document out-of-court efforts.

Constitutional Tension

At first glance, the reform seems to collide with Article 24 of the Spanish Constitution’s guarantee of effective judicial protection and access to the courts. Access to justice is constitutionally protected and cannot be rendered illusory by formal obstacles. However, the constitutional question is nuanced: the legislature frames the ADR requirement as a reasonable, proportionate procedural regulation designed to preserve the effective functioning of the justice system—arguing that diverting suitable disputes to faster, consensual mechanisms can itself better secure effective remedies. Whether the reform will survive constitutional scrutiny—which I’m sure it will have to face—will depend on how courts balance the proportionality of the



restriction against the legitimate aim of remedying systemic delay.

The Court of Justice of the European Union has already indicated important limits on national rules that make ADR a pre-condition for admissibility. In *Menini v Banco Popolare* (Case C-75/16) the CJEU held that national legislation requiring recourse to mediation can be compatible with EU law provided that it does not prevent effective access to the courts.

The legislative impetus is not merely theoretical. Spain’s courts have suffered persistent congestion for years; official statistics show substantial backlogs and long average durations in civil matters. The legislature invoked those practical realities in designing an intervention necessary to restore timely access to justice.

Arbitration as a Strategic Alternative

A predictable by-product is that arbitration will become yet more attractive for commercial actors. Arbitration already offers parties control of procedure, time limits under institutional rules, selection of specialised decision-makers, and confidentiality—advantages that are particularly compelling where

jurisdictional courts are congested. Although Organic Law 1/2025 does not refer to arbitration, mandatory exposure to ADR practices will likely increase parties’ openness to voluntarily choose arbitration in future contracts—complex or not. Observers have already flagged Barcelona’s or Madrid’s strengthened profile as arbitration hubs.

Final Remarks

Spain’s Organic Law 1/2025 is a bold attempt to reconcile the competing imperatives of timely justice and constitutional guarantees. It is an intervention born of administrative necessity; but legislating procedural preconditions that operate as gateways to judicial protection always invites constitutional and doctrinal contestation. For now, the law places an acute evidentiary burden on litigants and a new strategic premium on ADR and arbitration planning. How effectively the reform reduces delay—and whether Spanish courts or the Constitutional Court will recalibrate its limits—remains a live question of first-order interest to comparative proceduralists and to any international practitioner with Spanish-law disputes.

Jaume Martínez i Janer

Of Counsel, RocaJunyent, Barcelona



When the Streets Close: From the Tokyo Marathon to Japan's Festival Culture

On 1 March, Tokyo once again witnessed a remarkable transformation. The Tokyo Marathon—now in its 18th edition—brought approximately 38,000 runners to the capital, including roughly 15,000 participants from overseas. For several hours, the very heart of the city was comprehensively closed to vehicular traffic. Runners passed Tokyo Station, Nihonbashi, Asakusa, Ginza, Hibiya and Tamachi—districts that ordinarily pulse with commerce, finance and tourism.

For a country that has consciously positioned itself as a 'tourism nation', the Tokyo Marathon has become far more than a sporting competition. It is, in effect, a national showcase. International participants and spectators experience not merely a race but a curated journey through layers of Japanese history—from Edo-period merchant quarters to modern financial centres, from temple

precincts to imperial surroundings. The temporary suspension of traffic symbolises something deeper: the reordering of public space for shared civic experience. The city pauses its normal flow to celebrate collective endeavour.

On a personal note, I had the privilege of completing the Tokyo Marathon myself in 2017. Running through streets normally dominated by cars, surrounded by cheering crowds and fellow runners from across the globe, I felt firsthand how a modern metropolis can momentarily transform into a shared civic festival. It was not simply a race; it was a collective experience shaped by meticulous public coordination and a spirit of communal encouragement.

However, in Japan, large-scale traffic regulation is hardly limited to contemporary events such as marathons. One need only turn to the

country's traditional 'matsuri'—its festivals. Japan is sometimes described as a nation of festivals. Throughout the year, from remote mountain villages to major metropolitan centres, tens of thousands of 'matsuri' take place. If one includes small shrine rites and local community observances, the number may well exceed 100,000. Many of the larger festivals require extensive road closures and sophisticated crowd management, comparable in scale to major international sporting events.

Some readers may be familiar with the Gion Matsuri in Kyoto, a festival with over 1,000 years of history. Each July, elaborately decorated floats known as 'yamaboko' are paraded through central Kyoto, and significant sections of the city are closed to traffic. Yet Gion Matsuri is only one among countless examples of how public infrastructure in Japan periodically yields to ritual, procession and communal celebration.

For those considering a visit during the summer season, I would particularly recommend the three great festivals of Japan's Tohoku region in the northeast.

First, the Sendai Tanabata Festival, held annually in early August in Sendai City, Miyagi Prefecture, transforms shopping arcades and city streets into corridors of colour. Enormous streamers made of traditional 'washi' paper hang overhead, each carefully crafted and symbolising wishes for prosperity, learning and good health. The festival traces its roots to the Edo period and combines refined artistry with lively public participation.

Second, in Akita City (Akita Prefecture), the Kanto Festival—also



in early August—features towering bamboo poles adorned with dozens of illuminated lanterns, representing rice stalks heavy with grain. Performers balance these structures, some reaching 12 metres in height, on their foreheads, shoulders or hips. The spectacle is both athletic and meditative, and entire streets are closed to allow the night-time performances to unfold safely.

Third, the Aomori Nebuta Festival in Aomori City fills the summer nights with massive illuminated floats depicting warriors, mythical figures, and historical scenes. Accompanied by rhythmic chants and energetic dancers known as ‘haneto’, the procession moves through carefully regulated streets, turning the urban grid into a luminous stage.

In fact, my connection to these festivals goes back to my high school days in the 1980s. Armed with train tickets and accompanied by close friends, I travelled through Tohoku to witness these summer celebrations firsthand. The memory of night trains, crowded platforms and streets glowing with lantern light remains vivid even today. I sincerely hope to return and experience them again.

Many foreign visitors to Japan come first for its celebrated landmarks—historic temples, shrines, gardens and scenic landscapes. Yet those returning for a second or third visit might consider planning their travel around festival calendars. To witness a ‘matsuri’ is to encounter Japan not as a static collection of heritage sites, but as a living community bound by shared memory and ritual.

There is also a linguistic insight worth noting. In Japan, the Chinese



character ‘政’ was adopted to denote governance. Traditionally, it was read as ‘matsurigoto’—a term that literally derives from ‘matsuri’, meaning ritual or festival. The character ‘祭’, used for festival rites, is pronounced ‘matsuri’. The phonetic resonance is not accidental. In ancient Japan, governance and ritual were conceptually intertwined. Political order was understood as emerging from the proper conduct of communal rites.

Thus, when streets are closed for an old festival—the act is more than logistical. It reflects a long-standing cultural logic: public order and communal celebration are not

opposites, but partners. By stepping into a ‘matsuri’, one glimpses something essential about this island nation at the edge of the Eurasian continent—a society in which governance, ritual and community continue to intersect in the shared space of the street.

For internationally-minded lawyers, that intersection may offer a quiet reminder: the structure of law, like the structure of a festival, ultimately exists to sustain the community it serves.

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 Partner, Anderson Mori &
 Tomotsune, Tokyo

The European Heritage Days 'Les Journées Européennes du Patrimoine': France Opens Its Doors (Sometimes Literally and Figuratively)

Practical tips: For those who are in Paris during the 3rd weekend of September, and particularly on 18 and 19 September 2027 for the Paris IPBA Mid-Year Council Meeting and Regional Conference, make sure to book online whatever can be booked, or be ready to wake up extra early and/or queue for a long time to visit the most famous monuments (for example, the Presidential Elysée Palace). Please type 'Journées Européennes du Patrimoine' into your browser and plan your day ahead!

A Celebration of Accessible Heritage

Every September, France invites the curious to explore its hidden corners during the European Heritage Days, launched in 1984 by the French Ministry of Culture.

For two days, palaces, theatres, churches, workshops, and even private homes open their doors, offering a rare glimpse into the country's history and often to parts that are not generally accessible by the general public. The idea is simple but radical: heritage belongs to everyone.

Visitors can marvel at grand monuments such as Versailles, Notre-Dame Cathedral, or Mont-Saint-Michel, but the event's true magic often lies in smaller, less expected sites. In towns like Annecy, with its canals and pastel-coloured medieval streets, the Heritage Days bring history to life through local crafts, culinary traditions, and community stories, creating an experience both intimate and surprising.

Discovering the Living Past

The Heritage Days are not just about ancient stones. They celebrate living culture, craftsmanship, culinary heritage, music, and the contemporary use of historical spaces. You might watch an artisan restore stained glass, see a chef experiment with centuries-old recipes or step into a restored watermill.

Subtle humour often emerges naturally: a local guide might note that a medieval bridge 'has survived more tourists than the government' or an artisan jokes that their centuries-old techniques are 'more reliable than Wi-Fi'.

Annual themes, such as 'Sustainable Heritage' or 'Heritage in Motion', highlight contemporary issues, showing that history is not static but constantly interpreted and adapted.

By connecting past and present, the event encourages reflection on how heritage shapes identity today, while offering engaging, tangible experiences for visitors of all ages.

A Shared Cultural Dialogue

For foreign visitors, the European Heritage Days offer an unusual intimacy with France. Beyond the grandeur of Versailles or the Gothic majesty of Notre-Dame, small towns like Annecy provide stories that are personal, playful, or poignant. Perhaps a village historian recounts how a local festival began as a clever workaround centuries ago, or you encounter an artisan proudly sharing their family tradition.

Frédérique David

Partner, Harlay, Paris



IPBA NEW COUNCIL MEMBERS

Congratulations to the following council members who began their terms at the end of the Annual Meeting and Conference in New Delhi.

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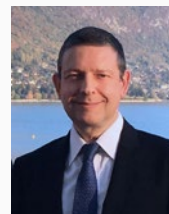
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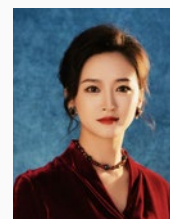
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New members, December 2025 through February 2026

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IPBA Upcoming Events		
Event	Location	Date
IPBA Annual Meeting and Conferences		
32nd Annual Meeting and Conference	Sydney, Australia	7-10 April 2027
33rd Annual Meeting and Conference	Hong Kong	2028 (TBD)
Mid-Year Council Meeting and Regional Conference		
Mid-Year Council Meetings (for Council members only)	Ho Chi Minh, Vietnam	26-27 September 2026
Regional Conference (open to all)	Ho Chi Minh, Vietnam	28 September 2026
Mid-Year Council Meetings (for Council members only)	Paris, France	18-19 September 2027
Regional Conference (open to all)	Paris, France	20 September 2027
Local and Regional Events		
Seminar on Legal Services in the Ecological Sector	Suzhou, China	28 April 2026
IPBA Arbitration Day 2026	Manila, Philippines	18 September 2026

The above schedule is subject to change.



LABUAN IBFC ASIA'S PREMIER INTERNATIONAL FINANCIAL HUB

Labuan International Business and Financial Centre (Labuan IBFC), located off the North West coast of Borneo, offers global investors and businesses the benefits of being in a well-regulated jurisdiction that provides fiscal, legal and currency neutrality, in addition to being an ideal location for cost-efficient substance creation.

Labuan IBFC is a wholesale financial, risk and wealth management intermediation centre that also boasts a wide range of business structures including solutions for fintech or digital businesses. It is also home to the world's first sukuk and is acknowledged as an Islamic financial hub.

Well-supported by a robust, internationally recognised yet business-friendly legal framework, Labuan IBFC operates within comprehensive legal provisions and guidelines, enforced by a single regulator, Labuan Financial Services Authority – a statutory body under the Ministry of Finance, Malaysia.

Labuan, also known as the 'Pearl of Borneo', offers a myriad of business and leisure opportunities. It is also a hub for financial tourism as its excellent location and compact structure offer easy connectivity between the financial district, and nature offerings.

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