**Doctoral Dissertation of Law School of University of International Business and Economics**

**Opening and literature review**

**Format example**

**2020.04**

**Study on the Recognition and Relief System of Cross-Border Bankruptcy[[1]](#footnote-0)**

Notice:

1. This example is for reference only, the emphasis is on format requirements. The specific content can be adjusted according to the actual situation of the major and thesis.

2. Literature review can be designed according to the actual situation of the major and thesis, but the structure and space distribution should be reasonable and standardized. The model of "foreign research review" + "domestic research review" can be used, and the two can be developed sequentially based on the issues researched by the doctoral dissertation; or adopt a model in which the questions studied in the doctoral dissertation are developed in sequence, and then discuss foreign and domestic documents separately.

3. The main body of the literature review should take the form of a combination of opinion summaries and own comments. You cannot copy and paste others’ documents.

4. At the end of the main body of the literature review, a certain length of summary should be attached to summarize and analyze the content of the full text review.

5. As with doctoral dissertations, literature reviews should take the form of footnotes in the text plus references at the end of the text. The style follows the requirements of “Footnotes and Reference Styles of the Dissertation of Law School of University of International Business and Economics (2020)”. If the style of footnotes and references in this example is inconsistent with the college’s “2020 Style”, the “2020 Style” shall prevail.

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**Literature Review of Study on the Recognition and Relief System of Cross-border Bankruptcy**

Abstract (300-500 words)：

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Key words (3-5 words or phrases)：

The cross-border bankruptcy recognition and relief system has a relatively mature legislative and practical foundation at the international level. In the past few years, China has not paid much attention to domestic cross-border bankruptcy legislation and practice. It has not been until recent years that with the increasing pace of Chinese companies “going global” and the increasing number of cross-border bankruptcy cases involving Chinese interests, the issue of cross-border bankruptcy recognition and relief has gradually attracted the attention of Chinese academic and judicial circles.

**1. Clarification and theoretical analysis of the recognition and relief system**

**1.1 Clarification of the recognition and relief system**

The so-called recognition refers to the recognition of the extraterritorial effectiveness of the extraterritorial insolvency proceedings by the judicial authorities or other relevant agencies of the receiving country. In other words, recognition in the cross-border insolvency legal system is a recognition of the debtor ’s bankruptcy status. Unlike the recognition of judgments, recognition in the cross-border insolvency legal system has its special procedures and substantive requirements. From a procedural perspective, according to current cross-border insolvency rules and judicial practice at the international level, it is generally believed that the subject who has the right to apply for foreign bankruptcy protection of the debtor ’s insolvency proceedings should be a foreign representative. Parties in the traditional sense do not have the legal status to apply for recognition in foreign courts. At the same time, when a foreign representative submits an application for recognition to an extraterritorial court or relevant agency, it is necessary to attach supporting materials that prove the objective existence of the foreign procedure and the legal status of the representative in the foreign procedure.

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**1.2 The influence of traditional theories such as international comity on cross-border bankruptcy recognition and relief practice**

Comity is an important theory to deal with international issues. It helps a country's courts to respond positively to the validity of foreign judgments in their own country without compromising the interests of their citizens. In the field of cross-border bankruptcy recognition and relief, due to a long-term lack of rule guidance, the international community has used international comity as the theoretical basis for the recognition and relief of foreign bankruptcy procedures for a long time. J.M. Farley once had a very classic discussion on the essence of comity. He believed that comity is not a mandatory rule, nor a mandatory obligation that a country must fulfill, but a goodwill expression made by a country out of practical and convenient considerations.[[2]](#footnote-1)

The United States has recognized and remedied foreign bankruptcy proceedings based on courtesy for a long time. Sefa M. Franken discussed in detail the different interpretations of the connotation of the principle of courtesy when the US courts tried cross-border bankruptcy cases.[[3]](#footnote-2) In 1883, when the United States Supreme Court heard the “Canadian Southern Railway Case” (109 US 527 (1883)), it believed that the spirit of international courtesy required its courts to recognize the validity of the Canadian debt agreement arrangement in the United States, taking into account that the agreement is consistent with most creditors’ interest and in line with the relevant US legislative requirements. Even if it is recognized that the agreement will damage the interests of two minority creditors in the United States, it should be recognized in accordance with international comity. However, the interpretation of the comity principle by the US courts has changed significantly in subsequent cases. In 1895, when the US Supreme Court tried the “Hilton Case” (159 US 113 (1895)), it gave a very narrow interpretation of the principle of comity, and believed that the application of the principle of courtesy in this case should satisfy preconditions such as not to damage the legitimate rights and interests of American creditors and nationals, and not to violate the laws of the United States, and also include the requirement of reciprocity in the grounds of judgment. The strict stance of the US courts on this issue did not change until the 1930s.

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**1.3 Game analysis in the recognition and relief of cross-border bankruptcy**

Michael J. Whincop uses the “prisoner's dilemma” model to analyze the interest game and strategic choices of the international community in cross-border bankruptcy.[[4]](#footnote-3) He believes that in the international community, there is no government above sovereign states, one country cannot impose obligations on other countries, and the commitments made by one country are not credible in nature. When a country faces the issue of whether to recognize foreign bankruptcy proceedings, how to choose a strategy, that is, similar to the “prisoner’s dilemma” model. For the applicant country, considering the protection of the interests of its citizens and national sovereignty, security, and social and public interests, refusing to recognize foreign bankruptcy proceedings is of course the best strategy of the applicant country; but at the same time, it is very likely that the country to which the foreign procedure belongs will choose not to recognize the foreign bankruptcy proceedings of the applicant country in the future, that is, in the long run, it is not the best for the two countries in cross-border bankruptcy cooperation select.

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**2. The main disputes of the cross-border bankruptcy recognition and relief system**

**2.1 The “center of main interests” rule in cross-border bankruptcy**

**2.1.1 The connotation, function and controversy of “center of main interests”**

The “center of main interests” (COMI), as a legal concept, first appeared in the Istanbul Convention and has since been adopted by the international community as the core concept in the cross-border bankruptcy rules. Chapter 15 of the United States Bankruptcy Law regards it as the key to the court’s determination of the nature of foreign bankruptcy proceedings, according to which the foreign bankruptcy proceedings are divided into foreign main proceeding and foreign non-main proceeding to give different degrees of relief. The EU Cross-Border Bankruptcy Regulation (No.1346/2000) regards the center of main interests as the basis for confirming the initiation of the main insolvency proceedings in the EU. The bankruptcy proceedings initiated at the location of the debtor ’s main interest center are deemed to be the main bankruptcy proceedings, and other member states automatically recognize and grant relief. In a word, the center of main interests rule involves both the recognition and relief of cross-border bankruptcy, and it is the core rule that discusses the inevitable cross-border bankruptcy procedure and relief system.

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**2.1.2 The time standard identified by the “center of main interests”**

Jesse Hallock sorted out the cases involving the time standard for the determination of the center of main interests in the US courts since 2010, and believed that there are two standard models for the determination of this issue in the US courts, that is, the determination model based on the start time of the foreign procedure, abbreviated “subject to the commencement” model and the foreign bankruptcy administrator’s application to the U.S. court to recognize the time for the approval of foreign proceedings, abbreviated “subject to application” model. Jesse Hallock analyzes the rationality of the “subject to commencement” model in identifying the location of the debtor’s center of main interests from the perspective of judicial practice, the similarity between the concept of the debtor’s main business place and the location of the debtor’s center of main interests, the provisions of the center of main interests in the EU’s cross-border bankruptcy regulations (No. 1346/2000) and the Chapter 15 of the US Bankruptcy Law. [[5]](#footnote-4)

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According to the recent judicial practice of the US courts, its position is more inclined to adopt the “subject to application” model. At the international level, in its cross-border bankruptcy legislation, Germany clearly defines the location of the debtor’s center of main interests when the foreign representative applies. When the Australian court heard the “Capilano Bankruptcy Case” (*in re* Edelsten, [2014] FCA 1112), it clearly adopted the “subject to the commencement” model. At present, the cases that elaborate on this issue are, for example, the “Millennium Global Bankruptcy Case” (*in re* Millennium Global Emerging Credit Master Fund Ltd., 458 BR63 (Bankr. SDNY2011)) and the “Gelehua Bankruptcy Case” (*in re* Gerova Financial Group, Ltd., 482 BR86 (Bankr. SDNY2012)), “Creative Finance Bankruptcy Case” (*in re* Creative Finance Ltd., 543 BR498 (Bankr. SDNY2016)), “Suntech Power Bankruptcy Case” ( *in re* SunTech Power Holdings Co., Ltd., 520 BR399 (Bankr. SDNY2016)), etc.

**2.1.3 Entity analysis identified by the “center of main interests”**

Compared with the time standard for the identification of the center of main interests, the discussions around the center of main interests mainly focus on the identification of the entity elements. The United States and European countries have elaborated a large number of judicial cases to elaborate the physical factors that should be considered when determining the location of the debtor’s center of main interests.

(1) The ideas of determination of the US court

Look Chan Ho analyzes two representative cases involving center of main interests that were heard in the early days of the US courts, namely the “Sphinx Fund Bankruptcy Case” (*in re* Sphinx, 351 B.R.103 (Bankr. S.D.N.Y.2006)) and “Bearsden Bankruptcy Case” (*in re* Bear Stearns High-Grade Structured Credit Strategies Master Fund, 389 B.R.325 (Bankr. S.D.N.Y.2008)). [[6]](#footnote-5)

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(2) The ideas of determination of the European Court

Compared with the flexible determination method of the US courts, the EU courts are cautious about the extent to which the statutory presumption of the location of the debtor’s center of main interests can be overturned, and more attention is paid to the third party. This basic position was established and strengthened in the “European Food Company Bankruptcy Case” (*in re* Eurofood IFSC Ltd, Case 341/04, ECJ.2006).

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(3) New development of the identification of the entity elements of the “center of main interests”

Tracy Albin pointed out that the current international community’s identification of debtors’ center of main interests tends to be flexible. As the practice of international cross-border bankruptcy justice becomes more mature, the identification of entities of the debtor’s center of main interests has also developed. [[7]](#footnote-6)

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**2.2 The recognition system in cross-border bankruptcy**

**2.2.1 Due process review**

The concept of due process first appeared in Britain in the 14th century, and was later introduced into the United States and included in the Federal Constitution. With the development of practice, due process has gradually become the mainstream of American judicial practice. Since the 20th century, civil law countries have paid more and more attention to due process, and some countries have begun to include due process provisions in domestic legislation or treaties signed with foreign countries.[[8]](#footnote-7) The existence of due process today is of increasing importance in protecting the legitimate rights and interests of the parties, balancing the powers and responsibilities of the judiciary, and regulating the recognition and enforcement of foreign judgments.

(1) Application and development of due process in the field of recognition and enforcement of foreign judgments

In the field of recognition and enforcement of foreign judgments, how to judge whether the procedure of a foreign court is proper in a specific case is a pre-problem to be solved by the courts of various countries when facing the recognition of foreign judgments. Audrey Feldman believes that the judgment of the country’s judicial process of foreign judgments should be based on international due process standards in the international sense, and a detailed review of the application and development of international due process standards in American judicial practice. [[9]](#footnote-8)

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(2) Application of due process in cross-border bankruptcy recognition and relief

In cross-border bankruptcy cases, when the applicant country faces an application for bankruptcy protection by a foreign representative, the legitimacy of the foreign bankruptcy process is an important aspect of the judge’s review of the bankruptcy process. Considering that there are differences in the provisions of due process in various countries, the Model Law does not regard the due process requirements as a prerequisite for the recognition and relief of foreign bankruptcy proceedings. However, in the practice of cross-border bankruptcy, most countries include due process in the scope of the recognition and relief of foreign bankruptcy proceedings.[[10]](#footnote-9)

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**2.2.2 Review of reciprocal relationship**

The principle of reciprocity, as an international practice for recognizing and enforcing judgments of foreign courts, is generally recognized and followed by the international community.[[11]](#footnote-10) Its purpose is not to retaliate, but to promote the free circulation of court judgments internationally on the basis of equality, thereby protecting the rights and interests of the parties. [[12]](#footnote-11)

(1) The main types of reciprocity principles

The international community has not reached agreement on the application of the principle of reciprocity, so different forms of reciprocity have been derived in judicial practice. Keith D. Yamauchi identified and classified the main types of reciprocity, that is, reciprocity is divided into “jurisdiction reciprocity” and “substance reciprocity”. Among them, the jurisdiction reciprocity is based on the reciprocity of the jurisdiction, which is applicable to the application country to review the jurisdiction of the foreign court in a case; the substance reciprocity requires that if the foreign court has recognized the judgment of the court of the application country under similar circumstances Precedent, the court of the applicant country should recognize and enforce the judgment of the foreign court. [[13]](#footnote-12)

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(2) Softening of the reciprocity principles

Beligh EIbalti made a comparative analysis of the current reciprocity principle softening measures in various countries.[[14]](#footnote-13) These softening measures include additional exceptions to the principle of reciprocity. For example, the Czech principle of reciprocity only applies if the domestic subject is the defendant named in the judgment, and Turkey applies the principle of reciprocity only to the enforcement of foreign judgments. Some countries have explicitly abolished the principle of reciprocity at the legislative level, such as Venezuela, Lithuania, Bulgaria, Poland, Montenegro and other countries. In many softening practices of the principle of reciprocity, it is presumed that the theory of reciprocity is an important theoretical result of softening the traditional theory of reciprocity.

(3) The embodiment of the principle of reciprocity in cross-border bankruptcy legislation

Judging from the text of the current international rules on cross-border bankruptcy, since the EU Cross-Border Bankruptcy Regulation adopts an automatic recognition mechanism for the main bankruptcy proceedings in the EU, the issue of reciprocal recognition is not involved at this time. The Model Law, as a soft law designed to provide a framework for cooperative procedures for global cross-border bankruptcy, also does not make reciprocity a prerequisite for recognition of foreign insolvency proceedings. However, because the Model Law allows countries to adopt a certain degree of modification to the text of the Model Law according to their actual circumstances, such as bankruptcy legislation, some countries have adopted reciprocity in the preconditions for the recognition of foreign bankruptcy procedures in principle.

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(4) Application of the principle of reciprocity in cross-border bankruptcy judicial practice

In the field of recognition and enforcement of foreign judgments, China has always adhered to strict standards of substance reciprocity, that is, only when there is a precedent for foreign courts to recognize judgments of Chinese courts, Chinese courts may recognize and enforce judgments of foreign courts. In the field of cross-border bankruptcy, there are currently no cases of recognition and relief of foreign insolvency proceedings based entirely on reciprocity. In the above-mentioned 2011 Beitai Automotive Industry Holdings Co., Ltd. applied to the Beijing High Court for the recognition of the winding-up order made by the Hong Kong High Court, even though the Hong Kong High Court had admitted China in the “Guangxin Bankruptcy Case”, the bankruptcy ruling of the Mainland China still has doubts about whether there is a reciprocal relationship in the field of cross-border bankruptcy between the mainland and Hong Kong, and finally refuses to recognize the Hong Kong winding-up order. As a result, there are currently barriers to cooperation between the courts of Mainland China and Hong Kong in the recognition and relief of cross-border bankruptcy proceedings.

**2.2.3 Public policy review**

As an important mechanism in the field of judgment recognition and enforcement, public policy exception clauses play a very important role in the cross-border bankruptcy recognition and relief system. This clause has been widely adopted by cross-border bankruptcy legislation of various countries to protect the fundamental interests of the country and limit the recognition of foreign bankruptcy proceedings by domestic courts in certain circumstances.

(1) Connotation of public policy

The UNCITRAL Legislative Guide on Insolvency Law defines broadly and narrowly the meaning of public policy. Broadly defined public policies include environmental protection policies and strict control of public health and safety harmful behaviors; non-recognition policies for foreign tax claims, gambling debts and other claims; and other policies related to domestic mandatory laws. However, the public policy referred to in Article 6 of the Model Law should be understood in a narrow sense, that is, the concept of public policy is limited to the most basic legal principles of a country, especially the constitutional principles. Only when it is recognized that foreign bankruptcy proceedings will “obviously violate” the above-mentioned narrow public policy of the country, the public policy exception clause can be activated. This basic position has been generally adopted by the international community.

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(2) International practice applying public policy exceptions

Since the international community generally takes a cautious position on the application of public policy exceptions, there are not many international judicial practices on the application of public policy exceptions.

***In re Qimonda AG[[15]](#footnote-14)：***

The debtor in this case was a semiconductor equipment company headquartered in Germany and entered bankruptcy proceedings in Germany. The debtor has a large number of patents in the United States, so it seeks the recognition of the German bankruptcy proceedings by the US court and remedies the debtor’s patents located in Germany to maximize the debtor’s bankruptcy property value. However, in this case, the German program’s remedy for the debtor’s patent was significantly different from the US patent law. In the end, the US court refused to recognize the German procedure in accordance with the provisions of Article 1506 of the US Bankruptcy Act on the ground that the patent remedy in the German procedure “obviously violated” the US public policy.

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(3) International practice that does not apply public policy exceptions

***in re Ernst & Young, Inc.[[16]](#footnote-15):***

In this case, the debtor entered bankruptcy proceedings in Canada, and requested the United States Federal Bankruptcy Court in Colorado to recognize that the debtor is in bankruptcy proceedings in Canada. The Colorado Securities Regulatory Commission believes that in Canadian proceedings, American investors are less compensated than the state ’s bankruptcy proceedings, and the cost of Canadian bankruptcy proceedings is significantly higher. In this case, the judge held that compared with the domestic bankruptcy proceedings, the differences in the settlement rate in foreign bankruptcy proceedings and the procedural cost factors did not form the basis for the application of public policy exceptions in the US bankruptcy court.

(4) Differences and connections between public policy review and protection of national creditors ’interests

In international practice, although the application of public policy exceptions is severely restricted, countries may use the provisions of Article 22 of the Model Law “Protection of Creditors and Other Interests” to refuse to recognize the f. oreign bankruptcy proceedings to achieve the legal effect of applying public policy exceptions.

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**2.3 Relief system in cross-border bankruptcy**

**2.3.1 Analysis of the main modes and types of cross-border bankruptcy relief**

Judging from the current cross-border bankruptcy rules established by the international community, the relief models for foreign bankruptcy proceedings are mainly divided into two categories, namely, auxiliary proceedings and master-slave proceedings.

(1) Auxiliary proceedings mode

The model of recognition and remedy for foreign bankruptcy procedures in the auxiliary mode is the Model Law issued by the United Nations Commission on Trade Law in 1997. It aims to promote, through framework-based moderate regulations, countries around the world to achieve maximum cooperation in the main aspects of cross-border bankruptcy cases. In the framework of the Model Law, if a foreign representative requests the adopting country to assist a foreign bankruptcy process, the adopting country will initiate ancillary proceeding against the foreign country on the premise of satisfying the scope of application of the Model Law Recognition and relief in bankruptcy proceedings.[[17]](#footnote-16) The so-called “auxiliary proceedings”, the relative concept of full proceeding, refers to the incomplete procedure initiated for the purpose of assisting foreign bankruptcy proceedings and aimed at providing recognition and relief for foreign bankruptcy proceedings. Compared with complete procedures, auxiliary proceedings can provide foreign representatives with faster access to the judicial system of the adopting country, and quickly recognize and remedy foreign bankruptcy procedures in order to avoid the initiation of parallel procedures and the waste of judicial resources.[[18]](#footnote-17) At present, this model has been adopted by 43 countries represented by the United States.

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(2) Master-slave proceedings mode

The typical example of adopting the master-slave procedure model to assist foreign bankruptcy proceedings is the EU Cross-Border Bankruptcy Regulations. Unlike the Model Law, which only provides guidelines for cooperation in cross-border bankruptcy frameworks, the rules contained in the EU Cross-Border Bankruptcy Regulation are more specific and involve the application of laws. Since the EU Cross-Border Bankruptcy Regulation adopts an automatic recognition mechanism for the main bankruptcy proceedings in member countries, the EU Cross-Border Bankruptcy Regulation is more concerned with the relief after the recognition of foreign main bankruptcy proceedings. According to the regulations, the country where the debtor’s center of main interests is located initiates the main bankruptcy proceedings, and other EU member states can initiate secondary proceeding under certain circumstances to achieve the protection and relief of creditors and other stakeholders within the country. Unlike the ancillary proceedings in the Model Law, ancillary proceedings are also called subordinate procedures. It is a complete domestic bankruptcy procedure initiated by the court of the country where the debtor’s non-primary interest center is located. The domestic law is applied to remedy the domestic interests. In the practice of cross-border bankruptcy in the European Union, in order to avoid the obstruction of the subsidiary proceedings in the centralized trial of cross-border bankruptcy cases, the administrator in the main bankruptcy proceedings will usually make a certain commitment to avoid other countries initiating subsidiary proceedings against the same debtor.[[19]](#footnote-18)

(3) Japan’s improvement and application of auxiliary mode

As early as 2000, Japan became the adopting country of the Model Law,[[20]](#footnote-19) unlike the way the United States accepts the provisions of the Model Law in its entirety, Japan has carried out a series of modifications based on the provisions of the Model Law to make it more suitable for its national bankruptcy legislation and culture.

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(4) Basic types of cross-border bankruptcy relief measures

Articles 19, 20, and 21 of the Model Law provide three basic forms of relief, interim relief, automatic stay, and discretionary relief. The application of these remedies in international practice has become more common and mature.

According to the provisions of Article 19 of the Model Law, the period of application of interim relief is generally applicable to the urgent need for relief to protect the bankruptcy property and creditors when the foreign representative applies to the court of the applicant country until the applicant country officially recognizes the foreign bankruptcy proceedings. Specific measures for such relief include, but are not limited to: suspension of execution of debtor’s property; realization of all or part of the debtor’s property based on its own nature or surrounding environment that is easy to decay or depreciate and that is located in the country of application to protect the value of debtor’s property; suspending the debtor’s transfer of property and exercising other obstructive actions; foreign representatives may ask witnesses to obtain information about the debtor’s property, business, rights, and obligations.

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**2.3.2 Analysis of cooperation mechanisms and rules in cross-border bankruptcy relief**

Cross-border bankruptcy cooperation, as the soul that runs through cross-border bankruptcy judicial practice, is the key to the recognition and relief of foreign bankruptcy procedures in various countries. In order to overcome differences in bankruptcy legislation in various countries, achieving maximum cooperation is the basic requirement that cross-border bankruptcy practices impose on judicial departments and practitioners in various countries.

(1) The rules of international cooperation in cross-border bankruptcy

According to the review by Leah Barteld, the current international community mainly regulates the basic rules of cross-border bankruptcy cooperation through the following forms.[[21]](#footnote-20) In the early days, in order to carry out cross-border bankruptcy cooperation with neighboring countries, countries generally tended to negotiate treaties. However, after all, the signatories to the treaty are limited, and the practice of promoting international cross-border bankruptcy cooperation through the treaty is in trouble. Subsequently, the principle of courtesy began to serve as the theoretical basis for international cooperation in international bankruptcy, and once became one of the determinants of the recognition and relief of foreign bankruptcy proceedings under the US Bankruptcy Law. At this stage, the difference between domestic and foreign bankruptcy legislation has become an important consideration for the domestic court to determine whether to cooperate.[[22]](#footnote-21)

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(2) Analysis of EU multi-dimensional cooperation mechanism

The unique geographical advantages and highly integrated political, economic and cultural traditions have laid the foundation for the EU to achieve the unification and coordination of cross-border bankruptcy rules within the region. Unlike the Model Law and the guidelines for cross-border bankruptcy promulgated by other international or regional organizations, the EU Cross-Border Bankruptcy Regulation provides a complete and multi-dimensional cooperation framework for EU member states to conduct cross-border bankruptcy cooperation. The EU Cross-Border Bankruptcy Regulation (No. 2015/848) stipulates that each member country is obliged to cooperate in cross-border bankruptcy, and Articles 41, 42 and 43 stipulate the three dimensions of cooperation and communication rules between insolvency administrators, courts and between insolvency administrators and courts.

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(3) Influence of information sharing mechanism on cross-border bankruptcy cooperation

The realization of data sharing of cross-border bankruptcy judicial information is an important link to improve the transparency of cross-border bankruptcy cases, avoid parallel litigation, and promote international cooperation in cross-border bankruptcy. At present, the European Union has practiced in sharing cross-border bankruptcy data. In 2013, the European Union launched the European Data Protection Supervisor (EDPS), requiring EU member states to disclose the necessary judicial information related to cross-border bankruptcy cases, and to establish a free bankruptcy registration system within the EU. An e-Justice portal website was opened for the courts of EU member states to easily check the registration of relevant bankruptcy cases in various countries. Since then, the EU Cross-Border Bankruptcy Regulation (No.2015/848) has systematically regulated the issue of data protection in cross-border bankruptcy cases as an independent chapter, with special emphasis on the bankruptcy registration system in the EU member states and the EU electronic judicial portal information security issues at various levels.

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**2.4 Recognition and relief of cross-border bankruptcy of enterprise groups**

**2.4.1 Particularity of cross-border bankruptcy of enterprise groups**

(1) Definition of enterprise group

In the strict sense, an enterprise group is not a legal concept, but a description of a special economic phenomenon. As a foreign word, enterprise groups first appeared at the end of the 19th century. After more than 100 years of development, enterprise groups have gradually become the dominant force influencing the world economy. Due to the many differences in the legal culture and historical background of the international community, countries have different expressions of their titles and connotations. From the perspective of legal definition, Germany is a typical country that specifically stipulates “enterprise groups” in legislation, and it calls this special economic phenomenon “Konzern”. According to the provisions of German law, Konzern refers to the union of multiple enterprises with independent legal person status under the unified management of the dominant enterprise.[[23]](#footnote-22) Article 2 (13) and (14) of the EU Cross-Border Bankruptcy Regulation (No. 2015/848) defines it as a consortium of parent companies and one or more subsidiaries through direct or indirect control. The Legislative Guide for the Model Law on Cross-Border Bankruptcy (Part III) believes that the structure of enterprise groups may be simple or highly complex, and the legal forms of group members are diverse and not limited to legal entities. In summary, an enterprise group is a combination of several enterprise entities connected by some form of control or ownership. This study believes that an enterprise group is actually used to describe the internal relationship between the companies in the group alliance, that is, the parent-subsidiary relationship. An enterprise group under the meaning of cross-border bankruptcy law usually refers to a parent company and several subsidiaries with a certain size Syndication.

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(2) Particularity of bankruptcy of enterprise groups

Nora Wouters and Alla Raykin believe that the particularity of enterprise group bankruptcy lies in: each member of the group has independent legal person status, shareholders, creditors and property; each group member has its own center of main interests; the cooperation between programs is very difficult.[[24]](#footnote-23) Based on the above particularities, Irit Mevorach believes that the following aspects should be considered when hearing cross-border bankruptcy cases of enterprise groups: First, whether the members of the group are relatively loose and independent of each other, or whether they are maintained through frequent intra-group transactions; the legal nature of the transaction, the legal nature of the claims and responsibilities should be identified; assess the creditor’s expectations and explore whether the debtor’s expectations are based on the entire group’s property or whether it is based on group members based on independent property; finally, from the perspective of saving the enterprise or maximizing the value of the group’s property, evaluate the best way to hear the cross-border bankruptcy case of the enterprise group.[[25]](#footnote-24)

(3) Basic theory of bankruptcy disposal of enterprise groups

Separate entity theory is based on the principles of traditional company law, and considers the related parent and subsidiary companies within the group as independent legal entities. Once it falls into bankruptcy, the independent entity will be used as the standard according to the general principles of bankruptcy law to cut and dispose separately. Helen Anderson believes that this theory obviously does not meet the needs of the development of modern cross-border bankruptcy legal system.[[26]](#footnote-25) First, the separate entity theory is not conducive to the realization of the fair purpose of the bankruptcy law; second, although the creditors of the bankrupt subsidiary can request the court to provide relief based on the theory of “piercing the veil of the company”, such exceptions are rare and cannot be provided to corporate group creditors full protection; Finally, when a member of a company group goes bankrupt, how to deal with the relationship between a bankrupt member and a non-bankrupt member according to this theory will be a difficult problem.

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**2.4.2 International experience of cross-border bankruptcy settlement of enterprise groups**

As Jay Lawrence Westbrook said, the legal issues of cross-border bankruptcy of company groups are the difficulties and key points in cross-border bankruptcy practice.[[27]](#footnote-26) Of the 591 Chapter 15 cases counted by Jay Lawrence Westbrook, 387 cases were related to corporate group issues, with a proportion as high as 65%. Jay Lawrence Westbrook believes that the particularity of the company group itself and its contradiction with the traditional company law theory are the main reasons leading to the difficulty of cross-border bankruptcy relief for the enterprise group.

(1) Development and innovation of coordination proceeding

After several years of discussion and revision, the 2015 EU Cross-Border Bankruptcy Regulation (No. 2015/848) was promulgated. Among them, Chapter 5 provides a special chapter on the cross-border bankruptcy of enterprise groups, and innovatively proposes group coordination proceeding for enterprise groups to deal with many of the enterprise group’s cross-border bankruptcy recognition and relief practices problem.

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(2) Group cross-border bankruptcy rules and practices in the Model Law on Cross-Border Bankruptcy

The “Model Law” promulgated in 1997 did not specifically regulate the issue of cross-border bankruptcy of enterprise groups. However, as the issue of enterprise groups became more prominent, the fifth working group of the United Nations Commission on Trade Law began to discuss how to deal with the difficulties. In 2010, Working Group V promulgated the Legislative Guide on Cross-border Bankruptcy Model Law (Part III), which specifically responded to the treatment of enterprise groups in bankruptcy, including the general characteristics of enterprise groups, bankruptcy disposal of enterprise groups in domestic law, and special issues in cross-border bankruptcy cases of enterprise groups. In 2013, Working Group V began to focus on the drafting of cross-border bankruptcy rules for enterprise groups in working group meetings, and revised and improved the draft through continuous consultation with various countries. The current version of the draft is the fifth in May 2017. The Working Group announced at the 51st Working Group Meeting “Facilitating the Transnational Bankruptcy of Multinational Enterprise Groups: Draft Legislation”. [[28]](#footnote-27)

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**2.4.3 Application of the protocol in cross-border bankruptcy of enterprise groups**

In recent years, the protocol has played an important role in coordinating parallel procedures for cross-border bankruptcy. Enterprise group bankruptcy cases often involve the coordination of bankruptcy procedures among several group members. Over the past two decades, the protocol has played a key role in the cross-border bankruptcy cooperation of enterprise groups and should be paid attention to and studied.

(1) The basic concept and application of the protocol

Paul H Zumbro pointed out that the protocol is usually used to solve the problem of coordination between parallel procedures initiated in different jurisdictions against the same debtor. And generally do not discuss the entity issues in the form of advance agreement, but after the start of the insolvency proceedings, the parties involved participate in the agreed agreement on how to coordinate the parallel process management, and requires the approval of the court of jurisdiction to implement. Paul H Zumbro believes that an ideal protocol should adhere to the concept of universalism and treat complex, parallel bankruptcy proceedings against the same debtor as a whole. In practice, out of a comprehensive consideration of issues such as international judicial sovereignty, court discretion, and other issues, the basic concept of the protocol is gradually tending to the revised universalist concept contained in the Model Law and the EU Cross-Border Bankruptcy Regulations, provide a procedural coordination framework for various parallel procedures on issues such as cooperative exchanges, information sharing, bankruptcy property preservation, debt rights determination, and intra-group disputes. [[29]](#footnote-28)

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(2) General provisions and source of the protocol

Since the protocol is negotiated on a case-by-case basis, there is no fixed model that is effective for any cross-border bankruptcy case as far as its content is concerned. Therefore, Fabian Andreas Van de Ven hopes to discuss the possible common provisions of the protocol from the perspective of the source of the protocol.[[30]](#footnote-29)

The 1995 Cross-Border Insolvency Concordat provides 10 basic principles for lawyers and courts to coordinate cross-border insolvency proceedings. When the insolvency proceedings against the same debtor are not the main proceedings, the Border Insolvency Concordat recommends that the procedures be coordinated through a protocol; the Guidelines for Application to Court-to-Court Communications in Cross-Border Cases in 2000 are guidelines for cross-border bankruptcy cases. There are 17 guiding principles on how to conduct exchanges and cooperation between the courts, and it is recommended to reflect them in the protocol, and encourage cross-border insolvency parties to use the protocol to coordinate insolvency proceedings; The European Communication and Cooperation Guidelines for Cross-border Insolvency as an important supplement to the EU Cross-Border Insolvency Regulations, provides 18 guidelines for cross-border insolvency cooperation, and in the annex, the basic requirements that the protocol should meet and the specifics that should be included. The above documents are considered to be an important source of the provisions of the protocol.

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(3) Disadvantages of the protocol and reform direction

On the one hand, David Lord affirmed the value and role of the Protocol in coordinating the parallel procedures for cross-border insolvency. On the other hand, David Lord also realized the limitations of the Protocol in the practice of cross-border insolvency. Since the protocol only solves the coordination among several insolvency proceedings at the procedural level, and does not touch on the legal systems of entities in various countries, it cannot avoid conflicts and contradictions arising from differences in substantive laws in various procedures.[[31]](#footnote-30)

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**2.5 Recognition and relief of cross-border bankruptcy of offshore companies**

**2.5.1 Recognition and assistance of common law to offshore company’s overseas main bankruptcy proceedings**

The issue of cross-border bankruptcy of offshore companies discussed in this chapter is mainly aimed at the registration of tax havens in the Cayman Islands, listing in Hong Kong and other places, and the existence of a large number of company assets in mainland China. Judging from the current situation, many companies operating in the mainland have their registered or parent companies registered in foreign jurisdictions that provide tax incentives. At the same time, these companies are listed in Hong Kong to absorb capital, and fixed assets such as factories are mostly located in China mainland. In the case that China has not adopted the Model Law, how to recognize and remedy the main bankruptcy proceedings initiated in an unregistered place, the recent “Hellun Agricultural Technology Group Co., Ltd. Bankruptcy Case” ruled by the Cayman Islands Court has certain reference and reference significance.

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**2.5.2 The challenge of VIE structure to China’s cross-border bankruptcy recognition and relief system**

Around 2000, a large number of Internet companies represented by Sina and Alibaba began to acquire overseas capital through the VIE structure, providing foreign investors with access to restricted areas of foreign investment in China. Its construction process, that is, the shareholders of the VIE company in the domain first set up an offshore company overseas, and the registration place is generally the tax havens such as the Cayman Islands and the British Virgin Islands; to isolate risks, the offshore company may set up several subsidiaries; then, the offshore company or its subsidiaries established elsewhere set up a wholly foreign-owned enterprise in the Chinese domain to open up the channels for VIE to connect with overseas financing and investment entities.[[32]](#footnote-31) However, since China’s current cross-border bankruptcy legislation only has the principle provisions of Article 5 of the “Corporate Bankruptcy Law”, the cross-border bankruptcy issue under the VIE framework poses a challenge to China's cross-border bankruptcy recognition and relief system. The specific performance is in the following aspects:

(1) The issue of reciprocal recognition

As mentioned above, when China has not yet participated in any cross-border insolvency treaty, reciprocity has become the main basis for Chinese courts to recognize foreign insolvency proceedings. Considering that China and the offshore jurisdictions have not conducted cross-border insolvency cooperation on the basis of reciprocity, if an offshore offshore company enters bankruptcy proceedings in an offshore jurisdiction, even if it has a large amount of assets in China, it will be difficult for the Chinese court to obtain recognition and relief.

(2) The issue of public policy reservation

Public policy review is a special issue facing cross-border bankruptcy under the VIE framework. Since the fundamental purpose of constructing the VIE structure is to circumvent China's restrictions on foreign investors' access to special industries, the related national policies involve foreign mergers and acquisitions, foreign exchange control, and overseas listing supervision. And in some areas, China's administrative and judicial departments have given a negative evaluation of the VIE structure, such as telecommunications. Therefore, John M. Marsden and Sally Mui believe that it is difficult to predict whether Chinese courts will refuse to recognize offshore bankruptcy proceedings in foreign companies on the grounds of public policy exceptions when facing applications for bankruptcy protection under VIE And relief.[[33]](#footnote-32)

(3) Requirements for protecting the legitimate rights and interests of domestic creditors

In the VIE structure, the actual controller of the VIE company in the domain is the same as the controller of the VIE financing entity outside the domain. Once the entity in the VIE structure has a bankruptcy crisis, it may lead to the problem of unclear definition of creditors. When the in-domain VIE company goes bankrupt, according to the provisions of the domestic insolvency law, the actual controller of the in-domain VIE company, that is, the shareholders, generally cannot participate as a creditor in the final disposal and settlement of the debtor’s bankruptcy property. It is very likely to participate in the distribution and settlement of the bankruptcy property of the VIE company in the domain as a creditor through indirect means. Therefore, how to define “creditors in the territory of the People’s Republic of China” as stipulated in Article 5 of the Corporate Bankruptcy Law becomes particularly important.

**2.5.3 Hong Kong’s judicial status in offshore company cross-border bankruptcy cases**

Judging from the current judicial practice of cross-border bankruptcy, the Hong Kong courts have jurisdiction over several cross-border bankruptcy cases involving offshore companies. As mentioned above, these offshore companies are mostly registered in Cayman and other places, listed in Hong Kong or engaged in business activities, and have assets in mainland China. Specific cases include “China Medical Technology Co., Ltd. Bankruptcy Case” (*in re* China Medical Technologies Ltd., [2014] 2 HKCU 900), “BJB Career Education Co., Ltd. Bankruptcy Case” (*in re* BJB Career Education Co Ltd., [2017] 1 HKLRD 113), “Winsway Bankruptcy Case” (*in re* Winsway Enterprises Holdings Ltd., [2017] 1 HKLRD 1), etc. Among them, the Hong Kong courts determined that certain offshore companies’ bankruptcy proceedings in Hong Kong were the main bankruptcy proceedings, and requested recognition and relief from other jurisdictions. However, cross-border bankruptcy cooperation between mainland China and Hong Kong has been affected by many factors such as differences in cross-strait bankruptcy legislation, and has never made breakthrough progress. In the above-mentioned case of Beitai Automotive Industry Holdings Co., Ltd. applying to the Beijing High Court in 2011 for recognition of the winding-up order made by the Hong Kong High Court, the approval of the Supreme Court has exacerbated the difficulty of conducting cross-border bankruptcy cooperation between the mainland and Hong Kong.

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**3. Domestic research situation**

**3.1 Sorting out the overall domestic research situation**

**3.1.1 Domestic early cross-border bankruptcy research**

The domestic academic circles have started research on the field of cross-border insolvency late, and the data are relatively limited. The research on the extraterritorial effectiveness of cross-border insolvency can be traced back to 1985, when Chen Guoliang, then president of the Taiwan High Court, clearly stated that cross-border insolvency should follow the universalist concept and purpose, that is, the equality of creditors, the unification of the debtor’s property, and the effect of the debtor’s inability to pay should be universal.[[34]](#footnote-33)After 1995, scholars represented by Shi Jingxia and Cheng Qingbo published numerous papers in the field of cross-border bankruptcy. Among them, Professor Shi Jingxia conducted an in-depth discussion on the basic issues in the field of cross-border insolvency from the two dimensions of procedure and entity. After 2000, young scholars such as Zhang Ling and Wang Xiaoqiong conducted in-depth research on the trend of cross-border bankruptcy international cooperation, the mode of international cooperation, and judicial conflicts in cooperation.

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**3.1.2 The main directions and issues of the current cross-border bankruptcy research in China**

After 2008, due to the continuous impact of the global financial crisis, successive large international multinational companies went bankrupt, which triggered a new round of research on cross-border bankruptcy issues in domestic academic circles. During this period, domestic scholars also discussed the specific issues of cross-border bankruptcy more diversely.

(1) Analysis of the cross-border bankruptcy rules in Europe and the United States

Scholars such as Zhang Ling, Xie Zhengshan and Chen Xiahong conducted a comparative study on the cross-border bankruptcy mechanism between the United States and the European Union. Among them, Zhang Ling and Xie Zhengshan focused on the application of the main interest center rules in the cross-border insolvency framework of the United States and the European Union. Under the framework of Chapter 15, the main interest center rules are closely related to the nature of foreign bankruptcy proceedings; under the EU cross-border insolvency framework, the main interest center rules are the key to confirm the jurisdiction of the main proceeding.[[35]](#footnote-34) Chen Xiahong is mainly concerned with the reform and development of EU cross-border bankruptcy rules. He believes that compared with the EU Cross-Border Bankruptcy Regulation (No. 1346/2000), the EU Cross-Border Bankruptcy Regulation (No. 2015/848) has many innovations, such as the expansion of the scope of application, multi-dimensional cross-border insolvency cooperation, cross-border insolvency regulations of enterprise groups, and the establishment of a cross-border insolvency registration system. Chen Xiahong expects that the European Court will continue to play an active role in the practice of cross-border bankruptcy. [[36]](#footnote-35)

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(2) Reform and improvement of China’s cross-border bankruptcy legislation

On the basis of comparative studies, Gu Xiaodan, Liu Minmin, Yang Bangtao, Chen Sheng and other scholars and practitioners began to reflect on the problems and reform directions of China's current cross-border bankruptcy legislation. Gu Xiaodan emphasized that different recognition and remedy standards should be designed for different types of foreign bankruptcy rulings. For cross-border insolvency inter-regional cooperation between Mainland China and Hong Kong, Gu Xiaodan believes that the mandatory recognition mechanism within the Commonwealth countries should be used.[[37]](#footnote-36)On the issue of cross-border bankruptcy between mainland China and Hong Kong, Hu Jian paid more attention to the legal status and authority requirements of the Hong Kong provisional liquidator in mainland China, and suggested that the mainland court should refer to the “Law of the People’s Republic of China on Certified Public Accountants”and the “Lawyers Law” to restrict the authority of Hong Kong’s temporary liquidators.[[38]](#footnote-37) Regarding how to perfect the existing cross-border insolvency legislation in China, Liu Minmin emphasized that the distribution of jurisdiction is the primary issue that needs to be resolved in cross-border insolvency. She believes that the general provisions on bankruptcy jurisdiction in Article 3 of the Enterprise Bankruptcy Law can no longer satisfy China ’s actual needs of international cross-border insolvency cooperation, and it is recommended to refer to the international community’s advanced experience in cross-border insolvency jurisdiction allocation legislation to reconstruct China’s cross-border insolvency jurisdiction allocation system from the aspects of legislative system, insolvency model, jurisdiction standards .[[39]](#footnote-38)

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(3) Cross-cutting issues in the field of cross-border insolvency

As the factors involved in cross-border bankruptcy cases become more complex, some cross-border bankruptcy-related issues have gradually attracted the attention of academic and practical circles.

Scholars and lawyers such as Wang Weiguo, Wu Shengshun, Liu Jingtao discussed cross-border bankruptcy issues and the cross-border bankruptcy and commercial arbitration issues. Based on the case analysis of typical maritime cross-border bankruptcy cases, Wang Weiguo believes that the core of solving the sea-related cross-border insolvency problem is to balance the conflict between bankruptcy and maritime affairs. To be precise, it is to balance the rank conflict between the litigation proceedings against the object and the general bankruptcy proceedings. At the same time, he also gave a brief introduction to the recent work of the International Maritime Commission (CMI), and raised the current issues that the International Maritime Commission is eagerly concerned about: the interaction between maritime law and insolvency law and the relevant objects of the Model Law potential needs for revision of litigation issues; The determination of the debtor’s main interest center shall be based on the date of submission of the main bankruptcy proceedings or the date of the subsidiary bankruptcy proceedings; Whether the system of mutual courtesy is a way to coordinate competition and conflict between insolvency proceedings and maritime proceedings; Whether it is necessary to further unify and coordinate the convention in this field.[[40]](#footnote-39) Wu Shengshun clearly pointed out that bankruptcy and maritime procedures have conflicts in the four aspects of case jurisdiction, trial, preservation and enforcement, and liquidation. He believes that the independence of the bankruptcy legal system and the maritime and maritime legal system is obviously not suitable for social and economic development. It is necessary to sort out and categorize the conflicts between them. Wu Shengshun believes that the top priority is to formulate judicial interpretations or guidance in a timely manner within the existing legal framework to reduce conflicts and standardize practices. At the same time, Wu Shengshun proposed the “Interpretation on the Interconnection of Bankruptcy Cases and Maritime Cases and the Application of Law (Recommendation Draft)”, which responded to the conflicts and convergence of the four aspects of bankruptcy and maritime procedures.[[41]](#footnote-40)

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(4) Recognition and relief of cross-border bankruptcy of offshore companies

Scholars represented by Zhang Haizheng analyzed cross-border insolvency issues in offshore jurisdictions. Zhang Haizheng believed that the VIE variable interest entity structure presented new challenges to China’s cross-border insolvency system and judicial practice, and clearly pointed out that the existence of issues such as the principle of reciprocity, the principle of reservation of public order and the protection of the legal rights and interests of creditors in the domain would have an important impact on the recognition and relief of bankruptcy decisions. [[42]](#footnote-41)

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**3.1.3 Research on “One Belt, One Road” Dispute Settlement Mechanism**

Around 2016, domestic scholars began to pay close attention to the research on the “Belt and Road” dispute settlement mechanism, and academic papers with the theme of “promoting international judicial cooperation in the field of civil and commercial affairs” gradually increased. As an important part of international civil and commercial judicial cooperation, academic discussions around the “Belt and Road”dispute settlement mechanism have enlightening implications for the settlement of cross-border insolvency issues.

Lian Junya used time as a clue to discuss the application of the principle of reciprocity in the recognition and enforcement of foreign court decisions by Chinese courts.[[43]](#footnote-42) Lian Junya analyzed that under the "Belt and Road" initiative, Chinese courts will continue to insist on mutual benefits of facts, but it will be possible for countries along the "Belt and Road" to adopt relatively lax legal reciprocity. At the same time, Lian Junya combed the cases in which the Chinese court refused to recognize and enforce the judgments of the courts of Japan, Germany, the United Kingdom, Australia, and South Korea on the basis of the factual reciprocity before the "Belt and Road" initiative was proposed, and after it was proposed with the "Belt and Road" initiative, the judgments of the Chinese courts have been recognized and executed by the courts of Singapore and Israel for comparison. Lian Junya emphasizes the problems of the principle of reciprocity in the judicial practice of Chinese courts: misunderstanding of the legislative objectives of the principle of reciprocity; the sharing of burden of proof of reciprocity relations is unclear; the review of reciprocity relations is too strict and the standards are vague; the scope of reciprocity exceptions is too narrow.

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**3.2 Research on domestic doctoral dissertations**

Since 2010, there have been several doctoral dissertations on cross-border insolvency issues, covering cross-border insolvency jurisdiction, conflict law research, extraterritorial validity, protection of bankruptcy creditors’interests, and recognition and enforcement of cross-border insolvency judgments. These new achievements focus on China's current judicial practice involving cross-border insolvency issues, and combined with the provisions of Article 5 of China's Corporate Bankruptcy Law to comment on and discuss the specific details involved in the case, which has certain reference significance.

Zheng Weiwei, Yang Li and Yang Yue successively wrote doctoral dissertations on the subject of cross-border bankruptcy legal issues. Both Zheng Weiwei and Yang Li discussed “Recognition and Enforcement of Foreign Bankruptcy Judgments in China” as a chapter in their doctoral thesis. Among them, Zheng Weiwei believes that the recognition and enforcement of foreign bankruptcy judgments are not only to respect for foreign judicial sovereignty, but more importantly, to respect and protect the interests of creditors of various countries, in order to better promote international civil and commercial exchanges. Therefore, Zheng Weiwei believes that the establishment of a new mechanism for recognition and enforcement of foreign bankruptcy judgments should establish a value orientation of convenience, transparency, fairness and efficiency. Specifically, the new mechanism should minimize subjective considerations of comity and reciprocity; minimize restrictions on the recognition and enforcement of foreign bankruptcy judgments; and try to avoid adverse factors caused by multiple foreign bankruptcy proceedings.[[44]](#footnote-43)

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**4. Summary**

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**5. References**

**5.1 Chinese works**

【1】付翠英：《破产法比较研究》，中国人民公安大学出版社2004年版。

【2】高晓力：《国际私法上公共政策的运用》，中国民主法制出版社2008年版。

……

【30】张玲：《跨境破产的国际合作－国际私法的角度》，法律出版社2007版。

**5.2 Chinese papers**

【31】陈乾：《协议控制模式中的跨境破产问题解析》，载《牡丹江大学学报》2015年第9期。

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【80】朱伟东：《试论我国承认与执行外国判决的反向互惠制度的构建》，载《河北法学》2017年第4期。

**5.3 Chinese thesis**

【81】沈乐平：《规范企业集团相关法律问题研究》，暨南大学2002年博士论文。

……

【100】郑维炜：《破产的国际私法问题研究》，吉林大学2010年博士论文。

**5.4 English works**

【101】IAN F. FLETCHER, INSOLVENCY IN PRIVATE INTERNATIONAL LAW (2005).

……

【120】MUIR WATT AND FERNANDEZ ARROYO, PRIVATE INTERNATIONAL LAW AND GLOBAL GOVERNANCE (2014).

**5.5 English papers**

【121】Tracy Albin, *Protecting Australian Creditors: An Analysis of KAPILA; RE EDELSTEN*, 19 INT’L TRADE & BUS. L. REV. 333 (2016).

……

【180】Paul H Zumbro, *Cross-border Insolvencies and International Protocols-an Imperfect but Effective Tool*, 11 BUISNESS LAW INTERNATIONAL 157 (2010).

**6. Appendix**

【1】Hon. Louise De Adler, *Managing the Chapter 15 Cross-Border Insolvency Case*, Federal Judicial Center Report (2014).

【2】Global Risks Report 2017, <http://www3.weforum.org/docs/GRR17_Report_web.pdf> (last visited Oct 11, 2017).

【3】Global Competitiveness Report 2017-2018, <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf> (last visited Oct 11, 2017).

1. This example is excerpted from the opening report of the doctoral thesis of the same name by Huang Yuanyuan, a doctoral student in international law at the School of Law, University of International Business and Economics. The original text contains more than 50,000 words, including more than 40,000 words of literature review, about 100 footnotes, and more than 200 references. This example is only for the use of the college’s teaching management. Please consciously respect the intellectual property rights of others. [↑](#footnote-ref-0)
2. J. M. Farley, *A Judicial Perspective on Cross-Border Insolvencies and Restructuring*, 24 INTERNATIONAL BUSINESS LAWYER 220, 220-222(1996). [↑](#footnote-ref-1)
3. Sefa M. Franken, *Cross-Border Insolvency Law: A Comparative Institutional Analysis*, 34 OXFORD J LEGAL STUDIES 97, 116-120(2014). [↑](#footnote-ref-2)
4. Michael J. Whincop, *The Recognition Scene: Game Theoretical Issues in the Recognition of Foreign Judgments*, 22 MELBOURNE UNIVERSITY LAW REVIEW 45, 45-48(1999). [↑](#footnote-ref-3)
5. Jesse Hallock, *Time Out: The Problematic Temporality of COMI Analysis in Chapter 15 Bankruptcy Cases in the Second Circuit*, 3 COLUM. BUS. L. REV 1074, 1075-1118(2015). [↑](#footnote-ref-4)
6. Look Chan Ho, *Proving COMI: Seeking Recognition Under Chapter 15 of the US Bankruptcy Code*, SSRN (Oct. 17, 2017), <http://ssrn.com/abstract=1014452>. [↑](#footnote-ref-5)
7. Tracy Albin, *Protecting Australian Creditors: An Analysis of KAPILA; RE EDELSTEN*, 19 INT’L TRADE & BUS. L. REV. 333, 349 (2016). [↑](#footnote-ref-6)
8. 乔雄兵：《外国法院判决承认与执行中的正当程序考量》，载《武汉大学学报（哲学社会科学版）》2016年第5期，第98页。 [↑](#footnote-ref-7)
9. Audrey Feldman, *Rethinking Review of Foreign Court Jurisdiction in Light of the Hague Judgments Negotiations*, 89 NYU LAW REVIEW 1291, 2241-2227(2014). [↑](#footnote-ref-8)
10. UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, UNCITRAL (Oct.21,2017), <https://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf>. [↑](#footnote-ref-9)
11. 杜涛：《互惠原则与外国法院判决的承认与执行》，载《环球法律评论》2007年第1期，第110页。 [↑](#footnote-ref-10)
12. 连俊雅：《“一带一路”战略下互惠原则在承认和执行外国法院判决中的适用现状、困境与变革》，载《河南财经政法大学学报》2016年第6期，第163页。 [↑](#footnote-ref-11)
13. Keith D. Yamauchi, *Should Reciprocity Be a Part of the UNCITRAL Model Cross-Border Insolvency Law*, 16 INT.INSOLV.REV 145, 146-149(2007). [↑](#footnote-ref-12)
14. Beligh Eibalti, *Reciprocity and the Recognition and Enforcement of Foreign Judgments: a lot of bark but not too much bite*, 13 JOURNAL OF PRIVATE INTERNATIONAL LAW 184, 200(2017). [↑](#footnote-ref-13)
15. *In re* Qimonda AG, 433 B.R.538(Bankr. E.D.Va.2011). [↑](#footnote-ref-14)
16. *In re* Ernst & Young, Inc., 383 B.R. 773,775(Bankr.D.Col. 2008). [↑](#footnote-ref-15)
17. *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, UNCITRAL (Oct.24,2017), <http://www.uncitral.org/pdf/english/texts.pdf>. [↑](#footnote-ref-16)
18. 解正山：《跨国破产立法及适用研究—美国及欧洲的视角》，法律出版社2011年版，第67页。 [↑](#footnote-ref-17)
19. Margreet B. de Boer and Bob Wessels, *The Dominance under the European Insolvency Regulation*, *in* INTERNATIONAL INSOLVENCY LAW: THEMES and PERSPECTIVES (Paul J. Omar ed., 2008). [↑](#footnote-ref-18)
20. UNCITRAL, *Status of UNCITRAL Model Law on Cross-Border Insolvency(1997)*, (Jan.10,2018), <http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html>. [↑](#footnote-ref-19)
21. Leah Barteld, *Cross-Border Bankruptcy and the Cooperative Bankruptcy*, 9 BRIGHAM YOUNG UNIVERSITY INT’L LAW & MANAGEMENT REVIEW 27, 33-39(2012). [↑](#footnote-ref-20)
22. Mark G. Douglas and Nicholas C. Kamphaus, *Cross-Border Bankruptcy Battleground: The Importance of Comity (Part II)*, JONESDAY (Oct.26,2017), <http://www.jonesday.com/cross-border-bankruptcy-battleground-the-importance-of-comity-part-ii-05-31-2010/>. [↑](#footnote-ref-21)
23. 沈乐平：《规范企业集团相关法律问题研究》，暨南大学2002年博士论文，第15-16页。 [↑](#footnote-ref-22)
24. Nora Wouters and Alla Raykin, *Corporate Group Cross-Border Insolvencies Between the United States & European Union: Legal & Economic Developments*, 29 EMORY BANKRUPTCY DEVELOPMENTS JOURNAL 387, 396(2012). [↑](#footnote-ref-23)
25. Irit Mevorach, *Cross-Border Insolvency of Enterprise Group: The Choice of Law Challenge*, 9 BROOK. J. CORP. FIN. & COM. L. 107, 110(2014). [↑](#footnote-ref-24)
26. Helen Anderson, *Challenging the Limited Liability of Parent Companies: A Reform Agenda for Piercing the Corporate Veil*, 22 AUSTRALIAN ACCOUNTING REV. 129, 134(2012). [↑](#footnote-ref-25)
27. Jay Lawrence Westbrook, *An Empirical Study of the Implementation in the United States of the Model Law on Cross Border Insolvency*, 87 AM. BANKR. L. J. 247, 265-268(2013). [↑](#footnote-ref-26)
28. 联合国贸易法委员会第五工作组文件网：http://www.uncitral.org/uncitral/zh/commission/working\_groups/5Insolvency.html，2017年10月28日访问。 [↑](#footnote-ref-27)
29. Paul H Zumbro, *Cross-border Insolvencies and International Protocols-an Imperfect but Effective Tool*, 11 BUISNESS LAW INTERNATIONAL 157, 160(2010). [↑](#footnote-ref-28)
30. Fabian Andreas Van de Ven, *The Cross-Border Insolvency Protocol: What is it and what is in it*, ACADEMIA (Oct.29,2017), <https://www.academia.edu/15056737>. [↑](#footnote-ref-29)
31. David Lord, *Cross-Border Insolvency Protocols: Do They Work*, SQUAREEYE (Oct.29,2017), <http://clients.squareeye.net/uploads/3sb/events/300904_lord.pdf>. [↑](#footnote-ref-30)
32. 张海征：《论VIE架构对中国跨境破产制度提出的特殊问题》，载《首都师范大学学报（社会科学版）》2016年第3期，第58页。 [↑](#footnote-ref-31)
33. John M. Marsden and Sally Mui, *Local Concerns Outweigh Offshore Creditors’ Interests in Chinese Restructurings*, MAYER BROWN JSM (Oct.31,2017), <https://www.mayerbrown.com/local-concerns-outweigh-offshore-creditors-interests-in-chinese-restructurings-09-16-2014/>. [↑](#footnote-ref-32)
34. 陈国栋：《论破产之域外效力》，载杨建华主编：《强制执行法、破产法论文选辑》，台湾五南图书出版公司1985年版，第409页。 [↑](#footnote-ref-33)
35. 张玲：《欧盟跨界破产管辖制度的创新与发展——“主要利益中心”标准在欧盟适用的判例研究》，载《政法论坛》2009年第2期，第112-119页；解正山：《论COMI在跨国破产国际管辖中的适用——欧盟及美国的视角》，载《环球法律评论》2009年第6期，第140页。 [↑](#footnote-ref-34)
36. 陈夏红：《欧盟新跨界破产体系的守成与创新》，载《中国政法大学学报》2016年第4期，第70页。 [↑](#footnote-ref-35)
37. 辜晓丹：《我国新破产法中的跨界破产制度分析》，载《今日科苑》2010年第6期，第108-109页。 [↑](#footnote-ref-36)
38. 胡健：《跨境破产：内地与香港不得不面对的难题》，载《公民导刊》2009年第11期，第18-19页。 [↑](#footnote-ref-37)
39. 刘敏敏：《中国跨界破产管辖权分配制度重构》，载《大庆社会科学》2016年第2期，第39页。 [↑](#footnote-ref-38)
40. 王纬国：《当前形势下跨界海事破产的若干突出问题研究》，载《中国海商法研究》2016年第4期，第113-116页。 [↑](#footnote-ref-39)
41. 吴胜顺：《冲突与协调：当海事诉讼与破产程序并行》，载《中国海商法研究》2017年第2期，第91-93页。 [↑](#footnote-ref-40)
42. 张海征：《论VIE架构对中国跨境破产制度提出的特殊问题》，载《首都师范大学学报（社会科学版）》2016年第3期，第63-66页。 [↑](#footnote-ref-41)
43. 连俊雅：《“一带一路”战略下互惠原则在承认和执行外国法院判决中的适用现状、困境与变革》，载《河南财经政法大学学报》2016年第6期，第155-165页。 [↑](#footnote-ref-42)
44. 郑维炜：《破产的国际私法问题研究》，吉林大学2010年博士论文，第84-86页。 [↑](#footnote-ref-43)