SQUIRE PATTON BOGGS

Local Connections. Global Influence.

Insolvency Laws:

How Countries Have Revamped Their Insolvency and Restructuring Laws

January 2022

China

Home

While there were no changes to the insolvency laws in the People's Republic of China (PRC) in response to the COVID-19 pandemic, numerous government authorities in China adopted measures and policies to aid businesses in their efforts to reduce operational costs and survive the economic downturn.

In addition, some PRC courts issued guidance on how bankruptcy cases initiated in response to COVID-19 should be handled. On 15 May 2020 the Supreme People's Court consolidated this guidance into: Guiding Opinions (II) on the Proper Handling of Civil Cases in response to COVID-19 in accordance with Laws, which enforced this guidance across the whole nation.

Governmental Measures and Policies	
Bank and Insurance Regulatory Commission	Banks and insurance companies are required to enhance their support for businesses in the areas impacted by the pandemic, including exempting or reducing service charges and commissions, simplifying processes and opening shortcut channels for credit. Financial institutions are also required to increase credit support in the areas of pandemic prevention and control and are prohibited from withdrawing, cutting off or suppressing loans blindly.
State Administration of Taxation and Ministry of Finance	A series of tax incentives were granted to businesses affected by the pandemic that exempted from, reduce or defer tax payments. Such tax incentives are valid until the end of 2021 but are subject to the government's further determination whether to further extend the incentives or not.

Courts' Guidance for Bankruptcy Cases	
Heightened Reluctance to Initiate Bankruptcy Proceedings	Banks and insurance companies are required to enhance their support for businesses in the areas impacted by the pandemic, including exempting or reducing service charges and commissions, simplifying processes and opening shortcut channels for credit. Financial institutions are also required to increase credit support in the areas of pandemic prevention and control and are prohibited from withdrawing, cutting off or suppressing loans blindly. In cases where a creditor initiates bankruptcy proceedings, courts shall actively guide negotiation between creditors and debtors to eliminate the need for bankruptcy proceedings by means of installment payments, extensions of the performance period for liabilities and changes of contract price, etc. When the courts are determining the eligibility of a debtor for bankruptcy acceptance, it will consider if the pandemic was the root cause of a debtors financial distress. The factors the court will take into account are: i. the ability of the debtor to continuously operate ii. the viability of the industry in which it operates as a whole (among other things) The purpose of this is to avoid bankruptcy proceedings for those debtors that could survive were it not for the impact of the pandemic.

China

Support for Businesses Engaged in the Manufacture and Sale of Materials for Pandemic Prevention and Control	According to Article 26 of the PRC Bankruptcy Law, before the first creditors' meeting, a bankruptcy administrator may decide to continue or halt the business of the debtor, subject to the court's approval. In such circumstances, courts are encouraging those debtors engaged in the manufacture, sale or logistics of materials that help control the pandemic to continue their businesses, and the courts seem inclined to approve such business continuance when decided by bankruptcy administrators.
Encouragement of Conversion of Bankruptcy Liquidation to Restructuring/ Reorganisation or Settlement	According to Articles 70 and 95 of the PRC Bankruptcy Law, after a court accepts a bankruptcy application but before the court declares the bankruptcy of the debtor, the debtor may apply to the court to convert the bankruptcy liquidation process to a restructuring or settlement process. In the present circumstances, courts are encouraging such conversions to help the debtors survive. This is particularly true for debtors engaged in the manufacture, sale or logistics of materials that help control the pandemic. In case of a bankruptcy restructuring/reorganisation, if no new investors can be found, due diligence was unable to be performed and negotiation could not be conducted due to the pandemic. The courts can however, extend the timeframe for a restructuring/reorganisation proposal by up to six months, on the application of a debtor or the bankruptcy administrator.
Procedural Updates	During the pandemic prevention and control period, courts are prioritising an online process for handling bankruptcy matters, such as hearings, creditors' rights declaration and reviews, bankrupt business property investigations and creditors' meetings. Courts are also permitting time extensions for relevant procedures in case of any delay caused by the pandemic to protect the interests of the parties involved, especially the interests of the creditors.

SQUIRE
PATTON BOGGS

squirepattonboggs.com