

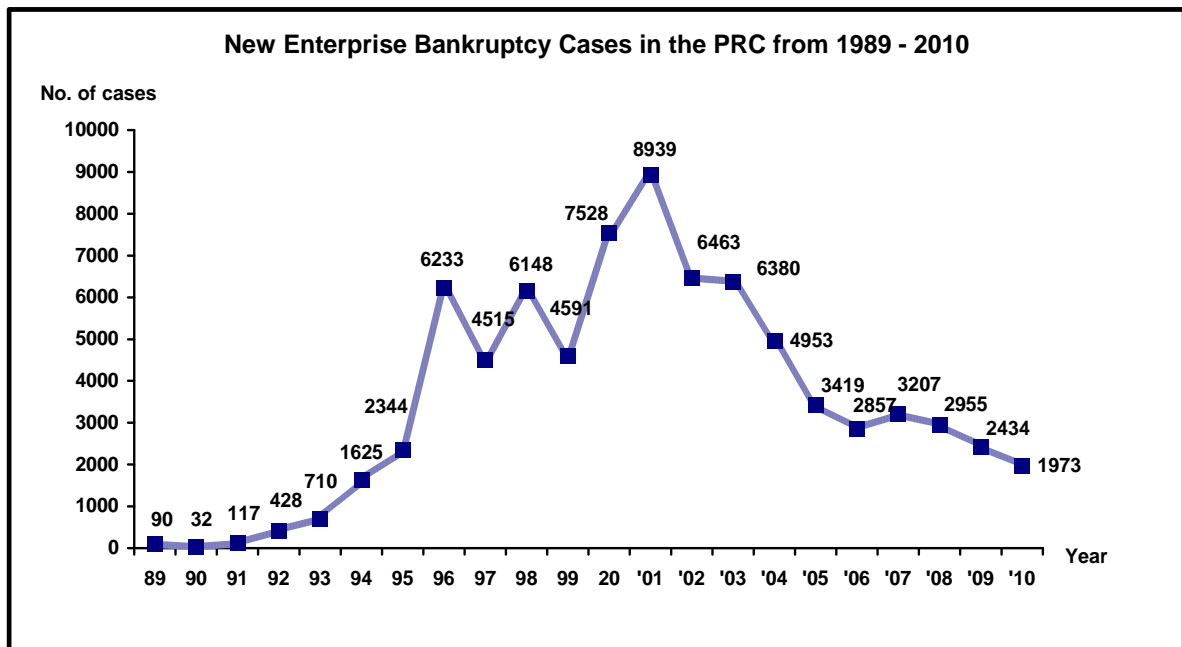
UPDATE ON REORGANISATION IN PRACTICE UNDER THE NEW PRC ENTERPRISE BANKRUPTCY LAW

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In INSOL International Technical Series Issue No. 9 (September 2009), Mr. Tang explained, inter alia, the mechanism of reorganisation of PRC A-share listed companies. Effectively, they take on and follow the “back-door” listing model by sale and transfer of the “listed shell” to new investors (white knights), as was commonly used for companies listed in Hong Kong during the Asian Financial Crisis in the late 1990s. Reference should be made to that paper by way of general background.

Number of Cases to Date

The number of new reorganisation and bankruptcy cases since the New (2006) Enterprise Bankruptcy Law (“New Law”) became effective in June 2007 has been appallingly low (see chart below).



Note: the 2007 figure includes cases under the 1986 Law; all cases under 2006 Law from 2008
Source: Beijing Siyuan Consultants

The number of cases in 2010 (1,973) has returned almost to the 1994 (1,625) level¹. What is even more disconcerting to note is the fact that for each of the companies that made to these statistics, there are at least another 100 or so insolvent companies that were closed by out-of-court government “administrative” measures, or that simply “vaporised” and disappeared without trace. These “out-of-court” cases are often informal and unstructured, if not ad-hoc and haphazard arrangements, with local government (and often with assistance of the local courts) taking a very active role and exerting massive influence in pulling a “deal” together to salvage the operations (or a part thereof) and to keep the employees, very much like the practice even before the “old” law was promulgated in 1986 and became effective in 1988.

A-share Listed Companies

Most cases that went through the courts² have been bankruptcy cases with few assets remaining and with operations closed for a long time. The courts are generally not taking in cases with current on-going operations³.

¹ Ironically, the process of review and amendment of the Enterprise Bankruptcy Law commenced in 1994!

² All insolvent bankruptcy cases have to be dealt with by and through the courts; there are no “voluntary” insolvent bankruptcy cases.

³ There have been a few major cases mostly involving sino-foreign joint ventures or “WFOEs” (wholly foreign-owned enterprises), e.g. the Ya Hsin Group in Dongguan.

The majority of the successful reorganisation cases remain those involving A-share “back-door” listing ones. Up to and until October 2010, there were 30 such cases, as summarised below:

Summary of cases for reorganisation of ST listed companies on the Shanghai Stock Exchange and the Shenzhen Stock Exchange

For the period from 1 June 2007 to 31 October 2010

No.	Stock Code	Company Name (before Reorganisation)	Application of Reorganisation	Approval for Reorganisation	Approval of Reorganisation Plan	Completion of Execution of Reorganisation Plan	Court location and Jurisdiction	Administrator	Financial position prior to Reorganisation ^{N3} (in M' RMB)		
									Total Assets	Total Liabilities	Net Assets / (Liabilities)
1	600722	Cang Zhou Chemical Industry Co., Ltd	12 Jun 2007	16 Nov 2007	24 Dec 2007	1 Dec 2010	HeBei Cangzhou Intermediate People's Court	Liquidation Committee	3,879	4,592	(713)
2	000631	Lan Bao Technology Information Co Ltd	14 Jun 2007	16 Nov 2007	21 Dec 2007	21 Jan 2008	Jilin Changchun Intermediate People's Court	Liquidation Committee ^{N2} (12 members)	517	1,142	(625)
3	000670	Tianfa Petroleum Co Ltd	1 Jul 2007	13 Aug 2007	11 Oct 2007	15 Dec 2007	Hubei Jingzhou Intermediate People's Court	Liquidation Committee	1,412	1,228	184
4	600703	Tianyi Science & Technology Co Ltd	1 Aug 2007	13 Aug 2007	10 Oct 2007	20 Nov 2007	Hubei Jingzhou Intermediate People's Court	Liquidation Committee	353	731	(378)
5	000925	Zhejiang Haina Science and Technology Co Ltd	13 Sept 2007	14 Sept 2007	20 Nov 2007	24 Dec 2007	Zhejiang Hangzhou Intermediate People's Court	Liquidation Committee	223	506	(283)
6	000688	Zarva Technology (Group) Co Ltd	6 Nov 2007	16 Nov 2007	24 Dec 2007	24 Mar 2008	Chongqing No. 3 Intermediate People's Court	Liquidation Committee	329	1,570	(1,241)
7	000561	Chang Ling (Group) Co. Ltd	22 Nov 2007	15 May 2008	6 Nov 2008	12 Oct 2009	Shanxi Baoji Intermediate People's Court	Liquidation Committee	620	1,307	(687)
8	000892	Stellar Megaunion Corporation	17 Dec 2007	11 Mar 2008	22 Apr 2008	31 Dec 2008	Chongqing No.3 Intermediate People's Court	Liquidation Committee	466	1,656	(1,190)
9	600155	Hebei Baoshuo Co Ltd	28 Dec 2007	3 Jan 2008	5 Feb 2008	outstanding (within 3 years from approval of reorganisation plan)	Hebei Baoding Intermediate People's Court	Liquidation Committee	2,287	3,836	(1,549)

10	600705	Beiya Industrial (Group) Co Ltd	28 Jan 2008	2 Mar 2008	24 Apr 2008	22 Oct 2010	Haerbin Intermediate People's Court	Liquidation Committee	1,176	967	209
11	600242	Guangdong Hualong Groups Co Limited	10 Mar 2008	12 Mar 2008	22 Apr 2008	30 Dec 2008	Guangdong Yangjiang Intermediate People's Court	Liquidation Committee	47	439	(392)
12	600556	Guangxi Beisheng Pharmace uthical Co., Ltd.	27 Nov 2008	27 Nov 2008	30 Dec 2008	28 Oct 2009	Guangxizhuan Beihai Intermediate People's Court	Liquidation Committee ^{N2} (13 members)	1,624	1,575	49
13	600094	Shanghai Worldbest Co. Ltd ^{N1}	27 Sept 2008	27 Sept 2008	13 Dec 2008	24 Apr 2009	Shanghai No.2 Intermediate People's Court	Liquidation Committee ^{N2} (6 members)	2,393	3,672	(1,279)
14	600180	Shandong Jiufa Edible Fungus Co. Ltd.	16 Sept 2008	28 Sept 2008	9 Dec 2008	31 May 2009	Shandong Yantai Intermediate People's Court	Liquidation Committee	2,097	1,801	296
15	000719	Jiaozuo Xin'an Science & Technology Co. Ltd	5 Nov 2008	6 Nov 2008	11 Dec 2008	11 Dec 2009	Henan Jiaozuo Intermediate People's Court	Liquidation Committee	371	557	(186)
16	200160	Chengde Dixian Textile Co. Ltd ^{N1}	5 Nov 2008	10 Nov 2008	30 Dec 2008	27 Apr 2009	Hebei Chengde Intermediate People's Court	Liquidation Committee	2,182	1,527	655
17	600728	Suntek Technology Co Ltd	12 Mar 2009	17 Mar 2009	3 Nov 2009	3 Sept 2010	Guangzhou Panyu People's Court	Liquidation Committee	250	401	(151)
18	000498	Dandong Chemical Fibre Co Ltd	12 May 2009	13 May 2009	27 Nov 2009	20 Apr 2010	Liaoning Dongdan Intermediate People's Court	Liquidation Committee ^{N2} (19 members)	741	1,400	(659)
19	600217	Shaanxi Qinling Cement (Group) Co. Ltd	23 Aug 2009	23 Aug 2009	14 Dec 2009	22 Oct 2010	Shanxi Tongchuan Intermediate People's Court	Liquidation Committee ^{N2} (24 members)	1,708	1,608	100
20	600057	Amoi Electronics Co., Ltd.	28 Sept 2009	15 Sept 2009	23 Nov 2009	7 Apr 2010	Fujian Xiamen Intermediate People's Court	Liquidation Committee ^{N2} (10 members)	1,588	2,643	(1,055)
21	000587	Guangming Group Furniture Co Ltd	9 Nov 2009	9 Nov 2009	5 Aug 2010	outstanding (within 6 months from approval of reorganisati on plan)	Heilongjiang Yichun Intermediate People's Court	Liquidation Committee ^{N2} (11 members)	338	599	(261)

22	000034	Shenzhen Shenxin Taifeng Group Co Ltd	10 Nov 2009	20 Nov 2009	30 Apr 2010	3 Sept 2010	Guangdong Shenzhen Intermediate People's Court	Law firm	255	700	(445)
23	000035	China Kejian Co Ltd	15 Jan 2010	application declined ^{N4}	-	-	Guangdong Shenzhen Intermediate People's Court	-	549	1,798	(1,249)
24	000557	Guangxia (Yinchuan) Industry Co Ltd	18 Jan 2010	16 Sept 2010	outstanding	outstanding	Ningxiahuizu Yinchuan Intermediate People's Court	Liquidation Committee ^{N2} (7 members)	212	411	(199)
25	600699	Liaoyuan Deheng Co Ltd	26 Jan 2010	14 Apr 2010	11 Aug 2010	27 Oct 2010	Jilin Liaoyuan Intermediate People's Court	Liquidation Committee ^{N2} (16 members)	816	988	(172)
26	600678	Sichuan Golden Summit (Group) Joint Stock Co. Ltd	2 Feb 2010	outstanding ^{N5}	outstanding	outstanding	Sichuan Leshan Intermediate People's Court	outstanding	1,745	1,620	125
27	000818	Jin Hua Group Chlor-alkali Co. Ltd	19 Mar 2010	19 Mar 2010	30 Jul 2010	outstanding (within 2 years from approval of reorganisation plan)	Liaoning Huludao Intermediate People's Court	Liquidation Committee ^{N2} (22 members)	2,347	2,481	(134)
28	000030	Guangdong Sunrise Holdings Co Ltd ^{N1}	12 May 2009	6 May 2010	22 Oct 2010	outstanding (within 3 months from approval of reorganisation plan)	Guangdong Shenzhen Intermediate People's Court	Bankruptcy professional	42	1,757	(1,715)
29	000787	Powerise Information Technology Co Ltd	Apr 2009	23 Aug 2010	outstanding	outstanding	Guangdong Shenzhen Intermediate People's Court	Law firm	90	66	24
30	600757	Shanghai Worldbest Industry Development Co Ltd	13 Jul 2010	30 Aug 2010	29 Nov 2010	outstanding (within 6 months from approval of reorganisation plan)	Shanghai No.2 Intermediate People's Court	Liquidation Committee ^{N2} (6 members)	1,068	2,307	(1,239)

Notes:

N1: Company issuing both A-shares and B-shares.

N2: Liquidation committee comprising legal and / or financial professionals, with known number of members for some committees shown for information.

N3: Financial position extracted from the respective annual reports for the year prior to the commencement of reorganisation.

N4: The applicant (a creditor) was unable to provide the requisite information to the court within the prescribed time. Application for reorganisation was declined on 20 Sept 2010. Submission of re-application by the applicant was made on 31 Dec 2010.

N5: Outcome for the application for reorganisation made in February 2010 not yet known. The company was subject to "**ST" special treatment with risk of being delisted some time in 2011.

Effectively, almost all of these A-share reorganisation cases were with various degrees of “pre-packs” awaiting compliance with creditors’ formal approval and/or the Court’s red seal of endorsement. Again, almost all of these cases involve the appointment by the Court of a “liquidation committee” to take up the role of the Administrator⁴. A detailed case study involving one of these reorganisation cases (#13 Shanghai Worldbest Company Limited) has been written jointly by Mr. Tang together with one of the presiding judges for the reorganisation, Judge Fu Wang of the Shanghai Second Intermediate People’s Court and published as INSOL Case Study No. 5 in March 2011.

The Ya Hsin Reorganisation

The Ya Hsin Group was a major producer of electronic goods and related computer parts and components listed in Taiwan, with PRC on-shore factories in two major locations (Suzhou and Dongguan) owned by off-shore (BVI) intermediate holding companies. The PRC factories faced debts of approximately Rmb 5 billion and immediate cash flow and operating problems when their parent company in Taiwan was ordered to be put under Court supervision in Taiwan in mid-2007, following alleged misconduct of top management and with debts of approximately US\$1.5 billion. There were many thousands of local employees in each of the factory sites and the local governments soon began attempts to reorganise both operations through the courts in conjunction with the local and international banking creditors.

The results are as follows:-

The Ya Hsin Group Companies	Status of Reorganisation
1. Ya Hsin Electronic (Dongguan) Co., Ltd	Failed*
2. Ya Hsin Electronic Printed Circuit Board (Dongguan) Co., Ltd	Failed
3. Ya Bang Electronic (Dongguan) Co., Ltd	Failed*
4. Xing Fa Electronic (Dongguan) Co., Ltd	Failed
5. Ya Hsin Electronic (Suzhou) Co., Ltd	Success
6. Ya Hsin Printed Circuit Board (Suzhou) Co., Ltd	Success
* following unsuccessful 2nd attempt re-organisation	

The Dongguan operations failed to be reorganised after two attempts as the “white knights” either decided to pull out of the deal, or were unable to proceed to completion. They were then put under bankruptcy to be administered under the New Law.

The Suzhou operations, on the other hand, have been successfully reorganised and, indeed, its success has been hailed by the judiciary and others as one of the biggest successes of reorganisation of non A-share listed companies in the PRC under the New Law. Effectively all creditors get paid 100% of their debts, as follows:-

Type of Creditor	Key Repayment Terms/Percentage Recovery
Employees	100% settled before April 2009
Tax-related	100% settled before April 2009
Secured	To repay 100% by instalments during a 6-year period from 2009
Unsecured	For smaller claims below RMB80,000, 100% settled before June 2009; for claims over RMB80,000, to repay 100% by instalments during an 8-year period from 2009

Whilst it might sound somewhat strange to the international reorganisation community, one key factor for the success of the Suzhou reorganisation was the ability of both international and local banking creditors to persuade

⁴ Under the 2006 New Law, other than professional firms of lawyers, accountants or bankruptcy specialist firms, the former “liquidation committee” as constituted under the “old” law may also be appointed as Administrator.

the Suzhou court to appoint an administrator of their choice, as opposed to the court appointing one from amongst its locally approved “panel” of administrators⁵.

The Judicial Interpretation

The 1991 and 2002 Judicial Interpretation for the “old” law ceased to be effective when the New Law became effective in 2007. There has been a complete void in how the New Law is to be implemented. One fundamental issue being deliberated in the drafting of the interpretation for the New Law is the respective roles of the judiciary, the various government departments and the creditors (the banking creditors in particular) in the administration of a reorganisation / bankruptcy case.

It is expected that piece-meal interpretations from the Supreme People’s Court on the handling of applications and admissions of new cases will be announced some time in 2011, together or to be followed by the release of a draft “general” interpretation for targeted consultation purposes.

⁵ It just happened that the Suzhou had not yet formed its own panel when the case started.