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**A Balanced Way
for China's Inter-Regional Cross-
Border Insolvency Cooperation**

Xinyi Gong

**A Balanced Way for China's Inter-regional Cross-Border Insolvency
Cooperation**

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
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in 1983

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Prof. dr. R.D. Vriesendorp

To my parents

Acknowledgement

In this dissertation, parts of my research have been published in separate articles, which are referred to in the footnotes of the text. I also list them below:

- *When Hong Kong Becomes SAR, Is the Mainland Ready? – Problems of Judgments Recognition in Cross-border Insolvency Matters*, in: *International Insolvency Review*, Wiley-Blackwell, Vol. 20, Issue 1, 2011, pp. 56-73;
- *To Recognize or Not to Recognize? - Comparative Study of Lehman Brothers Cases in the Mainland China and Taiwan*, in: *International Corporate Rescue*, Chase Cambria, Vol 10, Issue 4, 2013, pp. 240 – 247;
- *A Middle Way – Tailoring the Model Law and the Regulation into China’s Context*, in: *Norton Journal of Bankruptcy Law and Practice*, October 2014, Vol.23, Issue 5, Article 9, p.691-738 (Westlaw citation: 23 No. 5 JBKRLP-NL Art. 9)
- *Can the Day Understand the Night? Brief Introduction into Problems of the Current Insolvency System in China*, available at <http://www.iiiglobal.org/node/1929>

All these aforementioned articles have been accepted for publication through peer review.

Since the comparative research in this dissertation related to China, the relevant legislative documents, cases and articles are originally written in Chinese. Some of them have been officially translated into English but most of them are only available in Chinese. Despite of official translation, those contents that have been translated by the author are marked with the indication “in Chinese”.

Please note that the subsequent parts, including Annexes, bibliography and etc. do not constitute the main text of the dissertation.

Everyday I'm learning.

PREFACE

While completing this dissertation, reforms on insolvency legislations are undergoing in both east and west. In China's inter-regional regime (consisting of the Mainland, Hong Kong, Macao and Taiwan), in July 2014, the Legislative Council of Hong Kong SAR released a consultation conclusions documents on legislative proposals concerning improvement of corporate insolvency law. The problems of cross-border insolvency, especially involving Mainland-related companies, were brought to the attention of the Legislative Council of Hong Kong SAR and it was suggested to adopt proper measures to address that kind of issues. It is intended to prepare an amendment bill with a view to introduce the proposal into the Legislative Council in 2015. On 15 June 2015, the Judicial Yuan of Taiwan published the draft bankruptcy law (the Debt Clearance Act), a complete revision ever since 1935, in which a new chapter concerning recognition of foreign insolvency proceedings is included and the insolvency proceedings opened in the Mainland, Hong Kong SAR and Macao SAR also fall within the ambit of application, which has been forwarded to the legislative procedure. In EU, the EU Insolvency Regulation, twelve years after it came into effect, received the political agreement on its amended text by the Council (Justice and Home Affairs) on 4 December 2014. On 26 June 2015, the EU Regulation (recast) entered into force and shall apply from 26 June 2017.

It is also the very moment when concerns arose on cooperation within one country in the course of integration. In March and April 2014, the debating chamber of the Legislative Yuan in Taiwan was occupied by the protesters against an agreement on opening up services trade between the Mainland and Taiwan. In September and October 2014, roads in the city center of Hong Kong Special Administrative Region (SAR) were blocked by thousands of protesters due to disagreement with the Central Government on the way of the Chief Executive election. In June 2015, the reform on the way of the Chief Executive election proposed by the government was vetoed by the Legislative Council of HKSAR.

In the midst of uncertainty and reforms, this dissertation aims at pursuit of arrangements with respect to China's inter-regional cross-border insolvency cooperation in a balanced manner. My research questions are defined in Part I ('Introduction') of this study. A balanced way that can be tailored into China's regional cooperation arrangements shall be achieved based on China's regional political, economic and legal cooperation reality, by exploring the current cross-border insolvency systems in individual regions of China, and through the comparative study between China and EU on the main aspects of the regional regime, i.e. the EU Insolvency Regulation, as well as the UNICTRAL Model Law, which serves as the international standards of cross-border insolvency cooperation for more comprehensive reference. Considering that the cross-border insolvency legislations in the four regions are still under development, it is hoped that this dissertation can sketch the mainlines of the most relevant elements of cross-border insolvency cooperation on the regional level in China

and attempt to provide some “road signs” for future study and research on this topic.

I owe a debt of gratitude to my supervisor, Prof. Bob Wessels, for the opportunity to conduct independent research as Ph.d candidate in Leiden University and who, as eternal optimist of cooperation, keeps inspiring me with his professional advices to help me to complete this dissertation. I feel grateful to Leiden University for the kind academic support and host. A special appreciation also goes to China Scholarship Council who financially supports me to do my research in an independent way.

My sincere appreciation to those who rendered their voluntary assistance to the realization of this work, to my former colleagues from Department of Justice of Hong Kong SAR, United Nations Commission on International Trade Law (UNCITRAL) and the Hague Conference on Private International Law (HCCH), where I used to serve as intern in addition to my research, as well as to the professors from National Taiwan University, where I spent half one year studying the local legal system.

All the information collected in the dissertation was updated till 14 June 2016.

List of Abbreviations

ALI	American Law Institute
ARATS	Association for Relations across the Taiwan Straits
Cap 32	Companies (Winding-up and Miscellaneous Provisions) Ordinance
Cap 622	New Companies Ordinance
CEPA	Closer Economic Partnership Agreements
CICIA	China's Inter-regional Cross-border Insolvency Arrangement
COMI	center of main interests
CO	Companies Ordinance
CPCM	Civil Procedure Code of Macao
EBL	Enterprise Bankruptcy Law
ECFA	Economic Cooperation Framework Agreement
EC Regulation	EC Regulation on insolvency proceedings [Council Regulation (EC) 1346/2000]
EU Regulation (recast)	Regulation (EU) of the European Parliament and of the Council on insolvency proceedings (recast) 2012/0340 (COD)
GDP	gross development product
Guide and Interpretation	Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency
HCCH	Hague Conference on Private International Law
HK	Hong Kong
HK and Macao Act	Act Governing Relations with Hong Kong and Macao
III	International Law Institute
Model Law	UNCITRAL Model Law on Cross-border Insolvency
Mainland Act	Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area
Mainland-HK Arrangement	Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned

Mainland-Macao Arrangement	Arrangement Between the Mainland and the Macao Special Administrative Region on the Mutual Recognition and Enforcement of Civil and Commercial Judgments
P.R.C.	People's Republic of China
Regulation*	EC Regulation and EU Regulation (recast)
UNCITRAL	United Nations Commission on International Trade Law
Virgós/Schmit Report	Virgós/Schmit Report on the Convention on Insolvency Proceedings, Brussels, 1996
SAR	Special Administrative Region
SEF	Straits Exchange Foundation
SOE	State Owned Enterprise
TBA	Taiwan Bankruptcy Act

*The EC Regulation and the EU Regulation (recast) altogether will be referred to as the Regulation in this dissertation in order to utilize the simplified expression to conduct comparison with the UNCITRAL Model Law

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