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Annex I¹

Bilateral Legal Arrangements between the Mainland and HKSAR	
1998	Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts ²
1999	Arrangement Concerning Mutual Enforcement of Arbitral Awards ³
2006	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 ⁴
Bilateral Legal Arrangements between the Mainland and Macao SAR	
2001	Arrangement for Mutual Service of Judicial Documents and Exchange of Evidence in Civil and Commercial Proceedings between the Mainland and the Macao SAR Courts ⁵
2006	Arrangement Between the Mainland and the Macao Special Administrative Region on the Mutual Recognition and Enforcement of Civil and Commercial Judgments ⁶
2007	Arrangement Concerning Mutual Recognition and Enforcement of Arbitral Awards between the Mainland and the Macao Special Administrative Region ⁷
Bilateral Legal Arrangements between HKSAR and Macao SAR	
2013	Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Award between Hong Kong SAR and Macao SAR
Bilateral Legal Arrangements between the Mainland and Taiwan	
2009	Agreement between Both Sides of the Taiwan Strait on Jointly Fighting against Crimes and Mutual Judicial Assistance

¹ All of the Arrangements between the Mainland and the two SARs are implemented in the form of judicial interpretation in the Mainland.

² Supreme Court Judicial Interpretation No. 42 of [1999]

³ Supreme Court Judicial Interpretation No. 3 of [2000]

⁴ The Arrangement is implemented in HKSAR in the form of legislation, the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597), and implemented in the Mainland in the form of judicial interpretation, Supreme Court Judicial Interpretation No. 9 of [2008].

⁵ Supreme Court Judicial Interpretation No. 26 of [2001]

⁶ Supreme Court Judicial Interpretation No. 2 of [2006]

⁷ Supreme Court Judicial Interpretation No. 17 of [2007]

Annex II

(1)	Provisions of the Supreme People's Court on Designating the Administrator during the Trial of Enterprise Bankruptcy Cases (Interpretation No.8 [2007], issued on 12 April 2007)
(2)	Provisions of the Supreme People's Court on Determination of the Administrator's Remunerations (Interpretation No.9 [2007], issued on 12 April 2007)
(3)	Provisions of the Supreme People's Court on Some Issues about the Application of Law for the Enterprise Bankruptcy Cases That have not Been Concluded When the Enterprise Bankruptcy Law of the People's Republic of China Comes into Effect (Interpretation No. 10 [2007], issued on 25 April 2007)
(4)	Official Reply of the Supreme People's Court on How to Handle a Case Where a Creditor Applies for Bankruptcy Liquidation against a Debtor Whose Relevant Persons' Whereabouts are Unknown or Whose Asset Conditions are Unclear (Interpretation No.10 [2008], issued on 7 August 2008);
(5)	Opinions of the Supreme People's Court on Several Issues Concerning Correctly Trying Enterprise Bankruptcy Cases to Provide Judicial Protection for Maintaining the Order of Market Economy were published (Interpretation No.36 [2009], issued on 12 June 2009)
(6)	Provisions (I) of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (Interpretation No. 22 [2011], issued on 29 August 2011)
(7)	Notice of the Supreme People's Court on Correctly Applying the Provisions (I) on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China and Bringing into Full Play the Judicial Functions of People's Courts in the Trial of Enterprise Bankruptcy Cases (Interpretation No. 281 [2011])
(8)	Reply of the Supreme People's Court on Issues concerning Whether to Accept the Lawsuits Filed by Tax Authorities to Confirm Their Creditor's Rights to the Late Fees for Tax Arrears of Bankrupt Enterprises (Interpretation No. 9 [2012], issued on 26 June 2012)
(9)	Notice of the Supreme People's Court on the Summary of Minutes of the Symposium on the Trial of Cases concerning Bankruptcy Reorganization of Listed Companies (Interpretation No. 261 [2012], issued on 29 October 2012)
(10)	Reply of the Supreme People's Court on Whether the Liquidation of Sole Proprietorships May Refer to the Procedure for Bankruptcy Liquidation as Prescribed in the Enterprise Bankruptcy Law (Interpretation No. 16 [2012], issued on 11 December 2012)
(11)	Provisions (II) of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (Interpretation No. 22 [2013], issued on 5 September 2013)

Annex III

Comparative Table Concerning Cross-border Insolvency between the Mainland, SARs and Taiwan

	the Mainland	Hong Kong SAR	Macao SAR	Taiwan
Main References:	Enterprise Bankruptcy Law (EBL)	(1) case law; the Companies (Winding-up and Miscellaneous Provisions) Ordinance (Cap 32)	(1) Civil Procedure Code of Macao (CPCM) (2) Commercial Code of Macao	Bankruptcy Act of Taiwan (TBA)
Jurisdiction	/	unregistered company, including (1) non-Hong Kong company [Cap 622, s2; Cap 32 s326(2)] (2) overseas company <i>Securities and Futures Commission v MKI Corporation</i> [1995] 2 HKC 79	exclusive jurisdiction over the lawsuits concerning the bankruptcy or insolvency of legal persons, whose domicile is within Macao [CPCM, Article 20] exclusive jurisdiction is one of the negative conditions to recognize foreign judgments [CPCM, Article 1200-I]	applying the doctrine of <i>forum non conveniens</i> without taking into consideration the existing bankruptcy proceeding commenced abroad: Taiwan District Court Litigation No. 1807 [2010]; Taiwan High Court Appeal from Ruling No.215 [2011]; Taiwan Supreme Court Appeal from Ruling No. 1022 [2011]; Taiwan High Court
				Debt Clearance Act (the 2015 Draft) the place where to adjudicate the debt clearance proceedings is its head office or principal place of business in Taiwan [the 2015 Draft, Art.7(2)]

				<p>Appeal from Ruling No.286 [2012]; Taiwan Supreme Court Appeal from Ruling No. 529 [2012]</p>	
		<p>wide and unfettered jurisdiction conferred upon the Hong Kong court to wind up any unregistered company in the circumstances mentioned in accordance with the Cap 32 s.327(3):</p> <p>(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purposes of winding-up its affairs;</p> <p>(b) if the company is unable to pay its debts;</p> <p>(c) if the court is of the opinion that it is just and equitable that the company be wound-up.</p> <p>Three core requirements adopted by the HK courts:</p> <p>(1) there is sufficient connection with Hong Kong, but this does not necessarily have to consist in the presence of assets</p>			

	<p>within the jurisdiction; (2) there is a reasonable possibility that the winding-up order would benefit those applying for it; and (3) the court must be able to exercise jurisdiction over one or more persons interested in the distribution of the company's assets.</p> <p><i>Re Zhu Kuan Group Co. Ltd.</i> [2004] HKCFI 795; HCCW874/2003 (2 August 2004), at 22; <i>Re Information Security One Ltd.</i> [2007] HKCFI 848; [2007] 3 HKLRD 780; [2007] 4 HKC 383; HCCW212/2007 (13 August 2007), at 8; <i>Re Beauty China Holdings Ltd.</i> [2009] 6 HKC 351, at 23; <i>In re Yung Kee Holdings Limited</i> [2012] 6 HKC 246, at 70; <i>Re Pioneer Iron and Steel</i> [2013] HKCFI 324, at 27</p> <ul style="list-style-type: none"> - the significance of each core requirement will vary from case to case - the jurisdiction cannot be exercised if one of the three 			
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Recognition	<p>Criteria for recognition:</p> <p>(1) international treaties;</p> <p>(2) the principle of reciprocity without infringing public policy, including (a) the basic principles of the laws of the People's Republic of China;</p>	<p>core requirements has not been met.</p> <p>- However, under the exceptional circumstance that the connection with Hong Kong is so strong and the benefits of a winding-up order for the creditors of a company are so substantial, the court would be willing to exercise its jurisdiction despite the third core requirement not being satisfied.</p> <p><i>Re Pioneer Iron and Steel Group Co. Ltd.</i> [2013] HKCFI 324, at 28</p> <p><i>Re Pioneer Iron and Steel Group Co. Ltd.</i> [2013] HKCFI 324, at 58</p>	<p>Priority of local claims over foreign claims:</p> <p>if a foreign company is declared bankrupt by the court at its place of incorporation, the decision can be recognized but will not be enforced until the local debts have been paid off through the local assets</p>	<p>Territorial Approach in law:</p> <p>If reconciliation or declaration of bankruptcy is rendered in a foreign country, it shall have no binding effect on the assets of the debtor or the bankrupt, which are located in Taiwan</p>	<p>(1) based on the principle of reciprocity if (a) in accordance with the laws of Taiwan, the foreign courts do not have jurisdiction; (b) the interests of the domestic creditors are</p>
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<p>(b) the sovereignty and security of the State or public interests; (c) the legitimate rights and interests of the creditors within the territory of the People's Republic of China [the EBL, Article 5]</p>	<p>the civil action subject to two-stage analysis (a) the effect of the foreign insolvency proceeding is not binding on the creditor's claim in Hong Kong on the footing that the foreign discharge does not form part of the proper law, which governs the contract and gives rise to the claim (b) to fulfill the objective of universal distribution on a comity basis, the Hong Kong court may refuse execution against such assets within Hong Kong <i>Hong Kong Institute of Education v. Aoki Corporation</i> [2004] 2 HKC 397 (3)sanction of scheme of arrangement: only the first core requirement needs to be fulfilled in the case of sanctioning a scheme of arrangement, which is, there is a sufficient connection of the scheme with Hong Kong <i>Re LDK Solar Co. Ltd.</i> [2014] HKCFI 2234</p>	<p>[Commercial Code of Macao, Article 83]</p>	<p>[TBA, Article 4] Flexible interpretations in practice: (1) only excluding the effect of declaration of bankruptcy on the assets, which are located in Taiwan but it does not deny the effects of all the actions done by foreign courts in foreign insolvency proceedings, especially the effect of appointment of legal agents or statutory representatives for the debtor rendered by the court Taiwan High Court Important Appeal No. 23 [2011] (2) applying Article 49 of the Non-</p>	<p>inappropriately impaired in the foreign proceeding; (c) recognition of the foreign proceeding is on contrary to the public policy or <i>boni mores</i> [the 2015 Draft, Art.299] (2) the courts can withdraw the recognition of the foreign debt clearance proceedings: (a) the foreign debt clearance proceeding falls in the ambit of Article 299; (b) the foreign debt clearance proceeding has been terminated or rescinded;</p>
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			<p>litigation instead of Article 4, recognition of foreign insolvency proceedings Taipei District Court Trial on Application No. 514 [2009]</p> <p>(3) the foreign insolvency proceedings are deemed automatically effective and thus it is not necessary for the Taiwan courts to grant recognition Taipei District Court Trial on Application No. 355 [2012]</p> <p>(4) Article 42 of the HK and Macao Act is regarded as proper legal basis for recognition of Hong Kong insolvency proceedings Taipei District Court</p>	<p>(c) the documents submitted by the liquidator in accordance with Article 298-I and Article 300-I are forged, altered or involving other fraudulent behaviors (d)the liquidators, administrator or debtors seriously violate the statutory obligations [the 2015 Draft, Art.310]</p>
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				<p>Trial on Application No. 355 [2012] the corresponding legal basis for recognition of the Mainland insolvency proceedings shall be Article 74 of the Mainland Act</p>	
<p>Cooperation and Communication</p>	<p>/</p>	<p>(1) use of protocol <i>Re Peregrine Investments Holdings Ltd.</i> [1998] HKCFI 643; <i>Greater Beijing First Expressways Ltd.</i> [2000] HKCFI 755; <i>Re Kong Wah Holdings Ltd.</i> [2000] HKCFI 21; <i>Re Akai Holdings Ltd.</i> [2004] HKCFI 346; <i>Re Jinro (HK) International Ltd.</i> [2003] HKCFI 239 (2) use of video-conference to make communication in the course of cross-border insolvency cooperation <i>Re Chow Kam Fai David</i> [2004] HKCA 111</p>			<p>the duty of cooperation between domestic and foreign liquidators or administrators [the 2015 Draft, Art.317(1)]</p>

Annex IV

Comparative Table between the EC Regulation, EU Regulation (recast) and the Model Law⁸

EC Regulation	EU Regulation (recast)	Model Law
Main References:		
Regulation on insolvency proceedings Council Regulation (EC) 1346/2000, [hereinafter EC Regulation]	Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) [hereinafter EU Regulation (recast)]	UNCITRAL Model Law on Cross-border Insolvency (1997) with Guide to Enactment and Interpretation (2013) [hereinafter the Model Law and Guide and Interpretation]
Forms:		
Regulation: Community legal instrument [ex Article 65 TEC, Recital (2)]	Regulation: Union legal instrument [Article 81 TFEU, Recital (3)]	Model Law (soft law): legislative recommendation for States to incorporate into their own national law [Guide and Interpretation, para.19]
general application [ex Article 249 TEC]	general application [Article 288 TFEU]	an open tool to all states [Guide and Interpretation, paras. 21&22]
binding in their entirety; directly applicable in all MSs within EU, except Denmark	binding in their entirety; directly applicable in all MSs within EU, except Denmark	voluntary & flexible: modification to the uniform text is allowed (but intended to limit deviations from the uniform

⁸ This table has been published in Gong, Xinyi, Can the Day Understand the Night? Brief Introduction into Problems of the Current Insolvency System in China, 2015 III PRIZE In International Insolvency Studies (silver medal), available at <http://iiiglobal.org/iii-prize-in-insolvency.html>

[Recital (8) &(33)]	[Recital (8)&(88)]	text to a minimum) [Guide and Interpretation, para.20-22]
Objectives:		
Main References:		
33 Recitals; Virgós/Schmit Report 1996	Recitals	Preamble, Guide and Interpretation, para.1
	(1) proper and close cooperation between the various insolvency practitioners and the courts in all the concurrent proceedings, in particular by exchanging a sufficient amount of information; [Recital (48), (52)]	(a) Cooperation between the courts and other competent authorities of State and foreign States involved in cases of cross-border insolvency;
(1) to provide for legal certainty in cross-border insolvency;	(2) protection of legitimate expectations and the certainty of transactions in cross-border insolvency; [Recital (67)]	(b) Greater legal certainty for trade and investment;

<p>(2) to promote the efficiency of insolvency proceedings, by favoring those solutions which facilitate their administration and improve the <i>ex ante</i> planning of transactions;</p>	<p>(3) efficient administration of insolvency proceedings and effective realization of the total assets (a) a single debtor: the dominant role of the main proceedings shall be preserved in the way that insolvency practitioners in the main proceedings are granted with powers to intervene if the secondary proceedings are considered unresponsive for the efficient and effective realization of the total assets [Recital (41), (45)] (b) a group of companies: an integrated solution through the integrated group coordination proceedings on a voluntary basis, in addition to the combined efforts of all the actors involved in the multiple proceedings through compulsory cooperation and communication [Recital (51), (52), (56), (57)]</p>	<p>(c-1) fair and efficient administration of cross-border insolvencies that protects all the interested persons, including the debtor (d) Protection and maximization of the value of the debtor's assets; and</p>
<p>(3) to remove inequalities among Community-based creditors with regard to access and participation in such proceedings</p>	<p>(4) equal treatment of creditors on a coordinated basis with a swift transmission of information [Recital (67), (68)]</p>	<p>(c-2) protection of the interests of all creditors</p>
	<p>(5) promoting the rescue of economically viable but distressed businesses and giving a second chance to entrepreneurs; [Recital (10)]</p>	<p>(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment</p>

(4) prevention of forum shopping Recital (4)	(6) prevention of fraudulent or abusive forum shopping [Recital (5)&(30)&(32)]	
Scopes:		
General Scopes of Application:		
a debtor, including a natural person or a legal person, a trader or an individual [Recital (9)]	irrespective of whether the debtor is a natural person or a legal person, a trader or an individual [Recital (9)]	regardless of whether they involve a natural or a legal person as the debtor [Guide and Interpretation, para.50]
Definitions:		
(1) collective proceedings [Recital (10), Article 1(1)] Annex A [Article 2(a)]	(1) collective proceedings [Recital (14), Article 2(1)] exhaustively listed in Annex A [Recital (9), Article 2(4)]	(1) collective proceedings [Article 2(a), Guide and Interpretation, paras.69-71]
(2) based on the debtor's insolvency and not on any other grounds [Virgós/Schmit Report, para. 49(b), Article 1(1)]	(2) for the purpose of rescue, adjustment of debt, reorganization or liquidation, including interim proceedings [Recital (10), (15), (17), Article 1(1)]	(2) for the purpose of reorganization or liquidation, including an interim proceeding [Article 2(a), Guide and Interpretation, paras.77-80] presumption of insolvency in case that the insolvency proceeding is initiated but the debtor is not in fact insolvent [Article 31, Guide and Interpretation, paras.72, 235-236]

<p>(3) entailing the partial or total divestment of a debtor, relating to the winding-up of insolvent companies or other legal persons, and the appointment of a liquidator [Virgós/Schmit Report, para. 49(c),(d); Recital (7), (10), Article 1(1), 2(b), Annex C]</p>	<p>(3) control or supervision by a court, including intervention by the court on appeal by a creditor or other interested parties [Recital (10), Article 1(1)]</p>	<p>(3) control or supervision by a foreign court [Article 2(a)] (a) the level of control or supervision, including: a proceeding in which the debtor retains some measure of control over its assets, albeit under court supervision e.g. debtor in possession indirect control or supervision exercised by an actor, such as an insolvency representative, who is subject to control or supervision by the court [Guide and Interpretation, paras.74] (b) time for control or supervision, including control or supervision by a court at a late stage of the insolvency process e.g. expedited reorganization proceedings [Guide and Interpretation, paras.75-76; See also Legislative Guide, Part two, Ch. IV, paras. 76-94 and Recommendations 160-168]</p>
	<p>(4) based on a law relating to insolvency [Recital (17), Article 1(1)]</p>	<p>(4) pursuant to a law relating to insolvency [Article 2(a), Guide and Interpretation, para.73]</p>
	<p>(5) public collective proceedings [Recital (12), Article 1(1)]</p>	
<p>Exclusion :</p>		

<p>the principle of mutual trust [Recital (22)]</p> <p>as a corollary the waiver by the Member States of the right to apply their internal rules on recognition and enforcement in favor of a simplified mechanism for the recognition and enforcement of judgments handed down in the context of insolvency proceedings [Case C-444/07 <i>MG Probud Gdynia sp. z o.o.</i>, ECR I-00417 (<i>MG Probud</i>), para.28]</p>	<p>the principle of mutual trust [Recital (69)]</p>	
<p>(1) insurance undertakings</p>	<p>(1) insurance undertakings</p>	<p>(1) insolvencies related to natural persons if so required in accordance with the insolvency law of the enacting State [Guide and Interpretation, para.61]</p>
<p>(2) credit institutions</p> <p>(3) investment undertakings which provide services involving the holdings of funds or securities for third parties, collective investment undertakings [Recital (9), Article 1(2)]</p>	<p>(2) credit institutions</p> <p>(3) investment firms and other firms, institutions and undertakings to the extent these are covered by Directive 2001/24/EC as amended, and</p>	<p>(2) any types of entities subject to a special insolvency regime (such as banks or insurance companies) [art.1 (2), Guide and Interpretation paras.55-57]</p>
	<p>(4) collective investment undertakings [Recital (18), Article 1(2), 2(2)]</p>	

	<p>(5) proceedings which are not based on a law relating to insolvency, including</p> <p>(a) proceedings that are based on general company law not designed exclusively for insolvency situations e.g. UK schemes of arrangement (based on the Companies Act 2006, s 885)</p> <p>(b) certain adjustment of debt proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provisions for payment to creditors e.g. UK Debt Relief Orders based on Part 7A of the Insolvency Act 1986 (c. 45) [Recital (16)]</p>	
	<p>(6) no 'confidential' proceedings e.g. French <i>mandat ad hoc</i> and conciliation proceedings based on Article L611-13 and L611-4 Commercial Code [Recital (13)]</p>	
Structure:		
33 Recitals; 47 Articles	89 Recitals; 92 Articles	5 Chapters, 32 Articles

<p>3 Annexes Annex A: Insolvency proceedings referred to in Article 2(a) Annex B: Winding up proceedings referred to in Article 2(c) Annex C: Liquidators referred to in Article 2(b)</p>	<p>4 Annexes Annex A: Insolvency proceedings referred to in Article 2(4) Annex B: Insolvency practitioners referred to in Article 2(5) Annex C: Repealed Regulation with list of the successive amendments thereto Annex D: Correlation Table</p>	<p>Guide to Enactment and Interpretation (2013); Legislative Guide on Insolvency Law in 2004; Practice Guide on Cross-border Insolvency Cooperation in 2009; Part III to the Legislative Guide (treatment of enterprise groups) in 2010; Judicial Perspective in 2011; Part IV to the Legislative Guide (Directors' obligations in the period approaching insolvency) in 2013</p>
<p>Interpretation:</p>		
<p>purposive approach: recitals (assistance in interpretation) harmonized interpretation by CJEU [ex Article 234 TEC]</p>	<p>purposive approach: recitals (assistance in interpretation) harmonized interpretation by CJEU [Art. 267 TFEU, Recital (18) & (24)]</p>	<p>purposive approach: preamble (assistance in interpretation) (1) subject to different national implementation and interpretation with taking into consideration its international origin and to the need to promote uniformity in its application and the observance of good faith [Article 8, Guide and Interpretation para.106] (2) harmonized interpretation facilitated by the Case Law on UNCITRAL Texts (CLOUT) information system [Guide and Interpretation para.107]</p>

<p>Explanatory report: Virgós/Schmit Report 1996 [Case C-341/04 <i>Eurofood IFSC Ltd</i> [2006] ECR I-03813 (<i>Eurofood</i>), Opinion of AG Jacobs, at 2; Case C-396/09 <i>Interredil Srl (in liquidation) v Fallimento Interredil Srl, Intesa Gestione Crediti SpA</i> [2011] ECR I-09915 (<i>Interredil</i>), Opinion of AG Kokott, at 63]</p>		<p>Background and explanatory information: Guide and Interpretation</p>
COMI:		
<p>Not defined. The center of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties. [Recital (13)]</p>	<p>Introduction of formal clarification The center of main interests shall be the place where the debtor conducts the administration of his interests on a regular basis and which is ascertainable by third parties. [Article 3(1)]</p>	<p>Not defined. “Notwithstanding the different purpose of center of main interests under the two instruments, the jurisprudence with respect to interpretation of that concept in the EC Regulation may be relevant to its interpretation in the Model Law.” [Guide and Interpretation, para.141]</p>
Presumption (a company or legal person):		
<p>shall be presumed to be the place of the registered office in the absence of proof to the contrary [Article 3(1)]</p>	<p>shall be presumed to be the place of the registered office in the absence of proof to the contrary; shall only apply if the registered office has not been moved within a period of 3 months prior to the request for the opening of insolvency proceedings. [Article 3(1)] The presumption should be rebuttable [Recital (30)]</p>	<p>the debtor’s registered office [Article 16(3)] but serves different purposes [Guide and Interpretation, para.141]</p>

<p>Conditions to rebut the presumption:</p>	<p>By codifying the case law handed down by the CJEU (see Case C-396/09 <i>Interedil Srl (in liquidation) v Fallimento Interedil Srl, Intesa Gestione Crediti SpA</i> [2011] ECR I-09915 (<i>Interedil</i>), para. 53), the main conditions are:</p> <p>(1) central administration located in another Member State, and</p> <p>(2) a comprehensive assessment of all the relevant factors, and</p> <p>(3) in a manner that is ascertainable by third parties</p> <p>[Recital (30)]</p> <p>(4) third parties: special consideration should be given to the creditors and their perception; ascertainable: this may require, in the event of a shift of center of main interest, informing creditors of the new location from which the debtor is carrying out his activities in due course, e.g. by drawing attention to the change of address in commercial correspondence, or making the new location public through other appropriate means.</p> <p>[Recital (28)]</p>	<p>Principal factors, considered as a whole:</p> <p>(a) where the central administration of the debtor takes place, and</p> <p>(b) which is readily ascertainable by creditors.</p> <p>In addition, a non-exhaustive list of relevant factors are provided</p> <p>[Guide and Interpretation, paras.145-147]</p>
<p>Time to Determine COMI:</p>		

<p>the time of application for opening insolvency proceedings [not defined but developed in accordance with the case law, see Case C-1/04, <i>Susanne Staubitz-Schreiber</i> [2006] ECR I-00701 (<i>Staubitz-Schreiber</i>), para.29; <i>Interdil</i>, para.55]</p>	<p>the registered office presumption: three months prior to the time of the request for the opening of insolvency proceedings in order to prevent fraudulent or abusive forum shopping [Recital (31), Article 3(1), para.2]</p>	<p>the date of commencement of the foreign proceeding [Guide and Interpretation, para.141, 149, 159] e.g. inter-circuit split in U.S.A. (1) the date of the filing of the Chapter 15 petition [<i>Re Kemsley</i>, 489 B.R. 346 (Bankr. S.D.N.Y. 2013); <i>Re Millennium Global Emerging Credit</i>, 458 B.R. 63 (Bankr. S.D.N.Y. 2011); <i>Re Gerova Fin. Grp., Ltd.</i>, 482 B.R. 86 (Bankr. S.D.N.Y.2012)] (2) the date of the opening of the foreign proceeding [<i>re Ran</i>, 607 F.3d 1017 (5th Cir. 2010); <i>Re British American Isle of Venice (BVI), Ltd.</i>, 441 B.R. 713 (Bankr. S. D. Fla. 2010); <i>Re Fairfield Sentry Ltd.</i>, 440 B.R. 60, 64 (Bankr. S.D. N.Y. 2010), <i>aff'd</i>, 714 F.3d 127(2d Cir. 2013)] (3) the coordinated approach: the court should take into consideration the period between the commencement of the foreign insolvency proceeding and the filing of the Chapter 15 petition to ensure that a debtor has not manipulated its COMI in bad faith [<i>Re Fairfield Sentry Ltd.</i>, 714 F.3d 127(2d Cir. 2013), at 138; see also Adler, Louise De Carl, Managing the Chapter 15 Cross-Border Insolvency Case (A Pocket Guide for Judges), 2nd ed., Federal Judicial Center, 2014, p.22-23]</p>
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Establishment:		
Definition:		
any place of operations where the debtor carries out a non-transitory economic activity with human means and goods [Article 2(h)]	any place of operations where the debtor carries out or has carried out in the three months prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets [Article 2(10)]	any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services [Article 2(f)]
The mere presence of assets of the debtor cannot serve as the basis of establishment. [Virgós/Schmit Report, para.70]	The definition of establishment requires the presence of a structure consisting of a minimum level of organization and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of assets does not, in principle, meet that definition. [Interdil, para.64]	The presence of assets is not qualified as establishment. [Guide and Interpretation, para.32]
Time to determine establishment:		
/	three months prior to the request to open main insolvency proceedings [Article 2(10)]	the date of commencement of the non-main foreign proceedings [Guide and Interpretation, para.160]
Establishment-based Proceedings:		
opened in the Member State where the debtor has an establishment [Recital (12)]	opened in the Member State where the debtor has an establishment [Recital (23)]	(1) opened on the basis of presence of assets of the debtor in the enacting State after recognition of a foreign main proceeding [Article 28]

<p>the effects restricted to the assets of the debtor located in the Member State where his establishment is situated [Article 3(2)]</p>	<p>the effects restricted to the assets of the debtor located in the Member State where his establishment is situated [Article 3(2)]</p>	<p>(a) the effects restricted to the assets of the debtor that are located in the State, and [Article 28]</p> <p>(b) the possible extension of effects of a local proceeding to assets located abroad:</p> <p>(i) to the extent necessary to implement cooperation and coordination to other assets of the debtor</p> <p>(ii) those foreign assets must be subject to administration in the enacting State under the law of the enacting State [Article 28, Guide and Interpretation, para.227]</p>
		<p>(2) a concurrent proceeding can also be opened in accordance with the law of the enacting State relating to insolvency and the court involved should seek cooperation and coordination pursuant to Chapter IV of the Model Law [Article 29]</p>
<p>Territorial Proceedings:</p>		
<p>(1) prior to the opening of the main insolvency proceedings [Article 3(4)]</p>	<p>(1) prior to the opening of the main insolvency proceedings [Article 3(4)]</p>	<p>(a) prior to application for recognition of the foreign proceeding concerning the same debtor [Article 29(a)]</p>

<p>(2) the function of protection of local interests [Recital (17)]</p>	<p>(2) the function of protection of local interests [Recital (37)]</p>	<p>(i) any discretionary reliefs granted to the foreign proceedings should be in consistent with the concurrent proceeding in the enacting State Article 29(a)(i) (ii) automatic recognition and reliefs granted to a foreign main proceeding based on Article 20 of the Model Law does not apply if the foreign proceeding is recognized as a foreign main proceeding in this enacting State where a concurrent proceeding has already been opened Article 29(a)(ii)</p>
<p>(3) shall be transferred into secondary proceedings as soon as the main insolvency proceedings are opened [Recital (17), Article 3(4)]</p>	<p>(3) When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings. [Article 3(4)]</p>	

<p>(4) can only be opened under limited circumstances:</p> <p>(a) where main proceedings cannot be opened under the law of the Member State where the debtor has the center of his main interest; [Article 3(4)(a)]</p> <p>(b) requested by certain specific applicants a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment [Article 3(4)(b)]</p>	<p>(4) may be opened only under limited circumstances:</p> <p>(a) where main proceedings cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the center of the debtor's main interests is situated; [Article 3(4)(a)]</p> <p>(b) requested by certain specific applicants where the opening of territorial insolvency proceedings is requested by:</p> <p>(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or [Article 3(4)(b)(i)]</p> <p>(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings. [Recital (37), Article 3(4)(b)(ii), see also Case C-112/10, <i>Zaza Retail</i> [2011] ECR I-11525(<i>Zaza Retail</i>), para.30]</p>	
<p>Secondary Proceedings:</p>		
<p>(1) following the opening of the main insolvency proceedings [Recital (18)]</p>	<p>(1) following the opening of the main insolvency proceedings [Recital (38)]</p>	<p>(b) after recognition or after the petition for recognition of the foreign proceeding [Article 29(b)]</p>

<p>(2) the function of protection of local interests and the auxiliary function [Recital (19)]</p>	<p>(2)the function of protection of local interests and the auxiliary function [Recital (40)]</p>	<p>(i) any discretionary reliefs should be reviewed by the court and should be modified or terminated if inconsistent with the concurrent proceeding in this enacting State [Article 29(b)(f)] (ii) in case that the foreign proceeding is a foreign main proceeding, the stay and suspension in accordance with Article 20(1) should be modified or terminated pursuant to Article 20(2) if inconsistent with the proceeding in this enacting State [Article 29(b)(ii)]</p>
<p>(3)requested by certain specific applicants: (a)the liquidator in the main proceedings; (b)any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested [Article 29]</p>	<p>(3)requested by certain specific applicants: (a) insolvency practitioner in the main proceedings (b) any other person or authority empowered under the national law of that Member State [Recital (38), Article 37(1)]</p>	

<p>(4) must be winding-up proceedings [Article 3(3)]</p>	<p>(4) secondary proceedings can be opened in the Member State of the registered office, provided that main proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office [Recital (24), see also Case C-327/13 <i>Burgo Group SpA</i>, 4 September 2014 (<i>Burgo</i>), at 39]</p>	
<p>Intervention with the local proceedings:</p>		
<p>(1) the main liquidator shall be given an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings [Article 31(3)]</p>	<p>(1) the main insolvency practitioners shall be given an early opportunity to submit proposals on the realization or use of the assets in the secondary insolvency proceedings [Article 41(2)(c)]</p>	<p>(1) no limitations on the jurisdiction of the courts in the enacting State to commence or continue local insolvency proceeding [Guide and Interpretation, para.224] (2) intervention by tailoring the relief to be granted to the foreign main proceeding and cooperating with the foreign court and foreign representative [Guide and Interpretation, para.226, 231] (3) no rigid hierarchy between the concurrent proceedings in order to facilitate cooperation of the court [Guide and Interpretation, para.231]</p>

<p>(2) closure of secondary proceedings: (a) by the liquidator in the main proceedings (b) through a rescue plan, a composition or a comparable measure proposed [Article 34]</p>	<p>(2) closing a secondary proceeding: (a) by the insolvency practitioner in the main insolvency proceedings; (b) with a restructuring plan, a composition or a comparable measure if so permitted under the law of that Member State [Article 47(1)]</p>	
<p>(3) stay of the process of liquidation of secondary proceedings for a certain period stay of secondary proceedings: (a) at the request from the liquidator in the main proceedings, (b) suitable measure have been taken to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors (c) up to three months and may be continued or renewed for similar periods (d) terminated at the request of the liquidator in the main proceedings or by the court of its own motion at the request of a creditor or at the request of the liquidator in the secondary proceedings [Article 33]</p>	<p>(3) when a temporary stay of individual enforcement is granted in the main proceedings and for the purpose of preservation of the efficiency of such moratorium, the court can temporarily stay the opening of secondary proceedings (a) at the request of the insolvency practitioner or the debtor in possession (b) provided that suitable measures are in place to protect the interests of local creditors (c) for a period not longer than three months to allow negotiation on a rescue plan between the debtor and the creditors (d) revoked by the court of its own motion or at the request of any creditor [Recital (10), (45), Article 38(3)]</p>	

	<p>(4) an undertaking in order to avoid secondary proceedings:</p> <p>(a) by the insolvency practitioner in main proceedings</p> <p>(b) distribution of the assets to local creditors as if secondary proceedings had been opened; [Recital (42), Article 36(1), Article 38(2)]</p> <p>(c) applicable law: the law of the Member State in which secondary proceedings could have been opened [Article 36(2)]</p> <p>(d) relevant time for determination of the assets: the moment when the undertaking is given [Article 36(2)]</p> <p>(e) in writing and in the official language or one of the official languages of the Member State where secondary proceedings could have been opened [Article 36(3),(4)]</p> <p>(f) approved by the known local creditors [Article 36(5)]</p> <p>(g) binding on the estate [Article 36(6)]</p> <p>See also <i>Re Collins & Aikman Corp Group</i>, [2006] B.C.C. 606</p>	
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	<p>(5) The insolvency practitioner in the main proceedings may challenge the decision to open secondary proceedings before the courts of the Member State where secondary proceedings have been opened [Article 39] See also <i>Re Nortel Networks SA</i>, [2009] B.C.C. 343</p>	
Recognition:		
<p>Automatic recognition: recognized in all the other Member States from the time that it becomes effective in the State of the opening of proceedings [Article 16(1)]</p> <p>based on the principle of mutual trust: grounds for non-recognition should be reduced to the minimum necessary; the decision of the first court to open proceedings should be recognized in the other Member States without those Member States having the power to scrutinize the court's decision. [Recital (22)]</p>	<p>Automatic recognition: recognized in all the other Member States from the time that it becomes effective in the State of the opening of proceedings [Article 19(1)]</p> <p>based on the principle of mutual trust: grounds for non-recognition should be reduced to the minimum necessary; the decision of the first court to open proceedings should be recognized in the other Member States without those Member States having the power to scrutinize the court's decision; this is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. [Recital (65)]</p>	<p>Recognition upon request: A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed. [Article 15(1)]</p> <p>adaptive to different legal basis: comity v. reciprocity [Guide and Interpretation, para.214-215]</p>

Effects:	Reliefs:	
Main Proceedings:		
with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings [Article 17(1)]	with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings [Article 20(1)]	automatic reliefs granted (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed; (b) Execution against the debtor's assets is stayed; and (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended. [Article 20(1), Guide and Interpretation, para.176]
Secondary proceedings:		
not be challenged in other Member States [Article 17(2)]	not be challenged in other Member States [Article 20(2)]	Non-Main Proceedings: discretionary reliefs [Article 19, 21]
Public policy exception:		
manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual. [Article 26] Case C-341/04 <i>Eurofood IFSC Ltd</i> [2006] ECR I-03813 (<i>Eurofood</i>), para. 34	manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual. [Article 33]	manifestly contrary to the public policy of this State [Article 6] shall be understood in a more restrictive manner in matters of international cooperation [Guide an Interpretation, para.103]
Group of companies: Enterprise group:		

Main references:	
/	<p>EU Regulation (recast)</p> <p>Part III to the Legislative Guide (treatment of enterprise groups) to assist national countries [hereinafter Legislative Guide Part III] Working Group V (insolvency law), UNCITRAL, Facilitating the Cross-border Insolvency of Multinational Enterprise Groups, A /CN.9/WG.V/WP.128 [Working Group V proposal]</p> <p>Definitions of "group of companies" [Article 2(12)]</p> <p>Definition of "enterprise group" [Legislative Guide Part III, Glossary, para.4(a)]</p>
Cooperation and Communication:	
/	<p>proper cooperation between actors (including insolvency practitioners and courts) involved not incompatible with the rules applicable to them and does not entail any conflict of interests [Article 56(1), 57(1), 58 last paragraph]</p> <p>Cooperation between courts and insolvency representatives in insolvency proceedings involving multinational enterprise groups may help to facilitate commercial predictability and increase certainty for trade and commerce, as well as fair and efficient administration of proceedings that protects the interests of the parties, maximizes the value of the assets of group members to preserve employment and minimizes costs. [Legislative Guide Part III, Ch.3, para.7]</p>
Contents of Cooperation and Communication:	

	<p>(1) timely communication of any relevant information concerning the group members subject to insolvency proceedings, provided appropriate arrangements are made to protect confidential information [EU Regulation (recast), Article 56(2)(a); Legislative Guide Part III, Recommendation 250(a)]</p> <p>(2) coordination of the administration and supervision of the affairs of the group members subject to insolvency proceedings [EU Regulation (recast), Article 56(2)(b); Legislative Guide Part III, Recommendation 250(d)]</p> <p>(3) coordination of the proposal and of reorganization plans [EU Regulation (recast), Article 56(2)(c); Legislative Guide Part III, Recommendation 250(e)]</p> <p>(4) allocation of powers or responsibilities between insolvency representatives [EU Regulation (recast), Article 56(2); Legislative Guide Part III, Recommendation 250(c)]</p> <p>(5) by means of agreements or protocols [EU Regulation (recast), Article 56(1); Legislative Guide Part III, Recommendation 250(b)]</p>
Coordination:	
	<p>group coordination proceedings [Recital (54), Ch.5 Section II]</p> <p>[Working Group V proposal, Article 2(i)]</p>

	<p>Rules of the proceedings:</p> <p>(1)at the request of an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group, accompanied by required documents [Article 61(1)]</p> <p>(2)the competent court, which can assume its jurisdiction over group coordination proceedings, may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group and:</p> <p>(a) decided by the insolvency practitioner, who filed for the opening of the proceedings, or [Article 61(1)]</p> <p>(b) at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed by joint agreement that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction. [Article 66(1), (2)]</p> <p>(3) The court seized of the request will make its decision after considering effectiveness of the opening of such proceedings, no financial disadvantage on the creditor and eligibility of the proposed group coordinator [Article 63(1), 68(1)]</p>	/
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/	<p>Relationship between the participant and non-participants members:</p> <p>(1) Objections to the inclusion within group coordination proceedings: raised within 30 days of receipt of notice of the request for the opening of group coordination proceedings to the court seized of the request [Article 64(1), (2)]</p> <p>(2) no effect on the member who raised objection [Article 64, 65]</p> <p>(3) subsequent opt-in [Article 69]</p>	/
Group Coordinator:		

	<p>(1) eligibility: in accordance with the law of a Member State, under which they can act as insolvency practitioners [Article 71(1)]</p> <p>(2) exclusion: (a) not be one of the insolvency practitioners appointed to act in respect of any of the group members; and (b) shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members. [Article 71(2)]</p> <p>(3) rights and obligations of the coordinator [Article 69(2), 72]</p>	<p>appointment of a single or the same insolvency representative [Part III to the Legislative Guide (treatment of enterprise groups), III, para.4.3-47; Working Group V proposal, Article 18(1)]</p>
	<p>Relationship between the Insolvency Practitioners and the Group Coordinator:</p>	

<p style="text-align: center;">/</p>	<p>(1) they are required to cooperate with each other [Article 74(1)]</p> <p>(2) the insolvency practitioners shall communicate any relevant information to the coordinator [Article 74(2)]</p> <p>(3) an insolvency practitioner is not obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan by reporting the reasons to coordinator and other persons or bodies concerned under his national law [Article 70]</p> <p>(4) The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member, who is considered to act to the detriment of the creditors of a participating group member or fail to comply with his obligations [Article 75]</p>
<p>Cooperation and Communication:</p>	
<p>Main References:</p>	

<p>European Communication and Cooperation Guidelines for Cross-Border Insolvency, prepared by INSOL Europe's Academic ("CoCo Guidelines") Wing (2007)</p>	<p>best practices for cooperation in cross-border insolvency cases shall be taken into consideration, (a) relevant guidelines prepared by UNCITRAL (b) Principles and guidelines on communication and cooperation adopted by European organizations eg. "CoCo Guidelines": European Communication and Cooperation Guidelines for Cross-Border Insolvency, prepared by INSOL Europe's Academic Wing (2007). (c) principles and guidelines on communication and cooperation adopted by international organizations active in the area of insolvency law eg. ALI/III, Transnational insolvency: global principles for cooperation in international insolvency cases: report to the ALI, Philadelphia. PA : Executive Office, The American Law Institute, 2012 ; EU JudgeCo Principles and Guidelines, 2015 [Recital (48)]</p>	<p>Chapter V of the Model Law; Practice Guide on Cross-Border Insolvency Cooperation (Practice Guide on Cooperation) to assist national countries</p>
<p>Actors Involved:</p>		

<p>duty to cooperate and communicate between the liquidator in the main proceeding, and the liquidator in the secondary proceeding [Article 31]</p>	<p>(1) duty to cooperate and communicate between insolvency practitioners in the main proceedings and the insolvency practitioners or practitioners in secondary proceedings [Article 41]</p>	<p>(1) cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives [Article 26]</p>
<p>/</p>	<p>(2) duty to cooperate and communicate between courts in the main and territorial or secondary insolvency proceedings [Article 42]</p>	
<p>/</p>	<p>(3) duty to cooperate and communicate between the courts and the insolvency practitioners in the main and territorial or secondary insolvency proceedings [Article 43]</p>	<p>(2) cooperation and direct communication between a court of this State and foreign courts or foreign representatives [Article 25]</p>
<p>Forms of Cooperation:</p>		
	<p>(1) communication of information by any means considered appropriate by the court [EU Regulation (recast), Article 42(3)(b), the Model Law, Article 27(b)]</p>	
	<p>(2) coordination of the administration and supervision of the debtor's assets and affairs [EU Regulation (recast), Article 42(3)(c), the Model Law, Article 27(c)]</p>	
<p>/</p>	<p>(3) appointment of a person or body to act at the direction of the court [EU Regulation (recast), Article 42(1), the Model Law, Article 27(a)]</p>	
	<p>(4) coordination in the approval of protocols, where necessary/ approval or implementation by courts of agreements concerning the coordination of proceedings [EU Regulation (recast), Article 42(3)(e), the Model Law, Article 27(d)]</p>	

	<p>(5) coordination of the conduct of hearings/ coordination of concurrent proceedings regarding the same debtor [EU Regulation (recast), Article 42(3)(d), the Model Law, Article 27(e)]</p> <p>(6) appointment of a single insolvency practitioner for several insolvency proceedings concerning the same debtor [Recital (47); Article 42(3)(a)]</p>	/
EU-wide interconnection of insolvency registers:		
/	a system in a decentralized way by interconnecting the individual insolvency registers on the basis of implementing act [Article 25(1)]	/
/	composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system [Article 25(1)]	/
/	information mandated to be disclosed [Article 24(2)]	/

Annex V

The Mainland China ¹		
15.07.1955	Statute of the Hague Conference on Private International Law	The Hague
10.06.1958	Convention on the Recognition and Enforcement of Foreign Arbitral Awards	New York
15.11.1965	Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters	The Hague
18.03.1970	Convention on the Taking of Evidence Abroad in Civil or Commercial Matters	The Hague
29.05.1993	Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption	The Hague
Hong Kong SAR ²		
15.07.1955	Statute of the Hague Conference on Private International Law	The Hague
05.10.1961	Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions	The Hague
05.10.1961	Convention Abolishing the Requirement of Legalisation for Foreign Public Documents	The Hague
15.11.1965	Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters	The Hague
18.03.1970	Convention on the Taking of Evidence Abroad in Civil or Commercial Matters	The Hague
01.06.1970	Convention on the Recognition of Divorces and Legal Separations	The Hague
25.10.1980	Convention on the Civil Aspects of International Child Abduction	The Hague
01.07.1985	Convention on the Law Applicable to Trusts and on Their Recognition	The Hague
29.05.1993	Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption	The Hague
Macao SAR ³		
01.03.1954	Convention Relating to Civil Procedure	The Hague
15.07.1955	Statute of the Hague Conference on Private International Law ⁴	The Hague
24. 10. 1956	Convention on the Law Applicable to Maintenance Obligations towards Children	The Hague
15. 04.1958	Convention on the Recognition and Enforcement of the Decisions Relating to Maintenance Obligations towards Children	The Hague
05. 10. 1961	Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors	The Hague

¹ http://www.hcch.net/index_en.php?act=states.details&sid=30

² <http://www.legislation.gov.hk/interlaw.htm#Private%20International%20Law>

³ <http://en.io.gov.mo/Legis/International/1/14.aspx>

⁴ http://www.hcch.net/index_en.php?act=status.comment&csid=90&disp=resdn

05.10.1961	Convention Abolishing the Requirement of Legalisation for foreign Public Documents	The Hague
15. 11. 1965	Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters	The Hague
18. 03. 1970	Convention on the Taking of Evidence Abroad in Civil or Commercial Matters	The Hague
25.10.1980	Convention on the Civil aspects of International Child Abduction	The Hague
29.05.1993	Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption	The Hague

Annex VI

Legislations Listed in Annex III to the Basic Law of HKSAR	
1	Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China
2	Resolution on the National Day of the People's Republic of China
3	Declaration of the Government of the People's Republic of China on the Territorial Sea
4	Nationality Law of the People's Republic of China
5	Law of the People's Republic of China on the National Flag
6	Law of the People's Republic of China on the National Emblem
7	Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities
8	Regulations of the People's Republic of China concerning Consular Privileges and Immunities
9	Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone
10	Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region
11	Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf
12	Law of the People's Republic of China on the Judicial Immunity from Compulsory Measures concerning the Property of Foreign Central Banks

Legislations listed in Annex III to the Basic Law of Macao SAR	
1	Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China
2	Resolution on the National Day of the People's Republic of China
3	Nationality Law of the People's Republic of China
4	Law of the People's Republic of China on the National Flag
5	Law of the People's Republic of China on the National Emblem
6	Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities
7	Regulations of the People's Republic of China concerning Consular Privileges and Immunities
8	Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone
9	Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region
10	Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf
11	Law of the People's Republic of China on the Judicial Immunity from Compulsory Measures concerning the Property of Foreign Central Banks

Annex VII
List of Recommendations to CICIA

Recommendation 1 -- Guiding Principle

Acknowledging lack of cooperation in matters of cross-border insolvency despite of the increasingly closer economic relationship, the guiding principle that embodies the entire arrangement is designed to promote fair and efficient administration of China's inter-regional cross-border insolvency proceedings in a coordinated manner.

Recommendation 2 – Overriding Objective

Aware of restrictions set by the constitutional arrangements and lack of functioning fundamental principles, the overriding objective of the arrangement is to facilitate recognition of inter-regional cross-border insolvency proceedings.

Recommendation 3 – Form and Scope

(1) *Considering China's complex internal structure and desiring more predictability and more legal certainty at the regional level, an inter-regional cross-border insolvency arrangement (CICIA) is to be established.*

(2) *CICIA is binding on the Mainland and the two SARs altogether. In accordance with CICIA, cross-strait insolvency cooperation between the Mainland and Taiwan is subject to a separate arrangement.*

(3) *CICIA applies only to proceedings where the center of the debtor's main interests (COMI) is located within the Mainland and the two SARs.*

(4) *CICIA shall apply to public collective proceedings, including interim proceedings, in accordance with laws relating to insolvency in which proceedings the assets and affairs of the debtor are under the control or supervision by a court for the purpose of rescue, reorganization or liquidation.*

(5) *CICIA shall not apply to insolvencies concerning natural persons and financial institutions, which are governed by special insolvency regimes in the three regions.*

Recommendation 4 – Recognition and Reliefs

(1) *An insolvency proceeding commenced in one region, that with respect to the debtor concerned, has the relevant international jurisdiction should be recognized as main or non-main insolvency proceeding and given appropriate effect under the circumstances in every other region.*

(2) *The courts of one region within the territory of which the center of the debtor's main interests is situated shall have jurisdiction to open main insolvency proceedings.*

(3) The place of the registered office shall be presumed to be the COMI in the absence of proof to the contrary.

It should be possible to rebut this presumption where the debtor's central administration is located in a region other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the debtor's actual center of management and supervision and of the management of its interests is located in that other region.

The relevant date at which COMI shall be determined is the date of commencement of the main insolvency proceedings.

(4) The courts of another region shall have jurisdiction to open a non-main insolvency proceedings against the debtor if it possesses an establishment within the territory of that other region.

(5) Establishment means any place of operations where a debtor carries out a non-transitory economic activity with human means and assets.

The relevant date at which an establishment of the debtor shall be determined is the date of commencement of the non-main insolvency proceedings.

(6) Upon recognition of an insolvency proceeding as a main proceeding:

(a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed; but the stay does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor;

(b) Execution against the debtor's assets is stayed; and

(c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

The scope, modification or termination of those aforementioned reliefs is subject to the law of the region where recognition and reliefs are sought. Those aforementioned reliefs do not affect the right to request the opening of an insolvency proceeding in the region where recognition and reliefs are sought.

(7) The following interim reliefs may be granted upon request of the insolvency practitioners in the main or non-main proceedings, from the time of filing an application for recognition until the application is decided upon:

(a) Staying execution against the debtor's assets;

(b) Entrusting the administration or realization of all or part of the debtor's assets located in the region to the insolvency practitioners in the main or non-main proceedings, in order to protect and preserve the value of assets

The interim reliefs can be refused to be granted if they would interfere with the administration of a main insolvency proceeding and unless extended, they terminate when the application for recognition is decided upon.

(8) Upon recognition of an insolvency proceeding, whether main or non-main, the court may, at the request of the insolvency practitioners in the main or non-main proceedings, grant any appropriate relief that may be available under the laws of this region where recognition and reliefs are sought.

Recommendation 5 – Public Policy

Any region may refuse to recognize insolvency proceedings opened in another region or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that region's public policy, in particular its fundamental principles or the constitutional rights and liberties of its citizens.

Recommendation 6 – Cooperation and Communication (single debtor and enterprise groups)

(1) An insolvency practitioner shall, in the exercise of its functions and subject to the supervision of the court, cooperate and communicate to the maximum extent possible with the courts or insolvency practitioners in other regions.

(2) Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate and communicate with the courts and any insolvency practitioner appointed in proceedings concerning another member of the same group to the maximum extent possible.

Recommendation 7 – Cross-border Insolvency Agreements

(1) In the course of cooperation and communication, insolvency practitioners, who are subject to the jurisdiction of their own courts, can cooperate with each other closely to enter into cross-border insolvency agreements, which shall be approved by the courts.

(2) The independence, sovereignty or jurisdiction of the relevant local courts should not be affected by the agreement.

(3) The agreement concluded can cover the following basic contents:

(a) Allocation of responsibilities between the different courts involved and between insolvency practitioners; including limitations on authority to act without the approval of the other courts or insolvency practitioners;

(b) methods of communication, including language, frequency and means;

(c) sharing of information on claims lodged, the verification and disputes concerning claims;

(d) location, use and disposal of assets;

- (e) coordination and harmonization of reorganization plans;*
- (f) costs and fees;*
- (g) all other elements that can contribute to efficient coordination of inter-regional insolvency proceedings*

If the courts or the insolvency practitioners after discussion find something useful to add beyond the aforementioned scope, they shall not be limited as long as it is not inconsistent with the local mandatory rules.

- (4) In matters of enterprise groups, the agreement can include:*
- (a) means of timely communication of any relevant information concerning the group members subject to insolvency proceedings, provided appropriate arrangements are made to protect confidential information;*
 - (b) coordination of the administration and supervision of the affairs of the group members subject to insolvency proceedings;*
 - (c) coordination of the proposal and of reorganization plans;*
 - (d) allocation of powers or responsibilities between insolvency practitioners*
 - (e) costs and fees*
 - (f) all other elements that can contribute to efficient coordination of inter-regional group insolvency proceedings*

If the courts or the insolvency practitioners after discussion find something useful to add beyond the aforementioned scope, they shall not be limited as long as it is not inconsistent with the local mandatory rules

- (5) Complementary cross-border insolvency agreements shall also be allowed to address some issues upon prompt need on an ad hoc basis.*

Recommendation 8 – Functional Dispute Settlement Mechanism

(1) In the course of inter-regional cross-border insolvency proceedings, a court that seeks explanation of the provisions under CICIA shall report to the Supreme Court of that region, which can request a special meeting to be convened.

(2) Explanation given by the special meeting on specific provisions of CICIA serves as proper interpretation on the specific issues arising from the individual case, which deserves due respect of the courts concerned. Upon consensus of the Supreme Courts concerned, the explanation shall have binding effect on that individual case. Upon consensus of all the Supreme Courts, the explanation shall have binding effect on the specific provisions under CICIA.

(3) In the course of implementing cross-border insolvency agreements, the courts in the concurrent proceedings can report to the Supreme Court from the respective regions, which can jointly request a special meeting to be convened and refer the disputes arising from cross-border insolvency agreements to the special meeting.

(4) In matters of the disputes arising from cross-border insolvency agreements, the opinions or part of the opinions come into binding effect to the extent that all the requesting courts involved agree to accept them, which should be expressly written

into the judgments. The opinions are only binding on the individual case referred to the special meeting. If one of the requesting courts disagrees with the opinions or part of the opinions given by the special meeting, those opinions are not binding.

(5) Each court of the highest-level from the three regions can designate one or two in-house judges to participate in the meeting. After discussion, the participating judges will deliver their joint opinions on the case referred to them.

(6) As for Hong Kong, any reference handed down by the special meeting shall not be construed as a direct reference to the courts in Hong Kong SAR except for the disputes concerned or unless the Court of Final Appeal of HKSAR expressly indicates otherwise.

Recommendation 9 - Inter-regional Case Register

(1) Each region should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register.

(2) Once a cross-border insolvency proceeding is commenced in one region, the court shall immediately inform the communication authority in its own region. The communication authority must publish the information concerning opening of insolvency proceedings on its e-portal and is also mandatory to inform its counterpart communication authorities concerned in the other regions. Meanwhile, the e-portal of each region should provide interconnection system that links to the registers in other regions.

(3) The minimum amount of information is required to be published in the inter-regional insolvency registers, including

(a) the date of the opening of insolvency proceedings

(b) the court opening insolvency proceedings and the case reference number, if any;

(c) the debtor's name, registration number, registered office and current correspondence address;

(d) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings

(e) the time limit and place for lodging claims, if any, or a reference to the criteria for calculating that time limit;

Additional information subject to the local laws shall not be precluded.

(4) The official language for the relevant information shall be Chinese. The information can also be published in English in Hong Kong SAR or Portuguese in Macao SAR but shall always be accompanied with Chinese translation.

Recommendation 10 – Independent Intermediaries: Separate Arrangement for Cross-strait Insolvency Cooperation (The Mainland and Taiwan)

(1) The cross-strait insolvency proceedings shall be coordinated in the way of appointment of independent intermediaries from both sides.

(2) To guarantee the qualification as well as impartiality, the criteria to be appointed as an independent intermediary shall be agreed upon by the both sides. The role and competence of the intermediary can be set out in a protocol or an order of the court.

(3) The main duty of the independent intermediaries is to maintain the connection with its counterpart and jointly devise a practical means of conducting cooperation and communication between the courts concerned.

(4) Before the appointment of the independent intermediaries, the opinions of the insolvency practitioners should be consulted especially in matters of the way of conducting communication and cooperation. Once appointed, an intermediary should be accountable to the court that appoints him or her and a related protocol can be reached with the approval of the respective courts.

(5) The independent intermediaries from the both sides can hold regular meeting either onsite or via e-technological means so that they can keep the courts from the both sides informed of the possible conflicts or problems in the cross-strait insolvency proceedings.

(6) Considering the difference of professional qualification criteria in the each side, each side recommends some candidates of independent intermediaries for itself, holding a discussion to select someone both sides can trust and then putting those candidates separately in a closed list so that a consensus can be reached in advance to make sure that the qualifications of the independent intermediaries can be accepted by both sides in the process of coordination.

(7) The independent intermediaries should observe the duties in an impartial manner, free from bias, prejudice and any conflicts of interest. If its impartiality is in doubt, the court, after consulting the opinions of the insolvency practitioners of both sides, can dismiss the independent intermediaries appointed by itself or request the counterpart court to dismiss its independent intermediaries with specific reasons upon the request of the independent intermediaries. A new independent intermediary can be selected from the list.

(8) The independent intermediaries will be remunerated from the estate of the insolvency proceedings in which the court appointed him or her.

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Curriculum Vitae

Ms. Xinyi Gong is sponsored by China Scholarship Council to conduct her PhD research in Leiden University. Her research topic is concerning comparative study of cross-border insolvency and her expertise focuses on the insolvency systems of the Greater China Region (the Mainland China, Hong Kong, Macao and Taiwan), the EU Insolvency Regulation and UNCITRAL Model Law. In the course of her PhD research, she has spent half one year at National Taiwan University in order to explore the local legal system. In addition to her research, Ms. Gong also engaged in practicing at the governmental institution and international organizations, including the Department of Justice Hong Kong SAR, the United Nations Commission on International Trade Law (UNCITRAL) as well as the Hague Conference on Private International Law (HCCH), where she learned how the inter-regional and international legal cooperation regimes were drafted, negotiated and obtained consensus.