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A balanced way for China's inter-regional cross-border insolvency cooperation

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Propositions

relating to the dissertation (A Balanced Way for China's Inter-Regional Cross-Border Insolvency Cooperation) by Xinyi Gong

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) with 10 Recommendations 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. 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.
4. 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 insolvency proceedings.
5. 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.
6. 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.
7. 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.
8. 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.

9. 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.
10. 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.
11. Each region should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register.
12. The cross-strait insolvency proceedings shall be coordinated in the way of appointment of independent intermediaries from both sides.