

Cross-Border Insolvency between China and Uzbekistan: Two Typical Scenarios and Bilateral Cooperation Paths under China's New Draft Enterprise Bankruptcy Law

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Abstrak: China and Uzbekistan have established a basic legal framework for cross-border insolvency cooperation through existing Treaties. However, they cannot meet the special needs of insolvency proceedings. In 2025, China's Draft Revision to the Enterprise Bankruptcy Law added a specific chapter on "cross-border insolvency", adopting the core principles of the UNCITRAL Model Law on Cross-Border Insolvency, bringing new opportunities for cross-border insolvency collaboration between China and Uzbekistan. By analyzing two typical scenarios and pointing out the dilemmas in cross-border insolvency between China and Uzbekistan, this thesis proposes a cooperation path, connects regional rules, protecting the rights and interests of creditors of both countries.

Keywords: Cross-Border; bankruptcy; China; Uzbekistan

Introduction

China has become Uzbekistan's largest trading partner and major source of investment. With the rapid growth of cross-border investment and trade, cross-border insolvency cooperation has also become an important issue to deepen judicial cooperation between China and Uzbekistan and protect the legitimate rights and interests of creditors of both countries.

The Treaty Between the People's Republic of China and the Republic of Uzbekistan on Judicial Assistance in Civil and Criminal Matters, concluded by China and Uzbekistan, provides a basis for the mutual recognition of civil and commercial judgments of both countries but does not include special provisions for the particularity of cross-border insolvency proceedings. Cross-border insolvency involves a series of complex issues which cannot be effectively resolved through general rules on the recognition and enforcement of judgments.

Chapter 1 Existing Legal Framework

(I) CU-MJAT

Article 17 of the Treaty clearly stipulates that the contracting parties shall recognize civil rulings made in the territory of the other party within their own territory, including court judgments and rulings, among which those that should be enforced according to the nature of the ruling shall be enforced. Specifically, Article 4 of CU-MJAT stipulates the service of documents, investigation and collection of evidence, and the performance of other litigation acts related to judicial assistance.

(II) Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Both China and Uzbekistan are contracting parties to this Convention. In cross-border insolvency cases, insolvent enterprises fail to perform contracts, thus causing various commercial arbitration disputes. The Convention provides a guarantee for the efficient resolution of such disputes and effectively connects insolvency proceedings with arbitration ones, largely reducing the cost of

(III) United Nations Convention against Corruption

The convention focuses on the recovery of cross-border assets. According to the Convention, “proceeds of crime” refers to property obtained through any criminal offense. Since bankruptcy fraud is a criminal offense shared by the laws of both China and Uzbekistan, the transferred assets of which would fully meet the Convention’s definition of “proceeds of crime”. Therefore, the convention’s asset recovery mechanism is applicable to cross-border bankruptcy cases. This mechanism provides a supplementary way for both countries to regulate cross-border bankruptcy fraud and recover illegally transferred bankruptcy assets.

Chapter 2 Scenario 1: Cross-Border Asset Distribution under Single Entity Insolvency

(I) Dilemmas under Existing Legal Framework

First, the existing treaties do not clearly stipulate whether a bankruptcy manager is entitled to directly exercise management rights within the territory of another country. For example, when one country’s parent company enters insolvency proceedings, and the appointed bankruptcy manager may lack legal basis to perform in the other country. The lack of identity recognition will obstruct bankruptcy managers from effectively carrying out takeover and investigation work of cross-border assets, thereby affecting the efficiency of insolvency proceedings.

Second, in order to prevent debtors from transferring or concealing assets, it is often necessary to take temporary preservation measures against the debtor’s assets, including sealing up, freezing accounts, and seizing property. But the existing treaties do not make such provisions, and if temporary preservation measures are not taken in a timely manner, the debtor may further transfer assets, eventually damaging the rights and interests of creditors of both countries.

Third, China and Uzbekistan have made different provisions on the repayment order of bankruptcy claims based on their respective social policies and legislative value orientations, thus leading to different repayment priorities for the same claim, largely increasing the difficulty in handling cross-border insolvency cases.

(II) China’s Legislative Practice

Article 203 of the Draft Revision clarifies Chinese bankruptcy managers’ extraterritorial authority to conduct overseas duties and seek foreign court’s recognition and assistance. Following the recognition of foreign proceedings, Chinese courts may grant appropriate assistance, which covers necessary provisional preservation measures and offers a legal basis for regulating inbound cross-border bankruptcy assets. To reconcile conflicting repayment rules, Article 204(3) defines the domestic distribution order, while Article 205 stipulates the equal distribution principle for parallel insolvency proceedings. It restricts over-repayment for creditors who have obtained partial satisfaction abroad, protects domestic priority claims, and delivers clear operational rules for priority coordination in China-Uzbekistan cross-border bankruptcy matters.

Chapter 3 Scenario 2: Substantive Consolidation Insolvency under Confusion of Corporate Personality

Substantive consolidation insolvency is an internationally accepted system for handling the insolvency of affiliated enterprises, aiming to prevent debtors from transferring assets and evading debts through affiliated companies.

(I) Dilemmas under Existing Legal Framework

The Civil Code of the Republic of Uzbekistan upholds the independent civil liability of legal entities. Article 67(2) confirms a subsidiary is not liable for its parent company’s debts, reflecting separate legal personality and shielding subsidiary assets from parent creditors. In principle, parent companies also bear no liability for subsidiary debts, unless contractual obligations or wrongful mandatory instructions cause losses, triggering subsidiary liability. Notably, Article 67(3) imposes parental subsidiary liability where the parent’s fault results in a subsidiary’s insolvency. Lacking relevant provisions in bilateral treaties, substantive consolidation insolvency rulings from one state may be denied recognition by the other due to systemic legal gaps. Such deficiencies enable debtors

(II) China's Legislative Practice

Article 184 of Draft Revision stipulates that "where the legal personality of affiliated enterprises is highly confused and difficult to distinguish, seriously damaging the interests of creditors in fair repayment, or the affiliated enterprises are established for fraudulent purposes, the affiliated enterprises may apply for substantive consolidation insolvency of the relevant affiliated enterprises", clarifying the applicable conditions for substantive consolidation insolvency of enterprises and establishes a special chapter on consolidated insolvency.

(III) Common Interests in Carrying out Substantive Consolidation Insolvency Cooperation

For Uzbekistan, the introduction of a substantive consolidation insolvency cooperation mechanism can effectively prevent debtors from transferring assets to China to evade debts and protect the interests of domestic Uzbek creditors. The recognition of China's substantive consolidation rulings by Uzbekistan can also protect the legitimate interests of Chinese creditors and promote economic exchanges between the two countries.

Chapter 4 Feasible Paths for future Cooperation

I. "Real-Time Litigation" Cooperation established by UNCITRAL Model Law

(I) Direct Communication with Foreign Courts and bankruptcy managers

Drawing on Article 25 of the UNCITRAL Model Law "The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives". And the rules of Draft Revision, it is clarified that courts of both countries may directly cooperate and communicate with foreign courts and foreign bankruptcy managers, including through telephone conferences and video conferences. Such direct communication helps to resolve procedural conflicts in a timely manner and promote asset disposal, encouraging bankruptcy managers of both countries to carry out cross-border entrustment. Cooperation agreements, asset disposal plans and creditor's rights verification rules signed between managers may be recognized and enforced by courts on the premise of not violating the mandatory provisions of their own countries.

(II) Refine Rules for Coordination and Comity of Parallel Proceedings

The core spirit of modified universalism and the UNCITRAL Model Law should be absorbed, when courts of both countries handle parallel insolvency proceedings, they should replace the traditional model which relies solely on judicial coercion with market-oriented cooperation.

1. Establish a Coordinated Cross-Border Temporary Asset Preservation Mechanism

To address the risk of asset transfer, according to Article 19 and Article 21 of the UNCITRAL Model Law, "From the time of filing an application for recognition until the application is decided upon" and "Upon recognition of a foreign proceeding, the court may grant relief " a court's order of suspension of execution, property preservation, freezing, sealing up or seizure made on the basis of insolvency proceedings should be promptly assisted by the court of the other country upon receipt of the application, and shall no longer be refused on the grounds of "no special treaty provisions". The application materials should be simplified, and the review period shortened. Moreover, the rule of "preservation first, review later" shall be established during emergency occasions, minimizing the risk of debtors concealing or transferring cross-border assets.

2. Unify the Common Standards for the Order of payment

Under Article 13 of the UNCITRAL Model Law, foreign creditors enjoy equal rights to initiate and participate in domestic insolvency proceedings. In light of the Draft Revision and Article 32 of the UNCITRAL Model Law, a creditor who has received partial repayment abroad shall not obtain additional distribution in parallel domestic proceedings until creditors of the same priority gain equivalent treatment. Unified protection standards are required to prevent forum shopping and unfair distributions arising from inconsistent national repayment rules. Labor, social security and tax claims shall enjoy priority in cross-border insolvency, while secured claims shall be fully protected without

III. Promote Consensus on Regional Framework established by Shanghai Cooperation Organization

China and Uzbekistan should rely on the Meeting of Presidents of the Supreme Courts of the Member States of the Shanghai Cooperation Organization. Since its launch in 2006, this mechanism has become a core platform for member states to unify judicial standards and address new cross-border legal issues. At the same time, in accordance with documents such as the Joint Statement of the Meeting of Presidents of the Supreme Courts of the Member States of the Shanghai Cooperation Organization and the Memorandum of Understanding on Strengthening Judicial Cooperation and Assistance Between the Supreme Courts of the Member States of the Shanghai Cooperation Organization, the mechanism for regular judicial information exchange and experience sharing on the recognition and enforcement of judgments between courts of member states should be promoted.

Conclusion

In conclusion, although the existing treaty framework between China and Uzbekistan provides a basic foundation for judicial assistance, it is insufficient to address the unique challenges of cross-border insolvency. Draft Revision which draws on the UNCITRAL Model Law, offers new legal tools and opportunities for cooperation. On this basis, both countries should adopt a pragmatic approach to strengthen judicial coordination, improve procedural mechanisms, and gradually build shared standards for creditor protection, so as to achieve a more efficient and fair cross-border insolvency regime.

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