# The recognition of German insolvency proceedings in China and beyond

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*Abstract:*

Despite its position as the world's second-largest economy, China's development in bankruptcy legislation and judicial practice, especially in the realm of cross-border issues, remains rudimentary. To date, there have been very few cases where PRC courts have recognized and assisted foreign insolvency proceedings. This essay discusses two such cases in which the PRC courts recognized German insolvency proceedings, showcasing the gradual evolution of PRC judicial practice in this area. Notably, the criteria for granting recognition and assistance have shifted from a reliance on strict treaty relationships or de facto reciprocity to a more flexible approach based on de jure reciprocity. This shift exhibits China's increasingly open stance toward cross-border insolvency recognition and assistance. However, significant challenges remain for China to fully engage in effective cross-border insolvency cooperation with foreign jurisdictions, including Germany and, more broadly, EU member states. Over time, adopting the UNCITRAL Model Law serves as the optimal strategy for enhancing cross-border insolvency cooperation between the PRC and other jurisdictions. This approach also holds significance for the EU as it navigates cross-border insolvency issues with third countries, including China.

**Keywords:** cross border insolvency in China; recognition; *de jure* reciprocity; Sino-German insolvency cooperation; *In re Sascha Rudolf Seehaus*; *In re Dr. Andreas Ringstmeier*

## *A. Introduction*

As China's engagement with economic globalization deepens, the country has seen an increase in high-profile cross-border insolvency cases over the recent years.[1] Despite the critical importance of an insolvency legal system in nurturing a market economy, the development of China's bankruptcy law and related judicial practice, particularly its cross-border aspects, are still in the early stages.[2] This stands in sharp contrast to China's position as the world's second-largest economy. Within the current legislative framework, the 2006 Enterprise Bankruptcy Law ('EBL') addresses cross-border insolvency issues only in a single provision, Article 5, which contains two paragraphs. The first paragraph deals with the extraterritorial effect of outbound proceedings, providing that an insolvency proceeding commenced by a PRC court encompasses all the debtor's assets, irrespective of their locations. This asserts the universality effect of PRC insolvency proceedings, although the realization of this effect heavily relies on the recognition and assistance of foreign courts where the debtor's overseas assets are located. Inspired by Japan's bankruptcy law reforms in the late 1990s,[3] this assertion facilitates the bankruptcy administrator duly appointed in a PRC proceeding to seek such recognition and assistance from the courts in foreign jurisdictions.

The second paragraph of Article 5 concerns the territorial effect of inbound proceeding, *i.e.*, whether and how an insolvency proceeding commenced in a foreign jurisdiction could be recognized and assisted by a PRC court. Pursuant to this paragraph, a PRC court may recognize a foreign insolvency proceeding, subject to: (1) the rendering jurisdiction has an international treaty/agreement with the PRC or there exists reciprocity between the rendering jurisdiction and PRC; (2) recognition would not violate the basic principles of PRC law; (3) recognition would not jeopardize the State sovereignty, security or public interest; and (4) recognition would not undermine the interests of PRC creditors. The conditions set in this paragraph mirror the provisions in the 1991 Civil Procedure Law of the

1 *See e.g.*, Shi, Hong Kong Lawyer 2023.

2 In 1986, a first bankruptcy law in the Mainland China was promulgated but only applied to state-owned enterprises on a trial basis, reflecting a need in a transitional period of China from planned economy to market economy. This law did not contain any provision on cross-border insolvency. With respect to the limited judicial practice in this area, *see e.g.*, Guo/Su,), Int'l Ins. Rev. 2023, 41 (44–45) ('The judges apply a rigid 'international agreement/treaty + reciprocity' test, following CPLs'). With regard to the judicial practice prior to the adoption of the EBL, *see* Shi, Int'l Ins. Rev. 2001, 38 (38–39).

3 *See e.g.*, Bhala, p. 60–63.

PRC ('the 1991 CPL'), without distinguishing between collective insolvency proceedings and individual civil and commercial proceedings.[4]

Article 5 of the EBL is emblematic of its historical context, which does not adequately cater to the nuances of cross-border insolvency today. Its origins can be traced back to the influence of the 1991 CPL, especially its Articles 267 and 268 that govern the recognition and enforcement of foreign civil and commercial court judgments. This influence stems from the erstwhile prevailing view that bankruptcy law was a subset of civil procedure law,[5] suggesting that the criteria for recognizing and assisting foreign insolvency proceedings should align with those for recognizing and enforcing foreign civil and commercial court judgments. Despite the existence of the 1997 UNCITRAL MLCBI and the EIR as potential benchmarks during the EBL's drafting phase, the conditions for integrating these best practices into the EBL appeared immature. Consequently, the EBL's limited engagement with cross-border insolvency, confined to a singular article, hampers its capacity to address the complex realities of cross-border insolvency effectively.

The requirement of treaty relations or reciprocity often serves as a significant barrier for PRC courts in recognizing and assisting foreign insolvency proceedings. The question of whether reciprocity should be a prerequisite for such recognition and assistance in cross-border insolvency was subject to debate.[6] The outcome is that UNCITRAL MLCBI and the EIR do not mandate reciprocity as a condition for cross-border insolvency cooperation. However, Article 5 of the EBL, reflecting Articles 267 and 268 of the 1991 CPL, does require it. This requirement introduces a fundamental challenge: determining who should initiate for the establishment of reciprocity. Furthermore, when reciprocity is deemed necessary, the question then emerges on how to interpret reciprocity in a way that aids the recognition and support of foreign insolvency proceedings.

Since the enactment of the 2006 EBL, approximately ten insolvency proceedings initiated within the PRC have been recognized by foreign jurisdictions. This includes six cases in Hong Kong, three in the United States, and one in Singapore. On the inbound front, PRC courts have

4 For more analysis on Article 5 of the EBL, *see* Shi, Norton J. of Bankr. L. and Practice, 2007, 645 (645).

5 This understanding does not merely exist in China. *See e.g.*, Mooney, Washington and Lee L. Rev. 2004, 931 (937–940).

6 *See e.g.*, Yamauchi, Int'l Ins. Rev. 2007, 145 (145–179).

extended recognition and assistance to six foreign insolvency proceedings: two from Hong Kong,[7] two from Germany,[8] one from Singapore,[9] and one from Japan.[10] Following this introduction of PRC legislation and judicial practice on cross-border insolvency, this essay discusses two cases where PRC courts have recognized German insolvency proceedings, highlighting a shift from strict adherence to treaty relations or *de facto* reciprocity towards *de jure* reciprocity. This shift signifies a more open and flexible stance on cross-border insolvency cooperation taken by the PRC courts.

## *B. In re Sascha Rudolf Seehaus [In re Sascha]*

### I. Case summary and Court's decision

On July 30, 2012, Sascha Rudolf Seehaus, as a bankruptcy administrator appointed in a Germany insolvency proceeding, submitted an application to the Wuhan Intermediate People's Court ('Wuhan Court') for the recognition of a decision made by the District Court of Montabaur, Germany, on December 1, 2009, under file number '14 IN 335/09'. This decision included several key points: (1) Sascha Seehaus was appointed as the bankruptcy administrator for the debtor company, SP Management GmbH; (2) the debtor was barred from managing or disposing of any assets, both current and those acquired in the future, which were to be handed over to the administrator; (3) the administrator was granted with the power to enforce this decision; (4) creditors were instructed to file their debt of proof in writing to the administrator by January 10, 2010, and to promptly notify the administrator of any claims against movable properties or debt interests to mitigate risk; (5) any person owing money to the debtor was directed to cease payments to the debtor and instead pay to the administrator.[11]

7 (2021) Yue 03 Ren Gang Po No. 1 [(2021) 粤 03 认港破 1 号] (date of decision: December 15, 2021); (2022) Hu 03 Ren Gang Po No. 1 [(2022) 沪 03 认港破 1 号] (date of decision: March 30, 2023).

8 (2012) E Wuhan Zhong Min Shang Wai Chu Zi No. 00016 [(2012) 鄂武汉中民商外初字 00016 号] (date of decision: November 26, 2013); (2022) Jing 01 Po Shen No. 786 [(2022) 京 01 破申 786 号] (date of decision: January 16, 2023).

9 (2020) Min 72 Min Chu No. 334 [(2020) 闽 72 民初 334 号] (date of decision: August 18, 2021).

10 (2021) Hu 03 Xie Wai Ren No. 1 [(2021) 沪 03 协外认 1 号] (date of decision: September 26, 2023).

11 (2012) E Wuhan Zhong Min Shang Wai Chu Zi No. 00016, *supra note* 8.

The Wuhan Court found that the decision from the Montabaur Court in Germany came into effect on December 1, 2009. Puasuant to Article 154(1)(k) and Article 282 of the CPL of the PRC (2012 Amendment),[12] recognizing this decision did not contravene the fundamental principles of PRC law, nor did it jeopardize the state sovereignty, security, or public interests of the PRC. Furthermore, it is noted that the Kammergericht Berlin had previously issued a judgment on May 18, 2006,[13] recognizing a civil decision made by a PRC court, thereby establishing a precedent for reciprocity between the PRC and Germany.[14] Consequently, the Wuhan Court recognized the Montabaur court decision in this case.

## II. Comment on the Sascha case

*In re Sascha* marks the first case of the PRC recognizing a German insolvency proceeding. Regretfully, the ruling issued by the Wuhan Court is extremely brief, spanning just over a single page, and leaves considerable ambiguity. This brevity and lack of reasoning suggest the Wuhan court's relative inexperience in addressing matters concerning the recognition of foreign insolvency proceedings.

First, in the *In re Sascha* case, the request made to the Wuhan Court by the German bankruptcy administrator was ostensibly straightforward, *i.e.*, to secure recognition of a German insolvency proceeding in the PRC. Despite the EBL being in force for several years by that time, the Wuhan Court based its decision on the CPL (2012 Amendment), conspicuously ignoring

12 'After examining an application or request for recognition and enforcement of an effective judgment or ruling of a foreign court in accordance with an international treaty concluded or acceded to by the People's Republic of China or under the principle of reciprocity, a people's court shall issue a ruling to recognize the legal force of the judgment or ruling and issue an order for enforcement as needed to enforce the judgment or ruling according to the relevant provisions of this Law if the people's court deems that the judgment or ruling does not violate the basic principles of the laws of the People's Republic of China and the sovereignty, security and public interest of the People's Republic of China. If the judgment or ruling violates the basic principles of the laws of the People's Republic of China or the sovereignty, security or public interest of the People's Republic of China, the people's court shall not grant recognition and enforcement.' Article 282, Civil Procedure Law of the People's Republic of China (2012).

13 *See*, Aktenzeichen 20 Sch 13/04 (date of decision: May 18, 2006).

14 (2012) E Wuhan Zhong Min Shang Wai Chu Zi No. 00016, *supra note* 8.

the EBL altogether, including Article 5, which would have been directly pertinent to the case. This unusual decision appears to originate from the enduring perception of bankruptcy law as a subset of civil procedure law. In fact, the judges handling the case, while specialized in foreign-related civil and commercial disputes, demonstrated a notable deficiency in bankruptcy law expertise. Their ruling effectively conflated the recognition of foreign insolvency proceedings with the recognition and enforcement of foreign civil and commercial court judgments – a conflation that deviates from widely accepted international norms. For instance, international conventions on the recognition and enforcement of foreign court judgments, such as the latest Hague Convention, typically exclude bankruptcy and similar collective proceedings from their scope of application.[15]

Second, Article 282 of the CPL, as amended in 2012, likewise, requires a treaty or a reciprocity relationship for the recognition and enforcement of foreign judgments. Given the absence of a formal treaty between the PRC and Germany concerning cross-border insolvency, the principle of reciprocity should theoretically underpin the recognition of German insolvency proceedings. In this particular case, the Wuhan Court resorted to a *de facto* reciprocity test, which necessitates proven cooperative actions from the jurisdiction seeking assistance,[16] a method that potentially leads to a deadlock in judicial cooperation.[17] Interestingly, in this case, the judges' limited familiarity with bankruptcy law inadvertently facilitated a simpler establishment of a reciprocity relationship between the PRC and Germany. Instead of referencing an insolvency proceeding or order, the Wuhan Court cited an case where a German court had recognized a civil judgment

15 ‘1. This Convention shall not apply to the following matters –…(e) insolvency, composition, resolution of financial institutions, and analogous matters;…’ Article 2 (exclusions from scope), the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention).

16 *See*, UNCITRAL, *Report of the Working Group on Insolvency Law on the Work of the Eighteenth Session*, A/CN.9/419, 1 December 1995, para. 44; Westbrook, Am. Bankr. L. J. 1991, 457 (468).

17 Shi, *Cross-Border Insolvency in China: The Status Quo, Trend, and Suggestions*, in The Third Seminar of the International Commercial Expert Committee of the Supreme People's Court and Reappointment Ceremony of the First Group of Expert Members, 25 August 2022, https://cicc.court.gov.cn/html/1/219/199/203/2309.html (last visited February 25, 2024); Huang, p. 72.

issued by a PRC court in Jiangsu Province, thereby leveraging a broader interpretation of reciprocity requirement.[18]

Third, the succinct ruling by the Wuhan Court left crucial details ambiguous, failing to clarify whether any specific relief was extended to the bankruptcy administrator. Typically, the recognition and assistance of a foreign insolvency proceeding encompass recognizing the foreign administrator's status and enabling them to execute their responsibilities, which include managing and liquidating the bankruptcy estate. The absence of such details creates uncertainty regarding the extent of relief, if any, the Wuhan Court provided to the administrator to facilitate the execution of his duties within the PRC.

## *C. In re Dr. Andreas Ringstmeier [In re DAR]*

### I. Case summary

In this case, recognition concerned the German insolvency proceeding on *LION GmbH*, a German construction and engineering company, which was officially registered with the Industry and Commerce office of the Landgericht Aachen under the registration number HRB6267. On October 7, 2010, facing financial difficulties and unable to meet its debt obligations, LION GmbH applied for bankruptcy at the Landgericht Aachen. Subsequently, on January 1, 2011, the court issued an insolvency ruling under file number 91IE5/10 (*Aachen Court Ruling*), appointing Mr. DAR as the bankruptcy administrator for LION GmbH. The debtor company owned a piece of real estate in the Dongcheng District of Beijing, acquired on August 11, 1997. As the appointed administrator, Mr. DAR executed a real estate sale agreement with European LION (Singapore) Limited (*LION Singapore*) on December 19, 2016, for a sale price of EUR 50,000. LION Singapore completed the payment and took possession of the property, utilizing it thereafter. This real estate was the sole property of LION GmbH located within China, and no other parties had asserted claims over this property.[19]

Mr. DAR, acting as the bankruptcy administrator for LION GmbH, sought to manage the property transfer processes in the PRC and submitted

18 (2004) Xin Min Er Chu Zi No. 154 [(2004) 新民二初字第 154 号] (date of decision: September 2, 2004).

19 (2022) Jing 01 Po Shen No. 786, *supra note* 8.

an application to the Beijing No. 1 Intermediate People's Court/Beijing Bankruptcy Tribunal ('Beijing Court'). In the application, Mr. DAR sought the court's assistance for several actions: (1) to recognize the legal validity of the insolvency proceeding initiated by the Landgericht Aachen on January 1, 2011, under file number 91IE5/10; (2) to recognize him, DAR, as the appointed bankruptcy administrator of LION GmbH; and (3) to permit him to carry out his duties within the PRC, which include: (i) taking possession of LION GmbH's property, seals, accounting records, documents, and other relevant materials; (ii) determining the necessary daily and other essential expenses for LION GmbH; and (iii) overseeing and liquidating LION GmbH's assets.[20]

## II. The Beijing Court's decision

Upon affirming its jurisdiction over the matter, the Beijing Court proceeded to address multiple questions pertaining to the recognition of the insolvency ruling issued by the Landgericht Aachen, the role of DAR as the appointed administrator for LION GmbH, and the fulfilment of duties and functions by Mr. DAR in his capacity as the designated administrator.

### 1. Recognition of the Aachen Court ruling and Mr. DAR as the administrator

The Beijing Court's decision was anchored in several findings. First, pursuant to Article 5(2) of the EBL, in the absence of a specific treaty on cross-border insolvency between the PRC and Germany, the recognition of German insolvency proceedings should hinge on the principle of reciprocity. To this end, the Beijing Court took note that Section 343 of the German Bankruptcy Code facilitates the recognition of insolvency proceedings from foreign jurisdictions, implicitly including those initiated by PRC courts. Given the lack of any record of Germany refusing to recognize a PRC insolvency proceeding, reciprocity between the two nations is thus presumed to be in place. Second, the Beijing Court realized that, according to the decision from the Aachen Court, the insolvency proceeding was launched at the centre of main interests (COMI) of the debtor company,

20 *Ibid.*

LION GmbH, thereby granting the Landgericht Aachen the appropriate jurisdiction to commence insolvency proceeding against the debtor. Third, the German Bankruptcy Code characterizes its proceedings as collective, not disadvantaging foreign creditors,[21] including those from the PRC. Moreover, LION GmbH was not involved in any litigation or arbitration proceeding within the PRC, and apart from LION Singapore's role in contracting with the German bankruptcy administrator, no other claimants had become active in the PRC with regard to the debtor's assets in the PRC. Also, no challenges were presented to the Beijing Court within the designated timeframe for such submissions.[22] Based on these determinations, the Beijing Court granted recognition to the Aachen Court's Ruling and Mr. DAR as the duly appointed administrator in the German proceeding.

### 2. The scope of the administrator's duties and functions

The Beijing Court determined that the power and duties of a foreign administrator should be allowed both in the initiating (requesting) jurisdiction and the responding (receiving) jurisdiction. Specifically, the power and duties of the bankruptcy administrator are outlined in Article 25(1) of the EBL[23] and Section 80 of the German Bankruptcy Code.[24] Furthermore, the

21 Section 1 of the German Insolvency Code reads: *Insolvency proceedings serve the collective satisfaction of a debtor's creditors by means of liquidation of the debtor's assets and distribution of the proceeds or by reaching an arrangement in an insolvency plan, in particular in order to maintain the enterprise. Honest debtors are given the opportunity to achieve discharge of residual debt.*

22 On November 21, 2022, the Beijing Court published a notice on National Enterprise Bankruptcy Ruling Information Disclosure Platform, no objections were filed within the specified period allowed. (2022) Jing 01 Po Shen No. 786, *supra note* 8.

23 Article 25 (1) of the EBL reads: *An administrator shall perform the following duties: (1) taking over the property, seals, account books, documents and other data of the debtor; (2) investigating into the financial position of the debtor and preparing a report on such position; (3) deciding on matters of internal management of the debtor; (4) deciding on the day-to-day expenses and other necessary expenditures of the debtor; (5) deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business; (6) managing and disposing of the debtor's property; (7) participating in legal actions, arbitrations or any other legal procedure on behalf of the debtor; (8) proposing to hold creditors' meetings; and (9) performing other duties that the people's court deems that he should.*

24 Section 80(1) of the German Bankruptcy Code reads: *Upon insolvency proceedings being opened, the debtor's right to manage and transfer the insolvency estate is vested in the insolvency administrator.*

power and duties of Mr. DAR, as the administrator, were recognized as necessary to manage the LION GmbH's assets within the PRC.

In the present case, Mr. DAR requested the Beijing Court's permission for several specific duties: (1) taking control of LION GmbH's assets, company seals, accounting records, documents, and other relevant information; (2) evaluating the LION GmbH's daily and other essential expenditures; (3) managing and liquidating the assets of LION GmbH. These tasks were crucial for the effective administration of LION GmbH's assets in the PRC and lay within the legal duties of a bankruptcy administrator, as outlined in both the German Bankruptcy Code and the EBL. Consequently, in accordance with Article 5(2) of the EBL and Article 157(1)(k) of the CPL of the PRC, as amended in 2021, the Beijing Court authorized Mr. DAR with the powers necessary to fulfil his duties in the PRC.

### 3. A breakthrough from de facto to de jure reciprocity

In *Re DAR*, guided by the Supreme People's Court (SPC), the Beijing Court, for the first time, applied the test of *de jure* reciprocity in recognizing the German insolvency proceeding and the administrator appointed therein.[25] This decision is part of a broader effort to adapt the principle of reciprocity flexibly, aiming to facilitate the recognition and assistance of foreign court judgments within the PRC. This approach underscores a significant shift towards a more open and cooperative stance in international legal engagements by the PRC courts.

In recent years, with the rising need for cross-border judicial collaboration, China has evolved its approach to reciprocity requirement in recognizing and enforcing foreign court judgments, transitioning from a strict *de facto* reciprocity to a more flexible *de jure* reciprocity, also known as negative or presumed reciprocity.[26] This change addresses the fundamental challenge inherent in reciprocity – the dilemma of who should initiate reciprocal actions first. The PRC courts are now encouraged to offer judicial assistance to foreign counterparts first, aiming to establish reciprocal

25 *See*, Chang/Liu, Journal of Law Application 2023, 126 (126).

26 Negative reciprocity involves a rebuttable presumption that reciprocity was available in the jurisdiction whose proceeding was being recognized. UNCITRAL, *supra note* 16.

relationships proactively and thereby broaden the spectrum of international judicial cooperation.[27]

*The Nanning Statement from the Second China-ASEAN Chief Justices' Forum*, specifically in Article 7, clarifies this approach for countries without formal treaties on recognizing and enforcing foreign civil and commercial judgments. It suggests that a reciprocal relationship may be presumed to exist if there is no history of the foreign country's courts ever rejecting the recognition and enforcement of PRC civil and commercial judgments based on reciprocity, or providing recognition and enforcement of PRC judgments is permissible under its domestic laws.

Furthermore, the SPC offers guidance on assessing reciprocity, indicating that when PRC courts review applications for the recognition and enforcement of foreign court judgments, a reciprocal relationship is deemed established if the legal framework of the foreign jurisdiction accommodates the recognition and enforcement of PRC court judgements.[28] This methodology, coined as *de jure* reciprocity, aids in establishing reciprocity for the purpose of easing the requirements of recognizing and enforcing civil and commercial court judgements from foreign jurisdictions. The PRC courts are tasked with evaluating the existence of such a reciprocal relationship on a case-by-case basis. The SPC does take note of speciality and uniqueness of insolvency cases in applying these guidelines. Despite this, the support for *de jure* and presumed reciprocity indicates the spirit of active engagement of judicial cooperation. More specifically, the SPC indeed advises that PRC courts should seek innovative approaches to applying the reciprocity principle in cross-border insolvency cases, aiming to enhance collaboration between PRC courts and foreign administrators, thereby promoting the robust and orderly progress of international investments.[29] As such, when assessing reciprocal relationships, there is an imperative to relax the strict requirements of reciprocity to improve international judicial cooperation on cross-border insolvency issues.

27 SPC, *The Opinions on Providing Judicial Support for the 'Belt and Road' Initiative*, Fa Fa (2015) No. 9, [法发 2015 年第 9 号], *para*. 6.

28 SPC, *Conference Summary of the National Court's Symposium on Foreign-Related Commercial and Maritime Trials 2021* (2021 SPC Meeting Minutes on Foreign-Related Trials) [2021 年全国法院涉外商事海事审判工作座谈会会议纪要], 31 December 2021, *para*. 44.

29 SPC, *Notice on Issuing the Minutes of the National Court Work Conference on Bankruptcy Trials*, Fa (2018) No. 53 [法(2018)第 5 号，最高人民法院印发全国法院破产审判工作会议纪要的通知], 4 March 2018, *para*. 49.

Within this context, the Beijing Court posited that, absent an international treaty between China and Germany on cross-border insolvency, the decision to recognize and assist with the German insolvency proceedings hinges on the presence of reciprocity. Traditionally, China assesses reciprocity by examining if *de facto* reciprocity exists between China and requesting jurisdiction. However, in a notable departure from the Wuhan Court's stance in *Re Sascha* (2012), the Beijing Court articulated a differing view in the present case. It highlighted that the Wuhan Court's establishment of reciprocity was based on the Kammergericht Berlin's recognition of a civil judgment (2004) Xin Min Er Chu Zi No. 154 rendered by the Wuxi High-tech Industrial Development Zone People's Court in Jiangsu Province (the Wuxi Court) on May 18, 2006.[30] However, this judgment was not related to insolvency, leading the Beijing Court to question the existence of *de facto* reciprocity in the realm of cross-border insolvency between the two nations. Consequently, the Beijing Court shifted its focus to the investigation of *de jure* reciprocity between China and Germany, underlining a critical reconsideration of how reciprocity is determined in the context of cross-border insolvency.[31]

The Beijing Court maintains that establishing *de jure* reciprocity encompasses two aspects: firstly, scrutinizing the German Bankruptcy Code alongside relevant laws or regulations to ascertain if PRC insolvency proceedings can be recognized in Germany, including the conditions for such recognition; secondly, evaluating if there has been any case where Germany has declined to recognize a PRC insolvency proceeding. For this purpose, the Beijing Court engaged the services of the Foreign Law Research Center at East China University of Political Science and Law (*the ascertaining center*), a body designated by the SPC for the ascertainment of foreign laws, to examine the pertinent sections of the German Bankruptcy Code and related legal provisions. The report from the ascertaining center, submitted to the Beijing Court, outlined that foreign insolvency proceedings could be recognized under German law unless the rendering court lacks jurisdiction, or if recognizing the foreign insolvency proceeding would starkly contravene the core principles of German law, particularly those safeguarding civil rights. This indicates that, in general, German courts are inclined to recognize foreign insolvency proceedings and grant relief to foreign admin-

30 (2012) E Wuhan Zhong Min Shang Wai Chu Zi No. 00016, *supra note* 8.
31 (2022) Jing 01 Po Shen No. 786, *supra note* 8.

istrators. Consequently, it was concluded that PRC insolvency proceedings may be recognized by German courts, with the criteria for such recognition not being substantially stricter than those applied by China in recognizing foreign insolvency proceedings. Moreover, there has been no recorded case of German courts refusing to recognize a PRC insolvency proceeding. Based on these considerations, the Beijing Court determined the presence of reciprocity between China and Germany.[32]

Although the transition from *de facto* to *de jure* reciprocity in *Re DAR* is lauded as a key advancement in the recognition of foreign insolvency proceedings by PRC courts, it nonetheless highlights the challenges that remain in enhancing cross-border insolvency cooperation. From the perspective of established international norms, dating back to the 1990s, neither the UNCITRAL MLCBI nor the EIR mandate reciprocity as a condition for cross-border insolvency cooperation.[33] The elimination of the reciprocity requirement aligns with the practical necessities emerging from the recognition and support of cross-border insolvency cases, playing a crucial role in fostering such cooperation. In contrast, the reciprocity requirement often leads to considerable coordination costs and not necessarily fulfils the intended goals.[34] As demonstrated in *Re DAR*, while the Beijing Court's shift to *de jure* reciprocity simplifies the criteria for recognizing and assisting the German insolvency proceeding, it necessitates a thorough examination of the German Bankruptcy Code and related practices. This requirement could increase the time and costs involved, especially if the method used by PRC courts to ascertain foreign law may not be universally recognized. Consequently, this approach might cause delay in the process of recogniz-

32 *Ibid.*

33 In the *travaux préparatoires* of MLCBI, first, the Commission took into account the complexity of the term reciprocity, which could be understood in sharply differing ways. Including references to a reciprocity factor would contribute to uncertainty, due to differing understandings and legislative concepts of the notion and due to difficulties in determining the extent to which reciprocity was actually available. Accordingly, national laws often contemplated different notions of reciprocity so that no single solution could be easily provided, even in the form of a convention. Secondly, the requirement of reciprocity may derogate from the purpose of the MLCBI, especially from efforts to maintain the project within parameters of a modest but feasible scope. Inclusion of such a factor would be inconsistent with the basic aim of the project to foster greater international cooperation and would send an inappropriate signal not in accordance with that aim. It was further suggested that a successful model law that was widely accepted could accomplish the goal of reciprocity without the inclusion of such provision. UNCITRAL, *supra note* 16, at 11.

34 Westbrook, Am. Bankr. L. J. 1991, 467.

ing and aiding foreign insolvency proceedings and lead to unsatisfactory outcomes, particularly when swift action is required to avert adverse effects in cross-border insolvency scenarios.

### *D. Concluding remarks: cooperation between the EU and China on cross-border insolvency*

While the cases discussed in this short essay illustrate China's gradual willingness to engage in judicial cooperation, they also underscore that such efforts are insufficient for a global economic powerhouse like China to address cross-border insolvency cases effectively. Given the current unsatisfactory status quo, it is crucial for China to both enhance its legal framework and promote judicial practice. Specifically, considering the substantial economic interconnection between the EU and China, fostering cross-border insolvency cooperation between the two sides is not only practical but necessary. It would be prudent for both the EU and China to embrace the UNCITRAL MLCBI, which could serve as a standardized benchmark and foundational platform for judicial cooperation in this field. Adopting the MLCBI could streamline and improve the process of cross-border insolvency proceedings, benefiting both sides and contributing to a more stable and predictable market environment.

The Member States of the EU, except Denmark, have engaged in cross-border insolvency cooperation through the EIR for over twenty years. Despite its accomplishments within the EU, there remains an absence of a structured legal system for engaging with non-EU countries, including China, on cross-border insolvency cooperation. Coordinated efforts between the EU and the third countries become crucial when insolvency proceedings in a non-EU country have implications across multiple EU Member States. Legally and practically, there should be minimal obstacles for EU Member States to recognize and assist third countries based on the principles outlined in the UNCITRAL MLCBI. The key to expanding cross-border insolvency cooperation beyond the EU lies in the Member States' readiness to collaborate, reflecting a commitment to extending the scope of their insolvency cooperation to include third countries.

On the side of China, Article 5 EBL primarily outlines principles rather than offering operational guidelines on cross-border insolvency cooperation. This approach does not align with the widely accepted international practices in the field, leading to various challenges in practice. Recognizing the need to keep pace with economic advancements and market demands, China is currently revising the EBL. The UNCITRAL MLCBI serves as a crucial reference point for China to modernize its legislation on cross-border insolvency, as well as establishing a stronger basis for judicial cooperation with foreign jurisdictions. Adopting the MLCBI can significantly alleviate the complexities surrounding the reciprocity issue,[35] and therefore provide a structured yet adaptable framework for PRC courts to recognize foreign insolvency proceedings. By integrating the MLCBI into the revised EBL, particularly through a dedicated chapter on cross-border insolvency akin to Chapter 15 of the U.S. Bankruptcy Code, China not only could enhance its legal infrastructure but also lay a solid groundwork for engaging in cross-border insolvency cooperation with the EU.

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