

Creditors chase Chinese companies

Its rise appears unstoppable, but China has not been unscathed by the current global financial turmoil. Domestic structural problems and the global slowdown are triggering increased defaults and testing China's nascent bankruptcy law. How can those doing business with China benefit from an understanding of China's debt collection options and – in a worst case scenario – its bankruptcy law?

As with debt collection anywhere, understanding China's laws, language and customs is essential. Regulations issued in 1995 made professional debt collection agencies void under Chinese law, leaving Chinese law firms as the only viable option to assist companies with their debt recovery. Such law firms use concurrent litigation/arbitration and political influence to collect debts. Legal counsel with connections – or *guanxi* – to local officials can help hasten payment, where possible.

Legal proceedings are relatively swift and are generally the preferred and most direct way to collect debts in China. This is fortunate given the short statutory limitations on a creditor collecting a debt: two years between Chinese companies and four years if there is an international sale of goods contract between foreign and Chinese parties. The average time from filing to court verdict is six months. Furthermore, court filing fees are low – from 1% to 3% for a claim over Rmb1mn, and law firm fees are typically 20% to 30% of the amount collected.

Arbitration proceedings, although lengthier, are another widely-practised debt collection

method in China. The governing agency is the China International Economic and Trade Arbitration Commission (CIETAC). Headquartered in Beijing, with subdivisions in Shanghai and Shenzhen, CIETAC operates much like the ICC or SCC arbitral fora. CIETAC governs arbitration between international companies and companies from China, Hong Kong, Macao and Taiwan. Once issued, CIETAC awards are final, binding and enforceable abroad under the New York Convention.

Given China's corporate debt mountain and the difficulties of gauging creditworthiness, it is perhaps some consolation that foreign creditors can obtain judgments and awards so swiftly. As ever though, getting an award and getting paid are different things. Should unwillingness to pay become an inability to pay, understanding China's Enterprise Bankruptcy Law (EBL) becomes critical. The EBL of 2007 governs all insolvent mainland entities, including private companies, foreign investment enterprises and, crucially, state-owned enterprises (SOEs) – the small and medium-sized ones of which are, by the government's admission, largely insolvent anyway. It develops the interim EBL of 1986 and incorporates international best practice. For example, it introduced administration, creditor committees (on which foreign creditors can serve), debtor-in-possession financing, restructuring plans (albeit debtor-produced), and a hybrid cash flow/balance sheet insolvency test. Fostering corporate rescue and reducing governmental

involvement, it also introduced voidable transactions and moratorium.

Crucially for those involved with Chinese investments globally, the EBL purports to govern assets located outside China. A broadly drafted socio-political compromise, the EBL remains largely untested. Questions linger regarding the capacity of courts and the experience of both judges and administrators, as well as the implications for onshore/offshore financing structures. Grey areas remain regarding banks versus employees in the order of distribution, debtor-in-possession financing, and how foreign creditors and foreign bankruptcy orders will be treated. An EBL-triggered flood of restructuring has not materialised yet and there have been only two notable cases – one concerning an SOE, the other a private company with foreign investors. Despite teething problems, the EBL provides foreign investors with both greater clarity and an exit strategy.

China's political and economic hegemony seems inevitable. But as Chinese companies rise to the challenge, foreign traders and investors hoping to recover debts from both solvent and insolvent companies in China should pay attention to developments concerning debt collection and the EBL.

We invite those with outstanding debts in China to contact us for advice.

T. Feunteun on
feunteun@omnibridgeway.com

H.J. Rijkens on
rijkens@omnibridgeway.com

Africa Hyper-Exotics		May 2011	
Country / Issue	Price Range		
Angola / Trade	60.000%	65.000%	↑
Cameroon / Trade (non-HIPC)	14.000%	20.000%	
Congo / Trade (non-HIPC)	22.000%	26.000%	
DR Congo / Loans, Trade (non-HIPC)	16.000%	20.000%	
Ghana / Trade (non-HIPC)	78.000%	82.000%	
Kenya / Trade	39.000%	49.000%	
Mozambique / Trade (non-HIPC)	20.000%	26.000%	
Senegal / Loans, Trade (non-HIPC)	12.000%	16.000%	
Sudan / Loans, Trade (non-HIPC)	15.000%	19.000%	↑
Tanzania / Loans, Trade (non-HIPC)	10.000%	13.000%	
Uganda / Trade (non-HIPC)	14.000%	16.000%	
Zambia / Loans, Trade (non-HIPC)	13.000%	20.000%	
Zimbabwe / Trade	1.000%	4.000%	

Latin America & Caribbean Hyper-Exotics		May 2011	
Country / Issue	Price Range		
Cuba / Trade	2.000%	4.000%	
Cuba / Loans	5.000%	10.000%	
Suriname / Loans, Trade	14.000%	18.000%	

Eastern Europe Hyper-Exotics		May 2011	
Country / Issue	Price Range		
Azerbaijan / Trade	18.000%	23.000%	
Kazakhstan / Trade	60.000%	65.000%	
Georgia / Trade	11.000%	15.000%	
Serbia / Trade	44.000%	54.000%	
Turkmenistan / Trade	23.000%	33.000%	
Ukraine / Trade	18.000%	25.000%	
Uzbekistan/Trade	20.000%	24.000%	
Tajikistan / Trade	15.000%	20.000%	
Kyrgyzstan / Trade	10.000%	14.000%	

Middle East Hyper-Exotics		May 2011	
Country / Issue	Price Range		
Egypt Trade	65.000%	75.000%	
Iraq / Paris Club	83.000%	88.000%	↓
Iraq / Bonds	90.500%	91.000%	↓
Libya / Trade	25.000%	35.000%	
Syria / Trade	6.000%	11.000%	

Asia Hyper-Exotics		May 2011	
Country / Issue	Price Range		
Mongolia / Trade	22.000%	30.000%	
North Korea / Loans, Certificates	9.000%	12.000%	

Prices are a percentage of principal only, however assuming inclusion of an average amount of PDI for the specific debt instrument and the specific debtor. Trade debts and their documentation differ from case to case and price ranges should therefore be considered as a benchmark only.

Price ranges are based on a monthly compilation of sources and analytics. Liquidity on most instruments is very limited and trading may not have taken place for some time.

Omni Bridgeway is regularly requested to value distressed debt of countries not listed above, including distressed debt eligible under HIPC (Heavily Indebted Poor Countries) and/or Paris Club agreements. Such valuations are available on request.

Omni Bridgeway does not provide its legal services for debt that qualifies for treatment under the HIPC Initiative.

For such debt, Omni Bridgeway offers its clients the management and guidance through the HIPC reconciliation and restructuring process and related services.