1 Introduction

1.1 Why Bankruptcy Reorganization Law Exists

Bankruptcy reorganization law establishes a legal procedure in which all the interested parties are bound to make efforts towards collective rehabilitation and to produce a reorganization plan setting out how the debtor’s assets should be dealt with. Whether or not the provisions of the bankruptcy reorganization law of a specific country are good depends on whether the provisions will bind the participating parties, such as the debtor, the creditors, the shareholders, the committees, the bankruptcy trustee, and the court, to produce a desirable plan. Whether the plan emerging at the end of the bankruptcy reorganization procedure is desirable depends on whether the implementation of the plan will realize the goal of the bankruptcy. Therefore, before examining the merits and defects of the bankruptcy reorganization provisions under the law of a specific country, we need to understand why bankruptcy reorganization law exists, i.e. what function does bankruptcy reorganization serve or what is the goal of bankruptcy reorganization law. The jurisprudence theories of bankruptcy law have proposed different answers to the question of why bankruptcy reorganization law exists. Generally, these theories may be divided into two groups: the group emphasizing the debtor’s economic value that sees bankruptcy as the procedure for maximizing the debtor’s economic value or creditors’ economic recovery and the group emphasizing the debtor’s diversified values that sees bankruptcy as the procedure for addressing the vast range of social problems caused by business failure. In other words, the former argues that the goal of bankruptcy reorganization law is to enhance the debtor’s economic value, while the latter group believes the goal is to provide ideal protection to the parties affected or the values held by the affected parties. After comparing the representative

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bankruptcy theories,5 the author adopts the creditors’ bargain theory in this book as the theoretical device for analyzing the efficient and inefficient elements of the bankruptcy reorganization law of the chosen countries.

1.2 The Subject and Structure of the Book

1.2.1 The Subject of the Book

This book makes a comparative study of the bankruptcy reorganization law of the US and China with the aim of establishing an efficient legal system for bankruptcy reorganization in China. The research question is: judged against the standard proposed by the creditors’ bargain theory and compared with US law, what are the efficient and inefficient elements of Chinese bankruptcy reorganization law and how can this law be improved? The term “efficiency” in this book refers to both the efficient and inefficient elements of a bankruptcy provision or subsystem. The term “inefficient” means the costs of implementing a provision or subsystem or the negative effects caused by a provision or subsystem that obstruct the realization of the ultimate goal of bankruptcy reorganization law, which, according to the creditors’ bargain theory, is the maximization of the debtor’s overall value. Correspondingly, “efficient” means the cost-saving effect or positive effects caused by a provision or subsystem, which fosters the realization of the ultimate goal of bankruptcy reorganization law. The costs and effects of a bankruptcy provision or subsystem include both ex ante costs and effects, such as the strategic behaviors caused by the bankruptcy legal provisions before the bankruptcy procedure is initiated, and ex post costs and effects, i.e. costs and effects caused by the bankruptcy legal provisions after the bankruptcy procedure is initiated.

The comparative law approach is used to answer to the research question. Chinese law is compared with US law in order to obtain a clearer picture of the efficient and inefficient elements of Chinese bankruptcy reorganization law.6 The main reason for choosing to

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5 The analysis and comparison of the representing theories of the two groups is made in Chapter II of this book.
6 Comparative research provides an important method for acquiring useful knowledge. See Zweigert & Kötz (1998), p. 15. K. Zweigert & H. Kötz, translated by Tony Weir, An Introduction to Comparative Law (third Edition), Clarendon Press, Oxford, (1998), p. 15. “The basic methodological principle of all comparative law is that of functionality. From this basic principle stem all the other rules which determine the choice of laws to compare, the scope of the undertaking, the creation of a system of
compare US law with Chinese law is that US bankruptcy reorganization law has evolved over more than one hundred years and has been quite influential in the international trend of establishing corporate rescue law. Moreover, because Chinese bankruptcy reorganization law is quite similar to US law, the merits and defects of US law may provide useful insights for examining Chinese law.

Bankruptcy reorganization law touches upon a lot of interesting issues. In order to make a clear analysis, this book studies bankruptcy reorganization law from the perspective of the efficiency of the reorganization decision-making mechanism. Bankruptcy reorganization law is a set of legal provisions that binds the participating parties to produce a reorganization plan on how to deal with the debtor’s assets. The reorganization plan is essentially a set of decisions on how to deploy the debtor’s assets in the most efficient way and how to distribute the debtor’s value to all the interested parties. Whether the detailed provisions or systems of the bankruptcy reorganization law of a specific country are good or not depends on whether these provisions or systems establish an efficient decision-making mechanism that drives the participating parties to produce a desirable or efficient plan, the implementation of which will realize the goal of bankruptcy reorganization law. Therefore, the decision-making mechanism...
provides a useful perspective for examining the merits and defects of the detailed provisions and systems of the bankruptcy reorganization law.

From the perspective of the decision-making mechanism, the legal system for bankruptcy reorganization may be roughly divided into three major components: the plan-drafting system, the plan-passing system and the reorganization-fostering system. The plan-drafting system focuses on who may formulate a plan, how the other interested parties participate in the plan formulation and supervise the plan-proponent etc. The plan-passing system deals with how the draft plan is examined by the interested parties and the court through voting and confirmation and how it ultimately either becomes effective or fails. During the plan-drafting and –passing process, the interested parties are actually making collective rehabilitation efforts and trying to make an efficient decision on how to deal with the debtor’s assets. Some reorganization-supporting systems, such as the automatic stay and post-petition financing system, are necessary in order to provide basic preconditions and support for the collective reorganization efforts. Without these systems, it would be impossible to make the collective reorganization efforts. Therefore, in addition to the plan-drafting and –passing system, the reorganization-supporting system is another important component of the reorganization law.

To summarize, this book compares the bankruptcy reorganization law of the US and China from the perspective of the reorganization decision-making mechanism. The constituent systems or sub-systems being compared are the plan-drafting system, plan-passing system and the reorganization-supporting system.

1.2.2 The Structure of the Book

The book contains five chapters. Chapter 1 introduces the subject and structure of the book and provides a brief overview of the development history of bankruptcy reorganization law in the U.S. and China. Chapter 2 discusses and compares the representative jurisprudence theory of bankruptcy law and further analyses the reason why this book chooses the creditors’ bargain theory as the standard theory for examining the efficient and inefficient elements of the detailed provisions and subsystems of bankruptcy reorganization law in the U.S. and China; Chapter 3 compares the plan-drafting system of US and Chinese law, analyzes the
efficient and inefficient elements and provides reform suggestions for the Chinese system; Chapter 4 compares the plan-passing system of US and Chinese law, analyzes the efficient and inefficient elements and provides reform suggestions for the Chinese system; Chapter 5 compares the reorganization-supporting system of US and Chinese law, analyzes the efficient and inefficient elements and provides reform suggestions for the Chinese system; Chapter 6 gives a summary of the comparison of the US and the Chinese law in Chapters 2, 3 and 4 of this book, conducts an overall comparison of the US and Chinese practice and draws a final conclusion.

1.3 Overview of the Development History of US and Chinese Bankruptcy Reorganization Law

Before going into a detailed analysis and comparison of the current bankruptcy reorganization law in the US and China, we need to obtain an overview of the development history of bankruptcy reorganization law in both countries, which is necessary for us to get a clear understanding of the current law in both countries.

1.3.1 Overview of the Development History of US Law

(1) The Equity Receivership

US bankruptcy reorganization law originated from the equity receivership of railroads that began from the late nineteenth century.\(^9\) When the railroads were trapped in financial distress there were no bankruptcy reorganization provisions in bankruptcy law and the parties were left to their own devices. What they discovered as the legal mechanism to reorganize the railroad enterprise was the equity receivership.\(^10\) “One of the powers of a judge sitting in equity is the ability to appoint a person (called a receiver) to administer assets over which there is dispute. A creditor, for example, could petition the court to appoint a receiver to gain control over the assets of its debtor and sell them. This device was reshaped to accommodate

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the nineteenth-century railroads that had obligations so inconsistent with their earnings that they needed a new capital structure. The insiders who ran the railroad, typically also owners of a substantial part of the stock, would find a friendly creditor and have that creditor petition the court to place the assets in the hands of a receiver, usually the same person then managing the railroad.”

The market parties creatively used equity receivership as the legal device available at that time to maximize the value of investment. During the equity receivership, the creditors formed a “protective committee” to represent their interests. The various protective committees of different groups of creditors further formed the reorganization committee. The reorganization committee focused on negotiating and producing a plan, which provides a new capital structure for the debtor with appropriate adjustment to the investors’ interests. The typical plan respected the investors’ pre-bankruptcy priorities. Once the reorganization committee finished drafting a plan, they had actually determined the price that they would bid (the value of the debtor) and the distribution of the value among all the claimholders.

At the end of the equity receivership there was a court-supervised sale. When the court conducted the judicial sale and solicited competing bids, the reorganization committee was certain to be the top bidder, because it did not have to collect cash and was able to “credit bid”. Since the proceeds of any sale had to go to the most senior creditors, the committee could bid the amount of their claims. The only constraint upon the committee’s ability to credit bid came from its obligation to pay cash to the few senior creditors who refused to participate in the reorganization. It was commonly noticed that in the equity receivership, advisors to debtors, i.e. the investment bankers and lawyers, the debtor’s managers and creditors’ committees dominated the process.

(2) Codification of Railroad Reorganization and Corporation Reorganization in 1933 and 1934

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13 Id.
The railroad reorganization was codified and added to the Bankruptcy Act of 1898 in 1933, bringing an end to the railroad equity receivership. Soon after the codification of railroad reorganization, corporate reorganization was codified and added to the Bankruptcy Act of 1898 in 1934, which preserved the main feature of the practice in the equity receivership and allowed the investment bankers and lawyers to play a controlling role in the reorganization decision-making.

(3) Reform of Corporate Bankruptcy Reorganization in 1938

The corporate reorganization model that evolved from the equity receivership era was suspected of being a device used by corporate insiders, investment bankers and lawyers for enriching their self-interest at the expense of the interests of public investors. Corporate reorganization law changed dramatically because of the New Deal Reform efforts. The most prominent change of corporate reorganization law was the new Chapter X of the 1898 Bankruptcy Act added by the Chandler Act of 1938, which was to regulate the reorganization of large public corporations and protect the public investors who were usually senior bondholders. Chapter X required the mandatory appointment of a trustee to replace the existing managers, a judicial valuation hearing for the purpose of determining the debtor’s reorganization value, the Securities Exchange Committee (“SEC”)’s advisory report on the draft plan which was to provide the creditors and shareholders with the SEC’s evaluation of the plan, and a distribution of the debtor’s value according to the absolute priority rule etc.

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In addition to Chapter X, the Chandler Act also included a second reorganization chapter, Chapter XI.24 While Chapter X was designed for public corporations, Chapter XI was designed for small firms. In contrast to Chapter X’s management replacement and pervasive government oversight, Chapter XI left the management in control and did not provide for SEC intervention.25 Chapter XI was to provide a quick procedure for an arrangement of a business’ unsecured debts. Because Chapter XI did not permit the adjustment of a secured debt or of equity, it was not a completely effective remedy for a business undergoing financial difficulty. However, Chapter XI turned out to be the much more popular procedure, even though what can be done under Chapter XI was less than that under Chapter X. 26

(4) Reform of Corporate bankruptcy Reorganization in 1978

In 1978, the US Congress fundamentally reformed the corporate reorganization law, justifying this by claiming that any justification that existed in 1938 for two reorganization chapters had disappeared; Chapter X had become an unworkable procedure, while Chapter XI was unable to fill the void; Chapter X needed to be more flexible while Chapter XI needed to be expanded to permit adjustment of secured debt and equity. The Bankruptcy Reform Act of 1978 (“the 1978 Code” or “the current US bankruptcy code” or “the US Code”) 27 contained one unified corporate reorganization procedure, which was considered to be the product of adopting much of the flexibility of Chapter XI and the essence of public protection of Chapter X. 28 Chapter 11 of the 1978 Code, which provides a unified procedure for corporate bankruptcy reorganization, is the current US bankruptcy reorganization law that is compared with the Chinese bankruptcy reorganization law in this book.

1.3.2 Overview of the Development History of Chinese Law

(1) The 1986 Law – the Bankruptcy Law for SOEs

Bankruptcy law in China has developed hand in hand with the advancement of the reform of

China’s economic system. Before 1978, China operated a planned economic system, under which almost all the enterprises were state-owned-enterprises (“SOE”s), owned and operated by the state, i.e. governments at different levels (the central government and local governments) and there were no private enterprises. Because the SOEs operated under the government direction to execute the government’s economic plan, they were financed by the government and their losses were also born by the government. As a result, during that period there was no bankruptcy law in China.29

In 1978, China began to reform its economic system. One of the reform measures was to transfer power from the government to enterprises, giving the enterprises more managing power and allowing them more autonomy in management and to compete with each other. As SOEs gradually began to compete with each other this resulted in some enterprises going bankrupt and the government had to bear the losses. Against this background, the first bankruptcy law of China—Enterprise Bankruptcy Law of the People’s Republic of China (for Trial Implementation) (‘the 1986 Law’) 30 was promulgated in 1986. The 1986 Law was a breakthrough in Chinese bankruptcy legislative history in that it created the first set of bankruptcy rules in the history of the People’s Republic of China. The 1986 Law applied only to SOEs. With 43 articles, the 1986 Law was so simple and general that there was a need for detailed provisions on how to apply it. Two judicial interpretations were issued by the Supreme People’s Court in order to enhance the 1986 Law’s applicability, these were Opinions on Certain Issues in the Implementation of the Law of the People’s Republic of China on Enterprise Bankruptcy (for Trial Implementation) (“the 1991 Judicial Interpretation”), issued on 17 November, 1991 and Provisions on Issues concerning the Trial of Enterprise Bankruptcy Cases (“the 2002 Judicial Interpretation”), issued on July 18, 2002. Containing 106 articles, the 2002 Judicial Interpretation was a comprehensive judicial interpretation of bankruptcy law.

The 1986 law was a bankruptcy law under which the government can liquidate or

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30 Passed on December 2, 1986 at the 18th Session of the Standing Committee of the Sixth People’s Congress and repealed on June 1, 2007 by the current bankruptcy law, i.e. the Enterprise Bankruptcy law of the People’s Republic of China, which was passed on August 27, 2006 at the 23rd Session of the Standing Committee of the Tenth People’s Congress.
reorganize SOEs. Under the 1986 law, the Government Department in Charge,\(^{31}\) which controlled the operation of SOEs outside of bankruptcy, played a controlling role in the SOE’s bankruptcy procedure. According to the 1986 law, if a SOE wanted to file a bankruptcy petition, it must first obtain the written approval of the Government Department in Charge, which it should then submit to the court in order to get the court’s acceptance of the bankruptcy case. In the liquidation procedure, the court should appoint personnel from the Government Department in Charge, the financial department of the government and other related departments to constitute a “liquidation panel”, which was charged with the disposition of the debtor’s asset. The liquidation panel might hire some intermediary agencies, such as law firms or accounting firms, to provide professional services.\(^{32}\)

Under the 1986 law the Government Department in Charge was in charge of the reorganization of the indebted enterprise.\(^{33}\) After the court had accepted the bankruptcy case, the Government Department in Charge (or the shareholders’ meeting if there was no Government Department in Charge) was the only party with the right to apply for reorganization to the court.\(^{34}\) The SOE or its creditors had no right to apply for reorganization. The reorganization procedure was initiated on the reorganization application being made by the Government Department in Charge; there was no judicial screening of the initiation of the reorganization procedure. The Government Department in Charge was responsible for preparing a reorganization scheme. During such preparations the Government Department in Charge was required to present the reorganization scheme to the workers’ representatives’ meeting for discussion and to listen to their opinions.\(^{35}\) Based on the reorganization scheme, the SOE would then propose a reconciliation agreement, which had to be voted on by creditors at the creditors’ meeting. The reconciliation agreement should provide the time period, the method and the source of the funds for paying the debts.\(^{36}\) A reconciliation agreement was deemed to be approved by the creditors’ meeting if it was

\(^{31}\) The Government Department in Charge is the specific department of the government that controls the management of the SOE. Normally a SOE is controlled by the department that administers the specific kind of trade or business that the SOE belongs to. For example, a coal SOE is controlled by the coal department of the government.


\(^{33}\) Art. 20 of the 1986 law.

\(^{34}\) Art. 17 of the 1986 law. Art. 28 of the 2002 Judicial Interpretation.

\(^{35}\) Art. 18 of the 1986 law.

approved by more than one-half of the creditors present at the meeting and more than two thirds of the total unsecured credit amount.\textsuperscript{37} After being approved by the creditors’ meeting, the reconciliation agreement should be presented to the court for approval. If the court approved the reconciliation agreement, the bankruptcy procedure was suspended. During the implementation process, the Government Department in Charge should provide periodical reports concerning the progress of the reorganization to the creditors meeting and the court.\textsuperscript{38} If the reorganization scheme failed to be successfully implemented and the debtor remained unable to pay according to the reconciliation agreement, the court would push the debtor into the liquidation procedure and re-register the unpaid debts.\textsuperscript{39}

(2) \textbf{Chapter 19 Procedure—Bankruptcy Law for Non-SOEs}

The bankruptcy law for non-state-owned enterprises (“non-SOEs”) was enacted 6 years after the passing of the 1986 law. The Civil Procedure Law of the People’s Republic of China, which was passed in 1992,\textsuperscript{40} contained a chapter entitled “Chapter 19: Procedure of Bankruptcy and Debt Repayment of Corporate Legal Persons” (“the Chapter 19 Procedure”).\textsuperscript{41} Containing only eight articles, the Chapter 19 Procedure provided very simple and basic rules for liquidation for non-SOEs and did not touch upon reorganization.

To summarize, before the current Chinese enterprise bankruptcy law came into force, the 1986 law and the chapter 19 procedure jointly constituted the basic bankruptcy legal system for all the corporations in China, with the former applying to SOEs and the latter to non-SOEs.\textsuperscript{42}

(3) \textbf{Regulations for the Policy-Based Bankruptcy}

In addition to the 1986 law and the Chapter 19 procedure, the policy-based bankruptcy of SOEs should be mentioned to provide a complete picture of the development of Chinese bankruptcy law. Policy-based bankruptcy deals with special problems accompanying the

\textsuperscript{37} Art. 16 of the 1986 law.

\textsuperscript{38} Art. 20 of the 1986 law.

\textsuperscript{39} Art. 22, 23, 24 of the 1986 law.

\textsuperscript{40} Passed on April 9, 1991, at the 4\textsuperscript{th} Meeting of the Seventh National People’s Congress.

\textsuperscript{41} Chapter 19 was repealed from April 1, 2008, according to the Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China, passed on October 28, 2007, at the 30\textsuperscript{th} Session of Standing Committee of the Tenth National People’s Congress.

\textsuperscript{42} Feng Chen (1999), Chinese Bankruptcy Law: Milestones and Challenges, 31 St. Mary’s L. J. 49, pp.
bankruptcy of a large number of SOEs in the transition period and is based on the regulations issued by the State Council, these being *Notice of the State Council on the Experimental Implementation of the Bankruptcy of State-Owned Enterprises in Some Cities* (“the 1994 Notice”), issued on October 25, 1994; *Supplementary Notice of the State Council on the Experimental Implementation of the Bankruptcy, Acquisition, and Re-Employment of Jobless Workers of State-Owned Enterprises in Some Cities* (“the 1997 Notice”), issued on March 2, 1997; *Notice of the General Office of the State Council on Publicly Noticing the Opinions of the National Working Team of Sate-Owned Enterprise Bankruptcy, Acquisition, and Re-Employment Concerning How to Further Carryout the Policy-Based Closing and Bankruptcy in the Right Way* (“the 2006 Notice”), issued on January 16, 2006.\(^\text{43}\)

During the transition from the planned economy to the market economy, the bankruptcy of a SOE is accompanied by many problems, of which the most prominent is the problem of how to help the jobless workers acquire a basic living allowance, basic medical care and reemployment. Under the planned-economy system, unemployment was not a problem for workers of SOEs since they were permanent employees of the government. Moreover, the workers of SOEs relied on the enterprise for which they worked for social security benefits. For instance, they received their pension and reimbursement of their medical care expenses etc. from the enterprise for which they worked. The transition from the planned economy to a market economy calls for the establishment of a uniform national social security system, which provides insurance for pension, unemployment, medical care etc. While developing the bankruptcy system, China made great efforts to establish a social security system that matches the market economy.\(^\text{44}\) Despite these efforts, during the transition period the great number of jobless workers that were employed by the bankrupt SOEs is problematic. Problems include how to help these workers find new jobs, how to transfer their old social security benefits to the new system, how to help them pay the unpaid social insurance contributions, how to help them claim the unpaid salaries and how to ensure they have a basic living and receive basic medical care.

\(^{43}\) These provisions for policy-based bankruptcy are still effective at the time the book is finished since there has been no official announcement of the complete termination of all the policy-based bankruptcy cases or official appellation of the policy-based bankruptcy rules.

The main content of the policy-based bankruptcy provisions is intended to deal with the problems posed by these jobless workers. The 1994 Circular provides that the income from selling the land-use right of the insolvent SOE should first be used to solve the unemployed workers’ problems and if it is insufficient, the income from selling other assets should first be used to solve the unemployed workers’ problems. The government will pay a lump-sum settlement fee to workers who agree to find a job by themselves. The pensions and medical care costs of retired workers of bankrupt SOEs should be afforded by the social pension and medical care insurance fund. In cases where the bankrupt enterprise did not participate in the pension and medical care insurance fund or the insurance fund could not provide sufficient funds, the income from selling the land-use right, and if not sufficient, the income from selling the other assets of the insolvent enterprise should first be used to pay for the pensions and medical care costs of retired workers. The 1997 Notice provides that even if the land-use right has been the collateral of security rights, the income from selling the land-use right of the insolvent SOE should first be used to solve the unemployed workers’ problems. Where the income from selling the land-use right is not sufficient, the costs for solving the unemployed workers’ problems should be paid firstly by the income from transferring the unsecured assets; secondly by the income from transferring the secured assets; and thirdly by the government to which the insolvent SOE belongs. The payment method of the part of the pensions and medical care costs for retired workers of the bankrupt SOEs that could not be afforded by the social insurance fund is provided in a similar way. The 2006 Notice provides that the compilation of the policy-based bankruptcy plan should end at the end of the year 2008, which implied that after the end of 2008, no SOE could apply to be included in a new plan and conduct policy-based bankruptcy. However, the plans that had been compiled before December 31, 2008 should continue to be carried out according to the policy-based bankruptcy provisions until they are completely finished. Thus, the policy-based bankruptcy cases of SOEs that had already been included in the official policy-based bankruptcy plan

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45 Art. 2; 3 of the 1994 Circular.
46 Art. 5 of the 1994 Circular.
47 Art. 5 of the 1994 Circular.
48 Art. 5 of the 1997 Circular.
49 It should be noted that the 2006 Notice puts an end to the compilation of policy-based bankruptcy plan, but does not put an end to the implementation of the policy-based bankruptcy plans that have been compiled before December 31, 2006. See part (3) of Section 1.3.2.
should continue until they are finished.

What deserves special notice is that according to the policy-based bankruptcy provisions, the fee for solving the unemployed workers’ problems and paying the pensions and medial care expenses for the retired workers of the bankrupt SOEs ranked higher in priority than secured debt, which deviated from the provisions of the 1986 law and that the government should take on the obligation to make up the balance where the total income from the insolvent asset is not enough. In addition to provisions concerning how to solve the unemployed workers’ problems, the policy-based bankruptcy regulations also contain provisions on the merger and acquisition of the bankrupt SOEs, the valuation of the bankruptcy assets and the cancellation of the unpaid credit of banks.

(4) The Establishment of the New Bankruptcy Law

Through the reform of the economic system, China gradually established the market economy and the modern corporate legal system. The SOEs gradually transferred from government-controlled enterprises into market parties which make management decisions through the corporate governance mechanism established according to the law. In order to unify the administration of state-owned assets, State-owned Assets Supervision and Administration Commissions (SASAC) have been established by governments at different levels. The SASAC, as a specific government department, is charged with the duty of managing the state-owned assets on behalf of the government that owns the assets. When the SASAC exercises the shareholders’ right on behalf of the government, it should act according to the law. Meanwhile, more and more privately owned enterprises have been established and many foreign enterprises have successfully entered the Chinese market. These corporations, as equal market competitors, needed a unified bankruptcy law. However, the 1986 law and the Chapter 19 Procedure could not meet the demands of the market economy. The market economy drastically needed a new set of bankruptcy rules. After twelve years of

50 In 1993, China passed the Corporate Law of the People’s Republic of China.
51 Art. 10 of the Regulations on the Supervision and Management of State-Owned Assets in Corporations, which was issued by the State Council in 2003, provides that the owner of the state-owned assets shall respect the autonomous management right of the corporation and shall exercise its owner’s right according to the relative laws. Art. 46 of this regulation provides that the government and the corporations, in which the government invests, shall be separated.
drafting and discussion, the current Chinese bankruptcy law, Enterprise Bankruptcy Law of the People’s Republic of China (“the EBL”) was passed on August 27, 2006 and took effect on June 1, 2007. With 136 articles, the EBL contains 12 chapters, these being General Rules, Bankruptcy Petition and Acceptance of the Case, Bankruptcy Administrator, Debtor’s Asset, Insolvency Fee and Debts Incurred for Common Benefits, Declaration of Creditors’ Claim, Creditors’ Meeting, Reorganization, Reconciliation, Liquidation, Legal Liability and Supplementary Articles. Chapter 8 of the EBL, entitled “Reorganization”, contains the rules governing the corporate bankruptcy reorganization procedure. In the following chapters of this book, the bankruptcy reorganization provisions of the EBL will be compared with the corporate bankruptcy reorganization provisions of the current US bankruptcy code.

52 Shi Jingxia (2007), Twelve Years to Sharpen One Sword: The 2006 Enterprise Bankruptcy Law and China’s Transition to a Market Economy, 16 J. Bank. L. &Prac. 5 Art. 2.
53 Passed at the 23rd Session of the Standing Committee of the Tenth People’s Congress.