

Analysis of China's Cross-border Bankruptcy Property Online Auction Rules -- From the Perspective of Chinese Mainland and Hong Kong Cross-border Bankruptcy Recognition and Assistance

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Abstract: In the cross-border bankruptcy system, the online auction system plays an important role in realizing the assets of the bankrupt. Although online auctions have high transparency and transaction rates, there are still risks related to the rights and obligations between different countries, such as technical and transaction security risks. Therefore, to better address these issues, it is necessary to refine the recognition criteria for cross-border bankruptcy recognition and assistance between the two regions, appropriately expand the scope of cross-border bankruptcy recognition and assistance, and establish consistent evaluation rules and measures to improve the efficiency of asset disposal. These measures can effectively solve the cross-border bankruptcy issues in the online auction system and provide theoretical and practical significance for the development of bankruptcy laws.

1. Introduction

With the development of market economy, there are more and more cases of debt default, which leads to excessive debt of enterprises. To solve the problem of difficult enforcement, the Supreme People's Court of China issued the "Guiding Opinions on the Transfer of Enforcement Cases to Bankruptcy Review" in 2017, hoping to solve the problem of difficult enforcement through bankruptcy procedures. Auction is one of the main ways to dispose of bankruptcy assets, but due to the complexity of cross-border bankruptcy asset subjects and the large volume of assets, it is easy to encounter the problem of low efficiency in asset disposal, which directly affects the realization of creditors' rights and the placement of bankrupt employees. [1] The judicial online auction system is popular due to its high transparency and transaction rate, which reduces asset disposal costs and improves disposal speed, and has become the preferred way for courts in various regions of China to realize assets. However, there is still no universally applicable legal norm in the field of bankruptcy in China. Only various normative and guiding documents on the disposal of bankruptcy assets have been issued in various regions, most of which explicitly state the "priority principle of online auctions". Unless the nature of the debtor's property is not suitable for online auctions, or the creditors' meeting has other resolutions, or there are other relevant regulations, the disposal of the debtor's property in the bankruptcy proceedings should be conducted through online auctions. By

using information technology to streamline auction procedures, increase transparency, and expand the audience of bidders, bankruptcy cases can be optimized, and the problem of slow case progress can be effectively solved. [2] In addition, the Supreme People's Court issued and implemented the "Opinions on the Pilot Work of Recognizing and Assisting the Bankruptcy Procedures of the Hong Kong Special Administrative Region" and the "Meeting Minutes of the Supreme People's Court and the Hong Kong Special Administrative Region Government on Mutual Recognition and Assistance in Bankruptcy Procedures between Chinese mainland and the Hong Kong Special Administrative Region Courts" in May 2021, providing clear guidance for cross-border bankruptcy in different legal domains in China.

Against the backdrop of rapid development of information technology today, more people are participating in online judicial auctions of bankruptcy assets, and the relationships of rights and obligations involved are more complex. Even though the judicial online auction system is becoming increasingly perfect, there are still risks in terms of technology and transaction security. Therefore, solving the problems in the cross-border bankruptcy asset judicial online auction system has important theoretical and practical significance and can promote the development of bankruptcy legal system. [3]

2. Legislative Framework of China's Cross-border Bankruptcy Property Online Auction

2.1. Cross-border Bankruptcy Assistance

2.1.1. Relevant Provisions of Law in Chinese mainland

Article 5 of the Enterprise Bankruptcy Law of the People's Republic of China (hereinafter referred to as the "Bankruptcy Law") embodies China's cross-border bankruptcy system, providing legal basis to some extent for the convergence of China's bankruptcy law with bankruptcy rules of other countries and regions. [4]

However, the above provisions apply to cross-border bankruptcy issues between China and foreign countries. For the Hong Kong Special Administrative Region, the laws and regulations of Chinese mainland have not explicitly stipulated the recognition and enforcement of cross-border bankruptcy. Due to the barriers between the bankruptcy systems of Chinese mainland and Hong Kong, as well as the limited official arrangements or case-by-case assistance in judicial cooperation between the two places in bankruptcy proceedings, companies facing cross-regional property issues between Chinese mainland and Hong Kong often find it difficult to obtain fair liquidation or restructuring relief, resulting in increasing calls for improving legislation in response to the development of the market economy. [5]

2.1.2. Relevant Provisions of Policies in Chinese mainland

To address the above-mentioned issues, the Supreme People's Court issued and implemented the "Opinions on Carrying Out Pilot Work on Recognizing and Assisting Hong Kong Special Administrative Region Bankruptcy Proceedings" (hereinafter referred to as "Pilot Work Opinions") and the "Meeting Minutes between the Supreme People's Court and the Hong Kong Special Administrative Region Government on Mutual Recognition and Assistance in Bankruptcy Proceedings between Chinese mainland and Hong Kong Special Administrative Region Courts" (hereinafter referred to as "Meeting Minutes") respectively on May 11th and 14th, 2021. The Pilot Work Opinions and Meeting Minutes reached a consensus on mutual recognition and assistance in bankruptcy proceedings between Chinese mainland and Hong Kong courts and launched a cooperation mechanism for mutual recognition and assistance in bankruptcy proceedings between

the two courts in three cities: Shanghai, Xiamen, and Shenzhen. [6]

(1) Jurisdiction

According to "Pilot Opinion", there are some articles belong to Jurisdiction. Firstly, the intermediate people's courts of the three pilot cities have the power to designate Chinese mainland to recognize and assist the pilot work of Hong Kong's bankruptcy proceedings; Secondly, the scope of recognition and assistance is limited to corporate bankruptcy proceedings, excluding personal bankruptcy proceedings, and Hong Kong's bankruptcy proceedings are "collective liquidation proceedings", not individual or partial creditors applying for compulsory enforcement procedures or other collective procedures to adjust the corporate equity structure; Thirdly, the jurisdiction of Hong Kong's bankruptcy proceedings is reviewed based on the "center of main interests"; Fourthly, various factors for identifying the "center of main interests" are listed; Fifthly, it is stipulated that the "center of main interests" of the debtor must have existed in Hong Kong for at least six months before applying for recognition and assistance; Sixthly, the coordination and cooperation between parallel procedures and the coordination and cooperation between bankruptcy procedures of debtors with a relevant relationship are stipulated as a principle.

(2) Application Procedure

Articles 5 to 8 of "Pilot Opinion" stipulate the specific materials and contents that Hong Kong administrators need to submit when applying to mainland Chinese courts for recognition and assistance in relevant bankruptcy proceedings, and require the pilot courts to initiate notification and announcement procedures within five days after receiving the application, and allow interested parties to submit written objections.

(3) Legal Effectiveness

Articles 9 to 15 of the "Pilot Opinion" set out how mainland Chinese courts recognize and assist Hong Kong bankruptcy proceedings. When the Hong Kong administrator submits an application to the mainland Chinese court for recognition and assistance in executing cross-border bankruptcy proceedings, the mainland court will basically recognize the Hong Kong proceedings to the same extent as the mainland bankruptcy proceedings. After recognizing the Hong Kong proceedings, there will be legal effects of partial invalidation of liquidation, civil litigation or arbitration will be suspended, and preservation measures and execution procedures by the mainland court should also be suspended. In addition, the "dual administrators" model is proposed in the "Pilot Opinion", whereby the mainland court may appoint a mainland administrator upon application from the Hong Kong administrator or creditor. The authority and affairs of the mainland administrator shall be governed by the provisions of the Enterprise Bankruptcy Law, while the authority of the Hong Kong administrator is subject to the limitations of the Enterprise Bankruptcy Law and the laws of the Hong Kong Special Administrative Region.

(4) Scope of Assistance

Articles 14 and 16 of the "Pilot Scheme" stipulates that after the mainland pilot court approves the Hong Kong bankruptcy proceedings, it can provide assistance in matters such as bankruptcy property valuation, distribution, debt restructuring, and termination of proceedings. However, it should be noted that when conducting property disposal activities that will affect the interests of creditors, separate permission must be obtained from the mainland court. These property disposal activities include waiving property rights, setting property guarantees, borrowing, transferring property out of Chinese mainland, and other significant property disposal activities that affect the interests of creditors.

(5) Non-Recognition Situations

The "Pilot Opinion" in article 18 lists situations that do not meet the conditions for recognizing Hong Kong bankruptcy proceedings, including: the debtor's main center of interest in Hong Kong has been in existence for less than six months; the debtor does not meet the provisions of the

Enterprise Bankruptcy Law; situations involving unfair treatment of mainland creditors; and fraudulent behavior.

(6) Methods of Debt Settlement

According to Article 20 of the "Pilot Opinion", when the court recognizes and assists Hong Kong bankruptcy proceedings, the mainland bankruptcy property should first settle priority claims according to mainland laws and regulations, while the remaining property should be distributed and settled in accordance with the Hong Kong bankruptcy proceedings, but creditors of the same category should be treated equally. Therefore, the priority claims of mainland creditors will not be affected by foreign bankruptcy proceedings, and the remaining property will follow the principle of equal settlement and be distributed and settled by the Hong Kong court.

(7) Reporting and Consultation Mechanisms

When handling cross-border bankruptcy assistance cases, mainland pilot courts need to report and consult with the Supreme People's Court on important matters and cooperate actively with Hong Kong courts. In short, the "Pilot Opinion" establishes a formal cooperation mechanism between Chinese mainland and Hong Kong in the field of cross-border bankruptcy, although as a pilot opinion, the scheme does not provide detailed rules on many specific issues.

2.2. Bankruptcy Asset Online Auction

As mentioned in the previous section, after Chinese mainland recognized the Hong Kong bankruptcy procedure, it can provide assistance in the valuation of bankrupt assets upon application. Currently, more than 30 courts, including the Beijing Higher People's Court, Shanghai Higher People's Court, Hebei Higher People's Court, and Chongqing Higher People's Court, have successively issued implementation measures or work guidelines for the network auction of bankruptcy assets in their bankruptcy procedures. This section introduces the current system of bankruptcy asset online auctions in Chinese mainland with the relevant regulations of the two pilot cities for cross-border bankruptcy recognition and assistance between Hong Kong and Chinese mainland, namely Shanghai and Shenzhen. Since Xiamen does not currently have relevant online auction provisions for bankruptcy estates, the city's system will not be discussed.

2.2.1. Auction Subject

The court is the main body of online judicial auction, deciding the start and end time, reserve price, bidding increment, and other details of the subject, while the online judicial auction platform only provides technical services as an auxiliary. [7] However, in the network judicial auction of bankruptcy assets, due to the involvement of multiple entities, including the bankruptcy review department, the judicial technology management department, the administrator, and the creditors' meeting, the legal relationship becomes more complex. [8]

In the Article 6 of "Guidelines for Network Auction of Bankruptcy Assets in the Bankruptcy Procedure of Shenzhen Intermediate People's Court" (hereinafter referred to as the "Shenzhen Guidelines"), the administrator is the main body of the network auction of bankruptcy assets, and the network auction work implemented by the administrator should be supervised by the creditors' meeting and the court. Article 2, 5, 9 and 13 of the "Implementation Measures (Trial) for Property Network Auction in Bankruptcy Procedures of Shanghai Higher People's Court" (hereinafter referred to as the "Shanghai Measures") also stipulate that the administrator serves as the main body of the auction implementation, disposing of bankruptcy assets through the online auction platform and accepting the supervision of the creditors' meeting, creditors' committee, and people's court.

Under the current court regulations, the administrator is selected by the court and creditors' meeting and is responsible for the disposal of bankruptcy assets. However, the Chinese State

Council issued a document on October 31, 2021 to launch a pilot business environment innovation program in six cities, including Beijing, requiring the pilot cities to explore "allowing creditors and others to recommend the selection of bankruptcy administrators. The administrator independently exercises its statutory duties but still needs to accept the guidance and supervision of the court and creditors' meeting. The creditors' meeting plays a decisive role in the disposal procedure of the network auction of bankruptcy assets because the processing method of bankruptcy assets will directly affect the interests of all creditors, and the processing results will also affect the processing method. The creditors' meeting has the right to make choices in three aspects: whether to dispose of bankruptcy assets through the online judicial auction platform, evaluation matters, and guarantee creditors to issue written opinions. If there is a disagreement with the creditors' meeting resolution, it should be based on the creditors' meeting resolution. [9]

2.2.2. Auction Property Evaluation

Regarding the property evaluation for auction, both the "Shenzhen Guidelines" and the "Shanghai Measures" emphasize that the administrator should maximize the value of the debtor's property and improve its realization value. [10] Unlike online judicial auctions in civil enforcement procedures, where the subject of enforcement is the property being executed, the subject of bankruptcy estate online auctions is bankrupt properties that have not yet been subject to controlled enforcement measures. Except for the subject matter that others are entitled to exclude by law, all the properties owned by the debtor at the time of the court's acceptance of the bankruptcy application and all the properties obtained from the time of the acceptance of the bankruptcy application to the termination of the bankruptcy proceedings belong to the bankrupt properties of the online auction. The priority should be given to selling the property as a whole to avoid devaluation caused by scattered sales. However, there are some differences in the specific procedures between "Shenzhen Guidelines" and "Shanghai Measures".

For example, in the "Shenzhen Guidelines", the starting price for the first online auction can be determined in four ways: first, by using the pricing basis in the execution process. If the property has been evaluated in the execution process but the auction or sale process has not been initiated, the evaluation result in the execution process can be used as the starting price; if the property has been auctioned or sold but failed to be traded or the auction or sale has been postponed or suspended, the reserve price or the selling price in the auction can be used as the starting price. Second, by determining the market price of real estate. If the property is real estate, the market price information can be obtained through the "Real Estate Appraisal Price Inquiry System" of the Shenzhen Real Estate Appraisal and Development Center. The starting price should be based on the market price inquiry information within ten working days before the first auction notice is published on the online auction platform. Third, by decision of the creditors' meeting. The administrator can propose a starting price or a method for determining the starting price, which is voted on and approved by the creditors' meeting. If the administrator proposes a starting price to the creditors' meeting, an inquiry should be made through the online inquiry system, and the value displayed by the inquiry system or the average value obtained by comparing multiple inquiry systems should be used as the basis. Fourth, by commissioning an appraisal agency to determine. Article 16 and 17 of "Shenzhen Guidelines" stipulates that if an evaluation is required by law or other relevant regulations, and the creditors' meeting decides to commission an evaluation, or if the administrator believes that it is impossible to propose a starting price after investigation, the administrator may publicly hire an appraisal agency and use the appraisal value as a reference for the starting price with the permission of the people's court. In the "Shanghai Measures", in addition to the administrator's valuation, online inquiry, and commissioning of appraisal agencies, the reference price can also be determined by directional inquiry. If the debtor's property has a tax basis price, a

government price, or a government guidance price, the administrator can make directional inquiries to the relevant institutions where the property is located when determining the reference price. It also stipulates that if the above methods cannot effectively determine the reference price for the disposal of the debtor's property, the "Provisions of the Supreme People's Court on Several Issues Concerning the Determination of Property Disposal Reference Prices by People's Courts" can be used as a reference.

The above shows that the administrator's valuation, online inquiry, and commissioning of appraisal agencies are general options for determining the starting price of auctioned properties, which obviously combine the role of the administrator in performing duties in the bankruptcy proceedings. In the case of the administrator's comprehensive consideration of the nature of the property to be disposed of, the cost of determining the disposal reference price, the value of the property, etc., the administrator is granted the authority to estimate based on market transaction prices, financial data, etc., which is a highly flexible way of bankruptcy proceedings. However, some guidelines from local courts on the determination of the reference price for the disposal of bankruptcy property, such as the addition of the directional inquiry method in civil enforcement proceedings in Shanghai in addition to the three general options, provide the administrator with flexible choices under different circumstances, which not only meets the practical needs of bankruptcy trials but also provides a strong guarantee for improving the efficiency of the bankruptcy property disposal process.

2.2.3. Supporting System for Online Auctions

Before initiating the online auction process for bankruptcy assets, the administrator must determine the online auction platform and submit it for discussion and vote at a meeting of creditors. Both the "Shenzhen Guidelines" and the "Shanghai Measures" explicitly state that the online auction platform should be selected from the list of judicial auction network service providers determined by the Supreme People's Court. This list is selected, reviewed, and publicized by a professional review committee formed by the Supreme People's Court. Currently, there are seven network service providers on the list, including Taobao, JD, the People's Court Litigation Asset Network, Gongpaiwang, Zhongpaiwang, Beijing Property Rights Exchange, and ICBC Finance e-purchase.

In addition, the deposit is also a very important system before conducting online auctions of bankruptcy assets, to ensure that the administrator will not withdraw the auction application arbitrarily. The Article 18 of "Shanghai Measures" stipulate that the amount of the deposit shall be determined within the range of 5% to 20% of the starting price. Compared with this, the determination standard for the amount of the deposit in the article 19 and 22 of "Shenzhen Guidelines" is more lenient. The administrator can reasonably determine the amount of the deposit based on the amount of the starting price and other factors. Both places stipulate that bidders can only participate in bidding after they have authenticated their identity and paid the deposit before the auction. If the buyer regrets the purchase after the auction is completed, the deposit will not be refunded.

3. Practice of Cross-border Bankruptcy Property Online Auction in Chinese mainland and Hong Kong

3.1. Practical Status of Cross-Border Bankruptcy Asset Network Auction

3.1.1. Relevant Provisions of Law in Chinese mainland

In October 2002, the Hong Kong court issued a bankruptcy order, declaring Hong Kong resident Luo as bankrupt. In December 2002, the creditors' meeting of the bankrupt appointed Deng as the liquidator, responsible for disposing and distributing Luo's assets. During the liquidation process, the liquidator discovered that five Hong Kong special vehicle license plates held by the Hong Jue Development Company, owned by Luo, had certain value. As there was no bankruptcy asset network auction platform in Hong Kong, in February 2019, the liquidator applied to the Shenzhen Intermediate People's Court, hoping to use the Shenzhen bankruptcy asset auction platform to dispose of the Hong Kong bankruptcy assets to maximize their value and success rate.

The Shenzhen court reviewed and determined that there were no legal obstacles for onshore administrators to provide assistance to offshore bankruptcy representatives, and it was feasible. Therefore, the Shenzhen court guided the Shenzhen bankruptcy administrator's autonomous organization to contact and negotiate with the Hong Kong liquidator to review the status of the liquidator and the legality of the property disposal, and determined that the onshore administrator's autonomous organization could act as the representative of the onshore administrator to assist the offshore bankruptcy representative in disposing of the target assets. In March 2019, under the guidance of the Shenzhen court and with the assistance of the Shenzhen bankruptcy administrator's autonomous organization, the five Hong Kong special vehicle license plates were auctioned on the Alibaba auction platform using the Shenzhen court's bankruptcy asset disposal model, and were successfully sold to a Hong Kong resident for a total price of RMB 600,000.

It is worth noting that in this case, as the events occurred in 2019, the "Pilot Work Opinions" and the "Meeting Minutes" had not yet been issued. Therefore, according to the provisions of the "Civil Procedure Law", article 3 stipulates that the court accepts civil lawsuits filed by citizens regarding property and personal relationships, so Hong Kong and Macao residents who hold Chinese nationality can participate directly in litigation in Chinese mainland. For Hong Kong and Macao residents who do not hold Chinese nationality, article 5 of the "Supreme People's Court's Regulations on Several Issues Concerning Jurisdiction over Foreign-Related Civil and Commercial Cases" are applicable to jurisdictional issues involving parties from Hong Kong, Macao, and Taiwan in civil and commercial disputes. It can be seen that cases involving Hong Kong and Macao in Chinese mainland are regulated based on foreign-related cases. It can be concluded that Hong Kong residents can also apply to Chinese mainland courts for recognition and assistance of bankruptcy judgments under the cross-border bankruptcy system provided in Article 5 of the "Enterprise Bankruptcy Law".

Article 5 of the "Enterprise Bankruptcy Law" clearly states that the recognition and enforcement of foreign bankruptcy judgments requires, on the one hand, the existence of international treaties or reciprocity. Hong Kong courts recognized and assisted in the bankruptcy case of Guangdong International Trust and Investment Corporation, which was handled by the Guangdong Provincial Higher People's Court in 2001, as there is a reciprocal relationship between the two courts. On the other hand, the judgment does not violate the public order of the mainland, and from the facts of the case, it did not violate this point either. [11] In this case, the bankruptcy assets that the Hong Kong bankruptcy administrator applied to dispose of were assets located within Hong Kong, not within China. This was a major breakthrough in judicial practice, which was later recognized in the "Pilot Work Opinion" and "Meeting Minutes".

Furthermore, in this case, it is clear that the Shenzhen Intermediate People's Court recognized the bankruptcy order issued by the Hong Kong court and actively assisted the Hong Kong side's bankruptcy representative in disposing of the debtor's assets. The Shenzhen bankruptcy management organization was used as the representative of the Hong Kong bankruptcy management organization for the network auction of bankruptcy assets. The court guided the domestic bankruptcy management organization to provide civil assistance to the Hong Kong bankruptcy management organization and actively promoted the disposal of Hong Kong's bankruptcy assets through online auctions in Chinese mainland.

3.2. Problems in Practice

3.2.1. The Scope of Cross-border Bankruptcy Recognition and Assistance is too Narrow

The narrow scope of recognition and assistance in cross-border bankruptcy cases in the mainland has created significant difficulties in their handling. With regard to the scope of recognizing and assisting cross-border bankruptcy judgments or rulings, mainland law not only has limitations in terms of time, but also in other aspects.

On the one hand, in terms of time, the mainland only recognizes and assists bankruptcy judgments that have already taken legal effect, excluding Hong Kong courts' ongoing bankruptcy proceedings. This means that some critical decisions made by Hong Kong courts in bankruptcy proceedings, such as the issuance of bankruptcy protection orders and the appointment of bankruptcy administrators, will not be recognized and assisted. Such limitations may allow debtors in cross-border bankruptcy cases to evade their debts in some cases, thereby harming the legitimate rights and interests of other creditors. On the other hand, due to the limitations of existing mainland laws, Hong Kong creditors do not have sufficient protection over the property of debtors in the mainland. For example, the mainland does not recognize and assist Hong Kong court's temporary and protective bankruptcy decisions, which prevent Hong Kong creditors from preserving the debtor's property and protecting their rights in the mainland. In summary, the narrow scope of recognition and assistance in cross-border bankruptcy cases in the mainland may result in inadequate protection of the rights and interests of all parties involved. [12]

3.2.2. The Rules for Evaluating the Starting Price of Bankrupt Properties are Inconsistent between the Two Regions

In Hong Kong, the process of estimating bankruptcy assets is usually carried out by a licensed bankruptcy administrator who is appointed by the court as the trustee or liquidator of the bankrupt person's assets. The bankruptcy administrator is responsible for identifying, valuing, and realizing the bankrupt person's assets and distributing the proceeds to the creditors. The valuation of bankruptcy assets is usually conducted based on International Valuation Standards (IVS), which is a globally recognized framework for the valuation of assets and liabilities, providing guidance on the principles and methods used to evaluate various assets, including tangible and intangible assets, real estate, and financial instruments.[12] The bankruptcy administrator typically hires professional valuers to determine the value of assets, which may include real estate, personal property, investments, and other assets. The valuer will use appropriate valuation techniques, such as market value, income value, or replacement cost, based on the nature and condition of the assets. Once the assets are valued, the bankruptcy administrator will prepare a report for the court, which will include details of the assets, their estimated value, and any mortgages or claims against them. The report will also outline the proposed asset realization strategy, which may involve selling assets through auction or private sale, or transferring them to creditors to repay debts. Overall, the process

of estimating bankruptcy assets in Hong Kong is a complex and highly regulated process. [13]

In Chinese mainland, the starting price is determined by the bankruptcy administrator based on the reference price and the creditor meeting vote-passed or adjudicated "Provisions of the Supreme People's Court on Several Issues of the People's Court Online Judicial Auction". Specifically, article 10 stipulates that several methods mentioned above are used to evaluate bankrupt properties, including directional inquiry, online inquiry, commissioned evaluation, and administrator valuation. If the starting price requires the land use right as the subject of the first auction to be determined according to the reference price, the starting price of other subjects generally shall not be lower than 70% of the reference price. The reduction in price for the re-auction after the failure to sell generally shall not exceed 20% of the previous starting price. If the amount of the reduction in price determined by the creditor meeting or the creditors' committee resolution is not within the above range, it shall be determined according to their resolution.

Therefore, it can be seen that Chinese mainland and Hong Kong hold different standards for the valuation of bankrupt properties, which is a common problem in practice because cross-border bankruptcy involves laws and finance from two different legal systems. The provisions and standards of these aspects are not uniform, which may lead to significant difficulties in determining the value of auctioned properties.

3.2.3. The Current Bankruptcy Property Auction Rules Result in Low Disposal Efficiency

In practice, although there is a creditor meeting authorized by relevant regulations to determine the final starting price, the administrator mainly relies on the proposed disposal price. The administrator's pricing methods mainly include commissioning assessment, inquiring the administrator or estimating. For assets with slightly higher value, the administrator will mostly refer to the judicial auction procedure for the execution of the property and select an evaluation agency in advance to assess the property to determine the starting price based on this standard. However, evaluation inevitably incurs costs, which are often high. Saving the cost of online auctions is also one of the factors that administrators consider. For example, in a certain court in 2014-2015, 373 properties were evaluated, and the total evaluation amount was RMB 1.70677 billion, and the evaluation fee charged by the evaluation agency was more than RMB 6.82 million. These costs will ultimately be deducted from the auction proceeds, and will be treated as bankruptcy expenses in the bankruptcy proceedings. The key issue is that after incurring such high evaluation costs, the transaction price often deviates significantly from the evaluation price, especially in the bankruptcy liquidation process where the value of the auctioned items is ultimately verified by the market. The evaluation mechanism has not been able to play a particularly significant role, and the generation of evaluation fees has invisibly reduced the actual repayment rate of creditors.

In addition, under the current bankruptcy property auction rules, Chinese mainland currently adopts the increasing auction rule with a reserve price. Due to the high reserve price, cases of no bidders resulting in the auction being terminated frequently occur. At the same time, due to the procedural restrictions of judicial auctions, the starting price of the next auction will be reduced after termination. Even if the evaluation value of the auctioned item by a third-party evaluation agency is accurate and the listed starting price is reasonable, some potential bidders will adopt a wait-and-see attitude during the early stages of the auction process in the hope of buying the product at a lower price in the future, resulting in multiple terminations of online judicial auctions. When conducting subsequent auctions, it is necessary to re-publish the auction announcement in advance, prolong the auction cycle, and increase the time costs of the court, the administrator, and the debtor and creditor, which slows down the disposal efficiency and reduces the efficiency of handling bankruptcy cases. [14]

3.2.4. Delivery Issues of Bankruptcy Assets after Online Auction

The online judicial auction platform is particularly suitable for disposing of certain bankruptcy assets, such as motor vehicles, due to its own characteristics. This is mainly due to the fact that the general value of motor vehicles is relatively low and the cost of traditional auctions is high, resulting in the actual value of motor vehicles being lower and often wasted. To solve this problem, disposing of motor vehicles on the online judicial auction platform should be given priority, taking advantage of the zero commission offered by the platform. [15]

However, in practice, many bankruptcy assets have various defects, such as leasing, employee occupation, historical burdens, etc. During the process of disposing of assets through judicial auction platforms, trustees generally set up a large number of disclaimers and other measures, causing many potential buyers from other places to hesitate to purchase without fully understanding the auction items, thus affecting auction efficiency. [16]

After the bankruptcy assets are sold, the trustee should deliver the auction items to the buyer, and if registration needs to be changed, the relevant procedures should be carried out according to the regulations. When disposing of bankruptcy assets through the online judicial auction platform, the platform only provides a trading platform and technical support, which makes it difficult to handle the registration procedures for auction items using the platform. [17] Generally, there are two ways to handle the registration procedures for equity assets on the online judicial auction platform: one is to handle it in the usual way of transferring equity, which requires submitting documents such as the equity transfer agreement, shareholder meeting resolutions, and revised articles of association; the other is to handle it through judicial auction, which requires the court to issue a confirmation of the auction sale and an assistance execution notice and other legal documents. [18] However, for equity assets with small shareholding ratios and many shareholders, it is actually difficult to convene a shareholder meeting and form a shareholder meeting resolution. Moreover, due to the difference between judicial auction and bankruptcy asset auction, the accepting court also finds it difficult to issue corresponding legal documents since bankruptcy asset auctions do not belong to judicial auctions, resulting in difficulties in handling the registration procedures for equity transfer, which seriously affects the progress of bankruptcy cases.

4. Optimization Path for Future Cross-border Bankruptcy Property Network Auction Rules

4.1. Refining the Recognition and Assistance Criteria for Cross-border Bankruptcy in the Two Regions

To properly expand the scope of recognition and assistance for foreign bankruptcy procedures, this article believes that this issue should be discussed separately from the perspectives of time and property scope.

Regarding the time scope for China's recognition and assistance of foreign bankruptcy procedures, this article suggests that China should further expand the current scope of recognition and assistance for ongoing foreign bankruptcy proceedings. This actually involves the issue of whether the disposals of property within China's jurisdiction and individual liquidation actions taken by the debtor during the period between the start of the foreign bankruptcy proceedings and their recognition and assistance by Chinese courts are valid. [19]

Only by further expanding the scope of recognition and assistance of foreign bankruptcy procedures in terms of time, and recognizing their retroactive effect, can we achieve a more comprehensive protection of the legitimate rights and interests of creditors, prevent debtors from carrying out individual liquidation and property transfers before the foreign bankruptcy judgment is made, and differentiate between whether the creditors are acting in good faith. To balance the

protection of the interests of Chinese creditors and the prevention of individual liquidation actions by debtors, exemptions should be granted to good faith creditors. [20]

As for the property scope for China's recognition and assistance of foreign bankruptcy procedures, the question of whether it is limited to the debtor's own property rights or should also include leased property needs to be considered. This is because in practice, for some companies that operate large machinery and equipment through leasing, these leased properties are crucial for the operation of these enterprises and to achieve the purpose of debt restructuring. Therefore, Chinese courts should analyze the specific situation and, taking into account the current status of the enterprise, determine the scope of the debtor's property that falls within the maximum possible assistance for the bankruptcy of the enterprise.

4.2. Uniform Setting of Bankruptcy Property Auction Starting Price Evaluation Demonstration Rules between Two Regions

In cross-border bankruptcy property online auctions, the starting price of bankruptcy property is crucial. If the starting price is too high, it may lead to no one bidding, thus affecting the realization of bankruptcy property; if the starting price is too low, it may harm the interests of creditors. Therefore, in order to protect the interests of creditors, improve the efficiency and fairness of bankruptcy property online auctions, it is necessary to set uniform rules for the evaluation of starting prices of bankruptcy property between two regions. [21]

Specifically, the following details need to be considered when setting uniform rules for the evaluation of starting prices of bankruptcy property between two regions: (1) Establish evaluation standards and methods: The formulation of uniform evaluation standards and methods is key. Different characteristics of bankruptcy property, such as different types, values, and regions, should be taken into account. For example, market comparison method, income method, or cost method can be used to evaluate tangible assets such as real estate and vehicles; professional evaluation organizations need to be engaged to evaluate intangible assets such as trademarks and patents. In addition, factors such as depreciation and maintenance conditions of bankruptcy property need to be considered. (2) Choose evaluation organizations or professionals: To ensure the fairness and accuracy of evaluation results, professional evaluation organizations or professionals with relevant qualifications should be engaged to conduct the evaluation. These organizations or professionals should have strict qualifications requirements and industry norms, and should comply with relevant laws, regulations, and professional ethics. (3) Consider market demand and supply: Market demand and supply need to be considered when setting starting prices. If the market demand is high, the starting price can be appropriately increased; if the market supply is abundant, the starting price can be appropriately reduced. In addition, factors such as realization cycle and market risks of bankruptcy property need to be considered. (4) This study establishes a supervision and management mechanism: In order to ensure the effective implementation of the unified assessment rules of the starting price of bankruptcy property in the two places, it is necessary to establish a corresponding supervision and management mechanism. These mechanisms should include qualification review and supervision of evaluation organizations or professionals, review and supervision of evaluation results, review and supervision of starting prices, etc. In addition, corresponding complaint and appeal mechanisms need to be established to address possible disputes and controversies. (5) Information disclosure and transparency in this study: In order to ensure the fairness and transparency of the unified rules for the assessment of the starting price of bankruptcy property in the two places, it is necessary to establish a corresponding information disclosure mechanism. These mechanisms should include the disclosure of evaluation results, starting prices, bidding situations, and other information, and should be updated in a timely manner. In addition,

corresponding information inquiry channels need to be established to allow creditors or other relevant parties to query relevant information at any time.

In summary, the uniform setting of rules for the evaluation of starting prices of bankruptcy property between two regions is a crucial aspect of cross-border bankruptcy property online auctions. By formulating uniform evaluation standards and methods, engaging professional evaluation organizations or professionals, considering market demand and supply, establishing supervision and management mechanisms, and implementing information disclosure and transparency measures, the efficiency and fairness of cross-border bankruptcy property online auctions can be improved, the interests of creditors can be protected, and the development of the two regions' economies can be promoted.

4.3. Improving the Efficiency of Bankruptcy Property Auction Rules Disposal

Currently, there are problems with the bankruptcy property auction rules that lead to low disposal efficiency. One of the issues is that there are various pricing methods used by the administrator when referencing the disposal price, which results in high evaluation costs and large deviations between the evaluation and transaction prices, affecting the actual realization rate of creditors. [22] Additionally, the increase in auction rules with reserve prices often leads to situations where auctions are unsuccessful, requiring more time and costs to re-auction, which decreases the efficiency of bankruptcy cases. [23]

To improve the disposal efficiency of bankruptcy property auction rules, the following aspects can be considered: (1) Introducing a bidding mechanism, such as extending the time limit for online auctions or using online bidding methods, allowing market supply and demand to determine the final transaction price, thus improving disposal efficiency and transaction rate. (2) Reducing evaluation costs. By selecting evaluation institutions reasonably and limiting the scope of evaluation, evaluation costs can be lowered, avoiding high evaluation costs becoming an obstacle to creditors' realization rate. (3) Accurately positioning bidders. By accurately identifying the needs and expectations of bidders, the occurrence of unsuccessful auctions can be reduced. For example, targeted promotions can be done for specific asset types or regions, increasing participation and transaction rates.

In summary, improving the disposal efficiency of bankruptcy property auction rules requires taking multiple aspects into consideration, such as bidding mechanisms, evaluation costs, and bidder positioning. By comprehensively using various methods, the transaction rate can be improved, the auction period can be shortened, the efficiency of bankruptcy case handling can be improved, and the maximum realization of creditors' interests can be achieved.

4.4. Improving the Delivery System for Bankruptcy Assets after Online Auctions

To address the issue of delivering bankruptcy assets after online auctions, it is necessary to further improve the delivery system for bankruptcy assets after online auctions to enhance delivery efficiency and quality. [24]

Firstly, the online judicial auction platform should strengthen the examination of auction items to avoid items with problems such as leasing, employee occupation, and historical baggage, which can increase the confidence of potential buyers and improve auction efficiency. In addition, the online judicial auction platform should provide more comprehensive auction information, including the specific situation of auction items, delivery methods, delivery deadlines, etc., so that buyers can better understand the situation of the items and delivery details.

Secondly, the online judicial auction platform should provide more complete registration procedures for bankruptcy asset delivery. Specific measures include cooperation with relevant

departments to provide more convenient registration services for buyers, adopting flexible measures to solve the problem of difficult stock change registration procedures, and ensuring the effective implementation of the delivery system. In addition, the online judicial auction platform should establish a sound record and archive management system for bankruptcy asset delivery, and strengthen the tracking and resolution of problems that may arise during the delivery process.

Finally, the online judicial auction platform should strengthen cooperation with local governments and industry associations to jointly promote the improvement and implementation of the delivery system for bankruptcy assets after online auctions. The government can provide stronger support and supervision, and industry associations can provide more professional advice and guidance to jointly promote the standardization of the delivery system for bankruptcy assets after online auctions.

By implementing the above measures, the disposal efficiency and delivery quality of bankruptcy assets after online auctions can be improved, transaction risks can be reduced, bankruptcy cases can be smoothly promoted, and better support and protection can be provided for the development of the market economy. [25]

5. Conclusion

In summary, this article takes a perspective on cross-border recognition and assistance of bankruptcy between Chinese mainland and Hong Kong, delving deep into the legislative framework and practical aspects of China's cross-border bankruptcy asset online auction. In the legislative framework section, we provide a comprehensive analysis of cross-border bankruptcy assistance and asset online auction, revealing the characteristics of China's legal provisions, policy regulations, and relevant systems. In the practical aspects, this article objectively assesses the actual operation of cross-border bankruptcy asset online auctions and identifies existing issues and challenges.

However, this article also identifies several pressing issues that require resolution, such as the narrow scope of cross-border bankruptcy recognition and assistance, inconsistent assessment rules for initial auction prices of bankruptcy assets in both regions, inefficient disposal due to bankruptcy asset auction rules, and issues with the delivery of bankruptcy assets after online auctions. To optimize the rules governing China's cross-border bankruptcy asset online auctions, this article proposes the following optimization paths: Firstly, appropriately expand the scope of cross-border bankruptcy recognition and assistance to enhance the effectiveness of assistance. Secondly, establish unified guidelines for evaluating initial auction prices of bankruptcy assets in both regions to promote fair bidding and transactions. Thirdly, enhance the efficiency of bankruptcy asset auction rules, strengthening specialization and digitalization efforts. Lastly, refine the post-auction delivery system for bankruptcy assets in online auctions to ensure smooth transactions and asset security.

In future development, China should further enhance its international economic cooperation and legal coordination, draw from international advanced experiences, continuously improve the rules for cross-border bankruptcy asset online auctions, provide robust support for the efficient disposal and transactions of bankruptcy assets, and further advance China's economic and legal construction and international exchange cooperation to achieve new and greater accomplishments.

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References

- [1] Lingfang Wang and Liyao Sun. (2021) *Difficulties Facing the Disposition of the Debtor's Property in Insolvency Proceedings and Suggestions for Response*, *People's Court Daily* (Beijing, 14 October 2021) 1
- [2] M. L. Emiliani. (2000) *Business-to-Business Online Auctions: Key Issues for Purchasing Process Improvement* *Supply Chain Management*, 9, 176
- [3] Anqi Wang. (2019) *Research on Legal Issues of Network Judicial Auction of Bankruptcy Property* (LLM thesis on file at Southwest University of Political Science & Law).
- [4] Siyuan Zhang. (2019) *International Rules on Cross-border Insolvency Recognition and Relief and the Improvement in China* (LLM thesis on file at Capital University of Economics and Business).
- [5] Quan Yuan. (2022) *A Prospective Mechanism for Cross-border Insolvency Cooperation between the Mainland and Hong Kong* *Science of Law (Journal of Northwest University of Political Science and Law)*, 3, 173
- [6] Huanyan Jin. (2021) *Study on the Cross-border Bankruptcy Recognition and Assistance System between the Mainland and Hong Kong* (LLM thesis on file at Guangdong University of Foreign Studies).
- [7] Lu Xu. (2017) *Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China* *Information & Communications Technology Law*, 26, 59
- [8] Xu Zhang. (2022) *Research on the Scope of Cross-border Bankruptcy Property* (LLM thesis on file at Henan University).
- [9] Elizabeth H Mc Cullough. (2011) *Bankruptcy Trustee Liability: Is There a Method in the Madness* *Lewis & Clark Law Review*, 1, 153
- [10] Michael Korybut. (2007) *Using an Online Auction to Sell Article 9 Collateral* *Consumer Finance Law Quarterly Report*, 61, 792
- [11] Jingxia Shi. , Yuanyuan Huang. (2018) *On Cross-Border Insolvency Cooperation between the Mainland and Hong Kong - An Empirical Analysis and Recommendations Based on Cases* *Modern Law Science*, 5, 170.
- [12] Yujun Guo, Pengyuan Fu. (2018) *China's Recognition and Assistance System of Cross-border Insolvency: Theory, Practice and Improvement of Rules* *Wuhan University International Law Review*, 4, 1.
- [13] Dmitrii Rodionov. , Olesya Perepechko. , Olga Nadezhina. (2020) *Determining Economic Security of a Business Based on Valuation of Intangible Assets according to the International Valuation Standards (IVS) Risks*, 4, 115.
- [14] Stan Bernstein. , Susan H Seabury. , Jack F Williams. (2008) *Squaring Bankruptcy Valuation Practice with Daubert Demands* *American Bankruptcy Institute Law Review*, 16, 161.
- [15] Xuying Wang. , Jiabao Lin. (2022) *Research of the Influence of Automobile Purchase Restriction Policy on the Pricing of Motor Vehicles in Judicial Appraisal Enterprises* *Nankai Business Review International*, 1, 10.
- [16] Madaus Stephan. (2018) *Leaving the Shadows of US Bankruptcy Law: A Proposal to Divide the Realms of Insolvency and Restructuring Law* *European Business Organization Law Review*, 3, 615.
- [17] Rolef J. W. (2012) *Harmonisation of European Insolvency Law and the Need to Tackle Two Common Problems: Common Pool and Anticommons* *International Insolvency Review*, 21, 67.
- [18] Stephen S Gilstrap. (2010) *Refreshing the Page on Online Collateral Auctions*, *Yale Law Journal*, 3, 679.
- [19] Tao Du. (2017) *Presumption of Reciprocity: Promoting Litigation Dispute Resolution in the Belt and Road*, *People's Court Daily* (Beijing, 15 June 2017) 2.
- [20] Kexin Zhang. (2020) *Recognition and Assistance System of Foreign Insolvency Proceedings in China - Reflections Based on the Hanjin Shipping Bankruptcy Case* *People's Judicature (Application)*, 19, 25.
- [21] Zhonghua Zhao. (2019) *On Online Auction in Civil Enforcement* (LLM thesis on file at Zhengzhou University).
- [22] Karin S Thorburn. (2000) *Bankruptcy auctions: costs, debt recovery, and firm survival* *Journal of Financial Economics*, 3, 337.
- [23] Heng Xue. (2020) *Discussion on the Construction of Online Auction Rules for Bankruptcy Property* *Journal of Anhui Vocational College of Police Officers*, 2, 17.
- [24] Yujie Liu. (2021) *Analysis of Issues Related to the Disposal of Bankruptcy Property by Online Judicial Auction* *Farm Economic Management*, 7, 55.
- [25] John F Kros, S Scott Nadler, Haozhe Chen. (2011) *The Adoption and Utilization of Online Auctions by Supply Chain Managers* *Transportation Research Part E: Logistics and Transportation Review*, 2, 105.