

Bankruptcy and Intellectual Property
in the
People's Republic of China

By Ubbo Neelen

Preface

This thesis reflects the draft version of the proposed Enterprise Bankruptcy Law of the People's Republic of China as of 30 January 2006. A revised version of the law was subsequently enacted on 27 August 2006, and will be effective 1 June 2007. An English translation of the enacted law is available through the Internet site of the Ministry of Commerce of the People's Republic of China at:

[http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/
BasicLaws/P020070118609950781519.pdf](http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/BasicLaws/P020070118609950781519.pdf)

Abstract

This thesis examines the new system of bankruptcy law in the People's Republic of China.

A major issue of the thesis is the analysis of the possible links and side effects of the upcoming bankruptcy law on intellectual property rights in China.

The fact that the People's Republic of China is one of the fastest growing economies with the intention of becoming accepted as a market economy has various influences upon the political decisions and legal developments in China and the rest of the world.

All changes of the legal environment in China aim at increasing the faith of foreign investors and the growth of foreign investment in China.

China continuously allows foreigners to invest in more and more business areas and there is a wide variety of different types of investment in China.

On the one hand, companies have the possibility to invest their capital. On the other hand, companies have the option to invest their technical knowledge. Technical knowledge is of particular interest to Chinese partners. Because of this strong interest, western companies are in great danger of losing their intellectual property.

The Chinese legal system meanwhile offers western companies a range of different corporate forms. The corporate forms "Wholly Foreign Owned Enterprise" and "joint venture" in particular are very attractive to

foreign investors. Due to the large variety of corporate forms, this thesis focuses on the involvement of foreign investors in a joint venture.

Usually, western companies choose to invest intellectual property in the form of a “joint venture”. This generates a special need for the foreign company to receive a guarantee for their property. Foreign companies fear that a third party might use their intellectual property and, in order to reduce this risk, they have to be very careful as to how they invest their intellectual property in China.

The new bankruptcy law can create a new form of this well-known threat to foreign companies who invest in the People’s Republic of China. The aim of this thesis is to identify some of these new risks and to attempt to find solutions to help foreign investors reduce potential risks for their investments.

Globalisation and international investors are currently focusing on the Chinese market. In order to understand the contemporary situation in China, it is important to understand Chinese history and culture. Taking this into account, this thesis summarises the historical and cultural aspects in the initial chapters.

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