HAN KUN

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Legal Updates

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1. New Developments in Asset Recovery in England and Wales for Chinese Judgment Creditors - The UK Supreme Court Overturns the Court of Appeal's Decision in Derelle

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Introduction

For a creditor seeking to recover assets in England by reference to a foreign court judgment, the traditional route is generally to bring an action on the foreign judgment in England, obtain an English judgment and then use the enforcement measures available under the Civil Procedure Rules ("CPR") to pursue the debtor's assets. This route presents a practical difficulty in cross-border asset recovery: even after obtaining an English judgment on the foreign judgment, the creditor must still identify assets against which enforcement can be taken. Where the debtor, particularly an individual debtor, has concealed assets, the creditor cannot rely on the court to conduct an effective asset investigation. In some cases, it may therefore be more effective to proceed without a prior recognition action and rely directly on the foreign judgment to present a personal bankruptcy petition, thereby engaging the trustee's investigatory powers to identify and recover assets.

In January 2025, however, the Court of Appeal held in *Servis-Terminal LLC v Valeriy Ernestovich Drelle* [2025] EWCA Civ 62 that an unrecognised foreign judgment could not form the basis of a bankruptcy petition in England and Wales. That decision was widely understood to impose an additional procedural hurdle on the personal bankruptcy route described above. That position has now been reversed. On 27 July 2026, the UK Supreme Court overturned the Court of Appeal's decision in *Valeriy Ernestovich Drelle v Servis-Terminal LLC (In Liquidation in the Russian Federation)* [2026] UKSC 29 *(Drelle)*. The court held that a final foreign money judgment which cannot be registered under an English statutory regime and has not yet been recognised by an English court may give rise at common law to an immediate obligation to pay. That obligation is itself, in principle, a "debt" for the purposes of section 267 of the Insolvency Act 1986 and may support a creditor's bankruptcy petition.

The UK Supreme Court decision in Drelle therefore restores the approach to cross-border asset recovery by overturning the restrictive stance taken by the Court of Appeal in the same case. This means that a PRC creditor holding a final money judgment against an individual debtor may not need first to obtain an English recognition judgment. Instead, it may be able to rely on the payment obligation arising from the PRC judgment to seek the debtor's bankruptcy and thereafter trigger the extensive investigatory powers available to the trustee in bankruptcy to uncover and collect the debtor's assets for collective distribution to unsecured creditors.

[This article discusses personal bankruptcy exclusively under the laws of England and Wales. For brevity, references to "UK law" or "UK personal bankruptcy proceedings" mean the law and procedure of England and Wales unless otherwise stated, and do not extend to Scotland or Northern Ireland.]

Factual Background

ST was a Russian company. Mr. Drelle had served as ST's Director General and held shares in it. In December 2011, ST advanced a loan of RUB 2 billion to another Russian company and obtained a personal guarantee from that company's owner. The loan was not repaid.

In April 2017, ST entered insolvency proceedings in Russia. In March 2018, ST's insolvency practitioner brought proceedings on the company's behalf against Mr. Drelle in the Arbitrazh Court of the Yaroslavl Region, alleging that Mr. Drelle had failed properly to discharge his managerial duties in causing ST to make the loan and had thereby caused losses to ST.

On 24 May 2019, the Russian court ordered Mr. Drelle to pay ST RUB 2 billion. Subsequently, Mr. Drelle unsuccessfully sought relief from the appellate court, the regional arbitrazh court and the Russian Supreme Court. The first-instance judgment in the case became final.

By that time, Mr. Drelle had left Russia and settled in London. ST did not first bring an action in England to recognise the Russian judgment. Instead, ST served a statutory demand on Mr. Drelle on 9 October 2020 and presented a personal bankruptcy petition on 13 October 2020. At the then prevailing exchange rate, RUB 2 billion was approximately GBP 19.8 million.

Procedural History in the English Courts

I. First Instance: The Insolvency and Companies Court Makes a Bankruptcy Order

Mr. Drelle contended that the Russian judgment had been affected by state interference, judicial bias, fraud, collusion, breaches of natural justice and English public policy, and that the debt was therefore disputed on bona fide and substantial grounds. The Insolvency and Companies Court rejected those arguments and made a bankruptcy order in March 2023.

II. The High Court Upholds the Bankruptcy Order ([2024] EWHC 521 (Ch))

Mr. Drelle appealed to the High Court. On 11 March 2024, the judge dismissed the appeal and upheld the bankruptcy order. The High Court held that section 267 of the Insolvency Act 1986 is concerned with whether a debt exists, not whether the creditor is already able to enforce that debt directly in England. Because the final foreign judgment had conclusively and unconditionally established Mr. Drelle's obligation to pay RUB 2 billion, the absence of prior recognition proceedings in England did not prevent that obligation from constituting a bankruptcy debt[1].

III. The Court of Appeal Reverses the Decision ([2025] EWCA Civ 62)

In January 2025, the Court of Appeal reversed the High Court, set aside the bankruptcy order and dismissed the petition. It held that a foreign judgment has "no direct operation" in England. An unrecognised foreign judgment could not be deployed offensively as a "sword". Although bankruptcy

[1] *Valeriy Ernestovich Drelle v Servis-Terminal LLC* [2024] EWHC 521 (Ch), paras 46 and 54: "The 'obstacle' ... that ST has only an unrecognised foreign judgment, does not prevent the Judgment constituting a 'debt'." "I conclude that, in principle, it was open to ST to bring a bankruptcy petition by reference to the Judgment even though that Judgment was unrecognised."

is not execution in the narrow sense of seizure or attachment, it remains a method of enforcing a debt. The creditor therefore had to obtain an English judgment recognising the foreign judgment before relying on it to present a bankruptcy petition[2].

IV. The UK Supreme Court Reverses the Court of Appeal and Establishes a Principle of Law ([2026] UKSC 29)

The UK Supreme Court unanimously rejected the Court of Appeal's conclusion. Its central reasoning may be summarised as follows:

First, an unrecognised final foreign money judgment itself gives rise to a common-law obligation. The UK Supreme Court stated: "A foreign judgment for a debt or definite sum of money gives rise to an obligation to pay the sum for which judgment has been given. That obligation arises when the final and conclusive judgment is given. It does not depend upon recognition[3]."

Second, the absence of recognition limits direct execution; it does not negate the existence of the debt. An unrecognised foreign judgment cannot directly support enforcement measures that are available in respect of an English judgment, such as a third-party debt order, charging order or the appointment of a receiver. Personal bankruptcy, however, is not the individual enforcement of one creditor's judgment against a particular asset. It commences a collective process in which the debtor's assets are gathered in and, in principle, distributed rateably among unsecured creditors. The absence of recognition prevents the creditor from using execution measures available on an English judgment, but does not extinguish or negate the underlying debt.

Third, the obligation to pay arising from a foreign judgment is a "debt" within section 267 of the Insolvency Act 1986. Section 267 does not require the petition debt to have been reduced to an English judgment. "Debt" bears its general common-law meaning: a legal obligation owed by one person to another to pay money. Because an unrecognised final foreign money judgment gives rise to an immediate obligation to pay, that obligation is, in principle, a debt for the purposes of section 267 and may support a creditor's bankruptcy petition[4].

Fourth, giving effect to an unrecognised foreign judgment does not amount to the exercise of foreign sovereign power. The Court of Appeal had reasoned that an unrecognised foreign judgment derived from the exercise of foreign judicial sovereignty and should not carry legal effect across national borders without recognition. It drew an analogy with the revenue rule, under which foreign taxes, penalties and other sovereign claims are not directly enforceable in England. The UK Supreme Court held that this analogy confused the exercise of sovereign power by a foreign state with the assertion of a private debt by a private party. ST was not seeking to enforce a Russian tax, penalty

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[2] *Servis-Terminal LLC v Valeriy Ernestovich Drelle* [2025] EWCA Civ 62, paras 55-56: "A bankruptcy petition cannot be presented in respect of a foreign judgment which has not been the subject of recognition proceedings." "The Judgment was not capable of providing the basis for a bankruptcy petition."

[3] *Valeriy Ernestovich Drelle v Servis-Terminal LLC (In Liquidation in the Russian Federation)* [2026] UKSC 29, para 56: "A foreign judgment for a debt or definite sum of money gives rise to an obligation to pay the sum for which judgment has been given. That obligation arises when the final and conclusive judgment is given. It does not depend upon recognition."

[4] Ibid., paras 80-83.

or other public law claim. It was a private party asserting a civil claim requiring another private party to pay a definite sum. The Court also emphasised that the modern common-law basis for giving effect to foreign judgments is not international comity, but the obligation principle[5].

It is worth noting that the UK Supreme Court determined only Ground 1. Mr. Drelle's remaining Grounds 2 to 4 concerned whether the debt was genuinely disputed on bona fide and substantial grounds. The UK Supreme Court remitted those grounds to the Court of Appeal for determination. Accordingly, when the UK Supreme Court gave judgment, the ultimate outcome of Mr. Drelle's personal bankruptcy proceedings remained unresolved.

Comparison with the Traditional Recognition and Enforcement Route: The Distinct Advantages of Personal Bankruptcy

When the location of a debtor's assets is clear, the traditional route of recognition followed by individual enforcement may be more direct. For example, if the creditor has identified a particular UK bank account, London property or a specific receivable owed by a third party, and the debtor remains solvent overall, obtaining an English judgment on the foreign judgment and applying for a third-party debt order or charging order against that asset may give the creditor greater control over the particular property.

In many cross-border asset recovery matters, however, the real difficulty is not the absence of a final judgment, but the creditor's lack of reliable information about the location or ownership of the debtor's assets. After obtaining an English judgment recognising the foreign judgment, the creditor must itself pursue individual enforcement measures, such as a writ or warrant of control, a third-party debt order, a charging order or the appointment of a receiver. CPR Part 71 also permits the creditor to require the debtor to attend court and disclose information about assets and matters relevant to enforcement. However, each remedy has its own jurisdictional and evidential requirements, and the applicant will generally need to establish a sufficient factual basis linking the relevant person, information or assets to the proposed relief. Such applications can also be costly, and interim injunctive relief will ordinarily require the applicant to provide a cross-undertaking in damages. For bank accounts, for example, Practice Direction 72 makes clear that the court will not permit a purely speculative third-party debt order application: the creditor must adduce evidence supporting its belief that the debtor maintains an account with the respondent bank[6].

By contrast, once a bankruptcy order is made, the official receiver will ordinarily become the trustee in bankruptcy, although an authorised insolvency practitioner may subsequently replace the official receiver in accordance with the statutory procedures. The bankrupt's estate is then administered collectively by the trustee to realise the bankrupt's assets and distribute the proceeds proportionately among their unsecured creditors. The trustee's investigation is not confined to one known account or property; it extends to ascertaining the debtor's overall asset position, financial records and historical transactions. Under section 333 of the Insolvency Act 1986, the bankrupt is under a statutory duty to provide the trustee

[5] Ibid., para 56; see also paras 30 and 66-67 (summarising the Court of Appeal's reasoning and its analogy with the revenue rule).

[6] Civil Procedure Rules, Parts 70-73, rr 71.1-71.2; Practice Direction 72, paras 1.1-1.3.

with information concerning the bankrupt's affairs, attend on the trustee as required and take such other steps as the trustee may reasonably require. Section 366 further permits the trustee to apply to the court for an inquiry into the bankrupt's dealings and property. The court may summon the bankrupt, the bankrupt's spouse or former spouse, a person believed to possess property belonging to the bankrupt or to owe money to the bankrupt, and any other person able to provide information about the bankrupt's affairs or property[7].

Bankruptcy also provides mechanisms for reviewing certain pre-bankruptcy dispositions. Under section 339 of the Insolvency Act 1986, the trustee may seek relief in respect of qualifying transactions at an undervalue. Section 340 permits challenges to preferences that place particular creditors, sureties or guarantors in a better position than they would otherwise have occupied in the bankruptcy. Section 423 addresses transactions at an undervalue entered into for the purpose of putting assets beyond the reach of creditors or otherwise prejudicing their interests. The persons entitled to apply under section 423 are determined by section 424 and are not limited to a trustee in bankruptcy. Where the statutory requirements are met, the court may make such orders as it considers appropriate to restore the position and protect persons prejudiced by the transaction[8].

Practical Significance of Drelle for Chinese Judgment Creditors

Drelle reaffirms a procedural route of practical value for Chinese judgment creditors seeking to recover assets in England and Wales. Its significance may be considered on three levels:

I. Application to Individual Judgment Debtors

In many cross-border asset recovery cases, the persons who actually hold, control or transfer assets are the ultimate controllers, directors, shareholders or other responsible individuals. The company may have ceased trading, become an assetless shell or entered insolvency proceedings, whilst material assets have been transferred to individuals or associated structures. The ultimate target of the recovery exercise is therefore often not an assetless company, but the individuals behind it.

English law permits creditors to present bankruptcy petitions against individuals who meet the applicable jurisdictional requirements. The debtor need not be a British national. Section 265 of the Insolvency Act 1986 provides several territorial gateways, including that the debtor's centre of main interests ("COMI") is in England and Wales; that the debtor's COMI is in an EU Member State other than Denmark and the debtor has an establishment in England and Wales; or that one of the alternative connecting factors in section 265(2) is satisfied - for example, that the debtor is domiciled in England and Wales or, during the three-year period ending with the date of the petition, has been ordinarily resident, has had a place of residence or has carried on business there[9]. Mr. Drelle himself was an individual debtor who had left Russia and settled in London.

II. Addressing Information Asymmetry: The Trustee's Extensive Investigatory Powers Available

[7] Insolvency Act 1986, ss 291A, 306, 333 and 366.

[8] Insolvency Act 1986, ss 339, 340 and 423-425.

[9] Insolvency Act 1986, s 265(1)-(5).

in Bankruptcy

Chinese creditors pursuing recovery in England and Wales frequently lack reliable asset leads. A debtor may hold shares in UK companies, real property, bank deposits, investment products or beneficial interests under trusts, or may already have transferred assets to related parties. Public-source searches and private investigations often cannot reconstruct the full asset trail, and they can be costly and will ordinarily require some existing evidential basis and a sufficient connection with the jurisdiction. Where an individual judgment debtor is insolvent, the overall asset position is opaque or there are indications of prior asset dissipation, bankruptcy may provide an alternative collective framework for investigating and realising the debtor's estate.

Once a bankruptcy order is made, the trustee has statutory powers and duties to investigate the bankrupt's affairs and to get in and realise the estate. Those powers arise by virtue of the trustee's office and serve a different purpose from remedies pursued by a private creditor for its own benefit. They may facilitate an estate-wide examination of the debtor's assets, financial records and historical transactions, but must be exercised independently for the benefit of the estate and the creditors as a whole.

III. Taking an Active Role: Creditor Participation in the Appointment of the Trustee

A major creditor may participate in the process for appointing a trustee in bankruptcy and may, through the applicable statutory procedures, propose or support an authorised insolvency practitioner as the nominee for appointment as trustee[10]. Any trustee so appointed, however, acts independently for the benefit of the estate and the creditors as a whole. Where investigations or litigation are likely to be costly, the creditor may also consider providing ring-fenced funding or an indemnity, or assisting in arranging third-party funding, so that meritorious recovery claims can be pursued.

Key Considerations When Using the Personal Bankruptcy Route

Although the latest judgment in *Drelle* removes the procedural obstacle of obtaining prior recognition before using the personal bankruptcy route, Chinese judgment creditors should remain mindful of the following issues when pursuing asset recovery through that route.

I. The Foreign Judgment Must Still Satisfy the Common-Law Requirements for Recognition

Drelle dispenses with the procedural step of bringing a separate action and obtaining an English judgment recognising the foreign judgment before presenting a personal bankruptcy petition. It does not, however, dispense with scrutiny of the foreign judgment itself. In determining whether the judgment gives rise to an immediate obligation to pay and therefore constitutes a "debt" for the purposes of section 267 of the Insolvency Act 1986, the English court must still consider whether the judgment satisfies the requirements for recognition at common law within the bankruptcy proceedings. As summarised by the UK Supreme Court, the judgment must be a judgment in personam given by a

[10] The Insolvency Service, Technical Guidance for Official Receivers, Chapter 45, paras 45.2, 45.5, 45.7, 45.9-45.10, 45.13-45.15, 45.19-45.22 and 45.39-45.42; see also Insolvency Act 1986, ss 291A(1), 292(2), 296, 298(4)-(4A) and 388-390, and Insolvency (England and Wales) Rules 2016, rr 10.67-10.68 and 15.28.

foreign court; the foreign court must have had jurisdiction to give the judgment as recognised by English common law; the judgment must be for a debt or definite sum of money and must not concern taxes, analogous levies, penalties or other public-law claims; it must be final and conclusive; and it must not be impeachable on common-law grounds such as fraud, breach of natural justice or public policy[11].

For Chinese judgment creditors, a money judgment given by a Chinese court should, in principle, face no fundamental obstacle to recognition if it satisfies those requirements. The absence of a bilateral treaty between China and the United Kingdom for the recognition and enforcement of judgments is not, of itself, an insurmountable obstacle. There is established precedent for Chinese judgments in England, see for example: on 11 February 2026, in *Li and others v Yuan and Gao* [2026] EWHC 242 (Comm), the High Court held that five civil and commercial judgments of two district courts in Nanjing with an aggregate value exceeding RMB 245 million were enforceable in England as judgment debts at common law. That case demonstrates that a Chinese judgment may be enforceable in England as a judgment debt, so long as the judgment satisfies the English common-law requirements of finality, a definite sum and jurisdiction, even where service by public announcement and default judgments are involved. Creditors should nevertheless remain alert to potential challenges where the judgment includes punitive damages or multiple damages, or where issues of jurisdiction, fraud, natural justice or public policy arise.

II. The Petitioning Creditor Does Not Obtain Priority Merely by Presenting the Petition

A creditor does not acquire priority merely because it commenced the bankruptcy proceedings. As an ordinary unsecured creditor, it will generally share the bankrupt's estate rateably with other creditors of the same rank. The trustee's remuneration and the costs of investigation and litigation will also ordinarily be paid as expenses of the estate in priority to distributions to unsecured creditors. Thus, individual enforcement may be preferable to entering a collective process in which the estate must be shared with other creditors if the creditor has already identified assets in England and Wales and can move quickly for interim or individual enforcement relief after obtaining an English judgment on the foreign judgment.

III. A Cost-Benefit Analysis Remains Essential

Before presenting a personal bankruptcy petition, the creditor should still undertake a basic assessment of assets and enforceability. Where a potential recovery depends on litigation, the trustee must consider the merits of the case, the costs of investigation and litigation, and the expected recovery. The Insolvency Service's official guidance explains that, where the official receiver acts as liquidator or trustee, litigation will generally not be the preferred means of handling a right of action. The decision whether to litigate should take account of prospects of success, costs, potential adverse costs and expected realisations; a purely speculative claim will normally be inappropriate[12].

[11] *Valeriy Ernestovich Drelle v Servis-Terminal LLC (In Liquidation in the Russian Federation)* [2026] UKSC 29, paras 34-35.

[12] The Insolvency Service, Technical Guidance for Official Receivers, Chapter 37, paras 37.109-37.110, 37.114-37.115 and 37.121.

Accordingly, a preliminary asset and enforceability assessment remains essential. If the debtor has no valuable existing assets and there are no historical transactions or third-party claims with realistic recovery value, obtaining a bankruptcy order will not itself produce a substantive recovery.

IV. Limitation

Under section 24 of the Limitation Act 1980, an "action upon a judgment" may not be brought more than six years after the date on which the judgment became enforceable. Existing English authority indicates that a winding-up or bankruptcy petition will not ordinarily constitute an "action upon a judgment" for this purpose. The six-year period in section 24 therefore should not simply be treated as applying directly to such a petition[13].

The facts of *Drelle* did not themselves raise a limitation issue: the Russian judgment was given in May 2019, and the statutory demand was served and the bankruptcy petition presented in October 2020, plainly within six years.

Accordingly, where a foreign judgment is of some age, a Chinese judgment creditor should take English legal advice at an early stage in light of the proposed procedure and the particular facts, including any limitation defence that may arise.

Recommended Steps for Chinese Judgment Creditors

In light of *Drelle*, Chinese judgment creditors may consider the following steps:

Step 1: Assess whether the Chinese judgment satisfies the English common-law requirements for recognition. Consider whether it is a judgment in personam for a sum of money, is final and conclusive, concerns a civil debt rather than a punitive or revenue claim, and is not impeachable on grounds such as fraud or breach of natural justice.

Step 2: Investigate the debtor's connecting factors with England and Wales. Determine whether the debtor is domiciled or resident in England and Wales or has assets in the jurisdiction against which enforcement may be sought, or has their COMI there, and identify any other statutory connection capable of establishing bankruptcy jurisdiction.

Step 3: Conduct a cost-benefit analysis. Make a preliminary assessment of the likely scale of the debtor's assets, known leads, investigative difficulty and anticipated bankruptcy costs. If the procedure does not appear economically justified, consider deferring action or exploring third-party funding.

Step 4: Select the procedural route. The traditional route of recognition followed by individual enforcement may be preferable where specific assets have been identified in England and Wales, such as bank accounts or real property. Where asset information is limited or dissipation is suspected, personal bankruptcy may offer greater advantages.

Step 5: Commence the process. With the assistance of English solicitors, serve a statutory demand on the debtor. Ordinarily, once the statutory 21-day period has expired, a creditor's bankruptcy

[13] Ridgeway Motors (Isleworth) Ltd v ALTS Ltd [2005] EWCA Civ 92.

petition may be presented if the debt remains unpaid or unsecured, no arrangement satisfactory to the creditor has been reached, and the statutory demand has not been set aside. The court will consider whether the debt exists and whether the bankruptcy threshold and other statutory requirements are met. If the petition succeeds, the court will make a bankruptcy order, whereupon the official receiver will become the trustee in bankruptcy by operation of law. Creditors may thereafter use the applicable statutory procedures to support the appointment of an authorised insolvency practitioner to replace the official receiver and act as trustee in investigating, recovering, realising and distributing the bankrupt's estate.

Step 6: Participate in the administration of the bankruptcy. A major creditor may participate actively in the trustee appointment process, support an appropriate insolvency practitioner and, where necessary, provide an indemnity to enable investigations and recovery work to proceed.

Conclusion

The positive significance of *Drelle* for foreign judgment creditors is that it restores a procedural route of practical value for asset recovery in England and Wales. Where a foreign court having jurisdiction has given a final and conclusive judgment for a definite sum of money, obtaining a separate English judgment recognising the foreign judgment is not a prerequisite to presenting a personal bankruptcy petition in respect of the resulting debt. The creditor may instead rely directly on the payment obligation arising from the foreign judgment as a debt for the purposes of section 267 of the Insolvency Act 1986.

The decision in *Drelle* rests on the established common-law obligation principle and on the distinction between individual enforcement of a judgment and the commencement of a collective insolvency process. It therefore resolves the uncertainty created by the Court of Appeal's restrictive approach. For a PRC creditor that holds a final money judgment, the asset-gathering and investigatory powers available to a bankruptcy trustee may materially improve the prospects of identifying and recovering assets where the debtor has relocated to England and Wales, the asset position is opaque or there are indications of asset transfers.

Drelle therefore confirms the availability of personal bankruptcy as one potential component of a cross-border asset recovery strategy. Chinese lawyers and judgment creditors should consider how this reaffirmed procedural route may be used as part of their enforcement strategy and, after a full assessment of costs and risks, select the procedure best suited to the circumstances of the case.

2. China's Draft Disclosure Rules: What Foreign Banks Should Know

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Background

On 4 September 2026, the National Financial Regulatory Administration ("**NFRA**") released the *Administrative Measures on Information Disclosure by Banking and Insurance Institutions (Consultation Draft)* (《银行保险机构信息披露管理办法(征求意见稿)》, "**Draft**"). Comments are due by 3 October 2026. The Draft would replace the *Measures on Information Disclosure by Commercial Banks* (《商业银行信息披露办法》, "**2007 Measures**") and several other disclosure rules. For foreign banks in China, the main changes concern ongoing disclosure of material events, website publication and clearer management responsibility. Some requirements consolidate obligations already found in separate rules, rather than introduce entirely new duties. We summarize below the key highlights of the Draft and suggested actions for market participants.

Key implications

I. Covered entity - foreign bank subsidiaries and branches remain covered

The Draft does not change the regulatory approach under the existing 2007 Measures that both the locally incorporated foreign-owned banks and foreign bank branches in the PRC shall comply with the Draft. Art. 43 of the Draft would retain the following special arrangements for foreign bank branches, reflecting their special organisational structure:

- They would not need to disclose the legal-person-only information.
- They are still required to disclose a Chinese translation of a summary of their head office's disclosed information.
- It is reaffirmed that foreign bank branches, unlike foreign brank subsidiaries, are not mandatorily required to set up and maintain a website to disclose required information, and they can disclose the required information at their business premises instead (to the extent they do not voluntarily maintain a website for information disclosure purpose).

Other than the above, notably, the Draft does not repeat the requirement under Art. 23 of the 2007 Measures for branch information to be consolidated and disclosed by the principal reporting branch (主报告行). It remains to be clarified in the final version of the Draft or by the NFRA how the information disclosure obligations across multiple PRC branches of the same foreign bank shall be fulfilled.

II. Information required to be disclosed

In comparison with Art. 8 of the 2007 Measures, Art. 8 of the Draft has expanded the scope of information required to be disclosed from four (4) categories (namely financial accounting reports, risk management status, corporate governance, and annual material events) to nine (9) categories (namely

company basic information, financial accounting report, corporate governance information, financial product or service information, risk management information, capital information, related-party transaction information, consumer rights protection information, and material events information).

Of the nine (9) disclosure categories in Art. 8 of the Draft, most of the required information has already been substantively required under the existing rules. Set out below is a brief comparison of the Draft against the existing rules for quick reference:

Information required to be disclosed under the Draft	HanKun Assessment
Art. 9 and 27 of the Draft Company basic information: (1) name; (2) registered capital; (3) domicile and business premises; (4) date of establishment; (5) business scope and territory; (6) legal representative; (7) customer service hotline, complaint channel and complaint-handling procedure; (8) business premises and telephone numbers of provincial and first-tier branches, including overseas first-tier branches; (9) the website and place where the annual disclosure report is published; (10) the name and office address of the appointed accounting firm and the name of the signing CPA.	**Not entirely new requirement.** Art. 92 of the Corporate Governance Guidelines for Banking and Insurance Institutions (《银行保险机构公司治理准则》, the "**Corporate Governance Guidelines**") also requires banks to disclose company basic information in their annual reports. The scopes of information required to be disclosed are generally the same, provided that the Draft requires a standalone disclosure of the basic information on banks' websites, which shall be timely updated within ten (10) working days upon any change thereto.
Art. 10 of the Draft Financial accounting report: (1) accounting statements; (2) footnotes; (3) statement on financial condition.	**Not new requirement.** There is no change against Art. 9 of the 2007 Measures.
Art. 11 of the Draft Corporate governance information: information regarding equity structure, actual controller, major shareholders, organizational structure, directors, supervisors, senior management, and remuneration.	**Not new requirement.** The requirement under the Draft does not exceed the requirements under Art. 21 of the 2007 Measures and Art. 92 of the Corporate Governance Guidelines.
Art. 12 and 27 of the Draft Financial product or service: information such as the standard names, product types, transaction structures, rights and obligations, profit distribution, fee rates, innovative features, and risk levels of financial products and services.	**Not entirely new requirement.** While not provided in the 2007 Measures, Art. 31 of the *Measures for the Suitability Management of Financial Institution Products* (《金融机构产品适当性管理办法》) requires banks to disclose similar scope of information to customers, provided that

Information required to be disclosed under the Draft	HanKun Assessment
	Art. 27 of the Draft additionally requires an ad hoc update disclosure within ten (10) working days after any change thereto.
Art. 13 of the Draft Risk management information: (1) risk assessment status, including qualitative and quantitative descriptions of various types of risks; (2) risk control status, including the risk management organizational structure, risk management policies and procedures, and their implementation; (3) other risk management information prescribed by NFRA.	**Not new requirement.** Art. 19 and 20 of the 2007 Measures require the similar scope of information to be disclosed.
Art. 14 of the Draft Capital management information of banks	**Not new requirement.** The Draft does not provide for new disclosure requirements in relation to banks' capital, and banks still follow chapter IX of the *Administrative Measures for the Capital of Commercial Banks* (《商业银行资本管理办法》) to fulfill their disclosure requirements.
Art. 15 of the Draft Related party transaction information of banks	**Not new requirement.** The Draft does not provide for new disclosure requirements in relation to banks' related party transaction, and banks still follow chapter V of the *Administrative Measures on Related-party Transactions of Banking and Insurance Institutions* (《银行保险机构关联交易管理办法》) to fulfill their disclosure requirements.
Art. 16 of the Draft Consumer protection information	**Not new requirement.** The required information under the Draft does not exceed the requirements under the *Administrative Measures for the Handling of Consumer Complaints in the Banking and Insurance Sectors* (《银行业保险业消费投诉处理管理办法》) generally.
Art. 17 of the Draft Material event information: (1) change in the controlling shareholder or actual controller; (2) change in directors, supervisors, or senior management personnel;	**Partially new requirement.** On top of Art. 93 of the Corporate Governance Guideline, the Draft further requires the following material event to be timely disclosed: (1) other than the chairman, president and general manager, change in directors,

Information required to be disclosed under the Draft	HanKun Assessment
(3) cumulative changes in the board of directors during the year exceeding one-third of the total number of board members; (4) change in the company name, registered capital, domicile, or place of business; (5) change in the scope of business; (6) merger, division, dissolution, or filing for bankruptcy; (7) revocation of a provincial-level or first-tier branches branch (including an overseas first-tier branch); (8) significant equity investment; (9) imposition of criminal penalties on the company or its directors, supervisors, or senior management personnel; (10) imposition of administrative penalties on the company or its provincial-level (or first-tier) branches by NFRA or its local offices; (11) replacement or early termination of the engagement of the accounting firm; (12) replacement of the law firm that has long provided services to the company; (13) significant operating losses sufficient to affect the company's ability to continue as a going concern; (14) other circumstances prescribed by the NFRA.	supervisors, or senior management personnel; (2) other than the chairman, president and general manager, imposition of criminal penalties on the directors, supervisors, or senior management personnel; (3) replacement of the law firm that has long provided services to the company; (4) significant operating losses sufficient to affect the company's ability to continue as a going concern.
Art. 18 of the Draft Voluntary disclosed information	**Not new requirement.** While not provided in the 2007 Measures, banks can also voluntarily disclose information even before the Draft takes effect, and banks are also required to ensure the authenticity, accuracy and completeness of the disclosed information under Art. 5 of the 2007 Measures.
Art. 19 of the Draft Bank-specific material event information: (1) major litigation cases that significantly affect the bank's net assets and actual operations, or in which the bank is ordered to pay damages exceeding 1% of its total net assets as of the end of the previous quarter; (2) major arbitration matters that significantly affect the bank's net assets and actual operations, or in which the bank is ordered to	**New requirement.** These bank-specific material event information is newly introduced under the Draft, even though part of them may have also been properly reflected in the financial reports disclosed by banks.

Information required to be disclosed under the Draft	HanKun Assessment
pay damages exceeding 1% of its total net assets as of the end of the previous quarter; (3) external guarantee matters involving a single guarantee amount exceeding 5% of the bank's total net assets as of the end of the previous quarter or exceeding RMB 2 billion, excluding external guarantees within the scope of ordinary business operations; (4) matters such as equity investments, acquisitions, and asset sales involving a single amount exceeding 5% of the bank's total net assets as of the end of the previous quarter or exceeding RMB 2 billion, excluding asset transactions within the scope of ordinary business operations; (5) asset and equipment procurement matters involving a single amount exceeding 1% of the bank's total net assets as of the end of the previous quarter.	
Art. 25 of the Draft Information of systematically important banks	**Not new requirement.** Systematically important banks should follow the existing applicable rules, such as the *Additional Regulatory Rules for Systemically Important Banks (for Trial Implementation)* (《系统重要性银行附加监管规定(试行)》).
Art. 35 of the Draft Redaction of sensitive information	**New requirement.** Banks are required to properly redact the information involving third party's business secret, personal privacy or sensitive information when making the disclosure.

III. Information disclosure channel

Subject to the special treatment of foreign bank branches as discussed in Section 1 above, the Draft largely follows Art. 27 of the 2007 Measures and Art. 94 of the Corporate Governance Guidelines that website should be the primary information disclosure channel for banks, and the annual report and ad hoc reports for the latest five years should be retained on the website, provided that the Draft further requires that:

- (Art. 34 of the Draft) A prominent disclosure section would need to appear at the top of the website homepage, with separate categories; and
- (Art. 26 of the Draft) Other public channels could not publish earlier than the bank's website or contain conflicting information.

IV. Information disclosure time

The disclosure timeline would largely remain unchanged under the existing rules, i.e., annual reports to be disclosed by 30 April each year, and ad hoc reports to be disclosed within ten (10) working days.

On top of the above, the Draft introduces a comprehensive mechanism for delayed disclosure and exempted disclosure under Art. 30 of the Draft. A bank seeking a deferral or exemption would need to have the matter reviewed by its board or a relevant board committee and apply in advance to the NFRA or its local office. Applications must be submitted at least fifteen (15) working days before the annual deadline, or five (5) working days before the ad hoc deadline. Once the reason for a deferral ceases to exist, the bank shall prepare a disclosure report within ten (10) working days, disclosing the relevant information and details of its internal review.

V. Simplified disclosure by cross-reference

To ease operational burdens, Art. 42 of the Draft allows qualifying information already disclosed under applicable rules to be cross-referenced through a website link and brief explanation.

VI. Management responsibility over information disclosure

2007 Measures and Corporate Governance Guidelines	Draft
Under Art. 28 of the 2007 Measures and Art. 44 of the Corporate Governance Guidelines, the board of a bank, or where there is no board, the president of the bank, shall be ultimately responsible for the authenticity, accuracy and completeness of the information disclosed by the bank. Art. 96 of the Corporate Governance Guidelines mandates the board secretary to organize and coordinate information disclosure matters of the bank.	While the Draft largely remains unchanged compared with the existing rules, it makes the following changes: • (Art. 33 of the Draft) the chairman shall be the primary responsible person for information disclosure matters; • (Art. 43 of the Draft) where there is no board, instead of the president under the existing rules, the management decision-making body shall perform the board's duties and assume the corresponding responsibilities; and • (Art. 43 of the Draft) where there is no board secretary, a senior management personnel shall perform the board secretary's duties and assume the corresponding responsibilities.

VII. Obligations of shareholder and actual controller

Without prejudice to the existing obligations of shareholders of a bank to cooperate with the bank for the purpose of the bank's information disclosure, such as under Art. 30 of the *Regulatory Measures on Conduct of Major Shareholders of Banking and Insurance Organisations (For Trial Implementation)* (《银行保险机构大股东行为监管办法(试行)》), Art. 3 of the Draft expands the scope to include actual controller of the bank, and require both shareholder(s) and actual controller of a bank to provide requisite information to the bank for the bank's information disclosure.

Important Announcement

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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