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Reorganization of Listed Companies with Chinese Characteristics

by

Huimiao Zhao*

ABSTRACT

The Enterprise Bankruptcy Law [EBL] of the People's Republic of China ("PRC") governs the reorganization of Chinese companies. It does not grant local government many rights in the bankruptcy proceeding. Nevertheless, in practice, the local government is an active participant, seeking to further the interests of the local economy. This paper examines the reorganization of fifty-one listed companies in China through a detailed case study, analyses the reorganization system of listed companies with Chinese characteristics, and advocates for a change in the role of local government. Governmental intervention in the reorganization process is not only inefficient but it directly conflicts with the goals of reorganization.

I. INTRODUCTION

The most recent version of the EBL was promulgated on August 27, 2006 and went into effect on June 1, 2007. It provides greater protections and rights to both debtors and creditors than the prior 1986 version of the EBL. These changes reflect the commitment of the Chinese government to adopt regulatory reforms following China's accession to the World Trade Organization ("WTO"). In particular, China has made great efforts to make its laws and regulations more unified, consistent and transparent.¹ It specifically intended to reduce the government's direct involvement in economic activities and, in particular, with enterprise bankruptcies. Unfortunately, the evidence shows that the government continues to actively intervene in the reorganization of listed companies in China. For example, all the reorganization of/against the listed companies cannot be accepted by the people's court

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¹See generally Karen Halverson, *China's WTO Accession: Economic, Legal, and Political Implications*, 27 B.C. INT'L & COMP. L. REV. 319 (2004); Pitman B. Potter, *The Legal Implications of China's Accession to the WTO*, 167 THE CHINA Q. 592 (2001).

unless the local government allows and officially approves the application, despite the fact that such approval is not required by the 2006 EBL.

This article is comprised of five sections. Section II studies two typical reorganization cases: *ST Canghua, a state-owned listed company and *ST Dixian B, a privately listed company. Both case studies demonstrate how local governments continue to dominate the process. Section III identifies the significant characteristics of the Chinese reorganization system by examining the reorganization of 51 listed companies in China. Section IV focuses on the negative effects of governmental intervention. Section V concludes with a proposal for further reform to limit the involvement of local government.

II. ROLES OF LOCAL GOVERNMENTS IN THE REORGANIZATION OF *ST CANGHUA AND *ST DIXIAN B

A. DATA COLLECTION

There is no official bankruptcy office responsible for implementing the 2006 EBL or collecting and publishing reorganization cases in China, making it more difficult to collect information on bankruptcy cases. However, “listed companies” are required to publicly disclose all major events, including bankruptcy matters,² by the Securities Law and the Stock Listing Rules of the Shenzhen Stock Exchange (SZSE) and Shanghai Sstock Exchange (SHSE). This means companies listed on the main board of both the SZSE and SHSE, small and medium enterprise board, and the growth enterprise market of SZSE shall disclose all their information on the website of CNINFO,³ the official website for information disclosure of listed companies designated by the China Securities Regulatory Commission (CSRC). Thus, the source of information on listed companies for this article is drawn from the CNINFO site, which is a reliable and comprehensive site that includes the reorganization application, designation of administrators, and the reorganization plans.

Chart 1 below reflects the number of listed companies that have filed for reorganization from 2007 through February 2017. Of these forty-seven companies, twenty-eight were listed on the SZSE and nineteen on the SHSE exchange. In forty-four cases, the plans of reorganization have been both implemented and completed. In the case of one company, *ST Yunwei, the reorganization plan was still under implementation. One company, ST Boyuan, was in the process of drafting a reorganization plan.

²zhong hua ren min gong he guo zheng quan fa, 中华人民共和国证券法 [Securities Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 27, 2005, effective Jan. 1, 2006) art. 67 P.R.C. Laws.

³THE CNINFO (巨潮资讯网), <http://CNINFO.COM.CN> (last visited June 26, 2015).

Chart 1: Number of Listed Companies Involved in Reorganization Cases in China from 2007-2017

SZSE	SHSE	Total	
Numbers of LCs who entered reorganization process	31	20	51
Reorganization process terminated and implementation finished	31	18	49
Reorganization plan under implementation	0	1	1
Reorganization plan under drafting	0	1	1

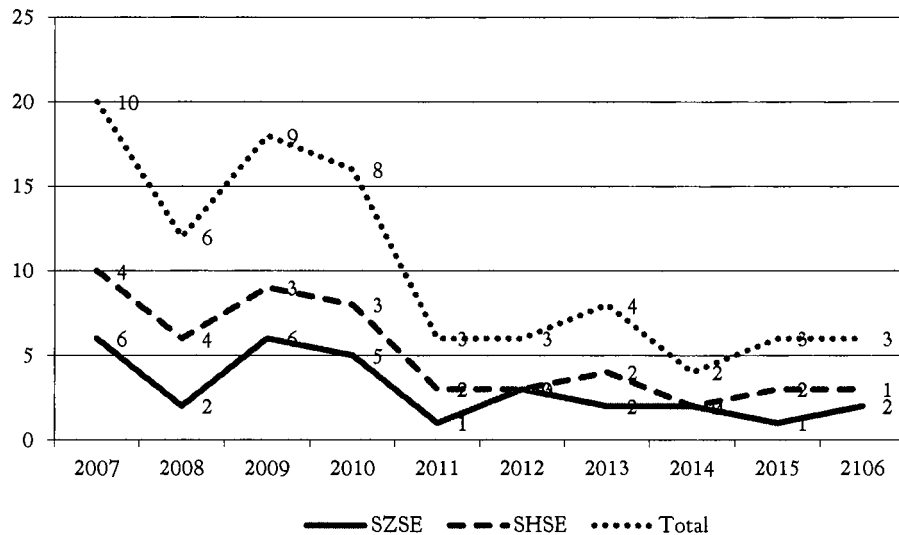
Source: Public Announcements of Reorganization of Listed Companies as of February, 2017).

Although it was the intention of the Chinese government to make reorganization more attainable under the 2006 EBL the number of reorganizations of listed companies has been steadily declining since its adoption. This decline is documented in Table 2 below. In 2007, there were ten listed companies that entered reorganization proceedings. The number declined to six in 2008, rebounded a bit to nine in 2009, but fell back to eight in 2010. In the following years, the number significantly decreased to three in 2011, three in 2012, four in 2013, two in 2014 and 3 in both 2015 and 2016.⁴ This decline in reorganization proceedings does not coincide with a similar sharp decline in bankruptcy filings overall. In fact, the bankruptcy filings overall remained relatively constant, with a more modest decline, over this same period-of-time. Charts 2 and 3 below shows the overall number of bankruptcy cases filed: 4,200 in 2007, 3,749 in 2008, 3,573 in 2009, 3,567 in 2010, 2,531 in 2011, and 2,100 in 2012 (see Figure 4).⁵ During this time-period of 2007 through 2017, economic development in China was slowing down and more and more companies were forced to exit from the market. Thus, one would have expected to find more companies reorganizing during this timeframe rather than a sharp decline.

⁴The data is collected from the reports disclosed by bankrupt listed companies on the website of CNINFO.

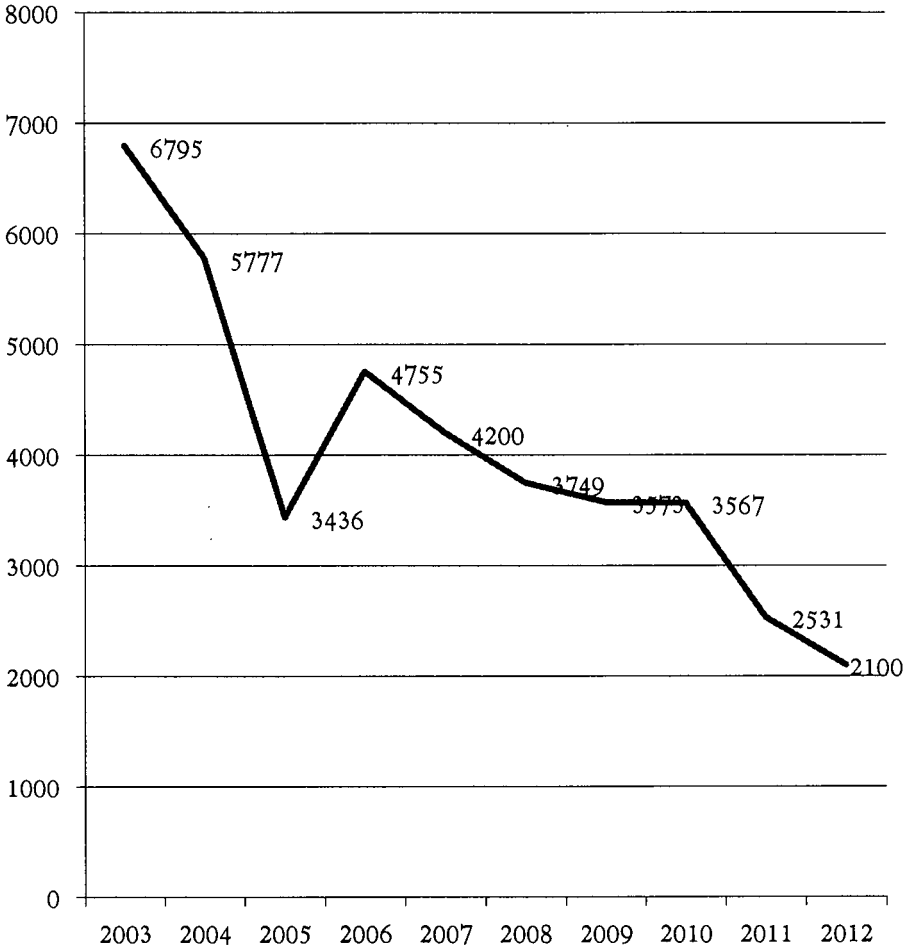
⁵The number of the bankruptcy cases is taken from Jian Ma (马剑), 2003-2012 年人民法院审理破产案件的统计分析 2012 年人民法院审理破产案件的统计分析 [The Statistical Analysis of the Bankruptcy Cases Tried by the People's Court from 2003 to 2012], 3 法制资讯/ [L. INFO.] 23, 23 (2014).

Chart 2: Listed Companies under Reorganization in China from 2007-2016



(SOURCE: PUBLIC ANNOUNCEMENTS OF REORGANIZATION OF LISTED COMPANIES AS OF FEBRUARY 2017, AVAILABLE AT [HTTP://WWW.CNINFO.COM.CN](http://www.cninfo.com.cn)).

Chart 3: Total Number of Bankruptcy Cases Accepted by the People's Courts Nationwide in China from 2003-2012



(Source: 马剑/Jian Ma, 2003-2012 年人民法院审理破产案件的统计分析 [The Statistical Analysis of the Bankruptcy Cases Tried by the People's Court from 2003 to 2012], 3 法制资讯/LEGAL INFORMATION 23, 23 (2014)).

There are likely two causes for the decline in reorganizations. First, some listed companies are reluctant to voluntarily file a reorganization.⁶ When they encounter financial difficulties, they would rather engage in an out-of-court restructuring or, in some cases, to attempt to cover up poor perform-

⁶Liangyong Wan & Xiaoling Zheng (万良勇/ & 郑小玲), 新破产法下的上市公司破产重整及其经济效率 / [The Application and Efficiency of Reorganization after the Enforcement of New Bankruptcy Law] (June 29, 2015), <http://doc.mbalib.com/view/5015874efa6fb290ab0378a9b1c1ed90.html>.

ance by submitting false financial information.⁷ The second cause is attributable to the influence of local government. Some insolvent or financially distressed listed companies have been denied access to the reorganization process by local governments, who do not support their application. The government may seek to restrict their access due to the lack of feasible plans to resettle workers or due to a perceived threat to social stability.⁸ Under such circumstances, the local people's court will not accept their applications to avoid going against the will of the local government, even though the companies meet the commencement standards established in the 2006 EBL.

B. REORGANIZATION CASE STUDIES: *ST CANGHUA AND *ST DIXIAN B

Since the establishment of China's stock market in the 1990s, no listed company has been forced into a liquidation proceeding. Instead the only bankruptcies of listed companies have involved reorganization proceedings. This statistic compares more favorably to that of publicly traded companies in the United States. Twenty-five percent of American companies filing for chapter 11 reorganization eventually liquidate their businesses.⁹ However, China's supposed one hundred percent success rate may be misleading. A bankruptcy system has been in place in China for almost 30 years. Yet in all of that time, not a single listed company has been liquidated. This statistic of zero liquidation generates significant doubt about the efficacy of China's bankruptcy system. Is it really following market rules? Poor performance of the listed SOEs¹⁰ in China persists. Some listed companies, such as *ST Shix-

⁷Huawei Ling & Shuo Wang (凌华薇/ &王烁/), *Yin Guangxia Trap (银广夏陷阱)* 财经/ [FIN. & ECON. MAG.] (Aug. 5, 2001), <http://magazine.caijing.com.cn/20010805/111291.shtml>.

⁸See 广东省深圳市中级人民法院民七庭课题组 [The Research Grp. of the Seventh Tribunal of Shenzhen Intermediate People's Court in Guangdong Province], *关于我国上市公司破产重整程序中的法律问题调研* [Investigation on Legal problems in the Reorganization Process of Listed Companies in China], *商事审判指导* [GUIDE ON COMM. TRIAL] 204-06 (最高人民法院民事审判庭第二庭 [The Second Tribunal of the Civil Court of the SPC] (ed) & /Xiaoming Xi 奚晓明 eds., 2010) [hereinafter *Investigation*].

⁹Twenty-five percent of the companies entering into the chapter 11 reorganization resulted in liquidation in the United States, according to Zinian Zhang (张子年/), *破产重整资产运营价值的在思考* [Reconsider on the Going-concern Value of the Bankruptcy Reorganization Assets], in *破产法论坛* [BANKR. F.] 119 (Xinxin Wang & Zhengyou Yin (王欣新/ 尹正友/) eds., Vol 6, 2011).

¹⁰SOEs in a broad sense includes three kinds of enterprises with state investment: (1) pure SOEs, refer to enterprises whose capital is wholly owned by the state; (2) enterprises controlled by the state, including absolute control (state equity greater than 50%) and relative control (state equity less than 50% but with a controlling interest over the company); (3) enterprises with the state being a small shareholder. SOEs in this thesis include enterprises which fall into type (2) and (3), and are called enterprises with state investment or SOEs for convenience. For the concept of SOEs, please refer to 国家统计局关于对国有公司企业认定意见的函 [Letter of the National Bureau of statistics on the opinion of Identifying the State-Owned Companies], available at <http://policy.mofcom.gov.cn/blank/claw/fetch.action?id=g000033027> (visited 22 November 2016).

ian and *ST Xin'an,¹¹ arguably should have been liquidated as they have lost their ability to be profitable, relying instead on government subsidies to maintain their listing status.¹²

In this section, the reorganization of *ST Canghua and *ST Dixian B will be examined to illustrate the means employed by the local government to influence the reorganization process. *ST Canghua is an SOE, controlled by the Cangzhou municipality, SASAC, in the Hebei province. Section II.B examines governmental intervention in connection with a privately listed company, *ST Dixian B, controlled by a natural person.

1. The *ST Canghua Case

Cangzhou Chemical Industrial Co. Ltd (**ST Canghua") was incorporated by means of sponsorship in March 1994. In June 1996, *ST Canghua made its initial public offering and its shares were publicly traded on the SHSE. After experiencing losses for two consecutive accounting years in 2005 and 2006, *ST Canghua was marked with *ST to warn investors of the risk of a potential delisting.¹³

There were several causes contributing to *ST Canghua's financial distress. In 2005, it diverted ¥ 365 million in capital toward a PVC resin project. It then had to cease its production of over 60,000 tons of PVC due to safety issues. In addition to its own problems, *ST Canghua was shouldering the debt of many of its affiliated companies. It had guaranteed over ¥ 2.6 billion of affiliates' debts, including over ¥ 867 million of debt owed by Baoshuo and its related companies. In January 2007, Baoshuo entered bankruptcy.¹⁴ Baoshuo's bankruptcy triggered *ST Canghua's guarantee liability. *ST Canghua was unable to maintain normal operations in light of this crippling debt.¹⁵

The primary creditor of *ST Canghua, Dinghua Resource Development Co. Ltd, filed a liquidation application at Cangzhou Intermediate Court in Hebei province on April 10, 2007. The Cangzhou Municipal People's Inter-

¹¹The 2010 Annual Report of S*ST Xin'an, THE CNINFO Annual Report (Apr 20, 2011, 6:30 AM), http://www.cninfo.com.cn/cninfo-new/disclosure/szse_main/bulletin_detail/true/59297150?announceTime=2011-04-20%2006:30 (indicating it made profits in 2010 owing to ¥ 2 million in financial aid from local government).

¹²*ST Shixian received substantial financial aid from Tumen municipal government: ¥ 1.7 million in 2011, ¥ 0.94 million in 2012 and ¥ 8.46 million in 2013. See 2011, 2012 and 2013 Annual Reports of *ST Shixian, http://quotes.money.163.com/f10/gsgg_600462,dqbg.html (last visited June 29, 2015).

¹³Rules Governing Listing of Stocks on Shenzhen Stock Exchange, 13.1.3,13.2.1 (2004), <http://www.szse.cn/main/en/RulesandRegulations/SZSERules/GeneralRules/>.

¹⁴(临2007-006) 河北宝硕股份有限公司重大事项公告 [Announcement of Hebei Baoshuo Co. Ltd on Some Major Event], 126 (Jan. 26, 2007), <http://file.ws.126.net/quotes/pdf/sh/2007/2007-1/2007-01-26/191992.PDF>.

¹⁵Jingfei Yue (岳敬飞), 沧化深陷宝硕担保黑洞' [*ST Canghua Falls into the "Black Hole" for Providing Guarantee to *ST Baoshuo], SOHU.COM (Nov. 2, 2006, 13:53 PM), <http://business.sohu.com/20061102/n246162252.shtml>.

mediate Court (“the Court”) accepted it on April 30, 2007. After the EBL came into effect on June 1, 2007, *ST Canghua’s board of directors filed a reorganization application on June 12, 2007. The board sought to take advantage of the new reorganization system in order to rescue the company. The Court ruled in favor of *ST Canghua’s reorganization application and designated the liquidation group as the administrator.¹⁶

During the reorganization, the Cangzhou municipal government played a key role. It sought to assist *ST Canghua in its efforts “to reduce debt, restructure and revive.”¹⁷ It employed the following five measures in its attempts to rescue *ST Canghua.

a. Government Support for the Reorganization Application

As a large state-owned listed company, the reorganization application against *ST Canghua could not be accepted by the Court without the approval of Cangzhou municipal government, which is tasked with protecting state-owned assets¹⁸ and maintaining social stability. It was the Cangzhou government that would have had the responsibility of resettling any workers displaced by the liquidation of *ST Canghua and, thus, this was a very sensitive issue for the government. It was only after the government issued a letter of commitment to support the reorganization of *ST Canghua that the Court accepted the reorganization application.

b. Organizing the Liquidation Group

The Cangzhou government was also instrumental in leading the reorganization effort. After the acceptance of the reorganization application, the Court designated a liquidation group to serve as the administrator over *ST Canghua. This group consisted of local officials from the various governmental departments.¹⁹ Lawyers and accountants were also included.²⁰ The group was led by Qingshan Feng, Deputy Head of the local SASAC.²¹

c. Financial Support

Immediately after *ST Canghua plunged into its debt crisis, the Cangzhou municipal government borrowed ¥160 million from the Hebei Provincial Finance Bureau to help fund *ST Canghua’s production and opera-

¹⁶*The Reorganization Plan of *ST Canghua*, DOC 88, <http://www.doc88.com/p-6187055851224.html> (last visited June 29, 2015).

¹⁷*Id.*

¹⁸zhong hua ren min gong he guo qi ye guo you zi chan fa (中华人民共和国企业国有资产法) [Enterprise State Assets Law] (promulgated by STANDING COMM. NAT’L PEOPLE’S CONG. GAZ., Oct. 28, 2008, effective May 1, 2009), art. 31, http://www.gov.cn/flfg/2008-10/28/content_1134207.htm.

¹⁹(临2007-033) 沧州化学工业股份有限公司风险提示公告 [Indicative Announcement of Canghua Co Ltd on Risk Warning], THE SSE (June 25, 2007), http://static.sse.com.cn/disclosure/listed_info/announcement/c/2007-06-25/600722_20070625_1.PDF.

²⁰*Id.*

²¹*Id.*

tions.²² Even with this additional capital, however, *ST Canghua continued to experience losses. According to the Listing Rules of the SHSE, if *ST Canghua continued to produce losses through the end of 2007, which would have been the third consecutive year of losses, its share trading would be suspended.²³ At the end of 2007, in an effort to avoid delisting, the Cangzhou government advanced it ¥ 1.49 million so that *ST Canghua could demonstrate a profit on its balance sheet.²⁴ Nevertheless, again in 2008 and 2009, *ST Canghua produced losses.²⁵ Thus, it again became necessary to demonstrate profitability by the end of 2010.²⁶ In order to do so, the Cangzhou government funded another ¥ 169 million to it.²⁷ In addition, the Cangzhou municipal government refunded ¥ 104.7 million to the company, which represented proceeds from retransferring to the Cangzhou government land that had been previously allocated to *ST Canghua but owned by Cangzhou government.²⁸ This aid allowed *ST Canghua to demonstrate a handsome profit on its balance sheet. Its operational profits, however, continued to be negative. Its profitability was due solely to non-business income, such as government subsidies.²⁹ These pecuniary measures greatly facilitated the reorganization of *ST Canghua.

d. Soliciting Strategic Investors

When *ST Canghua could not pull itself out of its debt crisis, strategic investors became crucial to any successful reorganization. The Cangzhou municipal government and the liquidation group consulted with interested investors. The government-led administrator finally reached an agreement with Hebei Jinniu Chemical Industry Co. Ltd (“Jinniu”), whereby Jinniu would obtain a 40.85 percent share in *ST Canghua and become its controlling shareholder.³⁰ Jinniu is under the control of Hebei Jinneng Group, whose

²²(临2010-030) 河北金牛化工股份有限公司关于公司破产重整进展情况的提示性公告 [Announcement of Hebei Jinniu Chemical Co Ltd on the Progress of Bankruptcy Reorganization], 126 (Nov. 23, 2010), <http://file.ws.126.net/quotes/pdf/sh/2010/2010-11/2010-11-23/631670.PDF>.

²³Stock Listing Rules of the SHSE, THE SHANGHAI STOCK EXCHANGE, Rule 14.1.1 (Oct. 19, 2014), <http://www.sse.com.cn/lawandrules/sserules/listing/stock/a/20141019/0c66952a92b51b909f3d7516f52f9778.doc> [hereinafter SHANGHAI RULES].

²⁴The Annual Report of *ST Canghua in 2006, THE 163. COM, Annual Report, http://quotes.money.163.com/f10/ggmx_600722_213895.html (last visited Aug. 13, 2015).

²⁵The Annual Reports of *ST Canghua in 2007 and 2008, THE 163 COM., http://quotes.money.163.com/f10/gsgg_600722,dqbg,1.html (last visited Oct. 16, 2014).

²⁶SHANGHAI RULES, *supra* note 23, at Rule 14.3.1.

²⁷The Annual Report of *ST Jinhua in 2010, CNINFO (Mar. 5, 2011) <http://www.cninfo.com.cn/finalpage/2011-03-05/59083174.PDF>.

²⁸*Id.*

²⁹*Id.*

³⁰Yuxin Wang (王宇新/), 金牛能源 将控制40.85%的*ST沧化的股权 [Jinniu Energy will Control 40.85 per cent of the Equity of *ST Canghua], FINANCE QQ (Mar. 26, 2008, 19:32 PM), <http://finance.qq.com/a/20080326/007384.htm?from=814e.com>.

shareholder is the Hebei provincial SASAC. As the deputy head of the liquidation group was also from the SASAC, the liquidation group backed by the local government had the necessary administrative resources and channels to solicit Jinniu, who was also under the control of the provincial SASAC, to become the strategic investor of *ST Canghua.³¹

e. Cramdown by Cangzhou Intermediate Court

During the reorganization process, the large general creditors rejected the proposed reorganization plan due to its low percentage of repayment of such claims. The payment rate would have been only 9.09 percent under liquidation. The plan offered only 14.28 percent under reorganization.³² Nevertheless, the administrator filed an application for confirmation of the plan by the Court. The Court confirmed the reorganization plan through a cramdown procedure, finding that the creditors' interests would be well protected and the principal secured creditors were still solvent.³³

Cramdown in this case violated the absolute priority rule.³⁴ As junior right holders, the shareholders should have received nothing because the creditors, the senior right holders, were not paid in full. Nevertheless, the shareholders retained at least 89 percent of their shares,³⁵ while the plan only entitled the creditors to receive a distribution on their claims between 14.28 percent and 30 percent of their claims.³⁶ Obviously, the shareholders of *ST Canghua, and the Cangzhou municipal SASAC in particular, had greater bargaining power than the general creditors. While it was questionable for the people's court to confirm such a plan, the result in this case reflects a fairly common pattern in the reorganization of listed companies.

2. The *ST Dixian B case

Chengde Dixian Textile Co. Ltd (*ST Dixian B or Dixian) was incorporated by the Hebei Dixian Textile Group Co. on November 3, 1999. Initially, it issued series B shares with the approval of the CSRC. Its shares are publically traded on the SZSE. As it became insolvent, the SZSE marked its

³¹沧州市副市长宋文新来我委感谢支持 [Wenxin Song, Deputy Mayor of Cangzhou City, Came to Hebei Provincial SASAC to Express Their Thanks for the Support], THE HBSA.GOV.CN (Apr. 9, 2008, 18:08 PM), <http://www.hbsa.gov.cn/WeiNeiJiGou/o/2014-06-11-26075.html>.

³²The Reorganization Plan of *ST Canghua, *supra* note 16.

³³Here, the secured claims refer to guarantees mutually supplied by *ST Canghua and its creditors, not the normal kind of claims secured by specified assets of the debtor. Information is from the analysis of Beijing Integrity Financial Consultant Ltd, quoted from CHENGWEN LI (李成文/), *中国上市公司公司重整的内在逻辑与制度选择* [The Intrinsic Logic and Imitational Choices of Reorganization for Listed Companies in China] 64 (2012).

³⁴zhong hua ren min gong he guo qi ye po chan fa(中华人民共和国企业破产法) [Enterprise Bankruptcy Law, hereinafter EBL] (promulgated by the Standing Comm. Nat'l People's Cong. Gaz., Aug. 27, 2006, effective June 1, 2007), art. 87, 2006 NPC Legislative Commission.

³⁵The Reorganization Plan of *ST Canghua, *supra* note 16.

³⁶*Id.*

shares with *ST on May 5, 2008 to warn investors of the risk of its delisting.³⁷ The cause of its insolvency was two-fold. First, it was highly leveraged with not only its own commercial loans but as a result of having guaranteed the loans of many of its subsidiaries. In addition, it encountered serious operating and financial difficulties in 2005, resulting in the termination of production of all of its subsidiaries. Thousands of workers went unpaid. Its daily operations and management also came to a halt. As it was unable to repay its debts, its major creditor filed a reorganization application with the Chengde Intermediate Court (the Court), which the Court accepted on November 10, 2008.³⁸

Although *ST Dixian B is privately owned, the Chengde municipal government tried its best to rescue the company. If *ST Dixian B were to permanently cease business, the government would lose a big taxpayer and its good image. In addition, thousands of workers would lose their jobs, further threatening the social stability of the local economy.³⁹

To assist the reorganization process, the Party Committee and the Chengde county government established a working group to assist Dixian's management. The duties of this group were: securing *ST Dixian B's operations and management; supervising its economic operations, coordinating relationships between managerial staff and external stakeholders, and assessing its overall financial situation.⁴⁰ The group also had the ability to make suggestions to the board of directors and supervisors on major events, manage production and operations, oversee management, suspend or stay execution of matters that could threaten the security of its assets, and check on the accounts of *ST Dixian B.⁴¹ This working group became the administrator of its estate. The group's leader was the head of the Chengde county government.

In addition, the Chengde municipal government bought 108.84 million B shares of Dixian for HKD 76,188,000, which was lower than the market price.⁴² Since the government is not allowed to hold shares of private compa-

³⁷(2008-014) 承德帝贤针纺股份有限公司股票交易实行退市风险警示的公告 [Announcement of Chengde Dixian Textile Co. Ltd on the Warning of Stock Trading Delisting Risk], THE 126. NET, (Apr. 30, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-4/2008-04-30/322576.PDF>.

³⁸The Reorganization Plan of Chengde Dixian Textile Co Ltd, THE 126. NET, (Dec. 31, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-12/2008-12-31/385182.PDF>.

³⁹*Id.*

⁴⁰帝贤B临时负责人更换 政府人员入驻监管 [Temporary Person in Charge Being Replaced, Government Officials Entered to Supervise Dixian B], HEXUN.COM (June 20, 2007, 7:39 AM), <http://news.hexun.com/2007-06-20/100061044.html>.

⁴¹*Id.*

⁴²承德帝贤针纺股份有限公司公告 [Announcement of Chengde Dixian Textile Co Ltd], STCN.COM, http://epaper.stcn.com/paper/zqsb/html/2009-06/22/content_96445.htm (last visited Oct. 19, 2014). The agreement was between the liquidation group of Southern Securities Co. Ltd. and Chengde municipal government and signed in Shenzhen on June 13, 2008.

nies, five natural persons held the shares on behalf of the Chengde municipal government, but the shares were managed by the municipal government. According to Article 47 of the Securities Law in China, these shares cannot be sold within six months after their transfer. The Chengde municipal government committed to reducing or transferring all of the shares upon the completion of the reorganization of *ST Dixian B.⁴³ Thus, the government only intended to hold the share as a temporary measure. It was a means of providing additional funds for the reorganization.

Government ownership of *ST Dixian, however, also complicated the reorganization process. It made it more difficult to reach a compromise between the shareholders and the creditors. As the second largest shareholder,⁴⁴ the Chengde government was reluctant to make concessions to give up all or part of its shares to facilitate either the solicitation of strategic investors or an increase in the repayment rate to creditors. The government's shares were considered state-owned assets and, as such, they were protected by the Law of the PRC on State-owned Assets of Enterprises⁴⁵ (the State-owned Assets Law) and other regulations. These laws prevent the loss of state-owned assets. As a result, neither Rong Chen, the controlling individual shareholder nor the Chengde municipal government were willing to give up their shares to increase the repayment rate of the creditors. While they retained 100 percent of their equity, the creditors received only two percent of their claims.

In summary, the involvement of local governments in the reorganization of listed companies is both beneficial and problematic.

III. REORGANIZATION OF LISTED COMPANIES WITH CHINESE CHARACTERISTICS

A. ACCESS TO THE REORGANIZATION PROCESS

Based on the 2006 EBL, it would appear that the reorganization process is readily available. Its requirements are fairly simple and straightforward. First, the application must demonstrate that the debtor cannot repay its debts. Article 2 of the 2006 EBL states:

[W]here an enterprise legal person fails to clear off its debt that falls due, and if its assets are insufficient to pay off all the debts or if it is obviously incapable of clearing off its

⁴³*Id.*

⁴⁴Chengde Dalu, Co., *Annual Report 2009*, THE CNINFO (Apr. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-30/57897880.PDF>.

⁴⁵zhong hua ren min gong he guo qi ye guo you zi chan fa (中华人民共和国企业国有资产法/) [State-owned Assets Law] (promulgated by the STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. Oct. 28 2008, effective May 1, 2009), http://www.gov.cn/flfg/2008-10/28/content_1134207.htm.

debts, it shall be liquidated according to the provisions of the present Law. Where an enterprise legal person is under the aforesaid circumstance or if it is obviously likely that it is unable to pay off its debts, it may be subject to reorganization according to the provisions of the present Law.”⁴⁶

The applicant must also supply basic information and documentation to support its request. Article 8 of the 2006 EBL requires: (1) basic information about the applicant and the respondent; (2) the purpose of application; (3) facts and grounds for the application; and (4) any other matter that the People’s Court deems necessary. When the debtor files its own application, it must submit financial statements, a listing of its debts and credits, and a reserve plan for employee arrangements. The employee plan must include the payment documents of wages and social insurance premiums.⁴⁷ If creditors file the application, they must include a statement that the debtor has no objection to the reorganization application or that the People’s Court has already overruled its objection.⁴⁸ If these were the only requirements for acceptance of an application, many companies would be able to reorganize.

In practice, however, the acceptance process is much more involved.⁴⁹ A report of the Seventh Tribunal of Shenzhen Intermediate Court in Guangdong Province provides a fuller description of the process in practice.⁵⁰ The following description and flowchart summarize this process. Suppose that a listed company “A” encounters serious financial or operational problems and cannot repay its debts. Its creditors file a reorganization application at the people’s court (“C”). If C considers there is a high possibility that the reorganization of A would be successful, it will issue a letter to the local government (“G”) to indicate its intention to accept the reorganization application. If G agrees with C, it issues a letter of commitment to support A’s reorganization. G then issues a recommended “pre-plan” for maintaining economic stability. The letter of commitment and the pre-plan will indicate that the government will facilitate A’s reorganization by mobilizing administrative resources. In the meantime, G has to issue a similar letter to the CSRC. The CSRC, after receiving G’s letter of commitment, will issue a letter to the Supreme People’s Court (SPC) to express its opinion on the reorganization. After receiving the reply from G, C will also report to the

⁴⁶EBL, *supra* note 34, art. 2.

⁴⁷*Id.* at art. 8.

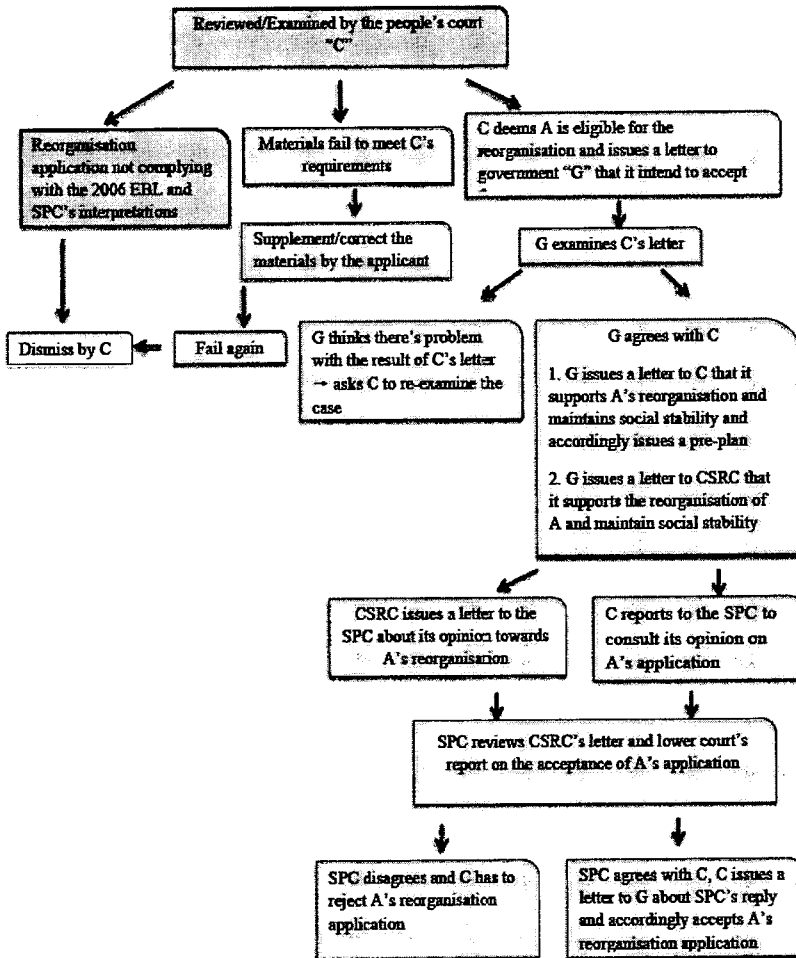
⁴⁸*Id.* at art. 10.

⁴⁹最高人民法院印发《关于审理上市公司破产重整案件工作座谈会纪要》的通知 [Notice of the SPC to Print and Distribute Summary of the Colloquium on the Trial of the Bankruptcy Reorganization of Listed Companies], art. 3, <http://www.chinainsol.org/show.aspx?id=6849&cid=6> (last visited Apr. 29, 2015).

⁵⁰*Investigation, supra* note 8.

SPC its opinion on whether to accept or reject the application. The SPC reviews the letters of the CSRC and C. The SPC will then determine whether C should accept the case or not. If it does not allow C to accept the case, C will issue a ruling to reject the application. If the SPC agrees with the recommendation of the CSRC and C, it will then inform C. C accordingly sends a letter to G, stating the court of a higher level agrees with C. Finally, C will issue its formal ruling to accept the application.

Chart 4: Flowchart of the Approval Process for Acceptance of a Reorganization Application Filed against a Listed Company



(Source: 广东省深圳市中级人民法院民七庭课题组 [The Research Group of the Seventh Tribunal of Shenzhen Intermediate People's Court in Guangdong Province], 关于我国上市公司破产重整程序中的法律问题调研 [Investigation on Legal problems in the Reorganization Process of Listed Companies in China], in 商事审判指导 /GUIDE ON COMMERCIAL TRIAL 206 (最高人民法院民事审判庭第二庭 [The Second Tribunal of the Civil Court of the SPC] & 奚晓明 /Xiaoming Xi eds., 2010).

The SPC has required, in addition to the materials set forth in Article 8 of the 2006 EBL, a report on the feasibility of the reorganization of the listed company, briefing materials sent by the provincial government at the place of the domicile of the listed company to the securities regulatory authority, the opinion of the CSRC on the reorganization application, and the pre-plan issued by the local government for the maintenance of stability.⁵¹ With any voluntary reorganization application, the listed company must submit a feasible plan for resettling workers.⁵²

These added requirements, which are not required by the 2006 EBL, curtail a listed company's access to the reorganization process. Preparing the additional materials adds to the cost of reorganization. More importantly, it delays its commencement, resulting in a deepening insolvency of the company and less prospects for its reorganization.

Obtaining the government's approval, however, is the most critical impediment. If the government refuses to issue a letter of commitment, the People's Court will not accept the reorganization application. This requirement gives the local government a great deal of leverage. It can use this leverage to dictate the terms of any reorganization of listed companies.

The government's filtering process raises concerns of due process. There is no opportunity for a public hearing on the government's decision. This "black-box operation" leaves stakeholders inadequately informed and their interests inadequately represented. The government's control over access to the reorganization process explains why there are so few reorganization cases of listed companies.

Furthermore, access to reorganization has become somewhat of a political privilege of the SOEs, former SOEs and listed companies with close relationships with local governments.⁵³ It is much easier for listed companies with state investment to obtain access to reorganization than privately held companies because the state-owned listed companies can easily obtain financial and administrative support from the local government after the bankruptcy. To the contrary, privately listed companies generally do not have access to such resources. Accordingly, the government feels more confident in the feasibility of reorganization with the SOEs than with the privately controlled listed companies. The government also knows that it can exert much greater

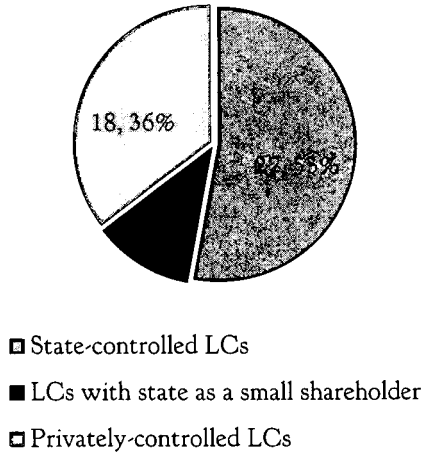
⁵¹最高人民法院印发《关于审理上市公司破产重整案件工作座谈会纪要》的通知 [NOTICE OF THE SPC TO PRINT AND DISTRIBUTE SUMMARY OF THE COLLOQUIUM ON THE TRIAL OF THE BANKRUPTCY REORGANIZATION OF LISTED COMPANIES], art. 3.

⁵²*Id.*

⁵³ROMAN TOMASIC & ZINIAN ZHANG, FROM ENTERPRISE BANKRUPTCY LAW MAKING TO IMPLEMENTATION: CONVERGENCE AND DIVERGENCE IN CORPORATE RESCUE AND REORGANIZATION LAW AND PRACTICE IN CHINA, 343 (2011) (paper presented at the conference — "The Trend of Corporate Governance and Corporation Law Convergence in the Economic Globalization", the 21st Century Commercial Law Forum-Eleventh International Symposium, Beijing, China) (on file with author).

influence during the reorganization of SOEs. From the statistics, twenty-seven companies were controlled by the state,⁵⁴ six companies involved the state as a small shareholder, and eighteen companies were privately controlled. Thus, 64.7 percent of the listed companies allowed access to the reorganization process were SOEs. These statistics demonstrate that access to the reorganization system is a political privilege of SOEs in China.

Chart 5: Ownership Structure of Listed Companies in Reorganization Proceedings



(Source: The Website of CNINFO).

Whenever the government refuses to support a listed company's reorganization and the application is then denied, the company's shares remain on the stock market with the delisting warning. As a consequence, the company may have little or no means of improving its financial condition. Sometimes, however, the government will assist the company in another way. In 2012, a private company, Pujiang Hongye Co. Ltd. (Hongye), controlled by Shaojiang Pan, fell into insolvency. The Pujiang county government did not support reorganization because it feared that the bankruptcy of Hongye would result in widespread unemployment and social instability. However, the Pujiang government intervened with Hongye's bank creditors, pressuring them to not pursue their default remedies. As a result, Hongye was able to resume

⁵⁴guo jia tong ji ju guan yu dui guo you gong si qi ye ren ding yi jian de han (国家统计局关于对国有企业企业认定意见的函) [*Letter of Opinion of the State Statistics Bureau on the Identification of State-owned Companies and Enterprises*], THE MOFECOM.GOV.CN, <http://policy.mofecom.gov.cn/blank/claw!fetch.action?id=g000033027> (last visited June 30, 2015). According to this Letter, state-controlled means that the state-owned shares account for more than 50% of all shares, or the state shares are less than 50% but more than those of the second largest shareholder, or the state is an actual controller based on agreements although its shares were less than other shareholders.

production.⁵⁵

B. GOVERNMENT SUBSIDIES

Another unique feature of Chinese reorganization is the prevalence of government subsidies given to assist the debtor in its reorganization. As Chart 6 below demonstrates, forty-seven out of the fifty-one listed companies (92.2 percent) received government subsidies in the year they entered the reorganization procedure and in subsequent years. Many listed companies, including *ST Baoshuo, *ST Shixian, and *ST Fenghuang, received government subsidies for many years after the reorganization.

Moreover, when it comes to government subsidies, it did not appear to matter whether the listed company was an SOE, a non-SOE in which the government held a minority stock interest, or a privately held company. After having obtained government support for the reorganization application, almost all of the listed companies received subsidies.⁵⁶ Chart 6 shows that government subsidies were given to all of the twenty-seven state-controlled listed companies, four of the six companies in which the state was a minority shareholder,⁵⁷ and sixteen out of eighteen (88.9 percent) of the privately listed companies. This shows that the impetus behind the subsidies is not only to preserve state-owned assets, but to help all types of listed companies to maintain their listing status, to secure adequate opportunity for reorganization, and to maintain economic and social stability. Sometimes the subsidies were designated for the advancement of technology or to allow the company to upgrade its products or equipment. More often, the subsidies were simply a means of assisting with reorganization.⁵⁸

⁵⁵浙江浦江宏业老板投机失败跑路 涉案金额超3亿[The Boss of Zhejiang Pujiang Hongye Ran Away Because of Speculation Failure and Amount of Money Involved was over 300 ¥ Million], 163.com (August 21, 2012, 7:03 AM), http://money.163.com/12/0821/07/89DOUJBj00253B0H_all.html.

⁵⁶The privately listed companies receiving government subsidies include: *ST Chaori, *ST Jincheng, *ST Shentai, *ST Dixian B, S*ST Xin'an, *ST Beisheng, *ST Hongsheng, *ST Xiancheng and *ST Zhongda. See Huimiao Zhao, *Lame-Duck Bankruptcy Institutions under Government Intervention in Reorganisation of Listed Companies in China (Part 2)*, 46(2) HKLJ 709, 720-730 (2016); see also *infra* Chart 6.

⁵⁷The data about the listed companies receiving government subsidies was obtained from the annual reports of those companies, as the listed companies are required to disclose such information in their annual reports. Twenty-four state-controlled listed companies and three out of six companies that have the state as a small shareholder receive government subsidies.

⁵⁸See, e.g., *The Annual Report of S*ST Zhaohua in 2011* (Apr. 26, 2011), <http://10.236.6.15/file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-26/902455.PDF>. For example, Financial Bureau of Fuling District, Chongqing granted a special financial subsidy ¥10 million to S*ST Zhaohua to facilitate its reorganization.

Chart 6: Government Subsidies Granted to 51 Listed Companies (as of February 2017)

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
S*ST Tianfa	Tianfa Group: 25.99% (non-SOE) ⁵⁹	Jingzhou municipal SASAC, 7.42% ⁶⁰	Liquidation group (officials + social intermediaries)	2009: 190 m ⁶¹
S*ST Haina	Dadi Investment ⁶²	Zhejiang Zheda Yuanzheng Group (wholly state-owned): 34% ⁶³	Pure-government Liquidation group (LG)	2009: 2.6 m, ⁶⁴ 2010: 7.42 m ⁶⁵
S*ST Lanbao	Changchun Junzilan Group Ltd. 36.92% ⁶⁶	Changchun municipal SASAC ⁶⁷	Pure-government LG	2009: 10.4 m ⁶⁸
S*ST Zhaohua	Sichuan Lixin Investment Co. Ltd ⁶⁹	Xiaolun Zhao ⁷⁰	Mixed LG Leader: General Secretary of Fuling District Government	2011: 10 m ⁷¹
S*ST Xingmei	Zhuojing Investment Holding Co. Ltd ⁷²	Hui Tan ⁷³	Mixed LG Leader: General Secretary of the District Government	2011: 0.1 m, ⁷⁴ 2012: 0.37 m, ⁷⁵ 2013: 0.19 m ⁷⁶

⁵⁹The Annual Report of S*ST Tianfa in 2006, CNINFO, 126 (Apr. 30, 2007, <http://www.cninfo.com.cn/finalpage/2007-04-30/23211093.PDF>).

⁶⁰Id.

⁶¹The Annual Report of S*ST Tianfa in 2009, 126 (Mar. 12, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-3/2010-03-12/517216.PDF>.

⁶²The Annual Report of S*ST Haina in 2007, 126 (Mar. 1, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-3/2008-03-01/296151.PDF>.

⁶³Id.

⁶⁴The Annual Report of United Mechanical & Electrical Co Ltd (S*ST Haina before reorganization) in 2009 (Apr. 23, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-4/2010-04-23/546472.PDF>.

⁶⁵The Annual Report of United Mechanical & Electrical Co Ltd (S*ST Haina before reorganization) in 2010 (Apr. 27, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-27/713692.PDF>.

⁶⁶The Annual Report of S*ST Lanbao in 2007, 126 (Mar. 29, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-3/2008-03-29/305967.PDF>.

⁶⁷Id.

⁶⁸The Annual Report of S*ST Lanbao in 2009, 126 (Mar. 20, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-3/2010-03-20/521471.PDF>.

⁶⁹The Annual Report of S*ST Zhaohua in 2007, 126 (Apr. 25, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-4/2008-04-25/318339.PDF>.

⁷⁰Id.

⁷¹The Annual Report of S*ST Tianfa in 2006, *supra* note 58.

⁷²The Annual Report of S*ST Xingmei in 2007, 126 (Apr. 30, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-4/2008-04-30/322450.PDF>.

⁷³Id.

⁷⁴The Annual Report of S*ST Xingmei in 2011, 126 (June 19, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-6/2012-06-19/928067.PDF>.

⁷⁵The Annual Report of S*ST Xingmei in 2012, 126 (Mar. 15, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-3/2013-03-15/1058371.PDF>.

⁷⁶The Annual Report of S*ST Xingmei in 2013, 126 (Jan. 30, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-1/2014-01-30/1291047.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
S*ST Chang-ling	Shaanxi Provincial Management Bureau of State-owned Assets ⁷⁷	Baoji municipal SASAC ⁷⁸	Mixed LG Leader: Deputy Director of Baoji municipal SASAC	2008: 15.66 m, ⁷⁹ 2009: 0.94 m, ⁸⁰ 2010: 3.78 m ⁸¹
S*ST Xin'an	Garden Group Co Ltd, Henan (private) ⁸²	Guosheng Xie, Bingshe Xie ⁸³	Mixed LG Head of Jiaozuo Bureau of Industry	2010: 2 m, ⁸⁴ 2011: 7.27 m ⁸⁵
*ST Dixian B	Rong Chen ⁸⁶	Rong Chen ⁸⁷	Mixed LG Head of Chengde County	2010: 19.13 m, ⁸⁸ 2011: 17.9 m ⁸⁹
*ST Danhua	Dandong Chemical Fiber (Group) Co Ltd ⁹⁰	Dandong State-owned Assets Management Co Ltd ⁹¹	Mixed LG Deputy Secretary-General of Dandong Municipal government	2008: 20 m, ⁹² 2010: 3 m, ⁹³ 2011: 1.93 m, ⁹⁴ 2012: 1.23 m, ⁹⁵ 2013: 6.2 m ⁹⁶

⁷⁷The Annual Report of S*ST Changling in 2007, 126 (Apr. 23, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-4/2008-04-23/316819.PDF>.

⁷⁸Id.

⁷⁹The Annual Report of S*ST Changling in 2008, 126 (Apr. 30, 2009), <http://file.ws.126.net/quotes/pdf/sz/2009/2009-4/2009-04-30/425582.PDF>.

⁸⁰The Annual Report of S*ST Changling in 2009, 126 (Feb. 10, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-2/2010-02-10/508056.PDF>.

⁸¹The Annual Report of S*ST Changling in 2010, 126 (Mar. 16, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-3/2011-03-16/673707.PDF>.

⁸²The Annual Report of S*ST Xin'an in 2007, 126 (Jan. 22, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-1/2008-01-22/287196.PDF>.

⁸³Id.

⁸⁴The Annual Report of S*ST Xin'an in 2010, 126 (Apr. 20, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-20/704396.PDF>.

⁸⁵The Annual Report of S*ST Xin'an in 2011, 126 (Apr. 20, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-20/889250.PDF>.

⁸⁶The Annual Report of *ST Dixian B in 2008, 126 (Apr. 30, 2009), <http://file.ws.126.net/quotes/pdf/sz/2009/2009-4/2009-04-30/425755.PDF>.

⁸⁷Id.

⁸⁸The Annual Report of *ST Dixian B in 2010, 126 (Apr. 27, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-27/714790.PDF>.

⁸⁹The Annual Report of *ST Dixian B in 2011, 126 (Apr. 24, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-24/896497.PDF>.

⁹⁰The Biannual Report of *ST Danhua in 2009, 126 (Aug. 20, 2009), <http://file.ws.126.net/quotes/pdf/sz/2009/2009-8/2009-08-20/456626.PDF>.

⁹¹Id.

⁹²The Annual Report of *ST Danhua in 2008, 126 (Apr. 30, 2009), <http://file.ws.126.net/quotes/pdf/sz/2009/2009-4/2009-04-30/425803.PDF>.

⁹³The Annual Report of *ST Danhua in 2010, 126 (Apr. 26, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-26/711887.PDF>.

⁹⁴The Annual Report of *ST Danhua in 2011, 126 (Mar. 31, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-3/2012-03-31/873115.PDF>.

⁹⁵The Annual Report of Shandong Hi-Speed Road & Bridge Co Ltd (*ST Danhua before reorganization) in 2012, 126 (Apr. 16, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-4/2013-04-16/1093327.PDF>.

⁹⁶The Annual Report of Shandong Hi-Speed Road & Bridge Co Ltd in 2013, 126 (May 7, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-5/2014-05-07/1403553.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
S*ST Guangming	Guangming Group Co Ltd (SOE) 32.10% ⁹⁷	State-owned Assets Management Office of Yichun ⁹⁸	Mixed LG Deputy Secretary-General of Yichun Municipal government	2009: 1.4 m ⁹⁹
*ST Shentai	China Sigma Co Ltd: 25, 62% ¹⁰⁰ Baoan District Investment management Co Ltd, Shenzhen 9.53%	Xiaoyan Wang ¹⁰¹	Pure social intermediary	No
*ST Pianzhuan	Xianyang Municipal SASAC ¹⁰²	Xianyang Municipal SASAC ¹⁰³	Pure-government LG Head of Xianyang municipal SASAC	2009: 100 m, ¹⁰⁴ 2010: 0.6 m, ¹⁰⁵ 2011: 0.1 m ¹⁰⁶
*ST Jinhua	Jinhua Group Co Ltd, 55.92% ¹⁰⁷	Huludao Municipal SASAC ¹⁰⁸	Mixed LG Deputy Secretary-General	2009: 0.51 m, ¹⁰⁹ 2010: 10 m, ¹¹⁰ 2011: 34.69 m, ¹¹¹ 2012: 88.43m, ¹¹² 2013: 61.05 m ¹¹³

⁹⁷The Annual Report of S*ST Guangming in 2009, 126 (Apr. 27, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-4/2010-04-27/550580.PDF>.

⁹⁸Id.

⁹⁹The Annual Report of S*ST Guangming in 2009, *supra* note 97.

¹⁰⁰The Annual Report of *ST Shentai in 2009, 126 (Mar. 10, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-3/2010-03-10/516207.PDF>.

¹⁰¹Id.

¹⁰²The Annual Report of *ST Pianzhuan in 2009, 126 (Mar. 25, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-3/2010-03-25/524073.PDF>.

¹⁰³Id.

¹⁰⁴Id.

¹⁰⁵The Annual Report of *ST Pianzhuan in 2010, 126 (Feb. 1, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-2/2011-02-01/657330.PDF>.

¹⁰⁶The Annual Report of *ST Pianzhuan in 2011, 126 (Apr. 13, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-13/881673.PDF>.

¹⁰⁷The Biannual Report of Fangda Jinhua Chemical Technology Co Ltd (*ST Jinhua) in 2010, 126 (Aug. 31, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-8/2010-08-31/603626.PDF>.

¹⁰⁸Id.

¹⁰⁹The Annual Report of *ST Jinhua in 2009, 126 (Apr. 23, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-4/2010-04-23/547420.PDF>.

¹¹⁰See The Biannual Report of Fangda Jinhua Chemical Technology Co Ltd (*ST Jinhua) in 2010, *supra* note 107.

¹¹¹The Annual Report of Fangda Jinhua in 2011, 126 (Feb. 18, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-2/2012-02-18/837585.PDF>.

¹¹²The Annual Report of Fangda Jinhua in 2012, 126 (Mar. 21, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-3/2013-03-21/1063588.PDF>.

¹¹³The Annual Report of Fangda Jinhua in 2013, 126 (Mar. 21, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-3/2014-03-21/1323543.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Shengrun	Shenzhen Lionda Holdings Co Ltd (private) ¹¹⁴	Shenyang Huirong Industrial Co Ltd and Tao Guo ¹¹⁵	Pure social intermediary	2011: 18 m ¹¹⁶ 2012: 16.48 m, ¹¹⁷ 2013: 21.57 m ¹¹⁸
*ST Chuangzhi	Sichuan Dadi Industrial Group Co Ltd ¹¹⁹	Peng Jia ¹²⁰	Pure social intermediary	No
*ST Guangxia	Zhejiang Changjin Industrial Co Ltd: 3.64% China Huarong Asset Management Co Ltd: 0.64% China Cinda Asset Management Co Ltd: 0.55% ¹²¹	Guanhu Zhu ¹²²	Mixed LG Director of Ningxia SASAC	No
*ST Fangxiang	Shenyang Beitai Fangxiang Group Co Ltd (private) ¹²³	Honghua Jin ¹²⁴	Mixed LG Director of Neijiang Municipal SASAC	2010: 0.74 m, ¹²⁵ 2011: 0.33 m, ¹²⁶ 2012: 0.97 m, ¹²⁷ 2013: 0.48 m ¹²⁸

¹¹⁴The Annual Report of *ST Shengrun in 2009, 126 (Apr. 30, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-4/2010-04-30/556217.PDF>.

¹¹⁵Id.

¹¹⁶The Annual Report of *ST Shengrun in 2011, 126 (Mar. 16, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-3/2012-03-16/853351.PDF>.

¹¹⁷The Annual Report of *ST Shengrun in 2012, 126 (Jan. 25, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-1/2013-01-25/1037211.PDF>.

¹¹⁸The Annual Report of FAWER (*ST Shengrun before reorganization) in 2013, 126 (Apr. 30, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-4/2014-04-30/1398796.PDF>.

¹¹⁹The Annual Report of *ST Chuangzhi in 2009, 126 (Apr. 30, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-4/2010-04-30/556221.PDF>.

¹²⁰Id.

¹²¹The Annual Report of *ST Guangxia in 2010, 126 (Apr. 28, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-28/716015.PDF>.

¹²²Id.

¹²³The Annual Report of *ST Fangxiang in 2010, 126 (Apr. 27, 2011) <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-27/714204.PDF>.

¹²⁴Id.

¹²⁵Id.

¹²⁶The Annual Report of *ST Fangxiang in 2011, 126 (Apr. 24, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-24/896333.PDF>.

¹²⁷The Annual Report of Sichuan Haowu Electromechanical Co Ltd (*ST Fangxiang) in 2012, 126 (Mar. 29, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-3/2013-03-29/1075158.PDF>.

¹²⁸The Annual Report of Sichuan Haowu in 2013, 126 (Mar. 8, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-3/2014-03-08/1310403.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Jincheng	Jinzhou Xintian Paper Co Ltd (private) ¹²⁹	Guorui Xu ¹³⁰	Mixed LG Vice Governor of Jinzhou City	2009: 41.1 m, ¹³¹ 2010: 4 m, ¹³² 2012: 50 m, ¹³³ 2013: 1.5 m ¹³⁴
*ST Kejian	Kejian Co Ltd, Shenzhen (private) ¹³⁵	Xiaozhu Cao ¹³⁶	Pure social intermediary	2012: 9.17 m, ¹³⁷ 2013: 5.75 m, ¹³⁸ 2014: 1.01 m ¹³⁹
*ST Taibai	China Cinda Asset Management Co Ltd: 40.25% The 404 Ltd, CN (SOE): 6.72% ¹⁴⁰	China Cinda Asset Management Co Ltd ¹⁴¹	Mixed LG Executive Vice Mayor of Jiayuguan City	2011: 3.06 m, ¹⁴² 2012: 5.4 m, ¹⁴³ 2013: 10.56 m ¹⁴⁴

¹²⁹The Biannual Report of *ST Jincheng in 2012, 126 (Aug. 24, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-8/2012-08-24/967019.PDF>.

¹³⁰*Id.*

¹³¹The Annual Report of *ST Jincheng in 2009, 126 (Apr. 15, 2010), <http://file.ws.126.net/quotes/pdf/sz/2010/2010-4/2010-04-15/538747.PDF>.

¹³²The Annual Report of *ST Jincheng in 2010, 126 (Apr. 22, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-22/706918.PDF>.

¹³³The Annual Report of *ST Jincheng in 2012, 126 (Apr. 26, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-4/2013-04-26/1118681.PDF>.

¹³⁴The Annual Report of *ST Jincheng in 2013, 126 (May 30, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-5/2014-05-30/1421699.PDF>.

¹³⁵The Annual Report of *ST Kejian in 2010, 126 (Apr. 26, 2011), <http://file.ws.126.net/quotes/pdf/sz/2011/2011-4/2011-04-27/713439.PDF>.

¹³⁶*Id.*

¹³⁷The Annual Report of *ST Kejian in 2012, 126 (Apr. 26, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-4/2013-04-27/1120769.PDF>.

¹³⁸The Annual Report of *ST Kejian in 2013, 126 (Mar. 12, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-3/2014-03-12/1313867.PDF>.

¹³⁹The Annual Report of China Tianying Inc. (*ST Kejian before reorganization) in 2014, CNINFO (Apr. 21, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-21/1200876291.PDF>.

¹⁴⁰The Annual Report of *ST Taibai in 2011, 126 (Apr. 25, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-25/899802.PDF>.

¹⁴¹*Id.*

¹⁴²*Id.*

¹⁴³The Annual Report of *ST Taibai in 2012, 126 (Mar. 22, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-3/2013-03-22/1064964.PDF>.

¹⁴⁴The Annual Report of *ST Taibai in 2013, 126 (May 9, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-5/2014-05-09/1404894.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Hailong	Investment Co Ltd, Weifang ¹⁴⁵	Weifang Municipal government ¹⁴⁶	Mixed LG Investigator of the Commission of Economy and Informatization	2012: 9.58 m, ¹⁴⁷ 2013: 12.81 m ¹⁴⁸
*ST Zhonghua A	Guosheng Energy Investment and Development Co Ltd (private) ¹⁴⁹	Hanfei Ji ¹⁵⁰	Pure social intermediary	No
*ST Zhongji	Agricultural Division six state owned Assets Management Co Ltd (wholly state-owned) ¹⁵¹	Sixth Agricultural Division ¹⁵²	Mixed LG	2012: 16.52 m, ¹⁵³ 2013: 9.58 m, ¹⁵⁴ 2014: 4.75 m ¹⁵⁵
*ST Xinye	MCC Huludao Nonferrous Metals Group Co Ltd (SOE) 33.69% ¹⁵⁶	SASAC of the State Council ¹⁵⁷	Mixed LG Deputy Director of the SASAC	2013: 12.16 m, ¹⁵⁸ 2014: 19.76 m ¹⁵⁹

¹⁴⁵The Annual Report of *ST Hailong in 2011, 126 (June 11, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-6/2012-06-11/924997.PDF>.

¹⁴⁶Id.

¹⁴⁷The Annual Report of *ST Hailong in 2012, 126 (May 30, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-5/2013-05-30/1143124.PDF>.

¹⁴⁸The Annual Report of *ST Hailong in 2013, 126 (Apr. 12, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-4/2014-04-12/1357107.PDF>.

¹⁴⁹The Annual Report of *ST Zhonghua A in 2011, 126 (Apr. 21, 2012), <http://file.ws.126.net/quotes/pdf/sz/2012/2012-4/2012-04-21/892943.PDF>.

¹⁵⁰Id.

¹⁵¹The Annual Report of *ST Zhongji in 2012, 126 (Aug. 8, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-8/2013-08-08/1184133.PDF>.

¹⁵²Id.

¹⁵³Id.

¹⁵⁴The Annual Report of *ST Zhongji in 2013, 126 (Apr. 29, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-4/2014-04-29/1394922.PDF>.

¹⁵⁵The Annual Report of *ST Zhongji in 2014, 126 (May 14, 2015), <http://file.ws.126.net/quotes/pdf/sz/2015/2015-5/2015-05-14/1787310.PDF>.

¹⁵⁶The Annual Report of *ST Xinye in 2012, 126 (Apr. 25, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-4/2013-04-25/1113370.PDF>.

¹⁵⁷Id.

¹⁵⁸The Annual Report of *ST Xinye in 2013, 126 (Apr. 25, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-4/2014-04-25/1384185.PDF>.

¹⁵⁹The Annual Report of *ST Xinye in 2014, 126 (Apr. 23, 2015), <http://file.ws.126.net/quotes/pdf/sz/2015/2015-4/2015-04-23/1737644.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Fenghuang	China Changjiang Shipping (Group) Corp (SOE) 26.72% ¹⁶⁰	SASAC of the State Council ¹⁶¹	Mixed LG Zhiqi Xin, King & Wood	2012: 126.96 m, ¹⁶² 2013: 48.42 m, ¹⁶³ 2014: 14.42 m ¹⁶⁴
*ST Chaori	Kailu Ni ¹⁶⁵	Kailu Ni ¹⁶⁶	Pure social intermediary	2013: 9.02 m, ¹⁶⁷ 2014: 7.57 m ¹⁶⁸
*ST Xiake	N/A	N/A	Pure social intermediary	2013: 5.44 m, ¹⁶⁹ 2014: 4.52 m ¹⁷⁰
*ST Xindu	Shenzhen Hanming Investment Co.	Yaoming Guo	Pure social intermediary	2013:0, ¹⁷¹ 2014:0.23 m ¹⁷²

¹⁶⁰The Annual Report of *ST Fenghuang in 2013, 126 (Apr. 30, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-4/2014-04-30/1398993.PDF>.

¹⁶¹Id.

¹⁶²The Annual Report of *ST Fenghuang in 2012, 126 (Apr. 24, 2013), <http://file.ws.126.net/quotes/pdf/sz/2013/2013-4/2013-04-24/1112802.PDF>.

¹⁶³The Annual Report of *ST Fenghuang in 2013, *supra* note 160.

¹⁶⁴The Annual Report of *ST Fenghuang in 2014, CNINFO (Apr. 28, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-28/1200921958.PDF>.

¹⁶⁵The Biannual Report of *ST Chaori in 2014, 126 (Aug. 30, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-8/2014-08-30/1497835.PDF>.

¹⁶⁶Id.

¹⁶⁷The Annual Report of *ST Chaori in 2013, CNINFO (Apr. 29, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-29/63944618.PDF>.

¹⁶⁸The Annual Report of *ST Chaori in 2014, CNINFO (Apr. 29, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-29/1200934725.PDF?COLLCC=3388210214&>.

¹⁶⁹The Annual Report of *ST Xiake in 2013, 126 (Apr. 29, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-4/2014-04-29/1394790.PDF>.

¹⁷⁰The Annual Report of *ST Xiake in 2014, 126 (Apr. 30, 2015), <http://file.ws.126.net/quotes/pdf/sz/2015/2015-4/2015-04-30/1768072.PDF>.

¹⁷¹The Annual Report of *ST Xindu in 2013, 126 (Jan. 10, 2016), http://www.cninfo.com.cn/cninfo-new/disclosure/szse_main/bulletin_detail/true/63952850?announceTime=2014-04-30.

¹⁷²The Annual Report of *ST Xindu in 2014, 126 (Jan. 10, 2016), http://www.cninfo.com.cn/cninfo-new/disclosure/szse_main/bulletin_detail/true/1200948360?announceTime=2015-04-30.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Baoshuo	Hebei Baoshuo Co Ltd ¹⁷³	Baoding Municipal SASAC ¹⁷⁴	Mixed LG Director of Baoding Municipal SASAC	2007: 2.44 m, ¹⁷⁵ 2008: 2.26 m, ¹⁷⁶ 2009: 8.52 m, ¹⁷⁷ 2010: 37.63 m, ¹⁷⁸ 2011: 0.09 m, ¹⁷⁹ 2014: 512 m ¹⁸⁰
*ST Canghua	Hebei Cangzhou Chemical Industry Group Co Ltd ¹⁸¹	Cangzhou Municipal SASAC ¹⁸²	Mixed LG Deputy Director of Cangzhou Municipal SASAC	2007: 1.5 m, ¹⁸³ 2010: 169.53 m, ¹⁸⁴ 2011: 15.26 m, ¹⁸⁵ 2012: 108.43 m ¹⁸⁶
S*ST Tianyi	Hubei Tianfa Industry Group Co Ltd (SOE) ¹⁸⁷	Jingzhou Municipal SASAC ¹⁸⁸	Mixed LG	after reorganization: 2009: 56.05 m, ¹⁸⁹ 2010: 750 m ¹⁹⁰

¹⁷³The Annual Report of *ST Baoshuo in 2006, CNINFO (Apr. 30, 2007), <http://www.cninfo.com.cn/finalpage/2007-04-30/23209023.PDF>.

¹⁷⁴Id.

¹⁷⁵The Annual Report of *ST Baoshuo in 2007, CNINFO (Apr. 7, 2008), <http://www.cninfo.com.cn/finalpage/2008-04-07/38563819.PDF>.

¹⁷⁶The Annual Report of *ST Baoshuo in 2008, CNINFO (Apr. 30, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-30/52003213.PDF>.

¹⁷⁷The Annual Report of *ST Baoshuo in 2009, CNINFO (Apr. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-30/57898221.PDF>.

¹⁷⁸The Annual Report of *ST Baoshuo in 2010, CNINFO (Apr. 30, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-30/59371062.PDF>.

¹⁷⁹The Annual Report of *ST Baoshuo in 2011, CNINFO (Apr. 28, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-28/60931209.PDF>.

¹⁸⁰The Annual Report of *ST Baoshuo in 2014, CNINFO (Apr. 29, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-29/1200935097.PDF>.

¹⁸¹The Annual Report of *ST Canghua in 2006, MONEY.163 http://quotes.money.163.com/f10/gmx_600722_213895.html (last visited July 1, 2015).

¹⁸²Id.

¹⁸³The Annual Report of *ST Canghua in 2007, CNINFO (Feb. 4, 2008), <http://www.cninfo.com.cn/finalpage/2008-02-04/37176170.PDF>.

¹⁸⁴The Annual Report of *ST Jinhua in 2010, CNINFO (Mar. 5, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-05/59083174.PDF>.

¹⁸⁵The Annual Report of Hebei Jimiu Chemical Co Ltd in 2011, CNINFO (Apr. 17, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-17/60841438.PDF>.

¹⁸⁶The Annual Report of Hebei Jimiu Chemical Co Ltd in 2012, CNINFO (Jan. 25, 2013), <http://www.cninfo.com.cn/finalpage/2013-01-25/62065608.PDF>.

¹⁸⁷The Annual Report of S*ST Tianyi in 2006, CNINFO (Apr. 30, 2007), <http://www.cninfo.com.cn/finalpage/2007-04-30/23210037.PDF>.

¹⁸⁸Id.

¹⁸⁹The Annual Report of San'an Optoelectronics Co Ltd (S*ST Tianyi) in 2009, CNINFO (Feb. 8, 2010), <http://www.cninfo.com.cn/finalpage/2010-02-08/57590850.PDF>.

¹⁹⁰The Annual Report of San'an Optoelectronics Co Ltd in 2010, CNINFO (Jan. 24, 2011), <http://www.cninfo.com.cn/finalpage/2011-01-24/58938032.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
S*ST Beiya	Harbin Railway Administration ¹⁹¹	Harbin Railway Administration ¹⁹²	Mixed LG Jingsheng Chen, Executive Vice Mayor of Harbin Railway Administration	2009: 7 m, ¹⁹³ 2011: 11.96 m, ¹⁹⁴ 2012: 13.27 m ¹⁹⁵
S*ST Hualong	Guangzhou Fuxing Economic Development Co, Ltd ¹⁹⁶	Xiaoling Zhang ¹⁹⁷	Mixed LG Director general of Medium and Small- sized Enterprise Bureau, Trade and economic cooperation Bureau, Yangjiang	After reorganization: 2007: 7.20 m, ¹⁹⁸ 2009: 2.14 m, ¹⁹⁹ 2010: 4.10 m ²⁰⁰
*ST Huayuan	China Worldbest Group International Co Ltd ²⁰¹	SASAC of the State Council ²⁰²	Mixed LG Fuxiang Wang, King & Wood	2009: 2.3 m, ²⁰³ 2011: 4 m ²⁰⁴

¹⁹¹The Annual Report of S*ST Beiya in 2007, CNINFO (Apr. 30, 2008), <http://www.cninfo.com.cn/finalpage/2008-04-30/39349432.PDF>.

¹⁹²Id.

¹⁹³The Annual Report of S*ST Beiya in 2009, CNINFO (Apr. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-30/57910999.PDF>.

¹⁹⁴The Annual Report of S*ST Beiya in 2011, CNINFO (Feb. 10, 2012), <http://www.cninfo.com.cn/finalpage/2012-02-10/60524538.PDF>.

¹⁹⁵The Annual Report of Avic Capital Co Ltd (S*ST Beiya before reorganization) in 2012, CNINFO (Feb. 1, 2013), <http://www.cninfo.com.cn/finalpage/2013-02-01/62093040.PDF>.

¹⁹⁶The Annual Report of S*ST Hualong in 2007, CNINFO (Apr. 30, 2008), <http://www.cninfo.com.cn/finalpage/2008-04-30/39347257.PDF>.

¹⁹⁷Id.

¹⁹⁸Id.

¹⁹⁹The Annual Report of ST Hualong in 2009, CNINFO (Feb. 4, 2010), <http://www.cninfo.com.cn/finalpage/2010-02-04/57577430.PDF>.

²⁰⁰The Annual Report of *ST Hualong in 2010, CNINFO (Mar. 18, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-18/59137741.PDF>.

²⁰¹The Annual Report of *ST Huayuan in 2007, CNINFO (Apr. 30, 2008), <http://file.ws.126.net/quotes/pdf/sh/2008/2008-4/2008-04-30/322308.PDF>.

²⁰²Id.

²⁰³The Annual Report of *ST Huayuan in 2009, CNINFO (Apr. 16, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-16/57819293.PDF>.

²⁰⁴The Annual Report of *ST Huayuan in 2011, CNINFO (Jan. 19, 2012), <http://www.cninfo.com.cn/finalpage/2012-01-19/60463772.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Jiufa	Shandong Jiufa Group Co Ltd ²⁰⁵	State Assets Bureau of Muping District, Yantai ²⁰⁶	Mixed LG	after reorganization: 2010: 2.81 m, ²⁰⁷ 2011: 17.56 m, ²⁰⁸ 2012: 7.17 m ²⁰⁹
*ST Beisheng	Guangxi Beisheng Group Co Ltd ²¹⁰ Blood Centre of Guangxi Autonomous Region (SOE): 2.25%	Guangxi Beihai Huijin Trading Co Ltd and Yuliang He ²¹¹	Mixed LG Deputy Mayor of Beihai	2008: 11.77 m, ²¹² 2011: 1 m ²¹³
S*ST Xintai	Controlling shareholder: Guangzhou Jiadu Group Co Ltd ²¹⁴ SOE shareholders: Guangzhou Panyu Communication Pipeline Construction Investment Ltd: 14.65%.	Guangzhou Jiadu Group and Wei Liu ²¹⁵	Mixed LG	2010: 9.74 m, ²¹⁶ 2011: 9.21 m, ²¹⁷ 2012: 20.48 m, ²¹⁸ 2013: 15.43 m, ²¹⁹ 2014: 24.62 m ²²⁰

²⁰⁵The Annual Report of *ST Jiufa in 2007, CNINFO (Apr. 26, 2008), <http://www.cninfo.com.cn/finalpage/2008-06-26/40807746.PDF>.

²⁰⁶Id.

²⁰⁷The Annual Report of *ST Jiufa in 2010, CNINFO (Apr. 30, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-30/59371064.PDF>.

²⁰⁸The Annual Report of *ST Jiufa in 2011, CNINFO (Mar. 30, 2012), <http://www.cninfo.com.cn/finalpage/2012-03-30/60760635.PDF>.

²⁰⁹The Annual Report of Shandong CCS Supply Chain Management Co Ltd (*ST Jiufa) in 2012, CNINFO (Mar. 2, 2013), <http://www.cninfo.com.cn/finalpage/2013-03-02/62171944.PDF>.

²¹⁰The Annual Report of *ST Beisheng in 2007, CNINFO (Apr. 30, 2008), <http://www.cninfo.com.cn/finalpage/2008-04-30/39347432.PDF>.

²¹¹Id.

²¹²The Annual Report of *ST Beisheng in 2008, CNINFO (Apr. 30, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-30/52003857.PDF>.

²¹³The Annual Report of *ST Beisheng in 2011, CNINFO (Apr. 28, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-28/60931219.PDF>.

²¹⁴The Annual Report of S*ST Xintai in 2008, CNINFO (Apr. 30, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-30/52003233.PDF>.

²¹⁵Id.

²¹⁶The Annual Report of S*ST Xintai in 2010, CNINFO (Sept. 9, 2011), <http://www.cninfo.com.cn/finalpage/2011-09-09/59942015.PDF>.

²¹⁷The Annual Report of Suntek Technology Co Ltd (S*ST Xintai) in 2011, CNINFO (Mar. 27, 2012), <http://www.cninfo.com.cn/finalpage/2012-03-27/60731213.PDF>.

²¹⁸The Annual Report of PCI-Suntek Technology Co Ltd (PCL-STCL) (S*ST Xintai) in 2012, CNINFO (Mar. 15, 2013), <http://www.cninfo.com.cn/finalpage/2013-03-15/62215825.PDF>.

²¹⁹The Annual Report of PCL-STCL in 2013, CNINFO (Apr. 15, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-15/63841302.PDF>.

²²⁰The Annual Report of PCL-STCL in 2014, CNINFO (Mar. 26, 2015), <http://www.cninfo.com.cn/finalpage/2015-03-26/1200742558.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Qinling	Shanxi Yao County Cement Plant ²²¹	Tongchuan Municipal SASAC ²²²	Mixed LG Executive Vice Mayor of Tongchuan City	2009: 39.25 m, ²²³ 2010: 5.49 m, ²²⁴ 2011: 4.85 m, ²²⁵ 2012: 9.83 m, ²²⁶ 2013: 9.50 m ²²⁷
*ST Xiixin	Amoi Electronics Co Ltd ²²⁸	China Electronics Co. ²²⁹	Mixed LG Leader: Zhiwei Wang Deputy Leader: Zhibin Zheng, King & Wood	2009: 0.53 m, ²³⁰ 2010: 0.24 m, ²³¹ 2011: 23.18 m, ²³² 2012: 9.89 m, ²³³ 2013: 23.61 m ²³⁴
*ST Deheng	Liaoyuan Municipal Financial Bureau ²³⁵	Liaoyuan Municipal Financial Bureau ²³⁶	Mixed LG Deputy Leader: Zhibin Zheng, King & Wood	2011: 10.2 m, ²³⁷ 2012: 897 m ²³⁸

²²¹The Annual Report of *ST Qinling in 2008, CNINFO (Apr. 9, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-09/51102023.PDF>.

²²²*Id.*

²²³The Annual Report of *ST Qinling in 2009, CNINFO (Mar. 18, 2010), <http://www.cninfo.com.cn/finalpage/2010-03-18/57700424.PDF>.

²²⁴The Annual Report of *ST Qinling in 2010 (Mar. 22, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-22/59153997.PDF>.

²²⁵The Annual Report of *ST Qinling in 2011, CNINFO (Mar. 13, 2012), <http://www.cninfo.com.cn/finalpage/2012-03-13/60660408.PDF>.

²²⁶The Annual Report of *ST Qinling in 2012, CNINFO (Mar. 19, 2013), <http://www.cninfo.com.cn/finalpage/2013-03-19/62228158.PDF>.

²²⁷The Annual Report of *ST Qinling in 2013, CNINFO (Mar. 25, 2014), <http://www.cninfo.com.cn/finalpage/2014-03-25/63719255.PDF?COLLCC=3387547603&>.

²²⁸The Annual Report of *ST Xiixin in 2008, CNINFO (Apr. 30, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-30/52003211.PDF>.

²²⁹*Id.*

²³⁰The Annual Report of *ST Xiixin in 2009, CNINFO (Mar. 1, 2010), <http://www.cninfo.com.cn/finalpage/2010-03-01/57636361.PDF>.

²³¹The Annual Report of *ST Xiixin in 2010, CNINFO (Feb. 28, 2011), <http://www.cninfo.com.cn/finalpage/2011-02-28/59055026.PDF>.

²³²The Annual Report of Fujian Xiamen Xiangyu Co Ltd (Xiangyu) (*ST Xiixin before reorganization) in 2011, CNINFO (Mar. 23, 2012), <http://www.cninfo.com.cn/finalpage/2012-03-23/60712404.PDF>.

²³³The Annual Report of Xiangyu in 2012, CNINFO (Apr. 12, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-12/62353015.PDF>.

²³⁴The Annual Report of Xiangyu in 2013, CNINFO (Apr. 1, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-01/63765727.PDF>.

²³⁵The Annual Report of *ST Deheng in 2009, CNINFO (May 20, 2010), <http://www.cninfo.com.cn/finalpage/2010-05-20/57972247.PDF>.

²³⁶*Id.*

²³⁷The Annual Report of *ST Deheng in 2011, CNINFO (Feb. 14, 2012), <http://www.cninfo.com.cn/finalpage/2012-02-14/60538065.PDF>.

²³⁸The Annual Report of (*ST Deheng) in 2012, CNINFO (Apr. 25, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-25/62423293.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Yuanfa	China Resources Group ²³⁹	SASAC of State Council ²⁴⁰	Mixed LG Fuxiang Wang, King & Wood	2008: 4.13 m, ²⁴¹ 2009: 16.47 m, ²⁴² 2010: 20.61 m, ²⁴³ 2011: 50.11 m, ²⁴⁴ 2012: 62.51 m ²⁴⁵
*ST Jinding	Controlling shareholder: Warren Group Co Ltd, SOE: China National Building Materials Group Corp ²⁴⁶	Administrator of Warren Group Co Ltd ²⁴⁷	Mixed LG Vice Mayor of Leshan Government	2008: 2.12 m, ²⁴⁸ 2009: 4.50 m, ²⁴⁹ 2010: 2.10 m, ²⁵⁰ 2011: 76.3 m, ²⁵¹ 2012: 89.47 m, ²⁵² 2013: 1 m ²⁵³

²³⁹The Annual Report of *ST Yuanfa in 2009, CNINFO (Mar. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-03-30/57747748.PDF>.

²⁴⁰Id.

²⁴¹The Annual Report of *ST Yuanfa in 2008, CNINFO (Apr. 30, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-30/52003879.PDF>.

²⁴²The Annual Report of *ST Yuanfa in 2009, CNINFO (Mar. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-03-30/57747748.PDF>.

²⁴³The Annual Report of *ST Yuanfa in 2010, CNINFO (Mar. 15, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-15/59120583.PDF>.

²⁴⁴The Annual Report of *ST Yuanfa in 2011, CNINFO (Feb. 29, 2012), <http://www.cninfo.com.cn/finalpage/2012-02-29/60601370.PDF>.

²⁴⁵The Annual Report of Changjiang Publishing & Media Co Ltd, CNINFO (*ST Yuanfa) in 2012 (Mar. 14, 2013), <http://www.cninfo.com.cn/finalpage/2013-03-14/62211793.PDF>.

²⁴⁶The Annual Report of *ST Jinding in 2009, CNINFO (July 2, 2010), http://www.cninfo.com.cn/cninfo-new/disclosure/sse/bulletin_detail/true/58123442?announceTime=2010-07-02%2006:30.

²⁴⁷Id.

²⁴⁸The Annual Report of Sichuan Jinding in 2008, CNINFO (Mar. 5, 2009), <http://www.cninfo.com.cn/finalpage/2009-03-05/49828712.PDF>.

²⁴⁹The Annual Report of ST Jinding in 2009, CNINFO (Apr. 27, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-27/57875819.PDF>.

²⁵⁰The Annual Report of ST Jinding in 2010, CNINFO (Jan. 29, 2011), <http://www.cninfo.com.cn/finalpage/2011-01-29/58964333.PDF>.

²⁵¹The Annual Report of *ST Jinding in 2011, CNINFO (Feb. 25, 2012), <http://www.cninfo.com.cn/finalpage/2012-02-25/60584726.PDF>.

²⁵²The Annual Report of *ST Jinding in 2012, CNINFO (Jan. 29, 2013), <http://www.cninfo.com.cn/finalpage/2013-01-29/62078578.PDF>.

²⁵³The Annual Report of Sichuan Jinding in 2013, CNINFO (Feb. 28, 2014), <http://www.cninfo.com.cn/finalpage/2014-02-28/63615747.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Hongsheng	Shanghai Hongpu Industrial Investment Co Ltd ²⁵⁴	Shuzhi Ju ²⁵⁵ Changhong Long	Pure Social Intermediary	2012: 2.98 m, ²⁵⁶ 2013: 786 m ²⁵⁷
*ST Shixian	Jilin Shixian Paper Co Ltd ²⁵⁸	Yanbian State-owned Assets Management Corp ²⁵⁹	Mixed LG Executive vice governor of Yanbian Korean Autonomous Prefecture	2008: 2 m, ²⁶⁰ 2009: 5.98 m, ²⁶¹ 2010: 47.39 m, ²⁶² 2011: 1.71 m, ²⁶³ 2012: 0.95 m, ²⁶⁴ 2013: 8.46 m ²⁶⁵
*ST Zhongda	Shenda Group Co Ltd ²⁶⁶	Guoping Zhang ²⁶⁷	Pure social intermediary	2010: 1.79 m, ²⁶⁸ 2011: 55.79 m, ²⁶⁹ 2012: 0.35 m, ²⁷⁰ 2014: 0.6 m ²⁷¹

²⁵⁴The Annual Report of *ST Hongsheng in 2010, CNINFO (June 9, 2011), <http://www.cninfo.com.cn/finalpage/2011-06-09/59529431.PDF>.

²⁵⁵*Id.*

²⁵⁶The Annual Report of ST Hongsheng in 2012, CNINFO (June 22, 2013), <http://www.cninfo.com.cn/finalpage/2013-06-22/62603661.PDF>.

²⁵⁷The Annual Report of *ST Hongsheng in 2013, CNINFO (Apr. 26, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-26/63924271.PDF>.

²⁵⁸The Annual Report of *ST Shixian in 2010, CNINFO (Mar. 19, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-19/59144400.PDF?COLLCC=1508197214&>.

²⁵⁹*Id.*

²⁶⁰The Annual Report of ST Shixian in 2008, CNINFO (June 9, 2009), <http://www.cninfo.com.cn/finalpage/2009-06-09/53294083.PDF>.

²⁶¹The Annual Report of ST Shixian in 2009, CNINFO (Apr. 23, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-23/57857039.PDF>.

²⁶²The Annual Report of *ST Shixian in 2010, CNINFO (Mar. 19, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-19/59144400.PDF?COLLCC=1508197214&>.

²⁶³The Annual Report of *ST Shixian in 2011, CNINFO (Apr. 27, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-27/60921739.PDF>.

²⁶⁴The Annual Report of Shixian in 2012, CNINFO (Apr. 23, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-23/62406177.PDF>.

²⁶⁵The Annual Report of *ST Shixian in 2013, CNINFO (June 17, 2014), <http://www.cninfo.com.cn/finalpage/2014-06-17/64140894.PDF>.

²⁶⁶The Annual Report of *ST Zhongda in 2012, CNINFO (Apr. 26, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-26/62430876.PDF>.

²⁶⁷*Id.*

²⁶⁸The Annual Report of Zhongda in 2010, CNINFO (Apr. 23, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-23/59324491.PDF>.

²⁶⁹The Annual Report of *ST Zhongda in 2011, CNINFO (Apr. 27, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-27/60921725.PDF>.

²⁷⁰The Annual Report of *ST Zhongda in 2012, CNINFO (Apr. 26, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-26/62430876.PDF>.

²⁷¹The Annual Report of Zhongda in 2014, CNINFO (Jan. 26, 2015), <http://www.cninfo.com.cn/finalpage/2015-01-26/1200577988.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Xiancheng	Xining Guoxin Investment Holding Co Ltd ²⁷²	Xianyou Huang ²⁷³	Mixed LG Lawyer Yan Chen	2010: 5.2 m, ²⁷⁴ 2011: 2.85 m, ²⁷⁵ 2012: 12.84 m ²⁷⁶ (prior bankruptcy); 2013: 0.50 m, ²⁷⁷ 2014: 44.4 m ²⁷⁸
*ST Xinyi	Jiangsu Di'ao Investment Ltd., Co ²⁷⁹	Jinfei Wang ²⁸⁰	Liquidation group	2012:1.06 m, ²⁸¹ 2013:1.6 m, ²⁸² 2014:0 ²⁸³
*ST Boyuan	Zhubai Huaxintai Investment Co.	Oingbo Cheng	NA	2014: 1.23 m ²⁸⁴
*ST Shunchuan	Jiangsu Sainity International Group	Jiangsu Provincial SASAC	King and Wood Law Firm, Leader: Le Wang	2014:3.6 m ²⁸⁵ 2015:0.9 m ²⁸⁶
*ST Chuanhua	Sichuan Chemical Holding Group	Sichuan Provincial SASAC	Dentons Law Firm	2014:13.1 m ²⁸⁷ 2015:17.2 m ²⁸⁸

²⁷²The Annual Report of *ST Xiancheng in 2012, CNINFO (Apr. 26, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-26/62431328.PDF>.

²⁷³Id.

²⁷⁴The Annual Report of ST Xiancheng in 2010, CNINFO (Apr. 29, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-29/59363164.PDF>.

²⁷⁵The Annual Report of ST Xiancheng in 2011, CNINFO (Mar. 10, 2012), <http://www.cninfo.com.cn/finalpage/2012-03-10/60651936.PDF>.

²⁷⁶The Annual Report of ST Xiancheng in 2012, CNINFO (Apr. 26, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-26/62431328.PDF>.

²⁷⁷The Annual Report of *ST Xiancheng in 2013, CNINFO (Apr. 30, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-30/63953821.PDF>.

²⁷⁸The Annual Report of *ST Xiancheng in 2014, CNINFO. (Jan. 31, 2015), <http://www.cninfo.com.cn/finalpage/2015-01-31/1200595849.PDF>.

²⁷⁹The Annual Report of *ST Xinyi in 2014, CNINFO (Apr. 29, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-29/1200936958.PDF>.

²⁸⁰Id.

²⁸¹The Annual Report of *ST Xinyi in 2012, CNINFO (Apr. 29, 2015), http://www.cninfo.com.cn/cninfo-new/disclosure/sse/bulletin_detail/true/62204911?announceTime=2013-03-12.

²⁸²The Annual Report of *ST Xinyi in 2013, CNINFO (Apr. 30, 2014), http://www.cninfo.com.cn/cninfo-new/disclosure/sse/bulletin_detail/true/63954395?announceTime=2014-04-30.

²⁸³The Annual Report of *ST Xinyi in 2014, CNINFO (Apr. 30, 2014), http://www.cninfo.com.cn/cninfo-new/disclosure/sse/bulletin_detail/true/1200936958?announceTime=2015-04-29.

²⁸⁴The Annual Report of *ST Boyuan in 2015, 163.COM (June 4, 2015), http://quotes.money.163.com/f10/ggmx_600656_2440055.html.

²⁸⁵The Annual Report of *ST Shunchuan in 2014, CNINFO (June 4, 2015), <http://www.cninfo.com.cn/finalpage/2016-06-04/1201101792.PDF>.

²⁸⁶The Annual Report of *ST Shunchuan in 2015, CNINFO (Apr. 29, 2016), (<http://www.cninfo.com.cn/finalpage/2016-04-29/1202267862.PDF>).

²⁸⁷The Annual Report of *ST Chuanhua in 2014, CNINFO (Apr. 30, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-30/1200947398.PDF>.

²⁸⁸The Annual Report of *ST Chuanhua in 2015, CNINFO (Apr. 29, 2016), <http://www.cninfo.com.cn/finalpage/2016-04-29/1202266698.PDF>.

Listed company	Controlling Shareholder	Actual-controller	Type of administrator and group leader	Government subsidy (¥)
*ST Yunwei	Yunnan Yunwei Group	Yunnan Provincial SASAC	Liquidation group Group Leader: Yihua Xie (Director of Yunnan provincial SASAC)	2014:22.5 m ²⁸⁹ 2015:7.4 m ²⁹⁰
Total	51		LG: 39 Social intermediaries: 11 NA: 1	Yes: 47 No: 4

Government subsidies provide a quick means of preserving the listing of bankrupt companies on the stock exchanges. The subsidies appear as profits on the balance sheets of the company and, as long as the company is profitable, it will maintain its listing status. For example, Shixian was marked with *ST in April 2007 after suffering losses for two consecutive years in 2005 and 2006.²⁹¹ If it failed to earn a profit in 2007, its listing would have been suspended according to the Stock Listing Rules of the SHSE.²⁹² Since *ST Shixian had lost its ability to be profitable, the Finance Bureau of the Yanbian government granted ¥ 300 million to *ST Shixian²⁹³ in 2007 and thereby removed its delisting risk. Similarly, *ST Shixian continued to realize losses in 2008 and 2009.²⁹⁴ It was marked with delisting risks again on April 26, 2010.²⁹⁵ The Tumen government then provided Shixian with another sum of ¥ 45 million,²⁹⁶ which made it appear profitable.²⁹⁷*ST Baoshuo

²⁸⁹The Annual Report of *ST Yunwei in 2014, CNINFO (May 16, 2015), <http://www.cninfo.com.cn/finalpage/2015-05-16/1201022072.PDF>.

²⁹⁰The Annual Report of *ST Yunwei in 2015, CNINFO (Apr. 29, 2016), <http://www.cninfo.com.cn/finalpage/2016-04-29/1202269456.PDF>.

²⁹¹延边石岘白麓纸业股份有限公司实施退市风险警示的公告 [Announcement of Yanbian Shixian Bailu Papermaking Co, Ltd on Delisting Risk Warning of Company Stocks], MONEY163, http://quotes.money.163.com/f10/ggmx_600462_208952.html (last visited July 1, 2015).

²⁹²See Stock Listing Rules of the SHSE, *supra* note 23.

²⁹³The 2007 Annual Report of *ST Shixian, 126 (May 30, 2008), <http://file.ws.126.net/quotes/pdf/sh/2008/2008-5/2008-05-30/330447.PDF>.

²⁹⁴The Annual Reports of *ST Shixian in 2008 and 2009, 163 http://quotes.money.163.com/f10/gsgg_600462,dqbg,1.html (last visited July 1, 2015).

²⁹⁵延边石岘白麓纸业股份有限公司关于股票交易实行退市风险警示的公告 [Warning Announcement of Yanbian Shixian Bailu Papermaking Co Ltd on Delisting Risk Warning of Company Stocks], 126.NET (Apr. 23, 2010), <http://file.ws.126.net/quotes/pdf/sh/2010/2010-4/2010-04-23/546816.PDF>.

²⁹⁶延边石岘白麓纸业股份有限公司关于收到图们市人民政府补贴及相关文件的公告 [Announcement of Yanbian Shixian Bailu Papermaking Co Ltd on Receiving Financial Subsidies from Tumen Municipal Government and Related Documents], 126 (Dec. 16, 2010), <http://file.ws.126.net/quotes/pdf/sh/2010/2010-12/2010-12-16/640310.PDF>.

²⁹⁷延边石岘白麓纸业股份有限公司2010年度业绩扭亏公告 [Announcement of Yanbian Shixian

followed the same path. For six years from 2005 to 2010, it suffered losses for two years and then made a profit in the third year. Each time that the company faced a delisting risk, the local government provided it with substantial subsidies.²⁹⁸ It is quite commonly known that these listed companies depend on government subsidies and are not independently viable and profitable.

Admittedly, government subsidies greatly facilitate reorganization. For example, the Jingzhou municipal government donated ¥ 10 million to *ST Tianyi in order to increase the repayment rate to its creditors.²⁹⁹ For the reorganization of *ST Canghua, the Cangzhou government borrowed ¥ 160 million from Hebei Finance Bureau and gave it to *ST Canghua for its reorganization. The Cangzhou government also returned the land compensation and land-transferring fees back to *ST Canghua.

However, government subsidies tend to mask the underlying problems these companies face. It becomes a vicious cycle: the listed companies suffer continuous and long-term losses yet receive government subsidies to maintain their listing on the stock market exchanges. Having the financial backup of the government, they do not feel the pressure to improve their performance. For example, in the reorganization of *ST Canghua, the Cangzhou government granted a subsidy of ¥ 1.49 million in 2007,³⁰⁰ ¥ 169.53 million in 2010³⁰¹ and ¥ 108 million in 2012.³⁰² A similar pattern exists with other listed companies.³⁰³ Their ability to operate profitably has not improved.³⁰⁴ Listed companies that continue to lose money and survive only on government subsidies are called “phoenixes” because they never die.³⁰⁵

Bailu Papermaking Co Ltd on turning from deficits to profit in 2010, 126 (Jan. 29, 2011), <http://file.ws.126.net/quotes/pdf/sh/2011/2011-1/2011-01-29/656457.PDF>.

²⁹⁸“不死鸟”: 那些连年亏损还赖在市场上的上市公司 [“Birds that Never Die.” Listed Companies that Make Losses for Years Stay on the Stock Market Shamelessly], JRJ <http://stock.jrj.com.cn/focus/gbsn/> (last visited July 1, 2015).

²⁹⁹天发石油天颐科技完成司法重整 [S*ST Tianfa and S*ST Tianyi Accomplished the Reorganization Procedure], CNHUBEI, <http://news.cnhubei.com/ctdsb/ctdsbsgk/ctdsb01/200712/t179008.shtml> (last visited July 1, 2015).

³⁰⁰*The Annual Report of *ST Canghua in 2007*, *supra* note 183.

³⁰¹*The Annual Report of *ST Canghua in 2010*, *supra* note 184.

³⁰²*The Annual Report of *ST Canghua (Hebei Jinniu Chemical Co Ltd after its reorganization) in 2012*, *supra* note 186.

³⁰³For example, the government also granted a huge amount of subsidies to *ST Xiancheng, *ST Zhongda and *ST Yuanfa. See *supra* Chart 6.

³⁰⁴Qiangquan Tang & Danglun Luo, *An Empirical Study on the Motivation and Effect of Government Subsidy*, 06 J. OF FIN. RES. 149, 161 (2007).

³⁰⁵The concept of “phoenix companies” in China is different from the Australian concept. In Australia, the ASIC defines phoenix activities as: (1) a company fails to and is unable to pay its debts; and/or (2) acts in a manner which intentionally denies unsecured creditors equal access to the available assets in order to meet and pay debts; and (3) within 12 months of closing, another business commences which may use some or all of the assets of the former business, and is controlled by parties related to either the management or directors of the previous company. See Angela Martin, *Director’s Duties and Phoenix*

It is also highly questionable whether public funds should be used to maintain unprofitable businesses. As business entities, these companies are supposed to create wealth, support the government through the payment of taxes, and benefit their shareholders, the community and society, not the other way around. It is the government itself, to a large extent, that creates so many of these “phoenix companies” using public finance to interfere with their reorganization and standing in the way of market forces that would otherwise weed out these inefficient companies. The artificial profitability of such companies poses great risks to China’s stock market and investors.

C. LIQUIDATION GROUP: THE PRIMARY ADMINISTRATOR

The administrator plays a central role in any reorganization procedure. Its role has been described as necessary to “the effective and efficient implementation of an insolvency law . . . to ensure that the law is applied effectively and impartially.”³⁰⁶ In other jurisdictions, this role may be filled by a trustee or debtor-in-possession. In China, this role may be filled by “social intermediaries,” such as law, accounting, and liquidation firms. In most cases in practice, however, it is filled by a committee of officials and professionals known as the “liquidation group.”

The composition of a liquidation group has evolved over time and it varies from one reorganization procedure to another. Under the 1986 EBL, it was exclusively comprised of local officials from different governmental departments, such as Taxation, the Administration of Industry and Commerce, Labor and Social Security.³⁰⁷ Reliance on governmental officials only drew heavy criticism for its unprofessionalism, partiality, and dependence on local government.³⁰⁸ Despite criticism from the SPC³⁰⁹ and lawmakers,³¹⁰ the 2006 EBL did not abolish the use of the liquidation group. The stated reason

Companies, ALLENS ARTHUR ROBINSON, <https://www.allens.com.au/pubs/pdf/insol/pap4apr07.PDF> (last visited July 3, 2015). The term in China refers to listed companies having no viable business or no ability to make profits and stay listed in the stock market, such as *ST Baoshuo, *ST Shixian, and *ST Fenghuang. These listed companies may fail to and be unable to pay their debts, but normally they do not possess the attributes of (2) and (3) of the “phoenix companies” in the Australian concept.

³⁰⁶THE UNITED NATIONS COMM’N ON INT’L TRADE LAW, LEGISLATIVE GUIDE ON INSOLVENCY LAW 174 (2004).

³⁰⁷最高人民法院关于贯彻执行《中华人民共和国企业破产法（试行）》若干问题的意见 [Opinions of the SPC on Some Issues Concerning the Implementation of the EBL (for Trial)], Article 50, http://www.slgsw.gov.cn/E_ReadNews.asp?NewsID=436 (last visited July 2, 2015).

³⁰⁸最高人民法院: 关于企业破产法司法解释理解与适用—破产管理人制度·新旧破产法衔接 [THE SPC: ON THE UNDERSTANDING AND APPLICATION OF THE JUDICIAL INTERPRETATIONS OF THE 2006 EBL—ADMINISTRATOR SYSTEM AND THE CONNECTION BETWEEN THE OLD AND NEW EBL] 35-36 (Xiaoming Xi (奚晓明) ed., 2007).

³⁰⁹*Id.* at 35-36.

³¹⁰Zhijie Jia (贾志杰), 关于《中华人民共和国企业破产法(草案)》的说明 [Explanation of the PRC’s EBL(draft)], in 中华人民共和国企业破产法释义 [INTERPRETATION OF THE PRC’S EBL] 38 (Jian An (安建) ed., 2006).

for preserving its concept is that some SOEs under “policy bankruptcy”³¹¹ require special arrangements to address issues of resettling laid-off workers, maintaining social stability, and protecting state-owned assets during bankruptcy. Special administrative resources that only the government can provide are needed to solve these non-bankruptcy problems.³¹² With the adoption of the 2006 EBL, there is now greater flexibility in terms of the composition of the liquidation group. Under the 2006 EBL and Provisions of the SPC on Designating the Administrator during the Trial of Enterprise Bankruptcy Cases, the liquidation group could be comprised of government officials only or a mix of government officials and social intermediaries.³¹³

As reflected in Chart 7 below, thirty-eight (76.0 per cent) of the fifty listed company reorganization cases designated some form of liquidation group as the administrator. The government officials-only model was utilized in only three cases: S*ST Haina, S*ST Lanbao, and *ST Pianzhuan. The mixed liquidation group of officials and social intermediaries has been much more prevalent, accounting for 70.0 percent (35/50) of the listed companies. All of the SOE listed companies (or companies in which the SOE was the controlling shareholder) designated a liquidation group as the administrator.³¹⁴ Social intermediaries, without a liquidation group, were designated as the administrator in only twelve of the fifty listed companies (24 percent), of which eight were individually controlled companies,³¹⁵ two with the state being a controlling shareholder,³¹⁶ and in two the state held a minority shareholder interest.³¹⁷

³¹¹The “policy bankruptcy” scheme deals with the bankruptcy of some special SOEs chosen by local governments. It consists of a number of administrative policies issued by the central government. It has several characteristics according to Prof. Xianchu Zhang: (1) resettlement of workers is the top priority in the bankruptcy of the chosen SOEs; (2) the policies encourage mergers and acquisitions instead of bankruptcy of the SOEs; (3) the central government allocates funds to help the state-owned banks write off their recoverable loans; and (4) the central government instigates annual SOE bankruptcy planning with the participation of state ministries and provincial governments. See Xianchu Zhang, *A Critical Analysis of China’s Enterprise Bankruptcy Law*, (2012) (unpublished manuscript) (on file with author).

³¹²Jia (安建/), *supra* note 310, at 35-36.

³¹³EBL, *supra* note 34, art. 24; *zui gao ren min fa yuan guan yu shen li qi ye po chan an jian zhi ding guan li ren de gui ding* (最高人民法院关于审理企业破产案件指定管理人的规定) [Provisions of the SPC on Designating the Administrator during the Trial of Enterprise Bankruptcy Cases], art. 19.

³¹⁴The data was collected by author from the public announcements of the listed companies. All the public reports are available at 巨潮资讯/ CNINFO, CNINFO.COM (Nov. 24, 2016) <http://www.cninfo.com.cn>. Pure government-official liquidation group has been seen in the reorganization case of S*ST Haina, S*ST Lanbao, and *ST Pianzhuan. Pure social-intermediary liquidation group has been witnessed in the reorganization of *ST Chaori, *ST Zhonghua A, *ST Kejian, *ST Shengrun, *ST Shentai, *ST Chuangzhi, *ST Zhongda, *ST Hongsheng, *ST Xiake and *ST Xindu. The rest appointed the mixed-type liquidation group as the administrator.

³¹⁵The eight listed companies are: *ST Shengrun, *ST Chuangzhi, *ST Kejian, *ST Zhonghua A, *ST Chaori, *ST Hongsheng, *ST Zhongda, *ST Xiake and *ST Xindu.

³¹⁶The listed companies are *ST Shunchuan and *ST Chuanhua.

³¹⁷They are *ST Shentai and *ST Xindu.

Chart 7: Types of Administrators

Type of Administrators	Formation	SZSE	SHSE	Total
Liquidation Group	Government officials only	3	0	3
	Mixed (government officials + social intermediaries)	18	17	35
	Total	21	17	38
Social intermediary	Law, accounting, and liquidation firms	10	2	12

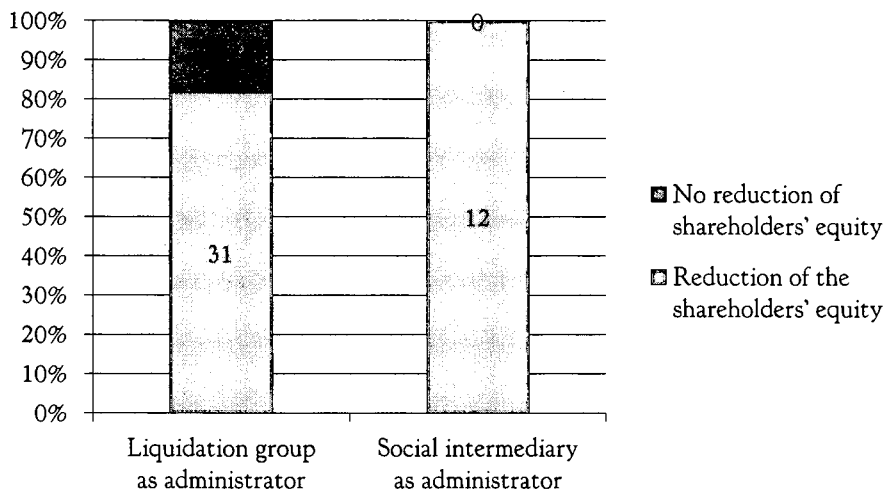
(Source: The Website of CNINFO).

While the majority of cases designate a mixed-type liquidation group as the administrator, there is a disadvantage to utilizing this form of administrator. The liquidation group may place the interests of state shareholders ahead of the interests of creditors. Shareholder rights were not diminished or reduced at all in the cases of three listed companies with local SASACs or SOEs as controlling shareholders (actual controllers).³¹⁸ Since the reorganization of the SOEs is subject to internal control, the liquidation group represents the government shareholders. As Chart 8 below demonstrates, among the fifty listed companies, thirty-eight designated a liquidation group as administrator.³¹⁹ In seven of these cases, shareholder equity remained unchanged. By way of comparison, in all twelve cases designating the social intermediary as the administrator, shareholder equity was reduced. From this data, it can be seen that the liquidation group seems to rank the interests of shareholders higher than creditors.

³¹⁸The actual controller of S*ST Haina is Zhejiang University Yuanzheng Holing Group Co. Ltd. Yuanzheng is a wholly state-owned company. See *The Annual Report of Zhejiang Haina Science and Technology Co Ltd in 2007*, 126 (Mar. 1, 2008), <http://file.ws.126.net/quotes/pdf/sz/2008/2008-3/2008-03-01/296151.PDF>. The actual controller of S*ST Lanbao is SASAC of Changchuan municipal government. See *The Annual Report of S*ST Lanbao Technology Information Co Ltd in 2007* (Mar. 29, 2008), <http://www.cninfo.com.cn/finalpage/2008-03-29/38389174.PDF>. The actual controller of *ST Pianzhan is its controlling shareholder. See *The SASAC of Xianyang Municipal Government*, CNINFO (Mar. 25, 2010), <http://www.cninfo.com.cn/finalpage/2010-03-25/57726376.PDF>.

³¹⁹One case, *ST Boyuan has no reorganization plan yet, and the reduction of shareholder equity and creditors' claims is unclear. Therefore this case is excluded from the calculation of the change of stakeholder rights in this part.

Chart 8: Comparison of Reduction of Shareholder Equity in Cases with Different Types of Administrators

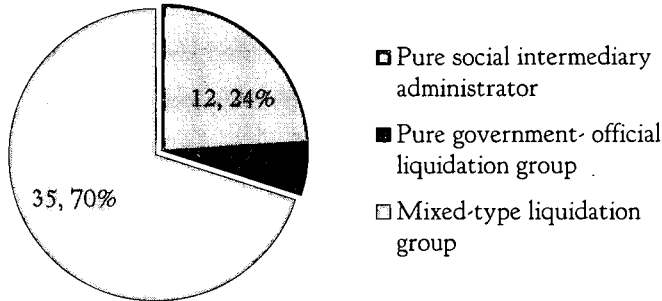


(Source: Public Announcements of the 50 Listed Companies on the Website of CNINFO).

The other disadvantage to utilizing a liquidation group involves the speed at which the reorganization process proceeds. Under the control of the liquidation-group administrator, the case will generally progress much faster. While faster may sound better, it does not always lead to better results. For example, it took one day for the People’s Court to accept the reorganization application of *ST Lanbao and *ST Haina, and thirty-five and sixty-seven days, respectively, to complete the reorganization process. The two listed companies had much in common: they were controlled by the SOEs or local SASAC and they formed a liquidation group consisting of government officials only. In both cases, the equity of the SOE or local SASAC shareholder was not reduced even though general creditors received only twenty-two percent and 25.35 percent of their claims, respectively. The government placed great pressure on all the parties to approve the reorganization plans.³²⁰ The speed with which this procedure progressed did not provide an adequate opportunity for full participation. As a result, their senior interests as creditors were impaired in favor of the shareholders. In complex cases under a comparatively new bankruptcy law, such efficiency sacrifices the parties’ ability to arrive at a detailed, feasible, and fair reorganization plan.

³²⁰Wen Liu & Shu Zhou (刘文/周舒), *shang shi gong si po chan guan li ren xuan ren zhi du yan jiu* (上市公司破产管理人选任制度研究) [Research on Designation of Administrator in Bankruptcy of Listed Companies], *破产法论坛* [BANKRUPTCY FORUM] 91 (Xinxin Wang & Zhengyou (王欣新尹正友)/ eds., 2013).

Chart 9: Different Types of Administrators



(Source: Public Announcements of the 47 Listed Companies as to the Designation of Administrator, found on the Website of CNINFO).

Following the enactment of the 2006 EBL, the social intermediary administrator was expected to be the main type of administrator in enterprise bankruptcy cases. In practice, however, only twelve out of fifty listed companies opted for this type of administrator and it has been used only with smaller listed companies controlled by private parties. Nevertheless, these ten cases show that social intermediary administrators were more successful at increasing the rate of recovery of the creditors. Creditors supported their reorganization plans. While the average time for the acceptance of the reorganization application by the People's Court was around 162.2 days,³²¹ much longer than the ones with the pure-government-official liquidation groups as the administrator, the creditor repayment rates greatly increased, for example, from an anticipated rate of 0.46 percent to 20.329 percent in *ST Shentai³²² and from 2.16 percent to 30.05 percent in *ST Shengrun.³²³ Of course, the interests of shareholders, especially controlling ones, were substantially reduced.³²⁴

³²¹Huimiao Zhao, *Lame Duck Bankruptcy Institutions under Government Intervention in Reorganization of Listed Companies in China*, 46(2) H.K.L.J. 709, 732-734.

³²²*The Reorganization Plan of *ST Shentai*, CNINFO (May 8, 2010), <http://www.cninfo.com.cn/finalpage/2010-05-08/57924702.PDF>.

³²³*The Reorganization Plan of *ST Shengrun*, CNINFO (Oct. 18, 2010), <http://www.cninfo.com.cn/finalpage/2010-10-28/58585719.PDF>.

³²⁴Among the reorganization cases of the eight listed companies, all the shares of the controlling shareholders are reduced in a range from 6% to 40%. See *The reorganization plans of *ST Shengrun*, CNINFO (Oct. 28, 2010), <http://www.cninfo.com.cn/finalpage/2010-10-28/58585719.PDF>; **ST Shentai*, CNINFO <http://www.cninfo.com.cn/finalpage/2010-05-08/57924702.PDF>; **ST Chuangzhi*, CNINFO (June 3, 2010), <http://www.p5w.net/p5w/home/stime/pdf/20110603/zq03b60.PDF>; **ST Kejian*, CNINFO (May 26, 2012), <http://www.cninfo.com.cn/finalpage/2012-05-26/61049264.PDF>; **ST Zhonghua A*, CNINFO (Nov. 8, 2013), <http://www.cninfo.com.cn/finalpage/2013-11-08/63248707.PDF>; **ST Chaori*, CNINFO (Oct. 8, 2014), <http://file.ws.126.net/quotes/pdf/sz/2014/2014-10/2014-10-08/1518595.PDF>; **ST Hongsheng*, CNINFO (Apr. 27, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-27/60923717.PDF>; **ST Xiate*, CNINFO (Apr. 18, 2015), <http://www.cninfo.com.cn/finalpage/2015-04-18/1200864180.PDF>.

Thus, there are benefits and shortcomings of both liquidation group and social-intermediary administrators. In terms of the pace of reorganization, listed companies with the liquidation group as the administrator have been far more expeditious. The goal behind a quick reorganization is to restructure the listed companies in time to avoid delisting. However, fairness and transparency of the reorganization process may be sacrificed with speed.

In addition, the legitimacy of the liquidation-group administrator has been widely questioned. A liquidation group comprised either wholly or partly with government officials places the interests of shareholders above that of general creditors, especially SASACs and SOEs. The 2006 EBL was widely expected to strengthen the autonomy of creditors and to increase their protection. A liquidation group is not interest-neutral, but easily captured and controlled by the local government. Its dominance in the reorganization of listed companies greatly weakens the intent behind the 2006 EBL.

The social-intermediary administrator is more professional and impartial than the liquidation-group administrator. However, the data shows that social-intermediary administrators take longer to reorganize. The lengthier process may be due to the fact that, at this stage, social intermediaries simply lack experience. Their role is a new addition to the process and requires comprehensive knowledge of such areas as mergers and acquisitions, issuance of securities, and the like. Furthermore, their coordination with related governmental departments may be not as smooth as it is with the government-official administrator.

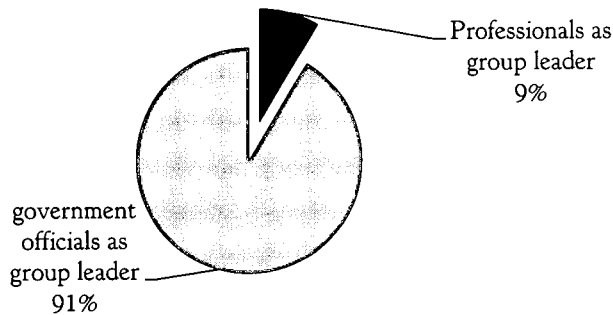
The mixed-type liquidation group, which combines the advantages of both the pure-government-official liquidation group and the social-intermediary administrator should provide the best of both worlds, especially in current China under a socialist market economy.³²⁵ The problem with this hybrid, however, is that government officials continue to take the lead in terms of number and power. They are the leaders of the mixed-type liquidation group in thirty listed companies (see Chart 10 below).³²⁶ For instance, in the reorganization of *ST Jinhua, the liquidation group was composed of twenty-two people, with twenty-one from governmental departments, such as the municipal SASAC, Financial Bureau, Bureau of Human Resources and Social Security, and one social intermediary, a lawyer from King and Wood.³²⁷ The Deputy Secretary-General of the Huludao municipal government was designated as the group leader. The lawyer was considered a subordinate to the government officials.

³²⁵Jia (贾/), *supra* note 303, at 69-70.

³²⁶See the type of administrator and group leader of the listed companies in Chart 6 for more details.

³²⁷*The Reorganization Plan of *ST Jinhua*, STOCKSTAR (Aug. 3, 2010), <http://stock.stockstar.com/JI2010080300000218.shtml>.

Chart 10: Group Leaders of Mixed-Type Liquidation Groups



(Source: Public Announcements of the 50 Listed Companies as to the Designation of Administrator, found on the Website of CNINFO).

Given this power structure in most mixed-type liquidation groups, it is not surprising that government officials, rather than the professionals, that make major decisions. Some of the issues require special resources that only the government can provide. The leaders of the liquidation group are mayors, vice mayors of local governments, or the head or deputy head of local SASACs. As high-ranking government officials, they have the power to mobilize necessary resources to facilitate the reorganization of listed companies.³²⁸ This is especially true with worker resettlements. The Department of Human Resources and Social Security are best suited to tackle this problem. By way of contrast, the professionals mainly address technical problems that require expertise in law, accounting, and restructuring companies.³²⁹

The mixed-type liquidation group, dominated by government officials, generally represents the interests of local governments. They are not impartial and independent as required by the 2006 EBL. They aim to achieve the administrative goals of the government—to protect the state-owned assets, preserve the listing status of the listed companies, and protect the interests of local government. The goals of the reorganization system are made inferior to these goals in the reorganization of listed companies in China. This type of liquidation group in the reorganization process of listed companies also unfairly transfers the costs of realizing these administrative goals to the creditors. As a result, liquidation groups comprised entirely or primarily with government officials should be phased out. Either social intermediaries or groups that are more fairly balanced should increase in the future.

³²⁸The leaders of the liquidation group may persuade local governments to grant preferential tax treatments to the listed companies or supply them with financial subsidies to increase the repayment rates to creditors.

³²⁹ja (贾/), *supra* note 310, at 70.

D. CRAMDOWN BY THE PEOPLE'S COURT

The 2006 EBL introduced “cramdown,” a concept borrowed from the United States Bankruptcy Code.³³⁰ The cramdown power allows the court to confirm a reorganization plan over the dissent of a group of stakeholders as long as the dissenting class is treated fairly and equitably and there is no unfair discrimination. This mechanism is now frequently applied to confirm reorganization plans of listed companies in China.

Under the 2006 EBL, the cramdown power is granted exclusively to the People's Court. According to the law, the government is not authorized to wield such power. However, in reality, the People's Court in China does not act wholly independently. Local government exerts significant political influence,³³¹ as it controls the court's personnel, finances, and organization.³³² In fifty listed companies' cases, the People's Court crammed down the reorganization plans in thirteen cases, with liquidation group being the administrator in twelve cases.³³³ The cramdown power, however, was used not to enhance the treatment of creditors, but to advance governmental interests in some sense. The liquidation group controlled the whole reorganization process, including negotiating with creditors, soliciting investors and drafting the reorganization plan. In the reorganization of *ST Dixian B, for instance, the People's Court confirmed the reorganization plan over the dissent of the general creditors, even though the creditors' interests were seriously affected and they were treated unfairly under the plan. Thus, given the fact that the People's Court cannot make independent decisions, the cramdown power has become another tool of local governments to control the reorganization process. The use of the cramdown power and its impact on the reorganization of listed companies will be further discussed below.

IV. EFFECTS OF REORGANIZATION ON LISTED COMPANIES

A. PLAN IMPLEMENTATION

As of February 2017, 98.0 percent (50/51) of the listed companies who entered the reorganization process had confirmed their reorganization plans,

³³⁰EBL, *supra* note 34, art. 87.

³³¹最高法院:各级人民法院要始终保持坚定政治立场 [the SPC: the People's Court at All Levels should Maintain a Firm Political Stand All the Time], CHINANEWS (June 25, 2012, 9:07 AM), <http://www.chinanews.com/fz/2012/06-25/3982807.shtml>.

³³²Ling Zhao, Lei Zhao & Silu Guo (赵凌/赵蕾/郭丝露/), “人财物独立于地方”十年, 突然要脱离, 法院不习惯/ [Ten Years after the Proposal of “Independence of Human, Financial and Material Resources”, the People's Court not Accustomed to be Separated from Local Governments], SOUTHERN WKLY. (南方周末/) (Nov. 29, 2013, 10:03 AM), <http://www.infzm.com/content/96241>.

³³³The twelve listed companies are: *ST Tianfa, *ST Guangming, *ST Jinhua, *ST Guangxia, *ST Xinye, *ST Baoshuo, *ST Canghua, *ST Tianyi, *ST Dixian B, *ST Fangxiang, *ST Jincheng and *ST Xinyi. Only *ST Hongsheng designated social intermediaries as administrator.

except for *ST Boyuan. This high confirmation rate, however, does not correlate to a high success rate of reorganization of these listed companies. Debt repayment deals only with pre-bankruptcy debt. It does not ensure future profitability. The decisive factor as to whether these companies could attain profitability was tied to asset restructuring, which takes place following confirmation. As of February 2017, thirty-seven (74.5 percent) of these listed companies had finished their asset restructuring, fourteen (25.5 percent) had not.

Successful reorganization of listed companies may be defined as: (1) the completion of both debt repayment and asset restructuring; and (2) resumption of share trading and the elimination of a delisting risk. Under this definition, thirty-five (68.6 percent) of the listed companies could be regarded as successful insofar as they have consummated their reorganization plans (debt repayment). Of the remaining sixteen companies, *ST Chuangzhi was delisted, *ST Yunwei and *ST Boyuan completed neither debt repayment nor asset restructuring, nine companies were still in the process of completing asset restructuring, and four companies had not been successful in regaining their listing or trading status, despite completion of both debt repayment and asset restructuring.

Some listed companies should be delisted to make room for more competitive companies, rather than squandering social resources. Nevertheless, some listed companies, such as S*ST Xingmei, *ST Guangxia, and *ST Hailong, with their asset restructuring uncompleted after many years, were still listed but remain marked with a delisting risk. The reorganization plan of *ST Hongsheng was confirmed by the People's Court on April 23, 2012. Its plan had a six-month implementation period. As of today, its reorganization plan has finally been completed after eight six-month extensions.³³⁴

Asset restructuring may be difficult and prolonged in part because most reorganization plans are passed without concrete plans for restructuring the business. For instance, seven years since entering the reorganization process, *ST Baoshuo and *ST Canghua did not finish their asset restructuring. Such companies have failed to achieve profitability. Some follow a pattern of two or three years of losses followed by one year of profitability, often due only to government subsidies.³³⁵ Such companies should be delisted, according to Some Opinions of the CSRC on Reforming, Improving and Strictly Executing the Delisting System of the Listed Companies (the CSRC's Opinions on Delisting System).³³⁶ These companies have no true sustainability other than

³³⁴Relative information can be found at the website of CNINFO, <http://www.cninfo.com.cn>.

³³⁵Companies such as *ST Shixian, *ST Zhaohua, *ST Canghua, *ST Hualong, *ST Qinling and S* ST Xingmei all followed such a pattern. See CNINFO <http://www.cninfo.com.cn/cninfo-new/index> (last visited Oct. 20, 2015).

³³⁶中国证券监督管理委员会关于改革完善并严格实施上市公司退市制度的若干意见 [Some Opin-

through government subsidies.³³⁷ *ST Canghua, *ST Hualong and *ST Qinling were marked with delisting risks again after they suffered losses for two consecutive years following completion of their reorganization plans and asset restructuring. Of the thirty-five “successfully” reorganized listed companies, more than ninety percent were receiving substantial government subsidies in order to avoid delisting.³³⁸

B. PERFORMANCE FOLLOWING REORGANIZATION

The performance of listed companies following reorganization should be measured according to objective standards. The rate of return on common shareholder equity (ROE) as well as operating income should serve as the auxiliary benchmarks. If (1) the ROE in the year following reorganization is greater than the average ROE of the specific industry,³³⁹ (2) the ROE is greater than zero in the second year (or vice versa), and the (3) the operating income is more than ¥ 10 million, then the reorganization should be considered “good.” If the ROE for the first and second years following the reorganization is less than the average ROE of the specific industry but greater than zero, then the result should be deemed “acceptable.” If the ROE in the first year is less than zero, then the result should be considered “poor.”

Chart 11 surveys twelve cases of listed companies in which the People’s Court used the cramdown power to confirm the plan of reorganization. Judges according to the ROE and operating income benchmarks, two companies achieved good results, five acceptable, and five poor results. Both the good and acceptable results are regarded as successful. The unsuccessful cases account for 41.7 percent of the crammed-down cases. The success rate accounts for 58.3 percent, of which 16.7 percent had good results and 41.7 percent had acceptable results.

If those with poor results were judged only by the standards set forth in Section IV.A (debt repayment and asset restructuring completed and share trading resumed), then *ST Dixian B and S*ST Guangming could be regarded as successful. However, the net assets of *ST Dixian B have been negative for three consecutive years and its operating income was less than ten million for two years after its reorganization. Under such circumstances, it should be marked with *ST again.³⁴⁰ S*ST Guangming also has had negative assets for two consecutive years, which makes the value of the ROE meaningless. The

ions of the CSRC on Reforming, Improving and Strictly Executing the Delisting System of the Listed Companies], CSRC, <http://www.csrc.gov.cn/pub/zjhpublic/zjh/201410/P020141017502705934937.PDF> (last visited June 20, 2015).

³³⁷Zhao, *supra* note 321.

³³⁸*Id.*

³³⁹*Id.* at 742-743.

³⁴⁰See *supra* note 13, Rule 14.1.1.

reorganization results of *ST Guangxia, *ST Baoshuo, and *ST Canghua are among the worst. They possess negative assets, and operating income has been less than ten million for three consecutive years.³⁴¹ Such poor results surely should be considered unsuccessful.

On the other hand, when the cramdown power was not utilized, the listed companies generally fared better following confirmation. Among the fifty cases in which cram down has been documented (with one case still undetermined), thirty-seven listed companies did not go through cramdown. Of these, eleven had good results, nine acceptable, and ten poor. As the ROE data was not available for the year of 2016, the results of seven cases, *ST Xindu, *ST Chaori, *ST Xinyi, *ST Shunchuan, *ST Chuanhua, *ST Yunwei and *ST Xiake, have not been calculated. Of those that could be calculated, the failure rate was 33.3 percent, less than the 41.7 percent of the cramdown cases. The successful rate was 66.7 percent, with good comprising 36.7 percent of this figure, much higher than the 16.7 percent in the cramdown cases, and acceptable being 30 percent.

³⁴¹Huimiao Zhao, *Lame-Duck Bankruptcy Institutions under Government Intervention in Reorganisation of Listed Companies in China (Part 2)*, 46(2) HKLJ 709, 737-741 (2016).

Chart 11: Effects of Cramdown Reorganization of the Listed Companies

	Negative net profits for 2 consecutive years?	Negative net assets for 2 consecutive years?	Operating income less than 10m for 2 consecutive years?	Debt restructuring	Asset restructuring	Revocation of delisting risk warning	ROE
S*ST Tianfa	No ³⁴²	No ³⁴³	No ³⁴⁴	Yes ³⁴⁵	Yes ³⁴⁶	Yes ³⁴⁷	Acceptable
*ST Dixian B	No ³⁴⁸	Yes ³⁴⁹	Yes ³⁵⁰	Yes ³⁵¹	Yes ³⁵²	Yes ³⁵³	Poor

³⁴²The Annual Report of S*ST Tianfa in 2008, CNINFO (Apr. 23, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-23/51611865.PDF> and in 2009, CNINFO (Feb. 5, 2010), <http://www.cninfo.com.cn/finalpage/2010-02-05/57581200.PDF>.

³⁴³Id.

³⁴⁴Id.

³⁴⁵天发石油股份有限公司公告 [Public Announcement of S*ST Tianfa], CNINFO (Dec. 18, 2007), <http://www.cninfo.com.cn/finalpage/2007-12-18/36050462.PDF>.

³⁴⁶舜元地产发展股份有限公司董事会关于重组履行法定程序的完备性、合规性及提交的法律文件的有效性说明 [Note of the Board of Director of Sunyoung Industry Development Co Ltd on the Completeness and Compliance of the Fulfillment of Statutory Procedures concerning the Restructuring and Effectiveness of the Legal Documents Submitted to the CSRC], CNINFO (Sept. 28, 2012), <http://www.cninfo.com.cn/finalpage/2012-09-28/61618124.PDF>.

³⁴⁷(2008-046) 天发石油股份有限公司关于深圳证券交易所同意受理公司恢复上市申请的公告 [Announcement of S*ST Tianfa on the Approval by the SZSE of the Application for Relisting of the Company], CNINFO (May 13, 2008), <http://www.cninfo.com.cn/finalpage/2008-05-13/39629791.PDF>.

³⁴⁸The Annual Report of S*ST Dixian B in 2009, CHENGDE DALU CO. (Apr. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-30/57897880.PDF>; The Annual Report of S*ST Dixian B in 2010, CHENGDE DALU CO (Apr. 27, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-27/59346248.PDF>.

³⁴⁹The Annual Report of S*ST Dixian B in 2009 and The Annual Report of S*ST Dixian B in 2010, *supra* note 348.

³⁵⁰The Annual Report of S*ST Dixian B in 2009 and The Annual Report of S*ST Dixian B in 2010, *supra* note 348.

³⁵¹承德帝贤针纺股份有限公司重大事项公告 [Public Announcement on the Major Event of *ST Dixian B], CNINFO (Apr. 28, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-28/51875426.PDF>.

³⁵²(2013-056) 承德南江股份有限公司重大资产重组实施情况报告书 [Report of Chengde Nanjiang Co Ltd on the Implementation of Major Asset Restructuring], CNINFO (July 5, 2013), <http://www.cninfo.com.cn/finalpage/2013-07-05/62776392.PDF>.

³⁵³(2009-033) 承德帝贤针纺股份有限公司关于撤销股票退市风险警示并实行其他特别处理的承德帝贤针纺股份有限公司重大事项公告 [Announcement of *ST Dixian B on the Revocation of Its Delisting Risk Warning and the Implementation of Other Special Treatment], CNINFO (July 6, 2009) <http://www.cninfo.com.cn/finalpage/2009-07-06/54267814.PDF>.

	Negative net profits for 2 consecutive years?	Negative net assets for 2 consecutive years?	Operating income less than 10m for 2 consecutive years?	Debt restructuring	Asset restructuring	Revocation of delisting risk warning	ROE
*ST Guangming	No ³⁵⁴	Yes ³⁵⁵	No ³⁵⁶	Yes ³⁵⁷	Yes ³⁵⁸	Yes ³⁵⁹	Poor
*ST Jinhua	No ³⁶⁰	No ³⁶¹	No ³⁶²	Yes ³⁶³	Yes ³⁶⁴	Yes ³⁶⁵	Good

³⁵⁴The Annual Report of S*ST Guangming in 2010, <http://www.cninfo.com.cn/finalpage/2011-04-02/59220760.PDF>; The Annual Report of S*ST Guangming in 2011, CNINFO (Apr. 27, 2012) <http://www.cninfo.com.cn/finalpage/2012-04-27/60920733.PDF>.

³⁵⁵The Annual Report of S*ST Guangming in 2009, CNINFO (Apr. 27, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-27/57876047.PDF>; The Annual Report of S*ST Guangming in 2010, CNINFO (Apr. 2, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-02/59220760.PDF>.

³⁵⁶The Annual Report of S*ST Guangming in 2010, *supra* note 354.

³⁵⁷(2011-005) 光明集团家具股份有限公司关于公司《重整计划》执行完毕的公告 [Announcement of S*ST Guangming on the Consummation of the Reorganization Plan], CNINFO (Mar. 10, 2011), <http://www.cninfo.com.cn/finalpage/2011-03-10/59101153.PDF>.

³⁵⁸(2011-76) 光明集团家具股份有限公司关于完成工商变更登记的公告 [Announcement of S*ST Guangming on the Completion of the Change of Business Registration], CNINFO (Dec. 16, 2011), <http://www.cninfo.com.cn/finalpage/2011-12-16/60330343.PDF>.

³⁵⁹(2011-046) 光明集团家具股份有限公司关于撤销股票退市风险警示的公告 [Announcement of S*ST Guangming on the Revocation of Its Delisting Risk Warning], CNINFO (Oct. 27, 2011), <http://www.cninfo.com.cn/finalpage/2011-10-27/60120256.PDF?COLLCC=445382692&>.

³⁶⁰The Annual Report of *ST Jinhua in 2011, CNINFO (Feb. 18, 2012), <http://www.cninfo.com.cn/finalpage/2012-02-18/60556810.PDF>; The Annual Report of *ST Jinhua in 2012, CNINFO (Mar. 21, 2013), <http://www.cninfo.com.cn/finalpage/2013-03-21/62236540.PDF>.

³⁶¹The Annual Report of *ST Jinhua in 2011 and The Annual Report of *ST Jinhua in 2012, *supra* note 360.

³⁶²The Annual Report of *ST Jinhua in 2011 and The Annual Report of *ST Jinhua in 2012, *supra* note 360.

³⁶³(2011-101) 方大锦化化工科技股份有限公司关于重整计划执行完毕的公告 [Announcement of *ST Jinhua on the Consummation of the Reorganization Plan], CNINFO (June 23, 2011), <http://www.cninfo.com.cn/finalpage/2011-06-23/59585836.PDF>.

³⁶⁴(2011-167) 方大锦化化工科技股份有限公司关于公司控股股东股权过户及股票锁定的提示性公告 [Indicative Announcement of Fangda Jinhua Chemical Co Ltd on the Transfer of Controlling Shareholder Equity and Stock Lock], CNINFO (Nov. 18, 2011), <http://www.cninfo.com.cn/finalpage/2011-11-18/60215803.PDF>.

³⁶⁵(2012-027) 方大锦化化工科技股份有限公司关于申请撤销公司股票其它特别处理的公告 [Announcement of Fangda Jinhua Chemical Co Ltd on the Application for Revocation of Other Special Treatment], CNINFO (Feb. 18, 2012), <http://www.cninfo.com.cn/finalpage/2012-02-18/60556798.PDF>.

	Negative net profits for 2 consecutive years?	Negative net assets for 2 consecutive years?	Operating income less than 10m for 2 consecutive years?	Debt restructuring	Asset restructuring	Revocation of delisting risk warning	ROE
*ST Guangxia	Yes ³⁶⁶	Yes ³⁶⁷	Yes ³⁶⁸	Yes ³⁶⁹	Yes	Yes	Poor
*ST Fangxiang	No ³⁷⁰	No ³⁷¹	No ³⁷²	Yes ³⁷³	Yes ³⁷⁴	Yes ³⁷⁵	Good
*ST Jincheng	No ³⁷⁶	No ³⁷⁷	No ³⁷⁸	Yes ³⁷⁹	Yes	Yes ³⁸⁰	Acceptable

³⁶⁶The Annual Report of *ST Guangxia in 2010, CNINFO (Apr. 28, 2011), <http://www.cninfo.com.cn/finalpage/2011-04-28/59354475.PDF>; The Annual Report of *ST Guangxia in 2011, CNINFO (Apr. 24, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-24/60890078.PDF>.

³⁶⁷The Annual Report of *ST Guangxia in 2010 and The Annual Report of *ST Guangxia in 2011, *supra* note 366.

³⁶⁸The Annual Report of *ST Guangxia in 2011, CNINFO (Apr. 24, 2012) <http://www.cninfo.com.cn/finalpage/2012-04-24/60890078.PDF>; The Annual Report of *ST Guangxia in 2012, CNINFO (Apr. 26, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-26/62429029.PDF>.

³⁶⁹(2013-009) 广夏(银川)实业股份有限公司关于银川中院裁定《重整计划》执行完毕的公告 [Announcement of *ST Guangxia on the Consummation of Reorganization Plan Ruled by Yinchuan Intermediate Court], CNINFO (Feb. 28, 2013), <http://www.cninfo.com.cn/finalpage/2013-02-28/62162597.PDF>.

³⁷⁰The Annual Report of *ST Fangxiang in 2011, CNINFO (Apr. 26, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-24/60889589.PDF?COLLCC=448066724&>; The Annual Report *ST Haowu in 2012, CNINFO (Mar. 29, 2013), <http://www.cninfo.com.cn/finalpage/2013-03-29/62295559.PDF>.

³⁷¹The Annual Report of *ST Fangxiang in 2011 and The Annual Report *ST Haowu in 2012, *supra* note 370.

³⁷²The Annual Report of *ST Fangxiang in 2011 and The Annual Report *ST Haowu in 2012, *supra* note 370.

³⁷³(2012-1) *ST方向关于收到内江市中级人民法院对公司破产重整计划终结裁定的公告 [Announcement of *ST Fangxiang on Receiving the Verdict on the Termination of Reorganization of the Company from Neijiang Intermediate Court], CNINFO (Jan. 6, 2012), <http://www.cninfo.com.cn/finalpage/2012-01-06/60411122.PDF>.

³⁷⁴(2012-20) 四川方向光电股份有限公司关于完成工商变更登记的公告 [Announcement of *ST Fangxiang on the Completion of the Change of Business Registration], CNINFO (Apr. 19, 2012), <http://www.cninfo.com.cn/finalpage/2012-04-19/60856035.PDF>.

³⁷⁵(2013-38) 四川浩物机电股份有限公司关于撤销退市风险警示的公告 [Announcement of *ST Haowu on the Revocation of Its Delisting Risk Warning], CNINFO (Apr. 18, 2013), <http://www.cninfo.com.cn/finalpage/2013-04-18/62377976.PDF>.

³⁷⁶The Annual Report of *ST Jincheng in 2013, CNINFO (May 30, 2014), <http://www.cninfo.com.cn/finalpage/2014-05-30/64083779.PDF>; The Annual Report of *ST Jincheng in 2014, CNINFO (June 2, 2015) <http://www.cninfo.com.cn/finalpage/2015-06-02/1201088407.PDF>.

³⁷⁷The Annual Report of *ST Jincheng in 2013, CNINFO (May 30, 2014) and The Annual Report of *ST Jincheng in 2014, *supra* note 376.

³⁷⁸The Annual Report of *ST Jincheng in 2013, CNINFO (May 30, 2014) and The Annual Report of *ST Jincheng in 2014, *supra* note 376.

³⁷⁹(2012-104) 金城造纸股份有限公司关于重整计划执行完毕的公告 [Announcement of *ST Jincheng on the Consummation of Reorganization Plan], CNINFO (Nov. 28, 2012), <http://www.cninfo.com.cn/finalpage/2012-11-28/61843546.PDF>.

³⁸⁰(2013-034) 金城造纸股份有限公司关于撤销退市风险警示的公告 [Announcement of *ST

	Negative net profits for 2 consecutive years?	Negative net assets for 2 consecutive years?	Operating income less than 10m for 2 consecutive years?	Debt restructuring	Asset restructuring	Revocation of delisting risk warning	ROE
*ST Xinye	No ³⁸¹	No ³⁸²	No ³⁸³	Yes ³⁸⁴	No	Yes ³⁸⁵	N/A
*ST Baoshuo	Yes ³⁸⁶	Yes ³⁸⁷	No ³⁸⁸	Yes ³⁸⁹	Yes	Yes ³⁹⁰	Poor
*ST Canghua	Yes ³⁹¹	Yes ³⁹²	No ³⁹³	Yes ³⁹⁴	Yes	Yes ³⁹⁵	Poor

Jincheng on the Revocation of Its Delisting Risk Warning], (June 18, 2013), <http://www.cninfo.com.cn/finalpage/2013-06-18/62590311.PDF>.

³⁸¹See *The Annual Report of *ST Xinye in 2013*, CNINFO (Apr. 25, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-25/63918282.PDF>; *The Annual Report of *ST Xinye in 2014*, CNINFO (Apr. 23, 2015) <http://www.cninfo.com.cn/finalpage/2015-04-23/1200890396.PDF>.

³⁸²See *The Annual Report of *ST Xinye in 2013* and *The Annual Report of *ST Xinye in 2014*, *supra* note 381.

³⁸³See *The Annual Report of *ST Xinye in 2013* and *The Annual Report of *ST Xinye in 2014*, *supra* note 381.

³⁸⁴(2013-125) 葫芦岛锌业股份有限公司关于重整计划执行完毕的公告 [Announcement of Huludao Zinc Industry Co Ltd on the Consummation of Reorganization Plan], CNINFO (Apr. 25, 2015), <http://www.cninfo.com.cn/finalpage/2014-01-02/63439755.PDF>.

³⁸⁵(2014-049) 葫芦岛锌业股份有限公司股票恢复上市公告书 [Announcement of Huludao Zinc Industry Co Ltd on the Relisting of Company Shares], CNINFO (Apr. 23, 2015), <http://www.cninfo.com.cn/finalpage/2014-07-30/1200086707.PDF>.

³⁸⁶*The Annual Report of *ST Baoshuo in 2008*, CNINFO (Apr. 30, 2009), <http://www.cninfo.com.cn/finalpage/2009-04-30/52003213.PDF?COLLCC=448507312&>; *The Annual Report of *ST Baoshuo in 2009*, CNINFO (Apr. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-04-30/57898221.PDF>.

³⁸⁷*The Annual Report of *ST Baoshuo in 2008* and *The Annual Report of *ST Baoshuo in 2009*, *supra* note 386.

³⁸⁸*The Annual Report of *ST Baoshuo in 2008* and *The Annual Report of *ST Baoshuo in 2009*, *supra* note 386.

³⁸⁹(临2011-019) 河北宝硕股份有限公司关于收到河北省保定市中级人民法院对公司破产重整计划相关裁定的公告 [Announcement of *ST Baoshuo on Receiving Verdict concerning the Reorganization Plan of the Company from Baoding Intermediate Court], CNINFO (June 28, 2011), <http://www.cninfo.com.cn/finalpage/2011-06-28/59603804.PDF>.

³⁹⁰河北宝硕股份有限公司关于公司股票复牌的提示性公告 [Public Announcement of *ST Baoshuo on Resuming Trading of the Shares], CNINFO (Mar. 7, 2014), <http://www.cninfo.com.cn/finalpage/2014-03-07/63645590.PDF>.

³⁹¹*The Annual Report of Hebei Jinniu Chemical Co Ltd in 2008*, CNINFO (Mar. 3, 2009) <http://www.cninfo.com.cn/finalpage/2009-03-03/49722161.PDF?COLLCC=448449085&> and in 2009, CNINFO (Mar. 30, 2010), <http://www.cninfo.com.cn/finalpage/2010-03-30/57747770.PDF>.

³⁹²*The Annual Report of Hebei Jinniu Chemical Co Ltd in 2008* and in 2009, *supra* note 391.

³⁹³*The Annual Report of Hebei Jinniu Chemical Co Ltd in 2008* and in 2009, *supra* note 391.

³⁹⁴(临2010-032) 河北金牛化工股份有限公司关于收到河北省沧州市中级人民法院对公司破产重整计划相关裁定的公告 [Announcement of Hebei Jinniu Chemical Co Ltd on Receiving Verdict concerning the Reorganization Plan of the Company from Cangzhou Intermediate Court], CNINFO (Dec. 1, 2010) <http://www.cninfo.com.cn/finalpage/2010-12-01/58725575.PDF>.

³⁹⁵(临2011-009) 河北金牛化工股份有限公司关于撤销股票交易退市风险警示并实施其它特别处理的公告 [Announcement of Hebei Jinniu Chemical Co Ltd on the Revocation of Its Delisting Risk

	Negative net profits for 2 consecutive years?	Negative net assets for 2 consecutive years?	Operating income less than 10m for 2 consecutive years?	Debt restructuring	Asset restructuring	Revocation of delisting risk warning	ROE
S*ST Tianyi	No ³⁹⁶	No ³⁹⁷	No ³⁹⁸	Yes ³⁹⁹	Yes ⁴⁰⁰	Yes ⁴⁰¹	Acceptable
*ST Hongsheng	No ⁴⁰²	No ⁴⁰³	No ⁴⁰⁴	Yes ⁴⁰⁵	No	Yes ⁴⁰⁶	Acceptable

The extensive and deep involvement of the government frustrates the merit of the reorganization system in eliciting a timely rescue of the listed companies in China. In practice, none of the forty-seven listed companies were rescued in a timely manner. All were heavily in debt.⁴⁰⁷ If they had

Warning and the Implementation of Other Special Treatment], CNINFO (May 5, 2011), <http://www.cninfo.com.cn/finalpage/2011-05-05/59387389.PDF>.

³⁹⁶The Annual Report of S*ST Tianyi in 2008, CNINFO (Jan. 17, 2009) <http://www.cninfo.com.cn/finalpage/2009-01-17/48475859.PDF?COLLCC=448596269&>; The Annual Report of S*ST Tianyi in 2009, (Feb. 8, 2010), <http://www.cninfo.com.cn/finalpage/2010-02-08/57590850.PDF>.

³⁹⁷The Annual Report of S*ST Tianyi in 2008 and The Annual Report of S*ST Tianyi in 2009, *supra* note 396.

³⁹⁸The Annual Report of S*ST Tianyi in 2008 and The Annual Report of S*ST Tianyi in 2009, *supra* note 396.

³⁹⁹(临2008-0047) 天颐科技股份有限公司公告 [Announcement of S*ST Tianyi], CNINFO (Dec. 21, 2007) <http://www.cninfo.com.cn/finalpage/2007-12-24/36211632.PDF>.

⁴⁰⁰(临2008-0047) 天颐科技股份有限公司关于公司更名及公司股票简称变更的公告 [Announcement of S*ST Tianyi on the Change of Its Name and the Company Stock Short], CNINFO (July 9, 2008), <http://www.cninfo.com.cn/finalpage/2008-07-09/41133424.PDF>.

⁴⁰¹(临2008-046) 天颐科技股份有限公司关于公司股票恢复上市的公告 [Announcement of S*ST Tianyi on the Relisting of Its Stocks], CNINFO (July 1, 2009), <http://www.cninfo.com.cn/finalpage/2008-07-01/40920092.PDF>.

⁴⁰²The Annual Report of *ST Hongsheng in 2012, CNINFO (June 22, 2013), <http://www.cninfo.com.cn/finalpage/2013-06-22/62603661.PDF?COLLCC=448742405&>; The Annual Report of *ST Hongsheng in 2013, CNINFO (Apr. 26, 2014), <http://www.cninfo.com.cn/finalpage/2014-04-26/63924271.PDF>.

⁴⁰³The Annual Report of *ST Hongsheng in 2012 and The Annual Report of *ST Hongsheng in 2013, *supra* note 402.

⁴⁰⁴The Annual Report of *ST Hongsheng in 2012 and The Annual Report of *ST Hongsheng in 2013, *supra* note 402.

⁴⁰⁵(2016-029) 西安宏盛科技股份有限公司关于法院裁定公司重整计划执行完毕的公告 [Announcement of *ST Hongsheng on the Approved Consummation of the reorganization Plan], CNINFO (July 9, 2016), <http://www.cninfo.com.cn/finalpage/2016-07-09/1202461979.PDF>.

⁴⁰⁶(临2013-005) 西安宏盛科技股份有限公司关于公司股票恢复上市的公告 [Announcement of *ST Hongsheng on Relisting of Its Stocks], CNINFO (Feb. 1, 2013), <http://www.cninfo.com.cn/finalpage/2013-02-01/62093187.PDF>.

⁴⁰⁷The information is available on the website of CNINFO (Apr. 22, 2015), <http://www.cninfo.com.cn>. See also Chang Mei, A Legal and Economic Analysis of Goals of Reorganization of Listed Companies under the Enterprise Bankruptcy Law of the PRC 96-100 (2013) (unpublished Ph.D Dissertation, China University of Political Science and Law) (on file with author).

been rescued in a timely manner, the repayment rate to creditors would have been greatly increased, and the possibility of success following reorganization would be much higher.

V. CONCLUSION

The goals of the reorganization system are to maintain the going-concern value of businesses and protect community interests. The reorganization system in China has similar goals as its counterparts in other jurisdictions, but one of its unique characteristics threatens these goals. Government control over the reorganization process is the primary obstacle. This control is asserted at the very outset of the process with the acceptance of the reorganization application, continuing during the negotiation process and the use of cramdown to achieve confirmation. It even continues after confirmation with the grants of substantial subsidies to mask poor performance. The 2006 EBL intended less governmental intervention but it has not achieved this result.

The government aims to safeguard the state-owned assets in listed companies, protect local interests and maintain its political legitimacy by rescuing the listed companies. The differences between the goals of the government and the reorganization system under the 2006 EBL have led to many conflicts in the reorganization of listed companies. To begin with, the government makes the protection of state-owned assets in listed companies its top priority. Consequently, it is difficult to cut the shares of the SASAC or SOE shareholders to increase the repayment rates to general creditors in many of the cases.

Moreover, a central purpose of the reorganization system is to preserve the going-concern value of companies, but if the enterprise itself has no viable business or no ability to make profits, it is a waste of public money to rescue this company. For the government, however, what matters is not only the economic value of the enterprise, but also the political and social values associated with its existence. Bailing out listed companies propagates a good image of local governments, provides employment for the local community, attracts more investment into the region, and also maintains social and economic stability. This other agenda is the greatest impediment to the smooth implementation of the reorganization system in China. It negatively affects the development of a market economy and the rule of law, squanders social resources in rescuing listed companies without a viable business, and obstructs economic reform in China. Such government intervention is unsustainable.

The United Nations Commission on International Trade Law warns that "adopting a reorganization-friendly approach should not result in establishing a safe haven for moribund enterprises: enterprises that are beyond rescue

should be liquidated as quickly and efficiently as possible.”⁴⁰⁸ The reorganization system in China is in danger of building such a safe haven for some listed companies that are near their demise, with no going-concern ability, sustaining only on government subsidies. As Dr. Fang Yu pointed out, it is very likely that the reorganization system is used as a tool for capital plunder: creditors pay the most for reorganization costs in a transitional country like Russia where the market is immature.⁴⁰⁹ China seems to be following the same pattern to protect capital owners at the expense of creditors due to a strong government standing in the way of a more efficient allocation of market resources.

⁴⁰⁸zhong guo zheng fa da xue po chan fa yu qi ye chong zu yan jiu zhong xin yan jiu zu (中国政法大学破产法与企业重组研究中心研究组) [Research Group of the Bankruptcy Law and Restructuring Research Centre of China University of Political Science and Law (Drafted by Meizheng Xu)]; wo guo shang shi gong si chong zheng guan li ren mo shi de an li yan jiu (我国上市公司重整管理人模式的案例研究) [*A Case Study of the Administrators of the Reorganizations of Listed Corporations in China*], (公司重整法律评论) / [L.REV. OF CORP. REORGANIZATION & RESTRUCTURING], 15-16 (Shuguang Li & Zhibin Zheng (李曙光/郑志斌) eds., 2012).

⁴⁰⁹Fang Yu (禹芳), 俄罗斯破产重整中债权人利益保护法律制度研究 [The Bankruptcy Legal System for the Protection of the Interests of Creditors in the Reorganization in Russia] 125 (2010) (unpublished Ph.D Dissertation, China University of Political Science and Law) (on file with author).

