



A TALE OF TWO ANCIENT ECONOMIES: CHINA & INDIA – BANKRUPTCIES AND RESTRUCTURING

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In the beginning: debtor-creditor relationship

- Traditional cultural stigma
- Pejorative associations
- Confucianism teachings
- Family and caste systems
- All debts must be paid



Break through: the 1st laws

- 1848 (India) vs 1906 (China)
- How these laws came about?
- Law vs culture / stigma
- International trade, market-led economies
- Economic reform



The current laws

India:

- 1956 and 2013 Companies Acts
- SICA / RDDBFI / SARFAESI / Relief Undertakings
- Provincial Insolvency Act 1920?

China:

- 1986 and 2006 Enterprise Bankruptcy Law (PRC)
- Supreme People's Court Judicial Interpretations



How the laws have fared – India?

BIFR registrations from 1987 to till date – 5,962 nos.

Recovery through various channels INR, Bil

	Debt	Recovery	%
Lok Adalat	66	4	6.1
RDDBFI	310	44	14.0
SARFAESI	681	185	27.1

Source: Report on Trend and Progress of Banking in India 2012-13

CDR References (up to December 31, 2013)

Particulars	Received	Not admitted	Under consideration	Total approved	Cases withdrawn	Cases exited	Live cases
Nos.	605	105	57	443	115	69	259
Debt, INR Bil	4,076	528	654	2,892	290	526	2,076

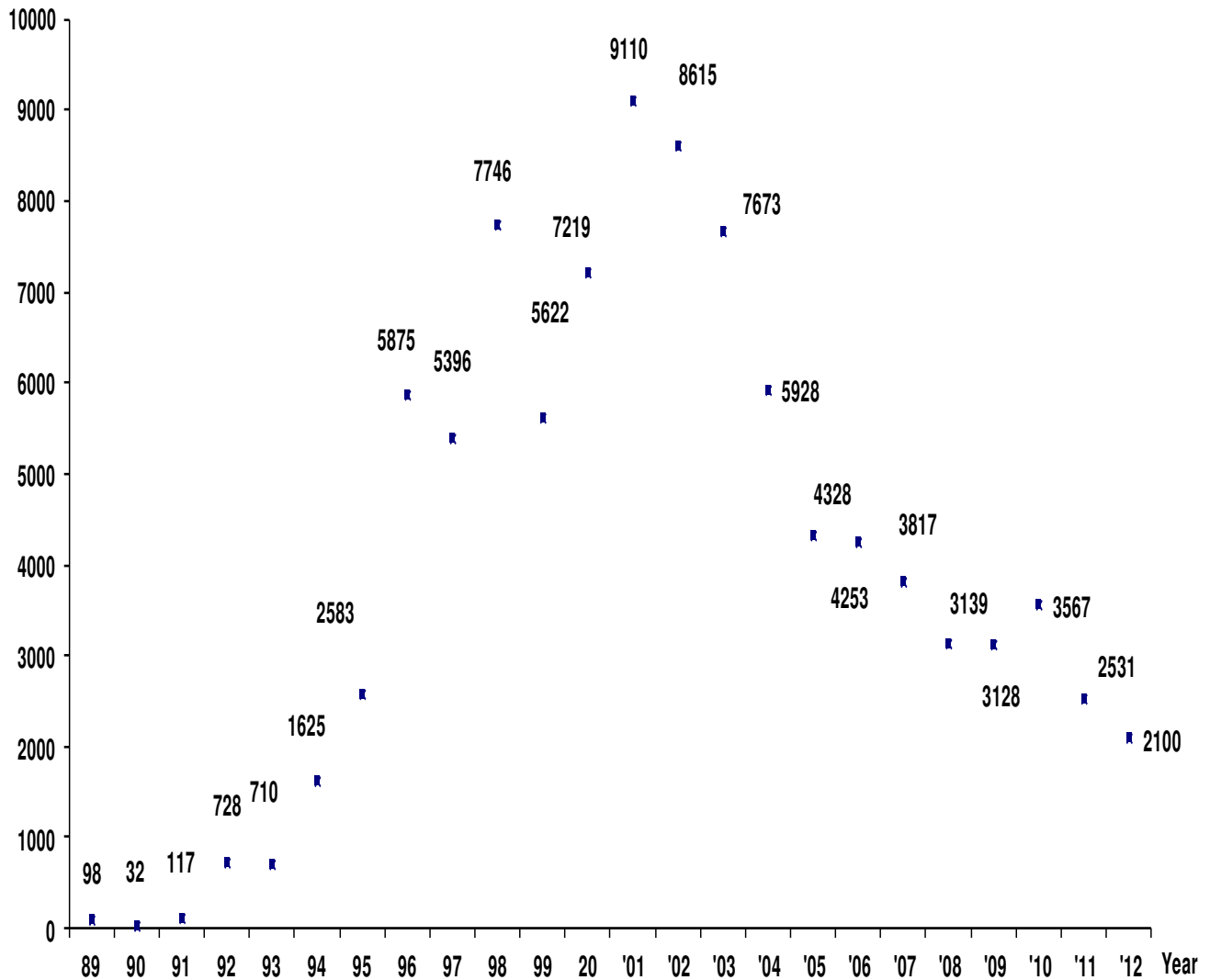
Source: CDR Office



How the laws have fared – PRC?

No. of cases

New Enterprise Bankruptcy Cases in the PRC from 1989 - 2012



Note:

The 2007 figure includes cases under the 1986 Law;
From 2008 all cases under 2006 Law

Source: Bankruptcy and Restructuring Law Research
Centre, University of China Politics and Law



How the laws have fared – India & China?

- Success or failure, or ... ?
- Government support or hindrances?
- The legal system and interplay with other laws
- Cultural stigma still a problem?
- Abuse of the law?



Something new – China: the Credit Investigations Industry

- January 2013 – Regulations on the Administration of Credit Investigation
- Establishment of personal credit reference agencies
- Small & Medium Enterprises (SMEs) and individuals are starting to have greater access to credit.



Something new – India

- Deal with stress at incipient stage
- Collective schemes under stricter control
- More private banks; consolidation
- Specialist services engaged for recovery
- Role of Administrators
- Liberal environment for ARC's



International interplay - China

- Cross-border provisions of EBL
- Impact of UNCITRAL Model Law
- Recent cases and lessons to learn, e.g. Suntech, [Li and Yin to add names of others]



International interplay - India

- Cross-border provisions of Companies Act
- Impact of UNCITRAL Model Law
- Recourse to overseas guarantors
- Foreign decrees / awards
- Statutory process is main proceeding
- Concessions to revival
- Change of control of defaulters



Prospects and development – China & India

- Restructuring vs bankruptcy
- Creditor vs debtor protection
- Specialised Bankruptcy Courts and insolvency profession
- International aspects
- Adoption of UNCITRAL Model Law?