

BOOM TIME FOR BUSTS 持续升温



The successive defaults of large companies such as Boashang Bank, Yongmei Group, Huachen Automotive and Tsinghua Unigroup recently sent shockwaves across the market. Restructuring lawyers discuss the defaults, how they feel the Chinese government will ensure orderly bankruptcy proceedings in the future, and how they are preparing for more cases in the coming year.

2020年下半年起，以包商银行、永煤集团、华晨集团、清华紫光等为代表的大型企业陆续出现债务违约事件，给市场带来极大震动。上述事件释放了怎样的信号？中国政府如何以法律保障未来破产重整的有序进行？该领域的律师们又做何准备，迎接新一年破产重整业务的持续升温？

BY HU YANGXIAOXIAO 作者：胡阳潇潇

At the start of 2020, bankruptcy and restructuring experts had predicted more bond defaults in China. A series of surprising events eventually confirmed the prophecy. Data showed that in 2020, there were around 33,700 bankruptcy investigations in China, up nearly one-half compared to 2019. There were also around 83,600 bankruptcy cases, double of that in 2019.

Xing Lixin, senior partner and head of insolvency and restructuring of Hai Run Law Firm, notes the characteristics of the insolvency and restructuring cases over the past year. "The year 2020 reversed many of our inherent understanding," she says. "First, the insolvent companies were state-owned enterprises, not limited to private companies. In the second half of the year, bond defaults concentrated in SOEs, breaking the norm of rigid payment. Second, these companies came from various sectors, ranging from banking, finance, energy, automobile, technology, to real estate, catering and services, as if no sector was an exception. Third, more listed

companies underwent bankruptcy, doubled to 13 in 2020 from six in 2019."

Xu Yu, partner at Hylands Law Firm, shares the same observations. "One thing to note is that companies that recently defaulted on their bonds had a high credit score before and they were the backbone of their industries, but the promising numbers and large operations could not hide their poor cash flow. At the same time, some companies accumulated their debts, which increased the risk of defaults even the loans did not seem big," he adds.

Although a series of bond defaults by large companies shocked the market and received negative media coverage, Zhou Jie, partner at DeHeng law Offices, does not see the rise in bankruptcy filings as a bad thing. He says the negative views show that efforts are still needed to remove the stigma associated with bankruptcy and restructuring. "Since the Enterprise Bankruptcy Law took effect in 2007, we have not paid enough attention to the bankruptcy system or used it enough, so the number of bankruptcy

filings has been far too low in China. When companies encounter operational issues, they should undergo bankruptcy proceedings earlier. Only when bankruptcy proceedings and restructuring are carried out earlier can repayment rates be improved to protect the creditors' interests, which would be an ideal outcome under the Enterprise Bankruptcy Law," he says.

"Fortunately, regulators as well as participants in the market economy, such as the banks, creditors, debtors and lawyers, are coming to realise this over the past two years," he points out.

REGULATORY GUIDANCE

As more bankruptcy filings come faster, what policies and laws have the Chinese regulators implemented to better handle such cases in the future?

Xu tells ALB that the bond defaults by SOEs such as Yongmei, Huachen and Tsinghua Unigroup touched on the nerves of the bond market. "Therefore, on November 21, 2020, Vice Premier Liu He convened the 43rd meeting with the

Financial Committee to look into regulating the bond market development and stabilizing the bond market," he says. The meeting not only analyzed the reason behind the rise of bond defaults, but also proposed in-depth solutions, which concern reforming the SOEs and enhancing operational efficiency.

Besides guidance from the country's top financial leader, Zhou tells ALB that regulators have been "constantly rolling out more laws, regulations and administrative measures regarding bankruptcy during the past six months."

"First is the newly-launched Civil Code and the many judicial interpretations, which include the judicial interpretations of the parts about guarantee under the Civil Code, as well as the revisions of the judicial interpretations of the Enterprise Bankruptcy Law and the reply of the Supreme People's Court on whether the right to use allotted state-owned land of a bankrupt enterprise shall be classified as insolvent property," he explains.

"The message here is that the bankruptcy system will be better incorporated into the general civil and commercial legal system. Take guarantee as an example. In the past, the law did not clearly stipulate whether the interest will continue to accrue on the guaranteed debt after the main debtor goes bankrupt. In practice, interest will continue to accrue on such debt. But the new judicial interpretation requires otherwise. It stipulates that the protection measures for ceasing interest accrual on the main debt also apply to the guarantors, which reduces the guarantors' burden," he adds.

Another administrative measure to note is the opinion on improving the system for enterprise bankruptcy, ensuring bankruptcy administrators perform their duties and optimizing the business environment proposed by the Supreme People's Court and the National Development and Reform Commission (NDRC) in September 2020.

"Although the regulators are still soliciting opinion on this draft, it shows that the high-level watchdogs pay great attention to establishing a system for

enterprise bankruptcy," Zhou says. "In the past, we only relied on the Enterprise Bankruptcy Law and three judicial interpretations, which were not solid enough to make up a well-established bankruptcy system. Hence, we need to improve the system for enterprise bankruptcy to include aspects of taxation, customs, credit report system and asset disposal. Currently, the Enterprise Bank-



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"团队不光要懂得破产法，可能还需要资本市场律师、银行或金融律师等参与.....这也意味着未来大型重整案件，只有综合实力最强大的律所才有能力承办。"

— 周杰，德恒律师事务所

ruptcy Law is not well connected with other laws, which only regulate enterprises that are operating normally. The draft is a response to this issue."

Besides the laws and regulations mentioned above, Xing also cites other regulatory guidance, for example the business guidelines for bond, and the administrative measures for the information disclosure of listed companies.

On the juridical front, the Supreme People's Court carefully defined disputes regarding company bonds, corporate bonds and non-financial institutions' financings. On January 20, 2021, a financial court was announced to be established in Beijing to dedicate to preventing financial risks. "These are all strong signals from the national regulators," Xing says.

Meanwhile, in the light of frequent bond defaults, Xing points out that it is urgent to overhaul the credit rating system. "Large SOEs must be rated 3A in the past. Now we need to reconsider how to give companies their credit rating to give investors a sound reference. As credit ratings become more objective and realistic, the whole credit rating system in China could be improved," she adds.

EFFORTS FROM FINANCIAL INSTITUTIONS

The regulatory guidance also implies to strengthen the financial institutions' role and support in the bankruptcy proceedings. Zhou tells ALB that this is included explicitly in the draft issued by the Supreme People's Court and the NDRC.

"This came as the financial institutions, as creditors, did not do enough in large cases. They make up a big representation in the creditors' meetings and should be the one to take part in or push forward the bankruptcy proceedings. But the decision-making process at state-owned or large banks in China is lengthy. Instead of making a decision within the required timeframe, the financial institutions would rather act negatively during the process," Zhou explains.

He tells ALB that after the draft proposed to strengthen the role of the financial institutions, the China Banking and Insurance Regulatory Commission, NDRC, PBoC and CSRC issued the notice on the working procedures of the creditor committee of financial institutions on December 28, 2020. The notice further specifies requirements for the financial institutions.

"First, they should establish and improve the internal working procedures linked to bankruptcy proceedings. Second, they should facilitate

the opening and extension of trustees' accounts. Third, they should support the trustees in taking over or investigating the debtors' accounts. Forth, they should give stronger financing support to companies that have undergone bankruptcy and restructuring. Fifth, they should help these companies improve their credit score.... These are all clear directions for the future role of the financial institutions," he explains.

Zhou is now seeing improvements on resolving certain feasible issues. "The commercial banks, in particular, are actively developing business in this area, such as establishing and improving the internal working procedures linked to bankruptcy proceedings, establishing a database or an office automation system. A lot of banks are also approaching our trustees to seek advice," he says.

CROSS-BORDER ATTEMPTS

In 2020, the increase in bankruptcy filings was observed not only in China, but across the Asia-Pacific region. Take Hong Kong SAR as an example, data from the Official Receiver's Office showed that there were 8,693 bankruptcy filings in 2020, up by 6.6% year-on-year to reach a four-year high. As Chinese companies actively go global, cross-jurisdictional collaborative efforts are also needed in bankruptcy and restructuring.

"China's Enterprise Bankruptcy Law is more localized," Zhou admits. "But it doesn't mean there has not been improvements. There have been more cross-border collaborative efforts and judicial assistance under the law."

Zhou cites two examples from the past year. The juridical documents issued by the Beijing Chaoyang District People's Court over the bankruptcy case of Luowa Group were recognized and executed by the local courts in the U.S. Furthermore, the intermediate people's court in Shanghai and the Hong Kong court had recognized each other's judicial documents over the bankruptcy case of CEFC Shanghai International Group.

In the latter case, the mainland administrators first applied to the Hong Kong court for recognizing and executing the bankruptcy order issued by the mainland Chinese court, which

was recognized later on. Secondly, CEFC had signed a keepwell deed agreement on behalf of its subsidiary in Hong Kong for the subsidiary's bonds. After CEFC Group went bankrupt, the Hong Kong court ruled that bond buyers had the right to be compensated in the bankruptcy proceedings, a ruling that was indirectly recognized by the Shanghai financial court. "This is the first of its



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"2020年颠覆了我们对破产重整的一些固有认识。首先在企业类型上从民企向国企转变；第二，涉及行业宽泛，甚至有覆盖全行业的感受；第三，上市公司破产数量增加。"

— 邢立新，海润天睿律师事务所

kind, which is significant for future cases. We can see the Chinese regulators and juridical authorities pay great attention to Chinese companies' creditability," Zhou says.

NEW APPROACHES TO NEW ISSUES

As the number and nature of bankruptcy filings are constantly changing,

what new methods have the bankruptcy lawyers applied to resolve new issues over the past year, and how will they apply them in the future cases?

Xu first points out that the debts of insolvent companies are increasingly complicated. "The pandemic quickly unveiled the risks that companies had long been exposed to, which complicated the relationship between creditors and debtors and made it more difficult to investigate the debt. There were even times when the debt amount could not be confirmed in a short time as criminal matters were involved. Furthermore, companies took out multiple loans, which complicated the issue with their externally mortgaged assets. This usually involves second mortgage, preservation and sealing, and freezing of assets. And some companies had capital raised from the public, which involved the interests of many retail investors," he explains.

To tackle these complicated issues, Xu advises local authorities to get more involved. For example, he and his team worked closely with the local government for the bankruptcy case of Dalian Donglin Food, to "eventually coordinate well with the government, who played a role in policy, taxation, industry and public opinion."

Xing saw the huge impact the pandemic had on investors in 2020. The pandemic broke out right after her team took a case. "When we recruited investors, many of them still showed up at our briefings in early 2020. But since March, many had withdrawn because of funding issue. Then in September and October, some showed interest again, especially after the city of Beijing rolled out policies about building infrastructure and free trade zones," she says. "But it is now difficult for industry investors to provide a huge amount of funding to restructure a large enterprise. What could be done by one single investor before has to be done by industry and financial investors together now. In the future, it will be more practical to coordinate efforts from two to three investors."

Xu also notices that in 2020, more companies are getting active in the bankruptcy and restructuring business, and even show a keen interest in becoming

an investor. "The most typical example was that in a restructuring case, the creditor took part in the restructuring after internal decision-making, and eventually became the controlling shareholder of the restructured company through transferring shares, collecting debt and investing in the company," he says.

Speaking of the methods that were used last year, Zhou mentions that in the case of restructuring, adopting different plans to pay off the debt is a way to protect creditors' interest. He says in the past, the ways to pay the creditors were limited and subject to legal requirements that all creditors be paid the same way or with the same ratio. When his team handled the case of Xingda Pharmaceutical, they offered different payment options to the creditors, such as converting the debt into shares or cash. "In the end, the resolution was passed by a high vote at the creditors' meeting and they were 100% paid," he says.

Zhou says convertible debt, trust plan share, retaining debt, paying with shares could be a way to pay off debt. "We've seen several recent cases adopting various payment plans, which can be reference for future cases," he says.

This will make work more difficult for lawyers. "This poses as bigger challenges for the team. They not only need to understand the bankruptcy law, but also get capital market, banking and finance lawyers involved... This implies that only a few top law firms in China will be capable of handling large-scale cases in the future," Zhou says.

FUTURE TRENDS

All three lawyers believe that the bankruptcy and restructuring business will continue to grow in 2021. Xing tells ALB that she has been working around the clock from November to January with no rest.

Xu analyses the trend of non-performing assets in 2021 from a geographical perspective. "In the Yangtze River Delta represented by Jiangsu, Zhejiang and Shanghai, the bankruptcy and restructuring business is large in general, but as the downward

pressure on the economy decreases, non-performing assets in the region will grow slowly. In the Bohai Economic Rim and mid-west region, non-performing assets have been growing over the past three years, further exposing the debt problems of the local companies. This trend may continue into the future. In the northeastern region, bankruptcy cases will keep increasing, and solving



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"江浙沪为代表的长三角地区不良资产规模增速将会趋缓；环渤海区域和中西部地区不良资产规模在过去三年持续增加，未来或延续这一趋势；东北地区破产重整类案件或将持续走高。"

— 徐羽，浩天信和律师事务所

the issue of non-performing assets will remain a key task," he says.


As bankruptcy and restructuring business becomes a new area of revenue growth in the legal industry, many firms are tapping into the area. Do lawyers feel the pressure? Xing says the pressure has been manageable for her team so far. On one hand, even as the law firms are competing for the cases, the cases grow

in number and the market is expanding. On the other hand, veteran lawyers with rich experiences maintain their competitive edge. "Bankruptcy cases are not something that lawyers can handle by only understanding the laws. They need to look into all the legal aspects to satisfy the creditors, investors and the courts, which requires a wealth of experience to balance the concerns of all parties. A trustee in bankruptcy is a profession that combines knowledge of the law, finance, corporate management, investment and coordination," she says.

As for staying competitive in this area, Xing suggests building up the team, as large restructuring cases need more people to work on them. Therefore, Hai Run has expanded its bankruptcy and restructuring team by a third in 2020.

Zhou also acknowledges the importance of having a sizable team. He also stresses the overall capacity of the firm. "DeHeng now aims at providing comprehensive legal services for bankruptcy cases, from legal services, introducing strategic investors, guidance in the early stage and withdrawal in the latter stage, to financing, debt payment, disposal of non-performing assets. In the future, legal services will be more integrated and specialized. Bankruptcy lawyers will need to be able to allocate resources, which are not limited to legal resources," he says.

Even when being capable enough, law firms still need to establish a solid system internally to provide manpower and capital support. "To handle large bankruptcy cases, the law firm will have to provide full support on mobilizing resources in the future. Law firms with a more competitive internal system will be able to mobilize a bigger team, thus seizing business opportunities," Zhou says.

Meanwhile, Xu says team members are now required to also become business managers of sorts too. "Bankruptcy lawyers need to balance both legal principles and interests," he says. "They need to consider the local economy where the company is in and the industry policies, so as to take everyone's interests into consideration to benefit everyone in the proceedings." 

早在2020年伊始，破产重整领域专家就曾预计当年中国债务违约率将持续上升，随后，2020年以一系列出人意料的事件加速印证了这一预言。根据全国企业破产重整案件信息网数据，2020年全年破产审查案件约为3.37万件，比2019年增加近二分之一；破产案件数量约为8.36万件，是2019年的两倍。

谈到过去一年中破产重整案件的特点，北京市第一破产管理人协会理事、副会长，海润天睿律师事务所管委会委员、破产与重组业务部主任、高级合伙人邢立新律师颇有感触。“2020年颠覆了我们对破产重整的一些固有认识。”她说，“首先在企业类型上从民企向国企转变，尤其在下半年，比较集中地出现了国企债务违约、打破刚性兑付的情况；第二，涉及行业宽泛，从银行和金融机构、能源、汽车及相关产业链、电子科技，到房地产、餐饮、服务行业，甚至有种覆盖全行业的感觉；第三，上市公司破产数量增加，从2019年的6家翻倍到了2020年的13家。”

浩天信和律师事务所合伙人徐羽律师赞同邢律师的观察，他补充道：“需要注意的是，近期发生债务违约的企业在违约前信用评级都维持在较高水平，而且都是所在领域的大型骨干企业。但华丽的数字外表、庞大的经营规模，并不能掩盖流动性紧张的尴尬现实。同时，部分企业存续债务规模过大，看似不大金额的债务，就有可能引起违约的超强地震。”

不过，虽然堪称“密集”的大型企业违约震动了市场，并在媒体上引发较为负面的评价，但在德恒律师事务所合伙人周杰律师看来，破产案件增多并非坏事，公众的负面评价恰恰说明“对破产重整去污名化的努力还任重道远”。“其实从现行《破产法》2007年生效以来，我们对破产制度的重视和利用并不够，导致中国破产案件不是过多，而是过少。企业如果出现经营困境，应该更早进入破产保护程序，早破产、早重整、早拯救，最大限度地提高企业清偿率，最大限度地维护债权人权益，这才是理想状态下《破产法》实施的效果。”

他进而指出：“可喜的是，在过去一两年里，从监管层到市场经济参与主体，包括银行债权人、其他普通债权人、债务人等，都越来越多地认识到了这一点，不再盲目地排斥作为司法程序的破产重整。但是，在具体的司法实践过程中，如何更加准确地适用和把握破

产法上的一些制度和工具，防范利用破产程序逃废债务的现象，确实还需要基于公平、审慎的立场进一步完善。”

监管引导

面对“加速”发生的破产案件，中国监管者近期颁布了怎样的政策及法律规章，以更好地引导未来破产案件的发生和处置？

徐羽律师告诉ALB：“以永煤、华晨、清华紫光为代表的国企债务违约让债务市场大为紧张。为此在2020年11月21日，刘鹤副总理主持召开金融委第四十三次会议，重点研究了规范债券市场发展、维护债券市场稳定工作。”这次会议不仅分析了当时违约个案增加的原因，同时提出更深层的“解决方案”：深化国企改革，提升运行效率。

除了来自金融界最高决策者的指导方针，周杰律师告诉ALB，实际上，破产领域“从法律法规到行政规章，最近半年的出台频率还是比较密集”。

他详细介绍道：“首先是《民法典》及大量司法解释的出台，后者包括《民法典》担保部分的司法解释、对《破产法》现有司法解释二和三的修正，以及对《最高人民法院关于破产企业国有划拨土地使用权应否列入破产财产等问题的批复》等专项司法解释的修改。”

“这里透露出的信息是：未来破产法制度和普通民事法律制度间会更好兼容和协调。以担保为例，过去法律中没有明确规定主债务人破产后，保证人没有破产的，保证债务是否要继续计息。实践中倾向于不停止，但新司法解释的规定和过去的做法不一样，明确规定对主债务停止计息的保护措施及于保证人，适当降低了保证人的负担，回归了保证从属性的法律定位。”周律师说。

另一个值得关注的行政法规是2020年9月最高人民法院和发改委提出的《关于完善企业破产配套制度保障管理人依法履职进一步优化营商环境的意见》。“虽然还处于征求意见稿阶段，但能看到监管层非常重视企业破产配套制度建设。”周律师说，“过去我们只有一个孤零零的《破产法》和三部司法解释，很难支撑起如此重大的破产制度，因此要完善企业的破产配套制度，包括税务、海关、企业征信、财产处置等。目前其他部门法和《破产法》的衔接不够，它们更多考虑的是企业在正常状态下的监管，而没有考虑到陷入困境非正常经营状态下的企业的监管制度需求，

《征求意见稿》正是意识到并回应了这个问题。”

上述法律法规外，邢立新律师也举出了其他监管引导的例子，例如2019年底中国银行间市场交易协会发布了债券受托管理人业务指引，并在2020年分批颁发了受托管理人名单；2020年12月底，央行、发改委和证监会联合发布《公司信用类债券信息披露管理办法》。在司法层面，最高人民法院在《全国法院审理债券纠纷案件座谈会纪要》中对公司债券、企业债券、非金融企业债券融资等几类纠纷做出了详细规范；2021年1月20日，新的金融法院也宣布将在北京设立，从司法角度支持金融风险防范。“这些都是国家从监管角度给出的强烈信号。”邢律师说。

与此同时，考虑到近期“超稳定”企业频繁违约的情况，邢律师指出，对信用评级体制的改革也迫在眉睫。“过去普遍认为大体量国企一定是3A级，现在要重新思考到底该如何评定企业的信用评级，给投资人更科学的参考。伴随信用评级的科学化和现代化，中国整体的信用体系也应相应完善。”她说。

金融机构作为

监管引导中释放出的另一个重要信号，则是加强金融机构对破产程序的参与和支持，周杰律师告诉ALB，这一点也被明确纳入了上文提到的最高法和发改委发布的《征求意见稿》中。

“这样做的背景在于大型案件中，金融机构作为大额债权人，还有更大的积极作为的空间。金融机构债权人往往在债权人会议中债权金额占比重大，本应主动参与或推动程序，但国有或大型银行往往受限于内部决策链条过长的的问题，要求他们在法定期限内针对在某个具体的破产案件中如何行使债权人权利做出决策，确实还存在困难，这就导致其参与破产程序的意愿不高或者立场相对消极。”周律师介绍说。

他告诉ALB，在《征求意见稿》提出强化金融机构角色后，2020年12月28日，银保监会、发改委、央行和证监会印发了《关于金融机构债权人委员会工作规程的通知》，进一步明确了对金融机构的要求。“第一是建立和完善与破产程序相衔接的内部业务流程；第二是便利管理人账户开立和展期；三是支持管理人依法接管、调查债务人帐户；四是加强对破产重整企业的融资支持；五是协助修复重整企业的金融信用……这都为金融机构未来的角色变化

指明了方向。”

周律师说，目前他已经观察到“一些具备可操作性的问题已有所改观……尤其是部分商业银行，已经在积极开拓相关业务，包括建立和完善与破产程序相连接的业务流程，在内部开发相关数据库或OA系统。不少银行还在与我们管理人积极对接，征求意见”。

跨境尝试

2020年，不只是中国大陆，整个亚太地区都呈现出破产重整案件频发的状况。以中国香港特别行政区为例，根据香港破产管理署数据，2020年全港提交申请破产的宗数达8693宗，按年增6.6%，为四年新高。伴随中国企业国际化程度提升，破产重整也出现了跨司法管辖区协作的需求。这一层面在2020年发展如何？

“中国的《破产法》国际化程度相对较低。”周杰律师坦言，“但并不意味着没有进展。《破产法》的跨境合作及司法协助也已经上路。”

以过去一年为限，周律师举出了两个例子。一个是北京市朝阳区法院针对洛娃集团破产案件做出的司法文书在美国得到了当地法院的承认和执行；另一个是在上海第一中级人民法院受理的华信集团破产案中，香港和内地法院相互认可了有关司法文书。

具体来说，在华信集团破产案中，首先是管理人在香港法院提起承认与执行中国内地法院所作出的破产指令，并得到认可；其次，华信集团曾为其在港子公司发行的债券签署“维好协议”，华信破产后，香港法院判决债券买受人有权让华信集团在破产程序中予以清偿，这个判决得到了上海金融法院的间接承认，“这开创了先例，对未来自有很大指导意义，可以看到中国的监管层和司法机关对于中国企业的信誉是高度重视的”，周律师说。

新问题，新方法

伴随破产重整案件数量和情况不断变化，过去一年中，面对新问题，破产律师又积累了怎样的新方法，得以应用到未来的案件处理之中？

徐羽律师首先指出了破产企业债务状况加速复杂化的问题。“受突发疫情影响，企业之前积累的风险加速暴露，导致债权债务关系复杂，潜在债务难以调查，甚至部分债权存在涉及刑事案件的可能，短期之内无法具体确定债务金额。而且企业借款较多，对外抵押资产情况也比较复杂，大多存在重复

抵押、保全查封、冻结资产等情况；另外，因为部分企业涉及民间资本，其中又牵扯到大量个人投资者的利益。”他解释说。

针对这种复杂情况，徐律师给出的建议是“更多引入当地政府的力量”。他举出了大连东霖破产案的例子，在这个案件中，他和团队通过反复和当地政府沟通，“最终和政府形成了良好的联动机制，充分发挥了政府在政策、税收、产业、舆情等各个方面的作用”。

2020年，邢立新律师遭遇的新情况则是疫情对于投资人的巨大影响。她和团队承接的某个案件在接手后就遇到了疫情爆发。“招募投资人时，2020年初还有非常多人来听我们介绍情况，但从三月份开始，很多投资人因为资金问题退出了。到了九月份，又有一波投资人兴趣重燃，尤其是去年下半年北京在服务业综合示范区、自贸试验区（两区）建设，以及数字化基础设施建设政策上的利好，对推动、聚拢社会资金起到了推动作用。”但她表示，“现在由产业投资人拿出巨额资金重整大型企业太难了。过去一个投资人能完成的事情，现在更多借助于产业投资人和财务投资人的联合，未来通过各种方式融和两三家投资人是更可行的方法”。

徐羽律师也观察到，2020年“越来越多企业开始活跃在破产重整业务中，尤其对担任财务投资人表现出更高热情……最典型的例子是，在我们做的某重整案件中，债权人经过内部决策，又以重整人身份参与到程序中，并最终通过转股、收债、注资等成为重整后企业的控股股东”。

提到过去一年积累的范式，周杰律师则提到了“在重组方案中，使用不同的偿债方案同等保护债权人利益”。他指出，过去重整案件中对债权人的清偿方式比较单一，且受限于法律对同等债权人采用同样清偿方式或清偿比例的要求。但在他和团队办理的兴大医药破产重整案件中，他们为债权人提供了不同股同权的债转股、现金等不同清偿选择，“最终在没有投资人的情况下，实现了债权人会议高票表决通过，而且实现了百分百清偿”。

周律师指出，“未来可转债、信托计划份额、留债、以股抵债、债转股等都可以成为偿债方式，近期很多案例——包括东北特钢、辉山乳业、丹东港、庞大集团等，都采取了非单一偿债方案，这应该会是未来的方向”。

当然，这一定会给律师工作带来更大难度。周律师说：“这对团队的综

合考验更大了，团队不光要懂得破产法，可能还需要资本市场律师、银行或金融律师等参与……这也意味着未来大型重整案件，只有综合实力最强大的律所才有能力承办。”

未来趋势

三位律师都表示，预计2021年破产重整业务会继续增长。邢立新律师告诉ALB，她已经从去年11月起连抽转到了今年1月底，“很少有休息时间”。

徐羽律师从地域角度分析了2021年不良资产的分布趋势：“江浙沪为代表的长三角地区破产重整类业务总体规模大，但随着经济下行压力减少，该区域不良资产规模增速将会趋缓，同时没有价值的企业将会加速出清；环渤海区域和中西部地区不良资产规模在过去三年持续增加，显示该地区企业债务问题正在加速暴露，未来或延续这一趋势；东北地区破产重整类案件或将持续走高，各类不良资产的化解依然是重中之重。”

伴随破产重整成为法律界新“金矿”，诸多机构纷纷进场，律师们是否感受到压力？邢律师表示“情况还好”。一方面，“虽然案源上存在竞争，但案件数量在增加，市场在扩大”；另一方面，她认为具备丰厚经验的“老破产人”依旧能够保持优势，“破产不是掌握条款就可以做的，想把所有法律点理顺，使债权人、投资人和法院都满意，需要基于经验的整体衡量。破产管理人是一个专门的行业，融合了法律、财务、企业管理、投资、协调等多方面知识经验”。

谈到在这一领域保持优势的方法，邢律师首先提到了“做好团队准备，大型重整案件需要比较多的人”，因此，“2020年海润天睿破产重整团队增加了差不多1/3的人员”。

周杰律师也认可队伍足够庞大的重要性，此外，他还强调了律所内“专业分工的健全完备……德恒目前追求的是打通破产案件上下游延伸的法律服务环节，包括法律服务、引进战略投资人和重整投资人、前期辅导和后期退出、融资、偿债、不良资产处置等各领域。未来法律服务的横向综合化、纵向专业化都在拓宽和加深，破产律师要能够综合调动资源，而且不光是法律资源”。

分工足够多元专业，律所内部也要“有良好的制度建设，提供人力、财力等支撑。未来办理大型破产案件肯定要举全所之力。哪个事务所内部的制度更有竞争力，更能调动大团队，它的业务才能占得先机”，周律师说。