

Discovery of Debtor's Assets in the Enforcement of Monetary Judgments in China

Zhixun CAO*

Abstract: The success of a civil process is largely determined by the factual result of the enforcement of the final judgment. The importance of enforcement proceedings is highlighted by leading comparative civil procedure research together with the practice and research in China. Compared with the situation in other jurisdictions, Chinese enforcement mechanism is special and the court should play a key role in assets discovery. In order to facilitate this discovery, there are many possible enforcement measures which could be divided into three groups: direct measures, indirect measures with active pressure to the debtor and indirect measures aiming at passively deterring the debtor. According to the philosophy of enforcement law in China, the enforcement court should play an all-inclusive role to find out the property of the debtor. Compared to this primary role of courts for discovery of any enforceable property, there is merely limited participation of the enforcement creditor. Among others, as the most crucial tool for the discovery of debtor's assets, the property reporting system in China could locate its position according to the well-accepted outline addressed by Prof. Rolf Stürner in 2016. Meanwhile, from a systematic perspective, this all-inclusive role of the enforcement court is to be mitigated. The enforcement court is not always the right one to be blamed for the failure of enforcement. In order to reduce the court's enforcement responsibility, other related institutions should also be established or developed.

Key words: Property Discovery; Difficulty in Enforcement; Effective Enforcement; Enforcement Measures; All-inclusive Role of the Enforcement Court; Chinese Judicial Reform

I. Introduction

William Shakespeare's comedy "As You Like It" and the German old saying "Endes gut, alles gut" reveal some simple fact: the outcome of a story is the most significant part of

* Professor (Research) of Peking University, P.R.C.

A previous version of this contribution has been read on May 1, 2021 at the Seminar on Civil Enforcement Law in Asia and Latin America (online) which was organized by Comparative Judicial System Research Group, Faculty of Law, Ritsumeikan University. To achieve a balance between the original content and the newest development in this field, the current contribution merely makes some necessary modification to keep the information provided correct.

The author would like to thank Prof. Masahisa Deguchi for his inspiration together with guidance in his study on enforcement law of CPLJ project and Prof. Wendy Kennett for kindly providing her newest contributions. Many thanks to Prof. Yulin FU and Ruowei HUANG for their long-lasting support and Prof. Ruoying CHEN, Yu WANG, Qing WEI, Xiaoqi SHI, Longde SUN, Shihao LIU and Michael ZHAO for their outstanding help, assistance and comments.

it. The vital test for the success of a civil process should be the factual result of the enforcement of the final judgment. In pursuit of this triumph, with which acting party lies the responsibility for initiating and promoting enforcement proceedings, who shall be accountable for the discovery of the assets of the debtor, which measures the competent enforcement organ could take, which legal relief the party nursing grievance has, and even whether civil enforcement proceedings ought to be revisited from a public management perspective,¹⁾ all deserve an in-depth analysis.

Among these issues, it is especially worthy to ask who is to discover assets in civil enforcement proceedings. The approaches to digging out enforceable assets differ among various legal jurisdictions.²⁾ In the time of intangible economy,³⁾ the difficulty in discovering the debtor's assets is easily found all over the world.⁴⁾ Yet, sufficient transparency of the financial situation of the debtor ought to be accomplished.⁵⁾ Under the former UNIDROIT "Principles of Effective Enforcement" project,⁶⁾ which is renamed as "Best Practices for Effective Enforcement"⁷⁾, the disclosure of the debtor's assets is among the key issues to be studied comparatively.⁸⁾ China takes a somewhat unique attitude on the distribution of roles between the court and the parties.⁹⁾ The related executive responsibilities are so allocated

1) Wendy Kennett, *Civil Enforcement in a Comparative Perspective. A Public Management Challenge* (Intersentia 2021).

2) The German reform Peter Gottwald, 'Enforcement Against Movable Property in Germany', in Masahisa Deguchi (ed), *Effective Enforcement of Creditors' Rights* (Springer 2022), 1–16; The Japanese reform Masahisa Deguchi, 'Fact Clarification and Effective Legal Protection in Civil Enforcement Law in Japan', in Masahisa Deguchi (ed), *Effective Enforcement of Creditors' Rights* (Springer 2022) 73–78.

3) Jonathan Haskel and Stian Westlake, *Capitalism Without Capital: The Rise of Intangible Economy* (Princeton UP 2018).

4) Xiuju Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' [Lun xian dai she hui de min shi zhi xing wei ji] (2010) 22 Peking Univ LJ 576, 580 (in Chinese).

5) Burkhard Hess, 'The Effective Disclosure of the Debtor's Assets in Enforcement Proceedings', in Masahisa Deguchi (ed), *Effective Enforcement of Creditors' Rights* (Springer 2022) 28–29.

6) Rolf Stürner, 'Preliminary Feasibility Study on Possible Additional Work on the Development of Principles of Transnational Civil Procedure Relating to Effective Enforcement' (UNIDROIT, Governing Council 95th Session, Rome, 18–20 May 2016) <<https://www.unidroit.org/english/governments/council/documents/2016session/cd-95-13add-02-e.pdf>> accessed 17 March 2022.

7) On the background and the on-going development, UNIDROIT, 'ENFORCEMENT: BEST PRACTICES' (UNIDROIT 2021) <<https://www.unidroit.org/work-in-progress/enforcement-best-practices>> accessed 17 March 2022.

8) This new project should supplement the model principles for transnational litigation, which left out the part of enforcement proceedings. American Law Institute, *Principles of Transnational Civil Procedure* (CUP 2006) Following this template, the European further establishment of model rules of civil procedure concentrates also mainly on the adjudicative proceedings. European Law Institute and UNIDROIT, *ELI/UNIDROIT Model European Rules of Civil Procedure* (OUP 2021). However, the temporary failure to lay out the rules on enforcement does not imply that these rules have been deemphasized.

9) This is also one major issue for the adjudicative proceedings. Rolf Stürner, 'The Principles of Transnational Civil Procedure: An Introduction to Their Basic Conceptions' (2005) 69 *RechtsZ* 201, 226–232; Rolf Stürner and Christoph Kern, 'Comparative Civil Procedure: Fundamentals and Recent Trends' in Osman B. Gürzumar et al. (eds), *Gedächtnisschrift für Halûk Konuralp*, vol I (Yetkin ↗

that they place great emphasis on the investigation and inspection of courts *sua sponte*. It means that, as one of the characteristics of Chinese enforcement law system, the enforcement organ and judges have to actively ascertain what belongs to the debtors.

Although other jurisdictions tend to take enforcement issues seriously as China does,¹⁰⁾ China gives often more weight to the importance of them. One key fact is that in 2019 and 2020 there are more than 10,000,000 enforcement cases. Among all initiated cases, 9,547,000 cases in 2019 and 9,958,000 cases in 2020, have been closed in the same year. The amount of satisfied enforcement debt is 1,700,000,000,000 CNY (equivalent 261,000,000,000 USD) in 2019 and 1,900,000,000,000 CNY (equivalent 291,000,000,000 USD) in 2020. And between 2017–2019, 96.5% of all enforcement proceedings are terminated each year,¹¹⁾ while this rate between 2016–2018 is 82.9%.¹²⁾ Considering the scale of the matter under discussion and the relatively rapid change, the enforcement problem is really of great significance in China.

II. Framework of the enforcement mechanism in China

Since the Chinese legal institutions, not only in the enforcement area, are relatively less frequently introduced in comparative context, it is necessary to describe several major aspects of Chinese enforcement law.

To begin with, the issue of applicable law under Chinese law is to be discussed. Besides the statute of Civil Procedure Law (hereinafter CPL)¹³⁾, there are numerous judicial interpretations and similar judicial documents, which are released by the Supreme People's Court (hereinafter SPC), specifically for different areas of law. All of them are effective norms in practice.¹⁴⁾ In other words, there are not only 35 articles (§§ 231–265) in the CPL statute, but far more legal norms spread in various judicial interpretations. Three of those judicial interpretations are for the purpose of this article to be specifically named: *Provisions of the SPC on Several Issues concerning the Enforcement of People's Courts (for*

↘ Yayınları, 2009), 997, 1012 ff.

10) Inbar Levy, 'Taking Enforcement Seriously' (2017) 36 CJQ 127.

11) This rate is grossly calculated by comparing the number of all initiated enforcement cases and the number of terminated ones, which does not mean the same case will be initiated and terminated in the same year.

12) Qiang Zhou, 'Annual Working Report of the SPC' [Zui gao ren min fa yuan gong zuo bao gao] <<https://www.court.gov.cn/zixun-xiangqing-232991.html>> (www.court.gov.cn, 1 June 2020) accessed 17 March 2022 (in Chinese); Qiang Zhou, 'Annual Working Report of the SPC' [Zui gao ren min fa yuan gong zuo bao gao] (www.court.gov.cn, 15 March 2021) <<https://www.court.gov.cn/zixun-xiangqing-290831.html>> accessed 17 March 2022 (in Chinese).

13) There are now six versions of CPL statute which are released subsequently in 1982, 1991, 2007, 2012, 2017 and 2021. Without further specification, the CPL is cited in its current version of 2021.

14) In detail Zhixun Cao, 'Civil Enforcement Rules and Mechanism in China: the Past, Present and the Future' (2021) 9(1) Peking Univ LJ 23, 25–27.

Trial Implementation) of 1998¹⁵⁾, *Interpretation of the SPC on Several Issues concerning the Application of Enforcement Procedures of the CPL of the P.R.C.* of 2008 (hereinafter *Enforcement Interpretation 2008*)¹⁶⁾, *Interpretation of the SPC on the Application of the CPL of the P.R.C.* of 2015 (hereinafter *ICPL*)¹⁷⁾. The rest of which may be relevant for our observation will be introduced later. At the end of 2020, there was a wave of revising these judicial interpretations due to the historic birth of the Chinese Civil Code.¹⁸⁾ If the relevant norms have been substantially modified, the reference in this contribution will be altered accordingly.

Since long ago, it has been argued that the enforcement of a final judgment in China was of great difficulty.¹⁹⁾ Recently, later researches show that the existing problems have been partially solved.²⁰⁾ Moreover, for the remaining difficulty, the resolution was also politically planned by the *Decision of the Central Committee of the Communist Party of China (CCCCP) on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law* which was adopted in the fourth plenary session of the 18th CCCCPC in 2014. This political agenda led to a more concrete task force directly administrated by the President of SPC, Chief Justice Qiang ZHOU, who promised in the fourth session of the 12th National People's Congress in March 2016 to basically solve these problems in two or three years. In 2019, Chief Justice ZHOU declared the success of this campaign against difficulty in enforcement. What we are going to see is to a great extent the results during and after this campaign. Now, the main related issue is on building up "a long-term effective system that solves the difficult problems of enforcement".²¹⁾

As one of its major characteristics, in China there is only one organization which has

15) Judicial Interpretation No. 15 [1998] of the SPC.

16) Judicial Interpretation No. 13 [2008] of the SPC.

17) Judicial Interpretation No. 5 [2015] of the SPC.

18) In the area of civil procedure law and the related enforcement law, there are two separate compiled judicial interpretations updating the current ones, namely *Decision of the SPC to Amend Eighteen Judicial Interpretations in Area of Enforcement Including the Provisions of the SPC on Several Issues Concerning People's Courts' Impoundment of Goods Transported by Railway*, Judicial Interpretation No. 21 [2020] of the SPC; *Decision of the SPC to Amend Nineteen Judicial Interpretations in Area of Civil Procedure Including the Provisions of the SPC about Several Issues Concerning the Civil Mediation Work of the People's Court*, Judicial Interpretation No. 20 [2020] of the SPC. Yet, in the scope of this contribution, the related articles of the aforementioned three judicial interpretations regarding enforcement proceedings were not modified in 2020.

19) In detail Zhixun Cao, 'Civil Enforcement Rules and Mechanism in China: the Past, Present and the Future' (2021) 9(1) Peking Univ LJ 23, 27–30. On the situation 25 years ago, Donald C Clarke, 'Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments' (1996) 10 Colum J Asian L 1, 14–15.

20) Randall Peerenboom and Xin He, 'Dispute Resolution in China: Patterns, Causes and Prognosis' (2009) 4 E Asia L Rev 1, 14–15; Xin He, 'Enforcing Commercial Judgments in the Pearl River Delta of China' (2009) 57 AJCL 419.

21) Supreme People's Court of PRC (ed), *Guidelines of the Supreme People's Court on Deepen the Judicial System Reform with Comprehensive Integrated Reforms of People's Courts—Framework of the Fifth Five-Year Judicial Reform for People's Courts (2019–2023)* (People's Court Press 2019) 35.

the functional jurisdiction over the enforcement issues regarding civil and commercial matters. It could be the People's court at all levels.²²⁾ The court and its enforcement officers monopolize the power of enforcement and then with no doubt are accountable for any enforcement activities. Therefore, this centralized model of competent enforcement organ is against the model with different organs. For instance, there are two enforcement organs in Japan and even four organs in Germany. The Chinese court acting as an enforcement organ means that public authority is the only possible entity responsible for civil execution. Moreover, like the counterparts in continental legal system, the Chinese enforcement law does in general adopt the principle of individual enforcement (*Einzelvollstreckung*).

To initiate enforcement proceedings, the enforcement applicant shall possess a valid basis for enforcement (enforcement title). To simplify the discussion, this article takes merely the situation of final civil judgment made by the court into consideration.²³⁾ After a creditor files the application, the responsible court will begin to review and determine whether this application meets all the requirements to start enforcement proceedings formally. There could be different objects to be controlled by enforcement officers. For instance, deposits in the bank account, bonds, stocks, fund shares (§ 249 I 1 of the CPL), potential income (§ 250 of the CPL), and with no doubt, cash, other financial products, negotiable securities, the real and movable property of the debtor are able to be counted as potential targets to be enforced.²⁴⁾

III. Available measures facilitating the property discovery

1. Direct measures to locate the assets of the debtor

To promote the effectiveness of the execution of any civil judgment, the most direct solution points at the physical discovery of assets. In 2017, the SPC made a judicial interpretation specifically on this issue, namely *Provisions of the SPC on Issues concerning Property Investigation during Enforcement in Civil Procedures* (hereinafter *Provisions*

22) Zhixun Cao, 'On the Civil Enforcement Organ in China' 2021 (4) China Legal Science 106. Comparative study Wendy Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in Vesna Rijavec and others (eds), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 301–357; Burkhard Hess, 'Different Enforcement Structures' in C H van Rhee and A Uzelac (eds), *Enforcement and Enforceability – Tradition and Reform* (Intersentia 2010) 45–48; Fritz Baur, Rolf Stürner & Alexander Bruns, *Zwangsvollstreckungsrecht* (13th edn, C.F. Müller, 2006) Rn. 6.47–6.52 (see but the partial reform suggestion: Wolf-Dietrich Walker, 'Zur Übertragbarkeit der Forderungspfändung auf den Gerichtsvollzieher', (2019) DGVZ, 89).

23) For other legal instruments to be enforced, Roger P Alford, Julian G Ku and Bei Xiao, 'Perceptions and Reality: The Enforcement of Foreign Arbitral Awards in China' (2016) 33 UCLA Pac Basin LJ 1; Randall Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 AJCL 249. See also Yuanshi Bu, 'Die Vollstreckung von Schiedssprüchen in China', (2017) 22 ZZPInt 315.

24) In detail Zhixun Cao, 'Civil Enforcement Rules and Mechanism in China: the Past, Present and the Future' (2021) 9(1) Peking Univ LJ 23, 30–33.

Investigation 2017)²⁵⁾. It incorporates some institutions and procedures which have been proven efficient in practice.

§ 249 I 1 of the CPL states explicitly that the enforcement court shall have the right to inquire the relevant entities about the deposits, bonds, stocks, fund shares and other property of the debtor. Following this rule and § 485 of the ICPL, *Provisions Investigation 2017* enables the court to discover the personal identity and property of the judgment debtor through the online enforcement inquiry and control system (网络查控系统)²⁶⁾ and by means such as on-site investigation. Both the debtor and the relevant entities and individuals could be subject to this inquiry, if the debtor fails to perform its obligations before the deadline determined by the enforcement notice (§ 12 I of the *Provisions Investigation 2017*). The court may copy, print, transcribe, photograph, or extract or preserve by other means the materials required for the prospective investigation (§ 12 II of the *Provisions Investigation 2017*). Even the creditor is able to file a request for inquiring about the property information investigated by the court. If while using its discretionary power, the court decides to approve the creditor of doing so, the creditor and the representative thereof shall secure the confidentiality of the information obtained (§ 12 III of the *Provisions Investigation 2017*). Compared to the German counterpart, the investigational power of the court is comprehensive. It is neither limited to the case where the debtor fails to report its property nor restricted in some categories of information (§ 802I I of the German ZPO).²⁷⁾ The Chinese law looks like rather the Japanese approach in accordance with § 18 of the Japanese Civil Execution Law which refers to a more generalized power of investigation.

The online enforcement inquiry and control system is accentuated in recent years. The background for this system is that, although there are already lots of platforms which could provide property information of the debtor, the judiciary does not have free access to these platforms. Most of them belong to some government departments, for instance, the ministries of civil affairs, of public securities, of human resources and social security, of natural resources, of housing and urban-rural development, of transport, of agriculture and rural affairs, of market or financial regulation and their local branches. In addition, financial institutions and private internet-based enterprises gain possession of such information as well. Thanks to the rapidly evolving information technology, the on-going efforts have been intensifying connections between those government agencies as well as enterprises and courts at all levels. Since the end of 2014, the SPC has endeavored to establish mutual systems between itself and some of these entities at national level. Then, the SPC authorized

25) Judicial Interpretation No. 8 [2017] of the SPC. In the scope of this contribution, the related articles of this judicial interpretation were not modified by the new Judicial Interpretation No. 21 [2020] of the SPC.

26) Online operation of civil proceedings is one of the hottest topics in China. Other perspectives regarding e-justice, Zhixun Cao, 'Evolution of Online Courts in China: Situation and Challenges' (2021) 11(2) *International Journal of Procedural Law* 300; Zhixun Cao, 'Online Dispute Resolution Mechanism in China: Principle of Proceedings and Impact of Technologies' (2022) 8 (1) *China and WTO Review* 29.

27) Thomas/Putzo/Seiler, 40. Aufl., 2019, § 802I Rn. 1 ff., 6 ff.

its lower courts to make use of these systems. Nevertheless, it is not rare that within such a comprehensive system, the investigation process in the individual case is still delayed or even impossible. To facilitate their own work, courts at different levels also organized their own connection network separately. Their partners were the regional or local entities taking control of the useful information.

Until recently, those different platforms and systems were not yet unified or streamlined.²⁸⁾ It would be more convenient and efficient to establish direct connections between any court and any local branches of these information-holding entities. As an illustration, a local court in province A could then instantly begin its work in coordination with the local bureau of housing administration in province B to locate the debtor's apartment in province B. More desirable is that the enforcement officer could seize the apartment without flying to its location physically and visiting the local bureau of housing administration personally. It would save time and money during enforcement. Even, this new online system would let the debtor give up its unrealistic daydream that the court in province A would be reluctant to come to province B and to take actions seriously. There are already some pioneer examples in relation to the online seizure of real estate. For instance, the implementation systems have already been accomplished within some provincial unity such as Shanghai²⁹⁾ and Chongqing³⁰⁾, or in Chaoyang district of Beijing³¹⁾ or other counties³²⁾. And after the bidding process of the online judicial sale of seized objects, it is recently reported that some local court has even in two hours successfully online transferred the ownership of an auctioned apartment to the buyer of the sale with the cooperation of other public authorities.³³⁾ It means that using new ICT, the whole process of

28) Introduction to achievements both at national and regional levels, Xiaomei Wang, 'Efficiency, Problems and Prospect: in the Background of Basically Solving the Problems of Difficulty in Enforcement of People's Courts' [Fa yuan zhi xing xin xi hua jian she de cheng xiao wen ti yu zhan wang] (2018) 1 China Review of Administration of Justice 8, 10–14 (in Chinese).

29) Jianyi Yan, 'Comprehensively Achieving the Entire Procedure of Inquiring and Control of Real Property Online' [Quan mian shi xian bu dong chan cha kong quan liu cheng zai xian ban li] *People's Court Daily* (Beijing, 10 September 2019) 1 (in Chinese).

30) Yang Liu, 'Real Property Inquiry and Control Online System in Chongqing Courts' [Chong qing fa yuan shang xian bu dong chan yuan cheng cha kong xi tong] *People's Court Daily* (Beijing, 19 February 2021) 1 (in Chinese).

31) Jiaqi Zhao, 'For the First Time Only 8 Minutes during Real Property Online Seizure in Chaoyang District' [Chao yang shou chuang xian shang cha feng fang chan ban li shi jian suo zhi 8 fen zhong] *Beijing Youth Daily* (Beijing, 30 August 2019) A7 (in Chinese).

32) China National Radio (CNR), 'First Real Property Inquiry and Control Online System in Jiangxi Province and New "Magic Tool" to Seize and Unseal Apartments' [Jiang xi sheng shou ge bu dong chan zai xian cha kong xi tong qi yong cha feng jie feng fang chan tian "fa bao"] (CNR, 13 May 2020) <http://jx.cnr.cn/2011jxfw/zfzx/20200513/t20200513_525088634.shtml> accessed 17 March 2022 (in Chinese).

33) Wenzhou Intermediate People's Court, 'In Wenzhou, Zhejiang Province: The Real Property Bought with Judicial Sale Could Be Registered' [Zhe jiang wen zhou: si fa wang pai bu dong chan zai fa yuan jiu neng wan cheng chan quan deng ji] (*JSZX.Court.Gov.Cn*, 1 March 2021) <<http://jszx.court.gov.cn/main/LocalCourt/284217.jhtml>> accessed 17 March 2022 (in Chinese).

discovery, control and sale of enforceable assets could be accomplished online successively. The enforcement officers are looking forward to a national-wide online system which could be used to search property information and even take enforcement measures directly.

Furthermore, § 255 of the CPL adds that the court could issue a search order signed by the president of the court, when the enforcement debtor conceals its property. Under this order, the court could search the body of the debtor, its residence or a place where property may locate. Since some search measure may affect the constitutional rights of the debtors, the SPC takes its procedure very seriously. The necessity of issuing a search order shows already the different approaches in § 758a of the German ZPO and § 123 II of the Japanese Civil Enforcement Law, which may at least reveal the emphasis of Chinese law on the procedural justice for the debtor. Following §§ 497–500 of the ICPL, the search personnel shall further wear uniforms as required, and show a search warrant and their professional certificates. No irrelevant person may enter the search site. In case of a natural person to be inspected, the debtor or its adult family members as well as the person assigned by a local public organization shall be present. A woman shall be searched by female enforcement officers. If a legal person or any other organization is to be enforced, its legal representative or principal person in charge shall be notified to show up. That the aforementioned persons do not appear on site, has nothing to do with the effect of the search. The assets of the debtor which are discovered during the search shall be seized instantly and then sold. Procedurally, transcripts of search shall be made, to which the signatures, fingerprints or seals of the search personnel, the person being searched and other persons on the scene shall be affixed. If any of these persons refuses to do so, it shall be indicated in the transcripts of search. It is to be noted that § 14 of the *Provisions Investigation 2017* extends the scope of targeted concealment to account books and other materials. If the debtor declines to unlock a place, chest, cabinet and so forth during the search, in which any property or material may be concealed, the court is authorized to use mandatory measures to unlock it.

2. Indirect measures to force the debtor to submit assets (active measures)

In order to push any discredited debtor to subject to enforcement of a civil judgment, the Chinese law has ascribed even more importance to indirect measures. When the enforcement debtor fails to fulfill its duty as required by a notice of enforcement, different indirect measures could be employed.

First of all, it comes to the duty to report the assets. § 248 of the CPL requests the debtor to report its current property status as well as its property status for one year before receiving the enforcement notice. According to § 247 of the CPL and § 482 of the ICPL, this notice of enforcement, which urges the debtor to obey the enforcement title and reminds it the additional payment in case of delayed fulfillment of the enforcement obligations, shows the next step of the enforcement court after the registration of the enforcement case. § 3 of the *Provisions Investigation 2017* regulates that the enforcement court ordering this

report, on the motion of the creditor or *sua sponte*, shall issue an order of property reporting to the judgment debtor. During the enforcement of monetary obligations, this order shall be issued together with the enforcement notice. This reporting duty seems like the order to obtain information from judgment debtors regulated in Part 71 of the CPR of UK³⁴⁾ or the German counterpart in order to clarify the matters (Sachaufklärung)³⁵⁾.

Concretely speaking, in accordance with § 4 of the *Provisions Investigation 2017*, an order of property reporting shall at least contain the deadline for submitting, the property reporting scope and period, the conditions and period for any supplemental reporting of property, and the legal liability for breaching this property reporting obligation. Not only the assets which the debtor have at presence, but also the ones which it owned from one year before the date of receipt of the notice of enforcement to the day when the written property report is submitted, shall be incorporated in the property report (§§ 5 f. of the *Provisions Investigation 2017*). The same applies to the changes of assets even after the submission of this report, provided that these changes could affect the fulfillment of obligations of the debtor (§ 7 of the *Provisions Investigation 2017*). Unlike in Germany, where there should be a central enforcement court in each federal state responsible for the administration of the debtor's disclosure (§ 802k of the German ZPO), the enforcement court in China will demand and administrate the property report on the basis of each individual case. Although only courts are responsible for civil execution, there is no public platform or working intranet inside the entire court system to exchange the disclosed property information. In this sense, each court has to fight its own battle. Only the nationwide online enforcement inquiry and control system, which concentrates on the enforceable assets, is accessible for all courts. The unified Website of Enforcement Information Publication (中国执行信息公开网),³⁶⁾ which is online disclosing all related enforcement information in China and publicly accessible, does not incorporate this function either. More unfortunately, some empirical research suggests that, even along with the pressure and possible sanctions under the direct and indirect measures, only 5% of all enforcement debtors followed the requirement of the order of property reporting sincerely.³⁷⁾

Besides waiting for the property report, the enforcement court may employ other measures more actively. In accordance with § 15 of the *Provisions Investigation 2017*, for the purpose of ascertaining the debtor's property and capability of performing obligations, the enforcement court may summon the debtor or its legal representative, person in charge, actual controller, or directly liable persons of the debtor, to appear before the court and

34) Neil Andrews, *Andrews on Civil Processes: Arbitration & Mediation* (Intersentia 2019) 498–499.

35) Alexander Alsfaser, *Sachaufklärung in der Einzelzwangsvollstreckung* (Mohr Siebeck 2018).

36) Available at: <http://zxgk.court.gov.cn/> accessed 17 March 2022.

37) Rijiu Lu and Chengxiao Li, 'The Operational Problems of Property Reporting System and the Approaches to Handle with Them' [Cai chan bao gao zhi du de yun xing wen ti ji ying dui lu jing] *People's Court Daily* (Beijing, 3 February 2021) 7 (in Chinese).

answer questions. When the persons mentioned before fail to do so without any good reason, the court may summon them by force (拘传) to the court. If the whereabouts of them is unknown, the enforcement court may notify the relevant entities for assistance in locating the person. This summon by force looks like detention by the police or judicial detention decided by the president of the enforcement court, whereas the purpose of doing so is limited to questioning the persons and inquiring the assets. Subject to § 484 II of the ICPL, the time reserved for the summon by force should be less than 8 hours and in case of summon with detention, no more than 24 hours. To be compared is the judicial detention, according to § 118 of the CPL, whose period shall not be longer than 15 days and which is to be enforced by a public security authority for custody. If the detainee admits and corrects its wrongdoing during the period of detention, the enforcement court may decide to discharge the detainee early.

In addition, partially in order to verify the property report, the enforcement officer is entitled to entrust an audit to assist it. Generally speaking, the necessity of taking such a measure lays on preventing abuse of process and gross violations of the general principle of effectiveness in court proceedings.³⁸⁾ In this sense, § 17 of the *Provisions Investigation 2017* states that the creditor may file a written application for entrusting an audit institution to audit the judgment debtor. According to §§ 18 f. of the *Provisions Investigation 2017*, a randomly selected audit institution will begin to examine the necessary materials, which are either submitted by the debtor voluntarily or collected by the court mandatorily. Nevertheless, this possibility of auditing is without prejudice to any other sanctions or procedural measures available to the court, including measures according to the to-be-introduced passive indirect measures.

3. Indirect measures to deter the debtor from hiding (passive measures)

Aside from active measures at obtaining a debtor's assets, there are some indirect enforcement measures which passively put the debtor under the pressure of being enforced. One prominent illustration refers to the establishment of an all-inclusive credit management network involving e.g. public authority in different branches, banks, leading private companies and so forth. Its legal basis is the § 262 of the CPL (originally § 231 of the CPL 2007 and then § 255 of the CPL 2012), which provides that the enforcement court may take or notify a relevant entity to assist in taking measures to restrict the debtor from going abroad, to record the debtor's failure in the credit system, to publish information on the failure on media and other measures prescribed by law. Subject to the original rule in the CPL statute, § 39 of the *Enforcement Interpretation 2008* enables the enforcement court, on its own motion or on the motion of the creditor, to publicize the information on the debtor's failure to perform the obligation determined in the enforcement title. The publication could

38) Neil Andrews, *Andrews on Civil Processes: Arbitration & Mediation* (Intersentia 2019) 460–461.

be accomplished through newspaper, radio, television, the Internet, or other media. And the expenses incurred from media release shall be borne by the debtor. The applicant creditor shall pay the relevant expenses in advance. The 2020 revision of this judicial interpretation made here no substantial amendment and only change it as the new § 26.

And after the amendment in 2015, a legal institution restricting the expense of the debtors is developed. The then-applicable *Several Provisions of the SPC on Restricting High Consumption and Relevant Consumption of Persons Subject to Enforcement* (hereinafter *Provision Consumption 2015*)³⁹⁾ authorizes that the enforcement court may take measures to restrict the high consumption by the debtor itself and the relevant consumption not necessary for living or business operation (§ 1 I of the *Provision Consumption 2015*). To be forbidden is, for instance, taking any flight or high speed train, entertaining in night clubs or golf courses, purchasing or renting real estate, travelling or taking a vacation, purchasing insurance and financial products by paying high premium and so forth (§ 3 I of the *Provision Consumption 2015*). Those restrictions refer not just to a natural person, but also to legal representative, principal, persons directly responsible for debt performance or actual controller of the legal entity debtor (§ 3 II of the *Provision Consumption 2015*). While determining to take measures, the court has to take many factors into consideration, such as whether the debtor has ever passively resisted the performance of the obligation, actively evaded the performance or refused to perform the obligation, and the capability of the debtor to perform the obligation (§ 2 of the *Provision Consumption 2015*). Then, the court should serve an order on restriction of consumption on the debtor. This order shall be signed and issued by the president of the enforcement court and shall specify the period, items, legal consequences, and other matters concerning the restriction of consumption (§ 5 of the *Provision Consumption 2015*). Only if the debtor has applied to the court for permission which is then granted, the debtor is able to conduct the consumption activities prohibited accordingly as they are necessary for life or business operation (§ 8 of the *Provision Consumption 2015*).

The strongest weapon of the court is its potential influence on the credit of the debtor. The failure to fulfill the obligations will be made public on some online platform, which is similar to the long-lasting tradition of having a public list of debtors in Germany (§§ 802f III 2, 882b ff. of the German ZPO). There is a judicial interpretation which describes the whole process of making this special list, namely *Several Provisions of the SPC on Issuing the Information on the List of Dishonest Judgment Debtors* (hereinafter *Provisions Dishonest Debtors 2017*)⁴⁰⁾, originally in 2013 and then amended in 2017. According to § 8 of the *Provisions Dishonest Debtors 2017*, the court system shall circulate a notice of the information on lists of dishonest enforcement debtors to relevant government departments,

39) Judicial Interpretation No. 17 [2015] of the SPC.

40) Judicial Interpretation No. 7 [2017] of the SPC.

financial regulatory authorities, financial institutions, public institutions and industry associations undertaking administrative functions, among others. These relevant entities shall impose credit-related punishment on these dishonest persons in terms of government procurement, tendering and bidding, administrative examination and approval, government support, financing credit, market access, qualification accreditation and so forth. Also, the court system shall notify credit investigation institutions, which shall record the information in their credit investigation systems as well. There are special provisions and sanctions for the public servants as well as for state organs or state-owned enterprises.⁴¹⁾ As an exceptional rule, the § 4 of the *Provisions Dishonest Debtors 2017* requires that the court shall not register a judgment debtor in the list of dishonest judgment debtors, when the debtor is in fact a minor.

IV. All-inclusive role of court in discovering debtor's assets

1. Primary role of the court during enforcement

After considering the concretely introduced enforcement law regime and its general framework, the next step goes to the discovery of the underlying principle under current Chinese law. In leading developed countries, there could be advanced institutional tools for the enforcement personnel, and even the enforcement creditor, to request the debtor to submit property information (e.g. property report, answer to specific property inquiry) and third parties to share information (e.g. bank accounts, real estate).⁴²⁾ Nevertheless, even if similar institutions and mechanism are employed in China and other jurisdictions, the performance of Chinese court could be different since it is the underlying principle that would make a difference.

Generally speaking, the philosophy of enforcement law in China distinguishes from the one of many other jurisdictions. While having nothing to do with the creditor's dispositional rights regarding the initiation and termination of enforcement proceedings,⁴³⁾ the Chinese enforcement court is deemed to take the final responsibility for the discovery of enforceable property. In other words, the court in China should play an all-inclusive role to find out the

41) Those severe and full-scale effects could be traced to the Decision of the CCCPC in the fourth plenary session of the 18th CCCPC together with the following *Opinions of the General Office of the CCCPC and the General Office of the State Council on Accelerating the Advancement of the Development of a Credit Supervision, Warning and Punishment System of Dishonest Persons Subject to Enforcement*, issued in September 2016. Reflective remarks, Xin Dai, 'Enforcing Law and Norms for Good Citizens: One View of China's Social Credit System Project' (2020) 63 *Development* 38.

42) Oscar Chase and others, *Civil Litigation in Comparative Context* (West 2017) 616–618; W.A. Kennett, *Enforcement of Judgments in Europe* (OUP 2000) 99–127.

43) Generally on the principles of enforcement proceedings and their exceptions, Fritz Baur, Rolf Stürner and Alexander Bruns, *Zwangsvollstreckungsrecht* (13th edn, C.F. Müller 2006) § 6; Wendy Kennett, 'Enforcement: General Report' in Marcel Storme (ed), *Procedural Laws in Europe: Towards Harmonisation* (Maklu 2003) 104–105.

property of debtor's assets. Since the court is the only enforcement organ in China and has duty to promote enforcement proceedings, it is with no doubt that the court dominates the operation of enforcement procedure (the principle of court operation; *Amtsbetrieb*), just like the situation in an ordinary civil procedure toward civil judgment.⁴⁴⁾ Then, both in enforcement proceedings and during the ordinary civil procedure, seeking truth is acknowledged as another ruling principle. There could be the principle of party presentation (*Verhandlungsgrundsatz*) or investigation on the court's own motion (*Untersuchungsgrundsatz* or *Amtsermittelungsgrundsatz*).⁴⁵⁾ If we are allowed to contrast this fact-finding doctrine for the truth of a disputed case with the information-obtaining matters for the location of enforceable assets, there should be a comparable principle of court investigation in Chinese enforcement proceedings. Furthermore, not only the procedural promotion and information gathering, but the Chinese courts have also to find out the assets eventually.⁴⁶⁾

As an illustration, *Provisions Investigation 2017* clarifies the allocation of investigative responsibility among the creditor, the debtor and the enforcement court. § 1 of the *Provisions Investigation 2017* confirms explicitly that the creditor shall provide clues to the property of the judgment debtor; the judgment debtor shall truthfully report its property; and the enforcement court shall investigate through the online enforcement inquiry and control system and adopt other investigative methods if necessary. Then the same judicial interpretation illustrates the duty of the creditor. § 2 of the *Provisions Investigation 2017* makes it clear that while providing clues for the debtor's assets, the creditor shall fill out a normalized Property Investigation Form. Where the clues are clear and specific, the enforcement court shall, at the first place, investigate and verify the clues within seven days or in case of emergency, within three days. Where a clue is substantiated, the court shall then take the corresponding enforcement measures in a timely manner. A further judicial interpretation named *Opinions of the SPC on Further Improving the Mechanisms for Restricting Enforcement Powers to Enhance Supervision over Enforcement*⁴⁷⁾ published in December 2021 enhances the requirement to the enforcement court in the third sentence of its § 13 by stating that in case of emergency, the deadline for investigating and verifying the clues should be within 24 hours rather than 3 days. However, under the circumstance that the creditor could not find out the debtor's assets due to objective reasons, it may apply for investigation operated by the enforcement court directly.

In such case, it is expected that the final result of an enforcement case is the successful discovery of enforceable assets. Since there is one and the same enforcement organ, the

44) Xiuju Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' [Lun xian dai she hui de min shi zhi xing wei ji] (2010) 4 Peking Univ LJ 576, 583–584 (in Chinese).

45) Leo Rosenberg, Karl Heinz Schwab and Peter Gottwald, *Zivilprozessrecht* (18th edn, C.H. Beck 2018) § 77 Rn. 1 ff.

46) Xiuju Zhao, 'The Crisis in Enforcement of Civil Judgments in Modern Society' [Lun xian dai she hui de min shi zhi xing wei ji] (2010) 4 Peking Univ LJ 576, 583 (in Chinese).

47) Administrative Document (法) No. 322 [2021] of the SPC.

People's court, no efforts need to be made toward division of competence in enforcement.⁴⁸⁾ The enforcement court and its officers have been equipped with plenty of measures to find out the property of the debtor directly or push it to submit its assets which the court has not yet found out.⁴⁹⁾ Nevertheless, if an enforcement officer fails to locate sufficient assets to fulfill the obligation determined in the enforcement title, there could be serious doubt on its willingness and capability to accomplish the enforcement. After all, it is generally accepted that the court has to realize the judgment it made. Not to be forgotten is that the creditor normally does not have to pay the enforcement costs in advance. Only on some specifically regulated occasions, such as the aforementioned auditing during enforcement, the applying creditor should bear the costs of auditing in advance. This special arrangement could be understood as the logical result of the court's duty to realize its final judgment, while some may argue that it is the taxpayer as a whole that is paying the costs. It may have its roots in "judicial emphasis on facts over the rigidity of law" and "historical preference for informality and the continuing belief in preserving harmony,"⁵⁰⁾ in China.

2. Limited participation of the enforcement creditor

As already mentioned, the creditor could and will provide available clues to the enforcement court. "Despite the availability of such seemingly strong weapons, most courts expect the applicant to take the lead and provide the necessary details about the respondent's assets."⁵¹⁾ Pragmatically, the creditor tends to be active and it is highly possible that they will not be just waiting for some good news coming from the enforcement officer. Fortunately, compared to the situation twenty years ago and substantially affected by the political campaign against difficulty in enforcement, the ability and willingness of Chinese courts have been improved remarkably.

Indeed, when it comes to the practicing lawyers active in enforcement area, their know-how is certainly their most valuable as well as invisible assets. In case of cash or movable items of the debtor, those party-provided clues must still represent the primary source for the court to locate the enforceable assets. As an illustration, data platforms of relevant public authorities or private companies may be a good starting point. Either a publicly accessible National Enterprise Credit Information Publicity System (国家企业信用信息公示公

48) The enforcement assignment e.g. taken by the Gerichtsvollzieher in Germany, see Peter Gottwald, 'Die Mobiliarzwangsvollstreckung in Deutschland', (2019) 37 Ritsumeikan L Rev 69.

49) It is even argued that compared to the counterparts in Germany and Japan, the property investigation is regarded as the one in the central area of the judicial system in China which is given priority during the allocation of judicial resources. Mingzhou Shi, 'Model Selection for Property Investigation in Civil Enforcement' [Zhi xing cai chan diao cha cheng xu de mo shi xuan ze] (2021) 2 ECUPL J 57, 65-66 (in Chinese).

50) Margaret Y K Woo, 'Law and Discretion in the Contemporary Chinese courts' (1999) 8 Pac Rim L & Poly J 581, 588.

51) Randall Peerenboom, 'Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC' (2001) 49 AJCL 249.

示系统)⁵²⁾ or some private owned investigative companies could provide necessary information as hints for any further investigation. The disclosed facts of the judgments recorded in the website of China Judgments Online (中国裁判文书网)⁵³⁾ are useful sources in search for enforceable assets.

Considering the position and ability of the creditor and the professionals which it has entrusted, a special institution deserves more attention. To begin with, according to the existing principle of individual enforcement (*Einzelvollstreckung*) as in other jurisdictions, the enforcement applicant moving fast could obtain an advantageous position during its enforcement proceedings. Moreover, even if other competing creditors have joined the process of distribution, the active efforts of this applicant should be rewarded further. It is pragmatically accepted in China that the creditor having contributed to the discovery of debtor's assets ought to obtain bonus respectively. As a result, § 510 of the ICPL states that, after the liquidation of enforcement expenses and rights enjoying substantive priority of repayment, ordinary creditors will "in principle" be repaid in accordance with its proportion in the total debts which has been claimed in the fair distribution process. Accordingly, "as an exception" in practice, if there is still some money left after the fulfillment of the priority rights, up to 20% of the total remaining value should be distributed to the creditor who has inquired about the debtor's property previously.

Besides, in the period of time between the date of taking effect of a final judgment and the commencement of enforcement proceedings, it is up to the creditor to decide whether to take action at an early stage.⁵⁴⁾ § 163 of the ICPL, instead of the now deleted § 3 of the *Provisions of the SPC for the People's Courts to Seal up, Distrain and Freeze Properties in Civil Enforcement* (hereinafter *Provisions Seizure 2004*)⁵⁵⁾, enables the creditor to apply for preservation measures before the prospective enforcement court. The application should be based on emergency circumstances such as the debtor's transfer of property which, without preservation measures, would lead to the failure of enforcement or difficulty in enforcement. Then, the court shall discharge these preservation measures, if the creditor fails to apply for enforcement within five days after the deadline of performance specified in the enforcement title. Otherwise, the preservation measures shall be automatically transferred into the seizure measure as the ones taken in enforcement proceedings. The period of such measures shall be calculated continuously, and there is no need to render a new written ruling (analogous

52) Available at: <http://www.gsxt.gov.cn/index.html>. accessed 17 March 2022.

53) Available at: <https://wenshu.court.gov.cn>. accessed 17 March 2022.

54) There is no need to mention that the interim measures taken during or even before the civil process could contribute to the effectiveness of enforcement proceedings dramatically. And the protective measures in case of provisional enforceability of a not yet final judgment, see Wendy Kennett, 'Different National Enforcement Structures and Their Consequences for Cross-Border Enforcement' in Vesna Rijavec and others (eds), *Remedies Concerning Enforcement of Foreign Judgements: Brussels I Recast* (Kluwer 2018) 345–346.

55) Judicial Interpretation No. 15 [2004] of the SPC.

§ 17 of the *Provisions of the SPC on Several Issues concerning the Handling of Property Preservation Cases by the People's Courts*,⁵⁶⁾ both its 2016 and 2020 version).

In a broader sense, the creditor could also apply for addition of some enforcement debtor during enforcement proceedings. Besides other applicable rules, the SPC releases in this area a judicial interpretation named *Provisions of the SPC on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement*⁵⁷⁾ in 2016. As an illustration stated in its § 20, where a one-person limited liability company as the enforcement debtor is unable to perform its obligations with its own property, the creditor could move to add the shareholder of this company as an additional enforcement debtor, provided that this single shareholder fails to prove that its personal property separates from the property of the company. After a successful addition, the shareholder shall assume joint and several liability for the debts of the company. Although in such case the assets of the debtor are not directly detected, since the definition and scope of debtor(s) have been altered, more assets are in fact added to the pool of enforceable property of the current enforcement case.

3. Comparative position of Chinese property reporting system

Besides observation in Chinese context, there could be other tests from a more comparative perspective. Generally speaking, a sort of property reporting system is the most crucial tool for the discovery of debtor's assets, if we follow the well-accepted outline addressed by Prof. Rolf Stürner in 2016.⁵⁸⁾ Under the elements of this outline, the debtor's declaration of property in China should belong to one of the severest models. The duty to declare is required at the very commencement of enforcement proceedings and covers both the current assets and the assets which the debtor once had up to one year ago. Without any limitation on the scope of the property to be enforced, demanded is the overall identification of debtor's assets. This disclosure refers to a continuous duty of the debtor during the whole enforcement proceedings. It applies even after the court has declared a failure of enforcement (执行不能) literally, which refers to a special status of the enforcement case. At this time, the current enforcement proceedings, in which no property is yet available, could be terminated temporarily (终结本次执行程序) (§ 519 I of the ICPL). Still, the duty to submit supplementary property report is nevertheless required (§ 11 II of the *Provisions Investigation 2017*).

Regarding the procedure of declaration, as mentioned, the court's order of property reporting should normally attach a Property Investigation Form, which the debtor must fill

56) Judicial Interpretation No. 22 [2016] of the SPC.

57) Judicial Interpretation No. 21 [2016] of the SPC. In the scope of this contribution, the related articles of this judicial interpretation were not modified by the new Judicial Interpretation No. 21 [2020] of the SPC.

58) Rolf Stürner, 'Preliminary Feasibility Study on Possible Additional Work on the Development of Principles of Transnational Civil Procedure Relating to Effective Enforcement' (*UNIDROIT*, Governing Council 95th Session, Rome, 18–20 May 2016) <<https://www.unidroit.org/english/governments/council/documents/2016session/cd-95-13add-02-e.pdf>> 6–7, accessed 17 March 2022.

out item by item as required (§ 4 II of the *Provisions Investigation 2017*). Although an affidavit is not formally requested, the requirement is substantially the same. It is said explicitly that the court may, according to the seriousness of the circumstances, fine or detain the debtor or even initiate criminal procedure under the applicable law when without any good reason, the debtor refuses to report or falsely reports or fails to report its property within a prescribed time limit (§ 248 of the CPL, § 9 I of the *Provisions Investigation 2017*). Simultaneously, the court shall investigate and verify the property reported by the debtor in due time, and if necessary, the enforcement officer may organize a hearing for the parties (§ 8 I of the *Provisions Investigation 2017*).

In case of refusal to declare, the debtor will be registered in a public list of dishonest enforcement debtors. The aforementioned consequences similar to the affidavit could be regarded as the sanction of last resort. Although not specifically for the declaration report, § 15 of the *Provisions Investigation 2017* empowers the court to force the debtor to appear before court for the search of assets.

Moreover, the court is authorized to ask for assistance of public authorities or private agencies. It could use its online enforcement inquiry and control system or visit the related institutions on site to obtain information. As mentioned, the forthcoming reform targets just at strengthening of the online system which may make even more steps to be taken in the most efficient way. For example, the located assets of the debtor could be seized or the bank saving could be transferred via online operation which means several keyboard commands and clicks of the mouse. In the long-range design, field work in this aspect will not exist anymore.

4. Mitigation of the court's duty in enforcement proceedings

Recently, the public authority in China is reconsidering the current active role of the enforcement court. One of major aims of the current judicial reform in enforcement area targets at the enhancement of the trust of people. Then the ordinary citizen may be persuaded that there are many debts which are not able to be fully compensated from the very beginning of the civil procedure. The creditor may have chosen a wrong partner in a contract case or the victim suffered in a traffic accident has to face up to a negligent wrongdoer who is in poverty. We are living in a society full of risks (*Risikogesellschaft*).⁵⁹⁾ The court, assisting the creditor to realize its rights as much as possible, is not always the right one to be blamed for the failure of enforcement. The enforcement court is not equivalent to the private debt collector or practicing lawyer helping the client to win money back.

Mitigating the enforcement court's responsibility does not mean to leave the judgment creditor alone or even "let it go". Rather, the entire government in China, including courts,

59) See Ulrich Beck, *Risikogesellschaft — Auf dem Weg in eine andere Moderne* (Suhrkamp 1986).

should get itself involved. It is supposed to implement the guidance and ideas of the *Opinions on Strengthening the Comprehensive Treatment of Solving the Problem of Enforcement Difficulties from the Source*,⁶⁰⁾ which was released by the Central Comprehensive Law-based Governance Commission in Summer 2019, a special political organ directly led by the President Jinping XI of P.R.C. The logic of this political opinion is sound and clear: for the enforcement titles which cannot be implemented totally, other related institutions should be established or developed in order to solve the difficulty in enforcement indirectly. The concrete institutions refer to the social credit system, market exit mechanism in the form of bankruptcy, judicial aid system for the vulnerable groups in need and liability insurance. The related civil, commercial and company law which may be misused should also be updated. For instance, the arbitrary change of legal representatives and other senior managers and the arbitrary evasion of corporate assets should be restricted and stopped, while the management of corporate accounting records and the tracing system of entire transaction process is supposed to be improved. The newest reform plan, as the fifth five-year judicial reform framework (人民法院第五个五年改革纲要), adds that the court should enhance the certainty and enforceability of their decisions and establish a mechanism for dealing with the related uncertainty. The case transfer mechanism from enforcement to bankruptcy and the information exchange and sharing between both of them are supposed to be strengthened, while the natural person bankruptcy system ought to be established comprehensively.⁶¹⁾ A more detailed reform plan is also published in the *Outline of People's Courts' Enforcement Work (2019-2023)*.

V. Concluding remark

Comparative civil procedure “may help not just to improve your own national law but to find solutions for practical legal problems of trans-national relations in our world of globalisation”.⁶²⁾ On one hand, reconsidering the discovery of debtor's assets during enforcement in comparative context provides Chinese observers with both an approach to looking at our own legal system more closely and the relative position of our practice in contrast with foreign counterparts worldwide. With its strong-willed emphasis on the primary role of the enforcement organ, namely the People's court, to dig out the enforceable

60) Central Comprehensive Law-based Governance Commission of the CPC Central Committee, ‘Opinions on Strengthening Comprehensive Management and Effectively Solving the Problem of Difficult Implementation from the Source’ [Guan yu jia qiang zong he zhi li cong yuan tou qie shi jie jue zhi xing nan wen ti de yi jian] (*JSZX. COURT. GOV. CN*, 22 August 2019) <<http://jszx.court.gov.cn/main/ExecuteStandard/235131.jhtml>> accessed 17 March 2022.

61) Supreme People's Court of PRC (ed), *Guidelines of the Supreme People's Court on Deepen the Judicial System Reform with Comprehensive Integrated Reforms of People's Courts—Framework of the Fifth Five-Year Judicial Reform for People's Courts (2019–2023)* (People's Court Press 2019) 62–63.

62) Peter Gottwald, ‘Comparative Civil Procedure’ (2005) 22 *Ritsumeikan L Rev* 23.

property, China has proven its somewhat exceptionalism⁶³⁾. To be illustrated is not just an exception to the general principles of dispute resolution mechanism in China, but could be traced to the modern Chinese legal tradition insisting on the substantial resolution of disputes in almost all legal areas. Having the comparative lessons in mind, it is not hard to welcome the newest development in China, which begins to examine the necessity of courts to fill the all-inclusive role in finding out the assets and shift the investigative burden and risks more to the parties.

On the other hand, what could be learned, if any, from the experience in China? Since the possibilities of the creditor in finding the debtor's property are planned to be enhanced as an international trend, the Chinese judges show how a hard mode (in the popular sense of a computer game) would look like. A more comprehensive enforcement law statute is still on its road. There is no uniform registration system for immovable property, no mandatory financial requirement for the usage of bank account rather than cash in case of a great amount of money. But on many occasions, plenty of debtors and their accessories are endeavoring to hide or transfer the assets in a society with less respect for integrity. In such case, Chinese courts have to make use of all possible means in order to iron out the difficulty in enforcement. Confronting tricky debtors, the enforcement mechanism ought to evolve as promptly as possible. It may explain why Chinese courts have taken so many aforementioned enforcement measures with regard to the discovery of assets. However, whether it goes too far and whether it could render templates for other jurisdictions, is still needed to be answered. Most crucially, how to protect the ordinary citizen, debtors inclusive, from excessive interference of public authorities should be taken into consideration. Also, to be observed is the practical influence of such emphasis on the courts' responsibility in China. The unjustly used discretion of judges and to-be-improved confidence in the judiciary may represent an always repeated story in less-developed countries concerning rule of law.

In large, "all happy families are alike; each unhappy family is unhappy in its own way". In the time of globalization,⁶⁴⁾ there are still local problems encountered in each legal jurisdiction. The comparative proceduralist is expected to let us run into the secret of success in enforcing the final judgment, and figure out the access to the good ending.

⁶³⁾ To be compared, Richard L Marcus, 'Putting American Procedural Exceptionalism into a Globalized Context' (2005) 53 AJCL 709.

⁶⁴⁾ Xandra E Kramer and C H van Rhee (eds), *Civil Litigation in a Globalising World* (TMC Asser Press 2012).