

Distressed Debt in China's Real Estate

中國房地產業的不良債務

Despite challenges, there are strategies for offshore bond investors to recover their debts
 境外債券投資者追討債務往往困難重重，但亦非束手無策

Rapid urbanisation is continuing to fuel substantial demand for residential property in China. However, the real estate sector's recent financial troubles have exposed developers' over-reliance on debt to fund their projects, leaving offshore bond investors, in particular, to ask if they will ever get repaid and what enforcement strategies are feasible.

Debt restructurings have occurred at a much slower pace than had been expected. Although some restructurings have taken place, the danger is that if companies do not move more quickly to address their debts, offshore investors will start to look on the Chinese real estate sector as a higher risk than other markets around the world.

A majority of Chinese real estate companies only started to issue high-yield bonds, typically with three to five-year maturities, to offshore investors in 2013. The need to redeem or refinance this debt has squeezed the sector in recent years. Those companies that issued another round of bonds with a five-year lifespan in 2017 will come under pressure this year. According to Fitch Ratings 2022 Outlook: "Fitch-rated developers have

around US\$40 billion of offshore public bonds and CNY165 billion of domestic capital market maturing in 2022."

The resumption of offshore bond sales, which have been off-limits to developers since the second half of 2021, has become a critical issue. Developers have had to repay debt with their own cash reserves, but even the strongest cannot do this indefinitely.

"The successful return of stronger developers to the primary cross-border debt market would be a key turning point; and the sooner this happens, the lesser the pain for the sector at large," Fitch said. "The government has made it easier and faster for developers to remit funds from onshore to offshore to repay offshore bond maturities. Remittance channels are likely to remain loose until capital markets normalise."

Policy Response

The government and other policymakers issued new rules and regulations to try to bring order to the real estate market in 2020. Perhaps the most significant were the "2-3-4" policies:



"2" – two land auction regulations in 22 major cities: limiting land auctions to three per year and collectively announcing and auctioning all land for sale;

"3" – "three red lines": limits on the ratios of liabilities to assets, debt to equity and cash to borrowing aimed at reducing real estate developer leverage and regulating liquidity; and

"4" – 40% land purchase budget: limiting land purchase amounts to 40% of annual contracted sales – to curb developers' risk-taking.

The People's Bank of China and the China Banking and Insurance Regulatory Commission followed up in December 2020, ordering banks to cap their mortgage loans and lending to developers over the



next two to four years. State-owned banks are allowed up to 40% in real-estate loans (of which 32.5% can be mortgage loans), for example.

REDD, a financial information provider, reported in January 2022 that policymakers were planning to relax the three red lines to allow developers to exclude debt accrued from acquiring distressed assets.

Restructuring Options

A critical issue facing bondholders hoping to recover their debts, however, is that China has no recent history of successful court-mandated debt restructurings in the real estate sector. According to Bloomberg, since 2018, 27 real estate companies in China have failed to make bond repayments.

Only two of them have taken part in court-led restructurings.

One of the first things, if not the first, bondholders should do is to identify what they can leverage in times like these to achieve the most optimal outcome under the circumstances. Logically, any security the issuers provided would be the first source of this leverage. This typically comes in the form of pledges of shares in an offshore company (or companies), which usually has indirect ownership of the onshore assets (i.e. the real estate project or projects) of the People's Republic of China real estate developer group.

Depending on how negotiations between the secured creditor and the issuer progress, it may be necessary to appoint experienced

professionals to act as receivers over such shares to enforce the security. The aim of this action would be to assert more pressure on the issuer even if the company, in which the shares are pledged, is not as close to the underlying onshore asset(s) in the group structure as one would like.

At a minimum, the appointment of the receivers will mean the secured lender will:

- Have direct access to the affairs, including the books and records, of the relevant company and its assets, including subsidiaries; and
- Be in a position to have the receivers sell the secured assets to discharge the debt.

The receivers can also strengthen their position if they can exercise the

shareholder's powers to replace the directors with their representatives on the boards of the company whose shares are in receivership and its subsidiaries on a layer-by-layer basis under the group structure.

This would allow the receivers to act to protect the interests of the secured lender in adverse situations where the issuer tries to dispose of or move the relevant underlying assets out of the group without the secured creditor's consent or engage in any questionable transactions that would harm the value of the security.

Reaching A Successful Outcome

While identifying what to leverage, creditors or offshore bondholders can still opt to pursue a restructuring in parallel at the same time, though they face at least two problems in doing this: structural subordination and insolvency regimes that may not work in the way they hoped. However, working with specialist advisers, they can clear these obstacles if they organize themselves for a negotiated restructuring as early as possible while at the same time, plan for the possibility they may never achieve one.

Tightening housing prices, restrictions on bank loans, private equity and off-balance sheet financing, and upcoming debt maturities are just some of the issues Chinese real estate developers are having to address at the moment. Since the end of 2021, some have made multiple attempts to restructure their offshore debts by conducting liability management exercises to extend repayment dates.

Nonetheless, the goal of debt restructuring is a more comprehensive package that provides a long-term solution, rather than a short-term one where none of the individuals in the market is keen to deal with each other unless absolutely necessary. Difficulties can arise if the sector has insufficient experienced restructuring advisers covering financing, business transformation and strategic communications who can provide a comprehensive response as a situation develops.

高速城市化繼續帶動中國住宅物業的龐大需求。然而，房地產業最近陷入財困，暴露了開發商過度依賴債務融資，令境外債券投資者關注到能否討回相關債務和可行的強制執行策略。

一些房地產公司已開始債務重組，但步伐遠比預期慢，若不加緊處理債務問題，難保境外投資者會認定中國房地產市場的風險高於全球其他地區。

國內房地產公司大多從2013年起才開始向境外投資者發行高收益債券，年期一般為三至五年。近年，贖回或再融資的需求對業界構成壓力，而於2017年發行新一輪五年期債券的公司將於今年面臨到期壓力。根據《惠譽



評級2022年信用前景展望》，「惠譽評級覆蓋的開發商有約400億美元的境外公債和約1,650億人民幣的境內資本市場債券於2022年到期。」

自2021年下半年起，開發商發售境外債券受到嚴重限制。在此期間，開發商只能動用現金儲備償還債務，但即使現金流如何充足，也無法一直持續下去。因此，恢復債券發行至為關鍵。

「實力較強的開發商回歸境外一級債市，將會是關鍵轉折點；這個轉折點來得愈早，整個行業的痛苦就愈小。」惠譽又表示：「政府已簡化及加快開發商的跨境匯款程序，以償還到期的境外債券。匯款渠道可能會一直保持寬鬆，直到資本市場恢復正常為止。」

政策配合

政府和其他政策制定者於2020年發布新規章制度，冀促進房地產市場有序發展。當中最重要的大概是「2-3-4」政策：

「2」是指在22個主要城市實施的兩大土地拍賣政策：將土地拍賣次數限制在每年三次，並統一公布和拍賣所有待售土地；

「3」指「三條紅線」，即限制資產負債比率、負債權益比率和現金短債比率，旨在降低房地產開發商的槓桿率和規範流動性；及

「4」意指40%的土地購置預算：將購地金額限制在年度合同銷售額的40%，以防開發商承擔過高風險。

中國人民銀行和中國銀行保險監督管理委員會於2020年12月提供進一步的指引，要求銀行於未來兩到四年內就開發商按揭貸款額和借貸額設定上限。以國有銀行為例，房地產貸款須控制在40%以內（其中32.5%可以是按揭貸款）。

金融資訊供應商REDD於2022年1月發表的一份報告指出，政策制定者計劃放寬「三條紅線」，允許開發商在計算比例時排除因收購不良資產而產生的債務。

重組選項

不過，希望能夠收回債款的債權人面臨的一大難題，是中國房地產業近期沒有法院強制債務重組的成功案例可循。據彭博報導，自2018年以來，中國有27家房地產公司出現債券違約情況，當中只有兩家進行了法院主導的重組。

債權人當務之急，是認清各種有助他們達至最佳結果的選項。從邏輯上來看，債券發行人提供的任何擔保，都是他們的首要關注目標。這通常以一家或數家離岸公司質押股份的形式出現，而該離岸公司一般會間接擁有中華人民共和國境內房地產開發集團的在岸資產（即一個或多個房地產項目）。

有擔保債權人需因應與發行人的談判進展，決定是否需要任命經驗豐富的專業人員擔任此類股份的接管人，以強制執行擔保。此舉是為了向發行人進一步施壓，即使被質押股份的公司與集團的相關在岸資產之間的關係並不如想像般密切。

任命接管人至少意味有擔保債權人將：

- 直接接觸相關公司及其資產（包括子公司）的事務，包括賬簿和紀錄；以及
- 有權要求接管人出售擔保資產以清償債務。

接管人還能透過行使股東權利，在集團架構下逐層更換被接管公司及其子公司的董事成員，從而鞏固個人地位。

這將允許接管人在不利的情況下採取行動，以保障有擔保債權人的利益，這些情況包括發行人在未經有擔保債權人同意的情況下試圖處置相關標的資產或將其移出集團，或從事任何可能損害擔保價值的可疑交易。

取得成功

在尋求對策的過程中，債權人或境外債券持有人可選擇同時進行債務重組，但會面臨至少兩個問題：債權結構性從屬問題和破產機制未如預期般運作。然而，如果債權人能及早與專家顧問合作，安排進行重組談判，並就各種可能出現的情況籌謀部署，便能清除這些障礙。

房價收緊、針對銀行貸款、私募股權和表外融資施加的限制，以及債務即將到期——這些只是中國房地產開發商急需解決的部分問題。自2021年底以來，部分開發商多次嘗試通過負債管理的方式重組其境外債務，以延後還款。

儘管如此，債務重組旨在提供一個更全面的長期解決方案，而不是短期策略，畢竟非到萬不得已，市場參與者也不願意直接打交道。若然業界缺乏經驗豐富的重組顧問因應事態發展提供融資、業務轉型和戰略溝通等方面的建議，那麼重組進程可能困難重重。

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