

# Economic and legal necessity of personal bankruptcy legislation in China

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## Abstract

With more domestic pilot explorations launched in China, alternative debt adjustment regulations and bills relating to personal bankruptcy are thriving. This article aims to familiarize the readers with both the economic and legal necessity of a personal bankruptcy system as well as the feasibility of future legislation in China by examining publicized reports and present regulations. Past decades have witnessed the take-off of China's economy along with prevailing trends in higher debt ratio, more credit loans, and pan-commercialization. The proliferation of over-indebtedness propels the need for personal bankruptcy regime. Given the *status quo*, some alternative legal methods are implemented. By deconstructing the existing regional regulations, this work identifies both progress and drawbacks of current debt adjustment rules from three angles: creditors' benefits, debtors' benefits, and social benefits. After identifying the need for personal bankruptcy legislation, this contribution focuses on the feasibility of a personal bankruptcy system in China. Several salient issues are discussed in three aspects, including political implications, cultural resistance, and social conditions. These unique factors should be considered in forthcoming legislation in China in order to secure a more suitable system.

## 1 | INTRODUCTION

With the pilot case in Wenzhou in 2019,<sup>1</sup> the debate of personal bankruptcy legislation in China has heated up rapidly among academics, industry professionals, and working class of China because the existing Chinese enterprise bankruptcy law has provisions for business corporations only and small individual business or working class do not come under the ambit of this law. Hence sometimes, it is referred to as a “half completed law.”

The legal system and the laws are not independent of historical and socio-cultural contexts of the country, and hence going back in time and looking at the cultural influence is important in making any reforms to the existing laws. Probing into China's legal history, the first personal bankruptcy legislative attempt, *Da Qing Bankruptcy Law* in 1906, applied to businessmen only. Later on, *The Drafting Bill of Bankruptcy Law* in 1915 and *the Bankruptcy Law* in 1935 both accepted the notion of personal bankruptcy, including consumers and businessmen.<sup>2</sup> However, all of them were short-lived. Although the customs and traditions contain some hints relating to debt discharges and forgiving traditions, hardly any statute law was enacted on personal bankruptcy in China in the past century.<sup>3</sup> Till now, some still believe that China does not have a solid legal framework for personal bankruptcy yet.<sup>4</sup> According to them, a property registration system and a social credit system are crucial to the successful implementation of personal bankruptcy in China.<sup>5</sup>

Fast-paced economic growth with a solid strategic focus on manufacturing and exports has led to an exponential rise in business and entrepreneurship in China, which has resulted in increased borrowing from banks and financial institutions for a host of reasons, such as housing loans, consumer credit, and business expansion. In the past decade, the debate on personal bankruptcy has been centered on establishing a robust legal bankruptcy systems encompassing and fitting all sections of the society.<sup>6</sup> On February 27, 2019, the Supreme People's Court in China issued *The Guidelines for People's Courts on Enforcement Work (2019–2023)*, which explicitly proposed guidelines and directions for exploring different viable options for a personal bankruptcy system.<sup>7</sup> Due to the differences in legal, historical, political, and cultural backgrounds, countries embrace various approaches in developing a justifiable personal bankruptcy law to meet their requirements.<sup>8</sup> Therefore, the search for applicable personal bankruptcy system for mainland China is the pivotal question in legislation for now.

This article intends to explore the necessity and possibility of personal bankruptcy legislation in China through analyzing its economic evolution route and the existing legal *status quo* as well as furnish some advice on how the individual bankruptcy system could be built. Section 2 of the article briefly sketches the history of the economic development in China from restrictive to debt-fueled development and later conveys the realistic drive and legislative need for personal bankruptcy in China, explaining the reasons for the reform in personal bankruptcy laws in China and why the contemporary alternative systems are not enough.

The *status quo* of existing Chinese regulations related to personal bankruptcy and drawbacks will be examined with a view to justify the necessity and feasibility of legislating personal bankruptcy law in China in Section 3. Section 4 discusses three salient issues pertaining future legislation. Recently, Shenzhen city has enacted the *Shenzhen Special Economic Zone Individual Bankruptcy Regulations* toward the end of August 2020.<sup>9</sup> Moreover, a *Personal Bankruptcy Law (Scholar Recommendation Version)* was presented to the public by Beijing Foreign Studies University at the end of March 2020.<sup>10</sup> To get a balanced view of the laws, these two regulations will be analyzed together with relevant matters, such as supporting documents.

## 2 | THE NECESSITY OF PERSONAL BANKRUPTCY: THE ECONOMIC PERSPECTIVE

Despite being the second largest economic system in the world,<sup>11</sup> China has very limited statistics on personal bankruptcy for a variety of reasons, and one of the factors influencing this is the lack of well-developed personal bankruptcy procedures. Although deficiencies in cultural and political will contribute massively to the stagnation of legal reforms, the authors attribute the postponement of personal bankruptcy legislation in China partially to its previous economic structure. To obtain a better understanding of the gaps in the bankruptcy legislation, this article will recount it through the historical perspective of China's economic development model.

### 2.1 | Economic transformation

The most important influencing factor in China's economy and the legislative process is deeply rooted in the socialist system. Professor Iain Ramsay is of the firm opinion that “ideology,” instead of “culture,” guides the transformation of the economy and society.<sup>12</sup> The developing path of China's economy has been shaped, remarkably by the “stone of ideology.”

#### 2.1.1 | From planned economy to market economy

From 1949 to 2020, China witnessed a transition from scarcity of commodities and financial support to a surplus of goods and debts. Before 1978, the planned economy, being the only economic system in China, dominated the process from production to distribution.

In the planned economy, the government took control of all economic schemes, instructing the outcome of manufacturing, resource distribution, products circulating, and consumption.<sup>13</sup> Numerous restrictions were placed on the supply and demand of consumer goods, from clothing to housing. The central government took control of the banks and all state-owned corporations. With meagre commodities and an impoverished economy, individuals had neither purchasing power nor debts, which resulted in people not having surplus financial resources for nonessential commodities. Meanwhile, the absence of private entrepreneurship and the existence of government-distributed social welfare made borrowing unattainable and unwanted. More importantly, access to credit, one the footstones of bankruptcy, was scarce or mostly did not exist at the time.<sup>14</sup> Even business individuals, not to mention consumers, had limited access to credit. Hence, the economic system obviated the need for individual bankruptcy.<sup>15</sup>

#### 2.1.2 | The introduction of the socialist market economy

After the reforms and opening up in 1979, China experienced several stages of transformation. Moreover, its entry into the World Trade Organization in 2001 has contributed considerably to China's economic growth. Meanwhile, both the supply and demand of credit have jumped frantically. Accordingly, the impetus for personal bankruptcy became inevitable.

A fully developed phase of the market economy underpins personal bankruptcy. The global personal bankruptcy system has been expanding since the 1970s along with the transformation of capitalism worldwide.<sup>16</sup> China has been a mainly agricultural country, and Chinese people

tended to enjoy a self-sufficient lifestyle for thousands of years. As the market economy developed in China, the domestic purchasing power and the need for individual loans became the norm in civil society, which resulted in the cultural changes to that society. Furthermore, there were massive lay-offs of employees by state-owned enterprises,<sup>17</sup> while the social welfare system, “rudimentary yet universal,” was dissolved,<sup>18</sup> thereby forcing the population to cope with more financial difficulties and insecurity. The market economy broke the equilibrium maintained by the planned economy as “the rich got richer and the poor got poorer.” Consequently, demand for individual bankruptcy increased with more people struggling to make a living.

Meanwhile, the market economy requires personal bankruptcy for its healthy functioning. Due to the economic transformation in China, the proportion of individual business mounts dramatically to two thirds of the national business, adding up to over 73 million entities by the end of 2018.<sup>19</sup> These individuals are bearing all financial risks by themselves. Besides, as the burden of housing, education, and medical costs shift from completely government-paid to partially individual-paid, the over-indebtedness of individuals in China increases drastically.<sup>20</sup> Thus, establishing a personal bankruptcy system is a critical step for growth of the market economy while protecting social security.<sup>21</sup>

## 2.2 | Economic status quo

Since the reform and opening up, the economy in China has experienced unprecedented expansion. China contributes over 30% to global economic growth.<sup>22</sup> The explosions of household debts, credit loans, and entrepreneurship are calling to society for a solution for individual default risks. Without proper guidance, the risk will be transferred from the private sector to the public sector, eventually leading to severe disruptions to the social fabric of the country.<sup>23</sup> The personal bankruptcy system is the mediator between private and public entities and could prevent the risk of both national and international systemic debt risk.<sup>24</sup>

### 2.2.1 | Household leverage rate

In 1998, China made a major reform in its housing market, allowing commercial banks to approve mortgage loans to people buying houses, cars, and other commodities.<sup>25</sup> It is ubiquitously acknowledged that housing mortgages constitute most of the debts.<sup>26</sup> Since the global financial crisis in 2008, the savings rate in China have declined, while the debt rate has increased rapidly. The household saving rate in China peaked in 2010 at 43% and stepped down annually afterward.<sup>27</sup> Nonetheless, compared to other countries, China's household debt-to-GDP ratio has perceived a much faster growth rate after the financial crisis, leaping from 20.6% in 2008 to 52.6% in 2018.<sup>28</sup> At the end of October 2019, the average household leverage rate in China reached 67.2%.<sup>29</sup>

### 2.2.2 | Credit loans

Credit is believed to redefine “capitalism as well as wealth.”<sup>30</sup> While credit has been recognized in the business for centuries, credit loans, particularly consumer credit loans, have reshaped the global consumption pattern.

When credit cards entered China in 1979, they offered services to a few elites with rigorous restrictions on occupation and asset information. Later on, with “the democratization of credit,”<sup>31</sup> banks started to approve more cards for ordinary users. Especially after the installment plan introduced in the 1990s, the market economy took over and opened up a flood gate of consumerism and credit facilities.<sup>32</sup> Additionally, online installment products spread to dominate the major half of the debt market with lower thresholds and more promotions.<sup>33</sup> At the end of 2018, the penetration rate of credit cards in China reached 0.49 per person, which means almost one in every two people owns a credit card.<sup>34</sup> And the average balance of consumption loans has rocketed to over RMB 27,000 per person.<sup>35</sup>

Albeit credit consumption has fueled the economy, it has also brought hazards along with the benefits: “Where there is credit, there is also a default.”<sup>36</sup> Previous research has verified the statement by identifying a positive correlation between the number of credit cards and the volume of bankruptcy cases.<sup>37</sup> Without a personal bankruptcy system, people with heavy debts would be stuck in a never-ending cycle of financial woes. At the end of the 2020 Q1, the total overdue of credit card loans in China reached RMB 91 billion, which was more than twofold compared to the same period in 2014.<sup>38</sup>

### 2.2.3 | Pan-commercialization of individuals

Aside from increasing consumer financing, the pan-commercialization of individuals also exacerbates the default risk of debts. E-commerce has been growing rapidly in China over the last decades, resulting in a surge of online shoppers with sales reaching RMB 2.5 trillion per quarter at the end of 2018.<sup>39</sup> The total volume of China’s e-commerce market in 2018 was RMB 31.63 trillion.<sup>40</sup> Among these online shops, a majority of the owners are self-employed businessmen. Meanwhile, with the rise of WeChat (an instant messaging application widely used by over 1 billion Chinese), a group called “WeiShang” (people presenting and selling products through WeChat) proliferates as well.

Similar to traditional entrepreneurs, WeiShang as individual businesses require funds for purchasing, stocking, and selling, exposing the owners to operational risks. Although the corporate bankruptcy law would be able to shoulder some burdens of business risks, it can hardly protect the businessmen behind the hazardous companies.<sup>41</sup> With an increase in entrepreneurship and a rise in private lenders, many entrepreneurs serviced their debt for operations through personal loans or guarantees. Many personal loans raised by the self-employed or entrepreneurs were used for their business operation cashflow as numerous private businesses were too small to apply for credit loans.<sup>42</sup> In practice, personal bankruptcy of the entrepreneurs came alongside with the fall of the enterprises due to concentrated risk and financial vulnerability.<sup>43</sup>

The economic transformation, credit deregulation, and pan-commercialization have contributed to debt rising. The personal bankruptcy system, indeed, works as an *ex ante* tool for entrepreneurialism protecting and an *ex post* instrument for resolving over-indebtedness. Moreover, it is complementary to the social welfare system, preventing major crises.<sup>44</sup>

## 3 | THE NECESSITY OF PERSONAL BANKRUPTCY: THE LEGAL PERSPECTIVE

### 3.1 | The existing alternative regulations in China

Many scholars have claimed that there has been no sufficient ground for personal bankruptcy legislation in China due to the lack of supporting systems in credit rating and property

registration.<sup>45</sup> Nonetheless, as the situation in China evolves, the necessity for personal bankruptcy legislation is commonly recognized. Professor Iain Ramsay predicted in 2017 that “China may introduce a personal bankruptcy law within this decade.”<sup>46</sup>

While the legislation is yet to be set, many alternative methods have been employed in several occasions experimentally. For instance, after some extreme disasters, temporary provisions were implemented within certain events. In 2008, a catastrophic magnitude-8 earthquake rocked Wenchuan county in Sichuan province. Many families suffered physically, mentally, and financially as they lost their health, relatives, friends, houses, and jobs. However, the victims of the earthquake still had to service their debts and loans despite losing everything they had. Therefore, the government issued *the Urgent Notice on Writing-off Bad Debts Caused by the Wenchuan Earthquake in the Banking Industry*, saving the victims from double or even triple harm.<sup>47</sup>

A similar approach has been carried out in 2020 due to the outbreak of COVID-19. The coronavirus pandemic has caused tens of thousands of Chinese to be hospitalized. The tests and treatments are extremely expensive without insurance coverage. To alleviate the unbearable medical burdens, the Chinese government introduced the policy of “free tests and free treatments for all coronavirus cases.”<sup>48</sup> Both actions employed in these two scenarios are imperative, provisional, and restricted under limited conditions. Using short-term policies for bankruptcy purposes may be useful at times, but it is neither sensible nor possible to replace the individual bankruptcy system in the long run.<sup>49</sup>

Aside from policies announced on specific occasions, without a proper personal bankruptcy system, most debt disputes have been settled through traditional civil litigation. Clauses in Civil Law, Civil Procedure Law, and other special regional regulations play a pivotal role in personal debt adjustments. The Civil Procedure Law of China buttresses the basic structure of the existing debt adjustment provision. With its judicial interpretation and application, an alternative legal framework has been laid. Also, provision on creditors' participation coupled with restrictions on enforced persons' high consumption provides supplements to these execution processes. Meanwhile, some pilot projects have been carried out in Taizhou and Wenzhou cities in Zhejiang province. Taizhou issued *Regulations on Transforming Execution Procedures to Personal Debt Adjustments (Interim)* in 2019,<sup>50</sup> while Wenzhou has trialed individual debt adjustment cases with a reference to corporate bankruptcy law in China.<sup>51</sup> Shenzhen city has also legislated a regional personal bankruptcy regulation in 2020 with the law scheduled for implementation on March 1, 2021.<sup>52</sup>

## 3.2 | The insufficiency of present alternative regulations

With existing methods for relief, some of the personal debts have been resolved. However, an equivalence between the current debt adjustment methods and personal bankruptcy legislation cannot be established. This section will analyze the drawbacks of alternatives by comparing the present regulations with personal bankruptcy objectives.

### 3.2.1 | The objective of personal bankruptcy

When personal bankruptcy was initially introduced, the primary purpose was to protect creditors' rights and to maximize their benefit.<sup>53</sup> With economic transformation and social

development, the legislators, as well as the general public, have a more forgiving attitude toward personal bankruptcy. This leads to a change in the system from “creditor-centric” to “creditor and debtor balancing.”<sup>54</sup> The debt discharge system is seen as a salutary humanitarian model, as it provides immediate relief to the borrower because the debt is written off on compassionate grounds, hence protecting the rights of debtors.<sup>55</sup> On the other hand, the personal bankruptcy system works as a social security net, protecting trade, credit, and social welfare.<sup>56</sup> According to the *Report on the Treatment of the Insolvency of Natural Persons* issued by the World Bank, the benefits to creditors, debtors, and the society are regarded as three “foundations of insolvency for natural persons.”<sup>57</sup>

### 1. Protection of creditors' benefits

The notion of creditors' rights came into existence simultaneously with the bankruptcy system, which includes arranging priorities of debts, compensating claims, preventing any misuse of the debts, evaluating economic conditions, etc.<sup>58</sup> In addition to a better realization of financial claims, the system is known for creating an equilibrium among creditors. While both focusing on protecting creditors' rights, the bankruptcy cases tell two different stories. In a corporate bankruptcy, most creditors can retrieve some, if not all, of the property. However, in personal bankruptcy, the distribution of assets is more of a theory.<sup>59</sup> In practice, due to the financial status of consumer debtors, few creditors are repaid.<sup>60</sup>

Without a proper system, those who collect their debts ahead of others win the game since they can obtain more assets before the debtors default. Yet, a first-come first-served race can be a no-win situation.<sup>61</sup> On one hand, the debt collection race will result in unfairness and inequity among creditors, thus making creditors compete for seizure, preservation, and other expensive litigation measures. On the other hand, the debtors may take more risks and obtain more debt once they are facing the potential default.

### 2. Protection of debtors' benefits

The major difference between personal bankruptcy and corporate bankruptcy is the protection of debtors' rights. While corporate bankruptcy leads to the end of a company, personal bankruptcy intends to offer the debtor a “fresh start.” Therefore, while the liquidation aims to distribute all assets, the basic need of personal and professional lives of the individuals concerned should be taken into account.<sup>62</sup> Based on this unique character, the protection of debtors' rights in personal bankruptcy includes three aspects:

- absolution of personal punishments;
- property exemption for survival; and
- discharge of debts for a fresh start.<sup>63</sup>

These regulations guarantee the rights of debtors and facilitate their making a new beginning.<sup>64</sup>

### 3. Social and national benefits

In the past few years, suicides and criminal activities linked with debt defaults have increased, thus creating social problems.<sup>65</sup> Even though the alternative methods can discharge their debts and repair their credit rating, debtors may still face discrimination in recruitment, loans, and

other aspects of life.<sup>66</sup> A well-functioning personal bankruptcy system not only protects the rights of creditors and debtors but also reduces potential crimes, unemployment, suicides, etc.<sup>67</sup> Through the implementation of personal bankruptcy law, social welfare and stability will be increased.

### 3.2.2 | Evaluation of existing alternative regulations

Professor Hynes maintains the idea that nonbankruptcy law can satisfy the aims of a personal bankruptcy system transitorily, finitely, and inexpensively.<sup>68</sup> However, whether China has accomplished this ideal state is questionable. To have a thorough understanding of the alternative methods in China, the regulations and provisions are differentiated into segments, and the validity of the alternative approaches is examined in this section.

#### 1. Protection of creditors' benefits: Mostly accomplished

The widely acknowledged necessity for building an individual bankruptcy system is its procedural advantages. Without a thorough mechanism, procedural justice cannot be guaranteed. Existing protection of creditors mainly focuses on the collection of debts, preventing debtors from escaping. Besides, how to distribute evenly among creditors and how to keep the creditors away from “race to collect” competitions are objectives of the alternative system as well. As they can withdraw their debts on a proportional basis, the creditors no longer need to beat others with the fastest legal actions.<sup>69</sup> Current rules adopted allow creditors to claim their rights collectively, which avoids the “first-come first-served” and duplicate litigation problems. However, without bankruptcy administrators, it is difficult to safeguard creditors' rights and judicial efficiency to the full extent.<sup>70</sup>

Meanwhile, although previous data show only 1 ~ 3% of the personal bankruptcy cases include fraud, it is still important to exercise caution with the discharge mechanism to avoid misuse by fraudulent debtors.<sup>71</sup> According to implementing rules, measures are taken. The Supreme Court published the *Revision of Supreme People's Court's Certain Provisions on the Debtor's High Consumption* in 2015, restricting debtors' consumption to confined levels.<sup>72</sup> And the Civil Procedure Law also facilitates creditors' rights by providing abusive use punishments in execution cases.<sup>73</sup> Yet, means-testing, seen as the “*raison d'être*” of the system by Professor Hynes,<sup>74</sup> does not have a similar counterpart in China yet.

#### 2. Protection of debtors' benefits: Partially accomplished

With the use of new technology, a new series of collection techniques have been used by the creditors which may invade the privacy of the debtors, causing mental stress and social stigma.<sup>75</sup> This rightly calls for the attention to physical and mental well-being of the debtors.

To sustain debtors' rights, more regional rules are applied. For example, debt adjustment rules in Taizhou<sup>76</sup> and Wenzhou<sup>77</sup> are similar to their counterparts in other countries' approaches such as liquidation and repayment plans. The Civil Procedure Law leaves a basic living allowance for debtors, which is also restressed in the *Opinions on Further Strengthening the Concept of Civilized Implementation in the Execution (2019)* by the Supreme Court.<sup>78</sup> All of these regulations are paving the way for debtors' “fresh start” and protecting their human rights and development possibilities.



However, under the existing framework, voluntary and free applications for personal bankruptcy cannot be realized for the debtors. The access requirement of personal bankruptcy is hard to replicate by nonbankruptcy laws.<sup>79</sup> According to the rules in use, only when there is a judgment on assets being brought by the courts, especially with enforcement hardships, can the case proceed to debt adjustment procedures.<sup>80</sup> That is to say, the decision to apply for consumer bankruptcy cannot be made alone by the debtors or the creditors, but a prerequisite ruling issued by the courts is required. Therefore, alternative methods are restricted to execution cases only.

Moreover, while there are provisions for the restriction of the debtor's high consumption, the loss and restoration of the debtors' rights have not been fully considered. Article 34 of the Wenzhou Regulation identifies some scenarios for the debtors to restore their credit.<sup>81</sup> However, it is not enough for a "fresh start" in life. The rule lists how to confine the property rights of defaulting debtors, although it does not guarantee complete restoration of debtors' rights and credits afterwards.<sup>82</sup> Hence, the current rules are incomplete from a systematic perspective.

Last but not least, the discharge mechanism, being a *sine qua non*, is not specified in the current alternative system. The alternative regulations, including some features of the bankruptcy mechanism, are temporary, limited, and unbalanced. In individual bankruptcy cases, the creditors may be able to recover little of the debt as per the provision of the law since the distressed debtors possess hardly any wealth. Nevertheless, the time and efforts invested in tracking, searching, and verifying debtors' assets are tremendous.<sup>83</sup> While the debt-relief system grants major benefits to the debtors, it also frees the creditors from much trouble.<sup>84</sup> The existing rules try to tackle the problem by signing contracts through multilateral voluntary negotiations led by the courts. However, according to lessons learnt in other countries, mandatory legal discharge in personal bankruptcy enjoys more efficacy and validity.<sup>85</sup>

### 3. Social and national benefits: Barely accomplished

As for the social perspective, some of the personal debt discharges may be able to avoid damages to the social and personal relationships in the community. However, it is difficult to attain national well-being with only alternative methods employed in specific cases in the pilot provinces. Current debt adjustments are regional rules which are only effective in their jurisdiction and to their inhabitants. The rulings may still be challenged by other domestic courts and are hardly recognized internationally.<sup>86</sup>

Additionally, the local legal culture in different countries, as agreed by many scholars, plays a key role in the enactment of a personal bankruptcy system.<sup>87</sup> In Chinese history, some hints of debt adjustments existed, but no personal bankruptcy law was implemented, either wholly or consistently.<sup>88</sup> This may be attributed to the cultural roots of China. Providing debtors with a "fresh start" means more than helping them out of debt. Even with negotiated deferred repayment plans, the fear of failure and the anxiety of losing face in the community presented a grim picture of future for many who go insolvent.<sup>89</sup> Besides, it is supported by the empirical data that the personal bankruptcy system is highly correlated with entrepreneurship, since individuals are more willing to start a business under a tolerant bankruptcy system.<sup>90</sup> Hence a forgiving attitude toward the debtors is the key element to be included in the modern personal bankruptcy system. It helps debtors to get back on their feet, encourages entrepreneurs exploring their business, while saving families from falling apart.

The structure of current alternative regulations depicts the priority ladder in China. Creditors' benefits, with a long history, stand at the center of the stage. Meanwhile, with the

development of the economy, debtors' benefits are supported at the regional level. Yet, using a personal bankruptcy system to assuage both systematic risk of distressed debts and negative societal effects has not been fully recognized yet.

## **4 | SALIENT CONDITIONS IN PERSONAL BANKRUPTCY LEGISLATION IN CHINA**

Since alternative regulations are not fully satisfactory, China still needs a personal bankruptcy system. While Professor Richard Hynes has evidenced that consumer bankruptcy can be effectively replicated by nonbankruptcy laws, he also agrees that there are still limitations with alternative debt adjustment and discharge methods.<sup>91</sup>

The current Chinese alternative regulations in debt adjustments and over-indebtedness relief are mainly in two areas:

1. mandatory enforcement with exemption for debtors' properties; and
2. deferred payment agreements between creditors and debtors.<sup>92</sup>

These methods ease pressure for some debtors but are not appropriate for all the situations. For instance, the mechanism taken now may be neither convenient nor effective for resolving complicated cases with multiple creditors.<sup>93</sup> Compared with the ideal consumer bankruptcy system suggested by Professor Tabb,<sup>94</sup> there is much to be improved.

Many countries have tried to transplant clauses, even chapters, from countries with sophisticated bankruptcy systems.<sup>95</sup> Yet, reproducing a similar law in a different country is problematic. With diverse cultural and legal traditions, challenges are distinct in the legislative process, and this is especially true in personal bankruptcy.<sup>96</sup> Hence, countries with individual bankruptcy systems possess divergent measures in their rules.<sup>97</sup> The factors influencing the drafting of legal documents and establishing legal frameworks depend on whether the underlying aim is “pro-debtor,” “pro-creditor,” or even “pro-entrepreneurship.”

A legal system of bankruptcy that is comprehensive and inclusive of all possibilities is the need of the hour, and it presents a herculean challenge for the legal fraternity. Professor Tabb has raised many illuminating and inescapable questions for consumer bankruptcy legislation.<sup>98</sup> Many factors, including, but not limited to its necessity, feasibility, financial costs, and social effects, should be taken into consideration.<sup>99</sup> Although there are numerous questions needed to be tackled before legislation in China, this section intends to focus on only a few burning issues.

### **4.1 | Political implications in personal bankruptcy legislation**

While social needs lead to personal bankruptcy, the legislation procedure may be postponed by other incentives.<sup>100</sup> Spooner stresses the hampering effect of political implications in analyzing the reasons for belated bankruptcy reforms.<sup>101</sup> When looking at nuances in personal bankruptcy regulations and legislation, investigations should not be limited to structural and cultural parameters. The essence of the statutory enactment is political engagement. Yet, political impetus, which should be enshrined, is often neglected in academic literature in China.

### 4.1.1 | Transformation of interest groups

Spooner has identified the most influential interest groups in personal bankruptcy legislation as:

relevant professions, financial institutions, purveyors of political ideologies, and state officials and agencies.<sup>102</sup>

The role of the credit industry and governmental agencies appears to be very central to the legislative process. The inertia of personal bankruptcy legislation in China is at least partly due to a lack of political desire. The credit industry in China has significant government involvement since the vast majority of the financial institutions are state-related.<sup>103</sup> Banks, as main creditors in China, are not bedfellows of generous personal bankruptcy, though they recognize the need for legal reforms.<sup>104</sup> Firstly, it is in their interest to preserve rigorous regulations toward debtors in order to reduce bad debts. Secondly, when debtors default, they have a better bargaining position in out-of-court negotiations than other creditors. The prudent attitude of the credit industry has deferred the legislative course. However, as more commercial banks and nonbank financial institutions participate in the credit industry, they have relaxed their guard.<sup>105</sup> In order to lure more clients to loan, they have invested massive money in advertising, propaganda, and public relations. The attitude of the credit industry has become blurred within the progress made.

Meanwhile, 12 bankruptcy courts have been set up by August 2020,<sup>106</sup> and more intelligent minds, including judges, lawyers, and scholars, are attracted to this area. Thus, the legal fraternity, academicians, and industry professionals are multiplying, and they are more actively advocating for personal bankruptcy law.

### 4.1.2 | Political incentives

While interest groups may exert political pressure, public attention incentivizes the final decision trigger for the legal reform.<sup>107</sup> As economic transformation and over-indebtedness situation evolve, the need for personal bankruptcy becomes more imminent, especially with the hit of multiple financial crisis and natural catastrophes.

In China, the Supreme Court expressed its desire for personal bankruptcy pilot experiments in 2019 to lay a footstone for future explorations.<sup>108</sup> In the same year, 13 Chinese Ministries and Commissions released *The Plan of Accelerating the Improvement and Reformation on Market Exit (2019)*, indicating that the bankruptcy system will be expanded to individual businessmen and working tax-payers. Besides, a more tolerant attitude toward the inability to service the debts in a timely manner is mentioned in the document.<sup>109</sup> Moreover, CPC Central Committee has expressed an opinion on the need to promote personal bankruptcy legislation in two recent documents.<sup>110</sup>

These well-intended gestures clear policy hurdles for the establishment of individual bankruptcy system and support the legislation in general, though the question of how will the driving forces of different interest groups shape Chinese personal bankruptcy law is still left unanswered.

## 4.2 | Cultural resistance and countervailing factors of personal bankruptcy

Professor Kilborn expressed concerns about the dilemma of “enticing the sick to seek treatment while keeping out the healthy.”<sup>111</sup> This notion reflects both sides of cultural resistance in China:

1. the fear of abuse and fraud as creditors' main concern; and
2. the worry of endogenous stigma and exogenous discrimination as debtors' major anxiety.

#### 4.2.1 | Combating moral hazard and fraud

How to prevent abusive usage, as the most vital part of personal bankruptcy, is extremely contentious in China. Owing to the inveteracy of “欠债还钱天经地义” (the Chinese equivalent of the doctrine of *pacta sunt servanda*), the fear of fraud and moral hazards like irresponsible debts hinders the adoption and implementation of a more generous personal bankruptcy system.<sup>112</sup> While the element of “good faith” is viewed as a premise in personal bankruptcy, it is not specified in consumer bankruptcy law worldwide.<sup>113</sup> However, based on the legal provision and cultural context, the lack of clarification in the personal bankruptcy system may be misused by malicious debtors. Hence, the debts belonging to the debtor must be evaluated in order to make an informed decision on discharge, which should be the last resort to bail out the debtors.<sup>114</sup>

China is cautious about consumer bankruptcy legislation, as the public is worried about the misuse of such a system. First, the legal history in China is pro-creditor. Second, people generally stereotype defaulting debtors as extravagantly wealthy. Last but not least, creditors, including banks and enterprises, are worried about incremental bad debts. These attitudes leave a deep mark in bankruptcy legislation in China.

According to a report on the People's Bank of China in 2018, consumers tend to value their credit records and reputations.<sup>115</sup> Nevertheless, interventions by the agencies to ensure smooth operation of the system are indispensable. Current rules emphasize punishment of vicious debt-escaping individuals.<sup>116</sup> However, the task of preventing misuse is tricky since both *ex ante* precaution and *ex post* supervision should be implemented. Several tested methods used in other countries can be referred to:

1. using the credit record to influence the debtor's ability to borrow;
2. providing “extremely undesirable” assistance which only heavily indebted people would accept, such as public housing, low-paying jobs, limited allowances, etc.; and
3. revocation and ancillary punishments.<sup>117</sup>

The Shenzhen version adopts restrictions on debtors' occupation<sup>118</sup> and consumption<sup>119</sup> to minimize the incentives for abusive applications, while using punishments to penalize frauds.<sup>120</sup> Even though these regulations still need refinements in future application, they suit the conditions in China in general.

#### 4.2.2 | Discrimination and stigma

The social opprobrium in bankruptcy is one of the most “intractable challenges” in initiating the personal bankruptcy system.<sup>121</sup> Adam Smith once said:

bankruptcy is perhaps the greatest and most humiliating calamity which can befall an innocent man.<sup>122</sup>

“面子” (social reputation) is a huge obstacle for the vast majority of the Chinese population who are considering bankruptcy as an option because it is considered shameful and woeful by

the society.<sup>123</sup> Indeed, cultural resistance is a conundrum in personal bankruptcy. It not only encumbers the society from accepting defaulting debtors but also deters debtors from seeking help. Once a debtor's bankruptcy became public, a series of consequences appear immediately. For instance, access to financing, employment, and even education is affected.<sup>124</sup> Besides, "feelings of guilt, shame, and stigma" of the debtor act as stimulants in shying away from bankruptcy applications.<sup>125</sup>

Socio-emotional counseling and support for the debtors play an important role in setting up the stage for them to enter into bankruptcy. This is in addition to the financial support they need. Countries with a rich history in personal bankruptcy still witness discrimination on insolvent individuals.<sup>126</sup> As such, Professor Tabb would prohibit discrimination of bankruptcy debtors by anyone except if "the nondebtor party proves that the discrimination was substantially justified."<sup>127</sup>

The discrimination clause is vital since the Chinese have been regarding bankruptcy as shameful and evil.<sup>128</sup> Unfortunately, legislators and scholars do not prioritize this in China. While it is under consideration by the scholars in the new recommendation version, the boundary of the clause is still narrow.<sup>129</sup> However, Hangzhou Intermediate Court issued a meaningful trial document on March 31, 2020, targeted to helping creditors restore their damaged credit.<sup>130</sup> This document advances the protection of debtors' reputation and attempts to weaken, if unable to cease, the negative influence of bankruptcy on the debtor's life.

While the cultural landscape does not change overnight, policies can start by eliminating a negative tone and using selective words.<sup>131</sup> There is a lot to be improved in minimizing cultural influence in motivating bankruptcy incentives in China. Additionally, the effect of local legal culture in the implementation of future personal bankruptcy law should be considered in advance in legislating.

### 4.3 | Social conditions and judicial burden

To establish a feasible individual bankruptcy system, the applicable subjects should include not only business individuals but also ordinary consumers.<sup>132</sup> However, present rules provide neither creditors nor debtors the right to apply for personal bankruptcy voluntarily. The subject range is widened in the Shenzhen legislation. Article 2 indicates that insolvent people (including business individuals and consumers) are eligible for personal bankruptcy, while Article 9 specifies that both creditors and debtors are qualified voluntary applicants.<sup>133</sup> A similar approach is adopted in the scholar recommendation version.<sup>134</sup> The clauses in both documents make personal bankruptcy more accessible and efficient, lowering the threshold for troubled debtors. Additionally, the restrictions placed on debtors (participating in social insurance for certain years) and creditors (holding maturing claims over certain amounts) truncate the overuse of the system.

Yet, it is globally reported that the number of personal bankruptcy cases has been skyrocketing in numerous countries since they launched individual bankruptcy systems.<sup>135</sup> Personal bankruptcy can be incredibly stressful for the courts, which is evident even in countries with sophisticated legal mechanisms.<sup>136</sup> China, with the biggest population in the world, may face even more pressure, obstacles, and uncertainties. The number of ongoing defaulting debtors with effective legal documents reckoned by the Chinese courts is about 6 million in 2020.<sup>137</sup> Overindebted consumers unrecognized are not yet accounted for. Therefore, the

alleviation of judicial pressure and legal costs cannot be ignored for a well-functioning bankruptcy system.<sup>138</sup>

Under these circumstances, a well-thought out consultative process is highly recommended in China in order to alleviate judicial pressure, to reduce costs, and also to boost productivity.<sup>139</sup> Shenzhen has introduced an administrative agency in personal bankruptcy affairs, taking over some nonlegal responsibilities from the courts.<sup>140</sup> The related clauses are generalized and should be specified by detailed execution rules. Still, as administrators proved to be effective in their involvements,<sup>141</sup> this creative approach is worth expecting.

## 5 | CONCLUSION

On the economic front, China was restricted by its planned economic system prior to economic reform. After the transformation of the economy, the need for personal bankruptcy has undertaken an intensive boost.

As for the legal side, personal bankruptcy is expected to vary from country to country according to its legal history, social background, economic status, and moral standards.<sup>142</sup> Simply mirroring a set of foreign rules can be not only unenforceable but also harmful. China, with its rare legal history on personal bankruptcy, has been holding resentment and distrust of the system for decades. Many countries have experienced these moral attitudes in their records as well.<sup>143</sup> In order to “test the water” and to mitigate imminent pressure, China has carried out some alternative methods within pilot provinces. While some aspects of creditors’ benefits and debtors’ benefits are protected through current rules, drawbacks still exist. Hence, legislation is inevitable. Among numerous questions, political, cultural, and social hurdles are the most conspicuous. Hence, understanding these issues enhances future legislation.

After many years of debates and development, scholars and legislators in China have finally reached a general consensus on consumer bankruptcy legislation. The discussion shifts from why to how. Although domestic pilot explorations are not perfect, they are definitely encouraging trials. The development is moving at a fast pace, which is very promising news. Updates on personal bankruptcy in China are proliferating. News on pilot cases, regional rules, and further research are thriving. Hopefully, we will see the birth of a personal bankruptcy system in China in coming years.

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### ENDNOTES

<sup>1</sup> Shuai Guo, “The first personal bankruptcy case in China” (*Leiden Law Blog*, 18 October 2019) <<https://leidenlawblog.nl/articles/first-personal-bankruptcy-case-in-china>>: “On 9 October 2019, a court in Wenzhou, Zhejiang province, delivered the first judgment regarding personal bankruptcy in China. In this case, a debtor with over [RMB 2 million] in debts reached a settlement with four creditors. This resulted in a first-time repayment of around [RMB 32,000] within 18 months, and, within six years upon the completion of the first repayment plan, the debtor will have to pay 50% of his household income exceeding [RMB 120,000].”

<sup>2</sup> Xiaorong Cai, “From the Principle of No Discharge for Bankruptcy to Debt Discharge for Bankruptcy: Historical Development of Chinese Debt Repayment Obligation for Bankruptcy” [2013] *The Jurist* 93, 101–105.

- <sup>3</sup> Ibid., 97–98. The Chinese tradition prefers peace and harmony, which helps minimizing the conflicts among debtors and creditors. Under customs, the Chinese used various alternative methods to balance the relations between debtors and creditors, such as: “兴隆票” (a promise for future repayment once the debtor has money), “摊账” (liquidation), and “倒四” (to repay the debt with business shares). The underlying philosophy of these means is similar to conventional deferring of debts and liquidation.
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- <sup>5</sup> Shuai Li, “The Structure of Personal Bankruptcy Law in China – An Essay based on Criticism to the Viewpoint that ‘Conditions to Establish Personal Bankruptcy Are Immature’” (2016) 467(3) *Commercial Research* 186, 187.
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- <sup>10</sup> Beijing Foreign Studies University, “Personal Bankruptcy Law (Scholar Recommendation Version)” (30 March 2020) <<http://www.hfsaba.com/glrnc-71.html>>.
- <sup>11</sup> World Bank, *Gross Domestic Product 2019* (1 July 2020) <[databank.worldbank.org/data/download/GDP.pdf](http://databank.worldbank.org/data/download/GDP.pdf)>.
- <sup>12</sup> Iain Ramsay, “Comparative Consumer Bankruptcy” (2007) 2007(1) *University of Illinois Law Review* 241, 267.
- <sup>13</sup> Min Hu, “Economic Theory Development with Chinese Characteristics in 70 Years” [2019] *People’s Forum* 12, 12–13.
- <sup>14</sup> Jose Garrido, “The Role of Personal Insolvency Law in Economic Development: An Introduction to the World Bank Report on the Treatment of the Insolvency of Natural Persons” (2014) 5 *World Bank Legal Review* 111, 113.
- <sup>15</sup> Yang Zhang, “Why is Personal Bankruptcy Possible: Traceability, Evidence and Prospect” (2019) 225(4) *Taxation and Economy* 1, 3.
- <sup>16</sup> Iain Ramsay, “Towards an International Paradigm of Personal Insolvency Law? A Critical View” (2017) 17(1) *QUT Law Review* 15, 35.
- <sup>17</sup> Edward X Gu, “From Permanent Employment to Massive Lay-offs: the Political Economy of ‘Transitional Unemployment’ in Urban China (1993–8)” (1999) 28(2) *Economy and Society* 281.
- <sup>18</sup> Lin Chun, “Against Privatization in China: A Historical and Empirical Argument” (2008) 13(1) *Journal of Chinese Political Science* 1, 20.
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- <sup>21</sup> Xinxin Wang, “Evaluating and Instructing Personal Bankruptcy Legislation under the Concept of Market Economy” [2019] *Journal of Law Application* 61, 66.
- <sup>22</sup> World Bank (above note 11).
- <sup>23</sup> Yin (above note 6), 71.
- <sup>24</sup> Bing Liu, “Constructing Personal Bankruptcy System in China” [2019] *China Legal Science* 223, 231.

- <sup>25</sup> Huifen Yin, "Consumer Credit and Over-indebtedness in China" (2018) 27(1) *International Insolvency Review* 58, 60. The People's Bank of China issued numerous policies, including *Management Measures on Individual Housing Loans* (1998), *Management Measures on Auto Loans* (1998) and *Opinions on Consumer Credit Development* (1999).
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- <sup>27</sup> Institute for Advanced Research of Shanghai University of Finance and Economics, *The Annual Report on the Analyzing and Forecasting Macroeconomy in China (2019–2020)* (Shanghai 2019–12), 105.
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- <sup>29</sup> Institute for Advanced Research of Shanghai University of Finance and Economics (above note 27), 104.
- <sup>30</sup> Martin (above note 8), 9.
- <sup>31</sup> Kent Anderson, "The Explosive Global Growth of Personal Insolvency and the Concomitant Cirth of the Study of Comparative Consumer Bankruptcy" (2004) 42(4) *Osgoode Hall Law Journal* 661, 667.
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- <sup>42</sup> Yin (above note 6), 70.
- <sup>43</sup> Charles Tabb, "Bankruptcy and Entrepreneurs: In Search of an Optimal Failure Resolution System" (2019) 93(2) *American Bankruptcy Law Journal* 315, 320–321.
- <sup>44</sup> Wilfred Dolfsma and Robert McMaster, "Revisiting Institutional Law and Economics - The Inadequacy of the Chicago School: The Case of Personal Bankruptcy Law" (2007) 41(2) *Journal of Economic Issues* 557, 563.
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- <sup>56</sup> Ma (above note 54), 177.
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- <sup>60</sup> Ma (above note 54), 176.
- <sup>61</sup> Li (above note 5), 187.
- <sup>62</sup> Yin (above note 6), 74.
- <sup>63</sup> Xu (above note 53), 744.
- <sup>64</sup> Hynes (above note 59), 140.
- <sup>65</sup> Liu (above note 24), 224.
- <sup>66</sup> Jason Kilborn, “Two Decades, Three Key Questions, and Evolving Answers in European Consumer Insolvency Law: Responsibility, Discretion, and Sacrifice” [2007] *SSRN Electronic Journal*, 3.
- <sup>67</sup> Yin (above note 6), 73.
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- <sup>69</sup> Li (above note 5), 189.
- <sup>70</sup> *Idem*.
- <sup>71</sup> Ma (above note 54), 177.
- <sup>72</sup> Article 3, *The Revision of Supreme People's Court's Certain Provisions on the Restriction of the Debtor's High Consumption 2015* (The Supreme Court), requires debtors not to: (a) when traveling, select planes, higher class trains, etc.; (b) consume in luxurious hotels, golf course, etc.; (c) purchase, build or rebuild housing; (d) rent luxurious hotels, offices, etc.; (e) purchase unnecessary vehicles; (f) travel for pleasure; (g) educate children in expensive private schools; (h) pay high premium; (i) ride G-series high-speed trains, etc.
- <sup>73</sup> Article 113, Civil Procedure Law of the People's Republic of China 2018 (National People's Committee), declares that “where the person being executed maliciously colludes with others and evades fulfilling the obligations...the people's court shall impose a fine and detention; if it constitutes a crime, it shall be investigated for criminal responsibility in accordance with the law.”
- <sup>74</sup> Hynes (above note 59), 124–125.
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- <sup>78</sup> Supreme Court of People's Republic of China, *Opinions on Further Strengthening the Concept of Civilized Implementation in the Execution* (3 January 2020) <<http://www.npc.gov.cn/npc/c30834/202001/125d1e81806f49a987637f0565a711bb.shtml>>.
- <sup>79</sup> Hynes (above note 59), 146.
- <sup>80</sup> People's Court of Wenzhou (above note 77); Article 6, Taizhou Intermediate People's Court (above note 50), states: "the debtor is unable to fulfil the paying obligation determined by the legal instrument in force..." Both documents require an effective legal document.
- <sup>81</sup> Article 34, paragraph 1, People's Court of Wenzhou (above note 77), states "if the applicant for debt liquidation has fully performed in accordance with the individual liquidation plan and met one of the following conditions, the people's court shall restore his credit on the application of the applicant..."
- <sup>82</sup> Li (above note 5), 189.
- <sup>83</sup> Yin (above note 6), 73.
- <sup>84</sup> Ma (above note 54), 175.
- <sup>85</sup> Kilborn (above note 26), 669, stating that "[t]he sine qua non of an effective, modern personal insolvency system is to reduce the debt burden on overindebted individuals... first principle of a personal insolvency regime is a mandated legal discharge of at least some portion of the individual debtor's unsustainable debt."
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- <sup>87</sup> Teresa Sullivan, Elizabeth Warren and Jay Westbrook, "Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts" (1994) 17 *Harvard Journal of Law & Public Policy* 801, defining local legal culture as "systematic and persistent variations in local legal practices as a consequence of a complex of perceptions and expectations shared by many practitioners and officials in a particular locality, and differing in identifiable ways from the practices, perceptions, and expectations existing in other localities subject to the same or a similar formal legal regime." See also Teresa Sullivan, Elizabeth Warren and Jay Westbrook, "Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981–1991" (1994) 68 *American Bankruptcy Law Journal* 121; Sullivan, Warren and Westbrook (above note 26); Jay Westbrook, "Local Legal Culture and the Fear of Abused" (1998) 6 *ABI Law Review* 25; Robert Lawless and Angela Littwin, "Local Legal Culture from R2D2 to Big Data" (2018) 96 *Texas Law Review* 1,353; Charles Tabb, "Lessons from the Globalization of Consumer Bankruptcy" (2005) 30(4) *Law & Social Inquiry* 763.
- <sup>88</sup> Cai (above note 2), 93–94.
- <sup>89</sup> Yin (above note 6), 71.
- <sup>90</sup> Xu (above note 53), 748.
- <sup>91</sup> Hynes (above note 59).
- <sup>92</sup> Yin (above note 6), 71.
- <sup>93</sup> Fei Han et al. (above note 28), 19.
- <sup>94</sup> Tabb (above note 43), 335, stating the ideal characteristics of the system to be "value-maximizing; equitable (as between the debtor and her creditors, and between creditors inter se); accessible for the debtor; controllable by the debtor; participatory for stakeholders; binding on all creditors, whether they assent or not; inexpensive; nongluttonous (i.e., no incentive for bankruptcy administrators to extract excessive fees); simple; clear; and speedy."
- <sup>95</sup> Martin (above note 8), 3–4, providing examples of countries trying to transplant an insolvency system, including New Zealand, Canada, Australia, etc.
- <sup>96</sup> Insolvency and Creditor/Debtor Regimes Task Force (above note 57), 3.

- <sup>97</sup> Tabb (above note 87), 763.
- <sup>98</sup> *Ibid.*, 771: “Should the system be oriented toward creditor protection? Debtor relief? Some uneasy combination of the two? In the realm of creditor protection, should the focus be on individual creditor autonomy or on collective action for the benefit of the whole? How sacrosanct should secured claims be? How readily should debtors be able to gain access to the consumer bankruptcy system itself? Once in the system, what sort of relief should the debtor be able to get? How broad should that relief be? What must the debtor do to obtain that relief? How quickly can the debtor obtain the relief?”
- <sup>99</sup> Yin (above note 25), 72.
- <sup>100</sup> Anderson (above note 31), 667.
- <sup>101</sup> Joseph Spooner, “Long Overdue: What the Belated Reform of Irish Personal Insolvency Law Tells Us about Comparative Consumer Bankruptcy” (2012) 86(2) *American Bankruptcy Law Journal* 243, 247.
- <sup>102</sup> *Ibid.*, 277.
- <sup>103</sup> Chaoke Wang, “The role of bank governance: evidence from market discipline, capital structure, ownership structure, risk taking and political connection” (Doctoral Thesis, University of Sussex, 2018), 165.
- <sup>104</sup> Spooner (above note 101).
- <sup>105</sup> Financial Stability Board, *Global Monitoring Report on Non-Bank Financial Intermediation 2019* (19 January 2020) <<https://www.fsb.org/2020/01/global-monitoring-report-on-non-bank-financial-intermediation-2019/>>.
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- <sup>107</sup> Spooner (above note 101), 284.
- <sup>108</sup> Supreme Court of People’s Republic of China (above note 7).
- <sup>109</sup> National Development and Reform Commission and others, *The Plan of Accelerating the Improvement and Reformation on Market Exit* (16 July 2019), 2 <[http://www.gov.cn/xinwen/2019-07/16/content\\_5410058.htm](http://www.gov.cn/xinwen/2019-07/16/content_5410058.htm)>.
- <sup>110</sup> The State Council and CPC Central Committee, *Opinions on Accelerating the Improvement of the Socialist Market Economic System in the New Era* (11 May 2020) <[http://www.gov.cn/zhengce/2020-05/18/content\\_5512696.htm](http://www.gov.cn/zhengce/2020-05/18/content_5512696.htm)>; CPC Central Committee, *Decision on Major Issues Concerning Persevering and Improving the Socialist System with Chinese Characteristics and Promoting the Modernization of the National Governance System and Governance Capacity* (31 October 2019) <[http://www.gov.cn/zhengce/2019-11/05/content\\_5449023.htm](http://www.gov.cn/zhengce/2019-11/05/content_5449023.htm)>.
- <sup>111</sup> Kilborn (above note 26), 669–670.
- <sup>112</sup> Insolvency and Creditor/Debtor Regimes Task Force (above note 57), 40–43.
- <sup>113</sup> Richard I Aaron, “Festschrift for Ruth Ann and James Wilson: A Review of Consumer Bankruptcy in Global Perspective” (2004) 12(2) *American Bankruptcy Institute Law Review* 521, 524.
- <sup>114</sup> Paul Ali, Lucinda O’Brien and Iain Ramsay, “Misfortune or Misdeed: An Empirical Study of Public Attitudes towards Personal Bankruptcy” (2017) 40(3) *UNSW Law Journal* 1098, 1101.
- <sup>115</sup> Financial Consumer Protection Bureau of the People’s Bank of China, *Consumer Financial Literacy Report (2019)* (2019–07), 7 <<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3868040/index.html>>.
- <sup>116</sup> Taizhou Intermediate People’s Court (above note 50).
- <sup>117</sup> Hynes (above note 59), 158–162.
- <sup>118</sup> Shenzhen People’s Congress (above note 9). Article 86 requires the debtors not to “hold the positions of director, supervisor and senior manager of a listed company, an unlisted public company or a financial institution from the declaration date of bankruptcy to the discharge date of outstanding debts.”
- <sup>119</sup> *Idem.* See Article 23, which is similar to Article 3, Revision of Supreme People’s Court’s Certain Provisions on the Restriction of the Debtor’s High Consumption (above note 72), yet with fewer restrictions: “From the date on which the people’s court makes the decision to restrict the debtor’s behavior to the date of the decision to lift the restriction on the debtor’s behavior, the debtor shall not, except with the consent of the

people's court, have the following consumption acts: (a) when traveling by means of transport, choose the higher class of trains, ships, high-speed trains, etc.; (b) consume in nightclubs, golf courses and hotels above the three-star level; (c) purchase real estate or vehicles; (d) build, expand or renovate houses; (e) educate children in expensive private schools; (f) rent high-end office buildings, hotels or apartments; (g) pay high premiums for insurance; (h) other inessential consumer acts.”

- <sup>120</sup> Shenzhen People's Congress (above note 9). Article 98 specifies the rejection of discharge as: (a) intentionally violating the provisions on restricting the conducts of debtors; (b) intentionally violating the obligations of debtors and the provisions on the property declaration; (c) having significant debts caused by acts such as extravagant consumption or gambling; (d) concealing, destroying, falsifying or altering financial documents, seals, letter documents, electronic documents and other materials; (e) concealing, transferring or damaging property; (f) other circumstances specified by laws, while Article 103 stipulates revocation if “the debtor has obtained the discharge of the outstanding debt by fraudulent means.”
- <sup>121</sup> Insolvency and Creditor/Debtor Regimes Task Force (above note 57), 130.
- <sup>122</sup> Dolfsma and McMaster (above note 44), 557.
- <sup>123</sup> Martin (above note 8), 75.
- <sup>124</sup> Tibor Tajti, “Bankruptcy Stigma and the Second Chance Policy: the Impact of Bankruptcy Stigma on Business Restructurings in China, Europe and the United States” (2018) 6(1–2) *China-EU Law Journal* 1, 10–11.
- <sup>125</sup> Insolvency and Creditor/Debtor Regimes Task Force (above note 57), 43–45.
- <sup>126</sup> Tabb (above note 43), 322.
- <sup>127</sup> *Ibid.*, 324.
- <sup>128</sup> Liu (above note 24), 225.
- <sup>129</sup> Beijing Foreign Studies University (above note 10). Article 183 states that “except for the relevant occupations that the debtor cannot engage in as specified in laws and administrative regulations, the debtor shall not be suspended or restricted from employment because of his insolvency. The debtor and his children's eligibility to enter school shall be protected as well.”
- <sup>130</sup> Hangzhou Intermediate People's Court, *Implementation Rules on the Credit Restoration of the Dishonored Person (Trial)* (31 March 2020) <<https://www.chinacourt.org/article/detail/2020/04/id/4898243.shtml>>.
- <sup>131</sup> Insolvency and Creditor/Debtor Regimes Task Force (above note 57), 43–45, suggesting measures “such as by referring to the ‘debtor’ as opposed to the ‘bankrupt,’ or by reducing post-relief restrictions on activity by debtors.”
- <sup>132</sup> Zhang (above note 15), 7.
- <sup>133</sup> Shenzhen People's Congress (above note 9). Article 2 indicates that “natural persons who live in the Shenzhen Special Economic Zone and have participated in Shenzhen social insurance for three consecutive years” are qualified for application under the regulation, while Article 9 states “... when the debtor is unable to pay off the due debts, the creditors who hold more than [RMB 500,000] of maturing claims alone or jointly may apply for liquidation of the debtor.”
- <sup>134</sup> Beijing Foreign Studies University (above note 10). See Article 3: “the following debtors are eligible to apply: (a) natural persons with residence, habitual residence, place of business, important property or other significant property interests within the territory of the People's Republic of China; (b) registered individual industrial and commercial households; and (c) rural contract-business households.” Article 16, paragraph 1, states that “... creditors who hold more than [RMB 500,000] of maturing claims, individually or collectively, may file an application for the debtor's liquidation.”
- <sup>135</sup> Xu (above note 53), 753.
- <sup>136</sup> Anderson (above note 31), 668: “For those countries that have formal bankruptcy proceedings, whether those are aimed at liquidation or rehabilitation, there has been a surge in filings. For those countries without formal proceedings, there has been increased pressure on the alternative private, semi-private, and public systems that have dealt with economic failure.”

- <sup>137</sup> Supreme Court of People's Republic of China, *China Executive Information Disclosure Network* (9 July 2020) <<http://zxgk.court.gov.cn/>>.
- <sup>138</sup> Insolvency and Creditor/Debtor Regimes Task Force (above note 57), 27–40.
- <sup>139</sup> Liu (above note 24), 234.
- <sup>140</sup> Shenzhen People's Congress (above note 9). See Article 6: “the administrative functions of personal bankruptcy affairs shall be exercised by the work department or institution determined by the municipal people's government (hereinafter referred to as the administrative department of bankruptcy affairs).” Article 155 also states: “the municipal bankruptcy administration department shall perform the following duties: (a) determining the qualifications of the administrator and establishing a roster of administrators; (b) proposing candidates for administrators in accordance with the provisions of Article 18; (c) managing and supervising the administrators in carrying out their duties; (d) providing advice and assistance on insolvency matters; (e) assisting the investigation of bankruptcy fraud and related violations; (f) implementing the system of registration and disclosure of bankruptcy information; (g) establishing and improving the coordination mechanism for bankruptcy affairs among relevant government departments; and (h) other administrative responsibilities related to the implementation of the regulation.”
- <sup>141</sup> Kilborn (above note 66), 18.
- <sup>142</sup> Tabb (above note 87), 775.
- <sup>143</sup> Jason Kilborn, “The Rise and Fall of Fear of Abuse in Consumer Bankruptcy: Most Recent Comparative Evidence from Europe and Beyond” (2018) 96 *Texas Law Review* 1327.

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