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Personal Insolvency in China: Necessities, Difficulties, and Possibilities

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PERSONAL INSOLVENCY IN CHINA: NECESSITIES, DIFFICULTIES, AND POSSIBILITIES

Rebecca Parry, Haizheng Zhang,* and Jiahui Fu**

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INTRODUCTION

Significant attention has been drawn in recent years and, particularly, in recent months to the unavailability of personal insolvency procedures in the People's Republic of China (PRC or China) and need for reform in this area. This increased interest has partly been attracted by a sharp rise in individual indebtedness given the expansion of individual borrowing, through investments in real estate and borrowing via credit

cards and lending apps.¹ However, momentum has also come from the liabilities of individuals in the business sector, as guarantee liabilities are a common problem, together with other potential liabilities for directors and shareholders of failed enterprises.² Demand may intensify soon as lost incomes resulting from the COVID-19 pandemic may make present debt levels unsustainable for some.³

The introduction of personal insolvency laws has hitherto been resisted in view of a culture of debt inheritance, discussed in Part 1 below, mistrust of debtors, fears regarding the impact on lenders and the potential for abuse by the dishonest in view of weak property information and credit information systems.⁴ Significant progress has been made, however, in building an infrastructure to support a personal insolvency system, and most recently, there has been notable progress towards the establishment of such a system in leading commercial regions that builds on approaches and expertise gained from corporate insolvencies.⁵ Most notably, Shenzhen announced the first local personal insolvency legislation in China, which came into force on March 1, 2021.⁶ However, enacting a national personal in-

1. United Nations Conference on Trade and Development. *Digital Economy Report*, 6, UNCTAD (2019); Kerry Liu, *Chinese Consumer Finance: A Primer*, 14:9 FRONTIER BUS. RES. CHINA 1, 5 (2020).

2. *A Way Out: China Is Getting Tough on Those Who Fail to Pay Their Debts*, THE ECONOMIST CHINA (May 30, 2019), <https://www.economist.com/china/2019/05/30/china-is-getting-tough-on-those-who-fail-to-pay-their-debts> [hereinafter THE ECONOMIST CHINA].

3. Logan Wright & Allen Feng, *COVID-19 and China's Household Debt Dilemma*, RHODIUM GROUP (May 12, 2020), <https://rhg.com/research/china-household-debt/>; FT Editorial Board, *Learning from China's Unequal Recovery*, FINANCIAL TIMES (Aug. 23, 2020), <https://www.ft.com/content/2e6eff69-e9fc-4a89-8491-945456cf206c> (China focused COVID-19 financial support on the business sector and support to workers was lower than in the UK and US, perhaps reflecting the greater levels of savings in China that could be used by workers to weather the impact); Sun Yu & Yuan Yang, *Why China's Economic Recovery from Coronavirus Is Widening the Wealth Gap*, FINANCIAL TIMES (Aug. 18, 2020), <https://www.ft.com/content/e0e2940a-17cb-40ed-8d27-3722c9349a5d> (The greatest financial impact appears to have been on those with lower incomes).

4. Guibin Zhang & Russell Smyth, *An Emerging Credit-Reporting System in China*, 42 THE CHINESE ECONOMY 40, 41 (2009).

5. See *infra* Part IV.E for the discussion on the Taizhou case.

6. Shēnzhèn Jīngjì Tèqū Gèrén Pòchǎn Tiáolì (深圳经济特区个人破产条例) [Shenzhen Special Economic Zone Personal Bankruptcy Regulations] (prom-

solvency law will not be straightforward in a society where credit plays a significant role in an individual's social capital and where many still view bankruptcy as a vehicle for feckless shirkers to escape their debts.⁷ It is these views that are likely to be the biggest obstacle to enactment of such a law on a national level.

Part I of this Article will consider the cultural factors and ideologies that have prevented the introduction of a personal insolvency system before now, as well as how these factors have changed over time. Part II analyzes the reasons why a personal insolvency system is now needed. Part III considers factors such as public resistance and an inadequate supporting infrastructure that present obstacles to the introduction of a national personal insolvency system. Part IV then considers the progress that has been made more recently in developing a personal insolvency system through judicial guidance, notable case law in some leading commercial provinces, and it includes discussion of the Shenzhen Regulations.

I. CHANGING SOCIETIES AND IDEOLOGIES

It is well known that personal insolvency laws have not historically been regarded as necessary in China, because the debts of a father would be passed on to the son and even to other family members and generations.⁸ Culture can shift as societies change,⁹ however, as seen in the case of the corporate insolvency laws in China. Corporate insolvency was regarded as

ulgated by the Standing Comm. of the Shenzhen Mun. People's Cong., Aug. 26, 2020, effective Mar. 21, 2021) [hereinafter Shenzhen Regulations].

7. Li Jinlei (李金磊), *Gèrén Pòchǎn Zhēn Yào Láile! Lǎo Làimen De Jiùshù Háishì Kuánghuān?* (个人破产真要来了! 老赖们的救赎还是狂欢?) [*Personal Bankruptcy is Really Coming! Lao Lai's Salvation or Carnival?*] TELLER REPORT CHINA NEWS CLIENT BEIJING (Jun. 3, 2020), http://www.xinhuanet.com/fortune/2020-06/03/c_1126069023.htm.

8. Paula Aronowitz, *Chinese Succession Law: An Historical Survey*, 2 PORTIA L. J. 265, 282 (1967); Fu Yifu, *Gèrén Pòchǎn Zhìdù Bùshì "Lǎo Lài" Men De Chūntiān* (付一夫: 个人破产制度不是"老赖"们的春天) [*The Personal Bankruptcy System Is Not the Spring of "Lao Lai"*], XINLÀNG CÁIJING (新浪财经) [SINA FINANCE] (Oct. 25, 2019) (China), <http://finance.sina.com.cn/zt/china/2019-10-25/zt-iicezuev4778877.shtml> (This factor is noted as contributing to resistance to a personal bankruptcy system).

9. The requirement for a son to inherit the debts of the father was subsequently limited to the amount of the inheritance. See Aronowitz, *supra* note 8, at 284–85.

ideologically inconsistent with China's planned economy; as such, corporate insolvency laws were only introduced on a trial basis in 1986¹⁰ (1986 Trial Insolvency Law) and only in relation to state owned enterprises¹¹ to support the development of the emerging socialist market economy.¹² Due to the narrow scope of the 1986 Trial Insolvency Law's application, including its inapplicability to private companies and the requirement of state involvement, which gave rise to tensions in foreign relations, it was replaced by the Enterprise Bankruptcy Law (the 2006 Bankruptcy Law), which applied to all the enterprises who are registered as legal persons as well as other organizations—such as partnerships—that are not legal-person enterprises.¹³ Personal insolvency was excluded despite its inclusion in early drafts of the law.¹⁴

The analyses above of both the 1986 Trial Insolvency Law and the 2006 Bankruptcy Law make clear they that they are limited to bankruptcy of legal persons and other unincorporated collective enterprise organizations. Hence, while insolvent companies—both private and state-owned—and partnerships are accounted for, natural persons are excluded, in contrast to their equivalents in Taiwan¹⁵ and Hong Kong Special

10. Zhōnghuá Rénmín Gònghéguó Qǐyè Pòchǎn Fǎ (中华人民共和国企业破产法) [Enterprise Bankruptcy Law (For Trial Implementation)] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 2, 1986, effective Nov. 1, 1988) CLI.1.3066(EN) (Lawinfochina) [hereinafter 1986 Law].

11. Qīyè Pòchǎn Fǎ (企业破产法) [Enterprise Bankruptcy Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 27, 2006, effective June 1, 2007), art. 2, CLI.1.78895(EN) (Lawinfochina) [hereinafter, Enterprise Bankruptcy Law 2006].

¹² See Rebecca Parry & Haizheng Zhang, *China's New Corporate Resue Laws: Perspectives and Principles*, 8 J. CORP. L. STUD. 113, 116 (2008).

13. See Enterprise Bankruptcy Law 2006, *supra* note 11, art. 135; see also Chuyi Wei, *Proposals to Establish a Partnership Bankruptcy Regime in China: With Lessons from the UK and USA*, 23 INT'L. INSOLVENCY REV. 122, 124–25 (2014).

14. Xin Hong (新红), *Dà Dìzhèn Néng Fǒu Cuīshēng Gèrén Pòchǎn Fǎ? Zhuānjiā: Hěn Nán Yícù'ěrjiù* (大地震能否催生个人破产法? 专家: 很难一蹴而就) [*Can a Major Earthquake Give Birth to a Personal Bankruptcy Law? Expert: It's Hard to do it Overnight*], FǎZHÌ RÌBÀO (法制日报) [LEGAL DAILY] (Jun. 5, 2008) (China), <http://news.sohu.com/20080605/n257312213.shtml> [hereinafter Legal Daily].

15. Taiwan Bankruptcy Law [Consumer Debt Settlement Regulation Amendment] (promulgated by the Dept. of the Court, Dec. 26, 2007, effective June 16, 2008), art 58..

Administrative Region of China,¹⁶ for example. Nowadays, personal insolvency law has seen a “global proliferation . . . ,”¹⁷ perhaps influenced by the globalization of credit. Social, cultural, and political differences have meant that there is by no means a uniformity of approach, however, with differences in factors, such as requirements for repayment plans and debt counselling, as conditions for a fresh start.¹⁸

In fact, there has long been significant lobbying for a personal insolvency system in the PRC, both during legislative processes and during academic discussions. Since 1994, there have been several attempts to reform the Chinese bankruptcy legislation and many drafts have been presented to the National People’s Congress Financial and Economic Affairs Committee¹⁹ that sought to protect creditors’ interests, encourage debtor integrity, and reflect the rise of credit borrowing by individuals but none were adopted for concerns about moral hazard and the potential for fraud.²⁰ Notable Chinese scholars, such as Weijian Tang, have repeatedly advocated for the establishment of a personal insolvency system in China,²¹ and more recently, support for such a system has been growing in official channels.²²

16. Bankruptcy Ordinance, effective Dec. 10, 2007, Cap 6.

17. Iain Ramsay, *Towards an International Paradigm of Personal Insolvency Law? A Critical View*, 17 QUTL. REV. 15, 16 (2017).

18. THE WORLD BANK, *Preface* to REPORT ON THE TREATMENT OF THE INSOLVENCY OF NATURAL PERSONS (2013).

19. *Quánguó Rénmín Dàibiǎo Dàhuì Cájīng Shìwù Wěiyuánhui* (全国人民代表大会财经事务委员会)

20. Huifen Yin, *Consumer Credit and Over-indebtedness in China*, 27 INT’L INSOLVENCY REV. 58, 58 (2018); Xiaoxiao Zhang & Fuyong Ou, *Economic and Legal Necessity of Personal Bankruptcy Legislation in China*, 30 INT’L INSOLVENCY REV. 289 (2021), 4.2.1.

21. Tang Weijian (汤维建), *Guanyu Jianli Woguo Geren Pochan Zhidu de Gouxiang* (关于构建我国个人破产制度的构想) [*Conception of Establishing China’s Personal Insolvency System*], 4 ZHONGGUO ZHENG FA DA XUE XUE BAO (中国政法大学学报)[J. CHINA U. POL. SCI. & L.] 41, 41 (1995). More recently see, e.g., Xu Yangguang (徐阳光), *Gèrén Pòchǎn Lìfǎ De Yīngguó Jīngyàn Yǔ Qǐshì* (个人破产立法的英国经验与启示) [*The British Experience and Enlightenment of Personal Bankruptcy Legislation*], 7 YŌU HUÀ YÍNG SHÀNG HUÁN JING JING ZHÌ PŌ CHÁN Fǎ GUĪ ZHÌ Fǎ XUÉ ZÁ ZHÌ (优化营商环境之破产法规制法学杂志) [J. BANKR. RULES & REG. TO OPTIMIZE THE BUS. ENV’T] (2020).

22. See Guójiā Fāzhǎn Gǎigé Wèi, Zuìgāo Rénmín Fǎyuàn, Gōngyè Hé Xīnxī Huà Bù Dèng Guānyú Yìnfā “Jiākuài Wánshàn Shìchǎng Zhǔtǐ Tuìchū Zhìdù Gǎigé Fāng’àn” de Tōngzhī (國家發展改革委、最高人民法院、工業和信息化部等關於印發《加快完善市場主體退出制度改革方案》的通知) [Notice by the

Significantly, the Supreme People's Court of China,²³ which often plays a key role in the development of the law,²⁴ has issued the Fifth Five Year Reform Outline²⁵ in which it proposed to promote the establishment of a personal insolvency system. As happened in the development of the Enterprise Bankruptcy Law 2006, advancements towards national law reform are being preceded by provincial trial approaches of personal bankruptcy relief.²⁶ Pioneering debt settlement decisions in the Zhejiang cities of Taizhou²⁷ and Wenzhou,²⁸ as well as the trial guidelines of the Zhejiang Higher People's Court²⁹ which devel-

National Development and Reform Commission, the Supreme People's Court, the Ministry of Industry and Information Technology and Other Departments of Issuing the Reform Plan for Accelerating Improvement of the Exit System for Market Participants] (promulgated by the Nat'l Dev. & Ref. Comm'n, June 22, 2019, effective June 22, 2019) CLI.4.334195(EN) (Lawinfochina) [hereinafter Reform Plan for Accelerating Improvement of the Exit System for Market Participants].

23. See ZHOU QIANG (周强), ZUIGAO RENMIN FAYUAN GUANYU RENMIN FAYUAN JIEXUE "ZHIXING NAN" GONGZUO QINGKUANG DE BAOGAO (最高人民法院关于人民法院解决“执行难”工作情况的报告) [REPORT OF THE SUPREME PEOPLE'S COURT ON THE WORK OF THE PEOPLE'S COURT TO SOLVE THE "DIFFICULTIES IN IMPLEMENTATION"] (2018) (China), <http://www.court.gov.cn/zixun-xiangqing-124841.html>.

24. Jerome A. Cohen, *Reforming China's Civil Procedure: Judging the Courts*, 45 AM. J. COMP. L. 793, 794–95 (1997).

25. Zui Gao Renmin Fayuan Guanyu Shenhua Renmin Fayuan Sifa Tizhi Zonghe Peitao Gaige de Yijian-Renmin Fayuan di Wuge Wunian Gaige Gangyao (2019-2023) (最高人民法院关于深化人民法院司法体制综合配套改革的意见-人民法院第五个五年改革纲要(2019-2023)) [Opinions of the Supreme People's Court on Deepening the Comprehensive Reform of the Judicial System of the People's Court - The Fifth Five-Year Reform Outline of the People's Court (2019-2023)] (promulgated by Sup. People's Ct., Feb. 27, 2019) (China) (One of the aims of the plan is to build a comprehensive personal insolvency system).

26. See Xianchu Zhang & Charles D. Booth, *Chinese Bankruptcy Law in an Emerging Market Economy: The Shenzhen Experience*, 15 COLUM. J. ASIAN L. 1, 2 (2001) (discussing a pioneering province in the corporate insolvency sector).

27. See THE ECONOMIST CHINA: *supra* note 2 (for a brief English language discussion of this case).

28. *In re Cai* Intermediate People's Court of Wenzhou City, Zhejiang Province, and the Pingyang County People's Court, October 9, 2019; see Shuai Guo, *The First Personal Bankruptcy Case in China*, LEIDEN LAW BLOG (Oct. 18, 2019), https://leidenlawblog.nl/articles/first-personal-bankruptcy-case-in-china_

29. *Zhèjiāng Gāo Yuàn: Gèrén Zhàiwù Jízōng Qīnglǐ (Lèi Gèrén Pòchǎn) Gōngzuò Zhǐyǐn (Shìxíng)* (浙江高院 | 个人债务集中清理 (类个人破产) (工作指

op the framework in personal insolvency cases and which are discussed below, may be regarded as initial steps towards the development of a personal insolvency system. Further, Shenzhen, one of a number of developed cities in Guangdong Province with high levels of entrepreneurship, is leading the way in the development of personal insolvency legislation after having announced a trial project in 2019³⁰ and, more recently, promulgated personal insolvency laws that came into force in 2021.³¹ Notably, Shenzhen was one of the main pioneers of corporate insolvency laws, and it stands to serve the same role in relation to personal insolvency laws.³² Shenzhen's new law is limited to locally resident debtors: debtors are only eligible if they have paid social insurance in Shenzhen for at least three years.³³ The Zhejiang trial guidelines are also regionally confined.³⁴

引 (试行)[*Notice of the Higher People's Court of Zhejiang Province on Issuing the "Guidelines for the Centralized Liquidation of Personal Debts (Personal Bankruptcy) of Zhejiang Courts (Trial)"*], ZHONGGUO POCHAN FA LUNTAN (中国破产法论)[CHINA BANKRUPTCY LAW FORUM] (Dec. 3, 2020), https://www.sohu.com/a/436097455_689962 [hereinafter Zhejiang Guidelines].

30. On October 28, 2019, Luo Wenzhi, director of the Standing Committee of Shenzhen Municipal People's Congress, hosted a symposium on *Standing and Improving the People's Congress System*. He proposed to further advance the first trial, exploring the possibilities of reforms, and promoting special legislation involving major reform matters such as personal insolvency regulations to improve the business environment.

31. Shenzhen Regulations, *supra* note 6, art. 173.

32. David Kirton, Yawen Chen & Clarence Fernandez, *Shenzhen Drafts China's First Personal Bankruptcy Laws as Virus Pressures Economy*, REUTERS (June 4, 2020, 5:55 AM), <https://www.reuters.com/article/us-china-economy-bankruptcy/shenzhen-drafts-chinas-first-personal-bankruptcy-laws-as-virus-pressures-economy-idUSKBN23B1EG>. Shenzhen's proximity to Hong Kong Special Administrative Region of China, which already has a personal insolvency system, is not likely to be very influential given the differences between the two. See Wen Zhang, *Gèrén Pòchǎn Zhìdù Yì Zài Lùshàng - Lú Lín Lǚshī Jiēshòu Duō Jiā Méitǐ Cǎifǎng* (媒体报道 | 个人破产制度已在路上——卢林律师接受多家媒体采访) [*The Personal Bankruptcy System is on the Way-Lawyer Lu Lin Accepts Interviews from Many Media*] GUOCO LAW FIRM (Aug. 6, 2019) (China).

33. Shenzhen Regulations, *supra* note 6, art. 2. The restriction to those who have paid social insurance, rather than those who have been registered as Shenzhen citizens, reflects the fact that Shenzhen has a high migrant worker population, many of whom are not registered as Shenzhen citizens.

34. Zhejiang Guidelines, *supra* note 29, art. 6 (confining the availability of relief to natural person with Zhejiang household registration, living in Zhejiang province, participating in social insurance in Zhejiang province or

Therefore, the majority of over-burdened debtors in China will have a longer wait for relief.

II. THE NEED FOR A PERSONAL INSOLVENCY SYSTEM

The need for a personal insolvency system is greater now than in the past because individuals have opportunities and incentives to incur credit on a far greater scale than in the past. As a result of a policy of mass entrepreneurship and innovation,³⁵ in which individuals participate in market economy activities more and more frequently, individuals have gradually come to occupy an increasingly important position, participating in the market and sharing risks.³⁶ There has also been a significant increase in the availability of credit for individuals, with greater access to financing for housing and other means of obtaining credit, such as fintech.³⁷

Due to factors such as a loss of income, a lack of judgment, or an unexpected catastrophic event such as an earthquake³⁸ or

paying personal income tax for three consecutive years). As noted in relation to the Shenzhen Regulations, *supra* note 6 (enabling migrant workers to benefit).

35. It was devised by Li Keqiang in the Summer Davos Forum in September 2014. See *Premier Li's Speech at Summer Davos Opening Ceremony*, STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA (Sep. 10, 2014, 9:44 AM), http://english.www.gov.cn/premier/speeches/2014/09/22/content_281474988575784.htm (for English text of Li's speech).

36. Edward Tse, *The Rise of Entrepreneurship in China*, FORBES (Apr. 5, 2016, 5:32 AM), <https://www.forbes.com/sites/tseedward/2016/04/05/the-rise-of-entrepreneurship-in-china/#6f57464d3efc>; Nisha Gopalan, *China Takes a Risk on GenZ's Love Affair With Debt*, BLOOMBERG OPINION (Dec. 24, 2019) <https://www.bloombergquint.com/global-economics/china-takes-growth-risk-on-genz-feeding-household-debt-levels>; Zhang & Ou, *supra* note 20, 2.2.3 (note potential for indebtedness among micro business sellers using the WeiShang platform).

37. Wei Wang & David Dollar, *What's Happening with China's Fintech Industry?*, BROOKINGS INST. (Feb. 8, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/02/08/whats-happening-with-chinas-fintech-industry/>.

38. After the earthquake in Wenchuan, 2008, a lot of people lost all of their property, as a result of which they could not pay their debts. See LEGAL DAILY, *supra* note 14. In response, The China Banking Regulatory Commission (CBRC) issued an urgent notice applying where a debtor had suffered huge losses due to the earthquake and where they could not obtain insurance compensation, or they had debts that could not be repaid after insurance compensation and guarantee recovery. *Id.* Under the notice, these unpaid debts should be identified as bad debts and be written off in time. *Id.* Howev-

pandemic,³⁹ individuals are highly vulnerable to insolvency and may find themselves unable to pay their debts as they come due through no fault of their own. Many types of people experience such financial distress, including business-related debtors, such as owner-directors of micro, small and medium sized enterprises (MSMEs),⁴⁰ as well as over-indebted consumers. Due to an absence of personal insolvency laws enabling a fresh start, such debtors presently have to bear the burden for their lifetime, which is particularly significant for young debtors.⁴¹ Without insolvency laws to aid debtors, insolvency will act as a fetter on enterprise and entrepreneurship, as well as undermine harmonious family life, among other limiting effects.⁴² The need for a personal insolvency system is inescapable.

A. Completing the Bankruptcy System in China

The next sections will identify in more detail the benefits that a bankruptcy law system would bring to Chinese society.

1. Discharge of Business-Related Liabilities

Recent decades have seen a rise in entrepreneurship. As private businesses have increased in economic significance,⁴³ they played an increasingly major role in the development of the

er, the writing off of these bad debts should not be regarded as equivalent to the discharge of the debts in a personal insolvency system, since writing the debts off was only to be done by internal processing in the bank system. *Id.* If the debtors came by property to pay the debts, the bank would still be entitled to ask them to pay off the debts. *Id.* In contrast, in a personal bankruptcy process the debtor's debts are discharged forever, and the debtors need not repay them if their fresh start leads to a change in fortunes. *Id.*

39. Wright & Feng, *supra* note 3.

40. Rosalind Mason, Jason Kilborn, Stephanie Ben-Ishai & Joseph Spooner, *Guest Editorial: Personal Insolvency- A Fresh Start*, 17 QUT L. REV. i, i (2017).

41. Tuula Linna, *Consumer Insolvency: The Linkage Between the Fresh Start, Collective Proceedings, and the Access to Debt Adjustment*, 38 J CONSUM. POL'Y 357, 359 (2015).

42. Sarah Dai, 'Worse Than Doing Time': Life on the Wrong Side of China's Social Credit System, *INKSTONE* (Mar. 26, 2019), <https://www.inkstonenews.com/china/chinas-13-million-discredited-individuals-face-discrimination-thanks-social-credit-system/article/3003319>.

43. Edward Tse, *The Rise of Entrepreneurship in China*, *FORBES* (Apr. 5, 2016, 5:32am), <https://www.forbes.com/sites/tseedward/2016/04/05/the-rise-of-entrepreneurship-in-china/#6f57464d3efc>.

Chinese market-based economy.⁴⁴ Entrepreneurship naturally entails risk-taking and, in some instances, will lead to failure through no fault of the entrepreneur. In addition to a loss of investment, failed entrepreneurs may suffer liabilities as a result of a guarantee being called in,⁴⁵ or as a result of company law—as in the Wenzhou case—or frauds—as in the Taizhou case, both of which are discussed below.⁴⁶ Personal liabilities may stem from involvement in enterprise, for example, through the system of lifting the corporate veil. Under Chinese company law, piercing the corporate veil is appropriate when any shareholder of a company evades the payment of its debts by abusing the independent status of the legal person or the shareholder's limited liabilities, and where this seriously injures the interests of any creditor.⁴⁷ Such a person can be ordered to bear several and joint liabilities for the debts of the company.⁴⁸ Additionally, if the shareholder of a one-person limited liability company is unable to prove that the property of the company is independent from his own property, he will bear joint liabilities for the debts of the company.⁴⁹ There can, therefore, be very real impacts on the solvency of individuals in

44. Weiyang Zhang, *The Future of Private and State-Owned Enterprises in China*, THE OXFORD COMPANION TO THE ECONOMICS OF CHINA 285 (Shenggen Fan, Ravi Kanbur, Shang-Jin Wei & Xiaobo Zhang eds, 2014).

45. Gabriel Wildau, *In Wealthy Chinese City, Debt Guarantees Spark Default Contagion*, REUTERS (Apr. 27, 2014, 5:18 PM), <https://www.reuters.com/article/us-china-debt/in-wealthy-chinese-city-debt-guarantees-spark-default-contagion-idUSBREA3Q0OK20140427>; Shu Zhang, *Debt Guarantee Tangle: China's Private Firms Hit by Default Contagion*, REUTERS (Feb. 12, 2019, 3:17 AM), <https://www.reuters.com/article/us-china-economy-debt/debt-guarantee-tangle-chinas-private-firms-hit-by-default-contagion-idUSKCN1Q107W>; *China's Chain of Debt Guarantees Looms as Systemic Danger*, BLOOMBERG NEWS (Nov. 18, 2018, 4:30PM), <https://www.bloomberg.com/news/articles/2018-11-18/china-s-daisy-chain-of-debt-guarantees-looms-as-systemic-danger>.

46. THE ECONOMIST CHINA, *supra* note 2.

47. Gongsì Fa (公司法) [Company Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Oct. 26, 2018, effective Oct. 26, 2018), art 20, CLI.1.324551(EN) (Lawinfochina) [hereinafter Company Law].

48. *Id.* See also Cheng-Han Tan, Jiangyu Wang & Christian Hofmann, *Piercing the Corporate Veil: Historical, Theoretical & Comparative Perspectives*, 16 BERKELEY BUS. L. J. 140, 186–203 (2019); Shuangge Wen, *The Ideals and Reality of a Legal Transplant – The Veil-Piercing Doctrine in China*, 50 STAN. J. INT'L L. 319, 326 (2014).

49. Company Law, *supra* note 47, art 63.

cases where companies fail. For instance, in circumstances where a director or shareholder is facing personal liabilities that they cannot pay in full this may harm the wider economy through a loss of entrepreneurial activity.⁵⁰ A personal insolvency system can enable honest but unlucky entrepreneurs to make a fresh start and this presents a compelling case for the introduction of such laws.⁵¹

2. Addressing the Increasing Personal Credit Risk

Personal insolvency systems have often drawn a distinction between traders and non-traders, with some jurisdictions limiting bankruptcy to only the former.⁵² The official discussions of a personal insolvency law, including the Shenzhen regulations⁵³ discussed below, do not maintain this distinction. There are, however, still high levels of mistrust of consumer debtors,⁵⁴ and the importance of granting relief to honest but unfortunate debtors, especially entrepreneurs, has been emphasized.⁵⁵ In

50. Chuan Roger Peng, *Limited Liability in China: A Partial Reading of China's Company Law of 1994*, 10 COLUM. J. ASIAN L. 263, 277–79 (1996); see also Xu Yangguang, *supra* note 21 (noting problems caused by businessmen absconding in view of a lack of personal insolvency relief).

51. Wei Fan & Michelle J. White, *Personal Bankruptcy and the Level of Entrepreneurial Activity*, 46 J. L. & ECON. 543, 543–44 (2003); John Armour, & Douglas Cumming, *Bankruptcy Law and Entrepreneurship*, 10 AM. L. & ECON. REV. 303, 306–07 (2008); Seung-Hyun Lee, Yasuhiro Yamakawa, Mike W. Peng & Jay B. Barney, *How do Bankruptcy Laws Affect Entrepreneurship Developing Around the World?* 26 J. BUS. VENTURING 505, 516–17 (2011).

52. U.N. COMM'N. ON INT'L TRADE LAW, LEGISLATIVE GUIDE ON INSOLVENCY LAW, at 38–40, U.N. Sales No. E.05.V.10 (2005). (An early example in the UK is 13 Elizabeth c 7).

53. See Shenzhen Regulations, *supra* note 6.

54. Xu Shengfeng, Wang Haijun, Deng Li, Shu Zhang, Jin Xu, Bi Ying & Li Binbin (许胜锋, 王海军, 张生, 邓莉, 舒金旭, 毕滢, 李宾宾), *Wōguó Shǒubù Gèrén Pòchǎn Fǎ Chūtái, Shēndù Jiědú “Shēnzhèn Jīngù Tèqū Gèrén Pòchǎn Tiáolì”* (我国首部个人破产法出台, 深度解读《深圳经济特区个人破产条例》) [*Promulgation of My Country's First Personal Insolvency Law, an In-Depth Interpretation of the “Shenzhen Special Economic Zone Personal Bankruptcy Regulations”*], ZHONG LUN (Sept. 1, 2020) (China), <http://www.zhonglun.com/Content/2020/09-01/1706185541.html> (referencing the controversy regarding consumer debtors in the Shenzhen legislative process).

55. See Qian Yi, *Zhèjiāng Zhèngshì Tàn suǒ Gèrén Pòchǎn Zhìdù Chéngxìn Zhàiwùrén Yǒu Jīhuì Chóng Huò “Xīnshēng”* (浙江正式探索个人破产制度诚信债务人有机会重获“新生”) [*Zhejiang Formally Explores the Personal Bankruptcy System, Trustworthy Debtors Have the Opportunity to Regain a “New*

the past, China has been notable for having high rates of individual savings, partly as a result of a common emphasis on the importance of living within one's means and consuming in moderation, though the ideological reasons for these high rates are complex.⁵⁶ With the development of the credit economy, however, the Chinese population's spending habits are changing.⁵⁷ It has been argued that as long as there is high consumer spending and loans, there will be some who are over-indebted, and a personal insolvency system will be needed.⁵⁸ For example, in the United States, a rise in credit card debt has been identified as a primary causal factor of increasing consumer bankruptcy filings.⁵⁹ Increasing access to consumer credit internationally⁶⁰ has led to cases of increased financial vulnerability as some individuals incur excessive debt.⁶¹ This has prompted legislators in a number of countries to revise their existing personal insol-

Life], ZHEJIANG DAILY (Dec. 4, 2020) (China), http://www.zj.xinhuanet.com/2020-12/04/c_1126820327.htm; *Shēnzhèn Jīngjì Tèqū Gèrén Pòchǎn Tiáolì* "Míngnián 3 Yuè 1 Rì Qǐ Shíshī" (深圳经济特区个人破产条例)明年3月1日起实施 [Shenzhen Special Economic Zone Personal Bankruptcy Regulations" Will Come Into Effect on March 1 Next Year], SHENZHEN SPECIAL ZONE DAILY (Sept. 2, 2020) (China), http://www.sz.gov.cn/cn/xxgk/zfxxgj/zwdt/content/post_8051049.html.

56. Aart Kraay, *Household Saving in China*, 14 WORLD BANK ECON. REV. 545, 547, 548 (2000); Guonan Ma & Wang Yi, *How Much Do We Know about China's High Saving Rate? in THE EVOLVING ROLE OF CHINA IN THE GLOBAL ECONOMY* 147 (Cheung Yin-Wong & Jakob De Haan eds., 2013); Shang-Jin Wei, *The Mystery of Chinese Savings*, VOX EU (Feb. 6, 2010), <http://www.voxeu.org/index.php?q=node/4568>.

57. DANIEL ZIPSER, YOUNGANG CHEN & FANG GONG, MCKINSEY & COMPANY, 2016 CHINA CONSUMER REPORT: THE MODERNIZATION OF THE CHINESE CONSUMER 6 (2016) http://mckinseychina.com/wp-content/uploads/2016/03/The-Modernization-of-the-Chinese-Consumer_EN.pdf; Liu, *supra* note 1, at 2.

58. LEGAL DAILY, *supra* note 14. This article, over 10 years old, discusses whether the serious Sichuan earthquake should prompt the introduction of a personal insolvency law in China, and many scholars gave the answer 'yes'. *Id.* Some scholars also pointed out that not only the earthquake, but also the advance in consumption and loans, necessitated a personal insolvency law. *Id.*

59. Robert J. Landry, III, *Credit Card Debt and Consumer Bankruptcy: Can We 'Nudge' Our Way Out?*, 27 AM. BANKR. INST. L. REV. 139, 145 (2019).

60. See e.g., *Household Debt, Loans and Debt Securities, Percentage of GDP*, INTL MONETARY FUND, https://www.imf.org/external/datamapper/HH_LS@GDD/CAN/GBR/USA/DEU/ITA/FRA/JPN/CHN (last visited Aug. 25, 2020).

61. Yin, *supra* note 20, at 71.

veny laws to accommodate the increased need of individuals for financial relief from over-indebtedness.⁶²

The increased availability of personal consumer credit in China began in the mid-1980s, much later than in many other countries, but it has increased rapidly in recent years.⁶³ Initially, personal credit became available through mortgages after the People's Bank of China promulgated the Measures for the Administration of Personal Housing Loans and the Guiding Opinions on the Implementation of Personal Consumer Credit.⁶⁴ Subsequent efforts to promote consumer credit developed to bolster the economy following the Asian financial crisis,⁶⁵ and since then, credit availability has developed significantly, owing to higher incomes and diversity of sources leading to availability of credit and greater levels of financial inclusion.⁶⁶ There is no doubt that credit consumption is a very effective measure to expand domestic demand and plays a very important driving role in stimulating economic growth, including recently, as household borrowing has been encouraged to compensate for slower economic growth elsewhere.⁶⁷

So far, China's personal consumer credit market has had its own marked pattern of development.⁶⁸ Statistics from the Qi-

62. Rafael Efrat, *Global Trends in Personal Bankruptcy*, 76 AM. BANKR. L. J. 81, 82 (2002); Jason J. Kilborn, *Reflections of the World Bank's Report on the Treatment of the Insolvency of Natural Persons in the Newest Consumer Bankruptcy Laws: Colombia, Italy, Ireland*, 27 PACE INT'L L. REV. 306, 315 (2015); Jason J. Kilborn, *Treating the New European Disease of Consumer Debt in a Post-Communist State: The Groundbreaking New Russian Personal Insolvency Law*, 41 BROOK. J. INT'L L. 655, 657 (2016).

63. Yin, *supra* note 20, at 60–64; Liu, *supra* note 1, at 9.

64. See *Notice on Issuing the "Guiding Opinions on the Implementation of Personal Consumer Credit,"* ZHONGGUO RENMIN YINHANG (中国人民银行) [PEOPLE'S BANK OF CHINA, LEGAL AFFAIRS DEPARTMENT], <http://www.pbc.gov.cn/tiaofasi/144941/144959/2817917/index.html> (last visited Nov. 5, 2019); *Notice on Issuing the "Measures for the Administration of Personal Housing Loans,"* ZHONGGUO RENMIN YINHANG (中国人民银行) [PEOPLE'S BANK OF CHINA, LEGAL AFFAIRS DEPARTMENT], <http://www.pbc.gov.cn/tiaofasi/144941/144959/2817884/index.html> (last visited Nov. 5, 2019).

65. Yin, *supra* note 20, at 60.

66. Runzhong Peng, Min Zhao, & Lei Wang, *Financial Inclusion in the People's Republic of China: Achievements and Challenges*, in ASIAN DEVELOPMENT BANK, FINANCIAL INCLUSION IN ASIA 7 (2014).

67. Wright & Feng, *supra* note 3.

68. Liu, *supra* note 1, at 9.

anzhan Industry Research Institute, show that from 2013 to 2017, the growth rate of the consumer credit balance, excluding housing loans, maintained a level above 20%, while the compound annual growth rate reached 24.7%.⁶⁹ Notably, in 2017, the balance of consumer credit reached 960 billion yuan—a year-on-year increase of 62.2%—indicating an explosive growth trend.⁷⁰ Although housing loans account for much of the household debt, data from the People’s Bank of China shows that short-term consumer loans increased from 125.3 billion yuan in 2004 to 8.23 trillion yuan in September 2018, an increase of nearly 6600%, and the medium- and long-term consumer loans have increased 1500% during the same period.⁷¹ Accordingly the consumer credit risk is getting higher and higher.⁷² By the end of 2018, China’s total level of household debt stood at 60.4% of the GDP, with total debts roughly equivalent to total incomes.⁷³ The use of credit, including through innovative platforms,⁷⁴ has become increasingly common,⁷⁵ which prompts re-

69. See 2018 Nián Zhōngguó Xiāofèi Xìndài Shìchǎng Guīmó Yùcè: Shìchǎng Guīmó Jiāng Túpò 13 Wàn Yì (2018年中国消费信贷市场规模预测: 市场规模将突破13万亿) [2018 China’s Consumer Credit Market Size Forecast: The Market Size Will Exceed 13 Trillion (Figure)], CHINA COMMERCIAL INDUSTRY RESEARCH INSTITUTE (Jul. 13, 2018, 10:49 AM), <http://finance.eastmoney.com/a/20180713906207015.html>.

70. *Id.*

71. See People’s Bank of China, *Financial Statistics*, GENERAL OFFICE OF THE STATE COUNCIL ON PROMOTING COMPREHENSIVE STATISTICAL WORK IN THE FINANCIAL INDUSTRY, <http://www.pbc.gov.cn/diaochatongjisi/116219/index.html> (last visited Mar. 27, 2020).

72. Quan Zhongguang, *Quán Zhōngguāng: Shìchǎng Jīngjì Jiùshì Chéngxìn Jīngjì* (权忠光: 市场经济就是诚信经济) [*The Market Economy is the Honest Economy*], XINLÀNG CÁIJĪNG (新浪财经) [SINA FINANCE] (Oct. 12, 2012) (China), <http://finance.sina.com.cn/hy/20121012/153613353646.shtml>.

73. Amanda Lee, *China’s Rising Household Debt a ‘Major Concern’ as Government Tries to Boost Consumption Amid Trade War*, SOUTH CHINA MORNING POST (Dec. 4, 2019, 9:00 AM), <https://www.scmp.com/economy/china-economy/article/3040346/chinas-rising-household-debt-major-concern-government-tries> (citing statistics from the People’s Bank of China).

74. See e.g., Gladys Pak Lei Chong, *Cashless China: Securitization of Everyday Life through Alipay’s Social Credit System—Sesame Credit*, 12 CHINESE J. COMM. 290 (2019).

75. See generally KELLE S. TSAI, *BACK-ALLEY BANKING: PRIVATE ENTREPRENEURS IN CHINA* (2002) (discussing the operation of informal financial networks in financing entrepreneurial activity, notably among wealthier

flection on measures to relieve those without the ability to repay their debts. It should be added that the Chinese government's firm grip on the credit industry has resulted in some individuals having little access to excess debt.⁷⁶

Personal insolvency laws enable a rebalancing between borrowers and lenders, with both offensive and defensive aspects. Bankruptcy can be seen as providing a defensive position for debtors to enable them to achieve a fresh start in cases where they cannot repay their debts—often in return for some repayment requirements and disqualifications—as well as an offensive method for creditors as part of their debt collection artillery,⁷⁷ resulting in a scheme for the repayment of debts. It is arguably necessary in a society with widespread credit availability and consumption by individuals to establish a personal insolvency system⁷⁸ to support credit consumption, enabling cases of over-indebtedness to be resolved as well as encouraging the healthy and rapid development of the credit market within the growth of the economy as a whole.⁷⁹ These laws should also result in mitigation of the social impact of indebtedness. Some overburdened debtors have chosen extreme methods to escape debt, such as absconding from creditors and even suicide.⁸⁰ There have also been regular examples of violence being used to extort debt repayments.⁸¹

individuals, whereas those on lower incomes typically still rely on informal financial networks or family loans).

76. Baizhu Chen, J. Kimball Dietrich & Yi Fang, *An Overview of China's Financial Markets: Progress, Problems and Prospects*, in FINANCIAL MARKET REFORM, IN CHINA: PROGRESS, PROBLEMS AND PROSPECTS 5, 11 (2000) (describing the “lingering” elements of the planned economy in China, including a highly regulated banking industry).

77. Linna, *supra* note 41, at 358.

78. Wang Xiaoxing (王晓星), *Lun Zhongguo Xiaofei Xindai Cunzai de Wenti Jiqi Falv Duice* (论中国消费信贷存在的问题及其法律对策) [*On the Problems Existing in China's Credit Consumption and Their Legal Countermeasures*], 5 ZHONGGUO SHICHANG (中国市场) [Chinese Market] 60 (2018).

79. See Jose M. 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*, 5 WORLD BANK LEGAL REV. 111, 118–19 (2014).

80. See Wu Yang Du Jiang, *Dàxuéshēng Shēn Xiàn Duōtóu Jièdài Hòu Zìshā, Cuīshōu Rén Kǒnghè Jiāshǔ* (大学生深陷多头借贷后自杀, 催收人恐吓家属) [*College Student Commits Suicide After Being Trapped by Long-term Borrowing and Intimidation of Family by Debt Collectors*], P2PEYE.COM (Mar. 4,

3. Improving the Efficiency of Judicial Debt Enforcement

China's existing systems to help creditors claim repayment, other than the innovative approaches in Taizhou and Wenzhou, are individualized debt collection measures, such as civil litigation procedures, after which the courts may formulate some judgment documents to determine the rights and obligations between the parties.⁸² However, this system suffers from some weaknesses that a bankruptcy regime would help to address. Under the terms of such judgments, the parties are required to perform certain obligations; in practice, however, few perform them voluntarily, as can be seen in the following chart, which shows the automatic fulfillment rate of effective judgment documents during the most recent three years for which data is available.⁸³

2018, 10:53AM) (China), <https://news.p2peye.com/article-509504-1.html>; Zhang & Ou, *supra* note 21, Part C.

81. Liu, *supra* note 20, at 13. See MENGBING TONG, THE APPLICATION OF LAW AND RESOLVING MECHANISM TO DEAL WITH VIOLENCE IN DEBT COLLECTION IN PRIVATE LENDING 181 (2017)

82. See *Wēnzhōu Shěnjié Quánguó Shǒu Lì “Gèrén Pòchǎn” àn* (温州审结全国首例“个人破产”案) [*Wenzhou Concluded the Country's First “Personal Bankruptcy” Case*], BĚIJĪNG QĪNGNIÁN BÀO (北京青年报) [BEIJING YOUTH DAILY] (Oct. 11, 2019), http://www.xinhuanet.com/legal/2019-10/11/c_1125089261.htm.

83. See Jin Hao (最高法:全国法院3年执行到位金额达4.4万亿元) [*Supreme Law: National Courts have Enforced a Total of 4.4 Trillion Yuan in Three Years*], [GUANGMING DAILY] (Jan. 21, 2019) (China), <http://news.cctv.com/2019/01/21/ARTIsZHTb2HG5uIoBLTBkIVr190121.shtml> (reporting increasing enforcement levels).

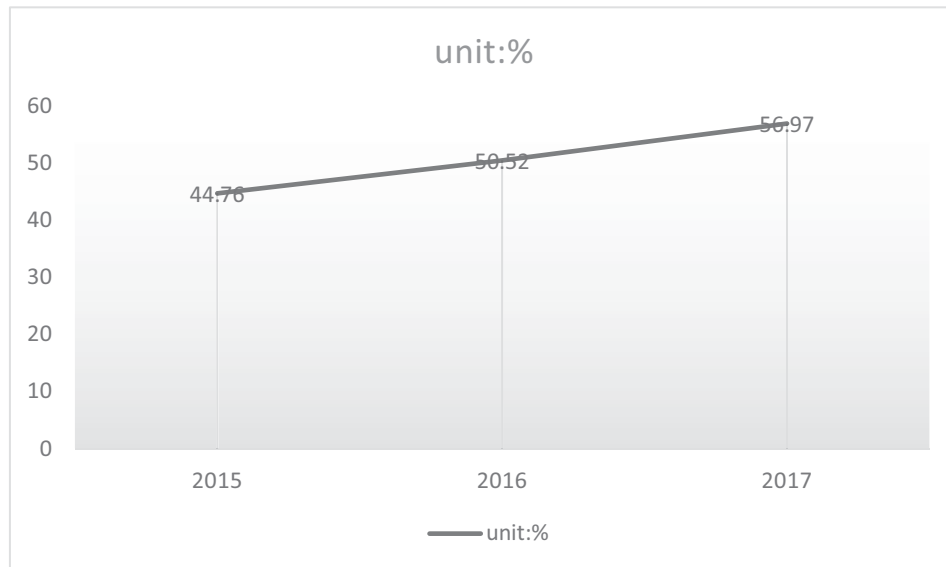


Fig. 1: automatic fulfillment rate of effective public judgments. *Source: see note 83.*

It can be seen from this chart that, despite steady improvement in recovery rates, the automatic fulfillment rate of effective judgment documents remains very low, only around 45-57%.

If a debtor refuses to comply with an order, the creditor may seek other judicial relief, such as through the civil enforcement procedure,⁸⁴ which is slow and costly. In a case where the defendant has property against which the judgment can be enforced, the enforcement must be concluded within six months from the date it is put on record, and the time limit for enforcement may be extended due to certain special circumstances.⁸⁵

There may also be valid reasons for non-compliance. In some cases the court will rule to deny execution of an arbitral award, such as where the arbitral award goes beyond the scope of the arbitration agreement, or where the evidence used as the basis

84. See *Zhongguo Minshi Susong Fa* (中国民事诉讼法) [The Civil Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991), art. 236, CHINA INTERNATIONAL COMMERCIAL COURT [hereinafter Civil Procedure Law].

85. See [Provisions of the Supreme People's Court on Some Time Limits for Handling Enforcement Cases by the People's Courts] (promulgated by the Sup. People's Ct., Dec. 31, 2006, effective Jan. 1, 2007), CLI.3.82874(EN) (Lawinfochina).

for an award was fabricated, or where evidence was concealed.⁸⁶ More importantly, the result of the enforcement procedure may be that the debtors cannot repay all of their remaining debts after the creditor has enforced against all their property. If, after the judgment, the creditor discovers that the debtor against whom recovery is sought has any other property, the creditor may at any time apply to the People's Court for enforcement,⁸⁷ which may not only waste judicial resources, but may also be costly for the creditors.

Difficulty in enforcement is one of the major problems in China's judicial practice, which has been stressed by Zhou Qiang, President of the Supreme People's Court, at the National Court of Basic Resolution on the Implementation of Difficult Work Promotion.⁸⁸ He contends that a problem-oriented approach should be adopted as a means to resolve the enforcement backlog, with improvements in information and case-handling infrastructure.⁸⁹ According to official statistics, from 2016 to 2018, the national courts accepted a total of 20.42 million execution cases, enforced in 19.39 million of these, and facilitated recoveries of the total amount of 4.4 trillion yuan.⁹⁰ The effect of strengthening enforcement has brought pleasingly improved results.⁹¹ Almost half of the cases cannot be executed and about 5% of the cases that entered the enforcement procedures are asking the people's courts to enforce the arbitral awards and notarized creditor's rights documents, but about 43% belonged to the "executive failure" cases where no property

86. See Civil Procedure Law, *supra* note 84, arts. 155, 237, 238.

87. See *id.* art. 254.

88. Zhōuqiáng Zài Quánguó Fǎyuàn Jīběn Jiějué Zhíxíng Nán Gōngzuò Tuījìn Huì Shàng Qiángdiào Jiānchí Yǐ Wèntí Wéi Dǎoxiàng Jiānjué Dǎ Yíng Jīběn Jiějué Zhíxíng Nán Zhè Chǎng Yìngzhàng (周强在全国法院基本解决执行难工作推进会上强调坚持以问题为导向坚决打赢基本解决执行难这场硬仗) [A Problem Solving Approach to Address Difficulties of Enforcement], [SUPREME COURT NEWS PAGE] (Jul. 5, 2017, 9:42 PM), <https://www.chinacourt.org/article/detail/2017/07/id/2913016.shtml>.

89. *Id.*

90. Nǚlì Jiāo Chū Wúkuì Yú Shídài De Yōuxiù Dájùàn—2016 Nián Yǐlái Quánguó Fǎyuàn Juéshèng “Jīběn Jiějué Zhíxíng Nán” Gōngzuò Zòngshù (努力交出无愧于时代的优秀答卷—2016年以来全国法院决胜“基本解决执行难”工作总结) [Summary of Achievements in Respect of Debt Enforcement Difficulties], [OFFICIAL WEBSITE OF THE SUPREME PEOPLE'S COURT] (Jan. 20, 2019), <http://www.court.gov.cn/zixun-xiangqing-140011.html>.

91. *Id.*

was available for the execution.⁹² Thus, when the debtors have no property to repay the debt, it is futile to apply the enforcement procedure. A personal insolvency system is a more appropriate way to handle such cases, strengthening the remedies available to creditors and providing a collective and principled basis for relief.

The personal insolvency system can ensure that the claims of each creditor are being fairly and equitably repaid in cases where the value of claims exceeds the value of the debtor's estate. The outcome in a bankruptcy is therefore likely to be different from any private settlement to which the debtor might have agreed to, as such a settlement may impair the interests of other creditors by repaying some favored creditors' debts while leaving others with nothing. The enforcement procedures discussed above are a means of dealing with debts on an individual basis, which means that the creditors who apply this procedure may be repaid in full. In circumstances where the debtor's property is insufficient to meet all her liabilities, enforcing creditors may receive the maximum amount of debt while other creditors may not receive anything. This problem is partially addressed by the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Interpretation of the Civil Procedure Law).⁹³ This interpretation applies in those circumstances where a creditor has benefited from an enforcement procedure and the debtor's property is insufficient to pay off all of the debtor's other debts.⁹⁴ It also enables other creditors to apply to the people's court to participate in the distribution of properties.⁹⁵ This system can be seen as an embryonic form of a personal insolvency system, as it enables a collective means of satisfaction of debts. It does not, however, ensure equality, since only creditors who have made application may benefit from the distribution of property, and thus it does not enable all of the creditors to participate in the distribution of properties automatically. This avoids a potential free-rider problem, which would otherwise arise in a case where other claimants could

92. See ZHOU QIANG, *supra* note 23.

93. [Interpretation of the Supreme People's Court on the Application of the <Civil Procedure Law>] (promulgated by Sup. People's Ct. Jan. 30, 2015, effective Feb. 4, 2015) (China).

94. *Id.* art. 508.

95. *Id.* (this approach is the Participatory Distribution System).

benefit from the efforts of the applicant without expenditure of their own efforts, but at the risk of potentially creating an unfair “race to the courthouse.” Thus, while it may be regarded as a good start, it is not good enough.

4. A More Compassionate Approach

The most significant difference between personal insolvency and corporate bankruptcy is, of course, that the natural person will live on after bankruptcy. Therefore, personal insolvency law aims to give debtors a fresh start, enabling them to once again become useful and productive members of society and to support their families.⁹⁶ There are great variations in approach between bankruptcy systems in this regard, a point which will be addressed below. Bankruptcy laws commonly exempt property from the estate available for creditors to meet the minimum domestic—and, if appropriate, business—needs of a debtor.⁹⁷ These debtors can also potentially be released from their heavy debt burden,⁹⁸ allowing them to restart from zero. Bankruptcy proceedings can therefore enable debtors to maintain their dignity and potentially continue to be productive and providing.

The fresh start policy is a common feature of personal insolvency systems, and can be traced back to England and the passage of the first discharge provision in 1705.⁹⁹ This law was effectively a debt collection measure for the benefit of creditors and far removed from modern fresh start laws.¹⁰⁰ However, it marked the beginnings of an approach that enables those in financial trouble an opportunity to begin a new and unencumbered chapter in their life.¹⁰¹

96. See e.g., Insolvency Act 1986, s. 283(2) (UK), <https://www.legislation.gov.uk/ukpga/1986/45/section/283>. See 11 U.S.C. § 522 (West).

97. THE WORLD BANK, *supra* note 18, para. 222.

98. See e.g. Linna, *supra* note 41, at 363 (discussing the Scandinavian systems). Although Linna also notes that some systems only provide the debtor with a fresh start upon a scheme of repayment being satisfied. *Id.*

99. Bankruptcy Act 1705, 4 Ann. c. 17 (Eng.). See Louis Edward Levinthal, *Early History of English Bankruptcy*, 67 U. PA. L. REV. 1, 18–20 (1919); Lawrence Shepard, *Personal Failures and the Bankruptcy Reform Act of 1978*, 27 J. L. & ECON. 419, 421–22 (1984).

100. Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR. L. J. 325, 333 (1991).

101. See Efrat, *supra* note 62, at 82.

In the light of the fresh start approach, it can be said that a personal insolvency system upholds the concept of assistance founded on principles of humanity and justice.¹⁰² A fresh start after bankruptcy can also be understood as aiding societal harmony more generally by limiting the need for society to provide public welfare for debtors and their families.¹⁰³ The fresh start may be subject to conditions, such as restrictions on conduct.¹⁰⁴ It may be that the fresh start can be lost in the event of misconduct, a technique often used as a means of encouraging the debtor to cooperate.¹⁰⁵

The need for a fresh start is fundamentally absent when corporate entity enters bankruptcy. In China, a company will lose the status of legal personage after its bankruptcy,¹⁰⁶ and thus, there is no need to provide such a similar protection for it.

III. DIFFICULTIES WHICH LIE IN THE WAY OF A PERSONAL INSOLVENCY SYSTEM

In spite of several compelling reasons for the introduction of a personal insolvency system, there are a number of difficulties that must be noted.

102. SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS 472 (1753); Wen Jie & Zhang Liqin, *Research on Establishing China's Personal Insolvency System*, 3 SHANGHAI ACAD.'Y. OF SOC. SCI. ACAD. Q. 69, 73 (2002).

103. Charles Jordan Tabb, *Scope of the Fresh Start in Bankruptcy: Collateral Conversions and the Dischargeability Debate*, 59 GEO. WASH. L. REV. 56, 94-5 (1990).

104. See Nick Huls, *American Influences on European Consumer Bankruptcy Law*, 15 J. CONSUMER POL'Y 125, 138 (1992) (discussing the idea of "earned discharge"); see also Nick Huls, *Overindebtedness and Overlegalization: Consumer Bankruptcy as a Field for Alternative Dispute Resolution*, 20 J. CONSUMER POL'Y 143, 153-56, 158 (1997); Iain Ramsay, *Comparative Consumer Bankruptcy*, 2007 U. ILL. L. REV. 241 (2006).

105. See Tabb, *supra* note 103.

106. See [Enterprise Bankruptcy Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 27, 2006, effective June 1, 2007), art. 121. ("A bankruptcy administrator shall, within 10 days as of the day when the procedures for bankruptcy are concluded, handle the formalities for write-off in the organ as originally in charge of the registration of the debtor upon the strength of the decision of the people's court on concluding the procedures for bankruptcy.").

A. Public Concerns About the System

Given the people are considered the masters of the country in China,¹⁰⁷ public support for the bankruptcy law is likely to be needed. Laws are generally enacted by the National People's Congress, and whether a legal system is successful or not depends in part on how much the people support and abide by it.¹⁰⁸ Unfortunately, a personal insolvency system is regarded with suspicion by many.¹⁰⁹

As noted, since ancient times in China, the society has generally recognized the traditional idea that "the sons should pay off all the debts of their fathers," and paying off debts is regarded as an unquestionable moral imperative.¹¹⁰ The personal insolvency system will probably result in some creditors receiving only part of what they are owed, or in some cases nothing at all, which will be contrary to these traditional beliefs. Not only may non-payment, or partial payment, be difficult for creditors to accept, but the debtor may bear the psychological burden of the "debt" long after it is discharged due to the prevailing societal moral thinking.¹¹¹ More recently, different psychological pressures towards debt repayment have arisen as social capital has become more important as a means of gaining trust.¹¹² A person who intentionally fails to pay their debts will be branded a *lao lai* (老赖), an untrustworthy figure which is commonly referred to in discussion of a potential personal in-

107. Jishun Zhang, *Creating "Masters of the Country" in Shanghai and Beijing: Discourse and the 1953–54 Local People's Congress Elections*, 220 CHINA QUARTERLY 1071, 1071 (2014).

108. John W. Lewis & Xue Litai, *Social Change and Political Reform in China: Meeting the Challenge of Success*, 176 CHINA QUARTERLY 926 (2003).

109. See e.g. Li Jinlei, *supra* note 7.

110. Hui-Ching Chang & G. Richard Holt, *Debt-Repaying Mechanism in Chinese Relationships: An Exploration of the Folk Concepts of Pao and Human Emotional Debt*, 27 RES. LANG. & SOC. INTERACT. 351, 361 (1994) (discussing how relationships, including business relationships, are defined by reciprocal obligations and expectations of fair exchange, although stronger moral obligations arise from relationships giving rise to emotional debts).

111. Zhifeng Liu, Xueyi Zhong, Tingting Zhang & Wenquan Li, *Household Debt and Happiness: Evidence from the China Household Finance Survey*, 27 APPLIED ECON. LETTERS 199 (2020) (Different types of debt will have different impacts on levels of unhappiness.)

112. Meg Jing Zeng, *China's Social Credit System Puts its People under Pressure to be Model Citizens*, THE CONVERSATION (Jan. 23, 2018, 2:12 PM), <https://theconversation.com/chinas-social-credit-system-puts-its-people-under-pressure-to-be-model-citizens-89963>.

solvency system.¹¹³ Failure to pay debts can result in an individual being blacklisted.¹¹⁴ Social shaming tactics, such as featuring the debtor on a billboard or on social media, can be used to humiliate those who fail to pay their debts despite being able to do so.¹¹⁵

Such branding has led to fears of a personal insolvency system presenting a risk of moral hazard, such as the potential for individuals to feign insolvency to gain relief from indebtedness, as well as potential encouragement of reckless borrowing.¹¹⁶ A sense of the extent to which these fears are widely held can be obtained by searching Chinese websites for personal insolvency¹¹⁷ or similar key words, since the results would list many articles addressing fears that *lao lai* could walk away from their debts under a personal insolvency system.¹¹⁸ It is no doubt a common public concern that a bankruptcy system will be exploited by *lao lai*,¹¹⁹ perhaps to a point that Chinese society will ignore the need to enable debtors to obtain a fresh start to those who find themselves unable to repay their debts in full.¹²⁰ Further, many debtors may end up in such a position

113. See *infra* note 309 for examples of newspaper articles where “a *lao lai* (老赖)” is noted.

114. Norms which would otherwise lead to a person being favourably red-listed are not otherwise clear. Severin Englemann, Mo Chen, Felix Fischer, Ching-Yu Kao & Jens Grossklags, *Clear Sanctions, Vague Rewards: How China’s Social Credit System Currently Defines “Good” and “Bad” Behavior*, in CONF. ON FAIRNESS, ACCOUNTABILITY & TRANSPARENCY 2019 (2018).

115. Rui Zhong, *In China, Social Credit is Just a More Invasive Form of Social Media*, CODA (Oct. 31, 2019), <https://www.codastory.com/authoritarian-tech/china-social-credit/>.

116. Zhao Li, *Personal Bankruptcy System “Breaking Ice” Expert Interpretation: Will not Become an Old Umbrella*, TELLER REPORT (June 21, 2020, 3:24 PM), <https://www.tellerreport.com/news/2020-06-21-personal-bankruptcy-system-%22breaking-ice%22-expert-interpretation—will-not-become-an-old-umbrella.BJEGIVVa6L.html>.

117. *Gèrén pòchǎn* (个人破产).

118. In a Google search conducted on 12 Feb. 2021 there were over 50 news articles reporting that personal insolvency reforms were incoming and explaining that “*lao lai*” could not benefit.

119. Li Jinlei, *supra* note 7.

120. The Chapter 11 reorganisation in the United States of the affairs of the Chinese businessman Jia Yueting also drew attention to the concept of bankruptcy. *In re Jia Yueting*, Case No. 2:19-BK-24804-VZ (Bankr. C.D. Cal.), formerly No. 19-12220 (Bankr. D. Del.); Caiwei Chen, *US Court Confirms Restructuring of FF Founder Jia Yueting’s Personal Bankruptcy*, PANDAILY (May 22, 2020), <https://pandaily.com/us-court-confirms-restructuring-of-ff->

through misfortune, and it would inequitable to only prevent them from seeking a fresh start.¹²¹ Nonetheless, attitudes towards debtors may mean that many Chinese will find it difficult to accept a personal insolvency system.

B. Inadequate Infrastructure

A system does not exist in isolation, and thus a personal insolvency system will be dependent on a number of other auxiliary systems that are vital to the success of an insolvency system. Looking at individual bankruptcy systems in other countries, such systems include property registration—which is important for the identification of creditor entitlements and the scope of the bankruptcy estate—and a social security system—which is important for supporting debtors who lose their livelihoods.¹²² As outlined in this section, the supporting infrastructure in China is not yet adequately developed. Still, this should not stand in the way of developing a personal insolvency system.

1. The Unsound Social Security System

The weaker the social safety net a country provides to its citizens, the more likely it is that individuals will resort to borrowing to obtain services like education, medical benefits, and housing.¹²³ Further, a government's decision to provide limited financial welfare benefits results in a diminished social safety net for individuals, leading to greater individual financial vulnerability arising from job layoffs, medical bills,¹²⁴ or family dissolution.¹²⁵ An unsound social security system can often be a

founder-jia-yuetings-personal-bankruptcy/; Li Gong (李攻), *Gèrén Pòchǎn Bùshì Bǎohù “Lǎo Lài”, Jiākuài Lìfǎ Shì Zài Bì Xíng* (个人破产不是保护“老赖”, 加快立法势在必行) [*Personal Bankruptcy is not to Protect the “Lao Lai”, it is Imperative to Expedite Legislation*], XINLANG CÁIJING (新浪财经) [SINA FINANCE] (May 26, 2020, 6:13 PM), <https://finance.sina.com.cn/wm/2020-05-26/doc-iircuyvi5153192.shtml>.

121. Shenzhen Regulations, *supra* note 6, Explanatory Notes.

122. THE WORLD BANK, *supra* note 18, para. 100.

123. See I. Ramsay & T. Williams, *Peering Forward, 10 Years After: International Policy and Consumer Credit Regulation*, 43 J. CONSUMER POL'Y 209, 214 (2019).

124. See Tal Gross & Matthew J. Notowidigdo, *Health Insurance and the Consumer Bankruptcy Decision: Evidence from Expansions of Medicaid*, 95 J. PUB. ECON. 767, 767 (2011).

125. Efrat, *supra* note 65, at 96.

contributing cause of personal insolvency, and if the PRC were to introduce a personal insolvency system, its underdeveloped, inadequate social security mechanisms may also exacerbate the difficulties of those who become bankrupt.¹²⁶

The construction of China's social security system began with the state's "seventh five-year" plan in 1982,¹²⁷ and it has progressed in subsequent years. The types of protection, coverage, and security have been significantly improved upon, and a social security system with Chinese characteristics has essentially been formed.¹²⁸ However, China still has a long way to go to build an adequate security system to help bankrupted debtors, since unified social security legislation is still lacking—and because there is no tradition for supporting debtors.¹²⁹

The state of the social security system may indeed influence the bankruptcy system that is implemented. Some systems will place restrictions on post-bankruptcy employment so as to protect the public from dishonest or irresponsible debtors.¹³⁰ Some will mandate that debtors will be subject to restrictions after bankruptcy and that debtors are restricted from some occupations.¹³¹ Having been denied access to the occupations which have provided their income, debtors may depend on social welfare post-bankruptcy if lacking other opportunities and other

126. See Ken Willis, *Seeking Balance, China Strives to Adapt Social Protection to the Needs of a Market Economy*, in 55 FIN. & DEV. 20, 22 (2018) (discussing the patchy development of the social security system).

127. See Joe C. B. Leung, *Dismantling the 'Iron Rice Bowl': Welfare Reforms in the People's Republic of China*, 23 J. SOC. POL'Y 341, 358 (1994). Prior to this time, state benefits had been provided to employees of state-owned enterprises via those enterprises.

128. GAO ZEXIN, MARIO ARTURO RUIZ ESTRADA, MOHAMAD ASLAM BIN GULAM HASSAN & MINSOO LEE, *THE DEVELOPMENT OF SOCIAL SECURITY IN CHINA (1949-2019)* 1 (2019).

129. There is no constitutional provision for social insurance relief for debtors. "Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old ill or lose the ability to work. The State develops social insurance, social relief, and medical and health services that are required for citizens to enjoy this right." XIANFA art. 45 (2018) (China).

130. Linna, *supra* note 41, 366–68.

131. Nicola Howell & Rosalind Mason, *Reinforcing Stigma or Delivering a Fresh Start: Bankruptcy and Future Engagement in the Workforce*, 38 U. NEW SOUTH WALES L.J. 1529, 1533 (2015); FIONA TOLMIE, *Sanctions in Bankruptcy*, in CORPORATE AND PERSONAL INSOLVENCY LAW 235 (2d ed. 2003).

resources to meet their basic needs.¹³² Rafael Efrat has accordingly hypothesized that individuals in a country that offers access to significant amounts of credit and a limited government safety net are more likely to find a fresh start policy that is broad in scope.¹³³ This hypothesis has interesting implications for China given its current trajectory. Since credit plays an increasingly important role in China, according to Efrat's hypothesis, it should follow that a liberal bankruptcy regime will become necessary given the lack of a developed social safety net.¹³⁴ As outlined in the final section, there are signs that such an approach may indeed be on the horizon.

i. The Incomplete Property Registration System

The incomplete and previously fragmented property registration system has made it more difficult for China to implement the personal insolvency system, and indeed some Chinese scholars have regarded this as an insurmountable barrier to the establishment of such an insolvency system.¹³⁵

A property registration system is an important prerequisite for the establishment of China's personal insolvency system because it is only by clearly identifying an individual's real property that a court may determine whether the individual meets the relevant conditions of personal insolvency—that is, that his property is insufficient to repay his debts. A registration system is also necessary for the debtor's personal property to be identified and the creditors to be paid off in a reasonable and fair manner. Determining the debtor's property is an essential feature of a personal insolvency system.¹³⁶

Compared with property in a corporate bankruptcy, property in the case of personal insolvency has the following characteris-

132. Tu Xiaoxia (屠小霞), *Geran Pochan Falv Zhidu Yanjiu* (个人破产法律制度研究) [*Research on Personal Insolvency Legal System*], 6 FAZHI YU SHEHUI (法制与社会) [LEGAL SYS. & SOC'Y] 98 (2017). [I can't verify this assertion with the Google Translated version]

133. Efrat, *supra* note 62.

134. See R. BERTHOUD & E. KEMPSON, CREDIT AND DEBT: THE PSI REPORT (1992).

135. Zhao Weinan (赵伟男), *Cong Falv Jiaodu Tantaowoguo Geran Pochan Zhidu de Goujian* (从法律角度探讨我国个人破产制度的构建) [*Exploring the Construction of China's Personal Insolvency System from the Legal Point of View*], 3 FAXUE YANJIU (法学研究) [LEGAL RSCH.] 101, 101 (2018).

136. A point made by Shenzhen lawyer Lu Lin. See Wen Zhang, *supra* note 32.

tics. First, the quantity and state of the property of an individual debtor is often undisclosed, and some property will be in the form of cash, the existence and location of which cannot always be determined by others.¹³⁷ Moreover, the property of individual debtors is often mixed with the property of other family members, which increases the difficulties of identifying bankruptcy property. This is to say that, in personal insolvency procedures, determining the extent of a debtor's estate may be relatively complicated.

In practice, property information systems will by necessity focus on limited categories of property, notably real property. In China, a register of interests in real property was established in 2007¹³⁸ and expanded in 2015.¹³⁹ Therefore, it is likely that good information is available in respect to a debtor's most valuable assets.

The increased availability of personal property information lays a good foundation for the implementation of the personal insolvency system. It is worth noting, however, that, due to the complexity of practice and the diversity and dispersion of personal property, it is often impossible to fully determine the property which falls within the debtor's estate, and there are still ways to conceal or illegally dispose of property. The weaknesses in China's current property registration system mean that the possibility and frequency of such difficulties will be considerable.

137. *Id.*

138. Wuquan Fa (物权法) [Property Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007), art 9(1), CLI. 1.89386(EN) (Lawinfochina). ("The creation, change, transfer or elimination of the real right of a real property shall become effective after it is registered according to law; it shall have no effect if it is not registered according to law, except it is otherwise prescribed by any law.").

139. Bu Dongchan Dengji Zanzing Tiaoli (不动产登记暂行条例) [Interim Regulation on Real Estate Registration] (promulgated by the State Council of the People's Republic of China, Nov. 24, 2014, effective Mar. 1, 2015), CLI.2.240136(EN) (Lawinfochina) (establishing a real estate registration system including details of the extent of property and transaction information, to provide a unified system for the real-time sharing of registration information at the national, provincial, municipal and county levels).

ii. *The Imperfect Credit Information System*

China is still in the process of developing sound credit information systems.¹⁴⁰ China's system lags behind those in other jurisdictions, such as the US,¹⁴¹ in the availability of information for creditors, leading to fears that the system may be ripe for abuse.¹⁴² There are concerns that difficulties for creditors in assessing credit risks of individuals, may undermine any personal insolvency system that may develop.¹⁴³ In countries with mature credit information systems, the availability of financial information regarding debtors enables creditors to assess bankruptcy risks.¹⁴⁴ Creditors can therefore more effectively manage portfolios to prevent and manage credit risks.¹⁴⁵ This information can also help to ensure their compliance with laws and regulations, and encourage them to conduct honest transactions.¹⁴⁶

140. Su Ning, Deputy Governor of the People's Bank of China, Address at the International Seminar on the Application of Credit Information Products in Managing Credit Risks of Commercial Banks (June 20, 2007) (transcript available at <https://www.bis.org/review/r071026g.pdf>); Ye Chuanxing (叶传星), *Jiakuài Gèrén Xìnyòng Fǎzhì Jiànshè Jiànlì Gèrén Pòchǎn Zhìdù* (加快个人信用法制建设 建立个人破产制度) [*Speed up the Establishment of Personal Credit Law System and Establish a Personal Bankruptcy System*], [PEOPLE'S DAILY NEWS] (Nov. 27, 2013) (China), <http://opinion.people.com.cn/n/2013/1127/c1003-23665070.html>.

141. Zhongguo Renmin Yinhang Jinan Fenhong Ketu zu (中国人民银行济南分行课题组) [People's Bank of China Jinan Branch Research Group], *Zhengxin Xitong Jianshe yu Geren Pochan Zhidu Yanjiu* (征信系统建设与个人破产制度研究) [Research on Credit Information System Construction and Personal Insolvency System], 4 WUHAN JINRONG (武汉金融) [WUHAN FIN.] 50 (2012).

142. Li Lei (李磊), *Zhongguo Muqian Jianli Geren Pochan Zhidu de Kexing Xing Fenxi* (中国目前建立个人破产制度的可行性分析) [*Feasibility Analysis of Establishing a Personal Bankruptcy System in China*], FAZHI YU SHEHUI (法制与社会) [LEGAL SYS. & SOC'Y] 5 (2009).

143. JUSTINA WONG & SAI MA, ESTABLISHING THE INDIVIDUAL CREDIT REGISTRY SYSTEM IN CHINA 4 (2011), https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/china_credit_registry_system.pdf.

144. Su Ning, *supra* note 140.

145. *Id.*

146. Liu Jing (刘静), *Xinyong Queshi yu Lifa Pianhao—Zhongguo Geren Pochan Lifa Nanti Jiedu* (信用缺失与立法偏好—中国个人破产立法难题解读) [*Lack of Credit and Legislative Preference— Interpretation of the Problem of China's Personal Insolvency Legislation*], 2 SHEHUI KEXUE JIA (社会科学家) [SOC. SCIENTIST] 100 (2011).

China was late to develop a credit information system, but it has made great progress in recent years under both government and private initiatives.¹⁴⁷ In November 2003, the People's Bank of China Credit Information Bureau, which is mainly responsible for personal credit information and credit management, was established and officially launched the construction of China's personal credit rating system.¹⁴⁸ The Bureau's goal was to provide banks with greater information about potential borrowers and to enable greater availability of credit for persons about whom information was lacking.¹⁴⁹ Private sector credit information systems were resisted at this time, but have since grown in significance,¹⁵⁰ as will be discussed below. In 2004, in accordance with the instructions of the Party Central Committee and the State Council, the People's Bank of China began to establish a nationwide, centralized, and unified personal credit database, and in January 2006, the database was launched and officially networked.¹⁵¹ Since the 18th National Congress of the Communist Party of China, the Party Central Committee and the State Council have attached great importance to the construction of the social credit system, and in 2014 officially issued a national top-level design document to upgrade it to the height of a national governance system and with modernized governance capabilities.¹⁵² At the end of March 2016, credit information on a total of 885 million natural persons and 21.39 million companies and other organizations was collected,¹⁵³ and by 2018 China's credit rating system

147. Mo Chen & Jens Grossklags, *An Analysis of the Current State of the Consumer Credit Reporting System in China*, 4 PROC. ON PRIVACY ENHANCING TECH. 89, 92 (2020).

148. WONG & MA, *supra* note 143, at 7.

149. *Id.*

150. Chen & Grossklags, *supra* note 147, at 104.

151. *Key Events in Our History*, CREDIT REFERENCE CTR: THE PEOPLE'S BANK OF CHINA, http://www.pbccrc.org.cn/crc/dsj/index_list_list.shtml

152. Guówùyuàn Guānyú Yìnfā Shèhuì Xìnyòng Tǐxì Jiànshè Guǐhuà Gāngyào (2014—2020 nián) de tōngzhī (国务院关于印发社会信用体系建设规划纲要(2014—2020年)的通知) [Notice of the State Council on Issuing the Outline of the Social Credit System Construction Plan (2014-2020)] (promulgated by the St. Council, June 14, 2014, effective June 14, 2014) ST. COUNCIL GAZ., June 27 2014, http://www.gov.cn/zhengce/content/2014-06/27/content_8913.htm.

153. Zhang Shen, *People's Bank of China: 885 Million Personal Information Has Been Collected in the Credit Information System*, ECON. DAILY (June 14, 2016).

had grown to become the world's largest and most widely used database of credit information.¹⁵⁴ More recently, the credit bureau of the People's Bank of China has been upgraded; it now contains a greater range of information about debtors for use in evaluating loan applications.¹⁵⁵

Not only is the range and extent of credit information held in the public system increasing, but credit information in private sectors is also growing and playing an increasingly important social role through its bearing on social capital.¹⁵⁶ In this regard, it also raises issues regarding the introduction of the personal insolvency system. At the beginning of 2018, the People's Bank of China accepted the application of the personal credit service, Baihang Credit Information Co., Ltd.¹⁵⁷ a private credit scoring initiative designed to open up borrowing opportunities, particularly in the fintech sector, for the millions without credit histories.¹⁵⁸ By the end of October 2018, Baihang Credit Information had signed credit information sharing cooperation agreements with 241 institutions, such as network micro-finance companies, auto finance companies, financial leasing companies, and private banks,¹⁵⁹ although there have also been some notable holdouts.¹⁶⁰ This private credit information sys-

154. Zhao Yang (赵妍), *Zhōngguó Zhēng Xìn Tìxì Chūbù Jiànli Bìng Fāhuī Zhōngyào Zuòyòng* (中国征信体系初步建立并发挥重要作用) [*China's Credit Information System Was Initially Established and Played an Important role*], CRI ONLINE (Oct. 22, 2018), <http://news.cri.cn/20181022/dbdc3a1b-b30f-1f7c-de46-6d23fed74752.html>. See also CBN Editor, *PBOC Credit Reference Center Becomes World's Largest Credit Information System*, CHINA BANKING NEWS (June 19, 2019), <https://www.chinabankingnews.com/2019/06/19/pboc-credit-reference-center-becomes-worlds-largest-credit-system/>.

155. Frank Tang, *China's Financial Credit Database of 1 Billion People, 28 Million Companies Gets an Upgrade*, SOUTH CHINA MORNING POST (Jan. 19, 2020, 8:30 PM), <https://www.scmp.com/economy/china-economy/article/3046739/chinas-financial-credit-database-1-billion-people-28-million>.

156. Chen & Grossklags, *supra* note 147, at 103.

157. *Guanyu Bai Xing Zheng Xin Youxian Gongsi (Chou) Xiangguan Qanguang De Gangsha* (关于百行征信有限公司(筹)相关情况的公示) [*Publicity on the Relevant Situation of Baihang Credit Information Co., Ltd.*], (中国人民银行) [PEOPLE'S BANK OF CHINA] (Jan. 4, 2018), <http://www.pbc.gov.cn/rmyh/105208/3456248/index.html>.

158. Yuan Yang & Nian Liu, *Alibaba and Tencent Refuse to Hand Loans Data to Beijing*, FIN. TIMES (Sept. 18, 2019), <https://www.ft.com/content/93451b98-da12-11e9-8f9b-77216ebe1f17>.

159. *Id.* at 53.

160. Yang & Liu, *supra* note 158.

tem can complement the basic national financial credit information database since it is drawn from different sources,¹⁶¹ a contrast that may play an important role in the improvement of the coverage of China's credit information system. With the improvement of China's credit system, credit reports have gradually infiltrated people's daily activities and research has indicated that the people are comfortable with this.¹⁶² Other significant creditor information systems that have grown in the private sector focus on reward systems for those who manage their debts well and have therefore demonstrated trustworthiness.¹⁶³ They are not licensed for wider credit information services.¹⁶⁴

Individuals with poor credit records may face a number of limitations and inconveniences in personal loans, visas, startups, and commercial transactions.¹⁶⁵ The National Credit Information Sharing Platform now operates on a national level and gains data from many different public agencies.¹⁶⁶ It has established an information verification and superposition mechanism with the National Population Bank to improve the level of information held in respect of natural persons, promot-

161. *See id.*

162. Xinyuan Wang, *Hundreds of Chinese Citizens Told Me What They Thought About the Controversial Social Credit System*, THE CONVERSATION (Dec. 17, 2019, 5:41 AM), <https://theconversation.com/hundreds-of-chinese-citizens-told-me-what-they-thought-about-the-controversial-social-credit-system-127467>.

163. Hu Yue & Guo Yingzhe, *Tencent Launches Credit Scoring System Based on WeChat Purchases*, CX TECH (June 8, 2020, 1:31 PM), <https://www.caixinglobal.com/2020-06-08/tencent-launches-credit-scoring-system-based-on-wechat-purchases-101564336.html>; *see also* Chenchen Zhang, *Governing (Through) Trustworthiness: Technologies of Power and Subjectification in China's Social Credit System*, 52 CRITICAL ASIAN STUD. 565, 565 (2020) (discussing the role of social credit in establishing the trustworthiness of individuals).

164. Hu & Guo, *supra* note 163.

165. Xiaodong Ding & Dale Yuhao Zhong, *Rethinking China's Social Credit System: A Long Road to Establishing Trust in Chinese Society*, J. CONTEMP. CHINA 1 (2020) (noting the unforgiving nature of the social credit system); *see also* Rachel Botsman, *Big Data Meets Big Brother as China Moves to Rate Its Citizens*, WIRED (Oct. 21, 2017), <https://www.wired.co.uk/article/548hinese-government-social-credit-score-privacy-invasion>.

166. Zhi Zhenfeng, *Xinyong Jianshe, Zhili Tixi Xin Zhizhu* (信用建设, 治理体系新支柱) [*Credit Construction, A New Pillar of Governance System*], [PEOPLE'S DAILY] (Sept. 11, 2018, 9:42 AM), http://www.xinhuanet.com/politics/2018-09/11/c_1123410949.htm.

ing the elimination of “information islands” between government departments and strengthening collaborative supervision.¹⁶⁷ At the same time, the Credit China website and other platforms provide public credit information inquiry services, with a daily visit rate of tens of millions of people.¹⁶⁸ There is also public demand for wider credit information, with contentions that the range of the credit information should be expanded, and that refusals to pay electricity bills and property fees should also be included and made available.¹⁶⁹

Since 2005, the People’s Bank of China has carried out publicity and provided explanations in simple terms regarding credit reporting and related financial knowledge.¹⁷⁰ Driven by this work, the Chinese society’s credit consciousness has gradually increased, bringing greater understanding of credit information; individuals are beginning to actively check their credit history and pay attention to their letters of credit.¹⁷¹

167. Cara Meng, *A High-Level Overview of China’s Social Credit System*, TAYLOR WESSING (Nov. 27, 2019), <https://www.taylorwessing.com/en/insights-and-events/insights/2019/11/a-high-level-overview-of-chinas-social-credit-system>.

168. Han Jiaping (韩家平), *Woguo Shehui Xinyong Tixi Jianshe de Xianzhuang yu Zhanwang* (我国社会信用体系建设的现状与展望) [*The Status Quo and Prospects of the Construction of My Country’s Social Credit System*], BANYUE TAN (半月谈) [CHINA COMMENT] (July 18, 2018, 11:02 AM), http://www.banyuetan.org/ssjt/detail/20180718/1000200033135841531882950257496296_1.html.

169. However, such utility bill information is not included in the second generation version of credit reporting. See Wan Zhou, [*Shuidian Qian Fei Bu Naru Zheng Xin Xitong Tixian Fazhi Lixing* (水电欠费不纳入征信系统体现法治理性)] [*Water and Electricity Are Not Included in Credit Information System*], BEIJING QINGNIAN BAO (北京青年报) [BEIJING YOUTH DAILY] (Jan. 20, 2020, 8:01 AM), <http://opinion.people.com.cn/n1/2020/0120/c1003-31556079.html>.

170. See e.g., [*“Credit Reporting With My Bank” Credit Reporting Knowledge Promotion Leaflet*], (征信管理局) [PEOPLE’S BANK OF CHINA] (Dec. 20, 2005, 4:39 PM), <http://www.pbc.gov.cn/goutongjiaoliu/113456/113466/113501/2828304/index.html>.

171. See e.g., [*Dianxing Anli*] *Geran Zheng Xin Xitong Jianshe Zai Tigao Daxuesheng Xinyong Yishi, Cujin Guojia Zhu Xue Daikuan Zhengce Shishi Fangmian De Anli* (典型案例个人征信系统建设在提高大学生信用意识、促进国家助学贷款政策实施方面的案例) [*Typical Cases in Which the Construction of a Personal Credit Information System Improves the Credit Awareness of College Students and Promotes the Implementation of the National Student Loan Policy*], (征信管理局) [PEOPLE’S BANK OF CHINA] (Oct. 11, 2006, 4:28 PM), <http://www.pbc.gov.cn/zhengxinguanliju/128332/128428/128450/2828251/index.html>.

Credit information is of increasing importance in debt enforcement with the National Development and Reform Commission,¹⁷² and courts have begun to use credit information to leverage the reputation of debtors.¹⁷³ Powers to limit the behavior of debtors who fail to pay their debts include those under The Civil Procedure Law (rev'd 2017), which provides that,

Where the party against whom enforcement is sought fails to perform obligations determined in a legal instrument, the people's court may take or notify a relevant entity to assist in taking the measure of restricting exit from China, the measure of recording the failure in the credit system, the measure of publishing information on the failure on media and other measures prescribed by law.¹⁷⁴

This approach leverages the credit system to address the problem of unsatisfied judgments, noted above. In a similar vein, another Judicial Interpretation, the Several Provisions of the Supreme People's Court on Restricting High Consumption of Judgment Debtors,¹⁷⁵ provides that, "[w]here a judgment debtor does not fulfill the payment obligation determined in an effective legal instrument within the period specified in the notice of enforcement, the people's court shall restrict the high consumption by the judgment debtor."¹⁷⁶

Such restrictions are intended to address non-payment problems and, to aid in the identification of relevant examples, the national courts have established the China Executive Infor-

172. *Zhōnghuá Rénmín Gònghéguó Guójiā Fāzhǎn hé Gǎigé Wěiyuánhui* (中华人民共和国国家发展和改革委员会).

173. Civil Procedure Law, *supra* note 85, art. 255; David Lee & Fan Qiu, *Application of the List of Dishonest Enforcees (Judgment Debtors)*, CHANG TSI & PARTNERS (Aug. 2018), <http://www.changtsi.com/en/news/application-of-the-list-of-dishonest-enforcees-judgment-debtors>.

174. Civil Procedure Law, *supra* note 84, art. 255.

175. Supreme People's Court, *Several Provisions of the Supreme People's Court on Restricting High Consumption of Judgment Debtors* (issued on Jul. 1, 2010), China, [hereinafter "Several Provisions"].

176. Several Provisions of the Supreme People's Court on Restricting High Consumption of Judgment Debtors (promulgated by the Sup. People's Ct., July 1, 2010, effective Oct. 1, 2010), art. 1, CLI.3.135141(EN) (Lawinfochina) [hereinafter "Several Provisions"].

mation Disclosure Website.¹⁷⁷ All local courts have established enforcement disclosure information websites and courts in various major cities have developed further means of dissemination of information about persons, including through social media.¹⁷⁸ In particular this information enables the public to identify persons considered *lao lai* who have unjustifiably failed to comply with an order of execution made against them.¹⁷⁹ Such persons are considered untrustworthy and therefore subject to a range of limitations on consumption.¹⁸⁰ As of April 12, 2019, 13,607,207 people are on the list of the untrustworthy debtors, 23,063,159 people are restricted from flying on airplanes, and 5,748,958 people are limited in train travel.¹⁸¹ There have been many examples of debtors who have been identified as *lao lai*, and therefore identified as able but unwilling to pay and some examples have been made of high-profile individuals.¹⁸²

The underdeveloped credit information system may have once been a significant barrier to the introduction of a personal insolvency system, but there has been continuous improvement.¹⁸³ The credit information system can operate in a manner that is complimentary to such a personal insolvency system that may be established, since personal credit risk is a factor in predicting the likelihood of default and personal insolvency.

177. *White Paper: Judicial Transparency of Chinese Courts*, CHINA DAILY (Feb. 27, 2017, 2:31 PM) https://www.chinadaily.com.cn/china/2017-02/27/content_28361599_6.htm.

178. *Id.*

179. *Id.*

180. *See* Several Provisions, *supra* note 176.

181. China Executive Information Disclosure Website, <http://zxgk.court.gov.cn/> (last visited Nov. 9, 2019).

182. *See* Liu Liming (刘黎明), *Tan Xianzhi Gao Xiaofei Cuoshi Zai Zhixing Anjian Zhong de Shiyong* [On the Application of Restricting High Consumption Measures in Enforcement Cases], [PEOPLE'S CT.S NEWS MEDIA HEAD OFF.] (May 11, 2020) (China), <http://jszx.court.gov.cn/main/ExecuteResearch/271259.jhtml>.

183. Zhuo Huang, Yang Lei & Shihan Shen, *China's Personal Credit Reporting System in the Internet Finance Era: Challenges and Opportunities*, 9 CHINA ECON. J. 288, 288 (2016).

C. The Special Problem of a Personal Insolvency System for Chinese Farmers

The per capita GDP of most rural areas in China is still very low,¹⁸⁴ the urban-rural gap is still large,¹⁸⁵ and there are many areas left behind in rural revitalization efforts.¹⁸⁶ Because of this disparity, some Chinese scholars have contended that there are several reasons why a personal insolvency system would be inappropriate for use in rural China, given the peculiarities regarding the property of rural debtors.¹⁸⁷ One problem that has been noted is that it is difficult to identify the personal property of rural villagers, which would inhibit the application of the personal insolvency procedure.¹⁸⁸ It is also worth noting that land is necessary for farmers to make a living—indeed, it is their main source of income. In China, however, farmers have no ownership of the land because it is owned by the state or a collective.¹⁸⁹ Further, the land also has a specific agricultural use and cannot be used for any other purpose, such as construction,¹⁹⁰ which may limit its value to an enforcing creditor.

184. See C. Textor, *Annual Per Capita Disposable Income of Rural and Urban Households in China 1990-2020*, STATISTA (Mar. 10, 2021), <https://www.statista.com/statistics/259451/annual-per-capita-disposable-income-of-rural-and-urban-households-in-china/#:~:text=Annual%20per%20capita%20disposable%20income,households%20in%20China%201990%2D2019&text=In%202019%2C%20the%20annual%20oper,the%20income%20of%20urban%20households..>

185. *Id.* There are also some poor urban areas. See Salvatore Babones, *China Quietly Releases 2017 Provincial GDP Figures*, FORBES (Feb. 12, 2018), <https://www.forbes.com/sites/salvatorebabones/2018/02/12/china-quietly-releases-2017-provincial-gdp-figures/?sh=1024ceca20dc>.

186. Michael Standaert, *Countryside Fit for a Superpower? Inside China's Colossal Rural Revamp*, THE GUARDIAN (Sept. 6, 2020, 5:00 AM), <https://www.theguardian.com/environment/2020/sep/06/countryside-fit-for-a-superpower-inside-chinas-colossal-rural-revamp>.

187. HU LING (胡玲), (债务人生存权益视角下的我国个人破产立法研究) [RESEARCH ON CHINA'S PERSONAL INSOLVENCY LEGISLATION FROM THE PERSPECTIVE OF DEBTOR'S SURVIVAL INTERESTS] (2014).

188. *Id.*, 44-49.

189. Thomas Vendryes, *Land Rights in Rural China Since 1978*, 4 CHINA PERSPECTIVES 87, 90-91 (2010).

190. Zhonghua Renmin Gongheguo Nongcun Tudi Chengbao Fa (中华人民共和国农村土地承包法) [Rural Land Contract Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29,

As with land, there will be other personal property, such as farming tools, that are necessary for the farmer to earn their living so that the loss of livelihood that enforcement against such assets by the court would entail might be considered unfair in depriving the debtor of the right to work.¹⁹¹ Mature bankruptcy systems will typically provide an exemption of such tools from the debtor's estate so that a fresh start can be made by the debtor.¹⁹²

The income of rural villagers is difficult to value as there can be uncertainty regarding the income earned by rural self-employed villagers' versus the income earned by rural villagers employed by others.¹⁹³ Moreover, in rural China, there is often no clear distinction between personal property and family property.¹⁹⁴ Thus, it would be difficult to determine whether rural villagers meet bankruptcy eligibility standards, or when

2002, effective Mar. 1, 2003), art. 11, 2002 P.R.C. Laws ("Rural land contracting operations shall abide by laws and regulations and protect the rational development and sustainable use of land resources. The contracted land shall not be used for non-agricultural construction without legal approval.").

191. HU LING, *supra* note 187; *see also* [Law of the People's Republic of China on the Administration of Tax Collection] (promulgated by Standing Comm. Nat'l People's Cong., Apr. 28, 2001, amended Feb. 28, 1995, effective May 1, 2001), art. 42, P.R.C. LAWS (an example of a law preventing unfair deprivation of tools needed for work).

192. In contrast, for example, the UK Insolvency Act 1986 § 283(a) exempts tools of the debtor's trade from the estate that is available for distribution to creditors. Insolvency Act 1986, c. 45, § 283(a) (Eng.). Similarly, US bankruptcy law allows an exemption for tools of the trade up to a specific value. 11 U.S.C. § 522(d)(6) (2010). Indeed, this approach is adopted in the Shenzhen Guidelines, which exempt from the debtor's estate any items necessary for professional purposes. *See* Shenzhen Guidelines, *supra* note 6, art. 36(2).

193. Zhu Tao (朱涛), *Geren Pochan Weishi Shangzao, Cong Nongcun Jingji Xianzhuang Lunzhi* ("个人破产"为时尚早——从农村经济现状论之) [Too Early for Personal Insolvency: from the Perspective of the Current Situations of Rural Economy], QIAN YAN (前沿) [Forward Position], 8 (2009).

194. *See* Liu Fen (刘芬), *Shengming Licheng Shijiao xia Zhongguo Nongmin Jiating de Shengji Bianqian, Jiyu Yige Nongmin Jiating 37 Nian de Shouzhi Zhangben Fenxi* (生命历程视角下中国农民家庭的生计变迁——基于一个农民家庭 37年的收支账本分析) [*Changes in the Livelihoods of Chinese Farmers' Family from the Perspective of Life Course—Based on an Analysis of the Income and Expenditure Accounts of a Farmer's Family in 37 Years*], 19 NANJING NONGYE DAXUE XUEBAO (南京农业大学学报(社会科学版)) [J. NANJING AGRIC. U. (SOC. SCI. EDITION)] 41, 41 (2019).

they have met the standards, it would be hard to confirm the scope and quantity of bankruptcy property.¹⁹⁵

Based on the above reasons, some scholars think it is not appropriate to implement the personal insolvency system in this sector in the current situation.¹⁹⁶ In the future, the specific regulations of personal bankruptcy law for Chinese farmers should be designed carefully with provisions enabling rural agricultural debtors to continue to earn a livelihood.

D. Further Reflections on Potential Difficulties

Apart from the difficulties discussed above, it may be further noted that China now has a poor standard of management for financial institutions and a lack of risk control governance capabilities.¹⁹⁷ There is no developed system of internal networking among financial institutions, and existing regulations and mechanisms are inadequate.¹⁹⁸ The hasty implementation of a general personal insolvency system may bring immeasurable risks of bad debts and a weakened financial position to financial institutions that were already vulnerable to risk.

As discussed above, due to the imperfect financial architecture with respect to personal debt, the general public will likely be concerned that debtors, particularly *lao lai*, will use this system to evade debt. This is a commonly discussed concern among the Chinese people.¹⁹⁹

195. Zhu Tao (朱涛), *Geran Pochan Weishishangzao: Cong Zhongguo Nongcun Xianzhuanglunzhi* (个人破产为时尚早——从中国农村现状论之) [*"Personal Insolvency" Is Premature—On the Current Situation of Rural Economy*], 8 QIAN YAN (前沿) [Forward Position] 87 (2009).

196. Hu Ling, *supra* note 187.

197. Jiang Xianfeng (蒋贤锋), *Geran Pochan he Jinrong Wending* (个人破产和金融稳定) [*Personal Bankruptcy and Financial Stability*], BEIFANG JINRONG (北方金融) [Northern Finance Journal] 5 (2015).

198. Lin Zhongming (林中明), *Jinrong Jigou Nèibù Jīzhì Cún Quēxiàn Fālù Fēngxiǎn Fáng Kòng Yìshí Bùzú Túchū* (金融机构内部机制存缺陷 法律风险防控意识不足突出) [*The Internal Mechanism of Financial Institutions Is Flawed, and the Awareness of Legal Risk Prevention and Control Is Outstanding*], *Zhèngyì Wǎng* (正义网) JUSTICE NETWORK (Apr. 28, 2014, 3:09 PM) (China), http://news.jcrb.com/jxsw/201404/t20140428_1383163.html.

199. Liu Jing (刘静), *Xinyong Queshi yu Lifa Pianhao, Zhongguo Geran Pochan Lifa Nanti Jiedu* (信用缺失与立法偏好——中国个人破产立法难题解读) [*Lack of Credit and Legislative Preference: Interpretation of China's Personal Bankruptcy Legislation*], SHEHUI KEXUE JIA (社会科学家) [SOCIAL SCIENTIST] 2 (2011); Wen Zhang, *supra* note 32.

IV. POSSIBILITIES FOR THE ESTABLISHMENT OF THE PERSONAL INSOLVENCY SYSTEM IN CHINA

It cannot be denied that significant difficulties stand in the way of the enactment of a personal insolvency law, despite its urgent need. The legislative efforts in Taizhou and Wenzhou, the trial guidelines of the Zhejiang Higher People's court, the guidelines of Dongying Intermediate People's Court in Shandong, and the new Shenzhen law, discussed below, signal significant advancements on a regional level. They also, however, represent progress towards the establishment of such a system nationally. In recent years, China has made great strides towards the advancement of the rule of law and in legal reforms to support the developing Chinese market economy, including a corporate insolvency system and the development of specialized courts.²⁰⁰ The development of a personal insolvency system is a logical progression, particularly in light of the increasing role that consumer credit has played in the development of the Chinese economy and the growth of mortgage lending, credit card use, and borrowing through smartphone apps.²⁰¹

A. The Preparations for Establishment of the Personal Insolvency System

The success of a national personal insolvency system will depend on adequate preparation since the enactment of a law is insufficient alone, and institutional support is crucial.²⁰² Although there have been positive developments in terms of the construction of a credit information system and a property registration system, there is still much progress to be made. Though the present state of the credit information and property registration systems may contribute to uncertainties for creditors, this arguably does not present a reason to delay the enactment of a personal insolvency law, since creditors can assess risks for themselves in deciding whether to advance credit and on what terms.

200. See generally Rebecca Parry & Yingxiang Long, *China's Enterprise Bankruptcy Law, Building an Infrastructure Towards a Market-Based Approach*, 20 J. CORP. L. STUD. 157, 171 (2020).

201. Wright & Feng, *supra* note 3.

202. Jingxia Shi, *Twelve Years to Sharpen One Sword: The 2006 Enterprise Bankruptcy Law and China's Transition to a Market Economy*, 16 NORTON J. BANKR. L. & PRAC. 645, 649 (2007).

B. The Possibilities of Identifying Property Falling within the Debtor's Estate

In the absence of a sophisticated property information system, the identification of the debtor's property falling within the estate can be aided by requiring debtors to make a property declaration when applying for personal bankruptcy. The prospect of a fresh start for honest debtors, as well as the possibility of criminal penalties in serious cases, can act as an incentive for cooperation, in particular if a fresh start will be denied to those who are obstructive or mendacious.²⁰³ Additionally, more information regarding the debtor's property could be obtained through a reporting system, through property information systems, or by administrative investigations. As noted above, a scheme for registration of real estate²⁰⁴ is developing, which may provide information about the most valuable property in the estate. Measures to promote honesty in relation to financial transactions include the Anti-Money Laundering Law²⁰⁵ The Provisions Concerning the Real-Name Personal Savings Account System,²⁰⁶ and Measures for the Administration of RMB Bank Settlement Accounts.²⁰⁷ These and other legal systems, require that individual Renminbi (RMB), bank

203. Tabb, *supra* note 103, 90–94 (discussing “debtor cooperation theory”, in which a fresh start is offered as a “carrot” to encourage cooperation by the debtor); *see also* Robert A. Hillman, *Contract Excuse and Bankruptcy Discharge*, 43 STAN. L. REV. 99, 109–10 (1990) (noting that the fresh start initially was intended to encourage cooperation with a view to increasing returns to creditors); *see generally* Scott F. Norberg, *Fraudulent Transfers and the Fresh Start in Bankruptcy*, 93 AM. BANKR. L. J. 139, 139 (2019) (discussing the denial of a fresh start on grounds of fraudulent transfers by the debtor).

204. Budong Chan Dengji Zanzing Tiaoli (不动产登记暂行条例) [Interim Regulations on the Registration of Real Estate] (rev'd 2019).

205. *See generally* [Anti-Money Laundering Law of the PRC] (promulgated by Standing Comm. of the Nat'l People's Cong., Oct. 31, 2006, effective Jan. 1, 2007) 2007 P.R.C. LAWS 56.

206. *See generally* [The Provisions Concerning the Real-Name Personal Savings Account System] (promulgated by the State Council, Mar. 20, 2000, effective Apr. 1, 2000) CLI.2.27162 (EN) (Lawinfochina) (made with the intent of ensuring the truthfulness of personal savings accounts and protecting the lawful rights and interests of depositors).

207. *See generally* [Administrative Measures for the RMB Bank Settlement Accounts] (promulgated by People's Bank of China, Apr. 10, 2003, effective Sept. 1, 2003). LEXIS CHINA, <http://hk.lexiscn.com/law/law-english-1-226943-T.html?&fromMsg=1> (China). These measures were partially invalid.

deposit accounts²⁰⁸ must be opened under the debtor's real name—that is, when depositors open various personal bank accounts, they must present a valid, legal and complete supporting identification document, and the account name must be the same as the depositor's name in the supporting documentation provided.

C. The Government's Belief in Establishing a Personal Insolvency System

Whether to establish a personal insolvency system or not is of course the choice of a country's legislature, which is based on the needs and possibilities of such a system and influenced by the public interest. To date, the representatives of the National People's Congress (NPC) have regularly filed individual bankruptcy legislation proposals, but none has yet been successful.²⁰⁹ This is perhaps unsurprising given the significance that a bankruptcy system would have, both in terms of historical ideologies and also in terms of confronting widespread suspicion and skepticism. Initial steps in formulating a way forward have been taken by the Supreme People's Court, as outlined below. However, as with the corporate insolvency system, swifter progress will be made on a regional level and it is likely that this will pave the way for an eventual breakthrough in the NPC. As in the development of corporate insolvency laws, Shenzhen is leading the way towards the enactment of personal insolvency legislation, although the following notable interim approaches have been developed in other major economic areas. In Zhejiang, initial breakthroughs came through collective debt settlement mechanisms in cases decided in Taizhou and Wenzhou. The approaches in these cases have been supplemented by trial guidelines by the Zhejiang Higher People's Court, building on the start made by the Supreme People's

208. Including personal bank settlement accounts, personal current savings accounts, personal time deposit accounts, personal notice deposit accounts, etc., hereinafter referred to as personal bank accounts.

209. Unsuccessful proposals were made in 2007 (proposal 370, supported by 30 deputies), 2008 (proposal 350, supported by 35 deputies), 2009 (proposal 6, supported by 31 deputies) and 2016 (proposals 228 and 423, supported by 31 and 33 deputies respectively).

Court.²¹⁰ Similar guidance has been issued by the Intermediate People's Court in the Shandong City of Dongying.²¹¹

D. Supreme People's Court

In an initial important development in 2018, Zhou Qiang, President of the Supreme People's Court, viewed a personal insolvency system as important to support the judgment enforcement efforts that were discussed above.²¹² There was also support at the same time for a personal bankruptcy system in the interests of domestic stability from another judge, Du Wanhua, Deputy Director of the Advisory Committee of the Supreme People's Court, who has been a leading influence in the development of the insolvency system.²¹³ These developments influenced the case law and are discussed below. In June 2019, the Supreme People's Court again voiced its support for a personal insolvency system in a multi-agency report on improvements to exit procedures for all types of market partici-

210. See generally Zhejiang Guidelines, *supra* note 29.

211. See generally *Dōngyíng shì zhōngjí rénmin fǎyuàn guānyú gèrén zhàiwù qīnglǐ de shíshī yìjiàn (shìxíng)* (东营市中级人民法院关于个人债务清理的实施意见(试行)) [*Implementation Opinions on the Liquidation of Personal Debts (for Trial Implementation)*] (promulgated by the Intermediate People's Court of Dongying City, effective Dec. 1, 2020), https://www.sohu.com/a/436097873_689962 (China) [hereinafter *Dongying Implementation Opinions*].

212. See generally *Yuē 43% Ànjiàn Què Wú Cáichǎn Kě Gōng Zhíxíng Jí Xū Jiànlì Gèrén Pòchǎn Zhìdù* (最高法院 | 周强: 约43%案件确无财产可供执行 亟需建立个人破产制度) [*About 43% of the Cases Really Have No Property to Execute, It Is Urgent to Establish a Personal Bankruptcy System*] ZHONGGUO PÒCHǎN Fǎ LÙNTÁN (中国破产法论坛) [CHINA BANKRUPTCY LAW FORUM] (Oct. 27, 2018, 7:42 PM), https://www.sohu.com/a/271753880_689962; Tang Xuebing (唐学兵), *Jiànlì Gèrén Pòchǎn Zhìdù: Chàngtōng "Zhíxíng Bùnéng" Ànjiàn De Tuìchū Jīzhì* (建立个人破产制度: 畅通“执行不能”案件的退出机制) [*Establishing a Personal Bankruptcy System: Unblocking the Exit Mechanism for "Unenforceable" Cases*], RÉNMIN FǎYUÀN BÀO (人民法院报) [PEOPLE'S COURT DAILY] (Dec. 19, 2018) (China), http://rmfyb.chinacourt.org/paper/html/2018-12/19/content_147119.htm.

213. Du Wanhua (杜万华), *Jiéhé Dāngqián Xíngshì Luòshí "Jiyào" Jīngshén Jījí Tuījìn Wōguó Pòchǎn Shěnpàn Gōngzuò Mài Shàng Xīn Táijiē* (结合当前形势落实“纪要”精神积极推进我国破产审判工作迈上新台阶) [*Combining the Modern Situation and the Minutes, Actively Promoting Bankruptcy Trial Work to a New Level*] RÉNMIN FǎYUÀN BÀO (人民法院报) [PEOPLE'S COURT DAILY] (Oct. 31, 2018) (China), <http://rmfyb.chinacourt.org/paper/images/2018-10/31/05/2018103105.pdf>.

pants and called for the establishment of a bankruptcy system for natural persons.²¹⁴

E. Taizhou Case Example

Building upon the initiative of the Supreme People's Court, the Taizhou case²¹⁵ has been reported to be the first example of an individual benefiting from the changing approach to personal insolvency.²¹⁶ It is also a simple case involving no assets.²¹⁷ The case concerned a debtor who had been had been a victim of fraud and had incurred significant liabilities as a result, and, with meager means, he was not in a position to repay his debts.²¹⁸ An administrator had been appointed to ascertain Ke's financial position.²¹⁹ In April 2019, the Taizhou court, influenced by the Supreme People's Court initiatives, declared that the debtor had no available property for distribution to creditors and declared the debt liquidation process be terminated.²²⁰ The approach taken in the case was based on section 120 of the Enterprise Bankruptcy Law of 2006, which enables proceedings with respect to companies to be terminated in the event that there are no assets available for distribution.²²¹

Two applications for relief by other debtors came before the Taizhou court at a similar time and had their cases dismissed: one on account of a failure to cooperate in answering creditors' questions,²²² and the other on account of a failure to give a

214. See Reform Plan for Accelerating Improvement of the Exit System for Market Participants, *supra* note 22.

215. Shēnqǐng Rén: Kē Shànwén Guǎnlǐ Rén (申请人: 柯善文管理人) *Ke Shanwen's Manager's Application* [Interm. People's Ct. of Taizhou City, Zhejiang Province Apr. 29, 2019], in Sān Fèn "Gèrén Pòchǎn" Cáidìng Shū, Yīrén "Pòchǎn", Liǎng Rén Huīfù Zhíxíng (三份"个人破产"裁定书, 一人"破产", 两人恢复执行) [*Three "Individual Bankruptcy" Rulings, One "Bankrupt" and Two Resume Execution*], NEW THIRD BOARD LEGAL RES. INST. (Aug. 31, 2019) (China), https://www.sohu.com/a/337868903_618578 [hereinafter *Three Individual Bankruptcy Rulings*].

216. THE ECONOMIST CHINA, *supra* note 2.

217. *Three Individual Bankruptcy Rulings*, *supra* note 215.

218. THE ECONOMIST CHINA, *supra* note 2.

219. *Id.*

220. *Three Individual Bankruptcy Rulings*, *supra* note 215.

221. *Id.*

222. Shēnqǐng Rén: Lǐ Chǎng Guǎnlǐ Rén (申请人: 李昶管理人) [*Li Chang's Manager's Application*] (Jiaojiang Dist. People's Ct., Taizhou City Jul. 2, 2019) (China), in *Three Individual Bankruptcy Rulings*, *supra* note 215.

truthful account of his debt situation.²²³ Subsequently, the Taizhou Intermediate Court announced the development of collective procedures for debt resolution.²²⁴

F. Wenzhou case example

This high-profile personal debt settlement case in Wenzhou in October 2019²²⁵ has received more accolades as the first personal insolvency case in China.²²⁶ It has greater complexity than the Taizhou case in the approach taken, as it was a case involving assets.²²⁷ The foundation for this case was laid by the Intermediate Court in Wenzhou when it issued the Implementing Opinions on Collective Resolution of Personal Debts, which

223. Shēnqǐng Rén: Huáng Dàhuá Guǎnlǐ Rén (申请人: 黄大华管理人) [Application of Huang Dahua's Manager] (Interm. People's Ct., Taizhou City May 6, 2019) (China), in *Three Individual Bankruptcy Rulings*, *supra* note 215.

224. *Táizhōu Zhōng Yuàn: Zhíxíng Chéngxù Zhuǎn Gèrén Zhàiwù Qīnglǐ Chéngxù Shěnli Guīchéng (Zhànxíng)* (台州中院 | 执行程序转个人债务清理程序审理规程 (暂行)) [*Taizhou Intermediate People's Court: Procedures for the Transfer of the Execution Procedure to the Personal Debt Liquidation Procedure (Interim)*], ZHONGGUÓ PÒCHǎN Fǎ LÙNTÁN (中国破产法论坛) [CHINA BANKRUPTCY LAW FORUM] (Apr. 2, 2020) (China), https://www.sohu.com/a/385173438_689962.

225. *Shǒu Lì Gèrén Zhàiwù Qīnglǐ àn Mài Chū Chóng Yào Yībù* (首例个人债务清理案迈出重要一步) [*An Important Step in the First Personal Debt Liquidation Case*], FǎZHÌ RÌBÀO (法制日报) [LEGAL DAILY] (Nov. 15, 2019) (China), <http://legal.people.com.cn/n1/2019/1011/c42510-31393297.html>. On the morning of October 9, 2019, the Intermediate People's Court of Wenzhou City, Zhejiang Province, and the Pingyang County People's Court jointly reported the case which gave rise to a collective resolution of the debts of an insolvent corporate shareholder of a certain bankrupt enterprise in Wenzhou. *Id.*

226. Zhang Yiwen (张译文), *Quánguó Shǒu Lì Gèrén Pòchǎn Shízhì Gōngnéng Gèrén Zhàiwù Jízōng Qīnglǐ ànjiàn Bàn Jié* (全国首例个人破产实质功能个人债务集中清理案件办结) [*The Country's First Case of Centralized Liquidation of Personal Debts with Substantial Functions for Personal Bankruptcy is Completed*], XīNLÀNG CÁIJīNG (新浪财经) [SINA FINANCE] (Oct. 10, 2019) (China), http://finance.sina.com.cn/money/bank/bank_hydt/2019-10-10/doc-icezuev1177834.shtml; Guo, *supra* note 28.

227. *Wēnzhōu Shěnjié Quánguó Shǒu Lì "Gèrén Pòchǎn" àn* (温州审结全国首例“个人破产”案) [*Wenzhou Concluded the Country's First "Personal Bankruptcy" Case*],

BĒIJīNG QīNGNIÁN BÀO (北京青年报) [BEIJING YOUTH DAILY] (Oct. 11, 2019) (China), http://www.xinhuanet.com/legal/2019-10/11/c_1125089261.htm. The debtor owed 2.14 million yuan and was to repay 32,000 yuan within 18 months. *Id.*

were rolled out to 11 primary courts.²²⁸ These Opinions were issued to establish a fair debt clearance procedure for local debtors who owed more than they were able to pay.²²⁹ Under the Implementing Opinions relief is only to be available to debtors who have been honest throughout, or who have made amends for minor untrustworthy behavior.²³⁰ Relief is available to judgment debtors who can't pay, whose assets are insufficient to meet liabilities or are obviously insolvent and who meet one of a number of conditions.²³¹ Three of these conditions reflect concerns previously noted in PartIIA)i) above regarding the impact on entrepreneurship of business liabilities: they enable relief to be granted to persons who have guaranteed debts of insolvent companies;²³² persons who have been denied the protection of corporate personality;²³³ or persons liable for the debts of an unincorporated business.²³⁴ Relief is also available to debtors who are struggling due to more general difficulties in life, as well as debtors who propose repayment and have the consent of executing creditors.²³⁵ There would be a strict investigation of the debtor's property, an opportunity for creditors to ask questions of the debtor at a creditors' meeting, and strict supervision of the settlement.²³⁶ The role of the court would be to facilitate the settlement as well as screening to guard against exploitation of the system for debt evasion.²³⁷

228. *Wēnzhōu Shì Zhōngjí Rénmín Fǎyuàn Guānyú Gèrén Zhàiwù Jízhōng Qīnglǐ De Shíshī Yìjiàn* (温州市中级人民法院关于个人债务集中清理的实施意见) [*Implementation Opinions of Wenzhou Intermediate People's Court on Centralized Liquidation of Personal Debts*] [CHINAQINGSUAN] (Sep. 16, 2019) (China), <http://www.yunqingsuan.com/news/detail/54285> [hereinafter *Wenzhou Implementation Opinions*].

229. *Id.* pmb1.

230. *Id.* art. 3.

231. *Id.* art. 6.

232. *Id.* art. 6(1).

233. *Id.* art. 6(2).

234. *Id.* art. 6(3).

235. *Id.* art. 6(4), 6(5).

236. *Wēnzhōu Shěnjié Quánguó Shǒu Lì "Gèrén Pòchǎn" àn* (温州审结全国首例“个人破产”案) [*Wenzhou Concluded the Country's First "Personal Bankruptcy" Case*], BĒIJĪNG QĪNGNIÁN BÀO (北京青年报) [BEIJING YOUTH DAILY] (Oct. 11, 2019) (China), http://www.xinhuanet.com/legal/2019-10/11/c_1125089261.htm.

237. *Id.*

In the first of many cases under these Opinions,²³⁸ the debtor was a shareholder of a bankrupt enterprise in Wenzhou and had been held to be jointly and severally liable for the enterprise's debt of 2.14 million yuan. The debtor's income, assets, and other personal liabilities rendered him bankrupt.²³⁹ The Pingyang County Court appointed an administrator and a creditors' meeting was held.²⁴⁰ The debtor and his creditors reached a settlement agreement that would settle the outstanding debts within 18 months.²⁴¹ Under the terms of the settlement, the debtor only needed to repay 1.5% of the debts, about 32,000 yuan, but it was also agreed that, if within the next 6 years his family income exceeded 120,000 yuan, he would pay 50% of the excess towards the settled creditor claims.²⁴² The terms of the settlement allowed Cai to retain living expenses and medical expenses. Perhaps unsurprisingly there was some criticism of the case based on the mistaken belief that the debtor was a *lao lai*²⁴³ but he was not in fact badged in this way.²⁴⁴ Instead, the debtor was an example of the honest but unfortunate debtor who should be able to benefit from bankruptcy relief and for whom, in the public interest, relief should be granted.²⁴⁵ As a condition, the debtor was subject to restrictions for the next three years, specifically providing that he was unable to act as legal representative of any legal entity.²⁴⁶ During this time, the debtor was also prohibited from traveling first class or on high speed trains, and had to obtain permission to travel abroad.²⁴⁷ Similar restrictions may be anticipated as a condition of a fresh start should a national personal insolvency system be introduced, since they are based on *Guānyú Xiànzhì Bèi Zhíxíng Rén Gāo Xiāofèi Jí Yǒuguān Xiāofèi De Ruògān Guīdìng* (Several Provisions of the Supreme People's Court on Restricting the High Consumption of the Person Subject to Enforcement)²⁴⁸

238. Zhang Yiwen, *supra* note 226 (reporting 19 other eligible cases).

239. [BEIJING YOUTH DAILY], *supra* note 236.

240. *Id.*

241. *Id.*

242. *Id.*

243. See Fu Yifu, *supra* note 8.

244. [BEIJING YOUTH DAILY], *supra* note 236.

245. *Id.*

246. *Wenzhou Implementation Opinions supra* note 228, art. 35.

247. *Id.I.*

248. *Guānyú Xiànzhì Bèi Zhíxíng Rén Gāo Xiāofèi Jí Yǒuguān Xiāofèi de Ruògān Guīdìng* (关于限制被执行人高消费及有关消费的若干规定) [Several

and similar restrictions also apply under the new Shenzhen Regulations, discussed in the next section.

G. Further Provincial Judicial Guidelines

The Taizhou and Wenzhou cases have been influential; in December 2020, it was reported that the province had seen a total of 237 cases of centralized liquidation of personal debts and closed 147 cases, with an average repayment rate of 16.53%.²⁴⁹ Building upon these cases, the Zhejiang Higher People's Court issued *Zhèjiāng fǎyuàn gèrén zhàiwù jízhōng qīnglǐ (lèi gèrén pòchǎn) gōngzuò zhǐyǐn (shìxíng)* (浙江法院个人债务集中清理(类个人破产)工作指引(试行)) (Guidelines for the Centralized Liquidation of Personal Debts (Personal Bankruptcy) in Zhejiang Courts (Trial)) and announced an official exploration of a personal insolvency system²⁵⁰ to enable honest but unfortunate debtors to settle their debts. Similar debt settlement guidelines were issued by the Intermediate People's Court of Dongying City in Shandong.²⁵¹ The basic approaches and safeguards under these guidelines emphasize the importance of relief only for honest and candid debtors²⁵² and are similar to those adopted in Shenzhen,²⁵³ to be discussed in the next section.

Regulations on Restricting the High Consumption of Persons Subject to Enforcement and Related Consumption] (promulgated by the Sup. People's Ct., July 20, 2015, effective July 22, 2015) (China) [hereinafter High Consumption Regulation].

249. *Zhèjiāng zhèngshì tànsuǒ gèrén pòchǎn zhìdù chéngxìn zhàiwùrén yǒu jīhuì chóng huò "xīnshēng"* (浙江正式探索个人破产制度诚信债务人有机会重获“新生”) [*Zhejiang Officially Explores the Personal Bankruptcy System Honest Debtors Have a Chance to Regain a "New Life"*] ZHÈJIĀNG RÌBÀO (浙江日报) [ZHEJIANG DAILY] (Dec. 4, 2020) (China), http://www.zj.gov.cn/art/2020/12/4/art_1229396854_59060661.html.

250. Zhejiang Guidelines, *supra* note 29.

251. *Dongying Implementation Opinions*, *supra* note 211; Zou Zhenjie Ji Ya (邹臻杰 计亚), *Duō de tànsuǒ gèrén pòchǎn zhìdù guójiā céngmiàn lìfǎ hái yǒu duō yuǎn* (多地探索个人破产制度 国家层面立法还有多远) [*Explore the Personal Bankruptcy System in Many Places*], Xīnlàng Cǎijīng (新浪财经) [SINA FINANCE] (Dec. 7, 2020) (China), <https://finance.sina.com.cn/roll/2020-12-07/doc-iiznctke5131264.shtml>.

252. High Consumption Regulation, *supra* note 248.

253. See Shenzhen Regulations, *supra* note 6.

H. Shenzhen Special Economic Zone Personal Insolvency Regulations

There has long been movement towards personal insolvency legislation in the Shenzhen Special Economic Zone and this has enabled rapid progress to be made towards the enactment of the new Regulations in recent months. The initiative towards the development of personal insolvency laws began when the Shenzhen Lawyers Association submitted legislative advice in 2014 about formulating personal insolvency regulations to Shenzhen Municipal People's Congress.²⁵⁴ The Shenzhen Intermediate People's Court completed a personal insolvency legislation research project in 2017,²⁵⁵ and submitted its report on the matter, which led to the Shenzhen Special Economic Zone Personal Insolvency Regulations (Proposed Draft) being presented to the Shenzhen Standing Committee of Municipal People's Congress.²⁵⁶

More recently, pressure in the wake of the COVID-19 crisis has led to further progress being made and following a consultation on the draft legislation, the Shenzhen Special Economic Zone Personal Insolvency Regulations were published on 26 August, 2020 and became effective on 1 March, 2021.²⁵⁷ This legislation represents a significant step towards the enactment of personal insolvency legislation on a national level.

Shenzhen is a particularly good choice as a pilot area for personal insolvency legislation because it has a good reputation for handling corporate insolvencies and has a large number of sole

254. Wen Zhang, *supra* note 32 (noting media interview by Lu Lin, who led this initiative).

255. Zhang Xiaoling (张小玲), *Shēnzhèn Jiāng Xiàng Quánguó Réndà Jiànyì Jiù "Gèrén Pòchǎn" Lìfǎ* (深圳将向全国人大建议就"个人破产"立法) [*Shenzhen Will Propose to the National People's Congress to Legislate on "Personal Bankruptcy"*], NÁNFĀNG DŪSHÌ BÀO (南方都市报) [SOUTHERN METROPOLIS DAILY] (Jan. 9, 2017) (China), http://epaper.oeeee.com/epaper/H/html/2017-01/09/content_2164.htm.

256. Guānyú "Shēnzhèn Jīngjì Tèqū Gèrén Pòchǎn Tiáolì (Zhēngqiú Yìjiàn Gǎo)" Gōngkāi Zhēngqiú Yìjiàn De Gōnggào (关于《深圳经济特区个人破产条例》公开征求意见的公告) [*Announcement on Public Consultation on the "Regulations on Personal Bankruptcy" of the Shenzhen Special Economic Zone (Draft for Comment)*], (promulgated by the Standing Comm. of Shenzhen Mun. People's Cong., Apr. 28, 2020, effective June 2, 2020), http://www.szrd.gov.cn/szrd_zyfb/szrd_zyfb_tzgg/202006/t20200602_19246539.htm (China).

257. Shenzhen Regulations, *supra* note 6, art. 173.

traders and owner-managers of companies, including micro, small and medium sized enterprises, who would potentially benefit from bankruptcy relief in the event of a downturn in fortunes, as discussed in Part II, A)i) above. The Regulations apply only if the debtor resides in Shenzhen Special Economic Zone and has participated in social insurance in Shenzhen for three consecutive years.²⁵⁸ Since the area of personal insolvency law is new, a Bankruptcy Administration Department is to be established locally to provide guidance to debtors, supervision of administrators, and information for the public.²⁵⁹ This development has been favorably regarded.²⁶⁰

The Regulations are fairly detailed and include 13 chapters and 157 articles covering all aspects of bankruptcy proceedings including the processes for application and acceptance of the case,²⁶¹ the appointment of a bankruptcy administrator,²⁶² the debtor's property,²⁶³ bankruptcy costs,²⁶⁴ the filing of claims by creditors,²⁶⁵ a creditors' meeting,²⁶⁶ as well as processes for reorganization,²⁶⁷ reconciliation, or settlement²⁶⁸ and liquidation.²⁶⁹ Reference can also be made to the Civil Procedure Laws and Enterprise Bankruptcy Law for interpretation in the event that the Shenzhen Regulations do not cover a point that aris-

258. *Id.* at art. 2. The spouse of such a person can apply simultaneously. *See* art. 171.

259. *Id.* at arts. 6, 155.

260. Zou Ningbo (邹宁博), "Shēnzhèn Jīngjì Tèqū Gèrén Pòchǎn Tiáolì (Zhēngqiú Yìjiàn Gǎo)" Fābù Duō Xiàng Nèiróng Jùyǒu Túpò Xīng (《深圳经济特区个人破产条例(征求意见稿)》发布 多项内容具有突破性) [Shenzhen Special Economic Zone Personal Bankruptcy Regulations (Draft for Solicitation of Comments) Released with Breakthroughs in Multiple Contents], ZHŌNGGUÓ ZHĪ SHĒNG (中国之声) [VOICE OF CHINA] (Jun. 4, 2020), http://china.cnr.cn/xwwgf/20200604/t20200604_525116918.shtml?from=groupmessage&isappinstalled=0.

261. Shenzhen Regulations, *supra* note 6, Ch. 2.

262. *Id.* at arts. 16, 17.

263. *Id.* at Ch. 3.

264. *Id.* at Ch. 5.

265. *Id.* at Ch. 4.

266. *Id.* at Ch. 6.

267. *Id.* at Ch. 8.

268. *Id.* at Ch. 9 (This Chapter provides a process whereby the debtor can reach a compromise with creditors, enabling debts to be repaid and the closure of liquidation proceedings.).

269. *Id.* at Ch. 7.

es.²⁷⁰ The Regulations enable debtors who have lost the ability to repay their debts, or whose assets are insufficient to repay their liabilities, to make a fresh start, regardless of whether their debts were incurred through business activities or through no fault of their own.²⁷¹ The regulations enable bankruptcy proceedings to be commenced by the debtor, or by creditors holding claims of 500,000 yuan or more.²⁷² Reorganization enables debtors with predictable regular future income to repay their debts over a longer period of time,²⁷³ up to five years.²⁷⁴

Like the Taizhou and Wenzhou decisions and the guidelines of the Zhejiang²⁷⁵ and Dongying²⁷⁶ courts, the Shenzhen Regulations emphasize the importance of enabling honest debtors to obtain relief while including various safeguards that may provide assurance to sceptics who fear that the fresh start can be exploited by the *lao lai*.²⁷⁷ The Regulations expressly require honesty and credibility in the process of claims liquidation²⁷⁸ and the probity of proceedings is underpinned by: (1) various obligations for the debtor, including disclosure requirements; (2) the scrutiny of a case by the court; (3) the appointment of an administrator; (4) the formation of a creditors' meeting; (5) transaction avoidance provisions; and (6) a wide range of restrictions on the debtor's conduct, as discussed in the following parts.

1. Obligations for the Debtor

A debtor applying for relief must disclose their reasons for doing so, the details of their income, their dependents and employees, their estate, any claims against them, and must also supply a statement of good faith.²⁷⁹ The debtor will also be subject to various obligations to cooperate,²⁸⁰ such as detailed dis-

270. *Id.* at art. 172.

271. *Id.* at arts. 2, 8.

272. *Id.* at art. 9.

273. *Id.* at Ch. 8.

274. *Id.* at art. 115(1) (also provides that mortgage repayments can be made over a longer period).

275. High Consumption Regulation, *supra* note 249.

276. *Dongying Implementation Opinions*, *supra* note 211, ch. 2.

277. Shenzhen Regulations, *supra* note 6, Explanatory Notes.

278. *Id.* at art. 3.

279. *Id.* at art. 8.

280. *Id.* at art. 21.

closure to the administrator of property owned by the debtor or another close family member in the debtor's household.²⁸¹ The debtor must regularly report on their personal income, expenditure, and property to the administrator and the Bankruptcy Administration Department, and must disclose any instances of a number of types of transaction, such as where the debtor made a large payment, or paid debts which were not due.²⁸² Debtors who fail to cooperate, or engage in concealment of assets or other dishonest behavior, can be reprimanded and may be subject to criminal proceedings.²⁸³ The debtor will be subject to ongoing obligations during a three year inspection period which applies following the opening of proceedings.²⁸⁴ This inspection period can be extended for up to two years in the event that the debtor violates any of the restrictions,²⁸⁵ but the inspection period can also be shortened in the event that the debtor is able to voluntarily repay a greater percentage of debts.²⁸⁶

2. Court Scrutiny

Complex cases can be investigated by the court at a hearing and cases are otherwise examined by written investigation.²⁸⁷ An application for relief can be rejected the event of dishonest conduct or intent.²⁸⁸ Clear and low value cases can be dealt with under a summary procedure.²⁸⁹

3. Administrator

An administrator may be proposed by creditors and approved by the court, or, if there is no such nomination or if the nomination is unsuitable, by the Bankruptcy Administration Department.²⁹⁰

281. *Id.* at arts. 33, 34.

282. *Id.* at art. 35.

283. *Id.* at art. 167–68 (Family members can also be liable in various circumstances).

284. *Id.* at art. 95.

285. *Id.* at art. 96.

286. *Id.* at art. 100.

287. *Id.* at art. 12.

288. *Id.* at arts. 14(2), 14(3).

289. *Id.* at Ch. 10.

290. *Id.* at arts 16–18.

4. Creditors' Meeting

A creditors' meeting is formed to carry out various functions, including a review of the debtor's list of exempt property, verification of claims, and to review and approve any reorganization plan.²⁹¹ A creditors' committee can also be established.²⁹² As noted above, the attendance of the debtor before such a meeting was regarded as important in the Wenzhou case as supporting the honesty of the proceedings.²⁹³

5. Transaction Avoidance

The probity of the proceedings is also supported by transaction avoidance provisions. In particular, transactions will be void where they involve concealment, transfer or improper disposal of property to avoid debts, or involve the fabrication of debts or admittance of falsified debts.²⁹⁴ Transactions entered into in the two years leading up to the bankruptcy application can be avoided in various circumstances.²⁹⁵ Debts paid in the six months prior to the bankruptcy application are regarded more strictly and can only be saved from avoidance if the payment was to the benefit of the debtor's estate or was necessary for the debtor's normal life.²⁹⁶

6. Restrictions on the Debtor

The debtor will not be permitted to act as a director, supervisor, or manager of a company, whether listed or non-listed, nor a financial institution, nor engage in such other occupations as may be specified.²⁹⁷ However, the terms of this restriction would not otherwise restrict the debtor's employment prospects.

Debtors are also expected not to incur expenditures that are not necessary for their life or work²⁹⁸ and, in particular, they

291. *Id.* at art. 73.

292. *Id.* at art. 74.

293. BEIJING YOUTH DAILY, *supra* note 236 (noting the swearing by the debtor of an oath as to honest conduct as well as the debtor's availability to answer the questions of creditors).

294. Shenzhen Regulations, *supra* note 6, art. 42.

295. *Id.* at art. 40.

296. *Id.* at art. 41. In the case of a connected party this article applies to any payments made in the two years leading up to the bankruptcy filing.

297. *Id.* at art. 86.

298. *Id.* at art. 23(8).

should not lead lavish lifestyles while applying for bankruptcy, such as by flying business class, staying in a high-quality hotel, or visiting a golf course or nightclub.²⁹⁹ Nor may debtors acquire real estate or motor vehicles, or engage in construction or redecoration.³⁰⁰ These restrictions parallel those set out in *Guānyú Xiànzhì Bèi Zhíxíng Rén Gāo Xiāofèi Jí Yǒuguān Xiāofèi De Ruògān Guīdìng* (Several Provisions of the Supreme People's Court on Restricting the High Consumption of the Person Subject to Enforcement).³⁰¹ Similar approaches have been taken in the Zhejiang³⁰² and Dongying judicial guidelines.³⁰³ This suggests the development of a uniform approach to the matter of appropriate restrictions on those seeking personal insolvency relief, and it may be expected that this approach will be carried forward in the event of national personal insolvency legislation.

7. Fresh Start

It is expected that debtors will be able to make a fresh start at the end of the bankruptcy proceedings. They will be able to retain property up to a value of 200,000 yuan (around \$29,000) that is not used to pay off their debts, as well as means to cover necessities and expenses of the debtor and their family, costs of medical treatment and education, and sentimental items, except those of high value.³⁰⁴ This maximum value of exemptions will make it difficult for debtors to retain their homes,³⁰⁵ unless some compromise can be reached with creditors. Shenzhen is one of the most expensive places in China in which to own real

299. *Id.* at arts. 23(1), 23(2).

300. *Id.* at arts. 23(3), 23(4).

301. High Consumption Regulation, *supra* note 248.

302. Zhejiang Guidelines, *supra* note 29, art. 14.

303. *Dongying Implementation Opinions*, *supra* note 211, art. XII.

304. Shenzhen Regulations, *supra* note 6, art. 36.

305. Sun Ling and Liu Yichen (孙莹、刘祎辰), *Shēnzhèn Jīngjì Tèqū Gèrén Pòchǎn Tiáolì* "Gōngbù Míngquè Shēnqǐng Pòchǎn De Zhàiwùrén Huòmiǎn Cáichǎn Shàngxiàn Wéi 20 Wàn Yuán" (《深圳经济特区个人破产条例》公布明确申请破产的债务人豁免财产上限为20万元) [*The Personal Bankruptcy Regulations of the Shenzhen Special Economic Zone Announced that the Debtor's Exempt Property Limit for Bankruptcy Applications is 200,000 Yuan*], CCTV (Jan. 1, 2020) (China), http://www.sohu.com/a/415970767_362042.

estate,³⁰⁶ with a reported average cost of 62,000 yuan (around \$9000) per square meter.³⁰⁷ Discharge is anticipated after three years from the commencement of the bankruptcy.³⁰⁸ The system therefore offers prospects to debtors of a fresh start on reasonable terms. Commentators tended to view the Shenzhen legislation favorably at its draft stage,³⁰⁹ with the main criticism based on speculation that if the rate of personal insolvency cases turns out to be equivalent to the rate in the United States, it will heavily burden the courts.³¹⁰ The restriction to local cases should at least help to prevent a rush of forum shopping cases from elsewhere in China.

CONCLUSION

The necessity of a personal insolvency law in China is doubtless, and the construction of such a system in the face of chang-

306. Alice Woodhouse, *Shenzhen Joins Top Five Cities with Most Expensive Housing*, FINANCIAL TIMES (Apr. 12, 2019), <https://www.ft.com/content/76b5dec2-5cc2-11e9-9dde-7aedca0a081a>.

307. Michael Standaert, *This Chinese City Wants to Make Housing More Affordable, but...*, AL JAZEERA (Dec. 13, 2019), <https://www.aljazeera.com/ajimpact/chinese-city-housing-affordable-191213042354066.html>.

308. Shenzhen Regulations, *supra* note 6, art. 95 (After three years there will begin an inspection period to assess whether remaining debts should be discharged or whether the inspection period should continue.).

309. See generally Zou Ningbo, *supra* note 260; Yang Yangteng (杨阳腾), *Gèrén Pòchǎn Zhìdù Bù Huì Chéng “Lǎo Lài” Bìfēngǎng* (个人破产制度不会成“老赖”避风港) [*Personal Bankruptcy Law Will Not Become a Safe Haven*], JINGJI RIBAO (经济日报) [ECONOMIC DAILY] (June 7, 2020) (China), <https://cn.chinadaily.com.cn/a/202006/07/WS5edcadb8a31027ab2a8ced14.html>; Li Jinlei, *supra* note 7; Peng Jiang, *Yǔnxǔ Gèrén Pòchǎn Bìngfēi Gěi “Lǎo Lài” Kāihòumén* (允许个人破产并非给“老赖”开后门) [*Allowing Personal Bankruptcy Does not Open Door to “Lao Lai”*], JINGJI RIBAO (经济日报) [ECONOMIC DAILY] (June 9, 2020) (China), http://www.qstheory.cn/llwx/2020-06/09/c_1126090178.htm; Sun Weiwei (孙维维), *Gèrén Pòchǎn Fǎ Lǎile! Nǎxiē Rén Kě Shēnqǐng? Shìfǒu Huì Zòngróng “Lǎo Lài”?* (个人破产法来了! 哪些人可申请? 是否会纵容“老赖”?) [*The Personal Bankruptcy Law Is Here! Who Can Apply? Will It Indulge “Lao Lai”?*], YICAI MEDIA (June 3, 2020) (China), <https://www.yicai.com/news/100654901.html>.

310. Chen Xiahong (陈夏红), *Pòchǎn Fǎ De Wēndù: Gèrén Pòchǎn àn Rúshān, Pòchǎn Fǎguān Hé Chù Lái* (破产法的温度 | 个人破产案如山, 破产法官何处来) [*Personal Bankruptcy Cases Are Like Mountains, Where Does the Bankruptcy Judge Come From?*], PÉNGPÀI XÍNWÉN (澎湃新闻) [THE PAPER] (June 18, 2020) (China), https://www.thepaper.cn/newsDetail_forward_7878364.

ing ideologies and significant resistance by many citizens and an under-developed supporting infrastructure should best be done incrementally.³¹¹ In China, the under-developed supporting infrastructure, including the property information, credit information, and debt enforcement systems should not necessitate delay to the establishment of a personal insolvency system. As the insolvency system develops, so too will the supporting infrastructure, and until that time, creditors can take steps to protect their own interests. The Supreme People's Court is playing a leading role in encouraging a fresh start for honest and overburdened debtors and the regional developments in Zhejiang, the city of Dongying and, in particular, Shenzhen, can inform the development of a personal insolvency system at a national level. A fairly consistent pattern has emerged of systems enabling honest but unfortunate debtors to obtain a fresh start, regardless of whether or not their debts are business debts or consumer debts. Addressing public concerns, the nascent systems all have safeguards designed to prevent exploitation by the dishonest, in requiring of debtors an honest declaration, subjecting the debtor's estate to investigation by an administrator, requiring that the debtor is available for interrogation by a meeting of creditors and also placing limitations on the debtor enjoying luxuries during the bankruptcy. The success of the personal insolvency system will depend on these safeguards assuaging public concerns regarding over-indebted persons since there is a shadow cast by the dishonest *lao lai* even though the regional personal insolvency systems are not designed to aid such persons. It is perhaps this, rather than a need for further institutional development, that will present the greatest obstacle to the development of a national personal insolvency system.

311. See generally Shi, *supra* note 202; Parry & Long, *supra* note 200.