

Ep.77 Personal Bankruptcy in Asia

Intro Music: INSOL international, in conjunction with the Early Researcher Academics Committee, presents INSOL talks.

Shuai Guo (SG) (00.22): Welcome back to a new episode of INSOL Talks. My name is Shuai Guo, associate professor at China University of Political Science Law, and I'm extremely honoured to host three distinguished guests Professor Jin Chun from Japan, Doctor Jenny Fu from Australia, and Doctor Huifen Ying from China to discuss personal bankruptcy laws in Asia.

First of all, please allow me to briefly introduce our distinguished speakers. Jin Chun is currently a professor at University of Tokyo Faculty of Law and Graduate Schools of Law and Politics. She specializes in Japanese and Chinese and Asian insolvency law, civil procedure, and alternative dispute resolution. Professor Jin holds a degree from Renmin University of China and the Kyoto University, Japan. Professor Jin has taught at the Faculty of Law, Doshisha University, Japan. She has also been a visiting professor or visiting researcher at the Renmin University of China, the Asian Law Centre, Melbourne Law School and National University of Singapore.

Jenny Fu is a senior lecturer in corporate commercial law at Canberra Law School, University of Canberra. She is also well versed in insolvency law in China, through her previous experience as a legal research officer at the Legislative Affairs Commission of the National People's Congress, the PRC. Jenny has a PhD in law from Australian National University and a Bachelor of Laws and Master of Legal Studies from the University of Canberra. Jenny's research interests are mainly in the areas of corporate governance and insolvency law; and has published in Australian, Chinese and national law journals in those areas.

Huifen Ying is an associate professor at the Law School of Shanghai University of Political Science and Law, specializing in bankruptcy law. She was a legal scholar at the Supreme People's Court of PRC from 202-2021, where she conducted research on the title of promoting the establishment of National Natural Person's Bankruptcy System in China. As a member of Shanghai Foreign Legal Talent Pool, she has visited law schools in countries such as the United States, Singapore and Finland for talent exchange. She has translated a report on treatment of National Natural Person Bankruptcy System by the World Bank into Chinese, and has published multiple English papers in journals.

So once again, thank you all for joining us on this panel today. To begin with, could you provide an overview of your jurisdictions personal bankruptcy laws? I would like to invite Jin to take the floor first, followed by Jenny and Huifeng. Thank you, Professor Jin, the floor is yours.

Jin Chun (JC) (03.04): Thank you very much for the kind introduction, dear Mr. Guo Shuai. Today I'm very pleased to have this opportunity to speak about Japanese personal insolvency law in this program. After the comprehensive reform of insolvency law that began in 1996, there are three main types of court insolvency proceedings for individuals in Japan.

First, bankruptcy liquidation under the Bankruptcy Act. Second, small scale individual rehabilitation under the Civil Rehabilitation Act and Third, salary earner individual rehabilitation, also under the Civil Rehabilitation Act. The third type, salary earner rehabilitation, is roughly comparable to Chapter 13 of the US Bankruptcy Code, but the second type, a small-scale individual rehabilitation, was originally designed for self-employed debtors. Because Japanese lawmakers thought it is difficult to calculate future disposable income for self-employed

individuals. So small scale individual rehabilitation procedure in Japan does not require a strict income based repayment formula. Instead, the debtor, under this procedure, must repay at least a statutory minimum percentage of total debts and creditors voting on repayment plan is still maintained. So, in that sense, I think this procedure is somewhat unique to Japan. In addition to these court proceedings, Japan also has special conciliation procedures and out-of-court work outs for individuals.

I will now speak a little bit more about bankruptcy liquidation proceedings in Japan, because a Japanese personal bankruptcy liquidation is often described as quite a debtor friendly. I would highlight two main reasons for this. First, there is a simplified procedure called the simultaneous termination procedure. This procedure applies when the debtor has no assets or not enough assets even to cover the trustee's fee. So in such circumstances, the bankruptcy liquidation procedure in Japan effectively ends. At the same time the procedure begins and the court moves directly to the discharge review process. As a result, the debtor can be discharged as soon as possible, usually within three months after filing of bankruptcy proceedings

From a creditors perspective, this system has been criticized, however, in Japan, the attorney of the debtor usually conducts very careful investigation of the debtor's assets and liabilities before filing of the bankruptcy liquidation proceedings. So that's why the procedure is justified in Japan. Second, there is no requirement for the debtor to use future income to repay creditors in Japan. Post filing income does not become part of the bankruptcy estate. Furthermore, even these days, Japan does not have a means test like the one in the US Bankruptcy Code that limits access to Chapter 7 liquidation type proceedings based on debtors sufficient future income.

Japanese experts have paid close attention to the US experience where the means test has increased the procedural complexity, and costs and has still remained a controversial even within the US. Overall, Japanese lawmakers and practitioners seem to place greater emphasis on giving an honest but unfortunate debtor with no assets a quick, fast, fresh start, even if that means tolerating a small number of bad faith cases. Thank you.

SG (08.44): Thank you very much, Professor Jin. And next I'm going to give the floor to Jenny. Thank you.

Jenny Fu (JF) (08.50): Thank you very much Shuai, for your invitation. In Australia, both personal and corporate insolvency are governed by Commonwealth or Federal legislation. Although both regimes are Federal, they remain distinct. While corporate insolvency is regulated by the Corporations Act, Personal insolvency is primarily governed by the Bankruptcy Act 1966 Commonwealth.

Like many areas of Australian law that are derived from the UK law, the Bankruptcy Act can be traced back to the late 19th Century UK bankruptcy legislation. The main features of the Australian personal bankruptcy framework, as I can see, can be summarised as follows. First, unlike court-based systems in countries such as Japan, as discussed by Professor Jin Chun, or the US, the Australian personal insolvency system is primarily administrative. An advantage of this system, according to the World Bank experts in their 2014 report, is, rather than dispute resolution, it focuses more on addressing the economic and social issues typically associated with our overwhelming personal debt.

The Australian Financial Security Authority, or AFSA, a government agency, plays a central role in the system as both a regulator and system administrator. Through its employees AFSA also acts as the official trustee in bankruptcy, which means it manages bankruptcy estates where no

registered trustee from private insolvency practitioners is appointed. The official trustee administers more than 75% of annual personal bankruptcies in Australia, and is typically involved in cases with very few or no assets at all.

The Bankruptcy Act of Australia provides for two types of bankruptcy, also called bankruptcy liquidation, in some other jurisdictions. These are voluntary bankruptcy initiated by the debtor, and involuntary or compulsory bankruptcy initiated by a creditor. Of these two types, voluntary bankruptcy accounts for more than 90% of all bankruptcies and about 2/3s of all personal insolvency cases in Australia. All voluntary bankruptcies are handled by AFSA through an administrative process. Only creditor-initiated bankruptcies are dealt with by the court.

A second feature of personal bankruptcy system in Australia is, despite its broad and relatively easy access, an earned start approach is adopted by voluntary bankruptcy. In terms of broad access, an insolvent debtor with sufficient connection with Australia, may apply for voluntary bankruptcy by lodging a debtor's petition with AFSA. There is no fee attached to filing for bankruptcy, as the official trustees remuneration is primarily through realization charges or levies collected from bankrupt states that do have assets. There's really no charge if a bankruptcy is assetless.

However, despite its broad and relatively easy access, the personal bankruptcy system in Australia remains quite punitive to the debtor in many aspects. Unlike the more debtor friendly systems in Japan or in the US, a debtor does not receive an immediate automatic discharge soon after, the procedure is commenced. Instead, discharge and relief from debts are conditional upon compliance with many statutory obligations and restrictions, including vesting a bankrupt's property except for exempt assets, including real estate in the trustee, and contributions from future income over a lengthy default bankruptcy period.

The default bankruptcy period in Australia is three years, which is much longer than the one year period in the UK. Although there was once a government proposal to reduce the Australian period to just one year, but this reform did not proceed. A third feature of the framework, as I can see, is the availability of formal alternatives to bankruptcy, so non bankruptcy procedures. These include the debt agreements and Part 9 of the Bankruptcy Act and personal insolvency agreements under Part 10 of the Act. Both procedures are rehabilitation focused that enable debtors to reach a compromise with creditors with the assistance of an insolvency practitioner, thereby avoiding the full consequences of bankruptcy.

Of these two alternatives to bankruptcy, debt agreements are much simpler, as they are available only to debtors who fall within prescribed income, assets and debt thresholds. Typically, consumer debtors. Unlike personal insolvency agreements, debt agreements do not require the assignment of debtor's property to a registered trustee or a former creditors meeting. To become legally binding, a debt agreement must be accepted by a majority in value of affected creditors, usually by postal vote. So, since their introduction, debt agreements have become the second most commonly used personal insolvency procedure in Australia after debtor initiated voluntary bankruptcy.

So in summary, unlike court based systems, the Australian personal insolvency regime is primarily administrative and is designed to provide an accessible, flexible and fair framework for addressing unmanageable personal debt. However, compared with more debtor friendly systems, in other jurisdictions, such as Japan and the US, the regime lags behind in certain respects when it comes to delivering a fresh start to debtors, such as the relatively lengthy default bankruptcy period. Thank you.

SG (16.11): Thank you very much, Jenny. And next, I'm going to invite Huifen to talk about experiences in China.

Huifen Yin (HY) (16.17): Hello everyone. I'm Huifen Ying from Shanghai University of Political Science and Law. It's my great honour to be here and share my thoughts on China's personal bankruptcy law. Unlike the corresponding legal system in Japan, Australia, China currently does not have a personal bankruptcy law that applies nationwide. The existing insolvency framework is governed by the Enterprise Bankruptcy Law of 2006, which applies exclusively to enterprises, leaving individuals burdened with severe debt without a formal legal remedy. For a long time, traditional social values also emphasized that debts must be repaid, which made the idea of personal bankruptcy unfamiliar to the public.

It is undeniable that since the 2010s, the rapid expansion of the market economy, coupled with a rise in individual entrepreneurship and consumer lending, has led to a surge in the number of personal insolvency. For example, a significant number of judgments are difficult to enforce according to the data issued by the Supreme People's Court, and the creditors may not get paid in around 18% of civil and commercial cases, and in about 80% of the unable to enforce cases, the executives were natural persons. Consequently, the call for personal bankruptcy system in China grew increasingly louder.

To address the problem of excessive personal indebtedness, in 2019, the Supreme People's Court put forward the idea of researching and promoting the personal bankruptcy system, which opened the prelude to institutional exploration, and the local courts have actively tackled the personal over indebtedness through individual debt clearance proceedings. Individual debt clearance means, is achieved through a formal agreement reached between the debtor and all creditors. Practical explorations are mainly concentrated in regions with relatively developed private economies such as Zhejiang Province, Jiangsu Province and Shandong Province. Taking Zhejiang Province for example, in the year 2024, Courts across the Zhejiang Province, accept about 2,000 individual debt clearance cases.

In recent years, important breakthroughs have been achieved in China's local personal bankruptcy regulations. Shenzhen and Xiamen, as special economic zones with local lawmaking power, took the lead in formulating personal bankruptcy regulations. Shenzhen Special Economic Zone introduced a milestone personal bankruptcy regulation in the year 2021, Establishing a complete set of procedures including debt adjustment, reorganization and liquidation. It aims to protect only debtors, while preventing debt evasion. By the end of June 2025, the Intermediate People's Court of Shenzhen had accepted more than 500 personal bankruptcy cases, most of which were reorganization cases.

In the year 2025, Xiamen Special Economic Zone also issued its Personal Bankruptcy regulation. The regulation has further optimized the applicable scope and relief measures. This local practice helped many overindebted individuals start their lives, and strengthen public understanding of personal bankruptcy, and also accumulate rich experience for national legal system. In September 2025, the Standing Committee of the National People's Congress released the draft amendment to the Enterprise Bankruptcy Law, which included provisions on personal bankruptcy. It marks an important step forward.

In general, China's personal bankruptcy law has gone through a clear development path from no legal basis, to judicial exploration, then to local regulations, and now moving toward formal national law. This process fully reflects China's gradual and steady statutory approach. That's for the current state of China's personal bankruptcy.

SG (21.32): Thank you Huifen. And the second round questions pertain to the specific situations in respective jurisdictions. So once again first, Chun, I would like to invite you to share the experience of Japan on discharge of guarantee liability of SME managers. Thank you.

JC (21.53): Thank you Guo Shuai. Historically, Japanese financial institutions have generally required managers of small and medium sized enterprises, who are usually also the owners, to provide a personal guarantee when their enterprises apply for bank financing, regardless of the enterprises financial condition. However, this practice has been increasingly criticized for discouraging the timely restructuring of enterprises because once a personal guarantee is in place, managers for small and medium sized enterprises fear personal liability if their enterprises commence insolvency proceedings.

As a result, managers in Japan are reluctant to file for insolvency proceedings in a timely manner or to attempt to work-outs for their enterprises. On the other hand, although Japan has well established personal insolvency laws, as I introduced just now, they do not function effectively in addressing guarantee liabilities of managers because of their adverse impact on managers, businesses and credit.

Based on this background, in 2013 the Japanese Financial Services Agency, together with other related institutions, issued administrative guidelines. One of the main concepts of these guidelines is to work out a personal guarantee liabilities of managers. In particular, if a formal insolvency proceeding or an out-of-court work out is initiated by the managers in relation to their enterprise, managers may also apply parallelly, at the same time, the guidelines to discharge their personal guaranteed liability through an out-of-court work out which is conducted under the involvement of insolvency professionals.

Not only is a discharge available, but when a filing of insolvency proceedings or workout is made, an early stage with respect of enterprises, the managers may also retain reward assets in excess of the exempted assets, in a hypothetical personal bankruptcy liquidation proceedings of managers. For example, if the enterprise enters rehabilitation at the managers petition, the managers may retain reward assets under a workout for guaranteed liabilities to the extent that the combined repayment under the Enterprises Repayment Plan and the Guarantors Repayment Plan exceeds the liquidation value of both parties in a hypothetical bankruptcy liquidation.

This framework also benefits the financial institution as it encourages managers to file for insolvency proceedings, for enterprises at the earlier stage. So as a result, typically the financial institutions, they can get higher repayment ratio from the principal debtor enterprises. Thank you.

SG (26.19): Thank you very much. And next, turning to Jenny. How are assetless debtors treated in Australia?

JF (26.28): Thank you Shuai. As you know, the issue of assetless or low asset bankruptcies has attracted growing attention, particularly in the Western developed economies. As highlighted in the 2014 World Bank report, a significant proportion of personal insolvencies, particularly those involving consumer debtors, concern individuals with few or no assets and no distributable income, commonly referred to as NINA debtors in that report.

For this cohort, traditional bankruptcy procedures, which are often quite lengthy, formal, complex, with disproportionate punitive and stigmatizing consequences, may not effectively facilitate a fresh start. And this is particularly where insolvency often arises through no personal fault of the debtor such as illness. On the other hand, concerns also arise regarding the high

administrative costs associated with administering such bankruptcies, where creditors do not generally receive any return. Of course, ensuring access to insolvency system for all individuals, regardless of their capacity to afford bankruptcy, has become the preferred policy position.

However, the costs of administering NINA cases must ultimately be absorbed by other parties in the system, whether through public funding, creditors or insolvency professionals. In this regard, some major jurisdictions which have a court-based system to deal with personal insolvency, such as the US and Japan have modified their existing procedures to accommodate NINA detours. In some other countries, such as the United Kingdom and New Zealand, where personal bankruptcies have been dealt with by an administrative body, special non-bankruptcy alternatives have been introduced to trade in NINA debtors outside the system of formal bankruptcy.

Currently, there is no separate procedure to deal with no asset cases in Australia, so voluntary bankruptcy is the only insolvency procedure that can be utilized by a no or low asset debtor to resolve their debts. However, with the lengthy three-year bankruptcy period, this system may not be suitable for a NINA Debtor. In Australia, following a roundtable on personal bankruptcy convened by the Attorney General in March 2023, the Australian government has carried out public consultations concerning the feasibility of introducing a minimal asset procedure, modelled on the New Zealand's no asset procedure.

The New Zealand no asset procedure also influenced the adoption of similar procedures, including the Debt Relief Order of United Kingdom, particularly England and Wales. The New Zealand model provides an alternative personal insolvency option, and that allows a person with debts of between \$1,000 and \$50,000 New Zealand dollars, and who holds no realisable assets to be discharged of their debts without going through bankruptcy. The no asset procedure is less restrictive and then bankruptcy, and usually lasts for only one year.

However, a person is able to use that procedure only once in their lifetime. The idea of a minimal asset procedure was supported by the great majority of the participants in the public consultation, so most participants believe that a debtor cohort that would benefit from the introduction of this procedure exists in Australia. Most believe that the procedure should be an alternative to bankruptcy managed by AFSA. We probably could say that it's not really up to the government to introduce this procedure through for the legislative reform. Thank you.

SG (31.13): Once again, thank you Jenny. And last but not least, turning to Huifen. What are the possible future reforms in China?

HY (31.22): As I have mentioned, China has been piloting local regulations in cities such as Shenzhen and Xiamen. In regions without lawmaking authority, local courts adjust individual insolvencies through personal debt clearance. To be sure, this local practice has yielded some results, but they are far from enough. In response to the draft amendment of enterprise bankruptcy law in 2025, China is now moving from local pilot program toward unified national law.

The draft amendment has included limited provisions on natural persons, which indicates a clear direction for future development. The most likely statutory path is the incorporation of personal bankruptcy into the national enterprise bankruptcy law. Because in practice, the lines between business and personal debt are increasingly blurred, this integration would not only foster entrepreneurship by providing a fresh start for failed business owners, but also establishing a more orderly mechanism for debt resolution.

Second, the scope of application will be gradually expanded. Since the draft primarily targets corporate legal persons, it introduced limited personal bankruptcy provisions regarding the scope of application. The draft clarifies that individual shareholders who bear joint and civil liability for corporate debt, may lease obligations through bankruptcy proceedings, as well as a restriction that such personal bankruptcy proceedings are ancillary to the corporate bankruptcy case. So the draft remains narrow in scope and falls short of meeting the practical needs.

Besides business shareholders, it is also common for other individuals to accumulate significant personal debt due to business failures. What's more, self-employed individuals are exposed to identical business risks as enterprises and should not be excluded from the scope of application.

Third, the institutional design will be more rational and well balanced. Unlike the relevant provisions in Japan and Australia, China will build a system that suits its own national condition. The rules on debt discharge, exempt property and rehabilitation period will be further refined. On one hand, it will protect the basic life of honest debtors. On the other hand, it will strengthen the supervision of malicious debt evasion.

The coordination between out-of-court mediation and formal bankruptcy proceedings will also be enhanced. Another point to note is that the draft shows the intention to protect honest entrepreneurs. But at the same time, it also reflects lawmakers conservative and cautious attitudes towards introducing personal bankruptcy law. Therefore, in my view, for the foreseeable future, local courts, personal data clearance and local personal bankruptcy regulations, maybe we will continue to serve as a necessary part of a practical solution to personal over indebtedness in China.

In conclusion, China's personal bankruptcy law is moving toward a unified national framework. The draft amendment of enterprise bankruptcy law is a significant step, but the statutory process is still a work in progress, with plenty of room for further development.

SG (35.47): Thank you Huifen. Thank you all. Closing our discussion, we want to extend our heartfelt thanks for sharing your insights and expertise. This has been incredibly engaging and informative discussion and I'm confident that our audience has gained valuable perspectives. Thank you again and thank you for everyone for tuning in. We look forward to seeing you at our future events.

Outro Music (36.09): If you have enjoyed this podcast, make sure to subscribe on your favourite podcast provider so you don't miss an episode. Contact us on LinkedIn and Twitter at INSOL International using the hashtag #INSOLTalks. The information provided is intended for a general audience and reflects the personal views of the participants. This podcast is distributed under a Creative Commons Attribution non-commercial no. Derivatives four-point zero International License. Thank you for listening.