Building Bridges in China for a More Harmonious Society: Origins and Evolution of Personal Insolvency in Taiwan and Shenzhen

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http://ssrn.com/abstract=3914365

Abstract: A much-heralded new law in Shenzhen, China, is not nearly as new as it might appear, and this law's past offers revealing and important lessons for its successful future. Effective in March 2021, the groundbreaking Shenzhen personal bankruptcy regulation is an impressive monument of Chinese legislation, but it is not the first Chinese personal insolvency law, as has commonly been announced. Rather, Shenzhen's statute was founded on and still reveals vestiges of a predecessor law with a rich background of informative development. The origin law emerged 13 years earlier across the Strait in Taiwan. In fact, although it was originally based on this Taiwanese law, the Shenzhen successor has powerfully evolved to take into account lessons from earlier struggles in Taiwan and the rest of the world, as catalogued in a landmark report by the World Bank. The Shenzhen model embodies an especially elegant product of building on common experience toward common goals. This article charts the progression of policy choices and results in Taiwan, through the decades of trial-and-error analyzed in the World Bank report, and culminating in the state-of-the-art new Shenzhen regulation, which is poised for potential rollout to all of Mainland China.

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Jason J. Kilborn†

After many years of contentious debate and eager anticipation, media outlets heralded the March 2021 launch of a personal insolvency statute in Shenzhen, the economic powerhouse of southern China.[1] Headlines frequently characterized this as "China's first personal bankruptcy law" or words to that effect.[2] But Shenzhen's is not, in fact, the first *Chinese* personal bankruptcy law.[3] Shenzhen's statute was founded on and still reveals vestiges of a predecessor law with a rich background of experience that should usefully inform practical implementation of its Shenzhen successor. This origin law emerged almost exactly 13 years earlier, just across the Strait, in Taiwan. Indeed, the first draft of the Shenzhen regulation was little more than a wholesale reproduction of this Taiwanese law, including a series of recent revisions that lawmakers in Taiwan had made to rectify several serious shortcomings.

The Shenzhen regulation has come a long way since that first draft. In the intervening years, it has evolved to take into account not only experiences and law reforms in Taiwan, but also experiences and law reforms elsewhere in the world, which were catalogued in a landmark report by the World Bank. This report responded to a pressing need, as international authorities recognized the growing threat of widespread and overwhelming personal debt and sought effective legal approaches to its treatment. As authorities in Mainland China seek similar solutions to impending personal debt

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[1] See, e.g., Reuters, *Shenzhen drafts China's first personal bankruptcy laws as virus pressures economy,* 4 June 2020, https://www.reuters.com/article/us-china-economy-bankruptcy/shenzhen-drafts-chinas-first-personal-bankruptcy-laws-as-virus-pressures-economy-idUSKBN23B1EG; *Shenzhen Launches China's First Personal Bankruptcy System,* CHINA BANKING NEWS, 3 Mar. 2021, https://www.chinabankingnews.com/2021/03/03/shenzhen-launches-chinas-first-personal-bankruptcy-system/; Cao Yin, *Bankruptcy regulation set to boost social credit system,* CHINA DAILY, 13 Jan. 2021, https://www.chinadaily.com.cn/a/202101/13/WS5ffe2c1fa31024ad0baa2249.html; *The Thing about China's First Personal Bankruptcy Regulation,* CHINA JUSTICE OBSERVER, 24 Oct. 2020, https://www.chinajusticeobserver.com/a/the-thing-about-chinas-first-personal-bankruptcy-regulation; HKTDC Research, *Shenzhen to Implement China's First Personal Bankruptcy Regulations Next Year,* 25 Sept. 2020, https://research.hktdc.com/en/article/NTQxMTE4Njc5; Wang Jun, *Matter of Life and Debt: Long-awaited personal bankruptcy regulations to go on trial in Shenzhen,* BEIJING REV., 9 July 2020, p. 38, http://www.bjreview.com/Business/202007/t20200708_800213343.html.

[2] See *id.*

[3] While Hong Kong has long had a personal insolvency system, its related law can hardly be called "Chinese," as it is a transplanted version of the English Insolvency Act 1986. For an overview of the fairly non-Chinese system in Hong Kong, see Official Receiver's Office, *Simple Guide on Bankruptcy,* https://www.oro.gov.hk/eng/publications/bankguide.htm; Briscoe Wong, *A Guide to Personal Insolvency in Hong Kong* (2020), https://www.briscoewong.com/wp-content/uploads/2020/06/Guide-Personal-Insolvency-Hong-Kong1.pdf.

problems,[4] they are poised to bridge East and West as the Shenzhen model embodies an especially elegant product of building on common experience toward common goals.

This article charts the progression of policy choices from the first Chinese personal insolvency law, in Taiwan, through the decades of struggles analyzed in the World Bank report, and culminating in the state-of-the-art Shenzhen statute that has impressively incorporated these earlier lessons. It examines the practical consequences of the several stages of adoption and reform in Taiwan and the West with an eye to informing future developments in Shenzhen and the rest of Mainland China, in particular with respect to hidden traps still embedded in the latest iteration of the law. Part I introduces the Q source,[5] the 2008 first personal insolvency law in Taiwan. It charts the various pathways of relief and their early results, both to offer one of the only English-language assessments of the still vibrant modern Taiwanese law, but also as a baseline from which to evaluate the improvements in the ultimate Shenzhen derivation. Part II reviews the World Bank's 2011-12 survey of three decades of personal insolvency procedures around the world. This part focuses on key points of challenge, many of which were precisely reflected in Taiwan's early successes and struggles. It proceeds to distill preferred solutions and apply them to the situation in Taiwan. Part III traces two rounds of subsequent law reform in Taiwan, in 2012 and 2018, showing that Taiwan has remodeled its original system in important ways that, coincidentally, perfectly echo parallel European reforms and respond to World Bank suggestions. Finally, Part IV picks up the chronology with the launch of the Shenzhen project in 2014 and explores how the final result in 2020 incorporated all of these earlier lessons to arrive at a monument of responsible legislation and a new standard for personal insolvency procedures in the 21st century, not only for China, but for policymakers around the world.

I. The First Chinese Personal Insolvency Law: Taiwan 2008

Excessive personal debt captured the attention of policymakers in Taiwan following a huge expansion of credit card lending in the early 2000s. As the 1990s began, banks had issued only 400,000 credit cards, which Taiwanese consumers used in transactions totaling only NT$12.5 billion (about US$400 million[6]). By 2014, the card market had exploded, with circulating credit cards exceeding 37 billion and card transaction volume soaring to just under NT$195 billion (about US$6 billion). Acute problems began to

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[4] See Shan Yuxiao & Tang Ziyi, *Shenzhen court issues landmark ruling on personal bankruptcy,* NIKKEI ASIA, 21 July 2021, https://asia.nikkei.com/Spotlight/Caixin/Shenzhen-court-issues-landmark-ruling-on-personal-bankruptcy (suggesting that the success of the Shenzhen model "could pave the way for the nationwide rollout" of a personal insolvency system for all of Mainland China).
[5] See Q source, https://en.wikipedia.org/wiki/Q_source (the original document hypothesized by biblical scholars to be the source of common material in the Gospels of Matthew and Luke).
[6] See Trading Economics, *Taiwanese Dollar,* https://tradingeconomics.com/taiwan/currency (reporting under "Stats" a rough average exchange rate over 25 years of just under 32 New Taiwan Dollars per US Dollar, with lower values in the 1990s). The Purchasing Power Parity implied rate of conversion has been about half this since 2008, so in real purchasing-power terms, the US Dollar figures reported in this article might reflect a more realistic weight if they were doubled. See Economy Watch, *Taiwan (Taiwan Province of China) Implied PPP Conversion Rate Statistics,* https://www.economywatch.com/economic-statistics/Taiwan/Implied_PPP_Conversion_Rate/.

emerge by 2005, when Taiwanese consumers found themselves in a real crisis, with 700,000 borrowers unable to pay their average NT$1 million (about US$32,000) credit card balances at any point in the foreseeable future.[7]

After a temporary bank-initiated voluntary renegotiation program failed to produce the desired results,[8] the legislature ramped up the pressure with a mandatory framework for clearing unmanageable personal debts. The first Chinese personal insolvency law thus emerged in Taiwan, adopted in July 2007 and effective, after a prescribed nine-month delay, on 11 April 2008. The Consumer Debt Clearance Act[9] provides consumers a path to debt relief very similar to many of the European procedures adopted in the preceding two decades, though it got off to a slow start as conservative courts resisted a very new approach to debt relief.

A. Out-of-Court Negotiation and Transition to Formal Relief

For consumers with debts to financial institutions—which one presumes would be the overwhelming majority of those seeking debt relief—the law reprised the earlier bank initiative, mandating that debtors first engage in workout negotiations with their bank creditors. The largest financial creditor is conscripted to collect the debtor's documents and information and liaise with all other financial creditors in coordinating the negotiation of a voluntary debt settlement plan.[10] If this process produces an agreed arrangement, the largest creditor presents it to the court for approval/confirmation, which is granted so long as the plan contains no provisions obviously in conflict with law.[11] Only if this negotiation process fails to produce an agreeable arrangement within 90 days may the debtor proceed to apply to the court for formal relief.[12]

The court in the debtor's domicile exercises the role of gatekeeper to formal relief.[13] A single judge[14] is charged with gathering and assessing information from debtors, their families, and government agencies to evaluate petitions for compliance with filing formalities and a pair of substantive requirements.[15] First, the scope of the law is limited to "consumers" (*xiaofeizhe*), which is defined surprisingly to include individual

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[7] Chih Hsiung Chang, Heidi H. Chang & Jui-Chu Tien, *A Study on the Coping Strategy of Financial Supervisory Organization under Information Asymmetry: Case Study of Taiwan's Credit Card Market,* 5 UNIVERSAL J. MGMT. 429, 429 (2017).
[8] *Id.*; Annie Huang, *Lawmakers pass debt-clearance law bringing closure to borrowers, banks,* TAIWAN TODAY, 22 June 2007, https://taiwantoday.tw/news.php?unit=6,23,45,6,6&post=8250 (reporting an estimated 220,000 debtors had engaged the bank-initiated renegotiation mechanism).
[9] The current text of the law is available in Chinese at https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=B0010042.
[10] Consumer Debt Clearance Act art. 151.
[11] *Id.* art 152. Once in place, a negotiated debt settlement plan prevents the debtor from seeking formal relief unless the debtor is later unable to fulfill the plan "due to reasons [not] attributable to [the debtor]." *Id.* art. 46(2). This condition is now defined to be met if the payments called for in the arrangement exceed the debtor's disposable income for three consecutive months. *Id.* arts. 75, 151.
[12] *Id.* arts. 151-1, 153.
[13] *Id.* art. 5.
[14] Appeals are heard by a collegial panel. *Id.* art. 11.
[15] *Id.* arts. 8-11, 44, 82.

entrepreneurs who fall below two thresholds: Their business activities in the preceding five years must be "small scale"; that is, not exceeding a monthly turnover of NT$200,000 (about US$6500),[16] and the primary relief procedure is available only to debtors with total unsecured, non-priority debt of no more than NT$12 million (about US$400,000).[17] It is thus likely that many if not most struggling individual entrepreneurs (and those who have guaranteed business debts) will be barred from relief under this law. Second, eligible debtors must exhibit a seemingly simple problem: The debtor cannot (*bu neng*) pay off all debts (or is in imminent danger of facing such a situation).[18] The law offers no guideline as to how to make this "cannot pay" determination. As we shall see, courts initially imbued this ambiguous phrase with substantial meaning, guarding the gateway to relief quite vigilantly.

B. Rehabilitation via Payment Plan v. Liquidation-and-Discharge

Unlike in most European procedures, eligible Taiwanese debtors must make a crucial strategic decision between two pathways to debt relief: The pathway clearly desired by the legislature (and courts) is a multi-year plan for the debtor's rehabilitation/recovery (*gengsheng*) through (likely partial) debt repayment. If the debtor fulfills the terms of a confirmed payment plan, most debts that remain unpaid are legally considered extinguished (*xiaomie*).[19] The other pathway (*qingsuan,* literally, "cleanup" or "clearance") is a liquidation of the debtor's legally available assets, distribution of the proceeds to creditors, and an application by the debtor for a court-ordered extinguishment (discharge, *mianze*[20]) of most[21] remaining unpaid liabilities.

1. Rehabilitation via payment plan

The preferred option emerges from yet another attempt to negotiate a compromise arrangement with creditors, but this second, in-court negotiation differs from the

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[16] *Id.* art. 2.

[17] *Id.* art. 42. This debt limit technically applies only to those seeking relief via a rehabilitation plan, and not via an asset liquidation, but the requirements for obtaining discharge, discussed below, make it all but inconceivable that any person with significant business debts would be able to obtain meaningful relief.

[18] *Id.* art. 3; *see also* arts. 5, 8-11. One other admission requirement, of course, is a court filing fee of NT$1000, though this small fee can be suspended for particularly low-income debtors, to be borne in the interim by the state treasury. *Id.* arts. 6-7. The debtor remains obligated to repay this state debt, which cannot be discharged in the personal bankruptcy procedure. *Id.* art. 138(6).

[19] *Id.* art. 73. In addition to secured and priority debts (such as taxes), unsecured debts for fines and penalties, intentional torts, and family support obligations are unaffected by any rehabilitation plan without the creditor's consent. *Id.* art. 55. Also, if a creditor's claim is not declared due to reasons not attributable to the creditor (e.g., the debtor neglected or intentionally failed to identify that creditor), the debtor remains liable to make a similar distribution on the undeclared creditor's claim. *Id.* art. 73. If the debtor fails to fulfill the plan, creditors can use the plan as an enforcement document in ordinary enforcement proceedings unless the failure is due to reasons "not attributable to [the debtor]" and either the plan can be extended two more years (if time remains before the maximum total duration of 8 years) or the court orders a hardship discharge given that creditors have already received two-thirds of the payment originally promised in the plan. *Id.* arts. 74-75 (the payment threshold was 75% before a reduction in the 2018 reform discussed below in Part III.A.).

[20] See *infra* note 213 for the interesting evolution of this term in Taiwan and Shenzhen.

[21] The scope of discharge is the same in liquidation and rehabilitation cases, see *supra* note 19.

required pre-filing negotiation in several crucial respects. First, a court-appointed supervisor is charged with assisting the debtor to develop and present a viable payment plan.[22] Second, the length of an in-court repayment plan is limited to six years, with a possibility of extension to a maximum of eight years.[23] Third, an in-court plan requires the approval of not all, but only a simple majority of unsecured[24] creditors (measured by both numbers of creditors and volume of claims) actually voting on the plan..[25]

The court has the power, however, to either confirm or reject a plan despite this creditor vote. If a majority of creditors approves (or is deemed to have approved) the debtor's payment plan, the court can still reject it if, for example, the court believes the plan is not viable or is "not fair to dissenting or absent creditors" or "contrary to public order and good customs."[26] Contrarily, the court can confirm (and impose on a majority of dissenting creditors) a payment plan, originally on the basis that the court considered it "fair" (*gongyun*),[27] so long as the promised payments under the plan are at least equal to the debtor's disposable income (deducting amounts necessary for family support) during the two preceding years[28] and is not substantially less than creditors would receive in liquidation proceedings.[29] In any confirmed plan, the court is expected as a matter of course to impose lifestyle restrictions on the debtor to ensure the ultimate fulfillment of the plan.[30] Otherwise, if the plan fails to muster the requisite proportion of creditor support and/or court approval, the court must initiate liquidation proceedings.[31]

2. Liquidation and discharge … for some

The fact that liquidation proceedings are the undesirable result of a failed plan negotiation is one indicator of the disfavored status of this pathway to relief.

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[22] *Id.* arts. 16-17, 39, 49(2), 57.
[23] *Id.* art. 53(3). An initial 8-year plan may be proposed for "special circumstances"; a list of enumerated bases was added in 2012. *Id.* art. 53(3).
[24] Secured creditors, with a property interest backing their claims, and creditors granted special priority by law, are unaffected by the plan unless they consent. *Id.* arts 54, 68.
[25] *Id.* art. 59. Indeed, the court may use a written procedure, soliciting creditor votes on a proposed plan in writing and setting a voting deadline, and creditors who fail to respond timely are deemed to approve the plan. *Id.* art. 60. This "deemed acceptance" technique saves resources, avoids creditor passivity, and increases the likelihood of plan adoption.
[26] *Id.* art. 63(1), (3), (8).
[27] This article was revised in 2012 to transition away from subjective "fairness" to more objectively defined "best efforts" (*jinli*), as described below in Part III.A.
[28] Recall that this two years' disposable income is to be paid out in the plan over at least six years, an interesting objective compromise on minimum distributions to creditors.
[29] Consumer Debt Clearance Act art. 64. Liquidation proceeds generally amount to little if anything, as discussed below. See *infra* notes 74-75 and accompanying text.
[30] *Id.* art 62. A common set of restrictions appended to confirmed plans is reported (in Chinese) by the Libra Law Office at http://www.chaohsin.com/lists_01.php?id=9012, including prohibitions on "extravagant and wasteful activities," gambling, borrowing money, taking taxis, high-speed rail, or airplanes, foreign travel, financial investments, and the giving of abnormal gifts. The firm downplays the impact of these restrictions, though, noting that mechanisms for tracking and controlling debtor behavior are limited.
[31] *Id.* arts. 61, 65.

Nonetheless, it is a second, alternative pathway for some debtors. The most obvious candidates are those who lack the reliable (disposable[32]) income source to fund a payment plan.

The only source of value available to creditors in liquidation is the traditional recourse to the debtor's legally available assets. For consumer debtors, basic household items and tools of the debtor's trade are "exempt" from creditors' claims by statute.[33] In many cases, this leaves little or no value to fund the expenses of administration of a liquidation, much less any distribution to creditors. Administrative expenses are defined to include necessary living expenses of the debtor's family.[34] To minimize the burden of such expenses, expand the estate, and dissuade debtors from seeking relief lightly, the law explicitly restricts the debtor's lifestyle to "the usual level of ordinary people," and it invites the court to further limit the debtor's expenditures at its discretion.[35] Even with the possibility of such restrictions, however, lawmakers clearly anticipated ordinary living expenses would consume all of the meager income of a debtor petitioning for liquidation, so one of the first provisions in the liquidation section directs the court to simultaneously open and close (or immediately close previously opened) liquidation proceedings in any case in which estate assets appear insufficient to cover administration expenses.[36]

Distribution of asset value to creditors is obviously not the goal of debtors petitioning for liquidation; they want freedom (discharge) from overwhelming debt. The rules for granting this relief, however, are designed again to dissuade those seeking an easy escape from their duties to creditors. While the "ordinary" outcome seems to be that debtors should be relieved of their debts upon conclusion of any liquidation proceeding,[37] two sets of exceptions potentially supplant the rule.

First, in both court-imposed rehabilitation payment plans and liquidation-and-discharge cases, creditors are guaranteed a minimum, though variable, entitlement: the debtor's disposable income (deducting amounts necessary for family support) during the two years preceding the petition filing.[38] For especially low-income debtors, even this two-year retrospective measure may amount to zero or close to it, but for debtors with any significant income during the preceding two years, this may require a substantial minimum dividend to creditors. While this amount cannot be amortized over six years as in a rehabilitation payment plan case, another provision encourages a debtor denied a discharge to continue toiling to pay creditors. Debtors denied discharge due to a liquidation-dividend shortfall nonetheless enjoy a two-year respite from

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[32] Debtors whose income barely suffices—or does not even suffice—to cover their families' basic living expenses are properly considered "no-income" in this sense, as it is *disposable* income that matters.
[33] The law in Taiwan, as in virtually every other country, identifies a basic list of items as "exempt" from creditor claims. Such items are also exempt from liquidation proceedings. *Id.* art. 98.
[34] *Id.* art. 106.
[35] *Id.* art. 89. For a common list of such restrictions, see *supra* note 30.
[36] *Id.* arts. 85, 129.
[37] *Id.* art. 132.
[38] *Id.* art. 133. The provision applies only to debtors who have fixed income, thus implicitly excluding no-income debtors, though it seems practically unlikely that many debtors with no fixed income at all would apply for relief to begin with.

enforcement by existing creditors,[39] and if they manage to pay "each ordinary creditor" their shares of the requisite preceding-two-years' disposable income, the debtor can apply again for a discharge.[40]

Second, a long list of undesirable behaviors disqualifies a debtor from discharge after liquidation. Some are related to the relief procedure itself and are common in other systems throughout the world, such as having received a discharge during the previous seven years, concealing or damaging estate assets or accounting materials, or falsifying claims or other property or income records.[41] Others are related to pre-petition behavior that objectively harms creditors, such as favoring one or more creditors over others or concealing insolvency during a transaction occurring in the preceding year.[42] One potentially troubling basis here, however, is rather susceptible to subjective judgment: reducing asset value or increasing debts via "waste, gambling, or other [financially] speculative behaviors."[43] Two saving-grace provisions, however, allow for discharge: (i) if the court considers any of these circumstances to be present to only a "minor" degree, courts have discretion to grant a discharge, and (ii) debtors are again invited to redeem themselves by producing a 20% dividend on all ordinary creditors' claims, after which the debtor can apply for a previously denied discharge.[44]

In addition to relief from previous debt, debtors are compelled to seek relief from a wide variety of restrictions and disabilities imposed on debtors subject to liquidation proceedings. In addition to the lifestyle restrictions the court might have imposed during the course of the proceedings,[45] statutes prohibit liquidation debtors from engaging in over 100 professions, including lawyer, accountant, and other professions having a connection to financial matters or trust, as well as a variety of management positions, including many political posts.[46] A debtor may apply for removal of these restrictions and restoration of civic rights after the grant of exemption is confirmed; if no discharge is granted, three years after termination of the proceedings, so long no sentence is imposed for a bankruptcy crime (e.g., for concealing or destroying assets or accounting information, or for falsifying debts); or five years after termination of liquidation proceedings in any case.[47]

C. First Hesitant Steps in the Courts: 2008-2011

The first successful case under Taiwan's Consumer Debt Clearance Act was announced on 1 August 2008, just under four months after the effective date of the new

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[39] *Id.* art. 140.
[40] *Id.* art. 141.
[41] *Id.* art. 134(1)-(3), (7)-(8).
[42] *Id.* art. 134(5)-(6).
[43] *Id.* art. 134(4). The language of this provision was changed in 2012, narrowing the basis for discharge denial substantially, as discussed below in Part III.B.
[44] *Id.* arts. 135, 142.
[45] See *supra* note 35 and accompanying text.
[46] See lists of restricted positions at https://www.twidrp.org.tw/pages/DownloadNotify.jsp?seqno=28&fileidx=0&BAflag=true and http://www.chaohsin.com/lists_01.php?id=9005.
[47] Consumer Debt Clearance Act art. 144.

law. The Taipei District Court confirmed a rehabilitation plan in which the debtor, a Mr. Huang, promised to pay only about 16% of his credit card balance over six years. The total payments amounted to only about US$2700—about US$37 per month for 72 months. The debtor's Legal Aid Foundation lawyer explained that the debtor had contracted polio during childhood and currently survived on a government subsidy, supplemented by selling recyclables. He juggled balances among cards and borrowed money from friends to try to service his more than US$20,000 credit card balance, but a reduction in government benefits and an operation had finally convinced the debtor he needed relief. The lawyer emphasized that the courts' major concern was not the level of creditor repayment but "debtors' sincerity in repaying their debts and developing healthy personal finance practices."[48] Several fundamental aspects of the new system were reflected in this first case, many of which are not obvious upon casual observation.

1. The hidden but central role of lawyers

First, while Mr. Huang was likely able to borrow from friends or seek a deferral of the modest filing fee of NT$1000 (about US$30), he needed a lawyer to assist in preparing the paperwork to gain admission and to navigate the labyrinthine new procedure. This is an often overlooked barrier to access to personal insolvency relief around the world.[49] Luckily for Mr. Huang, since 2004, Taiwan has had an active, responsive, and sophisticated state-sponsored Legal Aid Foundation, which created a program specifically to support debtors in Consumer Debt Clearance Act cases.[50] In the first four years of the new system's operation, Legal Aid assisted in half of the cases admitted by the courts into the formal relief system.[51] Without this assistance, many debtors would have been left without an effective means of seeking relief. Legal Aid has to rely on specially recruited and trained attorneys to process these specialized cases, however, and the cases are fairly complex and labor intensive. In the early years, the modest per-case remuneration led to gradual attrition from with the attorney ranks. To staunch this bleeding, as of 2015, Legal Aid increased per-case attorney compensation levels, which now range from NT$8000 up to NT$20,000 (about US$250-US$625) depending on the complexity of the case.[52]

2. Admission to formal relief as a rare exception

Second, Mr. Huang's case represented a rather rare exception to the rule, as few cases actually made their way into the formal system, much less arrived at the happy conclusion that Mr. Huang's case enjoyed. Most cases ended before they began, as nearly 75% of petitions presented to the courts were for approval of bank-negotiated

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[48] June Tsai, *Debtor freed of burden in precedent-setting case,* TAIWAN TODAY, Aug. 15, 2008, https://taiwantoday.tw/news.php?unit=10,23,45,10&post=14930.
[49] See Jason J. Kilborn, *Fatal Flaws in Financing Personal Bankruptcy: The Curious Case of Russia in Comparative Context,* 94 AM. BANKR. L.J. 419 (2020) (describing financial barriers in a variety of European and North American personal insolvency systems).
[50] See Legal Aid Foundation, *Who we are,* https://www.laf.org.tw/en/index.php?action=about.
[51] Legal Aid Foundation, *2011 Annual Report* 51, https://www.laf.org.tw/en/upload/2015/11/20151113144052.pdf.
[52] Legal Aid Foundation, *Legal Aid for Consumer Debt Clearance Program,* https://www.laf.org.tw/en/index.php?action=service&Sn=5.

out-of-court settlement arrangements. From 2008 through 2011, of just under 117,000 total new applications, nearly 87,000 fell into this category, and the courts approved 99.78% of these simple petitions.[53] While this might seem like good news, especially for a court system fearing an avalanche of new cases to process, many if not most of these cases represent not success, but temporary deferral of failure. Consumer debtors cannot negotiate in any real sense with major financial institutions. Most of these debtors likely felt powerless and pressured into accepting whatever payment arrangement the bank(s) offered. The most common arrangement was a simple deferral of full payment over an extended period, up to 180 months.[54] The likelihood of debtors' finances remaining stable over 15 years is quite low, so many of these cases can be expected to enter the formal relief system when the informal arrangements prove too burdensome and fail in the coming years.

For debtors like Mr. Huang who resisted the siren song of an out-of-court arrangement (or were rejected by their banks as hopeless cases) and applied for formal relief, the judiciary was far less enthusiastic about this new relief system. The courts' conservative early rulings led to a rapid decline in filings as the word spread among debtors.[55] More than half of the petitions filed in the law's first four years arrived in the first nine months, falling by more than half in the following year, then halving again the next year.[56] A process designed to treat hundreds of thousands of financially

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[53] Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 7. Statistical table on number of newly received consumer debt clearance petitions in the district courts, https://www.judicial.gov.tw/tw/lp-1758-1.html (in Chinese); Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 6. Statistical table on number and approval ratio of completed consumer debt clearance petitions in the district courts (in Chinese). As reported in these two tables, both of these statistics remained stable over the following years, as well, with 74% of petitions seeking settlement approval (gradually declining from 85% to 65% from 2012 through the first six months of 2021) and 99.86% approved. *Id.*

[54] See, e.g., Wenkai (Kevin) Lin, *Practical Experience with Consumer Debt Clearance Act—Rehabilitation Article (1),* ZHONG YIN LAW FIRM BLOG, 12 Jan. 2015, https://zhongyinlawyer.com.tw/%E6%B6%88%E8%B2%BB%E8%80%85%E5%82%B5%E5%8B%99%E6%B8%85%E7%90%86%E6%A2%9D%E4%BE%8B%E5%AF%A6%E6%88%B0%E7%B6%93%E9%A9%97-%E6%9B%B4%E7%94%9F%E7%AF%87%E4%B8%80/ (in Chinese) (suggesting debtors face pressure from courts who might later rule that debtors "can pay" if they have unreasonably rejected a proffered settlement arrangement, but reporting a shift in bank demands after a major reform in 2012, from previous demands for full payment with interest over 180 monthly installments); Hanwei Zhou, Legal Aid Foundation, *Notes on 2011 Amendments to the Consumer Debt Clearance Act,* text accompanying note 6, https://www.laf.org.tw/index.php?action=media_detail&p=1&id=193 (in Chinese) (also reporting softening of bank settlement arrangement conditions, though still oriented around 180-installment plans that repay principal in full, though without interest or penalties).

[55] See Legal Aid Foundation, *supra* note 52 (noting a drop from 23,000 applications for Legal Aid assistance with Consumer Debt Clearance cases in 2008 down to 5000 by 2015 because "the court was rather conservative … and the debtors were losing faith").

[56] Judicial Yuan, Table 7, *supra* note 53 (reporting 16,678 total rehabilitation and liquidation petitions in 2008, falling to 7334 in 2009, 3716 in 2010, and 2349 in 2011). In the years following a major reform in 2012, discussed below in Part III, petition filings would rebound only slightly, averaging about 4400 per year from 2012 through 2020. *Id.*

ill patients administered only 30,000 formal relief cases in its first four years and would continue to process only about 4400 cases per year thereafter.[57]

3. Rehabilitation preferred by debtors, often denied by courts

The overwhelming majority of formal relief petitions, like Mr. Huang's, sought rehabilitation through a payment plan, rather than liquidation-and-discharge. In the first nine months of the new procedure, hopeful debtors lodged over 15,000 petitions for rehabilitation. This represented 93% of petitions for formal relief filed that first year, though the percentage of debtors seeking rehabilitation would stabilize at about 80% from the following year forward.[58]

While debtors enthusiastically embraced rehabilitation, most were not like Mr. Huang, in that their affection remained unrequited by the courts. Fewer than 30% of rehabilitation petitions resulted in opened cases in 2008.[59] It is not clear on what basis these early petitions were rejected,[60] but in later years, it is clear that about 25% of petitions have been rejected on the basis that they failed to establish that the debtor-petitioners were unable to pay their debts,[61] and a much higher percentage (45%) has been rejected for some formal shortcoming of the petition itself.[62]

4. Rehabilitation payment plan struggles

For the relatively fortunate few, like Mr. Huang, allowed to seek an in-court payment arrangement, even fewer managed to convince their creditors and/or the court to accept their proposed rehabilitation plans. Of the 114 rehabilitation cases closed in 2008, only 28 (25%), like Mr. Huang's case, did so on the positive note of a confirmed plan.[63] Beginning the following year, however, the number of concluded cases rose to a

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[57] *Id.* (author calculations based on total annual petitions from 2012 through 2020, averaging 4413 per year). For another commentary critical of this undertreatment problem, see Fangjun Zhu, *Discussion of the Current Status of the Implementation of the Consumer Debt Clearance Act,* LEGAL AID Q., vol. 41 (Oct. 2013), 3, 4 (in Chinese) (reporting 850,000 card debtors but only a few thousand petitioners for Consumer Debt Act relief per month).

[58] Judicial Yuan, Table 7, *supra* note 53 (author calculations based on rehabilitation petitions as a percentage of total petitions, averaging 78% from 2009 through 2020).

[59] Judicial Yuan, Table 6, *supra* note 53.

[60] The Judicial Yuan's statistical table on rejected petitions begins reporting on the statutory basis for dismissal only in 2011, and the figures in the various columns for the statutory bases for dismissal account for only 58% (365/629) of the total dismissals reported for 2011. See *id.* In later years, more than one basis may be present, so the proper denominator for figuring percentages of cases dismissed on various bases is the "total dismissed" column.

[61] See *id.* (author's calculations based on 959 dismissals under article 3 out of a total of 3715 total dismissals from 2012 through the first half of 2021).

[62] See *id.* (author's calculations based on 959 dismissals under article 3 and 1662 under article 8 out of a total of 3715 total dismissals from 2012 through the first half of 2021); Zhu, *supra* note 57, at 5 (suggesting the problem lies in lack of legal representation of these debtors, who struggle to complete the paperwork properly).

[63] Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 2. Statistical table on consumer debt clearance implementation cases concluded in the district courts, https://www.judicial.gov.tw/tw/lp-1758-1.html (in Chinese).

steady average of about 2000 per year, and the plan confirmation success rate climbed steadily, above 60% in 2009 and just above 70% in 2010 and 2011.[64]

Creditors and courts adjusted their expectations and became far less demanding over time. Mr. Huang's plan promised creditors a 16% dividend, but only two other plans confirmed in 2008 got by with similar or smaller offers. Most confirmed plans in 2008 promised at least 50% payment, and the most common dividend was more than 60%.[65] This changed quickly, though, as the average confirmed plan dividend offered to creditors fell precipitously, from 57% in 2008 to 51% in 2009, 45% in 2010, and 39% in 2011. The payoff offer rate in confirmed plans has continued to fall every year since then, averaging only 15% between 2012 and the first half of 2021, when it bottomed out at just over 11% (that is, nearly half of all confirmed rehabilitation plans in 2021 offered creditors less than 10%).[66]

We should take care to observe that these are promises, not actual payments. Statistics do not report on the ultimate success rate of these plans. As far as happy conclusions go, it is great that Mr. Huang's plan was approved, but I have found no public reports of how he has fared since 2008 in dutifully surrendering his US$37 per month to creditors. This is a very small margin for error in any household budget, but especially for someone with such a vulnerable financial situation and sensitive health conditions that led him to seek relief from the consumer insolvency procedure in the first place.

Promising to lead a subsistence existence for six years and relinquish a fixed amount of disposable income to creditors is one thing; actually doing so is quite another. Courts varied in their assessments of "fairness" and debtors' efforts to reduce their lifestyles to minimal living standards, but generally these judgments were made in accordance with the statutory standards for minimum subsistence consumption.[67] These standards support only a very meager existence, set at 60% of the median income in each region, with household budgets per person per month in 2013 ranging from about NT$9700 (US$300) in Fukien Province, to about NT$11,000 (US$350) in Taiwan

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[64] See *id.* This rate would spike to an average of just over 85% from 2012 through June 2021 following a major reform of the plan assessment rules, discussed below in Part III.A.

[65] Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 4. Table on district court consumer debt clearance rehabilitation procedure payoff figures and percentages, https://www.judicial.gov.tw/tw/lp-1758-1.html (in Chinese).

[66] *Id;* see also Lin, *supra* note 54 (reporting on two confirmed plans offering 6% and 3% dividends). This rise in low-dividend plans is likely due in part to more lenient "best efforts" plan evaluation rules instituted in 2012, discussed below in Part III.A.

[67] See Zhu, *supra* note 57, at 7 (reporting most judges apply Ministry of Interior minimum living expense guidelines); Wenkai (Kevin) Lin, *Practical Experience with Consumer Debt Clearance Act—Rehabilitation Article (2),* ZHONG YIN LAW FIRM BLOG, 5 Jan. 2015, https://zhongyinlawyer.com.tw/%E6%B6%88%E8%B2%BB%E8%80%85%E5%82%B5%E5%8B%99%E6%B8%85%E7%90%86%E6%A2%9D%E4%BE%8B%E5%AF%A6%E6%88%B0%E7%B6%93%E9%A9%97-%E6%9B%B4%E7%94%9F%E7%AF%87%E4%BA%8C (in Chinese) (noting various courts assessed plan budgets in accordance with Ministry of Interior minimum consumption levels).

Province, to a maximum of just under NT$14,800 (US$462) in Taipei City.[68] Just as in the out-of-court settlement negotiation process,[69] one strongly suspects that many of these "success" stories will be back before the courts at some future point when the debtors fail to make ends meet, they fail to make plan payments, and creditors push them back over the brink.

5. Liquidation an even less reliable path to relief, little benefit for creditors

For those with even less predictable income than Mr. Huang, the path to liquidation and (hopefully) discharge was even more fraught. Most rehabilitation cases that failed to confirm a plan were converted to liquidation,[70] and about 20% of petitioners initially requested a liquidation proceeding.[71] Of these initial liquidation petitions, only 27% were admitted in the first nine months of the procedure, though this rate jumped to 70% the following year and then settled at an average of about 80% thereafter.[72] It is unclear on what basis the remainder of these liquidation petitions were rejected.

Of the 157 liquidation petitions granted admission to the formal procedure in 2008, about one-third were opened and then closed immediately for lack of any available asset value. That proportion held steady through 2011, then declined rapidly thereafter (down to 4% in 2020). Another significant portion of cases was closed later in the procedure, after the lack of any asset value to cover administrative expenses was revealed, bringing the total of "no-asset" cases to nearly 90% by 2010 and 2011 before declining to an average of about half of all liquidation cases in the following years.[73]

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[68] Ministry of Interior, *Social Assistance Measures* (2014), https://www.mohw.gov.tw/dl-288-6204a9ec-4f98-493e-ad58-713bf01f18f0.html; *see also* Zhu, *supra* note 57, at 7 (criticizing these budget standards as too low); Lin, *id.* (confirming these figures, breaking down consumption budget items, and suggesting a few hundred dollars per month in addition is allowed for health insurance).

[69] *See supra* note 54 and accompanying text.

[70] Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 3. Statistical table on the reasons for district court rehabilitation petition case rulings to initiate liquidation, https://www.judicial.gov.tw/tw/lp-1758-1.html (in Chinese) (reporting 1853 such cases from 2008 through 2011, an average of 463 per year, falling thereafter to a total of 3937 conversions through June 2021, an average of just under 300 cases per year). When added to the numbers of confirmed rehabilitation plans, the figures for cases converted to liquidation account for about 95% of all closed rehabilitation cases, with all but a few of the remainder "withdrawn," which seems to require creditor consent pursuant to article 12 of the Consumer Debt Clearance Act, so it seems likely that these are cases in which the debtor and creditors have struck some sort of private arrangement out of court.

[71] Judicial Yuan, Table 7, *supra* note 53 (reporting an average of just over 1000 liquidation petitions per year from 2008 through the first half of 2021, though only 554 petitions in 2011, at the height of debtor hesitancy about judicial hostility to these cases).

[72] Judicial Yuan, Table 6, *supra* note 53 (reporting an average of just under 970 liquidation procedure rulings per year after 2009, though rising sharply to 1784 in 2020, presumably a result of COVID pandemic disruptions).

[73] This data is available only in an online annual report of compiled judicial statistics published by the Judicial Yuan, available at https://www.judicial.gov.tw/tw/np-1260-1.html. Within the reports on statistics on the District Courts, one table reports on filings and dispositions in Consumer Debt Clearance cases by year and type of proceeding. In 2020, it is Table 59, though in 2015-18, it was

Of the minority of liquidation cases with any asset value available for distribution, few have repaid any significant portion of creditors' claims. From 2008 through 2011, the average dividend on creditors' claims in liquidation cases *with assets* was just over 13% (even after excluding the depressing effect of the majority of cases with no assets, making zero distribution). Between 60% and 70% of liquidation cases during this first four-year period distributed a dividend between 1% and 10% on creditors' claims.[74] Liquidation dividends dropped off sharply in 2012 and remained depressed through the first half of 2021, with an average return to creditors of only 1.68% during this period and a proportion of cases distributing less than 10% rising steadily to nearly 90% by 2017 and thereafter.[75]

If creditors had reason to be dissatisfied with these outcomes, debtors had even more reason to be disappointed with the extremely low rate of achievement of their ultimate goal, a discharge order. In the first four years of the procedure from 2008 through 2011, the courts granted fewer than 10% of the some 2500 applications for discharge.[76] This is where the courts made their skepticism about unearned debt relief most apparent. The overwhelmingly most common basis for denial of discharge (1875 cases, 85% of denials) was the provision with the most potential for troubling subjectivity, invoked upon a finding that the debtor had harmed creditors by depressing asset value or increasing debts via "waste, gambling, or other [financially] speculative behaviors."[77] Most of the remaining denials (413 cases, 19% of denials) were unsurprisingly due to the failure to produce a minimum distribution to creditors at least equal to the debtor's two preceding years' disposable income.[78] Given the conditions that lead debtors to seek insolvency relief, it is unsurprising that the conditions for such denials are present, but it seems hardly justified to leave debtors trapped in a vicious cycle by denying relief from the very financial problems that are the basis for the denial. The legislature eventually responded by revising the first of these hurdles, but not the second, as we will see after taking a short diversion to look at contemporaneous personal insolvency policy assessment in the West.

Table 58, in 2014 it was Table 54, and in 2008-13 it was Table 53. Two adjacent columns in that table report on liquidation cases opened and terminated immediately, and opened liquidation cases later terminated (*zhongzhi*), a term used only in reference to no-asset cases (*see* Consumer Debt Clearance Act art. 85), averaging 420 total no-asset cases per year from 2009 through 2020.

[74] Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 5. Table on district court consumer debt clearance liquidation procedure payoff figures and percentages, https://www.judicial.gov.tw/tw/lp-1758-1.html (in Chinese) (reporting 474 liquidation cases with asset distributions from 2008 through 2011, of which 323 (68%) produced a dividend of less than 10%).

[75] *Id.*

[76] Judicial Yuan, *Consumer Debt Clearance Statistics,* Table 1. Statistical table on applications for discharge and the reasons for non-discharge in consumer debt clearance cases in the district courts, https://www.judicial.gov.tw/tw/lp-1758-1.html (in Chinese) (reporting 2461 closed discharge petitions from 2008 to 2011, of which 229 (9.3%) were granted).

[77] See *supra* note 43 and accompanying text.

[78] See *supra* note 38 and accompanying text.

II. World Bank Survey and Report on Personal Insolvency, 2011-13

As Taiwan was experiencing the growing pains of implementing a new system of consumer debt relief, the World Bank undertook a landmark survey and assessment of accumulated experience with similar procedures established between the mid-1980s and the mid-2000s, predominantly in the West. That assessment culminated in the publication of the World Bank's landmark *Report on the Treatment of the Insolvency of Natural Persons*.[79] Many of the key themes of this report are clearly reflected in Taiwan's early experience and the policy choices facing Shenzhen legislators later.

After the global financial crisis of 2007-2008 struck not only businesses but also the household sector, triggering a worldwide recession, World Bank observers were moved to address the potential systemic risks of a worrying worldwide rise in unsustainable personal debt.[80] The World Bank turned to its Insolvency and Creditor/Debtor Regimes Task Force at its January 2011 meeting to explore the possibility of producing guidance for treating the expanding epidemic of personal insolvency.[81] The Task Force created a special Working Group to examine the most salient issues, policies, and practices uniquely implicated in the context of *personal* insolvency, as opposed to the more popular topic of distressed business entities, such as corporations.[82] The specific assignment was "to study the issue of natural person insolvency and produce a reflective document on this matter, suggesting guidance for the treatment of the different issues involved, and taking into account different policy options and the diverse sensitivities around the world."[83] The Working Group produced and presented to the Task Force a first draft in November 2011, and a final draft was approved in December 2012.[84]

The Working Group concluded that no one set of legislative approaches could be identified as "the" best practices in treating personal insolvency, and attempting to impose a unitary standard on widely varying cultural and socio-economic contexts

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[79] World Bank, *Report on the Treatment of the Insolvency of Natural Persons* (2013), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/05/02/000333037_20130502131241/Rendered/PDF/771700WP0WB0In00Box377289B00PUBLIC0.pdf [*hereinafter,* WB Report]. More recently, the World Bank Group released an additional report relevant to personal debt relief, the 2018 report on small business insolvency, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency,* http://documents.worldbank.org/curated/en/989581537265261393/Saving-Entrepreneurs-Saving-Enterprises-Proposals-on-the-Treatment-of-MSME-Insolvency [*hereinafter,* WB MSME Report]. This report also deals extensively with natural person-entrepreneurs and will be especially relevant to the scope discussion below.

[80] WB Report, *id*, ¶ 3.

[81] *Id.* ¶ 2 (describing the Task Force as "[b]ringing together experienced judges, expert practitioners, academics and policymakers from around the world").

[82] *Id.* ¶¶ 5-7.

[83] *Id.* ¶ 7. Senior Counsel in the World Bank's Legal Vice Presidency recruited the author to convene and chair the drafting committee, composed of academics who had concentrated for years on a comparative analysis of the policies and developing practices of treating personal insolvency. All comments on and characterizations of the report in this article are those of the author and do not necessarily reflect the views of the World Bank or any of its affiliated entities or staff.

[84] *Id.* ¶ 8.

would be unconstructive.[85] Nonetheless, the *Report* highlighted several notable characteristics of existing personal insolvency procedures that had proven both especially effective and particularly problematic.[86] The language of the *Report* clearly indicates that some approaches are preferable to others that had caused substantial problems and rendered existing systems less efficient and less effective.[87]

A. Scope of Application

A predicate issue is the proper scope of a procedure for "personal" or "consumer" insolvency, especially its extension to encompass former or even current business entrepreneurs. The *Report* noted that some policymakers had decided to exclude business debts or even entrepreneurs entirely from emerging personal insolvency relief systems, and it remained non-committal on the optimal solution. But noting "it is often quite difficult to draw a meaningful distinction between 'business' and 'non business' … debtors," the *Report* warned that failed business activity often imposes heavy debt burdens on individuals, and if entrepreneurs are excluded from a personal debt relief procedure for whatever reason, "the opportunity for accessing future productive, entrepreneurial energies is lost."[88] The essence of a personal insolvency regime is not the nature or even size of the debts involved, but the "human factor," as even in a case involving significant business activity or debt, "it is fundamentally the human element behind the business that needs to be protected."[89] "Only a regime of insolvency relief for natural persons" the *Report* advised, "can get to the heart of this problem."[90]

Taiwan's "consumer" insolvency relief statute contains a scope provision sensitive to these concerns, though it arbitrarily excludes significant numbers of worthy debtors. On the plus side, the proprietors of especially small micro-businesses are included, as their situation likely differs little if at all from "ordinary" consumers.[91] Given the small number of filings in the first few years, however, it is not clear why the threshold for inclusion of small entrepreneurs should be so low, and it is even less clear why a total debt limit is necessary. Again, it is not the size or nature of the debts that determines an individual debtor's need for relief. The World Bank's later watershed report on small business insolvency notes a trend to impose debt ceilings on small business procedures, but it boldly concludes "none of these concerns seems to justify the imposition of … debt limits."[92] If the fear is that more substantial business activity or debt will implicate greater complexity than the system is prepared to handle, a mechanism could easily be included for converting a case to a "business bankruptcy" procedure if and when such complexity were discovered, but leaving all other cases in

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[85] *Id.* ¶¶ 12, 53-55.
[86] *Id.* ¶¶ 10, 14-15, 55, 391-92.
[87] See, e.g., *id.* ¶¶ 131-34, 266-67, 277, 279, 285-89, 311-13.
[88] *Id.* ¶¶ 47, 51.
[89] *Id.* ¶ 51.
[90] *Id.* The World Bank Group's later report on small business insolvency addresses this issue even more directly, emphasizing the centrality of a personal debt discharge regime for individual entrepreneurs. See WB MSME Report, *supra* note 79, at vii, ix, 1, 3-8, offering notable country examples at 11-15.
[91] See *supra* notes 16-17 and accompanying text.
[92] See WB MSME Report, *supra* note 79, at 18.

the personal relief system.[93] If the fear is that the numbers of debtors seeking relief will overwhelm the administrative system, that did not come to pass in Taiwan, and there are more responsible means of addressing systemic capacity issues.[94]

B. Access Barriers

Having catalogued a broad range of diverse benefits to be gained from the proper implementation of a personal insolvency procedure, the *Report* observed two countervailing trends: On the one hand, a general approach to broad, open access to formal relief is necessary to deliver relief on a scale sufficient to reap significant rewards. On the other hand, both policymakers and courts expressed an abiding fear of fostering moral hazard among debtors and undermining payment morality.[95] Additional challenges for open access involved concerns about financing the administration of justice and a general preference for private resolution of debtor-creditor tensions. Taiwan faced all of these issues, fairly successfully on all but the last item.

1. Moral hazard and vague or heightened access criteria

Noting a variety of heightened or poorly defined demands imposed on debtors seeking relief (such as "permanent insolvency" and "good faith"), the *Report* cautioned that subjective or heightened access barriers may be counterproductive, leaving debtors in a state of permanent distress with no additional benefit for creditors. Society loses the productive energies of these debtors, forced "underground" in a war of attrition with creditors.[96] The driving force behind such restrictive approaches seemed to be a fear of moral hazard and fraud by debtors wrongfully evading their responsibilities that could be fulfilled if only they were willing to apply a bit of reasonable effort. Time had shown, however, that the burdens of publicly revealing one's inability to manage debts, identifying and turning over non-exempt assets, and facing the natural stigma of financial failure all served to deter abuse, and solvent debtors seldom, if ever, sought a discharge simply to evade claims they were actually able to pay.[97] The *Report* cited years of empirical evidence revealing that "the instances of real fraud are vanishingly low"[98] and "any reduction in moral hazard needs to be balanced against the increased screening costs and the social costs of more restricted access."[99]

As to these social costs of restricting access, the *Report* advised that "[c]are should be taken to avoid sacrificing the great good of such a system simply because perfection cannot be assured."[100] Over-deterrence and under-treatment represent equal if not greater risks, especially in light of the already substantial social stigma of personal

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[93] See *id.* at 18-19 (making this recommendation).
[94] See *id.* at 35; WB Report, *supra* note 79, ¶ 155-66, 172-78.
[95] *Id.* ¶¶ 112-19, 189-200.
[96] *Id.* ¶¶ 189-97.
[97] *Id.* ¶¶ 113-25; *see also* Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit In America* 338 (1999).
[98] WB Report, *supra* note 79, ¶ 118.
[99] *Id.* ¶ 193.
[100] *Id.* ¶ 115; *see also* ¶ 119.

insolvency.[101] This stigma is exacerbated by legal disabilities and restrictions imposed on debtors involved in insolvency procedures, despite the lack of any evidence of wrongdoing by these debtors. Endorsing an effort to reduce or eliminate such restrictions, the *Report* warned "excessive stigmatization of debtors seeking relief can powerfully undermine an otherwise well designed system and curtail the many benefits."[102]

Taiwan's early record on these points is mixed. It admirably avoided expressly heightened access criteria, confining the inquiry to debtors' inability to clear their debts in the present or imminent future.[103] The lack of clear contours of this concept, however, led to a significant degree of petition rejection in the early years, as some courts apparently concluded that "cannot pay" required a very substantial showing of inability, or they relied on other, undocumented reasons for denying access to relief.[104] And though this arose after liquidation cases had been accepted, denial of discharge based on debtors' past behavior amounts to a restriction on access to relief (since debtors cannot change the past), and the overwhelmingly most common basis for denial of discharge was a vague and unbounded inquiry into "waste, gambling, or other [financially] speculative behaviors."[105] As for stigma, Taiwan fell into the trap of super-charging the already significant ignominy of financial failure by fettering debtors with a dizzying array of stigmatizing lifestyle restrictions and even professional prohibitions.[106] The challenge in Taiwan, precisely as the *Report* warned,[107] was not in keeping unworthy debtors out, but in getting needy debtors into the system, as hundreds of thousands of afflicted debtors remained untreated, and applications for formal relief dwindled and remained at depressed levels of a few thousand per year.[108]

2. Filing fees and financing

One area of remarkable early success in Taiwan involves filing fee and other financing issue that had bedeviled many other countries. Though the *Report* mentioned this only briefly, it did note challenges involving debtors' inability to cover sometimes substantial court filing fees and/or to obtain reliable professional guidance in preparing and presenting their official paperwork.[109] Taiwan addressed this potential access barrier in a forward-thinking way that other countries would take up later—by allowing debtors to seek deferral of an already modest filing fee, borne by the state in the interim, and by providing for assistance from state-supported legal aid lawyers.[110] Austria, Poland, and Slovakia would follow Taiwan's lead in adopting one or both of

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[101] *Id.* ¶¶ 120-22; *see also* Michael D. Sousa, "The Persistence of Bankruptcy Stigma," 26 *ABI L. Rev.* 217 (2018).
[102] WB Report, *supra* note 79, ¶¶ 123-24.
[103] See *supra* note 18 and accompanying text.
[104] See *supra* notes 59-62, 72 and accompanying text.
[105] See *supra* note 77 and accompanying text.
[106] See *supra* notes 30, 35, 45-46 and accompanying text.
[107] WB Report, *supra* note 79, ¶ 120.
[108] See *supra* notes 55-57 and accompanying text; Zhu, *supra* note 57, at 8 (noting debtor hesitancy based on negative social perceptions, occupational restrictions, and a fear of denial of discharge).
[109] WB Report, *supra* note 79, ¶ 183.
[110] See *supra* notes 18, 49-52 and accompanying text.

these two crucial support mechanisms,[111] as Germany had already done (deferring filing fees) years before.[112]

3. Out-of-court settlement negotiation

A much more impactful and far less positive effect on access to relief comes from a mandate for out-of-court settlement negotiation. The *Report* recognized a widespread preference among policymakers for private solutions to personal debt issues. Primarily if not exclusively out of concern for public resource preservation, many procedures required debtors to engage with their creditors privately to seek negotiated concessions rather than asking courts to imposed such arrangements.[113] The *Report* relayed the commonly disappointing results of such efforts, however, in three respects: (1) settlement negotiations often introduce extended delays in debtors' obtaining relief, (2) these delays are seldom justified, because negotiations produce no settlement, and (3) even if a settlement is reached, this may be a temporary or otherwise undesirable solution due to "a risk that creditors will use their bargaining power to pressure debtors into accepting onerous payment plans that are not viable."[114] These factors had already led one country to abandon its requirement of out-of-court settlement negotiation, and others would follow.[115]

Taiwan seems to have experienced neither of the first two problems, but the third remains a salient concern. The overwhelming bulk of cases presented to the courts are for approval of mandatory bank-coordinated settlement arrangements, and negotiations are subject to fairly tight time deadlines.[116] The World Bank's report observed that a crucial element of successful settlement negotiations is a supportive institutional structure, which Taiwan enjoyed through the efforts of the banking sector and large financial institutions' willingness to coordinate a (self-interested) cost-free negotiation mechanism.[117]

While official statistics report that virtually all of these settlements are approved, they do not report on the number of negotiations that are attempted but fail (resulting in either a petition for formal relief or simple abandonment of the process). Furthermore, even if the success rate in negotiation is as high as official reports make it appear, real success lies in completion of these workout plans, and anecdotal accounts of their terms give cause for concern. Plans that press debtors to make full payment by constraining their lifestyles for 15 years are very likely to fail. At best, these debtors' maximum productivity is severely depressed, lost to society for an extended period, and at worst, these plans will eventually fail and proceed through a revolving door back into

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[111] See Jason J. Kilborn, *The Rise and Fall of Fear of Abuse in Consumer Bankruptcy: Most Recent Comparative Evidence from Europe and Beyond,* 97 TEXAS L. REV. 1327, 1335, 1338, 1343-44 (2018).
[112] See Jason J. Kilborn, *The Innovative German Approach to Consumer Debt Relief: Revolutionary Changes in German Law, and Surprising Lessons for the United States,* 24 NW. J. INT'L L. & BUS. 257, 279 (2004).
[113] WB Report, *supra* note 79, ¶¶ 128-30.
[114] *Id.* ¶ 131.
[115] *Id.* ¶ 132; Kilborn *supra* note 111, at 1342.
[116] See *supra* notes 10-12, 53 and accompanying text.
[117] See *supra* note 10 and accompanying text.

the formal relief system. This is precisely the situation faced by one of the earliest consumer insolvency systems, in France, as rampant failure of overly demanding settlement plans prompted an expansion of formal relief there.[118]

Subsequent events suggest that all is not well with these negotiated settlements. In 2012, debtors were given the option to choose mediation before a range of impartial bodies, rather than self-interested negotiation through a coordinating bank.[119] The implicit purpose of this revision seems to have been a suspicion that mediators would be more likely than banks to insist on fair and viable repayment arrangements, and if the results of mediation are any indication, the bank-settlement process conceals some serious problems. From its inception in 2012 through 2020, mediation has achieved an agreed arrangement in a steady average of only 30% of cases. The reasons for the 70% failures are not reported, but the failure rate has remained quite persistent over time. Meanwhile, the number of debtors seeking mediation has grown at the expense of the numbers seeking approval of a bank settlement. While bank settlements have remained close to their average of about 12,000 cases per year from 2014 through 2020, mediation requests have steadily increased from under 2000 in 2014 to over 7000 in 2020.[120] Perhaps the word is out among debtors that more reasonable and viable terms are available in mediation than from the bank-driven "negotiation" process, or perhaps debtors understand that mediation is more likely to lead to acknowledged failure and transition to formal relief. In any case, commentators have begun to call for the abolition of this counterproductive preliminary procedure altogether.[121]

C. Requirements for earned relief: payment plans, liquidation, discharge

Getting into a personal insolvency procedure has been generally easier than getting out successfully. The *Report* catalogued the many challenges facing system architects and debtors in relation to the requirements for obtaining the desired relief. Payment plans play a prominent role in almost all systems, but how those plans are adopted or imposed, and especially their key terms, have posed significant challenges and prompted prominent law reform efforts over the years. Once again, Taiwan's early experience resonates with many of the observations in the World Bank's report.

1. Payment plans for all?

However one might feel about the potential moral hazard in relieving debtors of their legitimately incurred financial obligations, policymakers worldwide have consistently expressed a desire for a careful balance between relief and responsibility, between benefit and burden; that is, between debtor and creditor interests.[122] A crucial

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[118] See Jason J. Kilborn, La Responsabilisation de l'Economie: *What the United States Can Learn From the New French Law on Consumer Overindebtedness,* 26 MICH. J. INT'L L. 619, 640-50 (2005).
[119] See Consumer Debt Clearance Act art. 151; Zhu, *supra* note 57, at 4; Zhou, *supra* note 54.
[120] This data is available only in an online annual report of compiled judicial statistics published by the Judicial Yuan, see *supra* note 73. Statistics on mediation are reported directly following the statistics on out-of-court settlement negotiation at the bottom of the table.
[121] See, e.g., Zhu, *supra* note 57, at 4.
[122] See WB Report, *supra* note 79, ¶ 57, 115, 270, 283.

aspect of that balance is an almost universal demand in existing systems that debtors earn the relief of debt discharge, usually by not only relinquishing their saleable assets, but also subjecting themselves to multi-year period of installment payments to creditors pursuant to a rehabilitation plan.[123]

This raises two preliminary questions in a system where the predominant user population has very little income or asset value to spare. First, if alternative tracks for relief are to be presented—e.g., rehabilitation payment plans versus asset-liquidation-and-discharge—how will the choice of track be made? The *Report* remarked on the danger in charging debtors, "who may be in a vulnerable position," with this important strategic choice.[124] It related "significant problems" in a system that allows debtor self-selection between a payment-plan track and a liquidation-and-discharge track, especially if the legislature or courts have a distinct view of the appropriate choice.[125] Debtors in Taiwan have confronted this very problem, as the system seems to offer a free choice in a dual-track procedure. In reality, the legislature and certainly the courts seem to have a distinct preference that debtors make at least some significant effort at repayment through a rehabilitation plan, with the liquidation-and-discharge alternative practically if not technically reserved for debtors with no reasonably available future income. If debtors like Mr. Huang, who can only afford to turn over US$37 per month, are expected to submit to a long-term payment plan, low-income debtors like this should not be temped to make the disastrous strategic choice of opting for liquidation only to have their discharge denied on the basis that their sparse assets have failed to produce a sufficient dividend for creditors.[126] Better yet, if low-income debtors like Mr. Huang are allowed to seek reliable relief in an efficient liquidation-and-discharge process, that should be made clear to them, rather than encouraging them to suffer through the depredations of a 72-month period of purgatory, with a US$37 margin for error and a high likelihood of failure and loss of relief.

Which leads to the second preliminary question: Should extended payment plans be the preferred option, or indeed an option at all, for most debtors? The *Report* revealed that requiring all debtors to submit to low-return "payment plans" had proven to be unproductive and perhaps counterproductive. The overwhelming majority of "payment" plans had produced little or no payment, in fact, that was not absorbed by the costs of administering the payments. Even among more successful systems, plan distributions seldom amounted to more than 10-15% of creditors' claims.[127] In a remarkably overt critique, the *Report* challenged, "[i]n the majority of existing systems, in which fewer than one-fifth of cases initiated each year produce returns to creditors, it is highly questionable whether the administrative costs of the 'good behavior system' are justified."[128] A 2016 European Commission study assessed required payment plans and summed up on a similar decidedly critical note:

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[123] *Id.* ¶¶ 220-21, 262, 356.
[124] *Id.* ¶ 201-02.
[125] *Id.* ¶ 318.
[126] See *supra* notes 76-78 and accompanying text.
[127] WB Report, *supra* note 79, ¶ 313.
[128] *Id.* ¶ 312.

> Methodologically sound research is needed on whether obliging Consumer debtors to earn debt discharge by adhering to Payment Plans in Debt Settlement Procedures over a period of time is genuinely in the public interest on any measure. … [T]hey may merely satisfy punitive and retributive norms which rest on the assumption that over-indebtedness is immoral and great effort should be made by the Consumer debtor and family to repay what has been borrowed. A family unit is very different from an economically productive business entity ....[129]

These scathing appraisals are vividly illustrated in Taiwan's experience. Mr. Huang's plan promised creditors only a 16% repayment, which exceeded the even more paltry average dividend among plans in later years.[130] One might reasonably question the legitimacy and morality of pressing a debtor like Mr. Huang into 72 months of penury simply for the sake of offering a 16% return to his creditors. Indeed, one might even ask why an asset liquidation might be justified if the returns to creditors in that procedure amounted to an average of less than 2%.[131] The comparative burdens to debtors sacrificing their family's meager assets and income do not seem to be fairly equivalent to the trivial benefits to creditors in Taiwan and elsewhere, though perhaps inculcation of payment morality is the purpose of the Taiwanese system, as was suggested of at least one Western procedure.[132]

2. Limited creditor participation

If a payment plan is to be the *quid pro quo* for relief, the question remains how that plan should be established. The *Report* drew an important distinction from business bankruptcy procedures, in that "in the insolvency of natural persons, creditors generally have little if any meaningful influence over the establishment of a payment plan or other requirements for discharge."[133] This is true for two primary reasons:

First, convening meetings of creditors incurs costs that are not clearly justified in personal insolvency administration. The plan terms to be assessed are simple and straightforward: how much income can the debtor reasonably expect over the next pre-determined period of years, and what reasonable family support expenses can be deducted from that income to produce the repayment offer? In very few cases is a significant distribution to be expected, so creditors generally take little interest in these cases. It makes little sense to expend resources on meetings of creditors under such circumstances, so the *Report* identified "a notable trend … to scrap creditors' meetings, and simplify the submission and verification of claims and other forms of creditor participation."[134]

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[129] Gerard McCormack et al., University of Leeds, *Study on a new approach to business failure and insolvency: Comparative legal analysis of the Member States' relevant provisions and practices* 359 (Jan. 2016).
[130] See *supra* note 66 and accompanying text.
[131] See *supra* notes 74-75 and accompanying text.
[132] See WB Report, *supra* note 79, ¶¶ 265, 315.
[133] *Id.* ¶ 209.
[134] *Id.* ¶¶ 185, 208.

More importantly, in low-value cases involving individual debtors, the *Report* explained, "natural market forces and freedom of contract are no longer sufficient safeguards of the public health and welfare."[135] Decisions on the simple terms noted above are better made by a disinterested authority like a court, preferably applying standardized terms:

> The proper levels of sacrifice by distressed debtors, and the appropriate levels of protection of and compromise by their creditors, are sensitive matters of social policy. Policymakers from a wide variety of regions seem to have all but unanimously concluded that these questions in the final analysis are best resolved by political representatives whose task is to balance the competing interests of different constituencies, such as debtors and creditors. Rather than leaving these questions to private negotiations among creditors and debtors, state authorities have consistently been assigned to make the key decisions with respect to the duration and level of sacrifice in insolvency payment plans.[136]

That being said, some mechanism for involving moderate degrees of creditor participation had been successful. If a simple majority of creditors is allowed to override a dissenting minority, this can be an effective means of freeing the court of the duty of imposing the standard terms on the parties.[137]

While steadily rising rates of plan confirmation have been reported in Taiwan,[138] the method of plan adoption is not reported. That is, it is not clear whether creditors have agreed to the debtor's proposed terms at a meeting or in the written "deemed consent" procedure,[139] or the court has confirmed the plan over creditor dissent, a technique often called "cramdown" in the West.[140] It is admirable that courts have been empowered to use a resource-conserving deemed-consent procedure or even impose reasonable plans on dissenting creditors in Taiwan, but this begs the question as to why a meeting of creditors or even a deemed-consent mechanism is needed at all. Once creditors become aware of the propensities of local courts for confirming plans on certain terms (including the statutory minimum dividend of the two previous year's disposable income[141]), those terms likely become the standard, against which any "negotiation" is conducted. In light of the weak negotiating position of individual debtors and the sparse value at issue, it seems far more efficient and effective to bypass the superfluous solicitation of creditor views and simply have the court confirm a standard plan so long as the debtor is willing to accept those terms, as discussed immediately below

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[135] *Id.* ¶ 211.
[136] *Id.* ¶ 212; *see also* ¶ 290.
[137] *Id.* ¶ 213.
[138] See *supra* note 64 and accompanying text.
[139] See *supra* note 25.
[140] See *supra* notes 27-29 and accompanying text.
[141] See *supra* note 28 and accompanying text.

3. Payment plan terms: duration and budget

Perhaps the most challenging and sensitive issue in personal insolvency procedures worldwide is the determination of an appropriate degree of sacrifice by debtors to earn their "fresh start." If payment plans are to be the preferred pathway, decisions must be made on the time period for such a plan and the household budget to which debtors should be relegated, with all other "disposable" income surrendered to creditors.[142] Plans must be formulated with care to avoid dissuading debtors from seeking relief or pushing them to abandon their efforts once begun.[143] The *Report* described the very negative consequences of leaving these matters to the discretion of a judge or administrator, much less to creditors, strongly endorsing some degree of standardization of both duration and payment expectations.[144]

As for plan duration, the *Report* surveyed various terms and their effects and discerned an "inverse relationship between plan length and plan success"[145]; that is, longer plans fail, and the goals of an insolvency treatment system will be undermined if fewer debtors enter or are successful due to extended payment plans.[146] Especially in light of the meager returns to creditors reasonably expected from these payment plans, a "realistic view of debtors' situations … often leads to prioritizing more lenient and shorter payment plans,"[147] as the "point of rapidly diminishing returns can be reached quite quickly when deciding on the proper repayment term."[148] While reporting a common range of standard terms between 3 and 5 years, the *Report* noted the rather arbitrary manner of settling on these periods. It favored a more practical approach taken by one country's policymakers, who "concluded that accumulated experience with voluntary workout arrangements indicated that expecting debtors to live longer than three years at a subsistence level would be 'from a social point of view, not responsible,'" adding that "experience in many countries indicates that plans that are longer than three years produce more failure than success."[149]

As for establishing household budgets for debtors to survive on during this repayment period, after surveying the many problems with leaving this determination to the discretion of courts or other administrators, the *Report* endorsed the establishment of objective expense allocations by "a legislature or other representative entity" to be applied to debtors of various family compositions in various regions with similar expense profiles.[150] Given the unpredictable nature and tight margins of debtor's finances, the *Report* also noted with approval the practice of allocating an

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[142] WB Report, *supra* note 79, ¶¶ 262, 274.
[143] *Id.* ¶¶ 265, 358.
[144] *Id.* ¶¶ 266-68, 284-90 ("One lesson that seems to have emerged most clearly from the last three decades of experience is that a flexible, discretionary approach, while theoretically attractive, is quite problematic in practice.")
[145] *Id.* ¶ 270.
[146] *Id.* ¶¶ 264-65.
[147] *Id.* ¶ 358.
[148] *Id.*¶ 264.
[149] *Id.* ¶ 269; *see also* ¶ 270.
[150] *Id.* ¶¶ 290, 294.

additional "buffer" amount to account for unforeseen expenses.[151] For the same reasons, the *Report* acknowledged that debtors' finances might well change over the long repayment periods called for in rehabilitation plans, so "the law usually anticipates the possibility of … modify[ing] plans prospectively, to take into account the effect of deterioration or improvement in the debtor's actual situation as compared to the projections embodied in the plan."[152]

On almost all of these aspects, Taiwan had stumbled. To their credit, legislators avoided the most serious problem of leaving all these decisions to judicial discretion. The plan term is set by law at a firm period of six years, with a possible extension to eight. Even the lower bound of this range is considerably longer than optimal, however, exceeding the high end of the common range observed in the World Bank report, and double the preferred duration of three years. Moreover, the most sensitive issues of debtor sacrifice and budgeting were relegated to judicial discretion as to a "fair" compromises with creditors.[153] Fortunately, most courts seem to have spontaneously gravitated toward the government guidelines for minimum subsistence budgets, though these seem painfully parsimonious, and courts were not clearly required to reference these standards (and not all did).[154] Finally, the law does not provide for modification of a rehabilitation plan for unforeseen circumstances. Debtors have only two options: extend the plan up to two more years (if time remains before the eight-year maximum and the debtor can produce sufficient income), or ensure that 75% (later reduced to 2/3) of the originally promised payments have been met.[155] For Taiwanese debtors who have demonstrated their resolve and suffered the burdens of a payment plan for three full years, relief may be not only *not* earned already, but farther away than before.

4. Minimum payment for "earned relief"

Finally, the *Report* took issue with a particular sticking point in some systems that demanded not only debtors' best efforts in light of their subjective circumstances, but an objective minimum payment to creditors. The *Report* lamented that such a requirement "invariably produces undesirable results," depriving "[s]ignificant numbers of 'honest but unfortunate' debtors" of needed relief.[156] Observing that debtors unable to spare any of their income for anything beyond basic family maintenance represented "one third, two thirds, or even a greater proportion of all confirmed cases," with payment plans that were little more than "purely symbolic," the *Report* advocated the "preferred position among both commentators and in established insolvency systems" to "provide the same relief to all debtors, regardless of their financial means."[157] Very few personal insolvency regimes have imposed such minimum payment demands, but long after the *Report* was released, one of these systems abandoned the requirement. The Austrian personal insolvency law adopted in the mid-1990s had demanded a minimum

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[151] *Id.* ¶ 291.
[152] *Id.* ¶¶ 306, 308.
[153] See *supra* notes 26-27 and accompanying text.
[154] See *supra* notes 67-68 and accompanying text.
[155] See *supra* note 19.
[156] WB Report, *supra* note 79, ¶ 357.
[157] *Id.* ¶ 300.

10% distribution on creditors' claims in exchange for relief. This requirement was lifted in 2017 in recognition that such a requirement unjustifiably denied relief to the people who needed it most.[158]

In both court-imposed rehabilitation plans and, more importantly, post-liquidation discharge petitions, Taiwan imposes a minimum payment requirement equal to the debtor's disposable income during the preceding two years.[159] In its defense, this requirement is not blindly objective, as it is based on each debtor's unique situation. But it is a backward-looking measure, with no connection to the debtor's present or future payment capacity. As discussed immediately above, the payment expectations of rehabilitation plans should be based on the debtor's current ability and willingness to produce partial payment on creditor claims, not an arbitrary benchmark based on past experience that debtors can never retrieve or modify, however much they might wish to do so. Especially for low-income debtors undergoing liquidation proceedings, the minimum payment threshold has been a common basis for denial of discharge.[160] This is unjustified and counterproductive.

III. Reforms in Taiwan Parallel World Bank Suggestions, 2012 and 2018

Just as the World Bank was formulating its analyses and suggestions for preferred practices, Taiwan was critically evaluating its consumer debt clearance system and preparing a series of major amendments. As revealed above, Taiwan's original law had implicated many of the problems catalogued in the World Bank's *Report,* and for at least some of them, Taiwanese lawmakers responded. Effective 6 January 2012,[161] a series of major revisions brought Taiwan's law much closer into line (coincidentally) with several of the World Bank's key endorsements, and another round of amendments in December 2018[162] would further this *rapprochement*. Among other amendments,[163] three stand out:

A. "Best Efforts" Standard for Rehabilitation Plan Confirmation

The most salutary revisions concerned judicial evaluation and confirmation of rehabilitation payment plans. Taiwanese lawmakers shared the World Bank *Report*'s discomfort with subjective judgment and discretion, so instead of a generalized "fairness" standard,[164] courts were invited to confirm plans so long as their terms represented debtors' "best efforts" to repay their debts.[165] This crucial amendment

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[158] Kilborn, *supra* note111, at 1343.
[159] See *supra* notes 28, 38 and accompanying text.
[160] See *supra* text accompanying note 78.
[161] See Zhou, *supra* note 54.
[162] See Emily Chueh, *The Statute for Consumer Debt Clearance was amended by a Presidential decree (Taiwan),* LEE TSAI BLOG, 28 Feb. 2019, https://www.leetsai.com/arbitration-litigation/the-statute-for-consumer-debt-clearance-was-amended-by-a-presidential-decree-taiwan (in Chinese) (incorrectly reporting date of Presidential Decree No. 10700139191 of 26 December 107 on the Minguo calendar, which is 2018, not 2017).
[163] See *supra* notes 119–121 and accompanying text. The amendments are nicely described in Zhu, *supra* note 57, and Zhou, *supra* note 54.
[164] See *supra* note 27.
[165] See Zhu, *supra* note 57, at 4, 7; Zhou, *supra* note 54.

redirected courts away from a holistic moral judgment of the debtor's past behavior and creditors' rights; instead, it called for a more concentrated and neutral evaluation only of debtors' actual financial capabilities in light of their current and anticipated income, expenses, and property.[166]

This still left considerable room for discretion and widely varying judgment calls, but Taiwanese lawmakers would tighten up this wiggle room gradually, as well. First, recognizing the volatility of debtors' budgets over six years, the Judicial Yuan adopted an implementing rule[167] encouraging courts to approve plans with a margin of leeway: So long as debtors dedicated at least 90% of the total value of available assets and projected disposable income to plan payments, that should be regarded as "best efforts," and if they had no asset value to relinquish, dedicating 80% of disposable income to plan payments should qualify as "best efforts."[168] This loosening of debtor budgeting by incorporating a 10-20% "buffer" precisely paralleled a technique used in Sweden previously,[169] praised in the World Bank *Report*.[170]

This still left open the key question of how to determine "disposable" income. While most courts were applying government standards for subsistence budgets, practice was not uniform, and these minimum budgets pressed debtors into a life of extreme austerity.[171] The 2018 revision finally mandated clear and objective standards for more tolerable budgets to establish debtors' "best efforts." Lawmakers rejected a suggested softening of the guidelines, to conform to the budgetary standards of "general consumers."[172] Instead, the already customary Ministry of Health and Welfare subsistence budget standards were adopted as the official standard for rehabilitation plans, though with two important deviations: (1) the standard budgets were multiplied by 1.2 (that is, increased by 20%), and (2) debtors were permitted to seek higher allowances if they can demonstrate that their actual necessary expenses exceed these minimum guidelines.[173] This reform mirrored a strikingly similar move from a decade

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[166] See Zhu, *supra* note 57, at 4, 7.
[167] These rules are established by the Judicial Yuan to guide court procedures under the Consumer Debt Clearance Act, pursuant to article 157 of the Act. See Consumer Debt Clearance Act Implementing Rules, https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=B0010045 (in Chinese).
[168] This provision was originally incorporated as article 27(1) of the Implementing Rules, but many judges remained unwilling to heed this directive, Zhu, *supra* note 57, at 7, so the 2018 amendment codified this "buffer" provision in article 64-1 of the Act itself.
[169] Jason J. Kilborn, *Out with the New, In with the Old: As Sweden Aggressively Streamlines Its Consumer Bankruptcy System, Have U.S. Reformers Fallen Off the Learning Curve?,* 80 AM. BANKR. L.J. 435, 452-53 (2007).
[170] See *supra* text accompanying note 151.
[171] See *supra* notes 67-68 and accompanying text, as well as text accompanying note 154.
[172] Zhu, *supra* note 57, at 7. This "general consumers" standard describes the budgeting approach adopted in a 2013 overhaul of Irish bankruptcy law, to avoid stigmatizing debtors and treating them unduly harshly. See Insolvency Service Ireland, *Guidelines on a reasonable standard of living and reasonable living expenses* 24 (2013), http://www.isi.gov.ie/en/ISI/Guidelines_under_section%2023_June_13.pdf/Files/Guidelines_under_section%2023_June_13.pdf.
[173] See Chueh, *supra* note 162; Consumer Debt Clearance Act art. 64-2.

earlier in Denmark, where newly adopted government standards similarly increased most debtors' budgets by nearly 20%.[174]

Following these reforms, plan confirmation rates jumped from about 70% before 2012 to an average of over 85% from 2012 through June 2021.[175] Contrarily, the shift to "best efforts" plans also led to a major depression in distributions to creditors. Payoff offer rates in confirmed plans have fallen every year since these amendments were instituted, averaging only 15% between 2012 and the first half of 2021.[176] While it is not entirely clear to what degree these trends are attributable to creditor acceptance or court cram-down, the now-codified standard has likely set the standard for plan terms in both contexts, as creditors know that the courts are likely to confirm plans that meet the objective "best efforts" standards, regardless of creditor preference. While the six-year duration of these plans remains far beyond the bounds suggested in the World Bank's *Report*, improvements in debtor budgets have likely boosted debtors' resolve to persist to achieve well-earned relief.

B. Narrower, More Objective Grounds for Denial of Discharge for "Waste"

Another most notable revision relaxed the stringent scrutiny of the past behavior of debtors seeking discharge following liquidation. Before 2012, the overwhelmingly most common basis for denial of discharge was an ambiguous standard of "waste, gambling, or other [financially] speculative behaviors,"[177] without limitation as to timing or significance of this behavior. In 2012, legislators moderated this factor by substantially tightening the scope of the inquiry in three ways: First, the relevant time period is now limited to the two years preceding the application for liquidation. Second, instead of the broad and ambiguous label of "waste," the sanctioned behavior is now defined more narrowly as "consumption of luxury goods or services" (along with the original "gambling or other speculative behaviors"). Third and finally, the volume and impact of such behavior must surpass a significant threshold; not just *any* wasteful behavior will trigger the prohibition, but only if the debts incurred through the identified behaviors exceed half of the unsecured, non-priority debts at the time of application for liquidation.[178]

With these fundamental modifications, relatively few denials of discharge after 2012 were based on "luxury consumption, gambling, or speculation,"[179] but another provision picked up much of the slack. Overall, the numbers and percentages of granted discharge rose substantially following this reform. From fewer than 10%

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[174] Jason J. Kilborn, *Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark,* 18 INT'L INSOL. REV. 155, 177-78 (2009).
[175] See Judicial Yuan, Table 2, *supra* note 63.
[176] See *supra* note 66.
[177] See *supra* note 77 and accompanying text.
[178] Consumer Debt Clearance Act art. 134 (4).
[179] Though this basis did continue to account for some 7.5% of subsequent discharge denials. See Judicial Yuan, Table 1, *supra* note 76 (reporting 2782 denials of discharge, of which 211 were based on section 134(4)).

before 2012, the rate of discharge conferral vaulted to just under 50% in 2012, averaging nearly 60% in the period following 2012, and rising steadily and consistently during this period to a high of nearly 68% in the first half of 2021.[180] This still leaves at least one-third of discharge petitions denied, and the second most frequent basis for denial before the reform has become the overwhelmingly most common basis now: The minimum-payment provision criticized in the World Bank's *Report*.[181] Many debtors in liquidation proceedings understandably continue to be unable to produce the minimum payment of their two preceding years' disposable income.[182] Of all the bases for the some 2800 denials of discharge from 2012 through the first half of 2021, over 2000 (74%) were based on failure to produce the minimum payment to creditors.[183] This is unsurprising in light of the fact that liquidation dividends dropped off sharply in 2012 and remained depressed thereafter, with an average dividend of only 1.68% from 2012 through the first half of 2021.[184] Continuing to deny a discharge to such asset-poor debtors precisely because they are so asset-poor represents a pressing legislative task sadly left unfinished.

C. Expanded Options in the Event of Rehabilitation Plan Failure

One final revision worthy of brief note concerns failed rehabilitation plans. Debtors' income and expenses are likely to change over six years, but the law still does not provide a mechanism for modifying an ongoing plan to conform to the debtor's changed circumstances. Before 2018, the only options were extending the plan up to two more years (if time remained and the debtor could produce sufficient income during this period to pay off the plan) or a hardship discharge for at least 75% completion of plan payments.[185] Rather than providing for modification, the 2018 amendments reduced the minimum divided for a hardship discharge to two-thirds, and debtors can now petition for liquidation proceedings if the plan fails because the required plan payment exceeds the debtor's disposable income in three consecutive months.[186]

IV. Shenzhen Builds on Taiwan's Foundation, Bridging Greater China and the West

Just after Taiwan began refining its law, and the World Bank released its *Report*, the Shenzhen Lawyers Association in August 2014 began exploring in earnest the question of a local personal insolvency regulation.[187] As a "special economic zone," Shenzhen had the latitude to experiment with local economic regulations like this, and

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[180] See Judicial Yuan, Table 1, *supra* note 76 (reporting 7635 discharge applications adjudicated from 2012 through the first half of 2021, of which 4537 (59.4%) were granted).
[181] See *supra* notes 156-160 and accompanying text.
[182] See *supra* note 38 and accompanying text.
[183] See Judicial Yuan, Table 1, *supra* note 76 (reporting 2782 denials of discharge, of which 2071 were based on section 133, the minimum-payment rule).
[184] See *supra* note 75 and accompanying text.
[185] See *supra* note 19.
[186] Consumer Debt Clearance Act arts. 75; Chueh, *supra* note 162. This implemented a longstanding suggestion from commentators, see Zhu, *supra* note 57, at 7-8.
[187] SHENZHEN SPECIAL ECONOMIC ZONE PERSONAL BANKRUPTCY REGULATION DRAFT: PROPOSAL WITH ACCOMPANYING EXPLANATION 355 (Law Press China, Lu Lin, ed., 2016) (in Chinese).

thought leaders in Beijing supported the initiative.[188] This local experiment would produce vital lessons for a potential nationwide rollout of the institution of personal insolvency across Mainland China. No acute debt crisis drove this process, so Shenzhen authorities could engage in several years of sober reflection to bridge the experiences in Taiwan and the West. In this, they succeeded marvelously, creating a sophisticated, elegant, nearly ideal Chinese personal insolvency statute.

After the Shenzhen Municipal People's Congress endorsed the Lawyers Association project in November 2014, the first foray began conservatively, with a proposed draft completed in late 2015 that virtually verbatim reiterated the Taiwan law.[189] The most notable immediate advance was elimination of mandatory pre-filing settlement negotiation with banks. Regrettably, the Shenzhen draft also weakened a few of the strong points of Taiwan's law and reversed some advances of its 2012 amendments.[190] A few curious new details were also inserted based on foreign models.[191] Thankfully, all of these sub-optimal provisions were scrubbed in the ensuing years-long evolution toward a final version.

After more than five years of continuous examination and revision, including a final open call for public comments in June 2020,[192] the Shenzhen Municipal People's Congress adopted a final regulation on 26 August 2020, effective 1 March 2021.[193] The final version is a greatly admirable monument of responsible lawmaking. Though still revealing hints of the Taiwan law at its foundation, the Shenzhen regulation

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[188] *Id.* (noted in the two prefaces, with independently numbered pages).
[189] See *id.* This is particularly notable in several sections that are relevant in the context of the Taiwan statute but superfluous in light of changes in the Shenzhen draft. For example, the Shenzhen draft calls for petitions to report the nature and scope of the debtor's business dealings (including monthly turnover) during the preceding 5 years, which is necessary in Taiwan in light of the scope provision that excludes all but specifically defined small-scale business entrepreneurs, but the Shenzhen draft contained no such scope limitation. See *id.* arts. 3, 56, 95.
[190] For example, the Shenzhen draft proposed (1) a 10,000 yuan filing fee (*far* higher than the NT$1000 in Taiwan), (2) a maximum rehabilitation plan period set at 8 years, extendable to 10 (rather than 6 extendable to 8), (3) no provision for a "buffer" in assessing "best efforts" plan budgets, (4) no provision for earning a second chance at a denied post-liquidation discharge by producing the minimum payment of the 2 preceding years' disposable income, and (5) a much longer series of sliding-scale waiting periods before applying for reinstatement. See *id.* arts. 9, 66, 77, 88, 168, 170.
[191] For example, the Shenzhen draft provided for (1) a "cessation of payments" indicator of inability to pay, based on German law, *see* Lin, *supra* note 187, at 4, (2) petitions by creditors to push individual debtors into rehabilitation or liquidation proceedings, based on laws in Hong Kong, Japan, and Germany, *id.* at 12-13, (3) diversion of debtors' mail to the administrator, drawn from the *corporate* bankruptcy laws of Taiwan and Japan, *id.* at 207, and (4) pre-petition written waiver of discharge by debtors, based on freedom of contract and inspired by US law, *id.* at 298, though the cited statute (11 USC § 106(a)) provides for waiver of sovereign immunity, *not* waiver of discharge, which would clearly violate longstanding and fundamental public policy in US bankruptcy law.
[192] See Shenzhen Special Economic Zone Personal Bankruptcy Regulations Public Solicitation of Opinions, http://www.sz.gov.cn/cn/xxgk/zfxxgj/zwdt/content/post_7715827.html (3 June 2020) (in Chinese).
[193] Shenzhen Special Economic Zone Personal Bankruptcy Regulation art. 173, available online at http://www.sz.gov.cn/zfgb/2020/gb1179/content/post_8352031.html (in Chinese) [hereafter, SPBR]. "Regulation" and not "Act" or "Law" because this is sub-national legislation, unlike the Taiwan law.

revolutionizes Chinese personal bankruptcy by implementing virtually all of the admonitions of the World Bank *Report* and establishing a state-of-the-art system tailored to current cultural conditions in China.

Without undertaking an exhaustive examination of the intricacies of specific provisions,[194] we can admire a few key ways in which the Shenzhen regulation builds on and continues beyond the successes of its Taiwanese foundations. First, as in the very first initial draft, the final regulation does not require settlement negotiation as a precursor to seeking formal relief. Settlement (*hejie*) is an option presented to debtors, but only an option, which may be supported by a variety of mediation-related entities (in either in-court or out-of-court proceedings), and negotiations must not exceed two months.[195] This places voluntary reconciliation in its proper place, avoiding the dangers identified by the World Bank.[196] It is a useful but voluntary alternative for lightly distressed debtors who wish to avoid the still powerful social stigma of publicly declaring bankruptcy and seeking formal relief.

Second, the scope of application of formal relief is not limited to "small scale" entrepreneurs; the gateway is open to any natural person living in Shenzhen and having participated in social insurance there for three consecutive years.[197] This local restriction is necessary for now, during this preliminary period of "special economic zone" experimentation, but if this law were transposed to cover all of Mainland China, the lack of fine and arbitrary distinctions between consumers and natural person entrepreneurs is a best practice.[198] Likewise, the single access requirement remains simple "loss of ability to pay off debts" (*sangshi qingchang zhaiwu nengli*).[199] The filing fee and other administrative costs are not pre-determined, but system management is assigned to a Bankruptcy Management Department, and administrators assigned by this Department are directed to provide "public welfare services" for debtors unable to shoulder these cost burdens.[200]

Third and most significantly, the Shenzhen regulation makes a wholesale shift toward a straightforward, unitary, equal track for most debtors. Just before adoption of the final text, the provisions on liquidation-and-discharge were moved up in the text of the regulation, preceding those on rehabilitation. This move was more than merely symbolic; it signaled a prediction (if not a preference) that most low- and medium-

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[194] For a more detailed description, see Daniel A. Austin & Cheng-to Lin, *Personal Bankruptcy in the Middle Kingdom: China's Local Pilot Programs and Half of a Bankruptcy System,* 95 AM. BANKR. L.J. 81, 106-21 (2021).
[195] SPBR, arts. 133-36 (providing for approval of settlement with "all" creditors).
[196] See *supra* note 114 and accompanying text.
[197] SPBR art. 2.
[198] See *supra* Part II.A.
[199] SPBR art. 2. The enumerated bases for dismissing an application also include "maliciously evading debts," but this does not seem to supplant the general, open rule in article 2. *Id.* art. 14(2). Conversely, creditors may petition for involuntary bankruptcy against their debtor only if the petitioning creditor(s) are owed more than 500,000 yuan (nearly $US100,000). *Id.* art. 9
[200] *Id.* arts. 155, 166. If creditors nominate an administrator, they are obliged to pay the administrator's costs. *Id.* art. 17.

income debtors would obtain relief through a standard procedure combining asset liquidation and a few years of surrender of disposable income (if any).

Unlike in Taiwan, and more like the European systems explored by the World Bank, the "liquidation" process in Shenzhen does not end immediately upon distribution of the proceeds of debtors' assets (if any), but continues into a three-year period of "discharge inspection" (*mianze kaocha*).[201] During this period, and until the debtor is discharged, any new non-exempt property (including income) becomes part of the estate distributable to creditors, and debtors remain obligated to comply with restrictions and obligations earlier imposed by court order and to report monthly to the administrator (via an electronic system) on assets, income, and expenses.[202] Debtors are thus held to a sort of payment plan that does not need to be modified, as the terms are set by their actual income minus their approved necessary household expenses, determined by reference to guidelines separately formulated by the Municipal Intermediate People's Court.[203] Any new income beyond these boundaries must be relinquished to the administrator for division among creditors.

Whether or not this standard calculation actually leaves anything for distribution to creditors, the scope and result of debtors' best efforts are clearly defined (not negotiated) and limited to a reasonable term of three years. If debtors fulfill these obligations, they have earned a discharge, ending all previous restrictions, with no need for a separate "reinstatement" process.[204] No minimum payment is required to earn

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[201] *Id.* art 95.

[202] *Id.* arts. 32, 96, 99. Inadvertent failure to comply with previous court orders can result in an extension of this inspection period up to two additional years. *Id.* art. 96. Deliberate refusal results in denial of discharge. *Id.* art. 98(1)-(2).

[203] *Id.* art. 36. As might be expected of the first hesitant experiment with debt forgiveness on the Mainland, the guidelines initially adopted by the Court seem to run headlong into the challenge of extreme austerity that Taiwan faced initially. As a standard for debtors' necessary household expenses, the Shenzhen Intermediate Court judges' conference settled on the local standard for social assistance qualification. *Country's first personal bankruptcy affairs management agency unveiled in Shenzhen,* SHENZHEN SPECIAL ZONE DAILY, 2 Mar. 2021, http://www.sz.gov.cn/cn/xxgk/zfxxgj/zwdt/content/post_8577508.html. While this standard is fortunately reconsidered annually by municipal authorities, the current standard seems to press debtors into very tight budgets, with a ceiling of 1950 yuan per person per month in the debtor's household. Shenzhen Municipal Bureau of Civil Affairs and Municipal Bureau of Finance, *Notice of Issuance of Standards for Guaranteed Minimum Living Standards for Residents,* 12 May 2021, http://www.sz.gov.cn/ztfw/shbz/wyk_183996/content/post_8765638.html. This represents less than 20% of the average salary in Shenzhen, far less than the Taiwan standards criticized by observers there, and the Shenzhen law does not multiply the poverty standard by 1.2 for debtors in bankruptcy, as the Taiwan law now does. See *supra* notes 67-68, 173 and accompanying text; *Shenzhen average monthly salary reaches 10,646 yuan,* SHENZHEN DAILY, 14 July 2020, http://www.sz.gov.cn/en_szgov/news/latest/content/post_7889482.html. While accurate international gauges of the buying power of the yuan are hard to come by, one convincing standard for purchasing-power parity suggests that 1950 yuan is only about US$465 per month per person. See OECD, *Purchasing power parities (PPP),* https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm (reporting PPP of about 4.2 yuan per US dollar).

[204] An application is required, to allow the administrator to report on debtors' fulfillment of their obligations and qualification for discharge, which is entered by court order. *Id.* arts. 100-101.

this relief. Indeed, the previous minimum payment stick has been replaced with a new carrot, as debtors who manage to make significant payment can earn a discharge early: after only two years if by that point they have paid 1/3 of creditor claims, and after only one year if they have managed to pay 2/3 of creditors claims.[205] This is a brilliantly well-balanced series of uniform compromises that represents the gold standard for what personal insolvency treatment should look like in the 21st century.

Part of the balance here, perhaps unique to China, is a notable effort to actually leverage social stigma. Discussions of personal bankruptcy in China inevitably come around to the shibboleth of the deadbeat (*lao lai*), furtively abiding a desire to evade legitimate debt and shirk responsibility. Shenzhen preserved the practice in Taiwan of both explicitly restricting debtors' behavior and in prohibiting them from engaging in certain professional and business activities.[206] As jarring as the behavior restrictions might be to Western sensitivities (e.g., no riding in soft berths or high-speed trains, no night clubs or golf courses, no sending children to high-fee private schools, etc.), these are nothing new for struggling Chinese debtors, as since 2013, the Supreme Court has maintained a blacklist of defaulting debtors banned from these very activities.[207] In the personal insolvency context, this is likely just window dressing, anyway, as the standard budget limits would not allow debtors sufficient surplus funds to apply to these "luxuries" in any event. The message and philosophy here are that public signals of humility and responsibility[208] are part of the social price to pay for reliable and fairly quick debt relief—in part to dissuade deadbeat *lao lai* from fouling public perception of the system.

Tailored rehabilitation plans persist, but as a secondary option, explicitly intended for debtors with predictable income,[209] most likely enough income to pay their creditors in full within a few years. No longer would a debtor like Mr. Huang[210] be enticed (or compelled) into a plan offering $37 in monthly payments for years on end. Plan duration is limited to five years (with possible extension up to two more years only if the debtor cannot complete the plan within the original timeframe, or a hardship discharge for 75% payment by that point), and no minimum dividend is imposed in any case.[211] Creditors must accept the plan by a higher margin (majority in number and 2/3 of total claims value), but the court can cram down a plan even on a dissenting majority so long as it does not harm anyone's legitimate interests.[212]

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[205] *Id.* art. 100. This idea was most likely inspired by so-called "motivation rebates" developed in the German personal insolvency system. See Kilborn, *supra* note112, at 283-84.
[206] See SPBR arts. 19, 23, 86.
[207] See Austin & Lin, *supra* note 194, at 87-88; Yuan Yang, "China penalizes 6.7m debtors with travel ban," FINANCIALTIMES, Feb. 15, 2017; *see generally* Yongxi Chen & Anne Sy Cheung, *The Transparent Self under Big Data Profiling: Privacy and Chinese Legislation on the Social Credit System,* 12 J. COMP. L., issue 2 (2017), at 356.
[208] An interesting aspect of this is the requirement that debtors' petition packets must include a written "good faith commitment" (*chengxin chengnuo shu*). SPBR art. 8(5).
[209] SPBR art. 106.
[210] See *supra* text accompanying note 48.
[211] SPBR arts. 108, 115, 127-28.
[212] SPBR arts. 115, 119, 121.

Finally, in another symbolic but important innovation, the primary goal of discharge (*mianchu*[213]) is highlighted at the very beginning of the statute.[214] Indeed, the Shenzhen regulation enhances discharge in a way seen in no other world personal insolvency law to my knowledge: After the list of debts that are not subject to discharge, the regulation allows the court to grant an extraordinary discharge of these debts for debtors who, having partially or fully lost their capacity to work, face the prospect of "extremely difficult life for an extended period."[215] One item to watch, however, is a potential retrogression, a return to the pre-revision approach of the Taiwanese law denying discharge for "luxury consumption, gambling, etc."[216] The Shenzhen version of this provision is not limited to the two previous years or to a predefined proportion of total debts. This concern is mollified somewhat by the qualifiers that discharge denial is warranted only if such behavior results in *major* (*zhongda*) debts or *remarkable* (*xianzhu*) reduction of available property value.[217] We can only hope that Shenzhen judges will learn from the painful experience in Taiwan and apply this provision sparingly.

Conclusion

The new Shenzhen regulation exemplifies a sensitive, comprehensive, and sophisticated assimilation of accumulated experience with personal insolvency law and practice in Taiwan and the West. Chinese authorities are poised to launch the newest and largest wave of personal insolvency experience on the planet. As central authorities consider expanding the Shenzhen model to all of Mainland China,[218] the evolution of this model from Taiwan to Shenzhen reveals two important truths about personal insolvency policy:

First, individual debtors around the world are more alike than different. Despite cultural variations, consensus seems to be building on a single optimal approach to personal insolvency procedure. Early conservative resistance and tailored bargaining have given way to more accessible, more reliable, and more standardized relief.[219] This progression is beautifully reflected in the Shenzhen model, which has overcome the pitfalls of its predecessor in Taiwan and embraced a more effective compromise-oriented approach evident in similar procedures around the world.

Second, local cultural sensitives need not be sacrificed in the interests of adopting this optimal procedure. Lawmakers in both Taiwan and Shenzhen have clearly

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[213] This seems to be another symbolic migration away from the Taiwan law, which used the term *mianze* for discharge. Earlier drafts of the Shenzhen regulation used this word, too, and it still appears only in the title of the "discharge inspection" period. Between June and August 2020, however, the word for the result of this inspection was inexplicably changed to *mianchu*, even in the very first article under the differently worded "discharge inspection" section heading. See *id.* art. 95.
[214] SPBR art. 4.
[215] SPBR art. 97
[216] See *supra* Part III.B.
[217] SPBR art. 98(3).
[218] See *supra* note 4 and accompanying text.
[219] See, e.g., Joseph Spooner, *Long overdue: what the belated reform of Irish personal insolvency law tells us about comparative consumer bankruptcy,* 86 AM. BANKR. L.J. 243 (2012).

signaled their expectation of continuing respect for the age-old adherence to payment morality in Chinese culture (欠债还钱—if you owe a debt, repay the money). And yet lawmakers and courts in both regions have shown that it is entirely possible to maintain these moral traditions while adopting personal insolvency laws, consistent with worldwide best practices, that confer effective, efficient, and meaningful debt relief for the benefit of a productive and harmonious society.