

## P2. Personal Bankruptcy in Asia: Latest Developments and International Implications

22 <sup>nd</sup> ASLI Conference 2025		
Panel Category	:	Bankruptcy Law
Panel Title	:	Personal Bankruptcy in Asia: Latest Developments and International Implications
Panel Abstract	:	
<p>In recent years, personal bankruptcy has received increasing global attention. In Asia, various jurisdictions have initiated discussions and reforms to establish new mechanisms to address individual financial failures and related issues for small and medium-sized enterprises (SMEs).</p> <p>In this panel, four speakers from three Asian countries will examine personal bankruptcy proceedings across five jurisdictions: Australia, China, Hong Kong, Japan, and Singapore.</p> <p>Prof. Dr. Chun Jin from the University of Tokyo will present “Personal Insolvency and Discharge of Guarantee Liability of SME Managers: The Japanese Perspective.” This article explores the Japan’s Financial Services Agency’s Guidelines, which provide instructions for financial institutions to refrain from enforcing personal guarantees provided by SME directors or managers for corporate debts, especially of SMEs. The focus will be on the impact of these guidelines in supporting a fresh start for directors and managers of SMEs and facilitating SME reorganization procedures.</p> <p>Senior Lecturer Dr. Jenny Fu from the University of Canberra will present “Providing a Fresh Start to Assetless Debtors in Personal Bankruptcy: An Australian Perspective.” This article addresses assetless debtors, outlining two non-court-based options in Australia: voluntary bankruptcy administered by the Australian Financial Security Authority and statutory debt agreements as alternatives to bankruptcy. This article will also provide critical analysis for the latest Attorney General’s Department’s proposed Minimal Asset Procedure.</p> <p>Associate Prof. Dr. Huifen Yin from Shanghai University of Political Science and Law will present “Practical Approaches and Future Trends of the Personal Bankruptcy System in China.” This article examines current challenges in China’s personal bankruptcy field, including the public concern that debtors abuse the system to evade debts, the judicial pressure caused by too many cases and the lack of out-of-court mediation mechanism. This article will discuss key considerations for revisions to the Chinese Enterprise Bankruptcy Law, such as the subjects of law, bankruptcy discharge period and regulation of debtors’ debt evasion.</p> <p>Assistant Prof. Dr. Shuai Guo from China University of Political Science and Law will present “Personal Bankruptcy in the Context of Cross-Border Asset Tracing and Recovery: A Comparative Analysis of Chinese Mainland, Hong Kong, and Singapore.” This article focuses on bankrupt individuals with assets abroad, drawing on recent UNCITRAL discussions on civil asset tracing and recovery. Key issues include recognition conditions, available relief measures, treatment of claims, including those of secured creditors, and the ranking of claims. This article will also address the facilitation of cooperation and coordination, along with potential reforms. This panel aims to provide comparative perspectives on personal bankruptcy laws in select Asian jurisdictions, discussing the role of the rule of law in resolving individual financial failures. The discussion will highlight possible future reforms in these jurisdictions and consider the global implications of these experiences.</p>		

## P2. Personal Bankruptcy in Asia: Latest Developments and International Implications

<b>Name of Convenor</b>	:	Shuai Guo
<b>Designation / Academic Post</b>	:	Assistant Professor
<b>Institution / Organisation</b>	:	China University of Political Science and Law
<b>Title of Paper</b>		
Personal bankruptcy in the context of cross-border asset tracing and recovery: a comparative analysis of Chinese Mainland, Hong Kong, and Singapore		
<b>Abstract</b>		
<p>This article provides a comparative analysis of personal bankruptcy laws in the Chinese Mainland, Hong Kong, and Singapore, with a focus on cross-border asset tracing and recovery. As globalization intensifies, individuals increasingly hold assets across multiple jurisdictions, complicating the enforcement of bankruptcy judgments and creditor recovery.</p> <p>This study examines the key legislative frameworks, procedural mechanisms, and judicial approaches in each jurisdiction, identifying both synergies and obstacles in cross-border insolvency cooperation. Building on the recent discussions at UNCITRAL about civil assets tracing and recovery, special attention is given to how each jurisdiction addresses the challenges of tracing and recovering debtor assets located abroad, namely, seeking recognition of a personal bankruptcy judgment. Several issues are examined: conditions for recognition, the reliefs that could be granted, including (automatic) temporary stay, treatment of different claims, including secured creditors and ranking of claims, and how cooperation and coordination could be facilitated.</p> <p>Drawing on case studies and judicial interpretations, the article sheds light on the effectiveness of each jurisdiction's personal bankruptcy mechanisms in international contexts and suggests potential reforms to enhance cross-border insolvency coordination.</p>		
<b>Brief Biography of Author</b>		
<p>Dr Shuai Guo is an Assistant Professor at the School of International Law, China University of Political Science and Law in Beijing, China. He holds a doctoral degree from Leiden University in the Netherlands. He was a visiting scholar at the University of Texas at Austin in the United States and currently serves as an individual expert at the International Institute for the Unification of Private Laws (UNIDROIT) in Rome, Italy on the Working Group of bank insolvency, a consultant to the United Nations Trade and Development in Geneva and Economic Research Institute for ASEAN and East Asia (ERIA) in Jakarta, and a working group member of United Nations Economic and Social Commission of Asia and Pacific (UN ESCAP) in Bangkok. He is the author of four books, with the most recent one being Recognition of Foreign Bank Resolution Actions (Edward Elgar 2022). He published in leading international journals such as Computer Law &amp; Security Review, the Journal of World Trade, International Insolvency Review, Asia Pacific Law Review, Asian Journal of WTO &amp; International Health Law and Policy, etc. He sits on the board of several international associations, such as INSOL International Early Researcher Academics and the International Insolvency Institute Academic Committee. In 2024, he was nominated by the Global Restructuring Review as Cross-Border Insolvency Academic of the Year.</p>		

## P2. Personal Bankruptcy in Asia: Latest Developments and International Implications

<b>Name of Panelist</b>	:	Jenny Fu
<b>Designation / Academic Post</b>	:	Senior Lecturer
<b>Institution / Organisation</b>	:	Canberra Law School, University of Canberra
<b>Title of Paper</b>		
Providing a Fresh Start to Assetless Debtors in Personal Bankruptcy: An Australian Perspective		
<b>Abstract</b>		
<p>In personal bankruptcy law, an “assetless debtor” is an individual who has little to no valuable assets that can be utilised to repay their debts. Although often large in size, traditional insolvency options may not be suitable for this cohort due to reasons such as high costs, low benefits and high administrative burden. As one of the world’s most debtor-friendly personal bankruptcy regimes, Australia offers two main non-court-based options for assetless debtors to resolve their unmanageable debts. One is voluntary bankruptcy administered by the Australian Financial Security Authority, a Federal government agency. The other is a statutory debt agreement as an alternative to bankruptcy. In addition, Since March 2023, the Attorney General’s Department has conducted a roundtable followed by a public consultation on a potential “Minimal Asset Procedure”. If introduced, this procedure, modelled on New Zealand’s No Asset Procedure, will allow low-income and low-asset debtors to be discharged more easily and quickly. This paper reviews the background of the public consultation and the ‘Minimal Asset Procedure’ it proposes to shed light on an important aspect of personal insolvency reform in Australia.</p>		
<b>Brief Biography of Author</b>		
<p>Dr Jenny Fu is a Senior Lecturer in corporate and commercial law at the Canberra Law School, University of Canberra. She is also well-versed in insolvency law in China through her previous experience as a Legal Research Officer at the Legislative Affairs Commission of the National People’s Congress of the PRC. Jenny has a PhD-in-Law from the Australian National University and a Bachelor of Laws and a Master of Legal Studies from the University of Canberra. Jenny’s research interests are mainly in the areas of corporate governance and insolvency law, and has published in Australian, Chinese and international law journals in those areas.</p>		

## P2. Personal Bankruptcy in Asia: Latest Developments and International Implications

<b>Name of Panelist</b>	:	Chun Jin
<b>Designation / Academic Post</b>	:	Professor
<b>Institution / Organisation</b>	:	The University of Tokyo, Graduate Schools for Law and Politics
<b>Title of Paper</b>		
Personal insolvency and discharge of guarantee liability of SME managers: the Japanese perspective		
<b>Abstract</b>		
<p>It is a common phenomenon in many countries that owners/managers of small businesses provide personal guarantees to their company's debtors. The issue of dealing with such over-indebtedness of managers is not only important for the fresh start of the individual manager, but also a key issue in the prompt resolution of insolvency of small and medium-sized enterprises. This paper examines this issue in the context of contemporary Japan. Japan's Financial Services Agency (FSA) issued an administrative guideline on 5 December 2013 to encourage financial institutions to refrain from enforcing personal guarantees given by directors/managers in respect of corporate debts, particularly of SMEs, in certain circumstances. The guidance provides for the personal guarantee to be dealt with work-out proceeding in parallel with the debtor's debt. This paper provides an overview of the purpose, operation and features of the Guidelines. This paper then examines how the Guidelines impact on the fresh start of directors/managers of SMEs and the promotion of the procedure of reorganisation of SMEs.</p>		
<b>Brief Biography of Author</b>		
<p>Jin Chun (金春) is currently a professor at the University of Tokyo, Faculty of Law and Graduate Schools for Law and Politics. She specialises in Japanese and Chinese and Asian insolvency law, civil procedure and alternative dispute resolution. Professor Jin holds degrees from Renmin University of China (LLB) and Kyoto University (LLM and PhD (Law)), Japan. Before moving to Japan, she worked at the Shenyang Intermediate People's Court, China. Her latest research work is a Japanese article: Requirements and Procedures for Recognition in Cross-Border Insolvency - the First Case of Recognition of Japanese Civil Rehabilitation Proceedings in China (Shoji Homu, 2024); a commentary on Australian insolvency law for Japanese readers: Australian Insolvency Law (Kōbundō Japan, 2022). Professor JIN had taught at the Faculty of Law, Doshisha University, Kyoto, Japan. She has also been a visiting professor or visiting researcher at Renmin University of China (Faculty of Law), the Asian Law Centre, Melbourne Law School and National University of Singapore.</p>		

## P2. Personal Bankruptcy in Asia: Latest Developments and International Implications

<b>Name of Panelist</b>	:	Huifen Yin
<b>Designation / Academic Post</b>	:	Associate Professor
<b>Institution / Organisation</b>	:	Shanghai University of Political Science and Law
<b>Title of Paper</b>		
Practice Approaches and Future Trends of Personal Bankruptcy System in China		
<b>Abstract</b>		
<p>In recent years the need to enact personal bankruptcy system is becoming progressively urgent in China. With increased social acceptance, the practice of personal debt solutions in local courts has been blooming. The promulgation of the Personal Bankruptcy Ordinance of Shenzhen Special Economic Zone in 2021 is an important event of epoch-making significance in China's bankruptcy legislative history. The revision of 2006 Enterprise Bankruptcy Law has been included in the legislator's working plan. Whether personal bankruptcy system could be introduced during the revision has become a major focus. The challenges to personal bankruptcy legislation in China include the public concern that debtors abuse the system to evade debts, the judicial pressure caused by too many cases and the lack of out-of-court mediation mechanism. Personal bankruptcy system is one of the most inconsistent legal fields in the world. China's future person bankruptcy law will confine its discussion around the subjects of law, bankruptcy discharge period and regulation of debtors' debt evasion. Policymakers should be aware of the social, legal and economic peculiarities that may affect the functioning of a regime for the insolvency of natural persons.</p>		
<b>Brief Biography of Author</b>		
<p>Huifen YIN is an Associate Professor at the Law School of Shanghai University of Political Science and Law, specializing in bankruptcy law. She was a legal scholar at the Supreme People's Court of P.R.C. from 2020 to 2021, where she conducted research with the title of "Promoting the Establishment of Natural Persons Bankruptcy System in China". As a member of the Shanghai Foreign Legal Talent Pool, she has visited law schools in countries such as the United States, Singapore, and Finland for academic exchange. She has translated the "Report on the Treatment of Natural Persons Bankruptcy System" by the World Bank into Chinese, and has published multiple English papers in SSCI journals.</p>		