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## Law in Books Versus Law in Action in the Landmark Shenzhen, China, Personal Bankruptcy Regime

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# LAW IN BOOKS VERSUS LAW IN ACTION IN THE LANDMARK SHENZHEN, CHINA, PERSONAL BANKRUPTCY REGIME

Jason J. Kilborn\*

## ABSTRACT

*The first personal bankruptcy regime in Mainland China celebrated its second anniversary on March 1, 2023. An empirical assessment of the law in action during these first two years reveals some troubling deviations from the early promises of the new law on the books. In the first year, a handful of judges were charged with an arduous in-person review process for over 1,000 applicants, and they accepted only twenty-five for case initiation. In the second year, initial case review was delegated to an administrative body—an important efficiency enhancement that tripled the number of opened cases. Nonetheless, most debtors continue to be dissuaded from applying at all, and hundreds of applications have been rejected, in part on the non-statutory grounds that the court is admitting only business-related cases. Moreover, the default gateway of liquidation-and-discharge has been successfully used only once, secretly relegated to “last resort” status. Debtors are effectively limited to proposing that creditors accept a payment plan offering full repayment of principal within five years, and creditors have rejected many such plans. While most admitted restructuring cases have led to confirmed plans, many of these “successes” are built on very shaky foundations that portend likely struggle and repeat default ahead. The new system, thus, seems to be operating in quite a skewed fashion: admitting only a very small fraction of applicants and offering relief on narrow and demanding grounds. This is a disappointing abandonment of the textual promise of broad, standardized relief consistent with international best practices. As national authorities in China (and elsewhere) consider adopting a country-wide personal bankruptcy law, Shenzhen’s experience illustrates the challenges of striking the right balance between relief and responsibility in personal insolvency regulation.*

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## INTRODUCTION

Debtors in Shenzhen, China, had good reason to feel optimistic on March 1, 2021. On that day, a new first-of-its-kind<sup>1</sup> personal bankruptcy regulation<sup>2</sup> became effective.<sup>3</sup> It seemed to offer proper personal bankruptcy relief from the debt burdens that had plagued individuals in the especially entrepreneurial city of Shenzhen as a result of business-startup trial and error in general, and the ravages of the COVID-19 Pandemic in particular. Early commentators extolled the virtues of the written provisions of this new municipal regulation as a potential model for national law. In particular, they praised its open access for both consumers and entrepreneurs and its provision of a discharge of unserviceable debt on standard compromise terms of relinquishing surplus assets

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<sup>1</sup> It was a first for Mainland China, although it was not the first “Chinese” personal bankruptcy law. See Jason J. Kilborn, *Building Bridges in China for a More Harmonious Society: Origins and Evolution of Personal Insolvency in Taiwan and Shenzhen*, 31 INT’L INSOLVENCY REV. 183, 184 (2022).

<sup>2</sup> “Regulation” and not “law” because this is a sub-national norm, adopted and effective only within a single municipality. See *id.* at 215 n.193.

<sup>3</sup> Shenzhen Jingji Tequ Geren Pochan Tiaoli (深圳经济特区个人破产条例) [Shenzhen Special Economic Zone Personal Bankruptcy Regulation] (promulgated by the Standing Comm. Shenzhen Mun. People’s Cong., Aug. 20, 2020, effective Mar. 1, 2021), art. 173, 2020 [hereinafter Shenzhen Pers. Bankr. Reg.], [http://www.sz.gov.cn/zfgb/2020/gb1179/content/post\\_8352031.html](http://www.sz.gov.cn/zfgb/2020/gb1179/content/post_8352031.html) (China).

and income for three years.<sup>4</sup> While reorganization plans negotiated with creditors remained an option, that approach seemed to be relegated to secondary status: used only for debtors with predictable income sufficient to make substantial offers to creditors.<sup>5</sup>

Perhaps understanding that the implementation of legal norms often does not go according to plan, one Chinese observer cautioned that a final assessment of the new regulation must await empirical evidence of the law in action.<sup>6</sup> This Article offers the first tranche of such evidence, surveying every case opened in the first two years of the new regulation's operation. True to the prescient Chinese observer's warning, it regretfully reveals a very different and much less optimistic picture emerging from the first two years of the new regime in action. Commentators have observed (accurately, in my view) that the hallmark of a true personal bankruptcy law is that debtors can generally obtain relief without the consent of creditors.<sup>7</sup> From this perspective, Shenzhen does not actually have a true personal bankruptcy law, at least as it has functioned in its first two years.

Take, for example, the case of Mr. Li, the second personal insolvency case opened in Shenzhen.<sup>8</sup> Mr. Li reported that he had started a business

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<sup>4</sup> See, e.g., Pingyao Xie, *Chinese Personal Bankruptcy Regulation: The Shenzhen Experience*, 30 INT'L INSOLVENCY REV. 410, 419 (2021); 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, 113–14, 124–25 (2021); Kilborn, *supra* note 1, at 203–04.

<sup>5</sup> See Kilborn, *supra* note 1, at 205.

<sup>6</sup> See Xie, *supra* note 4, at 416–17.

<sup>7</sup> See Austin & Lin, *supra* note 4, at 124 (noting “the Shenzhen bankruptcy regulations constitute a true, personal bankruptcy law” in contrast with experiments in other localities, because debtors can obtain relief without creditor consent, and sometimes “even over the creditors’ objections”).

<sup>8</sup> (2021) Yue 03 Po 231 Hao (Ge 2) ((2021) 粤 03 破 231 号 (个 2)) [(2021) Guangdong 03 Bankr. No. 231 (Pers. 2)], (Shenzhen Interm. Ct. May 11, 2021) (China). Mr. Li's story has received little if any public attention, unlike the widely reported first case of Mr. Liang, a Bluetooth headset entrepreneur whose business was also hobbled by COVID-19 and other business challenges. See, e.g., *China's First Personal Bankruptcy Case Granted by Shenzhen Court*, GLOB. TIMES (July 19, 2021), <https://www.globaltimes.cn/page/202107/1229044.shtml>; Shan Yuxiao & Tang Ziyi, *Shenzhen Court Issues Landmark Ruling on Personal Bankruptcy*, NIKKEI ASIA (July 21, 2021), <https://asia.nikkei.com/Spotlight/Caixin/Shenzhen-court-issues-landmark-ruling-on-personal-bankruptcy>; Guodong Du, *Behind China's First Personal Bankruptcy Case*, CHINA JUST. OBSERVER (Jan. 16, 2022), <https://www.chinajusticeobserver.com/a/behind-china-s-first-personal-bankruptcy-case>. Mr. Liang enjoyed a considerable monthly income of about 25,000 yuan, which allowed him to successfully negotiate a repayment plan promising his creditors 100% of the principal of their claims, and almost 90% of his creditors approved. (2021) Yue 03 Po 230 Hao (Ge 1) Zhi Er ((2021) 粤 03 破 230 号 (个 2) 之二) [(2021) Guangdong 03 Bankr. No. 230 (Pers. 1) Pt. Two], (Shenzhen Interm. Ct. July 16, 2021) (China). See generally *infra* note 12, for an explanation of Chinese personal insolvency case citations. In fact, Mr. Liang recently became the first debtor to complete his plan, paying off over 675,000 yuan and earning his discharge in only twenty-one months, just over half of the originally proposed time-period. See (2023) Yue 03 Po Shen 344 Hao (Ge Mian 1) ((2023) 粤 03 破

manufacturing and selling projectors in 2017, investing millions of yuan, but sales on various e-commerce sites struggled to keep pace with rising production costs. Then the COVID-19 Pandemic hit in 2020, devastating the business. Mr. Li reported debt of more than 3.6 million yuan (about U.S. \$850,000),<sup>9</sup> paltry assets worth only a few thousand yuan, and no fixed income. He thus seemed to be a perfect candidate for a liquidation-and-discharge proceeding to allow him to hit the reset button, learn from his mistakes, and apply his entrepreneurial energies to another venture.<sup>10</sup> On May 11, 2021, Mr. Li's case was accepted as a standard liquidation-and-discharge proceeding, but the case was later inexplicably converted to a settlement procedure, which required approval from *all* creditors for Mr. Li to obtain relief.<sup>11</sup> Then on September 9, 2021, the case was terminated after four of his twelve creditors (holding about one-third of Mr. Li's outstanding debt) refused to consent to such relief.<sup>12</sup>

A Mr. Cui (pronounced *tsway*), befell a similar fate. Mr. Cui's case was the fifth personal bankruptcy case opened in Shenzhen. Mr. Cui worked as a software engineer at a variety of companies before deciding to start his own teaching business, with on-site meal service, in 2016.<sup>13</sup> Perhaps in light of the

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申 344 号 (个 免 1)) [(2023) Guangdong 03 Bankr. Application No. 344 (Pers. Exemption 1)], (Shenzhen Ct. App. June 16, 2023) (China).

<sup>9</sup> See *Purchasing Power Parities (PPP)*, ORG. FOR ECON. COOP. & DEV. [OECD] (last visited Sept. 1, 2023), <https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm> (reporting PPP of about 4.2 yuan per U.S. dollar in 2020 and 2021, and 4.0 in 2022).

<sup>10</sup> See generally WORLD BANK GRP., *SAVING ENTREPRENEURS, SAVING ENTERPRISES: PROPOSALS ON THE TREATMENT OF MSME INSOLVENCY* 10, 26 (2018), <https://documents1.worldbank.org/curated/en/989581537265261393/pdf/Saving-Entrepreneurs-Saving-Enterprises-Proposals-on-the-Treatment-of-MSME-Insolvency.pdf> (noting that reinvigorating individual entrepreneurs is a purpose of small business insolvency law).

<sup>11</sup> The case was accepted as a liquidation case, as indicated by the acceptance order, and was dismissed as a settlement case, as indicated in the final order.

<sup>12</sup> (2021) Yue 03 Po 231 Hao (Ge 2) ((2021)粤 03 破 231 号 (个 2)) [(2021) Guangdong 03 Bankr. No. 231 (Pers. 2)], (Shenzhen Interim Ct. May 11, 2021) (China). Chinese court cases are identified by year, region, and serial number. Shenzhen is in Guangdong Province, so the first character (*yue* 粤) is an ancient abbreviation for Guangdong, and the Shenzhen Intermediate Court responsible for personal bankruptcy cases is in region "03" of Guangdong Province. The second character (*po* 破) is an abbreviation of the Chinese word for bankruptcy (*pochan* 破产), thus indicating a bankruptcy case. A unique serial number (*hao* 号) follows. Here, Mr. Li's case was the 231st opened bankruptcy case in Shenzhen in 2021. Additionally, it was a personal bankruptcy case, indicated by the final character in parentheses (*ge* 个), which is most likely an abbreviation of the word for "personal" (*geren* 个人). The character *ge* (个) is accompanied by a special serial number that indicates the order in which personal bankruptcy cases have been opened—Mr. Li's was thus the second such case. The rulings in which these stories are recounted are on file with the author, retrieved from the Shenzhen Bankruptcy Court's Personal Bankruptcy Case Information website before it was firewalled in November 2021.

<sup>13</sup> (2021) Yue 03 Po 236 Hao (Ge 5) ((2021)粤 03 破 236 号 (个 5)) [(2021) Guangdong 03 Bankr. No. 236 (Pers. 5)], (Shenzhen Interim Ct. May 13, 2021) (China).

disconnect between his software engineering background and the new teaching business venture, Mr. Cui's application was quite candid about the reason for the business's failure: "lack of sales and management experience in any industry."<sup>14</sup> Mr. Cui was saddled with more than 2.6 million yuan (about U.S. \$620,000) of debt for labor costs for a team of twenty and three venue leases. Though he had a respectable salary of 13,000 yuan per month, this was nowhere near sufficient to retire even half of the debt principal within the regulation's maximum of five years. Mr. Cui, thus, reasonably sought standard liquidation-and-discharge relief, and his petition was accepted on those grounds on May 13, 2021.<sup>15</sup> Again, for reasons that are unclear, the court converted Mr. Cui's case to a reorganization proceeding on August 9, 2021, now requiring him to convince a majority of his creditors to accept a proposed installment payment plan for him to obtain any relief. Not surprisingly in light of his limited payment capacity, Mr. Cui's case was terminated when only two of his creditors (holding 5% of his outstanding ordinary debt) agreed to the terms of his proposed payment plan.<sup>16</sup>

Many other debtors were barred from seeking relief altogether, often on grounds that were not reflected on the face of the new regulation. All but perhaps three of the hundreds of applications with predominantly non-business debt were rejected. After a norm seems to have been established for reorganization payment plans to offer 100% payment of at least the principal of outstanding debt, all applications that indicated the debtor would not, or could not, make such an offer seem to have been rejected on that basis. For example, in August 2022, a Mr. Fang applied for a reorganization proceeding after several startup business failures, saddled with a debt of 2.8 million yuan (about U.S. \$700,000).<sup>17</sup> He offered to pay nearly two million yuan (which appears to be the principal of this large debt) over five years, but his sparse assets and reported monthly income of only 18,000 yuan would fund barely half of this, even without reserving a budget for Mr. Fang's own personal support. Mr. Fang's application seems to have been rejected without giving him a chance to present a best-efforts, partial-payment offer to his creditors.<sup>18</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> (2022) Yue 03 Po Shen 815 Hao (Ge 81) ((2022) 粤 03 破 申 815 号 (个 81)) [(2022) Guangdong 03 Bankr. Application No. 815 (Pers. 81)], (Shenzhen Interm. Ct. Aug. 23, 2022) (China).

<sup>18</sup> *Id.* This case number differs from a number for an accepted or opened case in that the second segment includes two characters, not just the abbreviation for "bankruptcy" (*po* 破, for *pochan* 破产), but also an abbreviation for "application" (*shen* 申, for *shenqing* 申请). A summary of Mr. Fang's application, which seems

The results of the new regime's first two years of operations have thus diverged considerably from what appeared to be the textual promise of broad, standardized relief consistent with international best practices. An aggregate view of system operations is just as sobering as the case snapshots mentioned above. In the first year, a handful of judges were charged with an arduous in-person review process for over 1,000 applicants, and they advanced only about fifty to a secondary stage of in-court hearing, ultimately accepting only twenty-five for case initiation.<sup>19</sup> The second year saw an important efficiency enhancement, with initial case review delegated to the Shenzhen Bankruptcy Administration Office, an impressive administrative body set up to support the new personal bankruptcy system. This division of labor tripled the number of opened cases, but most debtors nonetheless continue to be dissuaded from formally applying at all, and hundreds of applications were rejected, in part on the non-statutory grounds that the court is admitting only business-related cases, or the debtor cannot offer full repayment of principal within five years. Moreover, the default gateway of liquidation-and-discharge has been successfully used only once, now explicitly relegated to "last resort" status, with a consistent demand for full-payment plans submitted for creditor vote. While most admitted payment plan restructuring cases appear to have been successful, many of these plans are built on very shaky foundations that portend likely struggle and repeat default ahead.

The new Shenzhen personal bankruptcy system, thus, seems to be operating in quite a skewed fashion—admitting only a tiny fraction of applicants and offering relief only on narrow and demanding grounds controlled by creditors. These are disappointing results considering the regulation's seeming embrace of open access and standardized discharge relief. The Shenzhen regulation thus regrettably seems to represent yet another illustration of the divergence between the law in books and the law in action. Part I opens with a review of the law in books and the expected operation of the new regime. Part II reveals the very

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to have been rejected (in light of no order of acceptance having been reported), is available in the Shenzhen Bankruptcy Administration Office's online database at [http://sf.sz.gov.cn/szgrpcxxgkpt/sqyslxx/content/post\\_10197445.html](http://sf.sz.gov.cn/szgrpcxxgkpt/sqyslxx/content/post_10197445.html). A similar case offering creditors just over 50% payment, supported by highly optimistic assumptions about future income, was filed by a Mr. Li and seems to have been rejected in September 2022—again without offering Mr. Li a chance to pitch his proposal to creditors. (2022) Yue 03 Po Shen 886 Hao (Ge 104) ((2022) 粤 03 破 申 886 号 (个 104)) [(2022) Guangdong 03 Bankr. Application No. 886 (Pers. 104)], (Shenzhen Interm. Ct. Sept. 28, 2022) (China), available in the Shenzhen Bankruptcy Administration Office's online database at [http://sf.sz.gov.cn/szgrpcxxgkpt/sqyslxx/content/post\\_10197601.html](http://sf.sz.gov.cn/szgrpcxxgkpt/sqyslxx/content/post_10197601.html).

<sup>19</sup> See *infra* Appendix A.

different law in action by reporting on the very small fraction of cases admitted into any of the available relief procedures. Part II also considers several reasons for this slow start, including a major change to the law effected not by the legislature, but by the court and the Bankruptcy Administration Office. Part III shows that this same sort of tacit shift in application of the law explains the wholesale routing of cases away from standard liquidation-and-discharge and into creditor-approved payment plans. Part IV surveys the details of the “dominant” reorganization procedure and the surprisingly consistent full-payment terms of proposed payment plans. Part V closes with a cautionary note on sources and transparency, recounting the sudden disappearance of a key database and the paucity and evanescence of detailed data available to future researchers outside China.

### I. EXPECTATIONS BASED ON LAW IN BOOKS

As drafted, the groundbreaking Shenzhen personal bankruptcy regulation seemed to adopt a sensitive, modern approach to personal insolvency.<sup>20</sup> If this approach had been implemented, the Shenzhen regime would have been an exemplar of effective personal insolvency treatment, consistent with international best practices<sup>21</sup> (*spoiler alert*: it was not so implemented). Launching the project in late 2014, the drafters of the Shenzhen regulation drew inspiration primarily from the neighboring Taiwanese consumer bankruptcy law of 2008, but they eventually incorporated lessons learned from the pitfalls exposed in Taiwan’s experience and from evolving international statements of best practices.<sup>22</sup> After a wholesale revision of the Shenzhen draft immediately preceding its final adoption in August 2020,<sup>23</sup> with a delayed effective date of March 1, 2021,<sup>24</sup> the Shenzhen regulation’s provisions instilled hope and admiration for what one perhaps overeager commentator characterized as a “nearly ideal Chinese personal insolvency statute.”<sup>25</sup>

The Shenzhen regulation departed from its Taiwanese starting point in several key ways that responded to admonitions from the World Bank and other

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<sup>20</sup> For a detailed analysis of the provisions of the regulation, see Austin & Lin, *supra* note 4, at 106–21. See also Xie, *supra* note 4, at 413–16; Kilborn, *supra* note 1, at 203–05.

<sup>21</sup> See Kilborn, *supra* note 1, at 203–05.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 203.

<sup>24</sup> Shenzhen Pers. Bankr. Reg. art. 173.

<sup>25</sup> Kilborn, *supra* note 1, at 203. Yes, that Kilborn, the author of the present Article, which might well be subtitled: “How to Eat Crow Gracefully.”



international commentators.<sup>26</sup> Two central topics are especially noteworthy: open access and standardized relief. That is, getting into and out of the procedure successfully.

First, the Shenzhen regulation promised easier and broader access to struggling debtors. It eliminated a requirement in Taiwan that debtors pursue mandatory settlement negotiation with banks before seeking formal relief.<sup>27</sup> As noted below, settlement (*hejie* 和解) is one of the procedural options presented to debtors, but is only available as an option once the debtor is already inside the formal relief system.<sup>28</sup> Further, and of primary importance to broad access, the Shenzhen procedure is ostensibly open to all debtors living within that municipality (who have contributed to the social security system there for three consecutive years) and meet a simple requirement: “loss of ability to pay off debts.”<sup>29</sup> The scope of the Shenzhen regulation is thus not confined to *consumer* bankruptcy (as in Taiwan)<sup>30</sup> and is likewise clearly not limited to individual entrepreneurs encumbered with business-related debt.<sup>31</sup>

Second, rather than favoring negotiated solutions, as the Taiwanese law does,<sup>32</sup> the Shenzhen regulation seems to signal a wholesale shift toward a standardized liquidation-and-discharge (*qingsuan* 清算) relief track for most debtors. This relief track entails liquidation of available assets followed by a three-year period of “discharge inspection,” during which debtors must turn over to an administrator all income in excess of a court-approved minimum household budget allowance (per standard guidelines).<sup>33</sup> So long as the debtor reports on and relinquishes this income for three years, debts not retired by distribution of income and asset value collected during the three-year period should be discharged by court order upon the debtor’s application.<sup>34</sup> This track

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<sup>26</sup> See *id.* at 191–205.

<sup>27</sup> Xie, *supra* note 4, at 419 (noting that “attempts to reach an agreement with creditors are difficult to achieve and thereby it is futile for debtors to negotiate with creditors”); Kilborn, *supra* note 1, at 204.

<sup>28</sup> Shenzhen Pers. Bankr. Reg. art. 135 (providing for approval of settlement with “all” creditors); see Austin & Lin, *supra* note 4, at 116–17.

<sup>29</sup> Shenzhen Pers. Bankr. Reg. art. 2 (stating that such loss might be “due to business operations or living consumption”); Kilborn, *supra* note 1, at 204.

<sup>30</sup> Kilborn, *supra* note 1, at 185 (noting definition of “consumer” in Taiwanese law, which surprisingly includes “small scale” entrepreneurs with limited business debt).

<sup>31</sup> Xie, *supra* note 4, at 414, 419 (noting in the Shenzhen regulation “there is no distinction between entrepreneurs and consumers”); Kilborn, *supra* note 1, at 204.

<sup>32</sup> See Kilborn, *supra* note 1, at 185–88.

<sup>33</sup> See Shenzhen Pers. Bankr. Reg. arts. 19, 23, 32, 36, 86, 95, 96, 99; Austin & Lin, *supra* note 4, at 111–14 (describing the standardized liquidation-and-discharge relief track); Kilborn, *supra* note 1, at 204–05.

<sup>34</sup> See Austin & Lin, *supra* note 4, at 113–14; Kilborn, *supra* note 1, at 204–05.

equalizes the treatment of all debtors, automatically setting and periodically adjusting their “best efforts” necessary to earn a discharge. The approach just described is the gold standard for personal insolvency treatment in the modern world.<sup>35</sup>

Just before adoption of the final text of the regulation, the provisions on liquidation-and-discharge were moved up, now greeting readers as the first relief procedure introduced. I have noted elsewhere that this revision struck me as a prediction (if not an implied preference) that, as in the U.S. and much of Europe, “most low- and medium-income debtors would obtain relief” not via payment plans negotiated with majorities of creditors, “but through a standard procedure combining asset liquidation and a few years of surrender of disposable income (if any).”<sup>36</sup>

A second pathway to relief, reorganization (*chongzheng* 重整), remains available for debtors who choose to propose a compromise payment plan to creditors, but serious hurdles seem to inhibit this choice. Debtors pursuing reorganization must have sufficient disposable income to fund a repayment offer over a maximum of five years that convinces a majority of voting creditors (holding two-thirds of voting claims) to approve the plan.<sup>37</sup> In light of the similarity between the terms of income surrender in liquidation and reorganization, and the presence of an administrator to monitor the debtor in liquidation, it seemed unlikely that creditors would be willing to accept reorganization plans offering anything less than full payment.<sup>38</sup>

Even less likely, it seemed, was the possibility that any debtor might convince *all* creditors to agree to a settlement, but that remains a third procedural option, likely for exceptional cases involving lightly indebted or hopelessly

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<sup>35</sup> See Kilborn, *supra* note 1, at 205; WORLD BANK GRP., *supra* note 10, at 3–4, 6–7.

<sup>36</sup> Kilborn, *supra* note 1, at 204.

<sup>37</sup> Shenzhen Pers. Bankr. Reg. arts. 106, 115, 119, 121. Creditors are sorted into three classes: secured, three groups of priority unsecured, and general unsecured claims. Each class of claims must approve the plan, but given the nature and limited number of these various types of claims, all but general unsecured creditors likely have to approve the plan unanimously in the average case where such claims are present. See Xie, *supra* note 4, at 415; Austin & Lin, *supra* note 4, at 114–16.

<sup>38</sup> Cf. Kilborn, *supra* note 1, at 205. Considering that liquidation offers the same amount of payment as reorganization, but in a three-year time frame as opposed to five, and a trustee monitors the debtor’s performance to ensure compliance, liquidation is clearly superior. Therefore, why would any rational creditor allow the debtor more time and no monitoring if anything less than full payment is offered? At least I was right about this one thing, as revealed below.

insolvent debtors.<sup>39</sup> As the remainder of this Article will reveal, I was quite wrong about most of these initial assessments and predictions.

## II. LAW IN ACTION: TIGHTLY RESTRICTED ACCESS

After two full years of on-the-ground operation of the new Shenzhen personal bankruptcy regime, we can now conclude that the regulation's textual enhancements to the Taiwanese model were not realized in practice—the law in action has not lived up to the promise of its statutory terms. While some notable improvements have been implemented during this introductory period, the overall operation of the Shenzhen system has departed fundamentally, not only from international best practices, but also from the very basics of a true personal bankruptcy system.<sup>40</sup>

### A. *Few Apply, Even Fewer Are Admitted*

As for the regulation's expected broad and open access, it turned out that few applicants were actually admitted, in part due to secret access restrictions imposed by the court. In the first year, from March 1, 2021, to February 28, 2022, while authorities expected several thousand personal bankruptcy applications,<sup>41</sup> a total of only 1,031 were received into a gauntlet of multi-stage evaluation that sieved out all but a small handful.<sup>42</sup> The regulation calls for a two-stage assessment of applications: a written review for most cases, and a court hearing in more “complicated” cases.<sup>43</sup> Feeling their way carefully into the

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<sup>39</sup> Shenzhen Pers. Bankr. Reg. arts. 133–36; Xie, *supra* note 4, at 416; Kilborn, *supra* note 1, at 204, 215 n.195.

<sup>40</sup> See *supra* note 7 and accompanying text.

<sup>41</sup> Wang Fan (王帆), Shen Zhen Shen Jie Quan Guo “Ge Ren Po Chan” Shou An Guo Jia Ceng Mian Ge Ren Po Chan Zhi Du Tan Suo (深圳审结全国“个人破产”案, 国家层面个人破产制度探索有望提速) [Shenzhen Finalizes the First “Personal Bankruptcy” Case in the Country, and the Exploration of a Personal Bankruptcy System at the National Level Is Expected To Accelerate], 21 SHI JI JING JI BAO DAO (21世纪经济报道) [21ST CENTURY BUS. HERALD] (July 19, 2021, 7:41 PM), <http://www.21jingji.com/article/20210719/herald/84eba052faafaa178371ae2b3951342.html> (China) (citing Shenzhen Bankruptcy Court President, Cao Quixuan, estimating annual personal bankruptcy filings in the range of 5,000–6,000).

<sup>42</sup> Shusen Xie (解树森), Shen Zhen Jing Ji Te Qu Ge Ren Po Chan Tiao Li Shi Shi Yi Zhou Nian (《深圳经济特区个人破产条例》实施一周年) [First Anniversary of “Shenzhen Special Economic Zone Personal Bankruptcy Regulations”], SHEN ZHEN TE QU BAO (深圳特区报) [SHENZHEN SPECIAL ZONE NEWS], (Mar. 7, 2022, 7:47 PM), [https://www.sznews.com/news/content/2022-03/07/content\\_24974344.htm](https://www.sznews.com/news/content/2022-03/07/content_24974344.htm) (China); Rong Tang (唐荣), Wei “Cheng Shi Er Bu Xing” De Chuang Ye Zhe Dou Di (为“诚实而不幸”的创业者兜底) [The Inside Story of the “Honest But Unfortunate” Entrepreneur], FA ZHI RI BAO (法制日报) [LEGAL DAILY], (Mar. 11, 2022), <http://epaper.legaldaily.com.cn/fzrb/content/20220311/Page04TB.htm> (China).

<sup>43</sup> Shenzhen Pers. Bankr. Reg. art. 12.

deep end of this new and controversial debt-relief procedure, the judges of the Shenzhen Bankruptcy Court decided to be extra cautious. This caution manifested in the judges' decision to add a third stage to the assessment that the regulation never called for. They conducted an initial personal review of filings followed by rounds of personal interviews with applicants whose petitions seemed facially acceptable, with a hearing before a three-judge panel before any final admission decision.<sup>44</sup>

Consequently, after the bulk of this first year's applications were rejected for obvious defects (such as not living in Shenzhen, not participating in Shenzhen social security for three consecutive years, improperly completed forms, and improper bases for seeking relief),<sup>45</sup> the Shenzhen Bankruptcy court judges themselves conducted 594 personal interviews of the remaining debtors.<sup>46</sup> Only seventy-four petitions cleared these first two triage stages and were passed through to a final, formal application assessment process before a three-judge panel.<sup>47</sup> Along with rejecting some applications, judges reportedly convinced about a quarter of all petitioners that they would be better off withdrawing their applications for a variety of reasons, including the rigors of the process, possible consequences of property transfers, and unwritten limitations on the scope of the procedure, as discussed below.<sup>48</sup>

In the end, only twenty-five personal bankruptcy applications were accepted and cases opened in the first year of the new regime<sup>49</sup>—a petition success rate of less than 2.5%. This is not the first time that a new personal insolvency regime has struggled to get off the ground. The admission statistics in Shenzhen mirror those in the first year of Poland's new personal bankruptcy law, effective in

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<sup>44</sup> See Xie, *supra* note 42; Tang, *supra* note 42. This process is also described in many of the petition acceptance orders on file with author.

<sup>45</sup> Pandian Ge Ren Pochan Shi Da Guanjian Wenti (盘点个人破产十大关键问题) [Listing the Top 10 Key Issues in Personal Bankruptcy] SOHU (搜狐) [SOHU], (Aug. 3, 2021), [https://www.sohu.com/a/481231982\\_121123884](https://www.sohu.com/a/481231982_121123884) (China) (reprinting interview with Cao Qixuan, Shenzhen Bankruptcy Court President, and reporting Qixuan's comment on bases for outright rejection of applications, including "some applicants went bankrupt due to excessive consumption, excessive speculation, gambling, etc., and some applicants do not meet the 'honest and unfortunate' requirements.").

<sup>46</sup> *Id.* (reporting comment from court President, Cao Qixuan, that by that point he had personally interviewed more than 140 applicants, and other judges had interviewed more than eighty).

<sup>47</sup> See Xie, *supra* note 42; Tang, *supra* note 42.

<sup>48</sup> Tang, *supra* note 42; Jing Xiaojing (景晓静), Shenzhen Fan Geren Pochan Qizha De Shijian (深圳反个人破产: 欺诈的实践) [The Practice of Countering Personal Bankruptcy Fraud in Shenzhen] RENMIN FAYUAN RIBAO (人民法院日报) [PEOPLE'S CT. DAILY] (Oct. 20, 2021), [http://rmfyb.chinacourt.org/paper/html/2021-10/20/content\\_210370.htm?div=-1](http://rmfyb.chinacourt.org/paper/html/2021-10/20/content_210370.htm?div=-1) (China).

<sup>49</sup> Xie, *supra* note 42; Tang, *supra* note 42.

March 2009. Access to the Polish system, however, was not designed to be open; indeed, it was explicitly restricted only to debtors whose insolvency resulted from exceptional circumstances entirely beyond their control.<sup>50</sup> In the first year of the new Polish law, only fourteen debtors were admitted, from among over 1,000 petitioners.<sup>51</sup> The parallel between these sparse first-year admissions figures from the first year in Shenzhen and Poland is striking. Similarly, the very first personal insolvency law in Europe, effective in 1984 in Denmark, also restricted entry in a variety of ways, including a general “reasonableness” assessment.<sup>52</sup> But even under these conditions, around 40% of all petitions were accepted into the bellwether Danish regime, most of which resulted in a confirmed payment plan (more on this below in Shenzhen).<sup>53</sup> Both Polish and Danish authorities eventually advanced reform initiatives to relax access restrictions, successfully increasing the efficiency and effectiveness of these systems.<sup>54</sup>

### B. Administrative Delegation Eases Access Slightly

While legislative action is likely necessary to loosen substantive access criteria, the Shenzhen Bankruptcy Court and Bankruptcy Administration Office have already moved to institute procedural reforms that have increased efficiency and, to a minor degree, access. After struggling with personal review of hundreds of applications in the first year, the court recognized that the process had to be expedited by delegation of this responsibility, and a ready candidate presented itself: the Shenzhen Bankruptcy Administration Office—a vital support structure created when the personal bankruptcy regulation became effective.<sup>55</sup> As of June 1, 2022, the Shenzhen Bankruptcy Administration Office

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<sup>50</sup> Jason J. Kilborn, *The Rise and Fall of Fear of Abuse in Consumer Bankruptcy: Most Recent Comparative Evidence from Europe and Beyond*, 96 TEX. L. REV. 1327, 1337 (2018).

<sup>51</sup> See Sylwia Czubkowska & Klara Klinger, *Upadłość Niedostępna dla Zwykłego Konsumenta – z Ustawy Skorzystało Tylko 14 Osób* [Bankruptcy Not Available to Ordinary Consumers – Only 14 People Benefited from the Act], (DZIENNIK GAZETA PRAWNA) [DAILY LEGAL NEWSPAPER], (Mar. 31, 2010) (Pol.).

<sup>52</sup> Jason J. Kilborn, *Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark*, 18 INT’L. INSOLVENCY REV. 155, 166–70 (2009).

<sup>53</sup> *Id.* at 170, 173–75.

<sup>54</sup> See Kilborn, *supra* note 50, at 1337–38; Kilborn, *supra* note 52, at 173–79.

<sup>55</sup> See SOHU, *supra* note 45 (reporting court President Cao Qixuan’s statement of a need to expedite the application review process by engaging a counseling system rather than having judges review applications); Wei “Cheng Shi Er Bu Xing” de Rensheng an Xia Chongqi Jian (为“诚实而不幸”的人生按下重启键) [Pressing the Reset Button on an “Honest but Unfortunate” Life] SHENZHEN SHI POCHAN GUANLI BANGONGSHI (深圳市破产管理办公室) [SHENZHEN BANKR. ADMIN. OFF.], (Mar. 23, 2023), [http://sft.gd.gov.cn/sfw/xwdt/qmyfzs/content/post\\_4138868.html](http://sft.gd.gov.cn/sfw/xwdt/qmyfzs/content/post_4138868.html) (China) (chronicling the creation and achievements of two years of operations of the office and noting its many crucial responsibilities).

began conducting counseling and mandatory pre-bankruptcy screening interviews for potential personal bankruptcy applicants.<sup>56</sup>

In the second full year of operation of the Shenzhen regulation,<sup>57</sup> the Bankruptcy Administration Office conducted just over 1,500 pre-bankruptcy counseling sessions and passed through to the court 734 applications.<sup>58</sup> This still left a gargantuan review task for the court, but the quality control effects are visible in the outcome: The court ultimately accepted and opened cases for seventy-three of these applications<sup>59</sup>—a marked improvement over the first year.<sup>60</sup> While this represents almost triple the absolute number of admitted cases, it is still a depressed admission *rate* of less than 10% (indeed, as a percentage of mandatory pre-bankruptcy counseling sessions, the rate still languishes below 5%).<sup>61</sup>

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<sup>56</sup> SHENZHEN BANKR. ADMIN. OFF., *supra* note 55; Guanyu Jiaqiang Geren Pochan Shenqing He Shencha Gongzuo De Shishi Yijian (关于加强个人破产申请和审查工作的实施意见) [Implementation Opinions on Strengthening Personal Bankruptcy Application and Review Work] SHENZHEN POCHAN FAYUAN (深圳破产法院) [SHENZHEN BANKR. CT.], arts. 3, 6(9), *reprinted in* SOHU (May 17, 2022), [https://www.sohu.com/a/548083077\\_121123884](https://www.sohu.com/a/548083077_121123884) (China) (imposing the pre-bankruptcy counseling mandate on applicants and requiring submission of a certificate of completion of such counseling with the bankruptcy petition).

<sup>57</sup> The figures quoted here are from June 1, 2022, to May 31, 2023, which is not perfectly contiguous with the second March-to-March year of the regulation, but the application figures for these periods seem to be fairly similar in light of the acceptance dates of petitions in the 2022–23 period.

<sup>58</sup> Zeng Zihang (曾子航), Shei Zai Shenzhen Shenqing Geren Pochan Fudao? (谁在深圳申请个人破产辅导?) [Who Applies for Personal Bankruptcy Counseling in Shenzhen?] NANFANG WANG (南方网) [NANFANG], (June 2, 2023), <https://sz.oeeee.com/html/202306/02/1376321.html> (China) (reporting “774 people were persuaded to withdraw because they did not meet the requirements for personal bankruptcy application”); Zeng Zihang (曾子航) Da Bufen Zhaiwuren Yuanyi Xuanze Chong Zheng Chengxu (大部分债务人愿意选择重整程序) [Most Debtors Are Willing to Choose Reorganization Procedures] NANFANG RIBAO (南方日报) [SOUTHERN DAILY], (June 2, 2023), [https://roll.sohu.com/a/681373107\\_161794](https://roll.sohu.com/a/681373107_161794) (China).

<sup>59</sup> Information on applications, acceptance orders, and case termination orders are based on the author’s painstaking hand collection and collation of orders from the Shenzhen Personal Bankruptcy Case Information website, <https://birp.szcourt.gov.cn/pcczajxxw/gpHome/index> (before it was firewalled in November 2021, *see infra* Part V), orders from the National Enterprise Bankruptcy Reorganization Case Information website, <https://pccz.court.gov.cn/pcajxxw/index/xxwsy>, and announcements from the Shenzhen Bankruptcy Administration Office’s personal bankruptcy public information website, <http://sf.sz.gov.cn/szsgprcpxgkpt/index.html>. *See infra* Appendix A.

<sup>60</sup> *See supra* text accompanying note 49.

<sup>61</sup> The Shenzhen Lawyers Association reported that, from the launch of the personal bankruptcy regulation on March 1, 2021, to the end of December 2022, the court had received 1,308 applications and accepted (that is, opened cases for) eighty. Shenzhen Shi Lushi Xiehui (深圳市律师协会) [Shenzhen Lawyer’s Association] Shenzhen Pochan Fating Chengli Si Zhounian! (深圳破产法庭成立四周年!) [The Fourth Anniversary of the Establishment of the Shenzhen Bankruptcy Court!] Geren POCHAN FALU XINXI (个人破产法律信息) [PERS. BANKR. LEGAL INFO.] 3, 4, issue 6, (Feb. 2023), [http://www.szlawyers.com/file/upload/20220419/file/20220419094745\\_09443dfeaf104e00bab53424a8876fb3.pdf](http://www.szlawyers.com/file/upload/20220419/file/20220419094745_09443dfeaf104e00bab53424a8876fb3.pdf) (China). These figures are perfectly consistent with the author’s hand compilation of case opening data from

One reason for the small admission rate in the first year was a lack of accessible guidance in navigating the new relief system.<sup>62</sup> Not only do applicants lack accessible guidance once they are in the system, many people can't even afford to consider applying. One debtor discovered the new Shenzhen regulation just as she had sunk to the worst depths of debt despair, but she lamented that when she sought out online legal consultation, customer service encouraged her to consult offline, while charging by the hour, to which she responded, "Where can I get the money for offline consultation?"<sup>63</sup> Sadly, the irony of being too poor to go bankrupt is a common topic worldwide.<sup>64</sup> The problem seems to have initially affected access in Shenzhen, as well, but Shenzhen has responded brilliantly to this problem by offering bankruptcy advising as a public service, including not only evaluation of the debtor's circumstances, but also guidance on completing a bankruptcy application, preparing a proposed payment plan, and even negotiating with creditors.<sup>65</sup> So far so good.

### C. *Prime Culprit: Secret, Court-Imposed Substantive Filters*

The real problem appears upon discovering accounts in the press of a series of secret reasons for the paucity of accepted petitions. It turns out that these restrictions likely arise from the court's extremely parsimonious interpretation of the regulation (verging on an extra-legal deviation) regarding the types of cases the Shenzhen judges were willing to admit.

The first restriction concerns the basic scope of access. Despite the regulation's provision clearly making this process available to all individuals,

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the Shenzhen Bankruptcy Administration Office, and it implies a rate of application acceptance of just over 6% in the first twenty-two months of the procedure. *See infra* Appendix A.

<sup>62</sup> Though this factor improved in year two because of the delegation of advisory responsibility to the Shenzhen Bankruptcy Administration Office. *See infra* Appendix A.

<sup>63</sup> Yuanyuan Zhao (赵媛媛), Shenzhen Shishi Geren Po Chan Liang Yue: Youren Dang Ta Jiuming Daocao, Youren Qian 300 Wan Buy Yuan Shenqing (深圳实施个人破产两月:有人当它救命稻草,有人欠300万不愿申请) [Shenzhen Has Implemented Personal Bankruptcy for Two Months: Some People Have Used It as a Life-Saving Straw, Some People Owe Three Million but Are Unwilling to Apply], WANGYI (网易) [NETEASE], (May 28, 2021), <https://www.163.com/dy/article/GB39V6J105148UNS.html> (China).

<sup>64</sup> *See* Jason J. Kilborn, *Fatal Flaws in Financing Personal Bankruptcy: The Curious Case of Russia in Comparative Context*, 94 AM. BANKR. L.J. 419, 443–45 (2020) (discussing the challenge of financing access to and operation of personal insolvency systems in several countries).

<sup>65</sup> *See* Qingrong Lin (林庆荣), Wei Geren Pochan Zhidu Shixing Pulu Daqiao (为个人破产制度施行铺路搭桥) [Paving the Way for the Implementation of the Personal Bankruptcy System] SHENZHEN TEQU XINWEN (深圳特区新闻) [SHENZHEN SPECIAL ZONE NEWS], (May 18, 2023), [https://www.sznews.com/news/content/2023-05/18/content\\_30232163.htm](https://www.sznews.com/news/content/2023-05/18/content_30232163.htm) (China).

consumers and small entrepreneurs alike,<sup>66</sup> the Shenzhen Bankruptcy Court decided to accept into the system only cases related to business failure. One debtor was quoted after his personal interview, “It seems that the [Shenzhen Bankruptcy Court of the] Intermediate People’s Court currently intends to limit the scope of applications to debts caused by entrepreneurship.”<sup>67</sup> This impression was confirmed when a fifty-year-old man who had been unemployed for more than half a year posted online that, in his personal interview the Shenzhen Bankruptcy Court judge had told him, “right now, only personal bankruptcy cases involving circumstances of entrepreneurial failure are accepted.”<sup>68</sup> This person’s debts were predominantly consumer debts, though of the same magnitude as many other cases accepted (430,000 yuan, about U.S. \$100,000), and he had no hope of repaying this large sum. Yet, his case was rejected for reasons not at all clear from the “law on the books.”

Empirical evaluation further confirms this spontaneous scope restriction. All but perhaps three of the ninety-eight cases opened in the first two years involved primarily business debt.<sup>69</sup> While most applications are diverted out of the system behind the scenes in the pre-filing screening process, several seemingly good candidates who were allowed to submit petitions (offering full-repayment plans) nonetheless saw their petitions recently refused for apparently no other reason than that their debts were not primarily business-related.<sup>70</sup>

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<sup>66</sup> See *supra* notes 29 and 31 and accompanying text.

<sup>67</sup> Zhao, *supra* note 63.

<sup>68</sup> *Id.*

<sup>69</sup> The three cases that seem to have involved primarily consumer debt were: (2022) Yue 03 Po 139 Hao (Ge 2) ((2022) 粤 03 破 139 号 (个 2)) [(2022) Guangdong 03 Bankr. No. 139 (Pers. 2)], (Shenzhen Interm. Ct. 2022) (China); (2022) Yue 03 Po 516 Hao (Ge 47) ((2022) 粤 03 破 516 号 (个 47)) [(2022) Guangdong 03 Bankr. No. 516 (Pers. 47)], (Shenzhen Interm. Ct. 2022) (China); and (2023) Yue 03 Po 65 Hao (Ge 9) ((2023) 粤 03 破 65 号 (个 9)) [(2023) Guangdong 03 Bankr. No. 65 (Pers. 9)], (Shenzhen Interm. Ct. 2023) (China). All three were admitted despite the nature of the debt, most likely because they proposed credible full-payment reorganization plans. The first two (个 2 and 个 47) ended successfully with confirmed plans on July 7 and November 24, 2022, respectively; the third (个 9) was terminated on May 10, 2023, after the plan was inexplicably rejected by creditors.

<sup>70</sup> See, e.g., (2022) Yue 03 Po Shen 841 Hao (Ge 86) ((2022) 粤 03 破 申 841 号 (个 86)) [(2022) Guangdong 03 Bankr. Application No. 841 (Pers. 86)], (Shenzhen Interm. Ct. 2022) (China) (reporting borrowing for “cash flow and consumption”); (2022) Yue 03 Po Shen 732 Hao (Ge 68) ((2022) 粤 03 破 申 732 号 (个 68)) [(2022) Guangdong 03 Bankr. Application No. 732 (Pers. 68)], (Shenzhen Interm. Ct. 2022) (China) (reporting credit card debt for “living expenses”); (2022) Yue 03 Po Shen 709 Hao (Ge 65) ((2022) 粤 03 破 申 709 号 (个 65)) [(2022) Guangdong 03 Bankr. Application No. 709 (Pers. 65)], (Shenzhen Interm. Ct. 2022) (China) (reporting debt for home and car purchases and living expenses, which “increased sharply” after birth of child).



It is unclear why the Shenzhen judges decided to admit only business-related cases—perhaps to control workflow and avoid a massive influx of cases, or to blunt the potential social unrest from a controversial system freeing individuals from legitimate debts.<sup>71</sup> It seems most likely to be simply a function of an extremely conservative interpretation of one of the bases for denial of discharge—applied in advance to screen applicants who would be denied relief ultimately, so better to reject their cases at the outset. The Shenzhen regulation denies a discharge to debtors who have taken on “debts . . . due to extravagant consumption [*shechi xiaofei* 奢侈消费], gambling, etc.”<sup>72</sup> This exact language is echoed in comments by Shenzhen Bankruptcy Court President, Cao Qixuan, repeatedly asserting that debtors whose insolvency was caused by “extravagant consumption” and “excessive borrowing” are automatically disqualified for relief.<sup>73</sup>

The Shenzhen Bankruptcy Court’s unnuanced approach seems to exclude virtually any debtor who has taken on debts that prove to be unbearable, but it appears to have been applied in Shenzhen to exclude all debtors whose predominant debt load is the result of “consumptive” borrowing, rather than “productive” business financing.<sup>74</sup> This is an unfortunate deviation from worldwide best practices, and it is surely among the major reasons why so few applications have been allowed through the gateway to the new procedure. This problem will not abate with time, and legislative intervention will be necessary to recalibrate the boundaries of “honest but unfortunate.”

And it gets worse. Two additional related and especially problematic bases for rejection of applications correspond to the types of proceedings for which debtors applied and the court’s surprisingly rigorous criteria for admitting such applications. These issues are discussed separately in Parts III and IV due to their special significance.

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<sup>71</sup> See Austin & Lin, *supra* note 4, at 82–83; Rebecca Parry et al., *Personal Insolvency in China: Necessities, Difficulties, and Possibilities*, 46 BROOK. J. INT’L L. 517, 539–41 (2021) (discussing public hostility toward debt defaulters as impediment to personal insolvency law).

<sup>72</sup> Shenzhen Pers. Bankr. Reg. art. 98(3).

<sup>73</sup> See SOHU, *supra* note 45 (citing President Qixuan at a press conference of the Shenzhen Intermediate Court declaring that personal bankruptcy regulation does not apply to alleviate debts caused by “extravagant consumption, excessive speculation, and excessive borrowing” (*shechi xiaofei, guodu touji, guodu juzhai* 奢侈消费, 过度投机, 过度举债)); see also Zhao, *supra* note 63.

<sup>74</sup> This questionable distinction between “good” business debt and “bad” consumer debt has been the subject of a long-raging debate around the world. See generally LENDOL CALDER, *FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF CONSUMER CREDIT* (1999).

### III. LAW IN ACTION: LIQUIDATION-AND-DISCHARGE RELIEF RELEGATED TO RARE BACKUP, EXTREME AUSTERITY

The most disturbing reasons for the slow uptake of new cases involve the court's peculiar perspective on the proper use of the two main bankruptcy procedures. In particular, the court all but completely refused to admit applicants into what should have been the most common and most useful procedure—liquidation. Liquidation-and-discharge turned out to be not only *not* the standard, primary form of relief, but the court actively dissuaded or prevented debtors from applying for this form of relief. Moreover, most debtors who managed to file liquidation applications saw their cases converted to a creditor-agreed procedure, or dismissed altogether.

In a surprise departure from what seemed to be both the text and spirit of the new regulation,<sup>75</sup> the Shenzhen Bankruptcy Court from the outset pursued a policy of relegating liquidation-and-discharge to disfavored status, emphasizing (if not explicitly requiring) payment plans for all applicants: “reorganization-type bankruptcy as dominant, and liquidation-type bankruptcy as last resort.”<sup>76</sup> In other words, the court was willing to admit only exceptional cases into the liquidation procedure as a last resort, with all others either refused or converted to reorganization (or settlement). After applying this policy as an unstated rule during the first year, in the second year, the court adopted public “Implementation Opinions” in which it confirmed and clarified its stance that applicants for liquidation must bear the especially heavy burden of demonstrating hopeless insolvency and therefore qualification for the exceptional liquidation procedure.<sup>77</sup> Other countries have struggled with a

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<sup>75</sup> See *supra* notes 34–36 and accompanying text.

<sup>76</sup> Qingrong Lin (林清容) & Yan Zhang (张燕), Shenzhen Geren Pochan Fagui Kaichuang Duo Ge Quanguo Shou Li (深圳个人破产法规开创多个全国首例) [Shenzhen Personal Bankruptcy Regulations Created Many First Cases in the Country], SHENZHEN TEQU BAO (深圳特区报) [SHENZHEN SPECIAL ZONE NEWS] (Mar. 1, 2023), [https://www.sznews.com/news/content/2023-03/01/content\\_30097040.htm](https://www.sznews.com/news/content/2023-03/01/content_30097040.htm) (China) (quoting this reorganization-dominant-liquidation-last-resort policy as enunciated by the court). The final word in this policy (*doudi* 兜底) has a confusing and ironic set of meanings. The word appears nowhere in my paper dictionary, and my electronic dictionary (Pleco) defines the word as a colloquial phrase meaning “reveal the details (of a person’s disreputable background, etc.)” Revealing the sordid details of one’s financial failure is certainly one of the consequences of filing for any form of bankruptcy relief, but the Shenzhen Court seems to have used this *double entendre* word to emphasize this specifically in the context of liquidation to further dissuade applicants. A Chinese colleague, a former bankruptcy judge from a different city, explained to me that “last resort” (or “basic minimum,” such as the lowest level of social support) is the intended meaning here.

<sup>77</sup> See SHENZHEN BANKR. CT., *supra* note 56, art. 9; see also Huashang Lawyers, Shenzhen Pochan Fating “Jiaqiang Geren Pochan Shenqing yu Shencha Gongzuo de Shishi Yijian” Jiexi (深圳破产法庭“加强个人破产申请与审查工作的实施意见”解析) [Analysis of Shenzhen Bankruptcy Court’s “Implementation

similar policy of allowing only “hopelessly insolvent” debtors into an effective relief procedure, though they eventually relented after years of depressed case admissions and inefficient and ineffective system operation.<sup>78</sup> Perhaps there will be movement in this direction in Shenzhen in the coming years, but the restrictive policy is deeply entrenched for now.

The effects of this policy are clear from the statistics. Of the ninety-eight cases opened in the first two years of the Shenzhen regulation, only a single case remains on the liquidation track.<sup>79</sup> This one case, accepted in September 2021, was confirmed two months later to enter the three-year “discharge inspection” period, with an expected discharge date of November 2024.<sup>80</sup> Two other cases—the only liquidation cases among the seventy-three cases opened in the second year—were accepted in June and December 2022 but were ultimately dismissed together on September 28, 2023. The administrator and court vaguely concluded that these debtors had “violated the principle of good faith,” their path to overindebtedness was unclear, and the cause of their bankruptcy was doubtful.<sup>81</sup>

Other cases from the first year were likewise accepted as liquidation cases and remained pending for nearly a year before suddenly being converted to reorganization.<sup>82</sup> In fact, of the twenty-five cases opened in the first year, nine were initially accepted as liquidation cases,<sup>83</sup> but all but one of these ended in a

Opinions on Strengthening Personal Bankruptcy Application and Review”] (May 26, 2022) [https://www.huashanglawyer.com/news\\_view.asp?cid=110&id=2318](https://www.huashanglawyer.com/news_view.asp?cid=110&id=2318) (China) (interpreting opinions to impose higher burden of proof on applicants for liquidation, access to which is “more strictly controlled”).

<sup>78</sup> See, e.g., Kilborn, *supra* note 50, at 1337–39; Kilborn, *supra* note 52, at 166–67, 174–76. In the specific context of individual entrepreneurs, the World Bank Group has explicitly criticized this approach of conditioning discharge relief on “hopeless” insolvency. See WORLD BANK GRP., *supra* note 10, at 4.

<sup>79</sup> See *infra* Appendix A.

<sup>80</sup> (2021) Yue 03 Po 417 Hao (Ge 11) ((2021) 粤 03 破 417 号 (个 11)) [(2021) Guangdong 03 Bankr. No. 417 (Pers. 11)], (Shenzhen Intermed. Ct. Nov. 8, 2021) (China). For a notice of the associated confirmation ruling, see [http://sf.sz.gov.cn/szsrpcxxgkpt/qsjkcqxx/content/post\\_9372221.html](http://sf.sz.gov.cn/szsrpcxxgkpt/qsjkcqxx/content/post_9372221.html).

<sup>81</sup> (2022) Yue 03 Po 310 Hao (Ge 20) ((2022) 粤 03 破 310 号 (个 20)) [(2022) Guangdong 03 Bankr. No. 310 (Pers. 20)], (Shenzhen Intermed. Ct. July 13, 2022) (China); (2022) Yue 03 Po 60 Hao (Ge 5) ((2022) 粤 03 破 60 号 (个 5)) [(2022) Guangdong 03 Bankr. No. 60 (Pers. 5)], (Shenzhen Intermed. Ct. Dec. 16, 2022) (China). The oddly joint dismissal order for these otherwise unrelated cases is summarized at [http://sf.sz.gov.cn/szsrpcxxgkpt/qsjkcqxx/content/post\\_10872395.html](http://sf.sz.gov.cn/szsrpcxxgkpt/qsjkcqxx/content/post_10872395.html).

<sup>82</sup> See (2022) Yue 03 Po 124, 125 Hao (Ge 22, 23) ((2022) 粤 03 破 124, 125 号 (个 22, 23)) [(2022) Guangdong 03 Bankr. Nos. 124, 125 (Pers. 22, 23)], (Shenzhen Intermed. Ct. Jan. 13, 2023) (China). A husband-and-wife pair of cases, accepted on the very last day of the first year, February 28, 2022, before an announcement suddenly appeared on December 20, 2022, that they had been converted to reorganization with an approved plan paying 100% of the principal of outstanding claims. The notice appears at [http://sf.sz.gov.cn/szsrpcxxgkpt/czyhxx/content/post\\_10382115.html](http://sf.sz.gov.cn/szsrpcxxgkpt/czyhxx/content/post_10382115.html).

<sup>83</sup> In fact, the very first opened and successfully concluded case, see *supra* note 8, was *filed* as a liquidation, but at the panel hearing on acceptance of the petition on April 27, 2021, the debtor was convinced to convert the

different way: four were converted to reorganization,<sup>84</sup> three were dismissed upon private, out-of-court settlement with creditors,<sup>85</sup> and one was converted to a formal settlement procedure.<sup>86</sup> It is noteworthy that, of the five converted cases, two failed to reach agreement with creditors on a plan or settlement and were terminated without providing the debtor any relief—raising the questions why they were converted in the first place, and why they were not converted back to liquidation upon failure of the alternative.<sup>87</sup>

The primary purpose of personal bankruptcy—to offer a standard, non-negotiated compromise of three years of disposable income in exchange for relief<sup>88</sup>—has been effectively abandoned in Shenzhen. Giving debtors an ostensible choice of liquidation or reorganization is problematic enough,<sup>89</sup> but effectively depriving them of meaningful non-negotiated relief seriously undermines a personal insolvency system. This is especially true in cases where the debtor clearly lacks any ability to repay a significant portion of the debt and, thus, has no hope of convincing creditors to approve a plan.

Take, for example, the case of Mr. Chen, whose small office equipment company was pushed out of business by competition from e-commerce sites.<sup>90</sup> Saddled with large business debts and suffering from “intense collection activity by a third party,” Mr. Chen took on several short-term jobs before settling in a

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petition to reorganization. (2021) Yue 03 Po 230 Hao (Ge 1) ((2021) 粤 03 破 230 号 (个 1)) [(2021) Guangdong 03 Bankr. No. 230 (Pers. 1)], (Shenzhen Intermed. Ct. May 11, 2021) (China).

<sup>84</sup> In addition to the two cases mentioned *supra* note 82, the other two converted to reorganization are (2021) Yue 03 Po 232 Hao (Ge 3) ((2021) 粤 03 破 232 号 (个 3)) [(2021) Guangdong 03 Bankr. No. 232 (Pers. 3)], (Shenzhen Intermed. Ct. May 11, 2021) (China), which concluded successfully with a confirmed full-payment plan, and Mr. Cui’s case, see *supra* notes 13–16 and accompanying text for more discussion, which was roundly rejected by 95% of creditors, leaving him without relief.

<sup>85</sup> (2021) Yue 03 Po 380 Hao (Ge 8) ((2021) 粤 03 破 380 号 (个 8)) [(2021) Guangdong 03 Bankr. No. 380 (Pers. 8)], (Shenzhen Intermed. Ct. Aug. 6, 2021) (China); (2021) Yue 03 Po 479 Hao (Ge 13) ((2021) 粤 03 破 479 号 (个 13)) [(2021) Guangdong 03 Bankr. No. 479 (Pers. 13)], (Shenzhen Intermed. Ct. Mar. 11, 2022) (China); (2021) Yue 03 Po 480 Hao (Ge 14) ((2021) 粤 03 破 480 号 (个 14)) [(2021) Guangdong 03 Bankr. No. 480 (Pers. 14)], (Shenzhen Intermed. Ct. Mar. 11, 2022) also reported online at <https://pccz.court.gov.cn/pcajxxw/pcgg/ggxxq?id=698A082F506B0EC69A994FDABC6949D6> (demonstrating that the final two are a joint husband-and-wife pair of cases). Note that these cases were not formally converted to settlement procedures; they were voluntarily dismissed in light of out-of-court settlements.

<sup>86</sup> This is the sad and surprisingly unsuccessful case of Mr. Li, discussed *supra* note 8 and accompanying text.

<sup>87</sup> See *supra* notes 84, 86.

<sup>88</sup> See WORLD BANK GRP., *supra* note 10, at 12.

<sup>89</sup> See Kilborn, *supra* note 1, at 196 (noting international criticism of encumbering unsophisticated debtors with this sensitive choice, and observing a similar problem in Taiwan).

<sup>90</sup> (2022) Yue 03 Po 517 Hao (Ge 48) ((2022) 粤 03 破 517 号 (个 48)) [(2022) Guangdong 03 Bankr. No. 517 (Pers. 48)], (Shenzhen Intermed. Ct. Aug. 17, 2022) (China).

low-paying job to support his wife and two young children.<sup>91</sup> In August 2022, he applied for reorganization, though reporting no property of any significant value and an income of only 9,900 yuan (about U.S. \$2,500) per month after taking on a second job at night.<sup>92</sup> Even burning the candle at both ends in this way, Mr. Chen's income barely exceeded the poverty-level minimum budget allowance of 2,200 yuan per person for Mr. Chen's family of four.<sup>93</sup> Nonetheless, rather than routing Mr. Chen into a liquidation-and-discharge case that would have collected a standard determination of his excess income for three years in exchange for a standard discharge, he was convinced or compelled to pursue negotiated reorganization.<sup>94</sup>

Knowing that his disposable income of about 1,000 yuan per month would come nowhere near paying off even a small fraction of the 600,000-yuan principal of his debt, Mr. Chen cut into the bone and offered his creditors more than half of his entire two-job salary, 5,000 yuan per month for five years.<sup>95</sup> As discussed in the next section, Mr. Chen's case is among a few rare exceptions where debtors offering less than full principal payment were even allowed to seek reorganization—his offer inflicting extreme family sacrifice would produce only 300,000 yuan, less than half of the principle of his debt. Unsurprisingly, all but one of his creditors (98% of claims) rejected his proposed plan, and in November 2022, Mr. Chen was left without relief after admitting that “due to his actual personal situation, he was unable to propose a better plan.”<sup>96</sup> Such heart-wrenching individual stories accentuate the pernicious effects of this “liquidation only as rare last resort” policy.

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> For more on this subsistence allowance, see Kilborn, *supra* note 1, at 204 n.203. For further discussion see *infra* notes 102–03 and accompanying text.

<sup>94</sup> (2022) Guangdong 03 Bankr. No. 517 (Pers. 48) (case opening Aug. 17, 2022) (case closing Nov. 22, 2022) (China). The case opening and closure announcements for Mr. Chen's case are online at [http://sf.sz.gov.cn/szsrpccxxgkpt/sqyslxx/content/post\\_10052687.html](http://sf.sz.gov.cn/szsrpccxxgkpt/sqyslxx/content/post_10052687.html) and [http://sf.sz.gov.cn/szsrpccxxgkpt/czyhjxx/content/post\\_10273776.html](http://sf.sz.gov.cn/szsrpccxxgkpt/czyhjxx/content/post_10273776.html), respectively.

<sup>95</sup> (2022) Guangdong 03 Bankr. No. 517 (Pers. 48) (China).

<sup>96</sup> *Id.* In addition to the Li and Cui cases discussed above, see *supra* notes 8–16 and accompanying text, other more recent similar stories include, for example, (2023) Yue 03 Po 61 Hao (Ge 6) ((2023) 粤 03 破 61 号 (个 6)) [(2023) Guangdong 03 Bankr. No. 61 (Pers. 6)], (Shenzhen Intermed. Ct. Feb. 9, 2023) (China), in which a Mr. Hu reported only limited, irregular income from a ride-sharing business. There, the court on December 16, 2022, recognized that Mr. Hu had “no future foreseeable income” and terminated the case, which seems as though it should not have been opened as a reorganization case to begin with.

The single liquidation case in progress toward discharge illustrates the exceptional desperation required to qualify for such relief in Shenzhen.<sup>97</sup> Ms. Hu, a divorced single mother of a high-school-aged daughter, started a cultural development business in 2014, bringing together training programs for martial arts, calligraphy, dance, and instrumental music.<sup>98</sup> After the mall housing her business closed in 2016 and water and electric service were abruptly cut off, her business was forced to close and refund tuition fees to her students. Though she operated her business through a limited liability company, Ms. Hu reported that “because the company was very small, it was impossible to apply for loans in the name of the company,” so she ended up personally shouldering a nearly five-million-yuan debt (about U.S. \$1.2 million).<sup>99</sup> Even after working for an insurance company for a year and selling her house and applying the proceeds to her debt, she still faced an insurmountable debt burden of over one million yuan. She had no regular income and little property of any value, so on September 2, 2021, the court admitted her into the one and only ultimately confirmed liquidation case in the first two years of the new procedure.<sup>100</sup>

Ms. Hu eventually reported that she collected about 5,000 yuan per month from service industry odd jobs, but this was unpredictable, and most of this income was absorbed in supporting herself, her daughter, and her elderly mother.<sup>101</sup> As a standard budgetary allowance for bankruptcy, the Shenzhen Judges’ Conference settled on the quite austere Shenzhen standard for social assistance qualification.<sup>102</sup> While this standard is reconsidered annually by municipal authorities, the then-standard of 2,200 yuan per month (about U.S. \$525) cited by the court in Ms. Hu’s case seems to press debtors into very tight budgets. This represents less than 20% of the average salary in Shenzhen.<sup>103</sup>

Accordingly, when the court declared Ms. Hu bankrupt on November 8, 2021, it budgeted Ms. Hu the standard subsistence allowance during her three-year “discharge inspection” period: 2,200 yuan per month for herself and half of

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<sup>97</sup> This case has been widely reported, and it was chosen by the provincial high court as an exemplary “typical case” of liquidation in personal bankruptcy—of course, it was the only option. Tang, *supra* note 42; Lin & Zhang, *supra* note 76.

<sup>98</sup> (2021) Yue 03 Po 417 Hao (Ge 11) ((2021) 粤 03 破 417 号 (个 11)) [(2021) Guangdong 03 Bankr. No. 417 (Pers. 11)], (Shenzhen Intermed. Ct. Nov. 8, 2021) (China).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Kilborn, *supra* note 1, at 204 n.203.

<sup>103</sup> *Id.* (noting the Shenzhen regulation does not multiply the poverty standard by 1.2 for debtors in bankruptcy, as the Taiwanese consumer bankruptcy law does).

this (1,100) for her daughter, as the father was expected to bear half of her support (with no cited evidence of whether he could or would reliably do so).<sup>104</sup> Ms. Hu's daughter's boarding school expenses exceeded this minimum by a significant margin, but Ms. Hu raised no objection to the reduced allowance. Because she supported her mother jointly with her three brothers, Ms. Hu was able to deduct only one-fourth of the standard subsistence budget in her mother's city—1,950 per month—that is, 487.50 yuan. Ms. Hu's total family maintenance budget was thus 3,787.50 yuan per month.<sup>105</sup> Subtracting this from her reported 5,000 yuan of irregular income left about 1,200 yuan per month (at best), which over the thirty-six months of her discharge inspection period would yield 43,200 yuan, just over 3% of her total debt.<sup>106</sup> One has to wonder whether this paltry return is worth the effort and pain of forcing Ms. Hu and her family into penury for three years.

It is unclear which are the most important distinctions between Mr. Chen's and Ms. Hu's cases. Both bore significant family support obligations, and both had worked hard and sacrificed to chip away at their mountain of debt. Nonetheless, neither had any reasonable hope of paying off even the principal of their debt within five years. Indeed, applying the same subsistence family support allowance to Mr. Chen that was applied to Ms. Hu, Mr. Chen actually had about 100 yuan *less* disposable income, although Ms. Hu's income was irregular and unpredictable. This seems quite a fine distinction for refusing standard liquidation-and-discharge relief for Mr. Chen's family but approving it for Ms. Hu's.

And only a portion of the “law in action” is visible, as many aspiring liquidation cases are rejected at the pre-application stage, so it is unknown how many other cases like these have been rejected or how those cases might differ from, or resemble, Ms. Hu's. It is not a best practice to reject standard relief on such nuanced and obscure bases in a process that is largely opaque. There is little, if any, legitimate justification for not proceeding in a standard way with respect to all such cases: collect from these debtors their “best efforts” for a reasonable period of time, and give them a non-negotiated discharge in exchange. That the new Shenzhen regime refuses to do this, despite the

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<sup>104</sup> (2021) Guangdong 03 Bankr. No. 417 (Pers. 11) (China).

<sup>105</sup> *Id.*

<sup>106</sup> (2022) Yue 03 Po 417 Hao (Ge 11) Zhi Yi ((2022) 粤 03 破 417 号 (个 11) 之一) [(2022) Guangdong 03 Bankr. No. 417 (Pers. 11) Pt. One], (Shenzhen Intermed. Ct. Nov. 17, 2022) (China).

regulation's text suggesting just such an intent, is perhaps the most disappointing and dissatisfying aspect of the new system.

#### IV. LAW IN ACTION: FULL-PAYMENT PLANS AND ANOMALOUS SETTLEMENTS

Only mildly less dissatisfying than the court's rejection of standard liquidation-and-discharge is the regime's secret requirement for reorganization payment plan cases. Not only has the court spontaneously relegated standard liquidation relief to a rare exception, it has set an exceptionally high bar for admission of applications proposing negotiated reorganization relief. Consequently, in addition to the multitude of applications rejected by the court, numerous plans with questionable viability are rejected by creditors, and even cases concluding with confirmed payment plans seem frequently unlikely to achieve the desired relief. As for the handful of cases pursuing the third pathway (settlement) these cases also evidence a rare constellation of factors needed to facilitate negotiated solutions.

##### A. *Payment Plans: Full Principal Repayment in Sixty Months*

As a result of the reorganization-as-dominant-type policy discussed above,<sup>107</sup> the overwhelming majority of cases opened in the first two years were either admitted as or converted to reorganization proceedings: seventeen of twenty-five cases opened in the first year, and seventy-one of seventy-three cases in the second year; eighty-eight of a total of ninety-eight cases, or 90%.<sup>108</sup> The ultimate success profile of these cases seems shockingly good: Of the cases that proceeded to a plan-approval process,<sup>109</sup> nearly 70% reported a creditor-approved<sup>110</sup> and court-confirmed payment plan: eleven of seventeen from the first year (65%), and forty-nine of seventy from the second year (70%), for a total of sixty of eighty-seven proposed plans (69%).<sup>111</sup>

But these cases have a clear common denominator that is quite uncommon in other world personal insolvency systems. Every single one of these sixty

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<sup>107</sup> See *supra* notes 76–77 and accompanying text.

<sup>108</sup> See *infra* Appendix A.

<sup>109</sup> One reorganization case was terminated on March 15, 2023, after the debtor settled out of court with all seven creditors. (2023) Yue 03 Po 64 Hao (Ge 7) ((2023) 粤 03 破 64 号 (个 7)) [(2023) Guangdong 03 Bankr. No. 64 (Pers. 7)], (Shenzhen Intermed. Ct. Mar. 15, 2023) (China).

<sup>110</sup> The court seems never to have exercised its power to confirm and “cramdown” a plan not approved by creditors. See generally Austin & Lin, *supra* note 4, at 116 (citing Shenzhen Pers. Bankr. Reg. art. 121) (discussing the ability of the Shenzhen court to cramdown).

<sup>111</sup> See *infra* Appendix A.



confirmed plans promised payment of at least 100% of outstanding principal,<sup>112</sup> and several promised to pay at least a portion of accrued interest, penalties, and other charges, as well.<sup>113</sup> Both the low application admission rate and these remarkable reorganization results seem to be driven by an extraordinary unspoken rule applied with few exceptions at the application stage. Debtor-applicants appear to have been generally required to offer full payment of at least the principal of their debts over five years to even be *admitted* into a restructuring proceeding.

This “full-payment-offer” hypothesis is supported not only by the consistency of the terms of confirmed plans, but also by the offered terms of rejected plans, as well as the intended proposals described in reorganization applications that were refused.<sup>114</sup> Because only a small subset of recent (after mid-July 2022) application announcements is readily publicly available, one can only speculate on the content of most accepted and refused applications. But the sparse data on applications adjudicated after mid-July 2022 reveal a tantalizing pattern: (1) all but two payment plans that were *not* confirmed offered full payment of the principal of outstanding debt,<sup>115</sup> just as all of the confirmed plans did,<sup>116</sup> and (2) applications that were refused (and thus did not get to present

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<sup>112</sup> Case number (2022) 粤 03 破 573 号 (个 55) seems like an exception, as the confirmed plan promised sixty months of installment payments totaling only (expressly) 36.97% of the total debt, but the debtor’s application notes a pending lawsuit for 905,000 yuan against a person named Shen, all of the execution proceeds of which the debtor pledged to apply to debt payment, completely covering all outstanding claims, including interest. (2022) Yue 03 Po 573 Hao (Ge 55) ((2022) 粤 03 破 573 号 (个 55)) [(2022) Guangdong 03 Bankr. No. 573 (Pers. 55)], (Shenzhen Intermed. Ct. Nov. 29, 2022) (China). The application and confirmation announcements for this case are online at [http://sf.sz.gov.cn/szsgRPCXXGKPT/SQYSLXX/content/post\\_10197442.html](http://sf.sz.gov.cn/szsgRPCXXGKPT/SQYSLXX/content/post_10197442.html) and [http://sf.sz.gov.cn/szsgRPCXXGKPT/CZYHJXX/content/post\\_10324796.html](http://sf.sz.gov.cn/szsgRPCXXGKPT/CZYHJXX/content/post_10324796.html), respectively.

<sup>113</sup> The debt profiles in these confirmed-plan cases are difficult to establish with any certainty in light of the debtors’ ambiguous reporting, but they generally reflect the small-business nature of the current system. The average total debt load of cases with confirmed plans was about 867,000 yuan (about U.S. \$217,000), with a slightly lower median of about 800,000 yuan (about U.S. \$200,000). The highest debt was just over 2.5 million yuan (about U.S. \$640,000) and the lowest was 240,000 yuan (about U.S. \$60,000).

<sup>114</sup> This is evident since reorganization applications must include the proposed terms of an eventual plan.

<sup>115</sup> The exceptions are (1) the case of Mr. Chen, offering only about 50% repayment, discussed above, *see supra* notes 90–96 and accompanying text, and (2) the case of Mr. Hu, *see supra* note 96, who proposed 80% repayment before his dire income situation was confirmed. Both of these cases would have been far better candidates for liquidation in light of their very tight income situation.

<sup>116</sup> The reasons for plan rejection are usually not described in the case closure announcements, but it seems frequently to be the case that creditors realized that the debtor’s offer of full payment was vastly overconfident considering very tight or unpredictable income. For example, all of the following cases coincidentally reported 8,000 yuan monthly income that was obviously insufficient to fund full principal repayment over sixty months: (2023) Yue 03 Po 64 Hao (Ge 8) ((2023) 粤 03 破 64 号 (个 8)) [(2023) Guangdong 03 Bankr. No. 64 (Pers. 8)], (Shenzhen Intermed. Ct. Mar. 9, 2023) (China); (2022) Yue 03 Po 593 Hao (Ge 58) ((2022) 粤 03 破 593

their proposed plans to creditors) were unable or unwilling to make full-payment offers, which seems to be the only (or at least primary) basis for rejection of these applications. Of the few refused applications from 2022 on which public information is readily available, the great majority<sup>117</sup> seem to have been denied admission primarily due to an insufficient proposed repayment offer.<sup>118</sup>

Perhaps these refusals were blessings in disguise, as confirmation of an unsustainable plan is not really a success, but sets up these debtors for failure and bitter disappointment. Four confirmed plans have already failed recently. One was the third case opened in 2021, which had been converted from liquidation to an ill-fated reorganization in August 2021, with a plan confirmed in September 2021 before failing nearly two years later in June 2023.<sup>119</sup> Two

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号(个 58)) [(2022) Guangdong 03 Bankr. No. 593 (Pers. 58)], (Shenzhen Intermed. Ct. Oct. 28, 2022) (China); (2022) Yue 03 Po 581 Hao (Ge 56) [(2022) 粤 03 破 581 号(个 56)] [(2022) Guangdong 03 Bankr. No. 581 (Pers. 56)], (Shenzhen Intermed. Ct. Dec. 30, 2022) (China). Again, all these cases would have been much better candidates for liquidation because of their very tight income situation.

<sup>117</sup> The others appear to have been refused most frequently due to a predominance of non-business debt. See *supra* Part II.C.

<sup>118</sup> See, e.g., (2022) Yue 03 Po Shen 646, 648 Hao (Ge 55, 56) [(2022) 粤 03 破 申 646, 648 号(个 55, 56)] [(2022) Guangdong 03 Bankr. Application Nos. 646, 648 (Pers. 55, 56)], (Shenzhen Intermed. Ct. July 18, 2022) (China) (proposing just over one-quarter payment in these joint cases); (2022) Yue 03 Po Shen 666 Hao (Ge 59) [(2022) 粤 03 破 申 666 号(个 59)] [(2022) Guangdong 03 Bankr. Application No. 666 (Pers. 59)], (Shenzhen Intermed. Ct. July 25, 2022) (China) (offering full payment, but only “before 2048,” well beyond the five-year maximum); (2022) Yue 03 Po Shen 708 Hao (Ge 64) [(2022) 粤 03 破 申 708 号(个 64)] [(2022) Guangdong 03 Bankr. Application No. 708 (Pers. 64)], (Shenzhen Intermed. Ct. Aug. 17, 2022) (China) (offering 27.8% repayment); (2022) Yue 03 Po Shen 728 Hao (Ge 66) [(2022) 粤 03 破 申 728 号(个 66)] [(2022) Guangdong 03 Bankr. Application No. 728 (Pers. 66)], (Shenzhen Intermed. Ct. Aug. 5, 2022) (China) (offering 80% repayment, while not clearly retiring all principal); (2022) Yue 03 Po Shen 815 Hao (Ge 81) [(2022) 粤 03 破 申 815 号(个 81)] [(2022) Guangdong 03 Bankr. Application No. 815 (Pers. 81)], (Shenzhen Intermed. Ct. Aug. 23, 2022) (China) (offering just under 70% repayment, not clearly retiring all principal); (2022) Yue 03 Po Shen 824 Hao (Ge 83) [(2022) 粤 03 破 申 824 号(个 83)] [(2022) Guangdong 03 Bankr. No. 824 (Pers. 83)], (Shenzhen Intermed. Ct. Aug. 24, 2022) (China) (offering repayment of a 3.5-million-yuan principal, but 10,000-yuan monthly income was clearly inadequate to do so over sixty months); (2022) Yue 03 Po Shen 846, 847 Hao (Ge 88, 89) [(2022) 粤 03 破 申 846, 847 号(个 88, 89)] [(2022) Guangdong 03 Bankr. Application No. 846, 847 (Pers. 88, 89)], (Shenzhen Intermed. Ct. Aug. 29, 2022) (China) (offering just over 40% principal repayment in these joint cases); (2022) Yue 03 Po Shen 852 Hao (Ge 93) [(2022) 粤 03 破 申 852 号(个 93)] [(2022) Guangdong 03 Bankr. Application No. 852 (Pers. 93)], (Shenzhen Intermed. Ct. Aug. 31, 2022) (China) (offering 75.57% repayment, while not clearly retiring all principal); (2022) Yue 03 Po Shen 886 Hao (Ge 104) [(2022) 粤 03 破 申 886 号(个 104)] [(2022) Guangdong 03 Bankr. Application No. 886 (Pers. 104)], (Shenzhen Intermed. Ct. Sept. 28, 2022) (offering 52.22% repayment); (2022) Yue 03 Po Shen 887 Hao (Ge 105) [(2022) 粤 03 破 申 887 号(个 105)] [(2022) Guangdong 03 Bankr. Application No. 887 (Pers. 105)], (Shenzhen Intermed. Ct. Oct. 27, 2022) (China) (offering 36.87% repayment); (2022) Yue 03 Po Shen 891 Hao (Ge 109) [(2022) 粤 03 破 申 891 号(个 109)] [(2022) Guangdong 03 Bankr. Application No. 891 (Pers. 109)], (Shenzhen Intermed. Ct. Oct. 12, 2022) (China) (offering 43.6% repayment).

<sup>119</sup> (2021) Yue 03 Po 232 Hao (Ge 3) [(2021) 粤 03 破 232 号(个 3)] [(2021) Guangdong 03 Bankr. No. 232 (Pers. 3)], (Shenzhen Intermed. Ct. May 11, 2021) (China). Terminated June 19, 2023, reported at (2023)

other related cases had been initiated in September 2021 as reorganizations, with a joint plan confirmed in December 2021. But these husband-and-wife cases were dismissed in September 2023, after nearly two years of the debtors struggling and failing to fulfill their plan.<sup>120</sup> One other short-lived plan had emerged from the first case opened for calendar year 2023, with a plan confirmed on March 24, 2023, terminated after the plan failed less than three months later on June 19, 2023.<sup>121</sup>

Several other confirmed plans exhibit strong warning signs of trouble ahead and likely plan failure. Take for example the case of Mr. Zeng, whose plan promises accelerating annual payments of 42,000, 54,000, 72,000, 120,000, and 132,000 yuan.<sup>122</sup> While most of us would welcome annual raises of 30%, 33%, and 67%, as Mr. Zeng promised his creditors in years two, three, and four of his plan, such an expectation of roaring growth is most likely unrealistic. The plan offers no basis for expecting such a meteoric rise in Mr. Zeng's income, as the source of such payments is described (as it is in most plans) as "predictable labor remuneration income and possible unexpected income."<sup>123</sup>

An even more worrying case concerns a Mr. Jin (whose surname ironically means "gold"), whose confirmed plan proposes annual payments of 60,489, 90,734, 181,467, 151,223, and 120,978 yuan.<sup>124</sup> While it is admirable that Mr. Jin tries to frontload his payments and get ahead quickly, expecting his payment capacity to increase by 50% in year two and fully double again in year three seems unduly optimistic. Mr. Jin's application indicates that he ended up in bankruptcy due to caring for his seriously ill father, and his monthly income

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Yue 03 Po 371 Hao (Ge 189) ((2023) 粤 03 破 371 号 (个 189)) [(2023) Guangdong 03 Bankr. No. 371 (Pers. 189)], (Shenzhen Intermed. Ct. June 19, 2023) (China).

<sup>120</sup> (2021) Yue 03 Po 481, 482 Hao (Ge 15, 16) ((2021) 粤 03 破 481, 482 号 (个 15, 16)) [(2021) Guangdong 03 Bankr. No. 481, 482 (Pers. 15, 16)], (Shenzhen Intermed. Ct. Dec. 31, 2021) (China). Terminated September 26, 2023, reported at (2023) Yue 03 Po Shen 445, 446 Hao (Ge 239, 240) ((2023) 粤 03 破 申 445, 446 号 (个 239, 240)) [(2023) Guangdong 03 Bankr. Application No. 445, 446 (Pers. 239, 240)], (Shenzhen Intermed. Ct. Sept. 26, 2023) (China).

<sup>121</sup> (2023) Yue 03 Po 1 Hao (Ge 1) ((2023) 粤 03 破 1 号 (个 1)) [(2023) Guangdong 03 Bankr. No. 1 (Pers. 1)], (Shenzhen Intermed. Ct. Mar. 24, 2023) (China). Termination order reported at (2023) Yue 03 Po 439 Hao (Ge 238) ((2023) 粤 03 破 439 号 (个 238)) [(2023) Guangdong 03 Bankr. No. 439 (Pers. 238)], (Shenzhen Intermed. Ct. June 19, 2023) (China).

<sup>122</sup> (2022) Yue 03 Po 493 Hao (Ge 40) ((2022) 粤 03 破 493 号 (个 40)) [(2022) Guangdong 03 Bankr. No. 493 (Pers. 40)], (Shenzhen Intermed. Ct. Nov. 18, 2022) (China). The plan confirmation and case closure announcement is online at [http://sf.sz.gov.cn/szsgprcpxgkpt/czyhjxx/content/post\\_10273784.html](http://sf.sz.gov.cn/szsgprcpxgkpt/czyhjxx/content/post_10273784.html).

<sup>123</sup> *Id.*

<sup>124</sup> (2022) Yue 03 Po 589 Hao (Ge 57) ((2022) 粤 03 破 589 号 (个 57)) [(2022) Guangdong 03 Bankr. No. 589 (Pers. 57)], (Shenzhen Intermed. Ct. Mar. 8, 2022) (China). The plan confirmation and case closure announcement is online at [http://sf.sz.gov.cn/szsgprcpxgkpt/czyhjxx/content/post\\_10479841.html](http://sf.sz.gov.cn/szsgprcpxgkpt/czyhjxx/content/post_10479841.html).

amounts to a meager 5,000 yuan, clearly insufficient to fund these ballooning debt payments, to say nothing of supporting himself and his father.<sup>125</sup>

In other personal bankruptcy systems, offering relief to such overwhelmingly indebted individuals only in the form of mild interest and penalty concessions has led to depressed admissions and insufficient relief. In France, lawmakers struggled with a negotiation-based approach offering only mild concessions for more than a decade before finally adopting one of the most aggressive discharge laws in Europe.<sup>126</sup> The new court-imposed discharge procedure soon became the dominant approach to treatment of personal insolvency in France.<sup>127</sup> Shenzhen already has such an approach on the books; if only system operators would engage that procedure for the multitude of cases for which it seems both morally and legally more appropriate than the current approach of requiring unsustainable 100% principal payment promises in reorganization for almost all applicants.

### B. *Settlement: Single Creditor, Dire Straits*

The few cases still unaccounted for in this survey eventually ended in another negotiated way: settlement requiring the approval of *all* creditors. A small handful of these (three) were filed as settlement cases (two succeeded, one failed).<sup>128</sup> Another was converted from liquidation to settlement only to fail thereafter (this is Mr. Li's case mentioned in the introduction).<sup>129</sup> And four

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<sup>125</sup> (2022) Yue 03 Po Shen 853 Hao (Ge 94) ((2022) 粤 03 破 申 853 号 (个 94)) [(2022) Guangdong 03 Bankr. Application No. 853 (Pers. 94)], (Shenzhen Intermed. Ct. Oct. 27, 2022) (China). To be fair, Mr. Jin reported that he holds a 7% stake in a technology company that paid out nearly 150,000 yuan in dividends to him in 2021, but as is known the world over, in the volatile land of tech company investment, past performance is no guarantee of future success. Relying on these dividends to fund most of Mr. Jin's plan seems to be a very risky investment, indeed.

<sup>126</sup> 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, 648–51 (2005).

<sup>127</sup> See Jason J. Kilborn, *Determinants of Failure . . . and Success in Personal Debt Mediation*, 14 TRANSNAT'L DISP. MGMT., Nov. 2017, at 11–13; Jason J. Kilborn, *Still Chasing Chimeras but Finally Slaying Some Dragons in the Quest for Consumer Bankruptcy Reform*, 25 LOYOLA CONSUMER L. REV. 1, 24–25 (2012).

<sup>128</sup> These were among the very first cases accepted into the system—and the last to be accepted as settlement cases: (2021) Yue 03 Po 233 Hao (Ge 4) ((2021) 粤 03 破 233 号 (个 4)) [(2021) Guangdong 03 Bankr. No. 233 (Pers. 4)], (Shenzhen Intermed. Ct. Aug. 24, 2021) (China) (accepting case on May 11, 2021, terminated Aug. 24, 2021, after failing to reach settlement); (2021) Yue 03 Po 347 Hao (Ge 6) ((2021) 粤 03 破 347 号 (个 6)) [(2021) Guangdong 03 Bankr. Application No. 347 (Pers. 6)], (Shenzhen Intermed. Ct. Oct. 8, 2021) (China) (accepting case on July 16, 2021, confirmed settlement on Oct. 8, 2021); (2021) Yue 03 Po 365 Hao (Ge 7) ((2021) 粤 03 破 365 号 (个 7)) [(2021) Guangdong 03 Bankr. No. 365 (Pers. 7)], (Shenzhen Intermed. Ct. Nov. 16, 2021) (China) (accepting case on July 22, 2021, confirmed settlement on Nov. 16, 2021).

<sup>129</sup> See *supra* note 12 and accompanying text.

others were terminated after the debtors struck private, out-of-court settlement arrangements with their creditors.<sup>130</sup>

The stories of the two successful formal settlement cases are interesting and revealing of the unique circumstances likely needed to achieve universal settlement. Mr. Wei had rented a shop selling women's clothing to try to defray the substantial costs of his recent wedding and improve his newly-married family income situation, but the shop suffered significant losses and had to close after his wife became pregnant.<sup>131</sup> Mr. Wei's settlement resembles the reorganization arrangements described above, promising full payment of the some-660,000 yuan principal of his debt in steady monthly installments over fifty-four months.<sup>132</sup> The particularly salient aspect of this case is that this settlement was facilitated by the Bankruptcy Administration Office itself.<sup>133</sup> The combination of full payment and powerful administrative support doubtlessly explains the rare success in this case.

The other case is more of a sad anomaly.<sup>134</sup> Mr. Zhang was a seventy-six-year-old retiree when he applied for settlement due to a single gargantuan debt. Decades prior, in 1999, he had personally guaranteed a large bank loan extended to an investment company of which Mr. Zhang appears to have been one of the principals.<sup>135</sup> When the company failed to pay, in 2001, Mr. Zhang was slapped with a nearly two-million-yuan judgment based on his personal guarantee liability. Even after the judgment-creditor bank seized Mr. Zhang's home in 2009 and applied its auction value to the debt, Mr. Zhang still faced an insurmountable debt of over 1.6 million yuan.<sup>136</sup> At this point, Mr. Zhang retired,

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<sup>130</sup> (2021) Yue 03 Po 380 Hao (Ge 8) ((2021) 粤 03 破 380 号 (个 8)) [(2021) Guangdong 03 Bankr. No. 380 (Pers. 8)], (Shenzhen Intermed. Ct. Sept. 16, 2021) (China) (accepting case on Aug. 6, 2021, as a liquidation case, and settled with a single creditor the following month); (2021) Yue 03 Po 479, 480 Hao (Ge 13, 14) ((2021) 粤 03 破 479, 480 号 (个 13, 14)), [(2021) Guangdong 03 Bankr. Application Nos. 479, 480 (Pers. 13, 14)], (Shenzhen Intermed. Ct. Sept. 28, 2021) (China) (accepting a husband-and-wife pair of liquidation cases on Sept. 28, 2021, and settled in March 2022); (2023) Yue 03 Po 64 Hao (Ge 7) ((2023) 粤 03 破 64 号 (个 7)), [(2023) Guangdong 03 Bankr. No. 64 (Pers. 7)], (Shenzhen Intermed. Ct. Mar. 15, 2023) (China) (accepting case on Dec. 16, 2022, as a reorganization case, having settled with six creditors between filing and acceptance of the application, after which the administrator assisted in obtaining agreement from the seventh and final creditor, terminating the case on Mar. 15, 2023—no need to beware the Ides of March here!).

<sup>131</sup> (2021) Guangdong 03 Bankr. No. 365 (Pers. 7) (China).

<sup>132</sup> *Id.*

<sup>133</sup> *See also supra* note 55.

<sup>134</sup> In addition to the case announcements for (2021) Yue 03 Po 347 Hao (Ge 6) ((2021) 粤 03 破 347 号 (个 6)) [(2021) Guangdong 03 Bankr. No. 347 (Pers. 6)], (Shenzhen Intermed. Ct. Oct. 8, 2021) (China), see Tang, *supra* note 42, for a brief recital of some of the facts of this widely reported case.

<sup>135</sup> Tang, *supra* note 42; *see also* (2021) Guangdong 03 Bankr. No. 347 (Pers. 6) (China).

<sup>136</sup> Tang, *supra* note 42; *see also* (2021) Guangdong 03 Bankr. No. 347 (Pers. 6) (China).

and his income was limited to a public pension. Then, in 2020, the judgment-creditor bank started garnishing that pension, leaving Mr. Zhang struggling to survive on only his exempt minimum subsistence allowance of 2,200 yuan per month.<sup>137</sup>

Mr. Zhang's bankruptcy administrator convinced the sole creditor in this case, the Shenzhen Great Wall sub-branch of Ping An Bank, to take mercy on the hapless Mr. Zhang. In exchange for a one-time payment of the entire current balance on Mr. Zhang's financial social security card<sup>138</sup> (47,286 yuan, about U.S. \$11,250) and one more monthly garnishment of Mr. Zhang's pension (4,817 yuan, about U.S. \$1,150), the bank agreed to forgive its remaining claim of over 1.8 million yuan (about U.S. \$450,000) against Mr. Zhang.<sup>139</sup> Accordingly, on April 8, 2022, the court entered the first of only two personal discharge orders delivered in Shenzhen to date,<sup>140</sup> formally freeing Mr. Zhang from his decades-old debt burden.<sup>141</sup> It is not surprising that, in light of Mr. Zhang's advanced age, the bank's decades-long collection efforts and seizure of Mr. Zhang's home, and Mr. Zhang's hopeless inability to significantly pay down this enormous debt, the single creditor (a government regulated bank) could not hide from pressure from the administrator and court to accede to this benevolent gesture. This is a rare confluence of factors that is not likely to reappear in other cases.

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<sup>137</sup> For more on the subsistence minimum allowance, also applicable in bankruptcy liquidation cases, see *supra* notes 102–03 and accompanying text.

<sup>138</sup> For a brief explanation of this concept, see *ICBC Financial Social Security Card*, INDUS. & COM. BANK OF CHINA, <https://www.icbc.com.cn/en/column/1438058476973998317.html> (last visited Jan. 12, 2024).

<sup>139</sup> (2021) Guangdong 03 Bankr. No. 347 (Pers. 6) (China). The administrator concluded that the actual amount of the remaining claim was only 970,380 yuan, but since everything in excess of Mr. Zhang's 52,103-yuan payment would be forgiven, the bank did not object to this recalculation.

<sup>140</sup> The other discharge order was entered more than a year later, on June 16, 2023, in the very first opened case, in which Mr. Liang completed his payment plan and earned his discharge early. See (2021) Yue 03 Po 230 Hao (Ge 1) Zhi Er ((2021) 粤 03 破 230 号 (个 1) 之二) [(2021) Guangdong 03 Bankr. No. 230 (Pers. 1) Pt. Two], (Shenzhen Intermed. Ct. July 17, 2021) (China).

<sup>141</sup> (2022) Yue 03 Po Shen 112 Hao (Ge 1) ((2022) 粤 03 破 申 112 号 (个 免 1)) [(2022) Guangdong 03 Bankr. Application No. 112 (Pers. Discharge Petition 1)], (Shenzhen Intermed. Ct. July 5, 2022) (China). The discharge announcement is reported online at [http://sf.sz.gov.cn/szsgprcxxgkpt/czyhjxx/content/post\\_9931704.html](http://sf.sz.gov.cn/szsgprcxxgkpt/czyhjxx/content/post_9931704.html). Note the new case designation—debtors must apply for discharge separately, so this is a new “application” number (*shen* 申), and the parenthetical designation includes not only the character for “personal” (*ge* 个) but also a new character (*mian* 免), an abbreviation of the word for “discharge” (*mianchu* 免除). See Kilborn, *supra* note 1, at 205 n.213 (explaining the interesting history of the emergence of this term).

## V. LAW IN ACTION: BEHIND THE GREAT FIREWALL

Before closing this empirical survey, a few comments are in order about the difficulty future researchers will have in continuing to follow the law in action in the Shenzhen personal bankruptcy regime and uncovering the kinds of detailed data reported here. I collected much of the most detailed data reported here from an extremely useful website launched by the Shenzhen Bankruptcy Court, which posted all the actual orders accepting applications and finalizing cases in the new personal bankruptcy system.<sup>142</sup> My delight at discovering this treasure trove of data suddenly turned to horror in November 2021, immediately after the court issued the first liquidation order. My access to the site was abruptly cut off. To this day, attempts to visit that site are met with the dreaded “This site can’t be reached” message.

After reaching out to several experts in the Engineering and Computer Science departments of my university and double-checking with colleagues in China, I discovered the URL is still active, but it is not accessible from computers outside China. I tried to circumvent this restriction using several VPNs that purported to operate via servers in China, but I discovered that this workaround was blocked by the keepers of the Great Firewall. I sent an email to the Shenzhen Bankruptcy Administration Office, asking if I could somehow register to receive special access to the site, but I received no response. Not wanting anyone in China to lose face, I dropped the matter and continued with the resources that remained available.

I wondered and still wonder why authorities would cut off foreign access to a website posting something as innocuous and mundane as personal bankruptcy court orders. My first wild theory, given the timing of the cutoff, was that Chinese authorities were concerned about liquidation orders revealing the dire straits of Chinese entrepreneurs to the international press. I was curious if this was a manifestation of the reported phenomenon in Chinese online case databases where “cases present[ing] an unflattering view of Chinese society . . . have likely been removed for that reason.”<sup>143</sup>

The more likely culprit seems to be (over)cautious interpretation of personal data privacy law. On November 1, 2021, right about the time the Shenzhen

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<sup>142</sup> The website can be reached at: <https://birp.szcourt.gov.cn/pcczajxxw/gpHome/index>.

<sup>143</sup> Jiajun Luo & Thomas Kellogg, *Verdicts from China’s Courts Used to Be Accessible Online. Now They’re Disappearing*, CHINAFILE (Feb. 1, 2022), <https://www.chinafile.com/reporting-opinion/viewpoint/verdicts-chinas-courts-used-be-accessible-online-now-theyre-disappearing>.

Personal Bankruptcy Case Information website disappeared behind a firewall, a new Personal Information Protection Law became effective in China.<sup>144</sup> That law requires “important data” to be protected behind firewalls and for database hosts to conduct “security assessment of *cross-border* data transfers.”<sup>145</sup> Most likely, Shenzhen Bankruptcy Court authorities are concerned about aggressive enforcement of this data privacy law, especially in the context of cross-border information transfers. So they have simply blocked transmission of the information in the database to foreign servers. The odd thing is that, while the Shenzhen Bankruptcy Court website was firewalled, the Shenzhen Bankruptcy Administration Office website,<sup>146</sup> with detailed summary announcements of most of these court orders, was not firewalled. Moreover, the National Enterprise Bankruptcy Reorganization Case Information website<sup>147</sup> was not firewalled<sup>148</sup> either, and while this national database is more difficult to search and does not contain all Shenzhen personal bankruptcy orders, it does contain many of them. It even includes some not reported on the Shenzhen Bankruptcy Administration Office website. It appears that different authorities have different views of (or at least different risk tolerances for) the application of the data privacy law. In the very context of secondary website publication of judgments concerning individuals, Chinese courts themselves have disagreed on the correct application of the new data privacy laws and the proper balance between personal data privacy and the importance of an open justice system and the public’s right to know.<sup>149</sup>

So, foreign researchers are left to rely on data sources that are mildly less complete and less reliable. The Shenzhen Bankruptcy Administration Office website reports announcements of new applications and orders quite belatedly (often with months of delay), and it offers only skeletal information, with a direction to find the relevant orders and details by visiting the court orders website—the one that was firewalled in November 2021. It also refers interested

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<sup>144</sup> Alexander C.H. Lou, *Right to Publish Judicial Judgments for Profits? Two-Tier Exemption of Published Personal Information in Chinese Law* (Aug. 3, 2022) (manuscript at 2), <http://ssrn.com/abstract=4181067>.

<sup>145</sup> T. Markus Funk et al., *China Data Privacy Laws, WeChat Muddy Cross-Border Inquiries*, BLOOMBERG LAW: US LAW WEEK (Oct. 27, 2022, 4:00 AM), <https://news.bloomberglaw.com/us-law-week/china-data-privacy-laws-wechat-muddy-cross-border-inquiries> (emphasis added).

<sup>146</sup> The website can be reached at: <http://sf.sz.gov.cn/szsrpcxxgkpt/index.html>.

<sup>147</sup> The website can be reached at: <https://pccz.court.gov.cn/pcajxxw/index/xxwsy>.

<sup>148</sup> Actually, it was blocked for a short time starting in mid-October 2022, but it became available again a few months later and remains so as of January 12, 2024.

<sup>149</sup> Guodong Du & Meng Yu, *Disclosing Chinese Judgments: Infringing Personal Privacy or Not?*, CHINA JUST. OBSERVER (Feb. 13, 2022), <https://www.chinajusticeobserver.com/a/disclosing-chinese-judgments-infringing-personal-privacy-or-not> (contrasting opposing rulings from courts in Beijing and Suzhou).



readers to the National Enterprise Reorganization Case Information website, which as just noted above has some but not all of the relevant Shenzhen personal bankruptcy orders. These are buried within tens of thousands of nationwide company-related bankruptcy filings, and searching the enormous dataset is not especially easy or intuitive. The enterprise database, too, has a significant delay in posting orders, and it contains significant gaps, especially with respect to Shenzhen personal bankruptcy files.

Researchers should beware that data on the internet in China can be ephemeral—here today, gone tomorrow. It is difficult to evaluate the law in action when it is intentionally hidden behind an electronic firewall.

#### CONCLUSION

The law in action in Shenzhen's groundbreaking new personal bankruptcy system has thus far dashed the hopes of most aspiring applicants. While the law in books could support a world-class insolvency relief system, the Shenzhen Bankruptcy Court's constricted and conservative interpretation has rendered it largely a dead letter. Effectively the opposite of the consumer bankruptcy regime in Taiwan, the Shenzhen regime in operation cannot be called a "consumer" bankruptcy system; it is only a partial "personal" bankruptcy regime restricted to current or former entrepreneurs (with a sufficient current connection to Shenzhen). Indeed, it is scarcely a "bankruptcy" regime at all, but rather primarily a mechanism for facilitating negotiation of mild interest and penalty concessions. A system that requires (1) exceptionally hopeless insolvency for standard liquidation-and-discharge relief, and (2) a promise of 100% principal repayment for a reorganization plan is not consistent with international standards for personal bankruptcy.<sup>150</sup> Such a system is destined to produce heartache and failure. Many more debtors need to be admitted to a proper personal bankruptcy hospital, and treatment should be offered to most on a standard basis, not only the extremes of almost-dead patients and negotiated prescriptions for those who need only mild relief. Shenzhen has sketched out a good framework in its personal bankruptcy regulation, but judicial and administrative officials would be well-served to go back to the drawing board.

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<sup>150</sup> WORLD BANK GRP., PRINCIPLES FOR EFFECTIVE INSOLVENCY & CREDITOR/DEBTOR REGIMES 29–31 (2021), <http://hdl.handle.net/10986/35506>.

## APPENDIX A

*Total Cases Opened in the First Two Years, and Ultimate Outcomes*

	<b>1 Mar. 2021 - 28 Feb. 2022</b>	<b>1 Mar. 2022 - 28 Feb. 2023</b>	<b>2 Years TOTAL</b>
<b>Cases Accepted/Opened</b>	25	73	<b>98</b>
<b>Initially Opened as:</b>			
Liquidation	9	2	<b>11</b>
Settlement	3	-	<b>3</b>
Reorganization	13	71	<b>84</b>
<b>Ultimately Closed as:</b>			
Liquidation	4	2	<b>6</b>
Settlement	4	-	<b>4</b>
Reorganization	17	71	<b>88</b>
<b>Outcome at Ultimate Closure:</b>			
Liquidation approved	1	-	<b>1</b>
Liquidation settled out of court	3	-	<b>3</b>
Liquidation dismissed	-	2	<b>2</b>
Settlement approved	2	-	<b>2</b>
Settlement failed/ dismissed	2	-	<b>2</b>
Reorganization confirmed	11	49	<b>60</b>
Reorganization settled out of court	-	1	<b>1</b>
Reorganization failed/dismissed	6	21	<b>27</b>