

# An Analysis of the Establishment of Individual Bankruptcy Legislation in China

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## Abstract:

In recent years, with the continuous development of China's market economy, and the impact of the new pneumonia epidemic in 2020, a large number of individuals are facing economic difficulties and increasingly prominent debt risks. Under such circumstances, the establishment of individual bankruptcy legislation has become highly urgent and important. China faces various difficulties in establishing individual bankruptcy system, such as differences in selecting legislative models, difficulties in determining the debtor's property, determining the applicable threshold criteria, Cross-regional execution of the property, etc. However, these difficulties cannot be the reason to deny the individual Bankruptcy system, and the establishment of individual bankruptcy system is crucial to optimize the business environment in China and accelerate the socialist market economy system in China. Through the discussion of this paper, the establishment and improvement of China's individual bankruptcy system can be a reference.

## Keywords:

Individual Bankruptcy System, Suggestion, Necessity, Exemption

## 1. Concept and Characteristics of Individual Bankruptcy System

### 1.1. Concept of Individual Bankruptcy System

The word bankruptcy evolved from the Italian Banca Rotta, which means a collapsed bank. The name can be traced back to the era of the Republic of Genoa. During this period, there was a tradition that if the money changer was insolvent, the creditor had the right to smash its stall. [1]

Individual bankruptcy refers to a legal system in which a natural person with civil capacity is unable to pay off due debts, and his property is auctioned and distributed to creditors in a certain proportion in accordance with the bankruptcy procedure while retaining the necessary living expenses and supplies of him and his dependants. Legal experts define it as "when all the assets of a natural person as a debtor cannot pay off its due debts, the court declares it bankrupt according to law, liquidates and distributes its property, exempts its debts, and determines the legal norms of the rights and obligations of the parties in the bankruptcy process". The significance of establishing

individual bankruptcy system should start from getting rid of misunderstandings. Misunderstanding includes that the establishment of individual bankruptcy system is not conducive to economic development, maintaining economic and social order, and protecting the interests of creditors. In fact, the debt in modern society presents an intertwined and interconnected relationship. After the establishment of the individual bankruptcy system, as debtors continue to be confirmed and declared bankrupt, the complex debt relationship in society will be simplified and clarified, which is fundamentally conducive to maintaining great economic order. In the absence of the individual bankruptcy system, creditors will inevitably seek judicial relief, which will inevitably increase the cost of judicial resources involved in litigation. What's more, some people may also use kidnapping, intimidation, and other means for private benefit relief, thus destroying the social order. In addition, after the establishment of the individual bankruptcy system, the creditor's rights can be fairly compensated through this system, so it can get rid of the dilemma that the creditor's rights are invalid in fact because the debtor is unable to repay. If the interests of creditors are guaranteed, they will be more confident in lending, which is of great benefit to stimulating domestic demand and promoting economic development.

### ***1.2. Legal Characteristics of Individual Bankruptcy System***

First, the premise of bankruptcy is that the debtor cannot pay off the due debts. Unable to pay, also known as “unable to pay”, that is, the debtor has no ability to pay off the debt within the specified time limit, and does not have the ability to repay the debt that is now due. Only because the debt is due, the debt cannot be paid in a short time, or there is a violation of individual matured debts. The contract situation cannot be defined as the inability to repay debts, which does not meet the requirements of bankruptcy.

Second, the bankruptcy system is to ensure that all creditors' debts are fairly paid off. Bankruptcy system is to minimize the losses of creditors within the scope permitted by law. If there is no bankruptcy system, the debtor can arbitrarily take unsecured assets as property to pay off debts according to his own will, resulting in the legitimate interests of relevant creditors, such as the malicious collusion between the debtor and a third party, with the gimmick of apparently paying the debt alone, is actually to complete the purpose of transferring assets to avoid debt. The bankruptcy system greatly guarantees the equal repayment of all debts. Under this guarantee, all creditors can be paid equally, so as to prevent a creditor from continuing to live an orderly life due to the default of a debt.

Third, the bankruptcy system is to effectively deal with the relationship between claims and debts. If the bankrupt is a legal person, the legal person status will be removed after bankruptcy. By liquidating all the assets of the bankrupt and using them for debt repayment. If the bankruptcy object is a natural person, help the natural person restore confidence and start again through bankruptcy exemption life. Therefore, to a certain extent, it can be considered that bankruptcy is more like a relief for the debtor. Creditors can ask the debtor to repay part of the debt and reduce losses before they realize that the debtor's business condition is in trouble and getting worse. At the same time, it also effectively avoids the situation that the debts of debtors with poor operating conditions are gradually increasing. In addition, it reduces the harm to the legitimate interests of innocent creditors.

To sum up, the bankruptcy system can be used as a criterion for the fair repayment of the debts of all creditors when the debtor is unable to repay the debts on time, a basis for ensuring that all or part of the creditor debt relationship is correctly handled, and also a system to protect the rights and interests of the debtor and creditors to the greatest extent.

## **2. The Necessity of Establishment Individual Bankruptcy System**

### ***2.1. Individual Bankruptcy System is Conducive to Alleviating the Dilemma of “Inability To Execute”***

In the past judicial practice of our country, how to implement effective judgment is a problem that is perplexed by courts all over China. According to court statistics, at present, among the existing cases that have been adjudicated but have not been executed, the proportion of cases in which the person subjected to execution has no property to enforce accounts for more than 40%. In such cases of difficult execution, the proportion of cases in which individuals face insolvency exceeds 70%. Thus, it can be seen that individuals have no property to execute, which has become a very common social phenomenon. If our country establishes and implements the individual bankruptcy system in time, the court can make judgments respectively according to the actual property of the defendant in the subsequent trial of the case. If the debtor does not have the property for execution, it can declare the debtor bankrupt, which can avoid the court falling into the dilemma of “inability to execute” in the later execution process. The relationship between individual creditor's rights and debt has been clarified in time, and the case has been effectively handled before entering the enforcement procedure, which helps the court to solve the difficult problem of enforcement, and relieves the pressure on the current social enforcement judges.

### ***2.2. The Establishment of Individual Bankruptcy System can Alleviate the Current Credit Crisis***

In the eyes of foreign legislative experts, taking away all the property of the debtor is equivalent to taking away their beliefs, taking away the most important things about his life, and leaving the debtor naked in this society. In the face of the wind and the sun, there is no guarantee to support him to continue to live. If you still want to expect people in this situation to create a series of wealth for the society, it is simply nonsense. [2] It's the same for China. With the reform of China's domestic economic system entering a new stage of development, due to the prevalence of housing loans and consumer entities, more and more individuals are bearing excess debt. In terms of giving individuals the main body of the bankruptcy system, China has now seen large-scale bankruptcy and groups that need to go bankrupt. With the continuous acceleration of the growth rate of domestic loan consumption, the total number of loan consumers has gradually increased, Credit cards are still being popularized. On the one hand, they have played an important role in promoting the growth of China's economy, but on the other hand, excessive consumption will inevitably lead to problems that cannot be repaid. It is difficult for most consumers to adhere to the principle of moderate consumption. In addition, in order to encourage consumption, banks will irregularly carry out points incentive plans to induce consumers to spend too much. On this basis, with the continuous expansion of the scale of credit, how to coordinate the creditor's rights and debts between banks and consumers, the important role of the individual bankruptcy system has become prominent. Because there is no

individual bankruptcy system, the bank's housing loans have nothing to fear, because as long as the debt is guaranteed by a natural person, the debt will inevitably fall on the natural person in the end, and he needs to bear unlimited joint and several liabilities, The individual bankruptcy system can be audited by bankrupt banks at some levels, and the loans of natural persons can be strictly audited, to control the safety of funds from the source, rather than blindly relying on post remedy.

### ***2.3. The Establishment of Individual Bankruptcy System is Conducive to the Equal Protection of Market Subjects***

Bankrupt is not enterprises' privilege, the protection of unfortunate individuals' debt relief can't be avoided. [3] China's current economic policy advocates the coexistence of multiple economic components and urges individual, private, and foreign-funded economies to achieve better development. However, due to the current upsurge of individual entrepreneurship, individual industry and Commerce, and individual partnership industry, natural persons are very active in the business field, leading to a huge problem we are facing that individuals cannot exit the market smoothly through bankruptcy procedures like enterprises. China has only established the enterprise legal person bankruptcy system but has not yet established the individual bankruptcy system. If the enterprise legal person still bears a large amount of debt in the case of unfavorable operation. They can choose bankruptcy through legal procedures, and the company can realize property liquidation and exit the market. For individuals, if their assets cannot repay their debts, they cannot resort to bankruptcy proceedings like enterprise legal persons. On the contrary, they must bear debts that cannot be repaid. Therefore, If we don't put the establishment of the individual bankruptcy system on the agenda, they cannot contribute to social development but may hinder social development, The corresponding creditors cannot apply for bankruptcy to repay their claims to the maximum extent. This makes it difficult for the debtor to restructure and greatly damages the interests of creditors. This leads to different recognition and competitiveness of enterprises and natural persons in the market when participating in market economic activities. Different subjects enjoy different rights, which obviously deviates from the principle of equality. Under this system, the competitiveness of the industry is very different between natural persons and enterprises, which neither encourages individual entrepreneurship nor helps the market economy. Generally speaking, in order to regulate the relationship between creditors and debtors, the bankruptcy system should aim to ensure fairness. In addition, the individual bankruptcy system also requires the debtor to perform the obligation of notification and publicity. If this obligation is not performed, this part of the creditor's rights cannot be exempted. This requirement also encourages the debtor to perform the obligation of notification and publicity in time, which also plays a very important and positive role in the fair repayment of creditors [4]. In the current economic environment of our country, the legal status of individuals is an important legal issue. Only by ensuring that natural persons enjoy the same right to apply for bankruptcy as enterprises, can natural persons provide strong barriers to bankruptcy protection, solve the worries of operators, ensure the integrity of China's commercial legal system, and maximize the stable and orderly development of social and economic markets.

### **3. Three Obstacles to be Overcome in the Establishment of Individual Bankruptcy System in China**

The establishment of individual bankruptcy system is an important part of improving the rule of law of bankruptcy in China, and it is also an important measure to improve the socialist market economic system with Chinese characteristics. It is of great significance for the full implementation of the civil code, the equal protection of the legitimate rights and interests of various market economic entities, including individuals, the maintenance of social stability, the creation of a safe legal environment in China, and the improvement of the modernization level of the national governance system and governance capacity. However, since the establishment of the individual bankruptcy system in China is, after all, a new legislative project without precedent, which concerns the vital interests of every ordinary citizen, people still have concerns and concerns to varying degrees, which are mainly reflected in the constraints of traditional concepts, the imperfection of individual credit system, the imperfection of credit supervision and restriction mechanism and credit risk prevention means.

#### ***3.1. Obstacles to the Traditional Concept Bondage***

In terms of concept, many people questioned whether the exemption of all debts owed by the debtor through a legal procedure conflicted with the long-standing basic social concepts such as “it is natural to owe money and repay the money” and the common psychological expectations of ordinary people. The reason why the individual bankruptcy law is recognized by the world, and the moderate tolerance, debt relief, and even judicial protection of debtors in the bankruptcy law has become a watershed symbolic concept and system between modern bankruptcy law and traditional bankruptcy law is that people generally realize that the risk of debtors is the risk of everyone: in Grid social relations, this risk is like “Hail falling from the sky”, It has objectivity and inevitability, and is also accompanied by credit economy and efficiency economy. In the final analysis, the individual bankruptcy law is that everyone pays for the reasonable risk of the debtor, to make the burden of this risk more reasonable. In this sense, the individual bankruptcy law is a special social security law, but it is not the state that provides this kind of security, but the society, and the creditors in the society. It may be counterproductive to force Chinese people who have been infected by traditional ideas to accept the individual bankruptcy system. If the inherent thoughts of Chinese people are not easy to change, then the individual bankruptcy system, which summarizes debt repayment and can partially or completely reduce the debtor’s responsibility, will be difficult to play a role.

#### ***3.2. Imperfect Individual Credit System***

In terms of integrity, the construction of a credible society depends not only on morality and teachings but also on laws and systems. The formulation and implementation of individual bankruptcy law is an integral part of the construction project of integrity society in China. China's individual credit system has yet to be established, improved, and strengthened, but we cannot wait for the individual credit system to be improved before implementing the individual bankruptcy law. The imperfection of the individual credit system cannot be a reason to refuse to establish the individual bankruptcy system. On the contrary, the implementation of the individual bankruptcy law will provide an important source of information for the establishment of the individual credit system, The implementation of the individual

bankruptcy system is conducive to the establishment and improvement of the individual credit system, to provide the impetus for the construction of integrity mechanism of market economy.

### ***3.3. Imperfect Credit Supervision and Restriction Mechanism and Credit Risk Prevention Means***

Now, with the reform and deepening of China's economic system, residents' consumption desire is gradually rising, among which individual consumption credit business accounts for a large proportion. The proportion of consumption in advance and overdraft income is also increasing, and the forms of credit such as housing loans, car loans, and student loans have been widely accepted by the public. In the future, China is about to reach the peak of loan repayment period. Therefore, it is inevitable that the repayment cannot be made on time. Nowadays, in some parts of the country, consumer credit for natural persons has revealed many problems. Consumer loans are not repaid, and intentional overdrafts, false loans, and malicious loan fraud are also repeatedly prohibited, which to a large extent restricts the green development of consumer credit. Moreover, most banks fail to fully understand the risks of individual credit, and the internal control system of banks is very imperfect. Similarly, many bank executives fail to fully understand the credit risk. Most banks in China have a weak level of screening and monitoring of individual credit risks. The function of the bank information system is relatively backward, and the risk control method is not innovative compared with the single individual credit risk prevention method, which cannot adapt to the changes of the market economy.

The formulation of China's bankruptcy law indeed faces many obstacles, difficulties, challenges, and risks, which requires us to update our concepts, keep pace with the times, treat the individual bankruptcy law dialectically, developmentally, and as a whole, and need to turn passivity into the initiative, actively prevent the abuse of the institutional loopholes of the individual bankruptcy mechanism through the establishment and improvement of the institutional system, and promote the implementation of the principle of good faith in the individual bankruptcy law, Promote the gradual improvement of supporting systems such as the credit reporting system and the property registration system, thus opening up the way for the smooth implementation of the individual bankruptcy law.

## **4. Specific Suggestions on the Establishment of Individual Bankruptcy System in China**

From the legislative experience of other countries and regions, the individual bankruptcy system is a quite complex system, which needs to build a variety of subsystems and detailed rules. As far as China is concerned, we should focus on solving the following problems.

### ***4.1. The Regulation Subject of Individual Bankruptcy System in China***

On the choice of the main legislative mode. At present, the main models of individual bankruptcy legislation in the world are divided into business individual bankruptcy model, consumer bankruptcy model and general individual bankruptcy model. In countries that implement the commercial individual bankruptcy model, only commercial individuals who engage in commodity trading or service provision to seek benefits are endowed with bankruptcy capacity. For example, in their traditional

bankruptcy laws, France, Italy, Belgium and other countries only recognize that individuals or natural persons (i.e. commercial individuals) who obtain commercial capacity in accordance with legal procedures, independently engage in commercial acts, and assume commercial law rights and obligations in accordance with the law have the bankruptcy capacity Power, but deny the bankruptcy ability of consumers. On the contrary, the consumer bankruptcy model only recognizes the bankruptcy ability of consumers and excludes the bankruptcy ability of business individuals. In other words, under this model, individuals can only apply to individual bankruptcy proceedings if they cannot repay their debts based on non-profit behavior. For example, Denmark introduced the consumer debt adjustment procedure and exemption system in 1984, which pioneered the European consumer bankruptcy legislation; Some countries, represented by Germany, Britain and the United States, advocate the general individual bankruptcy model, arguing that all individuals, including businessmen and consumers, have the ability to go bankrupt. Within the general individual bankruptcy model, there are broad and narrow senses. The general individual bankruptcy mode in the broad sense recognizes that all types of individuals have the bankruptcy ability. Although the general individual bankruptcy mode in the narrow sense also recognizes the bankruptcy ability of all individuals in principle, specific types of individuals do not have the qualification of bankruptcy subject. For example, the U.S. bankruptcy law excludes agricultural production and operation individuals and non-profit organizations from the scope of compulsory liquidation applications. Some domestic scholars, starting from the history of the development and evolution of the British individual bankruptcy system, believe that China's individual bankruptcy legislation should adopt the commercial individual bankruptcy model. From the perspective of comparative law, Europe and countries affected by the continental law system mostly follow the legal path of license exemption. For example, the Danish bankruptcy law stipulates that the court must carefully consider the reasons behind excessive debt before deciding whether to grant exemption. [5] Swedish law requires an independent administrative body to evaluate the rationality of the debt adjustment plan. When excessive debt is caused by speculation and consumers bear disproportionate risks, the administrative body must refuse to accept the debt adjustment plan. (30) the Japanese bankruptcy law stipulates that the exemption of the debtor shall be decided by the court after the trial, and the court shall make a judgment with the assistance of the bankruptcy administrator in a strict trial procedure. The court may require the bankruptcy administrator to investigate the non excusable causes and the circumstances involved in the discretionary exemption, and submit a written report on the investigation results. The author believes that from the reality and needs of our country, it is appropriate to adopt the narrow general individual bankruptcy mode at present. The main reason is that: from the perspective of subject, the participation of natural persons and unincorporated subjects in commercial activities has become more and more in-depth, "the universal commercialization of human beings makes the integration of commercial subjects and general legal subjects, and it is impossible to distinguish 'businessmen' from citizens and legal persons stipulated in the civil law"; From the perspective of behavior, under the condition of market economy, with the increase of people's participation in commercial activities, there have been many behaviors of vague nature and difficult to clearly define commercial, civil or other legal nature, such as the behavior of public institution employees who purchase multiple houses and engage in house leasing and reach a certain scale, and the behavior of stock speculation with a certain amount of funds and quantities, Although the behavior subject is not a typical commercial

subject, the behavior has the nature of commercial operation to a large extent, and in fact, it should be regulated by commercial legislation

#### ***4.2. In the Establishment of Exemption System, China Should Adopt the Exemption System of Licensing Exemption Doctrine***

The value of the exemption system lies in that through the investigation of the debtor's credit, some of its debts are exempted according to the law, so as to help the debtor obtain the opportunity of regeneration. [6] Bankruptcy exemption means that after the conclusion of the legal bankruptcy proceedings, it is inevitable that some debtors will be unable to pay off their debts due to real reasons, such as non individual unwillingness to pay their debts. For this part of debts, the law will also include them in the scope of exemption from liability according to the situation, so as to truly realize the original legislative intention of "the law is not difficult for people". The purpose of this system is that when an honest and kind-hearted individual fails in decision-making and investment in the process of entrepreneurship, the debtor should try his best to repay the debt. For the part that cannot be repaid, the people's court will announce that the debtor is exempted from the obligation of repayment, and give the debtor the possibility to live again from the legal level. At present, there are two viewpoints in this system: the doctrine of natural exemption and the doctrine of permitted exemption. The former is an exemption system in a full sense. As long as the bankruptcy proceedings are terminated, it means that the debtor does not need to bear any liability for repayment. Its advantage is that it gives the debtor the greatest protection, mainly represented by the United States and Taiwan. The latter is more inclined to safeguard the rights and interests of creditors, and the end of the bankruptcy proceedings does not directly mean the exemption of the debtor from the repayment responsibility. The people's court has imposed more restrictions on whether the insolvent debtor has the right to be exempted from liability. Take Japan, Britain and Germany as examples. In conclusion, debt exemption can be seen as the recognition of the inherent value of human dignity by legislation, that is, giving the debtor the opportunity to make a living. The liberation of human capital provided the individual debtor with the ability to maintain a minimum standard of living and put him back on the path of self-determination. Therefore, exemption is a valuable recognition of personal dignity by the legislature. [7]

Looking at the legislative reform trend of individual bankruptcy system in various countries (regions) around the world, most countries have refused to accept the legal path of automatic exemption. Singapore experienced two major amendments to the personal bankruptcy law in 1995 and 1999, and finally did not adopt automatic exemption, [8] and the modern individual bankruptcy system has gradually changed from one-sided consideration of the interests of creditors to the fact that both parties of creditor's rights and debts jointly bear the risk of failure to pay off the debts when they are due. China's enterprise bankruptcy system embodies the legislative concept of allowable exemption, and the court determines the final exemption time of the bankrupt debtor according to the amount of debts actually borne by the debtor in a specific case. Generally speaking, the debtor's actual debt repayment share is inversely proportional to the bankruptcy exemption period, that is, the greater the proportion of the actual debt repayment of the bankrupt debtor, the shorter the bankruptcy exemption period granted by the court; The smaller the proportion of the actual repayment of debts by the bankrupt debtor, the longer the bankruptcy exemption period, which is limited to ten years. Within the statutory exemption period,

as an equivalent exchange for individuals to obtain debt exemption, the law will restrict the debtor's behavior, professional qualifications and individual freedom, so as to achieve the unity of rights and interests. When the exemption period expires, the court may review the debtor and declare that the debtor who meets the requirements can continue to enjoy the right to cancel and repay the debt. As early as 1705, Britain first proposed the exemption system, but at the same time, some scholars raised concerns about the abuse of the exemption system. This paper believes that China should choose the exemption system of licensing. It not only retains the pressure of the debtor to continue to repay the debt, so that it can continue to repay the debt as much as possible within a certain period of time, reducing the possibility of dishonest debtors using the individual bankruptcy system to evade debt and default. At the same time, under the legislative mode of permitted exemption, the court undertakes more exemption supervision, which has more advantages than the creditor's exemption supervision. In the specific design of the legislative model of license exemption, Chinese legislative experts and scholars should clarify the following practical problems: first, only debtors who meet certain qualifications can enjoy exemption treatment, that is, debtors who meet the "honest and unfortunate" can enjoy immunity. All countries (regions) in the world legislate to include individuals who have been bankrupt continuously for a certain period of time into the ranks of "dishonest" people. In addition, for individuals who go bankrupt due to gambling, drug abuse and profligacy, it is also stipulated that they do not have the main conditions of individual bankruptcy qualification and will not be granted exemption treatment. Second, it is necessary to clarify which acts belong to non exempt acts in the form of examples. Referring to the legislation of Japan and the United States, this behavior usually includes bankruptcy fraud such as transferring or concealing individual property, fabricating creditor's rights and debts, and malicious destruction of property; False statements, failure to actively obey the administration of the court, refusal to provide property and other bankruptcy violations. Third, determine which debts cannot be forgiven. Non excusable debts usually include alimony, administrative fines, criminal fines, etc. Fourth, a good period of conduct should be established, and the bankruptcy responsible person should continue to pay off the remaining debts within the statutory period of conduct. The length of the good behavior period should be in direct proportion to the debtor's bankruptcy repayment rate, and should be adjusted according to the actual bankruptcy liquidation rate.

### ***4.3. The Procedure for Construction of Individual Bankruptcy System in China***

A reasonable individual bankruptcy procedure can effectively prevent the surge of individual bankruptcy cases after the establishment of the individual bankruptcy system and prevent the collapse of the judicial system. The realization of this legislative purpose mainly depends on the following two procedural means:

a. Set necessary pre-procedures. The necessary pre-procedure is an important means to effectively filter the application of the individual bankruptcy system. For example, the German individual bankruptcy legislation has set up the out-of-court settlement procedure and the in-court settlement procedure for debt repayment, and the formal bankruptcy trial procedure will be entered only after the two pre-procedures fail. That is, the debtor should first make an out-of-court settlement with the assistance of the debtor's consulting agency. After the failure of the out-of-court settlement, the debtor can apply for the commencement of individual bankruptcy proceedings only after the consulting agency issues the official certificate of the failure of the out-of-court

settlement and other documents. After the commencement of individual bankruptcy proceedings, the court reconciliation shall be carried out first, and the examination of the debtor's bankruptcy application shall be suspended during the court reconciliation. In addition, Germany also gives the court the discretion to force the adoption of the debt repayment plan when the procedure is deadlocked due to the dissent of a few creditors, thereby improving the efficiency of the procedure. Article 151 of the "consumer debt liquidation regulations" in Taiwan stipulates: "Before applying for renewal or liquidation, the debtor who is in debt to the financial institution due to consumer credit, self-use residential loans, credit cards or cash card contracts shall submit a list of creditors, request in writing to the largest creditor's financial institution to negotiate the debt repayment plan, and indicate the intention of joint negotiation. When the debtor makes the request in the preceding paragraph, it is deemed to agree or authorize the requested financial institution to inquire its property from tax or other authorities and groups Income, business and credit status". Its purpose is to give creditors sufficient right to know information after the debtor expresses his willingness to settle, so as to enhance the power of his out-of-court settlement. When establishing the individual bankruptcy system in China, we should also pay full attention to the role of pre-procedure, so as to reduce the burden on the judiciary. In addition, the settlement agreement should also be given strong legal effect, such as the enforcement force after notarization.

b. The summary procedure is preferred. Compared with legal person bankruptcy, individual bankruptcy generally has fewer creditors and simple relationship between claims and debts, so it can be moderately simplified. In this regard, the German bankruptcy law stipulates relatively complete simplification requirements. For example, (1) there is only the review period and no reporting period; (2) Conduct a non-court hearing in writing; (3) Replace the bankruptcy administrator with the trustee of bankruptcy property supervision (the authority of the former is more limited than the latter); (4) According to the application of the trustee for the supervision of the bankruptcy property, the court may rule not to realize all or part of the debtor's property, and the debtor shall pay the same price to the creditor within the time limit. Of course, there are exceptions to the application of simplified procedures. When the amount of creditor's rights, the number of creditors, and the relationship between creditor's rights and debts in a specific individual bankruptcy case reach a certain degree of complexity, it should refer to the application of general bankruptcy procedures.

#### ***4.4. Improve the Relevant System of Individual Bankruptcy***

##### ***4.4.1. Improve China's Social Credit System***

From the perspective of the legal system, the law itself cannot determine its own destiny, and the final factor that determines the development and evolution of the law is the social environment in which it lives. [9] The continuous progress of the social credit system can promote the orderly and stable operation of China's individual bankruptcy system, and the formulation and implementation of the individual bankruptcy system can also react on the continuous development of China's social credit system. Specifically, improving the construction of China's social credit system can help the court comprehensively inquire whether the debtor has a good degree of integrity in the process of hearing specific cases. According to the trial characteristics of individual debt liquidation cases, the debtor has a good degree of integrity. The

effect of trying cases is often better. At the same time, it is particularly important to improve the social credit system in order to avoid the situation of restoring enforcement measures due to the debtor's dishonesty or other behaviors that do not cooperate with the manager in debt liquidation after the court concludes the case.

First, strengthen the national legislation on individual credit system. In 2013, in order to regulate the social credit reporting industry, protect the legitimate rights of citizens, and promote the smooth operation of the social credit reporting industry, China formulated and implemented the "Regulations on the administration of credit reporting industry", but so far, China has only rules and regulations on individual credit reporting, and there is no relevant law. Compared with the construction of credit reporting in other countries, China's credit reporting system still needs to be improved. At present, dishonesty often occurs in society. It can be seen that it is not enough to rely on the restriction of rules and regulations alone. We need to rely on the law to form external pressure and promote people to develop an honest and trustworthy social style. Secondly, establish a unified credit reporting platform for all provinces. Establish a national unified credit platform based on the joint cooperation between the government and third-party institutions, widely collect and sort out valuable credit data related to individuals, and establish credit files for every citizen. Judging from the actual situation of various departments in China, industry and commerce, taxation and other departments have successively established independent credit systems, which provides a preliminary data basis for the establishment of a unified individual credit platform in China. With the gradual promotion of big data technology in China, the collection of individual information will be more perfect and gradually involve all aspects of people's lives. The credit network query platform is also constantly improving, providing convenience for people to query information. Finally, set up social credit agencies. The improvement of the credit reporting system requires the joint efforts of the government and the whole society to build a credible and authoritative third-party credit reporting institution through the cooperation of all parties.

#### ***4.4.2. Improve the Social Security System***

The original intention of the establishment of the individual bankruptcy system is to give the bankrupt debtor a chance to make a new face and separate the bankrupt from unlimited debt through bankruptcy exemption. However, after an individual is declared bankrupt, his property rights and individual credit investigation will be affected, mainly manifested in that the bankrupt cannot freely dispose of all his property and can only use limited and fixed property within the scope of free property ruled. The reduction of individual credit will also directly affect the subsequent borrowing behavior of the bankrupt, and will also have a negative impact on the reemployment of the bankrupt. Therefore, improving the social security system to meet the basic production and living needs of the bankrupt debtor is an important premise to ensure the smooth implementation of the individual bankruptcy system. Although the debtor has the obligation to repay the debt on schedule, when facing the situation of real insolvency in practice, we should also try our best to protect the basic survival rights and interests of the debtor and ensure that it enjoys the corresponding security system, so as to reflect the humanistic care spirit of legislation. First, we should improve the social security system. After the "honest and unfortunate" debtor declares bankruptcy, the bankrupt has no practical property other than free property, so legislation should be adopted to provide basic life security for the bankrupt.

Secondly, we should establish a unified social security system. The social security system of urban and rural residents in China shows a trend of polarization. The scope of protection of urban residents is relatively perfect and the strength of protection is also strong; On the contrary, in rural areas or urban-rural areas, due to the weak economic foundation and the incomplete establishment of relevant policies, it will inevitably lead to the problem of inadequate protection for some groups. In order to truly reflect the comprehensive coverage of the security system, China should further formulate and improve the social security system. Finally, according to the actual economic development of the region, we should make comprehensive provisions on the minimum living security, and help the bankrupt debtors regain their ability to repay debts as soon as possible by encouraging employment and improving unemployment systems, so as to escort the bankrupt debtors from the legislative level.

#### ***4.4.3. Improve Individual Property Registration***

A complete individual property registration system is an important basis for realizing the good operation of the individual bankruptcy system. It can not only effectively prevent the phenomenon of individuals' malicious evasion of debts, but also help the court clarify whether the debtor has the reason for bankruptcy. It also has a clear reference in the subsequent process of defining the scope of the free property of the bankrupt debtor. Compared with the problem that individual credit is difficult to quantify in practice, the perfect individual property registration status can most accurately and quickly judge whether the debtor meets the conditions of individual bankruptcy. At the same time, a perfect individual property registration system can reduce the court's examination energy and examination time of bankruptcy applicants in specific cases, and improve judicial efficiency. According to the articles of association, the property of legal persons has strict registration procedures and financial reporting system, while individual property is often confused with family property, and there is no clear written agreement to distinguish. Therefore, in the legislative process of individual bankruptcy system, it is necessary to strictly distinguish the boundary between individual property and family common property, and divide the individual property of the debtor. Improve the individual property registration system, including improving the property registration, query system, and establishing a real-time monitoring platform for property changes. As for the change of individual property, the establishment of a national unified property registration platform is conducive to monitoring the change of individual property in real time, preventing the bankrupt debtor from paying off the debt maliciously, transferring or hiding the property in advance, and performing acts that damage the legitimate rights and interests of creditors. Facing the practical requirements of the establishment of individual property registration system, China's "Civil Procedure Law" has begun to actively explore the property declaration system, and made principled provisions on the relevant content. At present, China's registration system has become more and more mature, and the most important individual properties such as houses and vehicles have been registered for easy query, but the disadvantage is that these registration platforms are managed by different competent departments. A comprehensive and unified individual property information platform has not yet been formed, which is not conducive to China's rapid and accurate query of individual property. Therefore, it is an important direction to integrate all kinds of property information collected at present into a database and establish a nationwide online individual property registration platform to improve China's individual property registration system.

## 5. Conclusions

Personal bankruptcy legislation is like a pair of weapons, both a spear for attacking the infringer and a shield to prevent oneself from being infringed. [10] China has a long history of research and Discussion on personal bankruptcy, the continuous development of market economy, the continuous improvement of social credit system, the problem of “difficult implementation” and the arrival of the entrepreneurial era have put forward requirements for the legal system of personal bankruptcy. The relevant discussion has also changed from whether or not to when and how to establish it at the beginning. Whether it is to improve China’s bankruptcy law system or to promote the more scientific and stable development of market economy, China urgently needs to establish a personal bankruptcy legal system in line with China’s national conditions. It is hoped that China can establish a personal bankruptcy system as soon as possible and improve the personal market exit mechanism.

## Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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