

Definition of the scope of property exempted from the localized personal insolvency regime

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Abstract: With the development of commodity economy, borrowing and lending consumption is more and more common. In this consumption pattern, the debtor is very easy to fall into the vicious circle of insolvency. In the individual, the society is a great impediment to the development of exempted property is the most constructive, one of the most innovative approach to personal bankruptcy, its emergence helps the debtor to get rid of the debt dilemma, and promotes a fresh cycle of the social economy. At this point, the definition of the scope of the exempted property is crucial, and it is essentially a product of the game between creditors and debtors around their own interests. Since there are differences in defining the scope of exempted property in different countries due to the level of economic development, politics, history and other factors, it is necessary to draw on extraterritorial legislation and base on China's national conditions when constructing the system of defining the scope of exempted property in China in order to effectively safeguard the balance between the interests of the debtor and the creditors. The main purpose of the exemption system is to ensure that the debtor's basic living and production activities can be sustained. Based on this purpose, balance and flexibility fit the necessary nature of our national conditions, while at the same time safeguarding the property of the debtor's personal exclusivity, in order to respect the basic rights of the debtor as an independent individual. There are a number of possible routes for specifying the scope of exempted property. One is to adopt a single amount, directly setting a fixed amount as the standard amount of exempted property. The second is to combine the type of property with the amount, starting from the type of property and matching the corresponding amount with the characteristics of different types of property. The third is to set a special amount for specific properties, that is, for some special properties, special planning for a specific amount of range. In practical application, each country should be allowed to flexibly choose the method of determining the amount that suits the actual situation of the country based on its own national conditions, legal system and socio-economic situation and other factors.

Keywords: personal insolvency; exempt property; productive rights; right to development

I. Introduction

In the process of the prosperous development of the socialist market economy with Chinese characteristics in the new era, residents' consumption concepts have changed significantly, gradually abandoning the traditional "zero-debt" consumption concept in the past, and the phenomenon of borrowing and consumption has become increasingly common. According to the statistics of CEIBS database, the balance of RMB loans of financial institutions reached RMB 255,677,821,000,000 Yuan in 2024, compared with RMB 208,247,000,000 Yuan in 1979, the first year after the reform and opening up, representing a year-on-year growth of 122,676.24%. This shift in

consumption patterns is closely related to the rapid development of China's digital economy and the continuous deepening of financial innovation. The popularization of mobile payment and internet credit platforms has made consumer credit readily accessible, forming an economic cycle of "consumption-credit-production". However, while this model stimulates economic growth, it also amplifies individual debt risks: when debtors encounter economic cyclical fluctuations, industry structural adjustments, or personal emergencies, they are highly likely to fall into a vicious circle of being unable to repay debts. Debtors are caught in a vicious circle of insolvency once they fall into economic cyclical fluctuations, industry restructuring, or personal emergencies. From the viewpoint of Marx's theory of socialist social development, this is not only a predicament for individual life, but also has a negative impact on social relations of production and the economic order, interfering with the smooth progress of social reproduction. In essence, exemption means that the individual's human capital (expressed as future income) and his future inheritance and gifts are free from the debts he has assumed in the past. A financial fresh start can then be envisioned in other ways. It is not obvious that the bankruptcy exemption should primarily protect the individual's human capital rather than his other assets. Thus, the line between an individual's present and future assets (or between tangible or financial assets and human capital) is by no means clear.^[1] Therefore, the definition of the scope of exempt property is particularly important at this point.

Throughout the twentieth century, bankruptcy law has maintained a relatively stable line: exemptions, as defined by federal bankruptcy law, have essentially focused on freeing an individual's future income from the claims of pre-bankruptcy creditors. Bankruptcy law does not typically extend similar protections to most of an individual's other assets. However, to say that they are not protected by bankruptcy law is not to say that they are not protected at all. Historically, non-bankruptcy laws have placed certain existing property beyond the reach of creditors. Traditionally, the decision whether to exempt certain assets has been made by the states, and state decisions have been incorporated into bankruptcy law with the effect of simply nationalizing the scope of those exemptions.^[2] At present, China's economy has shifted from the stage of high-speed growth to the stage of high-quality development, and the construction of a new development pattern requires the optimization of resource allocation efficiency. In this context, the lack of personal bankruptcy system leads to the problem of "zombie debt", which not only restricts the economic vitality of debtors, but also hinders the improvement of the social credit system. According to the statistics of the Supreme People's Court, in 2023, more than 3 million cases of personal debt disputes were received by the courts nationwide, of which 27% could not be enforced due to the lack of bankruptcy protection mechanism. This indicates that the establishment of a sound personal bankruptcy system and the scientific definition of the scope of exempted property have become a real demand for maintaining the vitality of market entities and preventing systemic financial risks. However, as to how to clarify the basic principles of the scope of exempted property, the legislative approach, and to construct a reasonable category of exempted property, each state needs to make legislative decisions based on the level of economic development, politics, history and other factors in its own country; at the same time, it should actively learn from the experience of extraterritorial legislation, and take Xi Jinping's Thought on Socialism with Chinese Characteristics in the New Era as a guideline for action to provide guidance for the personal insolvency system in its own country.

II. Basic principles governing the scope of exempted property in the context of the privatization exercise

(i) Safeguarding the debtor's right to life and development

Marxist theory has a series of important discussions on personal development. As a social being, human beings have material means of subsistence as the basis of their existence. In the history of human development, according to the amount of material materials available, in the period of slave society and feudal society, people formed a relationship of dependence with slave masters, landlords and other resource possessors: gradually to the capitalist

society people have a relatively independent personal relationship, but are subject to the exploited labor relationship; in the stage of communist society, in the society as a whole is established in the state of sufficiently affluent material means of production, the person truly realize freedom and independence, and everything is aimed at the free development of the individual. History has proved that the amount of material means of subsistence available to man determines the degree of development he can achieve. As human society has developed to the present day, the right to survival and the right to development have become the primary basic human rights.^[3]This not only concerns the dignity of the debtor's existence and future development, but also protects the debtor's human resources, making it possible for creditors to have greater possibilities for future repayment while socio-economic stability is maintained.

The debtor's basic security of life consists of property ranging from food, clothing, shelter and housing to basic medical supplies, which are necessary to maintain his dignity and basic ability to live. In addition, the right to subsistence also means being able to "maintain the standard of living necessary for the health and well-being of himself and his family"^[4], i.e., in a modern civilized country, the debtor will not be insolvent resulting in his and his family's standard of living below the poverty line, which, due to the different conditions and stages of economic development of each country, can be defined by an absolute poverty line criterion based on the minimum income to meet basic survival needs, or a relative poverty line criterion based on the minimum income to meet basic survival needs. minimum income to meet basic survival needs as the basis of definition, or the relative poverty line standard, which determines the poverty line based on a certain percentage of the average social income.

To maximize the debtor's human resources, it is necessary to preserve the debtor's most essential property for productive purposes. However, in the game of debtor-creditor interests, guaranteeing the right to development does jeopardize the currently precarious interests of creditors. Therefore, the specific level of economic development of each country needs to be taken into account, but the guarantee of the right to subsistence remains a necessity.

(ii) Modest guarantees

1. Adequate level of protection

In defining the scope of exempt property, the level of protection must be proportionate. The principle of proportionality requires the exemption system to maintain a certain standard of living for a period of time after the debtor's insolvency, rather than providing a lifelong shelter for the debtor and his or her family.^[5]If the level of protection is too low, it will be difficult for the debtor to maintain a basic life and production after bankruptcy, and the debtor may fall into poverty and unemployment, which will not only jeopardize the rights and interests of the debtor, but also increase the burden on society. On the contrary, if the level of protection is too high, it will unduly jeopardize the interests of creditors, lower the rate of claim settlement, affect the credit order of the market, make creditors doubt the security of market transactions, reduce economic activities such as lending and borrowing, and impede economic development. Therefore, the level of protection should be appropriately determined on the basis of factors such as the country's level of economic development, the standard of living of the population and the credit situation in the market, so as to achieve a balance between the interests of creditors and debtors. Based on the dimension of economic development level, regional division standards can be adopted. In the relatively affluent eastern coastal areas, the proportion of the digital economy in GDP is quite high, and thus new exemption categories such as "digital assets" and "professional equipment" can be added. In the central region, where manufacturing is more developed and the population is large, with a high proportion of multi-generational households, the needs of intergenerational living rights should be taken into account. Therefore, the exemption ratio for "residential property" can be expanded, and a special quota for "manufacturing-specific equipment" can be set up. According to the "Planning Outline for the Construction of Advantageous Areas for Special Agricultural

Products" issued by the Ministry of Agriculture and Rural Affairs, the western region has distinct characteristics in agriculture and cultural tourism, and its economic level is relatively backward. Therefore, traditional production tools can be retained in the exemption list, and a protection clause for "tools for ethnic handicrafts" can be added. Based on social background and cultural level, exemptions can be made according to family structure. For multi-generational households, the exemption area can be moderately increased based on the "Standard for Per Capita Housing Area in Urban Areas". Single-parent families face more difficulties in their children's education than normal families, and thus the exemption ratio for education expenses can be increased by 30%. Exemptions can also be made based on occupational characteristics. For cultural heritage practitioners, after being recognized and publicized by the cultural and tourism department, full exemptions can be granted for tools related to intangible cultural heritage. For freelancers, "professional qualification certification fees" can be included in the exemption scope. For traditional occupations, necessary equipment can be exempted in accordance with relevant policies. For emerging occupations, exemptions can be made on a case-by-case basis. For example, for live-streaming e-commerce practitioners, "content creation equipment" can be fully exempted, while "promotion and marketing equipment" can be partially exempted.

2. Guaranteeing the right amount of time

The duration of the protection is equally critical. If the period of protection is too short, the debtor will not be able to make full use of the exempted property to realize economic regeneration, and may soon fall into debt distress again, failing to achieve the purpose of the personal insolvency system of promoting a fresh start for the debtor. If the protection time is too long, creditors will not be able to obtain full repayment for a long time, and the funds will be occupied for a long time, affecting their economic activities and capital turnover. When China builds a system for defining the scope of exempted property, it should also be based on different bankruptcy procedures and the actual situation of the debtor, and it can set a scientific and reasonable protection time according to the debtor's ability to recover income and the scale of debt.

(iii) Flexibility guarantees

Legislation also needs to be forward-looking, taking into account the possibility that new things may quickly become necessities, and therefore regulations need to be flexible. The types of exempted property and the specific amount of the criteria need to be adjusted in accordance with the state of socio-economic development.^[6] That is to say, the scope of exempted property should be able to keep pace with the dynamic development of social economy and meet the real needs. On the one hand, the State can formulate principled provisions to provide a guiding framework for localities; on the other hand, localities are allowed to make appropriate adjustments in accordance with local realities. In economically developed regions where the cost of living is high, the value standard of exempted property can be raised accordingly; in regions where cultural traditions emphasize education, more protection can be given to property related to children's education. For debtors in special professions, such as artists' creative tools and doctors' specialized books, the scope of exempted property should be flexibly determined in accordance with the characteristics of their professions, so as to meet their needs for professional development and economic regeneration.

III. Options for a legislative approach to the scope of exempted property

Looking at the relevant foreign legislation, two main legislative approaches, generalized and enumerated, are used to define the scope of exempt property.

(i) Single amount

The single-amount approach is to directly set a fixed amount as the criterion for the amount of exempt property. The United Kingdom and the former British colonial countries tend to use enumerative legislation to delineate the scope of exempt property. Under this approach, the exempted property is limited to basic necessities and tools of the trade up to the value of £250, which is a narrower scope. English insolvency law has a long history, and most of the rules continue the tradition of protecting the interests of creditors and are punitive to the debtor. Although this kind of legislation is conducive to the quick payment of creditors, it pays insufficient attention to the debtor's right to survival and development. In economically developed regions, a fixed exemption amount may not be able to satisfy the debtor's basic living and production needs; in economically underdeveloped regions, it may cause greater harm to the interests of creditors. For example, in a first-tier city and in a remote rural area, the same single amount criterion would produce very different results. A British digital economy practitioner was only allowed to keep £250 of his professional tools (servers and algorithm models) valued at over £100,000 by the court, which prevented him from rebuilding his business. This incident has also exposed the rigidity of fixed quotas when dealing with new types of property.

(ii) Combination of property type and amount

The United States is a typical example of the use of such legislation, combining types of property with amounts. In its Federal Bankruptcy Code, a wide range of categories of exempted property is planned for debtors, and at the same time, an upper limit is set for the amount of each type of property, which is adjusted every three years in accordance with the inflation index, so as to keep in line with changes in the economy. In order to prevent the law from becoming rigid, the Code also establishes "generic" exemptions, which enable debtors to use the residual residential exemption to break through the limitations on some of the property and access specific assets. This type of legislation is more focused on the protection of the debtor's rights and interests, and the debtor can retain a larger amount of property. However, as the relationship between the insolvency estate and the exempted property is inverse, the interests of creditors need to be balanced against the protection of the debtor. Starting from the type of property, the criteria for the amount are matched according to the characteristics of different types of property. For household goods, a total value is set; for consumables, the amount is determined according to reasonable usage and value over a certain period of time. This approach is more targeted and rational, and can provide a reasonable definition based on the importance and usage of different properties. However, it is relatively complicated to operate and requires detailed categorization and assessment of various types of property, which increases the difficulty of legislation and implementation, and is also prone to give rise to disputes over the reasonableness of the categorization of property and the setting of the amount. A "List of Exempted Properties" can be formulated, clearly defining the upper limit of the amount and the assessment standards for various types of properties. In a bankruptcy case of a music teacher in the United States, the court, in accordance with the "Bankruptcy Code of the United States", reserved a professional violin worth \$8,000 for him (falling under the special quota for "professional tools in cultural and artistic fields"), while also exempting three months' living expenses. This also reflects the precise protection of special occupational groups through classified limits, but it also took six months of judicial appraisal due to disputes over property classification.

(iii) Setting of specific and earmarked property levels

As represented by the insolvency laws of Germany and Japan, some countries have adopted a unique approach to defining the scope of exemptions for specific types of property. For some specific types of property, only a monetary limit is set, while other types of property discard the fixed amount and adopt flexible expressions such as "must"

and "must not be lacking". This flexible restriction gives the administrator and the judge a certain amount of room for judgment, and the court can determine the scope of exempted property at its discretion and expand it appropriately according to the actual situation, so that the law can better meet the complex and diverse realities of the needs of specific practice.^[7] For specific property to set special amount, that is, for some special nature of the property, special planning specific amount of range. For the key equipments used by the debtor for production and operation, special credit is set according to their actual value and production importance to ensure that the debtor is still capable of resuming production after bankruptcy. For property of special commemorative significance and of incalculable value, ancestral relics, etc., a special line of credit can also be set for protection. This approach can meet the special needs of special property, but requires accurate identification and assessment of the special property, otherwise it is prone to unreasonable or abusive use of the line of credit. When the heir of a century-old bakery in Germany went bankrupt, the court invoked Article 1374 of the German Civil Code to exempt the ancestral fermentation culture (which was deemed to be "necessary for cultural inheritance") in full, breaking the conventional movable property limit. This judgment balances the survival of craftsmanship and the repayment of creditor's rights, and has become a typical case of "cultural asset exemption" in Europe.

(iv) Choice of legislative approach in line with China's national conditions

China has a vast territory, with unbalanced regional economic development, large differences in the incomes and costs of living of residents in different regions, and a wide variety of debtors, including individual businessmen, owners of small and microenterprises, and wage earners, whose property status and debt situations vary. Therefore, it is difficult to fully adapt to China's national conditions by adopting a single legislative approach. The above legislative methods should be comprehensively utilized, mainly combining property types and quotas, and setting reasonable quotas for different types of property; for some special regions and special properties, such as the property of innovative enterprises in special economic zones and the property with cultural characteristics in ethnic minority regions, etc., the quotas for specific properties and special properties should be set in a way that provides special protection; at the same time, under the framework of the national unified principle, certain adjusting authority should be given to the localities in order to adapt to the national situation. At the same time, under the framework of the principle of national unity, certain local adjustment authority is given to adapt to regional differences, so as to realize the scientific, reasonable and adaptable definition of the scope of exempted property.

IV. Categories that structure the scope of our exempted property

(i) Basic livelihood security property

1. Household goods

Household goods are the basis for maintaining daily life, including furniture and home appliances. The scope and upper limit of value of household goods that can be exempted should be clearly defined, such as ordinary furniture and home appliances that are essential to daily life, such as tables, chairs, beds, refrigerators and televisions, in accordance with the average market price and a reasonable quantity. High-grade and luxury household items should not be included in the scope of exemption to protect the interests of creditors. At the same time, the number of family members and actual needs should be taken into account, and the number and value of exempted household items may be appropriately increased for larger families.

2. Consumables and costs

Living consumables such as food, clothing, utilities, etc., as well as necessary living expenses such as rent and property fees, etc., are essential expenditures for survival. The value of consumables and the amount of living

expenses that can be exempted for a certain period of time (e.g., monthly or annually) should be determined in accordance with the average standard of living of local residents and the price index. In developed countries, the minimum living standard often reaches or even exceeds 50% of the average living standard of the residents. On the contrary, in China, the current per capita consumption expenditure is generally several times higher than the minimum living standard, reflecting the difference in the level of protection. According to the statistics of China's economic network database, in December 2020, the minimum living standard for urban residents was 798.1 yuan, while the annual per capita consumption expenditure of urban residents was 34,557 yuan, an average of 2,881.42 yuan per month, and the average standard of living of the residents was 3.6 times that of the minimum living standard. For such a situation, our country can appropriately raise the exemption amount for groups in difficulty, such as low-income families and families of persons with disabilities, so as to ensure that their basic lives are not affected. At the same time, a dynamic adjustment mechanism should be established to adjust the exemption amount in due course in accordance with price fluctuations and economic development.

(ii) Property necessary for development

1. Career tools

Exemptions should be granted for tools that are necessary for the debtor to carry out his or her occupation, such as the agricultural tools of farmers, the professional tools of workers, and the production tools of craftsmen. These tools are the key to the debtor's re-employment and economic regeneration and are directly related to the debtor's right to development. Exempted tools of occupation should be determined in accordance with the type of occupation and the actual work requirements of the debtor to ensure that they can meet basic work needs. Many countries would set a ceiling on the value of occupational tools, but there were limitations to that approach. When the tools used by the debtor are expensive due to the special occupation and the debtor lacks the skills to earn income from other occupations, unlike some high-grade household goods that can be replaced, it is not reasonable to set a rigid cap on the value. This will not only result in unfair differential treatment for special professions but also run counter to the original intent of the "fresh start policy" actively advocated by the personal bankruptcy system.

^[8]Therefore, for professional equipment of higher value, a certain value ceiling can be set or partial exemption can be granted after valuation so as to balance the interests of creditors and debtors.

2. Auxiliary tools

Auxiliary tools include learning materials, training equipment, etc., needed to improve the debtor's vocational skills and competitiveness in employment, as well as assistive devices needed by persons with disabilities to perform their work. These tools play an important role in the debtor's vocational development and integration into society. Learning materials such as computers and books for debtors participating in vocational training, and assistive devices such as wheelchairs and prosthetic limbs for debtors with disabilities, should be included in the scope of the exempted property to help debtors enhance their abilities and realize redevelopment.

3. Children's educational level and family development as a consideration

Children's education is an important aspect of family development and is related to the growth and future of the next generation. The right of the debtor's children to receive compulsory education and basic higher education should be guaranteed, and property and expenses related to the children's education may be exempted to a certain extent. Exemptions should also be considered within a reasonable range for property necessary for family development, i.e., property used to improve the living environment in order to enhance the quality of life and promote the physical and mental health of family members, in order to promote the stability and development of the family, and thus provide a good family environment for the debtor's economic regeneration.

(iii) Debtor's exclusive interest

The debtor's exclusive interests include the debtor's intellectual property rights and personal rights. Intellectual property rights, such as patents and copyrights, are the fruits of the debtor's intellectual labor, have potential economic value, and are closely related to the debtor's personal ability and creativity and should be protected. In bankruptcy proceedings, the proceeds of intellectual property rights may be reasonably distributed, while the debtor's right to continue to use and develop the intellectual property rights is safeguarded in order to promote innovation and economic development. Personal rights, such as the right to reputation and the right to honor, are the basic rights of the debtor as an independent individual and may not be infringed upon as a result of insolvency, and the protection of rights and interests relating to personal rights should be clearly defined in the definition of the scope of exempted property to ensure that the debtor's human dignity and social status are not unduly affected.

V. Conclusion

The purpose of this paper is to explore the definition of the scope of exempted property in the personal bankruptcy system. The study of the scope of exempted property in China needs to be based on the principles of safeguarding the debtor's right to survival and development, moderate protection, and flexibility. By comparing the single amount, the property type, and the amount of the combination of legislative methods, and then proposing to choose according to national conditions. At the same time, it constructed a category of exempted property that included basic livelihood protection, development necessity, and the exclusive rights and interests of the debtor. Future research can combine economic and social development, focus on the definition of emerging property types such as digital assets, study the impact of regional economic differences on the scope of exemptions, and strengthen empirical research. When formulating policies, the relevant departments need to balance the interests of creditors and debtors, focus on the feasibility and operability of the system, and strengthen the construction of the personal credit system and other supporting systems so as to prevent debtors from maliciously evading their debts and to ensure that the personal bankruptcy system can be effectively implemented.

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