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Bankruptcy Penalty Provisions: Alleviating Risk or Harming Debtors?

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Abstract:

A fundamental objective of bankruptcy is to provide the “honest but unfortunate” debtor with a fresh start. However, national policies vary substantially with some countries utilizing bankruptcy protection to encourage economic risk taking and others embracing bankruptcy as a personal failure and source of shame. In the latter, many jurisdictions attach penalties to the bankrupt, including the inability to serve as a company director, to practice law or engage in certain other professions. While these penalties serve legitimate policy objectives in jurisdictions seeking to limit bankruptcies, they not only limit the fresh start of debtors in their own jurisdiction but also of debtors from risk encouraging countries that engage in transnational business or seek to relocate to a jurisdiction with penalty provisions.

This article looks at the personal bankruptcy systems in Hong Kong, Singapore and the United States to compare the approaches and assess whether utilizing penalty provisions limits risk taking. It then addresses how, as labour becomes increasingly mobile, countries can utilize domestic laws to protect their debtors by ensuring the fresh start continues to apply outside their jurisdictions.

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