

Bond University
Research Repository



Bankruptcy Penalty Provisions: Alleviating Risk or Harming Debtors?

Watters, Casey G.

Licence:
CC BY-NC-ND

[Link to output in Bond University research repository.](#)

Recommended citation(APA):
Watters, C. G. (2016). *Bankruptcy Penalty Provisions: Alleviating Risk or Harming Debtors?*. Abstract from Personal Insolvency Conference 2016, Brisbane, Queensland, Australia.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

For more information, or if you believe that this document breaches copyright, please contact the Bond University research repository coordinator.

PERSONAL INSOLVENCY CONFERENCE 2016

Bankruptcy Penalty Provisions: Alleviating Risk or Harming Debtors?

Casey G Watters¹

¹ Singapore Management University School of Law's Centre for Cross-Border Commercial Law in Asia, Singapore, cgwatters@smu.edu.sg.

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.

Conference Subtheme: (please bold your choice)

Pick the most appropriate theme your abstract relates to

- **Fresh start: rhetoric or reality?** (or comparative approaches)
- Policy tensions: fresh start v commercial certainty
- Personal insolvency law reform
- Alternatives to bankruptcy
- Multi-disciplinary insights
- Comparative approaches
- Lenders' perspectives
- Human rights
- The health effects of over-indebtedness