

## ADVISORY GROUP MEETING PAPER 4-C

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### Encouraging MSMEs to start up again for failed entrepreneurs discharging former debt liabilities and others measures to give them second chance

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- 1 In most Asian and Latin American economies, there are huge conglomerates which may impact national economies. To develop regional economy, it is crucial to mitigate gaps between poor and rich. For this purpose, governments in the region should encourage starting new businesses up by many motivated persons. Increasing the number of micro, small and medium enterprises (MSME) may contribute to the prosperities of regional economies.
- 2 Finance to entrepreneurs is the most important matter to help starting new businesses up. However, about 50% of entrepreneurs may fail within five years after starting their businesses with huge amounts of debt. Most entrepreneurs borrow money from financial institutions or other loan providers by guaranteeing the loans by themselves personally.
- 3 Failed entrepreneurs are able to file enterprise and or personal bankruptcy proceedings for orderly liquidation in many economies, but in some economies there is no personal bankruptcy system. Every economy should have both enterprise and personal bankruptcy proceedings for orderly liquidation of both -failed businesses and its owner-managers.
- 4 Only orderly liquidation is not enough to encourage starting up new businesses. Giving a second chance is indispensable to encourage entrepreneurship. Honest personal bankrupts should be discharged from old debts after the conclusion of the speedy bankruptcy proceedings. Business and personal bankruptcy proceedings should be dealt with speedily and efficiently in every jurisdiction. And personal bankruptcy laws of every economy should provide for a discharge system for honest debtors.
- 5 In most jurisdictions, bankrupt debtors are disqualified to engage some particular businesses, for example law businesses, accounting businesses and so forth. And in some jurisdictions, bankrupt debtors are prohibited from engaging or starting new businesses generally for certain years. Disqualification to do business should not be too broad and disqualification period should not be too long. Re-qualification should be given as early as possible.

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- 6 To make it possible to maintain day-to-day living of bankrupt debtors and their families, some reasonable amount of money, business tools and modest homestead should be kept by them. For this purpose, the scope of exempted property from a bankruptcy estate should be broad and generous, but not luxurious.
- 7 Speedy bankruptcy administration is the key for early discharge and re-qualification, which are necessary to re-start a new business for failed bankrupt debtors. Discharge must be given within three years at the longest after the opening of bankruptcy proceedings.
- 8 A personal rehabilitation plan proceeding, which is a natural person's version of corporate reorganization procedure, may be useful to avoid moral hazard criticism. The personal rehabilitation plan may provide for deferred installment payments and/or partial payments as well as debt forgiveness after the deferred and partial payment. But straight bankruptcy is recommended for early start-up of a new business.
- 9 Most common law countries may have personal or natural persons' bankruptcy related laws. Provisions regarding personal bankruptcy may be included in the entire bankruptcy laws in some countries. However, many of them may be old fashioned and outdated. The main target of the existing personal bankruptcy laws may be over-indebted consumers. Existing personal bankruptcy laws should be reformed to encourage a fresh start for failed entrepreneurs. Besides, some countries do not have personal bankruptcy laws. For example, Chinese Bankruptcy Law is Enterprise Bankruptcy Law.
- 10 To encourage entrepreneurship, the aforementioned bankruptcy law reforms are necessary in the APEC region. The Proposed Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU released by the European Commission on November 22, 2016 is a good example of this type of reform. [http://ec.europa.eu/information\\_society/newsroom/image/document/2016-48/proposal\\_40046.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf)
- 11 Per to my recommendation, the Symposium was held as written below.  
“International Symposium on Personal Insolvency Legislation and Business Environment”, on June 15, 2018 at Beijing Friendship Hotel, in China co-organized by China Banking Law Society, International Financial Corporation (IFC, World Bank Group), China Council for Promotion of International Trade (CCPIT), ABAC and Tiantong & Partners.

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- 12 In addition to the Chinese Justices and Judges from Peoples' Supreme Court, other high and district courts from all of China, Chinese Government Officials who are in charge of law legislation, professors and practicing lawyers were attended from all across China. Professors and practitioners from foreign countries, including Australia, the United Kingdom, the United States of America and Japan attended and spoke at the Symposium. Total number of attendees were more than one hundred. Heated discussions were made by the participants. I hope China may enact their personal bankruptcy law including a proper discharge system in very near future. Prospected new personal bankruptcy law including discharge, exemption and others may be indispensable within China for its developing economy.
- 13 In Asian region, Japan, Korea, Singapore, Hong Kong and Malaysia may have good personal bankruptcy laws with a discharge system. In Thailand, Indonesia, Philippines and India, there may be bankruptcy laws including personal bankruptcy, but I am not sure whether their practices are well developed or not. In Mongolia, Vietnam, Cambodia and Laos, there are bankruptcy laws but the number of actual cases may be few. There are no bankruptcy law in Myanmar.
- 14 I would propose to all APEC economies to enact proper personal bankruptcy laws including discharge systems which encourage honest but failed entrepreneurs, give them a second chance to restart up new businesses as soon as possible to have more prosperous MSMEs in the APEC region.