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“Moral Conviction” plus “Joint Sanctions”: The Judgment-defaulter Blacklist System in China

Ding Chunyan

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“MORAL CONVICTION” PLUS “JOINT SANCTIONS”: THE JUDGMENT-DEFAULTER BLACKLIST SYSTEM IN CHINA

*Ding Chunyan**

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INTRODUCTION

The practice of blacklisting judgment defaulters is unique to China. When a judgment debtor fails to satisfy an effective judgment or ruling of a court, that party will first be prohibited by the court from having high or non-necessary consumptions.¹ If the court finds that the judgment debtor refuses to pay the judgment debt or perform the obligations determined in the judgment despite having the performance capability, that party will then be blacklisted as a “discredited judgment defaulter”

1. See Provisions on Restricting High Consumption of Judgment Debtors (关于限制被执行人高消费的若干规定) (promulgated by the Supreme People's Court, Jul. 1, 2010, effective Oct. 1, 2010, amended on Jul. 20, 2015), art. 3 (China). The amended judicial interpretation was renamed as Provisions on Restricting High Consumption and Relevant Consumption of Judgment Debtors (关于限制被执行人高消费及有关消费的若干规定). Judgment defaulters are deprived of access to high or non-necessary consumption. Specifically, they cannot (1) take a flight, take a soft-berth train, take the second class berth or above of a steamship, take any seat in a G-category high-speed train, or take a seat on the business class or a higher class in any other high-speed train; (2) have high consumption activities at star hotels, night clubs, golf courses, or other places; (3) purchase real estate, or build, expand, or luxuriously furnish houses; (4) rent high-end office buildings, hotels, apartments, or other places for conducting businesses; (5) purchase vehicles not necessary for business operations; (6) travel or take a vacation; (7) send their children to high-cost private schools; (8) purchase insurance and financial products by paying a high premium; and (9) have any other consumption not necessary for life or work.

(失信被执行人)² and be subject to a range of restrictions and sanctions as a consequence. The nationwide judgment-defaulter blacklist system not only represents a Chinese-characteristic solution to improving judgment enforcement but also serves as a window to China's "social credit system" (社会信用制度),³ which consists of three core parts: (1) a "financial creditworthiness" (征信) system; (2) a data-driven social credit scoring system primarily applied to private parties to determine different treatments in terms of access to public services and public resources according to the parties' social credit score (that is, ratings & differentiations); and (3) a general system of blacklisting "discredited parties" (失信主体) followed by a range of liabilities (which is modeled on the judgment-defaulter blacklist system).⁴

Despite the practical importance of the judgment-defaulter blacklist system in China, there has been little English literature examining its nature and logic as well as its implications for the broader blacklist system under the social credit system.⁵

2. The Chinese term "失信" has two meanings: one is breaking a promise; the other is loss of credibility or discredit. Because the term is used in the context of the blacklist system by referring to the second meaning, I translate the Chinese term into the English word "discredit" as a noun, and "discredited" as adjective.

3. China's social credit system primarily aims to rate individuals and organizations by generating a social credit score based on the collected information about their performance of contracts, compliance with laws, and discharging social or moral obligations. The generated social credit scores are then used as a basis for rewards and punishments of private parties for providing financial creditworthiness ratings, enhancing state governance and legal compliance, and promoting state-endorsed values. It creates a data-driven quantitative approach to state and social governance through behavior steering. See Outline of the Plan of Developing the Social Credit System (2014-2020) (社会信用体系建设规划纲要) (promulgated by the State Council, June 14, 2014) (China) http://www.gov.cn/zhengce/content/2014-06/27/content_8913.html.

4. Dai Xin, *Toward a Reputation State: The Social Credit System Project of China*, PEKING UNIV. L. SCH., June 10, 2018, at 26. Moreover, the Chinese government published for public consultation the draft of the *Law on the Construction of the Social Credit System* (社会信用体系建设法) on Nov. 14, 2022. The draft incorporates in particular Chapter 8, a general blacking system against discredited parties, including sanctions to be imposed in accordance with laws. See *Law of the PRC on the Establishment of the Social Credit System (Draft Released for Solicitation of Public Comments)*, CHINA LAW TRANSLATE (Nov. 14, 2022), <https://www.chinalawtranslate.com/en/social-credit-law/>.

5. The existing English literature has much discussion on the social credit scoring system because it gives rise to the concern that the Chinese government is tightening data control and surveillance over private parties by taking

It is worth noting that the Standing Committee of the National People's Congress had the first reading of the bill titled the *Civil Compulsory Enforcement Law* (民事强制执行法) on June 21, 2022.⁶ Once the bill goes through three readings and becomes a new law made by the national legislature, it will establish a new legal framework of compulsory enforcement of civil judgments and rulings in the country. Section Five (titled "Sanction Measures") of Chapter Five (titled "Enforcement Procedure") of the bill provides a set of provisions on the judgment-defaulter blacklist system, which are largely similar, but not identical, to the current rules set out in the relevant judicial interpretations of the Supreme People's Court (the SPC).⁷ Moreover, how the prospective *Civil Compulsory Enforcement Law* designs the judgment-defaulter blacklist system will influence the operation of the broader blacklist system against discredited parties under China's social credit system. Therefore, it is a good time to

advantage of big data technologies as well as there is a high risk of privacy violation, behavior steering, and cybernetic governance by the state. See generally Larry Cata Backer, *Next Generation Law: Data-Driven Governance and Accountability-Based Regulatory Systems in the West, and Social Credit Regimes in China*, 28(1) S. CAL. INTERDISC. L.J. 123 (2018); Daithí Mac Síthigh and Mathias Siems, *The Chinese Social Credit System: A Model for Other Countries?*, 82(6) MOD. L. REV. 1034 (2019); Liav Orgad & Wessel Reijers, *How to Make the Perfect Citizen? Lessons from China's Social Credit System*, 54 VAND. J. TRANSNAT'L L. 1087 (2021); Bi Honghai, *Old Regulatory Wine in a New Bottle of Technology - A Critical Analysis of China's Social Credit System*, 16 U. PA. ASIAN L. REV. 282 (2021); Anne Cheung & Yongxi Chen, *From Datafication to Data State: Making Sense of China's Social Credit System and Its Implications*, 47 L. & SOC. INQUIRY 1137 (2022). Given the different nature of and concerns arising from different parts of China's social credit system, it is better to examine the details of each part to have an accurate understanding and fair evaluation of the social credit system operating in China. This article focuses on the nature and logic of the judgment-defaulter blacklist system, which is closely related to the third part of the social credit system and has not yet been studied thoroughly.

6. Zhou Qiang, *Explanations on the Draft of Civil Compulsory Enforcement Law* (关于《中华人民共和国民事诉讼法(草案)》的说明), COURT.GOV. (Jun. 21, 2022), <https://www.court.gov.cn/zixun-xiangqing-363381.html>.

7. Under the Chinese legal system, the SPC has the law making power to promulgate judicial interpretations concerning the application of the law in their trial work in accordance with the original meaning, objectives, and principles of the law. See Chunyan Ding, *Judicial Activism of Provincial Courts in China: Medical Negligence Law as a Case Study*, 7(3) THE CHINESE J. OF COMPAR. L., 505, 509 (2019).

examine and analyze China's judgment-defaulter blacklist system comprehensively and critically.

This article makes three major arguments. First, the nature and logic of the current judgment-defaulter blacklist system feature a strategic combination of "moral conviction" and "joint sanctions" (联合惩戒).⁸ This system runs parallel to the legal system that has provided administrative and criminal liabilities for refusing to satisfy an effective judgment. The legal system has unfortunately failed to reinforce court judgments and enhance judicial authority and credibility. Hence, the judgment-defaulter blacklist system is intended to pragmatically remedy the failure of the judiciary to perform its duty of judgment enforcement and the ineffectiveness of the existing legal approaches to enhancing judgment enforcement. Inevitably concerns have arisen about "double punishment" and the diluted role of the legal system because of the judgment-defaulter blacklist system based on moral judgment by the state.

Second, although the joint sanction mechanism has played a role in increasing judgment enforcement in terms of case numbers and amount of judgment debts, it has violated a number of fundamental legal principles, thus casting doubt on the legality, reasonableness, and due process of the joint sanctions imposed on discredited judgment defaulters. The underlying rationale for joint sanctions derives from ancient China's Legalism (法家) theory of "A chaotic society calls for heavy penalties" (治乱世用重典)⁹ in the name of promoting moral virtue in individuals and organizations for the pragmatic purpose of improving law enforcement and governance. Nevertheless, this article suggests that the joint sanction mechanism against discredited judgment defaulters should be abolished as it contradicts the rule of law¹⁰

8. Joint sanctions refer to a wide range of joint restrictions and punishments imposed by the government on targeted discredited parties. See Yu-Jie Chen, Ching-Fu Lin & Han-Wei Liu, *Rule of Trust: The Power and Perils of China's Social Credit Megaproject*, 32 COLUM. J. ASIAN L. 1, 17 (2018). A detailed discussion on joint sanctions is found in Part II of this article. See *infra* Part II.

9. Peng Xinwu, *Spirit of Legalism: Values and Defects* (法家精神：价值与缺失), 2 J. OF RENMIN UNIV. OF CHINA (中国人民大学学报), 46, 50 (2014); see also Lin Junyue, *Investigating the Nature of the Social Credit System and Its Practical Significance* (辨识社会信用体系的性质及其现实意义), 260 CREDITWORTHINESS (征信) 1, 6 (2020).

10. The concept "rule of law" used here refers to the "thin" type of rule of law, which "stresses the formal or instrumental aspects of rule of law—those

China has been devoted to establishing for more than four decades.

Third, in enthusiastically implementing the social credit system, Chinese local governments have borrowed the same strategy of combining “moral conviction” and “joint liabilities” to blacklist private parties who have violated a law or breached a contract. The legality of such moral judgments combined with joint liabilities, however, is highly questionable. The findings of this article help to better understand the nature, logic, and approaches of China’s judgment-defaulter blacklist system and the broader blacklist system as one core part of the social credit system. Moreover, through discovering their disturbing implications for the Chinese legal system, they shed light on how to design the judgment-defaulter blacklist system through the prospective *Civil Compulsory Enforcement Law*.

This article is made up of five parts. Part I examines the detailed rules on blacklisting judgment defaulters established by the SPC and their differences with the relevant provisions in the *Civil Compulsory Enforcement Law (draft)*. Part II reviews the details and categories of the joint sanctions imposed on discredited judgment defaulters. Part III analyzes the nature and logic of the judgment-defaulter blacklist system from a socio-legal perspective by probing into the fundamental reasons for its rise as well as its implications for the wider practice of blacklisting discredited parties under the social credit system. Part IV discusses how the joint sanction mechanism against discredited judgment defaulters violates the fundamental legal principles recognized by the Chinese legal system although it has some effect on improving judgment enforcement. Part V concludes the article.

I. RULES ON BLACKLISTING JUDGMENT DEFAULTERS

The idea of blacklisting judgment defaulters has existed since the 2007 Amendments to the *Civil Procedure Law* (民事诉讼法).¹¹ The law provides in the then Article 231 that

features that any legal system allegedly must possess to function effectively as a system of laws, regardless of whether the legal system is part of a democratic or nondemocratic society, capitalist or socialist, liberal or theocratic.” See RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 3 (2002).

11. Civil Procedure Law (民事诉讼法) (promulgated by the National People’s Congress, Apr. 9, 1991, effective Apr. 9, 1991, and amended in 2007, 2012, 2017, and 2021), (China).

where a judgment debtor fails to perform obligations determined in a judgment or ruling, the court may take or notify a relevant entity to assist in taking the measure of restricting exit from China, recording the failure in the financial creditworthiness system, publishing the information on the failure in the media, or other measures prescribed by law. In 2011, the SPC issued the *Several Opinions on Punishing Evasion of Judgment Enforcement according to the Law* (关于依法制裁规避执行行为的若干意见),¹² specifying a set of measures to effectively enforce judgments, moving closer to the implementation of blacklisting judgment defaulters.¹³

The SPC formally established the judgment-defaulters blacklist system by releasing the *Several Provisions on Issuing the Information on the List of Discredited Judgment Defaulters* (关于公布失信被执行人名单信息的若干规定)¹⁴ (the Provisions on Discredited Judgment Defaulters) in July 2013. This part of the article examines the rules of the judgment-defaulters blacklist system set out in the Provisions on Discredited Judgment Defaulters as amended in January 2017. If applicable, the relevant provisions in the *Civil Compulsory Enforcement Law (draft)* (the Draft)¹⁵ will also be compared and analyzed.

A. Who Are Discredited Judgment Defaulters?

According to Article 1 of the Provisions on Discredited Judgment Defaulters, judgment defaulters will be blacklisted and labeled as “discredited judgment defaulters” in either of the following circumstances: (1) if they have the performance

12. *Several Opinions on Punishing Evasion of Judgment Enforcement according to the Law* (关于依法制裁规避执行行为的若干意见) (promulgated by the Supreme People’s Court, May 27, 2011, effective May 27, 2011), (China).

13. For example, Articles 21 and 22 of the *Several Opinions on Punishing Evasion of Judgment Enforcement according to the Law* are about establishing the financial creditworthiness systems that collect the information of judgment defaulters and the wide publicity of judgment defaulters through various news media. *See id.* at arts. 21–22.

14. *Several Provisions on Issuing the Information on the List of Discredited Judgment Defaulters* (关于公布失信被执行人名单信息的若干规定) (promulgated by the Supreme People’s Court, Jul. 16, 2013, effective Oct. 1, 2013, amended on Feb. 28, 2017), (China).

15. *See Civil Compulsory Enforcement Law (Draft)* (promulgated by the Standing Committee of the National People’s Congress, June 24, 2022), (China), <https://npcobserver.com/wp-content/uploads/2022/06/Civil-Compulsory-Enforcement-Law-Draft.pdf>.

capability but refuse to perform the obligations determined in an effective judgment; (2) if they obstruct or resist judgment enforcement by forging evidence, by committing violence, issuing threats or any other means; (3) if they evade judgment enforcement through false litigation or false arbitration, concealment or transfer of property or any other method; (4) if they violate the property reporting system; (5) if they violate the order on the restriction of consumption;¹⁶ or (6) if they refuse to perform the enforcement reconciliation agreement without good reason.¹⁷

The following scenarios, however, are excluded from the circumstance of "having the performance capability but refusing to perform the obligations determined in an effective judgment." They include (1) where a sufficient and effective guarantee has been provided; (2) where the property against which seizure, impoundment, freeze, or any other measure has been taken is sufficient to repay the debts determined in an effective judgment; (3) where the judgment debtor is not subject to compulsory enforcement according to the law because it is arranged later in sequence to perform the obligations; and (4) any other circumstance under which the judgment debtor does not fall within the scope of "having the performance capability but refusing to perform the obligations determined in an effective judgment."¹⁸ In effect, the above situations are examples of cases where a judgment debtor is not yet a judgment defaulter.

Regarding the first circumstance set out in Article 1 of the Provisions on Discredited Judgment Defaulters, a judgment defaulter is labeled "dishonest" because the party has refused to perform the obligations determined in the judgment despite the performance capability, that is, refusing to satisfy a judgment "by intention." In this circumstance, before blacklisting a judgment defaulter, the court must determine whether the judgment debtor has performance capacity and whether the debtor has deliberately refused to perform the obligations concerned. The obligations determined in an effective judgment may involve pecuniary payment and/or a non-pecuniary obligation (such as vacating premises, apology, visitation of a child, eliminating or

16. The order on restriction of consumption can be imposed on all judgment defaulters by the court. *See* Provisions on Restricting High Consumption and Relevant Consumption of Judgment Debtors, *supra* note 1, at art. 1.

17. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 1.

18. *Id.* at art. 3.

abating nuisance).¹⁹ In the case of the obligation of pecuniary payment, a judgment defaulter will be seen as discredited after the court ascertains that the party has the financial capacity to perform it. In the case of non-pecuniary obligation, the finding of a failure of performance *per se* is sufficient to establish the judgment debtor's refusal to perform it. Both the applicant for judgment enforcement (i.e., "the enforcement applicant") and the court may seek evidence to prove the judgment defaulter's performance capacity.²⁰ It is, however, the courts that take a critical responsibility to locate the judgment defaulter and investigate and trace the defaulter's properties and assets through the judicial informatization system.²¹ In doing so, the court often collaborates with other public agencies (e.g., the bureaus of public security, housing and urban-rural development, telecommunication, and transportation, etc.), which share with the judiciary the relevant information about the judgment defaulter.²²

Regarding circumstances (2) to (6) under Article 1 of the Provisions on Discredited Judgment Defaulters, the judgment defaulter falling within these circumstances is deemed to have refused to perform the obligations despite the performance capability, that is, refused to satisfy a judgment by "constructive

19. They are forms of civil liabilities other than compensation for damages. See Civil Code (民法典) (promulgated by the National People's Congress, May 28, 2020, effective Jan. 1, 2021), art. 179 (China).

20. See Provisions of the SPC on Issues concerning the People's Court's Work of Judgment and Ruling Enforcement (for Trial Implementation) (最高人民法院关于人民法院执行工作若干问题的规定(试行)) (promulgated by the Supreme People's Court, Jul. 8, 1998, effective Jul. 8, 1998, amended on Dec. 16, 2008 and Dec. 29, 2020), art. 18 (China); see also Provisions of the SPC on Issues concerning Property Investigation in Civil Enforcement Procedure (最高人民法院关于民事执行中财产调查若干问题的规定) (promulgated by the Supreme People's Court, Feb. 28, 2017, effective May 1, 2017, amended on Dec. 29, 2020), arts. 1, 2(5) (China); Notice of the SPC on Further Regulating Issues concerning the Recent Enforcement Work (最高人民法院关于进一步规范近期执行工作相关问题的通知) (promulgated by the Supreme People's Court, May 28, 2018, effective May 28, 2018), art. 2(5) (China).

21. *Id.*

22. This is often called "Joint actions" (联动) of the judiciary and other authorities or agents. See Zhang Jing, *Joint Actions of the Court and the Public Security Office Made the Disappearing Judgment Debtors Have No Place to Hide* (法院与公安执行联动 让失踪被执行人无处无藏), CHINACOURT.ORG (Aug. 15, 2018), <https://www.chinacourt.org/article/detail/2018/08/id/3455875.shtml>.

intention.”²³ For example, if a judgment debtor fails to perform the obligation determined in an effective judgment within the specified period of time after receiving the court’s notice of enforcement, that party may be subject to an order of restriction of consumption.²⁴ When the party violates such an order, the court will deem it as refusing to perform the obligations and then may blacklist it as a discredited judgment defaulter.²⁵

Article 66(1) of the Draft provides that a judgment defaulter may be blacklisted as a discredited judgment defaulter by the court in either of the circumstances specified in Article 62(1) of the Draft.²⁶ These circumstances include all circumstances provided by the Provisions on Discredited Judgment Defaulters except two: one is violating the property reporting system; and the other is refusing to perform the enforcement reconciliation agreement without good reason.²⁷ Nevertheless, because Article 62(1) of the Draft includes a catch-all subsection—“other conducts that obstruct or resist judgment enforcement”—it is likely that the court will hold that the catch-all subsection covers the above two unlisted circumstances. Hence, the Draft is not different from the Provisions on Discredited Judgment Defaulters in terms of the circumstances where a judgment defaulter may be blacklisted.

Moreover, the Draft adds three new rules regarding the scope of discredited judgment defaulters. The first is Article 66(2) of the Draft, which provides that the court should determine an appropriate term or level of blacklist based on the degree of severity of the discredited behavior concerned and, moreover, may give a one-to-three-month grace period before publishing the information on the discredited judgment defaulter according to the

23. The term “constructive intention/intent” often refers to “actual intent [that] will be presumed when an act leading to the result could have been reasonably expected to cause that result.” See *Constructive Intent*, Black’s Law Dictionary (11th ed. 2019). Under Chinese law, the court may establish a “deemed or presumed intention” of a party based on the occurrence of a specific circumstance stipulated by written law, despite a lack of evidence concerning actual intent. See, e.g., Civil Code, *supra* note 19, at art. 1222.

24. See Provisions on Restricting High Consumption and Relevant Consumption of Judgment Debtors, *supra* note 1, at art. 1.

25. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 1(5).

26. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

27. *Id.* at art. 62(1).

specific circumstances of the case.²⁸ The second new rule is Article 67(2) of the Draft, which explicitly states that when incorporated or unincorporated associations are blacklisted, the court cannot label as “discredited judgment defaulter” their legal representative, main responsible persons, directly responsible persons affecting the repayment of debts, and actual controllers who are not judgment debtors.²⁹ Article 67(3) of the Draft provides the third new rule: that a judgment defaulter should not be blacklisted as a discredited judgment defaulter if it engaged in special and emergent social security functions during a special time, such as in rescuing in a disaster or danger, or preventing or controlling an epidemic.³⁰ These three new rules introduced by the Draft, to some extent, mitigate the rigorousness of the existing rule concerning the scope of discredited judgment defaulters. The first new rule (i.e., Article 66(2) of the Draft) intends to treat the judgment defaulters in different circumstances in a different way concerning the term or level of blacklisting, although it remains unclear how the court will differentiate between discredited judgment defaulters in reality.

In terms of the length of the blacklist term, according to Article 2 of the Provisions on Discredited Judgment Defaulters, the blacklist term for circumstances (2) to (6) (i.e., refusing to satisfy a judgment by constructive intent) lasts two years; however, when a judgment debtor obstructs or resists judgment enforcement by committing violence, issuing threats or through any other means, or has more than one discredited behavior, the blacklist term may be extended by one to three years. In other words, the first circumstance (i.e., refusing to satisfy a judgment by intention) is not subject to a time limit on the blacklist term. By contrast, Article 68 of the Draft generally sets a maximal time limit on the blacklist term for all circumstances—no more than two years—although it allows the term to be extended by one to three years in a serious circumstance or a circumstance involving several discredited behaviors.³¹ Besides, the rule that a judgment debtor under eighteen years old should not be

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

blacklisted as a discredited judgment defaulter³² is reiterated in Article 67(1) of the Draft.³³

B. How to Blacklist Judgment Defaulters?

The enforcement applicant may file a request with the court for blacklisting a judgment defaulter in accordance with Article 1 of the Provisions on Discredited Judgment Defaulters.³⁴ The court should review and decide within fifteen days of the receipt of the request.³⁵ Alternatively, the court can take the initiative to blacklist a judgment defaulter based on its own power.³⁶ When the court decides to blacklist a judgment defaulter, it should issue a written decision stating the reasons and the period, if any.³⁷ The decision should be issued by the President of the court and come into force on the date the decision was made.³⁸ It should be served on the party according to the modes of service of process stipulated by the *Civil Procedure Law*.³⁹

The Draft has not provided detailed rules on how to blacklist judgment defaulters, except that Article 66(3) of the Draft requires that the court should issue a written decision to do so.⁴⁰ It is likely that the relevant rules provided by the Provisions on Discredited Judgment Defaulters will still guide the judicial practice of blacklisting judgment defaulters despite the silence of the Draft in this regard.

C. Publication and Circulation of the Information on Discredited Judgment Defaulters

The recorded and published information about discredited judgment defaulters should include the following: (1) the names and unified social credit codes (or organization codes) of legal persons or other organizations as judgment debtors, and the names of legal representatives or persons-in-charge thereof; (2) the names, genders, ages and identity card numbers of natural

32. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 4.

33. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

34. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 5(2).

35. *Id.*

36. *Id.*

37. *Id.* at art. 5(3).

38. *Id.*

39. *Id.*

40. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

persons as judgment debtors; (3) the obligations determined in the effective judgments and the information on the performance of such obligations by judgment debtors; (4) the specific circumstances of discredited behaviors of the judgment debtors; (5) the agencies making the basis of enforcement and the document numbers, enforcement case numbers, the time for placing cases on file and enforcement courts; and (6) other matters not involving state secrets, commercial secrets or personal privacy that the court considers shall be recorded and announced.⁴¹

The information should be recorded in the database of the SPC's lists of discredited judgment defaulters, and the list should be released to the public in a unified manner.⁴² The courts may, according to the actual circumstances of localities, issue lists of discredited judgment defaulters through "newspapers, radio, television, Internet, bulletin boards of courts, and other means."⁴³ The courts may publicize on a regular basis to the public the information on the implementation of the system of blacklisting discredited judgment defaulters by the courts and other courts within their respective jurisdictions by press conference or any other means.⁴⁴

Moreover, the courts should circulate the information to the relevant government departments, financial regulatory authorities, financial institutions, public institutions, and industry associations undertaking administrative functions, among others; and relevant entities should, *in accordance with laws, regulations and relevant provisions*,⁴⁵ impose credit-related punishments on discredited judgment defaulters regarding "government procurement, tendering and bidding, administrative examination and approval, government support, financing credit, market access, qualification accreditation, and so on."⁴⁶ The court should also circulate a notice of the information about discredited judgment defaulters to credit investigation institutions;

41. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 6.

42. *Id.* at art. 7(1). The SPC has established an official online platform. See China Enforcement Information Online (中国执行信息公开网, IPC.COURT.GOV.CN, <http://zxgk.court.gov.cn/shixin/> (last visited May 9, 2023)).

43. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 7(2).

44. *Id.*

45. *Id.* (emphasis added by the author).

46. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 8(1).

and credit investigation institutions should record the information in their credit investigation systems.⁴⁷ When public officers, deputies to people's congresses, or members of the Chinese people's political consultative conference are blacklisted as discredited judgment defaulters, the courts should circulate a notice to the entities where they work or the relevant department.⁴⁸ When "public organs, public institutions or state-owned enterprises" are blacklisted, the courts should issue a notice to the entities at higher levels or the departments that they are responsible for, or the institutions performing the duties of investors.⁴⁹

By contrast, the Draft only briefly addresses this issue in Article 69, which confirms that the court should publish information about discredited judgment defaulters to the public and circulate it to the relevant government departments, financial regulatory authorities, financial institutions, and public institutions and industry associations undertaking administrative functions.⁵⁰ The aim is to facilitate the latter to, *in accordance with laws, regulations, and relevant provisions*,⁵¹ impose credit-related punishments on discredited judgment defaulters in terms of consumption restrictions, government procurement, financing credit, market access, qualification accreditation, and honorary awards, etc.⁵² The court should also notify financial creditworthiness institutions of the information so that the latter is able to record it in their financial creditworthiness system.⁵³ It is worth noting that the Draft removes "tendering and bidding, administrative examination and approval, government support" from the list of credit-related punishments and includes "honorary awards" on the list. The same as Article 8 of the Provisions on Discredited Judgment Defaulters, Article 69 of the Draft states that credit-related punishments must be imposed on discredited judgment defaulters "in accordance with laws, regulations and relevant provisions."⁵⁴

47. *Id.* at art. 8(2).

48. *Id.* at art. 8(3).

49. *Id.* at art. 8(4).

50. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

51. Emphasis added by the author.

52. See Civil Compulsory Enforcement Law (Draft), *supra* note 15, at art. 69.

53. *Id.*

54. *Id.*

D. Revocation, Correction, and Deletion of the Information on Discredited Judgment Defaulters

When the court blacklists a party as a discredited enforcement defaulter by mistake, the court should revoke the relevant information within three working days.⁵⁵ When the recorded or published information is incorrect, the court should correct it within three working days.⁵⁶ Once the blacklisting period expires, the court should delete the information within three working days.⁵⁷

The court should delete the information within three working days in any of the following circumstances: (1) the judgment debtor has performed the obligations determined in the effective judgment or the court has completed enforcement; (2) the parties have reached an enforcement reconciliation agreement and have completed the performance thereof; (3) the enforcement applicant has filed a written request for deletion of the information, and the court has approved the request upon review; (4) after the “this-time enforcement proceeding” (本次执行程序)⁵⁸ has been terminated, no property available for enforcement is found after searching for the property of the judgment debtor twice or more times through the “online enforcement inquiry and control system” (网络执行查控系统),⁵⁹ and the enforcement applicant or any other party fails to provide effective property clues; (5) the court rules to suspend the enforcement by the discredited judgment defaulter due to the trial-supervision or bankruptcy procedures according to the law; and (6) the court rules not to carry

55. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 9(1).

56. *Id.* at art. 9(2).

57. *Id.* at art. 10(2).

58. Because of the lack of a personal bankruptcy law in China, the courts have to terminate an enforcement proceeding after they cannot find any property or assets of individual judgment defaulters. *See infra* Part III, Section A (providing further information).

59. In 2014, the SPC established the online enforcement inquiry and control system through cooperation with banks and financial institutions, and a variety of public authorities (e.g., public security administration, transport administration, civil affairs administration, etc.). This national system helps the courts locate judgment debtors and trace their properties and assets in an electronic, networked and autonomous way. *See The SPC’s Online Enforcement Inquiry and Control System Makes Lao Lai’s Assets Unhidden* (最高法院网络执行查控系统让“老赖”财产无处可藏), GUANGMING DAILY (光明日报) (Jul. 21, 2018), .

out enforcement or rules to terminate the enforcement in accordance with the law.⁶⁰

Judgment defaulters may be re-blacklisted as discredited judgment defaulters when either of the circumstances stipulated in Article 1 of the Provisions on Discredited Judgment Defaulters occurs after the deletion of the information.⁶¹ The enforcement applicant is, however, barred from requesting the court to re-blacklist the same judgment debtor within six months after that debtor filed a written request for deletion of the information, which was approved by the court.⁶²

By contrast, Article 70 of the Draft simply provides that the court should revoke or delete the information within three working days when it has blacklisted a judgment defaulter by mistake, or when the blacklist term has expired, or the discredited behavior concerned has been corrected.⁶³ The Draft fails to provide a complete range of circumstances where the court should revoke, correct, or delete the information on discredited judgment defaulters. Unless the Draft is improved, it will create legal loopholes regarding revocation, correction, and deletion of the information on discredited judgment defaulters.

E. Remedial Procedures Available to Discredited Enforcement Defaulters

The discredited judgment debtor is entitled to file a request with the court to revoke, correct, or delete the information when that debtor should not be blacklisted as a discredited enforcement defaulter in accordance with the law, when the recorded or published information is incorrect, or when the information should be deleted according to the law.⁶⁴ The court should review the written request for deletion or correction within fifteen days of receipt of the request and then correct it within three working days if the request is accepted or otherwise rejected.⁶⁵

If the blacklisted judgment debtor refuses to accept the decision of rejection, the debtor may file a request with the court at

60. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 10(1).

61. *Id.* at art. 10(3).

62. *Id.* at art. 10(4).

63. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

64. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 11.

65. *Id.* at art. 12(1).

the next level for reconsideration within ten days from the date the written decision was served.⁶⁶ The court at the next level should decide on the request within fifteen days of receipt.⁶⁷ The enforcement of the original decision should not proceed during the period of reconsideration by the next-level court.⁶⁸

The Draft provides in Article 71(2) that a discredited judgment defaulter may directly file a request with the court at the next level for reconsideration when the defaulter disagrees with the blacklist decision.⁶⁹ According to Article 86 of the Draft, a reconsideration request must be made within ten days from the date the written decision was served, and the court at the next level should review and decide within thirty days of acceptance of the reconsideration request.⁷⁰ By nature, different from a judgment or verdict of the court, a blacklist decision is the court's administrative decision in the judgment enforcement process and is only subject to administrative reconsideration by the next-level court.⁷¹ The major difference from the Provisions on Discredited Judgment Defaulters is that the Draft allows the discredited judgment debtor to directly seek a remedy from the next-level court without the need to first file a request to the court that makes the decision, thus saving the judgment debtor's costs for seeking remedies.

II. JOINT SANCTIONS AGAINST DISCREDITED JUDGMENT DEFAULTERS

The joint sanction mechanism was formally established by the *Memorandum on the Cooperation in Taking Joint Sanctions against Discredited Judgment Defaulters* (关于对失信被执行人实

66. *Id.*

67. *Id.*

68. *Id.* at art. 12(2).

69. *See* Civil Compulsory Enforcement Law (Draft), *supra* note 15.

70. *Id.*

71. Under the Chinese legal system, when a disputing party disagrees with the court's judgment or verdict, the party should "appeal" to the next-level court. By contrast, a citizen who disagrees with an administrative decision (made by the local government in most cases) can apply for administrative reconsideration by the next-level government. *See* Administrative Litigation Law (行政诉讼法) (promulgated by the National People's Congress, Apr. 4, 1989, effective Oct. 1, 1990, amended in 2014 and 2017), at art. 44 (China). Therefore, given an administrative reconsideration of the lower court's blacklist decision by the next-level court, the nature of a blacklist decision is arguably an administrative decision of the court. *See id.*

施联合惩戒的合作备忘录)⁷² (the “Memorandum”) jointly issued by forty-four state organs and party offices on January 20, 2016, with immediate effect. In terms of the content of joint sanctions, it has been extended from reputational sanction (“naming and shaming”⁷³) of discredited judgment defaulters⁷⁴ to a wide range of joint sanctions.

The National Development and Reform Commission, using the national credit information sharing platform (全国信用信息共享平台),⁷⁵ established a joint sanctions system against discredited behaviors. The Memorandum authorizes the relevant state organs to collect and share information on the identity, property (e.g., real estate, vehicles, vessels), marriage, and etc., of discredited judgment defaulters. The Memorandum lists a variety of sanctions that cover various sectors. Specifically, joint sanctions

72. Memorandum on the Cooperation in Taking Joint Sanctions against Discredited Judgment Defaulters (关于对失信被执行人实施联合惩戒的合作备忘录, “the Memorandum”) (promulgated jointly by 44 state organs and party offices, Jan. 20, 2016, effective Jan. 20, 2016), (China). Despite a lack of consensus, the nature of the Memorandum has been understood either as a soft law or an internal administrative agreement among public organs. In other words, it is not a formal source of law as recognized by the *Legislation Law* (立法法) (promulgated by the National People’s Congress on Mar. 15, 2000, effective on Jul. 1, 2000, amended on Mar. 20, 2015). See Liu Xinqi & Chen Meiyuan, *The Soft Law Nature of the Memorandums on Joint Sanctions against Discredited Parties and the Concern on the Legality* (失信联合惩戒合作备忘录的软法性质及其合法性控制), 305 GUANGXI SOC. SCI. (广西社会科学) 107, 108 (2020).; see also Wu Yulin & Liu Heng, *The Memorandums on Joint Sanctions against Discredited Parties: The Operation Logic, the Legal Nature and the Rule-of-law Path* (信用联合惩戒合作备忘录: 运作逻辑、法律性质与法治化进路), 28(3) HENAN SOC. SCI. (河南社会科学) 11, 16 (2020).

73. “Naming and shaming” is a form of reputational sanction through “publicizing and stigmatizing a violator’s illegal conduct in a way intended to reinforce the prevailing social norms that disapproval of such behavior” and have a deterrent effect on the public. See *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116(7) HARV. L. REV. 2186, 2187 (2003).

74. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 6.

75. The national credit information sharing platform was established by the National Center for Public Credit Information (国家公共信用信息中心) under the leadership of the National Development and Reform Commission (国家发展与改革委员会) in 2015. It builds up a network with 94 public organs at the national level and 31 provincial governments as well as 77 social credit institutions by December 2020. See *National Development and Reform Commission Government Service Window* (国家发展改革委政务服务窗口), GJZFWF.GOV.CN, <http://app.gjzfwf.gov.cn/jmopen/webapp/html5/fgwxxyxpc/index.html> (last visited May 9, 2023).

in the Memorandum may be divided into several categories applied to individual, corporate discredited judgment defaulters, or both (Table 1 below).

In addition, the information on discredited judgment defaulters should be taken for reference (1) for the purpose of approving the establishment of securities companies, fund management companies, and futures companies, and the registration of privately offered fund management institutions; (2) for the purpose of approving the establishment of commercial banks or branches, representative offices, as well as stock purchases and acquisitions of commercial banks. Moreover, the information on discredited judgment defaulters should be considered for “prudential reference;” (3) in the approval and management of quotas for qualified foreign institutional investors and qualified domestic institutional investors; (4) in reviewing financing credit granting to discredited judgment defaulters or *those enterprises with blacklisted legal representatives, actual controllers, directors, supervisors, and senior executives*;⁷⁶ and (5) in awarding preferential policies on investment, tax, import and export, and other respects to discredited judgment defaulters or *those enterprises with blacklisted legal representatives, actual controllers, directors, supervisors, and senior executives*.⁷⁷

Although the joint sanction mechanism originally applied to discredited judgment defaulters, it has now been extended to other serious discredited behaviors after the *Guiding Opinions of the State Council on Establishing and Improving the System of Joint Incentive for Honest Conducts and Joint Sanctions for Discredited behaviors and Accelerating the Advancement of the Development of Social Honesty* (国务院关于建立完善守信联合激励和失信联合惩戒制度加快推进社会诚信建设的指导意见)⁷⁸ (the Guiding Opinions) was issued on May 30, 2016. The Guiding Opinions adopted a “carrot and stick” approach to promote social

76. Emphasis added by the author to show that joint sanctions are imposed on a third party other than the judgment-defaulter.

77. Emphasis added by the author to show that joint sanctions are imposed on a third party other than the judgment-defaulter.

78. Guiding Opinions of the State Council on Establishing and Improving the System of Joint Incentive for Honest Conducts and Joint Sanctions for Discredited behaviors and Accelerating the Advancement of the Development of Social Honesty (国务院关于建立完善守信联合激励和失信联合惩戒制度加快推进社会诚信建设的指导意见) (promulgated by the State Council, May 30, 2016, effective May 30, 2016), (China).

morality. Specifically, the Guiding Opinions list four categories of serious discredited behaviors: (1) those that cause serious harm to the life and health of the public (e.g., unsafe food and drugs, environmental harm, defective infrastructure, occupational unsafety, errors in compulsory certification); (2) those that seriously harm the market fair competition order and the social order (e.g., bribery, tax evasion, maliciously refusing to pay debts or salaries, illegal fundraising, contractual fraud, multi-level marketing, operation without license, manufacturing and selling fake products, intentional infringement of intellectual property rights, conspiracy in bidding, deceptive advertisement, infringement of consumer rights, infringement of distribution rights in cyberspace, assembling a crowd to disrupt the social order); (3) refusing to discharge statutory obligations and seriously harming the judiciary's credibility and the government's authority (e.g., having the capability to but refusing to satisfy a judgment, ruling, or decision); and (4) refusing to discharge national security obligations (e.g., military service, requisition of civil resources), destroying national security facilities, or seriously harming national security interests.⁷⁹

Subsequently, with the National Development and Reform Commission taking the lead, another forty-one memorandums on the cooperation in taking joint sanctions with respect to various specific areas or sectors have been jointly issued by relevant State organs and Party offices since 2018.⁸⁰ As such, the mechanism of joint sanctions ("the stick") has been applied with a wide scope at the national level under China's social credit system.

Moreover, the joint sanction mechanism has been extended beyond discredited judgment defaulters through local legislation, regulations, and rules concerning implementing the social credit system.⁸¹ For example, Article 26 of the *Regulation of Zhejiang*

79. *Id.* at art. 9.

80. Such as, joint sanctions against employers who fail to pay wages to migrant workers, patent law violators, discredited parties in the accounting sector, those in the transportation sector, those in the statistics sector, those in the social insurance sector and so on. See Peng Chun, *The Rule-of-law Predicament and the Way Out for Joint Sanction Mechanism against Discredited Parties* (失信联合惩戒制度的法治困境及出路), 38(5) *STUD. IN L. & BUS.* (法商研究) 47, 49 (2021).

81. Such examples include: (1) local legislation made by the local People's Congress; (2) local regulations made by the local government, and (3) local rules made by the department of the local government. See, e.g., *Regulations of Liaoning Province on Sanctions against Serious Discredited Parties* (辽宁省

Province on the Management of Public Credit Information (浙江省公共信用信息管理条例)⁸² imposes a set of joint sanctions on serious discredited parties. This includes, but is not limited to, restricting participation in public procurement, bidding for or trading public resources and franchising of infrastructure and public utilities; restricting high consumption; banning the entry into the market or industry; professional disqualification, disqualification for government subsidies, privileges, or public awards and honors.⁸³

Table 1: Categories of Joint Sanctions Imposed on Discredited Judgment Defaulters under the Memorandum on the Cooperation in Taking Joint Sanctions against Discredited Judgment Defaulters

Individual/ corporate discredited judgment defaulters	Reputational sanction	Publish the information on discredited judgment defaulters to the public through the website “Credit China” and the enterprise credit information publication system as well as major news websites
	Closer monitoring and supervision	Becoming the key supervision target and strengthening routine supervision and inspection of discredited

惩戒严重失信行为规定) (promulgated by the Standing Committee of the People’s Congress of Liaoning Province, May 27, 2021, effective on Aug.1, 2021) (local legislation). *See, e.g.*, Measures of Shenyang City on Joint Sanctions against Serious Discredited Corporations (沈阳市严重失信企业联合惩戒办法) (promulgated by the government of Shenyang City, Mar. 10, 2017, effective May 1, 2017) (local regulation). *See, e.g.*, Detailed Rules on the Administration and Implementation of the Blacklist of Serious Discredited Parties regarding Ecological Environment (for Trial Implementation) (生态环境严重失信名单管理实施细则 (试行)) (promulgated by the Ecological Environment Bureau of Ningbo City, January 6, 2022, effective on the same day) (local rules).

82. Regulation of Zhejiang Province on the Management of Public Credit Information (浙江省公共信用信息管理条例) (promulgated by the Standing Committee of the People’s Congress of Zhejiang Province, Sept. 30, 2017, effective Jan. 1, 2018), (China).

83. *Id.* at art. 26.

		judgment defaulters and those enterprises with blacklisted legal representatives, actual controllers, directors, supervisors, and senior executives
	Restrictions on their lawyers & law firms	Restricting the lawyers or firms from participating in the selection of the advanced lawyers or firms within a certain period of time
Individual discredited judgment defaulters	Personal restrictions	Restricting exit from China
		Restricting high and non-necessary consumption
		Restricting purchasing houses, lands, or other real estate*
		Restricting their children from attending high-tuition private schools*
	Deprivation of Occupational qualifications	Being civil servants or staff of public institutions
		Being legal representatives of public institutions
		Being legal representatives, directors, supervisors, or senior executives of state-owned enterprises
		Being the main responsible persons, directors, supervisors, and senior executives of business entities

		Being directors, supervisors, and senior executives of financing guarantee companies or financial institutions
Corporate discredited judgment defaulters	Business restrictions	Establishing financing guarantee companies and insurance companies
		Issuing enterprise bonds and corporate bonds
		Acquiring listed companies (for serious discredited judgment defaulters)
		Suspending the equity incentive plans of black-listed domestic state-controlled listed companies or terminating the equity incentive participants' qualification to exercise their rights
		Using state-owned forest land, applying for key forestry construction projects, getting approval for the land occupation by state-owned grasslands, or applying for key grassland protection and construction projects
		Engaging in the production, operation, and storage of hazardous chemicals, production and operation of fireworks and crackers, mine production, or safety assessment, and other industries

		Participating in government procurement activities as suppliers
		Engaging in the transactions of the assets of state-owned enterprises, national assets, and other state-owned property rights
	Disqualifications for preferential treatments	Being enterprises certified by the Customs administration
		Getting the support of subsidized funds and social security funds
		Participating in the election of civilized entities and moral models (including those with blacklisted leaders)
	Applying stricter approval and supervision criteria	Strictly reviewing the issuance of bonds on the interbank market
		Strictly supervising imported and exported goods
		Strictly approving engagement in the pharmaceutical, food, and other industries
		Implementing strict supervision and strengthening documents examination and inspection under surveillance by the Customs administration
	Restrictions on the legal representatives, main responsible persons, directly responsible persons affecting the	Restricting their high and non-necessary consumption
		Restricting them from paying high insurance

	repayment of debts, and actual controllers	premiums to purchase insurance products with monetary value*
		Restricting them from purchasing houses, land, or other real estate*
		Restricting their children from attending high-tuition private schools*

* *Seen as one example of consumption restrictions.*

III. NATURE AND LOGIC OF THE JUDGMENT-DEFAULTER BLACKLIST SYSTEM: “MORAL CONVICTION” PLUS “JOINT SANCTIONS”

A. *The Problem of “Enforcement Difficulties”*

Adjudication and judgment enforcement are two core functions of Chinese courts. There were heated debates as to the reform of “separation of adjudication and judgment enforcement” (审执分离) under which the division or bureau of judgment enforcement is either separated from the divisions of adjudication within the court or established as a separate judicial institution independent from the court.⁸⁴ Few, however, have questioned the judicial function of judgment enforcement.⁸⁵ Unlike other jurisdictions where it is judgment creditors who are responsible for tracing the judgment debtor’s assets for judgment enforcement, it is the Chinese court’s duty to locate judgment debtors and find their assets to successfully enforce judgments.⁸⁶ In China’s context, effective judgment enforcement not only matters to judicial

84. Xiao Jianguo & Huang Zhongshun, *On the Principle of Separation and Collaboration in the Allocation of Judicial Powers: Focusing on Separation of Adjudication and Judgment Enforcement* (论司法职权配置中的分离与协作原则——以审判权和执行权相分离为中心), 55(6) JILIN UNIV. J. SOC. SCI. ED. (吉林大学社会科学学报) 34, 36 (2015).

85. Piao Shunshan, *On the Choice of the Models of Separation of Adjudication and Judgment Enforcement under the Frame of Judicial Powers* (试论司法权控制下的审执分离模式选择), 71 J. OF CHINA UNIV. OF POL. SCI. & L. (中国政法大学学报) 79, 80 (2019).

86. *See supra* note 20.

competence and credibility but is also a form of authoritarian responsiveness⁸⁷ through the courts to address the urgent demands of numerous judgment creditors.

The problem of “enforcement difficulties” (执行难) has troubled the Chinese judiciary for more than three decades. It has been seen as a failure to perform the courts’ judicial duty of judgment enforcement.⁸⁸ The term “enforcement difficulties” was officially used for the first time when the then President of the SPC, Zheng Tianxiang, adopted it in his speech at the 13th National Meeting on Judicial Work in 1987.⁸⁹ It has frequently appeared in the SPC’s Working Report at the National People’s Congress’s Annual Meeting since 1988.⁹⁰

The problem of “enforcement difficulties” was highlighted by the SPC as an indicator of the state’s governance competence in 2014.⁹¹ The three-year nationwide campaign to preliminarily solve the problem of “enforcement difficulties” was launched by the SPC between 2016 and 2019.⁹² Although the then Chief

87. Responsiveness in an authoritarian regime aims to “strengthen the state and avoid the development of a revolutionary opposition rather than being a sign of state weakness.” See CHRISTOPHER HEURLIN, *RESPONSIVE AUTHORITARIANISM IN CHINA: LAND, PROTESTS, AND POLICY MAKING* 3 (2017).

88. See Hou Xuebin & Chen Yueou, *People’s Courts’ Preference to the Campaign-Style Governance: Analysis Based on People’s Courts’ Practice to Solve the Problem of “Enforcement Difficulty”* (人民法院的运动式治理偏好——基于人民法院解决“执行难”行动的分析), 60(6) J. OF JILIN UNIV. SOC. SCI. ED. (吉林大学社会科学学报) 70, 71-72 (2020); see also Cheng Xuezheng, *On the Harmed Judicial Authority from the Perspective of “Enforcement Difficulty”* (论“执行难”的视角论司法权威的流失), 4 LEGAL SYS. & SOC’Y (法制与社会) 147, 147 (2011).

89. Zhang Tianxiang, *Situations that People’s Courts Are Facing and Their Major Tasks: Speech at the 13th National Meeting on Judicial Work* (人民法院面临的形势和当前的主要任务——在第十三次全国法院工作会议上的讲话), in ZHENG TIANXIANG’S ARTICLES ON THE JUDICIARY (郑天翔司法文存) 249 (2012).

90. Zheng Tianxiang, *The 1988 SPC’s Working Report*, PEOPLE’S CT. DAILY (人民法院报) (Apr. 18, 1988), http://www.gov.cn/test/2008-03/27/content_929873.htm.

91. Chinese Communist Party (CCP), *Decision of the Central Committee of the CCP on Several Significant Issues concerning Comprehensively Promoting Law-based Governance* (中共中央关于全面推进依法治国若干重大问题的决定), XINHUA NEWS AGENCY (新华社) (Oct. 23, 2014), http://www.gov.cn/zhengce/2014-10/28/content_2771946.htm.

92. The Supreme People’s Court, *The SPC’s Working Agenda on Implementing the Goal of Preliminarily Solve the Problem of “Enforcement Difficulties”* (最高人民法院关于落实“用两到三年时间基本解决执行难问题”的工作纲要), THE SUPREME PEOPLE’S CT. OF CHINA (May 11, 2016), <https://www.court.gov.cn/zixun-xiangqing-20752.htm>.

Justice Zhou Qiang announced the success of the three-year campaign in the SPC's Working Report at the National People's Congress's Annual Meeting in March 2019, the Central Commission for Comprehensive Law-based Governance of the Chinese Communist Party released in July 2019 the *Opinions on Strengthening Comprehensive Governance and Effectively Solving the Problem of Enforcement Difficulties from the Source* (关于加强综合治理从源头切实解决执行难问题的意见)⁹³ to tackle the problem of enforcement difficulties that continuously trouble the judiciary. Accordingly, the SPC released the *Opinions on Deepening the Enforcement Reform and Improving the Long-term Mechanism for Solving Enforcement Difficulties—the Work Outline of People's Courts' Enforcement Work* (深化执行改革健全解决执行难长效机制的意见——人民法院执行工作纲要) (2019-2023).⁹⁴ As part of the SPC's Work Outline, the *Civil Compulsory Enforcement Law* was drafted and submitted for the first reading to address the targeted problem of “enforcement difficulties.”⁹⁵

The reasons for the problem of “enforcement difficulties” are three-fold. First, judgment enforcement is seen as an important indicator in the annual evaluation of the work and performance of the judiciary by the national and local people's congresses.⁹⁶ The public has a very high expectation of the effectiveness of judgment enforcement centered around judicial competence, credibility, and legitimacy.⁹⁷ The problem of “enforcement

93. *Opinions on Strengthening Comprehensive Governance and Effectively Solving the Problem of Enforcement Difficulties from the Source* (关于加强综合治理从源头切实解决执行难问题的意见) (promulgated by the Central Commission for Comprehensive Law-based Governance of the Chinese Communist Party, Jul. 14, 2019, effective Jul. 14, 2019), (China).

94. See The Supreme People's Court, *Opinions of the Supreme People's Court on Deepening Enforcement Reform and Improving the Long-term Mechanism for Resolving Enforcement Difficulties—the Work Outline of People's Court Enforcement Work (2019-2023)* (深化执行改革健全解决执行难长效机制的意见——人民法院执行工作纲要) (2019-2023), THE SUPREME PEOPLE'S CT. OF CHINA (June 11, 2019), <https://www.court.gov.cn/zixun-xiangqing-163022.html>.

95. See Qiao Wenxin, *The First Reading of the Civil Compulsory Enforcement (Draft) Which Provides Legal Safeguard for Effectively Solving the Problem of “Enforcement Difficulties”* (民事强制执行法草案初审“为”切实解决执行难”提供法律保障), PEOPLE'S CT. DAILY (人民法院报) (June 6 2022), <https://www.court.gov.cn/zixun-xiangqing-363091.html>.

96. Hou & Chen, *supra* note 88, at 71.

97. Zhou Qiang, *Report of the Supreme People's Court on the People's Courts' Work of Solving the Problem of “Enforcement Difficulties”* (最高人民法院关于人

difficulties” has largely been politicized in China and has become a political goal for the SPC to solve.⁹⁸ It is a prioritized task of the judiciary to significantly reduce the number of unsuccessful enforcement cases.

Second, although Chinese courts have a duty and responsibility to enforce judgments, they do not have sufficient resources (personnel, material, and financial) to discharge the duty, given the large number of civil and commercial cases adjudicated by the courts every year.⁹⁹ The judiciary has taken several measures to deal with such practical difficulties. For instance, many capable and experienced judges have been transferred from the adjudication divisions to the enforcement division of their courts to strengthen the human resources for judgment enforcement.¹⁰⁰ The SPC has established the “online enforcement inquiry and control system” to enable the courts to efficiently trace the properties and assets of judgment debtors nationwide.¹⁰¹ Moreover, the SPC launched the institutional reform to “push forward the unified management of personnel, funds, and properties of local courts below the provincial level” (省统管人财物) to establish a centralized court funding, personnel, and administration regime for the purpose of enhancing the institutional independence of basic and intermediate courts against

民法院解决”执行难”工作情况的报告), PEOPLE'S CT. DAILY (人民法院报) (Oct. 24, 2018), <https://www.court.gov.cn/fabu-xiangqing-124841.html>.

98. *Id.*

99. The SPC reported that the annual number of civil cases in China had increased by 10.1 percent between 2013 and 2019, from 7,782,000 civil cases in 2013 to 13,852,000 civil cases in 2019, whereas civil cases accounted for 85 percent of the total cases accepted by the Chinese judiciary. See Xu Jun, *The Report on Civil Adjudication Work Showed the Amount of the Subject Matter of the Closed First-instance Civil Cases Annually Increased by 23.7 Percent* (民事审判工作相关报告显示民事一审案件结案标的年均增长23.7%), PEOPLE'S CT. DAILY (人民日报) (Oct. 16, 2020), <http://www.npc.gov.cn/npc/c30834/202010/ed592770e89a48fd8499195c8661359f.shtml>.

100. Wang Limin, *Strengthening Human Resources for People's Court's Enforcement Work* (加强人民法院执行队伍建设), PEOPLE'S CT. DAILY (人民法院报) (June 12, 2018), http://rmfyb.chinacourt.org/paper/html/2018-06/12/content_140048.htm?div=-1.

101. *The SPC's Online Enforcement Inquiry and Control System Makes Lao Lai's Assets Unhidden*, *supra* note 59.

administrative interference.¹⁰² Besides, some lower courts carried out the reform of the “cross-regional jurisdiction of enforcement cases” (执行异地管辖), which has played a role in mitigating local protectionism in relation to judgment enforcement.¹⁰³ These measures have helped the judiciary reduce the number and rate of unsuccessful enforcement cases.¹⁰⁴ Nevertheless, they have a limited impact on unsuccessful enforcement cases where judgment debtors have no assets for enforcement or have evaded their debts through false litigation or false arbitration, concealment or transfer of property, or other illegal means.

Third, China does not have a personal bankruptcy law for natural persons.¹⁰⁵ A natural person cannot apply to the court for liquidation when he fails to clear his or her debts as due and if his or her assets are insufficient to pay off all the debts or is incapable of paying off the debts. In other words, a judgment debtor owes his or her debts for a lifetime unless he or she clears them. The judgment creditor is entitled to enforce judgment at any time when the judgment debtor has assets or restores his performance ability. This explains why a case of judgment enforcement against an individual debtor cannot be closed before the debt is paid off. Moreover, although China has had the *Enterprise Bankruptcy Law*¹⁰⁶ since 2006, a significant number of corporations do not go into liquidation and winding-up procedures through the so-called “Shift from enforcement to

102. Information Office of the State Council (国务院新闻办公室), *Whitepaper on Chinese Judicial Reform* (中国司法改革白皮书), GOV.CN (Oct. 9, 2012), http://www.gov.cn/zwggk/2012-10/09/content_2239971.htm.

103. Zhang Zixue, *Cross-regional Jurisdiction of Enforcement Cases Can Avoid Local Protectionism* (异地管辖让执行案件走出地方干预藩篱), PEOPLE'S CT. DAILY (人民法院报), (Feb. 9, 2017,) http://rmfyb.chinacourt.org/paper/html/2017-02/09/content_121578.htm?div=-1.

104. *Id.*

105. Shenzhen was authorized by the central government to experiment on the personal bankruptcy law and on Aug. 26, 2020, made the first local legislation in this regard—*Regulations of Shenzhen on Personal Bankruptcy* (深圳经济特区个人破产条例). See Bai Tiantian, *Controversies and Choices in the Personal Bankruptcy Law Making: The Case of the Regulations of Shenzhen on Personal Bankruptcy Law* (个人破产立法中的争议与抉择——以《深圳经济特区个人破产条例》为例), 5 J. OF RENMIN UNIV. OF CHINA (中国人民大学学报) 1, 1 (2021).

106. *Enterprise Bankruptcy Law* (企业破产法) (promulgated by the Standing Committee of the National People's Congress, Aug. 27, 2006, effective Jun. 1, 2007), (China).

bankruptcy” (执转破) procedure for practical reasons.¹⁰⁷ The lack of personal bankruptcy law for individuals and the ineffective implementation of the *Enterprise Bankruptcy Law* have combined to cause the number of unsuccessful enforcement cases filed with the court to soar over the years.¹⁰⁸

In response to this dilemma, in March 2009, the SPC and the Committee of Political and Legal Affairs of the Chinese Communist Party innovatively introduced an enforcement procedure called the “termination of the this-time enforcement proceeding” (终结本次执行程序). The procedure enables an enforcement case to be closed when no property or assets of a judgment debtor is available for enforcement according to Article 3(8)-(10) of the *Notice on Regulating the Case Closing Criteria for the Intensive Clear-up of Long-pending Enforcement Cases* (关于规范集中清理执行积案结案标准的通知).¹⁰⁹ Seven years later, the SPC specified the detailed rules of this special procedure in its *Notice on Issuing the Provisions on Strictly Regulating the Termination of the This-time Enforcement Procedure (for Trial Implementation)* (关于严格规范终结本次执行程序的规定(试行)).¹¹⁰ Nevertheless, any enforcement cases after the termination of the this-time enforcement proceeding can be re-opened and counted as a new judgment enforcement case when the enforcement creditor applies to the court for enforcement.¹¹¹ Moreover, the court has the duty to biannually check the assets status of the judgment debtor

107. Wang Minmin, Study on the Dilemmas concerning Initiating Bankruptcy Proceedings in the “Shift from Enforcement to Bankruptcy” Procedure and the Solutions (“执转破”程序中破产启动的困境与对策研究), 15-22 (2019) (Master of Laws thesis) (on file with author).

108. See Hou & Chen, *supra* note 88, at 81, Wang Shiqi, *Study on the Problem of “Enforcement Difficulties” and the Necessity of Establishing the Personal Bankruptcy Law in China* (“执行难”问题与我国构建个人破产制度的必要性研究), 9 LEGAL SYSTEM AND ECONOMY (法制与经济) 48, 49 (2019); see also Zuo Weimin, *Empirical Study of Chinese Modes Responding to “Enforcement Difficulties” (中国“执行难”应对模式的实证研究)*, 34(6) PEKING UNIV. L. J. (中外法学) 1445, 1455 (2022).

109. Notice on Regulating the Case Closing Criteria for the Intensive Clear-up of Long-pending Enforcement Cases (关于规范集中清理执行积案结案标准的通知) (promulgated by the Supreme People’s Court, Mar. 19, 2009, effective Mar. 19, 2009), art. 3(8)-(10) (China).

110. Notice on Issuing the Provisions on Strictly Regulating the Termination of the This-time Enforcement Procedure (for Trial Implementation) (关于严格规范终结本次执行程序的规定(试行)) (promulgated by the Supreme People’s Court, Oct. 29, 2016, effective Dec. 1, 2016), (China).

111. *Id.* at art. 9(1).

through the “online enforcement inquiry and control system” and inform the judgment creditor of the result in due course.¹¹² The *Civil Compulsory Enforcement Law (draft)* also adopts the procedure of “termination of the this-time enforcement proceeding” in Articles 80-82.¹¹³

B. Ineffectiveness of the Legal Approaches

Both the *Civil Procedure Law* and the *Criminal Law* (刑法)¹¹⁴ have provided legal approaches to the judgment debtor’s refusal to satisfy an effective judgment or ruling. Article 114 of the *Civil Procedure Law* authorizes the court to impose a fine or detention on the litigation participant or any person, or the person in charge or directly liable persons of a legal entity according to the severity of the listed circumstances and, if suspected of a crime, subject them to criminal liability. Among the listed circumstances under Article 114, the following are related to those where a judgment debtor may be blacklisted as a “discredited judgment defaulter” according to Article 1 of the Provisions on Discredited Judgment Defaulters. They include (1) concealing, transferring, selling, or destroying any seized or impounded property or any inventoried property under the custody of the litigation participant or person as ordered, or transferring any frozen property; (2) insulting, defaming, falsely incriminating, assaulting, or retaliating against any judicial personnel, litigant, witness, interpreter, expert for forensic authentication, surveyor or person assisting in enforcement; (3) obstructing judicial personnel from performing their duties by violence, threat, or any other means; and (4) refusing to satisfy any effective judgment or ruling of a court.¹¹⁵

Moreover, Article 313 of the *Criminal Law* sets out “the crime of refusing to satisfy a judgment or ruling” for which the convicted may be sentenced to no more than three years of fixed-term imprisonment, criminal detention, or fined if the circumstances are serious. The SPC then issued in July 2015 the *Interpretation on Several Issues concerning the Application of Law in*

112. *Id.* at art. 9(2).

113. *See* Civil Compulsory Enforcement Law (Draft), *supra* note 15.

114. Criminal Law (刑法) (promulgated by the National People’s Congress, Jul. 6, 1979, effective Jan. 1, 1980), (China). It was substantially revised by the National People’s Congress on Mar. 14, 1997, and has been amended thirteen times since then. *See id.*

115. Civil Procedure Law, *supra* note 11, at art. 114.

the Trial of Criminal Cases of Refusing to Satisfy a Judgment or Ruling (关于审理拒不执行判决、裁定刑事案件适用法律若干问题的解释)¹¹⁶ and made supplementary rules in December 2020.¹¹⁷

Article 2 of the above Interpretation illustrates eight circumstances deemed “serious circumstances of having the capacity to satisfy a judgment or ruling but refusing to do so.” These eight circumstances include (1) displaying the conduct of refusing to satisfy a judgment or ruling, such as refusing to report his or her property status or submitting a false report, or consuming in violation of the order of the court on restricting high consumption and relevant consumption, and still refusing to do so after a fine or detention being imposed or subject to other compulsory measures; (2) forging or destroying any material evidence that the person subject to enforcement is capable of performance, or preventing any other person from testifying by violence, threat, or bribery, or instigating, bribing, or coercing any other person to commit perjury, or obstructing the court from identifying the property status of the person subject to enforcement, thus causing a failure to enforce the judgment or ruling; (3) refusing to deliver the property or negotiable instrument to be delivered as designated by a legal document, or refusing to be evicted from a building or land, thus causing a failure to enforce the judgment or ruling; (4) instituting a false action, arbitration, or mediation in collusion with other persons to impede enforcement, thus causing a failure to enforce the judgment or ruling; (5) obstructing enforcers from entering the enforcement site by violence, threat, or any other means, or assembling a crowd to interrupt or impact the enforcement site, thus causing a failure of enforcement; (6) insulting, besieging, seizing, or battering enforcers, thus causing a failure of enforcement; (7) damaging or snatching materials relating to the enforcement case, vehicles for exercising official duties, other instruments for exercising official duties, garments of enforcers, or certificates for exercising official duties, thus causing a failure of enforcement; and (8) refusing to

116. Interpretation on Several Issues concerning the Application of Law in the Trial of Criminal Cases of Refusing to Satisfy a Judgment or Ruling (关于审理拒不执行判决、裁定刑事案件适用法律若干问题的解释) (promulgated by the Supreme People’s Court, July 20, 2015, effective Jul. 22, 2015, amended on Dec. 29, 2020), (China).

117. *Id.*

satisfy a judgment or ruling, thus causing heavy losses to the creditors.¹¹⁸

These circumstances in relation to “the crime of refusing to satisfy a judgment or ruling” cover all circumstances under Article 1 of the Provisions on Discredited Judgment Defaulters, except the one concerning refusing to perform the enforcement reconciliation agreement without any good reason.¹¹⁹ Although the procuratorates have the power to prosecute the judgment defaulter who falls within the circumstances of the crime of refusing to satisfy a judgment or ruling,” the SPC’s statistical data show that criminal cases accounted for 0.79 percent of unsuccessful enforcement cases from 2012 to 2017 nationwide.¹²⁰

Three reasons may explain such a low rate. First, in practice, it is the judges of the enforcement division who are in charge of finding and collecting evidence and transferring suspicious criminal cases to the police.¹²¹ They, as a matter of fact, carry out the case investigation. On the other hand, the police is hesitant to accept suspicious criminal cases because it generally sees the crime of refusing to satisfy a judgment or ruling as much less important than serious crimes such as murder, robbery, drug trafficking, and the like.¹²² Some police officers even think that the enforcement judge’s referral of suspicious cases to the police is a sign of the judge’s shifting its responsibility in enforcing civil judgments and rulings.¹²³ Second, while enforcing a large number of judgments and rulings is their major work task, enforcement judges have little incentive to take additional time and effort to collect evidence on suspicious criminal cases, especially when such work cannot be counted for the purpose of their performance appraisal based on the number of closed cases handled.¹²⁴ Moreover, investigating suspicious criminal cases may induce the judgment defaulters concerned to take violent revenge against the charging enforcement judges or their family

118. *Id.* at art. 2.

119. *See supra* Section A, Part I.

120. Tian Wenjun, *Study on the Difficulties in Charging the Crime of Refusing to Satisfy a Judgment or Ruling* (拒不执行判决、裁定罪追究难问题研究), 31 *PEOPLE’S JUDICIARY* (人民司法) 75, 75 (2018).

121. *Id.* at 77.

122. *Id.*

123. *Id.*

124. *Id.*

members.¹²⁵ Third, the pragmatic goal of enforcement judges is to reduce the number and rate of unsuccessful enforcement cases in order to mitigate the failure to perform the judicial duty of judgment enforcement.¹²⁶ Charging judgment defaulters does not help much for this purpose because the crime of refusing to satisfy a judgment or ruling aims to safeguard judicial authority and credibility.¹²⁷

C. Rise of the Social Credit Approach: “Moral Conviction” plus “Joint Sanctions”

Given the politically prioritized task of solving the problem of “enforcement difficulties” and the ineffectiveness of the legal approaches, the Chinese judiciary led by the SPC has resorted to an alternative approach—blacklisting judgment defaulters based on the notion of “social credit” and imposing joint sanctions on them. It is true that blacklisting judgment defaulters is an example of the state’s use of reputation as a governance instrument.¹²⁸ In my opinion, however, the blacklisting approach is not merely a reputation sanction by the state,¹²⁹ however, in a far-reaching sense, serves as a “moral conviction” by the state. Moreover, such a moral conviction will immediately lead to a range of restrictions and sanctions that are “automatically” imposed on the blacklisted judgment defaulters.¹³⁰

In practice, instead of imposing administrative or criminal liabilities on judgment defaulters according to the law, the courts,

125. *Id.*

126. *Id.*

127. Xie Yundong, *Investigation and Analysis on the Application of the Crime of Refusing to Satisfy a Judgment or Ruling* (对拒不执行判决裁定罪适用情况的调查分析), CHINA COURT DAILY (中国法院报) (Oct. 10, 2006), <https://www.chinacourt.org/article/detail/2006/10/id/220368.shtml>.

128. Dai, *supra* note 4, at 2, 3.

129. Marianne von Blomberg & Haixu Yu, *Shaming the Untrustworthy and Paths to Relief in China’s Social Credit System*, MODERN CHINA, Feb. 17, 2023, at 7-12.

130. As art.1 of the Memorandum provided, “Parties subject to joint sanctions are discredited judgement defaulters announced by the Supreme People’s Court (including natural persons and entities).” See the Memorandum, *supra* note 72, at art. 1. Based on the literal reading of art. 1 of the Memorandum, once being blacklisted as a discredited judgement defaulter, a person is “automatically” subject to joint sanctions without any due process. See *id.* Moreover, it shows that the same package of joint sanctions is applied to discredited judgment defaulters regardless their special circumstances of judgment default (e.g., the amount of defaulted debt, the times of default, etc.). *Id.*

through the enforcement division, exercise a moral judgment and then assign a “discredited judgment defaulter” label to them when they have committed one of the discredited behaviors set out in Article 1 of the Provisions on Discredited Judgment Defaulters.¹³¹ Therefore, blacklisting judgment defaulters is, in nature, a “moral conviction” by the court when they fail to satisfy a judgment by intention or by constructive intent. The equivalent daily-life expression in Chinese indicating negative moral judgment is “*Laolai*” (老赖), which refers to a dishonest person who refuses to pay his debt.¹³² The moral conviction of judgment defaulters will be announced and publicized by the courts to the public and various public agents and professional associations.¹³³ Moreover, such a moral conviction leads to a “moral sentence,” which is not necessarily limited to a moral reprimand.¹³⁴ Once being determined as a discredited judgment defaulter with a moral stain, the judgment debtor must take the consequences—a wide range of joint sanctions tailor-made for discredited judgment defaulters, as shown in Table 1 above.

Figure 1 below shows the nature and logic of the social credit approach of blacklisting judgment defaulters in relation to the legal approaches. To give a brief explanation: when the court finds that a judgment debtor has failed to satisfy a judgment by (constructive) intention, it will make a “moral conviction” and label the judgment debtor a “discredited judgment defaulter,” who will then be given a “moral sentence” (i.e., joint sanctions) as a consequence.¹³⁵ Therefore, in the case of a judgment debtor’s refusal to satisfy a judgment by (constructive) intention, the legal approaches and the social credit approach run parallel to each other in China. Due to the ineffectiveness of the legal

131. *See supra* Part I.

132. *See The SPC Confirmed the Term of Backlisting “Laolai”: Two Years Generally and the Maximum of Five Years* (最高法明确“老赖”上榜期限：一般2年 最长或为5年), CHINA NEWS (中国新闻网) (Mar. 1, 2017), <https://www.chinanews.com.cn/m/gn/2017/03-01/8162445.shtml>.

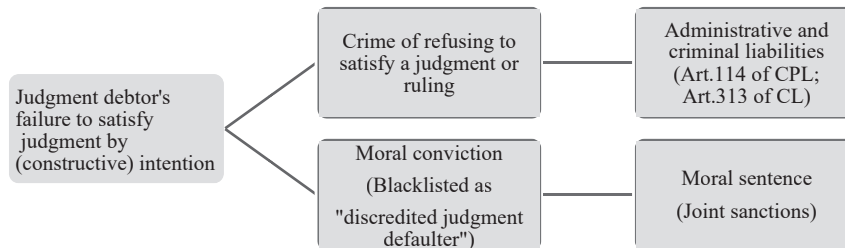
133. Provisions on Discredited Judgment Defaulters, *supra* note 14, at art. 8.

134. *See supra* Table 1.

135. *See generally* Luo Peixin, *Control of Public Power and Protection of Private Interest: Discussion on Legislating the Social Credit System* (遏制公权与保护私益: 社会信用立法论略), 36(6) TRIB. OF POL. SCI. & L. (政法论坛) 170, 174 (2018).

approaches,¹³⁶ the latter has become more and more popular and common in practice.¹³⁷

Figure 1: The Nature and Logic of the Judgment-defaulter Blacklist System



Then, what are the major problems of the social credit approach of blacklisting and punishing judgment defaulters? Primarily, the judicial power to make a moral conviction followed by a wide range of joint sanctions has not been authorized by the *Constitution Law* (宪法)¹³⁸ or the *Organizational Law of the People's Courts* (人民法院组织法).¹³⁹ Neither has it been authorized by the *Civil Procedure Law* because it merely provides that the judgment defaulter's failure to satisfy a judgment should be recorded in the financial creditworthiness system.¹⁴⁰ Therefore, the practice of judicially labeling a party as a discredited judgment defaulter is arguably an unconstitutional judicial innovation introduced by the SPC through its judicial interpretation. Although Article 66 of the *Civil Compulsory Enforcement Law* (draft) grants the judiciary the power to blacklist judgment

136. See *supra* Section B, Part III.

137. From 2015 to 2021, on average, 2.35 million parties were blacklisted as "discredited judgment defaulters" annually in China—it is likely that the 2021 number dropped significantly because of the Covid-19 pandemic. See *The Number of Lao Lai Increased by 1.34 Million in China in 2021* (2021年我国新增“老赖”134万), SINO MANAGER (Mar. 26, 2022), <https://www.sino-manager.com/274443.html>.

138. Constitution Law (宪法) (promulgated by the National People's Congress, Dec. 4, 1982, effective Dec. 4, 1982), (China). It was amended in 1988, 1993, 1999, 2004, and 2018. *Id.*

139. Organizational Law of the People's Courts (人民法院组织法) (promulgated by the National People's Congress, Jul. 5, 1979, effective Jan. 1, 1980), (China). It was amended in 1983, 1986, 2006, and 2018. *Id.*

140. Civil Procedure Law, *supra* note 11, at art. 262.

defaulters in certain circumstances, its Article 69 only mentions that the relevant public agents and professional associations may, “in accordance with laws, regulations, and relevant provisions,” impose credit-related punishments on discredited judgment defaulters in terms of consumption restrictions, government procurement, financing credit, market access, qualification accreditation, and honorary awards, etc.¹⁴¹ In other words, the *Civil Compulsory Enforcement Law (draft)* (same as the Provisions on Discredited Judgment Defaulters) has never stated that the joint sanctions could be automatically imposed on judgment defaulters once they are labeled “discredited.” Therefore, the strategic combination of a moral conviction and joint sanctions lacks a legal basis in Chinese law.

Moreover, different from a criminal sentence, the court does not engage in the determination of a moral sentence by considering the various factors of the *particular* discredited judgment defaulter (such as whether the defaulter is a first-time or repeat judgment defaulter, the nature and seriousness of the misconduct in question, the impact of the misconduct on the judgment creditor and so on) on a case-by-case basis. Instead, the moral sentence is set out as a one-size-fits-all joint sanction mechanism and is generally applied to all discredited judgment debtors without the involvement of a court decision.¹⁴² This gives rise to the concern about unfairness to individual judgment defaulters as well as the risk of excessive punishment inherent in the judgment-defaulter blacklist system.

Last but not least, the joint sanction mechanism against discredited judgment defaulters violates a set of fundamental legal principles that the Chinese legal system recognizes. A detailed discussion of this problem is made in Part IV of the paper below.

D. Implications for the Blacklist System under the Social Credit System

The social credit system is a comprehensive governance system over the “social credit” of individuals and corporations. The case of blacklisting judgment defaulters touches upon one core part of the social credit system—the blacklist system against discredited parties.¹⁴³ Leading local legislation on the social

141. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

142. See *supra* note 130.

143. See *supra* Part II.

credit system, such as the *Regulation of Shanghai on Social Credit* (上海社会信用条例)¹⁴⁴ defines the term “social credit” as the status of “law compliance” (合规) and “fulfilment of contractual obligations” (践约) by private parties, including natural persons, legal entities, and unincorporated associations.¹⁴⁵ This definition is much wider than the meaning of the traditional “financial creditworthiness” of private parties evaluated by financial institutions and regulatory authorities worldwide. Private entities’ behaviors regarding fulfillment of contractual obligations cover, but are not limited to, financial creditworthiness. Their behaviors regarding legal compliance have an even broader coverage because numerous statutes and legal enactments, both at the national and local levels, have imposed various statutory duties and obligations on private entities in China.

Wu Jingmei’s theory of three-dimensional social credit is that the notion of “social credit” has three dimensions: “honesty and creditworthiness” (诚信), “legal compliance,” and “fulfilment of contractual obligations.”¹⁴⁶ In the context of the blacklist system under the social credit system, different from Wu’s view that three dimensions run in parallel, the author argues that “honesty and creditworthiness” is a high-level overarching notion of the social credit system while “legal compliance” and “fulfilment of contractual obligations” are two behavioral pillars subject to “moral judgment” by the state under the social credit system, guided by the notion of “honesty and creditworthiness.” When private parties violate the law or breach a contract, they are labeled as “discredited parties” after an official moral judgment by the government or a specific public authority. Then, they will be required to bear “moral liabilities”—joint liabilities that are not necessarily limited to moral reprimand¹⁴⁷ and, among them,

144. Regulation of Shanghai on Social Credit (上海社会信用条例) (promulgated by the Standing Committee of the People’s Congress of Shanghai, Jun. 23, 2017, effective Oct. 1, 2017), (China).

145. *Id.* at art. 2.

146. WU JINGMEI, THEORY OF THREE-DIMENSIONAL SOCIAL CREDIT (三维信用论) 43 (2016).

147. See, e.g., Regulation of Shanghai on Social Credit, *supra* note 144, at art. 30; see also Regulation of Zhejiang Province on the Mgmt. of Public Credit Information, *supra* note 82, at art. 26.

“joint sanctions” are the serious liabilities imposed on “severely discredited parties” (严重失信人员).¹⁴⁸

Figure 2 below illustrates the nature and logic of the blacklist system under the social credit system in relation to the legal liabilities for violation of law or breach of contract. In fact, fulfillment of contractual obligations is a contractual obligation, and breach of contract is a legal (civil) wrong. Hence, fulfillment of contractual obligations and legal compliance are essentially legal obligations. Both breach of contract and violation of law bring about legal liabilities under the Chinese legal system. In addition to the legal system, the social credit system makes a moral judgment over private parties who have committed legal wrongs (including civil, administrative, and criminal wrongs) and labels them as “discredited parties.” Discredited parties are then required to bear joint liabilities under the social credit system on top of the relevant legal liabilities arising from the legal system. Therefore, the social credit system runs in parallel to the legal system, as a result of which private entities who breach a contract or violate a law are subject to “double judgment” (i.e., legal judgment and moral judgment) and “double punishment/liabilities” (i.e., the liability for breach of contract or violation of law under the civil, administrative, or criminal law, and the joint liabilities under the social credit system). This is obviously against the rule of law.

Figure 2: The Nature and Logic of the Blacklist System against Discredited Parties under the Social Credit System



Moreover, there arises a risk that the social credit system is likely to dilute the role of the legal system in China. This is because moral judgment by the state under the social credit system

148. See, e.g., Regulation of Shanghai on Social Credit, *supra* note 144, at art. 25; see also Regulation of Zhejiang Province on the Mgmt. of Public Credit Information, *supra* note 82, at art. 24.

is not subject to any procedural requirements, and the joint liability or joint sanction mechanism can utilize a wide and flexible range of moral liabilities generally and automatically applied to discredited parties, and the social credit system does not offer remedies to private parties in the case of erroneous moral judgments and unreasonable or excessive moral liabilities.¹⁴⁹

Two significant implications are observed. First, the social credit system blurs the difference between law and morality and tends to pan-moralization,¹⁵⁰ as well as increasing the prevalence of moral judgment over the legal order. In other words, morality no longer only works as the underlying rationale for justifying legal principles but works as the state's normative standards, and a violation of morality (i.e., "discredited behaviors") will *directly* result in an imposition of a wide range of liabilities or punishments on discredited parties.¹⁵¹ Second, the social credit system adopts ancient China's Legalism approach of "Clear rewards and punishments" (奖惩分明)¹⁵² in the name of improving the moral virtue of citizens.¹⁵³ The Legalism approach may deter discredited behaviors but seldom helps in the cultivation of the moral virtue of citizens or making the "perfect

149. Chinese courts held that a decision to blacklist discredited parties by the administration was not judiciable because it should be solved through the court's letters and visits mechanism rather than through administrative litigation. See Peng Chun, *The Difficulties in Obtaining Remedy for Joint Sanctions against Discredited Parties through Administrative Litigation and Solutions* (失信联合惩戒行政诉讼救济困境及出路), 3 ORIENTAL L. (东方法学) 171, 174 (2021).

150. Zhou Haiyuan, *Pan-moralization Trend of Joint Sanctions against Discredited Parties and Remedy* (失信联合惩戒的泛道德化倾向及其矫正), 3 STUD. ON ADMIN. L. (行政法学研究) 69, 71-73 (2020).

151. It is worth noting that this feature makes the blacklist system essentially different from the approach of upgrading some moral norms to legal rules (以德入法), as described by Luo Peixin. See *supra* note 135, at 175.

152. Yuri Pines, *Legalism in Chinese Philosophy*, STAN. ENCYC. OF PHIL. (Nov. 16, 2018), <https://plato.stanford.edu/entries/chinese-legalism/>. Specifically, the blacklist system under the social credit system exemplifies "punishments" while the red-list system exemplifies "rewards" based on the low or high social credit scores of private parties. See Wang Wei & Yang Huixin, *Study on the Categorical Regulation of Incentives for Credited Behaviors* (守信激励的类型化规制研究), 305 ZHONGZHOU ACADEMIC J. (中州学刊) 43, 43 (2022).

153. See Outline of the Plan of Developing the Social Credit System (2014-2020), *supra* note 3.

citizens,”¹⁵⁴ as Confucianism always claimed.¹⁵⁵ The author, therefore, argues that the judgment-defaulter blacklist system is intended to achieve a pragmatic purpose and function to remedy the failure to perform the judicial duty of judgment enforcement and the ineffectiveness of legal approaches to solving the problem of “enforcement difficulties” in a convenient and delegatized way. Similarly, the blacklist system under the social credit system is employed by the state to deal with the problems of governance failure and ineffective legal enforcement.¹⁵⁶ The rapid development of big data technologies has enabled the state’s collection, analysis, sharing, and use of massive “discrediting information” (不良信息) of private parties, and has significantly facilitated the state’s rating and scoring discredited parties¹⁵⁷ and imposition of joint liabilities for moral conviction on discredited parties.¹⁵⁸

154. Orgad & Reijers, *supra* note 5.

155. Meng Rong, *The Missing Virtue in Building the Social Credit System and the Remedies* (社会信用体系建设中的美德缺失及其填补), 3 *Zhejiang Academic Journal* (浙江学刊) 88, 90 (2022).

156. See Meng Rong, *The Inherent Logic Feature of the Social Credit System under the State’s Governance Regime* (国家治理体系下社会信用体系建设的内在逻辑基调), 154 *L. & SOC. DEV.* (法制与社会发展) 162, 166 (2020); Shen Kui (沈焜), *The Rule-of-law Route for Developing the Social Credit System* (社会信用体系建设的法治之道), 5 *CHINA LEGAL SCI.* (中国法学) 25, 27-28 (2019).

157. The individual and corporate social credit scoring system is another core part of China’s social credit system. It has been established and implemented at the local level. See e.g., Regulation of Zhejiang Province on the Management of Public Credit Information, *supra* note 82, at art.11, on which many local governments in China have modeled their local legislation regarding the social credit scoring system. See Wang Wei, *The Construction of the Social Credit System in the Time of Digital Economy* (数字经济时代的社会信用体系建设), 1 *CHINA CREDIT* (社会信用), 116, 117 (2020); see also Lin Junyue, *The Regulatory System: The Fundamental Part of the Social Credit System* (信用规则体系: 社会信用体系的基础组成部分), 292 *CREDITWORTHINESS* (征信) 1, 8 (2023) (regarding the functions of big data technologies on China’s social credit system development).

158. Regulation of Zhejiang Province on the Mgmt. of Public Credit Information, *supra* note 82, at arts. 23-24, 26-27; see also Regulation of Shanghai on Social Credit, *supra* note 144, at arts. 25, 30, 31, 33.

IV. PROBLEMS OF THE JOINT SANCTION MECHANISM AGAINST DISCREDITED JUDGMENT DEFAULTERS

The joint sanction mechanism features a policy of “discredited behavior here, restrictions everywhere” (一处失信, 处处受限).¹⁵⁹ It has equipped the judgment-defaulter blacklist system with “teeth” (not merely as moral guidance)¹⁶⁰ by strengthening punishment in terms of both quantity and quality. The system has increased, though not significantly,¹⁶¹ the number and rate of successful enforcement cases in China. As empirical data that the author collected from a district court located in Beijing show (Table 2 below), in terms of the case numbers, between 2019 and 2021, 16.7 percent of the cases involving individual discredited judgment defaulters and 3.85 percent of the cases involving corporate discredited judgment defaulters chose to perform their obligations determined in a judgment after being blacklisted and subject to joint sanctions. Moreover, in terms of the amount of judgment debts, empirical data that the author collected from the city of Chongqing show (Table 3 below) that the amount of enforced judgment debts increased by 8.78 percent and 10.54 percent, respectively, after individual and corporate judgment defaulters were blacklisted and subjected to joint sanctions.

159. Zhu Ningning, *What Discredited Judgement Defaulters Face: Discredited Behavior Here Restrictions Everywhere* (让失信被执行人一处失信处处受限), LEGAL DAILY (法制日报) (Oct. 25, 2018), http://www.npc.gov.cn/zgrdw/npc/cwhhy/13jcw/2018-10/25/content_2063715.htm.

160. See Xiaodong Ding & Dale Yuhao Zhong, *Rethinking China's Social Credit System: A Long Road to Establishing Trust in Chinese Society*, 30 J. OF CONTEMP. CHINA 630, 637 (2021).

161. In the opinions of the judges working in the Enforcement Division that I interviewed, this is because, before being blacklisted, almost all judgment defaulters were ordered by the court to be subject to high and non-necessary consumption restrictions which cause great conveniences to their life and work. As a result, many judgment defaulters performed their obligations determined in the judgment if they had the performance capability at this stage. The rest of judgment defaulters are blacklisted by the court due to their failure to satisfy a judgment by (constructive) intention and then subject to joint sanctions automatically. However, such approaches cannot work when they have no more properties or assets available for judgment enforcement.

Table 2: Data on the number of cases involving discredited judgment defaulters in a district court of Beijing (2019-2021)

Year	Individual discredited judgment defaulters		Corporate discredited judgment defaulters	
	Case numbers	Enforced case numbers	Case numbers	Enforced case numbers
2019	164	25 (15.24%)	46	0 (0%)
2020	126	30 (23.81%)	47	1 (2.13%)
2021	147	18 (12.24%)	11	3 (27.27%)
Total	437	73 (16.70%)	104	4 (3.85%)

Source: on file with the author.

Table 3: Data on the amounts of judgment debts in cases involving discredited judgment defaulters in Chongqing (2019-2021)

Year	Individual discredited judgment defaulters		Corporate discredited judgment defaulters	
	Judgment debts (million yuan)	Enforced judgment debts (million yuan)	Judgment debts (million yuan)	Enforced judgment debts (million yuan)
2019	132.20	8.55(6.47%)	90.16	4.96 (5.50%)
2020	39.90	7.50 (18.80%)	33.94	8.99 (26.49%)
2021	50.24	3.47 (6.91%)	24.35	1.70 (6.98%)
Total	222.34	19.52 (8.78%)	148.45	15.65 (10.54%)

Source: on file with the author.

Despite its effect on improving judgment enforcement, the joint sanction mechanism against discredited judgment defaulters violates fundamental legal principles in three respects. First, some of the joint sanctions imposed on discredited judgment defaulters lack a legal basis and are questionable in terms of legality. Moreover, some sanctions are unlawfully imposed on innocent third parties.¹⁶² Second, the joint sanction mechanism cannot be reconciled with the reasonableness doctrine that Chinese administrative law has been devoted to over the past four decades—mainly in its concern with “the prohibition of the improper connection principle” (不当联结禁止原则) and the

162. See *infra* Section A, Part IV.

proportionality principle.¹⁶³ Third, discredited judgment defaulters are required to bear the joint sanctions without due process of law.¹⁶⁴ Because the joint liabilities mechanism against discredited parties under China's social credit system is modeled on the joint sanction mechanism against discredited judgment defaulters, the three violations of fundamental legal principles mentioned above are also relevant to the broader blacklist system under the social credit system.¹⁶⁵

A. Legality of the Joint Sanctions?

1. Lack of legal basis

In terms of legality, the following four categories of joint sanctions involve restrictions on the fundamental civil rights of private parties and thus should be stipulated by the laws made by the National People's Congress or its Standing Committee according to Article 8 of the *Legislation Law* (立法法):¹⁶⁶ (1) reputational sanctions; (2) personal restrictions; (3) deprivation of occupational qualifications; and (4) business restrictions. By contrast, the following three categories of joint sanctions arguably fall within the discretionary power of the administration: (1) closer monitoring and supervision; (2) disqualification for preferential treatments; and (3) applying the stricter approval and supervision criteria (see Table 1 above).

Because the *Civil Procedure Law* made by the National People's Congress authorizes the court to restrict the discredited judgment defaulter from exiting China, to record the failure to satisfy a judgment in the financial creditworthiness system, and to publish the information on discredited judgment defaulters in the media, these sanctions have a legal basis.¹⁶⁷ Nevertheless, the legality of some joint sanctions that restrict the fundamental

163. Shen Kui, *Prohibition of Improper Connection concerning the Social Credit Sanctions* (社会信用惩戒的禁止不当联结), 274 JINAN J. (PHIL. & SOC. SCI.) (暨南学报) (哲学与社会科学版) 1, 3-4 (2021).

164. See *infra* Section C, Part IV.

165. Yu-Jie Chen, Ching-Fu Lin & Han-Wei Liu, *Rule of Trust: The Power and Perils of China's Social Credit Megaproject*, 32 COLUM. J. ASIAN L. 1, 33 (2018) (noting the due process concern in the local government's blacklist system).

166. Legislation Law (立法法) (promulgated by the Standing Committee of the National People's Congress, Mar. 15, 2000, effective Jul. 1, 2000, amended on Mar. 20, 2015), art. 8 (China).

167. Civil Procedure Law, *supra* note 11, at art. 262.

civil rights of discredited judgment defaulters is highly questionable. For example, high and non-necessary consumption restrictions were created by the SPC through its judicial interpretation—the *Provisions on Restricting High Consumption of Judgment Debtors*¹⁶⁸—but the national legislature has passed no law to this effect. To solve this problem, Article 57 of the *Civil Compulsory Enforcement Law (draft)* thus aims to authorize the court to issue an order of restrictions on high and non-necessary consumption to judgment defaulters.¹⁶⁹

In addition, under the joint sanction mechanism, individual discredited judgment defaulters are deprived of the qualification of serving as main responsible persons, directors, supervisors, and senior executives of business entities according to the *Memorandum on the Cooperation in Taking Joint Sanctions against Discredited Judgment Defaulters* (the Memorandum).¹⁷⁰ Although the appendix of the Memorandum cites as a legal basis for the deprivation Article 91 of the *Work Safety Law* (安全生产法),¹⁷¹ a law made by the Standing Committee of the National People’s Congress, its third subsection provides the following:

Where the main responsible person of a business entity has received any criminal penalty or the disciplinary sanction of removal from office under the preceding subsection, he or she shall not serve as the main responsible person of any business entity within five years from the date of completion of serving the criminal penalty or the date when the disciplinary sanction is taken; or, if he or she is liable for any serious or especially serious work safety accident, he or she shall not serve as the main responsible person of any business entity in the same industry for life.¹⁷²

According to the language of Article 91(3), the *Work Safety Law* only deprives the *ex-main responsible person* of a business entity of the qualification of serving as main responsible person *in the same industry* in two circumstances: (1) on receipt of a *criminal penalty* or (2) on receipt of a *disciplinary sanction of*

168. Provisions on Restricting High Consumption and Relevant Consumption of Judgment Debtors, *supra* note 1, at art. 3.

169. See Civil Compulsory Enforcement Law (Draft), *supra* note 15.

170. The Memorandum, *supra* note 73, at arts. 3(13), 3(27).

171. Work Safety Law of China (安全生产法), (promulgated by the Standing Committee of the National People’s Congress, Jun. 29, 2002, effective Nov. 1, 2002, amended in 2009, 2014, and 2021), art. 91 (China).

172. *Id.*

removal from office when he or she has *failed to perform the duties in work safety management as provided for in the law* and thus *caused a work safety accident*.¹⁷³ Moreover, the time limit of the disqualification is generally set at *five years* unless the failure has caused a *serious or especially serious* work safety accident.¹⁷⁴ By contrast, as Table 1 shows, the joint sanction mechanism under the Memorandum generally disqualifies *all discredited judgment defaulters*, regardless of the nature and amount of their judgment debt, from serving as *main responsible persons, directors, supervisors, and senior executives* of all business entities until the label “discredited judgment defaulter” is removed.¹⁷⁵ Therefore, it is evident that this sanction imposed on discredited judgment defaulters is unlawful, excessive, and unfair according to Article 8 of the *Legislation Law* and Article 91 of the *Work Safety Law*.

Besides, there are other joint sanctions under the Memorandum uniformly applied to discredited judgment defaulters that, however, lack legal basis because they are not grounded on any provisions of the laws made by the National People's Congress or its Standing Committee.¹⁷⁶ Such unlawful joint actions include: (1) the deprivation of the qualification to be staff of public institutions; (2) the deprivation of the qualification to act as a legal representative of public institutions; (3) the restriction on the establishment of insurance companies; (4) the restriction on using state-owned forest land, applying for key forestry construction projects, getting an approval to the land occupation by state-owned grasslands, and applying for key grassland protection and construction projects; (5) the restriction on engaging in production, operation, and storage of hazardous chemicals, production and operation of fireworks and crackers, mine production, safety assessment, and other industries; and (6) the restriction on engaging in the transactions of the assets of state-owned enterprises, national assets, and other state-owned property rights.¹⁷⁷

Some might argue that Article 69(2) of the *Civil Compulsory Enforcement Law (draft)* may be the legal basis for all joint sanctions imposed on discredited judgment defaulters. The author

173. Emphasis added by the author.

174. Emphasis added by the author.

175. Emphasis added by the author.

176. Legislation Law, *supra* note 166, at art. 8.

177. *See supra* Table 1.

disagrees because Article 69(2) explicitly requires that credit-related punishments must be imposed on discredited judgment defaulters “in accordance with laws, regulations and relevant provisions;” otherwise, any punishment imposed on them would be illegal.

2. Imposing sanctions on a third party

The joint sanction mechanism imposes some sanctions on a third party beyond the discredited judgment defaulter. As Table 1 shows, they include the following joint sanctions set out in the Memorandum: (1) restricting *the child of individual discredited judgment defaulters* from attending high-tuition private schools; (2) restricting *the legal representatives, main responsible persons, directly responsible persons affecting the repayment of debts, and actual controllers of corporate discredited judgment defaulters* from paying high insurance premiums to purchase insurance products with monetary value, having high and non-necessary consumption, purchasing houses, land or other real estate, as well as restricting *their child* from attending high-tuition private schools; (3) restricting *the lawyers or law firms who provide legal service to discredited judgment defaulters* from participating in the selection of the advanced of lawyers or firms; (4) closer monitoring and supervision of *those enterprises with blacklisted legal representatives, actual controllers, directors, supervisors, and senior executives*; (5) disqualifying *those enterprises with blacklisted leaders* from participating in the election of civilized entities and moral models; and (6) terminating the qualification to exercise its rights of *equity incentive participants of a blacklisted domestic state-controlled listed company*.¹⁷⁸

The above sanctions are similar to ancient China’s criminal sentence of “collective punishment” or “relational punishment” (连坐).¹⁷⁹ It differs strongly from “joint liability” in modern law: collective punishment is imposed on a third party who has not committed any wrong despite having a social relationship with the wrongdoers, such as their relatives or neighbors.¹⁸⁰ Additionally, the purpose of collective punishment is to strengthen

178. Emphasis added by the author to show that joint sanctions are imposed on a third party other than the judgment-defaulter.

179. See generally Fang Shi, *On the Collective Punishment System in Ancient China and Its Influence* (试论中国古代的连坐制度以及影响), 6 MARKET WEEKLY (市场周刊) 142, 142 (2005).

180. *Id.* at 144.

punishment and deterrence beyond the wrongdoers while joint liability is imposed on several parties who have either jointly or independently committed a wrong and thus are liable for the same but indivisible harm caused.¹⁸¹ Therefore, collective punishment lacks a legal basis and obviously contradicts the self-reasonability principle recognized by the current Chinese law. In other words, unless the relevant third parties subject to the above joint sanctions have conspired with the discredited judgment defaulter for the purpose of evading judgment enforcement, it is unlawful to impose sanctions on an innocent third party.¹⁸² Since the *Civil Compulsory Enforcement Law (draft)* does not approve collective punishment,¹⁸³ its legality will remain questionable even if the national legislature later passes the bill.

B. Reasonableness of the Joint Sanctions?

1. Against the prohibition of improper connection principle

Table 1 above shows that blacklisted judgment defaulters are subject to multiple sanctions, some of which are connected to their discredited behavior of concern, that is, a failure to satisfy a judgment by (constructive) intention, while others lack such a connection.

On the one hand, reputational sanctions, a restriction on exit from China, and high and non-necessary consumption restrictions have a connection with the discredited behavior concerned, that is, the failure to satisfy a judgment by (constructive) intention. The first two types of sanctions (i.e., reputational sanctions and a restriction on exit from China) are provided by Article 255 of the *Civil Procedure Law*. Specifically, reputational sanction is a new form of legal penalty that fits the Internet and

181. Some Chinese researchers mixed up collective punishment with joint liability by mistake. See, e.g., He Yongjun & Xie Meng, *The Modern Value and Limitations of Connective Punishment* (连坐制度的现代价值及其限度), 3 JINYANG J. (晋阳学刊) 115, 116-17 (2022).

182. Shen Kui saw it as an example of violation of the prohibition of improper connection principle. See Kui, *supra* note 163, at 4. However, the author argues that the practice of collective punishment lacks a legal basis and therefore it is concerned with the issue of legality. *Id.*

183. See *Civil Compulsory Enforcement Law (Draft)*, *supra* note 15.

digital era.¹⁸⁴ It not only forces discredited judgment defaulters to perform their judgment debt through a strategy of wide public shaming that threatens “bankruptcy in reputation” but also serves as a public warning with respect to their financial creditworthiness and credibility in general. Unlike the traditional financial creditworthiness system, reputation sanction allows the public (including but not limited to financial institutions) to readily access the creditworthiness information of discredited judgment defaulters in determining whether to engage in a legal relationship with or involving the latter. Moreover, the restriction on exit from China aims to avoid discredited judgment defaulters from leaving the country to escape their judgment debts and is, therefore, in aligned with the prohibition of improper connection principle.¹⁸⁵

As for high and non-necessary consumption restrictions, in May 2010 (six years before the establishment of the joint sanction mechanism), the SPC introduced high consumption restrictions through the *Provisions on Restricting High Consumption of Judgment Debtors*, which was amended in July 2015 to add non-necessary consumption restrictions.¹⁸⁶ Although China has not made a personal bankruptcy law for natural persons, it seems that the high and non-necessary consumption restrictions and the property reporting system are modeled on the similar restrictions imposed on the individual bankrupt by a personal bankruptcy law:¹⁸⁷ For example, a bankrupt’s estate should be set up to include “all property belonging to or vested in the bankrupt at the commencement of the bankruptcy” except those necessary for satisfying his basic domestic needs.¹⁸⁸ Given their outstanding judgment debts, it is reasonable to require judgment defaulters to report their earnings and new assets and, at the same time, restrict them from having high and non-necessary consumption.

184. See Kate Klonick, *Re-Shaming the Debate: Social Norms, Shame, and Regulation in an Internet Age*, 75 MD. L. REV. 1029, 1031 (2016).

185. Hu Xiaodong, Xiong Yan & Zhang Wenru, *Review of an Application for the Restriction on Exit from China against the Relevant Party* (对当事人提出限制出境申请的审查), PEOPLE’S CT. DAILY (Feb. 10, 2010), http://rmfyb.chinacourt.org/paper/html/2010-02/10/content_4136.htm?div=-1.

186. Provisions on Restricting High Consumption and Relevant Consumption of Judgment Debtors, *supra* note 1.

187. See, e.g., Bankruptcy Ordinance, (1992) Cap. 6 (H.K.).

188. *Id.* Section 43.

On the other hand, the joint sanction mechanism also imposes on discredited judgment defaulters the sanctions which have no proper connection to their failure to satisfy a judgment by (constructive) intention. To give a few examples, first, as one of the joint sanctions, the government will treat discredited judgment defaulters (no matter whether they are individuals or corporations) as the key supervision target and generally strengthen its routine supervision, monitoring, and inspection of their activities.¹⁸⁹ Second, the government will also increase the approval criteria in reviewing the issuance of bonds on the interbank market, supervising imported and exported goods, etc., when discredited judgment defaulters are involved, regardless of the nature of their judgment debts.¹⁹⁰ Third, the joint sanction mechanism requires the blacklisted, domestic, state-controlled, listed company to suspend the equity incentive plans.¹⁹¹ Relating to this sanction is Article 34 of the *Trial Measures for Implementing Equity Incentive Plans by State-controlled Listed Companies (Domestic)* (国有控股上市公司(境内)实施股权激励试行办法),¹⁹² which suspends the equity incentive plans of a domestic, state-controlled, listed company only when “it has committed a serious violation of regulation and has been punished by the securities regulatory body or any other relevant department.”¹⁹³ According to the literal meaning of the provision, a legitimate connection is lacking between the failure to satisfy the judgment by (constructive) intention and the sanction concerned.

Proponents of the joint sanction mechanism might argue that a proper connection with the sanction lies in the “discredit” of judgment defaulters. Their reason is as follows: since they are labeled “discredited judgment defaulters,” it is justifiable for the government to conduct stricter supervision of them or apply higher approval criteria to them, just as financial institutions will be more careful and alert when considering whether to provide the borrower with a loan according to their financial

189. *See supra* Table 1.

190. *Id.*

191. *Id.*

192. Trial Measures for Implementing Equity Incentive Plans by State-controlled Listed Companies (Domestic) (国有控股上市公司(境内)实施股权激励试行办法) (promulgated by the State-owned Assets Supervision and Admin. Comm'n of the State Council and the Ministry of Treasury, Sep. 30, 2006, effective Sep. 30, 2006), art. 34 (China).

193. Emphasis added by the author.

creditworthiness.¹⁹⁴ This analogy, however, has a flaw. It is reasonable for financial institutions to consider the borrower's financial creditworthiness to assess the "business and legal risk of default" concerning a loan contract because of a proper connection between the borrower's financial creditworthiness and the risk of his breach of the loan contract. Nevertheless, it is not convincing to argue for a proper connection between the loose moral label of "discredited judgment defaulter" and the general risk of that defaulter's violation of laws of a different nature. Because of this, it is difficult to justify the government's tighter supervision and application of higher approval criteria (as one of the joint sanctions) regarding unconnected matters against a discredited judgment defaulter.

2. Against the proportionality principle

The proportionality principle means that the sanctions imposed on a party must have a legitimate aim, be suitable (and effective), necessary, and reasonable to achieve the aim.¹⁹⁵ In the context of administrative sanctions, the principle requires a balance and match between the sanctions imposed and the nature and severity of the unlawful act concerned. Nevertheless, the joint sanction mechanism that applies to discredited judgment defaulters neither considers the different nature of the circumstances of failure to satisfy the judgment by (constructive) intention, nor the details of the unsatisfied judgment debts (e.g., monetary debt or conduct debt; the amount of monetary debt; the amount of unsatisfied monetary debt; a first-time or repeat judgment defaulter; the nature and seriousness of the misconduct concerned; single misconduct or multiple misconducts, etc.) involved in each case.¹⁹⁶ Instead, the same package of joint sanctions uniformly applies to all discredited judgment defaulters regardless of the different circumstances of each case.¹⁹⁷ It is obvious that the joint sanction mechanism for discredited judgment defaulters violates the proportionality principle that Chinese

194. Wang Wei, *The Justifications and Enhancement of the Legality of Public Credit* (公共信用的正当性基础与合法性补强), 5 *GLOB. L. REV.* (环球法律评论) 34, 39 (2021).

195. Wang Ruixue, *Study on the Social Credit Instrument in Government Governance* (政府规制中的信用工具研究), 4 *CHINA LEGAL SCI.* (中国法学) 158, 168-69 (2017).

196. *See supra* Table 1.

197. *See supra* note 130.

law recognizes as a cornerstone principle in relation to any deprivations and restrictions of private rights and interests by the public authority.

It is worth noting that Article 66(2) of the *Civil Compulsory Enforcement Law (draft)* states that the court should determine an appropriate level of blacklisting based on the degree of severity of the discredited behavior that a discredited judgment defaulter has committed.¹⁹⁸ Although it seems to imply that different levels of blacklisting as determined by the court will lead to sanctions of a different degree of severity to be imposed on the discredited judgment defaulter, it remains far from clear whether this provision intends to highlight the importance of the proportionality principle in imposing joint sanctions on discredited judgment defaulters. The author suggests that the national legislature should clarify this issue during the second and third readings of the bill.

C. Due Process of the Joint Sanctions?

The due process of law principle is violated by the joint sanction mechanism operating against discredited judgment defaulters in two major aspects. First, although the Memorandum lists the relevant sources of law in the appendix in an attempt to prove the lawfulness of some of the joint sanctions, each discredited judgment defaulter is in law entitled to be considered on a case-by-case basis by a specific public authority when the latter is exercising its power to decide whether to impose specific restrictions and sanctions on the defaulter according to the relevant legal basis of law.¹⁹⁹ The joint sanction mechanism, however, directly imposes a package of uniform sanctions on all discredited judgment defaulters without granting them a chance to be considered by the relevant public authority on a case-by-case

198. See *Civil Compulsory Enforcement Law (Draft)*, *supra* note 15.

199. Liu & Chen, *supra* note 72, at 107-09; see also *Administrative Penalty Law (行政处罚法)* (promulgated by the Standing Committee of the National People's Congress, Mar. 17, 1996, effective Oct. 1, 1996, amended in 2009, 2017 and 2021), art. 4 (China). Art 4 of the *Administrative Penalty Law* provides that "An administrative penalty that needs to be imposed upon a citizen, legal person or another organization for violation of the administrative order shall be prescribed in the laws, regulations, and rules according to this Law and be implemented by the administrative authority according to the procedures prescribed in this Law." *Id.*

basis, let alone enabling them to exercise the right to make a statement and defense before the public authority.²⁰⁰

Second, there are no remedial procedures and legal remedies available for the discredited judgment defaulters who disagree with the sanctions imposed on them. Because blacklisting judgment defaulters as “moral conviction” and imposing joint sanctions on them as “moral sentence” become the two stages of the judgment-defaulter blacklist system, discredited judgment defaulters should be entitled to lodge an objection and seek remedies with respect to each stage. Although the Provisions on Discredited Judgment Defaulters provide remedial procedures to them for the first stage (i.e., blacklisting judgment defaulters),²⁰¹ any remedial procedure is lacking for the second stage because it is the Memorandum that directly and uniformly imposes a package of joint sanctions on all discredited judgment defaulters once they are blacklisted.²⁰² According to Article 13(2) of the *Administrative Litigation Law* (行政诉讼法),²⁰³ a complaint against administrative regulations and rules or decisions and orders with general binding force developed and issued by administrative agencies is not judiciable. Because the joint sanctions are imposed on discredited judgment defaulters by the operation of the Memorandum, which falls within this category (i.e., “administrative regulations and rules or decisions and orders with general binding force developed and issued by administrative agencies”), the courts will not accept a complaint from discredited judgment defaulters against the joint sanctions imposed on them.²⁰⁴ Moreover, the Chinese judicial system does not

200. *Id.*; see also *supra* note 130.

201. Provisions on Discredited Judgment Defaulters, *supra* note 14, at arts. 9-10.

202. See *supra* note 130.

203. Administrative Litigation Law, *supra* note 71, at art. 13(2).

204. It is noteworthy that Article 53 of the *Administrative Litigation Law* to some extent relaxes Article 13(2) of the same law by allowing an applicant, while filing a complaint against a specific administrative action, to request the court to review the regulatory document on which the action was made, although such regulatory document must be issued by a department of the State Council or by a local government or its department and must be below the level of “regulatory rules (规章)”. *Id.* at art. 53. However, the Memorandum is arguably a set of regulatory rules jointly made by multiple departments of the State Council, the SPC, the Supreme People’s Procuratorate, and relevant organs of the CCP. *Id.* Therefore, it is excluded by Article 53 of the *Administrative Litigation Law*. *Id.*

recognize the constitutional review of laws, administrative regulations, and rules.²⁰⁵ Although in theory it is possible for the higher-level lawmakers to initiate a review and examination of their legality upon the request of citizens,²⁰⁶ it seldom happens in practice.²⁰⁷ Therefore, the current joint sanction mechanism fails to provide remedial procedures and legal remedies available to discredited judgment defaulters. Unfortunately, the *Civil Compulsory Enforcement Law (draft)* is silent on this issue.²⁰⁸

CONCLUSION

The judgment-defaulter blacklist system was tailor-made to deal with the failure to perform the judicial duty of judgment enforcement and, due to the ineffectiveness of the legal approaches, to solving the problem of “enforcement difficulties” in China. A strategy of combining “moral conviction” and “joint sanctions” has been adopted by the judgment-defaulter blacklist system and this has then been extended to a broader blacklist system against discredited parties under China’s social credit system. Running in parallel to the legal system that has already provided administrative and criminal liabilities for refusing to satisfy an effective judgment and ruling, the judgment-defaulter blacklist system has utilized ancient China’s Legalism approaches of “a chaotic society calls for heavy penalties” and “clear reward and punishment” in contemporary China to deal with the problems of governance failure and ineffective legal enforcement. The joint sanction mechanism, however, violates a set of fundamental legal principles that the Chinese legal system embraces. The legality, reasonableness, and due process of joint sanctions against discredited judgment defaulters are highly questionable.

Therefore, the author suggests that the joint sanction mechanism should be abolished and any credit-related punishment should be imposed on discredited judgment defaulters “in

205. Zhiwei Tong, *A Comment on the Rise and Fall of the Supreme People’s Court’s Reply to Qi Yuling’s Case*, 43 SUFFOLK UNIV. L. REV. 669, 672-73 (2010).

206. Legislation Law, *supra* note 166, at art. 99.

207. Guo Ruomei et al., *Six Requests Were Considered by the National People’s Congress in the Past Five Years* (全国人大5年回应6个合宪性事例), THE NORTH CITY NEWS (南方都市报) (Dec. 24, 2021), <https://m.mp.oeeee.com/a/BAAFRD000020211224637276.html>. https://k.sina.com.cn/article_7517400647_1c0126e47059024wut.html#/.

208. See *Civil Compulsory Enforcement Law (Draft)*, *supra* note 15.

accordance with laws, regulations and relevant provisions,” as Article 67(2) of the *Civil Compulsory Enforcement Law (draft)* states.²⁰⁹ When requiring individuals and organizations to improve their creditworthiness, the government itself must first comply with the law when exercising its power to sanction discredited judgment defaulters as well as discredited parties under the social credit system.

The findings of the article have three important implications and act as food for thought in understanding China’s social credit system. First, the blacklist system as part of the social credit system is officially claimed to promote Confucian virtues of individuals and organizations.²¹⁰ Ironically, Confucianism thinks coercive punishment has little influence on the development of a sense of shame that is autonomous or endogenous (that is, a predisposition to feel ashamed when one does something wrong because it seems wrong to oneself and not because others think it wrong or shameful) and the cultivation of moral virtue of individuals.²¹¹ Even though big data technologies enable the state to easily detect discredited behaviors and implement harsh joint punishments against discredited parties, there remains serious doubt that the blacklist system can effectively promote the inherent “honesty and trustworthiness” of individuals and organizations.

Second, the joint sanction mechanism against numerous discredited judgment defaulters by nature follows ancient China’s Legalism approaches, which pragmatically treat rules merely as the state’s ruling tools. A wide range of joint sanctions uniformly applied to discredited judgment defaulters not only excessively increases deterrence against failure to satisfy a judgment by (constructive) intention but also amounts to double punishment against them. The Legalism approaches, which are not in line with the rule of law and China’s modern legal system, should be abandoned.

Third, with the big data technical capacities, both the central government and local governments are enthusiastically developing the social credit system by implementing the blacklist

209. *Id.*

210. Zhang Wenyan, *On the Legal Issues of Chinese Social Credit System*, 9 CHINA LEGAL SCI., 3, 7-8, 32 (2021).

211. Justin Tiwald, *Punishment and Autonomous Shame in Confucian Thought*, 36 CRIM. JUST. ETHICS 45, 47 (2017); see also Meng, *supra* note 155, at 93.

system based on moral judgment of private parties who breach contracts or laws for the purpose of improving their governance in terms of market regulation, judicial credibility, and, more generally, legal compliance. Although the Chinese legal system has provided legal solutions to enforce laws and regulations through imposing civil, administrative, and criminal liabilities for breaching contracts or laws, there is a real risk that the government resources will shift largely from regular legal enforcement to implementation of the blacklist system, thus diluting the role of the legal system and undermining the rule of law. Therefore, the potential negative influence of the blacklist system as a core part of the social credit system on the Chinese legal system should not be ignored.