Poverty, Debts and Legal Aid in Taiwan

Part One. Introduction

I. Debt Issues in Taiwan and Legal Aid

Even in a country with well-developed economy, there are always people with debt problems due to poverty, inadequate social welfare schemes and other factors. However, the legal mechanism for resolving debts and the system of legal aid services provided for debtors may vary in different countries, and it is worth sharing the relevant legal institutions and empirical achievements with one another.

Many think that the occurrence of debts is a personal matter of individual debtors. In fact, other than individual poverty, unemployment, failure in investment or business, paying for relatives or friends and excessive consumption, it may be concerned with governmental policies, e.g. tax policy, urban planning, land policy, economic policy, social security and social welfare policy, etc. Therefore it is unfair and hard to impute the problems to debtors or their families and demand them to take the whole responsibility. On the other hand, when the debts are too much for debtors to handle and there isn't any reasonable mechanism for them to solve the problem, suicidal tragedies happen or debtors may take the risk of committing crimes of robbery or drug trafficking. In less serious cases, debts without proper resolution are often the cause of debtors' overwork, physical or mental illness, domestic violence and divorce, which adds to various social burdens. If the government can provide relevant legal mechanism to reasonably solve their debt problems, not only the problems and burdens of society will by reduced but the debtors will be able to return to the normal economic community and contribute to social productivity. Considering that the occurrence of debts is related to governmental policies and that their resolution can reduce social problems and burdens while increasing social productivity, the government is responsible for establishing a reasonable legal institution to solve the debtors' problems and reviewing those unfair policies which result in the occurrence of debts.

In recent years, the debt problems of credit card and cash card users in Taiwan have become more and more serious. News is often heard that some debtor's entire family has committed suicide or run away to avoid debt collectors hired by the banks. In the past, there was no law regulating the petition for bankruptcy or restructuring, and the problems of credit card debts could not be solved through legal procedures. In 2006, at the request of NGOs and credit card debtors and based on the belief in fair justice and elimination of poverty, LAF made criticizes the unreasonableness of the existing negotiation

mechanism, and dedicated itself to helping debtors negotiating with banks. In 2007, LAF joined the NGOs to form an alliance advocating the enactment of Consumers Debt Clearance Regulations ("CDCA") and thereby the establishment of a mechanism for debt restructuring and clearance. After the enactment of the CDCA and 9 months before it is effective, LAF actively initiated a promotion to debtors as well as trainings to legal aid attorneys for them to understand its content, and to provided a hotline to debtors for reservation for legal consultation and legal aid application. After the CDCA came into effect on April 11, 2008, while the legal aid attorneys appointed by LAF branch offices have provided numerous debtors with legal consultation and assisted them with negotiation, restructuring and clearance, both the judges and attorneys need to learn and find out the best application of the regulations. To the different interpretations made by different judges, the LAF team for the CDCA Program would analyze and provide responding strategies to attorneys while presenting the collection of the unreasonable and inconsistent interpretations made by judges to judiciary authorities as reference for improvement. Following are descriptions of relevant credit card debt issues in Taiwan and the different stages of participation of LAF.

II. Poverty and Legal Aid in Taiwan

The legal aid system was established in 2004 in Taiwan. At that time the priority understanding about legal aid focused on consolidating people's litigation right and equality right. The so-called protecting the rights of the disadvantaged also emphasized on the aid to litigation. LAF has indeed provided legal aid to some disadvantaged people's litigations since the Foundation's establishment, but the disadvantaged are not necessarily involved in litigation, and their problems may not always be solved by litigation or conventional law suit. LAF has limited knowledge about poverty issues, and provides little legal aid to people with poverty problems.

Both the major political parties in Taiwan are right-wing parties that emphasize on democracy and liberty but ignore social justice and equality. The tax rate in Taiwan is not high, and so the social welfare system and security system are relatively defective.

The Social Assistance Law in Taiwan provides subsidies to low-income households. However, as described below, only perhaps 1% of the disadvantaged can receive the subsidies, while the other poor majority will be trapped in the cycle of poverty. As the social insurance and social security systems are not sound enough, people may be trapped in poverty if they themselves or their family suffer from serious accident or illness, long-term unemployment or business failure.

Besides the aforesaid debt problems, the poor in Taiwan may also have

trouble with medical care, children's education, employment, subsidies and loaning with legitimate rates. All these issues are handled by social workers without any assistance from legal workers, who know very little about these issues. In the past, LAF did provide assistance with debt problems and application by few poor people for administrative relief to low-income households but never legal aid to the poor with other problems.

If LAF believes that the major task for legal aid is to assist the poor with relevant legal issues (not limited to conventional law suits), in the future the Foundation must work closely with social workers to provide aid to the poor with disputes concerning various subsidy application and administrative relief. When both the central and local governments fail to provide a comprehensive system or administrative measures to meet the poor people's demands, LAF will also provide legal aid to them in application for administrative relief and petition for Constitution interpretation. When necessary, LAF should assist with statute amendment or enactment to protect the poor.

Part Two. Debt Issues and Legal Aid in Taiwan

One. Deterioration of Debt Issues in Taiwan and Its Causes

I. Data Related to Credit Card Debts in Taiwan

(I) Card Issuance in Taiwan

1. Credit Card: The number of circulated cards exceeded 10,000,000 in 1997 and 40,000,000 in 2004. The total credit amount was NT$491,000,000,000 in 1997 and NT$1,421,000,000,000 in 2005, an indication of amazing credit card business growth.

2. Cash Card: In 1999 the Cosmos Bank first started to issue cash cards. The number of cash cards issued in 2005 was 3,810,000 and the loan amount totaled NT$299,700,000,000, another sign of rapid business growth.

II. Overdue Credit Card and Cash Card Payment in Taiwan

The seriousness of credit card debt problems started to show in the latter half of 2005. By February 2006, the sum of revolving credit balance and cash card loan was NT$764,900,000,000. A total of 520,000 card owners had overdue payments, the average amount of their debts was NT$300,000, and 160,000 of them owed more than NT$300,000. The amount of overdue debts

increased rapidly, the reasons included revolving credit rate and liquidated damages, etc.

III. Bank-Related Causes of Deterioration of Card Debt Problems

(I) Surplus of Banks

In 1991, the government lifted the ban on the establishment of new banks. By 2005, there were 7690 banking institutions including their branches, and the average number of banking institutions per 10,000 people in Taiwan was 2.7 times of that in Japan, which was a sign of too many banks.

(II) Surplus of Bank Funds

When businessmen shift their focus to China, the percentage of Taiwan's banks loan to enterprises drops as a result. In 2000, during the financial storm in Taiwan, investment in the private sectors became stagnant and the demand for fund was low, hence the banks also shifted their emphasis from "enterprise's loan" to "personal consumer's loan".

(III) Improper Promotion by Banks

To promote their credit card and cash card business, the banks place massive improper advertisements on TV and newspapers. Stalls at railway stations or MRT stations where crowds meet handle fast application and issuance of cards without credit checking even repeatedly to those who are already loaded with debts. To inflate their credit loan, the banks would hire marketing staff or collaborate with sales agencies and even forms collusion with the outsiders, making debt problems even worse.

(IV) The banks encourage credit card consumption through various favorable terms, making card users overlook the high revolving interest rate, liquidated damages and handling fees, etc.

Most credit card holders regard their cards as a tool for payment instead of borrowing and therefore pay little attention to the high revolving interest rate, liquidated damages and handling fees. In the meantime, the banks encourage mass consumption via annual charge exemption, bonus points and other favors in addition to the lure of a minimum payment requirement. When holders turn their cards into a borrowing tool because of excessive consumption, the banks are compensated for their loss caused by the aforesaid favors from the high interest, damages and handling fees earned later. The interest rate of banks' credit cards and cash cards is almost 20% and revolving or compound by nature. With the addition of liquidated damages, handling fees

and other charges, the actual annual interest rate can be as high as 82%, which is a grave burden for card holders who are not fully informed of the truth about the rates by the obligated banks.

(V) Debt collection agencies are hired by banks to press debtors with illegitimate methods.

Most banks commission agencies to collect credit card and cash card debts. The agencies would make dozens or even hundreds of phone calls to debtors each day, and make them unable to work by threatening, insulting or abusing them. The collectors might call the families, employers or friends of debtors, causing pressure on the debtors. The collectors would even send people to debtors' residence and cause pressure and disturbance to their family.

IV. Debtors-Related Causes of Deterioration of Card Debt Problems

Since the CDCA was passed by the Legislative Yuan in June 2007 after the third reading of the draft Bill, LAF has held many introduction meetings for debtors around the country and asked the participants to complete a survey. The findings of the 1300 surveys collected are listed as follows, which explain their reasons for getting into debt:

(I) Income insufficient to cover the expenditure. (41.9%)
(II) Unemployment (30.3%)
(III) Business failure due to unsuccessful fund procurement (27.2%)
(IV) Excessive consumption (24.7%)
(V) Helping the family to pay off their debts (23.3%)
(VI) Huge medical expense for the debtors or their family (16.7%)
(VII) House purchasing (14.6%)
(VIII) Being fraud victims (12.7%)
(IX) Debt transferred by being guarantors for others (12.3%)
(X) Being victims of private rotating savings embezzlement (10.9%)

These data indicate that the reasons for debtors' deteriorating debt problems are insufficient income (e.g. living beyond one's income, unemployment and business failure, etc.), huge expenditure (e.g. medical expense, house purchasing, helping others with paying off debts, indebted by guaranteeing for others, being victimized by fraud or rotating savings embezzlement, etc.) and excessive consumption. Debtors are often smeared by banks through media reports that they owe money because of excessive consumption, which does not conform with the facts. Excessive consumption

is the cause of debts for a minority of debtors, and the major causes are insufficient income and huge expenditure.

V. Society-Related Causes of Deterioration of Card Debt Problems

(I) Economic Recession and High Unemployment Rate

Affected by economic recession and industry emigration, the unemployment rate and unemployed persons increase day by day. The unemployed people try to survive on loans and their debt problems become worse.

1. The unemployment rate broke 5% in December 2008 and continued to rise to near 6% by May 2009.

2. The number of unemployed persons increases with the unemployment rate.

Month	Unemployment Rate (%)	Persons Unemployed (by Thousand)
Average in 2005	4.13	428
Average in 2006	3.91	411
Average in 2007	3.91	419
2008/7	4.06	442
2008/8	4.14	452
2008/9	4.27	464
2008/10	4.37	476
2008/11	4.64	507
2008/12	5.03	549
2009/1	5.31	578
2009/2	5.75	624
2009/3	5.81	630
2009/4	5.76	625
2009/5	5.82	633
2009/6	5.94	647
2009/7	6.07	663
2009/8	6.13	672

(II) Poverty Line Set too Low and Insufficient Social Welfare

According to Taiwan's Social Assistance Law, the poor who are confirmed by the government as low-income households can receive subsidies. But local

governments do not pay much attention to this operation, whose budgets are very low. As a result, about only 1% of the low-income households can have subsidies while the majority has none. When they have problems in life, using credit cards or cash cards may temporarily solve their problems but more unsolvable debt problems will follow. For those subsidized low-income households, the limited amount they receive is not enough when emergencies happen, and loans are needed and debts ensue. The following are the number of confirmed low-income households, persons, and rate.

Year (Month)	Low-Income Households			
	No. of Households by Year(Month)'s End	Percentage of Total Households (%)	No. of Persons by Year(Month)'s End	Percentage of Total Persons (%)
1999	58,310	0.89	136,691	0.62
2000	66,467	0.99	156,134	0.70
2001	67,191	0.99	162,699	0.73
2002	70,417	1.02	171,200	0.76
2003	76,406	1.08	187,875	0.83
2004	82,783	1.15	204,216	0.90
2005	84,823	1.16	211,292	0.93
2006	89,900	1.22	218,166	0.95
2007	90,682	1.21	220,990	0.96
Jan.-Sept. 2007	89,097	1.19	216,312	0.94
Jan.-Sept. 2008	90,846	1.19	218,180	0.95

Two. Administrative and Judiciary Institutions Are Both Unable to Solve Debt Problems

I. The authorities' belated actions do not help.

(I) The authorities' belated actions do not help.

The Financial Supervisory Committee ignored and did not try to regulate the banks' improper promotion of credit cards and cash cards, high interest rates and hiring debt collection agencies which adopted illegitimate practices until debt problems became serious in the latter half of 2005.

It was until the latter half of 2005 when the debt problems became a grave social issue and were extensively reported by media that the Financial Supervisory Committee issued administrative orders to restrain the banks, but had limited effect over the already deteriorated problems:

1. Improper collecting acts are prohibited.

2. Improper advertisements are banned and all other ads should contain warnings.

3. When issuing cards the banks should examine the applicants' financial sources and paying capability and stipulate that an unsecured debt may not exceed the applicants' average monthly income by 22 times (in Japan it may not exceed one third of the applicants' annual income).

4. The banks should inform the debtors of the interest rate and all related charges. Adoption of compound interest is forbidden.

(II) The general debt negotiation mechanism proposed by the Bankers Association of ROC in 2006 did not take the debtors' paying capability into consideration and therefore did not truly solve the problems.

From December 15, 2005 to the end of 2006, the Bankers Association set up a debt negotiation mechanism for credit cards, cash cards and credit loan on the instruction of the Financial Supervisory Committee. However, the mechanism did not take the repayment capability of debtors into consideration, and so the debtors might not be able to pay even if the negotiation succeeded. Consequently the debts problems were not truly solved.

II. The court' opinion in Taiwan being conservative, the application of Bankruptcy Law was limited to the juridical person and all bankruptcy petitions by natural persons were dismissed.

When ROC took over Taiwan from Japan in 1945, the government continued to adopt the bankruptcy law from mainland China which provided for settlement before bankruptcy and bankruptcy procedures, which in theory are applicable to both natural and juridical persons. However, the practical opinions of the court again and again dismissed natural persons' bankruptcy petitions by assuming that debtors' assets could not cover bankruptcy procedure fees. Among the two or three hundred bankruptcy cases processed by the court per year, only a few dozen were approved and almost all were petitioned by juridical persons. In 2006, the Taipei District Court even dismissed a bankruptcy petition on the basis of the existence of debt negotiation mechanism.

Before the enactment of the CDCA on April 11, 2008, there was no restructuring system for natural persons to solve their debt problems, and their bankruptcy petitions were always dismissed by the court. Having no way to get them out of trouble, the desperate debtors created a lot of social problems.

While the juridical persons could petition for bankruptcy according to the Bankruptcy Law or for restructuring according to Corporation Law when they had difficulties to pay off debts, it was obviously unfair that natural persons could not appeal to any mechanism to solve their debts.

Three. Credit Card Debts Cause Serious Social Problems in Taiwan

I. Since the first issuance of cash cards by banks in Taiwan in 1999, coupled by the overstretched issuance of credit cards, the problems with card debts became more and more serious and reached culmination by 2005 and 2006, resulting in grave troubles in society. Similar reports could be seen on media almost every day.

(I) Though paying back every month, debtors found that their debts grew more and more because of the high interest rate and liquidated damages. Some debtors killed themselves by burning charcoal, and some and their entire family committed suicide for fear that their children might be trapped in debts.

(II) Debtors dared not stay at home at night to face collectors. Some even took their children away and became homeless people, creating difficulties for their children to study. For this matter, the Ministry of Education later relaxed the regulations and allowed children to enter a school outside their designated zone.

(III) Some debtors would not marry even when pregnant because they were afraid that the debt collectors might disturb the work or life of their spouses.

(IV) Desperate debtors took the risk to make money via fraud, drug trafficking and even robbery.

II. Most Suicidal People Have Debt Troubles

(I) The number of suicidal mortality in 2008 is 4,128, ranking 9th of all causes of death. The crude suicidal mortality rate (number of deaths/mid-year population) in 2008 is 17.9 per 100,000 people, ranking 9th of all causes of death. If calculated according to the world's standard population structure of 2000 (with the factor of aging population included), the standardized mortality rate is 15.2 per 100,000 people in 2007, with a slight increase of 3.5% from that of 2006. Of all causes of death, the percentage of suicidal mortality in

2008 is 2.9%, with an increase of 0.1% from that of 2007. The following are the number of suicidal mortality and percentage of suicide among all causes of death from 1987 to 2008.

Year	Suicidal mortality	Percentage of Mortality
1987	1851	1.9%
1988	1790	1.8%
1989	1573	1.5%
1990	1359	1.3%
1991	1465	1.4%
1992	1381	1.3%
1993	1301	1.2%
1994	1351	1.3%
1995	1618	1.4%
1996	1847	1.5%
1997	2172	1.8%
1998	2177	1.8%
1999	2281	1.8%
2000	2471	2.0%
2001	2781	2.2%
2002	3050	2.4%
2003	3193	2.5%
2004	3467	2.6%
2005	4281	3.1%
2006	4404	3.3%
2007	3930	2.8%
2008	4128	2.9%

(II) The causes of suicide are many, and economical factor like unemployment or debts is a major one. When the unemployment rate rises or debt problems deteriorate, suicide rate also rises, which is discussed by many relevant essays and theses in the world. In the two years of 2005 and 2006 when debt problems were most serious in Taiwan, 4000 people committed suicide, and the mortality rates were 3.1% and 3.3% separately, which were the most of the past years.

Four. In 2006, at the request of NGOs and moved by the stories of the debtors, LAF started to assist debtors in negotiation with the banks

and understood the aforesaid debt problems and their causes.

I. Before 2006, LAF followed the rules and in principle did not provide legal aid in bankruptcy cases.

Before the enactment of the CDCA in 2007, although there was an effective Bankruptcy Law, the court deemed that it applied only to juridical persons and natural persons could not petition for bankruptcy. Hence when LAF was established in 2004, in principle the Foundation did not provide legal aid to bankruptcy cases according to the Implementation Measures and Scope of Legal Aid Act. At that time LAF neither realized the importance of a bankruptcy or restructuring system to the disadvantaged debtors nor understood that the desperate debtors were exactly the major subjects of civil legal aid. It was in early 2006 when LAF was requested by the NGOs to provide legal aid to debtors, and when LAF realized that debt cases were the majority of civil legal aid cases during a study trip to the United Kingdom in October 2006 that debt cases gradually became a major type of legal aid provided by LAF.

II. In 2006, at the request of NGOs and moved by the stories of debtors, LAF started to assist debtors in negotiation with the banks.

When first founded, LAF was busy with establishing branch offices and the legal aid scheme in general, therefore had limited understanding about debt issues and a biased view under the influence of the media. It was the request from the NGOs and the case stories from the NGOs that moved LAF, and stirred LAF to the understanding of the relevant issues and the provision of legal aid.

(I) Story of a Debtor Father of a Premature Baby

In early 2006, Mr. Si-kai Jian, Convener of the Pan-Purple Coalition, called me and asked me to find attorneys to help credit card debtors. I had thought that most debtors were people who led a luxurious, squandering life and bought LV bags and therefore were not supposed to be the subject of LAF service. But as I asked my associates at LAF to invite the legal aid attorneys by fax, more than 90 of them expressed their willingness. I rang Mr. Jian back and asked him to contact the attorneys on the list. I thought I have done my job, but then Mr. Jian requested LAF to help the debtors. I hesitated and wondered if they really were the disadvantaged people who needed LAF's assistance. However, the experience of serving the disadvantaged in society for years told me that only through actual contact with cases that I could understand this issue. Therefore I asked Mr. Jian to invite some debtors to LAF for exchange

of opinions.

Four debtors came to LAF and related their stories. They explained why they got into debt, how they tried to pay off but the money they owed simply grew more, and how the debt collection agencies were commissioned by the banks to press them. When they finished their stories, I realized how my understanding about credit card debtors was affected by the mainstream media, whose reports were so much different from the reality in society. Now years later I still remember that one of them was a taxi driver in his forties who spent lots of money on his premature baby. Originally he was a private chauffeur but was dismissed because he spent too much time going to the hospital. Then he became a cab driver but could not make enough money because of SARS and the economic recession. He borrowed several hundred thousand of dollars from the bank, and the loan became several million dollars in a few years due to the revolving interest rate. The more he paid, the more he owed, while the debt collectors haunted him with harassment and abuse all the time. Just a few days before coming to LAF he had intended to kill himself by burning charcoal but had stopped when he thought of his adorable young child. He said he truly wanted to pay off his debt to set a good example for his child and pled the bank for a second chance. When I saw that forty-something-year-old man confessing in tears, I was shaken in my heart.

I use credit cards often but never for borrowing money, and credit cards are just my tool for payment. At first I did not understand why debtors did not try to live within their income but resorted to loan on cards. On hearing their stories, I suddenly realized that people like me who use credit cards as tools for payment could not understand the pain of those who use cards as borrowing tools. Does this also imply a kind of gap, caused by the differences in social strata?

(II) Story of a Debtor Sister Who Is Pregnant but Cannot Marry

The stories of credit card debtors made us decide to cooperate with the Pan-Purple Coalition. During the process of assisting them in negotiation with the banks, we heard more about their sad stories. One debtor said that her younger brother was born with a genetic disease. At that time the system of national health insurance was not yet established, and his medical expense exceeded one million NT dollars per year. Their parents sold their house but still could not afford to pay and had to borrow from others and take on many jobs. When she started to work, she also borrowed several hundred thousand dollars from the bank to pay her brother’s medical expense and her family’s living cost. Her loan increased to several million dollars from 1990s to 2006. To keep her credit, she worked multiple jobs to make money and was never late for payment. In 2005, she had a boy friend and became pregnant, but she

dared not marry lest her boy friend should have been involved in her debts. When she was informed by the hospital that she might not be able to work due to her health conditions, she tried to negotiate with the major lending bank but was told that she needed no negotiation because she had paid regularly. When she could not continue working, she tried to negotiate with the bank but was told that she was not qualified because she did not have a job. The collection agencies hired by each bank would call her about 20 times a day, and she had to answer over 200 calls from the dozen of banks who had loaned her money. Sometimes the collectors made phone calls to her employer and she was nearly dismissed. They even went to her home and collected money from her senile grandmother.

III. LAF expected that through assisting 300 debtors in negotiation with the banks the Foundation might understand the causes of their debts and if the banks' negotiation mechanism was reasonable, or if a reasonable mechanism might be established to thoroughly solve all debtors' problems.

In 2006, after contacting the NGOs and debtors, LAF understood that debtors were indeed the disadvantaged who needed legal aid. Then the Foundation rallied near 100 enthusiastic legal aid attorneys and 3 staff attorneys to process the applications from around 500 debtors. With the exception of those who were refused after assessment, those who completed the negotiation by themselves and those who lost contact with the Foundation, a total of 300 debtors had finally received legal aid from the Foundation to proceed with collective negotiation with the banks. Knowing that there were several hundred thousand debtors with payment problems, why did the Foundation decide to help only 300 of them? In fact it was expected that, through the process of helping those 300 debtors, the Foundation might understand the cause of their debts and whether the general negotiation mechanism proposed by the banks in 2006 was reasonable and feasible. If possible, the Foundation hopes to propose a reasonable mechanism for the authorities to ask the Bankers Association to make amendment accordingly and thoroughly solve the problems of all debtors. The Foundation understood that it was meaningless for the attorneys to represent debtors in negotiating with the banks if the mechanism was not reasonable. LAF also believed that if the disadvantaged people lacked a reasonable legal mechanism for resolving their problems, it would be the task of LAF to help establishing or modifying the system because the subject of legal aid service is not limited to serving individual cases.

IV. A Card Debt Project Team was formed by LAF to research into the issue, actions were taken to comment on the faults in Bankers

Association's negotiation mechanism, and the civilian version of the negotiation mechanism was proposed.

(I) A Card Debt Project Team was formed by LAF.

LAF attorneys, staff attorneys and external attorneys together formed a Card Debt Project Team to communicate closely with debtors and the NGOs in order to fully understand the real problems and condition of debtors. While researching into the unreasonable regulations of the Bankers Association's general debt negotiation mechanism, a civilian version of negotiation mechanism was proposed. A research was also made by the Project Team to compare the advantages and disadvantages to debtors of the Judicial Yuan's draft the CDCA and the restructuring draft proposed by some members of the Legislative Yuan.

(II) Criticisms were made by LAF on the Bankers Association's general debt negotiation mechanism.

1. Following the instruction of the Financial Supervisory Committee, the Bankers Association established a debt negotiation mechanism for credit cards, cash cards and credit loans from December 15, 2005 to the end of 2006. The Committee claimed that the number of applicants totaled 270,000, among which 222,000 succeeded in negotiation.

2. As a matter of fact the mechanism had limited effect and the following faults.

(1) The banks did not allow debtors to be represented by attorneys and thus created an inequality in the respective positions of both parties. Without the attorney's assistance, debtors could not know if the calculation of banks' interest rate, liquidated damages and handling fee was legitimate. If the banks did not provide the relevant information, debtors had no way of understanding how the indemnity amount was offset. It was also hard for debtors to know whether the standard form contract for negotiation drafted by the banks was reasonable or not.

(2) At that time there wasn't an effective restructuring and clearance system, and the banks were willing only to lower their interest rate instead of offering discount of the principal. Without an alternative system of restructuring and clearance, debtors could not but agree to the negotiation terms offered by the banks.

(3) The banks asked only for fast debt collection without considering debtors' income or paying capability, and so debtors might find it hard to fulfill their agreement afterwards even if they had agreed reluctantly. According to the banks' terms, 48% debtors of the 300 cases processed by LAF were required to pay back more than their monthly income, and 70% of them had to pay back an amount 3/4 higher than their income.

(4) Because of the high interest rate, liquidated damages and handling fee in addition to the pressure from collectors, debtors could not but agree to the banks' negotiation terms even though they knew there would be difficulty in fulfilling them.

(5) Debtors' paying capability might differ at different times of the year, for example, the tuition fees of their children might vary for each school semester. But at that time the banks' negotiation terms were set by computer software and had to be consistent throughout the year. Hence they refused to offer different repayment terms for different periods of the year.

(6) The terms offered by banks were deemed accepted by debtors if they did not object within a certain time, therefore the number of successful negotiations was inflated.

(7) In total, 250,000 debtors did not petition for negotiation, 50,000 failed in negotiation, and a large number of the 220,000 successful in negotiation had difficulties in fulfilling their agreement.

(III) "10 Schemes of Civilian Version of Negotiation Mechanism" was proposed by LAF.

1. The banks should provide information to confirm the amount of debt.
The banks should provide debtors with information about their debt structure, including the principal, interest, handling fee, liquidated damages, the amount paid and others.

2. For whatever items, no more payment would be made if the annual simple interest rate exceeds 20%.
It is in breach of the Civil Code if the banks calculated their interest at the compound interest rate. Therefore no matter what the items are, they all should all be calculated at an annual simple rate of 20%. As a result, the s invalid, while the payment on the excess interest need not continue and

should be deducted from the amount owed.

3. The maximum monthly repayment amount should be determined according to debtors' income.

(1) The maximum pay off amount should be in proportion to debtors' work income. The higher their income is, the higher their pay off amount becomes according to a progressive ratio.

(2) A minimum basic living cost should be reserved for debtors and it should not be less than NT$11,000.

(3) The following items may be deducted from debtors' income:
a. Regular medical expenses for debtors or their family who has serious illness or injury
b. An amount equivalent to their tax deduction if debtors have dependents
c. Other items necessary to be deducted

4. The interest rate should be 3.88% or none.

(1) Principle: calculated according to the annual simple rate of 3.88% for the loan principal

(2) Exceptions to be exempted from interest payment:
a. Mid- or low-income household
b. Debtors or their family with serious illness or injury
c. Debtors with total amount owed that needs to be paid off in more than 80 installments

5. Liability-free after 10 years
For debtors who owe a total that needs to be paid off over 120 installments, the excessive part needs not to be paid.

6. Principal discount
Debtors who meet the following conditions should be favored with principal discount
(1) Mid- or low-income household
(2) Debtors or their family with serious illness or injury
(3) Debtors who have lost their working capability or has low working capability

7. Negotiation principles for debtors without income

(1) Debtors who have no income but have relatives willing to pay for them should present an income agreement.

(2) Debtors who have no income for the time being might have a year's grace time if they present a certificate or proof.

8. Principle for flexible adjustment
If the income of debtors varies, they should honestly inform the banks and modify their payment per installment according to the ratio stipulated by Article 2 of this negotiation mechanism.

9. Stop counting the interest
The debt collecting action should stop from the day of negotiation petition by debtors, and the interest counting should also stop.

10. Applicable subjects
This negotiation mechanism applies to subjects who –
(1) had already been late for payment for 30 days prior to the negotiation.
(2) are normal households with a debt ratio higher than 25 times.

(IV) LAF took actions to voice for debtors.

1. During the first half of 2006, members of LAF Card Debt Project Team accepted 17 interviews by TVBS, ETTV, Police Radio Station, and Cheng Sheng Broadcasting Corporation, etc. on credit card debt issues to explain the serious faults of the general negotiation terms proposed by the Bankers Association and the major reason for LAF's presentation of "10 Schemes of Civilian Version of Negotiation Mechanism".

2. On March 27, 2006, LAF Card Debt Project Team and CEO Jian of the Pan-Purple Coalition paid a visit to the Financial Supervisory Committee and explained about the banks' improper methods of debt collection, the unreasonable general negotiation terms proposed by the Bankers Association, and presented the "10 Schemes of Civilian Version of Negotiation Mechanism".

3. On April 12, 2006, LAF Card Debt Project Team held a press

conference to expose the facts about the negotiation data presented by the Financial Supervisory Committee.

4. During the first half of 2006, members of LAF Card Debt Project Team were invited to attend the many hearings at the Legislative Yuan to explain about the banks' improper methods of debt collection, the unreasonable general negotiation terms proposed by the Bankers Association, and presented the "10 Schemes of Civilian Version of Negotiation Mechanism". The Team also pointed out that the authorities, i.e. the Financial Supervisory Committee and the Banking Bureau, were partial to the banks and allowed them to oppress debtors. A successful negotiation might be defaulted and meaningless if the debt negotiation mechanism did not take into consideration the debtors' capacity to repay, and the data of successful negotiations were false and deceptive.

V. Although the media reported on LAF's action, the Bankers Association's unreasonable negotiation mechanism still could not be changed.

(I) LAF's research and action attracted the attention and reports by the media.

LAF initiated researches into debt issues and the negotiation mechanism, held press conferences, attended hearings at the Legislative Yuan, visited the authorities, criticized on the unreasonable negotiation mechanism proposed by the Bankers Association and presented the "10 Schemes of Civilian Version of Negotiation Mechanism". These actions attracted the attention and reporting by the media and produced the effect of speaking for debtors.

(II) Veiled by the data of 220,000 successful negotiations presented by the Financial Supervisory Committee, the reports by media and public attention diminished greatly in the second half of 2006.

Because of the aforesaid measures taken by the Financial Supervisory Committee in the second half of 2005 and the massive media reports on incidents of debtors' suicide during the first half of 2006, the collection agencies commissioned by the banks did restrain a little in their methods. The negotiation mechanism proposed by the Bankers Association in 2006 temporarily freed those debtors who succeeded in negotiation from being pressured by debt collection, and the media's reports on debtors' suicide was much less frequent in the second half of 2006, plus that the Financial Supervisory Committee repeatedly propagandized the 220,000 successful

negotiation cases. All of these led the public and Legislative Yuan to believe that the debt problems had been solved and was less concerned with this issue.

(III) The Financial Supervisory Committee agreed to help only the 300 cases represented by LAF but rejected the Foundation's proposal to amend the unreasonable terms of the negotiation mechanism, and the Committee even asked the Judicial Yuan to dissuade LAF from participating in "social movement".

At the press conference, hearings and during visits to the Committee, LAF repeatedly stressed that the negotiation mechanism proposed by the Bankers Association did not taken the debtors' capacity to repay into consideration, which was apparently unreasonable. LAF also presented the "10 Schemes of Civilian Version of Negotiation Mechanism" and demanded the Association to make amendment. But the officials of the Financial Supervisory Committee arrogantly indicated that most debtors had succeeded in their negotiations with the banks and the Committee refused to amend the mechanism. They only agreed to assist in negotiation with the banks concerned if the 300 cases represented by LAF had difficulties. Later when the Committee found out that LAF, who often criticized in the Legislative Yuan and other occasions, was not an NGO but an NPO established with the budget of the Judicial Yuan, the Committee turned to the Judicial Yuan and through it advised that LAF should offer services only to individual cases only instead of engaging in the "social movement" which is beyond LAF's "proper duties".

VI. Yielding to reality, LAF Card Debt Project Team confined service only to assisting the 300 negotiation cases in the second half of 2006.

(I) LAF made the painful decision to assist only the 300 cases while waiting for the right moment to seek resolutions to the overall debt problems.

LAF Card Debt Project Team did not agree with the view of the Judicial Yuan or the Financial Supervisory Committee that LAF should only engage in providing services to individual cases and that LAF's advice for improving the negotiation mechanism was an act of "social movement" or "beyond the Foundation's proper duties". On the contrary, LAF thought that establishing or improving the laws and mechanisms for resolving the problems of the disadvantaged was the most effective and most economical way of providing legal aid. Also, intervention from the Judicial Yuan and the Financial Supervisory Committee in LAF's business have seriously infringed the independence of LAF. However, considering that the public and the Legislative Yuan's concerns with this issue have already diminished in the

latter half of 2006, LAF was incapable of dealing with the Financial Supervisory Committee or the Bankers Association and painfully decided to deal with these 300 cases first. Some LAF staff questioned, “Don’t we care about the hundred thousand debtors besides these 300 cases?” We could only wait for the right moment to seek for resolutions to the overall debt problems.

(II) What LAF Learned from the Experience of Assisting These 300 Cases:

1. When LAF staff attorney assisted the debtors in the 300 cases in applying for debt negotiation, all banks refused to allow the attorneys to represent debtors. In addition to writing and visiting the Financial Supervisory Committee, demanding the Committee to correct the banks, LAF immediately sent a letter to the banks stating that their refusal was in breach of the Attorney Regulation Act and Legal Aid Act. In the end the banks agreed to allow LAF to represent the debtors in the 300 cases.

2. The general debt negotiation mechanism proposed by the Bankers Association was a standard form of terms, and debtors could not make negotiations except expressing their agreement or disagreement to accept. Also, as the mechanism did not take into consideration the debtors’ capacity to repay, debtors could only accept reluctantly, hoping to gain a lower interest rate and temporary relief from collectors’ pressure, while it in fact went beyond their repayment capability. LAF Card Debt Project Team attempted for several times through the Banking Bureau to negotiate with the major banks in relation to the following matters:

(1) In the first negotiation, the Project Team requested the major banks to consider individual debtor’s paying capability and specific conditions and stop debt collection during the negotiation period.

(2) In the second negotiation with the major banks, the following matters were covered:

A. The banks might examine individual cases and consider whether a flexible adjustment was possible for cases requiring more than 120 installments.

B. The banks might consider whether it was possible to slightly extend the number of installments for cases requiring more than 240 installments but with insignificant difference.

C. The banks give individual considerations for special cases.

D. The banks consider whether it is possible to accept the debtors' proposals to pay different amounts at different stages.

(3) In the third negotiation with the major banks, the following matter was covered:
Discussion over the possible alternative ways of payment is made when the terms of both parties are at odds with each other. The representatives from the banks agreed to further evaluate some of the cases, and LAF staff attorneys continued to coordinate this matter after the negotiation meeting.

3. In addition to the negotiations on matters of principle between LAF Card Debt Project Team and the major banks through the Banking Bureau, the staff attorneys responsible for the cases had to coordinate and communicate with every debtor and persons in charge of their cases from the banks. By the end of 2006, 186 cases succeeded in negotiation, the process and outcome of which obviously were favored with certain "special privileges" when compared with many other debtors. When these 300 negotiation cases were completed, LAF has not forgotten how to establish a reasonable overall mechanism for resolving debt problems.

Five. Alliance was formed to promote the passage of consumer debt restructuring and clearance law in the first half of 2007.

I. Drafts Bills on Consumer Debt Restructuring and Clearance

(I) The Judicial Yuan's Draft Bills of the CDCA

1. When credit card debts became a serious social problem, the Judicial Yuan decided in February 2006 to propose an independent legislation of THE CDCA besides amendments to the Bankruptcy Law. A research team was formed by Civil Department of the Judicial Yuan discussed at nonscheduled meetings and completed the entire draft on April 11, 2006.

2. In June 2006, the Judicial Yuan sent the CDCA draft to the Executive Yuan and started negotiation. On September 19, the Judicial Yuan and the Executive Yuan presented a joint proposal of the draft and submitted it to

the Legislative Yuan for deliberation on December 21, 2006. Different opinions and amendment by the Executive Yuan were listed in this joint version.

(II) Draft of Restructuring or Clearance Law Proposed by Members of the Legislative Yuan:

The frequent news reports about debtors' suicides since the second half of 2005 caused great public concern, therefore besides the Judicial Yuan's CDCA Draft, quite a few members of the Legislative Yuan also proposes different draft versions, e.g. the Pan-Purple Coalition's version of Draft of Civil Restructuring Law, Legislator Ci-chang Cai's Special Chapter of Restructuring Procedure for Natural Persons in the amendment to the Bankruptcy Law, Legislators Gen-de Chen and Jhih-huei's Draft of Personal Debt Restructuring Law and Kuomintang's version of Debt Clearance Law.

II. LAF held discussion meetings about relevant laws in the first half of 2006 and paid visits to members of the Legislative Yuan.

(I) In the first half of 2006, LAF held two conference about the civil restructuring law, to which 27 participants including attorneys, scholars and actuaries were invited. Discussions about the aforesaid drafts were made in addition to presentations of a comparison table and 23 concrete proposals.

(II) During the first half of 2006, LAF visited two legislators to exchange opinions about the restructuring law and held press conferences for the visits.

III. No progress was made by the Legislative Yuan in the second half of 2006 regarding the restructuring or clearance law.

In the latter half of 2006, the Financial Supervisory Committee and Bankers Association repeatedly claimed that 220,000 of the 270,000 debtors had succeeded in negotiation and so there was no need to establish a restructuring or clearance system. They also tried to smear the image of debtors via media by describing debtors as luxurious, squandering and irresponsible, and indicated that the system would create grave moral crisis in society. Affected by their opinions, the legislators made no progress in deliberating the restructuring or clearance legislation.

IV. Background of LAF's Active Promotion for Restructuring or Clearance Legislation during the First Half of 2007

(I) Through assisting with 300 debt negotiation cases in 2006, LAF had a clear understanding about the seriousness of debt problems in society and the unreasonable terms of the banks' negotiation mechanism. According to this mechanism, the debtors' problems could not be thoroughly solved even with the assistance from LAF in negotiation with the banks.

(II) LAF found that with the exception of few legislators, in the second half of 2006, most members of the Legislative Yuan no longer had the enthusiasm for the legislation of debt restructuring or clearance and no progress was made in their examination. Furthermore, the second half of 2007 happened to be the time for election at the Legislative Yuan, and legislators would be too busy in election to care about this kind of law. In 2008 a new term of legislators would begin, the previous bills would not continue and each draft would have to be deliberated all over again, and it seemed that the legislation of restructuring or clearance would not be completed in the foreseeable future. Though the CDCA Draft was completed by the Judicial Yuan under social pressure and expectation, it was not of priority among other cases. Facing the strong objection from the Executive Yuan and the banks, it was impossible for the Judicial Yuan to actively lobby for it at the Legislative Yuan. As caring for the disadvantaged had always been the major task of LAF, the Foundation joined the NGOs without hesitation and established an alliance to promote the legislation of restructuring and clearance law and gave support to the Judicial Yuan and those few legislators who were concerned with debtors.

V. In January 2007, LAF joined NGOs to establish "Debt-Restructuring and Bankruptcy Law Promotion Alliance".

In January 2007, LAF rallied all the social groups who cared about the disadvantaged, including Taipei Bar Association, Judicial Reform Foundation, Taiwan Association for Human Rights, Taiwan Labor Front and other labor groups, National Alliance of Taiwan Women's Association, The Garden of Hope Foundation and other women's groups, League of Welfare Organizations for the Disabled, Parents' Association for Persons with Intellectual Disability and other groups of the disabled, Consumers' Foundation, Millet Foundation and other indigenous groups, etc., to form the "Debt-Restructuring and Bankruptcy Law Promotion Alliance". With the CEO of the Judicial Reform Foundation as the convener, the Alliance would dedicated itself to promoting the legislation of debtors' restructuring and clearance law, hoping to complete the three reading procedure of the Judicial Yuan's CDCA before June 2007. I remember that after the press conference for the establishment of the Alliance on January 16, 2007, a financial reporter

called me. He said that the Alliance's appeal was reasonable, but as the banks were very powerful, it would be almost impossible to have the CDCA passed in the session before June. He asked about my opinion, but actually I could not be sure, either. I told him that people like us who were engaged in social reform always sought for the possibility out of the impossible, for a hope out of difficulties, and could only did our best for it.

VI. Alliance's Lobbying at the Parliament

(I) Press conferences were held.

(II) Public hearings were held about the restructuring and clearance law.

(III) Visits were made to the Judicial Yuan, party groups of the Legislative Yuan and legislators who made proposals.

(IV) The self-help association formed by the Alliance and debtors made petitions to the Executive Yuan and Legislative Yuan.

(V) A march for "The Poor Stand up for Warmth" was held by the self-help association formed by the Alliance and debtors.

(VI) Alliance members met the legislators, representatives from the Judicial Yuan and Bankers Association to negotiate for relevant regulations.

(VII) Representatives of Japan's National Association of Strategies for Credit Card Debt Problems, including Mr. Tatsuya Kimura and other attorneys, judiciary scriveners, scholars and reporters, etc., contacted the Alliance and came to Taiwan just before the completion of the CDCA's three readings procedure and shared their rich experience for over 30 years. Their enthusiasm was so admirable, and some members still participated in the march on June 2nd even when they were sick. We asked Attorney Tatsuya Kimura why he could keep on caring about such a difficult issue for 30 years. He replied humbly that he simply would not give up, and this simple but meaningful reply encouraged us a lot.

VII. The Arduous Process of THE CDCA's Completion of Three Readings

(I) On April 4, 2007, the Judiciary and Organic Laws and Statutes Committee of Legislative Yuan completed the first reading of the CDCA Draft

jointly proposed by the Judicial Yuan and Executive Yuan, and the Executive Yuan's different opinions were all discarded.

(II) However after the completion of the first reading, the banking industry strongly objected via the Executive Yuan, the ruling party and the media. Through the communication between the Alliance and Legislator Jhong-syong Syu who cared most about the CDCA, a consensus was reached that when the ideal version could not be acquired, concession must be made for the CDCA to be passed. Through Legislator Syu's repeated mediation, the several concessions made for the Judicial Yuan's version which had already completed the first reading, together with the mediation by the vice premier and deputy secretary-general of the Executive Yuan, a agreement was eventually achieved by representatives from the Judicial Yuan, legislators, the banks and political parties. Originally it was scheduled as top priority to be completed with the second and third reading on June 5, but just on the day before, members of the Alliance were worried because they heard that the key ruling party whip refused to sign and so the schedule could not be arranged before the end of this session in 10 days. On the following day, it was confirmed that the ruling party whip would not sign, and so the Alliance and Legislator Syu held a joint press conference to criticize the ruling party for not caring about the disadvantaged and allowing the banks to bully debtors by blocking the negotiated bill. As I saw at the press conference Legislator Syu and the Alliance members spoke with tears in their eyes and heard the NGO representatives expressing that they planned to protest against the ruling party the next day, I could imagine that hundreds of thousand of more people would suffer and probably kill themselves if the approval of this bill was postponed until a few more years later. I couldn't accept that a single person could be so powerful as beyond control to object to such an important bill. I tried with all might through various connections with the President's Office, Executive Yuan and headquarters of the ruling party and requested to meet this party whip. I believed that God would have mercy for the disadvantaged debtors and hate to see them committing suicide or causing family broken. On the next day, I finally met that party whip and convinced him of re-negotiation with those legislators who were concerned with this matter. Then a miracle happened and the CDCA was completed with the procedure of three reading on June 8.

VIII. Major Concessions Made for the Approval of THE CDCA

(I) With the exception of those who had obvious difficulties in fulfillment by the cause not attributable to themselves, debtors who had settled negotiations with the banks in 2006 could not petition for restructuring or

clearance.

(II) Two clauses of the Judicial Yuan's the CDCA Draft were concerned with special provisions of debtors' residence loan, the first being about the negotiation between debtors and creditors and the second about debtors could set their own provisions according to the CDCA, and the latter was deleted from the CDCA version complete with three reading procedure.

(III) According to the Judicial Yuan's draft, the "percentage" of paying off should be recorded, and the ultimate time limit for paying off should be no more than 4 years and might be extended to 6 years under special circumstances. the CDCA version complete with three readings procedure changed the term "percentage" into "amount" and "4 years and 6 years" into "6 years and 8 years".

(IV) According to the Judicial Yuan's draft, a pre-negotiation should be conducted prior to application for restructuring or clearance. When the negotiation failed to start before 20 days after the next day of debtors' application or failed to stand before 30 days after the next day of initiation of negotiation, debtors could petition directly to the court for restructuring or clearance. The CDCA version complete with three readings procedure changed the aforesaid term "20 days and 30 days" into "30 days and 90 days".

(V) The Judicial Yuan's draft did not stipulated when the CDCA should be enforced after promulgation, while the CDCA version complete with three readings procedure stipulated that it should be enforced 9 months after promulgation.

Six. From the second half of 2007 to March 2008, LAF held The CDCA presentations and made preparation for the legal aid service to debtors.

Preparation prior to the enforcement of the CDCA: the CDCA was completed with three readings procedure and passed by the Legislative Yuan on June 8, 2007, and was promulgated by State President on July 11, 2007. According to Article 158 of the CDCA, it would come into effect 9 months after promulgation, i.e. on April 11, 2008. During the 9 months after its promulgation, LAF made the following preparations to help more debtors understand the CDCA and to consolidate the purpose of this legislation:

I. Educational Trainings for Attorneys

the CDCA is very different from the original Bankruptcy Law, and no individual persons can petition for bankruptcy according to the latter. In Taiwan almost none of the attorneys had experience in bankruptcy petition for individuals, therefore it was important to provide educational trainings for attorneys. As soon as the CDCA was passed, LAF invited the judges and scholars who had participated in its drafting to give training courses at different LAF branches.

II. LAF held presentations to promote the **CDCA to debtors and collected their questions and relevant information.**

Without promotion and publicity, many laws meant to help cannot be utilized by the people. Promotion is needed especially to the disadvantaged who lack the capability to access information. LAF actively tried to promote the CDCA via various channels like the media, advertisement, internet and other minority communication lest certain debtors should still be unaware of the enforcement of the CDCA and commit suicide or take risks. To acquaint debtors with the existence of the CDCA and its basic content so that they might make petitions when it became effective, LAF held presentations at different branches between October and December 2007. Trained attorneys also offered a brief legal consultation after presentations to understand debtors' questions and concern. Surveys were made to collect debtors' relevant information, e.g. their reasons for getting into debt, facts about their negotiations with the banks in 2006, their paying methods and difficulties, and the banks' improper ways of debt collection, etc.

III. LAF paid a visit to Japan's National Association of Strategies for Credit Card Debt Problems and Legal Support Center to learn from their experience in helping debtors with debt problems.

When the CDCA was about to completed the legal procedure of three readings in June, Attorney Tatsuya Kimura and other representatives of Japan's National Association of Strategies for Credit Card Debt Problems came to Taiwan to offer their support. Later when the CDCA was passed by the Legislative Yuan, LAF also paid a visit to them in October 2007 to understand how they assist debtors in negotiation. They ardently shared their thirty years' experience with LAF, for example, how they help debtors to tell the struggling stories and gradually affect those probably biased judges or attorneys. LAF also visited Japan's Legal Support Center, and was inspired greatly by their legal information telephone center.

IV. Reservation hotline was announced and local centers for card debt consultation were established to provide legal consultation and convenient

accesses to application for legal aid.

As an adequate consultation for individual cases could not be made at the brief presentation, it would be important for debtors to have a one-on-one legal consultation with attorneys but the LAF branch offices had limited space for too many debtors. Hence through cooperation with local administrative institutions and social groups, LAF branches set up more than 100 consultation centers in addition to telephone centers around the country. A reservation hotline was announced on February 25, 2008, and one-on-one legal consultation was offered from March 3. During the consultation, application for legal aid for negotiation, restructuring or clearance could be made simultaneously if debtors qualified for LAF's examination criteria. Since the service was provided, 6000 reservations for legal consultation per month could be processed by all branches.

V. Points for attention by the CDCA consultation attorneys, members of Examination Committee and legal aid attorneys were specified and educational trainings were held.

Considering that the CDCA was a new law, besides providing educational trainings, LAF also rallied staff attorneys and internal administrative attorneys to form a special team for researching on points for attention by the CDCA consultation attorneys who needed to know how to provide opinions, members of Examination Committee who needed to know about the criteria, and legal aid attorneys who needed to know how to fight for optimal benefits for debtors. Currently more than 1000 attorneys had joined in the work as consultation attorneys, members of Examination Committee and legal aid attorneys.

VI. A platform for communication with the Judicial Yuan and Bankers Association was established to offer proposals and advices but with limited effect, hence more efforts were required.

Being the competent authority, the Judicial Yuan was responsible for drawing up the CDCA's enforcement rules and points for attention. LAF collected debtors' questions and opinions from seminars and presentations and presented them to the Judicial Yuan for reference. While some of the collected opinions were referred, certain key factors were not accepted by the Judicial Yuan. For example, according to Article 64 of the CDCA, the court the court could decide the approval criteria if the court deemed the restructuring plan as fair, and Article 151 stipulated the criteria for debtors with difficulties in fulfillment by the cause not attributable to themselves. Both these articles have significant effects upon the rights and interest of debtors. LAF advised that the aforementioned criteria should be included in the enforcement rules or points for attention. If it was suspected that the trial might be intervened by

administration, LAF also advised the Judicial Yuan to hold judges meeting before the enforcement to discuss the aforesaid criteria and achieve a consensus. Thus difference in court opinions could be avoided, standard could be established for the banks and debtors to observe, number of successful negotiations would be increased, and the court's burdens would be diminished. However on April 11, 2008 when the CDCA came into effect, both proposals by LAF were not accepted by the Judicial Yuan. Also, according to Article 151, debtors should negotiate with major creditor banks prior to petition for restructuring or clearance. But it was not clear what procedures of negotiation mechanism were established by the Bankers Association according to this stipulation or if there was different from the version of 2006. When LAF tried to negotiate for the mechanism with the Bankers Association through Legislator Jhong-syong Syu, the representatives of Bankers Association expressed that they would consider the repayment capability of debtors and that debtors could negotiate at a branch of the major creditor banks, but they made no specific explication about the criteria for negotiation terms.

(VI) An academic conference on personal restructuring and clearance was held by LAF to discuss relevant statutes of different countries and offer reference for judges' interpretation of the CDCA.

Learning from the experience of Japanese attorneys, LAF and Taiwan Law Journal held the Academic Conference on the CDCA on December 22, 2007, to explore relevant statutes regarding personal restructuring and bankruptcy in USA, Germany, France, Japan and Taiwan so that reference could be provided for judges' interpretation of the CDCA and understanding about the function of laws of different countries.

VIII. Stories of debtors were published by LAF, and surveys on debtors were made to explain the causes of their debts and situations.

According to the experience of Japanese attorneys, inviting debtors to relate their true stories through mass media could most effectively correct the public misunderstanding about them and change the court judges' bias against them. However, like those with multiple debts in early Japan, most debtors in Taiwan would simply woe and blame themselves, avoid the media and suffer from extreme pressure from society. In addition to inviting several debtors to explain in person at the press conference, LAF published in March 2008 a book "Trapped in Debts" based on the survey and interview of 15 debtors. The survey findings about the causes of debts, the paying off experience of debtors, the negotiations in 2006 and methods of debt collection by the agencies were also included in this book. Copies of this book were sent to judges and sold to the public in hopes of correcting their bias caused by the misleading of

mainstream media or social class difference.

IX. Amending LAF's Relevant Regulations for the Convenience of Debtors' Application

Since LAF's establishment, the coverage of the Foundation's operation in principle had excluded personal bankruptcy cases. After the enactment of the CDCA, LAF puts emphasis on personal debt negotiation, restructuring and clearance cases and initiates a special program for them. When examining the financial eligibility for general legal aid cases, the applicants' debts in principle are not deducted from their disposable income, while for the debtors' convenience in application for aid to personal debt negation, restructuring and clearance cases, it is specially stipulated that their monthly payment or planed payment for debts may be deducted from monthly disposable income.

Seven. Since the enforcement of the CDCA in April, LAF has been dedicated to providing legal consultation and legal aid to assist debtors in negotiation, restructuring and clearance.

I. The Function and Role of Attorneys after the CDCA Came into Effect

(I) The reason and cause for attorneys to have an important function and role after the CDCA came into effect:

During the process of debt negotiation in 2006, which was before the enforcement of the CDCA, the banks always refuse to let attorneys to represent debtors. After the CDCA came into effect, the banks openly express their refusal via various media and their teller machines to let agencies of attorneys to represent debtors. As the competent authority of the CDCA, the Judicial Yuan has not corrected the banks for their violation against Article 15 of the CDCA that it may apply mutatis mutandis to the stipulation of Civil Litigation Act, and even expresses openly via media or in private that the petition for restructuring or clearance is a simple non-litigation procedure. As long as the forms designed by the Judicial Yuan are honestly completed, the court will naturally make a legitimate verdict and so an attorney is not necessarily required. If debtors want to commission an attorney, it not only adds burdens to them but also wastes the Judicial Yuan's effort in specially designing a series of forms that can in fact be completed by debtors themselves. Officials of the Judicial Yuan also points out that it is impossible for legal aid attorneys to represent all debtors in petition for restructuring or clearance, and the Judicial Yuan will start training litigation assistants to help debtors. But based on the following reasons, I do not think that the banks' and Judicial Yuan's points of

view are legitimate or legitimate, and that the function and role of attorneys are rather important with the enforcement of the CDCA.

1. Uncertain legal concepts are concerned with the CDCA and need attorney's assistance from debtors' stance with the judges to establish legitimate and practical consensuses and legal precedents.

2. Compared with the relevant law of Japan, the CDCA is relatively indefinite and less advantageous to debtors.

3. Stipulations advantageous to debtors are deleted or modified by the banks during legislative process.

4. Without definite explanations in advance by the Judicial Yuan or justice meeting, the interpretations of each court judge are liable to differ.

5. The court judges do not necessarily understand debtors' situation and the illegitimate terms of the banks.

6. The court judges may make illegitimate rules that are disadvantageous to debtors in order to ease the judges' own burden.

7. The Judicial Yuan expresses that the CDCA do not necessarily need attorneys' representation.
The Judicial Yuan ignores the fact that most debt-related cases are represented by attorneys in advanced countries, and that the CDCA is a litigable non-litigation procedure. As the Bankers Association already pronounced their "Operation Guidelines for members of ROC Bankers Association in Processing the Restructuring and Clearance Procedures of the CDCA", creditor banks would inevitably have their own opinions on debtors' terms. Thus attorneys will be especially required for representing debtors to explain or contradict. It needs observation to make sure whether debtors might be misled by the Judicial Yuan and decide not to commission attorneys or the court judges might be affected by the Judicial Yuan and be hostile or ignorant to attorneys who represent debtors. Because of this, attorneys should be more active to fight for debtors' legitimate rights and prove the necessity and value of attorneys' representing debtors.

8. The Judicial Yuan lowers attorneys' remuneration without mutual agreement.

The LAF attorneys' remuneration for the CDCA cases has been twice modified to observe the Judicial Yuan's opinion and decided through considering the attorneys' work loads for stages of negotiation, restructuring and clearance and that the remuneration for legal aid attorneys is half or one third of the market fee. However, while LAF has neither violated the law nor acted improperly, the Judicial Yuan partially sets the remuneration rate and deprived the right and duty of LAF board. It not only inadequately lowers the attorneys' remuneration but also breaks the fair balance between the CDCA cases and other types of cases. Because of this, some legal aid attorneys refuse to assist with the CDCA cases, resulting in legal aid attorneys' deficiency. While many debtors need the assistance from attorneys in overcoming their problems lest they should commit suicide or take other risks, it is hoped that more attorneys would join the CDCA legal aid attorneys' team.

9. Before the court has a clear and just interpretation about the CDCA cases, it is not easy for the banks to agree to concede to clearance terms.

10. The banks refuse attorneys' representation in negotiation, and demand debtors on using the petition form with traps concealed within designed by the banks.
The banks express openly via press conferences and other public occasions as well as via their teller machines that they refuse to let attorneys to represent debtors in negotiation. The space for representatives' information is missed in the negotiation petition form designed by the banks, and the banks would directly contact debtors by skipping the attorneys. In addition, there are many illegitimate terms and traps found in the banks' form, e.g. debtors are required to give up their negotiation for residence loan. If debtors do not use the banks' petition form, their application forms will be returned by the banks. During negotiation both parties are supposed to be in equal positions, but in reality it is lopsided. Under these circumstances, debtors depend even more on attorneys' assistance to clearly understand the banks' relevant documents and for legal advices during negotiation.

(II) The functions and role attorneys are supposed to have after enforcement of the CDCA.

1. How attorneys should convince the court judges to deem a restructuring plan as fair and just:

(1) Whether a restructuring plan is fair and just is an uncertain legal concept that requires the attorneys' effort in creating practical consensuses or legal precedents.

(2) As the court's opinion on a restructuring plan's fairness is not clear and there are no massive petitions for bankruptcy like what happened in Japan, it is hard for creditors meeting to agree to restructuring plans. Therefore it is more important for attorneys to try to convince the judges of the plan's fairness.

(3) In Taiwan's the CDCA, there is no stipulation about the calculation of minimum paying off amount for personal restructuring with salaries, hence it is even more important for attorneys to convince the judges of the fairness of a restructuring plan.

2. How attorneys should convince the court judges to make a liability-free rule for clearance cases

3. Regarding to cases with successful negotiations in 2006, how attorneys should explain for debtors that they have difficulty in fulfillment by the cause not attributable to themselves

4. How attorneys should assist debtors in raising objections or making appeals against the total amount of debts

5. How attorneys should assist debtors who have petitioned for restructuring in negotiation with the banks on the special clauses for residence loan in order to retain their own residences.

6. How attorneys negotiate for debtors with the banks before petitioning for restructuring or clearance

II. Since the enforcement of the CDCA, LAF has been dedicated to providing legal consultation and legal aid to debtors.

The CDCA came into effect on April 11, 2008, and LAF established a reservation hotline for debtors on February 25 of the same year. Legal consultation for debt problems was launched in early March together with further application for legal aid. The monthly applications by debtors, cases approved and total of legal consultations provided between March 2008 and September 2009 are shown as follows:

	Applications	Cases Approved	Legal Consultations
2008/03	2306	1276	539
2008/04	4376	2474	898
2008/05	3623	1879	856
2008/06	2958	1403	654
2008/07	3042	1246	842
2008/08	2139	804	626
2008/09	1331	505	410
2008/10	1219	385	464
2008/11	923	302	352
2008/12	1250	256	756
2009/01	689	142	432
2009/02	956	236	525
2009/03	1093	267	649
2009/04	1029	248	611
2009/05	909	192	563
2009/06	768	132	529
2009/07	763	146	506
2009/08	597	114	390
2009/09	665	132	463
TOTAL	30636	12139	11165
Average in 2008/Month	2316	1053	639
Average in 2009/Month	829	178	518

According to the above data, the average applications per month in 2008 are 2316 cases and 829 in 2009, with the latter equivalent to 35% of the former. The average number of approved cases per month is 1053 in 2008 and 178 in 2009, and the latter is 16.9% of the former. The average number of legal consultations per month is 639 in 2008 and 518 in 2009, which are relatively close in both. The number of approved general cases is 17,698 in 2008, while the debt-related is 10,537, 37.3% of the former, which is huge and a great challenge for LAF. However, it is worth exploring the reason for the approved debt-related cases per month in 2009 accounting for only 16.9%. As described later, the banks' refusal to let attorneys to represent debtors in negotiation, and the court's delay and conservative attitude toward processing restructuring and clearance cases are both possible reasons for the drop of case amount. How LAF should change its strategy and effectively assist more debtors with their problems is the next significant challenge for LAF.

III. After the enforcement of the CDCA, LAF established a special team to provide legal opinions and sample statements to legal aid attorneys for reference.

Although LAF had held multiple trainings about the CDCA for legal aid attorneys before the enforcement of the CDCA, it is still a new law and, without precedent examples, legal aid attorneys have to fumble and find the way to process specific cases. Hence with the purpose to assist legal aid attorneys with cases, a special team is formed to compile questions raised by attorneys, provide them with legal advices and even written statement samples of various circumstances for their reference.

IV. Some time after the enforcement of the CDCA, the special team of LAF made analysis on each court rules for legal aid attorneys to refer to, and the team identified those illegitimate, inadequate or contradictory verdicts and reported to the judiciary authority for improvement.

After the CDCA was enforced for a certain period, the special team of LAF collected various court verdicts, including dismissed procedure rulings, approved and disapproved verdicts for restructuring plans. The team deliberated and made analyses on these verdicts, and provided them to legal aid attorneys for reference. For those illegitimate, inadequate or contradictory rulings, the team also reflected to the Judicial Yuan for resolution.

V. A survey was made by LAF via the commissioned agency on debtors' reflection and opinions about negotiations with the banks and relevant court rules, and the findings wee discussed in a meeting attended by judges, scholars and attorneys.

Besides referring to the information reported back by legal aid attorneys on cases closed, LAF commissioned an agency to conduct a survey by phone in September 2009 on debtors about relevant details and opinions in order to understand the process of banks' pre-negotiations and different court rules. Then on October 2, one and a half year after the enforcement of the CDCA, enthusiastic judges, scholars and attorneys were invited to a conference to discuss about the survey findings.

Eight. Empirical Study and Analysis about the Banks' Pre-Negotiation and Court Rulings for Restructuring or Clearance Plans One and a Half Year after the Enforcement of the CDCA

I. Introduction

It has been a year and half since the CDCA came into effect on April 11th, 2008. Many debtors have applied for negotiation of debt with banks or

petitioned the court for restructuring or debt clearance. Whether these cases are following the spirit of the regulations and releasing debtors' problems should be subject to examination. The goal is to solve debtor's problems more efficiently and to construct a better society of justice.

According to the CDCA, debtors should apply for negotiation with the bank before petitioning for restructuring or debt clearance with the court. However, the bank is not the neutral third party. Are there any illegal practices or deliberate operations from the bank during the negotiation process? What is the percentage of sustained negotiation? Is the ratio of repayment to debt reasonable? Are debtors really capable of repaying the debtor and would not fall into debt again? All these questions are worth observing and analyzing.

There are other things worth a discussion. For example, how long does it take for debtors to petition for restructuring or debt clearance? If the petition is dismissed due to mistakes happened in the petition procedure, does the rejection comply with rules and spirit of the Act? What is the opinion of the court concerning whether the debtor's restructuring plan is fair? According to the court, what are the conditions for debtors to be exempted from debt? How does the court define the term "obligation which debtors are unable to perform due to uncontrollable events which debtors are not responsible to" in Article 151? Do different courts and judges have consistent opinions about the above proceedings or substantial issues?

The CDCA has been enforced for a year and half. As cases of petition for restructuring and debt clearance decreases, the number of applications for negotiation with banks remains high. With the economic downturn and increasing unemployment rate, what accounts for the above occurrences? Is it possible that debtors prefer to negotiation because banks offer reasonable plans considering the repaying ability of debtors? Or, is it possible that debtors have lost their confidence in the court because it takes a long time for the court to process petitions and the court often dismisses cases based on inappropriate proceedings? Furthermore, are the standards for approving restructuring and debt clearance petitions conservative and inconsistent? We should consider all the above questions.

The exact implementation of the CDCA can not only solve debtors' problems, avoiding many family and social problems, but also represent the value of justice. Therefore, the following issues worth everyone's effort: how to improve the mechanism for negotiation; how to build consensus between judges on those uncertain legal concepts; how to increase the efficiency of restructuring and debt clearance cases; how to make judges and judicial associate officers realize the spirit of this Act and the situation of debtors.

II. Reflections on the Negotiation between Banks and Debtors

(I) Numbers of Negotiation Application and Approval

1. Statistics for negotiation with financial institutions according to the CDCA, Article 151

Month	Number of Applications
April of 2008 (started from April, 11th)	1362
May of 2008	5450
June of 2008	3804
July of 2008	4221
August of 2008	3937
September of 2008	3866
October of 2008	4189
November of 2008	3900
December of 2008	4446
January of 2009	3372
February of 2009	3374
March of 2009	4506
April of 2009	4291
May of 2009	3395
June of 2009	4089
2008 average cases/ per month	3908.3
2009 average cases/ per month	3837.8
average cases/ per month	3880.1
Total	58202

2. Statistics for approvals of negotiation cases from court according to the CDCA, Article 152

Month	Approval
April of 2008 (started from April, 11th)	-
May of 2008	-
June of 2008	-
July of 2008	3877
August of 2008	2473
September of 2008	2524
October of 2008	2908
November of 2008	2477
December of 2008	2880

January of 2009	2696
February of 2009	3623
March of 2009	2668
April of 2009	2602
May of 2009	3754
June of 2009	2982
2008 average cases/ per month	2856.5
2009 average cases/ per month	3054.2
average cases/ per month	2955.3
Total	35464

3. Statistical analysis of negotiation applications and approvals

(1) Negotiation cases did not decrease after one year of implementation. Compared with the average amount of cases per month in 2008 which was 3908, the average amount of cases per month in the first six months in 2009 was 3837. There is little difference between the two figures. Negotiation cases did not decrease over time after implementation. It is thus evident that debt problems are still severe.

(2) The success rate of applications approved is as high as 70 percent. In 2008, the average cases per month were 3905 with 2856 being approved by the court and the success rate is 73%. In 2009, the average cases per month were 3837 with 3045 being approved by the court and the success rate is 79.5%. In the reply to the Legislator Jhung-hsiung Syu on September 11, 2009, Banking Bureau, Financial Supervisory Commission pointed out that until July 31, 2009, the sustained pre-negotiation cases and amount were 41,799 and NT$65,800,000,000 while the not sustained cases and amount were 12,355 and NT$15,300,000,000. The sustained rate is up to 77%.

(II) Analysis of Clearance Plan of the Sustained Negotiation Cases

1. Analysis of sustained cases reported by LAF until the end of 2008
The cases reported by LAF until December 17, 2008 were 153 with 90 cases with complete document to be analyzed. Following are the repayment plans of these 90 cases.

(1) Interest rate in repayment plan

a. Statistics: There were 38.89% of debtors repaying with 0 interest rate,

54.44% of debtors repaying with an interest rate below 5%, 6.67% of debtors repaying with an interest rate between 5% and 10%.

b. Analysis: Individual Restructuring Act in Japan is divided into small-scale individual restructuring and income individual restructuring. Plans of mall-scale individual restructuring should be subject to debtors' council with the total repayment no lower than the minimum repayment: If the debt is 5 million Japanese Yen, then the minimum repayment will be 1 million Yen. If the debt is between 5 million Yen and 15 million Yen, then the minimum repayment will be 20% of total amount. If the debt is between 15 million Yen and 30 million Yen, then the minimum repayment will be 3 million Yen. If the debt is between 30 million Yen and 50 million Yen, then the minimum repayment will be 10% of total amount. To put it simply, the minimum repayment is about 10% to 20% of total debt amount. The CDCA drafted by our Judicial Yuan imitated the related regulations in Japan. In the draft of the CDCA Article 53, it is stipulated that debtors' restructuring plan need to have "repayment percentage". In other words, debtors can have a discount on their debts. However, under the protest of banks, "repayment percentage" in Article 53 was changed into "repayment amount." Restructuring was a debt clearance procedure designed for those debtors who cannot pay in accordance with the contract, in hope to help debtors start a new life. If debtors are asked to pay the principal with interest which almost equals to the original debt, then the restructuring system becomes meaningless. Our debt clearance system requires debtors to first negotiate with banks. And if the required repayment with interest in the pre-negotiation plan equals to the original debt, then this system of pre-negotiation plan may become obstacles for debtors to access to restructuring or debt clearance. Furthermore, pre-negotiation in Taiwan is evidently unfair because it makes vulnerable debtors exposed to powerful banks without a neutral third party engaging. Among the mentioned sustained cases, there are 60% of cases needing to pay the total debt with interest and the interest can be up to 6.67%, higher than the statutory interest rate of 5%. Our restructuring system is surely different that of Japan.

(2) Installment Payments

a. Statistics: Among the above 90 cases, there are 14.44% with 72 installments, 18.89% with 72 to 100 installments, 55.56% with 100 to 180 installments and 11.11% with more than 180 installments.

b. Analysis: Restructuring period in Japan is 3 years and can be extended to 5 years, enabling debtors to get rid of debt earlier and have a new life. The CDCA Draft by Judicial Yuan stipulates in Article 53 the ultimate repayment period to be 4 years and can be extended to 6 years with particular excuses. At the request of banks, it was extended to 6 years with special extension to 8 years. Among the mentioned cases, there are 85% of cases have installment period longer than 6 years, 70% cases 8 years to 15 years, and 11.11% cases more than 15 years. It is evident that the installments period is much longer than the 3-year restructuring period in Japan.

(3) Whether repayment rules set by negotiations are unaffordable to debtors

a. Statistics: Among the mentioned 90 cases, compared the amount of each installment with debtors' monthly income (deducting basic expense), we can see whether repayment rules set by negotiations are unaffordable to debtors. The result is that as high as 80% have each installment payment higher than the difference of debtors' income and expense. Whether debtors can afford the negotiated repayment rules is thus questionable.

b. Analysis: according to the CDCA Article 151, debtors should negotiate with the biggest creditor (financial institutions). But the Article does not set rules for repayment plan and there is no neutral third party who can conduct the negotiation. Often, individual debtor in face with powerful financial institution can only accept the actually unaffordable repayment plan, undermining future performing of obligations. National Joint Debt Negotiation Commission of Bankers Association of Taiwan have issued "Guidelines for financial institution on executing pre-negotiation of the CDCA" on February 14, 2008. In Chapter IV, it regulates that "A. Debt without security: (a) The minimum repayment amount per month should be more or at least equal to that of debtor's monthly disposable income after deducting monthly minimum expenses." (b) Installments and interest rates should be based on the minimum repayment per month. B. Debt with security: the original contract should be followed." According to this guideline, the minimum repayment per month for debtors without security should be higher than that of debtor's monthly disposable income after deducting monthly minimum expenses. In other words, debtors are asked to pay what they cannot afford. The repayment plan does not take debtors'

repaying ability into consideration. No wonder 80% of the 90 previous sustained cases have repayment plan exceeding debtors' ability.

(II) In September of 2009, LAF commissioned Global Views Survey Research Center to interview by telephone 1303 applicants and recipients for legal consultation or legal aid between March 3, 2008 and April 30, 2009. Among them, 821 people were granted legal aid, 361 people with legal consultation and 121 people rejected. The findings and analysis are as follows.

1. Whether debtors are capable of repaying according to the sustained negotiation plan

(1) Statistics: 32% of debtors could pay on time, 46.6% struggled to pay on time, and 21.3% could not pay on time.

(2) Analysis: As mentioned, according to guidelines for negotiations, the minimum repayment amount per month for debt without security should be more or at least equal to that of debtor's monthly disposable income after deducting monthly minimum expenses. If the payment is higher than the balance, it obviously exceeds debtors 'repaying ability. Even if the debtor borrows money from others or work overtime, the situation cannot be prolonged. It is easy for debtors to fall short. If the payment is equal to the balance, then under conditions where debtor or debtors' family suffers from an accident, illness, unexpected expense or reduction in salary, it is also easy for debtors to fall short. Statistics from Banking Bureau shows that as high as 40,000 debtors have sustained negotiation and the successful rate is 77%. But the previously mentioned debtors who struggled or couldn't repay on time were 67.9%. This is obviously contradictory to the spirit of the CDCA, exploiting debtors. Financial institutions had no intention to really resolve debtors' problems. In order to ease burden on judges and judicial associate officers, the court considered all cases proper and sustained them according to the CDCA Article 152. However, as the authority of the Act, Judicial Yuan was ignorant to the harsh rules of negotiation plan and debtors being unable to perform obligations, discarding the spirit of the Act.

2. Among the mentioned cases, why 67.9% of debtors fell short to repay but their cases were sustained at the first place

(1) Statistics: 56.8% of debtors were limited to the conditions offered by banks. 18.1% of debtors wanted to work hard and discharge as soon as

possible. 15.2% of debtors underwent uncontrollable events. 9.7 % of debtors don't want to face compulsory enforcement or affect their jobs. 2.5% of debtors had no confidence in the insolvency system. 1.5% of debtors had other sources to repay, and 0.5% just followed the court's advice.

(2) Analysis: The reasons why debtors would agree conditions beyond their ability could be objective or subjective. Objectively speaking, 56.8% of debtors were limited to the conditions offered by banks. It is thus evident that requirements from financial institutions are often unreasonable. On the other hand, individual debtor faced with powerful financial institutions is often powerless and cannot but take the unreasonable conditions. Besides, 9.7% of debtors didn't want to face compulsory enforcement or affect their jobs. Debtors wanted to avoid being forced to pay or have salary compulsory salary reduction. Therefore, they accepted the negotiation conditions. In addition to that, 0.5% of debtors just followed the court's advice. Why did the court ignore the basic spirit of the Act to allow debtors to repay what within their ability and "advised" debtors to take what exceeds their ability? This is unbelievable. Subjectively speaking, 18.1% of debtors wanted to work hard and discharge as soon as possible. It is clear that some debtors wanted to work hard and get rid of debt earlier so they accepted conditions that exceeded their ability. Under this circumstance, debtors often fell ill because of exhaustion. Even if debtors do not lose their health due to over fatigue, making debtors work excessively is not the intention of the Act. Besides, 15.2% of debtors underwent uncontrollable events. Some debtors fell short due to income decrease or expense increase after negotiation, and in some cases debtors simply accepted conditions that exceeded their ability or without any flexibility. Once themselves or their family members encounter income decrease or expense increase, they would probably default. 2.5% of debtors had no confidence in the insolvency system. In other words, debtors lacked confidence in the court to fairly solve their debt problems according to the Act. So the only thing they could do was to take unreasonable conditions. There is room to improve for the courts and Judicial Yuan in charge of restructuring and debt clearance and as the authority of the CDCA.

3. Among the sustained cases, the default rate and the reasons

(1) Statistics: 2% of debtors had discharged. 75.6% of debtors were still in the repayment process. 22.4% of debtors have bleached. Those who

defaulted said it was because of "income decrease due to unemployment or reduction in salary" (53.9%) "unable to sustain a living after repayment" (23.8%); "debtors or family members fell ill, had accidents or more expenses "(19.1%); some experienced "increase of children or parenting fees" (14.7%); some debtors' "monthly repayment was higher than income" (11.3%), and some had "increase of other expenses" (9.9%).

(2) Analysis: As mentioned, although the debtors with sustained negotiations were up to 40,000 people with a 77% successful rate according to Bankers Association in Taiwan, there were 22.4% of defaults. Behind the flattering figures, debt negotiation system surely deserves a reflection. Those debtors who had defaulted had existing reasons during the negotiation process or something happened after negotiations. For example, some debtors were "unable to sustain a living after repayment" (23.8%) and some debtors' "monthly repayment was higher than income" (11.3%). These conditions existed when negotiating. The Act let debtors face powerful financial system alone. There should be amendment to have a neutral third party to conduct negotiation. The court should reject when financial institutions ask more than debtors' ability. Also, the court should correct when financial institution prevent debtors from having an agent ad litem. Besides, there were things happening after the negotiation. For instance, some debtors had "income decrease due to unemployment or reduction in salary" (53.9%); some "debtors or family members fell ill, had accidents or more expenses "(19.1%); some had "increase of children or parenting fees" (14.7%); some debtors' "monthly repayment is higher than income" (11.3%), and some witnessed "increase of other expenses" (9.9%). These mostly happened after negotiation. But if debtors had been granted some flexibility in repayment such as some petty cash or amendment for accidents, then the occurrence of defaults should decrease.

III. Reflections on Courts' Handling Restructuring and Debt Clearance Cases

(I) Statistics and Analysis of Debtors Petitioning for Restructuring and Clearance

1. Statistics for newly accepted restructuring and clearance cases in court
(1) Statistics

Month	Restructuring	Clearance
April 2008 (started from April 11th)	1073	96

May of 2008	2370	170
June of 2008	2473	121
July of 2008	3104	152
August of 2008	2160	144
September of 2008	1961	136
October of 2008	1884	131
November of 2008	1436	123
December of 2008	1535	160
January of 2009	868	108
February of 2009	890	117
March of 2009	860	102
April of 2009	702	117
May of 2009	602	117
June of 2009	578	155
Average cases per month in 2008	1999.6	137.0
Average cases per month in 2009	750.0	119.3
Average cases per month	1499.7	129.9
Total	22496	1949

(2) Analysis

a. In 2008, the monthly average restructuring cases were about 2000 while in 2009 it became 750, being only 37.5% of the original figure. In 2009, we were still facing economic downturn with unemployment rate increasingly high and debt problems more and more serious. Why was there a sharp decline in restructuring cases in courts? In 2008, the average debt clearance cases were about 137 per month while in 2009 it was 119.3, having no serious difference. In 2008, the average clearance cases were 6.8% of restructuring cases. In 2009, the average clearance cases were 15.9% of restructuring cases. Compared with Japan's situation where bankruptcy cases were 6 to 10 times more than restructuring cases, clearance cases were obviously less. Was it because that the word clearance was stigmatized by financial institutions and the media? Or did debtors in Taiwan insist on keeping the virtue to pay off debt?

b. In 2003, Japan, there were 24,553 restructuring cases and 251,800 bankruptcy cases. With 127,750,000 populations, all cases accounted for 0.21% of total population and in 2006 the figure was 0.15%. In the U.S., the application cases from 2003 to 2006 accounted for 0.2% to 0.68% of total applications. In Hong Kong, the application cases from 2003 to 2006 accounted for 0.14% to 0.36% of total applications. Whereas in Taiwan, calculation by the average cases per month in 2008 would be 25,639 cases

per year, accounting for 0.11% of total populations. Calculation by the average cases per month in 2009 would be 10,431 cases per year, accounting for 0.45% of total populations. Compared with the above mentioned countries, our figures were evidently smaller. While debt has become a serious problem with sluggish economy and high unemployment rate, why were there lesser restructuring and clearance cases in the court?

2. Telephone interview and analysis of debtors who have not filed petition for restructuring or clearance

(1) Telephone interview and analysis of debtors who have filed petition for negotiation, restructuring, clearance or have not filed any petition
According to the previously mentioned report by Global Views Research Survey Center, among 1303 debtors (including debtors who had applied for legal consultation at LAF, who had petitioned for legal aid at the court but rejected and who were granted with legal aid by LAF), 62.5% of debtors petitioned for negotiation, 26.5% for restructuring, 3.8% for clearance and 22.5% did not petition any. Those who did not petition for any assistance said that they "had no money to handle it" (48.2%) and "had no one to ask for help" (13.7%). Accordingly, LAF should reflect on whether they should lower the criteria for financial eligibility for application. Besides, some debtors "had no confidence in THE CDCA" (11.1%) or that "banks refused to negotiate" (4.1%). The court and banks should reflect on whether they should improve their services.

(2) For debtors who did not negotiate, failed to negotiate or defaulted after negotiation, the telephone survey and analysis on their petitions for restructuring, clearance or did no petition
60.1% petitioned for restructuring to court, 8.8% for clearance, and 31.1% did not petition for any. The reasons why they did not apply for any were: "feeling they would be rejected" (22.7%), "too many required documents" (12%), "court process time being too long" (7.5%). All the above reasons were related to court. So the court should make improvement in how to deduct unnecessary document, how to accelerate the handling of restructuring or clearance cases and how to reduce unnecessary procedure rejection. Loosening the liability-free conditions for restructuring and clearance would be consistent with the spirit of the Act.

(II) Telephone Survey and Analysis on Time Needed for Processing

Restructuring or Clearance Cases by Court

Of debtors who have cases in process: 45% had taken more than one year, and 31.5% half to a year. In other words, 76.5% had taken more than 6 months to be processed. Besides, Debtors who had cases closed: 26.9% took more than a year to close the case, and 35.5% took 6 months to a year. That meant as many as 62.4% of cases took more than 6 months to process. In addition, whether debtors thought court was efficient in handling the cases: “very efficient” (6.8%), “somewhat efficient” (22.9%), “a bit inefficient” (28.7), and “very inefficient” 23.1%. That showed 51.8% of debtors thought the court handling was inefficient while only 29.7% thought efficient. If the court was inefficient, the intention of debtors petitioning for restructuring or clearance would decrease. This might lead to debtors to agree with banks on conditions exceeding their ability in negotiation or being unconfident in the Act and petitioning for neither negotiation nor restructuring or clearance. As authority, Judicial Yuan should reflect on that and have a better strategy to win debtors’ trust. Only then can they really solve debt problems and realize the idea that justice is for the people.

(III) Telephone Survey and Analysis of Debtors Who Had been Demanded by Court Illegally to Re-negotiate when Petitioning for Restructuring or Clearance

The findings from Global Views Research Survey Center (GVRSC) showed that 19.5% of debtors were asked by court to re-negotiate with banks when petitioning for restructuring, and 15.4% when petitioning for clearance. However, according to the CDCA, the court or judicial associate official has no right to ask debtors to re-negotiate with banks. Usually, banks would not want to re-negotiate either. This would just prolong the time of restructuring or clearance, imposing more burden on debtors because they have to pay more interest or penalty. In addition, 68% of debtors in sustained cases could only struggle or could not repay on time. Meanwhile, the court cases of restructuring and clearance were decreasing. If the court keeps asking those failing to negotiate to try again and even if banks are willing to re-negotiate, it will simply result in more debtors who can only struggle or cannot to repay on time. Eventually, more debtors will lose faith in the court, resulting in even lesser cases of restructuring or clearance.

(IV) Telephone Survey and Analysis of Results of Restructuring or Clearance Cases by Court

1. Restructuring cases

According to the findings from GVRSC, 46.7% of restructuring cases

were in process, 19.6% were approved while 26.2% were dismissed by court. Accordingly, only 20% were accepted. No wonder that debtors did not trust the Act or the court.

2. Clearance cases

As mentioned, there were not many petitions for clearance. According to the findings from GVRSC, there were 62.6% of clearance cases still in process. 14.2% are approved and granted with free liability while 15.7% were dismissed by court and the debtors still needed to repay. Obviously, the pace of clearance was too slow and the success rate of clearance was also too low.

(V) Reasons Why the Court Dismissed Restructuring or Clearance Cases and Analysis

1. Telephone survey and analysis on reasons why the court dismissed restructuring cases

According to the findings from GVRSC, among the above 26.2% of dismissed restructuring cases, the reasons were: “having no sustainable reasons not to repay” (32.3%), “could afford to pay monthly repayment” (12%). These two dismissals were related to the Act Article 151 whether the debtors “are unable to fulfill by the cause not attributable to themselves”. The dismissal rate being so high, we should consider if the court’s interpretation of this Article was too strict. The other three dismissal reasons were: “the court would not agree with the restructuring plan” (22.8%), “having exceeded the time to complement the required documents” (22.7%) and “not having conducted pre-negotiation with banks” (9.5%). All three reasons were statutory reasons to dismiss. But since all cases are unique, we should consider if the court was reasonable. For example, was the court fair to restructuring cases? Was the court too strict without really understanding the situation of debtors? Was the court’s requirement for documents necessary and was there sufficient time for debtors to collect them? Also, the court favored banks more instead of debtors in defining whether debtors had pre-negotiated with banks. All these are questionable.

2. The reasons why the court dismissed restructuring or clearance cases and analysis

According to the research by LAF on the dismissed cases between April 11, 2008 and June 30, 2008, questionable rulings can be divided into different types as following:

(1) Transfer of jurisdiction
a. Types: LAF searched for 296 cases of transfer of jurisdiction on the website of Judicial Yuan and discovered that some rulings were "Applicants who petition at the court of current residence should apply at the court of household registry because applicants may change their jobs or rent other places to live."

b. Analysis: According to Article 5 of the CDCA, "restructuring and clearance cases belong to the jurisdiction of the court of applicant's residence." As the current residence and household registry residence of applicants can be different, the article aims at saving applicant's time and cost. But the previous cases obviously contradict regulation in Article 5. Some rulings were changed after appeal. Judicial Yuan should pay more attention to those judges who make situations more difficult for debtors and ask them to improve.

(2) Rulings on whether obligation which debtors are unable to perform by the cause not attributable to themselves:
According to Article 151 of the CDCA, if debtors had negotiated with banks in 2006, they should not petition for restructuring or clearance. But it is beyond this restriction for debtors are unable to perform their obligations by the cause not attributable to themselves. The following rulings dismissed debtors' petition for restructuring or clearance because the court decided those debtors had major difficulties in fulfilling their negotiations not by the cause not attributable to themselves. These cases should be subject to further examination.

a. Type
(a) Debtors' income being less than negotiated amount
Most rulings on this were that it was "by the cause not attributable to debtors themselves", but still a few court rulings were given because the court thought that "debtors were aware of the fact that their income was insufficient to fulfill required payment during negotiation, but they still accepted and finally led to default. It was obvious that there was the cause attributable to themselves."

(b) Debtors being unable to afford negotiated amount of repayment after deducting basic living expenses
Some rulings accepted it as "by the cause not attributable to debtors themselves", while some dismissed the case because: "During negotiation

in 2006, debtors obviously knew that there was no way to make both ends meet but still accepted the negotiation. It was obvious that debtors had major difficulties to fulfill their agreement not "by the cause not attributable to themselves".

(c) Debtors suddenly defaulted after repaying many installments.
Some rulings were: "After agreeing on the negotiation and paying many installments, debtors suddenly default. It is obvious that their honesty is questionable and there should not be any cause not attributable to themselves."

(d) After negotiation in 2006, there wee no significant changes in debtors' income and expenses.
Some rulings were: "there are no significant changes in debtors' income and expenses between negotiation in 2006 and the default. There should not be any cause not attributable to themselves."

(e) Debtors underwent compulsory enforcement after negotiation in 2006.
Some rulings were: "after negotiation in 2006, if debtors were compulsory enforced by other creditors, for example, their fixed salaries were deducted by one third every month, and then unable to repay on agreed terms of negotiation. This should not be any cause not attributable to themselves."

(f) Other private debts
After negotiation in 2006, if debtors should repay other private debts, they often could not provide enough proofs for themselves, and so most courts did not consider those private debts "necessary monthly expense after negotiation."

(g) There was immobile property under debtors' name.
Some court thought that if selling their immovable property could reduce debtors' debt, they should not claim that they were unable to repay while retaining their immovable property.

b. Analysis
(a) Regarding the above types from A to D, the judges obviously did not understand debtors' background and situation by considering "the cause not attributable to debtors themselves" would only happen after negotiation. They ignored the fact that "the cause not attributable to debtors themselves" already existed during the 2006 negotiation. At that

time, debtors had no other systems like restructuring or clearance. In order to avoid being forced to repay by debt collection agencies hired by financial institutions, and also to avoid accumulating more and more interest and liquated damages, they could not but accept the terms beyond their capability. These debtors actively stood out and negotiated. Compared with those who did not negotiate in 2006 or did not agree on the negotiation, these debtors cannot be deprived of the rights to petition for restructuring or clearance. The CDCA Draft proposed by the Judicial Yuan had no restriction on this. The current article was forced to be added at the banks' demand and therefore illegitimate. Therefore, the judge should realize the mentioned situation and interpret this article in a more tolerant way.

(b) The previous (e) type was a typical example of "cause not attributable to debtors themselves" happening after negotiation and stipulated by Article 44 of the CDCA, while the judges still dismissed those cases. The judicial authority should improve the education and trainings for judges about the CDCA.

(c) It is very common for debtors to borrow money from relatives and friends in Taiwan. As to the problems in type (f) to provide proofs, private loans may not use remittance or check. Therefore, the court should be more flexible with this for example substituting these with calling witness or requiring for affidavit.

(d) As to type (g) with real estate, the special Article 54 and Article 55 of the CDCA Draft have stipulations on residence loan. But the final version just keeps Article 54, stipulating that "debtors can negotiate with residence loan creditors for special terms for the restructuring plan." Accordingly, if the immovable properties of debtors are residences and not particularly expensive or spacious, then they should be protected by the Article. The judge should not demand debtors to sell their immovable properties otherwise they cannot claim their inability to pay off their debts.

(e) In the above cases, judges in different courts often have different opinions. LAF had suggested before the enforcement of the CDCA that consensuses should be achieved for those indefinite interpretations at the judges meeting convened by the Judicial Yuan to avoid contradictory rulings. But the Judicial Yuan did not pay heed to it, and now contradictions in rulings have already been produced, resulting in

people's lack of confidence in court and the Act. It is reported that this year there has been two judicial meetings at Judicial Yuan, reaching many consensuses. But the results are not yet on the Internet or published. Therefore, it is suggested that Judicial Yuan release the results as soon as possible in order to help judges, attorneys, debtors and creditors to follow or anticipate.

(3) Rulings deciding debtors' being unable to pay or possibility of debtors' inability to pay

According to Article 3 of the CDCA, "debtors who are unable to pay or have the possibility of being unable to pay can follow the restructuring or clearance procedure stipulated by this Article to settle their debts." Whether the following rulings were reasonable is worth deliberation.

a. Type

(a) Debtors have assets greater than their debts.

Some court rulings deemed that debtors had more assets than their debtors therefore they were not unable to pay or did not have the possibility of being unable to pay. But the courts did not take debtors' repaying ability into consideration.

(b) Debtors currently still followed the negotiated agreement.

Some rulings considered that debtors were still following the agreement so there should not be any possibility of their being unable to repay.

b. Analysis: Whether debtors were unable to pay or have possibility of being unable to pay, the courts should consider their repaying ability while the mentioned two situations did not do so. Even though debtors had more assets than debt, their assets might be their own residence only. If they had no income or limited income, they might still be unable to pay. Debtors who are still fulfilling the agreement negotiation probably because they had been borrowing from their relatives or friends in order to pay for the negotiation and in fact they were unable to pay off.

(4) Overdue fees

According to Article 6 of the CDCA, debtors should pay NT$1000 on petitioning for restructuring or clearance in addition to the prepaid fee required by the court. If it is overdue, the court can dismiss the case. According to Article 7, if debtors cannot pay the fee, they can explain their situation and petition for being temporarily exempted from payment. The following cases were dismissed because debtors did not pay the fee,

which was questionable.

a. Type
(a) Debtors petitioned for restructuring but were unable to afford the several thousand postal fees or inspection fees, and so their cases were dismissed by the court.

(b) Debtors petitioned for clearance but were not able to afford the several thousand postal fees or inspection fees and did not petition for temporary exemption from payment, and so their cases were dismissed by the court.

b. Analysis
(a) According to Article 7 of the CDCA, only clearance but not restructuring petitioners can request temporary exemption from payment. The reason was that if debtors can repay by installments, they should be able to pay the fees. But in fact, the prepaid fees required by the court can be several thousand or as high as several tens of thousands, which was too much for debtors to pay within a short time, especially when many debtors in Taiwan are supposed to petition for clearance but actually petitioned for restructuring instead. After being dismissed by court due to overdue payment, according to Article 65, their cases cannot be relegated back to clearance either. Therefore, the judicial authority should reflect on whether the fees are too high and the time to pay too short. They should also establish a system for petitioners to pay in installments.

(b) The CDCA is a new Act, which is not easy for many debtors to fully understand relevant stipulations. When requiring for the fees, perhaps the court can also explain to debtors that they can petition for temporary exemption by explaining their financial ineligibility? For future amendment, it should be amended that debtors can be exempted from the payment when petitioning for clearance, and that the fees should be due for the financial conglomerates that have the priority for being repaid.

(5) Overdue documents
The following cases were dismissed because debtors did not hand in documents in time. This is also a questionable ruling.

a. Type
(a) The court demanded debtors to hand in many documents in a short time. If they are overdue, the court would dismiss the case immediately.

(b) The debtor handed in the documents, but the court considered them insufficient to prove and deemed them as not complemented and so dismissed the case.

(c) The court dismissed the case because it thought that the debtor's claimed dependents could actually self-support themselves.

(d) The court dismissed the case because it thought that the negotiation made in 2006 lacked the signatures of negotiators which were not later complemented.

b. Analysis
(a) Court judges had different opinions on what document is required, and debtors or their representatives could made preparation in advance. The judicial authority should hold judge meetings to achieve a consensus on which documents are required.

(b) Some judges allowed too short a time for debtors to submit the documents or prepayment. The judicial authority should decide an appropriate period of time for different circumstances.

(c) If the court considered the documents as insufficient, they should request debtors to explain or to complement the required document instead of regarding it as overdue and dismissing the case. If the court thought the debtors' claimed dependents as able to self-support themselves, it should ask debtors to explain or exclude the supporting cost from necessary expenses when ruling whether debtors are unable to pay or not. The court should not simply regard it as overdue and reject it. Besides, the cost for dependents support is hard to be proved; the court should be more lenient in deciding the fact. Regarding the proof of ways of paying for the cost for dependents support, it might be presenting the affidavit or attendance to the court in addition to proof of remittance or withdrawal of money.

(d) In 2006, if debtors and financial institutions agreed on a negotiation, the institution usually would not sign on the written agreement. If the court demanded debtors to provide a written agreement signed by both parties, it would be very difficult for debtors to complement the required signatures. The court could simply send a letter to the financial institutions for confirmation instead of dismissing the case for overdue documents.

(6) No prior negotiation had been made.
According to Article 151 of the CDCA and Article 42 of its Enforcement Rules, debtors should negotiate with the primary financial institution creditor in advance before petitioning for restructuring or clearance. If the negotiation was sustained in 2006, they did not need further negotiation. But if it was not sustained, then according to Article 42 of the Enforcement Rules, negotiation would not be considered by the court to have been conducted. The following questionable cases were dismissed because the court ruled that debtors had not negotiated in advance.

a. Type
(a) Some courts ruled that though some successful negotiations in 2006 did not include financial institution other than banks, nor did they include guarantors and creditors with security, which did not conform to the institutions stipulated by the CDCA for pre-negotiation. Thus, the courts dismissed debtors petitioning for restructuring or clearance even though their cases had succeeded in negotiation in 2006.

(b) When pre-negotiating with the primary financial institution creditors, if debtors did not provide documents requested by Bankers Association in Taiwan, they would usually be rejected. If creditors did not start a negotiation in 30 days, then according to Article 153 of THE CDCA, debtors could petition for restructuring or clearance. But usually the court would dismiss the case due to the lack of a negotiation. Even the debtor had submitted the documents requested by Bankers Association in Taiwan but perhaps a little different in format, the banks would refuse to negotiate, and then the court would dismiss their petitions.

b. Analysis
(a) Situations in the aforesaid type (a) have been changed after appeals by debtors. The court now accepts debtors with sustained negotiation in 2006 even though not all creditors were included.

(b) As required by Article 153, Paragraph 1 of the CDCA, debtors only need to express their intention to negotiate with major financial institution creditors without providing any documents. Furthermore, two parties in a negotiation should be on the same level. Bankers Association in Taiwan has no right to unilaterally request debtors to provide documents or reject to negotiate. Moreover, the court has accepted opinions from Bankers Association in Taiwan, thinking that negotiation is not sustained without

debtors providing documents required by Bankers Association in Taiwan, and so dismissed restructuring or clearance cases. On the other hand, even if debtors need to provide those documents in order to assist with the negotiation, based on the principle of equality and the principles of disclosure of information, creditors should provide documents about the actual amount of debt, the past repayments, the interest, liquidated damages and fees. As financial institutions are powerful with the advantages of information and legal resources, debtors should consult with attorneys or have access to other help. However during the pre-negotiation, debtors have no idea of the amount of debt and how it is calculated. When asking the banks to provide related data, the banks just refuse to help. Even though debtors have an attorney, the banks would reject the involvement of the attorney and ignore the lawyer during the entire negotiation process. The court has neither rejected the aforesaid illegitimate negotiation based on the principle of equality nor considered the fact that the banks might refuse to negotiate so debtors can petition for restructuring or clearance directly. As competent authority of the CDCA, the Judicial Yuan has turned a blind eye to the previous situation and tacitly agreed on rulings that favored banks in order to save the judges' own trouble.

(VI) Analysis and Reflection on reasons for the court's approval or dismissal of restructuring cases

After the court's approval of debtors' petitioning for restructuring, a restructuring plan should be proposed for the court to hold the creditors meeting to decide on whether to accept or not. The court can also directly turn to Article 64 of the CDCA to decide whether the plan is fair and make the final ruling. Usually the court would not hold the creditors meeting and it is not easy to have 50 percent creditors agreeing on the plan. Therefore, whether the court considers the plan fair and approves it or not will be the key to the success of a restructuring plan. However, by Article 64, except for the situations in Article 63 or Article 64, Paragraph 2, the court can approve it as long as the plan is fair. But there is no further stipulation to define the fairness of a plan.

In order to understand and analyze the information of the court rulings on restructuring plan, LAF has researched on the "debt clearance cases in local courts between June 1, 2008 and February 28, 2009", based on the list provided by Judicial Yuan to Legislator Jhung-hsiung Syu in April 2009. the explanation and analyses are as follows:

1. Analyses on approved restructuring plans

(1) Only 42.7% of plans were accepted. The success rate is obviously too low.
From June 2008 to February 2009, there were 3,452 restructuring cases approved by the court but only 79 restructuring plans of them were accepted at a rate of 2.29%. Judging from the cases closed with the ruling to start restructuring, the accepted plans were 79 while the rejected were 52. The approval rate of restructuring plans was 60%. In addition, according to the survey by GVRSC, except for the 46.7% of cases still in process, the restructuring plans of 19.6% of all the restructuring petition cases were accepted while 26.2% were rejected (including the dismissed restructuring petitions and plans not accepted). Accordingly, only 42.7% of restructuring plans were accepted out of the dismissed restructuring petitions and rejected plans.【19.6%÷(19.6%＋26.2%)＝42.7%】No matter it was 60% or 42.7%, the court's approval rate of restructuring plans was obviously too low. The judicial authority should find out the reasons and try to improve.

(2) It was obviously against the stipulations of the CDCA when 70% of the approved restructuring plans had a repayment period as long as 8 years.

a. Statistics: Among the above mentioned 79 approved plans, 45 had information about repayment period, and 68.89% of which had an 8-year repayment period, 2.22% had a 7-year repayment period, 24.44% had a 6-year repayment period, and 4.44% less than 6 years.

b. Analysis: The restructuring period in Japan is 3 years and can be extended to 5 years. The CDCA Draft of Judicial Yuan stipulates in Article 53 the ultimate repayment period to be 4 years and can be extended to 6 years for particular reasons. Under the continuous pressure from the banks, it was extended to 6 years and 8 years for plans with special reasons. With 70% of the above restructuring plans having an 8-year repayment period, it is obvious that exceptions have already become normal rules.

(3) Compare with the restructuring system in Japan, almost 70% of plans had the repayment percentage higher than 50% of the repayment, which was relatively too high.

a. Statistics: 26.67% of the restructuring plans had to repay more than 90%, 42.22% of the plans had to repay from 50% to 90%, 26.67% of the

plans had to repay from 20% to 50%, and 4.44% of the plans had to repay less than 20%.

b. Analysis

(a) There are two types of personal restructuring plans in Japan, the small-scale personal restructuring plan and that for persons with salary incomes. The small-scale personal restructuring should be subject to creditors' meeting to decide, and the total repayment is lower than the minimum repayment. If the debt total is 5 million Japanese Yen, the minimum repayment will be 1 million Yen. If the debt amount is between 5 million Yen and 15 million Yen, the minimum repayment will be 20% of total amount. If the debt is between 15 million Yen and 30 million Yen, the minimum repayment will be 3 million Yen. If the debt is between 30 million Yen and 50 million Yen, the minimum repayment will be 10% of the total. The restructuring plan for persons with salary incomes does not need to go through creditors' meeting, but the total amount of repayment should based on the disposable income. There are three steps to calculate: The first is based on debtors' gross income in 2 years before proposing the plan. After deducting the income tax, residence tax and social security fees, the figure should be divided by two to get an average yearly income. The second plan deducts the basic expense of debtors and their dependents to get the debtors' disposable income. The third plan will multiply the disposable income by 2 to get the base for disposable income, which is therefore the minimum repayment amount.

(b) On the other hand, the CDCA in Taiwan does not regulate the minimum repayment amount. Article 64 just stipulates that it should be considered fair by the court without a standard for being fair. The approved repayment percentage was from 14.42% to 100% with a significant difference in between. There have been decades since Japan had bankruptcy system, and its personal restructuring system only started in 2001. The banks in Japan were willing to accept a restructuring plan with a minimum of 20% of repayment since they usually got no compensation under the bankruptcy system. In Taiwan, restructuring and clearance system were enforced at the same time, but it was not easy for banks to accept restructuring plan with a discount on repayment. The judges also believed that debts must be paid off. Therefore almost 70% approved restructuring plans had repayment percent as high as 50%. There were even 26.67% of plans with 90% of total repayment. Compared with that in Japan, our restructuring system helps debtors only in a limited way.

(4) Almost half of the approved restructuring plans had a monthly repayment higher than the balance between debtors' income and expense. It obviously violates the spirit of the CDCA.

a. Statistics: Of the 25 cases with relevant information, 48% had the approved restructuring plans with a monthly repayment higher than the balance between debtors' income and expense, 44% had the repayment equal to the balance, and 8% lower.

b. Analysis: If the plan is to repay with all the balance between debtors' income and expense, the debtors would surely be considered as most sincere. But in fact, this kind of plans were liable to be hard to fulfill in the future because there are many situations for their expense to increase in the following 6 or 8 years such as price fluctuation, medical expense, education fees, increase of dependents or increase of the cost of supporting them. In the mean time, there are also possibilities for their income to decrease such as pay cut, decrease in overtime pay, business downturn…But the court had approved as many as 48% of plan with a monthly repayment higher than the balance between debtors' income and expense without considering debtors' ability to repay. It obviously contradicts Article 64 of the CDCA and the spirit of restructuring system that is meant to offer an opportunity to debtors. Beside, 44% of the approved plans had the monthly repayment equal to the balance between debtors' income and expense. Although it had taken debtors' repaying ability into consideration, debtors still had to struggle to repay without a room to breathe and were liable to default in case of accidents.

2. Related analysis on the rejected restructuring cases

(1) "From 06/01/2008 to 02/28/2009, Based on the information between June 1, 2008 and February 28, 2009 provide by Judicial Yuan to Legislator Jhung-hsiung Syu in April of 2009, the reasons and analyses on the rejected restructuring plans are as follows.

a. Statistics: Among the 22 plans which the court considered as unfair, 7 were due to the debtor's extravagance and 5 cases were because that the debtors were in the prime of life and so were supposed to be able to find a better job.

b. Analysis: Debtor's extravagance was the cause of debt and was not related to the fairness of the future restructuring plan.

(a) As stipulated by the CDCA's Article 64, Paragraph 1, as long as the restructuring plan is fair, the court may approve the case but no further definition of "fairness" is provided by the Act. However, according to the literary meaning of the Article, whether the plan is fair or not should be based on Article 53 concerned with debtor's repaying ability, total repayment amount, repayment percentage, repayment for each installment, and the cause of debtors' debt was not included. According to Article 134 and 142, debtors petitioning for clearance are normally unable to be liability free. But if debtors continue to repay and each ordinary creditor receive repayment as much as 20% of the amount of debt, debtors can be liability free. If extravagance resulted in debtors' debts but the restructuring plan has repayment percentage higher than 20%, it would contradict Article 134 and Article 142 of the CDCA if the court disapproves the plan.

(b) Even if debtors were in the prime of life, it is uncertain whether they could find a better job or not, and it had nothing to do with the fairness of the plan. So the court could not disapprove the case on the basis of factors uncertain and irrelevant to fairness.

(2) According to the survey by GVRSC, the reasons and analyses for court to disapprove restructuring plans are as follows.

a. Statistics: 32.1% of plans with debtors "having family members to help to repay", 24.2% with debtors "having too high living costs", 14.1% with debtors "able to find a better job", and 4.2% "displaying reckless spending."

b. Analysis
(a) Debtors having family member to help with repayment
To begin with, regarding the argument of the 32.1% of plans with debtors "having family member to help with repayment", in fact family members were not obliged to help and it is also questionable whether they could help for a long time. It is obvious unreasonable for the court to reject the plan on the basis of this reason.

(b) Have too high living expenses
Secondly, regarding the 24.2% rejected plans because of high estimated

living expenses, it was a legitimate reason worth further analysis on whether it is too strict with individual plans.

(c) Debtors being able to find a job or a better job
The analysis is the same as (b).

(d) Debtors displaying reckless spending
The analysis is the same as (b).

(3) According to the survey by GVRSC, about 70% of the rejected plans exceeded debtors' ability to repay
Among the rejected plans, according to the survey by GVRSC, 70.7% of the debtors had monthly repayment exceeding the balance between their income and expense. In other words, even if the debtor gave every penny of the balance to the banks according to the restructuring plan, the court still considered it unfair, which obviously contradicted the spirit of the CDCA. Representatives from Civil Department of the Judicial Yuan expressed in the Attorneys' Training Course held by LAF that if debtors could repay with all their monthly balance, the case should be considered fair and no further argument over the amount of debt would be needed. But there was obviously significant difference between the Judicial Yuan's speculation and the practices of courts.

(VII) Reflection and analysis on the satisfaction rate of debtors of the restructuring and clearance cases

According to the survey by GVRSC, 7.2% of debtors considered the court "reasonable", 23.7% "somewhat reasonable", 16.2% "a bit unreasonable", 19.3% "very unreasonable", and 33.5% refused to reply. In other words, only 30.9% of debtors considered the court reasonable, which was less than one third of all. The court should thoroughly improve the efficiency of the system to win debtors' trust and solve debtors' problems.

IV. Conclusion

(I) After 15 months of enforcement of the CDCA, the average petitions for clearance per month were 129.9, 8.6% of the 1499.7 restructuring petitions. Petitions for pre-negotiation were 3880.1, 2.5 times of the restructuring petitions.

(II) Compared with 2007, the pre-negotiation cases did not decrease while restructuring cases reduced to 37.5%.

(III) As the total of pre-negotiation cases remaining the same, the restructuring and clearance cases rapidly dropped. The main reasons were the slow court process that often lasted over a year, the high dismissal percentage, the low liability-free percentage of court-approved restructuring or clearance plans, and debtors losing confidence in the court and the restructuring or clearance system.

(IV) The success rate of pre-negotiation cases is as high as 70%, but 67.9% of debtors with successful negotiation could not or could just struggle to repay. Over 60% of the successful negotiations have conditions demanding interest, over 60% had to pay over 8 years and even 11% over 15 years.

(V) The dismissed petitions were far more than the approved ones. The reasons were incompletion of document, overdue fees, lack of negotiation, having no possibility of being unable to pay, difficulty in fulfillment not by the cause not attributable to debtors themselves, and relegation of cases. But some of these reasons obviously contradicted the CDCA, some were partial toward the banks' illegitimate excuses for debtors, and some did not understand the real situations of debtors or the negotiations in 2006.

(VI) Among the restructuring cases with court rulings to start, 60% of their plans were approved, 70% needed to pay over 8 years, about 70% needed to repay half of their total debts, and about 50% of the plans had each installment amount higher than debtors' balance. It was clearly beyond debtors' ability to repay and contradicted the spirit of the CDCA.

(VII) The Judicial Yuan should hold judges meetings to achieve a consensus on judges' different interpretations contradictory to the CDCA. And the results should be put online or published for everyone to refer to.

(VIII) As the regulations and spirit of the CDCA are different from that of general civil codes, the Judicial Yuan should enhance training for judges and judicial associate officials in charge, making them understand the CDCA and actual situations of debtors.

(IX) If there is further amendment on the CDCA in the future, it should be stipulated that pre-negotiations must be conducted by a neutral third party, and that creditors must provide information about debt amount and debt calculation. Besides, whether the restructuring plan is fair or not should be put into clear calculation or definition. Furthermore, for clearance plans there should be

stipulations on circumstances for free liability.

(X) LAF should lower the criteria for debtors to apply for legal aid and enhance efficiency of legal aid attorneys' representation for procedures of negotiation, restructuring and clearance. The Judicial Yuan should correct the banks illegitimate refusal to allow attorneys' representing debtors, and the competent authorities should enforce a ban on any illegal act from agencies.

Part Two. Poverty Issues and Legal Aid in Taiwan

As mentioned in the introduction, LAF has provided a lot legal aid to conventional civil and criminal litigations but conducted no research or action about understanding the causes of poverty, the problems faced by the poor, the loopholes in legal system concerning with the poor, and how to provide legal aid to individual cases or the system. Except for providing assistance to some low-income households with application for administrative relief, it was until 2006 that LAF initiated the aforesaid program for legal aid to debt-related cases and the assistance in amendment program on Social Assistance Law in 2007. In the future, it is worth considering and planning for how LAF will provide legal aid to the poor.

One. Legal Aid to Assist Rejected application by Low-Income Households with Administrative Relief Petition

The scope of LAF's legal aid covers criminal cases, civil cases, family cases and administrative case, with the administrative cases constituting a very low proportion. For example, of the all aided cases in 2008, criminal cases constitute 46.5%, civil cases 26.3%, family cases 22.7%, and administrative cases only 1.3%. As described above, the Social Assistance Law stipulates that low-income households can apply for a diversity of subsidies. But it is overlooked by governments of different levels and hence the relevant budgets are very low. When the poor apply for the qualification of low-income households, they are often refused by various reasons. The refused can apply for legal aid with appeal and administrative litigation, but the applications have been few in the past years, as listed in the follows:

Year	Aided Cases	Aids with Advantageous Result	Aids with Disadvantageous Result	Aids with Unclear Result
2004	8	0	8	0
2005	25	15	6	4

2006	16	8	4	4
2007	28	16	10	2
2008	14	12	2	0
2009	8	8	0	0

The above data shows that there aren't many legal aided cases of assisting low-income households with administrative relief for their refused applications. The reasons for it are many, for instance, the low-income household applicants or the social workers who help them do not know that this type of legal aid is provide by LAF, the low-income household applicants have to wait for application again the following year because they do not have a keen awareness of their rights and are afraid to be blamed by the authority, and appealing for administrative relief is ineffective because the Social Assistance Law and related administrative regulations are not legitimate, etc. It is imperative that LAF establishes a special team to keep close contact with low-income household applicants and social workers besides make researches on Social Assistance Law and its related administrative regulations as well as effective strategies for effective administrative relief. If necessary, the team should assist with the amendment of Social Assistance Law and related administrative regulations or petition for the Constitution interpretation.

Two. A draft of Social Assistance Law Amendment was proposed by Social Welfare Alliance through the assistance from LAF in 2007, but was only partly approved in the end.

In 2006, members of the Social Welfare Alliance found that lots of the previously qualified low-income households were denied in 2005 and had trouble in making a living, and the Alliance asked LAF to give them assistance. As a special team was formed by LAF to assist individual cases with application for administrative relief, the team also discovered many illegitimate points of the Social Assistance Law and many relevant administrative regulations needing amendment. In 2007, the Alliance established a law amendment team and required the assistance from LAF. The amendment draft was completed in nearly a year, and though it was completed with the three readings procedures and passed by the Legislative Yuan, only a little part of the Alliance' proposals were accepted with many problems remaining unsolved as follows.

I. Major Illegitimate Points of Social Assistance Law and Relevant Administrative Regulations

(I) The budgets decided by governments of different levels are low and

the examination of low-income household qualification is strict.

(II) The qualification examination process has become mostly written and superficial, and the examiners are not professional social workers.

(III) Most local governments stipulate that people cannot apply for low-income qualification until they have been registered as local households and actually living there for a certain period, which apparently violates the Social Assistance Law.

(IV) For the immovable properties without economical effect that may not be included in family assets, the category scope is too narrow.

(V) When calculating the size of a household, the Social Assistance Law takes only the formality of identity relationship into consideration. As a result, the applicants cannot pass the examination because the income and assets of those who in fact are not their dependents are also included in the count.

II. Key points of Social Welfare Alliance' draft of Social Assistance Law

(I) When the central government determines the budget for social assistance, the local governments' scope of expenditure should be designated, and the secondary reserve fund may be executed if the budget is not enough.

(II) The reply to applicants who do not accept the result of low-income qualification examination should be based on the investigation made by professional social workers.

(III) An amendment is made by adding that there must not be any regulation stipulating the applicants' time limit of household registration.

(IV) The category scope of immovable properties not to be included in the family assets should be broadened.

(V) The household size count should be limited to those who are actual supporters of the applicants. Only the part of income of applicants' supporters actually obtained by applicants can by included in the total household income, and only the assets of those actually living with applicants can be included in the household assets.

(VI) To those who are capable but fail to fulfill their obligation to support

the applicants, the government may have the subrogation right after providing care to the applicants.

III. Key Points of Amended Social Assistance Law in 2007

(I) When the central government determines the budget for social assistance, the local governments' scope of expenditure should be designated, but there is no stipulation that the secondary reserve fund may be executed.

(II) The category scope of unmovable assets not to be included in the family assets is partly broadened while some other part of the category is not.

(III) Instead of adopting the complete proposal for "only those are actually supporters of the applicants can be included in the count of total household size", the amendment only makes an exceptional stipulation that "those who have not fulfill their obligation of supporting due to other special conditions and cause the applicants' life trapped in difficulty can be deemed as proper not to be included in the population count after the visit and evaluation by the competent authority of the city or county", which means that they cannot be included in size count only after passing multiple restrictions.

(IV) No amendment are made concerning with points (II) and (III) mentioned in the previous part II.

Three. For other poverty issues, LAF should initiate a special program to research into them and propose aid strategies.

I. LAF should initiate a special team to research into issues concerning with the poor.

Both the social welfare system and social security system in Taiwan are not sound enough. The second generation of the poor, people unemployed for a long time, people having failed in investment, and people themselves or their family suffering from serious accidents or illness all may fall into poverty. Poor people's housing, medical expense, children education, work problems, subsidies and the possibility of small loans at a legitimate rate are all issues worth researching and analyzing by a special team of LAF.

II. LAF should initiate a special team to propose aid strategies for poverty issues.

Regarding the above poverty issues there are certain relevant legal systems, but the systems may not be legitimate or comprehensive. LAF should consider determining various aid strategies, e.g. strategies for administrative

relief petition, Constitution interpretation petition or assistance with law amendment. Some of the above-mentioned poverty issues do not have relevant legal systems to resort to, and LAF should also determine aid strategies for administrative relief petition, Constitution interpretation petition or assistance with law amendment.