

Annex

Response by the Ministry of Law (“MinLaw”) to Feedback Received from the Public Consultation on the Proposed Legislative Amendments to the Debt Repayment Scheme (“DRS”)

S/N	Feedback / Suggestion(s) Received	MinLaw’s Response
<p><i>Proposal 1:</i></p> <p><i>Introduction of a new criminal offence to target the soliciting and canvassing of any person, in the course of any business, to make a bankruptcy application</i></p>		
1 While the majority of the respondents expressed support for the proposal, a number of respondents indicated that there are some genuine debt consultancy firms (“DCFs”) that have assisted debtors in managing their debts and navigating the complex process of self-petitioning for bankruptcy. If such form of assistance is to be criminalised, there needs to be an alternative way for debtors to seek help.		
		<p>There are several free resources available for debtors who are in financial distress and genuine about repaying their debts. For instance, MoneySense, Credit Counselling Singapore (“CCS”), the Community Development Councils, the Family Service Centres, banks and financial institutions organise talks and workshops on financial literacy from time to time, covering topics related to debt management. Debtors who are looking for a more personalised counselling service for their financial woes can also consider the Debt Management Programme administered by the CCS.</p> <p>MinLaw intends to exempt a select group of entities from the new criminal offence, including regulated professionals, institutions of public character and several social service agencies, so that they can continue to assist debtors in need by providing debt management related services. These may conceivably entail suggesting, after careful evaluation of cases, that the debtors self-petition for bankruptcy as a last resort.</p> <p>If, after exhausting all avenues to resolve their indebtedness, debtors would like to self-petition for bankruptcy, there is a guide on how to do so on the MinLaw’s website (https://io.mlaw.gov.sg/bankruptcy/applyingforbankruptcy/). MinLaw is committed to ensuring that the relevant information on bankruptcy and DRS is</p>

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		made available online to debtors and the general public, and will continue to undertake reviews to make such information more user-friendly.
2	Given that DCFs charge high fees which range from \$1,000 to \$5,000, the proposed penalty, which is a fine of up to \$10,000 or imprisonment of up to three years or both, is insufficient to deter them. The maximum fine should be raised to at least \$20,000 which is the maximum fine for several offences under the Moneylenders Act 2008. Provisions should also be made for the forfeiture of their illegally gained profits.	MinLaw agrees that the financial penalty should be sufficiently high to serve as an effective deterrent. We are considering increasing the maximum fine to \$30,000, which is the current sentencing jurisdiction of the District Court for fines. This is in addition to the proposed maximum imprisonment term of three years.
3	A governing body should be established to regulate DCFs, with a proper licensing framework which entails the following: (a) a Code of Conduct; (b) requirements for consultant registration, mandatory training, customer record-keeping, transparent pricing; and (c) monitoring and banning of misleading advertisements relating to DRS.	The proliferation of DCFs is a recent development that MinLaw is actively monitoring and the introduction of the criminal offence is the first step taken by the Ministry to clamp down on the activities of errant DCFs. Bearing in mind that any costs associated with the introduction of any regulatory body and licensing regime will result in lower recovery for creditors, MinLaw intends to monitor the effectiveness of the new criminal offence first before assessing whether further steps need to be taken. MinLaw will look into enacting a specific offence to address the communication, for purposes of business, of information (through advertisements or otherwise) about the DRS that is false and misleading. In the meantime, MinLaw will continue its outreach efforts in addressing misinformation on the DRS and members of public are welcomed to contact the Insolvency Office should they encounter misleading information.

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4	As DCFs may be able to work around the criminal offence by registering their business under one of the exempted classes of persons, there should not be any blanket exemption for classes of persons. Instead, exemptions should be granted on a case-by-case basis. Known DCFs should also be blacklisted and prevented from being exempted.	When proposing the classes of persons to be exempted from the proposed criminal offence, MinLaw will consider whether such classes of persons are already regulated (e.g. by an existing licensing regime).
5	Social service agencies, several of which are not institutions of public character, should be exempted.	MinLaw intends to exempt a select group of social service agencies that MinLaw has experience working with, and is open to considering exempting other social service agencies.
<i>Proposal 2:</i>		
<i>Addition of two further grounds of unsuitability for the DRS, namely:</i>		
<ul style="list-style-type: none"> (a) <i>Failure to pay preliminary fees; and</i> (b) <i>Incurring of debts without any reasonable expectation of being able to pay</i> 		
6	The failure to pay preliminary fees should not be an independent ground for finding debtors unsuitable for the DRS. Instead, it should be just one of the factors.	The DRS is a debtor-driven scheme that is meant for debtors who are earning an income and are serious about repaying their debts. The strict enforcement of payment of fees, without which taxpayers would be subsidising costs incurred by debtors, is critical in instilling discipline among debtors placed on the DRS.
7	When assessing whether a debtor had incurred a debt, within 12 months before the making of a bankruptcy application or after the making of a bankruptcy application but before the commencement of the DRS, without any reasonable ground of expectation (“RGE”) of being able to pay, in addition to the factors set	All relevant factors will be taken into account in an assessment on RGE. In each specific case, the focus is on whether the debtor had RGE of repaying the debt in question at the time of incurring such debt. Whether such a factor would be relevant would turn on the specific facts of each individual case.

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	out at [12] of the consultation paper, the OA should also consider whether the debtor had sought to restructure his debt with his creditors, or sought the assistance of a non-profit welfare organisation or social service agency prior to self-petitioning for bankruptcy.	
8	MinLaw should publish clear guidelines on what constitutes “reasonable ground of expectation”.	MinLaw will consider whether to issue guidelines prior to the proposed amendment coming into force.
<i>Proposal 4:</i> <i>Imposition of a four-week deadline for creditors to file proofs of debt</i>		
9	Four weeks is too short for personal creditors, small businesses, overseas creditors and even banks. Some of these creditors have several departments and the notices from the OA might get routed to the wrong department. Some of these creditors might also require some time to generate statements of account in respect of particular debtors upon receipt of the OA's notice to file a proof of debt.	<p>There is a need for creditors to have discipline in filing their proofs of debt promptly, so that a debtor's financial position can be established quickly and the debtor can be placed on the DRS without delay if found suitable. This benefits both the debtor and the creditors who are prompt in filing their proofs of debt. A window period of four-weeks adequately balances the interests of all the relevant parties.</p> <p>MinLaw will issue guides to help creditors file their proofs of debt. For major creditors such as banks and moneylenders, there are already existing and established points of contact with MinLaw. MinLaw will continue to engage the Association of Banks of Singapore and the Credit Association of Singapore to ensure that the contact details of the appropriate point-of-contact are updated to avoid situations where notices from the Insolvency Office are sent to the wrong department.</p>

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<i>Other feedback received</i>		
10	As the Insolvency Office's current practice is to send out hardcopy notices to only creditors disclosed in the statement of affairs submitted by debtors, the notices take some time to reach the creditors and some creditors might not even receive the notices since they were not disclosed. When a debtor has been referred to the OA for DRS suitability assessment, MinLaw should publish a notice on its website similar to how bankruptcy orders are currently published.	The DRS is intended to be an alternative to bankruptcy that is focused on financial rehabilitation. While the OA does not separately publish the fact that a debtor has been referred for assessment or placed on the DRS this information can be obtained through a DRS digital search service on the MinLaw website. The debtor has a duty to make full disclosure of his or her creditors, and if a material omission in this regard comes to light, that would constitute grounds for the debtor to be found unsuitable for the DRS (if the debtor is still under assessment for DRS) or to fail the DRS (if the debtor has commenced the DRS).
11	A creditor requires a debtor's DRS case number to file a proof of debt but such case numbers are not publicly available. This information should be published on the MinLaw website.	A debtor's DRS case number is indicated in all notices sent by the Insolvency Office to creditors disclosed by the debtor.
12	MinLaw should review the overall structure of the DRS, in particular, reduce the amount of debt haircut and lengthen the repayment period beyond five years so as to minimise misuse and strengthen the scheme's long-term sustainability.	Calibration of the repayment duration is a delicate balancing exercise, involving ensuring on the one hand that there is sufficient time for debtors to earn income and actively repay their debts, and on the other hand making sure that creditors do not have to wait too long to recover their debt. MinLaw's assessment is that the current maximum duration of five years is adequate. As for the debt repayment rate, the OA endeavours, in approving debt repayment plans, to achieve as high recoveries for creditors as possible, bearing in mind the debtor's ability to sustain the monthly instalments. Debtors who are able to avoid bankruptcy by being placed on the DRS should be prepared to adjust their lifestyles to repay their debts. In cases where the debtors have the means to pay

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		more, the debt repayment plans approved by the OA have resulted in a full repayment of the debts.