

PUBLIC CONSULTATION ON THE PROPOSED LEGISLATIVE AMENDMENTS TO THE DEBT REPAYMENT SCHEME (“DRS”)

I. Background

- 1 The DRS is a voluntary debtor-driven scheme intended to help wage-earning debtors with relatively small debts avoid bankruptcy, while helping creditors receive higher repayments than what they would otherwise receive in the event of bankruptcy.
- 2 Under the DRS, a debtor with a regular source of income will formulate and implement a debt repayment plan (“**DRP**”) where he uses a portion of his income to pay all or some of his debts within a maximum period of five years under the supervision of the Official Assignee (“**OA**”). Upon completion of the plan, the debtor will be released from his debts under the DRS. If the debtor furnishes any information to the OA which is false or misleading in any material particular, fails to co-operate with the case administrator or fails to comply with any term of the **DRP**, he may be issued with a Certificate of Failure. Any creditor may proceed to make the debtor a bankrupt thereafter.
- 3 Since its inception on 18 May 2009, the DRS underwent a round of review in 2016, following which several amendments were made to the Insolvency, Restructuring and Dissolution Act 2018 (“**IRDA**”) and implemented with effect from 30 July 2020.
- 4 In this round of review, the Ministry of Law (“**MinLaw**”) proposes to make further amendments to the IRDA to meet the following key objectives:
 - (a) finetune the DRS to better meet the changing profile and needs of debtors while continuing to safeguard the interest of creditors; and
 - (b) enhance the existing administrative processes.

II. Proposed Substantive Amendments to the DRS

A. *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*

- 5 There has been an increasing number of debtors who engage the services of consultancy firms which encourage debtors to self-petition for bankruptcy with the objective of being placed on the DRS. Such consultancy firms charge debtors sizeable fees and encourage debtors to borrow money from creditors to pay for their services. Due in part to this trend, there has been an increase in the number of debtor-initiated bankruptcy applications where debtors borrow irresponsibly to pay for such consultancy firms’ services in helping them apply for bankruptcy. This is done not with the intention of being adjudged a bankrupt, but with the intention of abusing the DRS to obtain a discount off their debts.
- 6 To address this, MinLaw proposes to introduce a new criminal offence which criminalises the soliciting and canvassing, in the course of any business, of any person

to make a bankruptcy application. Regulated professionals, in particular lawyers, accountants and financial advisers, as well as charitable entities that are institutions of a public character, will be exempted. The offence will be punishable with a \$10,000 fine or three years' imprisonment or both.

B. Addition of two further grounds of unsuitability for the DRS

7 Under the current legislation, the OA must report to the Court on a debtor's unsuitability for the DRS if any of the conditions set out in s 289(2) IRDA is satisfied. MinLaw intends to add two additional grounds of unsuitability, namely the debtor's failure to pay the preliminary fees, and the debtor's incurring of debts without any reasonable ground of expectation of being able to pay.

(i) Failure to pay preliminary fees

8 Under reg 3 of the Insolvency, Restructuring and Dissolution (Official Assignee's Fees) Regulations 2020, debtors who are referred by the Court to the OA to be assessed for their suitability for the DRS are required to pay \$350 (for the OA's preliminary administration, upon the Court's referral of the matter to the OA) and \$250 (for the OA's review of the debtor's suitability for the DRS and the OA's approval of the DRP) (collectively, "the Preliminary Fees"). While the current legislation is silent on the consequences of failure to pay such fees, in practice, the OA has been finding debtors who had failed to pay the Preliminary Fees unsuitable for the DRS under s 289(2)(e) IRDA. The OA expends resources to conduct DRS suitability assessment for every debtor referred to the OA regardless of whether the debtor is eventually found suitable, and the fees are necessary to cover the costs incurred by the OA.

9 MinLaw intends to include the non-payment of the Preliminary Fees, by such time as may be specified by the OA, as an additional ground of unsuitability under s 289(2) IRDA, so that debtors are placed on express notice that to qualify for the DRS, they must pay the Preliminary Fees, and to do so when directed by the OA.

(ii) Incurring debts without any reasonable ground of expectation of being able to pay

10 There has been a recent increase in the number of debtors who obtain loans from licensed moneylenders ("LMLs") and financial institutions, shortly before self-petitioning for bankruptcy and thereafter being assessed and placed on the DRS. These debtors effectively circumvent their obligation to repay the loans as they enjoy a "haircut" in the DRS while avoiding the stigma and restrictions of bankruptcy. Not only is this to the detriment of the lenders and the wider credit system in general, it also constitutes an abuse of the DRS, which is intended to assist debtors who are genuine about repaying their debts to avoid bankruptcy.

11 To address this, MinLaw intends to prescribe an additional ground of unsuitability under s 289(2) IRDA, that the OA may find a debtor unsuitable for the DRS if the debtor, within 12 months before the making of a bankruptcy application, or after the making of the bankruptcy application but before the commencement of the DRS, incurs

a debt provable in bankruptcy without any reasonable ground of expectation of repaying it (“**the Reasonable Expectation Ground**”).

- 12 This assessment is focused on whether there is a reasonable ground of expectation of the debtor repaying the debt in question at the time of incurring such debt. Some of the relevant factors that the OA may consider in the assessment include: (a) the debtor’s financial affairs at the time of incurring the debt, which include his income, expenses and liabilities; and (b) the debtor’s conduct after incurring the debt such as whether the debtor had been serving the debt in question and other liabilities regularly without default, the time period between the date the debt was incurred and the date of the bankruptcy application, the purpose of incurring the debt and whether there is evidence of the debtor incurring several debts over a short period of time.

C. *Addition of one further ground of failure for the DRS*

- 13 Under the current legislation, the OA may issue a certificate of failure to a debtor who has commenced a DRP if any of the conditions set out in s 300(1) IRDA is satisfied. To address cases where the OA only becomes aware that a debtor had obtained credit with no reasonable ground of expectation of paying after the debtor had commenced his DRP, MinLaw intends to include the incurring of such debts as an additional ground of failure under s 300(1) IRDA. This new ground will not apply to bankruptcy applications filed before the operative date of the amendment.

D. *Imposition of a four-week deadline for creditors to file proofs of debt (“PDs”)*

- 14 Presently, in the absence of a statutorily mandated deadline for creditors to file their PDs, creditors often file their PDs just before the DRP is to commence or even after the DRP has commenced. This has resulted in at least two issues.
- 15 First, when such newly filed PDs cause the debtor’s total debts to exceed the DRS debt threshold of \$150,000, the OA must either:
- (a) if the DRP has not commenced, report to the Court of the debtor’s unsuitability for the DRS under s 289(2) IRDA; or
 - (b) if the DRP has commenced, issue a certificate of inapplicability under s 299(a) IRDA following which the DRP ceases to have effect according to s 298 IRDA.
- 16 If the newly filed PDs do not cause the total debts to exceed \$150,000:
- (a) if the DRP has not commenced, the OA will need to re-compute and potentially adjust the monthly instalment taking into consideration the new PDs filed; or
 - (b) if the DRP has commenced, the OA may need to modify the DRP under s 295 IRDA.
- 17 As a result of these various possible scenarios, debtors lack certainty as to whether they are eligible for the DRS and if so, the terms of their DRP. The DRS suitability

assessment process also takes a longer time to complete, even as interest continues to accrue to the detriment of debtors and creditors wait to receive dividends.

- 18 Second, according to reg 13(1) of the Insolvency, Restructuring and Dissolution (Debt Repayment Scheme) Regulations 2020 (“**IRDA Regs**”), the OA must, within 14 days after receiving from the debtor all the duly completed documents set out in reg 8 of the IRDA Regs and s 290 IRDA, send a notice to convene a meeting of creditors to all the creditors named in the debtor’s Statement of Affairs. According to reg 16(1)(a) of the IRDA Regs, creditors are allowed to ask debtors questions relating to the documents submitted by the debtor. In the absence of a deadline for creditors to file their PDs, creditors who file their PDs only after the meeting has been convened lose out on the opportunity to attend the meeting and have their queries answered.
- 19 To address these issues, MinLaw intends to amend s 290(2) IRDA to state that the OA’s notice to creditors to file PD will require creditors to file a PD within four weeks from the date of the OA’s notice. Creditors who are unable to file their PDs within the four weeks may submit a request to the OA for an extension of time to file their PDs under reg 10(7) IRDA Regs. For such requests to be granted, the creditors must satisfy the OA that there was a reasonable justification for failing to comply with the deadline. If a creditor fails to file a PD within four weeks from the date of the OA’s notice without reasonable justification and the debtor is issued the Certificate of Completion, the debtor would be released from the debt in respect of that creditor under s 301(2) IRDA.
- 20 The proposed four-week timeline will not apply to the PDs filed in respect of debts set out in s 294(1)(b) IRDA (i.e. debts to which the debtor becomes subject after the DRP has commenced but before it has ceased by reason of any obligation incurred before the date of commencement, and any interest thereof) and s 294(1)(c) IRDA (i.e. debts being the balance due from the debtor after the security in respect of a secured debt owing by the debtor has been realised as at the date of commencement).
- 21 Flowing from this, MinLaw also intends to amend: (a) reg 10(7) of the IRDA Regs to refer to the time specified in s 290(2) IRDA as opposed to the time specified in the notice mentioned in s 290(2) IRDA notice; and (b) reg 13(1) of the IRDA Regs to state that the notice convening the creditors’ meeting must be sent out within 10 weeks after the expiry of the deadline for the creditors to file their PDs.

III. Proposed Miscellaneous Amendments to the DRS

- 22 In addition to the abovementioned substantive amendments, MinLaw proposes the following miscellaneous amendments to the DRS:
- (a) to clarify the prescribed DRS debt threshold referred to in ss 316(9)(a) and 318(3)(a) IRDA, by amending these provisions to refer to the prescribed amount mentioned in s 289(2)(a) IRDA;
 - (b) to permit all appeals, whether filed under s 291(4) IRDA (i.e. appeals against the OA’s decision to approve a DRP) or s 295(4) IRDA (i.e. appeals against the OA’s

decision to modify a DRP), to be addressed to the Deputy Chairperson of the Appeal Panel in the Chairperson's absence by amending s 304(10)(a) IRDA;

- (c) to authorise the Chairperson of the Appeal Panel, or the Deputy Chairperson of the Appeal Panel in the Chairperson's absence, instead of the Minister, to appoint members of the Appeal Panel Committee, by amending s 304(8) IRDA;
- (d) to extend the deadline for the OA to submit his written decision to the DRS Appeal Panel from 14 days to 28 days, by amending reg 22(3) of the IRDA Regs; and
- (e) to prescribe a form and mechanism by which appeals that had been filed with the DRS Appeal Panel may be withdrawn.

IV. Submission of Feedback

- 23 MinLaw invites members of the public to provide their feedback on the above proposals by 27 June 2025 via the online feedback form which may be accessed via <https://go.gov.sg/drs-proposed-legis-consult>.