

**CONSULTATION PAPER ON PROPOSED
“DEBT REPAYMENT SCHEME”**

23 April 2007

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1. Introduction

1.1 In March 2007, the Ministry of Law announced that it would issue a Consultation Paper for the proposed Debt Repayment Scheme (called “DRS”) to help wage-earner debtors with relatively small unsecured debts not exceeding \$100,000 avoid bankruptcy.

1.2 The Ministry of Law (MinLaw) and the Insolvency & Public Trustee’s Office (IPTO) now seek your/your organisation’s feedback on the DRS procedure described in this consultation paper¹.

1.3 You can send your submissions in electronic or hard copy form. The submission should reach IPTO no later than Friday, 1 June 2007, and be submitted via e-mail to IPTOdrsfeedback@ipto.gov.sg or by mail to the following address:

Attn: Ms Beverly Wee
Debt Repayment Scheme Feedback
The URA Centre East Wing
45 Maxwell Road, #06-11
Singapore 069118.

1.4. MinLaw and IPTO reserve the right to make public all or parts of any written submission. Respondents may request that any part of their submission that they believe to be proprietary, confidential or commercially sensitive be kept confidential.

¹ This consultation paper has incorporated several useful suggestions and ideas arising from informal consultations between IPTO and selected stakeholders, amongst which, representatives from Association of Banks Singapore and its members, members of the Insolvency Practitioners Association of Singapore, and Law Society. We thank all who attended the informal consultation sessions and for their feedback.

2. Overview of the DRS

2.1 A bankruptcy regime seeks to strike a balance between the interests of the creditor, who would like to recover as much as possible debts owed to him by the debtor, and that of the debtor, in affording him an opportunity for a fresh start in his financial matters.

2.2 When a person is adjudged a bankrupt, the financial embarrassment and social stigma that may follow can create difficulty for the bankrupt in keeping his job or in obtaining new employment. Creditors will receive a smaller dividend payment on their debts as a result.

2.3 Where a debtor has a regular source of income and the debts are not excessive, it is better to provide an intermediate alternative to bankruptcy that affords the debtor a reasonable opportunity to pay off all or some of his debts under a repayment plan over a period of time.

2.4 The proposed DRS seeks a “win-win” outcome for both creditors and debtors. The debtor will be required under a repayment plan to repay as much as possible to his creditors by apportioning his income, the realization of his assets and making adjustments to his lifestyle where necessary. Creditors will receive not less than what they would have otherwise received had the debtor gone into bankruptcy. The debtor, if he dutifully meets his financial obligations under the repayment plan, will be able to avoid the stigma of bankruptcy and have a fresh start. As the debtor under DRS is not a bankrupt, the disqualification and disabilities of a bankrupt set out in the Bankruptcy Act would also not apply to him. The DRS will also emphasize debtor rehabilitation and the inculcation of financial responsibility in debtors to avoid future financial embarrassment.

3. Proposed DRS Procedure

3.1 The DRS procedure will be kept simple. The proposed DRS will be administered by IPTO case administrators who are suitably qualified to handle financial matters. The Official Assignee (OA) has overall supervision of the case administrators and the DRS. Unlike bankruptcy proceedings, the DRS is not a court-based process.

Qualifying Criteria for DRS

3.2 Subject to certain qualifying criteria, debtors with unsecured debts not exceeding \$100,000² and who are facing bankruptcy proceedings will be given a chance to enter into a repayment plan with his creditors under the DRS. The DRS will only be applicable to debts incurred on a personal basis, for example consumer loans, personal loans, and debts incurred from credit facilities, etc.

3.3 The DRS would not apply to cases where the debtor is a sole proprietor, a partner in a business or has debts incurred from his business activities (business debtors). This group of debtors could consider the voluntary arrangement scheme under the Bankruptcy Act.

Persons Disqualified from the DRS

3.4 The following persons will be disqualified from participating in the DRS:

- a. Any debtor who is an undischarged bankrupt;
- b. Any debtor who is presently under a DRS;

² The calculation of \$100,000 unsecured debts would exclude contingent liabilities. The \$100,000 cap is to ensure that debtors that have the highest chance of repaying some or all of their debts can benefit from the scheme. In 2006, the percentage of bankrupts whose total liabilities at the point of bankruptcy do not exceed \$100,000 was 62%.

- c. Any debtor who has been discharged from bankruptcy, successfully completed or failed a DRS, during a period of 5 years preceding the commencement of the intended DRS;

The OA will be given the discretion to admit, in exceptional cases, certain disqualified persons into the DRS, where he is of the view that creditors are not unreasonably prejudiced.

Appointment of DRS Administrator

3.5 Under the present bankruptcy regime, a debtor is presumed to be unable to pay his debts if a statutory demand from a creditor for a debt of more than \$10,000 is not set aside within 21 days of service, or if the creditor's judgement debt remains unsatisfied after execution proceedings. In such situations, the creditor can proceed to file a bankruptcy application against the debtor.

3.6 Under the DRS, where the liabilities in question are not more than \$100,000, the Court at the hearing of the bankruptcy application will adjourn the matter for 6 months and refer the case to the OA. The OA will appoint an administrator to consider whether the case is suitable for DRS.

3.7 Where the debtor files for his own bankruptcy, the current bankruptcy law requires the debtor to file a statement of his affairs disclosing information including those on his liabilities. If the debtor's liabilities from unsecured debts set out in the statement of affairs do not exceed \$100,000, the court will similarly adjourn the bankruptcy application and refer the matter to the OA, who will appoint an administrator to determine if the case is suitable for DRS.

3.8 On the appointment of the administrator, no creditor shall be allowed to commence or proceed with any action against the debtor for any outstanding debt, except with the leave of the Court. However, as in bankruptcy cases under

the Bankruptcy Act, this moratorium shall not affect the rights of a secured creditor to realise or otherwise deal with his security.

3.9 A public database will be maintained by the OA to keep records of the cases where DRS has commenced.

3.10 On the appointment of the administrator, a fee will be levied either from the deposit paid by the creditor who served the statutory demand in the first instance, or that paid by the debtor, in cases where the debtor files his own bankruptcy application. The fee taken from the deposit paid by the petitioning creditor will be considered a priority debt that will be repaid from the debtor's assets ahead of other debts.

3.11 To facilitate the administration of the case, the administrator will be empowered to investigate the acts, conduct, assets, liabilities and financial condition of the debtor.

Qualifying for the DRS

3.12 Once the administrator is appointed, he will contact and inform the debtor that he is required to file a statement of affairs and a proposed repayment plan within 2 weeks. It is imperative that the debtor gives his full cooperation to the administrator by making full disclosure of his assets, liabilities and income, without which, the administrator is empowered to declare that debtor has failed to meet the requirements and hence has failed under the DRS.

3.13 With the information provided in the debtor's statement of affairs, the administrator will contact all creditors disclosed by the debtor and any creditor who notifies the administrator of his claim against the debtor, requesting them to file their proofs of debt against the debtor. All proofs of debt will be

examined by the administrator. Claims that are not properly substantiated will be rejected.

3.14 In determining whether the debtor qualifies for DRS, only the unsecured debts at that point will be used to determine whether the debtor's unsecured liabilities exceed the prescribed cap of \$100,000. However, information on the secured debt will be relevant to assist the administrator in determining whether the debtor is suitable for DRS (see paragraph 3.31). If the administrator determines that the debtor does not qualify or is not suitable for DRS, the OA will issue a certificate of non-qualification to any creditor who wishes to proceed with a bankruptcy application.

Formulation of Repayment Plan

3.15 The debtor must provide the proposed repayment plan within 2 weeks of notification by the administrator. The period of the repayment plan shall not exceed 5 years from the date the plan is approved (see paragraphs 3.22 & 3.23).

3.16 A debtor is expected to adjust his lifestyle and habits in order to provide reasonable payment to his creditors. He may, for example, be requested to downgrade his lifestyle. It is intended that a debtor, where reasonable, will be able to apportion a reasonable sum to service his mortgage or any necessary secured loan. The rights of the secured creditor under the agreement between the secured creditor and the debtor will not be affected by the DRS. Any debtor who fails to provide the plan will be deemed uncooperative and the administrator may declare that the debtor has failed under the DRS.

3.17 The administrator will assess the repayment plan based on all information provided by the debtor, using the "best interests of creditors" test and the "availability of disposable income of the debtor" test, guidelines for which will be issued in due course. The debt repayment plan may involve full

or partial repayment of debts, and the creditors may receive full or only partial payment of debts owed to them.

Meeting of Creditors

3.18 If the administrator is satisfied that the debtor's proposed repayment plan is reasonable or when he has reached an agreement with the debtor on an appropriate repayment plan, he will table it at the creditors' meeting for examination.

3.19 The administrator shall convene a creditors' meeting within 3 weeks after receiving the debtor's repayment plan and statement of affairs. He will furnish the creditors with the debtor's statement of affairs and repayment plan at least 3 days before the creditors' meeting. The debtor must personally attend the creditors' meeting. The debtor would be deemed to have failed under the DRS if he does not attend the meeting. All creditors who have filed a proof of claim with the administrator may attend or instruct a proxy to attend the creditors' meeting.

3.20 At the meeting, the debtor's repayment plan will be examined by the creditors. Creditors may query the debtor on the repayment plan and furnish any additional relevant evidence or information to the administrator.

3.21 At or following the creditors' meeting, the administrator may approve the repayment plan that was tabled, or he may modify the plan based on the evidence and information surfaced by creditors at the creditors' meeting. The decision to approve the repayment plan lies with the administrator (i.e. creditors do not vote on the plan). However, the administrator must be satisfied that the plan meets the test of "best interests of creditors", i.e. the creditors will receive a dividend not less than the amount that they would otherwise have received if the debtor went into bankruptcy.

3.22 The administrator will inform creditors of his decision on whether the plan is approved within 5 working days following the creditors' meeting. Where there is no appeal against the administrator's decision, the administrator will lodge a copy of the approved repayment plan with the OA.

Appeal to Independent Panel

3.23 Any creditor or debtor who is dissatisfied with the decision made by the administrator may lodge an appeal to an independent panel ("appeals panel") within 14 days. The appeals panel may approve the original repayment plan, or make modifications to the plan. The decision of the appeals panel will be final. The administrator will lodge a copy of the final approved repayment plan with the OA.

Endorsement of the Repayment Plan

3.24 Once the plan is approved, the parties to the adjourned bankruptcy application will appear before and inform the Court that a repayment plan is in place and that the debtor will enter the DRS. Upon the Court being informed that the debtor will enter the DRS, the bankruptcy application will be deemed to have been withdrawn.

Implementation of Repayment Plan

3.25 Once the plan is approved, the debtor has the duty to make his best efforts to comply with the plan and effect repayment promptly and diligently.

3.26 At the beginning of the plan, the administrator will brief the debtor of his duties and responsibilities under the DRS. The duties of the administrator include monitoring the debtor's compliance with the plan. In the event of non-

compliance with the plan, the administrator has the final decision in declaring that the DRS plan and hence, the DRS for that debtor, has failed. The administrator will also be empowered to realise the debtor's assets surrendered to him. He will charge a realisation fee, which is a percentage of the amount realised from the sale of the debtor's assets. In addition, he will also be reimbursed for reasonable expenses incurred in the administration of the DRS plan.

3.27 IPTO will distribute moneys received from the debtor under the repayment plan and from the proceeds of the sale of the debtor's assets. As in the case of bankruptcy, IPTO will charge a distribution fee.

3.28 During the course of the implementation of the plan, the debtor has to provide information relating to his income and expenses on a regular basis. In addition, he will also be required to attend courses to improve his financial management skills. A debtor undergoing DRS will not be allowed to obtain any further loan without the consent of the administrator. A debtor undergoing DRS must also inform a potential creditor of his DRS status.

3.29 The OA will, in due course, issue guidelines on administration procedures for the DRS such as commencement and conducting of creditors' meeting, realization of debtor's assets, powers and duties of administrators, conduct and ethics required of administrators, etc.

Modification of Repayment Plan

3.30 If there is a substantial and material change of circumstances affecting the debtor's ability to pay e.g. if the debtor receives a substantial inheritance or enjoys a significant increase in his earning ability, or suffers a pay cut, the administrator may modify the plan to increase or decrease the amount payable by the debtor to the creditors. As is the procedure for providing the initial

repayment plan, the debtor will propose a new plan subject to the approval of the administrator, and the examination of the plan by the creditors, and where necessary, consideration by the appeals panel.

Secured Creditors: Shortfall arising from realising security

3.31 It is intended that under the DRS, a debtor, where reasonable, will apportion a sum to service a mortgage or any necessary secured loan. The rights of the secured creditor under the agreement between the secured creditor and the debtor would not be affected. Alternatively, a secured creditor may before the inception of the DRS realise his security and file a proof of claim for the outstanding unsecured debt due to him, in which case, the outstanding debt will be taken into account in assessing if the debtor's unsecured debts exceed the threshold amount of \$100,000.

3.32 If in the midst of the DRS, the debtor is no longer able to service the secured loan, or the secured creditor decides to realise the security and file a claim for any balance remaining unpaid, 2 possible scenarios may arise:

- a) Where the sum of the outstanding debt due to the secured creditor and the absolute debts due to the existing unsecured creditors at the inception of the DRS do not exceed \$150,000³, the secured creditor will join the existing DRS creditors *pari pasu* in the DRS. The secured creditor in this instance will not be able to commence proceedings against the debtor to enforce payment of the additional unsecured debt which has surfaced after the security had been realised. However, in view of the additional liability, the repayment plan period could be extended up to a further 2 years. (e.g. if the original plan required 4

³ The \$150K cap due to creditors would be based on the total debt due to unsecured creditors at the beginning of DRS plus the outstanding debt due to secured creditors after the security has been realised. E.g. if the original debt is \$90K and after 2 years, a secured creditor realised his security and the balance due is \$50K, the total debt would be \$140K.

years, the repayment period can be extended by a maximum period of 2 years making the absolute repayment period 6 years). The initial repayment plan may also be modified to take into account payment of the additional debt, the procedure for which is described in paragraph 3.30.

b) Where the sum of the outstanding debt due to the secured creditor and the absolute debts due to the existing unsecured creditors at the beginning of the DRS exceed \$150,000, and if the debtor is not able to reach agreement with his creditors, the administrator may declare that the DRS plan has failed and will notify all the creditors and the OA accordingly. Unless the debtor can reach another agreement with his creditors, any creditor can proceed with a bankruptcy application⁴. The period of time the debtor spent under the DRS may be taken into account for purposes of ascertaining the time spent in bankruptcy under s124 and s125 of the Bankruptcy Act.

3.33 In the event the secured creditor realises the security after a debtor had successfully completed the DRS, the secured creditor can proceed with the normal enforcement proceedings against the debtor.

Failure of DRS Plan

3.34 To enjoy the benefits of the DRS, a debtor is required to give his utmost cooperation to the administrator. He has to make full disclosure of his assets and liabilities, and his best efforts in completing the repayment plan. Hence, if the debtor fails to cooperate at any stage of the plan without good reason, the administrator is empowered to declare that the debtor has not met the requirements and thus has failed under the DRS. For instance, if the debtor

⁴ Assuming that the aggregate debt of the debtor is more than \$10,000 as required under s.61 of the Bankruptcy Act.

fails to make full disclosure of his assets, fails to provide his statement of affairs, fails to attend the creditors' meeting, defaults on his repayment, fails to make payment promptly, does not comply with the terms of the plan, has acted in bad faith (e.g. if the debtor had been dishonest in declaring his assets or statement of affairs) or if the debtor incurs new credit or fails to inform a potential creditor of his DRS status, the administrator may declare the DRS as having failed for that debtor.

3.35 When the debtor has failed under the DRS, the OA's office will issue a certificate so indicated to any creditor who wishes to pursue bankruptcy proceedings against the debtor. Unless the administrator is guilty of misconduct, the administrator's decision is final and the certificate from the OA shall be conclusive proof that the debtor is unable to pay his debts for the purpose of s.61(1)(c) of the Bankruptcy Act. Thereafter, any creditor with a balance debt amount due of more than \$10,000 may file a bankruptcy application against the debtor.

Completion of Repayment Plan

3.36 If the debtor successfully completes the repayment plan, the OA will issue a certificate stating that the debtor has completed the DRS and the debts under the DRS have been discharged. After the successful completion of the plan, the debtor shall be released from all debts under the plan, with the exception of certain debts, for example, debts due to the Government, debts arising from damages in respect of personal injuries, debts arising from maintenance orders in favour of dependants, as is the position when a bankrupt is discharged from bankruptcy. However, if the debtor had failed to disclose a prior debt to the administrator, the debtor would not be released from such a debt.

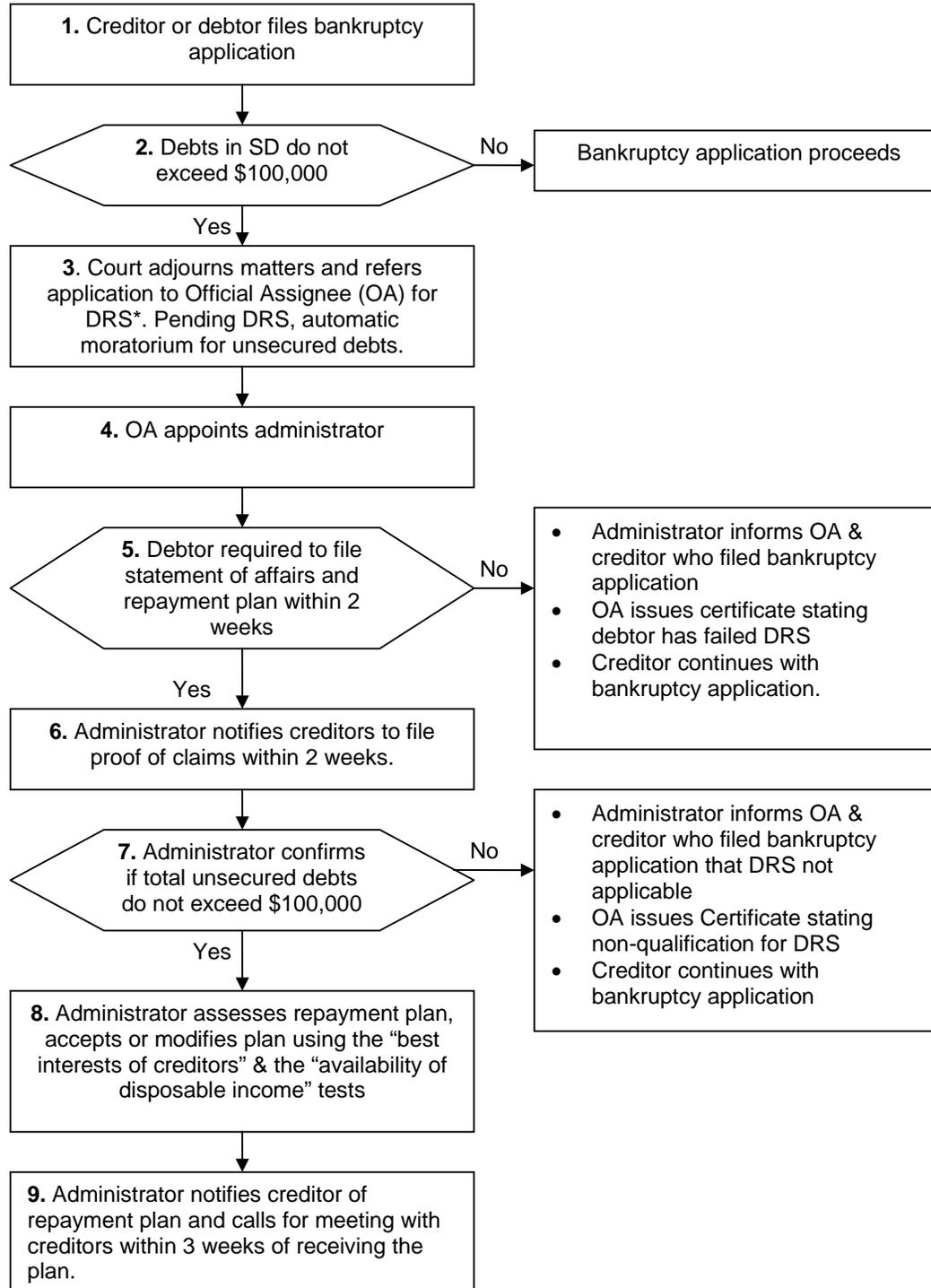
4. Conclusion

4.1 The DRS is a pre-bankruptcy procedure to provide wage-earner debtors an opportunity to avoid bankruptcy without compromising the rights of the creditors in respect of dividend payment. The DRS is designed to complement the bankruptcy regime. Debtors on the DRS will avoid the stigma of bankruptcy and be afforded a fresh start, and will also be provided education on financial management. Creditors will benefit from DRS as they will receive more dividends than if the debtor had been made a bankrupt.

4.2 MinLaw and IPTO invite your feedback on the proposed DRS and its procedure. It would be appreciated if your feedback can reach the designated addressees in paragraph 1.4 by Friday, 1 June 2007.

*** End ***

5. ANNEX A – FLOWCHART FOR DRS PROCEDURE



* The following debtors do not qualify for DRS:

- An undischarged bankrupt
- A debtor presently under a DRS
- A person who has been discharged from bankruptcy, successfully completed, or failed a DRS, during a period of 5 years preceding the commencement of the intended DRS
- Debtor who is a sole proprietor, or in partnership, or in business debt

5. ANNEX A – FLOWCHART FOR DRS PROCEDURE [CONTINUED]

