RESPONSE TO FEEDBACK FROM PUBLIC CONSULTATION ON PROPOSED DEBT REPAYMENT SCHEME (APR – JUN 2007)

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
1	**The maximum qualifying unsecured debt limit of $100,000** Consultation paper paragraph 3.2 Subject to certain qualifying criteria, debtors with unsecured debts not exceeding $100,000 and who are facing bankruptcy proceedings will be given a chance to enter into a repayment plan with his creditors under the DRS. Feedback Respondents generally supported a cap on the level of unsecured debt for a debtor to qualify for the DRS, but had opposite views as to whether the cap should be higher or lower than $100,000. A majority of respondents suggested a higher limit, or greater flexibility in determining whether a debtor meets the cap so that deserving cases can still be considered. One respondent suggested lowering the cap to $50,000 so as to exclude the "middle and upper-middle" class of debtors.	In determining the unsecured debt limit, MinLaw and IPTO seek to balance the interests of the debtor and creditors. For a start we intend to maintain the $100,000 cap, as we assess that debtors with unsecured debts lower than this amount would be better able to repay some or all of their debts to the satisfaction of their creditors and benefit from the scheme. 62 per cent of debtors adjudged bankrupts in 2006 (or around 1,800) had liabilities not exceeding $100,000.
2	**Contingent liabilities, unliquidated claims and joint-liabilities** Consultation paper paragraph 3.2 [footnote 2] The calculation of unsecured debts would exclude contingent liabilities. Feedback Some respondents sought greater clarity as to the treatment of contingent liabilities, unliquidated claims and joint liabilities in the calculation of unsecured debt.	As far as practicable, we align the DRS procedure and principles to those for bankruptcy to maintain consistency in approach. Since there is no certainty as to whether a contingent liability would arise, or as to what the quantum of unliquidated claims would be, these liabilities would be excluded from the calculation of unsecured debt. However, where the debtor is jointly and severally liable, the entire debt would be counted as if the debt is solely owed by the debtor. We appreciate the feedback that a contingent liability or unliquidated

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
		claim could reduce the chances of the debtor meeting his obligations in the repayment plan. As with the treatment of secured debt, the Administrator will take into account the presence of contingent liability and unliquidated claims when assessing whether the debtor is suitable for the DRS and advise the debtor accordingly.
3	**Debts incurred in the course of business** Consultation paper paragraph 3.2 & 3.3 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. 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. Feedback Some respondents suggested that the DRS should also be extended to entrepreneurs to encourage entrepreneurship. Some respondents queried why the DRS could not extend to business owners who have incurred personal debts unrelated to the business.	We accept that a debtor should not be automatically excluded from the DRS because he has incurred business debts in the past. Hence, we will refine the qualifying criteria such that a debtor can qualify for the DRS as long as he is a wage earner at the commencement of the DRS. However, debtors engaged in a business would not qualify for the DRS as they are unlikely to have a regular stream of income to effect the repayment plan.
4	**Persons disqualified from the DRS** Consultation paper paragraph 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; and c. Any debtor who has been discharged from bankruptcy,	We agree with the feedback and will clarify that a person undergoing a voluntary arrangement with his creditors, or who had completed a voluntary arrangement in the preceding five years, would not qualify for the DRS.

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
	successfully completed or failed a DRS, during a period of 5 years preceding the commencement of the intended DRS. Feedback Some respondents suggested that for consistency, a debtor undergoing a voluntary arrangement should likewise not qualify for DRS.	
5	**Adjournment of bankruptcy application** Consultation paper paragraph 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 Official Assignee. Feedback Some respondents felt that an adjournment of a bankruptcy application by the Court for 6 months is too long for creditors. Once it is decided that a debtor does not qualify for the DRS, creditors should be allowed to submit a Bankruptcy Petition and the Court should grant an earlier hearing date.	We would like to clarify that the period of 6 months is the maximum time period allowed for the consideration of the eligibility of a debtor facing a bankruptcy application for the DRS. His creditors will be allowed to revive or file a bankruptcy application as soon as it is determined that the debtor does not qualify for the DRS.
6	**Bankruptcy Self-petitioners** Consultation paper paragraph 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. Feedback Respondents gave mixed feedback as to whether self-petitioners for bankruptcy should be allowed to participate in the DRS.	We agree that the DRS should not inadvertently lead to an erosion of financial discipline. Hence, to qualify for the DRS, the debtor must have relatively smaller debts and also meet the eligibility criteria and checks by the administrator. Furthermore, the DRS protects creditors' interests by ensuring that they will receive no less than if the debtor had been made a bankrupt. The DRS will also place emphasis on the inculcation of financial responsibility. Taken together, the rigour that the DRS puts a debtor through would

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
	Some respondents felt that self-petitioners recognise their own financial distress and should therefore be helped and admitted into the DRS. Respondents who were not in favour feared that allowing self-petitioners into the DRS could lead to an erosion of financial discipline.	sufficiently discourage abuse. Self-petitioners who want to help themselves and qualify for the DRS would therefore not be excluded from the DRS.
7	**Appointment of Administrator** <u>Consultation paper paragraph 3.7</u> 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 Official Assignee, who will appoint an administrator to determine if the case is suitable for DRS. <u>Feedback</u> Some respondents sought details on the qualifications of the administrators and wanted the assurance that the administrators will be independent of debtors.	The DRS will be administered by suitably qualified IPTO officers. They will at least have tertiary qualification and will be trained in mediation, accounting and financial management. When the DRS has operated for some time, private sector professionals may be allowed to be DRS administrators We agree with the suggestion that the appointed Administrator be made to declare any interests that he would have in the administration of the DRS so as to prevent any conflict of interest. .
8	**DRS public database** <u>Consultation paper paragraph 3.9</u> A public database will be maintained by the Official Assignee to keep records of the cases where the DRS has commenced. <u>Feedback</u> A majority of respondents supported having a DRS public database for creditors to verify an individual's credit worthiness. However, some respondents felt that a public database may generate a social stigma for debtors undergoing DRS and reduce their opportunities for employment. Some respondents suggested removing the names of debtors who have completed the DRS	We acknowledge that listing debtors undergoing the DRS in a public database may lead to them facing a social stigma and reduced employment opportunities. However, in assessing whether to extend credit to an individual, creditors should have the benefit of knowing whether the person is undergoing or had recently undergone a DRS. Therefore, a DRS public database will be maintained. We agree with the suggestion that a debtor's DRS records be removed from the database after a certain period from his completion of his repayment plan. We will be setting it at 5 years.

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
	after a certain period.	
9	**Voting by creditors on repayment plan** Consultation paper paragraph 3.21 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". Feedback One respondent suggested allowing creditors to vote on the repayment plan as creditors' concerns may not be solely based on financial considerations.	Creditors' interests and concerns will be addressed by the DRS Administrator carrying out robust checks. For example, before the repayment plan is approved, the Administrator will request information from creditors and seek creditors' feedback on the plan. The Administrator will also be provided with data on dividend payouts under bankruptcy and will ensure that creditors do not receive less than what they would receive if the debtor had been made bankrupt. Should creditors be dissatisfied with the Administrator's decision, they may lodge an appeal with an independent panel. ,These should take care of creditors' interests and concerns, without them having to vote on the repayment plan.
10	**Meeting of creditors to examine repayment plan** Consultation paper paragraph 3.20 At a meeting convened by the Administrator, creditors are to examine the debtor's proposed repayment plan and furnish additional information if necessary. Feedback One respondent suggested that creditors should be allowed to submit their feedback via email instead of at a meeting with the Administrator and the debtor.	We agree with the suggestion, and will allow creditors the option of presenting their views via electronic means.
11	**Appeal to independent panel** Consultation paper paragraph 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.	We envisage the panel to consist of 3 suitably qualified members. The panel members are likely to be drawn from both the public and private sectors. Further details of the composition of the panel will be provided in the draft Bill.

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
	Feedback Some respondents requested for more details on the panel.	
12	**Repayment procedures & timelines** Consultation paper paragraphs 3.25 to 3.29 Feedback Respondents requested for more details on the procedural aspects of the DRS, such as the fee structure to be adopted by the administrator, the monitoring of payments made by debtor to the administrator, the automation of payments to creditors, clarity of timelines and procedures for repayment, how creditors would be informed should the debtor not qualify or fails under the DRS, etc.	As stated in paragraph 3.25 of the consultation paper, the Official Assignee will, in due course, issue guidelines on the administration procedures for the DRS such as commencement and conduct of creditors' meetings, realisation of debtor's assets, powers and duties of administrators, conduct and ethics required of administrators, etc. We thank respondents for their suggestions and will take them into consideration when drafting the rules and manual for administrators.
13	**Priority debts** Consultation paper paragraph 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. Feedback Some respondents requested for more details on which debts would take priority.	The DRS will adopt the same principles for priority repayment under Section 90 of the Bankruptcy Act. Priority debts include administrative costs incurred by the Official Assignee or bankruptcy order applicant, employee wages, retrenchment benefits or ex gratia payments under employment contracts, workmen's compensation, taxes, GST, etc.
14	**Secured debt** Consultation paper paragraphs 3.31 & 3.32a 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	Where the shortfall is less than $50,000, the secured creditor will be required to join in the ongoing DRS with the other creditors. In such a case, the administrator will have the option to extend the plan up to a maximum of two years from the period under the original DRS (i.e. up to a maximum of seven years)

S/N	FEEDBACK FROM RESPONDENTS	RESPONSE
	affected. 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 $150,000, the secured creditor will join the existing DRS creditors *pari pasu* in the DRS. <u>Feedback</u> Some respondents sought clarity as to whether a secured creditor, who upon realizing the security at a point after the commencement of the DRS, faces a shortfall would be required to join the DRS.	