ANNEX A - SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE INSOLVENCY LAW REVIEW COMMITTEE (ILRC) REPORT AND MINLAW'S RESPONSE

Chapter 2: A New Insolvency Act

Rec No.	Recommendation	Feedback received	Ministry of Law's response
2.1	Consolidation of Bankruptcy and Corporate Insolvency Laws into a single piece of omnibus legislation.	Supportive Agrees with Recommendation.	MinLaw agrees with the Recommendation.
2.3	Insolvency Act should be general and not industry specific.	Supportive Entities operating in highly regulated sectors ought to have special regimes designed to address particular industry specific issues. These entities include banks and insurance companies. Supportive but, Suggests that it should be possible to bankrupt a foreign individual, but there should be a threshold to prevent frivolous applications.	MinLaw agrees with the Recommendation and the views expressed in the feedback. There is no intention for the new Insolvency Act to have regimes designed to address industry specific issues. Provisions that are applicable for specific industries to address industry specific issues will remain in specialised legislation relating to that industry. Singapore courts already have the power to bankrupt a foreign individual, where criteria under section 60(1) of the Bankruptcy Act are satisfied. The requirements prevent foreigners who have no presence or property in Singapore from being made bankrupts, as administration of such estates only depletes resources without any real benefit to creditors. MinLaw does not intend to change this.
		Other / Neutral Query on whether the proposed reforms will impact the Co-operative Societies Act and the Mutual Benefit Organisation Act	The New Insolvency Act will only cover individuals and companies for now, and will not cover particular industries that have specialised legislation (e.g. banks and insurers) as well as non-corporate bodies (e.g. co-operatives, societies and mutual benefit organisations).

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		The new Insolvency Act should also address Limited Liability Partnerships.	The New Insolvency Act will, for the time being, apply to the insolvency regimes of natural persons and companies incorporated under the Companies Act. The issue of whether the insolvency regimes for other legal entities and organisations may be brought under the ambit of the New Insolvency Act may be considered at a later time. Consistent with this, the rules for the receivership and winding up of a limited liability partnership will remain under the Limited Liability Partnerships Act (Cap. 163A). Where existing provisions of the Bankruptcy Act refer to a limited liability partnership, these will be ported over to the New Insolvency Act as well.
2.4	(d) Interest should be provable at the contractual rate up till 3 years prior to the commencement of liquidation, judicial management or bankruptcy and capitalisation allowed if contractually provided for. Interest within the 3 years prior to commencement of bankruptcy or liquidation will be subject to the rule against capitalisation and statutory cap.	<u>Others</u> This rule should not be applied in judicial management as there is no logical reason why simply because interest ceases to run against the company in liquidation it should also cease to run in judicial management. In liquidation, the date of the winding up order or passing of the resolution of winding up should be adopted as the date in respect of which the rule against capitalisation and the cap on interest should be calculated upon.	See below for a combined response.
		<u>Not Supportive</u> Process seems to be unnecessarily complicated. The exclusion of contractual interest for any period up until 3 years prior to the insolvency seems harsh, where there are mechanisms in	There are reasons for and against the current statutory cap and rule against capitalisation. MinLaw notes that in the context of liquidation/bankruptcy, the statutory cap and rule against capitalisation give rise to the difficulty of re-calculating interest for the proof of debt. It is a source of

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		place to challenge extortionate rates. It is strange that creditors who can claim for the full principal outstanding are limited from claiming contractually agreed interest on commercial terms, which may have accrued up to the commencement of liquidation. The approach of calculating interest under proofs of debts in the UK does not give rise to any issues in practice. There are certain limited circumstances where estates may have sufficient realisations to pay interest.	substantial work, delay and expense. Most commercial transactions also carry higher interest rates than the statutory cap, and it may not be commercially sensible to force creditors to adopt lower interest rates from those contractually agreed. Other jurisdictions such as UK and Australia do not adopt this practice. On the other hand, as noted in the Report, there may be a practice or tendency for governing contracts to allow creditors to charge interest at high contractual or default rates, capitalise interest into the principal and/or charge compound interest. In the context of bankruptcy, the restrictions also protect consumer debtors who may face high default interest rates if institutional creditors can claim the full interest owed. While applications may be made to the Court to strike down extortionate rates of interest, that approach may engender some uncertainty, as there will be no useful reference for when a claim for interest is extortionate. In contrast, a statutory cap and rule against capitalisation provides a "bright line" rule. The time period of 3 years from the commencement of the liquidation/bankruptcy accords with the relevant time for avoidance provisions to apply in respect of an extortionate credit transaction in a liquidation/bankruptcy. MinLaw will continue to consider these arguments before coming to a position on the rule against capitalisation and whether the statutory cap should be retained in bankruptcy and liquidation. However, for the judicial management regime, there is no similar

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			statutory cap and it appears from case law that the rule against the capitalisation of interest should not apply in that regime.[1] Unlike liquidation, the company is not in a state of insolvency and may be revived, thus limiting contractual rights may prejudice creditors.
2.5	Rule on realisation of security should apply to both corporate and individual insolvency. In the context of liquidation, default period should be extended to 1 year. Rule on realisation of security should also be extended to judicial management, if leave is granted by the Court or judicial manager.	<u>Supportive but,</u> Queried whether period of time should be extended further. Certain assets, which form a significant part of a particular market, may be difficult to dispose of within 12 months.	The recommended default time limit of 1 year may be extended by the Official Receiver or liquidator or upon application to court.
2.7	Employee vacation leave as a preferential debt should be capped at $7,500.	<u>Supportive but,</u> Suggest that this change be made in subsidiary legislation to enable it to be amended in the future. The cap on remuneration payable for vacation leave as a preferential debt should be raised to $10,000, to be in line with revisions to the cap for preferential debts in respect of salary in the Proposed Additional Amendments to the Companies Act.	MinLaw intends that the cap on remuneration payable for vacation leave be subject to section 328(2A), which will allow the Minister to make future amendments by way of an order in the Gazette. MinLaw intends that the cap on remuneration payable for vacation leave will be the same as the cap for preferential debt in respect of salary.

[1] *Re Boonann Construction Pte Ltd* [2000] 2 SLR(R) 339 states that in contrast to liquidation, contractual interest rates will apply when calculating the proof of debt, and will continue to run after the date of the judicial management order, and there is no reason to deprive creditors of those contractual rights. Following that logic, the rule against the capitalisation of interest should likewise not apply in a judicial management.

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N.a.	N.a.	<u>Carve-outs and Safe-harbour provisions</u> Suggests that there should be provisions which give powers to enable the Minister (or other appropriate body) to make regulations to allow carve outs or safe-harbour provisions either unconditionally or on terms from some or all of the provisions of the New Insolvency Act.	MinLaw is of the view that carve outs or safe-harbour provisions ought to be made through a full legislative process to allow careful consideration of all policy issues and to ensure that views of all stakeholders are obtained. It would therefore be inappropriate for carve outs or safe-harbour provisions to be made by way of regulation. Insofar as the feedback has raised specific examples of financial transactions that may require carve-outs and safe-harbour provisions, MinLaw has forwarded the feedback to the relevant government agencies.

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Chapter 3: Bankruptcy

Rec No.	Recommendation	Feedback received	Ministry of Law's response
3.1	Individual Voluntary Arrangement and Debt Repayment Scheme ("DRS") regimes should be adopted.	Neutral / Others Suggests that if it is clear that total unsecured debts of a debtor exceeds S$100,000 there should be no need to refer the case to the Official Assignee for consideration for DRS.	MinLaw accepts that the court should have discretion to not refer a case for consideration for DRS if it is satisfied that the debt or the aggregate of the debts of the debtor exceeds $100,000.
3.2	Current procedural provisions on proceedings in bankruptcy can be largely adopted. An expedited bankruptcy application procedure should be included.	Supportive There is a mechanism to obtain an earlier date on an urgent basis, but this should be specifically legislated.	MinLaw agrees with the Recommendation.
3.3	Non-automatic vesting of property acquired after bankruptcy order but before discharge should not be adopted.	Supportive The automatic vesting of property helps clarify the OA has *locus standi* for dealing with creditors.	MinLaw agrees with the Recommendation.
3.7	Amendments to s. 131 to clarify that OA's sanction is required for bankrupt to defend any action, including those commenced or continued with leave of Court pursuant to s. 76(1)(c). Amendment to s. 131 to clarify that "action" includes arbitration proceedings. Section 131 does not apply to criminal and matrimonial	Supportive This amendment will provide greater clarity regarding the when OA approval is required for a bankrupt to defend legal proceedings.	MinLaw agrees with the Recommendation.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
	proceedings but bankrupts need to inform OA of such proceedings promptly.		
N.a.	No recommendation is made on whether to introduce an automatic discharge regime, but the current discharge system should be reviewed and fine-tuned.	<u>Supportive</u> A system that discharges bankrupts without regard to facts and circumstances is inappropriate. Careful assessment of the cause of bankruptcy is needed before discharge is given in order not to encourage careless, irresponsible spending, gambling habits or even cheats and scams. A bankrupt should not be discharged based on a rigid set of criteria as the need to clear up the administration of bankruptcies cannot trump the need for justice to be upheld. However, there should be sympathy for bankrupts engaged in entrepreneurial activities.	MinLaw is currently reviewing the bankruptcy discharge regime. A separate consultation will be held for these reforms.
N.a.		<u>Not Supportive</u> An automatic discharge regime should be introduced. It has been suggested for the period of time before automatic discharge is granted was between 3 to 7 years.	

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		The reasons given in support of automatic discharge included: (a) Automatic discharge would encourage entrepreneurs to engage in entrepreneurial activities; (b) Financial institutions should be made to take greater responsibilities on their loan controls and bear the risk of non-payment; (c) A lack of automatic discharge gave the impression that a bankrupt can remain in bankruptcy forever; (d) Automatic discharge gives bankrupts a second chance and allows bankrupts to think of and plan for a future after bankruptcy; (e) The lack of an automatic discharge hurts poor people who cannot afford lawyers or pay their debts, are likely to stay bankrupt all their lives.	
N.a.		<u>Others</u> Different causes of bankruptcy should be taken into consideration: Automatic discharge may be appropriate in cases where there is no fraud and the bankrupt is not recalcitrant and has made genuine attempts to repay the amounts owed by him.	

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		Automatic discharge may not be appropriate for bankruptcies arising out of (i) personal guarantees given to banks as this would lessen the value that banks place on personal guarantees; and (ii) wilful or negligent incurring of excessive credit, as being too lenient in such cases may cause people to be irresponsible in their financial planning. Suggested to have a monetary threshold that the bankrupt would have to repay before being considered for automatic discharge. The threshold should determine based on the quantum of a bankrupt's debts and bankrupt's assets and earning capacity. This threshold should be agreed by creditors. A bankrupt who is a primary borrower to a loan should not be discharged if a person who has given personal guarantees on the same loan is still a bankrupt.	

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Chapter 4: Receivership

Rec No.	Recommendation	Feedback received	Ministry of Law's response
N.a.	N.a.	Inconsistency of sections 226(1) and 328(5) CA Under section 226(1) CA (and where there is no winding up), it appears that the costs and expenses of receivership enjoy priority over preferential creditors. However, if the company is wound up, section 328(5) CA provides that certain preferential creditors rank ahead of claims of the debenture holder, which could include the costs and expenses of the receiver. Suggests that the priorities should remain the same whether or not there is a winding up.	It is intended that the priority of a receiver's remuneration remains the same whether the company is wound up or not, and this will be taken up in the drafting of the new Insolvency Act.

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Chapter 5: The Liquidation Regime

Rec No.	Recommendation	Feedback received	Ministry of Law's response
5.1	A summary liquidation regime should be adopted for cases where realisable assets are insufficient to cover expenses of liquidation and affairs of company do not require further investigations.	Supportive Objecting creditors should be made to place funds to further the liquidation. This would weed out frivolous actions that impede the finalisation of the liquation and ensure that the funding creditors are committed in assisting the liquidator.	MinLaw is of the view that the summary liquidation provisions should allow an objecting creditor, who disagrees with a liquidator's decision to proceed with summary liquidation, to apply to court for directions. The court hearing the facts of each application would be best-placed to make the appropriate order in each case, which may include ordering the creditor to fund the liquidator.
		There should be a requirement for an advertisement to be placed in Government Gazette when there is an intention to seek early dissolution so it can be communicated to relevant stakeholders.	Under the proposed early dissolution regime, there will be a requirement to serve, on the creditors and contributories, a notice of intention to seek early dissolution. MinLaw is of the view that this will be sufficient to bring the matter to the attention of the relevant stakeholders and a separate advertisement is not necessary.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
5.2	Official Receiver to remain as liquidator of last resort, but be empowered to outsource liquidations to private liquidators.	<u>Supportive</u> If OR appoints a private liquidator, the normal rules of Court-ordered winding-up should apply.	Where the Official Receiver outsources a liquidation to a private liquidator, the case remains a court-ordered winding-up, such that the normal rules of a court-ordered winding up will apply. In respect of the Official Receiver's role as the liquidator of last resort, MinLaw is of the view that the Official Receiver ought to move away from administering liquidations as liquidator, save for cases which are in the public interest or where the Official Receiver consents to be liquidator.
5.3	Section 328(1)(a) should be amended to confer priority on OR's fees (or expenses and fees of private liquidators, if outsourced) ahead of the other debts in the same section.	<u>Neutral / Other</u> A receiver's remuneration and expenses should rank equally with the security holder as well as preferential claims.	MinLaw accepts the Recommendation and disagrees with the feedback. The present rules on priority for receivers' remuneration vis-à-vis the security holder and preferential creditors are well-established and have worked well in practice. MinLaw does not see any pressing need to change these rules.
5.4	Actions statutorily vested in a liquidator should not be assignable but remain vested in the liquidator and pursued by him. A liquidator may assign the fruits of the statutory causes of action to third party funders provided appropriate safeguards control the extent to which a third party funder can control conduct of proceedings.	<u>Supportive</u> Creditors usually have reservations in funding a liquidator due to uncertainty on whether (i) the claims that have been assigned will succeed; and (ii) whether the funding creditor has standing to pursue claims on behalf of a company in liquidation even when the cause of action is assigned to them. It would be helpful if these uncertainties can be clarified in the new Insolvency Act. Agrees that statutory claims of the liquidator should not be assignable.	MinLaw accepts the Recommendation. MinLaw disagrees with this feedback. The first uncertainty referred to arises out of the unpredictability of litigation and it is not possible to legislatively provide certainty in the outcome of litigation. Where a creditor funds a claim that is statutorily vested in the liquidator, the claim remains vested in the liquidator and it is for the liquidator to pursue the action for the benefit of all the creditors. The assignment of the fruits of such an action is not intended to confer on a particular creditor any standing to pursue this action.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		Suggests that liquidators should not be able to assign actions for wrongful or fraudulent trading (which is a reform being considered in the UK). Insolvency litigation funding by third party funders should be statutorily codified, and regulated according to a principled framework, the details of which are set out in the paper on Litigation Funding in Insolvency cases by the Sub-Committee (of the Singapore Law Academy Law Reform Committee).	MinLaw agrees that liquidators should not be able to assign actions for wrongful or fraudulent trading. The issue of third party funding is currently being examined by MinLaw.
5.6	A single director should be allowed to apply for a company's winding-up if the director can show a prima facie case that company ought to be wound-up and obtains leave of court.	<u>Supportive</u> Supportive of Recommendation.	MinLaw agrees with the Recommendation.
N.a.	N.a.	<u>Opening a separate bank account</u> The requirement for a liquidator to apply to court to open a separate bank account in compulsory liquidation should be removed as it is generally procedural and administrative in nature and increases the costs of liquidation. Suggests that the OR can approve the opening of the bank account if regulatory oversight is needed.	MinLaw has considered the feedback and is of the view that the application to court for a liquidator to open and operate a bank account is not merely procedural as the court does not simply rubber-stamp such applications. The oversight of the court remains a useful safeguard against possible abuses of such bank accounts.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
N.a.	N.a.	<u>Taxation of professional agent fees</u> The Committee of Inspection or the creditors should be allowed to approve the fees to be paid to professionals engaged by the liquidator.	MinLaw agrees with the proposal in the feedback.
N.a.	N.a.	<u>Meetings</u> Suggests that the quorum for meetings should be standardised. There are different requirements in Section 296, 308(4) of the CA and Rule 123 of the Winding Up Rules. Suggests that the notice period for creditor meetings should be standardised. There are different requirements in Section 296(2)(a), 296(b) of the CA and Rule 114 of the Winding Up Rules. Suggests that there should be provisions to guide liquidators in their assessment or allocation of voting rights of creditors in a first meeting of creditors. Suggests that there should not be a requirement that in order for a creditor to vote, a liquidator has to admit (wholly or in part) or reject a proof before a creditor meeting.	MinLaw disagrees with this feedback. There is no compelling reason to standardise quorum and notice periods between the different types of meetings, as long as the quorum and notice periods are clearly prescribed for each type of meeting. The allocation of voting rights to creditors in a first meeting remains a judgment call for the liquidator and he is best placed to make this decision, having all the facts of a given case before him. It would not be appropriate for legislation to prescribe a generic set of rules which may not be flexible enough to deal with unique factual scenarios. MinLaw is also of the view that a liquidator ought to admit (wholly or in part) or reject a creditor's proof before the creditor may vote at a meeting. Such a requirement ensures that creditors who have obviously frivolous or illegitimate claims cannot vote at meetings. The standard for admitting or rejecting a proof for the purpose of voting at meetings is not the same as adjudicating proofs of debts for the

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		Suggests that there should be statutory provisions that will prevent related-party debts from voting at creditor meetings when there are legitimate concerns over the existence of the related party debt.	purpose of declaring a dividend. There are no compelling reasons to provide statutory provisions to prevent related-party debts from voting when there are legitimate concerns on the existence of the debt. The liquidator remains best placed to determine whether such concerns exist for any debts (including non-related party debts) and should exercise his discretion to permit or exclude the debt from voting accordingly.
N.a.	N.a.	<u>Provisional Liquidator's remuneration</u> A provisional liquidator's remuneration should rank in priority to a liquidator's remuneration.	MinLaw disagrees with the feedback. A provisional liquidator's remuneration should not rank in priority to a liquidator's remuneration. The work done by both office-holders concerns the same subject matter, i.e. the winding up of a company. There are no compelling reasons to favour provisional liquidators over liquidators when the assets of the company are insufficient to pay the costs and expenses of the winding up.
N.a.	N.a.	<u>Taxation of Liquidator's remuneration in voluntary liquidation</u> Suggests that the right to allow a liquidator to proceed for taxation of his remuneration in a creditors voluntary liquidation should be statutorily provided. Suggests that there should be an independent body to ensure independent decision and assist liquidators who are affected by biased decisions taken by the Committee of Inspection or body of creditors in respect of their fees.	MinLaw accepts that a liquidator in a creditors' voluntary liquidation should be allowed to tax his bill in court. This can be addressed in the drafting of the new Act to provide for a uniform position vis-à-vis court-ordered windings up and voluntary liquidations. Where there are any disagreements with the Committee of Inspection or the creditors, the liquidator should proceed to tax his bill in court.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
N.a.	N.a.	<u>Committees of Inspection</u> Suggests that provisions should provide when a liquidator can override decisions of the Committee of Inspection.	MinLaw is of the view that the situations in which a liquidator may disagree with the Committee of Inspection are likely to be premised on the specific facts of each case. Thus, it would be more appropriate for the matter to be resolved by the courts, who are better placed to make the appropriate orders.
N.a.	N.a.	<u>Transition between Provisional Liquidation to Liquidation</u> Suggests that there should be provisions which deal with the cut-off point for the powers of the provisional liquidator upon appointment of the liquidator.	There is already clarity on when a provisional liquidation ends, which is on the making of the winding up order. The arrangements for a hand over from the provisional liquidator to the liquidator are administrative in nature and it is not appropriate to have statutory provisions govern this process.
N.a.	N.a.	<u>Expenses of preparing a Statement of Affairs</u> Suggests that there should be provisions that cover claims by a director for expenses incurred in preparation of the Statement of Affairs in creditors' voluntary liquidations.	It is intended that there should be a uniform position in court-ordered windings up and voluntary liquidations on the requirements to provide a Statement of Affairs and for the covering of expenses incurred in preparing a Statement of Affairs. This will be addressed in the drafting of the new Insolvency Act.

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Chapter 6: Judicial Management

Rec No.	Recommendation	Feedback received	Ministry of Law's response
6.1	Judicial management regime should be retained but with reform in certain areas.	Neutral/Others To extend the present timeframe for the judicial manager to present the statement of proposals once the judicial management order has been made.	The initial 60-day time period to present the statement of proposals appears to be an appropriate starting point, which can be subject to extension by the court. Increasing the default time period may prolong the overall judicial management timeframe. Nonetheless, MinLaw recognises that in certain cases, it may be difficult for the judicial manager to present the statement of proposals within that time period, and would incur costs by having to take out a court application for extension. Therefore, to provide greater flexibility to judicial managers who require more than 60 days to present the statement of proposals, MinLaw is of the view that the 60-day time period should be capable of a single extension for a period of up to 60 days, by a vote of a simple majority in number and value of creditors without needing to apply to court for the same.
6.2	Court should have overriding discretion to grant a judicial management order despite objection by secured creditors who may appoint a receiver over the whole or substantially the whole of a company's assets. Court should exercise discretion if the prejudice to unsecured creditors if the judicial management order is not made is wholly disproportionate to the prejudice suffered by secured creditors if a judicial management order is made.	Neutral Unclear whether judicial management process can be commenced if a receiver has already been appointed. Unclear as to who bears the burden of proof as to the prejudice potentially being caused to unsecured creditors.	The Recommendation does not envisage any changes to the present framework, where a judicial management and receivership are not able to co-exist. It will be for the parties seeking the judicial management order to satisfy the court that there are circumstances warranting the making of a judicial management order over the wishes of the floating charge holder.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		<u>Not supportive</u> Secured creditors who have the right to appoint a receiver over the whole or substantially the whole of a company's assets should have an absolute veto right (subject to public interest). Giving the Courts this discretion to override the veto prejudices the security holders' rights. It is unclear how the Court can meaningfully weigh prejudice between the secured and unsecured creditors. Suggests that if the recommendation is adopted, the test should not be based solely on the rights of the secured creditors, such as whether the secured creditor is "more than adequately secured".	Secured creditors should not have absolute veto rights. The Recommendation seeks to strike a better balance between the extensive rights of secured creditors, and general unsecured creditors, particularly where rehabilitation may be possible for the company (which ultimately will also enhance value for secured creditors). It envisages a high threshold to meet. The court will only exercise its discretion where the prejudice caused to unsecured creditors if the judicial management order is *not* made is "wholly disproportionate" to the prejudice caused to secured creditors if the judicial management order is made. The burden to prove that high threshold, moreover, is on the parties seeking the judicial management order, to satisfy the court that there are circumstances warranting the making of a judicial management order over the wishes of the floating charge holder. The proportionality test should enable the court to take into account a number of factors, including the legal and commercial interests of the unsecured creditors, particularly if there is a chance for the company to be rehabilitated through judicial management, or if the secured creditor is over- or under-secured.
6.3	Right to object to judicial management should only accrue to holder of a floating charge that is valid in the liquidation of a company.	<u>Supportive but,</u> The right to object should only be given to holders of floating charges that constitute a substantial proportion of the company's total debts.	MinLaw accepts the Recommendation. In response to the feedback, MinLaw notes that section 227B(5)(b) already allows the holder of a floating charge over "the whole or substantially the whole" of the company's property to veto an application for judicial management.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
6.4	A floating charge holder who consents to judicial management should be granted the right to appoint the judicial manager.	Not supportive The appointment of a judicial manager should be decided by majority creditors.	MinLaw accepts the Recommendation, which seeks to provide floating charge holders with some incentive to consent to a judicial management order, rather than exercise their right to veto. The judicial manager will ultimately act in the interest of all creditors, and other creditors may object to the nomination on limited grounds (e.g. bias or bad faith). MinLaw thus disagrees with the suggestion in the feedback.
6.5	A company should be able to put itself into judicial management upon filing requisite documents without formal application to court.	Not supportive Judicial management should only be initiated through a court application to ensure that all creditors' rights are catered for.	It is intended that dissenting creditors will have the same right of recourse to the court against a company-appointed judicial manager as they presently have against a court-appointed judicial manager (including the right to apply to court under section 227R for an order or interim order to protect their interests, or for an order to discharge the judicial management process). Creditors should also have the right to apply to court to set aside the judicial management process where, for example, procedural requirements have not been met.
6.8	Personal liability for contracts entered into or adopted by judicial managers should not be imposed on judicial managers.	Supportive but, A judicial manager should still be personally liable in instances of gross negligence or fraud.	Imposing personal liability on judicial managers may discourage judicial managers from adopting contracts which may be beneficial for the company, and also appears at odds with the position taken with liquidators of a company, or directors of a company, who do not assume personal liability for contracts entered into or adopted. The Recommendation does not affect the judicial manager's general liability for acts of negligence, default, misfeasance, breach of trust or breach of fiduciary duties.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
6.13	(a) Any creditor of the company should be allowed to apply for appointment of an interim judicial manager before the judicial management order is made.	<u>Neutral / Others</u> Concerned about the lack of clarity on the basis / legal requirement to appointing an interim judicial manager. Suggests that the threshold requirement for appointment of an interim judicial manager should be that of "good *prima facie* case" (as is the case for appointment of provisional liquidators). Suggests that the situations in which an interim judicial manager should be appointed should be specifically set out.	It is appropriate that the threshold requirement for the appointment of an interim judicial manager should be that of a "good *prima facie* case". However, it may not be appropriate to specifically set out the situations that warrant the appointment of an interim judicial manager. Instead, the Court is best placed to decide on the facts of a particular case whether the appointment of an interim judicial manager ought to be made.
	(b) Where a company applies for its own judicial management, the directors should give personal undertakings to the court that the company will apply its assets and incur liabilities only in the ordinary course of business.	<u>Supportive but,</u> Unclear what the consequence of the breach of an undertaking would be and who would be in position monitor this, or be able to enforce or take action against a breach of an undertaking.	Generally, a breach of the terms of the undertaking may result in personal liability of the director. Any creditor should be able to apply to the court to enforce the undertaking. The details of the undertaking and how it may be enforced will be taken up in the drafting of the Act.
6.15	Provisions should be made to allow grant of super-priority for rescue finance, but should not introduce super-priority liens.	<u>Supportive</u> Agrees with Recommendation. Introduction of such funding will give companies with sound businesses a real opportunity of survival.	MinLaw agrees with the Recommendation.

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Chapter 7: Schemes of Arrangement

Rec No.	Recommendation	Feedback received	Ministry of Law's response
7.2	The scope of the moratorium should be no narrower than that in a judicial management, but the court should have discretion to alter it.	Not supportive There should not be a moratorium for schemes of arrangement, unless appropriate safeguards are in place or the scope of the moratorium is narrower than the moratorium in judicial management. Allowing a moratorium opens the possibility for abuse by the management of the company.	MinLaw accepts the Recommendation and does not agree with the feedback. Currently, a moratorium (non-automatic) is already available for schemes of arrangement. To prevent abuse, the Recommendation to expand the scope of the moratorium also contains the following safeguards: (a) the court is empowered to tailor the scope of the moratorium in each case according to its circumstances; and (b) aggrieved creditors will be entitled to apply to the court for relief if there is abuse.
		Other / Neutral Specific carve-outs and exemptions may be needed.	See discussion on carve out and safe harbour provisions in the comments for Chapter 2.
7.4	(a) Each creditor is entitled to review proofs submitted by other creditors. Notice should first be given, and the company and proving creditor have the right to object to the inspection. An independent assessor shall decide whether there is a legitimate basis for declining to disclose the proof and if he agrees, must review	Supportive but, Concerned that allowing each creditor to "review" and object to other creditors claim may lead to uncertainty, higher costs and inevitable delay (even though strict timelines are in place).	MinLaw is of the view that adequate safeguards exist as the independent assessor has a right to determine whether a creditor's request to review another creditor's claim is legitimate or a mere delaying tactic. In any case, the resulting increase in uncertainty, costs and delay (which may not be significant) has to be weighed against the fact that the creditor's right to information is an important right (as the claims submitted by creditors and admitted or rejected by the company or the scheme manager would fundamentally affect voting rights and the issue of whether the scheme has been properly approved by the

Rec No.	Recommendation	Feedback received	Ministry of Law's response
	the proof himself. He may direct that it be partially disclosed and/or that sensitive portions are redacted.		creditors).
	(d) The independent assessor may be appointed when an application relating to a scheme of arrangement is made to court, upon nomination of the company, a creditor or member of the company. The independent assessor may also be appointed once a matter requiring his assessment arises.	<u>Neutral</u> Suggest that independent assessors be appointed at the outset and that they assess the proofs.	An independent assessor should be appointed at the outset only if the company, a creditor or a member desires such an appointment. Additionally, it would not be efficient and cost-effective to require that an independent assessor assess each and every proof. Instead, the independent assessor's role in respect of assessing proofs ought to be focused on disputes relating to the admission or rejection of a proof.
	(e) The independent assessor's decisions may be challenged in court, but only at the sanction hearing.	<u>Neutral</u> Suggests that each creditor should only have a summary right to appeal the independent assessor's decision on their own claim. <u>Not Supportive</u> The challenge should not be restricted to the sanction hearing. A creditor should have the right to proceed to Court immediately. The scheme meeting may still proceed and be voted on with two results declared:	The creditor's right to challenge the independent assessor's decision should not be confined to his claim only. The admission or rejection of proofs fundamentally affects voting rights and the issue of whether the scheme has been properly approved by the creditors. MinLaw is of the view that there will be time and cost savings in having the court hear and determine all the creditors' challenges at the sanction stage. This is particularly so as some of the creditors' challenges may be inter-related and can be dealt with at the same time, whilst other challenges may become inconsequential because of the voting results of other unchallenged debts.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		(a) The result based on the accepted adjudicated claims and the adjudicated amount of disputed adjudications; and (b) The result based on the accepted adjudicated claims and the disputed amount of the disputed adjudications.	In contrast, requiring that the court deal with challenges as and when they are raised may lead to excessive delays and increased costs. It may also make the scheme of arrangement process overly cumbersome. In addition, there is a concern that some creditors may abuse this process by raising challenges with the objective of delaying and de-railing an otherwise viable scheme of arrangement. In any event, the creditor does not suffer prejudice from having the challenge heard only at the sanction stage, as a scheme of arrangement is not effective until it is sanctioned by the court.
7.10	Provisions should be introduced to allow grant of super-priority for rescue finance.	<u>Supportive</u> Agrees with Recommendation.	MinLaw agrees with the Recommendation.
7.11	Where the requisite majorities in number and value of creditors have been obtained, a scheme of arrangement should be passed over the objections of dissenting creditors, subject to the court being satisfied that the dissenting creditors are not prejudiced by such cram-down.	<u>Neutral</u> Unclear who bears the burden of proof in establishing that the dissenting class is not prejudiced. Unclear how appointments of court assessors or experts to assist the Court would work in practice.	Under the US Bankruptcy Code, it is for the proponents of the reorganisation plan under Chapter 11 to prove that the plan does not discriminate unfairly against the dissenting, impaired class of creditors. MinLaw is of the view that In Singapore, the company and/or the classes of creditors in favour of the scheme would have the burden of proof in establishing that the dissenting class is not prejudiced. The Court ought to be given powers to order how the court assessors or expert should be appointed and assist the Court. This will allow the appropriate order to be made based on the circumstances of a particular case.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		Clear parameters are needed as to how the mechanism is to apply. Noted that a "no worse off than in a liquidation" threshold is used in many jurisdictions.	It is intended for the Court to require a high threshold of proof that the dissenting class is not going to be prejudiced by the cram-down. The MinLaw will consider using "no worse off than in a liquidation" threshold in the drafting of the Act.
N.a.	N.a.	<u>Suspension of Insolvent Trading Rules</u> Suggests that there should be a provision to allow a distressed company to apply to Court for an order that insolvent trading rules applicable to officers do not apply or apply in a modified way, during an interim period between the periods from the first application to the Court to the convening of the first meeting. There should be a long stop date to this interim period to prevent abuse. This longstop date should not be statutorily prescribed but be fixed by the Court at the first application, with liberty to apply for extension(s) for good reason.	Stipulating that insolvent trading rules do not apply during the interim period (even if there is a longstop date) could potentially allow abuses during that period. One of the Recommendations in the ILRC report is that a defence to insolvent trading arises where the officer acted honestly and having regard to the circumstances of the case, he ought to be fairly excused. MinLaw is of the view that this defence provides sufficient protection to the company's officers. This is because the defence will permit the Court to consider the actions of the officers in light of the fact that a scheme of arrangement is being proposed. Additionally, if an officer has legitimate concerns as to whether a proposed course of action could amount to insolvent trading, it will be possible for an application to be made to court to determine whether such action at and after such application would be wrongful.
N.a.	N.a.	<u>Supervision of Management</u> Suggests that in appropriate certain cases modification of the company's existing management may be required. This could be done by supervision by the court, through a court appointed director who regularly reports to the court. Alternatively, to give creditors the	Appointing a new independent officer to supervise the company's existing management may be undesirable as it would reduce the autonomy and flexibility given to the company to propose a restructuring plan. It may also be difficult to give creditors a right to appoint directors of their choice, and this may result in lobbying by creditors.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		right to appoint a number of directors to deny existing management control of the board.	Should there be a need for an independent officer to supervise and oversee the management and running of the company, an alternative process such as judicial management should be used. On balance, this distinguishing feature of the scheme of arrangement, which allows existing management to remain in control of the company, should be preserved.
N.a.	N.a.	Longstop Date There should be a longstop date between the granting of the moratorium and the first meeting. This longstop date should not be statutorily prescribed but be fixed by the court at the first application, with liberty to apply for extension(s) for good reason.	MinLaw agrees that a longstop date should not be statutorily enacted. The court is best placed to determine if a longstop date is appropriate in a given case.
N.a.	N.a.	Expedited Procedure Suggests an additional expedited procedure for obtaining the court's approval for a scheme of arrangement, similar to the US concept of pre-packaged restructuring plans. Under this procedure, application to the court for a scheme meeting to be convened will be bypassed. Instead, the company constructs a plan along the existing scheme of arrangement principles. The company can apply for a moratorium without being required to have already proposed a plan to creditors, and can also apply for rulings on classification of	MinLaw is of the view that the proposal in the feedback may not be appropriate for the three reasons set out below. Nevertheless, MinLaw is of the view that there may be merit in introducing a procedure that allows a court to sanction a scheme of arrangement in a fast and efficient manner, provided the concerns listed below are not present. MinLaw will consider if such a procedure can be enacted in the drafting of the Act. (i) Adoption of the UK Practice Statement (Companies: Schemes of Arrangement) [2002] 1 WLR 1345 In England, the practice regarding applications to court for meetings is governed by a Practice Statement (Companies: Schemes of Arrangement). The Court of Appeal in *The Royal Bank of Scotland NV v TT International Ltd [2012] 2 SLR 235 [at para 61]* approved and

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		creditors. Upon approval of the plan by a majority in number representing three-quarters in value of creditors present and voting in each class, the company applies for approval.	opined that this Practice Statement could serve as guidance for local practitioners. MinLaw is of the view that the same should be adopted in Singapore. The adoption of the Practice Statement in Singapore requires the company's solicitors, when applying for an order to summon the scheme creditors' meeting, to unreservedly disclose all material information to the court to assist it in arriving at a properly considered determination on how the scheme creditors' meeting is to be conducted. This means that an applicant has a responsibility when bringing the first application to consider *inter alia,* whether there are different classes of creditors which require more than one meeting of creditors to be convened, and to notify persons affected by the scheme of its purpose and the meetings which the applicant considers to be necessary. The applicant is also required to draw the court's attention to any issues that may arise as to the constitution of meetings of creditors or which otherwise affect the conduct of those meetings. This allows the court to exercise greater oversight over the scheme process and ensure that the creditors meetings are properly called. Additionally, by ventilating all these issues at this early stage, the court may also give directions for the calling of scheme creditors' meeting(s) to pre-emptively resolve challenges that may arise at the sanction hearing. (ii) Possibility of Abuse There are concerns that the suggested expedited procedure is open to abuse as it allows an applicant to avoid raising issues that ought to be raised at the first application, and only raise them at the sanction hearing, which will lead to significant delays and costs. Furthermore,

Rec No.	Recommendation	Feedback received	Ministry of Law's response
			in the process outlined in the Practice Statement, it is expressly provided for creditors who consider themselves unfairly treated, to be able to raise objections at the sanction hearing, though the court will expect a good explanation for why such objections were not raised earlier. (iii) Existing Framework allows pre-negotiated restructuring plans; no significant savings in time and cost that outweigh possibility of abuse In any case, the existing framework for schemes of arrangement does not prevent a company from pre-negotiating its restructuring plan with its creditors, in similar fashion to a pre-packaged US restructuring plan. If the company successfully pre-negotiates its restructuring plan with the requisite majority of creditors to pass the plan (as would be the case in a pre-packaged US restructuring plan), there would not be a need for the company to seek a moratorium or apply for rulings on the classification of creditors. The only savings in cost and time achieved under this expedited procedure is the by-passing of a single court application i.e., the first application for leave to convene a scheme meeting. As a result, the costs and time savings under the suggested expedited procedure are not significant enough to outweigh the potential for abuse by the company.

ANNEX A - SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE INSOLVENCY LAW REVIEW COMMITTEE (ILRC) REPORT AND MINLAW'S RESPONSE
Chapter 8: Avoidance Provisions

Rec No.	Recommendation	Feedback received	Ministry of Law's response
8.3	The relevant time for transactions at an undervalue should be reduced to 3 years.	Not supportive No rationale or benefit for the proposed reduction. The relevant time should remain as 5 years.	MinLaw accepts the Recommendation. In response to the feedback, MinLaw notes that the current 5-year period creates unnecessary concerns and difficulties in practice for parties seeking to enter into a legitimate commercial transaction. In any case, the nexus between a transaction and the prejudice to creditors weakens with the passage of time. The most reprehensible form of undervalued transactions are those entered into close to the time when the party is placed under insolvency/bankruptcy. A period of 3 years should cover such cases, and yet strike a balance for parties to enter into legitimate commercial transactions.
8.9	The subjective test for unfair preference should be retained, i.e. the person giving the preference was influenced by a "desire to prefer" the recipient.	Not Supportive In practice there are difficulties gathering evidence to satisfy a subjective test. It is particularly difficult to gather evidence if the former officers are not co-operative and creditors / other stakeholders are unable to provide assistance and information. The objective test will give greater clarity on transactions that would amount to an undue preference.	MinLaw accepts the Recommendation. The case law and applicable principles on the subjective approach are sufficiently clear as to what is required to satisfy the test. Further, while it may be difficult to prove subjective intention, this should be weighed against the potential consequences of the objective test, one of which is that all payments made after insolvency are *prima facie* liable to be set aside. This may pose even more practical problems. MinLaw thus disagrees with the feedback.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
8.10	The provision on registering of charges should be retained in the Companies Act.	Neutral / Others Clarification should be made on security which does not fall squarely within section 131(1) of the CA.	MinLaw accepts the Recommendation, and takes the view that clarification is not necessary since section 131(3) of the Companies Act already sets out the types of charges that the section applies to. The question of whether a security falls within section 131(1) is best left to the development of case-law.
8.11	An unregistered charge shall be void against a judicial manager, and shall remain enforceable against the company in the event that the judicial management is successful.	Neutral / Others Does this recommendation simply clarify that a charge will still be enforceable vis-à-vis a company after discharge from judicial management and not have an effect of curing any defects due to a lack of registration.	This Recommendation does not intend to cure any defects in the validity of a charge due to a lack of registration, in the event that the judicial manager is discharged and the company is rehabilitated.
8.13	(b) Notice of the intended disclaimer should be given to creditors, OR and any other relevant parties.	Neutral / Others Suggests that the insolvency office-holder also advertise the proposed disclaimer in the appropriate place whether this be the gazette / company registry / land registry in order to protect third party interests.	The relevant third parties should have been given notice of the intended disclaimer. Where the third party cannot be immediately located, under the Recommendation, the insolvency office-holder is required to advertise the proposed disclaimer in a newspaper and/or government gazette.
N.a.	N.a.	Defence of Good Faith A defence similar to Regulation 6 of the Companies (Application of Bankruptcy Act Provisions) Regulations ('CABAR') should be introduced to promote transactions entered into good faith.	MinLaw intends to introduce a defence similar to regulation 6 of CABAR in the drafting of provisions on undervalued transactions in liquidation and judicial management in the new Act.

ANNEX A - SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE INSOLVENCY LAW REVIEW COMMITTEE (ILRC) REPORT AND MINLAW'S RESPONSE

Chapter 9: Officer Delinquency

Rec No.	Recommendation	Feedback received	Ministry of Law's response
9.2	(a) A criminal conviction should not be a requisite to bringing a civil claim for insolvent trading.	Supportive Agrees with Recommendation.	MinLaw agrees with the Recommendation.
	(b) It should be expressly provided that a defence to insolvent trading arises where the officer acted honestly and having regard to the circumstances of the case, he ought to be fairly excused.	Neutral Civil liability should be imposed so long as certain thresholds are proven such as insolvency of the company, no evidence to support the reasonableness of incurring the debt etc.	Allowing the court to have regard to the circumstances of the case is a flexible approach that strikes a balance between guarding against insolvent trading and ensuring fairness to the officer. In any event, MinLaw is of the view that what was proposed in the Recommendation and the suggested thresholds in the feedback will not result in much difference in practice, as there would be few if any cases where it would be fair to excuse the officer when there is no evidence to support the reasonableness of incurring the debt.

ANNEX A - SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE INSOLVENCY LAW REVIEW COMMITTEE (ILRC) REPORT AND MINLAW'S RESPONSE

Chapter 10: Regulation of Insolvency Practitioners

Rec No.	Recommendation	Feedback received	Ministry of Law's response
10.1	Official Receiver should take on the registering and renewal of licenses, and the setting of licensing requirements for all insolvency office-holders.	Supportive Official Receiver also needs to set ethical standards for the profession and these standards should be no less onerous than the standards in other major jurisdictions.	As it is intended for the Official Receiver to leverage on existing frameworks within the professional bodies for disciplinary matters, licenced insolvency practitioners will be subject to the professional standards and codes of conduct of those professional bodies. MinLaw will consult with the relevant professional bodies to determine if specific and additional ethical standards ought to be issued for insolvency practitioners.
10.2	The qualification standard for all insolvency office-holders should be the same except for scheme managers and liquidators in members' voluntary winding-ups.	Neutral / Other Suggests that section 46(2) of the BA (governing qualifications required of nominees in IVAs) be amended to be standardised with the Recommendation that qualifications of insolvency practitioners be the same in all insolvency regime. Advocates and solicitors should continue to have the right to be appointed as trustees in bankruptcy.	It is intended that the qualification requirements of all insolvency practitioners acting in insolvency regimes be standardised unless expressly excluded. There is no proposal to disallow advocates and solicitors from being appointed as trustees in bankruptcy. An advocate and solicitor will also be considered a qualified person for the purposes of licensing and appointment as an insolvency practitioner.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		<u>Not supportive</u> Liquidators in members' voluntary liquidations should be subject to the same qualification standards as they take on similar work to other liquidators. Issues of adjudication of proofs of debt, set-offs and other insolvency related issues may arise in an members' voluntary liquidation. These liquidators in members' voluntary liquidations also need to be regulated by a government agency.	MinLaw disagrees with the feedback. Generally, in members' voluntary liquidations, the company is solvent and able to pay its debts in full. The directors are required to make a declaration to that effect and if this declaration is made without reasonable grounds to believe in the truth of the declaration, the directors would be liable for an offence. Where the company is solvent, there would usually not be issues of adjudication or set-off that require professional knowledge. Where the company turns out to be insolvent, the appointed liquidator in a members' voluntary liquidation is required to call a creditors' meeting, whereupon, the liquidation proceeds as a creditors' voluntary liquidation with a licensed practitioner to be appointed as liquidator. Even if the liquidator appointed in a members' voluntary liquidation is not licensed, the liquidator will be subject to the same duties and liabilities imposed by the Act and Rules.
10.3	Further views should be taken on the issue of whether liquidators in members' voluntary liquidations should be licensed insolvency office-holders before a decision be made.	<u>Supportive of regulation</u> Liquidators of members' voluntary liquidations should be regulated to ensure that all insolvency practitioners have basic knowledge and experience of insolvency law. In a members' voluntary liquidation, certain compliance procedures have to be carried out and liquidators in a members' voluntary liquidation should be aware of such requirements.	Having considered the feedback, MinLaw is of the view that in a members' voluntary liquidation, the company is solvent and thus, the choice of liquidator is unlikely to have an impact on the creditors. As such, there is no compelling reason to limit the appointment to a licensed insolvency practitioner or allow unqualified persons to act as insolvency office-holders only in certain limited circumstances. There is no obstacle to appointing an insolvency practitioner if so desired. In respect of feedback that a liquidator ought to be aware of the requirements of a members' voluntary liquidation, MinLaw is of the view that an unqualified person is capable of obtaining advice to ensure he discharges the necessary requirements. He assumes the risks of non-compliance of such requirements by choosing to act as

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		Suggests that the threshold to obtain a licence to be a liquidator of a members' voluntary liquidation should not be as high as a liquidator acting in a creditors' voluntary liquidation and a compulsory liquidation. <u>Supportive of Regulation but,</u> Liquidators in members' voluntary liquidations should be Approved Liquidators (as defined in the Companies Act), as such persons are better placed to deal with complications in the liquidation, e.g. where it is subsequently determined that the liquidation is an insolvent liquidation. Suggests that an unqualified person may act as liquidators in members' voluntary liquidations for companies with no assets and no liabilities (similar to the case of strike-off from the registry).	the liquidator, instead of engaging an insolvency practitioner.
N.a.	N.a.	<u>Liquidator's Security Undertaking</u> The security undertaking that liquidators have to furnish to the Official Receiver in compulsory liquidation limits the financing facilities available to insolvency practitioners. Professional indemnity insurance, which is generally taken up by insolvency practitioners,	One of the purposes of having the security in the form of a banker's guarantee is to ensure that in cases of misfeasance, the Official Receiver can step in and use these funds to begin administering the case. As such, professional indemnity insurance does not sufficiently fulfil this function. If liquidators are able to provide alternative security that can serve this purpose, there should be no objection to allowing these other forms of security.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		should be a sufficient safeguard in the event of any misfeasance of the insolvency practitioner. Suggests that the requirement of the security undertaking could be replaced by submission of proof of professional indemnity insurance when an insolvency practitioner is applying for a renewal of his licence.	
N.a.	N.a.	<u>Prohibition of auditors as officeholders</u> Suggests that save for a members' voluntary liquidation, a company's auditors or former auditors should not be allowed to act in all forms of insolvent regimes. (Prohibitions are already in place for Receivership and Judicial Management, see section 217(1)(c) and section 227B(3)(a)).	As it is intended that the qualification requirements of all insolvency practitioners be standardised across all insolvency regimes save for members' voluntary liquidation, the prohibition of an auditor of the company from acting as an insolvency office holder will apply to all insolvency regimes, unless expressly excluded.
N.a.	N.a.	<u>Distinction between court appointed and out-of-court appointed Judicial Managers</u> Suggests that provisions be enacting to prescribe that the duties / standards on an out-of-court appointed judicial manager or interim judicial managers are no different from ones appointed by the court.	There is no intention to differentiate between judicial managers who are appointed by the court and judicial managers appointed out-of-court in terms of their duties and obligations as judicial managers of a company.
N.a.	N.a.	<u>Prevention of staff from working on a case when an insolvency practitioner is prohibited from acting</u>	MinLaw is of the view that such a prohibition ought to be in professional conduct rules or ethical standards of the professional body that the practitioner belongs to, and should not be enacted in legislation.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		There should be provisions preventing practitioners who cannot be appointed from having another practitioner be appointed, only to have the work done by the staff of the prohibited practitioner.	

ANNEX A - SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE INSOLVENCY LAW REVIEW COMMITTEE (ILRC) REPORT AND MINLAW'S RESPONSE

Chapter 11: Cross-Border Insolvency

Rec No.	Recommendation	Feedback received	Ministry of Law's response
11.1	The judicial management regime should be extended to cover all foreign companies.	Supportive Extending Judicial Management to foreign companies establishes consistency in the availability of corporate insolvency regimes to foreign companies.	MinLaw agrees with the Recommendation.
		Neutral / Others Suggests that there should be provision to introduce regulations containing carve-outs or safe harbour provisions. For example, there might be carve-outs for certain securitisations, where the security provided by a foreign entity may be subjected to a moratorium and disposal by a judicial manager.	See discussion on carve-outs and safe harbour provisions in the comments for Chapter 2.
11.2	The UNCITRAL Model Law on Cross-Border Insolvency should be adopted with appropriate modification and exclusions.	Supportive Agrees with Recommendation. Supportive but, Model Law should be limited to selected entities, i.e. branches of foreign companies or foreign companies in Singapore not registered with ACRA.	MinLaw agrees with the Recommendation. It is intended that certain regulated industries will be exempted under Article 2 of the Model Law. However, apart from these exempted industries, it would be inappropriate to limit the Model Law's application to selected entities.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
		In the event that Model Law is applied to all entities in Singapore, preferential creditors should rank in priority to the global pool of creditors in the main proceedings in the foreign jurisdiction.	Currently, a foreign company registered under the Companies Act that is in liquidation must comply with requirements under section 377(7) to pay local preferential creditors first, before remitting the balance monies to the foreign representative. Provisions in the Model Law also allow a court to make appropriate orders to ensure that the interests of local creditors, including preferential creditors, are adequately protected. Such provisions may provide adequate protection to creditors generally in the event that they may be prejudiced or discriminated against *vis-à-vis* creditors in a similar class in that foreign insolvency proceeding. Therefore, the local court may refuse to turn over assets to the foreign representative where the rules of that foreign jurisdiction purport to discriminate or prejudice the local creditors *vis-à-vis* creditors in a similar class in that foreign jurisdiction. In any case, a provision that is enacted in Singapore that provides priority to preferential creditors over the global pool of creditors is unlikely to have any force in the foreign jurisdiction.
11.4	The Model Law should apply only to corporate insolvency with a review at a later date on whether to extend it to bankruptcy.	<u>Supportive</u> Agrees with the Recommendation, bearing in mind existing common law principles and sections 43 and 46 of the Evidence Act. However, consideration should be given on whether to expand and develop the provisions in the Evidence Act to not only cover recognition but also assistance.	MinLaw agrees that common law principles will continue to evolve and supplement the statutory framework on cross-border insolvency.

Rec No.	Recommendation	Feedback received	Ministry of Law's response
11.5	Ring-fencing of assets of foreign companies should, as a general rule, be abolished.	<u>Supportive but,</u> The abolishment of ring fencing should not prejudice a bank's local security package in financing transactions.	The abolition of ring-fencing will not affect the promulgation or continued operation of any other ring-fencing legislation which is applicable to any specific type of companies or industries. Adequate protection for a local security package (which would be prejudiced in a foreign proceeding) is provided, as the Model Law allows the court to have the discretion not to grant assistance to a foreign proceeding where the interests of local creditors would not be adequately protected.

ANNEX A - SUMMARY OF FEEDBACK FROM THE PUBLIC CONSULTATION ON THE INSOLVENCY LAW REVIEW COMMITTEE (ILRC) REPORT AND MINLAW'S RESPONSE

List of Respondents

1. Institute of Singapore Chartered Accountants
2. Law Society of Singapore
3. Association of Banks in Singapore
4. Ministry of Culture Community and Youth
5. Stamford Law Corporation
6. Clifford Chance
7. Ferrier Hodgson
8. Rae Chan
9. Elango Subramanian
10. Ashok Kumar
11. Brendan Chian
12. Jayram Atmaram Khialani
13. Vashdev Atmaram Khialani
14. Ganshamdas Atmaram Khialani
15. Yaan Lin
16. Ulaganathan Karumanan
17. Kwok Sze Hwee
18. Sonny Yuen
19. Rianne Meurzec
20. Agnes Meurzec
21. Gary Berlandier
22. Suneel Ramchandani