

THE SIMPLIFIED INSOLVENCY PROGRAMME: STAYING AFLOAT IN DIFFICULT TIMES

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The Simplified Insolvency Programme was introduced to allow micro and small companies easier access to restructuring and winding up in the light of the financial impact which COVID-19 has had on various businesses. This article will cover the eligibility requirements for two programmes under the Simplified Insolvency Programme – the Simplified Debt Restructuring Programme and Simplified Winding Up Programme – and provide a step-by-step guide on how these processes will work and how they differ from their traditional counterparts.

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I. Introduction

1 The Simplified Insolvency Programme (“SIP”) was introduced to allow micro and small companies (“MSCs”) easier access to restructuring and winding up under the Insolvency, Restructuring and Dissolution Act 2018² (“IRDA”) in the light of the financial impact which COVID-19 has had on various

1 The authors would like to acknowledge the assistance of Sathya Narayanan and Zeng Yu, whose first draft of this article formed a substantial basis of its final form.

2 Act 40 of 2018.

businesses. The SIP reduces the involvement of the court as well as the number of procedural steps required for winding up or restructuring. This allows MSCs to undertake faster and cheaper restructuring or winding-up processes given their potentially limited resources.

2 Parts 5A and 10A were added into the IRDA by the Insolvency, Restructuring and Dissolution (Amendment) Act 2020³ to legislate the SIP. Part 5A concerns the Simplified Debt Restructuring Programme (“SDRP”) while Part 10A concerns the Simplified Winding Up Programme (“SWUP”).

3 The SDRP and the SWUP were originally intended to be in effect for a period of six months starting from 29 January 2021 and ending 28 July 2021. The Minister for Law has since further extended this period by 12 months, to end on 28 July 2022 instead of 28 July 2021.

4 In addition, a non-statutory scheme called the Sole Proprietors and Partnerships scheme (“SPP”) was introduced to assist sole proprietors and partnerships to restructure their unsecured debts. This scheme was introduced by the Association of Banks in Singapore and the Ministry of Law and is being administered by Credit Counselling Singapore.

5 This article will cover the eligibility requirements for the SDRP and SWUP and provide a step-by-step guide on how these processes will work in practice and how they differ from their traditional counterparts. It will then touch briefly on the SPP.

6 Unless otherwise stated, all provisions cited in this article are with reference to the IRDA.

3 Act 39 of 2020.

II. Simplified Debt Restructuring Programme

A. Eligibility

7. To be eligible for the SDRP, the applicant company must satisfy the Official Receiver (“OR”) that it:⁴

- (a) has an annual sales turnover for the relevant period⁵ not exceeding \$10 million;
- (b) has not more than 30 employees;
- (c) has not more than 50 creditors;
- (d) has liabilities (including contingent and prospective liabilities) not exceeding \$2 million; and
- (e) satisfies any other criteria as may be prescribed by the Minister by order in the *Gazette*.

8. Additionally, the applicant company must not:

- (a) be in the process of being wound up whether pursuant to an application under s 216 of the Companies Act⁶ on the ground of oppression or injustice, by court order or voluntarily;
- (b) be in judicial management;
- (c) have applied for, or have pending applications with respect to a scheme, scheme moratorium, judicial management or winding up;
- (d) be subject to a moratorium;

4 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72E(2). As of 2 November 2021, no further criteria have been provided for in the *Gazette*.

5 As defined in s 72F(5) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018).

6 Cap 50, 2006 Rev Ed.

- (e) have had a provisional liquidator appointed over it;
- (f) have had an interim judicial manager appointed over it and whose term of appointment has not ended;
- (g) have applied for acceptance into the SWUP that is pending;
- (h) have affairs such that the administration of the SDRP is likely to require significant resources, specialised knowledge or expertise, or that the applicant company (with the assistance of a restructuring adviser) is unlikely to be able to formulate a proposed scheme with its creditors, obtain the agreement of a two-thirds majority in value and apply to the court for approval of the proposed scheme within 90 days after the applicant company's acceptance into the SDRP. To this end, the OR may appoint any qualified person to advise him on whether to grant an application by an application company to be accepted into the SDRP;⁷
- (i) have a trustee appointed for debenture holders in respect of the applicant company;
- (j) have at least one-third in value of its creditors object to its acceptance into the SDRP;
- (k) have a person who has appointed, is or may be entitled to appoint a receiver and manager of the whole or substantially the whole of the applicant company's property under the terms of any debentures secured by a floating charge, or by a floating charge and one or more fixed charge(s), that would be valid and enforceable in the case

7 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72D(1).

of its liquidation, object to its acceptance into the SDRP; or

- (1) be in any other circumstance as prescribed by order in the *Gazette*.⁸

9 Notwithstanding the requirements listed at paras 7 and 8 above, the Minister has the discretion to direct the OR to admit an otherwise ineligible applicant company.⁹ This discretion, however, can only be exercised in marginal cases, where all other criteria are met save for one, or where there is a borderline failure to satisfy a criterion.¹⁰

B. Procedure

10 The procedure for applying for the SDRP is as follows:

- (a) Apply in the prescribed form¹¹ to the OR for acceptance into the SDRP along with the following documents:¹²
 - (i) a special resolution of the applicant company in a general meeting authorising the making of the application;
 - (ii) a list containing the name and address of each creditor of the applicant company as well as the amounts owed to each creditor;
 - (iii) the relevant financial statements, unaudited balance sheet, profit and loss statement and cash flow statement where necessary;¹³ and

8 Section 72F(3) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) applies to the criteria set out in para 8. See also n 7 above.

9 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72H(1).

10 *Parliamentary Debates, Official Report* (11 March 2020), vol 95 (Edwin Tong Chun Fai, Second Minister for Law).

11 Applications can be done online via <<https://eservices.mlaw.gov.sg/io/welcome.xhtml>> (accessed 5 October 2021).

12 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72E.

13 Insolvency, Restructuring and Dissolution (Simplified Debt Restructuring) Regulations 2021 (S 48/2021) r 3(1).

- (iv) a plan for the survival of the applicant company as a going concern, including its projected cash flow for the 90 days following the making of the application, and descriptions of its current business activities as well as its intended business activities for the two years following the making of the application, including the projected profit and loss statements for those two years based on the intended business activities.

- (b) A fee of \$450.00 must be paid along with the application.¹⁴

- (c) Upon receiving the application, the OR will consider the applicant company's eligibility pursuant to ss 72F(2) and 72F(3).¹⁵ These were the requirements as set out at paras 7 and 8 above. The OR may also request for any additional documents where necessary.¹⁶

- (d) Once the OR determines the applicant company to be eligible, it will send a notice of the application to the applicant company and all its creditors, and publish the notice on the designated website, www.mlaw.gov.sg.¹⁷

- (e) Any creditor, member or officer of the applicant company who believes there is reasonable cause that the applicant company should not be accepted into the SDRP may deliver a notice of objection to

¹⁴ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72E(2)(e) read with Insolvency, Restructuring and Dissolution (Simplified Debt Restructuring) Regulations 2021 (S 48/2021) r 3(3).

¹⁵ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72F(1).

¹⁶ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72E(3).

¹⁷ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72G(1) read with Insolvency, Restructuring and Dissolution (Simplified Debt Restructuring) Regulations 2021 (S 48/2021) r 2.

the OR within 21 days after the date of the notice of application.¹⁸

- (f) The OR will require a deposit of \$18,750 to be paid within a specified time period as stipulated by the OR. Until the deposit is paid, the applicant company will not be accepted into the SDRP, unless the deposit has been waived or remitted in whole or in part by the Permanent Secretary of the Ministry of Law.¹⁹
- (g) At the expiry of 21 days after the date of the notice of application and if the deposit has been paid and no notice of objections has been filed, the OR may accept the applicant company into the SDRP. If a notice of objection has been filed, the OR must consider the grounds of objection and, accordingly, choose to accept or reject the applicant company. The OR's decision as to whether the applicant company is accepted or rejected is final.²⁰
- (h) The OR will notify the applicant company of its acceptance or rejection and make the relevant publications.²¹

11 Upon acceptance into the SDRP:

- (a) A moratorium against actions against the company and its property enters into effect and lasts until the company is discharged from the SDRP.²²
- (b) The company must not intentionally or knowingly dispose of any property other than in good faith or

18 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72G(4).

19 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72I read with Insolvency, Restructuring and Dissolution (Simplified Debt Restructuring) Regulations 2021 (S 48/2021) r 4.

20 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 72G(6) and 72G(7).

21 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72J.

22 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72K(1).

in the ordinary course of business of the company until it is discharged from the SDRP.²³

- (c) The OR may appoint a restructuring adviser to the company on any terms and for any duration as the OR may specify.²⁴ The restructuring adviser's duties include, *inter alia*, assisting the company to formulate its proposed scheme, obtaining the agreement or support of the creditors for the scheme and assisting the company in its application to obtain the court's approval of the scheme.²⁵
- (d) The company may apply to court for approval of the scheme proposed.²⁶ This application can be filed without counsel.²⁷ The court must not approve the proposed scheme unless:
 - (i) the company has provided each creditor meant to be bound by the scheme with a statement that explains the effect of the scheme, including any material interests of the directors of the company and the effect that the scheme has on those interests, and contains the following information concerning:
 - (A) the property, assets, business activities, financial condition and prospects of the company;
 - (B) the manner in which the terms of the scheme will affect the rights of the creditor; and
 - (C) any other information necessary to enable the creditor to make an

23 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72K(3).

24 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72D(2).

25 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72L.

26 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(1).

27 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72N(3).

informed decision on whether to agree to the scheme;²⁸

- (ii) the company has informed each creditor meant to be bound by the scheme of the date fixed for the court's determination of the proposed scheme ("Determination Date") at least 14 days prior to the Determination Date together with the relevant notice and a copy of the application;²⁹
 - (iii) the company has published in the *Gazette*, at least 14 days before the Determination Date, the notice of court application as well as a statement that all objecting creditors must file their objection in court at least seven days before the Determination Date;³⁰ and
 - (iv) the court is satisfied that had the meetings for the creditors been called, the scheme would have gotten the support of a majority of at least two-thirds in value of its creditors in each class. This can be achieved by proffering signed proxy forms.³¹
- (e) In determining whether the requisite threshold is met, the court must:
- (i) disregard the vote of a party related to the company; and
 - (ii) regard:
 - (A) all secured creditors as forming a class;

28 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(3)(a).

29 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(3)(b).

30 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(3)(c).

31 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(3)(d).

- (B) all preferential creditors as provided for under s 203 as forming a class; and
 - (C) all unsecured creditors as forming a class.³²
- (iii) The court is empowered to substitute its own views for the requirements set out in para 11(e) above if the circumstances so require and the result of doing so is fair and equitable to all the creditors meant to be bound by the scheme.³³
- (f) An appeal can be filed against any order granted by the court with respect to its determination of the proposed scheme. If such an appeal is filed, the company can, pending the appeal, apply for the following orders that restrain:
- (i) the passing of a resolution for winding up the company;
 - (ii) the appointment of a receiver or manager over any property or undertaking of the company;
 - (iii) the commencement or continuation of any proceedings (other than proceedings arising from the appeal) against the company, except with the leave of court and subject to any terms the court imposes;
 - (iv) the commencement, continuation or levying of any execution, distress or other legal process against any property of the company, except with the leave of court and subject to any terms the court imposes;
 - (v) the taking of any step to enforce any security or to repossess any goods, except

³² Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(4).

³³ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(5).

- with the leave of court and subject to any terms the court imposes; and
- (vi) the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company, except with the leave of court and subject to any terms the court imposes.³⁴
- (g) The company will be discharged from the SDRP:
- (i) upon the expiry of 90 days after the day the notice of acceptance is published under s 72J(b).³⁵ This period may be extended once for a period not exceeding 30 days.³⁶ To do so, application for extension must be made to the OR at least 21 days before the expiry of the 90-day period.³⁷
 - (ii) on the same day that the application for the court's determination of the proposed scheme is granted, dismissed or withdrawn;³⁸ or
 - (iii) if the OR is satisfied that:
 - (A) the company did not meet all the eligibility criteria under s 72F(2) at the time of the acceptance or subsequently became ineligible;³⁹
 - (B) a disqualifying circumstance under s 72F(3) existed in relation to the

34 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72O.

35 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(1).

36 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(3).

37 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 72Q(1) and 72Q(3) read with Insolvency, Restructuring and Dissolution (Simplified Debt Restructuring) Regulations 2021 (S 48/2021) r 6(a).

38 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(5).

39 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 72Q(7)(a)(i) and 72Q(7)(b).

- company at the time of acceptance or had arisen subsequently;⁴⁰
- (C) the company's acceptance into the SDRP was obtained on the basis of any false or misleading particulars, information or document submitted by the company to the OR;⁴¹
 - (D) the company failed to cooperate with the restructuring adviser;⁴²
 - (E) there is insufficient support from the creditors for the intended scheme such that the threshold requirement for the scheme to pass will not be met;⁴³ or
 - (F) the company is not suitable for the SDRP for any other reason.⁴⁴

C. Comparison with a scheme of arrangement

12 The table below sets out the key differences between the processes in a traditional scheme of arrangement and the SDRP.

40 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 72Q(7)(a)(ii) and 72Q(7)(c).

41 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(7)(d).

42 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(7)(e).

43 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(7)(f).

44 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72Q(7)(g).

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Traditional Scheme of Arrangement	SDRP
The scheme requires approval of a majority in number representing at least $\frac{3}{4}$ in value of creditors or class of creditors, present and voting. ⁴⁵	The scheme requires approval of two-thirds in value of its creditors or class of creditors, present and voting. ⁴⁶
Method of determination of classes is prescribed. ⁴⁷	No prescription as to how classes should be determined.
Default position is that a scheme meeting should be held. ⁴⁸	Default position is that a scheme meeting is not necessary. ⁴⁹
Lawyers are usually appointed.	An authorised officer of the company may act for it in the whole process (including any applications to court) except in any appeals mentioned in s 72O. ⁵⁰
Available to any corporation liable to be wound up under the IRDA save for such company or class or companies as the Minister may by order in the <i>Gazette</i> prescribe.	Only applicable to eligible MSCs.

III. Simplified Winding Up Programme

A. Eligibility

13 To be eligible for the SWUP, the applicant company must satisfy the OR that it:

- (a) has an annual sales turnover for the relevant period⁵¹ not exceeding \$10 million;

45 Companies Act (Cap 50, 2006 Rev Ed) s 210(3AB).

46 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(3)(d).

47 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(4).

48 Companies Act (Cap 50, 2006 Rev Ed) s 210(1).

49 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72M(3)(d).

50 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 72N.

51 As defined in s 250F(6) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018).

- (b) has not more than 30 employees;
 - (c) has not more than 50 creditors;
 - (d) has liabilities (including contingent and prospective liabilities) not exceeding \$2 million;
 - (e) has realisable assets not exceeding \$50,000 in value; and
 - (f) satisfies any other criteria as may be prescribed by the Minister by order in the *Gazette*.⁵²
- 14 Additionally, the applicant company must not:
- (a) be in the process of being wound up whether pursuant to an application under s 216 of the Companies Act on the ground of oppression or injustice, by court order or voluntarily;
 - (b) be in judicial management;
 - (c) have applied for, or having pending applications with respect to a scheme, scheme moratorium, judicial management or winding up;
 - (d) be subject to a moratorium;
 - (e) have had a provisional liquidator appointed over it;
 - (f) have had an interim judicial manager appointed over it whose term of appointment has not ended;
 - (g) have applied for acceptance into the SDRP that is pending;
 - (h) have a dispute or disagreement between two or more relevant persons as to its affairs;

⁵² Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250F(2). See also n 7 above.

- (i) be facing any allegations in writing made to the OR by a past judicial manager, liquidator, creditor, contributory, employee or officer that:
 - (i) any business of the applicant company has been carried on with an intent to defraud its creditors or creditors of any other person or for the purpose of fraudulent trading;
 - (ii) the applicant company has traded wrongfully; or
 - (iii) any person who has taken part in the formation or promotion of the company or any past or present officer, judicial manager or liquidator, has misapplied, retained, become liable or accountable for any money or property of the company, or has been guilty of any misfeasance or breach of trust or duty in relation to the applicant company.
- (j) be a party to any pending legal proceedings before a court, arbitral tribunal or other body, whether in Singapore or elsewhere;
- (k) be likely to require significant resources or specialised knowledge or expertise in its winding up;
- (l) in the carrying out of its winding up, require greater supervision of the court or participation of any creditors or contributories than is provided for or applicable to a winding up under the SWUP, or is likely to require the exercise of a power by the court or the liquidator that is disapplied or is otherwise unavailable in a winding up under the SWUP; or

- (m) be in any other circumstance as prescribed by order in the *Gazette*.⁵³

15 Notwithstanding the requirements listed at paras 13 and 14 above, the Minister has the discretion to direct the OR to admit an otherwise ineligible applicant company.⁵⁴ This discretion, however, can only be exercised in marginal cases, where all other criteria are met save for one, or where there is a borderline failure to satisfy a criterion.⁵⁵

B. Procedure

16 The procedure for apply for the SWUP is as follows:

- (a) Apply in the prescribed form⁵⁶ to the OR for acceptance into the SWUP along with the following documents:⁵⁷
- (i) a special resolution of the applicant company in general meeting authorising the making of the application;
 - (ii) a statement of affairs of the applicant company;⁵⁸ and
 - (iii) the relevant financial statements, unaudited balance sheet, profit and lost

53 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250F(3) applies to the criteria set out para 14 above. See also n 7.

54 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250H.

55 *Parliamentary Debates, Official Report* (11 March 2020), vol 95 (Edwin Tong Chun Fai, Second Minister for Law). This statement was made in relation to the Simplified Debt Restructuring Programme but would arguably similarly apply to the Simplified Winding Up Programme.

56 Application can be done online via <<https://eservices.mlaw.gov.sg/io/welcome.xhtml>> (accessed 7 October 2021).

57 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250D.

58 See s 250E of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) and r 5 of the Insolvency, Restructuring and Dissolution (Simplified Winding Up) Regulations 2021 (S 47/2021). The prescribed form available at <<https://io.mlaw.gov.sg/corporate-insolvency/forms/>> (accessed 7 October 2021).

statement and cash flow statement where necessary;⁵⁹

- (b) A fee of \$450.00 must be paid along with the application.⁶⁰
- (c) Upon receiving the application, the OR will consider the applicant company's eligibility pursuant to ss 250F(2) and 250F(3).⁶¹ These were the requirements as set out at paras 13 and 14 above. The OR may request for any additional documents where necessary.⁶²
- (d) Once the OR determines the applicant company to be eligible, it will send a notice of the application to the applicant company and all its creditors, contributories and officers. It will also publish the notice on the designated website, www.mlaw.gov.sg.⁶³
- (e) Any creditor, contributory, officer of the applicant company or public agency who believes there is reasonable cause that the applicant company should not be accepted into the SWUP may deliver a notice of objection to the OR within 21 days after the date of the notice of application.⁶⁴
- (f) The OR will require a deposit of \$2,700 to be paid within a specified time period as stipulated by the OR. Until the deposit is paid, the applicant

59 Insolvency, Restructuring and Dissolution (Simplified Winding Up) Regulations 2021 (S 47/2021) r 4(1).

60 Insolvency, Restructuring and Dissolution (Simplified Winding Up) Regulations 2021 (S 47/2021) r 4(3).

61 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250F(1).

62 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250D(3).

63 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250G(1) read with Insolvency, Restructuring and Dissolution (Simplified Winding Up) Regulations 2021 (S 47/2021) r 3.

64 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250G(4).

company will not be accepted into the SWUP, unless this payment requirement is waived by the Permanent Secretary of the Ministry of Law.⁶⁵

- (g) At the expiry of 21 days after the date of the notice of application, if the deposit has been paid and no notice of objections have been filed, the OR may accept the applicant company into the SWUP. If a notice of objection has been filed, the OR must consider the grounds of objection and, accordingly, and choose to accept or reject the applicant company.⁶⁶ The OR's decision as to whether the applicant company is accepted or rejected is final.⁶⁷
- (h) The OR will notify the applicant company of its acceptance or rejection and make the relevant publications.⁶⁸

17 Upon acceptance into the SWUP:

- (a) Winding up commences at the time of publication of notice of acceptance by the OR in the *Gazette*. The winding up will be treated as if it were a creditors' voluntary winding up, with the OR being the liquidator,⁶⁹ subject to the modifications and disapplication as set out in s 250L.
- (b) The OR may appoint a special manager for the liquidation of the company for the period the OR

65 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250I read with Insolvency, Restructuring and Dissolution (Simplified Winding Up) Regulations 2021 (S 47/2021) r 6.

66 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250G(6).

67 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250G(7).

68 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250J.

69 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250K.

specifies, with such powers as are entrusted to it by the OR.⁷⁰

- (c) The OR may nonetheless apply to have the company wound up under an order of the court if the OR is satisfied that:
 - (i) the company did not meet all the eligibility criteria under s 250F(2) at the time of the acceptance or subsequently became ineligible;⁷¹
 - (ii) a disqualifying circumstance under s 250F(3) existed in relation to the company at the time of acceptance or had arisen subsequently;⁷² and
 - (iii) the company's acceptance into the SWUP had been obtained based on false or misleading information submitted by the company to the OR.⁷³

It is also available to other persons to apply for a court-ordered winding up.⁷⁴

- (d) The company will be discharged from the SWUP upon the earliest occurrence of any of the following events:
 - (i) the company is dissolved;
 - (ii) an order is made by the court for the winding up of the company; or

70 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250M(1).

71 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 250O(1)(a)(i) and 250O(1)(b).

72 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ss 250O(1)(a)(ii) and 250O(1)(c).

73 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250O(1)(d).

74 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250O(2).

- (iii) an order is made by the court under s 186 for the stay of proceedings in relation to the winding up or for the termination of the winding up.⁷⁵

C. Comparison with creditors' voluntary winding up

18 The key differences between a creditors' voluntary winding up under Part 8 of the IRDA and the SWUP are set out in s 250L.

IV. Sole Proprietors and Partnerships scheme

19 Under the SPP scheme, eligible entities may lower monthly instalment payments for unsecured business loans by extending the loan repayment period by a maximum of eight years. The interest rates for the restructured loans will be based on the original loan interest rates but will be capped at 7% per annum. Approval of the SPP application is at the sole discretion of the participating lenders.

20 The eligibility requirements for the SPP are as follows:⁷⁶

- (a) businesses must be operating as sole proprietors or partnerships;
- (b) the SPP's total unsecured debt does not exceed \$1 million;
- (c) the SPP owes unsecured debts to two or more lenders; and
- (d) the SPP's unsecured debts are owed to the participating lenders.

⁷⁵ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 250N.

⁷⁶ Ministry of Law, "Sole Proprietors and Partnerships (SPP) Scheme Launched to Help Businesses in Financial Distress" (1 November 2020).

V. Conclusion

21 The SIP and many other measures were rolled out in record time and was an effort between many different parties, including insolvency practitioners and the regulators. It is the authors' hope that the SIP will prove useful to MSCs and assist them to get through these difficult times.