SUMMARY OF RECOMMENDATIONS
BY THE INSOLVENCY LAW REVIEW COMMITTEE

1. It is important that our insolvency regime is kept updated in order to remain modern and relevant. Whilst both the personal insolvency regime and the corporate insolvency regime have undergone various revisions over the years, such reviews have essentially been piecemeal. A holistic review and update is thus timely, especially given Singapore's growth as a regional financial and business hub.

2. The main recommendation in the Committee's report is for the enactment of a New Insolvency Act. The Act will consolidate and update the core areas of Singapore's personal and corporate insolvency regime, as well as set out common principles and procedures (see Recommendation 2.1).[1] The Committee is of the view that this will enhance clarity and access to our laws by members of the commercial sector and insolvency practitioners; provide a greater consistency and certainty on various concepts that are common to the various insolvency regimes; and better support the transition and coordination between these regimes.

3. With this in mind, the Committee's recommendations aim to recommend the overall structure of the new regime, the key changes to be made, and provide a roadmap for the drafting of the detailed and specific statutory provisions.

I. Framework Issues

4. As to the overall framework for insolvency proceedings, recommendations are made to unify and rationalise the various procedural rules; such as the rules on how debts are to be proven under the various insolvency regimes (see Recommendation 2.4). While procedural in nature, such rules are often of central importance and may impact the nature and quantification of the claims a party can assert against an individual or company undergoing an insolvency proceeding.

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[1] The Committee has also recommended the starting point for the New Insolvency Act should be the UK Insolvency Act 1986, and that where appropriate, the approaches of other relevant jurisdictions, such as Australia, Hong Kong, New Zealand and Canada should be taken into account.

II. The Bankruptcy regime

5. Our bankruptcy legislation has been consistently reviewed to keep pace with the social and economic developments in Singapore. The overall experience on the ground appears to be that the bankruptcy regime is operating and discharging its functions well. The Committee therefore recommends the general incorporation of the present Bankruptcy Act into the New Insolvency Act.

6. Recommendations have been made to strengthen the regime and regularise anomalies. For example, in order to give swift creditor recourse against fraudulent debtors, there should be an expedited bankruptcy procedure where there is a real risk that the debtor's assets would be diminished (see Recommendation 3.2). The Committee also recommends excusing bankrupts from criminal liability for failing to comply with their duties, disabilities or disqualifications where they have neither knowledge nor reason to believe that they have been made bankrupt (see Recommendation 3.5). Other recommendations include enhancing the court's powers to examine discharged bankrupts in order to identify assets that should have rightfully vested in the bankrupt's estate (see Recommendation 3.6).

7. Members of the Committee were divided on the issue of automatic discharge, noting that there were valid reasons for and against the introduction of such a feature into the New Insolvency Act. As such, no recommendation is made on this issue, but the Committee suggests the present discharge regime may be reviewed and refined to see if a better balance between creditors, the bankrupt, and the State's interests can be achieved.

III. Corporate Insolvency

8. The report covers the various corporate insolvency regimes, namely, private receivership (Chapter 4), liquidation (Chapter 5), judicial management (Chapter 6) and schemes of arrangement (Chapter 7).

A. Receivership

9. The principal recommendation is that the receivership regime should to be retained, save for some procedural updates to the statutory framework (see Recommendations

4.1 and 4.2). The Committee notes the different approach under the UK Insolvency Act, where receivership has been effectively abolished. However, as the local receivership regime is a well-established one, the Committee notes that there are no pressing problems to be addressed that would justify abolishing it.

B. Liquidation

10. Likewise, the corporate liquidation regime is fairly sophisticated and stable. Taking into account legislative developments in other jurisdictions which may be beneficial in the local context, the Committee's recommendations aim to enhance the effectiveness and proper functioning of the liquidation regime in Singapore.

11. A key recommendation is the introduction of a summary liquidation procedure in Singapore, similar to that in the UK, where the Official Receiver may apply to court to seek an early dissolution of the company where it appears that the assets of the company are insufficient to cover the costs of winding-up and no further investigation is required (see Recommendation 5.1). The Committee further recommends extending these powers to a private liquidator, provided the consent of the Official Receiver is obtained. This aims to put the public resources of the Official Receiver to better use, rather than funding the administration of insolvent companies. In line with this, it also recommends that while the Official Receiver should remain the liquidator of last resort, the Official Receiver should have the power to outsource liquidations to private liquidators, as is the case in the UK and Hong Kong. The details of how this outsourcing will work will, however, require further study.

12. Other recommendations include: litigation funding for claims vested with the liquidator (see Recommendation 5.4) and enhancements to the present provisions in the Companies Act that allow creditors who finance the insolvent company's litigation to be paid ahead of other creditors (see Recommendation 5.5).

C. Judicial Management

13. Judicial management remains a relevant regime and should be retained but improved in the New Insolvency Act. The Committee's recommendations are aimed at addressing deficiencies in the existing regime, with an emphasis on reinforcing

judicial management as an efficient rescue mechanism rather than a transition phase leading into liquidation.

14. The main recommendations seek to:

(i) Rebalance the relationship between judicial management and receivership by giving the courts the power to appoint a judicial manager despite the objections of the holder of a floating charge (see Recommendation 6.2);

(ii) Make judicial management more accessible by granting the holder of a floating charge who consents to the making of a judicial management order the right to appoint the judicial manager (see Recommendation 6.4), enabling a company to enter judicial management without having to make a formal application to the courts (see Recommendation 6.5), and empowering the court to place the company into judicial management not only when it is insolvent but also when it is "likely to become unable to pay its debt" (see Recommendation 6.6);

(iii) Protect creditors by introducing provisions conferring protection during the period between the making of the application for judicial management and the eventual making of the judicial management order (see Recommendation 6.13) and permitting applications to court for the protection of interests and creditors on the grounds of abuse (see recommendation 6.22);

(iv) Aid rehabilitation of the company under judicial management by granting a priority status to lenders who lend money to the company whilst it is under judicial management (known as "**super-priority** rescue for financing"), allowing the duration of the judicial management to be extended by the creditors without having to go to court (see Recommendation 6.20), and giving judicial managers the power to pay-off debts incurred before the company went into judicial management (see Recommendation 6.21).

D. Schemes of Arrangement

15. The Scheme of Arrangement regime has worked out well in practice. As such, the Committee's recommendations do not seek to overhaul the regime but only strengthen it by providing more oversight and protection to creditors.

16. This is done by (i) strengthening and clarifying the scope of the stay against certain actions against the company (see Recommendations 7.1 to 7.3), (ii) providing greater clarity on the procedure for proofs of debt and creditors' right to information (see Recommendation 7.4), and (iii) providing additional safeguards to creditors during the period between the making of an application for a scheme of arrangement and the holding of a meeting of creditors to vote on the scheme of arrangement (see Recommendations 7.6).

17. Additional reforms adapted from the US Bankruptcy Code include the introduction of super-priority rescue for financing (see Recommendation 7.10) and a procedure to allow a scheme of arrangement to be approved even when a class of creditors votes against the scheme of arrangement (see Recommendation 7.11).

IV. Avoidance Provisions

18. A number of recommendations are made to the "avoidance provisions" which operate to undo earlier transactions entered into by the insolvent entity (which apply to both personal and corporate insolvency). Changes are recommended to the periods of time within which a transaction must have occurred before it may be challenged as an unfair preference, a transaction at an undervalue or an extortionate credit transaction (see Recommendations 8.2 to 8.4). Other recommendations are made to clarify and regularise how this period of time is calculated, and, further, to provide clearer guidance on how to determine when a person is either an "associate" of a bankrupt or insolvent company, or a person connected with the company (see Recommendations 8.5 to 8.7).

19. The Committee, having considered the positions in the UK and Australia, also recommends that the test used to determine whether a transaction amounts to an unfair preference should continue to be a subjective one, requiring the person to have been motivated by a desire to put the recipient in a better position in the event of bankruptcy or insolvency (see Recommendation 8.9).

20. Other recommendations include proposed amendments to amend the provisions affecting the validity of a floating charge created within 6 months of the commencement of the winding up of a company to bring our law in line with that of the UK. For example, aside from the existing requirement that fresh money must

have been provided by the creditor before such a charge will be deemed as valid, the provision will be enhanced to recognise the giving of other forms of value to the company such as goods or services (see Recommendation 8.12).

21. Recommendations are also made to enable insolvency office-holders to disclaim the company's interest in certain kinds of property that are no longer of any benefit to the company (thus ending the company's rights and liabilities in relation to that property) without having to first obtain the permission of the court or the committee of inspection (see Recommendation 8.13). Other recommendations relate to the categories of property that may be disclaimed (see Recommendations 8.14 and 8.15) and the extension of this power not just to liquidators but also to judicial managers (see Recommendation 8.16).

V. Officer Delinquency

22. Concerning the provisions on insolvent trading, the Committee notes that the main drawback of the current provisions is that they require a criminal conviction of the delinquent officer before civil liability to indemnify the company for the losses caused by that person's conduct can be triggered. The Committee not only recommends that this precondition be removed, but also that the provisions be amended to incorporate key features that were previously recommended by an earlier committee in the UK (see Recommendation 9.2).

VI. Regulation of Insolvency Practitioners

23. Proposals for reform are made to both the licensing and the disciplinary aspects of the regulatory regime for insolvency practitioners.

24. In relation to licensing, as the New Insolvency Act will come eventually come under the purview of the Insolvency and Public Trustee's Office, the Committee recommends that the Official Receiver should take over licensing of insolvency practitioners from the Registrar of Public Accountants (see Recommendation 10.1). The different qualifying requirements for insolvency office holders across the bankruptcy and insolvency regimes should also be homogenised to ensure common standards, save, perhaps, for scheme managers and liquidators in a members' voluntary winding up (see Recommendation 10.2).

25. With regard to the discipline of insolvency office holders, the Committee recommends leveraging, where possible, on the disciplinary processes of existing professional bodies. As for insolvency office-holders who are not under the purview of an existing professional body, two options are suggested. First, to introduce a simple regulatory system to provide for the discipline of such persons, or second, to confine the classes of persons who may undertake insolvency work to those who are subject to disciplinary oversight by their respective professional bodies (see Recommendation 10.6).

VII. Cross-Border Insolvency

26. Finally, recommendations have been made to facilitate Singapore's development into a regional forum of choice for corporate debt work-outs and restructuring. First, the judicial management regime should be extended to cover all foreign companies (see Recommendation 11.1). Second, the UNCITRAL Model Law on Cross-Border Insolvency should be adopted for corporate insolvencies in Singapore, with appropriate modifications (see Recommendation 11.2 and 11.4). Third, the concept of ring-fencing (which requires that debts incurred in Singapore by a registered foreign company shall be paid in priority to the debts owed by it to all other international creditors) should be abolished, save in certain circumstances (see Recommendation 11.5).