**Text, logo, company name

Description automatically generated**

**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5A**

**BERMUDA**

This is the **summative (formal) assessment for Module 5A** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 5A**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment5A]**. An example would be something along the following lines: 202223-336.assessment5A. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

7. Prior to being populated with your answers, this assessment consists of **10 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

What is a **segregated account representative** of an insolvent Segregated Accounts Company required to do under section 10 of the Segregated Accounts Companies Act 2000?

1. Resign immediately.
2. File a Suspicious Transaction Report forthwith.
3. Make a written report to the Registrar of Companies within 30 days of reaching the view that there is a reasonable likelihood of a segregated account or the general account becoming insolvent.
4. Notify the directors, creditors and account owners within 28 days.

**Question 1.2**

Where do secured creditors **rank** in a liquidation?

1. Behind unsecured creditors.
2. Behind preferential creditors.
3. Behind the costs and expenses of liquidation.
4. In priority to all other creditors, since they can enforce their security outside of the liquidation.

**Question 1.3**

**In what order** are the following paid in a compulsory liquidation under Bermuda law?

1. Preferential creditors.
2. Unsecured creditors.
3. Costs and expenses of the liquidation procedure.
4. Floating charge holders.

Choose the **correct answer**:

1. Order (i), (ii), (iii) and (iv).
2. Order (iii), (iv), (i) and (ii).
3. Order (iii), (i), (iv) and (ii).
4. Order (i), (iii), (iv) and (ii).

**Question 1.4**

**Who may appoint** a provisional liquidator over a Bermuda company?

1. A secured creditor.
2. A contributory.
3. The company itself (whether acting by its directors or its shareholders).
4. The Supreme Court of Bermuda.

**Question 1.5**

When is a Bermuda company deemed to be **unable to pay its debts** under section 161 and section 162 of the Companies Act 1981?

1. Only when it is balance sheet insolvent.
2. Only when it is cash flow insolvent.
3. When it is balance sheet insolvent and cash flow insolvent.
4. When it is either balance sheet insolvent, or cash flow insolvent, or a valid statutory demand has not been satisfied within a period of three weeks after service on the company’s registered office, or if a judgment in favour of a creditor remains unsatisfied.

**Question 1.6**

How **many insurance policyholders** are required to present a petition for the winding-up of an insolvent insurance company under section 34 of the Insurance Act 1978?

1. At least five.
2. One is sufficient.
3. At least 10 or more owning policies of an aggregate value of not less than BMD 50,000.
4. At least 10.

**Question 1.7**

What types of transactions are **reviewable** in the event of an insolvent liquidation?

1. Only fraudulent conveyances.
2. Only floating charges.
3. Only post-petition dispositions.
4. All of the above.

**Question 1.8**

What is the **clawback period** for fraudulent preferences under section 237 of the Companies Act 1981?

1. Two years.
2. One month.
3. Twelve months.
4. Six months.

**Question 1.9**

**What percentage** of unsecured creditors must vote in favour of a creditors’ scheme of arrangement for it to be approved?

1. Over 50% in value.
2. 50% or more in value.
3. Over 75% in value.
4. A majority of each class of creditors present and voting, representing 75% or more in value.

**Question 1.10**

Summary proceedings against a company’s directors for **breach of duty** (or misfeasance) may be brought by a liquidator under the following provision of the Companies Act 1981:

1. Section 237 of the Companies Act 1981.
2. Section 238 of the Companies Act 1981.
3. Section 247 of the Companies Act 1981.
4. Section 158 of the Companies Act 1981.

**QUESTION 2 (direct questions) [10 marks in total]**

**Question 2.1 [maximum 2 marks]**

When can rights of set-off be exercised after the commencement of a liquidation of a Bermuda company?

Section 37 of the Bankruptcy Act 1989 applies to companies in liquidation and provides for mandatory set-off in the event of a liquidation in Bermuda. Where there have been mutual credits, mutual debts or other mutual dealings between a debtor company in compulsory liquidation and any other person proving or claiming to prove a debt in the liquidation, an account shall be taken of what is due from one party to the other in respect of the mutual dealings, and the sum due from one party shall be set-off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid on either side. However, a party is not entitled to claim the benefit of any set-off against the property of a debtor where he had at the time of giving the credit to the debtor, notice of an act of insolvency committed by the debtor and available against him.

Set off rights can only be exercised after the commencement of the liquidation of a Bermudian company where (i) the debts giving rise to the set off were incurred prior to the commencement of the liquidation and have crystallised as monetary payment liabilities; (ii) the transaction giving rise to the debts was not a fraudulent conveyance; or (iii) the dealings between the parties were mutual (that is, the parties giving rise to the debt are identical to the parties giving rise to the credit and the parties have contracted with each other in the same capacity).

**Question 2.2 [maximum 4 marks]**

Describe three possible ways of taking security over assets under Bermuda law.

There are various ways by which a creditor can take security over assets in Bermuda by an agreement between it and the debtor. Types of security which can be granted include legal mortgages, equitable mortgages, fixed charges, pledges, contractual liens and assignments.

The nature of the security interest to be granted will depend upon the terms of the parties' agreement usually set out in the security documents, the nature of the asset to be secured and the debtor's interest in the asset to be secured. This answer looks at legal mortgages, equitable mortgages, and fixed and floating charges.

In relation to movable, immovable and certain intangible assets, a secured creditor can take a legal mortgage, an equitable mortgage or a fixed charge.

A legal mortgage results in legal title to the debtor's property being transferred to the secured creditor as security for the debt. The debtor retains possession of the property but only gets legal title to the property returned to it once the debt has been satisfied in full, at which stage the legal title is conveyed back by the secured creditor.

In contrast, with an equitable mortgage, the debtor retains title to and possession of the property but transfers its beneficial interest in the property to the secured creditor. An equitable mortgage will not take priority over a bona fide purchaser for value without notice.

In further contrast, with a fixed charge, the creditor is given the right to take possession of the property and a power of sale where the debtor is in default of its obligations. However, there is no transfer of legal or beneficial title. Upon the exercise of the power of sale, the proceeds of sale can be applied by the secured creditor towards payment of the debt and without reference to any unsecured creditors. While the fixed charge is in place, the debtor cannot deal with any property subject to the charge without the consent of the secured creditor.

A floating charge does not attach to a specific asset but rather floats above a variety of assets subject to the charge. The debtor may deal with those assets while the security is in place without the consent of the secured creditor. However, in the event of a default by the debtor, the security crystallises and converts into a fixed charge that attaches to the specific assets remaining in the debtor's possession and subject to the floating charge as at the date of crystallisation. Property secured by a floating charge forms part of the debtor's general assets in the event of an insolvency.

**Question 2.3 [maximum 4 marks]**

In what circumstances may be a provisional liquidator be appointed?

A provisional liquidator may be appointed prior to the final hearing of a winding up petition if there is a prima facie case that a winding up order will be made and if the court considers that a provisional liquidator should be appointed in the circumstances of the case. The traditional grounds for a provisional liquidator to be appointed pending the final hearing of the winding up order is where there is a risk of dissipation of assets or where there is evidence of serious mismanagement or fraud requiring the need for immediate supervision or control.

A provisional liquidator may also be appointed with specific powers to implement a restructuring which is designed to support formal and informal restructuring plans which have the support of a majority of the debtor's creditors and credible prospects of success (a so-called "soft-touch" provisional liquidation).

**QUESTION 3 (essay-type question) [15 marks]**

**Question 3.1 [maximum 7 marks]**

Write a brief essay on the circumstances in which a foreign court judgment will not be registered or enforced in Bermuda. Also consider and address the question as to whether a foreign court-sanctioned scheme of arrangement might be registered or enforced in Bermuda.

A judgment or order of a foreign court has no direct legal effect in Bermuda and, as such, is not enforceable in and of itself. Rather, steps need to be taken in Bermuda either pursuant to statute or the common law depending on the nature of the judgment and the foreign court from which it emanates.

In particular, there are statutory rules that apply to the registration and enforcement of final money judgments of the UK and certain Commonwealth countries under the Judgments (Reciprocal Enforcement) Act 1958 (as amended) (the "1958 Act"). There are also common law rules applicable to the enforcement of final money judgments issued by foreign courts in the rest of the world. There are also common law and statutory rules applying to the recognition (rather than enforcement) of foreign judgments, either as a defence to a claim or as conclusive of an issue in Bermuda proceedings.

There are also statutory rules applicable to maintenance orders and to divorces and legal separations.

The Bermuda Courts will recognise and enforce a foreign money judgment which falls within the ambit of the 1958 Act or the common law rules for recognition and enforcement.

If the judgment emanates from a country to which the 1958 Act applies, it can be registered in Bermuda and given effect upon registration as though it were a judgment given in Bermuda.

The Bermuda Courts may decline to register a judgment if it is not covered by the 1958 Act;

if the foreign court had no jurisdiction in the circumstances of the case; the defendant did not receive notice of the proceedings before the foreign court allowing sufficient time to enable the defendant to defend the proceedings and did not appear; it was obtained by fraud; and the rights under the foreign judgment are not vested in the person applying for registration.

As to recognition pursuant to the common law, the court may refuse to grant recognition and enforcement where the foreign judgment conflicts with another prior judgment from another court of competent jurisdiction, the judgment is not final and conclusive, it is a judgment is penal in nature (ie it is for taxes, fines or penalties), and where the judgment is contrary to the public policy of Bermuda. (Where the judgment is being registered pursuant to the 1985 Act, the Bermuda Courts are not able to refuse to register the judgment purely on public policy grounds (*Masri v Consolidated Contractors International Company* [2009] Bda LR12).)

In this regard, there is some uncertainty as to whether the Bermuda Courts can recognise and enforce a scheme of arrangement promulgated before a foreign court in the absence of a local scheme of arrangement being implemented in parallel. Although the Supreme Court has shown some willingness to recognise foreign court orders approving foreign schemes (in the absence of opposition), it is unclear what position it or an appellate court would take where the recognition is opposed.

**Question 3.2 [maximum 8 marks]**

Write a brief essay on the basis upon which foreign liquidators are granted recognition and assistance in Bermuda. Also consider the circumstances in which foreign liquidators might not be granted recognition and assistance.

Bermuda has no statutory equivalent to Chapter 15 of the US Bankruptcy Code, section 426 of the UK Insolvency Act 1986 or the UK's Cross-Border Insolvency Regulations 2006 by which the US and the UK have implemented the UNCITRAL Model Law on Cross-Border Insolvency.

However, the Supreme Court has confirmed, following the Privy Council decision in *Cambridge Gas Transportation Corp v Navigator plc* [2007] 1 AC 508, that, pursuant to the common law, it may recognise liquidators appointed by the court of the company's incorporation and the effect of that order. It also has a discretion to assist the primary liquidation court by doing whatever it could have done in the case of a domestic insolvency.

The power to assist foreign officeholders has been the subject of significant debate in a number of recent decisions including *Singularis Holdings Limited v Pricewaterhouse Coopers* [2014] UKPC36 and *Pricewaterhouse Coopers v Saad Investments Company Limited* [2014] UKPC 35.

In short, and subject to the facts of the case, the Supreme Court is likely to recognise the winding up orders of foreign courts, and to assist foreign officeholders to the fullest extent possible where:

1. there is a sufficient connection between the foreign court's jurisdiction and the foreign company making it the most appropriate or most convenient jurisdiction to have the winding up order made and liquidators appointed;
2. there are documents, assets or liabilities of the foreign company within Bermuda; the foreign company has conducted business or operations in Bermuda (whether on its own behalf, by agents or branches); the foreign companies has directors, officers, managers, agents or service providers located in Bermuda; and/or the company needs to be involved in litigation or arbitration in Bermuda;
3. there are no public policy considerations which would militate against recognition and assistance.

The Supreme Court does not have the power to assist foreign liquidators to do something which they could not do under the law by which they were appointed and the Court's exercise of its power must be consistent with the substantive law and public policy of Bermuda.

The Court may decline to recognise a foreign appointment where no active assistance is being requested, and where it is likely that any such request for assistance would be refused.

The Court must ultimately consider whether the foreign court had proper jurisdiction to appoint the officeholders, whether there is any link to Bermuda such that assistance is required from its court and whether the assistance required is of the type the Bermuda courts can grant in domestic insolvencies.

Oftentimes, where a Bermudan company has operations in another jurisdiction and is subject to winding up proceedings in that jurisdiction, its officeholders can be granted recognition and assistance or may be supported by ancillary liquidation proceedings in Bermuda.

**QUESTION 4 (fact-based application-type question) [15 marks]**

Mudatea Limited (the Company) was incorporated in 2020 as an exempt Bermuda company; as the parent company in a group of companies with a direct subsidiary incorporated in the British Virgin Islands; with indirect trading subsidiaries incorporated in the People’s Republic of China (PRC); and with offices and a substantial business presence in Hong Kong. The Company’s trading operations in the PRC involves tea shops and other retail businesses associated with tea and hot drinks.

The Company issued a number of bonds to creditors based in the United States (US) with the face value of USD 500 million, with a view to raising additional capital (by way of debt funding) to fund the expansion of its business activities in the PRC (which had previously been funded with the benefit of shareholders’ capital contributions).

It was subsequently disclosed that the Company had fraudulently misrepresented its financial performance in the offering documents associated with the bonds, with the consequence that the US bondholders were entitled to demand immediate repayment by the Company of the sum of USD 500 million, even though that money had already been transferred to the Company’s indirect subsidiaries in the PRC, and was incapable of being returned due to local currency control restrictions and associated Chinese legal issues.

The US bondholders served a statutory demand on the Company in Bermuda, demanding repayment of the sum of USD 500 million within 21 days.

The Company’s directors decided, however, that it was in the best interests of Mudatea Limited and its shareholders to not satisfy the statutory demand but to ignore it for the time being, having regard also to the Chinese legal position, and with a view to trading through the Company’s financial difficulties.

The Company’s directors subsequently borrowed an additional USD 50 million from its bank, Berbank, which loan is secured by way of a floating charge against all of the Company’s shares and the assets of its subsidiaries. Out of the USD 50 million received from Berbank, Mudatea Limited’s directors immediately paid themselves a bonus of USD 20 million and they also paid a dividend to the Company’s shareholders in the sum of USD 30 million.

The US bondholders only found out about these transactions two weeks later, through a report received from a disgruntled former employee of Mudatea Limited.

**Using the facts above, answer the questions that follow**:

**Question 4.1 [maximum 7 marks]**

What actions could the US bondholders take in order to try to recover some or all of the sum of USD 500 million from the Company or other parties? Please consider (a) the jurisdictions in which they could take such action, bearing in mind the potential need for enforcement; (b) the defendants against whom they could take such action; (c) the pros and cons of litigation as opposed to insolvency proceedings; and (d) the causes of action that may be available against the various potential defendants.

Given that the Company issued a number of bonds to creditors in the United States, the bondholders may have a cause of action against the Company in the US. Any judgment rendered in such proceedings would not however be directly enforceable in Bermuda and any judgment would need to be enforced in Bermuda pursuant to the usual common law rules on enforcement (ie that the judgment is a final money judgment, that is has been rendered by a court of competent jurisdiction, it has not been obtained by fraud, is not penal in nature, its enforcement would not contravene the public policy of Bermuda and the rules of natural justice were followed in the US proceedings). Consideration would also have to be given to whether there are assets in Bermuda against which any judgment can be enforced. It would appear that any US proceedings would be limited to a contractual cause of action under the bond documentation and the Company would be the most likely defendant. It is not clear, for example, that any cause of action would lie against the directors in their personal capacity, though this is likely to be a question of the relevant US federal or state law pursuant to which the contractual claim is brought.

The bondholders may also have a cause of action against the Company under sections 36A and 36G of the Bermuda Conveyancing Act 1983 which provides that a creditor of a company may be entitled to apply to court to have a transaction set aside to the extent required to satisfy its claim, provided that the dominant intention of the transaction was to put the property beyond the reach of creditors and the transaction was for no value or for significantly less value than the property transferred. For these purposes, the bondholders would be considered creditors given that the monies due and owing under the bonds are immediately payable. They may be able to challenge the payment of the bonus to the directors and the dividend paid to the shareholders if it can be shown that the dominant intention of these payments was to take monies outside of the reach of the Company's creditors. There is no requirement for the Company to be insolvent for the bondholders to rely on this provision.

The bondholders could apply to wind up the Company in Bermuda on the basis of the unsatisfied statutory demand, provided that they do not delay too long in doing so to ensure they can rely on the deemed insolvency of the Company by reference to the unsatisfied statutory demand. One benefit of applying to wind up the Company in Bermuda is that it will assist with recognition of the officeholders in other jurisdictions as, under the rules of private international law, a foreign court will often recognise appointment holders appointed in a company's country of incorporation as that jurisdiction's law will determine who can act as the company's agent. The bondholders will join the general body of unsecured creditors and their claim will rank *pari passu* with other unsecured creditors. They would receive the benefit of any recoveries made by the liquidators which increase the general body of assets available for distribution to unsecured creditors. The liquidators would also have powers to review the new money lending of US$50 million and the floating charge securing it, together with the transactions which the lending appears to have been used for (the payment of a dividend to the Company's shareholders and a bonus paid to the directors).

In commercial litigation against the Company, the bondholders would have only an enforceable judgment against the Company (assuming their claim was successful) and limited means by which to challenge various transactions, save as outlined above. Where the Company is clearly insolvent, the bondholders would likely receive better recoveries by proving as creditors in the liquidation rather than bringing a contractual claim against the Company which it appears unable to satisfy. The bondholders would also receive their costs and expenses of petitioning to wind up the Company in priority to other creditors (save for secured creditors) whereas, with commercial litigation, if successful, the bondholders would likely have the benefit of a costs order but the Company being insolvent is unlikely to be able to satisfy any costs order.

As to the floating charge, under section 239 of the Companies Act 1981, a floating charge on the undertaking or property of a company created within 12 months of the commencement of the liquidation is invalid, unless it is proved that the company immediately after the creation of the charge was solvent, except as to the amount of any cash paid to the company at the time of or subsequently to, the creation of the charge, together with interest at the statutory rate. Here, it is clear that the Company is insolvent as it is presently unable to repay the monies owed under the bonds, meaning that it is cash flow insolvent. The floating charge is therefore likely to be invalid assuming it is placed into liquidation within 12 months of the granting of the floating charge.

As to the dividend paid to the shareholders, it is likely that this was an unlawful return of capital given that the directors knew or had reasonable grounds to believe that the Company is, or would be after the payment, unable to pay its liabilities as they become due and payable or the realisable value of the Company's assets would thereby be less than its liabilities. The Company is facing an unpaid statutory demand and is unable to pay the liabilities owed under the bonds therefore the Company, on its face, is insolvent and we are told that a decision has been made to continue trading.

Pursuant to the common law, the shareholders may be liable to repay the dividend if they had reasonable grounds for knowing the payment was unlawful. The directors declaring the dividend may also be jointly and severally liable to repay it and are also likely to be in breach of their fiduciary duties in approving the dividend.

As to the directors' bonus, they may be personally liable to repay the bonus under section 247 of the Companies Act given they have misapplied the Company's money and have arguably acted in breach of trust in dealing with the company's property by paying it to themselves in circumstances where the Company is insolvent.

The directors may also be personally liable under section 246 of the Companies Act 1981 for fraudulent trading given they are appearing to carry on the business of the Company when it is known to be insolvent.

Given the Company's operations are chiefly in Hong Kong, it may be possible to wind the Company up in Hong Kong but the order appointing them would have no effect in Bermuda, such that they would need to seek recognition in Bermuda or commence an ancillary liquidation in Bermuda to ensure that the creditors who are not bound by the HK order cannot apply to wind up the Company in Bermuda, as the Company's country of incorporation.

**Question 4.2 [maximum 8 marks]**

To what extent would it be open to Mudatea Limited to try to take steps to restructure its debt obligations, and how and where could it do so? Consider whether it would be more appropriate to take steps before the Hong Kong courts, the Bermuda courts, or both and, if so, why? Also consider whether it would make any difference if the debt restructuring involved a “debt-for-equity” swap, (that is, if the US bondholders would be issued new shares in the Company in exchange for cancellation of their debt, with existing shareholders’ shares in the Company being cancelled).

The Bermuda insolvency regime provides that the Company may apply for the appointment of soft touch provisional liquidators within a compulsory liquidation who can be appointed to implement a restructuring. The winding up petition will be adjourned to allow the restructuring to proceed.

The provisional liquidators are given powers by the Courts to implement the restructuring which are designed to support the formal and informal restructuring plans of the company, provided that the plan has credible prospects of success and the support of a majority of creditors. If appointed, the provisional liquidators may then apply for a statutory stay of all proceedings against the company while the work-out process continues. Typically the directors will stay in place (though query whether that would be appropriate/advisable given the directors' conduct to date) and will work alongside the provisional liquidators and under their, and the Court's, supervision while the restructuring is worked through. If the work-out is successful, the winding up petition is dismissed. If the restructuring is unsuccessful, the petition will come back on for hearing where a winding up order will likely be made.

Oftentimes the soft touch provisional liquidation is put in place as a protective wrapper to allow a scheme of arrangement to be proposed to the company's creditors. A scheme of arrangement is a formal procedure which may be used to reorganise the business of a debtor with a view to it continuing in business. The stay sought by the provisional liquidators can protect the company against litigation and parallel winding up petitions being presented by dissenting creditors.

A scheme of arrangement may result in the adjustment or compromise of all or a class of the debt of the company. It may include the transfer of rights, property and liabilities to another company and may also be used to reorganise the capital structure of the company.

For a scheme of arrangement to be binding, it must be approved by a majority of each class of creditors present and voting at the meeting, representing at least 75% in value of that class. Accordingly, a scheme of arrangement may cram down dissenting creditors in each class provided the statutory thresholds are met, though the scheme will clearly require the support of a majority of creditors in each class holding at least 75% in value of the debt. The classes of creditors have to be constituted on the basis that there is a commonality of interests based upon a sufficient similarity of their rights.

A scheme of arrangement can be initiated on an application by a creditor, a member, the company itself (or when one has been appointed) the liquidator.

The applicant must first apply to the court for an order that the meeting be convened and will make directions as to the manner in which creditors will be notified of the meeting, most commonly by the advertisement of the meetings.

Assuming the scheme is approved by each class of creditors meeting the statutory thresholds for approval noted above, a further hearing is listed at which the court is asked to sanction the scheme. The court's jurisdiction is discretionary and it will consider the voting on the scheme as well as whether the scheme is fair to all creditors. The scheme becomes effective upon the court order sanctioning it being delivered to the Registrar of Companies in Bermuda.

Here, we are told that the Company's main business operations are located in Hong Kong. Subject to Hong Kong law, it may be possible for the scheme of arrangement to be implemented there to ensure that any Hong Kong law governed debt would be compromised by the scheme. However, to the extent that creditor's rights and obligations cannot be compromised by Hong Kong law, there is a risk that they bring a winding up petition in Bermuda, meaning that parallel schemes of arrangement may be advisable to ensure that steps cannot be taken in Bermuda which would scupper the success of the Hong Kong scheme. Further, to the extent that the restructuring contemplates a debt-for-equity swap, this requires a reorganisation of the company's capital structure which should be done in accordance with the laws of the Company's incorporation.

We are not told whether the bonds are governed by US law, however, given we are told that creditors are based in the US, it may be possible, subject to the US Bankruptcy Code, for the schemes to be given recognition in the United States to the extent that any US creditors are not already bound by the schemes promulgated in Bermuda and Hong Kong.

We are told that the monies that have been paid to the Company has been distributed down to the Company's operating business. We are also told that it is currency restrictions from the PRC and other PRC law issues that are causing the financial difficulties so it may be that a coordinated restructuring plan will be successful.

**\* End of Assessment \***