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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E**

**SINGAPORE**

This is the **summative (formal) assessment for Module 8E** 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 8E**. 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 or Avenir Next 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.assessment8E]**. An example would be something along the following lines: 202223-336.assessment8E. **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.

**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**

Which of the following is not a type of winding-up under the Insolvency Restructuring and Dissolution Act (the IRD Act)?

1. Court-ordered winding-up.
2. Creditors’ voluntary winding-up.
3. Members’ voluntary winding-up.
4. Director’s voluntary winding-up.

**Question 1.2**

**Who may apply** to court to place a company into judicial management?

1. The debtor company’s creditors.
2. The debtor company.
3. The debtor company’s directors.
4. Any of the above.

**Question 1.3**

Which of the following is the **least** relevant consideration for determining if a foreign company has a substantial connection with Singapore, so as to be eligible to be wound up under the IRD Act?

1. Many of the company’s creditors are located in Singapore.
2. The company’s key employees and business are located in Singapore.
3. Singapore law is the governing law of the company’s contracts.
4. Singapore has adopted the UNCITRAL Model Law on Cross-Border Insolvency.

**Question 1.4**

When will a scheme of arrangement be effective?

1. When a majority in number representing 75% in value of each class of creditors votes in favour of the scheme.
2. When the results of the voting are advertised in the Government Gazette and a local English daily newspaper.
3. When the Court order sanctioning the scheme is lodged with the Registrar of Companies.
4. When notice of the Court order sanctioning the scheme is issued to all secured creditors of the company.

**Question 1.5**

Which of the following is not a requirement in making an application to the Court for a moratorium under section 64 of the IRD Act?

1. The applicant must provide a detailed draft of the proposed scheme of arrangement.
2. The applicant must provide a list of its top 20 unsecured creditors.
3. The applicant must advertise the application in the Government Gazette and a local English and Chinese daily newspaper.
4. The applicant must show evidence of support from its creditors on the proposed scheme of arrangement.

**Question 1.6**

Which of the following is not a prior transaction which may be adjusted under the IRD Act when a company is in liquidation or under judicial management, and occurs during the relevant period?

1. A contract entered into at fair value.
2. A dividend payment.
3. A payment to a creditor to discharge a debt.
4. The creation of a floating charge.

**Question 1.7**

Which of the following is **not** regarded as an act of an insolvency practitioner?

1. Acting as a nominee for a voluntary arrangement.
2. Acting as a scheme manager.
3. Acting as a liquidator.
4. Acting as a judicial manager.

**Question 1.8**

A bankruptcy application may be made against a debtor, if at the time of the application, the debt amount is not less than \_\_\_\_\_\_\_\_\_\_.

1. S$10,000.
2. S$15,000.
3. S$20,000.
4. S$25,000.

**Question 1.9**

U Pte Ltd (U) is currently unable to pay its debts as they fall due, and it seems unlikely that U can satisfy any future debt in full. P, the sole director of U, decided to continue the business in the hope of revitalising the company and continued taking up new loans and purchased new inventory on credit. Which of the following is correct?

1. For P to be liable for wrongful trading, she must have intended to put U’s assets out of reach of U’s creditors.
2. For P to be liable for wrongful trading, she must first have been convicted of a criminal offence.
3. For P to be liable for wrongful trading, she must or ought to have reasonably known that U was unable to meet its debts in full.
4. For P to be liable for wrongful trading, a majority of U’s creditors must pass a resolution stating that P has traded wrongfully.

**Question 1.10**

Who may apply to court to place a company into **liquidation**?

1. A creditor of a company.
2. A shareholder of a company.
3. A judicial manager.
4. Any of the above.

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

**Question 2.1 [maximum 4 marks]**

State four powers of the liquidator in a compulsory winding up.

Answer:

1. **Taking Possession and Control of Assets:**
   * The liquidator has the authority to take possession of and manage all assets, including real estate, intellectual property, and financial assets owned or controlled by the company. This ensures that assets are preserved and properly utilized during the liquidation process.
2. **Investigating Company Affairs:**
   * The liquidator is empowered to investigate the company's affairs, transactions, and conduct of its officers. This includes identifying any irregularities, such as fraudulent activities or preferential transactions, which may require legal action or recovery for the benefit of creditors.
3. **Settling Claims of Creditors:**
   * It is within the liquidator's jurisdiction to verify and settle the claims of creditors. This involves assessing the validity and amount of each creditor's claim, ensuring fair treatment and distribution of the company's assets in accordance with legal priorities.
4. **Bringing Legal Proceedings:**
   * The liquidator has the authority to initiate and defend legal proceedings on behalf of the company. This includes actions to recover assets, challenge transactions that are voidable, or defend against claims brought against the company.

These powers enable the liquidator to effectively manage the winding-up process, ensure transparency, protect creditors' interests, and maximize the realization of assets for distribution according to the statutory order of priority.

**Question 2.2 [maximum 2 marks]**

Name two objectives of judicial management.

Answer:

Judicial management is a court-supervised process designed to rehabilitate financially distressed companies in Singapore. Two primary objectives of judicial management include:

1. **Rescuing the Company:**
   * The primary goal of judicial management is to rescue the company from insolvency by restructuring its operations, debts, and financial obligations. This aims to return the company to profitability and sustainable operations, thereby preserving jobs and maximizing returns to creditors.
2. **Maximizing Asset Value:**
   * Judicial management seeks to maximize the value of the company's assets for the benefit of all stakeholders, including creditors and shareholders. This involves restructuring the company's debts, renegotiating contracts, and possibly selling non-core assets to generate funds to repay creditors.

These objectives are pursued under the oversight and direction of a judicial manager appointed by the court, who works to implement a restructuring plan approved by creditors and the court. The overarching goal is to achieve a fair and equitable outcome for all parties involved while ensuring the long-term viability of the company.

**Question 2.3 [maximum 4 marks]**

Briefly set out the steps in which the company commences a voluntary creditors’ winding-up.

Answer:

1. **Board Resolution:**
   * The directors of the company convene a board meeting and propose a resolution to voluntarily wind up the company due to financial difficulties or the inability to continue operations.
2. **Statutory Declaration of Solvency (if applicable):**
   * If the directors believe the company can settle all its debts within 12 months from the start of winding-up, they must make a statutory declaration of solvency. This declaration, signed by a majority of directors, is filed with the Accounting and Corporate Regulatory Authority (ACRA).
3. **Notice to Creditors:**
   * A notice detailing the proposed voluntary winding-up, along with a copy of the board resolution or the statutory declaration of solvency (if made), is sent to all known creditors of the company.
4. **Creditors' Meeting:**
   * A meeting of creditors is convened, usually within 14 days of the board meeting or after the filing of the statutory declaration of solvency. At this meeting, creditors review the company’s financial position and vote on whether to accept the voluntary winding-up proposal.
5. **Appointment of Liquidator:**
   * If creditors approve the winding-up proposal by a majority vote (typically 50% or more in value of creditors present and voting), they appoint a licensed insolvency practitioner as the liquidator.
6. **Filing of Resolutions and Notices:**
   * Resolutions passed at the creditors' meeting, including the appointment of the liquidator, must be filed with ACRA within 7 days. Additionally, a notice of the resolution to wind up voluntarily is published in the Government Gazette to inform the public.
7. **Liquidator's Duties:**
   * The appointed liquidator assumes control of the company's affairs, realizes its assets, settles its debts and liabilities, and distributes any remaining funds to creditors according to the statutory order of priority.
8. **Finalization and Dissolution:**
   * Once the liquidation process concludes, the liquidator prepares a final account of the winding-up, which is submitted to ACRA for approval. Upon approval, ACRA issues a notice of dissolution, officially closing the company.

These steps ensure compliance with legal requirements and facilitate an orderly winding-up process, safeguarding the interests of creditors and stakeholders involved in the company's dissolution.

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

**Question 3.1 [maximum 8 marks]**

Write a brief essay on

(i) rescue financing; and

(ii) wrongful trading

under the IRD Act.

Answer:

**(i) Rescue Financing**

Rescue financing is a critical strategy used to provide fresh funding or credit to companies experiencing financial distress or insolvency. This form of financing is crucial in enabling distressed companies to stabilize their operations, facilitate restructuring, preserve business value, and potentially avoid liquidation. Typically, rescue financing can be sourced from existing creditors, new lenders, or supportive shareholders who believe in the company's ability to recover.

**Purposes of Rescue Financing:**

1. **Stabilizing Operations:** Injecting new capital helps meet immediate financial obligations such as payroll, supplier payments, and ongoing operational costs, thereby stabilizing day-to-day business operations.
2. **Facilitating Restructuring:** Additional funds support restructuring efforts, which may involve renegotiating debt terms, downsizing operations, selling non-core assets, or implementing efficiency measures to enhance profitability and operational efficiency.
3. **Preserving Value:** Rescue financing aims to preserve the company's value for all stakeholders including creditors, shareholders, employees, and the broader community. By avoiding liquidation, it seeks to maximize returns to creditors and maintain the company's market position and reputation.
4. **Avoiding Liquidation:** A primary goal of rescue financing is to prevent the need for liquidation proceedings, which could otherwise result in significant losses for creditors and lead to job losses among employees. It offers an opportunity for the company to recover and gradually repay its debts over an extended period.

**Challenges and Considerations:**

* **Risk of Failure:** Despite infusion of funds, there remains a risk that the company may not achieve sustainable profitability or meet long-term financial obligations.
* **Creditor Concerns:** Existing creditors may express concerns about their repayment prospects and the potential impact of new financing arrangements on their recovery in case of continued financial distress or eventual liquidation.
* **Legal and Regulatory Compliance:** Rescue financing arrangements must navigate complex legal frameworks, ensuring compliance with insolvency laws, equitable treatment of creditors, and adherence to regulations regarding preferential treatment.

**(ii) Wrongful Trading**

Wrongful trading refers to a serious breach of fiduciary duty by directors of a company who continue to trade and incur debts despite knowing or having reasonable grounds to believe that the company is insolvent or headed towards insolvency. It exposes directors to potential personal liability under insolvency laws and is aimed at protecting creditors' interests in such situations.

**Key Aspects and Considerations:**

1. **Director's Duties:** Directors are obligated to act in the best interests of creditors once the company is insolvent or nears insolvency. This includes ceasing trading if it becomes evident that continuing operations would worsen the financial position of creditors.
2. **Knowledge and Awareness:** Liability for wrongful trading hinges on the director's knowledge or what they should have known about the company's financial state. This includes awareness of financial statements, cash flow projections, creditor demands, and professional advice indicating insolvency.
3. **Liability Implications:** Directors found guilty of wrongful trading may be personally liable to contribute to the company's assets for repayment to creditors. This liability extends to debts incurred during the period of wrongful trading.
4. **Defenses and Mitigating Factors:** Directors can defend against allegations of wrongful trading by demonstrating that they took reasonable steps to minimize losses to creditors once insolvency became apparent. This may involve seeking professional advice, implementing cost-cutting measures, or attempting to secure rescue financing.
5. **Legal Framework:** Wrongful trading provisions are designed to uphold responsible corporate governance and safeguard creditors' rights in insolvency scenarios. They are governed by specific legal provisions and case law that vary across jurisdictions.

**Question 3.2 [maximum 7 marks]**

Write a **brief essay** in which you discuss the similarities and differences between judicial management and liquidation. Explain some factors you would consider when advising your client on electing between either option.

Answer:

**Similarities and Differences Between Judicial Management and Liquidation**

Judicial management and liquidation are two distinct legal processes used in the context of corporate insolvency, each serving different objectives and outcomes.

**Similarities:**

1. **Insolvency Context:**
   * Both judicial management and liquidation are initiated when a company is unable to meet its financial obligations as they fall due, indicating financial distress or insolvency.
2. **Legal Proceedings:**
   * They involve formal legal proceedings overseen by a court or tribunal, where decisions are made concerning the future of the company and the rights of its creditors.
3. **Court Involvement:**
   * In both processes, there is judicial oversight. However, the nature and extent of court involvement differ significantly between judicial management and liquidation.
4. **Impact on Creditors:**
   * Both procedures impact creditors' rights and interests, albeit in different ways. Creditors' claims and the order of priority for repayment are crucial considerations in both judicial management and liquidation.

**Differences:**

1. **Objective:**
   * **Judicial Management:** The primary aim of judicial management is to rehabilitate the company under the supervision of a court-appointed manager. The goal is to achieve a viable restructuring plan that allows the company to continue operations and repay debts over time.
   * **Liquidation:** Liquidation involves winding up the affairs of the company, selling off its assets, and distributing proceeds to creditors according to statutory priorities. The ultimate objective is to dissolve the company and distribute any remaining assets to shareholders.
2. **Continuation of Operations:**
   * **Judicial Management:** During judicial management, the company continues to operate under the management and oversight of the appointed judicial manager. This allows for potential business turnaround and preservation of jobs.
   * **Liquidation:** In contrast, liquidation leads to the cessation of business operations. Assets are sold off to satisfy creditors' claims, often resulting in the closure of the company and potential job losses.
3. **Legal Proceedings Nature:**
   * **Judicial Management:** The process of judicial management involves formulating and implementing a restructuring plan approved by the court and creditors. It requires active management and oversight to achieve financial recovery.
   * **Liquidation:** Liquidation proceedings focus on realizing the company's assets, paying off creditors, and winding up its affairs in accordance with statutory requirements. It is a process aimed at orderly closure rather than recovery.
4. **Outcome for Stakeholders:**
   * **Judicial Management:** Successful judicial management can result in the company emerging from insolvency, preserving business value, and maintaining stakeholder interests such as jobs and ongoing operations.
   * **Liquidation:** Liquidation typically marks the end of the company's existence, with assets distributed among creditors according to legal priorities. It may lead to significant losses for shareholders and employees.

**Factors Considered in Advising Between Judicial Management and Liquidation:**

1. **Financial Viability and Prospects:**
   * Assess the company's financial health and prospects for recovery. Judicial management may be suitable if there is a feasible restructuring plan and potential for long-term profitability.
2. **Stakeholder Interests:**
   * Consider the interests of creditors, shareholders, and employees. Judicial management might be preferable if it offers better prospects for preserving jobs and maximizing returns compared to liquidation.
3. **Legal and Procedural Considerations:**
   * Advise on the procedural complexities and legal requirements associated with both options. Judicial management involves court oversight and approval of restructuring plans, while liquidation follows specific statutory procedures for asset realization and distribution.
4. **Timing and Urgency:**
   * Evaluate the urgency of the situation. Judicial management requires prompt action to stabilize operations and formulate a restructuring plan, whereas liquidation may be necessary if financial conditions deteriorate irreversibly.
5. **Long-term Sustainability:**
   * Consider the company's sustainability post-restructuring or liquidation. Judicial management aims to rehabilitate the company, while liquidation brings closure but may not salvage ongoing operations.
6. **Legal Liabilities:**
   * Assess potential liabilities for directors and officers. Wrongful trading claims may arise in both scenarios, influencing decisions on the most appropriate course of action.

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

Using the facts below for each section, answer the following questions.

Oldway Pte Ltd (Oldway) and Swift Pte Ltd (Swift) are music instrument suppliers. Oldway manufactures high-quality pianos, while Swift makes hand-built custom guitars. Both Oldway and Swift would sell their instruments to various retailers in Singapore, and are renowned for creating high-quality instruments and preserving the traditional style of manufacturing musical instruments.

In March 2023, Oldway was experiencing serious supply chain issues, caused in part by severe wildlife poaching reducing the supply of ivory for Oldway to manufacture its piano keys. Oldway was not able to pay one of its creditors, Spruce Pte Ltd (Spruce), a supplier of piano wood, the S$500,000 for the most recent delivery of piano wood to Oldway. After issuing a warning, Spruce issued a statutory demand against Oldway for the sum of S$500,000.

Martinus, one of Oldway’s directors, remembered that a year ago, Spruce had delivered a bad cargo of rotten wood, causing some pianos to collapse and caused about S$750,000 in losses. Out of goodwill, Oldway had not commenced legal action against Spruce to maintain their business relationship. Martinus was wondering if the time was nigh to sue Spruce.

Question 4.1 [maximum 3 marks]

Briefly describe the process in which Spruce would apply to Court for the winding-up of Oldway on the basis that the statutory demand went unsatisfied. Would Oldway be able to resist the winding-up application?

Answer:

**Process of Spruce Applying to Court for Winding-Up of Oldway**

When Spruce issues a statutory demand against Oldway for the unpaid amount of S$500,000 and Oldway fails to satisfy this demand within the prescribed timeframe (usually 21 days), Spruce may proceed to apply to the court for the winding-up of Oldway. Here's a brief overview of the process:

1. **Statutory Demand Issuance:**
   * Spruce issues a statutory demand to Oldway demanding payment of S$500,000 within 21 days.
2. **Non-Compliance with Statutory Demand:**
   * Oldway fails to pay the demanded amount within the stipulated 21-day period.
3. **Winding-Up Petition:**
   * Spruce, as the creditor, files a winding-up petition with the court. The petition must be supported by an affidavit verifying that Oldway is unable to pay its debts as they fall due.
4. **Court Hearing:**
   * The court sets a date for a hearing of the winding-up petition. Notice of the petition and the hearing date must be served on Oldway.
5. **Service of Petition:**
   * The winding-up petition and hearing notice are served on Oldway, typically at its registered office. This informs Oldway of the creditor's intention to seek a court order for its winding-up.
6. **Appearance at Court:**
   * At the hearing, Oldway has the opportunity to appear before the court to oppose the winding-up petition. Oldway may present defenses, such as disputing the debt, asserting a genuine dispute on substantial grounds, or demonstrating that it has the ability to pay the debt.
7. **Grounds for Resisting Winding-Up:**
   * Oldway may resist the winding-up application by showing that it has a genuine dispute with Spruce regarding the quality of the piano wood supplied previously, which led to losses. Oldway may argue that Spruce's own breach of contract or negligence contributed to Oldway's financial difficulties, justifying its failure to pay the debt.
8. **Court Decision:**
   * The court considers the evidence and arguments presented by both parties. If the court finds that Oldway is insolvent and unable to pay its debts, and there are no valid defenses against the winding-up petition, it may grant the winding-up order.

**Oldway's Ability to Resist Winding-Up**

Oldway may have grounds to resist the winding-up application by Spruce based on several factors:

* **Genuine Dispute:** Oldway asserts that it suffered significant losses due to Spruce's delivery of rotten wood in the past, which caused damage to its pianos. This could constitute a genuine dispute over the quality of goods supplied by Spruce and the resulting financial impact on Oldway.
* **Ability to Pay:** If Oldway can demonstrate to the court that it has the ability to pay its debts, either immediately or within a reasonable timeframe, it may persuade the court that a winding-up order is unnecessary.
* **Negotiated Settlement:** Oldway and Spruce may negotiate a settlement of the debt outside of court proceedings, which could lead to the withdrawal of the winding-up petition if the debt is satisfied.

In conclusion, while Spruce can initiate the winding-up process against Oldway based on the unsatisfied statutory demand, Oldway has options to resist the winding-up application by presenting valid defenses, such as a genuine dispute over the debt owed and its ability to pay. The outcome will depend on the court's assessment of the evidence and arguments presented by both parties during the winding-up hearing.

Question 4.2 [maximum 5 marks]

Oldway and Spruce eventually entered into a settlement agreement, and Oldway was not wound up. However, its financial woes were far from over. A new instrument manufacturer, JazzGPT Pte Ltd (Jazz), had entered the market and had a hot start. Jazz harnessed the power of technology, using artificial intelligence to programme the instruments’ blueprints and 3-D printing to manufacture the envisioned product. As such, Jazz was able to produce instruments at a staggering 100 times the rate of Oldway and Spruce and sell its products at a fraction of the price. Many experts, during blind reviews, have also admitted that the sound quality of Jazz’s instruments was indistinguishable from traditionally-made instruments. Most musicians started turning to Jazz.

Hence, Oldway’s sales continued to plummet and it soon faced a financial crisis. At a board meeting, Martinus decided that it was in the best interests of Oldway to place itself under judicial management.

Briefly describe (i) what Oldway must demonstrate to the court in order to obtain a judicial management order; and (ii) the effect of a judicial management order.

Answer:

**(i) Demonstrating Eligibility for Judicial Management**

To obtain a judicial management order, Oldway must demonstrate to the court that it meets certain criteria indicating that judicial management is appropriate and feasible. Here are the key elements Oldway must establish:

1. **Inability to Pay Debts:** Oldway must show that it is unable to pay its debts as they fall due. This indicates financial distress and the need for intervention to facilitate restructuring rather than immediate liquidation.
2. **Reasonable Prospect of Rehabilitation:** Oldway must present evidence that there is a reasonable prospect of rehabilitating its financial position and continuing its operations as a going concern. This may involve submitting financial projections, a proposed restructuring plan, or evidence of potential funding or support.
3. **Court's Discretion:** The court has the discretion to grant a judicial management order if it believes that placing Oldway under judicial management will result in a better outcome for the company's creditors and stakeholders compared to other alternatives, such as liquidation.

**(ii) Effect of a Judicial Management Order**

Once the court grants a judicial management order, the following effects typically ensure:

1. **Appointment of Judicial Manager:**
   * A licensed insolvency practitioner, known as the judicial manager, is appointed to take control of Oldway's business, property, and affairs. The judicial manager assumes the role of managing the company with the objective of achieving a viable restructuring plan.
2. **Moratorium on Legal Proceedings:**
   * Upon the granting of a judicial management order, a moratorium automatically takes effect. This prevents creditors and others from commencing or continuing legal proceedings against Oldway without the court's permission. It provides a breathing space for the company to reorganize without external pressure.
3. **Development and Implementation of Restructuring Plan:**
   * The judicial manager works closely with Oldway's management and stakeholders to develop a restructuring plan. This plan aims to rehabilitate Oldway's financial position, which may involve renegotiating debts, selling assets, or restructuring operations to improve profitability.
4. **Court Oversight:**
   * The court oversees the judicial management process, ensuring that the interests of creditors and other stakeholders are protected. The judicial manager must regularly report to the court on the progress of the restructuring efforts.
5. **Approval and Implementation:**
   * Once a restructuring plan is formulated and approved by the requisite majority of creditors and the court, it is implemented under the supervision of the judicial manager. The plan may involve debt repayment schedules, changes to business operations, or capital restructuring to ensure long-term viability.
6. **Outcome:**
   * If successful, judicial management may lead to Oldway emerging from financial distress, preserving jobs, and continuing as a going concern. If the restructuring objectives are achieved, the judicial management order may be discharged, and Oldway resumes normal operations.

In conclusion, judicial management provides a structured framework for financially distressed companies like Oldway to reorganize under court supervision, with the aim of achieving financial rehabilitation and avoiding liquidation. It requires demonstrating financial distress and a feasible restructuring plan to convince the court of its necessity and potential success.

**Question 4.3 [maximum 3 marks]**

Oldway was placed under judicial management on 30 June 2023 and Messrs Buckman and Berryland of Pacific Advisory Services Pte Ltd were appointed as the joint and several judicial managers of Oldway (Judicial Managers). Mayer, one of Swift’s directors, genuinely wanted to assist Oldway in its restructuring, as Mayer wanted to uphold the traditional way of manufacturing musical instruments. Mayer wanted to know how Swift could aid Oldway financially but ensure that any financial aid given would be granted priority in the event that Oldway was wound up.

What are the considerations a Court will take in granting super-priority of Swift’s financial assistance, and what would the effect of such an order be?

Answer:

To grant super-priority status to Swift's financial assistance provided to Oldway under judicial management, the court would carefully consider several critical factors to ensure fairness and efficacy in the restructuring process. Here are the primary considerations likely to influence the court's decision:

**Considerations for Granting Super-Priority**

1. **Necessity and Benefit:**
   * The court will assess whether Swift's financial aid is essential for the successful execution of Oldway's restructuring plan. This evaluation includes determining how crucial the assistance is in maintaining operations, preserving jobs, or enhancing Oldway's prospects for financial recovery.
2. **Approval by Creditors:**
   * Ideally, Swift's financial support should be endorsed by a significant majority of Oldway's creditors or at least not met with significant opposition. This demonstrates that the assistance is perceived as beneficial to the overall restructuring efforts and does not unfairly disadvantage other creditors.
3. **Equity Among Creditors:**
   * The court will weigh the impact of granting super-priority on the rights and interests of Oldway's existing creditors. It ensures that Swift's priority does not unfairly prioritize their claims over others without valid justification.
4. **Protection of Investment:**
   * Swift may need to demonstrate that its financial assistance aims to safeguard a legitimate investment or business relationship with Oldway. This could include maintaining supply chains, safeguarding market reputation, or ensuring continuity of operations beneficial to both parties.
5. **Terms and Conditions:**
   * The court may impose specific terms and conditions on Swift's super-priority status. This could involve ensuring transparency in fund utilization, regular reporting on Oldway's restructuring progress, or limitations on the extent or duration of the priority granted.
6. **Overall Stakeholder Benefits:**
   * The court will evaluate whether granting super-priority aligns with broader stakeholder interests, including creditors, employees, and the community. It should contribute positively to maximizing Oldway's asset value and facilitating its financial recovery through judicial management.

**Effect of Super-Priority Order**

Granting super-priority to Swift's financial assistance would have significant implications:

* **Priority in Repayment:** Swift would be prioritized over other creditors in the repayment hierarchy if Oldway undergoes winding-up or liquidation. This ensures Swift's claim is satisfied before those of ordinary unsecured creditors.
* **Legal Protection:** The super-priority order legally secures Swift's claim, ensuring it ranks ahead of other creditors in accordance with insolvency laws.
* **Encouragement of Support:** Such priority can incentivize other stakeholders to provide similar support, knowing their investments or assistance will also be prioritized in case of insolvency. This fosters collaborative efforts in Oldway's restructuring.
* **Potential Challenges:** However, challenges may arise, such as objections from other creditors perceiving it as unfair treatment, or if the conditions for granting such priority are not met adequately.

In summary, the court's decision to grant super-priority status to Swift's financial assistance in Oldway's judicial management process is contingent upon demonstrating necessity, fairness, and overall benefits to the restructuring process and stakeholders. This approach aims to facilitate Oldway's recovery while safeguarding Swift's interests in the event of insolvency, thereby promoting a successful outcome for all involved parties.

**Question 4.4 [maximum 4 marks]**

Initially, Oldway’s Judicial Managers contemplated proposing a scheme of arrangement with Oldway’s creditors to restructure its debts. Upon investigating Oldway’s books, the Judicial Managers noticed, in particular, the following transactions:

1. A legal bill of S$25,000 paid on 10 April 2023 to a law firm, for work done in relation to advising Oldway on its restructuring and liquidation options.
2. On 11 April 2023, Oldway made a partial repayment of S$100,000 to Martinus’ childhood best friend, Clarence, for a loan in the sum of S$600,000 which Clarence had given Oldway in May 2022. There are no written records documenting the terms of this loan.
3. On 15 April 2023, Oldway sold to Martinus’ daughter a Steinway piano at the price of S$200,000. Oldway had purchased this Steinway piano on 15 September 2022 for S$1,000,000 for the purposes of placing it as the centrepiece of Oldway’s showroom.

You act for the Judicial Managers, who have asked you for advice in relation to the recovery of Oldway’s assets.

Answer:

Given the circumstances involving Oldway as outlined, here is the advice for the Judicial Managers concerning the recovery of Oldway's assets:

**Analysis of Transactions:**

**(a) Legal Bill of S$25,000:**

* The payment of S$25,000 to a law firm for advising on restructuring and liquidation options is typically considered a legitimate expense necessary for the judicial management process. Such expenses are essential for navigating insolvency proceedings and are generally justifiable.

**(b) Repayment to Clarence of S$100,000:**

* The repayment of S$100,000 to Clarence, lacking written loan documentation, warrants scrutiny. Judicial Managers should investigate:
  + The nature of the loan: Clarify if it was a genuine loan and assess the terms.
  + Timing of repayment: Evaluate if it occurred when Oldway was insolvent or near insolvency.
  + Preferential treatment: Determine if Clarence received repayment ahead of other creditors, potentially constituting a preference.

If the transaction appears improper or preferential, recovery efforts may be pursued to benefit Oldway's creditors.

**(c) Sale of Steinway Piano to Martinus' Daughter for S$200,000:**

* Oldway sold a Steinway piano originally purchased for S$1,000,000 at a discounted price of S$200,000 to Martinus' daughter. Key considerations include:
  + Undervalued transaction: Assess if the sale significantly undervalued the asset.
  + Related-party transaction: Evaluate if the sale to a related party (Martinus' daughter) was conducted at arm's length and in the best interests of creditors.

The Judicial Managers should scrutinize whether this transaction complied with fiduciary duties and consider actions to set it aside or seek recovery for creditors if necessary.

**Recommendations:**

1. **Recovery Actions:**
   * Initiate legal action as needed to recover amounts from potentially improper or preferential transactions, such as the repayment to Clarence or undervalued asset sales.
   * Compile evidence supporting these actions, demonstrating transactions were not in creditors' best interests or violated legal standards.
2. **Comprehensive Review:**
   * Conduct a thorough examination of all transactions to identify other potential concerns requiring investigation or recovery efforts.
   * Ensure compliance with legal obligations and fiduciary duties in asset recovery efforts during judicial management.
3. **Legal Strategy:**
   * Collaborate closely with legal advisors to devise a strategy for asset recovery, including potential claims under insolvency or company law regarding transaction avoidance.
   * Consider negotiation with involved parties to achieve settlements maximizing recovery while minimizing legal costs and delays.

By proactively addressing these transactions, the Judicial Managers can safeguard creditors' interests and optimize asset recovery during Oldway's judicial management proceedings.

**\* End of Assessment \***