INSOL INTERNATIONAL
FOUNDATION CERTIFICATE
in INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8A

AUSTRALIA

This is the **summative (formal) assessment** for **Module 8A** 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 8A. 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: **[studentnumber.assessment8A]**. An example would be something along the following lines: 202021IFU-314.assessment8A. **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 "studentnumber" 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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 **7 pages**.

ANSWER ALL THE QUESTIONS

Commented [DB1]: 44 out of 50 = 88% Well done!

QUESTION 1 (multiple-choice questions) [10 marks in total] 9/10

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

Select the correct answer:

If a creditor is dissatisfied with the bankruptcy trustee or liquidator's decision in respect of its proof of debt, the creditor may:

(a) apply to AFSA or ASIC for the decision to be reversed or varied.

(b) apply to the bankruptcy trustee or liquidator for the decision to be reversed or varied.

(c) bring court proceedings for a money judgment in respect of the debt.

(d) apply to the court for the decision to be reversed or varied.

Question 1.2

Which of the following **is not** a collective insolvency process:

(a) Receivership.

(b) Liquidation.

(c) Deed of company arrangement.

(d) Voluntary administration.

Question 1.3

Select the correct answer:

The purpose of the Assetless Administration Fund is to:

(a) finance preliminary investigations and reports by AFSA to trustees into the bankruptcies of individuals with few or no assets, to assist trustees in deciding whether to commence enforcement action.

(b) finance preliminary investigations and reports by ASIC to liquidators into the failure of companies with few or no assets, to assist liquidators in deciding whether to commence enforcement action.

(c) finance preliminary investigations and reports to AFSA by trustees into the bankruptcies of individuals with few or no assets, to assist AFSA in deciding whether to commence enforcement action.

(d) finance preliminary investigations and reports to ASIC by liquidators into the failure of companies with few or no assets, to assist ASIC in deciding whether to commence enforcement action.

Question 1.4

Select the correct answer:

Newco Pty Ltd has 3 employees and an annual turnover of AUD 950,000. It currently owes AUD 300,000 to its trade creditors, and it has a AUD 800,000 secured loan from its bank. Which of these restructuring processes is Newco **ineligible** for?

(a) A voluntary administration followed by a deed of company arrangement.

(b) An informal restructuring with the agreement of creditors.

(c) A small business restructuring plan.

(d) A deed of company arrangement.

Question 1.5

Select the correct answer:

Which of the following is **not** "divisible property" in a bankruptcy?

(a) Wages earned by the bankrupt.

(b) Fine art.

(c) Choses in action relating to the debtors' assets.

(d) The bankrupt's family home.

(e) Superannuation funds.

Question 1.6

Which of the following **is not** a relevant period for the entry into a transaction which constitutes an unfair preference in a liquidation?

(a) The six-month period ending on the "relation back day".

(b) The one-year period ending on the relation back day where the creditor had reasonable grounds for suspecting that the company was insolvent.

(c) The four-year period ending on the relation back day where the creditor is a related entity of the company.

(d) The 10-year period ending on the relation back day where the transaction was entered into for a purpose that included defeating, delaying or interfering with the rights of creditors in the event of insolvency.

(e) After the relation back day but on or before the liquidator was appointed.

Question 1.7

Select the correct answer:

A receiver:

(a) is an agent of the secured creditor that appointed the receiver.

(b) owes a duty of care to unsecured creditors.

(c) is an agent of the company and not of the secured creditor that appointed the receiver.

(d) is an agent of the company until the appointment of a liquidator to the company.

(e) is required to meet the priority claims of employees out of assets subject to a non-circulating security interest.

Question 1.8

Select the correct answer:

A voluntary administrator must convene and hold a first meeting of creditors within how many business days of his appointment?

(a) 3 business days.

(b) 8 business days.

(c) 12 business days.

(d) 24 business days.

(e) 45 business days.

Question 1.9

Select the correct answer:

Australia has excluded from the definition of “laws relating to insolvency” for the purposes of Article 1 of the Model Law the following parts of the Corporations Act:

(a) The part dealing with schemes of arrangement.

(b) The part dealing with windings up of companies by the court on grounds of insolvency.

(c) The part dealing with taxes and penalties payable to foreign revenue creditors.

(d) The part dealing with the supervision of voluntary administrators.

(e) The part dealing with receivers, and other controllers, of property of the corporation.

Question 1.10

Select the correct answer:

Laws regarding the following came into effect on 1 January 2021:

(a) an *ipso facto* moratorium in voluntary administrations and liquidations.

(b) simplified restructuring and liquidation regimes for small companies.

(c) reducing the default bankruptcy period from three years to one year.

(d) a safe harbour from insolvent trading liability.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks] 2/3

Name the three types of voidable transactions that can be reversed by a bankruptcy trustee and describe the circumstances in which such a transaction will not be reversible.

[Presented below are , first, the rules for determining the date of commencement of bankruptcy followed by a tabulation of the three types of voidable transactions in Bankruptcy that the Trustee can seek Court orders to reverse and the circumstances in which the identified transactions will not be reversible:

Commencement date of bankruptcy(DoCB) For Involuntary bankruptcy, the DoCB will be the date of filing of Creditors' petition . For voluntary Bankruptcy, tDoCB would fall on the date of filing of Debtors' petition , though, in some circumstances of a creditor or creditors having already filed a petition , it could fall on an earlier date.

The three types of voidable transactions may be tabulated as follows:

(No transactions are voidable or reversible if they are carried out before the date of bankruptcy and are transacted in good faith , in the ordinary course of business, for market value and where the counterparty has no notice of any petition for bankruptcy filed against the debtor.) Correct.

Also, the bankruptcy trustee will not be able to recover property if the original transferee has since transferred the property to a third party and the third party received the property in good faith and for market value (s 120(1)).

Where voidable transactions are reversible and the circumstances in which they survive without being reversed are set out below:

S No	Voidable Transaction (TXN) Particulars	Relation-Back Period for which TXN reversal can be sought	Circumstances in which TXN is not reversible
1	**Undervalued Transactions** where property is transferred by the debtor to another for either no consideration or for consideration less than market value	5-year period before DoCB	(a) Where transferee shows that the TXN occurred over 2 years ago (or 4 years ago, if it is a related party) and at that time, the debtor was solvent
2	**Transfers to defeat creditors . Here,**Bankruptcy Trustee must show that the purpose of a transfer of property was to prevent, hinder or delay payment to creditors **.** Statutory presumption exists of such **a** purpose if the debtor was insolvent or about to become insolvent on the date of the impugned transfer	No specific Relation Back period. Could be at any time prior to bankruptcy	If transferee shows that s(he) paid market value, was unaware of either the purpose of defeating creditors on the debtor's part or of the insolvency or impending insolvency of the debtor.
3	**Preferential Transactions** A transfer of property from Debtor to a creditor if the debtor was insolvent at the time of transfer and the transaction gave a preference/priority/advantage to the benefiting creditor over other creditors.	6 months preceding DoCB	IF creditor shows that TXN was in good faith, in ordinary course of business , and for valuable new consideration.

]

Question 2.2 [maximum 3 marks] 3/3

How does a court determine the scope of the stay in relation to a corporate debtor under Australia's implementation of Article 20 of the Model Law?

[Art 20 relates to cases where a foreign proceeding is recognized as a Foreign Main Proceeding (FMP). The Australian Court that recognizes the FMP , in its discretion can order stay and suspension of various actions/enforcement measures in alignment with Bankruptcy Act and Corporations Act. (Chapter 5, other than Parts 5.2 and 5.4A). The Stay could be wider , to include secured creditors , as for Voluntary Administration proceedings under the Corporations Act , or the Stay could be more limited as for Liquidation Proceedings under Corporations Act which extend only to unsecured creditors. (In reality, even the wider stay as for voluntary administration does not

entirely freeze the action of secured creditors as they can still within a certain period decide to appoint a Receiver over the head of the Voluntary Administrator).The rulings that have come about in Australia have laid down that Stay will be granted as appropriate for the type of proceeding that obtains in the FMP ("as the case requires"). FMPs which focus on business Rescue are considered suitable for the wider stay as in Voluntary Liquidations. FMPs which are in the nature of liquidation would be granted a stay as applies for liquidation in Australia. In the notable cases of Tai-Soo Suk v Hanjin Shipping Co ltd, and of Rizzo-Bottiglieri-deCarlini Armati (Rizzo) , the Federal Court held that appropriate Stay would be as for liquidation. Even though it was pointed out by Counsel in Rizzo that the FMP in Italy allowed for stay on secured creditors as well, Federal Court determined that Italian Fallimento is more akin to a liquidation and this factor weighs in favour of a stay of that type.] Good.

Question 2.3 [maximum 4 marks] 3/4

What is an *ipso facto* clause and what is the relevance of *ipso facto* clauses in liquidations?

[Where a debtor has entered into a contract where the counterparty has obtained incorporation of an "ipso Facto" clause envisaging that the counterparty can terminate the contract when the debtor enters insolvency is an Ipso Facto Clause. Need to have more detail about the different insolvency events that ipso facto clauses cover- e.g. upon the company entering voluntary administration or because of the company's general financial position while it remains in voluntary administration (s 451E Corporations Act).Ipso Facto clauses undermine the prospects of continuing the debtor's business and of selling the debtor on a "going Concern" basis . In liquidation, in Australia , there is no moratorium on ipso facto clauses , with one exception . Since July 2018, there is available in the law, an Ipso Facto moratorium for Voluntary Administration and for Creditor Schemes of Arrangement. Where a Creditors' Voluntary Liquidation follows a Voluntary Administration or an attempt at a Creditor Scheme of Arrangement or a Deed of Company Adinistration, then the Ipso Facto moratorium that was in force during the Voluntary Administration or the Creditor Scheme of Arrangement would continue in the liquidation as well. No, the moratorium does not continue during the liquidation. However, I can see why you read p 30 of the Guidance Text in this way so I have no deducted marks for this. At that, this is only a moratorium and the Ipso Facto clause is not void as it is in Bankruptcy Act Sec 301.

It may be said that , in any case, in liquidation in Australia, there is little scope for sale as a going concern and the detriment to that possibility by invoking of ipso fact clauses is, not, by itself so damaging . However, ipso facto invocation also freezes in mid-course , the completion of ongoing contracts and thus frustrates the generation of full value of certain products. That, effectively shrinks the value of the Liquidation Estate available for distribution.] Interesting point.

QUESTION 3 (essay-type questions) [15 marks in total] 15/15

"Creditors' schemes of arrangement are costly and time-consuming and are an ineffective corporate rescue mechanism in Australia."

Critically discuss this statement and indicate whether you agree or disagree with it, providing reasons for your answer.

[My view is that Creditor Schemes of Arrangement (Cr SOA) are meaningful for larger and more complex restructurings and for, less complex, ordinarily encountered restructurings,

Deed of Company Arrangement (DoCA) is much to be preferred. The reasons for this are as follows:

(a) DoCA could be finalised within 2 months whereas C^{r}rSOA can easily take upto 6 months. This is mainly because, DoCA does not require Court intervention, whereas C^{r}rSOA needs Court intervention at two stages, first when Court has to order convening of the First Creditor Meeting and secondly when Court has to approve the C^{r}rSOA after it has been approved by requisite majority of the different classes of creditors.

(b) Both DoCA and C^{r}rSOA require, in practice, the support of the Banks/major financiers. The speed and efficiency of DoCA makes it more attractive to Banks and makes it easier for the company to mobilise this prerequisite support.

(c) While DOCA process can be carried right through upto implementation, without Court involvement , there is a carve-out in Corporations Act, and the Administrator can apply to the Court u/s 444F and obtain an order restraining a dissenting secured creditor from enforcing its interest and this effectively discourages "holding out" behaviour. It is the closest that Australian insolvency law gets to approaching the "cramdown" provisions of US Bankruptcy Code.Good point. The Court cannot do this arbitrarily and has to ensure "adequate protection" for the affected secured creditor.This feature also makes it more likely that agreement will be reached and appeals to both the company and to the major lenders to the company.

(d) DoCA needs to secure approval from a homogenous group of all creditors . The requirement is a simple majority , both in terms of number present and voting and in terms of the % value of claims of those voting in favour as compared to the total value of claims of all those present and voting. In contrast, C^{r}rSOA requires voting in separate classes of creditors .50%+ of creditors in each class present and voting and 75%+ in terms of value of claims among those present and voting in each class of creditors need to approve the C^{r}rSOA. This is more difficult to attain and there is no provision for a cross-class cramdown and, so, even one class of creditors with less support for the C^{r}rSOA than the stipulated benchmarks would derail the C^{r}rSOA .

(e) That said, there exist advantages for C^{r}rSOA . C^{r}rSOA allows for effective releases to be given by creditors in favour of third parties , which is not possible in DoCA. The C^{r}rSOA in the case of Fowler v Lindholm demonstrated this. In the 2010 case of Lehman Bros Inc v City of Swan, claims arose from the creditors not only against the "Deed company" (viz. Lehman Bros.) but also against affiliates like Lehman Asia , Lehman Holdings etc. The Court ruled that DoCA applied only to address the dues of the "Deed Company" (Lehman Bros) and the DoCA could not release the liabilities of the third parties involved such as Lehman Asia etc.

(f) To sum up, in complex cases, with interconnected and interlocking liabilities in a group of companies, C^{r}rSOA is beneficial.]

Excellent answer. Also worth mentioning that there is a broad VA moratorium on creditors enforcing any of their rights, which does not apply in schemes of arrangement. But for large, complex corporate groups, schemes are still worth it, as you say.

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

Question 4.1 [maximum 9 marks] 8/9

Aussiebee Pty Ltd (Aussiebee), a company incorporated in the fictional country of Lyonesse, sells chocolates flavoured with Australian native plants. The chocolates are manufactured in Australia by NewYums Pty Ltd (NewYums), an Australian-incorporated wholly-owned subsidiary of Aussiebee.

Aussiebee has offices and warehouses in both Sydney and in Lyonesse. Aussiebee regularly sells its chocolates all over the world, from both its Lyonesse and its Sydney offices and warehouses. AussieBee and NewYums share a board of directors, made up of six Australians and one Lyonessian. Aussiebee employed 40 staff: 20 in Sydney and 20 in Lyonesse. Aussiebee's CEO is an Australian, but resident in Lyonesse. Aussiebee's CFO is an Australian, resident in Australia.

Aussiebee is insolvent. NewYums, however, remains solvent.

A liquidator has been appointed to Aussiebee in Lyonesse. She applies to the Federal Court of Australia for recognition of the Lyonessian liquidation as a foreign main proceeding, and for orders entrusting Aussiebee's assets (including Aussiebee's shares in NewYums which are worth AUD 20 million) to her, so that she can realise them for the benefit of creditors in the Lyonessian liquidation.

Aussiebee owes AUD 12 million in taxes in Australia, payable to the Australian Taxation Office (ATO). Assume that revenue creditors such as the ATO are not entitled to prove in the Lyonessian liquidation.

You are advising the ATO. What should the ATO do to protect or improve its position?

[The Liquidator_Lyonnese (Lqdtr_Ly is entitled to apply u/Art 15 of the Cross-Border Insolvency Act (CBIA) for recognition as a Foreign Representative (FR). If the application complies with Art 15 and is complete in all respects, then u/Art 17, the Federal Court of Australia (FCA) is expected to recognise the Foreign Proceeding. Moreover, since Aussibee is a Lyonnese-registered company, has its CEO as a resident there, and as its activity is significantly located there, Lyonnese will be recognised as the COMI for Aussiebee. The Liqdtr^{ly} will get recognition as FR of a Foreign Main Proceeding (FMP). Good, you are likely right on this, although a court might not dismissing quite so easily the possibility of the COMI being in Australian, given all the Australian aspects of Aussiebee.

In respect of the second request i.e.for orders entrusting Aussiebee's assets to her, for her to "realise them for the benefit of creditors in Lyonnese liquidation", this cannot be granted in the terms requested as foreign revenue debt is not provable in Lyonnese and ATO's dues are therefore, excluded in the potential distribution from the Liquidation Estate in Lyonnese. The application of Lqdtr^{ly} is u/Art 21 and Para 2 thereunder envisages that any order of the FCA is subject to the satisfaction of the Court that interests of creditors in Australia are adequately protected. Good In this case, there is patently a gap in the Lqdtr^{ly-}'s application which simply confines distribution to creditors in the Lyonnese liquidation. The Lqdtr^{ly} has not been in any obligation to give notice to any creditors in Australia related to the application for recognition u/Art 15. (It is possible, however that as part of the earlier ;liquidation process in Lyonnese , notices were publicly issued in Australia , and eligible creditors in Australia have filed proofs of debt with Lqdtr^{ly} . There is no information provided to the Court by Lqdtr^{ly} on this.) Note that the rules for each Australian court with jurisdiction under the CBIA provide that a foreign representative must give notice to all creditors of an Australian recognition application, and advertise the application in Australian newspapers, but this goes beyond the course material so there was no reason for you to know this. It is excellent that you have given consideration to the question of notice.

Presumably, ATO is now aware of the Lqdtr[ly]'s application u/Art 21 at this application stage itself. Since recognition as FMP may be given or is already given, an automatic stay u/Art 20 is in force barring, inter alia, any enforcement or action even regarding the shareholding of Aussiebee in NewYums. Good. It is relevant that , under Australian law, ATO's dues rank as unsecured dues and as provable debt in an Australian liquidation. ATO must, accordingly, petition FCA to stipulate that Lqdtr[ly] must , even if entrusted with assets of Aussiebee in Australia for realisation as Liquidator, remit the proceeds for distribution in the Lyonnese liquidation only after arriving at the proportionate share of ATO in the liquidation estate and escrowing in a separate account in Australia, the amount corresponding to that proportionate share of ATO. Exactly. Could refer specifically here to *Ackers v Seputy Commissioner of Taxation* where the Australian court made such an order. We may accept, in alignment with one of the Second Appeal judgments in the UK courts on HIH Casualty and General Insurance , that an FMP is a universal proceeding. Care of the interests of ATO requires that rights determined in accord with Australian law are protected. ATO may also request that the Court is better-placed than Lqdtr[ly] to validate the claim of ATO and so the Court may be requested to adjudicate the ATO claim for settlement from the assets of Aussibee including shares in New Yums.] Good additional point.

Question 4.2 [maximum 6 marks] 4/6

Shipmin Pty Ltd (Shipmin) is a company incorporated in Australia. Shipmin owned two cargo ships, one valued at AUD 20 million, the other at AUD 15 million. About 3 months ago, Shipmin sold the AUD 20 million cargo ship and paid the full proceeds of AUD 20 million to its parent company Shipmax Ltd (Shipmax) to reduce Shipmin's intercompany debt to Shipmax. Shipmax is also incorporated in Australia and owns 100% of the shares in Shipmin.

Shipmin now owns only the one cargo ship with a value of AUD 15 million. Shipmin owes AUD 20 million to the Commonwealth Bank of Australia (CBA), which is secured by a mortgage over the remaining ship. The mortgage is not registered on the Personal Property Securities Register.

Shipmin's debt to CBA has been guaranteed by Shipmax. Shipmin owes Shipmax AUD 180 million in inter-company debt. Shipmin has no other creditors.

Shipmax has been placed into liquidation. Advise Shipmax's liquidator on the best way to bring the operations of Shipmin to an end and maximise the return to Shipmax from the assets of Shipmin.

[Considering that it was only 3 months ago that AUD 20 million was received by Shipmax from Shipmin, those funds should be available in the asset pool of Shipmax-in-liquidation and in the Liquidation Estate. Yes, this money could be clawed back by a liquidator of Shipmin in an "unfair preference" claim against Shipmax. The mortgage of Shipmin's ship has not been perfected and therefore, the ownership of that AUD 15 mio asset remains with Shipmin. More specifically, the security interest *vests* back in Shipmin the moment before a voluntary administration or liquidation of Shipmin is commenced (*Personal Property Securities Act*, s 267) In case, the receipt of AUD 20 million was utilised during the 3-month period ending now to acquire some other assets then , those assets would currently form part of the liquidation estate. In case the utilisation of the proceeds have resulted in Shipmax being saddled with assets of lesser value, then Liquidator needs to investigate if there are any voidable transactions such as unfair preferences or uncommercial transactions. The liquidation estate of Shipmax would comprise of :

S No	Item	Estimated Value

1	Shareholding in Shipmin	AUD 15 mio
2	Assets from proceeds of AUD 20 mio received 3 m ago from Shipmin	AUD 20 mio
3	Due from Shipmin	AUD 180 mio

As against this, there is a contingent liability of AUD 20 mio to CBA on account of guarantee extended to secure their loan to Shipmin. Good

Shipmax is now heading for liquidation and deregistration, and CBA faces the prospect of being left high and dry , losing the recourse of the guarantee of Shipmax. Yes.

Liquidator should assist CBA to now complete the formalities for perfecting the security over the Shipmin vessel to provide a cover of at least AUD 15 mio in this form for the outstanding dues of AUD 20 mio. An Australian liquidator is very unlikely to do this. The liquidator is there to protect the rights of *unsecured creditors*, not the rights of secured creditors. The liquidator will instead tell CBA that the security has vested in Shipmin, and now CBA is an unsecured creditor. Further, a sum of AUD 5 mio should be transferred from item at s no 2 above (assets representing proceeds utilised from inflow of AUD 20 mio 3 m ago from Shipmin) to Shipmin to be offered by latter to CBA as cash collateral. The recover of AUD20m as an unfair preference will go into the pool of assets for distribution to all unsecured creditors.

The shares of Shipmin would now be valued at nil and Liquidator does not have a task of realising any amount from them. The dues of 180 mio from Shipmin also may have to be extinguished since Shipmin may have no residual value or sufficient future income with which to service this liability of AUD 180 mio. No. Shipmax is entitled to prove in the liquidation of Shipmin for the 180m debt and receive a dividend in the same way that CBA as an unsecured creditor will prove in the liquidation of Shipmin.

Liquidator can finally realise the balance value of AUD 15 mio from item at S No 2 and distribute this to shareholders of Shipmax after deducting liquidation costs.

Rather than liquidation, the better alternative for Shipmax is as follows: Shipmax's liquidator should, using her power as the sole shareholder of Shipmin, have the directors of Shipmin place Shipmin into voluntary administration on the grounds of insolvency or likely future insolvency (it owes CBA more than the present value of its only major asset – whilst this is balance sheet insolvency, it may well lead to cash flow insolvency when combined with the collapse of its parent company).

Immediately before the Shipmin enters voluntary administration, the mortgage over the ship will vest in the voluntary administrator because CBA failed to register its security interest on the PPSA. Unperfected (ie unregistered) interests vest in the voluntary administrator immediately before the commencement of a voluntary administration (*Personal Property Securities Act*, s 267).

The voluntary administration can then sell the ship to provide a return to unsecured creditors, or the creditors can vote to place Shipmin into a DOCA. Shipmax will carry any vote on value, as there are only two creditors and Shipmax holds the overwhelming majority of the debt.

However, note that a liquidation would be risky, because Shipmax may find itself the target of:

- a preference claim by the liquidator for the $20 million already repaid to Shipmax in the last 12 months. Shipmax as the parent company would have had knowledge of Shipmin's insolvency.
- creditor-defeating disposition claim (see Guidance Text, pp 75-76)

If Shipmax can get Shipmin into a DOCA whereby the remaining ship is sold and the proceeds paid equally to all unsecured creditors, Shipmax will receive most of the assets of Shipmin, as its unsecred debt to Shipmax ($200m) swamps the now-unsecured debt to CBA ($20m).]