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 (where this must be done is indicated under each question).

2. All assessments must be **submitted electronically in MS Word format**, using a standard A4 size page and a 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 each question. More often than not, one fact / statement will earn one mark, but it is also possible that half marks are awarded (this should be clear from the context of the question, or in the context of the answer).

4. You must save this document using the following format: **[studentID.assessment8A]**. An example would be as follows 202122-336.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 “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 paragraph 7 of the Course Handbook, specifically the information on pages 15 and 16, which deals with plagiarism and dishonesty in the submission of assessments. **Please note that plagiarism includes copying text from the guidance text and pasting it into your assessment as your answer**.

6. The final time and date for the submission of this assessment is **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2022. 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 **8 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

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. 1 mark

Question 1.2

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

(a) Receivership. 1 mark

(b) Liquidation.

(c) Deed of company arrangement.

(d) Voluntary administration.

Question 1.3

Select the correct answer:

Which of the following insolvency procedures **requires** court involvement:

(a) creditors' scheme of arrangement. 1 mark

(b) deed of company arrangement.

(c) creditors' voluntary liquidation.

(d) voluntary administration.

(e) small company restructuring plan.

Question 1.4

Select the correct answer:

Newco Pty Ltd has three (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. 1 mark

(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. 1 mark

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. 1 mark

(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 company can only be placed into voluntary administration if:

(a) the directors declare that the company's liabilities exceed its assets.

(b) the creditors resolve that the company is unable to pay its debts as and when they fall due. 0 marks

(c) a liquidator declares that the company is insolvent or likely to become insolvent.

(d) the directors resolve that the company is insolvent or likely to become insolvent. Correct

Question 1.8

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. 0 marks

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

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

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. 1 mark

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. 1 mark

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

(d) a safe harbour from insolvent trading liability.

8/10 marks

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

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.

Three types of voidable transactions that can be reversed by a bankruptcy trustee are as follows:

- Undervalued transactions
- Transfer to defeat creditors or
- Preferential payments to creditors

There are also certain circumstances in which transactions will not be reversible. For undervalued transactions if the transaction did not take place in the five-year period before bankruptcy commencement and there was consideration, or the market value consideration was higher than the undervalued transactions would not be reversible.
In relation to transfers to defeat creditors, those transactions would not be reversible if the bankruptcy trustee cannot produce evidence that the debtor's main purpose in the transfers that were made to defeat creditors were done with the intention to prevent or delay other creditors from being paid.
In relation to preferential payments to creditors, those transactions would not be reversible if the bankruptcy trustee cannot provide evidence to show that the transfer were done to give those creditors preference, priority or advantage over the other creditors.

Defences for all voidables:

- Transactions which occurred during the relation back period but were transacted in good faith, in the ordinary course of business and in the absence of notice of a creditor's petition or debtor's petition, are not recoverable under the voidable transaction provisions (s 123).
- 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)).

Defences for particular voidables:

Transfers to defeat creditors:

The transaction is irreversible if the transferee can show that:
(a) the consideration that they gave for the transfer was at least as valuable as the market value of the property; and
(b) they did not know, or could not reasonably have inferred, that the transferor's main purpose in making the transfer was defeating creditors; and
(c) they could not reasonably have inferred that, at the time of the transfer, the transferor was, or was about to become, insolvent.
(Section 121(4) of Bankruptcy Act 1966)

Preferential payments to creditors:
The transaction is irreversible if the creditor can show that the transaction occurred in the ordinary course of business and they acted in good faith and gave valuable consideration at least as valuable as the market value of the property. (Section 122 (2)(a) of Bankruptcy Act 1966)

1.5/3 marks

Question 2.2 [maximum 3 marks]

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?

The Courts determine the scope of the stay by applying the stay under either the Bankruptcy Act, Chapter 5 of the Corporations Act or as the case requires No, it must be a stay from the Bankruptcy Act or Chapter 5 of the Corporations Act, they have to choose one of these. They choose between the two different stays under Chapter 5 of the Corporations Act by appling the test of what "the case requires". However, in relation to a corporate debtor, the courts have to consider what "the case requires". In considering what the case requires, the nature of the proceedings will be considered to determine whether a broader voluntary administration stay is required as is utilized when the foreign proceedings is a business rescue procedure, or a standard liquidation stay will suffice which is utilized when the foreign proceedings is similar to that of a liquidation proceeding. The critical difference being the voluntary administration stay binds secured creditors, and liquidation stay does not.

1.5/3 marks

Question 2.3 [maximum 4 marks]

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

An ipso facto clause is otherwise known as a termination provision, which allows one party of the agreement to terminate or modify the contract upon the trigger of a certain event taking place which in insolvency would be the appointment of an administrator, a liquidator of a receiver. Yes
Ipso facto clauses used in liquidations are used in the event that a liquidator would like to maintain a supply contract to allow for the business to continue functioning during the period before the business is placed into liquidation. No
However, in the instance of a creditors voluntary liquidation, creditors are now restricted from relying on the ipso facto contractual clause to terminate a contract with a company solely on the grounds that the Company would have entered voluntary liquidation. No

Liquidations do not get benefit of ipso facto protection. However, ipso facto clauses that are triggered by a prior voluntary administration or attempt to negotiate a creditors' scheme of arrangement continue to be subject to the moratorium during a subsequent liquidation.

1/3 marks

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

"Australia's insolvency and restructuring options have in the past been very creditor-friendly. However, recent reforms have made Australia more of a debtor-friendly jurisdiction."

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

Australia has been considered as a creditor friendly jurisdiction not only in insolvency but also generally, and there are a few reasons why they have considered the jurisdiction to be creditor friendly.
Firstly, a jurisdiction is considered creditor friendly where creditors rights are protected over the rights of debtors and in a debtor friendly jurisdiction, it is vice versa.
Australia have been considered creditors' rights as most important and as the protection of this as their primary focus. Creditors' right have been said to be protected over the interests of debtors, and also secured creditors whose security consists of the whole of the debtors' property. I think you mean because they can appoint a receiver even though a voluntary administrator has been appointed, but I cannot tell if you know this or have just copied this from somewhere. Secured creditors also are entitled to enforce their rights during bankruptcy and liquidation, and those creditors that have not major creditors can continue to enforce action in relation to perishable property or within the means of the court order. In Australia, recovery from directors is very likely where there is evidence to show that the directors have allowed the company to incur debts during a period where they were insolvent. Transactions are also allowed to be clawed back which is ultimately for the advantage of the creditors. Voidable transactions that are allowed to be clawed back include:

- Unfair preferences – Payments made to creditors that is at a disadvantage to other creditors and allowed that creditor to recover more than what they would have recovered under normal circumstances.
- Uncommercial transactions – Payments that were made that would be considered unreasonable given the Companys' circumstances.
- Unreasonable director related transactions – Payment, transfer of property or issue of shares in favour of a director of a close associate of the director.
- Unfair loans – Loans where the interest charges in relation to the loan at the time were extortionate. and
- Circulating security interests – Floating charges that were created within 6months before the commencement of liquidation.

However there have what has been considered as small shifts towards Australia becoming more debtor friendly. This has been due to a few factors including the introduction of safe harbour scheme and the recent exclusions made towards the "ipso facto" clauses.
Introduced in September 2017, Australia has been it possible for directors to utilise the "safe harbour" initiative which can be used against insolvent trading liability. This initiative makes it easier for the director to allow the company to incur debts all whilst forming a restructuring scheme. Initially, directors were liable for insolvent trading under many circumstances including when the company was insolvent, and debts were incurred which led to the company being insolvent and if the directors failed to prevent the company from incurring the debt. This would have normally led to a compensation order being made against the director, and criminal penalties could also be imposed.
Under the safe harbour initiative, liabilities are not incurred by the directors if they develop course of action to assist with the potential insolvent state of the Company at the point in time when they suspected that the company would become insolvent. These courses of action

however should have depicted that the directors were indeed seeking a better outcome for the company without the need to appoint an administrator or a liquidator.
However, the court will have to consider that the actions taken for the betterment of the company are reasonable including whether the directors had taken reasonable steps to maintain the financial records of the Company and keep up to date with the financial position of the company, whether they obtained advice from experts in relating to potential restructuring scheme and can provide evidence to show that they had implemented the scheme.
Even though the safe habour initiative can be utilised against insolvent trading, it only applies to debts that were incurred directly or indirectly in connection to the proposed course of action, if the company continues to pay their employees in a timely manner and if the company continues to adhere to all tax obligations.
As of July 2018, there have been certain exclusions introduced in the "ipso facto" clauses. An administrator appointed over a company who felt there was a need for the Company to remain trading, could have continue to engage with pre -appointment contracts (including those with employees) and can now be assisted under the ipso facto moratorium. The moratorium can only be utilised if the company is in voluntary administration, and creditors will not be able to rely on ipso facto clauses to terminate a contract with the company just because of the trigger event (the company entering into voluntary administration).
Regardless of the new factors that have been introduced, it is my opinion that Australia is still quite a creditor friendly jurisdiction.

10/15 marks – you identified a number of developments to improve the rights of debtors. You could have also mentioned the new small company restructuring regime for small businesses which is a DIP proceeding (albeit with the supervision of an IP). You could have also discussed the increase in creditors' rights in the insolvency process (eg greater voting rights and to require the IP produce certain information).

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

Question 4.1 [maximum 9 marks]

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?

ATO is not allowed to prove its debt in the Lyonessian liquidation, even though they should have been allowed every right to do so. Why – Lyonessian law says they cannot. Many countries do not let foreign tax creditors prove in liquidation. They are owed AUD 12 million from Aussiebee, who is insolvent with assets worth AUD 20 million located in Australia.
ATO would therefore be advised to open proceedings in Australia, parallel to the proceedings ongoing in Lyoneese. Regardless of Aussiebee being incorporated in Lyonesee, proceedings still can be opened against it. True
To open proceedings in Australia, the Corporation Act allows that the following type of entities are allowed to be wound up in Australia.

- A registered foreign company or
- An unregistered foreign company that is currently or was carrying out business in Australia

According to the facts of the case, Aussibee is incorporated in Lyonesse, but their products are manufactured in Australia by New Yums, and they have warehouses and offices in Australia, employees and board of directors that are currently in Australia. Therefore, the Company can be wound up in Australia as it has satisfied the requirements.
Also, the fact that Aussibee is in proceedings overseas, does not preclude it from being in proceedings in Australia. The Corporations Act allows for a company that is already being wound up overseas to be placed into liquidation in Australia and an Australian liquidator appointed over the proceedings. True
There are three types of corporate liquidation including members voluntary liquidation, creditors voluntary liquidation and compulsory liquidation. As ATO are creditors of Ausssibee they can likely open a creditors voluntary liquidation. No. Creditors voluntary liquidation is commenced by the shareholders resolving to place the company into liquidation, because the directors have informed the shareholders that the company is insolvent. The ATO can apply to the Court for Aussiebee to be placed in compulsory liquidation (under s 583 Corporations Act). In a creditors voluntary liquidation, a liquidator can be appointed by a special resolution of shareholders if the director believes the company is insolvent, and the appointment can be ratified by the creditors at the second meeting of the creditors. Ausssiebee would not be allowed to engage in the new simplified version of the voluntary liquidation, as their total liabilities exceed AUD1 million.

You missed the two main issues in this question:

The ATO should intervene on the recognition application, arguing that:

- The COMI of Aussiebee is Australia, not Lyonesse, and so the assets of Aussibee should not be entrusted to the Lyonessian liquidator:
    - *Ackers v Saad Investments* is the leading Australian decision on COMI. It followed and expressly adopted the principles in *Re Eurofoods IFSC Ltd* that COMI is to be determined having regard to the objectively ascertainable factors of the debtor.
    - Need to displace presumption that place of incorporation is COMI
    - Six of the seven directors are Australians
    - The CEO is Australian (although resident in Lyonesse)
    - The CFO is Australian and resident in Australia
    - Sells Australian product, manufactured by its subsidiary in Australia.
    - Do not know whether Aussiebee holds itself out to be an Australian-based company, but its name and its product seem to indicate that it does.
    - On balance, the ATO is unlikely to succeed on this argument. More likely the Court would find that Aussiebee's COMI is still in Lyonesse, despite the connections to Australia.

- (If the ATO could establish that Aussiebee's COMI was in Australia, it is likely that the Court would not be willing to remit the NewYums shares to the Lyonessian liquidator. The ATO could then have applied to wind up Aussiebee as a foreign company carrying on business in Australia (as you suggested)).

- Applying *Ackers v Deputy Commissioner of Taxation*, that if the Court is to entrust the NewYums shares to the Lyonessian liquidator, then the ATO should give leave to the ATO to take steps to enforce its claim in Australia, expressly for the purpose of recovering an amount up to the pari passu amount the ATO would have received if it were entitled to prove for the tax debt as an unsecured creditor in the Lyonessian proceeding, because this is an appropriate way to ensure that the interests of the ATO as a creditor were adequately protected (Model Law, Art 22).

3/9 marks

Question 4.2 [maximum 6 marks]

Hyrofine Australia Pty Ltd (HA) is a company incorporated in Australia. It is in the business of re-refining waste oil from electric substations in Australia and selling the re-refined oil. All of the shares in HA are owned by HA's parent company, Hyrofine Group Ltd (HGL), also incorporated in Australia. The same Board of directors controls both HGL and HA.

HA operated an oil re-refining plant near Sydney, Australia as a joint venture with Best Oil Refining Pty Ltd (BOR). The joint venture proved to be unprofitable and the plant ceased operations in mid-2020.

HA's major remaining asset is a second re-refining plant that it operates near Perth, Western Australia. This plant has only been in operation for one year. The funding for the Perth plant has been provided by a major shareholder of HGL as an unsecured loan for AUD 30 million. The loan agreement provides that the loan is repayable by monthly instalments over a term of 5 years with the first payment due at the end of 2021. The loan agreement also provides that the loan becomes automatically due and payable in full if HA enters into any formal insolvency or restructuring process in Australia.

HA also owns three large trucks that transport waste oil to the Perth re-refining plant and transport re-refined oil to HA's customers. Those trucks were purchased with a AUD 3 million loan from the Commonwealth Bank of Australia (CBA). That loan is secured by mortgages over the three trucks. The mortgages are not registered on the Personal Property Securities Register.

In July 2020, BOR commenced proceedings against HA in the Supreme Court of New South Wales for damages in respect of the failed joint venture. On 1 October 2020, the Supreme Court found in favour of BOR, ordering that HA pay AUD 4.6 million in damages to BOR.

Between October 2020 and October 2021, HA continued to trade, incurring debts to trade creditors as well as borrowing AUD 5 million from its parent company HGL. It made only a small profit from its Perth re-refining plant.

In October 2021, you are called in to advise the Board of directors of HGL and HA about the financial predicament of HA. The Board tells you that HA has been insolvent since the judgment was handed down in October 2020, because HA does not earn enough from its second refining plant to meet the judgment debt and to start repaying CBA at the end of 2021. The Board also tells you that there is no more funding available for HA's operations, and that they have exhausted all possibilities for refinancing HA's debts.

What do you advise the Board to do about HA? What are the main issues that the board of HGL and HA should be aware of in light of the facts set out above?

There is not much more than can be done about HA, it has been insolvent since the judgement was handed down in October 2020 and does not earn enough funds from the second refining plant to sustain its debt. HA should therefore just be wound up. The Company has undoubtedly incurred further debt from October 2020 and should not incur any further debts due to its position.
The main issued the board of HGL and HA will be faced with are as follows:

- There are a few voidable transactions that have occurred, specifically uncommercial Transactions. It is clear that many of the transactions that occurred where not commercial to the business. The joint venture was proved unprofitable in mid-2020, however the company continued to trade, incurring further debts, however only small profits were made by the second refining plant and unable to cover those debts. There are not sufficient facts to make out uncommercial transactions.
- Other voidable transactions include the unfair loans as the requirements for the repayment of the AUD 30million loan was that if the Company is to be wound up, then the loan becomes repayable in full. This is a standard term and not an unfair term. All it means is that the creditor will get to prove in the liquidation for the full value of the debt as payable at the date of liquidation, instead of as payable at a future date. This is quite extortionate, given that the funding was provided by a major shareholder, as certainly any company in distress should not be obligated to repay a loan in full that is unsecured.
- Insolvent Trading is also an issue. Yes The directors (and also the holding company HGL) can be held liable for insolvent trading under the following circumstances as quoted from the Guidance Text What is the amount of their liability? All debts incurred whilst insolvent:
    - The Company was insolvent when debt was incurred or became insolvent as a result of the debt
    - There were reasonable grounds for suspecting that the company was insolvent
    - The directors failed to prevent the company from incurring the debt
    - The directors were aware that there were reasonable grounds for suspecting the company was insolvent when the debt was incurred.
- The assets of the Company also include three trucks which were purchased by a loan from CBD, and are secured regardless of their registration status. This security is voidable in voluntary administration or liquidation as it was not registered on the PPSR.
- The liabilities of HA also include legal costs payable to BOR in the amount of 4.6m worth of damages.
- Once the Company is wound up and the assets are pooled to be realised for distribution, the liquidators fees and expenses will be covered first, after which the secured creditors will follow. The loan arrangement made between the company and the major shareholder will have to be challenged as this loan was not secured and should be treated as such in any distribution to creditors. Will not need to be challenged, it will just be admitted to proof as an unsecured debt.

The Board should resolve to place HA into voluntary administration, resolving that it is insolvent or likely to become insolvent. They need to be aware that:

- The *ipso facto* clause in the loan agreement will not be triggered by entry into VA, because of the *ipso facto* moratorium in VA (but it will trigger once the company then goes into liquidation or a DOCA after the VA period).

- Immediately before HA enters voluntary administration, the mortgages over the trucks will vest in the voluntary administrator because CBA failed to register its security interests on the PPSR. 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 trucks to create a fund to provide a return to unsecured creditors.

- The VAs, or HGP, could propose a DOCA if HGP is willing to tip in some cash to create a fund to pay creditors (which would incentivise creditors to voite for the DOCA), or if they can find a purchaser for the Perth plant.

- All creditors will get to vote on the DOCA, HGP appears to only be owed $5m so it will not be able to out-vote the other creditors. But HGP's major shareholder is the major creditor of HA, so they will out-vote the other creditors and will presumably want a DOCA rather than a liquidation.

2/6 marks

*** End of Assessment ***

TOTAL MARKS 27/50