



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5A

BERMUDA

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

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

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

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

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment5A]. An example would be something along the following lines: 202223-336.assessment5A. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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

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

- (a) Only when it is balance sheet insolvent.
- (b) Only when it is cash flow insolvent.
- (c) When it is balance sheet insolvent and cash flow insolvent.
- (d) When it is either balance sheet insolvent, or cash flow insolvent, or a valid statutory demand has not been satisfied within a period of three weeks after service on the company's registered office, or if a judgment in favour of a creditor remains unsatisfied.**

Correct

Question 1.2

Who may appoint a provisional liquidator over a Bermuda company?

- (a) A secured creditor.
- (b) A contributory.
- (c) The company itself (whether acting by its directors or its shareholders).
- (d) The Supreme Court of Bermuda.**

Correct

Question 1.3

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

- (i) Preferential creditors.**
- (ii) Unsecured creditors.**
- (iii) Costs and expenses of the liquidation procedure.**
- (iv) Floating charge holders.**

Incorrect - question unanswered

Choose the correct answer:

- (a) Order (i), (ii), (iii) and (iv).**
- (b) Order (iii), (iv), (i) and (ii).**
- (c) Order (iii), (i), (iv) and (ii).**
- (d) Order (i), (iii), (iv) and (ii).**

Correct

Question 1.4

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

- (a) Over 50% in value.**
- (b) 50% or more in value.**
- (c) Over 75% in value.**
- (d) A majority of each class of creditors present and voting, representing 75% or more in value.**

Correct

Question 1.5

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

- (a) Two years.**

(b) One month.

(c) Twelve months.

(d) Six months.

Correct

Question 1.6

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

(a) Only fraudulent conveyances.

(b) Only floating charges.

(c) Only post-petition dispositions.

(d) All of the above.

Correct

Question 1.7

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

(a) At least five.

(b) One is sufficient.

(c) At least 10 or more owning policies of an aggregate value of not less than BMD 50,000.

(d) At least 10.

Correct

Question 1.8

Where do secured creditors rank in a liquidation?

(a) Behind unsecured creditors.

(b) Behind preferential creditors.

(c) Behind the costs and expenses of liquidation.

(d) In priority to all other creditors, since they can enforce their security outside of the liquidation.

Correct

Question 1.9

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

(a) Section 237 of the Companies Act 1981.

(b) Section 238 of the Companies Act 1981.

(c) Section 247 of the Companies Act 1981.

(d) Section 158 of the Companies Act 1981.

Correct

Question 1.10

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

(a) Resign immediately.

(b) File a Suspicious Transaction Report forthwith.

(c) Make a written report to the Registrar of Companies within 30 days of reaching the view that there is a reasonable likelihood of a segregated account or the general account becoming insolvent.

(d) Notify the directors, creditors and account owners within 28 days.

Correct

9 out of 10 marks

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

Question 2.1 [maximum 4 marks]

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In what circumstances may a provisional liquidator be appointed?

A Provisional Liquidator ("PL") may be appointed pursuant to Section 170(2) of the Companies Act 1981 during the time between the first winding-up petition is made and the final hearing for winding up order is granted. Such powers to appoint a PL is only conferred to the court. If the court deems that appointment of PL is for the benefit of creditors and the situation warrants the appointment of PL. Such situation typically involves high probability of assets diminishing in a short span of time where a third-party needs to be appointed to monitor and closely watch the business operations. If there is a chance of turning around the company, a PL may also be appointed so that there is a stay on legal actions against the company and a soft-touch provisional liquidation can take place to restructure the company.

Correct - 4 marks

Question 2.2 [maximum 2 marks]

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

The transactions subject to set-off must be genuine and not subject to fraudulent preference or fraudulent conveyance. These transactions must be relating to the same type of contract, with the same parties performing the same role eg. providing same service / goods in the relevant transactions. These transactions must have been entered into before the winding up and the debts must have fallen due or become due and payable.

Largely correct, but a little bit inaccurate and incomplete in its paraphrasing of the relevant legislative provisions.

1 mark.

Question 2.3 [maximum 4 marks]

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

1. *A legal mortgage - in exchange for a consideration, the debtor may pass the legal title of an asset to a creditor. While the debtor retains the asset, the legal title of the asset is held by the creditor, and this continues until such time the debts have been cleared.*

2. *Fixed charge - A creditor may also obtain a fixed charge against an asset that gives them the right to take possession and sell the asset in the event of default. In the event of default, a fixed charge secured creditor may sell the asset without notice to other creditors and apply the sales proceeds towards sums due to them. During such*

time the asset is subject to a fixed charge, the debtor may not sell or dispose the asset without approval by the fixed charge holder.

3. **Floating charge** - for movable assets and/or specific intangible properties, a creditor may take a floating charge security. Such floating charge only materializes upon an event of default and at that instant, converts to a fixed charge attached to the balance of the relevant assets remaining on the date of default. Prior to the occurrence of an event of default, the debtor may deal with the assets as they deem fit, without consulting or getting approval from the creditor.

It is important to note that any security agreement that is entered into should also be filed as soon as practicable with the Registrar of Companies in Bermuda. This is to ensure that the security interests are perfected. Security interests registered with the Registrar maintains precedence over security interests that have not been registered or are registered at a later date. This act of registration with the Registrar also serves as notice to third party as the register is publicly available.

Correct - 4 marks

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

Question 3.1 [maximum 8 marks]

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

There is currently no statutory law that legislates the recognition and assistance granted by Bermuda courts to foreign liquidators. In the case of *Cambridge Gas Transportation Corp v Navigator Holdings plc*, the Privy Council held that as a matter of common law, the Supreme Court of Bermuda can recognize liquidators appointed by a foreign court and similarly the corresponding foreign winding up order. The Bermuda courts determine the scope and type of recognition and assistance to be granted to the foreign liquidator. The Bermuda courts typically follows the principle that recognition and assistance may be provided to the extent allowed if the winding up had taken place in Bermuda or as allowed for by Bermuda laws. The scope that such recognition and assistance may be granted is subject to discussions and has been highlighted in the recent cases in *Singularis Holdings Limited v PricewaterhouseCoopers* and *PricewaterhouseCoopers v Saad Investments Company Limited*. In these cases, the Privy Council held that the assistance that may be granted should be restricted to those that are available in the foreign jurisdiction and in Bermuda locally and any assistance granted must also not be contrary to public policy.

Summarily, recognition and assistance are most likely to be granted / provided to foreign liquidators by the Bermuda Court when the following conditions are met:

(1) *There is an established nexus between the foreign entity and the foreign court that makes the foreign court the most suitable forum for an order granting the appointment of foreign liquidator be made.*

(2) *The foreign entity conducts its affairs in Bermuda and has records, properties or debts in Bermuda. The foreign entity has conducted business via its officers and agents in Bermuda and/or is required to be a party to ongoing proceedings within Bermuda; and*

(3) *Providing assistance does not contravene any public policy.*

The privy council highlighted that the extent that common law allows assistance to foreign liquidators is on a case-by-case basis and dependent on the type of assistance that is being sought. The power of the Bermuda court to grant an order to produce documents is limited to cases where it is deemed essential to support the foreign court officer. The Bermuda court is not able to assist with voluntary liquidations, which are deemed to be an informal agreement. If the foreign court does not allow for the order to be granted, the Bermuda court will not be able to grant such order. Any orders made by the Bermuda courts must adhere to the local laws in Bermuda and public policy.

*In the case of *Stephen John Hunt v Transworld Payment Solutions UK Limited*, the Supreme Court of Bermuda did not recognise the appointment of a foreign liquidator from UK as assistance had not yet been sought and such assistance if sought would be rejected, given that there are proceedings in England and Wales and other sources of information available to the respective parties.*

It is common for Bermuda exempted companies to do business in foreign countries, be listed in foreign exchange and be subject to foreign insolvency regulations. If winding up proceeding is not taking place in Bermuda, typically, there will be supplementary liquidation proceedings in Bermuda in parallel or recognition and assistance from the Bermuda Supreme Court will be subsequently sought by the foreign liquidator.

[Largely correct, subject only to typographical errors.](#)

[8 marks.](#)

Question 3.2 [maximum 7 marks]

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

There are steps required to be undertaken for a foreign court judgment to be enforceable in Bermuda. Depending on the type of judgment, one may rely on

statutory and/or common law to decide how to take such steps for enforcement or registration. Generally, the following applies for the registration and enforcement of various types of judgements:

(a) *Judgments (Reciprocal Enforcement) Act 1958 (the "1958 Act") applies to final money judgments in superior courts from UK and certain commonwealth countries and for final money judgments from other countries that are not listed within the 1958 Act, common laws apply.*

(b) *Maintenance Orders (Reciprocal Enforcement) Act 1974 (the "1974 Act") applies to foreign maintenance orders made by courts of reciprocating countries*

~~(c)~~ *Recognition of foreign judgments in Bermuda proceedings is governed by both statutory and common law rules. They determine the applicability of foreign judgments as a defence against a claim or as conclusive evidence for ongoing disputes within the Bermuda proceedings.*

(d) *The Divorces and Legal Separations Act 1977 applies to recognition of divorces and legal separations.*

Other statutory or common law regulation applies to other types of judgements e.g. arbitration awards, etc. Foreign money judgment that is not defined in the 1958 Act or the common law may not be registered or enforced by application to Bermuda courts.

The 1958 Act also allows for UK judgments granted by superior courts be registered in Bermuda as if it was an order granted locally. This is also extended to Commonwealth countries as set out in Appendix II of the 1958 Act.

A foreign judgment registered under the 1958 Act can be set aside if it fulfils the following criterion:

(a) *It is not defined in the 1958 Act or was registered contrary to the 1958 Act*

(b) *The foreign court was not the appropriate forum to grant such order*

~~(c)~~ *Notice was not given, or too short of a notice was given to defendant to respond and defendant was not present at the hearing when judgment was made*

(d) *It was obtained by deception*

(e) *The party making the application had no right to such claims*

A registration may be set aside if the Bermuda court takes the view that the issue had already been dealt with at the appropriate forum prior to the date of such foreign judgment being made. The courts of Bermuda may not set aside the registration of foreign judgment solely due to the reason that it is not fair or equitable or it is contrary to public policy for such registration or enforcement to take place.

Foreign judgments that are not defined under the 1958 Act is governed by the common law, which deems these judgments as proof of claims and requires distinct legal proceedings to be undertaken. Pursuant to common law, a foreign money judgment will be registered and enforced if:

- (a) *it is a definitive and ultimate order made by the foreign court*
- (b) *the foreign court was the appropriate forum to grant such order*
- (c) *it was not obtained by act of deceit*
- (d) *it does not pertain to statutory debts owed to the foreign country e.g. Taxes, fines and penalties*
- (e) *it is not contrary to public policy*
- (f) *principles of natural justice were upheld*

In general, any judgment that deviates from or fails to adhere to the UK common law in relation to recognition and enforcement of foreign judgments will not be successful.

A final and conclusive foreign judgment granted by a foreign court with jurisdiction may be registered pursuant to common law and can be used as evidence in other legal cases in Bermuda. If a judgment is granted in favour of one party by a foreign court, said party is not allowed to commence the same proceeding in Bermuda, unless such foreign judgment cannot be registered or enforced in Bermuda.

*The recognition and enforcement of foreign Schemes of Arrangement in Bermuda under common law is uncertain. While the Bermuda courts have recognized foreign court orders approving such schemes, it is unclear what position the courts will take in the event of disputes. This is seen in the cases *Re C&J Energy Services Ltd*, *Re Energy XXI* and *Re Seadrill Limited*.*

[Correct - 7 marks](#)

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

Bercoffee Limited (the Company) was incorporated in 2019 as an exempt Bermuda company; as the parent company in a group of companies with a direct subsidiary incorporated in the British Virgin Islands; with indirect trading subsidiaries incorporated in the People's Republic of China (PRC); and with offices and a substantial business presence in Hong Kong. The Company's trading operations in the PRC involves coffee shops and other retail businesses associated with coffee and hot drinks.

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

It was subsequently disclosed that the Company had fraudulently misrepresented its financial performance in the offering documents associated with the bonds, with the consequence that the US bondholders were entitled to demand immediate repayment by the Company of the sum of USD 500 million, even though that money had already

been transferred to the Company's indirect subsidiaries in the PRC, and was incapable of being returned due to local currency control restrictions and associated Chinese legal issues.

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

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

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

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

Using the facts above, answer the questions that follow:

Question 4.1 [maximum 7 marks]

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

(a) Possible jurisdictions to take action - Hong Kong, Bermuda, BVI, PRC, US

Practically, it may be easiest for US Bondholders to sue for a breach pursuant to Securities Act of 1933 in US as there exists fraudulent misrepresentation in the offering documents for these bonds issued in US, which are likely governed by US law. With the US judgement order, the Bondholders may then seek recognition where the assets of Bercoffee Limited ("BL") are located at and seek enforcement. However, this would mean that additional costs will have to be incurred to seek recognition of foreign judgement and enforcement as BL does not have other assets in US.

BL's assets are largely located in Hong Kong which can be easily enforced against with a Hong Kong order. However, the claim of US Bondholders is against BL, which is incorporated in Bermuda and BL may not have a direct connection to the assets in Hong Kong. It is more likely for US Bondholders to get a successful order in their favour

in Bermuda courts and then to subsequently seek recoveries in BVI via the direct subsidiary and indirect subsidiaries in Hong Kong and PRC.

US bondholders may attempt to also take action in PRC, however, as there are restrictions to capital outflows, it may not be possible to remit funds out and the associated Chinese legal issues, the enforcement of the judgment order may not be possible even if such order is granted in their favour.

(b) & (d) defendants and causes of action against potential defendants - directors of BL, shareholders of BL, BL directly, subsidiary in BVI, indirect subsidiaries in Hong Kong and PRC

1. Directors of BL

As the directors had fraudulently misrepresented the financials of BL on offering documents of the bonds, the directors may be held personally liable for such misrepresentation and losses due to the bondholders. The bondholders may commence negligent claims against the directors of BL.

Directors are also in breach of duty of care to the company - for failing to make payment on time pursuant to the Hong Kong judgment and subsequently charging the assets to Lendbank for additional financing and making bonus payments of USD20m to directors and USD30m of dividends to shareholders when BL may be insolvent or would have become insolvent as a result and continuing trading while insolvent. However, US bondholders may not have the direct locus to make such claims and this claims and actions should be undertaken by the appointed liquidator on behalf of the company instead.

2. Shareholders of BL

Claims against shareholders of BL for receipt of unlawful dividend when BL is insolvent or may have become insolvent as a result of the dividend payment. Similar to the above, as US bondholders do not have the locus to make such claims, this should be undertaken by the appointed liquidator on behalf of the company instead.

3. BL

Winding up proceedings against BL for default in making payment within the 21 days as set out in the statutory demand. Liquidator appointed will undertake recovery action for all creditors of BL's estate.

4. Subsidiary in BVI

To seek recognition and enforcement of judgement order (US, Bermuda or otherwise) against BL's assets, including its subsidiary in BVI and its shares in other indirect subsidiaries. Or if liquidators have been appointed to BL, the liquidator to realize the shares in the BVI subsidiary.

5. Indirect subsidiaries in Hong Kong

To seek recognition and enforcement of judgement order (US, Bermuda or otherwise) against BL's assets, including its indirect subsidiaries in Hong Kong. Or if liquidators have been appointed to BL, the liquidator to realize the assets in Hong Kong indirect subsidiaries.

6. Indirect subsidiaries in PRC

To seek recognition and enforcement of judgement order (US, Bermuda or otherwise) against BL's assets, which includes the USD500m transferred to PRC. Or if liquidators have been appointed to BL, the liquidator to realize the assets in PRC indirect subsidiaries. This, however, can prove to be practically challenging in view of the currency restrictions and local Chinese legal issues.

(c) Pros and cons of litigation as opposed to insolvency proceedings

Litigation may be a long-drawn process and can take significant time to conclude, which may end up being very costly. Insolvency proceedings are relatively more straightforward and can be concluded in a shorter timeframe and thus cost less. Given that BL has not fulfilled the statutory demand within 21 days, it is proven that BL is insolvent and can and should be wound up on insolvency grounds.

Litigation outcomes may be uncertain and unpredictable, depending on the matters that come to light during the process and is subject to the judge's view. It can however result in settlement being made if both parties do not want to incur additional costs to conclude the dispute.

It is noted that if there are news of winding up proceedings being commenced, it may result in significant discount being applied to the assets held by BL and adversely affect the recoveries of US Bondholders. Hence, insolvency proceedings should only be commenced if discussions fall through, and likelihood of recoveries or settlement via alternative options is low.

A thoughtful and complete answer - 7 marks

Question 4.2 [maximum 8 marks]

To what extent would it be open to Bercoffee Limited to try to take steps to restructure its debt obligations, and how and where could it do so? Consider whether it would be

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

BL can look to restructure its debts in Bermuda, Hong Kong and possibly PRC. These options are discussed in further detail below.

1. Bermuda restructuring

Directors of BL may wish to restructure through an informal work out and discussion with creditors, but this requires all creditors consent and during such time BL will be subject to enforcement actions by creditors. While it is the directors’ duty to take steps to rehabilitate the company by taking steps to restructure, it may be more effective to conduct such restructuring by way of a soft-touch provisional liquidation. Directors may choose to appoint a provisional liquidator, to allow BL the benefit of the automatic stay of proceedings for companies in provisional liquidation while a scheme of arrangement is being worked out to prevent any creditor from disrupting the process by commencing litigation and/or winding up proceedings. Noting that BL has business dealings in other jurisdictions, it is likely that BL may be subject to other enforcement proceedings in foreign jurisdictions, which may disrupt the restructuring process. Hence, a soft-touch provisional liquidation is required to offer protection against further enforcement actions.

A Scheme of Arrangement can be adopted to implement a debt-to-equity swap as it is a procedure designed to allow an entity to restructure its debt and equity. A scheme requires consent from majority in number representing at least 75% in value of each class of creditors and/or members present and voting. The Bermuda court has jurisdiction to sanction such a scheme.

Any transfer of shares of a Bermuda exempt company, which BL is, will require approval of the Bermuda Monetary Authority. Hence, the scheme will also require the approval of the Bermuda Monetary Authority for the cancellation of existing shareholders’ shares and issuance of new shares (swapping of debt to equity).

2. Hong Kong restructuring

It can be argued that BL’s centre of main interest is in Hong Kong, where its assets are in and where BL conducts its business.

There is no formal restructuring procedure available under Hong Kong law. However, it is possible to negotiate an informal work-out. Similar to Bermuda law, this will require consent of all creditors. Pursuant to the directive of the Hong Kong Association of Banks and the Hong Kong Monetary Authority, lenders are generally encouraged to discuss restructuring options with borrowers. Without co-operation

from all creditors, a scheme of arrangement may be more effective to drive a successful restructuring that is binding on all creditors.

Pursuant to Division 2 of Part 13 of the Companies Ordinance (Cap. 622 of the laws of Hong Kong), a scheme of arrangement requires approval from majority in number and at least 75% in value of each class creditors or members present and voting. The scheme will become binding on all such classes once approved by court, including dissenting creditors and members. The Hong Kong courts have discretion on the decision to sanction any scheme. Factors that the courts will consider include: (i) if statutory requirements have been complied with, (ii) whether there is fair representation of each class acting in good faith voting in favour, and (iii) whether the interest of all classes of creditors / members are not prejudiced. Where creditors / members have varying / conflicting interests, they should be split into different classes and be required to vote separately and have separate discussion on any proposed scheme.

Similar to the Bermuda scheme of arrangement, no protection is provided against enforcement actions by creditors and a provisional liquidator may have to be appointed to protect BL from such enforcement actions.

The recognition and enforcement of foreign Schemes of Arrangement in Bermuda under common law is uncertain. While the Bermuda courts have recognized foreign court orders approving such schemes, it is unclear what position the courts will take in the event of disputes. Hence, it is more advisable to proceed with the restructuring process directly in Bermuda, or if there requires a proceeding in Hong Kong, the proceeding in Hong Kong should be conducted in parallel to that in Bermuda.

3. Others - PRC

BL may also consider making an application in PRC for restructuring of its debts as it has operations in PRC and having a parallel restructuring procedure in Bermuda. As PRC's regulations in restructuring and insolvency has not been substantively developed and largely only been applied locally, to ensure that interests of offshore stakeholders are adequately protected, a parallel procedure in Bermuda is required.

As it is not a straightforward case for BL, given the complexity of the structure of the group, it would be prudent to conduct a parallel scheme in both Bermuda and Hong Kong to ensure the interests of all stakeholders are adequately protected.

[This is a thorough and well considered answer - 8 marks](#)

[Total: 48 out of 50 marks](#)

*** End of Assessment ***