



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 - not answered**

**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?**

*[Generally speaking, a provisional liquidator (“PL”) may be appointed if there is a good prima facie case that a winding-up order would be granted by the Court and if the Court considers that it is right that PLs should be appointed in the circumstances of the case (e.g. where assets of the company are in jeopardy or where there is a need for independent control and supervision): see Re Stewardship Credit Arbitrage Fund Ltd [2008] Bda LR 67 at [35]-[36]. Specifically, there is risk of dissipation of assets after the presentation of winding-up petition and before the substantive hearing for the petition, a PL may be appointed since it would be in the best interest of creditors to do so.*

*Alternatively, PL may also be appointed on urgent basis where a restructuring may be achieved under the supervision by an independent officer of the court with the benefit of a general stay of legal proceedings. Such a “soft touch” PL would generally be provided with specific powers to implement a restructuring, which is intended to support both formal and informal restructuring plans that have good prospects of success as well as majority creditors’ support: see, e.g., Re Up Energy Development Group Limited [2016] Bda LR 94 at [24].]*

**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?**

*[Rights of set-off can be exercised after the commencement of liquidation of a company in Bermuda when:-*

*(a) The debts from which set-off arise were incurred before the commencement of winding-up and have then crystallized as monetary payment liabilities;*

*(b) The transaction in question does not constitute a “fraudulent conveyance” under sections 36A-36G of the Companies Act 1981 or a “fraudulent preference” under sections 237-238 of the Companies Act 1981; or*

*(c) There are mutual dealings between the parties, which means that the parties giving rise to the debt in question are identical to the parties giving rise to the credit in question and that the capacity in which such parties have contracted with each other is the same.]*

**Correct - 2 marks**

Question 2.3 [maximum 4 marks]

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

*[First, a creditor may take security over assets by way of legal mortgage, that is, by transferring the legal title of the debtor's assets to the creditor as security for a certain debt. Such legal title would be reconveyed by the creditor to the debtor until full payment and satisfaction of the debt in question. This applies to immovable, movable and limited intangible properties.*

*Second, security may be created by way of fixed charge. A fixed charge does not involve transfer of legal or beneficial ownership. Instead, the creditor would be given the right to take possession of the property together with right of sale in case of default. Upon sale of the charged asset by the creditor, the proceeds of sale may be used by the creditor to settle the debt regardless of other unsecured creditors of the debtor. The debtor then may not deal with the charged property without consent of the creditor. This again applies to immovable, movable and limited intangible properties.*

*Third, security may also be created by way of pledge, which means the creditor would take (actual or constructive) delivery or possession of the pledged assets until the debt is fully paid or settled. This applies to movable and certain intangible properties.]*

**Correct and to the point - 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.**

*[As a starting point, insofar as the basis for recognition and assistance is concerned, the Bermuda Court derives its jurisdiction from common law to recognize and assist foreign liquidators: see *Cambridge Gas Transportation Corp v Navigator Holdings plc* [2017] 1 AC 508. In doing so, according to the Privy Council, the Bermuda Court has a discretion under its common law powers to provide assistance, "by doing whatever it could have done in the case of a domestic insolvency" so as to "enable the foreign office holder or the creditors to avoid having to start parallel insolvency proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum": see *Cambridge Gas Transportation Corp* (*supra*) at [22].*

*In contrast, there is no statutory basis for recognition and assistance of foreign liquidators in Bermuda. Specifically, Bermuda did not enact any legislation adopting the UNCITRAL Model Law on Cross-Border Insolvency (and does not have any statutory equivalent of, e.g., Chapter 15 of the Bankruptcy Code of the US or section 426 of the Insolvency Act 1986 of the UK). Foreign liquidators therefore cannot rely on any statutory provisions and/or UNCITRAL Model Law on Cross-Border Insolvency to seek recognition and assistance from the Bermuda Court.*

*As regards the circumstances in which foreign liquidators might or might not be granted recognition and assistance, the Privy Council's decisions in *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36; [2015] 1 AC 1675 and *PricewaterhouseCoopers v Saad Investments Company Limited* [2014] UKPC 35 suggest that the Bermuda Court may recognize the winding-up order made by a foreign court and assist the liquidators appointed by such court to the maximum extent possible where:-*

- (1) **Sufficient connection:** There is a 'sufficient connection' between the foreign court's jurisdiction and the company such that such jurisdiction can be considered as the most appropriate jurisdiction for granting the winding-up order of the company and appointing liquidators over the company;*
- (2) **Connection with Bermuda:** There should exist assets, liabilities or documents of the company in Bermuda, or the company should have (directly or indirectly) conducted business either in or from Bermuda, or the company should have former directors, officers, agents or managers in Bermuda; and/or there should be a need for the company to be involved in litigation or arbitration in Bermuda; and*
- (3) **Public policy:** There should not be, as a matter of Bermuda law, any public policy grounds requiring that no recognition and assistance be granted. A clear example would be that the recognition and assistance sought would cause unfairness or prejudice to creditors in Bermuda.*

*In the premises, (even though the Privy Council did stress that each case turns on its own facts,) it is expected that if any of the factors are not met in a certain case, it would be more likely that the foreign liquidators in question may not be granted recognition and assistance.,.*

*In addition:-*

- (4) **The Bermuda would not grant recognition and assistance where the liquidation in question is only a voluntary winding-up (as opposed to a court-led(compulsory) winding-up); and***

- (5) *Where the foreign liquidators sought powers to do something that they could not have done under the law of the jurisdiction in which they were appointed, the Bermuda Court would also probably refuse to grant the recognition and assistance sought.*

*Lastly, it should be noted that it remains uncertain whether the Bermuda Court may exercise its common law powers to recognize and enforce foreign schemes of arrangement (or other relevant procedures such as an insurance business transfer scheme).]*

[Correct and well-considered summary: 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.**

*[Under Bermuda law, a foreign court judgment will not be registered or enforced in Bermuda in the following circumstances:-*

- (1) *The foreign judgment falls outside the scope of, or is not registered in accordance with, the Judgments (Reciprocal Enforcement) Act 1958 (the "1958 Act") and the regulations made thereunder.*
- (2) *The foreign judgment falls within the scope of specified statutory rules for registration in Bermuda, but the judgment is not registered in accordance with such statutory regimes. For example, in the case of a foreign maintenance order, the Maintenance Orders (Reciprocal Enforcement) Act 1974 (and the regulations made thereunder) should be followed;*
- (3) *The foreign judgment contravenes the common law rules in respect of enforcement of foreign judgments in general. For instance:-*
  - (a) *The foreign judgment is not "final and conclusive";*
  - (b) *The foreign court had no jurisdiction to grant the judgment in question in the circumstance of the case;*
  - (c) *The rules of natural justice were not observed (e.g., the judgment was a "default judgment" but the defendant did not timely and duly receive notice of the proceedings in the foreign jurisdiction);*
  - (d) *The foreign judgment was obtained by fraud;*
  - (e) *The foreign judgment was for taxes, fines or penalties; or*
  - (f) *The enforcement of the foreign judgment would go against the public policy of Bermuda (except for the case of the 1958 Act according to the*

*case of Masri v Consolidated Contractors International Company [2009] Bda LR 12);*

- (4) *The applicant for registration of the foreign judgment did not have rights to enforce the judgment. In other words, the rights under the judgment are not “vested” in the applicant.*

*Insofar as foreign schemes of arrangement are concerned, it should be noted that the Bermuda Court frequently approves parallel schemes of arrangement linking Bermuda with the UK, Singapore and/or Hong Kong (see, e.g., Re Titan Petrochemicals Group [2014] Bda LR 90).*

*That being said, it remains uncertain as to whether the Bermuda Court may exercise its common law powers to enforce foreign schemes of arrangement in the absence of a local scheme of arrangement implemented in Bermuda in parallel in contentious situations.]*

[A well-drafted answer: 7 points](#)

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. Litigation: Obtaining money judgment against the Company**

**First, the US bondholder may sue the Company based on its failure to immediately repay USD 500 million upon the occurrence of the event of default (that is, the Company's fraudulent misrepresentation about its financial performance in the offering documents associated with the bonds).**

**Based on the available facts, it is uncertain as to whether the US bondholders should sue the Company in Bermuda or the US (which depends on, among other things, the governing law and dispute resolution provisions of the bond). There are two scenarios:-**

- (i) If parties have submitted to the jurisdiction of courts other than the Bermuda Court (e.g., the US Court), then the US Bondholders should bring legal proceedings against the Company in such designated jurisdictions (e.g. in the US). In such case, after judgment is obtained, the US bondholder may take steps in Bermuda to register and enforce the judgment provided that the relevant statutory or common law rules for enforcement of foreign judgments can be satisfied.**

(ii) *Alternatively, if parties have submitted to the jurisdiction of the Bermuda Court, then the US Bondholders may bring legal proceedings against the Company and obtain judgment directly in Bermuda.*

*After judgment is obtained (in either of the scenarios above), it does not necessarily follow that the US Bondholders may recover the sum of USD 500 million from the Company. In this case, the Company seems to operate its business mainly in Hong Kong and the PRC through its subsidiaries, and it remains unclear that whether the Company has (substantial) assets in Bermuda. If the Company does not have substantial assets in Bermuda that may satisfy the money judgment to be obtained by the US Bondholders, then the money judgment may not assist the Company in recovering the sum of USD 500 million from the Company.*

*That said, if the Company indeed have substantial assets in Bermuda, then the US Bondholders may enforce the judgment and recover sums from the Company which need not be shared with other general creditors of the Company.*

**b. Insolvency proceedings: presenting winding-up petition against the Company**

*Alternatively, the US Bondholders may also proceed to present a winding-up petition against the Company on the ground that it is unable to pay its debts under section 161 of the Companies Act 1981. Since the Company's directors decided to ignore the statutory demand issued by the US Bondholders, it is likely that the Company would fail to satisfy the statutory demand within 21 days after its issuance, in which case the Company would be deemed to be unable to pay its debts under section 162 of the Companies Act 1981, allowing the US Bondholders to present a winding-up petition against the Company.*

*Immediately after (or at the same time as) the winding-up petition is presented against the Company, the US Bondholders may apply to the Court for appointment of provisional liquidators given the dissipation of assets of the Company by its directors by way of (i) payment of bonus to directors in the sum of USD 20 million and (ii) payment of dividend to the Company's shareholders in the sum of USD 30 million. Based on the facts of the case, there is a *prima facie* case that a winding-up order would be made and there is dissipation of the Company's assets, which calls for independent control and supervision. In the circumstances, there may be a reasonable chance that the Bermuda Court would appoint provisional liquidators over the Company before the substantive hearing for the winding-up petition.*

*The said provisional liquidators of the Company (or the liquidators of the Company to be appointed at the subsequent stage) should take steps against the directors of the Company for (i) misfeasance under section 247 of the Companies Act 1981 and (ii) unlawful return of capital under section 54 of the Companies Act 1981.*

*The liquidators of the Company (once appointed) may also take steps to take control of the subsidiaries of the Company by seeking recognition and assistance from foreign*

courts (subject to relevant rules in the foreign jurisdictions). For instance, it may be difficult for the liquidators of the Company to take control of the PRC subsidiary of the Company and to remit the funds out of the PRC subsidiary back to the Company.

Also, all the sums recovered by the liquidators should be distributed in accordance with the statutory priority rules and in the case of general creditors (including the US Bondholders), the *pari passu* rule. In this case, LendBank, as floating charge holder, would enjoy a higher priority over the US Bondholders. As such, it remains unclear as to whether the US Bondholders may recover the sum of US 500 million in full.]

**This is a thorough and well-considered analysis.**

**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).**

[In essence, the Company may take steps to restructure its debts by (1) appointment of “soft touch” provisional liquidators and/or (2) introduction of schemes of arrangement.

**a. Appointment of “soft touch” provisional liquidators**

First, following presentation of a winding-up petition against the Company (either by the Company itself or other creditor(s) of the Company), the Company may apply to the Bermuda Court for appointment of “soft touch” provisional liquidators. Upon appointment of the “soft touch” provisional liquidators, the board of directors may still retain control over the company, and the board may take steps to restructure its debts (including both informal negotiations with the Company’s creditors and introduction of formal schemes of arrangement (see below)) under the supervision of the said “soft touch” provisional liquidators and the Court.

A key advantage of appointment of “soft touch” provisional liquidators is that the said provisional liquidators may apply for a statutory stay of all legal proceedings against the Company (i.e., a statutory moratorium) so as to facilitate any restructuring work-out process led by the Company.

Insofar as cross-border issues are concerned, since the principal business activities of the Company (via its subsidiaries) appear to take place in Hong Kong, the Bermuda



***Court may issue letters of request to the Hong Kong court for recognition and assistance to the “soft touch” provisional liquidators appointed in Bermuda: see, e.g., Re Sea Containers [2012] Bda LR 33 and Hughes v Hannover [1997] 1 BCLC 497.***

***For completeness, the Company is not advised to directly apply to the Hong Kong Court for appointment of “soft touch” provisional liquidators in Hong Kong (and then seek the Bermuda Court’s recognition of the same) because, as a matter of Hong Kong law, the Hong Kong Court declines to appoint provisional liquidators solely for the purpose of pursuing corporate rescue: see, e.g., Re Legend International Resorts Ltd [2006] 2 HKLRD 192; [2006] 3 HKC 565.***

***b. Introduction of (parallel) schemes of arrangement***

***Second, regardless of whether provisional liquidators are appointed or not, the Company may use schemes of arrangement to reorganize/restructure its debts. Specifically, should the scheme of arrangement be sanctioned by the Court, it may (subject to the terms of the scheme) result in a compromise of all classes of debts of the Company even though only part of the creditors agree to the scheme (see below).***

***As a matter of procedure, the Company should first apply to the Court for convening creditors’ meetings (if there are more than one classes of creditors, a meeting should be convened for each of such class). Upon approval and direction by the Court, the Company should issue notice to such creditors for the meeting and advertise the same.***

***If the Company obtains agreement from majority within each class of creditors (representing 75% in value in each of the classes) present and voting at the meeting of such class, the Company may then apply to the Court for sanction of the scheme. In exercising its discretion to sanction the scheme, the Court would consider whether all the statutory requirements (including convening of the creditors’ meeting and approval of the requisite majority of creditor) have been met and whether the scheme is fair to creditors generally. Once the Court has sanctioned the scheme and a copy of the court order has been delivered to the Registrar of Companies, the scheme would take legal effect.***

***If the Company has been wound-up, then the scheme would be conducted by the liquidators of the Company. Otherwise, the scheme would be conducted by the board of directors of the Company (under the supervision of provisional liquidators, if any).***

***Since the Company is incorporated in Bermuda and has its principal business in Hong Kong, the Company should consider introducing parallel schemes in both Bermuda and Hong Kong so as to cover as many liabilities owed by the Company and its subsidiaries as possible.***

***Further, the Company is advised to conduct parallel schemes in both Bermuda and Hong Kong also because there remains uncertainty as to whether the Bermuda Court would sanction standalone foreign scheme(s) of arrangement that is not supported by***

*a local scheme of arrangement in Bermuda in contentious context. In the present case, since the US Bondholders may not agree to the scheme (such as the scheme may not be sanctioned in non-contentious context), it may be risky for the Company to elect to only introduce a scheme of arrangement in Hong Kong.*

*That said, the Company should also consider the potential costs and expenses involved in the parallel scheme. If the Company has insufficient funds, it may be advised to introduce a scheme of arrangement only in Bermuda.*

*Finally, if the debt restructuring involved a "debt-for-equity" swap, the Company is highly recommended to introduce a local scheme of arrangement providing for the same in Bermuda to facilitate the processes of allotment of new shares and cancellation of old shares. Also, if transfer of shares is involved, it should be noted that transfer of shares in the Company (being an exempt Bermuda company) would be subject to the approval of the Bermuda Monetary Authority.]*

[This is a thorough and well-drafted answer.](#)

[8 marks](#)

[TOTAL: 49 out of 50.](#)

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**\* End of Assessment \***