



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 202223-336.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 dealing 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 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 9 pages.**



**ANSWER ALL THE QUESTIONS**

Commented [BB1]: TOTAL = 30/50 (60%)

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

Commented [BB2]: Sub-total = 9 marks

**Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph in yellow. Select only ONE answer. Candidates who select more than one answer will receive no mark for that specific question.**

**Question 1.1**

Select the correct answer:

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

- (a) apply to AFSA or ASIC for the decision to be reversed or varied.
- (b) apply to the bankruptcy trustee or liquidator for the decision to be reversed or varied.
- (c) bring court proceedings for a money judgment in respect of the debt.
- (d) apply to the court for the decision to be reversed or varied.**

**Question 1.2**

**Which of the following is a debtor-in-possession process?**

- (a) Small company restructuring.**
- (b) Bankruptcy.
- (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.**
- (b) Deed of company arrangement.
- (c) Creditors' voluntary liquidation.
- (d) Voluntary administration.
- (e) Small company restructuring.

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 100,000 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 debt agreement under Part IX.**
- (b) A voluntary administration followed by a deed of company arrangement.
- (c) A small company restructuring.
- (d) A deed of company arrangement.

Question 1.5

Select the correct answer:

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

- (a) Wages earned by the bankrupt.
- (b) Fine art.
- (c) Choses in action relating to the debtors' assets.
- (d) The bankrupt's family home.

**(e) Superannuation funds.**

Question 1.6

**Which of the following claims are not provable in a liquidation?**

- (a) Future debts**
- (b) Contingent claims**
- (c) Penalties or fines imposed by a court in respect of an offence against a law**
- (d) Claims for damages for personal injury**

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.**
- (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.**

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

Commented [BB3]: The correct answer is (d)

**(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.**

Question 1.10

Select the correct answer:

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

- (a) An *ipso facto* moratorium in voluntary administrations and liquidations.**
- (b) Simplified restructuring and liquidation regimes for small companies.**
- (c) Reducing the default bankruptcy period from three years to one year.**
- (d) A safe harbour from insolvent trading liability.**

**MULTIPLE CHOICE: 9/10**

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

**Commented [BB4]:** Sub-total = 8 marks

Question 2.1 [maximum 3 marks]

**Name the five types of voidable transactions that can be reversed by a liquidator on application to the court, and explain whether it is a complete defence to each of these**

**types of voidable transactions if the defendant proves that they were not aware that the company was insolvent at the time they entered into the transactions.**

**The following types of transactions can be reversed by the liquidator<sup>1</sup> under the Corporations Act 2001 (Cth) ("Corporations Act"):**

- 1. Unfair preferences or preferential transactions: *These are transactions which enable a creditor to receive more than what they would have received if they would have stood under the liquidation waterfall as an unsecured creditor<sup>2</sup>, thereby grossly prejudicing the other stakeholders, which was made at a time when the debtor was insolvent (or the act in question caused the debtor to become insolvent)<sup>3</sup>, which was either made in the 6 month period ending on the relation back day, or in the four-year period (in case of a related party), or a ten-year period (in case the action was taken to prejudice or defeat the rights of creditors), or after the relation back day and before the liquidator appointment.***
- 2. Uncommercial Transactions: *These are transactions that any reasonable person would not have entered into considering the consequences thereof to the health of the company, which were entered into by the debtor company when it was insolvent or the act in question caused the debtor to become insolvent, which was either made in the 6 month period ending on the relation back day, or in the four-year period (in case of a related party), or a ten-year period (in case the action was taken to prejudice or defeat the rights of creditors), or after the relation back day and before the liquidator appointment.***
- 3. Unreasonable director-related transaction: *These transactions can pertain to transfer of property/interest, of undertaking of an obligation, in favour or for the benefit of a director of a company debtor or a related party of the director, which would have not have been entered into by a reasonable person given the consequences thereof to the health of the company. For clawing back any amounts hereunder the liquidator does not have to prove that the company was insolvent at the time or went insolvent due to the nature of the transaction.***
- 4. Unfair Loans: *Any loan given by the company debtor before the appointment of the liquidator which in its opinion is extortionate in its clauses, nature, interest etc. can be avoided by the liquidator, whether or not the company was insolvent at the time or went insolvent due to the nature of the transaction.***
- 5. Circulation security interest: *Any floating charge or a circulating security interest created on the property of the debtor company in the 6-month period before the commencement of liquidation, provided that the company was and***

---

<sup>1</sup>Corporation Act- Part 5.7B- Recovering property or compensation for the benefit of creditors of insolvent company

<sup>2</sup> Idem, Section 588FA (1)



*still remained solvent after the transaction was consummated, can be avoided by the liquidator, which can only be done in compulsory liquidation.*

*Applications to set aside any preferential transaction of any uncommercial transaction can be defended if the party is able to show that they were not aware that the company was insolvent while entering into it. No such defence is available for the other voidable transactions.*

QUESTION 2.1: 2/3

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?**

*In accordance with Section 16 of the Cross-Border Insolvency Act 2008<sup>4</sup>, in relation to Article 20<sup>5</sup> of the UNCITRAL Model Law on Cross-Border Insolvency ("Model Law"), which essentially lays down the nature and the extent of stay on the recognition of a proceeding as foreign main proceedings, provides that, in Australia, on the same happening, the stay or suspension are the same as would apply if the stay or suspension arose under:*

- (a) the Bankruptcy Act 1966; or*
- (b) Chapter 5 (other than Parts 5.2 and 5.4A) of the Corporations Act 2001; as the case requires.*

*The application of the aforementioned Section 16 is on a case-to-case basis. It should be noted that the stay under the Bankruptcy Act, 1966, is more blanket, in the sense that the same is extended over the actions of secured as well as unsecured creditors. While the stay under Chapter 5, is the one whereby only unsecured creditor actions are stayed, whilst secured creditors are free to enforce their claim/security interest. The Australian courts are left to determine, depending on the nature and scope of the foreign proceeding which has been recognized, to grant stays under the aforementioned two statutes. Traditionally, the proceedings which are more rescue or restructuring centric and thus warrant a higher degree of protection from creditor and other actions, the courts tend to apply the wider stay which is available under the Bankruptcy Act, 1966. While the ones which carry the color or are more leaning towards a liquidation scenario, which entails sale of assets and distribution of monies to the stakeholders, the court tend the apply or extend the stay which is available under the Corporation Act 2001. The same can be demonstrated from very iconic matters of *The-Rizzo-Bottiglieri-de Carlini Armatori*<sup>6</sup>, in which the judge refused to grant the stays as under the Bankruptcy Act, 1966, even when in the state of COMI,*

<sup>4</sup> Act No. 24 of 2008

<sup>5</sup> Effects of Recognition of Foreign Main Proceedings

<sup>6</sup> Board of Directors of The-Rizzo-Bottiglieri-de Carlini Armatori SpA v. The-Rizzo-Bottiglieri-de Carlini Armatori SpA (2018) FCA 153; Alari v The-Rizzo-Bottiglieri-de Carlini Armatori SpA (2018) FCA 1067

*being Italy, both unsecured and secured creditor actions were stayed, and extended the stay only as per the Corporations Act, 2001, as the nature of the foreign main proceedings was more like that of a liquidation.*

QUESTION 2.2: 3/3

Question 2.3 [maximum 4 marks]

**What are the differences between liquidations and small company liquidations?**

*The small company liquidations are applicable from January 1, 2021, and can only be availed by businesses with total outstanding liabilities of less than AUD 1 million for matters under creditors' voluntary liquidation. The procedure is swifter, more time and cost effective, given the nature and the size of the companies its catering to. The main differences between traditional and small company liquidation have been highlighted below:*

- 1. The eligibility criteria require the directors of the company to give a report to the liquidator certifying that in their mind the company is eligible for small companies' liquidation;*
- 2. The preparation and submission of the Section 533 report (Corporations Act 2001), under which the liquidator is required to report wrongdoings to the Australian Security and Investments Commissions (ASIC), is not a requirement under the small company liquidation process, which makes it more time and cost effective;*
- 3. No creditors meeting is required as per the Insolvency Practice Rules. Here the liquidators supply the required information to the creditors electronically and voting is also done electronically;*
- 4. In terms of voidable transactions, unlike the traditional lengthy look back period and strict voidability ratios, a preferential transaction is only voidable if the same was made more than three months before the relation back date qua a creditor who was a related party. And further more qua preferential transactions with related parties within the three months, the same is voidable only if the same is more than AUD 30,000;*
- 5. As is natural, there is also a more simplified claim verification process;*
- 6. Unlike under a traditional liquidation, the liquidator has to be continuously mindful that the eligibility criteria are being met, because the moment the same are not met, the liquidator is required to exit the small companies' liquidation process. The same is also ought to be exited, if the liquidator has more than reasonable grounds to believe that the directors have engaged in mis conduct so as to cause a material adverse effect and prejudice the rights of a creditor.*

QUESTION 2.3: 3/4

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

Commented [BB5]: Sub-total = 8 marks

***“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.***

*Historically, Australia has been a creditor-in-possession insolvency system, with only two procedures being debtor-in-possession<sup>7</sup>.*

*To begin with, its noteworthy to mention that more than 98% of the business are small or medium businesses<sup>8</sup>. Micro businesses were the largest proportion of all Australian business, with 1.55 million (60 per cent) of businesses employing no staff. A further 955,000 businesses (37 per cent) employed 1-19 staff<sup>9</sup>. Given that, the country had had to pay a steeper price in terms of impact of Covid-19 pandemic. In April 2020 as many as 73% of SMEs reported a decrease in revenue from the previous month. Some industries recovered quickly from this contraction while others were harder hit. SMEs in hospitality, tourism and accommodation suffered an extended period of revenue reduction with three quarters or more continually reporting a reduction in revenue each month for an entire year to March 2021<sup>10</sup>. Pursuant to this, the need was felt to help foster, faster small business rescues and to establish a debt restructuring process for eligible small companies and provide temporary relief for eligible companies seeking to enter the process<sup>11</sup>.*

*In light of the above, the Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 (F2020I01654) (“Regulations”) was enacted with effect from January 1, 2021. While Covid-19 may have triggered the action, there has always been*

<sup>7</sup> Scheme of arrangement and small companies’ liquidation

<sup>8</sup> Australian Banking Association- Small Businesses, << [<sup>9</sup> \*Ibid\*](https://www.ausbanking.org.au/small-business/#:~:text=SMEs%20are%20the%20lifeblood%20of,jobs%20and%20stimulate%20economic%20growth.>>”, accessed on 27.07.2023</a></p></div><div data-bbox=)

<sup>10</sup> *Ibid*

<sup>11</sup> Parliament of Australia – Corporations Amendment (Corporate Insolvency Reforms) Bill 2020, << [202223-909..assessment8A](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6626#:~:text=Amends%20the%3A%20Corporations%20Act%202001,be%20given%20electronically%20and%20allow>>”, accessed on 27.07.2023</a></p></div><div data-bbox=)

pressure from the legislation to provide different approaches to different needs that may arise in the realm of insolvency. The Regulations introduced a Chapter 11 like debtor-in-possession model, where business owners continued to operate the business under a moratorium whilst they develop a restructuring plan with the assistance of (and, ultimately, certification by) an independent “small business restructuring practitioner” (SBRP). The restructuring plan is then put to the company’s creditors (within 20 business days) and voted on by them (within a further 15 business days). The company must pay its employee entitlements before the creditor vote<sup>12</sup>. Moreover, the Regulations also introduce a simplified liquidation process, where a lot of requirements under a traditional liquidation are relaxed, hence making it swifter and more time and cost effective. Another form of debtor-in-possession procedure available in Australia is the Creditors’ Scheme of Arrangement, where even before the event of insolvency, the directors of the debtor enter into negotiations with the creditors as to how best restructure their debt and streamline operations and cashflows. The debtor will then apply to the court for orders on convening a creditors meeting, where the scheme has to be approved by creditors representing 75% of the outstanding debt of the debtor, post which, court approval is again required before implementation of the scheme begins.

It is quite clear from the above that debtor-in-possession is a concept that Australia is trying to familiarize itself starting very recently, which momentum was propelled due to the happenings of the pandemic. The applicability of the benefits given to the SME are majorly restrictive as compared to Chapter V of the US. The Legislation is not a full-scale adoption of all the powers afforded to a debtor-in-possession under Subchapter V. However, certain features of Subchapter V, which are not presently contemplated by the Legislation, may be also beneficial for Australian SMEs and perhaps the focus of further legislation—particularly, the ability to reject burdensome contracts and pay administrative expenses over the life of the restructuring plan<sup>13</sup>. Even under the creditors’ scheme of arrangement, the lack of much creditor involvement is made up by the extent of court involvement, which makes the process expensive and cumbersome. Hence, while Australia, is on the way to fully appreciate the benefits of a debtor-in-possession regime, or a debtor-friendly regime, its still a long way off compared to other more pro-business jurisdictions.

**8/15 marks - the essay contains interesting context to the recent insolvency reforms but fails to address many of the substantive legal procedures and reforms which have shifted Australia from creditor-friendly to (more) debtor-friendly. The essay does not mention the insolvent trading safe harbour and ipso facto moratorium which are debtor-friendly processes. It does not acknowledge the number of procedural rights which creditors have. It does acknowledge the new small company restructuring**

---

<sup>12</sup> Norton Rose Fulbright- Insolvency Law reform in Australia: Big benefit for small and medium enterprises, <<https://www.nortonrosefulbright.com/en/knowledge/publications/cd46e9a1/insolvency-law-reform-in-australia>>, accessed on 27.07.2023

<sup>13</sup> *Ibid*

**process. The comparative elements and recommendations of aspects of US bankruptcy law, while interesting, are not relevant to this question.**

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

**Commented [BB6]:** Sub-total = 5 marks

Question 4.1 [maximum 8 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 in both Sydney and in Lyonesse. Its warehouses are only in Sydney. Aussiebee regularly sells its chocolates all over the world, with orders received in Lyonesse and shipped from the Sydney warehouses. Aussiebee and NewYums share a board of directors, made up of six Australians and one Lyonessean. 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 Lyonessean liquidation as a foreign main proceeding under the *Cross-Border Insolvency Act 2008*, 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 Lyonessean 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 Lyonessean liquidation.***

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

***The following steps should be taken by the ATO to protect and improve its position:***

- 1. The ATO should file an interlocutory application in the recognition proceedings filed by the foreign representative, with reliefs that make the recognition application subject to and conditional on notice to the ATO, before the foreign representative deals with the assets of the Aussiebee located in Australia.***
- 2. As the intention of the foreign representative, as clear from the factset, is to take possession and control of all of Aussiebees's assets located in Australia for the benefit of the Lyonessean creditors, its important to bear in mind the ration of***

*Ackers v Deputy Commissioner of Taxation*<sup>14</sup>, "When granting or modifying relief under the Model Law, the Court must ensure that the interest of local creditors are protected"<sup>15</sup>."

3. It was further held in the above matter that, "Australian Courts have the power to make orders under the Model Law to protect the Commissioner's ability to recover revenue liabilities from assets located in Australia in circumstances where the revenue liability would not be admitted in a foreign liquidation."
4. The ATO hence on the basis of the judgement, very well claim to be held *pari passu* from the proceeds of the Australian assets, as its claim cannot be enforced in *Lyonesse* nor can the claims of the foreign creditors be made good from the Australian assets of *Aussiebees*.

3/8 marks - **this answer fails to interact with the main feature which this question is asking for. It was mainly concerned with ascertaining AussieBee's COMI. Rather than ATO being granted some priority in the distribution of AussieBee's assets, you should have recommended that the ATO intervene on the basis that the proceeding should not be recognised as a foreign main proceeding at all, as the true COMI of AussieBee is Australia. There were facts in the question which supported this conclusion. Ackers is good and relevant authority, for which marks were awarded, but the answer failed to grapple with the substance of what this question was asking.**

Question 4.2 [maximum 7 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.**

<sup>14</sup> [2014] FCAFC 57, (2014) 311 ALR 167, (2014) 223 FCR 8

<sup>15</sup> Australian Taxation Office- Akers & Ors. V Deputy Commissioner of Taxation, <<https://www.ato.gov.au/law/view/view.htm?docid=LIT/ICD/NSD1933-2013/00001&PIT=99991231235958>>>, accessed on 28.07.2023

**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.**

**A competitor has recently approached HA with an attractive offer to purchase the 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?**

**The advice to the Board should be to accept the attractive offer of the competition, for purchase of the second re-refining plant in Perth, due to the following reasons:**

- 1. The unsecured loan of AUD 30 million, which has been provided by the major shareholder of HGL, which has been the primary financing, of the Perth re-refinement plant, becomes due for first instalment at the end of 2021. By the information supplied by the Board HA, the company does not have enough liquidity to service this loan;**
- 2. In the event, HA does enter into insolvency, then the entire aforementioned unsecured loan is accelerated and becomes due and payable. To make which accelerate payment, of AUD 30 million, HA is not in the capacity of;**
- 3. Any such acceleration of loan granted by a major shareholder of HGL, can also pose significant threats to HGL, being the parent company.**
- 4. The loan on hypothecation taken from CBA is also due for its first instalment at the end of 2021. Though as the security is not registered as required, it shall not take priority over the other secured security interest.**

5. *Given the amount of related party (inter company loans) that HA has taken, the same will all fall under scrutiny as voidable transactions and the chances of a clawback of the same are high.*
6. *HA has already faced a significant blow to its reputation, given the defeat in the lawsuit. Any defect in payment of damages can cause contempt, which should be avoided at all costs.*
7. *Further, no more avenues of refinancing are available.*
8. *The second part has only made marginal profits and no visibility of higher profits has been foresighted by the Board.*
9. *Any channels of the restructuring or liquidation that the Board will adopt, will nevertheless be expensive and time consuming. And given that that the assets are not enough to satisfy all the debt, the company will be liquidated and hence the chances of revival are next to nil.*

QUESTION 4.2: 2/7

\* End of Assessment \*