



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E

SINGAPORE

***This is the*** summative (formal) assessment for Module 8E ***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 8E. ***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 or Avenir Next 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.assessment8E]. An example would be something along the following lines: 202223-336.assessment8E. 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 9 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 **1m**

**Which one of the following insolvency tools is not available in Singapore?**

- (a) Judicial management.**
- (b) Administration.**
- (c) Court winding-up.**
- (d) Scheme of arrangement.**

Question 1.2 **1m**

**Who may apply to court to place a debtor company into judicial management?**

- (a) A contingent creditor.**
- (b) The debtor company.**
- (c) A prospective creditor.**
- (d) Any of the above.**

Question 1.3 **1m**

**Which of the following factors may support a foreign debtor's case to establish a "substantial connection" to Singapore?**

- (a) The debtor has chosen Singapore law as the law governing a loan or other transaction.**
- (b) The centre of main interests of the debtor is located in Singapore.**

**(c) The debtor has a place of business in Singapore.**

**(d) Any of the above.**

Question 1.4 **1m**

**What percentage of each class of creditors must approve a scheme of arrangement for it to pass?**

**(a) Over 50% in value.**

**(b) 50% or more in value.**

**(c) Over 75% in value.**

**(d) 75% or more in value.**

Question 1.5 **1m**

**Which of the following in respect of the automatic moratorium under section 64(1) of the Insolvency Restructuring and Dissolution Act (IRD Act) is incorrect?**

**(a) The automatic moratorium lasts for 30 days.**

**(b) The automatic moratorium may be extended.**

**(c) The automatic moratorium can be obtained without filing an application to court.**

**(d) The debtor has to either propose or intend to propose a scheme of arrangement.**

Question 1.6 **1m**

**Which of the following types of contracts are excluded from the *ipso facto* restriction in section 440 of the IRD Act?**

**(a) Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.**

**(b) Any contract that is a licence, permit or approval issued by the Government or a statutory body.**

**(c) Any commercial charter of a ship.**

**(d) Any contract for a loan with a financial institution.**

Question 1.7 1m

**Which of the following is one of the three statutory objectives of a judicial management?**

**(a) To allow the directors to oversee the restructuring of the company.**

**(b) To preserve all or part of the company's business as a going concern.**

**(c) As a means for the secured creditors to realise their security.**

**(d) To liquidate the company in a fast-track and cost-efficient manner.**

Question 1.8 1m

**Which one of the following is not a debtor who can apply for personal bankruptcy in Singapore?**

**(a) An individual domiciled in Singapore.**

**(b) An individual who owns property in Singapore.**

**(c) An individual who has been carrying on business in Singapore for the last year.**

**(d) An individual whose parents live in Singapore.**

Question 1.9 1m

**Which of the following in respect of rescue financing is incorrect?**

**(a) Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing.**

**(b) Rescue financing is financing that is necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding-up of that debtor.**

**(c) Rescue financing enjoys preferential treatment automatically without the sanction of court.**

**(d) Rescue financing may be sought in a judicial management process.**

Question 1.10 1m

**Who may apply to court to place a company into liquidation?**

- (a) The company itself.**
- (b) A creditor of the company.**
- (c) A shareholder of the company.**
- (d) Any of the above.**

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

Question 2.1 [maximum 4 marks] 3m

**Explain the concept of a cross-class cram-down in a scheme of arrangement and what the requirements are before a court would order a cram-down.**

*The concept of a cross-class cramdown was first introduced in the 2017 Amendment Act. Subject to certain conditions, it allows a scheme of arrangement with creditors to be approved notwithstanding one or more classes of creditor having rejected the proposed scheme. The rationale for introducing the provision was to minimise the overall influence of minority creditors.*

*Under the previous cross-class cramdown regime contained in the Companies Act, to cram down a class of unsecured creditors, existing members were required to divest their shares. However, there was no set procedure for shareholders to be compulsorily divested of their shares as part of the scheme of arrangement and the cramdown was therefore dependent on the members voluntarily divesting their shares. Under the IRD Act, unsecured creditors can be crammed down without requiring that the members are divested of their shares.*

*In judicial management and under a scheme of arrangement, notwithstanding the fact that one or more classes of creditors have not approved the scheme in accordance with*

*the voting mechanisms detailed above, a court can order that the scheme is still binding on the company and all classes of creditors (but not shareholders) if:*

- (a) a majority in number of creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) have agreed to the compromise or arrangement;*
- (b) that majority in number of creditors represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy); and*
- (c) the court is satisfied that the compromise or arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class.*

***[discuss what is fair and equitable]***

Question 2.2 [maximum 2 marks] **2m**

**Name two objectives of the IRD Act.**

- (a) introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws.*
- (b) establish a regulatory regime for insolvency practitioners.*

Question 2.3 [maximum 4 marks] **4m**

**State four factors that should be considered under the cash flow test in determining whether a company is "unable to pay its debts" under the IRD Act.**

- 1) the quantum of all debts which are due or will be due in the reasonably near future;*
- 2) whether payment is being demanded or is likely to be demanded for those debts;*
- 3) whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it; and*
- 4) the value of the company's current assets and assets that will be realisable in the reasonably near future.*

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

Question 3.1 [maximum 8 marks] **8m**

**Write a brief essay on**

**(i) rescue financing; and**

**(ii) wrongful trading**

**under the IRD Act.**

(i) rescue financing:

***Rescue financing refers to the provision of financing necessary for the survival or improved realization of a debtor's assets, compared to a liquidation scenario. It serves as a lifeline for companies facing financial distress, enabling them to continue operations, restructure their debts, and achieve a successful turnaround.***

***Rescue financing plays a vital role in the corporate insolvency landscape, providing crucial financial support to financially distressed companies aiming for recovery and rehabilitation. In Singapore, rescue financing is regulated under the Insolvency, Restructuring, and Dissolution (IRD) Act.***

***Rescue financing serves as a critical tool within the insolvency framework of Singapore, enabling financially distressed companies to receive the necessary financial support for their survival and recovery. Under the IRD Act, rescue financing is subject to court approval, ensuring a fair and balanced approach that considers the interests of all stakeholders involved. By incorporating rescue financing provisions, Singapore's insolvency regime promotes the preservation of businesses as going concerns and encourages successful restructurings, benefiting the economy as a whole. Rescue financing is financing that is either or both:***

- (a) necessary for the survival of a debtor that obtains the financing;***
- (b) necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding-up of that debtor.***

***Under both the scheme of arrangement and judicial management processes, a Singapore court may, on application by the debtor, make an order that any rescue financing obtained by a debtor will:***

- 1) be treated as part of the costs and expenses of the winding-up if the debtor is later wound up;***
- 2) enjoy priority over preferential debts if the debtor is later wound up;***
- 3) be secured by a security interest on property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property of the debtor that is subject to an existing security interest if the debtor would not have been able to obtain unsecured rescue financing from any other person; or***
- 4) be secured by a security interest on property subject to an existing security interest, of the same or a higher priority than the existing security interest, if the debtor would not have been able to obtain rescue financing from any other person unless it was secured in such a manner and there is adequate protection for the interests of the existing security interest.***

***These are extraordinary remedies / measures which have been taken largely from section 364 of the US Bankruptcy code. These measures were introduced as part of the package of amendments set out in the 2017 Amendment Act (prior to the IRD***



*Act coming into effect in 2020), and which were designed to enhance Singapore's reputation as an international restructuring hub.*

(ii) wrongful trading

*Wrongful trading is a crucial concept within the realm of corporate insolvency, aiming to hold directors accountable for their actions when a company faces financial distress. In Singapore, wrongful trading is regulated under the Insolvency, Restructuring, and Dissolution (IRD) Act. This essay explores the concept of wrongful trading under the IRD Act, highlighting its significance, key provisions, and the framework surrounding its implementation.*

*Wrongful trading is defined as the incurrence of debt or other liabilities without a reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of such debt. Therefore, wrongful trading refers to the situation where a director continues to trade a company while being aware of its impending insolvency, and subsequently causes further losses to the company's creditors. The objective of wrongful trading provisions is to discourage directors from engaging in reckless behavior that exacerbates the financial difficulties faced by the company, and to protect the interests of creditors.*

*In a new provision relating to wrongful trading, the court is empowered to make a declaration that any person who was a knowingly party to the company trading wrongfully, is personally responsible for the debts or liabilities of the company. A company or any person party to, or interested in becoming party to, the carrying on of business with a company, may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading. A company trades wrongfully if the company incurs debt or liabilities without reasonable prospect of meeting them in full when the company is insolvent, or becomes insolvent as a result of the incurrence of such debt or liability.*

*Section 239 of the IRD Act introduces the new concept of wrongful trading, which imposes personal liability for the company's debts on a person if:*

- (a) they knew that the company was trading wrongfully; or*
- (b) as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully.*

*This provision is adopted from English insolvency legislation and no longer requires criminal liability to be established (as was the position previously before the enactment of this new wrongful trading provisions) before taking effect.*

*Wrongful trading provisions under the IRD Act play a crucial role in promoting responsible directorship and protecting the interests of creditors in Singapore. By imposing liability on directors who knowingly trade a company while insolvent, the*

*IRD Act discourages reckless behavior and encourages timely actions to mitigate potential losses. The provisions strike a balance between holding directors accountable for their actions and providing defenses and relief in cases where directors have acted responsibly. Ultimately, wrongful trading provisions contribute to maintaining the integrity of Singapore's corporate insolvency framework and fostering a culture of responsible corporate governance.*

Question 3.2 [maximum 7 marks] **7m**

**Write a brief essay in which you discuss the differences between the judicial management and scheme of arrangement processes.**

*The Insolvency, Restructuring, and Dissolution IRD Act in Singapore provides two distinct processes for the restructuring and rehabilitation of financially distressed companies: scheme of arrangement and judicial management. While both processes aim to facilitate corporate rescue and provide an avenue for debt restructuring, they differ in their nature, application, and key features. The following explores the differences between the scheme of arrangement and judicial management processes under the IRD Act in Singapore:*

(1) Schemes of arrangement - moratorium for insolvent debtor companies

*Section 64 of the IRD Act, as first introduced by section 211 of the Companies (Amendment) Act 2017, introduces a debtor-in-possession restructuring regime which has the following key features:*

- (a) an automatic moratorium for 30 days upon the filing of an application with the court. The moratorium can be further extended by order of the court;*
- (b) the availability of US-style debtor-in-possession finance (DIP) or rescue financing;*
- (c) the availability of a cross-class cramdown in schemes of arrangement;*
- (d) the availability of pre-packaged schemes of arrangement; and*
- (e) moratoria having extra territorial effect.*

(2) Judicial management

*Unlike the scheme of arrangement, this is a process where an insolvency practitioner takes over control of the debtor company. Upon the application of a company or its creditors the court may appoint a judicial manager where it is shown that the company is or is likely to become unable to pay its debts and one or more of the purposes outlined in the IRD Act will be achieved by the appointment (such as the survival of the company or whole or part of its business as a going concern or a more advantageous realisation of the company's assets than through a*

winding-up

order).

**If the court grants an order for judicial management, then the judicial manager, an independent insolvency practitioner, will take control of the business and property of the company for a period of 180 days, subject to any further extensions granted by the court.**

The following table illustrates the differences between the scheme of arrangement and judicial management processes:

Area of Difference	Scheme of Arrangement	Judicial Management
Nature and Purpose	<b>A scheme of arrangement is a court-sanctioned arrangement between a company and its creditors or members, allowing for the restructuring of debts and alteration of rights. The purpose of a scheme of arrangement is to achieve a compromise or arrangement that is agreed upon by the relevant parties.</b>	<b>Judicial management involves the appointment of an independent judicial manager by the court to take control and oversee the management of a financially troubled company. The primary objective of judicial management is to rehabilitate the company and its operations while preserving its value as a going concern.</b>
Court Supervision and Control	<b>A scheme of arrangement is typically proposed by the company itself, and the court's role is primarily limited to overseeing the fairness and legality of the scheme. The company retains control over its day-to-day operations throughout the process.</b>	<b>In contrast, in judicial management, the appointed judicial manager assumes control over the company's operations and exercises decision-making powers with the aim of facilitating a successful turnaround. The judicial manager is accountable to the court and must comply with the court's directions and reporting requirements.</b>
Approval and Voting Requirements	<b>A scheme of arrangement requires the approval of the majority in number representing 75% in value of the creditors or class of creditors, or members or class of members, present and voting either in person or by proxy at the scheme meeting. The scheme of arrangement must subsequently be sanctioned by the court for it to become effective.</b>	<b>For a judicial management application, the court must be satisfied that the company is or is likely to become unable to pay its debts and that a judicial management order is necessary for the company's survival. The court's approval is required to commence judicial management.</b>
Scope and Flexibility	<b>A scheme of arrangement primarily focuses on the alteration of rights</b>	<b>In contrast, a judicial management process provides a broader scope</b>

	<i>and the compromise of debts. It provides a more targeted approach to debt restructuring and may not involve extensive operational changes or asset sales.</i>	<i>for the restructuring of a company, including the ability to sell assets, negotiate with creditors, and potentially vary contracts. It allows for a comprehensive restructuring plan that addresses various aspects of the company's operations.</i>
Mechanisms for conversion from corporate rescue to liquidation	<i>There is no specific conversion mechanism. If the moratorium granted under section 64 of the IRD Act comes to an end, either by creditor application or otherwise, with no scheme sanctioned, creditors or the company would then be at liberty to apply for winding-up or any other process, including judicial management.</i>	<i>A judicial management order will be discharged after 180 days unless extended by the court. There is no limit to the number of extensions that may be granted by the court. A discharge does not mean automatic liquidation, but the court has a discretion to order that the company be placed into liquidation.</i>
Moratoria	<i>An automatic 30-day moratorium arises upon the filing of an application for a moratorium under section 64 of the IRD Act with the court where the debtor proposes or intends to propose a scheme of arrangement with its creditors. The court may extend the moratorium upon the application of the debtor.</i>	<i>An automatic moratorium on legal proceedings against the company comes into effect upon the filing of the judicial management application. If a judicial management order is made, a more extensive moratorium will come into effect for the period of the judicial management. The court, or the judicial manager, has a discretion to allow otherwise prohibited proceedings or enforcement actions to be commenced or continued.</i>
Process of appointing officeholders	<i>While this is a debtor-in-possession type regime, it envisages the debtor company appointing a proposed scheme manager to facilitate the restructuring process.</i>	<i>Upon the making of a judicial management order, the court will appoint a judicial manager. An interim judicial manager can be appointed by the court, on application of the company or any of its creditors.</i>

*Finally, the scheme of arrangement and judicial management processes under the IRD Act in Singapore offer distinct avenues for the restructuring and rehabilitation of financially distressed companies. A scheme of arrangement is a court-sanctioned arrangement between the company and its creditors or members, while judicial management involves the appointment of a judicial manager to oversee the company's operations. Each process has its own characteristics, such as court supervision, approval requirements, and scope. The choice between judicial management and a scheme of arrangement depends on the specific circumstances of the company and the objectives of the restructuring efforts. Understanding the*

*differences between these processes allows stakeholders to make informed decisions and select the most appropriate mechanism to achieve the desired outcomes.*

***[other differences include avoidance provisions / disclaimer of onerous property]***

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

***ABC Limited (the Company) is incorporated in Singapore and is the ultimate holding company of a group of construction and property companies (the ABC Group). As at 31 December 2021, the ABC Group owns and operates 16 construction drilling rigs outside of Singapore in Australia and the United Kingdom. The Company's directors and major shareholders are Mr X and Mr Y, who collectively own 57% of the shares in the Company. Mr X and Mr Y are based in Singapore.***

***The ABC Group traditionally funds its business via bank lending, with project financing facilities advanced directly to the underlying project companies within the ABC Group.***

***As the ABC Group's ultimate holding company, the Company's assets comprise largely of its investments in its subsidiaries and intercompany receivables from its subsidiaries. The Company does not have fixed assets and operational cashflows and is dependent on dividends and receivables from its subsidiaries to meet its own financial obligations. The main operating subsidiaries of the ABC Group are Alpha Pte Ltd and Beta Pte Ltd (both incorporated in Singapore and wholly owned by the Company).***

***The ABC Group recently expanded its business into property ownership and owns property in Australia via another subsidiary, Charlie Pty Ltd, which is incorporated in Australia. The properties in Australia are mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law. Mr X and Mr Y are the majority directors of Charlie Pty Ltd.***

***To finance its growing operations, the Company issued a Multicurrency Medium Note Programme (MTN) under which the Company could raise unsecured debt financing of up to USD 600 million. Funds raised by the Company under the MTN were either advanced to its subsidiaries as intercompany loans, or injected as capital into its subsidiaries. As at 31 December 2021, the total unpaid amount under the MTN notes was approximately USD 267 million.***

***The Company also provided corporate guarantees to financial institutions to guarantee the performance of its subsidiaries under various facility agreements. As at 31 December 2021, the Company had provided seven guarantees to various lenders, for a total liability of approximately USD 160 million.***

***Besides the above liabilities, the Company has also obtained shareholders' loans of USD 120 million from Mr X and Mr Y. These shareholders' loans are repayable on demand.***

***In recent years, the ABC Group's business has been adversely impacted by an extremely challenging operating environment and instability, which has caused various entities in the ABC Group to default on their bank facilities, including entities whose debts are guaranteed by the Company.***

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 4 marks] **2m**

***The bank lenders have come together to form a working group and the working group has asked its advisors to provide it with a written analysis covering the following critical issues for the Company. In particular, the bank lenders are considering the possibility of placing the Company into judicial management. Provide analysis on the following issues:***

- (a) Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order. (2 marks)***
  - (b) Assuming that the Company is placed under judicial management, what requirements must be satisfied in order for the Company to be able to access rescue financing under the IRD Act? (2 marks)***
- (a) Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order.

***The primary objective of judicial management proceedings is to facilitate the rehabilitation of a company experiencing financial distress, with the aim of optimising its prospects for survival. In order to secure a judicial management order, it is necessary to submit the following documents and information to the court:***

- 1) There exists evidence indicating that the company is currently experiencing or is at a high risk of encountering financial insolvency, rendering it incapable of fulfilling its outstanding financial obligations.***
- 2) The individual in question is a prospective judicial manager who possesses the necessary qualifications and expresses a willingness to assume the role of administrator for the company.***
- 3) A comprehensive disclosure of the organisation's financial status, encompassing its resources, obligations, and overall fiscal standing. This document presents a comprehensive overview of the aims and recommendations pertaining to judicial management, encompassing measures such as the reorganisation of the company's activities, liabilities, and financial resources.***
- 4) There is substantial evidence suggesting that the implementation of judicial management holds a higher probability of yielding a more favourable outcome for the creditors of the company as compared to the scenario where the company undergoes liquidation.***

[see s 89 to 91 of IRDA]

(b) Assuming that the Company is placed under judicial management, what requirements must be satisfied in order for the Company to be able to access rescue financing under the IRD Act? (2 marks):

***If the Company is subjected to judicial management, it is imperative for the Company to fulfil certain prerequisites in order to obtain rescue financing in accordance with the provisions outlined in the Insolvency, Restructuring, and Dissolution Act (IRD Act).***

- 1) The judicial manager is required to submit a proposal for rescue financing to the court.***
- 2) The proposal should provide evidence of how the rescue financing will be utilised to facilitate the rehabilitation of the company and optimise the recovery of creditors.***
- 3) In order to ascertain the appropriateness of rescue financing, the court must ascertain its necessity and its alignment with the collective interests of the company's creditors.***
- 4) The court's approval is necessary for the rescue financing, and it is imperative that the terms and conditions of such financing are both reasonable and equitable.***

[see s 101 of IRDA - what is definition of rescue financing]

Question 4.2 [maximum 6 marks] **2m**

***As things transpired, the Company was placed under judicial management.***

***The bank lenders are now considering whether Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd should also be placed into judicial management. Provide analysis on the following issues:***

- (a) What are the steps that need to be taken in order to place Alpha Pte Ltd and Beta Pte Ltd under judicial management out of court? (3 marks)***

***In order to initiate the process of placing Alpha Pte Ltd. and Beta Pte Ltd. under judicial management outside of the court system, it is necessary to undertake the following procedural measures:***

- 1) It is imperative that the board of directors, or a majority thereof, pass a resolution to that effect.***
- 2) The resolution ought to designate a suggested judicial manager and furnish the requisite particulars.***
- 3) It is advisable to submit a copy of the resolution and any pertinent documents to the Accounting and Corporate Regulatory Authority (ACRA).***

[discuss steps under s 94 IRDA]

**(b) Is Charlie Pty Ltd eligible to be placed into judicial management in Singapore and, if so, what must be demonstrated for it to be so eligible? (3 marks)**

*The eligibility of Charlie Pty Ltd. for judicial management in Singapore is contingent upon specific criteria. In order to meet the requirements for eligibility, it is necessary to provide evidence of the following:*

- 1) In order for Charlie Pty Ltd. to establish a significant nexus with Singapore, it is imperative that the company possess tangible elements such as a physical establishment or assets within the jurisdiction of Singapore.*
- 2) The necessity of establishing the justifiability and fairness of subjecting Charlie Pty Ltd. to judicial management in Singapore must be demonstrated.*
- 3) In order to determine whether it is appropriate to subject Charlie Pty Ltd to judicial management in Singapore, the court must ascertain whether such action would effectively serve the interests of the creditors or advance the objectives of the Insolvency, Restructuring, and Dissolution Act (IRD Act).*

***[discuss that a company can only be placed under JM if it is liable to be wound up in SG, and that a substantial connection to SG is needed to show that; and what the factors are]***

Question 4.3 [maximum 5 marks]

***Assuming Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd are also placed into judicial management in Singapore.***

***Please provide analysis on the following issue:***

**(a) *Would the assets owned by the ABC Group in jurisdictions outside of Singapore be protected? If there is no automatic protection, what can be done to obtain such protection? (5 marks) 3m***

*If Alpha Pte Ltd, Beta Pte Ltd, and Charlie Pty Ltd are subjected to judicial management in Singapore, it cannot be assumed that the protection of assets belonging to the ABC Group in jurisdictions beyond Singapore will occur automatically. Nevertheless, there are several measures that can be implemented in order to achieve protection.*

*The judicial managers assigned to each subsidiary have the ability to collaborate with legal advisors in the respective jurisdictions in order to gain a comprehensive understanding of the local laws and implement appropriate measures for protecting the assets.*

*One potential course of action for individuals or entities involved in Singaporean judicial management proceedings is to consider pursuing recognition of these proceedings in foreign jurisdictions where the relevant assets are situated.*

*The judicial managers have the option to enlist the services of local legal representatives in each jurisdiction to commence legal actions, if deemed*



*necessary, in order to protect the assets. Efforts may be made to establish cooperation and coordination with local authorities, courts, or insolvency practitioners in the pertinent jurisdictions in order to protect and preserve the integrity of assets.*

*The judicial managers possess the ability to engage in effective communication and collaboration with the bank lenders and their advisors. This enables them to develop a strategic plan that optimally protects the assets of the ABC Group in jurisdictions beyond Singapore, all while adhering to the relevant local laws and procedures.*

[also discuss that there is a moratoria that arises in Singapore, but a foreign court may not automatically recognise that if recognition is not available. If so, need to consider commencing parallel proceedings]

**\* End of Assessment \***

**41m - well done!**