



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).**
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- 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 **0m**

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.

ANS:

In 2016, a cross-class cram-down mechanism was introduced into the insolvency regime in Singapore, in the form of section 211H of the Companies Act. Subsequently, section 70 of the Insolvency Restructuring and Dissolution Act 2018.

A cross-class cram down is where the imposed terms can apply across creditor classes. The debtors, get the benefit of cram down by having to prevent a minority non- consenting creditor from blocking a restructuring plan.

The concept of a cross-class cramdown was first introduced in the 2017 Amendment Act.

It allows scheme of arrangement with the creditors to be approved, though one or more creditors have rejected the proposed scheme. This helps minimize the influence of minority creditors.

In the previous regime of the Companies Act, for the purpose of cram down of a class of unsecured creditors, the existing members were required to divest their shares without having a set procedure for the same. However, 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, even if the fact being that one or more classes of creditors have not approved the scheme, in accordance with the voting

mechanisms, a court can order that the scheme is still binding on the company and all classes of creditors if:

1. A majority in number of creditors meant to be bound by the arrangement, who were present and voting at the relevant meeting approved the scheme;
2. The majority above represents three-fourths in value of the creditors meant to be bound by the arrangement, who were present and voting at the relevant meeting; and
3. The Court is satisfied that the arrangement does not discriminate unfairly between classes of creditors and is fair and equitable to each class of creditors.

The requirement is also known as the 'absolute priority' rule.

The rule requires that the original priority and order of stakeholders be preserved.

Pursuant to the scheme the creditor must not receive, a lower amount than what was estimated to be received in an alternative arrangement.

Secondly the dissenting creditors being crammed down upon must receive full payment of their claims before subordinate classes of creditors can be paid.

This has similarity to the corresponding provision in the US Code.

[discuss what is fair and equitable – see s 70]

Question 2.2 [maximum 2 marks] 2m

Name two objectives of the IRD Act.

ANS:

The IRDA, Insolvency Restructuring and Dissolution Act was passed by Singapore Parliament on October 1, 2018 and came into effect on July 30, 2020. This together with 48 subsidiary legislations which were enacted earlier, now adopted best practices of restructuring. These were adopted from around the world including Chapter 11 of the US Bankruptcy Code

The major objectives

Firstly, it combines laws on corporate and personal insolvency debt restructuring into one piece. This removes the need to cross reference between these Acts.

Secondly it further strengthens the existing debt restructuring regime. By this it has incorporated the amendments of 2017, to the Company's Act. Thus, new rescue tools were incorporated. The foreign companies have access to Singapore's insolvency procedures and the UNCITRAL Model law on Cross border Insolvency has improved its Court's ability to participate and facilitate cross -border insolvency processes. This Act has put together all the restructuring legislation into one omnibus Act. This facilitates troubled multinational businesses which can consider using an alternative jurisdiction to get their business going and become stronger. It has established 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.

ANS:

In Sun electric power Pte Ltd Vs. RCMA Asia, 2021- The Court of Appeal clarified that the cash flow test should be the sole test and determinative under S.125(2) (c) of IRDA. The court set out these factors

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;
4. the length of time that has passed since the commencement of the winding-up proceedings;
5. the value of the company's current assets and assets that will be realisable in the reasonably near future;
6. the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;
7. any other income or payment which the company may receive in the reasonably near future; and
8. arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realisable

assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

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.

ANS:

RESCUE FINANCING:

Major reforms were introduced for debt restructuring through Companies (Amendment) Act 2017 and came into effect on 23rd May 2017. These were based on US Chapter 11 regime. scheme of arrangement regime which included rescue financing provisions that allow for the grant of super priority status.

The IRDA consolidates Singapore's insolvency laws for both personal bankruptcy and corporate insolvency, including the provisions relating to super priority rescue financing.

The rescue financing provision under Section 67 of the IRDA allows the Court to grant an order that the rescue financing be given super priority status.

If a company has made an application to convene a meeting for the purposes of a scheme of arrangement or a moratorium under Section 64(1) of the IRDA.

In fact the Court can make one or more of the following orders in respect of any debt arising from any rescue financing obtained.

It can be given 4 levels of priority:

- a) Treated as part of the costs and expenses of the winding up
- b) Priority over all the preferential debts specified in Section 203(1)(a) to (i) of the IRDA and all other unsecured debts;
- c) Secured by a security interest on property not otherwise subject to any security interest or that is subordinate to an existing security interest;
- d) Secured by a security interest on property subject to an existing security interest, of the same priority or higher priority than that existing security interest.

“Rescue financing” is defined in Section 67(9) of the IRDA.

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.

Examples of first few successful cases are: Asiatravel.com Holdings Ltd, Swee Hong Ltd, Design Studio Group Ltd.

Rescue Financing provides essential breathing room. This allows to engage with creditors on restructuring proposal and not filing insolvency proceedings

The grant of such super-priority status for rescue financing is important.

It provides the lender with assurance that the rescue financing will be paid out of the unsecured assets of the borrower company first. This will be done ahead of all unsecured claims and other administrative expenses, and potentially even rank equal or in priority to existing secured debts. This will make lenders less reluctant to provide additional financing to troubled companies, and enable viable companies a second chance at restructuring and rehabilitation.

WRONGFUL TRADING:

The IRDA introduces the concept of wrongful trading, which provides that a company trades wrongfully if:

- a. the company, when insolvent, incurs debts or liabilities without reasonable prospect of meeting them in full; or
- b. the company incurs debts or liabilities that it has no reasonable prospect of meeting in full and that result in the company becoming insolvent.

Civil personal liability and criminal liability may be attracted to the persons who are party to such act of trading. Specially when the person knew that the company was trading wrongfully or as an officer ,ought to have known that the company was trading wrongfully. An officer may be a director of the company or an executive. It can be a receiver and manager.

The Court may declare any person who was party to such trading personally responsible for the debts or liabilities of the company, if it is found that the person:

- Knew that the company was trading wrongfully
- Ought to have known that the company was trading wrongfully as an officer of the company.

An officer, includes –

1. any director or secretary of the corporation or a person employed in an executive capacity by the corporation;
2. a receiver and manager of the corporation appointed by way of some instrument.
3. any liquidator of a company appointed in a voluntary winding up, but does not include –
4. any receiver who is not also a manager
5. any receiver and manager appointed by the Court
6. any liquidator appointed by the Court or by the creditors
7. a judicial manager appointed under IRDA

Such a person may also be guilty of a criminal offence and shall be liable on conviction to a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding 3 years, or both.

The IRDA includes a statutory defence for personal liability. In this regard, the Court may relieve the person of personal liability if the person acted honestly and taking into account all circumstances the person ought to be relieved from personal liability.

The party may apply to the court for a declaration as to whether a particular course of conduct or transaction would constitute wrongful trading.

Question 3.2 [maximum 7 marks] 5m

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

ANS:

Judicial management is also often compared with scheme of arrangement, which is a similar tool. This also is statutory tool designed for the rehabilitation of financially distressed companies.

The main difference between them is that the scheme of arrangement operates under the supervision of the management of the company. Judicial management is supervised by judicial manager.

Judicial Management:

Under the IRDA 2018, there are two main ways to put a company under judicial management. These are:

- Applying to court.
- Passing a creditors' resolution.
-

In the application, the grounds have to be mentioned and the applicant has to nominate a judicial manager. The nominee must be a licensed insolvency practitioner who is not the auditor of the company. The court has the right to reject the applicant's nomination and appoint another person, who may not be a licensed insolvency practitioner.

The court may make an order (court has discretion) for judicial management if:

- It is satisfied that the company is or is likely to become unable to pay its debts; and
- It considers that placing the company under judicial management would be likely to achieve at least one of the following purposes:
 - *The company's survival, or its undertaking as a going concern either in whole or in part
 - *The approval of a scheme of arrangement
 - *The more effective use of the company's assets to satisfy creditors' claims, compared to if the company was wound up.

Passing a Creditors' resolution: That the judicial management is commenced through a creditors' resolution by a majority in value (of the total amount of the creditors' claims) and in number of creditors present and voting.

An interim judicial manager must be appointed before the creditors meet to vote on the resolution for a formal judicial manager.

A company cannot be put into judicial management via creditor's resolution if there is already a pending court application for a judicial management order which has not yet been withdrawn or decided by the court.

There were amendments to the company Act and which incorporated certain features of Chapter 11 of the US Bankruptcy Code and this came into force on 23 May 2017. This enabled the courts to pass a judicial management order when the company -is likely to become unable to pay its debts.

There is one situation where the court must dismiss an application for a judicial management order. This is when: A creditor who holds a secured charge on certain assets of the company (floating charge holder) opposes the making of the order and the court is satisfied that the prejudice is caused to the floating charge holder.

Earlier judicial management order could be made when a company “is or will be unable to pay its debts”.

If a secured creditor, objects to the making of a judicial management order, he will have to show that the prejudice that would be caused to him by the making of the order will be disproportionately greater. This is compared to the prejudice caused to the unsecured creditors.

A judicial manager may initiate a scheme under the new regime in relation to cram down and approval of a scheme without holding creditors’ meetings.

Secured creditors cannot adopt an obstructive view if the interests of all creditors favour the making of a judicial management order.

Super priority is given for rescue financing. There is no statutory priority of claims in judicial management unless the aim of the judicial management is to wind up the company and in doing so the winding-up priority of claims would apply.

Where a company is in judicial management or is being wound up, and the company has at the relevant time entered into a transaction with any person at an undervalue, the judicial manager or liquidator may apply to the court for an order to restore the company to the position which it would have been in if it had not entered into the transaction.

A company will be considered as having entered into a transaction with a person at an **undervalue** in either of these circumstances:

- The company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration.

- The company enters into a transaction with that person for a consideration the value of which is significantly less worth than the value of the consideration provided by the company

When any person is given unfair preference while a company is in judicial management or is being wound up, the judicial manager or liquidator may apply to the court for an order to restore the position to what it would have been if the company had not given that unfair preference. An unfair preference occurs where a creditor, surety or guarantor is put in a better position.

The relevant time period here is one year prior to the commencement of the judicial management or winding-up.

Once judicial management has commenced, the appointed judicial manager has 90 days to prepare a statement of his proposals on how he intends to achieve the desired purpose.

During the period of the judicial management, all the powers normally possessed and exercised by the company's directors will be exercised instead by the judicial manager. He can do acts necessary for the management of the company's affairs, business and property. He is expected to be honest and diligent. He has the following powers:

- Power to sell, dispose of the company's property
- Power to conduct legal actions on behalf of the company
- Power to use the company seal and to carry on the business

Judicial management will automatically end after 180 days from the date of the judicial management court order, and he may apply for an extension of time from the court or creditors.

Judicial management can end when the judicial manager applies to court to be discharged, either because he has achieved his purposes or because he believes that the purposes can no longer be achieved.

Scheme of Arrangement

Automatic moratorium

Automatic moratorium for up to 30 days upon the filing of the application of a company which is proposing, or intends to propose, a scheme of arrangement for the protection of a

moratorium arises under S. 64 of the IRD Act. Such an application can be made at the same time or prior to the making of the application to court to convene the relevant meetings of creditors.

In determining any such application, the court has the power to order the granting of a moratorium with worldwide effect. If the court declines to make such an order, the automatic moratorium lapses.

A subsidiary or holding company can also apply to court to obtain a moratorium of similar scope.

Obtaining a moratorium gives the company an opportunity to restructure without the risk of creditor actions obstructing the process.

Super priority- for rescue financing

This allows the rescue financier to be given (by the Court) priority over statutorily preferred creditors, a security interest over assets which are not subject to any existing security interests. The court must be satisfied that the interests of the existing security-holder are adequately protected. This is a concept which is imported from the United States Bankruptcy Code)

This allows companies in financial difficulties to be given new finance to aid survival.

Cram down- provisions

The Singapore Court to approve the scheme where there are multiple classes of creditors and the requisite majorities of at least one class of creditors have voted in favour of the scheme, in circumstances in which, provided that 75% by value and 50% in number of all creditors in aggregate (i.e. combining all classes for these purposes) have voted in favour of the scheme and the Court is satisfied that the scheme does not unfairly discriminate between classes and is fair and equitable to each dissenting class. The scheme can be allowed

In order to be "fair and equitable", the dissenting creditors must not receive less than they would in a liquidation. Also, in the case of secured creditors their security rights must not be prejudiced.

These provisions prevent a minority dissenting class of creditors from unreasonably frustrating a restructuring that benefits creditors as a whole.

Power of court to approve scheme without creditors' meetings:

It is now possible for schemes to be approved without the need to convene meetings of creditors.

The Singapore Court has the power to approve schemes without a meeting of creditors being called. It has to be seen that a scheme has been agreed and the Singapore Court is satisfied that, had a meeting of the creditors or class of creditors been summoned, not less than 50% in number and 75% in value of each class of creditors would have approved the scheme.

It is expected that the court's approval without the holding of creditors' meetings would benefit by shortening the time it takes for the scheme to come into effect. Here it is thought that the debtors will dispense with creditor meetings only in urgent circumstances.

There is no statutory priority of claims for schemes of arrangement.

The ultimate aims of these changes are to improve the Singapore Court's ability to deal with cross-border insolvencies and restructurings and to transform Singapore into a regional and international forum of choice for international debt restructurings.

[contrast each aspect eg moratorium, avoidance provisions instead of a discussion on each of them separately]

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] **3m**

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)

ANS:

a) Purpose of judicial management:

To protect the assets or business of the company which is at risk of being dissipated or deteriorating. To safeguard the interests of the company as well as its creditors. Once a

judicial management order has been made, all the responsibilities, functions and powers of the board of directors are transferred to the judicial manager.

In this way it helps put in place a third party who is seen as providing legitimate view of the debtor's operations and financials, and manage disoriented group of creditors in a restructuring process.

Judicial managers powers are beyond those available to directors such as the ability to sell assets of the debtor. He can sell charged assets of the debtor under specified conditions. Also pursue clawback actions for unfair preferences and undervalue transactions.

A court may only make a judicial management order if it is presented to the court:

1) that the company is or will be unable to pay its debts. It is also presented to the court that the placement under judicial management will make it helpful for

a) the survival of the company, or the whole or part of it as a going concern;

b) the more advantageous realisation of the company's assets than would occur in a
the interests of creditors or members of the company.

The court will consider whether there is a real prospect that the appointment of the judicial manager will help realizing better value of the assets and keep the company as going concern.

Ans :

b) Rescue financing:

Means financing provided to the company or its subsidiaries to remedy a breach or default by the company AND to provide liquidity to fund their operations.

Requirements that must be satisfied in order for the Company to be able to access rescue financing under the IRD Act

The Court's approval for a rescue financing order is subject to the following core pre-conditions being met:

- Reasonable efforts made to secure rescue financing without super priority

The company would not have been able to obtain the rescue financing unless super priority was given.

- There is adequate protection for the interests of the holder of the existing security interest
- It meets definition of rescue financing

The proposed financing must constitute “rescue financing” as defined in Section 67(9) of the IRDA (i) financing necessary for the survival of a company that obtains the financing and/or (ii) financing necessary to achieve a more advantageous realisation of the assets than on a winding up.

[discuss what priority orders can be sought]

Question 4.2 [maximum 6 marks]

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) 1m

ANS:

A company can be put into judicial Management in the following two ways:

An application to the court OR A resolution of creditors.

Judicial Manager thus appointed runs the management. Here the Court retains supervisory powers over the actions of the judicial Manager.

If the judicial management is intended by way of creditors’ resolution the company may appoint an interim judicial manager but ultimately the appointment of the judicial manager is decided by the creditors.

Here in the present given case the company has been placed under judicial management. Once this has happened, the company must submit the statement of affairs to the judicial manager. In doing so the Judicial manager will appreciate the role played by the two subsidiary companies namely Alpha Pte and Beta Pte Ltd.

His role as a judicial manager involves:

- Send to the Registrar of Companies and to every creditor a statement of the judicial manager's proposals
- Lay a copy of the statement before a meeting of the company's creditors (summoned for the purpose) on not less than 14 days' notice.

Once the creditors meeting takes place the proposal to place Alpha Pte Ltd and Beta Pte Ltd under judicial management can be taken up being the subsidiaries. Most importantly Company ABC group is dependent on dividends and receivables from its subsidiaries to meet its own financial obligations. Both incorporated in Singapore and wholly owned by the Company ABC Group.

Funds raised by the Company under the MTN were either advanced to its subsidiaries as intercompany loans, or injected as capital into its subsidiaries. Thus the role of the subsidiaries is important and has financial implications.

Therefore, during the creditors meeting this can be one of the proposals to be considered.

[discuss the steps under s 94]

(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) 2.5m

ANS:

The ABC Group 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. The Company has also obtained shareholders' loans of USD 120 million from Mr. X and Mr. Y. These shareholders' loans are repayable on demand.

This factum when placed before the Judicial Manager will show involvement financial transactions. Once these show that monies are involved and the directors of the subsidiary are themselves are majority directors. Thus, action can be taken by the Judicial Manager to take care of the loans provided by Mr. X and Mr. Y, as the directors of the subsidiary are themselves creditors.

Thus a proposal can be made and in judicial management even if one or more classes of creditors have not approved the scheme in accordance with the voting mechanisms, a court can order that the scheme is still binding on the company and all classes of creditors (but not shareholders)

Previously, only companies which were incorporated in Singapore could undergo Judicial Management in Singapore, the 2017 Amendments gave foreign companies doing business in Singapore access to the regime.

A foreign company to enter into Judicial Management in Singapore must be able to demonstrate that it had a "*substantial connection with Singapore*". [comment – discuss that this is to show that it is liable to be wound up in SG, which is required before a company can be put into JM – s 88]

it has assets located in Singapore; (b) it has substantial business in Singapore; (c) Singapore law had been used as the governing law for its business transactions; (d) the foreign company has submitted to the jurisdiction of the Singapore Courts for the resolution of disputes relating to its business transactions; and/or (e) Singapore was the company's Centre of main interests.

In the given facts of the case 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 showing substantial connection with Singapore.

Singapore is not a party to any treaty on international insolvency. It has, however, adopted the UNCITRAL Model Law on Cross-Border Insolvency, which may increase the chances of recognition of Singaporean insolvency proceedings overseas.

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) 0m

ANS:

The assets owned outside Singapore as in this case the properties owned by ABC Group in Australia are mortgaged in Singapore bank, pursuant to bank facility governed by Singapore laws, thus making the place of action in Singapore. Moreover, it has been pursuant to a bank facility that is governed by Singapore law. Thus when the Singapore law governs the

properties mortgaged, the properties are protected under the Singapore Law as the company has substantial connection and when under the Judicial management the properties outside would be in the care of the Judicial manager.

All the powers normally possessed and exercised by the company's directors will be exercised instead by the judicial manager, who can do anything necessary for the management of the company's affairs, business and property. Some of these powers include:

- Power to sell, dispose of or grant security over the company's property
- Power to bring or defend legal actions on behalf of the company.

This power can be used to protect the properties situated outside Singapore.

Rescue financing can be resorted to protect the Properties situated outside Singapore. Judicial manager can obtain restraining orders from the court to protect these assets from being sold out.

[discuss the moratorium in Singapore (s96 read with s 88), and that recognition needs to be sought in the relevant jurisdictions to prevent proceedings or enforcement action being taken against property in those jurisdictions]

*** End of Assessment ***

37.5