



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 cross-class cram-down, allows for a scheme of arrangement with the creditors to be approved for implementation, even after one or more classes of creditors have voted against the same. In the erstwhile scenario under the Companies Act, a cram-down could only be exercised, if the members of the debtor company were to divest their shareholding. However, no such requirement exists now under the Insolvency Restructuring and Dissolution Act ("IRD Act"). In such circumstances, when one or more classes of creditors have voted against the scheme, the court can still approve the same, provided:*

- 1. That the majority of creditors who shall be bound by the scheme (present and voting) have approved the scheme;*
- 2. That 75% or more of the creditors representing the outstanding debt in value (present and voting), have voted in favour of the scheme;*
- 3. That the court approving the scheme of arrangement, is satisfied that the scheme does not discriminate between two or more classes of creditors and has treated every class of creditor in an equitable manner. The test for if there has been no discrimination *inter-se* classes, is if, the dissenting class is not slated to get under the proposed scheme, an amount that is lower than the amount they would have received in the event the court does not approve the scheme. Additionally, in the event the dissenting class is that of unsecured creditors, the court has to further assess whether the scheme provides an amount or property value equal to such unsecured creditors' claim and that the scheme should not provide any amount or property value to an unsecured creditor who has a subordinate claim, on that account/basis itself.*

**[comment - to discuss what is fair and equitable - see s 70 IRDA]**

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

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

*The objectives of the IRD Act are:*

- 1. To amend and consolidate the written laws relating to the making and approval of a compromise or an arrangement with the creditors of a company or an individual, receivership, corporate insolvency and winding up, individual insolvency and bankruptcy, and the public administration of insolvency<sup>1</sup>, and;*
- 2. To provide for the regulation of insolvency practitioners, to provide for connected matters, to repeal the Bankruptcy Act (Chapter 20 of the 2009 Revised Edition) and to make consequential and related amendments to certain other Acts<sup>2</sup>.*

**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. **4m****

*In accordance, with Section 125(2)(c) of the IRD Act, a company is deemed to be unable to pay its debts if it is proved to the court that the company is in fact unable to pay its debt. And further in determining the same, the court must take into account the contingent and prospective liabilities of the company. The Singapore Court of Appeal has now held that the cash-flow test as the determining factor, that the courts have to apply qua this section <sup>3</sup>, which consists of the following factors:*

- 1. The value of the assets of the debtor on date and the realisable value in the near future;*
- 2. Aggregate of debts that are already due for payment and the ones which will become due in the near future;*
- 3. Whether the debtor has defaulted on its financial obligations, and if yes, to what extent;*
- 4. Whether payments are being demanded under over due loans and what payment can/will be accelerated in the near future.*

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

Question 3.1 [maximum 8 marks] **6m**

**Write a brief essay on**

---

<sup>1</sup> Preamble- Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018), <<  
<https://sso.agc.gov.sg/Acts-Supp/40-2018/Published/20211231?DocDate=20181107&WholeDoc=1>>>,  
accessed on 28.07.2023

<sup>2</sup> *Ibid*

<sup>3</sup> Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (2021) SGCA 60

**(i) rescue financing; and**

**(ii) wrongful trading**

**under the IRD Act.**

Rescue Financing: *Rescue financing is a critical element of a scheme of arrangement or a judicial management as it helps the debtor company to remain afloat and as a going concern during these rescue procedures. Additionally, they also help maximise the value of the assets for all the stakeholder which would have otherwise been sold at a distressed value under winding-up. During a scheme of arrangement or a judicial management the debtor company on an application to the court<sup>4</sup>, obtain approval to give these kinds of rescue financiers a super priority status. However, the same should also pass the following threshold tests:*

- 1. That in the even the debtor is wound up, then the amount of the rescue financing will be treated as winding-up costs<sup>5</sup>;*
- 2. That the rescue financing will have super priority over the unsecured claim and the preferential debts<sup>6</sup>;*
- 3. The rescue financing will be secured by a security interest on a property which did not have a pre-existing security interest or is to be secured by a sub-ordinate security interest, in the event the concerned property already has a pre-existing security interest<sup>7</sup>;*
- 4. (Last resort) In the event the debtor is not able to obtain rescue financing from any other avenues, then the rescue financing is to be secured by security interest of the same or a high ranking on property which already has a pre-existing security interest, provided that the interest of the existing security holder<sup>8</sup> are not prejudiced<sup>9</sup>.*

*In the event, the debtor has two or more super priority claims then the same are to rank equally or abate proportionally between themselves<sup>10</sup>.*

*Another aspect of rescue financing that has been added to its realm is that of roll-ups. Distressed debtors typically turned to their existing pre-petition lenders to obtain financing necessary to continue operations. Such pre-petition lenders often conditioned the provision of new debt on the roll-up of pre-petition debt<sup>11</sup>, which*

---

<sup>4</sup> IRD Act, Section 67(1)

<sup>5</sup> IRD Act, Section 67(1) (a)

<sup>6</sup> IRD Act, Section 67(1) (b)

<sup>7</sup> IRD Act, Section 67(1) (c)

<sup>8</sup> IRD Act, Section 67(6)

<sup>9</sup> IRD Act, Section 67(1) (d)

<sup>10</sup> IRD Act, Section 67(3)

<sup>11</sup> White & Case- Singapore Rescue Financing- introducing roll-ups, << <https://www.whitecase.com/insight-alert/singapore-rescue-financings-introducing-roll->



*phenomenon is referred to as roll-up, which is quite prevalent in the United States. In the matter of Re Design Studio Group Ltd.<sup>12</sup>, the Singapore Court of Appeal, held that Section 67 of the IRD Act is "sufficiently broad" to allow for roll-ups. Nonetheless, the court emphasized that the use of roll-ups is not without limits and the rescue financing must create "new value"<sup>13</sup>.*

**[comment - also discuss what constitutes rescue financing as defined in IRDA]**

**Wrongful Trading:** *In accordance with Section 239 of the IRD Act which has primarily been borrowed from the insolvency act of the United Kingdom, a company is said to have traded wrongfully<sup>14</sup>, if:*

- i. The company, when insolvent, incurs debts or other liabilities, without any reasonable prospects of meeting them in full, or;*
- ii. The company incurs debts or other liabilities that it has no reasonable prospect of meeting in full; and that resulted in the company becoming insolvent.*

*In the course of judicial management or winding up of a company or in any proceedings against a company, if it appears that the company has wrongfully traded<sup>15</sup>, then either the judicial manager of the company, the liquidator, the official receiver, any creditor (with leave)<sup>16</sup>, can file an application to declare that any person who has a party to such a wrongful trade or in any manner responsible for it, shall without limitation, be liable for all or any of the debts or other liabilities of the company as the Court directs<sup>17</sup>, if the said person:*

- a. Knew that the company was trading wrongfully<sup>18</sup>; or*
- b. As an officer of the company, ought to have known that the company was trading wrongfully<sup>19</sup>.*

*The person accused as such, as a defence demonstrate that the person acted honestly and that given the circumstances, he/she, ought to be relieved from the personal liability under this section<sup>20</sup>.*

*The provisions regarding wrongful trading are notwithstanding, any criminal liability*

---

[ups#:~:text=d\)%20the%20rescue%20financing%20is,from%20any%20person%20unless%20the>>](#), accessed on 28.07.2023

<sup>12</sup> and other matters [2020] SGHC 148

<sup>13</sup> Idem, Pt. No. 4

<sup>14</sup> IRD Act, Section 239 (12)

<sup>15</sup> IRD Act, Section 239 (1)

<sup>16</sup> IRD Act, Section 239 (5)

<sup>17</sup> IRD Act, Section 239 (1)

<sup>18</sup> IRD Act, Section 239 (1) (a)

<sup>19</sup> IRD Act, Section 239 (1) (b)

<sup>20</sup> IRD Act, Section 239 (2)

*that the person may face under any laws for the time being in force<sup>21</sup>. Further, any court giving a declaration under this section can give further orders to give effect to the same<sup>22</sup>.*

[comment – also discuss that it doesn't require criminal liability to be first imposed, and that an interested party can seek a court declaration that a transaction is not wrongful trading]

**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.**

Sr No	Parameter	Scheme of Arrangement	Judicial Management
1.	<b>Purpose</b>	<i>Under this, an application is made, when the company proposes that a compromise or an arrangement can be reached between itself and its creditors<sup>23</sup>.</i>	<i>Judicial Management is to either achieve survival of the company or approval of a scheme of arrangement under section 210/71 of the IRD Act, a more advantageous realisation of the companies' assets than under winding up<sup>24</sup></i>
2.	<b>Officer appointed and its powers</b>	<i>No statutory officer as such appointed, but a scheme manager can be appointed to administer/draft the scheme, liaison with the creditors etc.</i>	<i>A judicial officer is appointed by the court on an application by the company/creditors' for a period of 180 days, which period can be extended<sup>25</sup>. An interim judicial officer can also be appointed by the court.</i>  <i>The judicial officer has wide statutory powers under the IRD Act, such as that the judicial officer</i>

<sup>21</sup> IRD Act, Section 239 (8)

<sup>22</sup> IRD Act, Section 239 (3)

<sup>23</sup> IRD Act, Section 64 (1)

<sup>24</sup> IRD Act, Section 89 (1)

<sup>25</sup> IRD Act, Section 91

			<i>is required to take into control all the assets of the debtor, manage the affairs of the company, summon a meeting of creditors, has the power to deal with property, amend constitution documents, power to defend suits or sue, power to borrow etc.<sup>26</sup></i>
3.	<b>Entry requirements</b>	<i>The company can only make an application hereunder if no winding up order has been passed against it and it undertakes to draft the scheme as soon as possible, and no moratorium protection has been granted to it under section 210 of the IRD Act<sup>27</sup>. The company must also file evidence of support from its creditors or a feasibility <sup>28</sup> report where no such support has been garnered along with a list of the creditors.</i>	<i>A company, its directors, or its creditors can make an application hereunder, and if the court is satisfied that the company is likely to become insolvent or is likely to achieve the objectives laid out in Sr No. 1 hereinabove, the court may pass a judicial management order<sup>29</sup>.  #can be triggered by a court order or by obtaining a creditors' resolution for judicial management</i>
4.	<b>Moratorium</b>	<i>A 30-day moratorium comes into effect, when the application under Section 64 is filed, which can also be extended on the discretion of the court<sup>30</sup>.</i>	<i>An automatic moratorium period begins when the application is made <sup>31</sup>. Further, during the period when the company is under judicial management, a larger moratorium is ordered<sup>32</sup>.</i>

<sup>26</sup> IRD Act, Section 99 read with Section 100

<sup>27</sup> IRD Act, Section 64

<sup>28</sup> IRD Act, Section 64 (4)

<sup>29</sup> *Ibid*

<sup>30</sup> IRD Act, Section 64 (7)

<sup>31</sup> IRD Act, Section 95

<sup>32</sup> IRD Act, Section 96 (4)

5.	<b>Dealings with property</b>	<i>The court can ask for details of any dealings with the property<sup>33</sup>. Or a creditor can make an application restraining the company from dealing/disposing any property to the prejudice of the creditor or the scheme<sup>34</sup>.</i>	<i>As mentioned above in Sr. No. 4, the judicial officer has powers to deal with the properties belonging to the company.</i>
6.	<b>Administration of Claims/creditors meeting</b>	<i><sup>35</sup> After court approval, the company can lay down the methodology and timelines of claim submissions, which can be extended by the court and is adjudicated by a person who is appointed by the Court to serve as the chairperson of the meeting summoned. Any dispute qua the claims can be adjudicated by a mutually appointed assessor or by the court.</i>	<i><sup>36</sup> The judicial officer is supposed to administer a meeting of creditors and also collect claims</i>
7.	<b>Approval threshold</b>	<i>Majority of 75% or more in value of the respective classes of creditors present and voting</i>	<i>Majority of 75% or more in value of the respective classes of creditors present and voting</i>
8.	<b>Onerous Contracts</b>	<i>Cannot be disclaimed</i>	<i>Judicial officer has powers to disclaim onerous contracts.</i>
9.	<b>Court intervention</b>	<i>High</i>	<i>Not as high as under a scheme of arrangement.</i>
10.	<b>Benefits</b>	<i>1. In addition to its binding nature, the benefit of a scheme of arrangement to the company is that its current management remains in place with full powers to carry on the business, subject only in certain cases to oversight by an</i>	<i>1. Ipso facto clauses are stayed 2. Here an application to court for judicial management is made, the floating charge holder's opposition will only block the judicial management if</i>

<sup>33</sup> IRD Act, Section 64 (6)

<sup>34</sup> IRD Act, Section 66

<sup>35</sup> IRD Act, Section 68

<sup>36</sup> IRD Act, Section 107

		<p><i>insolvency professional.</i> 37</p> <p>2. <i>Ipso facto clauses are stayed</i></p> <p>3. <i>Court can cram-down on the dissenting creditors holding up the approval of the scheme</i></p>	<p><i>the court is of the view that the prejudice that would be caused to it if the order is made is disproportionately greater than the prejudice that would be caused to unsecured creditors of the company if the application is dismissed</i><sup>38</sup></p>
--	--	---	--

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.***

<sup>37</sup> Allen & Overy- Restructuring Across Borders, << [https://www.allenoverly.com/en-gb/global/expertise/practices/restructuring/restructuring\\_across\\_borders](https://www.allenoverly.com/en-gb/global/expertise/practices/restructuring/restructuring_across_borders)>>, accessed on 28.07.2023

<sup>38</sup> *Ibid*

**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]

**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)**

**2m**

**(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) 1m**

**(a)**

**The purpose of judicial management is<sup>39</sup>:**

- i. The survival of the company or the whole or part of its undertaking, as a going concern;**
- ii. or approval of a scheme of arrangement under section 210/71 of the IRD Act;**

---

<sup>39</sup> IRD Act, Section 89(1)

- iii. a more advantageous realisation of the companies' assets than under winding up.

*The creditors should make an application to the court for placing the Company under judicial management of judicial manager as per Section 90 of the IRD Act, where they consider that the Company is likely to be unable to pay its debts and that there is a reasonable of rehabilitation and rescue of business which is a better alternative to winding-up.*

(b)

*For a court to order and approve rescue financing, the following conditions must be met:*

- 1. That in the event the Company is wound up, then the amount of the rescue financing will be treated as winding-up costs<sup>40</sup>;*
- 2. That the rescue financing will have super priority over the unsecured claim and the preferential debts<sup>41</sup>;*
- 3. The rescue financing will be secured by a security interest on a property which did not have a pre-existing security interest or to be secured by a sub-ordinate security interest, in the event the concerned property already has a pre-existing security interest<sup>42</sup>;*
- 4. In the event the Company is not able to obtain rescue financing over any other avenues, then the rescue financing is to be secured by security interest of the same or a high ranking on property which already has a pre-existing security interest, provided that the interest of the existing security holder<sup>43</sup> are not prejudiced<sup>44</sup>.*

**[comment - discuss what constitutes rescue financing under IRDA]**

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) *Om***

---

<sup>40</sup> IRD Act, Section 67(1) (a)

<sup>41</sup> IRD Act, Section 67(1) (b)

<sup>42</sup> IRD Act, Section 67(1) (c)

<sup>43</sup> IRD Act, Section 67(6)

<sup>44</sup> IRD Act, Section 67(1) (d)

*The subsidiaries cannot automatically be placed under judicial management, just because the holding or the parent company has gone under judicial management. There are no such provisions in the IRD Act. However, the separate lenders of the two subsidiaries can move independent petitions if they are satisfied that the conditions warranting judicial management is being met. Also, coordination in that event will be warranted with the judicial officer of ABC Limited, as the possession and control of the assets (being the subsidiaries here) will be with him/her. In its capacity as the judicial manager of ABC Limited, he can convince the board of the subsidiaries/or its creditors to move an application for judicial management.*

**[comment - see 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) 1m**

*As per section 88 of the IRD Act, only those debtors can be placed under judicial administration, which are eligible to be wound up under the act. In the case of Charlie Pty Ltd, it is to be noted that, it is an Australian incorporated entity and hence the creditors will have to prove the eligibility (*inter-alia*, the various other grounds which the creditors are required to prove for obtaining an order of judicial management under the IRD Act), by demonstrating that Charlie Pty Ltd. has willingly submitted to the jurisdiction of Singapore in its financing documents under which it has obtained a loan from a Singapore Bank to finance the properties it has purchased in Australia (all of which are mortgaged to the Singapore Bank).*

**[comment - discuss what is a company eligible to be wound up - ie it has a "substantial connection" with SG, and what are the factors]**

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) 4m**

*The rescue proceedings of ABC Limited, will have the characteristics of being recognised as 'foreign main proceedings' in the Australia and the UK, on an application of recognition by the judicial officer appointed under the judicial management, given that the Centre of Main Interest of the company is very clearly Singapore. Given that it has a lot of its own assets (subsidiaries) located in Australia and the UK, the same should get protection from creditor enforcement once the proceedings are recognised*



*as foreign main proceedings, also given that both UK and Australia have adopted the UNCITRAL Model law (almost without major changes).*

[comment - also discuss firstly that there is a moratorium in SG but no effective protection in the relevant jurisdiction]

**\* End of Assessment \***

**40m**