



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 basically allows a scheme of arrangement to be approved despite one or more classes of unsecured creditors rejecting the proposed scheme for voting purposes. This minimises the influence of minority creditors on the scheme still giving the company a chance to restructure its debts and reach an agreement with its creditors. This mechanism also allows a court to order that the proposed scheme that was rejected to be binding on the company and all classes of creditors if a majority of creditors present and voting agreed to the arrangement and this majority represents 75% in value of creditors meant to be bound by the arrangement who were present and voting. Once the court is of the opinion that the arrangement is fair amongst the dissenting class of creditors and doesn't discriminate unfairly between two or more classes of creditors and three-fourths in value of creditors of each class have voted in favour then it can be approved by the court to be binding on all creditors involved.

***Comment - discuss what is far and equitable - s70 IRDA***

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

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

Two objectives of the IRD Act are to:

1. "introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws; and
2. establish a regulatory regime for insolvency practitioners."<sup>1</sup>

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

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<sup>1</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 62

**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.**

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 are as follows:

1. “Whether payment is being demanded or likely to be demanded in respect of those debts;
2. The length of time that has passed since the commencement of the winding-up proceedings;
3. The value of the company’s current assets and assets that will be realisable in the reasonably near future; and
4. The state of the company’s business, to determine expected net cash flow from business by deducting the projected future sales the cash expenses which would be necessary to generate those sales.”<sup>2</sup>

**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.**

Rescue financing is a mechanism that was recently introduced to Singapore, by virtue of the Companies (Amendment) Act 2017, for distressed companies. Rescue financing is financing that is either or both: “(1) necessary for the survival of a debtor that obtains financing; and/or (2) necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing than on a winding up of a debtor.”<sup>3</sup> This feature is based off of a US-style debtor in possession finance which provides funding for financially distressed companies with the intent to avoid insolvency and facilitate restructuring. The implementation of this legal mechanism helped to enhance Singapore’s reputation on being a respectable international restructuring hub. It also provides an avenue for companies facing financial trouble who often face higher costs of borrowing as banks and other financial institutions become more wary of advancing funds to distressed companies without some form of assurance or protection that the funds will be repaid.

Hence, rescue financing plays a crucial role in restructuring processes as it essentially allows a debtor company to continue doing business and pay suppliers and other trade debtors. It’s usually provided by lenders or investors who believe in the financially distressed company recovering and becoming financially viable again. A Singapore court has the discretion on an application by a debtor to make an order that any rescue financing that the debtor obtains will be: “(1) be treated as part of the costs and expenses of the winding-up if the debtor company is later wound up; (2) enjoy priority over preferential debts if a winding-up occurs; (3) be secured by a security interest on the debtor’s property not otherwise subject to any existing

<sup>2</sup> Ibid. p32; Sun Electronic Power Pte Ltd v RCMA Asia Ptd Ltd [2021] SGCA 60

<sup>3</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 51

security or to confer a subordinate security interest on the debtor company's property already subject to an existing interest; and (4) for the debt to be secured by a security interest of the same or higher priority than an existing security interest.<sup>4</sup>

On the other hand, wrongful trading refers to situations where a financially distressed company continues to operate/trade and incur debts even when the directors are aware or should have been aware that there's no reasonable prospect of the company meeting them in full or avoiding insolvency. In such instances, the Court can make declarations that any person who was knowingly a party to the company engaging in wrongful trading can be held personally liable for any debts or liabilities of the company as a result of such transaction.<sup>5</sup> This determination is made by taking considering factors such as: the company's financial position, the directors' knowledge and actions, and whether any steps were taken by the directors to minimise the potential loss to the creditors of the company.

An application can be made by a company or any person party to or interested in becoming party to the carrying on of business with a company to court for a declaration that a specific conduct, action or transaction would not constitute wrongful trading.<sup>6</sup> However, if the company is in fact continuously incurring debt or liabilities when the company is insolvent or becomes insolvent as a result of engaging in such transaction then this would obviously amount to wrongful trading. Wrongful trading serves as a deterrent against directors from mismanaging companies or continuing to trade knowing that the company is in financial distress. It also encourages directors to prompt actions to help avoid insolvency and consider the best interests of the company's creditors. This also encourages directors of distressed companies to exercise greater care as the threshold to establish wrongful trading is quite low to satisfy as oppose to the previous regime which imposed criminal liability as a prerequisite before the making of an application to impose civil liability against a director of a company (which was a higher standard of proof). However, the court has discretion to relieve the person from personal liability if satisfied that the person acted honestly, having regard to all the circumstances of the case, and ought fairly to be relieved from personal liability.

### 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.***

There are many differences between the judicial management and scheme of arrangement processes in Singapore. While both are legal mechanisms that are used to restructure or rescue companies facing financial distress, they differ in their nature, applicability, and outcomes which will be discussed below.

Scheme of arrangement is a debtor driven, corporate rescue process and a voluntary arrangement between the company and its creditors to restructure the company's debts and liabilities; which is usually proposed by the distressed company itself. The compromise or arrangement requires approval from the company's creditors and the court. It essentially provides a basis for the company and its creditors to negotiate and agree on a compromise with the aim of avoiding liquidation and ensuring the company continues in operation. During this process, the directors and existing management continue with the running of the company,

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<sup>4</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 52

<sup>5</sup> IRD Act, section 239; Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 55

<sup>6</sup> Section 239(10) IRD Act



retaining control of the company's affairs, as they're more familiar its operations as opposed to a court -appointed judicial manager. The directors play a crucial role in formulating a plan and seeking approval from the company's creditors (75% present and voting) with some decisions needing court approval. There is less stigma involved in a scheme of arrangement which is important for a public listed company preventing an adverse impact. A scheme of arrangement offers flexibility in negotiating terms with creditors but essentially involves more tailored restructuring arrangements. Once all the criteria have been satisfied and the relevant majorities have voted on the scheme or restructuring plan has been approved by the creditors or shareholders, the court sanctions the approval of restructuring plan to be implemented and the scheme to be executed. However, the scheme does not automatically impose a moratorium but the court still has power to grant one, if necessary, for the scheme to be implemented successfully.

This above process is different from judicial management which is creditor led and a court-supervised mechanism designed to facilitate the rehabilitation of a financially distressed company. An application for judicial management is usually made by the company, its directors or its creditors and determined by the court on whether to grant such application. Judicial management entails an appointment of an insolvency practitioner, as the judicial manager (insolvency practitioner), which is appointed by the court. The judicial manager replaces the company's directors and management as their powers cease on the appointment and the judicial manager also assumes control of the company's operations becomes responsible the affairs, business, property of the company and ultimately for running the company. Upon appointment of judicial manager, an automatic moratorium is imposed preventing creditors from bringing actions against the company. It essentially provides breathing space for a financially troubled company by allowing reorganisation of its debts, renegotiation of contracts and reiving the company's operations.

Unlike scheme of arrangement, judicial management is more of an insolvency process, with the directors' powers ceasing and creditors having a limited role in the management and direction of the company due to it falling within the responsibility of the judicial manager.<sup>7</sup> However, a creditors committee is formed to consider judicial manager's proposals and require the judicial manager to attend before the committee and account for its conduct in relation to carrying out its functions or other information the committee may reasonably require.<sup>8</sup> The judicial manager seeks the approval from the company's creditors and the court for the proposed restructuring plans and then implements these plans which may involve restructuring the company's debts. It also has the ability to modify and make the necessary changes to the company's operations to facilitate the restructuring. Once an order for judicial management is granted, the judicial manager takes control of the company for 180 days which can be extended by the court. The judicial manager can also apply to court for an order seeking to claw back any assets transferred in transaction that were unfair preferences or conducted at an undervalue one the relevant elements are satisfied.

In conclusion, while both of the above mechanisms can provide alternatives for financially distressed companies, they differ significantly in scope. It appears judicial management provides more flexibility for restructuring a company's operations than a scheme of arrangement due to the judicial manager having broad powers manage the company's affairs and allows more significant changes to occur to the company's structure and operations. Schemes primarily focus on restructuring the company's debts and liabilities while negotiating with creditors and propose compromises to alleviate the financial distress. Hence, depending on the company's position and needs will determine which process is best suited to help a company in financial distress.

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<sup>7</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 13

<sup>8</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 13

**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] **4m**

***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)***

The purpose of judicial management proceedings is to facilitate the rehabilitation or rescue of a financially distressed company. This mechanism would allow the Company to restructure its affairs, revive its operation and maximise on creditor returns. It also provides breathing space to the trouble company so that the judicial manager can formulate a restructuring plan. To obtain an order for judicial management the following must be presented:

1. Application by company setting out company's position in being financially distressed.
2. Eligibility- must be a company registered, carry on business, or have a place of business in Singapore to qualify for judicial management.
3. Nomination of judicial manager - appoint a suitable person with relevant expertise set out in Companies Act.
4. Statement of affairs prepared and submitted detailing financial affairs of company (Assets, liabilities, etc.).
5. Supporting documents – affidavit supporting application.
6. Proposed restructuring plan.

***(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)***

Since ABC Limited is already placed under judicial management, the following requirements would need to be satisfied in order for the Company to be able to access rescue financing under the IRD Act:

1. "the financing for ABC Limited would have to be necessary for the survival of this Company as the debtor obtaining the financing; and
2. the financing would have to be necessary to achieve a more advantageous realisation of ABC Limited's assets than an order for the Company to be wound up."<sup>9</sup>

(a) the court may make an order for judicial management if: (1) the debtor company is or is likely to become unable to pay its debts and (2) the court considers that placing the company under judicial management would be likely to achieve at least one of the 3 purposes of judicial management which are: (1) survival of company (wholly or partly as a going concern); (2) approval under section 210 of CA of a

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<sup>9</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 51

compromise/arrangement between the company and such persons mentioned; and (3) more advantageous realisation of the company's assets that would occur in a winding.<sup>10</sup>

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

***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)***

Under section 94(1) of the IRD Act, judicial management should only be used where creditors consider that: "(1) the companies are unable to pay their debts; and (2) there is a reasonable probability of achieving one or more of the proposes of judicial management mentioned in sections 89(1); and (3) a resolution of its creditors is obtained."<sup>11</sup> You have to also consider whether the interest of creditors would better serve the companies than by resorting to winding them up.<sup>12</sup> The creditors can pass a resolution under subsection 11 for companies to be placed under judicial management of a judicial manager.<sup>13</sup> The procedure for the judicial management process includes "the manner to conduct creditor meetings; notice requirements; and relevant timelines"<sup>14</sup> (give at least 7 days written notice in the prescribed for to appoint a judicial manager

In order to place Alpha Ptd Ltd and Beta Pte Ltd under judicial management out a court, a creditors' resolution would have to be passed by majority in value (of total amount of creditors' claims) and in number of creditors present and voting rather than simply by a single creditor. An interim judicial manager is appointed by filing a creditors' or shareholders' resolution for the appointment and lodging statutory declarations with the Official Receiver and ACRA stating the interim judicial manager's consent to be appointed as such, and that the company intends to undergo judicial management. After the appointment, the company then also has to lodge a notice of appointment with the Official Receiver and ACRA and publish the notice in the Government Gazette and in an English local daily newspaper.

***(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)***

Although Charlie Pty Ltd was incorporated in Australia, Singapore have jurisdiction to place foreign companies in liquidation or a utilise a rescue tool, such as judicial management, if the

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<sup>10</sup> Section 9(1) IRD Act; Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 48

<sup>11</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 65

<sup>12</sup> Section 90, Pt 7, IRD Act; Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 47

<sup>13</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 65

<sup>14</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 66

company has a “substantial connection” with Singapore.<sup>15</sup> This can be demonstrated in the following ways:<sup>16</sup>

- (a) The COMI of the Debtor is located in Singapore;
- (b) The debtor is carrying on business in Singapore or has its place of business there;
- (c) The debtor is registered as a foreign company in Singapore;
- (d) The debtor has substantial assets in Singapore;
- (e) The debtor has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transactions; and/or
- (f) The debtor has submitted to the jurisdiction of the Singapore courts for the resolution of one or more disputes relating to a loan or other transaction.<sup>17</sup>

In this case, this substantial connection can be established by virtue of Charlie Pty Ltd choosing Singapore law as the law governing the mortgage given to the Company by a Singapore bank for properties bought in Australia. There is a possibility that the Company is registered as a foreign company in Singapore considering the fact it's a subsidiary of the holding company (ABC Limited) which is a Singapore company and probably would've had to disclose all subsidiaries it owns since it is dependent upon the dividends and receivables from its subsidiaries to meet its own financial obligations. Hence, the Singapore court does have jurisdiction to exercise this rescue tool on the Charlie Pty Ltd.

#### 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 assets owed by the ABC Group in jurisdiction outside of Singapore may not be protected because the order may have limited extra territorial effect. Generally, the moratorium provided in judicial management is limited to assets within the jurisdiction where proceedings are taking place under section 210(10) of the Companies Act or section 64 of the IRD Act whereby a moratorium can be imposed for 30 days. Hence, an automatic moratorium on assets outside of Singapore depends on the jurisdiction and the specific laws governing the proceeding in order to impose a moratorium over those assets and whether the company involved does business or has a place of business in Singapore. This may require a judicial manager to seek assistance from the Singapore courts for recognition of the judicial management and to further obtain a moratorium over the assets outside of Singapore. It also involves cooperation and communication between jurisdictions. However, the automatic stay under Singapore's version of the UNCITRAL Model Law on Cross-Border Insolvency ("Singapore Model Law") is an accessible and powerful tool for protection under the Singapore restructuring regime for non-Singapore debtors facing enforcement action in Singapore. These debtors may obtain protection from creditor action in Singapore through the application of the Singapore Model Law, thereby facilitating the debtor's ability to restructure. In United Securities Sdn Bhd (in

<sup>15</sup> Pt 10, section 246 of Insolvency Act; Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, p 45

<sup>16</sup> Shaun Langhorne, Debby Lim and Sheila Ng, Module 8E Guidance Text, Singapore2022/2023, pp 45-46

<sup>17</sup> Ibid.

receivership and liquidation) and another v United Overseas Bank Ltd [2021] SGCA 78, the Singapore Court of Appeal considered the application of the Singapore Model Law for the first time.

The Singapore Court of Appeal held that even when an automatic stay on proceedings applies under the Singapore Model Law where there are foreign main proceedings, the Singapore courts still has discretion to grant leave to secured creditors (if creditors are adequately protected)<sup>18</sup> to take enforcement action against a debtor in Singapore where they are bringing a prima facie case on enforcement which is bona fide and capable of succeeding if allowed to proceed.

**\* End of Assessment \***

**[comment - the express wording of s88 covers property that is outside of singapore, but there is no extraterritorial effect in that it depends on whether the relevant jurisdiction recognises it. If no recognition available, then there is a need to consider whether to commence parallel proceedings]**

**48m - well done!**

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<sup>18</sup> Article 22 of the Singapore Model Law.