



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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- 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.

In broad terms, the concept of a cross-class cram-down in a scheme of arrangement allows for a scheme of arrangement to be approved even if one or more classes of creditors (of the company proposed to be subject to the scheme of arrangement) reject it. Conceptually, this reduces the influence that minority creditors may have over the scheme of arrangement as a restructuring tool.

*Under the IRD Act (in contrast to the position under previous legislation), it is *not* required that the shareholders of the relevant company are divested of their shares in the company prior to unsecured creditors being crammed down.*

*The court can make an order that the scheme of arrangement is binding on the company and *all* the classes of its creditors (but not the shareholders of the company), regardless of there being dissenting creditors, *subject to* the scheme being approved by the requisite majority of the company's creditors.*

*That requisite majority is (1) a majority *in number* of creditors meant to be bound by the proposed scheme of arrangement (out of those creditors who were present and voted on the proposed scheme of arrangement) (2) who, together, represent three quarters or more of the value of creditors' claims (out of those creditors who were present and voted on the proposed scheme of arrangement).*

Furthermore, the court must be satisfied that the scheme of arrangement does not discriminate unfairly between the classes of creditors and treats each dissenting class fairly and equitably.

In considering whether a scheme of arrangement is fair and equitable, the court must be satisfied that (i) no creditor in the relevant dissenting class(es) will receive, under the terms of the proposed scheme of arrangement, an amount lower than the creditor would receive if the scheme of arrangement were not approved (i.e., in the most likely alternative scenario, as estimated by the court) and (ii) if the dissenting creditors are unsecured creditors of the company, the terms of the scheme of arrangement (a) must provide for each creditor in the class of dissenting creditors to receive property that is equal in value to the quantum of each such creditor's claim or (b) must not allow for a creditor to receive or retain property where such creditor's claim is subordinate to the claim of a creditor in the dissenting class of creditors as a result of the terms of the proposed scheme of arrangement. This requirement mirrors Chapter 11 of the U.S. Bankruptcy Code in preventing creditors receiving a distribution in preference to more senior classes of creditors.

[Comment: to also refer to the situation where dissenting class are secured creditors]

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

Name two objectives of the IRD Act.

The IRD Act is a single piece of insolvency legislation that became effective on 30 July 2020. It repealed and replaced existing Singaporean statutory restructuring and insolvency regimes, consolidating all personal and corporate insolvency and restructuring laws. As a result, there is no longer a need to cross-reference between different Singaporean statutory regimes for restructuring and insolvency matters.

Two of the objectives of the IRD Act, as stated by Singapore's Ministry of Law, were to (i) establish a regulatory regime for Singaporean insolvency practitioners (by introducing mandatory minimum qualifications in order to practice, by setting out the requirements for insolvency practitioners' licences to be granted and renewed, and by creating a framework for disciplinary matters relating to insolvency practitioners and (ii) enhance the restructuring and insolvency laws of Singapore.

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.

*The determination that a company is "unable to pay its debts" is the most typical justification upon which to wind up a company on the grounds that it is insolvent. A creditor is *prima facie* entitled to the making of a winding up order (by the court) if a company is deemed "unable to pay its debts".*

The phrase is assessed pursuant to section 125(2) of the IRD Act, pursuant to which a company is deemed unable to pay its debts if: (i) a creditor of the company (who is owed SGD 15,000 or more that is due by the company) has served the company with a demand requiring payment of such debt and the company has failed to make payment or otherwise satisfy the debt in the following three weeks; or (ii) the execution of a judgment, decree or order of a court in favour of one of the company's creditors is not wholly satisfied; or (iii) the court is satisfied that the company is unable to pay its debts (taking into account the company's contingent and prospective liabilities).

*Pursuant to *Sun Electric Power Ptd Ltd v RCMA Asia PTE Ltd* [2021] SGCA 60, the Court of Appeal of Singapore ruled that, in the case of (iii), above (which reflects section 125(2)(c) of the IRD Act), the only - and determinative - test for the court to consider is known as the "cash flow test". The Singapore Court of Appeal set out a list of factors (on a non-exhaustive basis) for the court to consider when assessing whether a company has failed the cash flow test.*

Those factors (stated at paragraph 69 of the judgment) include the following: (i) the value of debts that are due or will be due in the reasonably near future; (ii) whether payment for those debts is being demanded or is likely to be demanded; (iii) the value of the current assets of the company and those of the company's assets which will be realisable in the reasonably near future; and (iv) any income or payment that the company may receive in the reasonably near future.

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

Question 3.1 [maximum 8 marks] 8m

Write a brief essay on

(i) rescue financing; and

(ii) wrongful trading

under the IRD Act.

Rescue financing and wrongful trading are both, to Singapore, foreign-law imports; rescue financing is a concept borrowed from the U.S. Chapter 11 Bankruptcy Code, whilst wrongful trading reflects English insolvency legislation. Both are necessary constituents of a statutory restructuring and insolvency framework, as set out below.

(i)

Rescue financing is financing that is (1) necessary for a debtor's survival, or (2) necessary for the achievement of a realisation of the assets of a debtor that is more advantageous than on a winding-up of the debtor, or (3) both.

Under Singapore law, and in particular from its introduction pursuant to the 2017 Amendment Act coming into effect prior to the IRD Act, a debtor may benefit from rescue financing under the scheme of arrangement and judicial management restructuring and insolvency procedures.

Upon the debtor's application, a Singapore court may order that rescue financing obtained by the debtor will: (1) be treated as part of the debtor's costs and expenses (if the debtor is later wound up); (2) benefit from priority over preferential debts of the debtor (if it is later wound up); (3) be secured by a security interest on the debtor's assets not subject to an existing security interest or by a subordinate security interest on assets of the debtor already subject to an existing security interest (if the debtor would not have obtained unsecured rescue financing from any other lender); or (4) be secured by a security interest on the debtor's assets subject to an existing security interest, with the same or higher priority as/than such existing security interest (if the debtor would not have obtained rescue financing unless secured in such a manner and there is sufficient protection for the existing secured party's existing security interest).

Rescue financing can provide a debtor with the liquidity it needs for its business and affairs to be rescued and for it to return to trading, as well as removing concerns the directors may have as to failing to meet their duties (and thereby providing a debtor with some certainty and stability). It is necessary to provide for the above orders to be made by the Singapore court to encourage the practice of lenders offering rescue financing and debtors seeking rescue financing, and it is to be hoped that even where a company is not, ultimately, capable of being rescued, rescue financing will nevertheless lead to a more favourable outcome for creditors on the whole.

(ii)

The IRD Act also introduced a new provision, at Section 239, regarding wrongful trading, which allows the court to declare that a person who was knowingly party to a debtor trading wrongfully is personally liable for the debtor's debts or liabilities. More precisely, personal liability may be imposed if the person knew that the company was engaging in wrongful trading or (if they were an officer of the company) ought to have known, given all relevant circumstances, that the company was trading wrongfully. There is no requirement to establish criminal liability.

Wrongful trading occurs where debts or other liabilities are incurred by a debtor without there being a reasonable prospect that the debtor will be able to satisfy such obligations in full, when the company is insolvent, or when the company becomes insolvent as a result of incurring debt or liability.

It is necessary for a provision relating to the treatment of wrongful trading to exist because it incentivises trading that is in the interests of the company and its creditors.

Question 3.2 [maximum 7 marks] **6m**

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

The differences between the judicial management process and the scheme of arrangement process stem primarily from their different designs. Whilst they may be grouped together as corporate rescue procedures, with an aim of rehabilitation of corporate entities, they achieve that aim differently.

The judicial management process begins with an application made by the debtor itself (by a resolution of its members), by its directors (by a resolution of the board of directors), or by one or more of its creditors. The application should only be brought where the relevant applicant believes that the debtor is, or will be, unable to pay its debts and there is a reasonable prospect of the debtor being rehabilitated (or, alternatively, preserving all or part of the debtors business as a going concern or better serving the interests of creditors than in comparison to a winding up of the debtor). Correspondingly, a court may only make an order for a debtor's judicial management if it is satisfied that the company is, or will be, unable to pay its debts and it considers that a judicial management of the debtor would achieve one of the purposes listed above.

By contrast, the scheme of arrangement process begins with an application being made by the debtor, one of the requirements of which is that the debtor must propose, or intend to propose, a compromise or an arrangement between it and its creditors (or any class of its creditors).

In a judicial management an independent insolvency practitioner will be appointed by the court and they will have all the responsibilities, functions, and powers of the debtor's board of directors (in substitution for the board of directors), as well as certain statutory powers. The position in a scheme of arrangement is different; although it is envisaged that a scheme manager will be appointed to facilitate the restructuring, their role is to prepare the scheme proposal, adjudicate on creditors' proofs of debt, sit as chairperson in scheme meetings, and administer the scheme. Those points aside, the scheme of arrangement is a debtor in possession process in which the directors of the debtor retain control of the debtor and day-to-day decision-making.

Various differences between the two processes follow from those starting positions (or are otherwise consistent with those starting positions).

For instance, a judicial manager is entitled to disclaim onerous contracts, whereas disclaimer is not possible in a scheme of arrangement. This is logical because it might unfairly prejudice creditors' claims if disclaimer were possible in schemes of arrangement - whereas a judicial manager is appointed by the court and independent, meaning it has no vested interest in unfairly prejudicing creditors' positions.

The provisions relating to impeachable transactions do not apply in relation to schemes of arrangement (because the debtor, acting by its directors, remains in possession of its business and assets), whilst impeachable transactions provisions to apply to judicial management (because there is an independent appointee who can adjudicate on such matters).

Similarly, provisions relating to the liability of officers do not apply in a scheme of arrangement (because such officers remain in control), whereas they do in a judicial management (again, because there is an independent appointee who can adjudicate on such matters).

Finally, there is no formal mechanism to convert a scheme of arrangement into a liquidation, although a scheme of arrangement could be followed by a winding-up petition. By contrast, in a judicial management there is a formal possibility for a judicial management order to be discharged by the court (for instance, if the judicial manager believes it is not possible for the purposes of a judicial management to be achieved), in which case the court has a discretion to place the company into liquidation.

[Comment: to also discuss the moratorium differences]

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]

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)

Judicial management proceedings are a process in which an insolvency practitioner (being a licensed professional) assumes control of a debtor - in this case, that would be ABC Limited.

The purposes of judicial management are prescribed by section 89(1) of the IRD Act, pursuant to which the judicial manager of a company (being the insolvency professional appointed to oversee the judicial management) must perform their functions in order to achieve one or more of the following: (i) the survival of the company; and/or (ii) the entry into, by the company and relevant stakeholders (including creditors and members) of a statutory compromise or arrangement in relation to the company and its financial position; and/or (iii) a realisation of the company's assets that is more advantageous than would be the case in a winding up.

In this case, a judicial management might seek to achieve the survival of ABC Limited, a compromise or scheme of arrangement with the bank lenders and ABC Limited's other creditors, and/or a realisation of the assets of ABC Limited (which we understand, principally, to be its holdings in its subsidiaries and any dividends/receivables from its subsidiaries).

Pursuant to section 91(1) of the IRD Act, in order to obtain a judicial management order, the court must be presented, by the relevant applicant (which could be ABC Limited itself, Mr X and Mr Y (as ABC Limited's directors), or the bank lenders or other creditors (as ABC Limited's creditors)) with evidence sufficient to satisfy it that (i) the company is or will be unable to pay its debts and (ii) making the order for judicial management would be likely to lead to achieving one or more of the purposes of judicial management set out above.

(b)

Pursuant to section 101 of the IRD Act, and upon application by ABC Limited's judicial manager for the court to make an order granting priority (or similar relief) for rescue financing, ABC Limited may benefit from rescue financing. The judicial manager must send a notice of the application to each creditor of ABC Limited (per section 101(2) of the IRD Act).

Rescue financing may be granted by the court (i) prescribing that such financing has priority over all preferential and other unsecured debts (section 101(1)(b) of the IRD Act), (ii) prescribing that such financing be secured by otherwise unsecured property of ABC Limited or a security interest on property that is subject to existing security, provided the new security is subordinate to the existing security (per section 101(1)(c) of the IRD Act), and/or (iii) prescribing that such rescue financing be secured by secured by property of ABC Limited that is subject to existing security, where the new security is given the same or a higher priority than the existing security (per section 101(1)(d) of the IRD Act).

To make orders as described in scenarios (i), (ii), and (iii) above, the court must be satisfied that ABC Limited would not have been able to obtain the rescue financing from any person unless, respectively: (i) the debt was given such priority; (ii) the debt was secured in the manner described; and (iii) the debt was secured in the manner described and there was adequate protection for the interests of the holder of the existing security interest.

[Comment: to also include discussion on definition of rescue financing]

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)***

As a general matter, applications for the judicial management of Alpha Pte Ltd and Beta Pte Ltd may be brought to the court by those companies themselves (pursuant to a resolution of ABC Limited, as sole member), by their directors (pursuant to resolutions of the boards of directors of those companies), or those companies' creditors (including the bank lenders), in circumstances where the applicants believe the companies is or will be unable to pay their debts and there is a reasonable probability of achieving one or more of the statutory objectives of judicial management.

*However, section 94 of the IRD Act also provides for a voluntary commencement of judicial management without it being necessary to make an application to court, in circumstances where (i) the relevant company is, or is likely to become, unable to pay its debts, (ii) there is a reasonable probability of achieving one or more of the statutory objectives of judicial management; *and* (iii) a resolution of the company's creditors is obtained.*

In order to voluntarily enter into judicial administration, each of Alpha Pte Ltd and Beta Pte Ltd would need to abide by the process set out in section 94 of the IRD Act, as follows:

- ***94(2): give at least 7 days' notice, in writing and in the prescribed form, of its intention to appoint an interim judicial manager, to each of the to the proposed interim judicial manager and to any person who has appointed or is (or may be) entitled to appoint a receiver and manager of the company's property pursuant to any relevant security granted by the company;***

- **94(3):** be satisfied that the relevant conditions have been met, including (i) a resolution of the members of the company or (if the company's constitutional documents permit it) a resolution of the board of directors of the company, (ii) the notice period set out above has expired but not more than 21 days have elapsed since the date of the notice, (iii) each person entitled to receive it has given their consent to the notice, (iv) the proposed interim judicial manager has lodged a statutory declaration that they do not have a conflict, consider the judicial management can achieve one of the statutory objectives, and consent to be appointed, (v) the company has lodged a statutory declaration that it is or is likely to become unable to pay its debts, will summon a meeting of the company's creditors for no later than 30 days after such lodgment, and believe the judicial management can achieve one of the statutory objectives, and (vi) that the proposed interim judicial manager is a licensed insolvency practitioner and not the company's auditor;
- **94(5):** upon the appointment of the interim judicial manager, the company must within 3 days give notice in writing of the appointment to the Official Receiver and the Registrar of Companies and within 7 days publish in the *Gazette* and advertise the appointment;
- **94(7) and (8):** the company must convene a meeting of the company's creditors to be held not later than 30 days after the lodgment of the statutory declaration set out above (re. paragraph 94(3), sub-paragraph (iv)), at a time and place convenient to the majority in value of the creditors of the company, to consider a resolution for the judicial management of the company, giving at least 14 days' prior notice in writing and enclosing a statement of all the company's creditors' names and amounts of their claims and a full statement of the company's affairs (including its assets, property, and method of valuing the same), and publishing notice details of the meeting at least 10 days beforehand; and
- **94(9), (10) and (11):** subject to the company nominating one or more directors to attend the meeting, and such directors (and the company secretary) attending the meeting and disclosing the circumstances leading to the proposed judicial management, a creditors' resolution for the judicial management of the company will be approved and the judicial management will commence if a majority in number and value of the creditors present and voting resolve accordingly.

(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)

Only a company that is eligible to be wound up pursuant to the IRD Act may enter into judicial management (per the definition of "company" in section 88(1) of the IRD Act). This does not exclude foreign entities (which Charlie Pty Ltd is, being incorporated in Australia), on the proviso that any foreign debtor availing itself of judicial management in Singapore must have a substantial connection with Singapore (by reference to section 246(1)(d) of the IRD Act). Charlie Pty Ltd is, therefore, eligible to

be placed into judicial management in Singapore - subject to having a substantial connection with Singapore.

In determining whether Charlie Pty Ltd has a substantial connection with Singapore, the court will have regard to the matters listed in section 246(3) of the IRD Act. Assuming that Australia remains Charlie Pty Ltd's centre of main interests and that it is not carrying on business in Singapore, does not have a place of business in Singapore and is not registered as a foreign company in Singapore, it must be demonstrated to the court that Charlie Pty Ltd has substantial assets in Singapore, has chosen Singapore law as the governing law of a loan or other transaction or law governing the resolution of disputes arising out of a loan or other transaction, or has submitted to the jurisdiction of the court in Singapore for the resolution of one or more disputes relating to a loan or other transaction.

Of those possibilities, we understand that Charlie Pty Ltd has a bank facility that is governed by Singapore law. Unless it has a non-standard governing law and jurisdiction clause, the bank facility will also provide for the forum for disputes arising in relation to it to be the courts of Singapore. This is sufficient to establish that Charlie Pty Ltd has a substantial connection with Singapore, pursuant to section 246(3)(e) of the IRD Act. The applicant for judicial management (be it Charlie Pty Ltd's creditors or shareholders, or indeed Charlie Pty Ltd itself) will need to provide the court with the fully signed and dated facility agreement in order to satisfy the court of Charlie Pty Ltd's substantial connection with Singapore.

Question 4.3 [maximum 5 marks]

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

Please provide analysis on the following issue:

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

The ABC Group owns various (unnamed) subsidiary construction and property companies, which themselves own and operate construction drilling rigs in Australia and the United Kingdom, and property in Australia (via Charlie Pty Ltd).

If each of Alpha Pte Ltd, Beta Pte Ltd, and Charlie Pty Ltd entered into judicial management in Singapore, the judicial manager of each entity would be bound, pursuant to section 99(1) of the IRD Act, to take custody or control of all the property to which each entity is, or appears to be, entitled.

However, the courts of England and Wales and of Australia are unlikely to automatically recognise the judicial management of the entities in Singapore.

The judicial manager may seek to obtain recognition of the judicial management in Australia and the United Kingdom pursuant to the UNCITRAL Model Law on Cross-Border Insolvency.

Equally, the judicial manager may seek to obtain recognition of the judicial management in Australia and the United Kingdom pursuant to those states' equivalents of the Reciprocal Enforcement of Commonwealth Judgments Act, which provides for judgment from those states to be registered in the Singapore High Court.

[comment: moratorium covers property outside of singapore (s88) but whether protection would still depend on whether recognition is available in the relevant jurisdictions. If not recognition available, then to consider commencing parallel proceedings]

*** End of Assessment ***

45m well done!