



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.**

*A cross-class cram-down in a scheme of arrangement is a process by which a scheme of arrangement can be approved even where one or more classes of creditor have rejected the proposed scheme. It was first introduced by the 2017 Amendment Act (now contained in the IRD Act), and is aimed at minimizing the overall influence of minority creditors. By Pt 5 s. 70 of the IRD, notwithstanding that one or more classes of creditors have not approved the scheme, a court can order that the scheme is still binding on the company and all classes of creditors, once certain conditions have been satisfied. The requirements that must be met before a court will order a cram-down are:*

- (a) A majority (in number) of creditors intended to be bound by the arrangement and who were present and voting (either in person or by proxy) have agreed to the arrangement;*
- (b) That majority represents three-fourths in value of the creditors meant to be bound on the arrangement, and who were present and voting; and*
- (c) The court is satisfied that the arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class. The arrangement will *not* be considered fair and equitable to a dissenting class unless:
  - a. Under the terms of the scheme, no creditor in the dissenting class receives an amount that is lower than what the creditor is estimated to receive in the most likely scenario if the scheme does not become binding*
  - b. Where the creditors in the dissenting class are unsecured, the terms of the arrangement provide for each creditor in that class to receive property of a value equal to the amount of the creditors claim OR does not provide for any creditor with a claim**

*that is subordinate to the claim of a creditor in the dissenting class, or any member, to receive or retain any property on account of the subordinate claim/member's interest.*

**[comment: to also discuss scenario where the dissenting class are secured creditors]**

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

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

*Two objectives of the IRD Act, as stated by the Ministry of Law at the time that it was submitted to Parliament as the Omnibus Bill, 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.*

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.**

*That a company is "unable to pay its debts" is the most common ground to wind up a company on the grounds of insolvency. As per the Singapore Court of Appeal in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd*, four of the factors should be considered under the cash flow test when determining whether a company is "unable to pay its debts" under the IRD Act are:*

- (1) The quantum of all debts which are due or will be due in the reasonably near future;*
- (2) Whether payment is being demanded or is likely to be demanded for those debts;*
- (3) The length of time that has passed since the commencement of the winding-up proceedings; and*
- (4) Whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it.*

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.**

*The Insolvency, Restructuring and Dissolution Act (IRD Act) came into effect on July 30, 2020 and, with it, introduced to the Singapore insolvency system a new legislative framework that consolidated all personal and corporate insolvency and restructuring laws into one piece of legislation.*

*Two important features that were ushered into the regime by virtue of the IRD Act are its provisions relating to rescue financing and wrongful trading.*

**Rescue Financing**

*Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing and/or necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on winding-up of the debtor. The provisions in the IRD Act relating to rescue financing have been taken largely from the US Bankruptcy Code (particularly section 364 thereof), are considered to be extraordinary in nature and were introduced with a view to enhancing Singapore's reputation as an international restructuring hub.*

*The key rehabilitative procedures prescribed by the IRD Act are schemes of arrangement and judicial management. A scheme of arrangement is a debtor-in-possession restructuring process, while judicial management involves the appointment of an insolvency practitioner, who takes over control of the debtor company, displacing its directors. In both of these rehabilitative processes, under the provisions of the IRD Act, a Singapore court is empowered, on application of either the debtor in the former process (s. 67) or the judicial manager in the latter (s. 101), make an order that any rescue financing obtained by the debtor will be afforded a super priority in the event of the winding-up of the company. More particularly, a court may order that, in the event of a winding-up, the rescue financing be:*

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



*It is important to note that post-commencement lenders are **only** entitled to be treated preferentially if that treatment is provided for in the loan itself and is sanctioned by the court pursuant to the provisions discussed above.*

### **Wrongful Trading**

*The IRD Act introduced a concept that was previously unknown to the Singapore insolvency regime; that of wrongful trading. “Wrongful trading” is the incurrence of debt or other liabilities without a reasonable prospect of meeting them in full, when the company is insolvent, or when the company becomes insolvent as a result of such debt. As such, a company trades wrongfully if it incurs debt/liabilities in such a context.*

*Under the IRD Act, the Singapore court may make a declaration that any person who was knowingly a party to the company trading wrongfully is personally liable for the debts or liabilities of the company. More particularly, section 239 of the IRD Act provides that a person can be found personally liable for a company’s debts if:*

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

*This provision is adopted from the English insolvency regime. Notably, there is no requirement to establish any criminal liability in invoking this section, as was required prior to the enactment of these provisions.*

*A company or a person who is interested in becoming party to a transaction or carrying on business with a company in a proper and lawful manner, but wishes to protect him/itself from any potential liability under this section can apply to the Singapore court for a declaration that the particular course of conduct, transaction or series of transactions would not constitute wrongful trading.*

*In conclusion, while serving different purposes, rescue financing and wrongful trading are two important additions to the insolvency regime that were introduced by the IRD Act, and which add to the sophistication of their legislative scheme for corporate rehabilitation.*

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.**

*Judicial management and schemes of arrangement are two central corporate rescue tools contained within and provided for by Singapore’s Insolvency, Restructuring and Dissolution Act (IRD Act). While they are both rehabilitative procedures available to*

*debtor companies under the IRD Act, there are key distinctions between judicial managements and schemes of arrangement.*

*In general, a scheme of arrangement is an arrangement or compromise reached between a company and its creditors or members that has been sanctioned by the court. A judicial management, on the other hand, is a method of restructuring whereby an independent third-party (the judicial manager) is appointed to manage the affairs and business of the debtor company.*

*Perhaps the most essential differences between these two processes relate to the role of the debtor therein, and the status of the company's management. The scheme of arrangement process allows the debtor to remain in possession of its property and control of management while it proposes a restructuring plan to be implemented via the scheme. The management of the company remains in control throughout the moratorium period and while the scheme is implemented, and it is the company itself who is responsible for putting forward the restructuring proposal. To the contrary, judicial management contemplates the appointment by the court of an insolvency practitioner as the judicial manager of the company, who replaces the company's directors and management and takes over the responsibility of running the company. As a result, upon the judicial manager's appointment, the powers of the company's directors come to an end, and the judicial manager takes over the affairs, business and property of the company.*

*The role of creditors also varies between the processes. In a scheme of arrangement, they liaise and negotiate the restructuring plan with the company. They retain control in the process by, ultimately, voting on the scheme. In a judicial management, their role is more limited, with the judicial manager responsible for management and direction of the company. However, creditors can still exercise some level of influence or control over the process through the creation of a creditors committee, which can be granted the power to compel the judicial manager to produce information regarding the carrying out of his functions.*

*Regarding the transition from corporate rescue to liquidation, the court has a discretion to order that the company be placed into liquidation on the discharge of a judicial management order. A judicial management order will be discharged if creditors decline to approve the judicial manager's proposals, the judicial manager is of the view that the purposes of the judicial management can't be achieved, the judicial manager has acted or will act in a manner that is unfairly prejudicial to the interests of the creditors or members of the company or automatically after 180 days (unless extended by the court). On the other hand, there is no specific conversion mechanism prescribed by the IRD Act from a scheme of arrangement to a liquidation. If the moratorium effected on a scheme of arrangement under s. 64 of the IRD Act comes to an end without a scheme sanctioned, then the company's creditors will be at liberty to apply for a winding-up order for the liquidation of the company (or another process).*

*Another important difference between the processes is the moratoria associated with each. In a scheme of arrangement, there is an automatic 30-day moratorium that arises upon the filing of an application for a moratorium under section 64 of the IRD Act where the debtor proposes/intends to propose a scheme of arrangement with its creditors. This 30-day stay can then be extended, upon the application of the debtor. When an application for judicial management is filed, there is an automatic moratorium on legal proceedings against the company. There is, therefore, no need for a separate application for a moratorium, in the context of a judicial management. If the judicial management order is made, then a more extensive moratorium will come into effect for the period of the judicial management, with the court or the judicial manager retaining the discretion to allow proceedings that would otherwise be stayed to proceed/be commenced.*

*These are just a few of the distinctions between these corporate rescue processes, which, although both designed with a view to rehabilitating a financially struggling corporation, represent very different modes of getting there.*

**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) 2m**

**(a) Judicial management is one of the tools available under the IRD Act to rescue a corporation from financial difficulty. The purpose of judicial management proceedings is to facilitate the rehabilitation of a financially distressed company or to realise its assets in a more advantageous way than if the company were to be wound up, including by replacing its management with an independent, insolvency practitioner charged with restructuring its debt. Note, however, that the judicial management process has been criticized as being more of an insolvency process than a corporate rescue one, as a limited percentage of companies have actually been "rescued" through the process, due to the stigma that attaches to the appointment of an insolvency professional.**

*To obtain a judicial management order, an application for judicial management must be presented. Such an application may be brought by the company, its directors or its creditors, the latter of which would include the members of the working group.*

*As per s. 91 of the IRD Act, to obtain the order, the working group must also present evidence to the court that demonstrates that:*

- (i) the Company is or is likely to become unable to pay its debts;*
- (ii) there is a real prospect that the order will achieve one or more of the following purposes, namely:
  - a. the survival of the company or the whole or part of its undertaking as a going concern;*
  - b. the approval under s. 210 of the Companies Act of a compromise or arrangement;*
  - c. the more advantageous realisation of the company's assets than in a winding-up.**

*(b) Rescue financing is defined by s. 101(10) of the IRD Act as any financing that is necessary for the survival of the company, or of the whole or any part of the undertaking of that company, as a going concern, necessary for the Court's approval under section 210(4) of the Companies Act or section 71(5) of the IRD Act of a compromise or an arrangement involving a company that obtains the financing or is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company. Rescue financing is available to a company under judicial management without order of the Court.*

*However, in order for the Company to benefit from the provisions in the IRD Act that allow for orders to be made providing that if the company is wound up, the debt arising from any rescue financing will have priority over all preferential debts or will be secured by security on property not otherwise subject to a security interest or by a subordinate security interest on property of the company subject to an existing security interest, then the Court must be satisfied that the Company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing was given the priority or was secured in that particular manner (s. 101(1)). For an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, then the Court must be satisfied that (a) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph; and (b) there is adequate protection for the interests of the holder of that existing security interest (s. 101(1)(d)).*

*Priority orders securing rescue financing are likely to be integral in any restructuring of the Company, due to its large level of indebtedness and lack of fixed assets, which make it unlikely that a lender will be willing to voluntarily provide financing without some level of additional security. On the facts presented, there is no indication of any existing security interest in the Company's property, which is comprised primarily of its investments in its subsidiaries and intercompany receivables. It follows that the Company will likely be principally concerned with obtaining an order allowing the rescue financing to take priority over preferential debts, or securing it by security on property not otherwise subject to a security. As discussed above, this can be obtained by demonstrating to the Court that the Company would not be able to obtain the rescue financing from any person unless the debt arising from the rescue financing was given the priority or was secured in that particular manner.*

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) 3m***

*Under s. 94 of the IRD Act, instead of applying to the Court for a judicial management order, a company may be placed under judicial management outside of court through resolution of its creditors. Once satisfied that the company is, or is likely to become, unable to pay its debts and that there is a reasonable probability of achieving one or more of the purposes of judicial management (that is, the survival of the company or the whole or part of its undertaking as a going concern, the approval under s. 210 of the Companies Act of a compromise or arrangement or the more advantageous realisation of the company's assets than in a winding-up), Alpha Pte Ltd and Beta Pte Ltd. (the "Companies") must appoint an interim judicial manager and subsequently notify the Official Receiver and the Registrar of Companies of that appointment, and publish notice of the same in a local daily newspaper. The Companies must then convene a meeting of their creditors to consider a resolution for the company to be placed under judicial management, with at least 14 days' written notice to all creditors, together with a creditor statement and statement of the Companies' respective affairs, and at least 10 days' notice in a local paper. At the meetings, the Companies will be placed under judicial management of a judicial manager if a majority in number and value of the creditors present and voting resolve to do so. Where the meeting passes a resolution to place the company under the judicial management of a judicial manager, the meeting must approve, by a majority in number and value of the creditors of the company present and voting, the appointment of a person as judicial*

manager. The judicial manager must be a licensed insolvency practitioner who is not the auditor of the company.

The participation and cooperation of the Companies will, therefore, be essential to this process. However, notably, the Companies' sole shareholder, ABC Limited, is now in judicial management, and its management has, therefore, been replaced by the independent judicial manager. The judicial manager of ABC Limited may, therefore, be able to exert control over the process, provided that he agrees that the state of the Companies render them appropriate for judicial management.

**(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) 3m**

A company can only be placed into judicial management if it is eligible to be wound up under the IRD Act (s.88 of the IRD Act). Included amongst the persons eligible for judicial management are foreign debtors, provided that they have a "substantial connection" with Singapore (s. 246). A debtor will be considered to have a "substantial connection" to Singapore where it can be demonstrated that one or more of the following factors are satisfied:

- (1) The debtor's centre of main interests is located in Singapore;
- (2) The debtor is carrying on business or has a place of business in Singapore;
- (3) The debtor is registered as a foreign company in Singapore;
- (4) The debtor has substantial assets in Singapore;
- (5) The debtor has chosen Singapore law as the law governing a loan or other transaction or the resolution of one or more disputes arising out of or in connection with a loan or other transaction; and/or
- (6) 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.

It follows that Charlie Pty Ltd, as a "foreign debtor" incorporated in Australia, will be eligible to be placed into judicial management if it can be found to have a "substantial connection" to Singapore. Although incorporated outside of Singapore, it is evident that Charlie Pty Ltd. has creditors in Singapore. More particularly, it has entered into financing arrangements with a Singapore Bank, and has chosen Singapore law as the governing law for its loan. On this basis, Charlie Pty Ltd is likely to be considered to have a "substantial connection" to Singapore, having satisfied one of the listed factors by choosing Singapore law as the law governing a loan. In addition to its satisfaction of this factor, two of Charlie Pty Ltd.'s directors, Mr. X and Mr. Y are based in Singapore. While not conclusive, this is likely to further evidence Charlie Pty's connection to Singapore, and weigh in favour of the entity being one that is susceptible to being placed into judicial management due to its connection to 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) 4m**

*Assuming Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd are also placed into judicial management in Singapore, there is no provision for the protection arising from the said judicial management to automatically extend to assets outside of Singapore. The scope of the moratorium generally applies to local assets and creditors within Singapore. If a company has overseas assets, the extent to which those assets are protected by the moratorium would depend on the specific jurisdiction where those assets are located. Different countries have their own laws and regulations, and the moratorium granted in Singapore may not automatically be recognized or enforceable abroad.*

*To obtain protection for the assets of the ABC Group, particularly of Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd, in jurisdictions outside of Singapore, advice should be sought in the jurisdictions in which those assets are located (in Australia and the United Kingdom). Notably, Singapore has adopted the UNCITRAL Model Law on Cross Border Insolvency, which has been enacted by 53 states in 56 jurisdictions, including the United Kingdom and Australia. Additionally, the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency matters that were adopted by the Singapore Supreme Court in 2017. While the adoption of the UNCITRAL Model Law primarily provides for methods by which foreign representatives may apply to the High Court of Singapore for recognition of foreign proceedings, it also provides for international communication and cooperation between courts and representatives, and for concurrent insolvency proceedings, which may prove useful in obtaining the overseas protection that is desired. To obtain protection of the assets of the ABC Group entities that are subject to judicial management in Singapore, it is likely that an application will need to be made for recognition of the Singapore proceedings (the judicial managements) in the United Kingdom and Australia, the jurisdictions in which the assets are situated. Such a process will be guided by the cross-border insolvency laws adopted in those respective jurisdictions.*

[Comment: property under s88 extends to property outside of Singapore, but whether there is protection in that jurisdiction depends on the laws of that country. If there is no recognition available, the debtor may need to consider parallel proceedings in order to obtain protection]

**\* End of Assessment \***

**48m. Well done!**