



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 **0m**

What percentage of each class of creditors must approve a scheme of arrangement for it to pass?

(a) *Over 50% in value.*

(b) *50% or more in value.*

(c) *Over 75% in value.*

(d) *75% or more in value.*

Question 1.5 **1m**

Which of the following in respect of the automatic moratorium under section 64(1) of the Insolvency Restructuring and Dissolution Act (IRD Act) is incorrect?

(a) *The automatic moratorium lasts for 30 days.*

(b) *The automatic moratorium may be extended.*

(c) *The automatic moratorium can be obtained without filing an application to court.*

(d) *The debtor has to either propose or intend to propose a scheme of arrangement.*

Question 1.6 **0m**

Which of the following types of contracts are excluded from the *ipso facto* restriction in section 440 of the IRD Act?

(a) *Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.*

(b) *Any contract that is a licence, permit or approval issued by the Government or a statutory body.*

(c) *Any commercial charter of a ship.*

(d) Any contract for a loan with a financial institution.

Question 1.7 **1m**

Which of the following is one of the three statutory objectives of a judicial management?

(a) To allow the directors to oversee the restructuring of the company.

(b) To preserve all or part of the company's business as a going concern.

(c) As a means for the secured creditors to realise their security.

(d) To liquidate the company in a fast-track and cost-efficient manner.

Question 1.8 **1m**

Which one of the following is not a debtor who can apply for personal bankruptcy in Singapore?

(a) An individual domiciled in Singapore.

(b) An individual who owns property in Singapore.

(c) An individual who has been carrying on business in Singapore for the last year.

(d) An individual whose parents live in Singapore.

Question 1.9 **1m**

Which of the following in respect of rescue financing is incorrect?

(a) Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing.

(b) Rescue financing is financing that is necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding-up of that debtor.

(c) Rescue financing enjoys preferential treatment automatically without the sanction of court.

(d) Rescue financing may be sought in a judicial management process.

Question 1.10 **1m**

Who may apply to court to place a company into liquidation?

- (a) The company itself.**
- (b) A creditor of the company.**
- (c) A shareholder of the company.**
- (d) Any of the above.**

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 4 marks] **3m**

Explain the concept of a cross-class cram-down in a scheme of arrangement and what the requirements are before a court would order a cram-down.

Under a scheme of arrangement, notwithstanding the fact that one or more classes of creditors have not approved the scheme in accordance with the voting mechanisms, the court can pass an order that the scheme is still binding on the company and all classes of creditors if:

- (a) a majority in number of creditors, present and voting, meant to be bound by the scheme have agreed for the same;*
- (b) that such majority represent three-fourths in value of the creditors meant to be bound by the scheme; and*
- (c) The court is satisfied that the scheme does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class. In order to check whether the scheme is fair and equitable to the dissenting class, the following needs to be looked into:*
 - No creditor in the dissenting class receives an amount that is lower than what the creditor is estimated by the court to receive in the most likely scenario if the scheme proposal does not become binding; and*
 - Whether the creditors in the dissenting class are unsecured creditors, and the scheme provides for each creditor to receive property of a value equal to the claim or scheme must not provide for any creditor with a subordinate claim in the dissenting class to receive any property on account of subordinate claim.*

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

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

Name two objectives of the IRD Act.

- *Introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws; and*
- *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.

The Singapore Court of Appeal in the matter of Sun Electric Power Pte Ltd. v. RCMA Asia Pte Ltd. ([2021] SGCA 60) has laid down certain factors under cash flow test in determining whether a company is “unable to pay its debts” under Section 125(2)(c) of the IRD Act. Some of them are the following:

- *The quantum of all debts which are due or will be due in the reasonably near future;*
- *Whether payment is being demanded or is likely to be demanded for these debts;*
- *Whether the company has failed to pay any of its debt, the quantum of such debt, and for how long the company has failed to pay it; and*
- *The value of the company’s current assets and assets that will be realisable in the reasonably near future.*

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

Question 3.1 [maximum 8 marks]

Write a brief essay on

(i) *rescue financing; and* **3m**

(ii) *wrongful trading* **3m**

under the IRD Act.

(i) Rescue Financing:

Rescue Financing is one of the critical aspects of the IRD Act which provides for a mechanism aimed at facilitating the turnaround and revival of struggling businesses. Rescue financing is a form of funding provided to an insolvent or financially distressed company during the restructuring process. Its primary purpose is to support the company's operations, stabilize its financial situation, and enable it to continue its business activities while pursuing a successful restructuring plan. This mechanism is instrumental in preserving the value of

the business and protecting the interests of various stakeholders, such as creditors, employees, and shareholders.

One key feature is the "super-priority" status given to rescue financing. This means that in the event of liquidation, the rescue financier's claims are prioritized over other existing unsecured debts, enhancing their position and reducing the risk associated with providing funds in uncertain situations. A Singapore Court under the scheme of arrangement and judicial management under the IRD Act, on application by the debtor may pass necessary order that gives the rescue financing the super priority. Such court order can also convert the unsecured rescue financing to be secured. By a security interest on property of the Company.

Furthermore, rescue financing is typically accompanied by other restructuring measures. The synergy between these strategies enhances the chances of a successful turnaround, allowing the company to emerge stronger and more viable after the restructuring process.

The legislation also includes provisions that protect rescue financiers from potential liabilities that may arise during the restructuring phase. As long as the financier acts in good faith and with due diligence, they are shielded from being held liable for the company's existing financial distress or any losses incurred during the restructuring.

For a distressed company seeking rescue financing, it is essential to demonstrate the viability of its proposed restructuring plan. This entails providing a clear and credible roadmap for addressing the underlying issues that led to insolvency. By presenting a well-reasoned and comprehensive plan, the company can attract potential financiers who can see the potential for future growth and profitability.

Overall, rescue financing under the IRD Act of Singapore plays a vital role in preserving struggling businesses, protecting stakeholders' interests, and fostering a conducive environment for economic growth. It facilitates the restructuring process by providing much-needed financial support to companies facing financial difficulties, with the aim of revitalizing and strengthening them for a sustainable future. However, like any insolvency regime, effective implementation and careful monitoring are crucial to ensure that the process remains fair, transparent, and successful for all parties involved.

[Comment: to discuss what constitutes rescue financing under IRDA]

(ii) Wrongful Trading

Wrongful trading is a critical aspect of the IRDA Act aimed at holding company directors and officers accountable for their actions in the face of insolvency. It

serves as a safeguard against directors engaging in irresponsible behavior that may worsen or which led to the financial plight of a struggling company and protect the interests of creditors and other stakeholders involved therein. The same was introduced under Section 239 of the IRD Act.

Under the IRD Act, the Singapore Court is empowered to make a declaration that any person who was knowingly party of the company trading wrongfully, is personally responsible for the debt or liabilities of the company. Moreover, if an officer of the company ought, in all the circumstances, to have known that the company was wrongfully trading would be deemed to be also personally liable for wrongful trading.

Through such a provision, the IRDA imposes a duty on directors to act responsibly and in the best interests of the company and its creditors, especially during financially challenging times. It discourages directors from engaging in reckless behavior and taking undue risks with the company's finances when insolvency is imminent or inevitable. Furthermore, it serves as a means of recovery for creditors who may have suffered losses due to the actions of irresponsible directors.

The provision allows the company's liquidator or judicial manager to seek compensation from the directors for the debts incurred during the period of wrongful trading. This compensation can then be used to repay creditors and mitigate the impact of the company's insolvency.

It is important to note that directors are not automatically liable for the company's debts during insolvency process. The provision requires proving that the directors knew or should have known that there was no reasonable prospect of avoiding insolvent liquidation or restructuring.

To conclude, wrongful trading under the IRD Act plays a crucial role in promoting responsible corporate governance and protecting the interests of creditors and stakeholders. At the same time, it provides an avenue for creditors to seek compensation in cases where directors have failed in their fiduciary duties, ensuring a fair and equitable resolution in the event of insolvency.

[comment: discuss what is definition of wrongul trading, and to note that it now doesn't require an imposition of criminal liability]

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 IRD Act provides for two distinct mechanisms for financially distressed companies to restructure, resolve, and rehabilitate their financial difficulties: Judicial

Management (JM) and Scheme of Arrangement (SOA). While both processes aim to facilitate the turnaround and revival of struggling businesses, they differ significantly in their application, objectives, and outcomes.

Nature of the Processes:

Judicial Management: JM is a court-driven process where a financially troubled company seeks court protection from its creditors to allow a qualified insolvency practitioner (judicial manager) to take control of the company's affairs. The appointed judicial manager's role is to assess the company's viability, formulate a restructuring plan, and oversee its implementation.

Scheme of Arrangement: SOA is a creditor-driven but debtor-in-possession process that involves the company proposing a restructuring plan to its creditors and/or shareholders. The company seeks approval for the scheme through a court-sanctioned meeting, where the plan's approval requires the support of the requisite majority of affected creditors or shareholders. The SOA process is relatively more flexible and can be adapted to suit the complexity of the restructuring.

Time period:

Judicial Management: Subject to any extension, JM shall be completed within a period of 180 days. During the said period the judicial manager works to formulate and implement a viable restructuring plan. Upon completion of the plan or if the court decides to terminate the JM, the company may return to normal operations or proceed to other insolvency processes if necessary.

Scheme of Arrangement: The duration of the process can vary depending on negotiations and court procedures, but it generally offers a longer timeframe compared to JM.

Initiation of the Process:

Judicial Management: JM is typically initiated by the company's directors, shareholders, or creditors applying to the court for the appointment of a judicial manager. The court will assess the company's financial situation and appoint a judicial manager if it deems the process appropriate.

Scheme of Arrangement: SOA is initiated by the company itself, which prepares and proposes the restructuring scheme to its creditors and/or shareholders. The company must demonstrate the scheme's fairness and feasibility to the court for it to be considered for approval. Section 64 of the IRD Act deals with the SOA.

Moratorium:

Judicial Management: An automatic moratorium on legal proceedings against the Company comes into effect upon filing of the JM Application. Once the JM order is passed, a more extensive moratorium shall come into effect for the period of JM process.

Scheme of Arrangement: An automatic moratorium of 30 days triggers after the date of application for SOA is made. The same is also extendable by the court upon application of the debtor. ***[Comment: the moratorium is sought pursuant to an application under s64 IRDA or s210(10) Companies Act specifically, and not when an application for approval of a SOA or to call for a scheme meeting]***

Scope of Control:

Judicial Management: Once appointed, the judicial manager assumes full control of the company's operations and decision-making, overriding the powers of the existing management. The judicial manager has the authority to restructure the company's debts, sell assets, and make necessary changes to restore its financial health. Creditors have limited involvement in JM, as the judicial manager takes charge of restructuring and negotiating with creditors on behalf of the company.

Scheme of Arrangement: The existing management retains control of the company throughout the SOA process. The company's directors are responsible for proposing and implementing the restructuring scheme, subject to the court's approval and the consent of creditors and/or shareholders. SOA requires active participation from creditors and/or shareholders, as they must vote on the proposed scheme during the court-sanctioned meeting. The success of the scheme depends on obtaining the requisite majority approval from these stakeholders.

Conversion to Liquidation:

Judicial Management: Upon discharge of Judicial Management after the prescribed time period, the court has a discretion to order that the company be placed into liquidation.

Scheme of Arrangement: a separate application for winding up need to be made by the creditor for liquidation process to begin if no scheme of arrangement is sanctioned.

In conclusion, while both Judicial Management and Scheme of Arrangement are valuable tools for restructuring financially distressed companies under the IRD Act, they offer different approaches and levels of involvement for stakeholders. Judicial Management involves court-appointed control with a focus on swift decision-making, while Scheme of Arrangement relies on creditor and shareholder approval and allows existing management to lead the restructuring efforts. The choice between the two

processes depends on the specific circumstances and objectives of the distressed company and its stakeholders.

Approval process of rescue plan:

For both Judicial Management and Scheme of Arrangement A Rescue Plan must be approved by the a majority in number of each class of creditors present and voting at the meeting convened by the Court, such majority in number must represent three-quarters in value of respective class of creditors present and voting.

Sale of assets outside the ordinary course of business:

Judicial Management: A judicial manager has power to sell or dispose of the property of the company by public auction or private contract. He/she may also dispose property secured by a floating charge subject to satisfying of certain conditions.

Scheme of Arrangement: There is no blanket restriction on sale of assets outside the ordinary course of business under SOA. However, such disposal shall be under the supervision of the court, and the information relating to the same must be furnished to the court in enquired not later than 14 days from the disposition. Moreover, a creditor can move an application before the court to restrain the company from disposing of or selling the property.

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) In order to initiate Judicial Management Process, the Bank Lenders must present before the Court the following:

- That the ABC Limited is or will be unable to pay its debts;**

- *That the ABC Limited has not already gone into liquidation*
- *That ABC Limited is not:*
 - *A bank licensed under the Banking Act*
 - *A finance Company licensed under the Finance Companies Act*
 - *An insurance company licensed under the Insurance Act*
 - *A company belonging to such class of companies as Minister may be order in the Government Gazette has prescribed.*
- *That Judicial Management would achieve one or more of the following purposes:*
 - *Survival of ABC Limited (Whole or in Part) as a going concern;*
 - *Approval of a compromise or arrangement between the company and the creditors as prescribed under Section 210 of the Companies Act;*
 - *More realisation of the ABC's assets than it would have in a winding up proceeding.*

(b) To access rescue financing under the IRD Act while ABC Limited is already under Judicial Management (JM), certain requirements must be satisfied which includes the following:

- *Demonstrating compelling evidence that it requires rescue financing to support its operations during the JM process. This evidence should demonstrate that the company's existing financial resources are insufficient to sustain its business activities and the implementation of the judicial manager's restructuring plan.*
- *A consent from the Judicial Manager must be obtained. As the judicial manager is responsible for overseeing the company's affairs during the JM process, their consent and cooperation are vital for the company to pursue rescue financing. The judicial manager must be involved in the decision-making process and should be in agreement with the company's plan to seek additional funding.*
- *Court Approval: To access rescue financing while under Judicial Management, the company must seek approval from the court. The court will carefully consider the company's financial situation, the proposed rescue financing arrangement, and its potential impact on the ongoing JM process. The court's approval is crucial to ensure the rescue financing is legally valid and protected under the IRDA.*
- *Reasonable Prospects for Success i.e., a viable and feasible restructuring plan to the court, outlining how the rescue financing will be utilized to improve the company's financial position and ensure a successful turnaround. The court will assess the likelihood of the company's revival and whether the proposed financing will contribute to achieving this objective.*

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) 0m

Alpha Pte Ltd and Beta Pte Ltd are whole owned subsidiary of ABC Limited incorporated in Singapore. If the bank lenders have direct exposure to the Alpha Pte Ltd and Beta Pte Ltd, they could initiate Judicial Management by filing an application for the same under the IRD Act. However, if the bank lenders have no direct exposure to Alpha Pte Ltd and Beta Pte Ltd, the bank lenders can through the judicial manager who now control the Alpha Pte Ltd and Beta Pte Ltd after taking over the management of ABC Limited can file an application for initiation of Judicial Management. Since the judicial manager of ABC Limited controls Alpha Pte Ltd and Beta Pte Ltd, it can initiate judicial management process against Alpha Pte Ltd and Beta Pte Ltd. The judicial manager must just like every other Judicial Management application must satisfy the court for the need for Judicial Management for Alpha Pte Ltd and Beta Pte Ltd.

[Comment: see s94 IRDA]

(b) Is Charlie Pty Ltd eligible to be placed into judicial management in Singapore and, if so, what must be demonstrated for it to be so eligible? (3 marks) 3m

Under the provisions of IRD Act, foreign debtor can also be brought under Judicial management. However, the creditor must establish that the foreign debtor has a substantial connection with Singapore.

Charlie Pty Ltd is an entity incorporated under Australia. In order to bring the Charlie Pty Ltd under Judicial Management, the creditor in its application for Judicial Management must establish one or more of the following factors:

- The Centre of Main Interest of Charlie Pty Ltd is located in Singapore;*
- Charlie Pty Ltd is carrying on business in Singapore or has a place of business in Singapore;*
- Charlie Pty Ltd is registered as a foreign company in Singapore;*
- Charlie Pty Ltd has substantial assets in Singapore;*
- Charlie Pty Ltd has chosen Singapore law as the law governing the loan or law governing the resolution of one or more disputes arising out of or in connection with the loan; and / or*
- Charlie Pty Ltd has submitted to the jurisdiction of Singapore Courts for the resolution of one or more disputes relating to the loan.*

The abovementioned one or more factors alone or combined shall be considered by the court while passing a Judicial Management order apart from the other factors that are applicable to domestic companies as well in terms of initiation of Judicial Management Process.

In my opinion, it can be inferred from the limited facts given above, that the Centre of Main interest of Charlie Pty Ltd is located in Singapore. However, since the information with respect to other factors are available, the discretion of the court is primary to determine whether the Charlie Pty Ltd will be brought under Judicial Management.

Furthermore, in my opinion Charlie Pty Ltd could be brought under Judicial Management under IRD Act of Singapore.

Question 4.3 [maximum 5 marks] **4m**

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)***

In order to protect the assets of the ABC group (i.e., Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd) outside Singapore, the provisions under the cross border insolvency process of each respective countries must be followed.

Since Singapore had adopted UNCITRAL Model law on Cross-Border Insolvency (Model Law), if the country wherein which the assets of ABC group are located has adopted the Model Law, the judicial manager of ABC group can approach the court of the local jurisdiction which has entrusted the cross-border insolvency jurisdiction by way of an appropriate application for recognition of Judicial Management process initiated against each ABC group companies as foreign main proceeding.

In order to establish that the Judicial Management under IRD Act of Singapore is the foreign main proceeding, the judicial manager must establish the that in respect of each ABC Group companies, the centre of main interest is in Singapore. Once the Judicial Management under IRD Act of Singapore is recognised as the foreign main proceeding by the local court of each country, an automatic stay on the individual actions against such companies and transfer, encumber, dispose of assets are prohibited which in turn protects the ABC group companies incorporated in other countries and also the asset of the ABC group companies which are lying at the other countries.

The Singapore court order on moratorium can also be enforced in such countries if such countries recognise Singapore judgements.

[Comment: the moratorium covers property outside of Singapore (s88) but it would depend on the relevant jurisdiction's recognition laws. If there is no recognition available, then the debtor may consider commencing parallel proceedings to obtain protection]

*** End of Assessment ***

40m