

THE UNIVERSITY OF SYDNEY

FACULTY OF LAW

EXAMINATION FOR THE GRADUATE DIPLOMA OF
CORPORATE SECURITIES AND FINANCE LAW; GRADUATE
DIPLOMA IN COMMERCIAL LAW; GRADUATE DIPLOMA OF
LAW; DOCTOR OF JURIDICAL STUDIES AND MASTER OF
LAWS

ADVANCED FINANCING TECHNIQUES

NOVEMBER 2003

TIME ALLOWED: 2 HOURS

PLUS

READING TIME: 20 MINUTES

CANDIDATES ARE REQUIRED TO ANSWER ANY THREE (3) QUESTIONS.

ALL QUESTIONS ARE VALUED AT 20%.

THIS IS AN 'OPEN BOOK' EXAMINATION.

ANSWER EACH QUESTION IN A SEPARATE BOOK AND CLEARLY WRITE
THE QUESTION NUMBER ON THE FRONT OF THE BOOK

Question 1

A large Australian company decides to self arrange a syndicated loan for \$200m. It invites banks in Australia and Asia to participate in the loan in minimum amounts of \$20m. The company seeks your advice on two issues:

- 1 Will the company have to pay interest withholding tax on interest payments to banks in Asia and can the loan be structured in a way to avoid this?
- 2 Does the company have to lodge the information memorandum which it sends to banks with ASIC, if not why not?

[examination continues on next page]

Question 2

Donut Limited is an investment bank. Donut proposes to approach a number of entities with financing proposals. Your assistance is sought to advise Donut on the Australian legal issues relevant to each of the proposals, including matters of concern from the perspective of the borrowing entities that Donut will approach.

Proposal 1

Orange Limited is a company incorporated in NSW. Orange has a number of businesses including the ownership and operation of airports and toll roads located in various places within Australia. Orange's business is conducted through a number of subsidiaries.

Orange is listed on the Australian Stock Exchange and has a broad spread of owners.

Orange has some existing financing arrangements with Australian banks.

Donut's financing proposal to Orange is as follows:

- Orange, or a wholly owned subsidiary of Orange, would issue medium term notes denominated in the Australian dollars to investors to raise moneys to partially repay the existing bank financings of Orange.
- The notes would be primarily marketed to Australian investors.
- No prospectus or disclosure document would be prepared in respect of the notes as it is anticipated that the notes would be offered to and purchased by wholesale investors.
- The notes would be structured so that no interest withholding tax to be payable on the notes.
- The notes would be registered notes.
- A guarantee of the notes would be provided by Orange (as the ultimate parent of the entity issuing the bonds) in respect of the notes.
- Donut will agree in an underwriting agreement with Orange to underwrite the issue of the notes.
- It is proposed that the notes be settled in the Australian system.

What is your advice?

Proposal 2

As a variation on proposal 1, Donut will suggest to Orange that the notes be listed on the Australian Stock Exchange.

What additional matters would you raise?

[Question 2 and examination continues on next page]

[Question 2 continued]

Proposal 3

Red Limited is a company incorporated in Victoria. It is a distributor of foreign manufactured vehicles.

It is listed on the Australian Stock Exchange and has a broad spread of owners.

It has some implied brand recognition in foreign markets as a result of the foreign cars it distributes in Australia.

Donut's proposal to Red is along the lines of Proposal 1 except that:

- The notes would be denominated in US Dollars instead of Australian Dollars.
- The notes would be marketed in the USA where investor appetite for instruments from this sort of entity may be greater.

What is your advice?

Proposal 4

White AG is a European, government owned bank, whose long term debt obligations are rated AAA by Standard & Poors. White routinely taps various debt capital markets to raise finance for its banking business.

Donut's financing proposal to White is as follows:

- White would issue bonds in Australian dollars.
- The bonds would be marketed to Australian investors.
- No prospectus or disclosure document would be prepared in respect of the bonds as it is anticipated that the bonds would be offered to and purchased by wholesale investors.
- There would be no guarantees or security to support the bonds.
- Donut will enter an underwriting agreement with White to place, on a best efforts basis, the bonds.

What is your advice?

You are also asked to provide advice in relation to any further variations that could be required to enhance the proposals from a legal perspective.

[examination continues on next page]

Question 3

A bank ("BigBank") proposes to finance a specially formed bid vehicle ("Predator") which is about to launch an off-market cash takeover bid for a listed Australian company ("Target"). BigBank is aware that Predator has already acquired a 19.9% 'relevant interest' (for the purposes of the Corporations Act) in the shares in Target using funds advanced to it on an unsecured basis by a family trust controlled by one of the entrepreneurs promoting the bid (and who is a director of Predator).

Target has substantial undervalued non-core assets, and Predator's plan is that once control of Target is achieved those assets will be sold and a substantial part of the proceeds will be returned to the shareholders by way of dividend or share buyback, so enabling Predator to repay a substantial portion of the BigBank loan.

Initially BigBank will be granted security over all shares in Target which Predator holds or may acquire, but it would like to get security over Target's assets as well. BigBank's facility terms will include a requirement that, if Predator acquires control of Target, Predator will exercise its voting power in relation to the Target to cause Target:

- not to raise further borrowings or materially change its business;
- to sell its non-core assets as soon as practical and to distribute any resulting profits to its shareholders by way of dividend and/or share buyback; and
- to grant BigBank security over its assets to secure BigBank's loan to Predator.

Although BigBank's officers are confident of obtaining the requisite internal approval of their credit committee in due course, it will not be obtained by the time of the launch of the bid. Accordingly, BigBank's funding commitment is conditional on obtaining the approval of its credit committee. Once that approval is obtained, the commitment will still be subject to an extensive list of conditions precedent, including that BigBank is satisfied that there has been no material adverse change in the financial condition of Target or Predator.

Predator has informed BigBank that it proposes to disclose in the bidder statement that a funding commitment for the amount required if the bid is successful has been provided by BigBank "subject to the usual conditions precedent".

Predator proposes that the bid be subject to a 50% minimum acceptance condition.

[Question 3 and examination continues on next page]

[Question 3 continued]

Advise BigBank concerning:

- (a) the legal implications of BigBank's proposals; and
- (b) its legal risks associated with those proposals and with the transaction in general, and strategies to reduce those risks.

Include advice on the potential consequences for BigBank if Predator or Target breaches the Corporations Act or Predator engages in "unacceptable conduct".

[examination continues on next page]

Question 4

"The need for any regulatory initiatives to respond to OTC derivatives risks must be assessed against ... the current scope of OTC derivatives regulation.."

(Companies and Securities Advisory Committee Discussion Paper, "Regulation of the OTC Derivatives Market", August 1995).

The above statement was made in 1995 in relation to the scope of legislative regulation of OTC derivatives at that time.

How has the scope of OTC derivatives regulation been enlarged, under the Financial Services Reform Act amendments to the Corporations Act? Your answer should make particular reference to:

- a) the manner in which OTC products will be captured by the new chapter 7 regime
- b) the circumstances in which an OTC derivatives market will be treated as a "financial market" for the purposes of chapter 7 and the licensing implications of such treatment; and
- c) the nature of the "gaming and wagering" issue, and the purported resolution of this issue under the new chapter 7.

[examination continues on next page]

Question 5

Parent/Sponsor Ltd wishes its wholly owned subsidiary to borrow on a project finance (limited recourse) basis to establish a new mining project in Australia. A group of Australian banks have been mandated to provide finance to its wholly owned special purpose subsidiary for 75% of the project's establishment costs.

1. What options does Parent/Sponsor Ltd have to provide the 25% balance of the establishment costs, keeping in mind the bank's likely requirements?
2. Advise Parent/Sponsor Ltd how and during what phases of the project the banks are likely to support its wholly owned subsidiary (borrower)?
3. Once the project is profitable, how will Parent/Sponsor Ltd be affected by its wholly owned subsidiary's project finance?

[this is the end of the examination]