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**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**

Which one of the following insolvency tools **is not** available in Singapore?

1. Judicial management.
2. Administration.
3. Court winding-up.
4. Scheme of arrangement.

**Question 1.2**

**Who may apply** to court to place a debtor company into judicial management?

1. A contingent creditor.
2. The debtor company.
3. A prospective creditor.
4. Any of the above.

**Question 1.3**

Which of the following factors may **support** a foreign debtor’s case to establish a “substantial connection” to Singapore?

1. The debtor has chosen Singapore law as the law governing a loan or other transaction.
2. The centre of main interests of the debtor is located in Singapore.
3. The debtor has a place of business in Singapore.
4. Any of the above.

**Question 1.4**

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

1. Over 50% in value.
2. 50% or more in value.
3. Over 75% in value.
4. 75% or more in value.

**Question 1.5**

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**?

1. The automatic moratorium lasts for 30 days.
2. The automatic moratorium may be extended.
3. The automatic moratorium can be obtained without filing an application to court.
4. The debtor has to either propose or intend to propose a scheme of arrangement.

**Question 1.6**

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

1. Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.
2. Any contract that is a licence, permit or approval issued by the Government or a statutory body.
3. Any commercial charter of a ship.
4. Any contract for a loan with a financial institution.

**Question 1.7**

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

1. To allow the directors to oversee the restructuring of the company.
2. To preserve all or part of the company’s business as a going concern.
3. As a means for the secured creditors to realise their security.
4. To liquidate the company in a fast-track and cost-efficient manner.

**Question 1.8**

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

1. An individual domiciled in Singapore.
2. An individual who owns property in Singapore.
3. An individual who has been carrying on business in Singapore for the last year.
4. An individual whose parents live in Singapore.

**Question 1.9**

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

1. Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing.
2. 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.
3. Rescue financing enjoys preferential treatment automatically without the sanction of court.
4. Rescue financing may be sought in a judicial management process.

**Question 1.10**

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

1. The company itself.
2. A creditor of the company.
3. A shareholder of the company.
4. Any of the above.

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

**Question 2.1 [maximum 4 marks]**

**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.

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

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

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

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.

[Type your answer here]

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

**Question 3.1 [maximum 8 marks]**

Write a brief essay on

(i) rescue financing; and

(ii) wrongful trading

under the IRD Act.

[Type your answer here]

**Question 3.2 [maximum 7 marks]**

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

[Type your answer here]

**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:

1. 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)
2. 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)

[Type your answer here]

**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:

1. 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)

[Type your answer here]

1. 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)

[Type your answer here]

**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:

1. 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)

[Type your answer here]

**\* End of Assessment \***