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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 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**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 of the following is not a type of winding-up under the Insolvency Restructuring and Dissolution Act (the IRD Act)?

1. Court-ordered winding-up.
2. Creditors’ voluntary winding-up.
3. Members’ voluntary winding-up.
4. Director’s voluntary winding-up.

**Question 1.2**

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

1. The debtor company’s creditors.
2. The debtor company.
3. The debtor company’s directors.
4. Any of the above.

**Question 1.3**

Which of the following is the **least** relevant consideration for determining if a foreign company has a substantial connection with Singapore, so as to be eligible to be wound up under the IRD Act?

1. Many of the company’s creditors are located in Singapore.
2. The company’s key employees and business are located in Singapore.
3. Singapore law is the governing law of the company’s contracts.
4. Singapore has adopted the UNCITRAL Model Law on Cross-Border Insolvency.

**Question 1.4**

When will a scheme of arrangement be effective?

1. When a majority in number representing 75% in value of each class of creditors votes in favour of the scheme.
2. When the results of the voting are advertised in the Government Gazette and a local English daily newspaper.
3. When the Court order sanctioning the scheme is lodged with the Registrar of Companies.
4. When notice of the Court order sanctioning the scheme is issued to all secured creditors of the company.

**Question 1.5**

Which of the following is not a requirement in making an application to the Court for a moratorium under section 64 of the IRD Act?

1. The applicant must provide a detailed draft of the proposed scheme of arrangement.
2. The applicant must provide a list of its top 20 unsecured creditors.
3. The applicant must advertise the application in the Government Gazette and a local English and Chinese daily newspaper.
4. The applicant must show evidence of support from its creditors on the proposed scheme of arrangement.

**Question 1.6**

Which of the following is not a prior transaction which may be adjusted under the IRD Act when a company is in liquidation or under judicial management, and occurs during the relevant period?

1. A contract entered into at fair value.
2. A dividend payment.
3. A payment to a creditor to discharge a debt.
4. The creation of a floating charge.

**Question 1.7**

Which of the following is **not** regarded as an act of an insolvency practitioner?

1. Acting as a nominee for a voluntary arrangement.
2. Acting as a scheme manager.
3. Acting as a liquidator.
4. Acting as a judicial manager.

**Question 1.8**

A bankruptcy application may be made against a debtor, if at the time of the application, the debt amount is not less than \_\_\_\_\_\_\_\_\_\_.

1. S$10,000.
2. S$15,000.
3. S$20,000.
4. S$25,000.

**Question 1.9**

U Pte Ltd (U) is currently unable to pay its debts as they fall due, and it seems unlikely that U can satisfy any future debt in full. P, the sole director of U, decided to continue the business in the hope of revitalising the company and continued taking up new loans and purchased new inventory on credit. Which of the following is correct?

1. For P to be liable for wrongful trading, she must have intended to put U’s assets out of reach of U’s creditors.
2. For P to be liable for wrongful trading, she must first have been convicted of a criminal offence.
3. For P to be liable for wrongful trading, she must or ought to have reasonably known that U was unable to meet its debts in full.
4. For P to be liable for wrongful trading, a majority of U’s creditors must pass a resolution stating that P has traded wrongfully.

**Question 1.10**

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

1. A creditor of a company.
2. A shareholder of a company.
3. A judicial manager.
4. Any of the above.

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

**Question 2.1 [maximum 4 marks]**

State four powers of the liquidator in a compulsory winding up.

The powers of the liquidator in a compulsory winding-up include:

* bring or defend legal proceedings on behalf of the company;
* sell the assets of the company;
* execute documents and deeds in the name of and on behalf of the company;
* raise debt for the company and secure such debt against the company’s assets.

**Question 2.2 [maximum 2 marks]**

Name two objectives of judicial management.

The objectives of judicial management include rehabilitating a company or preserving all or part of the business of the company as a going concern.

**Question 2.3 [maximum 4 marks]**

Briefly set out the steps in which the company commences a voluntary creditors’ winding-up.

Such a liquidation arises if the company is unable to pay its debts and the directors are therefore unable to provide the solvency declaration. A company can commence a voluntary creditors’ winding-up by the members of the company passing a resolution to wind-up the company and the company will convene a meeting of the the creditors of the company to approve of the winding-up. Either the company or the creditors can nominate the liquidator that will act. However, if there is a disagreement on which liquidator to use, the appointment of the creditors will prevail.

**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.

Rescue financing

Rescue financing is a court approved financing that is obtained by a company following the commencement of a scheme of arrangement or judicial management and for the purpose of the survival of that company and/ or for the purpose of achieving a more advantageous (as compared to a liquidation) realisation of the assets of the company.

A rescue financing has different levels of priority (such priority determination is subject to the court’s approval). In summary, the priority of the financing means the financing can be treated (in order of seniority):

* as a winding-up cost and expense;
* as having priority over preferential debts (if the company is later liquidated);
* to benefit from security over assets of the company not already subject to security or to benefit from subsequent ranking security over assets already subject to security (on the grounds that the company would not be able to raise such financing without granting that security – this criteria has been applied by the courts in all four priorities of rescue financing); or
* to be secured on assets already subject to security but with a super priority ranking compared to that existing security (again on the basis that the company would not be able to raise such financing without granting that security and provided that the existing secured parties are given “adequate protection”).

Wrongful trading

Section 239(12) of IRDA provides that a company undertakes wrongful trading if: “(a) the company, when insolvent, incurs debts or other liabilities without reasonable prospect of meeting them in full; or (b) the company incurs debts or other liabilities (i) that it has no reasonable prospect of meeting in full; and (ii) that result in the company becoming insolvent”. The court may declare that that any person knowingly party to the wrongful trading of the company is personally responsible for the debts and liabilities. The personal liability can arrive if the person either knew the company was trading wrongfully or, in respect of an officer of the company, ought to have known that the company was trading wrongfully.

**Question 3.2 [maximum 7 marks]**

Write a **brief essay** in which you discuss the similarities and differences between judicial management and liquidation. Explain some factors you would consider when advising your client on electing between either option.

Similarities between judicial management and liquidation

The similarities between judicial management and liquidation include that:

* both are insolvency related processes (compare a scheme of arrangement which need not be in the insolvency context - it is a process that can also be used when the company is solvent);
* judicial management entails a moratorium; similarly depending on the type of liquidation, a liquidation can entail a moratorium;
* both processes are run by an insolvency practitioner.

Differences between judicial management and liquidation

The differences between judicial management and liquidation include that:

* judicial management is intended to be a rehabiliatation process i.e. with a primary aim of enabling the company to survive; the purpose of liquidation is the fair and orderly distribution of assets of the company (after which the company will cease to exist);
* judicial management is a court driven process; a court process is not always required for a liquidation (a voluntary liquidation does not entail court involvement).

Considerations in electing

Judicial management would be selected if the intention is to save the company and keep it going. Liquidation would be selected if the intention is to “end the life of the company” and distribute its assets.

**QUESTION 4 (fact-based application-type question) [15 marks]**

Using the facts below for each section, answer the following questions.

Oldway Pte Ltd (Oldway) and Swift Pte Ltd (Swift) are music instrument suppliers. Oldway manufactures high-quality pianos, while Swift makes hand-built custom guitars. Both Oldway and Swift would sell their instruments to various retailers in Singapore, and are renowned for creating high-quality instruments and preserving the traditional style of manufacturing musical instruments.

In March 2023, Oldway was experiencing serious supply chain issues, caused in part by severe wildlife poaching reducing the supply of ivory for Oldway to manufacture its piano keys. Oldway was not able to pay one of its creditors, Spruce Pte Ltd (Spruce), a supplier of piano wood, the S$500,000 for the most recent delivery of piano wood to Oldway. After issuing a warning, Spruce issued a statutory demand against Oldway for the sum of S$500,000.

Martinus, one of Oldway’s directors, remembered that a year ago, Spruce had delivered a bad cargo of rotten wood, causing some pianos to collapse and caused about S$750,000 in losses. Out of goodwill, Oldway had not commenced legal action against Spruce to maintain their business relationship. Martinus was wondering if the time was nigh to sue Spruce.

Question 4.1 [maximum 3 marks]

Briefly describe the process in which Spruce would apply to Court for the winding-up of Oldway on the basis that the statutory demand went unsatisfied. Would Oldway be able to resist the winding-up application?

Spruce (as a creditor of Oldway) would apply for a compulsory winding-up on the grounds that Oldway is unable to pay its debts and is therefore insolvent (Spruce has already made the statutory demand and the debt is greater than S$15,000). In light of the Sun Electric case, the starting position is that the creditor is entitled to a winding-up order as Oldway has been unable to pay it debts. However, Oldway may be able to resist the application on the grounds that it has not paid the amount as Spruce owes it a larger amount and it was purporting to set-off this amount against the amount it owes Spruce (I note though that it is not stated in the facts if the set off is agreed e.g. in the sale and purchase agreements entered into between Oldway and Spruce).

Question 4.2 [maximum 5 marks]

Oldway and Spruce eventually entered into a settlement agreement, and Oldway was not wound up. However, its financial woes were far from over. A new instrument manufacturer, JazzGPT Pte Ltd (Jazz), had entered the market and had a hot start. Jazz harnessed the power of technology, using artificial intelligence to programme the instruments’ blueprints and 3-D printing to manufacture the envisioned product. As such, Jazz was able to produce instruments at a staggering 100 times the rate of Oldway and Spruce and sell its products at a fraction of the price. Many experts, during blind reviews, have also admitted that the sound quality of Jazz’s instruments was indistinguishable from traditionally-made instruments. Most musicians started turning to Jazz.

Hence, Oldway’s sales continued to plummet and it soon faced a financial crisis. At a board meeting, Martinus decided that it was in the best interests of Oldway to place itself under judicial management.

Briefly describe (i) what Oldway must demonstrate to the court in order to obtain a judicial management order; and (ii) the effect of a judicial management order.

What needs to be demonstrate to obtain a judicial management order

Oldway would need to demonstrate to the court that Oldway is or will be unable to pay its debts and that there is a real prospect that the appointment of a judicial manager will achieve: the survival of Oldway or all or part of its business as a going concern, act as a bridge to undertaking a scheme of arrangement, or that the interests of its creditors would be better served by the judicial management process in comparison to a liquidation.

The effect of the order

Whilst the making of a judicial management application will result in an automatic 30 day moratorium on legal proceedings against Oldway, upon the court approving the application a longer moratorium will apply (which can be extended by court order). The court or the judicial manager may however allow legal proceedings against Oldway to be continued or commence.

**Question 4.3 [maximum 3 marks]**

Oldway was placed under judicial management on 30 June 2023 and Messrs Buckman and Berryland of Pacific Advisory Services Pte Ltd were appointed as the joint and several judicial managers of Oldway (Judicial Managers). Mayer, one of Swift’s directors, genuinely wanted to assist Oldway in its restructuring, as Mayer wanted to uphold the traditional way of manufacturing musical instruments. Mayer wanted to know how Swift could aid Oldway financially but ensure that any financial aid given would be granted priority in the event that Oldway was wound up.

What are the considerations a Court will take in granting super-priority of Swift’s financial assistance, and what would the effect of such an order be?

The court will consider whether (1) Oldway could have obtained the financing from another source without having provided the super priority to the proposed Swift financing and (2) if super priority proposal is approved whether adequate protection is provided to the existing security creditors (whose security interest becomes lower ranking as a result of the super priority granted to the Swift financing).

**Question 4.4 [maximum 4 marks]**

Initially, Oldway’s Judicial Managers contemplated proposing a scheme of arrangement with Oldway’s creditors to restructure its debts. Upon investigating Oldway’s books, the Judicial Managers noticed, in particular, the following transactions:

1. A legal bill of S$25,000 paid on 10 April 2023 to a law firm, for work done in relation to advising Oldway on its restructuring and liquidation options.
2. On 11 April 2023, Oldway made a partial repayment of S$100,000 to Martinus’ childhood best friend, Clarence, for a loan in the sum of S$600,000 which Clarence had given Oldway in May 2022. There are no written records documenting the terms of this loan.
3. On 15 April 2023, Oldway sold to Martinus’ daughter a Steinway piano at the price of S$200,000. Oldway had purchased this Steinway piano on 15 September 2022 for S$1,000,000 for the purposes of placing it as the centrepiece of Oldway’s showroom.

You act for the Judicial Managers, who have asked you for advice in relation to the recovery of Oldway’s assets.

Legal bill: this was for work before and was paid before the judicial management. I don’t see it as being an issue and the amount seems in line with the expected work.

Partial repayment of loan from Clarence: there may be a potential clawback claim as this could be an unfair preference. Matinus, knowing of the current and pending financial difficulties, favoured using available funds to repay Clarence in part. To satisfy the requirements to be an unfair preference, it needs to be shown that (1) Clarence is a creditor of creditor of Oldway (there should be some financial records of the loan despite it not being documented); (2) that Oldway was insolvent at the time of giving the preference (this is likely the case as the payment was made in April after when the timeline suggests Oldway had failed to pay the statutory demand from Spruce); (3) Clarence may have been put in a better position than he would have otherwise been – as the loan is undocumented, we don’t know from the facts if the S$100,000 payment was an amortisation payment that was contactually due; and (4) Oldway (via Martinus as the sole director) was influenced by his relationship with Clarence (as childhood best friends) to make the payment to Clarence. There is a possible claw back claim for an unfair preference.

Sale of piano to daughter: this is highly likely to be a transaction at an undervalue (unless there is evidence that the market value of the similar pianos is S$200,000 i.e. Oldway originally overpaid for the piano rather than sold it for less than they should have). We would need to show that the piaot was sold at significantly less that is actual value and that Oldway was insolvent at the time of the transction (again this seems to be the case as the sale was made in April after when the timeline suggests Oldway had failed to pay the statutory demand from Spruce) or became insolvent as a result of the transaction.

**\* End of Assessment \***