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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.

* Bring or defend any action or proceedings in the name of the company;
* Sell the immovable and movable property and things in action of the company;
* Raise on the security of the assets of the company any money required;
* Appoint an agent to do any business which the liquidator is unable to do themselves.

**Question 2.2 [maximum 2 marks]**

Name two objectives of judicial management.

* To preserve the survival of the company, or its undertaking (in whole or in part) as a going concern; or
* For the company’s assets to be more advantageously realised than would occur in a winding-up.

**Question 2.3 [maximum 4 marks]**

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

If the company is unable to pay its debts, a voluntary creditors winding-up may be commenced with the following process:

* A members’ special resolution to wind up the company is passed
* A creditors meeting is convened to consider and approve the winding up (by way of special resolution). The liquidation commence once this resolution is passed.
* Creditors may vote to nominate a liquidator to replace the debtors’ nominated liquidator.

**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 refers to financing that is necessary for the survival of a debtor and/or necessary to achieve a more advantageous realisation of the debtor’s assets relative to a winding up.

To promote corporate rescue, a number of measures were introduced in the 2017 Amendment Act, largely influenced by s364 of the US Bankruptcy code. In a scheme of arrangement or judicial management process, on application of the debtor, the court may make an order the rescue financing will receive priority/security if the debtor is later wound up. This may take the form of:

* The financing be treated as costs and expenses of the winding up;
* The financing is given priority over preferential debts; or
* The financing be secured over property over the debtor.

The enjoy such priority, the debtor needs to show that it would not have been able to obtain rescue financing from any other person, unless in the manner sought.

Wrongful trading

Wrongful trading refers to the incurrence of debt or other liabilities, without a reasonable prospect of meeting them in full when the company is insolvent (or becomes insolvent in incurring said debt). Wrongful trading was adopted into Singapore law, taking inspiration from English insolvency legislation. It does not require criminal liability to be established.

A court may declare pursuant to s239 of the IRD Act, that a person is personally liable for a company’s debts if:

* That person knew that the company was trading wrongfully; or
* As an officer of the company, that person ought to have known in the circumstances, 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.

Judicial management is a corporate rescue procedure available under Singapore law. Judicial management involves the appointment of a judicial manager by the court, who replaces the debtor company’s management and directors.

A liquidation involves the appointment of an insolvency practitioner as liquidator of a debtor. Similar to a judicial management, directors’ power cease (except so far as the liquidator consents, or if the court appoints directors as special managers upon application by the liquidator).

Unlike a judicial management, a liquidation may be commenced without application to the court, by way of a members’ voluntary liquidation (appropriate if the company is solvent) or creditors’ voluntary liquidation.

A key consideration of which procedure is more appropriate, is whether a judicial management may facilitate:

* the survival of its company or its undertakings (in whole or part)
* the approval of a compromise or arrangement, or
* the more advantageous realisation of assets relative to a liquidation.

If none of the above apply, a liquidation is likely the more appropriate and economic option.

**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?

Assuming that three weeks has passed since the issuance of the statutory demand to Oldway, Spruce may apply to the court on the basis that Oldway is unable to pay its debts. Pursuant to s125(2) of the IRD act, the company is deemed to be unable to pay its debts, and Spruce is prima facie entitled to a winding up order.

The onus is on Oldway to establish that they are not insolvent. Notwithstanding, Oldway is unlikely to be able to resist winding up on the basis of the potential action against Spruce. If the claim is legitimate, the liquidated damages are likely to be setoff in a liquidation. Alternatively, Oldway may litigate against Spruce for damages, with the view of reaching a settlement to avoid a winding up application (or for one to be withdrawn).

**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.

Upon making an application for judicial management, Oldway must propose (or intend to propose) a compromise or arrangement between the company and its creditors. It must demonstrate that:

* the company is or will be unable to pay its debts; and
* there is a reasonable probability of rescue, or alternatively, to preserve all or part of its business as a going concern, or that creditors’ interests are better served compared to a winding up.

A court will only make a judicial management order if it serves one or more of the objectives in the IRD act, being:

* Preserving the company or its undertaking as a going concern;
* The approval of a compromise or arrangement pursuant to s210 of the Companies Act; or
* The more advantageous realisation of assets relative to a liquidation.

The court must also be satisfied that the company is not already being wound up.

Upon the making of a judicial management order, the directors’ powers will cease, and the appointed judicial manager will take control of the debtor. The manager must present a statement of proposals within 60 days to creditors at a creditors meeting.

An automatic moratorium commences upon the initial making of the application, and a more extensive moratorium comes into effect upon the making of the order.

**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?

Swift may provide rescue finance / credit to assist Oldway, and may be able to obtain super-priority in the form of security, preferential ranking, or as treatment as costs and expenses to the winding up.

A court only grant such an order if the debtor is able to demonstrate that it would not have been able to obtain rescue financing from any other person unless in the manner sought.

**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.

1. This transaction is unlikely to be voidable, nor commercial to pursue.
2. This transaction may be an unfair preference as it has put Clarance in a preferred position, and is within the one year period prior to appointment (Clarence is not deemed an associate). It must be established that the company was insolvent, or become insolvent as a result of that transaction, and that there was a desire to prefer Clarence.
3. This transaction may be an undervalue transaction, assuming the piano was not damaged or otherwise significantly depreciated in the 7 months since purchase. It appears to be transferred at less than market value, and falls within the three year period. It must also be established that the company was insolvent or became insolvent as a result of the transaction, noting that the beneficiary is an associate.

**\* End of Assessment \***