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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 a liquidator in a compulsory winding up are set out in ***section 144 of the Insolvency, Restructuring and Dissolution Act 2018 (“IRDA 2018”)***, and they are as follows:

1. to carry on the business of the company so far as is necessary for the beneficial winding up of the company;
2. to pay any class of creditors in full;
3. to make any compromise or arrangement with creditors
4. to bring or defend any action or other legal proceeding in the name and on behalf of the company;
5. to appoint solicitor to assist the liquidator in the liquidator’s duties

**Question 2.2 [maximum 2 marks]**

Name two objectives of judicial management.

The objectives of judicial management are set out in section 89 of IRDA 2018, and they are as follows:

1. to achieve the survival of the company, or the whole or part of its undertaking, as a going concern, and
2. to achieve a more advantageous realisation of the company’s assets 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.

The brief steps to commence a voluntary creditors’ winding up are as follows:

1. First, the company must convene a meeting of creditors to consider and vote on a resolution for voluntary winding up.
2. Second, a notice of meeting of creditors must be sent to creditors at least 10 days before the date of meeting. A copy of the notice of meeting must also be advertised at least 7 days before the date of meeting in the Gazette and at least 1 English local daily newspaper.
3. Third, the directors of the company must then cause a full statement of the company’s affairs together with a list of the creditors and the estimated amount of their claims, to be laid before the meeting of creditors.
4. Fourth, the resolution for voluntary winding up must be passed by way of a special resolution.
5. Fifth, the company must then, within 7 days after the passing of the resolution, lodge a copy of the resolution with the Registrar of Companies, and within 10 days of the passing of the resolution, give notice of the resolution in the Gazette and at least 1 English local daily newspaper.

**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.

**(i) Rescue financing**

1. Rescue financing or “super priority rescue financing” is a provision under **section 67 of IRDA 2018** which essentially allows the court to make an order granting the debt arising from any rescue financing obtained, priority over other debts.
2. It is available to be used in a scheme of arrangement proceedings and judicial management proceedings, and it is used in situations where a debtor obtains financing from 3rd parties to finance the debtor in a scheme of arrangement or judicial management.
3. The effect of the rescue financing provision is to cloth or confer some security over the rescue financing which would otherwise not be available if not for the rescue financing provisions.
4. There are 4 different kinds of orders of priority that may be made under section 67 of IRDA 2018, and the test to obtain such orders varies from one another. However, the key requirement is that the debtor must show some evidence of reasonable attempts to secure financing on a normal basis (***Re Attilan Group* [2017] SGHC 283**)

**(ii) Wrongful trading**

1. Wrongful trading is a new concept introduced under **section 239 of IRDA 2018** which is applicable in a judicial management process of winding up process.
2. It is essentially a provision that enables the court to declare a natural person to be responsible for the debts or liabilities of the company trading wrongfully. A company is trading wrongfully if the company incurs debts or liabilities without reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of the incurrence of such debt / liability.
3. A natural person would be liable for wrongful trading if that person knew that the company was trading wrongfully or as an officer of the company, ought to have known that the company was trading wrongfully in all circumstances of the case.
4. A natural person found to be liable for wrongful trading shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding $10,000 or imprisonment for a term not exceeding 3 years or both.

**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.

1. There similarities between judicial management and liquidation are as follows:
   1. A 3rd party would be taking control of the company and the functions and powers of the directors / management of the company would be transferred to this 3rd party. The said 3rd party in a judicial management is the “Judicial Manager” whereas in a liquidation, the person would be “Liquidator”.
   2. The said 3rd party (Judicial Manager / Liquidator) would also take into custody or control all the company’s property.
   3. Upon a judicial management order and winding up order granted, there will be an automatic moratorium against the debtor company where no legal action may be commenced or continued against the debtor company unless the court grants permission.
2. The differences between the two are as follows:
   1. A company under judicial management still has a chance of survival. This is because the judicial manager will be tasked to try and rehabilitate the company as a going concern. In contrast, a company in liquidation is where the company is insolvent and the process of winding up the company will take place.
   2. A judicial management is only for a fixed period of 180 days, and it will be discharged unless extended by court. In contrast, there is no fixed timeline for liquidation and the liquidation can go on for a prolonger period of time until the company is dissolved, or the liquidation is terminated.
   3. In a judicial management, a judicial manager’s main objective is to prepare and table a statement of proposal for the purpose of achieving the objectives of judicial management. In contrast, in a liquidation, the liquidator’s main objective is to liquidate the company, realise the company’s assets to be distributed to the company’s creditors.
3. In considering which options to elect, one should consider the following factors:
   1. For a debtor - Whether there is still any intention to rehabilitate and keep the company going? If so, a judicial management would be better. If not, it may be best to consider liquidation.
   2. For a creditor – Whether there is any prospect of realising the assets of the company which would give better returns to a creditor. If so, judicial management would be better. If not, it may be better to opt for liquidation.

**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 would have to wait until the expiry of 3 weeks of the statutory demand before filing a winding up petition pursuant to ***section 125(2)* of IRDA 2018**. The petition would be filed on the basis that there is a debt due and owing exceeding the sum of S$ 15,000 from Oldway to Spruce which remains unpaid for 3 weeks after the service of the statutory demand.

Oldway can try to resist the winding up petition on the basis of the potential S$750,000 in losses caused by Spruce. However, as Oldway did not commence legal action to recover this loss, it is unlikely that Oldway may succeed in resisting the winding up petition.

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.

Oldway must demonstrate the following:

1. That it is likely to become unable to pay its debts and

2. The making of the judicial management order would be likely to achieve either (i) the survival of Oldway as a going concern or (ii) a more advantageous realisation of Oldway’s assets or property than in a winding up.

Oldway must also nominate a person who is a licensed insolvency practitioner who is not the company’s auditor, to act as the judicial manager.

The effect of the judicial management order is that there will be a moratorium against Oldway, whereby all legal proceedings against Oldway shall be restrained except by leave of court or consent of the judicial manager. During this period, the judicial manager would then have to prepare a statement of proposal to be presented to the creditors at a creditors meeting.

**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 factors that the court will consider before granting any super priority order include the following which are set out in the case of ***Re Attilan Group* [2017] SGHC 283:**

1. Whether there is any evidence of Oldway attempting to secure financing on a normal basis.
2. Whether the proposed financing by Swift is sound and reasonable.
3. Whether such financing is in the best interest of Oldway’s creditors.
4. Whether the terms of financing agreement are fair, reasonable and adequate.

The effect of any super priority order (if granted) depends on the type of application made under section 101 of IRDA 2018. It could be any one of the following:

1. That Swift’s financial assistance would be treated as if it were part of the costs and expenses of the winding up;
2. That Swift’s financial assistance would have priority over all preferential debts specified in section 203(1) of IRDA 2018 and all other unsecured debts;

**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. In so far as the payment of legal bill under (a), it is unlikely that the Judicial Managers can take any actions. This is because the transactions may not be one which is undervalue or unfair preference. In fact, it may be one which was influenced by proper commercial considerations. In this respect, such transaction may not be set aside as unfair preference (***Tam Chee Chong and another v DBS Bank Ltd* [2010] SGHC 331**).
2. In so far as the payment of S$100,000 under (b), the Judicial Managers may be able to file an application pursuant to **section 225 of IRDA 2018**, that the payment is an unfair transaction. This is because the requirements under **section 225(3) of IRDA 2018** may be satisfied, namely:
   1. Clarence is one of Oldway’s creditors after having given Oldway a loan in the sum of S$600,000 just about a year ago; and
   2. The payment of S$100,000 to Clarence has the effect of putting Clarence in a better position that Clarence would be in if the payment was not made. Had it not been for the payment, Clarence is unlikely to be able to get early repayment.
   3. The decision to pay Clarence is presumed to have been influenced by a desire to prefer Clarence. This is because Clarence is Martinus’ childhood best friend, and it is arguable that Clarence is connected to Oldway.
3. In so far as the payment of S$200,000 under (c), the Judicial Managers may be able to file an application pursuant to **section 224 of IRDA 2018**, that the payment was made at an undervalue. This is because the requirements under **section 224(3) of IRDA 2018** may be satisfied, namely, that the sale of the piano to Martinus’ daughter was for a consideration the value of which is significantly less than the value of the same provided by Oldway when purchasing it in September 2022.

The exception under **section 224(4) of IRDA 2018** is also unlikely to be met because the sale was likely to have been done with Martinus’ knowledge that the transaction was undervalue. Hence, it is unlikely that Oldway made the transaction in good faith and for the purpose of carrying on its business.

**\* End of Assessment \***