



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 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: 202122-336.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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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] 10 marks

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** one of the roles of a scheme manager?

- (a) To administer the scheme after it has been approved by the creditors.
- (b) To run the business of the debtor company.
- (c) To prepare the scheme of arrangement proposal.
- (d) To adjudicate on the proofs of debt filed by the creditors.

Question 1.2

Which of the following forms of security **need not** be registered?

- (a) A fixed charge.
- (b) A mortgage.
- (c) A pledge.
- (d) A floating charge.

Question 1.3

Which of the following factors may enable a foreign debtor to establish a “substantial connection” to Singapore?

- (a) The debtor has chosen Singapore law as the law governing a loan or other transaction.
- (b) The debtor is registered as a foreign company in Singapore.
- (c) The debtor is carrying on business in Singapore.
- (d) Any of the above.

Question 1.4

What percentage of each class of creditors must approve a scheme of arrangement for it to be binding?

- (a) Over 50% in value.
- (b) 50% or more in value.
- (c) Over 75% in value.
- (d) 75% or more in value.

Question 1.5

Which of the following is **not** one of the statutory duties of a bankrupt?

- (a) To make discovery of and deliver all his property to the Official Assignee.
- (b) To attend any meeting of his creditors as may be convened by the Official Assignee.
- (c) To execute such powers of attorney, conveyances, deeds and instruments as may be required.
- (d) To not travel overseas under any circumstances whatsoever.

Question 1.6

Which of the following **is not true** of the Model Law as enacted in Singapore?

- (a) It allows foreign representatives to apply to court for the recognition of foreign proceedings.
- (b) The court can deny recognition only if recognition is "manifestly contrary" to public policy.
- (c) It provides for concurrent insolvency proceedings.
- (d) It provides for international co-operation and communication between courts and representatives.

Question 1.7

Which of the following new reforms **were not** introduced by way of the 2017 amendments to the Companies Act?

- (a) The automatic moratorium.
- (b) The cross-class cram down.
- (c) Restrictions on *ipso facto* clauses.
- (d) Pre-packaged scheme of arrangement.

Question 1.8

Who amongst the following **may not** bring a judicial management application?

- (a) The company by way of a members' resolution.
- (b) **The liquidator by way of an application to court.**
- (c) The directors pursuant to a board resolution.
- (d) The creditors either together or separately.

Question 1.9

Which one of the following **is not** one of the statutory duties that a bankrupt is subject to?

- (a) Make discovery of and deliver all his property to the Official Assignee.
- (b) Disclose all property disposed of by gift or settlement without adequate valuable consideration within the five years immediately preceding his bankruptcy.
- (c) **Not being able to travel overseas at all.**
- (d) Attend meetings with the Official Assignee and answer all relevant questions.

Question 1.10

Which of the following **is not** one of reasons for which the Court will appoint an interim judicial manager:

- (a) The preservation of the company's property or business from dissipation or deterioration.
- (b) **The more advantageous realisation of the property than in a liquidation.**
- (c) To bridge the gap between the application for judicial management and the hearing of the judicial management application.
- (d) To safeguard the interests of the company as well as its creditors.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 4 marks]

What is the significance of the decision in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60 and what did the Court of Appeal decide?

In *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60, the sole and determinative test, under Section 125(2) of the Insolvency, Restructuring and Dissolution Act ("the IRD Act"), for a debtor company being deemed unable to pay its debts, was clarified by the Court of Appeal to be the cash flow test. This is significant as the creditor would then, if the debtor company fails the test, have the prima facie entitlement to be granted a winding-up order on the debtor.

The Court of Appeal, in addition to clarifying that the cash flow test was the sole and determinative test, also laid out some of the factors which should be considered under this test. These factors are:

- a) the amount of all debts currently due or falling due in the reasonably near future;
- b) existing/current payment demands or future likely payment demands with respect to the above debts;
- c) whether, how much and for how long the debtor company has failed to pay any of its debts;
- d) the duration since the start of winding-up procedures;
- e) the current and likely future value of the company's current and future realisable assets;
- f) the health of the debtor company's business and expected net cash flow;
- g) any and all other income or payment likely receivable by the debtor company in the reasonably near future; and
- h) arrangements for prospective financing, with re-payment dated later than current debts, to help bridge possible shortfalls in liquid and realisable assets.

Incomplete answer that does not talk about how the balance sheet test was also previously applicable. 3 marks.

Question 2.2 [maximum 2 marks]

State **four (4)** new features that were only introduced in the IRDA and were not in force at the time of the 2017 amendments to the Companies Act.

Four new features introduced in the IRDA 2018 were;

- a) introduction of a regulatory framework for insolvency practitioners including introduction of minimum qualifications, conditions for licence grant/renewal and a disciplinary framework in Division 3;
- b) limitation on ipso facto clauses in Section 440;
- c) inclusion of a provision relating to "wrongful trading" in Section 239; and
- d) providing a new voluntary process, if certain conditions are met, for initiating judicial management, without prior application to the Court.

2 marks

Question 2.3 [maximum 4 marks]

Describe the process involved in one of the alternatives to formal bankruptcy.

One of the alternatives to formal bankruptcy is a debt repayment scheme or plan, agreed with creditors and administered by the Official Assignee

Under this process, the Court may refer the debtor to the Official Assignee, for him/her to assess the debtor's eligibility and suitability for enrolment in the repayment scheme. The debtor must meet the following criteria:

- a) total debts do not exceed the prescribed amount;
- b) the debtor is neither currently an undischarged bankrupt nor, been a bankrupt at any time in the past five years immediately preceding the bankruptcy application date;
- c) the debtor is neither currently in a Voluntary Arrangement or Debt Repayment Scheme nor, been in a Voluntary Arrangement or Debt Repayment Scheme at any time in the past five years immediately preceding the bankruptcy application date;
- d) the debtor is not a sole proprietor, a partner of a firm under the Partnership Act (Cap 391) nor a partner in a limited liability partnership.

If the above criteria are satisfied and the case is referred to the Official Assignee, the debtor will then have to submit a statement of his/her affairs and a debt repayment plan of not more than five years' duration.

If the Official Assignee approves, a creditors' meeting is then convened to review the plan. Upon the plan being subsequently approved by the Official Assignee, all creditors are then bound by it, with a moratorium in effect for the duration of the debt repayment plan.

In case of the debtor's failure to comply with the conditions of the scheme, the Official Assignee may issue a Certificate of Failure of the debt repayment scheme, which would then come to an end.

Creditors may then bring a bankruptcy application against the debtor.

4 marks.

QUESTION 3 (essay-type questions) [15 marks in total]

Question 3.1 [maximum 8 marks]

Write a brief essay in which you discuss some of the claims that a liquidator or judicial manager can bring and how the IRDA has enhanced their ability to do so.

Some of the claims that a liquidator or judicial manager can bring include:

a) the treatment of executory contracts with ipso facto clauses, whereby the judicial manager / liquidator can secure performance by the other party of future obligations. This is achieved by availing of Section 440 of the IRD Act 2018 to restrict, under certain circumstances, the enforcement of ipso facto clauses to terminate contracts with the debtor company, once any proceedings relating to any judicial management / scheme of arrangements applications are commenced. Contracts excluded from this restriction include any prescribed eligible financial contract, any government licence/permit/approval, any commercial charter of a ship and any agreement subject to international treaty, to which Singapore is a party. **This is not quite a claim.**

A liquidator or judicial manager can also bring claims to claw back assets previously transferred, where there was:

- an unfair or undue preference given, with claw back period extending back to the two years (for associated preferred parties) or one year (for unrelated parties), prior to the date of winding-up application / judicial management application provided four elements can be shown (preferred party is a creditor/guarantor; the debtor was insolvent at the time or became insolvent as a consequence; the debtor has undertaken any preferential action with regards to the preferred party; and the debtor company entered the transaction with the intent to show preference with presumption of intention in the case of associates); or
- the transaction was conducted at an undervalue, with claw back period extending back to the three years prior to the date of winding-up application / judicial management application (regardless of whether with a related or unrelated party) provided two elements can be shown (debtor company makes a gift or transacts with significantly less consideration received compared with consideration provided; the debtor company was/became insolvent as a consequence of this transaction). There is presumption of an undervalue transaction if it was carried out with an associate.

How is different from previously?

Liquidators / judicial managers can also bring claims under Section 239 of the IRD Act 2018, against persons, knowingly a party to the debtor company carrying out wrongful trading. Under such claims, such persons can be personally liable for the debts or liabilities of the debtor company. Wrongful trading involves the debtor company incurring debt or liabilities without reasonable prospect of meeting them in full (when insolvent or becoming insolvent as a consequence of such wrongful trading). If the person is an officer of the company, it is presumed they he/she ought to have been aware of the company trading wrongfully. **How does this compare with the previous regime?**

Liquidators and judicial managers can also apply to the court and pursue claims relating to fraudulent transactions or contracts, disclaim onerous contracts (entered into prior to commencement of liquidation / judicial management) and set aside transactions with extortionate credit.

The IRD Act 2018 statutorily empowers both liquidators and judicial managers to seek third-party funding for some causes of legal action, including those causes personal to the liquidators/ judicial managers. Thus, their ability to bring various legal claims is enhanced, with increased financial muscle, to pursue costly legal actions.**how is this better than previously?**

Cover the key claims that can be brought but answer would have been improved with how the powers of the JM/liquidator are enhanced now.

6 marks.

Question 3.2 [maximum 7 marks]

Write a brief essay in which you discuss the process of commencing a voluntary judicial management application. In your answer you should also discuss how this differs from a judicial management application that is filed in court.

Under Section 94(1) of the IRD Act 2018, a new process is introduced of Voluntary Judicial Management application. This is done without having to first make an application to the Court.

The conditions which need to be met are:

a) the debtor company is unable, or likely to become unable, to pay its debts;

b) existence of reasonable prospects for achieving one or more of the purposes of judicial management (as listed in Section 89(1) of the IRD Act 2018) ie survival of the company as a going concern, approval under Section 210 of the Companies Act of a compromise agreement or a more advantageous realisation of the company's assets; **what are these 3 aims.**

c) a resolution of the debtor company's creditors can be obtained.

Section 94 also includes procedures for conduct of creditor meetings, notice requirements and relevant timelines. **Please elaborate.**

A judicial management that is filed in court is initiated by creditors as opposed to being initiated by the debtor company. **Not true court JM can also be initiated by creditors.**

The judicial manager, under a Voluntary Judicial Management Application, is appointed by the debtor company with the agreement of the creditors, as opposed to being court-appointed.

Lack of details of the procedure and limited comparison with court process. 3 marks.

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

PT Angostura Textiles Tbk (Angostura, and together with its subsidiaries, the Angostura Group) is an Indonesia-incorporated company listed on the Indonesia stock exchange. Angostura is a substantial market player in textile production in South East Asia and China. Its primary lines of business are:

- fibre production with assets and factories in Malaysia, Thailand and Cambodia;
- textile manufacturing with assets and factories in Indonesia, Vietnam and China; and
- garment manufacturing and distribution facilities with assets and factories in Indonesia, Vietnam and the United States.

The Angostura Group has two key Singapore incorporated subsidiaries:

- Juniperus Textiles Pte Ltd. (Juniperus) which is wholly owned by Angostura; and
- Casuarina Garments Pte Ltd (Casuarina) which is wholly owned by Juniperus.

Each entity in turn owns all, or substantially all, of the shares in the relevant entities incorporated in the local relevant overseas jurisdiction.

The Angostura Group had traditionally funded its business via bank lending, with a combination of bilateral and syndicated loan facilities advanced directly to Angostura. As at 2019, the group had raised SGD 2 billion in bank lending, all of which was guaranteed by Angostura Indonesian subsidiaries.

In late 2019, as COVID-19 started to spread around the world, the Angostura Group sought to take advantage of the situation by expanding its garment manufacturing business into personal protective equipment. To fund this expansion, Juniperus issued SGD 200 million in retail bonds (the Juniperus SG Bonds) on the Singapore Stock Exchange (SGX) which were guaranteed by Angostura. The proceeds of the Juniperus Bonds were on-lent to Casuarina who lent them via an offshore intercompany loan to Angostura (the Casuarina Intra-Group Loan). To ensure bondholders had rights in connection with the Casuarina Intra-Group Loan, holders of the Angostura Bonds are given security over the shares of each of Juniperus and Casuarina. The Juniperus Bonds are governed by a New York law.

In late 2020, Angostura's business experienced significant supply-chain disruptions as a result of the COVID-19 pandemic. During this time, Angostura started informing some of its bank lenders that they may require waivers on certain terms in their loans and potentially further time to repay certain amounts owing. In early 2021, Angostura appointed legal and financial advisors to provide it with advice as to the best steps to take. Shortly thereafter, a trade creditor filed a PKPU petition in Indonesia against Angostura and its Indonesian subsidiaries. Further to this, Juniperus and Casuarina filed for protection, under sections 64(1) and 65(1) respectively, of the Insolvency Restructuring and Dissolution Act (Act No 40 of 2018) (the IRDA). Angostura then announced that Juniperus will launch a separate Singapore Scheme of Arrangement under section 210 of the Companies Act (Cap 50) to restructure the Juniperus Bonds after the conclusion of the Indonesian PKPU, which will largely mirror the terms in the PKPU.

The bondholders of the Juniperus Bonds are concerned the moratoria being sought will prevent them from participating in the PKPU proceedings in Indonesia and enforcing their security over the shares in Juniperus and Casuarina, respectively. They have therefore decided to object to the Singapore moratorium applications.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 6 marks]

The working group of the bondholders has asked its advisors to provide it with a written analysis covering the following critical issues for the Angostura Group. Please provide analysis on the following issues:

Question 4.1.1 (2 marks)

What must be presented to the court in order to obtain moratorium protection order under section 64(1) IRDA?

In order to obtain moratorium protection under Section 64(1) IRD Act 2018, the following must be presented to the Court by Juniperus:

- no order has been made and no resolution passed for winding up of Juniperous;
- an application or undertaking to make an application to sanction a scheme of arrangement;
- confirmation that Juniperous has not made an application for moratorium under Section 210(10) of the Companies Act;
- evidence that Juniperous has published a notice in the Government Gazette and in at least one local English-language daily newspaper and sent notice to all its known creditors;
- evidence of support from Juniperous's creditors;
- either the proposed / draft scheme or at least, in the absence of such a scheme, a summary of the intended compromise or arrangement, sufficiently detailed to allow the Court to determine if it is feasible and worth consideration by creditors; and

- a list of every secured creditor (including Juniperous's bondholders) and the largest unsecured creditors.

2 marks

Question 4.1.2 (2 marks)

What must be presented to the court in order to obtain moratorium protection order under section 65(1) IRDA?

Under Section 65(1) of the IRD Act 2018, in order to obtain moratorium protection, the following must be presented to the Court by Casuarina:

- no order has been made and no resolution passed for winding up of Casuarina;

the order under Section 64(1) of the IRD Act 2018, to Juniperous, is in force;

- Casuarina plays "a necessary and integral role in the compromise or arrangement" [IRD Act 2018 Section 65(1)] relied on by Juniperous;

Juniperous's compromise or scheme of arrangement will be frustrated if one of more insolvency-related actions (if not restricted under the moratorium applied for) are taken against Casuarina;

- evidence that Casuarina's creditors would not be unfairly prejudiced by the moratorium applied for;

- evidence that Casuarina has published a notice of the application in the Government Gazette and in at least one local English-language daily newspaper and sent notice to all its known creditors and the Registrar of Companies / Accounting and Corporate Regulatory Authority (ACRA);

2 marks

Question 4.1.3 (2 marks)

Can the moratoria sought by Juniperus and Casuarina be ordered to have extra-territorial effect? If so, what acts and / or creditors will the moratoria apply to?

Yes, the moratoria sought by Juniperous and Casuarina, under Sections 64(1) and 65(1) respectively, can be ordered to have extra-territorial effect by the Court and will apply to "...any act of any person in Singapore or within the jurisdiction of the Court whether the act takes place in Singapore or elsewhere..." [Sections 64(1) and 65(1) IRD Act 2018]. However, the moratoria will not affect the exercise of any legal right, for example netting-off arrangements.

No order may be made and no resolution may be passed for the winding up of Juniperous and/or Casuarina. No receiver or manager may be appointed over any property or undertaking of the company. No proceedings, other than under Section 210 or 212 of the Companies Act or Sections 64, 66, 69 or 70 of IRD Act 2018, may be commenced or continued against the company, except with the leave of the Court and subject to such terms imposed by the Court. No step may be taken to enforce any security over any property of the company, except with the leave of the Court.

Binds creditors who are within the jurisdiction of the Singapore Court. 1.5 marks.

Question 4.2 [maximum 9 marks in total]

As things transpired, Juniperus and Casuarina were granted moratorium protection for a period of three (3) months and are expected to apply for an extension to this moratorium

period for an additional six (6) months upon expiry of the original three- (3) month period. The working group of bondholders intends to oppose any extension application.

The bondholders have instructed the Juniperus Bonds' trustee under the relevant indenture to be ready to enforce their security over the shares in Casuarina as soon as practicable. The Juniperus Bonds appear to be traded heavily in the market, with private equity funds looking to buy up significant stakes in order to enforce the security over shares in Casuarina.

To try and protect against this risk, Angostura also commenced local insolvency proceedings and emergency recognition proceedings in the United States.

Taking these additional facts above into consideration, answer the questions below.

Question 4.2.1 [maximum 5 marks]

What are the steps that need to be taken in order to launch a subsequent scheme of arrangement under section 210 of the Companies Act? How does the process for a scheme proposed under section 210 of the Companies Act differ from a prepack scheme proposed under section 71(1) of the IRDA?

Under Section 210 of the Companies Act, unless the Court orders otherwise, a majority in number of each class of creditors (holding not less than three-fourths of the respective value) vote in person or by proxy to accept the scheme of arrangement, Angostura Group must then apply for the voted-upon scheme of arrangement to be approved by the Court.

Convening of creditors' meeting?

The Court may grant approval, subject to such alterations or conditions as it sees fit.

A copy of the Court Order must then be lodged with the Registrar / ACRA. Upon being lodged, the order takes effect from the date of lodgement or such earlier date as the Court decides.

Comparison with prep-packaged scheme?

2 marks.

Question 4.2.2 [maximum 2 marks]

What requirements must be satisfied in order for the Angostura Group to be able to access rescue financing under the IRDA?

Angostura Group must provide evidence that any proposed rescue financing, under the IRDA Act 2018, is necessary for:

- the survival of Angostura Group companies; and/or
- a more advantageous realisation of its assets.

It would also be to the advantage of Angostura Group (and prospective rescue financiers, if any), and to the detriment of existing creditors, if the Court can be shown that Angostura Group companies would not be able to obtain unsecured financing from any other person or additionally (in the case of secured financing), that there is adequate protection for existing secured creditors.

1 mark. Incomplete answer.

Question 4.2.3 [maximum 2 marks]

Explain the key requirements in order for a Singapore court to recognise a foreign insolvency proceeding and what the effect will be if the court were to do so.

The key requirements for Singapore courts to recognise a foreign insolvency proceeding are, as guided by UNCITRAL Model Law which Singapore adopted in 2017:

- that the foreign proceedings take place in jurisdictions where the debtor company is registered or alternatively, where its centre of main interests is located (even if different from place of registration).

The recognition of a foreign insolvency proceeding should also not be contrary to Singapore public policy (with no requirement to be "manifestly not contrary").

Notably, there is no requirement for reciprocity from the foreign jurisdiction.

Can elaborate further on this. 1 mark.

In addition, judgements, provided they are registered in Singapore:

- from the UK and Australia (and some other Commonwealth countries) may also be recognised by Singapore courts under the Reciprocal Enforcement of Commonwealth Judgments Act; and

- under the Reciprocal Enforcement of Foreign Judgments Act, foreign judgements from Hong Kong;

may also be recognised in Singapore.

With respect to a judgment for a fixed sum of money from a foreign court, it can be recognised in Singapore if it is:

- final and conclusive as per the laws of the respective foreign jurisdiction; and

- where the foreign court had international jurisdiction, as defined by Singapore law, over the parties.

Once registered, the foreign judgment may be enforced in Singapore as if it was issued by the Singapore High Court, without the need to commence fresh proceedings in Singapore.

A foreign judgment which is recognised, potentially, has the effect of preventing any claim or proceeding contrary to the foreign judgment.

Question is not asking about recognition of foreign judgment.

*** End of Assessment ***

37.5 out of 50