



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?

The decision of the Singapore Court of Appeal in *Sun Electric Power* clarified that the cash flow test should be the sole and determinative test under section 125(2)(c) of the IRD Act in determining whether a company is unable to pay its debts¹.

The Singapore Court of Appeal also set out a non-exhaustive list of factors, which should be considered under the cash flow test:

¹ INSOL Guidance Text Module 8E Singapore, chapter 6

- (a) The quantum of all debts which are due or will be due in the reasonably near future;
- (b) Whether payment is being demanded or is likely to be demanded for those debts'
- (c) Whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;
- (d) The length of time that has passed since the commencement of the winding up proceedings;
- (e) The value of the company's current assets and assets that will be realisable in the reasonably near future;
- (f) The state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;
- (g) Any other income or payment which the company may receive in the reasonably near future; and
- (h) Arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realizable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts².

How about the balance sheet test? 1.5 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.

The US Bankruptcy Code heavily influences four new features introduced in the IRDA. They provide that a Singapore Court, may on application by the debtor, make an order that any rescue financing obtained by a debtor will:

1. Be treated as part of the costs and expenses of the winding-up if the debtor is later wound up;
2. Enjoy priority over preferential debts if the debtor is later wound up;
3. Be secured by a security interest on property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property of the debtor that is subject to an existing security interest if the debtor would not have been able to obtain unsecured rescue financing from any other person; or
4. Be secured by a security interest on property subject to an existing security interest, of the same or a higher priority than the existing security interest, if the debtor would not have been able to obtain rescue financing from any other person unless it was secured in such a manner and there is adequate protection for the interests of the existing security interest.

0 mark

Question 2.3 [maximum 4 marks]

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

A voluntary arrangement is an alternative to formal bankruptcy. It is a formal arrangement made between a debtor and his creditors and overseen by a nominee. The aim of the arrangement is to see the relevant debts satisfied³. The process is as follows:

² INSOL Guidance Text Module 8E Singapore, chapter 6

³ 276 (1) IRDA

1. A debtor must appoint a nominee as part of the proposal for a VA⁴.
 2. Any nominee must be a licenced insolvency practitioner.
 3. Where a debtor intends to propose a VA to its creditors, the Singapore Court may grant an interim moratorium order, pursuant to which: no bankruptcy application may be made or proceeded with against the debtor; and no other proceedings, execution or other legal process may be commenced or continued against the person or property of the debtor without the leave of the court; and where the interim order is in respect of a firm- no bankruptcy application may be made or proceeded with against the firm or, except with the leave of the court, any partner therein; and no other proceedings, execution or other legal process may be commenced or continued against the firm or its property or against the person or property of any partner in the firm, without the leave of the court.⁵
 4. Where an interim order has been made, the nominee must submit a report to the Court which states whether, in his opinion, a meeting of the debtor's creditors should be summoned, and if so, the date, time and place which the meeting should take place.⁶
 5. Unless otherwise directed by the Court, the nominee then summons a creditors meeting.⁷
 6. The VA must then be approved by special resolution by the creditors at the creditors meeting. If the VA is approved by the requisite majority, it will then bind all creditors who have had notice of and were entitled to vote at the meeting.⁸
- If the debtor fails to comply with any of the obligations under the VA, the nominee or any creditor bound by the VA may bring a bankruptcy application against the debtor.⁹

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.

A liquidator or judicial manager in Singapore insolvency proceedings is empowered under the IRDA to bring or defend any action or other legal proceeding in the name and on behalf of the company.

This power is subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.¹⁰

A liquidator may appoint a solicitor to bring or defend any such action or legal proceeding in the name and on behalf of the company; and assign, in accordance with the regulations, the proceeds of an action arising under section 224, 225, 228, 238, 239 or 240.¹¹

Taking two of the aforementioned sections in Division 3 of the IRDA, which provide for a liquidator or judicial manager to bring claims for:

⁴ Idem s 277

⁵ Idem s 276(3); INSOL Guidance Text Module 8E Singapore, chapter 6

⁶ Idem s 280 (1); Ibid

⁷ Idem s 281 (1); Ibid

⁸ Idem s 282 (1); Ibid

⁹ Idem s 287; Ibid

¹⁰ Idem s 144; Ibid

¹¹ Ibid

Transactions at undervalue.¹²

Where a company is being wound up or is under judicial management, and has, at the relevant time, entered into a transaction with any person at an undervalue. The liquidator or judicial manager may apply to the Court for an order to restore the company to the position it would have been in, if the company had not entered into that transaction. **What are the elements of transactions at an undervalue?**

Unfair preferences.¹³

Where a company is in judicial management or is being wound up, and has, at the relevant time, given an unfair preference to any person. The liquidator or judicial manager may apply to the Court for an order to restore the company to the position it would have been in if the company had not given that unfair preference.

A Singapore company is deemed unable to pay its debts if a creditor to whom the company is indebted in a sum exceeding SG\$15,000 has served a written demand on the company, and the sum due has not been satisfied¹⁴

Where a company is unable to pay its debts, claims under sections 224 and 225 are subject to the limitation periods set out in section 226 of the IRDA. Namely, the time at which a company enters into a transaction at an undervalue or gives an unfair preference is a relevant time if the transaction is entered into or the preference given-

- (a) In the case of a transaction at undervalue-within the period starting 3 years before the commencement of the judicial management or winding up and ending on the date of the commencement of the judicial management or winding up;
- (b) In the case of an unfair preference which is not a transaction at an undervalue and which is given to a person who is connected with the company (otherwise than by reason only of being the company's employee)-within the period starting 2 years before the commencement of the judicial management or winding up; and
- (c) In any other case of an unfair preference-within the period starting one year before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial management or winding up.

Incomplete answer that does not discuss third party funding and wrongful trading. Also parts of the answer are irrelevant to the question. 3.5 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.

Judicial management involves the appointment of an insolvency practitioner as a judicial manager to replace a company's directors and management and to take over responsibility for running the company. It is characterised as a corporate rescue tool, but has been criticised as being more of an insolvency process¹⁵

Section 94 (1) of the IRD introduced a new voluntary process for commencing judicial management without filing an application in court¹⁶.

A company may undertake the voluntary process if it is or is likely to become, unable to pay its debts; there is a reasonable probability of achieving one or more of the purposes

¹² Idem s 224

¹³ Idem s 225

¹⁴ Idem s 125 (2)

¹⁵ INSOL Guidance Text Module 8E Singapore, chapter 6.1.3.2.

¹⁶ Idem s 94(1), INSOL Guidance Text Module 8E Singapore, chapter 9.8

of judicial management mentioned in section 89(1); and a resolution of its creditors is obtained¹⁷.

The voluntary judicial management application process has similar requirements to the court ordered judicial management process, and can be summarised as follows:

- (a) Judicial management is commenced through a creditors' resolution by a majority in value of the total amount of the creditors' claims and in the number of creditors present and voting- rather than just by a single creditor, the latter of which is possible with a court application for judicial management¹⁸.
- (b) An interim judicial manager may be appointed, if the conditions set out in s. 94 (3) are present. An interim judicial manager is appointed either by filing a shareholder's resolution or board resolution for the appointment, and lodging statutory declarations with the Official Receiver and the ACRA, stating the interim judicial manager's consent to be appointed as such, and that the company intends to undergo judicial management¹⁹. The interim judicial manager must be appointed before the creditors meet to vote on the resolution for a formal judicial manager-there is no requirement for an interim judicial manager in a court application for judicial management²⁰.
- (c) A company that proposes to obtain a resolution of the company's creditors must comply with the 7 day written notice period set out in s.94 (2).
- (d) After the appointment, the company must lodge a notice of appointment with the Official Receiver and ACRA, and publish the notice in the Government Gazette and in an English local daily newspaper²¹.
- (e) To protect the company from creditors in the period before formal judicial management begins, an interim moratorium operates for judicial management commenced by creditors' resolution, starting once the written notice is lodged and ending when either a formal judicial manager is appointed, the interim judicial manager's term has ended, or when the creditors reject the resolution for judicial management. However, for judicial management commenced by a court order, an interim moratorium applies from the making of the application to the time when the court makes its decision on whether to grant the order²².

Lack of detail on the procedure for voluntary JM. Decent comparison with court JM though. 4 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.

¹⁷ [ibid]

¹⁸ [ibid]; <https://singaporelegaladvice.com/law-articles/judicial-management#resolution>

¹⁹ <https://singaporelegaladvice.com/law-articles/judicial-management#resolution>

²⁰ <https://singaporelegaladvice.com/law-articles/judicial-management#resolution>

²¹ [ibid].

²² [ibid].

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?

A company must present an application made pursuant to section 64 (1), only if all of conditions set out in section 64 (2) are satisfied, and must file with the Court together with the application: evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement; in a case where the company has not proposed the compromise or arrangement to the creditors or class of creditors yet, a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors when a statement mentioned in section 211 (1) (a) of the Companies Act 1967 or section 71 (3) (a) relating to the intended compromise or arrangement is placed before those creditors; a list of every secured creditor of the company; a list of all unsecured creditors who are not related to the company or, if there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims against the company are the largest among all such 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?

Where the Court has already made a moratorium order pursuant to section 64 (1) in relation to a company, a subsidiary, holding company or an ultimate holding company of the subject company (referred to as the "related company") may make an application pursuant to section 65 (1) if all of the conditions under section 65 (2) are satisfied and the notice provisions set out in section 65 (3) have been complied with.

0.5 marks. Please elaborate.

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?

If moratoria are granted pursuant to sections 64 (1) and 65 (1) of the IRDA, it will automatically apply to all claims worldwide and will affect all creditors. However, in effect, this will mean that any proceedings brought in Singapore will be automatically stayed, that creditors will be unable to take actions against the companies in Singapore and that the companies would have to apply for the moratorium orders to be recognized in other jurisdictions, for example in Indonesia, should the companies wish for those proceedings to be stayed. The orders of the Singaporean Court will not have automatic extra-territorial effect.

Explain in personam extra territorial effect. 1 mark.

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?

A company must issue an application pursuant to section 210 of the Companies Act. That application should disclose all material information, including, for example, the classification of creditors. A company must then send out notices of meeting and statements explaining the proposed scheme to creditors. The chairman of the creditors' meetings reviews proofs of debt sent in by prospective scheme creditors, and chooses which to admit. Creditors then vote on the scheme during their meetings. The following approval threshold must be met: at least 50% of the creditors or class of creditors (present and voting) in favour and these creditors must represent 75% of the value of the debt claims against the company. Once the court has approved of the proposed scheme, a copy of the order must be lodged with ACRA²³.

The above process differs from a "pre-packed" scheme of arrangement in that the court can approve a scheme that fulfills the requirements of a "pre-pack" scheme without the need for a creditors' meeting to vote on it.²⁴

Lack of detail. Application to convene meeting? 2.5 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?

Where a company has made an application under section 64 (1) of the IRDA or section 210 (1) of the Companies Act to convene a meeting for the purposes of a scheme of arrangement, it can access rescue financing. Additionally, section 67 of IRDA allows the Court to grant an order that the rescue financing be afforded super priority status²⁵.

²³ Section 210 Companies Act; [Schemes of Arrangement: How They Work and How to Apply - SingaporeLegalAdvice.com](#)

²⁴ [ibid]; Section 71 IRDA.

²⁵ Section 64 (1) and 67 of the IRDA.

Not answered properly on threshold that has to be met. 0 marks.

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.

Adoption of the Model Law via the Amendment Act now allows foreign representatives to apply to the High Court of Singapore for the recognition of foreign proceedings²⁶. A judgment which has an in personam effect from a foreign court may be recognised in Singapore or enforced by an action at common law through the Singapore courts. Some qualifying foreign judgments may be registered under the statutory provisions of the Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Foreign Judgments Act. If the judgment cannot be registered pursuant to the aforementioned statutory provisions, it may be recognized at common law if it is final and conclusive by the law of the foreign country and where that court had international jurisdiction over the parties²⁷.

Does not discuss recognition under model law. 0 marks.

*** End of Assessment ***

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²⁶ INSOL Guidance Text Module 8E Singapore, chapter 7.

²⁷ INSOL Guidance Text Module 8E Singapore, chapter 8.