



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**.

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Commented [DB2]: I am not sure why you do not read and follow the instructions? This is as much a part of the course as the content.

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.

(Present and voting)

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*, the Court of Appeal clarified/ decided that the cash flow test is the sole test to be applied when determining solvency under section 125(2)(c) of the IRD Act. **What was the previous position?**

The Court of Appeal also set out a (non-exhaustive) list of factors that are to be considered when applying the cash flow test. These are:

The quantum of all debts which are due or will be due in the reasonably near future;
Whether payment is being demanded or is likely to be in relation to the aforementioned debts;

Whether the company has failed to pay its debts, the quantum of those debts and how long the company has failed to pay them;

The length of time that has passed since the commencement of the winding up proceedings;

The value of the company's current assets and the assets that will be realizable in the reasonably near future;

The state of the company's business (to determine its expected net cash flow);

Any income the company may receive in the reasonably near future;

Arrangements between the company and prospective lenders to determine whether any shortfall in reliable liquid assets and cash flow could be made up by borrowings.

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.

Minimum qualifications for insolvency practitioners, conditions for the grant and renewal of licenses and a disciplinary framework (introduced in division 3);

Restriction on the application of ipso facto clauses to terminate (some types of) contracts with insolvent companies (section 440);

The concept of wrongful trading (incurring debts/ liabilities without reasonable prospect of meeting them in full when the company is insolvent, or becomes insolvent as result of incurring those debts/ liabilities), empowering the court to make a declaration that any person who was knowingly party to the company trading wrongfully is personally liable for the company's associated debts/ liabilities (section 239); and

The court having a power to stay or terminate the winding up of the company at any time after application from the liquidator, a creditor, or a contributory and satisfactory proof that all proceedings in relation to the winding up ought to be stayed or terminated (section 186). This is different to the previous power which only allowed for winding up proceedings to be stayed upon such an application (not terminated).

2 marks. Good elaboration.

Question 2.3 [maximum 4 marks]

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

A bankruptcy order will only be made if there are no successful objections and/ or the application is not suitable for referral to one of the alternatives to formal bankruptcy. The logic behind this is that bankruptcy should be a last resort as it has draconian consequences and often does not result in the best return to creditors when compared to other options.

A debt repayment scheme is an alternative to formal bankruptcy. It allows the debtor to enter into a payment plan with their creditors. If the court considers a debt repayment scheme may be appropriate, it will refer the debtor to the Official Assignee to assess the debtors eligibility and suitability to enter into a debt repayment scheme. To be eligible/ suitable the following criteria must be satisfied 1) the debt must not exceed the prescribed amount of (x) 2) the debtor must not be an undischarged bankrupt any time within the 5 years prior to the bankruptcy application 3) a voluntary arrangement or debt repayment scheme must not already be in effect in relation to the debtor and 4) the debtor is not a sole proprietor a partner in certain types of firm. **What is the prescribed amount?**

Commented [3]:

If the above criteria are met then the debtor is required to submit a statement of affairs and a debt repayment plan for the Official Assignee to approve. If they do approve, they will convene a meeting of the debtor's creditors to review the plan. The Official Assignee can then approve the plan (if thought fit) and if they do, the plan will be binding on all creditors under s 291(8) and a moratorium on claims against the debtor will be in effect for the period of the debt repayment scheme as per section 293 (the maximum length being 5 years as per section 290 (1).

What happens if debtor fails to comply? 3 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.

There are multiple types of claims that a judicial manager or liquidator can bring. Some of these include:

Unfair preference in relation to a liquidation

A liquidator or judicial manager can claim unfair preference and claw back a transaction made within the two years prior to the winding up application or judicial management application. To do so the liquidator or judicial manager must show 1) the preferred party is a creditor or guarantor for any of the company's debts or liabilities 2) the company was insolvent or became insolvent as a result of the transaction in issue 3) the company has done anything which puts the preferred party in a better position than they would have been had the transaction not been entered into and 4) the company was influenced in deciding to enter into the transaction by a desire to prefer the preferred party (there being a presumption so if the preferred party is an associate of the company).

What is the clawback period?

Transaction(s) at an undervalue in relation to a liquidation

A liquidator or judicial manager can claim transaction at an undervalue and claw back a transaction made within the three years prior to the winding up application or judicial management application. To do so the liquidator or judicial manager must show 1) the company made a gift to the recipient or entered into a transaction where the consideration received by the company was significantly less than the value of the consideration provided by the company and 2) the company was or became insolvent as a result of that transaction. Similar to an unfair preference, the company is presumed to have undertaken a transaction at an undervalue where it was to an associate of the company.

The IRDA has enhanced liquidators and judicial managers' abilities to make claims by allowing for third party funding to bring undervalue, unfair preference, extortionate credit, fraudulent trading, wrongful trading and assessment of damages claims in circumstances where the company otherwise will not be able to bring the claim due to insufficient resources, providing an additional avenue for recovery. The judicial manager or liquidator must first obtain authorization from the court or the committee of inspection.

Please elaborate further on third party funding and wrongful trading. 4.5 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.

Voluntary judicial management applications are provided for in section 94 of the IRDA 2018. They are voluntarily entered into and do not require an application to the court (unlike a (non-voluntary) judicial management application, which does require an application to the court).

This process was introduced in the IDRA 2018 and can be used if 1) the company is or is likely to become unable to pay its debts 2) there is a reasonable possibility of achieving one or more of the purposes of judicial management mentioned in section 89(1) and 3) a resolution of creditors is obtained.

If the company thinks that 1) and 2) above are met, it can, instead of applying to the court for a judicial management order, seek a resolution of the company's creditors that the company be placed under the judicial management of a judicial manager (as set out in 94(11)).

First the company will appoint an interim judicial manager to bridge the gap until the creditors vote and a judicial manager is appointed. The procedural steps and relevant test for the appointment of an interim judicial manager are set out in 94(2)-(5). These requirements include notifying the Official Assignee and advertising the appointment. The interim manager can be appointed for up to 30 days (but this can be extended).

In order to have a (non interim) judicial manager appointed the company must convene a meeting of its creditors to consider a resolution that the company be placed under judicial management. 14 days' written notice (together with a statement showing the names and amounts claimed by all creditors and a statement of the company's affairs) is required and the meeting must take place at a time and place convenient to the majority in value of creditors. The company must also publish notice of the meeting at least 10 days before the date of the meeting.

At the meeting, the creditors can appoint a chairperson (from themselves, the interim judicial manager or one of the company's directors). If the chairperson consider the meeting is at a time and place convenient to the majority in value of the creditors then the meeting can proceed. If it is resolved by the majority by number and value of the creditors present and voting resolve to appoint a judicial manager, then the company will be placed under judicial management and the meeting must approve by the majority by number and value of the creditors present and voting the appointment of a person as judicial manager, who must be a licensed insolvency practitioner who is not the auditor of the company.

As noted above, the major difference between this proceed and a (non-voluntary) judicial management process is that in the voluntary process no application to the court is required. If the non-voluntary approach is taken, the company (after considering the test mentioned at 1) and 2) above) applies to the court for an order that the company should be placed under judicial management, rather than seeking a resolution of creditors. This process is set out in section 90. **What other differences? 5 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?

An automatic moratoria for 30 days is imposed under section 64(1) when a company proposes (or intends to propose) a scheme of arrangement between the company and its creditors.

Under 64(4) when making an application under 64(1), the company must show the court evidence of support for the intended or proposed scheme from the company's creditors and an explanation of how such support would be important to the success of the scheme, or if the company has not yet proposed the scheme to the creditors, a brief description of the intended scheme (sufficient enough to allow the court to assess whether it will be feasible, as well as a list of every secured creditor of the company and a list of all unsecured creditors of the company who are not related to the company (or the largest 20, if there are more than 20).

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?

Section 65(1) allows for a moratorium on claim against subsidiaries and/or holding companies. The Section itself does not set out anything that must be presented to the court in order to obtain moratorium protection.

Not true. There are requirements. 0 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 can have extra territorial effect and will apply to claims made by creditors against the company.

Elaborate further. 0.5 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?

Under section 210 of the Companies Act the liquidator (if the company is being wound up), company or any creditor, member or holder of units of shares in the company can apply to the court summarily to order a meeting of creditors, members or holders of units of shares (or as class of such persons) (as applicable). The party that summoned the meeting must send notice to each relevant stakeholder (creditor, member or holder of units of shares), including an explanation of the proposed scheme and must advertise the meeting. Unless the court orders otherwise, if three fourths or more in number of the relevant stakeholders present and voting agrees to the compromise or arrangement, then the court will consider it. If the court then approves it, it is binding and can be launched. **Lodging the order?**

Leave to convene meeting?

Section 71 of the IRDA is different in that:

it only applies to creditors (not members or holders of units of shares);

the company is the only party that can apply for an order approving the compromise or arrangement and it can do so even if no meeting has been ordered under section 210 of the Companies Act/has taken place (the court simply being required to be satisfied that had a meeting taken place, the conditions in section 210(3AB)(a) and (b) of the Companies Act would have been met.

the advertisement/notice requirements are different. Unless the court orders otherwise, the company must provide each creditor intended to be bound with a statement that explains the company's assets, property, business activities, financial condition and prospects, information on the matter in which the terms of the compromise or arrangement will affect the rights of the creditor and any other information necessary to enable the creditor to make an informed decision as to whether or not to agree to the compromise or arrangement. The company must also publish notice of the application in the Gazette (sending that notice to the Registrar of Companies) and at least one local English daily newspaper.

Importantly no meeting conducted for prepackaged.

Incomplete answer and does not grasp some of the key points. 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?

Angostura must show that the financing is either or both of:

Necessary for the company's survival;

Necessary to achieve a more advantageous realization of the assets of the company when compared to the winding up of the company.

Please elaborate. 0.5 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.

Singapore has adopted the Model Law, allowing foreign representatives to apply to the High Court of Singapore for recognition of foreign proceedings. The only notable difference in the Singapore process is that the Singapore court can deny recognition if the recognition would be contrary to public policy, whereas the Model law prescribes that recognition can only be denied when it would be manifestly contrary to public policy.

Please elaborate. 0.5 marks.

*** End of Assessment ***

33.5 out of 50