



**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 case established the grounds for entering into liquidation procedure. According to section 125(2) of IRD Act, if the company is deemed unable to pay its debt, the creditor is prima facie entitled to a winding up order. However, what factors should be considered for a company is deemed unable to pay its debt were not mentioned. Traditionally, cash flow test and balance sheet were adopted in accessing the company's ability to settle the debts. Upon the conclusion of this case, it was decided that cash flow test will be used solely to determine under section 125(2).

Besides, the decision also set out a list of factors to be considered under the cash flow test, they are,

- 1) Amount of debts which are due or will be due in near future,
- 2) Whether payment is demanded or will likely be demanded,
- 3) Whether the company has failed to pay its debt, and if so, for how long,
- 4) Length of time that has passed since the winding up proceedings commence,
- 5) The value of current asset that can be realised in near future,
- 6) Income/payment that the company will be received in near future,
- 7) the state of the company's business, and
- 8) arrangement between the company and prospective lenders.

2 marks. Good concise answer.

### **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.

IRDA introduce 1) restriction of ipso facto clauses, 2) early dissolution of company in liquidation in sections 209 to 211 of IRDA 2018, 3) the power for judicial manager/liquidator to seek third-party funding and 4) a new wrongful trading provisions under section 239.

2 marks.

### **Question 2.3 [maximum 4 marks]**

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

Voluntary arrangement is one of the solutions to formal bankruptcy. A nominee, who must be a licensed insolvency practitioner, must be appointed to oversee proposed by the debtors to the creditors. In the proposal, the debtor must disclose his assets and liabilities and how he is going to settle the debts with various creditors.

The debtor may apply for an interim moratorium order which, without court leave, will disallow bankruptcy application and execution of other proceedings/other legal process made against the debtors.

After that, the nominee should submit a report to the court stating whether a creditors meeting is necessary. If so, the date, time and place of the meeting.

During the meeting, the voluntary arrangement must be voted and approved special resolution by majority of the creditors. The results will bind to creditors who have had notice of and were entitled to vote at the meeting.

Finally, the debtor will comply with the approved voluntary arrangement until all of his obligations were discharged. In case, the debtor failed to comply with the arrangement, the nominee or creditors bound by the arrangement can bring a bankruptcy petition 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.

There are a number of claims that can be made by liquidator or judicial manager, they are

- 1) undervalued transactions,
- 2) unfair preferences,
- 3) extortionate credit transactions,
- 4) fraudulent trading,
- 5) wrongful trading, and
- 6) damages against delinquent officers.

For wrongful trading under section 239, the company can impose the liabilities raised from trading to a person if,

- 1) they knew the company was trading wrongfully,
- 2) as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully.

#### How is different from previously?

The liquidator or judicial manager can claim these damages from individual parties acting wrongfully.

Similarly, the liquidator or judicial manager can claw back assets if the transactions were conducted at an undervalue manner and unfair preference was given 2 years (1 year for associates) before the date of winding-up/judicial management application. Investigation has to be made and confirmed that the company is insolvent or become insolvent as a result of that transactions and the consideration received by the company is significantly less than the value provided. **Note that clawback period for undervalue and unfair are different.**

Meanwhile, to establish an unfair preference, a number of factors should be considered, namely, the desire of prefer, financial status of the company at the time when the preference is given, whether the preferred party is a creditor or guarantor of the company's liabilities and whether the preferred party position was improved after the preference is given.

All these investigations required resources from the distressed company and in many cases, the company may not have the funding to pursue these claims. Moreover, before the introduction of IRDA, the court may allow litigation funding under certain circumstances. Liquidator can only assign the proceeds of claims but not right of litigation to third party. The power of liquidator or judicial manager is limited.

The introduction of third-party funding under the IRDA can cater for the shortage of funds and make a greater recovery to creditors. It also includes actions applied personal to liquidator or judicial manager. Under the IRDA, the liquidator or judicial manager is given the statutory power to negotiate funding and assign the proceeds with third party.

**Some inaccuracies. 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.

According section 94(1) of IRD Act 2018, a voluntary judicial can be commence if i) the company is, or likely to become, unable to pay its debts; ii) there is a reasonable probability of achieving one or more of the purposes of judicial management in section 89(1) and iii) a resolution of the company's creditor is obtained. **Please elaborate more on procedure.**

The first difference between a voluntary judicial management ("VJM") application and judicial management application ("JMA") is that, the distressed company needed not to apply to court for VJM while JMA must be made to the court. VJM only needs the consent by creditors and make filings to government bodies without the interference of the court. VJM saves time and costs for the company to make application to the court.

Secondly, creditors play a larger role in VJM as the company has to gain a majority support in order to commence the process. The creditor may have more involvement in formulating the recuse plan, assets selling off and company's operation. While for JMA, the role of creditor is limited to forming a creditor committee, they can amend the proposal only if the judicial manager agreed on it. **Not that much difference actually. Creditors also vote on plan for JMA.**

Finally, VJM has to obtain most of the consent of floating charge holders for the appointment of interim judicial manger. If these holders do not give their consent, the VJM will end. However, for JMA, the process may not be blocked by the floating charge holders if the court is satisfied that the prejudice that would be caused to it if the order were made is disproportionately greater than the prejudice that would be caused to unsecured creditors if the application were dismissed.

**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.

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?

According to section 64 of IRDA, an automatic moratorium period for 30 will be granted upon filing of application. When making the application, the company must publish a notice in English and Gazette and send notice to the creditors. Besides, the applicant must show to the court that the evidence of support from company's creditors, a list of every secured creditor and the largest unsecured creditors and, in the absence of proposed scheme, an intended compromise or arrangement which enabling the court to determine if it is feasible and merits consideration by creditors.

Please elaborate a bit. 1.5 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 of the IRDA, if the moratorium protection is made under section 64 of IRDA, a related company of Juniperus and Casuarina may apply for moratorium protection too.

An ex-prate summons together with a supporting affirmation should be filed to the court. The related company's application should be filed concurrently with the Juniperus and Casuarina's application. After the making of application, the related company of Juniperus and Casuarina should send a notification of application to each creditor who will be affected by the moratorium as well as all other creditors of the company.

The related company should present memorandum showing that all of statutory and notice requirements are fulfilled. The related company should demonstrate to the court that the granting of moratorium orders is crucial for the compromise/arrangement to be proposed the company under section 64 moratorium.

What are the other elements to be met? 1 mark.

**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?

One of the features for moratoria is it has extra-territorial effect so long as the creditor was in Singapore or within the jurisdiction of the court. The moratoria will apply to all class of creditors from enforcing payment against the Juniperus and Casuarina with the exception of secured creditors whom can still enforce their security. Legal proceedings for debt enforcement cannot be commenced without the leave of the court. In this case, as the bonds are secured by the shares of Juniperus and Casuarina, the bondholder can still enforce their security despite the moratoria.

Secured creditors are also bound by the moratorium. 1.5 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?

To apply for scheme of arrangement, Juniperus and Casuarina should apply to court for a scheme of arrangement. The application should disclose all material information such as, evidence of support from creditors, classes of creditors and the proposed scheme which assisted the court to work out how the creditor's meeting should be conducted. **Do you mean leave to convene creditor's meeting?**

When making the application, Juniperus and Casuarina should publish a notice in the Gazette and in at least one English local daily newspaper. A notice should be sent to creditors.

With the approval of the court, the company may send notice to creditors for meeting. The notice should include information the period within which the proof is to be filed and how the creditor should file a proof of debt. The scheme should be circulated to all creditors explaining the effect of the scheme. To facilitate the process of negotiation, the court or the company may appoint a scheme manager. The scheme manager will also be the chairman of the meeting.

Upon receiving the above documents, the creditors can submit their proof of debts with supporting documents to the chairman who will decide whether the claims will be admitted or rejected.

During the meeting, the creditors will cast their votes. To pass the scheme, at least 50% each class of creditors present and holding at least 75% in value of debts claims agree to the proposed scheme, the approved scheme will be passed to court for approval.

Once the court approved the scheme, the scheme will be binding on all creditors. The role of court is supervisory over the scheme. **Lodging of the order with ACRA?**

In view of the length process for implementing a scheme, a faster and less costly 'pre-packed' scheme of arrangement was introduced.

Under the prepack scheme, the court can approve the scheme without summoning a creditors' meeting to vote on it. It also allows the company to dispense with court hearing to convene a creditor meeting.

To satisfy for a prepack scheme, a notice containing the information of Juniperus and Casuarina and the proposed scheme must be sent to each creditor. The notice should also be published in the Gazette and at least one English local newspaper and the court must be satisfied that the proposed scheme would have been approved if the creditors have voted on it **at a meeting**.

**Some inaccuracies. 3.5 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 Group should give the rescue finance a super priority status as according to section 67(1)(a) to (d) of IRDA.

Secondly, adequate protection should be given to the existing secured creditors, i.e. bondholders, as per section 67(1)(d) of IRDA.

Lastly, as per section 67(9) of IRDA, Angostura Group should demonstrate that the finance is necessary for survival of a company and/or the results of obtaining rescue finance is more advantageous than a winding up.

**Please elaborate further. 1 mark.**

#### **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 UNCITRAL Model Law on Cross-Border Insolvency in 2017 Amendment Act. This version is substantially the same with the original Model Law in recognition of foreign proceedings. An application should be made to High Court of Singapore and a certified copy of the decision to commence the foreign proceedings and appointment of the foreign representative or a certificate from foreign court for affirming the same should be submitted.

However, it should be noted that Singapore adopted a stricter approach on public policy exception which omitted the word “manifestly”. If an application for recognition of foreign proceedings by a foreign insolvency representative appointed under proceedings restrained by the Singapore Court is made, it will lead to denial of recognition under public policy exception.

The effect of recognition is relief will be granted to the foreign proceedings in accordance to Article 21 of Singapore Model Law. This includes but not limited to examining witness, taking evidence or delivery of information regarding the debtor’s affairs

**Concise answer. 2 marks.**

**\* End of Assessment \***

**37.5 out of 50**