



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**.

Commented [DB1]: Not sure why you did not read and follow the instructions? I had to do this for you . . .

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?

[Type your answer here]

In *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60, the Singapore Court of Appeal clarified that the cash flow test should be the sole and determinative test under section 125(2)(c) of The Insolvency, Restructuring and Dissolution Act ("IRD Act"). Section 125(2)(c) of the IRD Act relates to the determination of whether the company is unable to pay its debts,

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

- (i) the quantum of all debts which are due or will be due in the reasonably near future;
- (ii) whether payment is being determined or is likely to be determined for those debts;
- (iii) 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;
- (iv) the length of time that has passed since the commencement of the winding up proceedings;
- (v) the value of the company's current assets and assets that will be realisable in the reasonably near future;
- (vi) 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;
- (vii) any other income or payment which the company may receive in the reasonably near future; and
- (viii) arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

What was the previous position? 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.

[Type your answer here]

Four (4) new features in the Insolvency, Restructuring and dissolution Act ("IRDA") are:

- (i) Section 239 – the new concept of wrongful trading, which imposes personal liability for the company's debts on a person if:
 - a. They knew that the company was trading wrongfully; or
 - b. As an officer of the company, ought, in all the circumstances, to have known that the company was wrongfully trading.
- (ii) Section 94(1) – introduces a new voluntary process for initiating judicial management without having to first apply to the Court if:
 - a. The company is, or likely to become, unable to pay its debts;
 - b. There is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1); and
 - c. A resolution of its creditors is obtained.
- (iii) Section 440 – restricts the enforcement of *ipso facto* clauses once any proceedings relating to any application under judicial management or a scheme of arrangement process are commenced by a company.
- (iv) Section 209 to 211 – introduced a new procedure for the early dissolution of a company in liquidation.

2 marks

Question 2.3 [maximum 4 marks]

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

[Type your answer here]

One (1) of the alternatives to formal bankruptcy is a voluntary arrangement. Pursuant to section 276(1) of the IRD Act, a voluntary arrangement is a formal arrangement made between a debtor and his creditors for the satisfaction of its debts overseen by a nominee. A debtor must appoint a nominee as part of any proposal for a voluntary arrangement (section 277 of the IRD Act).

Where a debtor intends to make a voluntary arrangement proposal to its creditors, section 276(3) of the IRD Act grants the Court the power to order an interim moratorium. The purpose of such an interim moratorium is to:

- (i) Order that no bankruptcy application may be made on or proceeded with against the debtor;
- (ii) Order that 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
- (iii) Where the interim order is in respect of a firm:
 - a. Order that no bankruptcy application may be made or proceeded against the firm or, except with the leave of the court, any partner therein; and
 - b. 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 leave of the Court.

Pursuant to section 280(1) of the IRD Act, if an interim order is made by the Court, the appointed nominee must submit a report to the Court which states whether a meeting of the debtor's creditors should be convened and if so, the report must contain the date, time and place the meeting will take place. Unless otherwise directed by the Court, the nominee will summon the creditors meeting (section 281(1) of the IRD Act).

The voluntary arrangement must then be approved by special resolution by the creditors at the creditors meeting. If approved the voluntary arrangement is approved by the requisite majority, the voluntary arrangement will bind all creditors who have had notice of and were entitled to vote at the creditors meeting (section 282(1) of the IRD Act).

Section 287 of the IRD Act outlines that if a debtor fails to comply with the obligations of the voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement are able to 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.

[Type your answer here]

A liquidator or judicial manager can apply to the Court to seek bring a claim for the below listed transactions:

- (i) Unfair or undue preferences (section 225 of the IRD Act);
- (ii) Transactions at undervalue (section 224 of the IRD Act);
- (iii) Extortionate Credit Transactions (section 228 of the IRD Act);
- (iv) Fraudulent or wrongful trading (section 238 and 239 of the IRD Act); and

- (v) Delinquent officers (section 240 of the IRD Act).

Pursuant to section 144(1)(g) and (f) of the First schedule of the IRD Act, both judicial managers and liquidators are statutorily empowered to seek third party funding for certain cause of action, including those personal to them.

Accordingly, owing to the implementation of the IRD Act, liquidators and judicial managers can seek third party funding to pursue the five (5) types of claims listed above.

Authorisation by the Court or committee of inspection is required.

Lack of elaboration. Answer is too brief. 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.

[Type your answer here]

Section 94 of the IRD Act outlines the process for initiating a voluntary judicial management. Pursuant to section 94(1) of the IRD Act, instead of applying to the Court, a company can obtain a resolution of its' creditors for the company to be placed under judicial management where a company considers that:

- (i) the company is or is likely to become, unable to pay its debts; and
- (ii) there is reasonable probability of achieving one or more of the purposes of judicial management (as referenced in section 89(1) of the IRD Act).

A company which proposes to obtain a resolution of its creditors to place the company into judicial management must give at least seven (7) days written notice of its intention to appoint a judicial manager to:

- (i) the proposed interim judicial manager; and
- (ii) any person who has appointed, or is or may be entitled to appoint, a receiver and manager of the whole (or substantially the whole) of the company's property under the terms of any debentures of the company secured by a floating charge or by a floating charge and one or more fixed charges (section 94(2) of the IRD Act).

After the seven (7) day notice period has expired, the company can there appoint an interim judicial manager if the requirements of section 94(3) are met, including the lodgement of a statutory declaration with the Official Receiver of the Registrar of Companies ("Official Receiver") by the proposed judicial manager, which starts the 30 day time period for the company to convene a creditors meeting to consider a resolution to place the company under judicial management (Section 94(7) of the IRD Act).

The appointment of the interim judicial manager will end on the earlier of:

- (i) the expiry of thirty (30) days after the date of the appointment, or such extension, of that period as the Official Receiver may allow; or
- (ii) the appointment of a judicial manager, or the rejection of the resolution to place the company under judicial management at a meeting of creditors.

At the creditors meeting under subsection seven (7), the creditors must consider, amongst other things, whether the company is placed under judicial management, and if so, the appointment of a person as judicial manager (section 94(11) of the IRD Act). Section 94(12) of the IRD Act states that the Judicial Manager must be a licenced insolvency practitioner who is not the auditor of the company.

What is the threshold for voting?

The primary difference in the process of appointing a voluntary judicial manager as opposed to a judicial manager by the Court is that the initial resolution for the voluntary judicial manager is through a creditors' resolution by a majority in value (of the total amount of the creditors' claims) and in number of credits present and voting. A court application to appoint a judicial manager can be made by a single creditor.

One further difference is that in voluntary judicial management an interim judicial manager must be appointed, which is not the case for the court process.

Could have elaborated a bit more on the procedure. Decent effort nonetheless. 5.5 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?

[Type your answer here]

Section 64 of the IRD Act deals with the powers of the court to restrain proceedings against a company. Therefore Section 64 would only be applicable to a single company (i.e. Juniperus or Casuarina).

In order to obtain moratorium protection under section 64(1) of the IRD Act, Juniperus or Casuarina must satisfy the conditions of section 64(2) of the IRD Act that:

- (i) no order has been made and no resolution has been passed for the winding up of the Juniperus or Casuarina;
- (ii) Juniperus or Casuarina make, or undertakes to the Court to make as soon as practicable an application to sanction a scheme of arrangement;
- (iii) Juniperus or Casuarina has not applied for protection under section 210(10) of the Companies Act, which is a provision that also provides for a moratorium protection.

Left out requirements of 64(1). 1 mark.

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?

[Type your answer here]

Section 65 of the IRD Act deals with the powers of the court to restrain proceedings against subsidiary or holding company. Therefore, if the Court has made an order for Juniperus or Casuarina under section 64(1) of the IRD Act, either Juniperus or Casuarina would be regarded as the subject company and the court may, on application of any company that is a subsidiary, a holding company or an ultimate holding company of Juniperus or Casuarina make the same orders as section 64(1) but not for a period exceeding the order which has already been made subject to section 64(1).

In order to make an application under section 65(1) of the IRD Act, the relevant company within the Angostura Group must satisfy the following conditions:

- (i) no order has been made and no resolution has been passed for the winding up of the Angostura Group company;
- (ii) the order made in relation to the subject company under section 64(1) of the IRD Act is in force;
- (iii) the Angostura Group company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application for the order under section 64(1) of the IRD Act;
- (iv) the compromise or arrangement will be frustrated if one or more of the actions that may be restrained by an order under section 65(1) of the IRD Act are taken against the related company;
- (v) the Court is satisfied that the creditors of the Angostura Group Company will not be unfairly prejudiced by the making of an order under section 65(1) of the IRD Act.

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?

[Type your answer here]

Yes, pursuant to section 64(5)(b) of the IRD Act, the Court may order that the scheme of moratorium (ordered subject to section 64(1) or 65(1) of the IRD Act) applies to any act of any person who is in Singapore or within the jurisdiction of Singapore, whether the act took place in Singapore or elsewhere.

What are the acts restrained? 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?

[Type your answer here]

In order to launch a scheme pursuant to section 210 of the Companies Act, an application must be made to the Court to request the Court to order a meeting of the creditors, members, holders of units of shares or a class of such person to be summoned in such manner as the Court directs (section 210(1) of the Companies Act). Pursuant to section 210(2) of the Companies Act an application to the Court for a scheme of arrangement can be made by:

- (i) in the case of a company being wound up – the liquidator; and
- (ii) in any other case (a) the company; or (b) any creditor, member or holder of shares of the company.

If the Court approves the creditors meeting the company will send notices summoning the meeting as well as statements explaining the effects of the proposed scheme to all relevant parties.

A compromise or arrangement is binding pursuant to section 210(3AA) of the Companies Act if the majority in number and three-fourths in value of (i) the creditors or class of creditors; (ii) the members or class of members; or (iii) the holders of units of shares or class of holders of units of shares, present and voting at the meeting approve the compromise or arrangement, and; the compromise or arrangement is approved by Order of the Court.

Section 71(1) of the IRD Act provides the power to the Court to approve a compromise or arrangement between a company and its creditors, or any class of those creditors, without a meeting of the creditors under section 201(1) of the Companies Act being ordered.

Please elaborate further especially on the prepackaged portion. 3 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?

[Type your answer here]

Pursuant to section 67(9) of the IRD Act rescue financing refers to any financing that satisfies either or both of the following conditions:

- (i) necessary for the survival of a debtor that obtains the financing; and/or

- (ii) necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding up of that debtor.

Section 67(1) of the IRD Act outlines that under a scheme of arrangement, an application can be made to the Court for any rescue financing obtained to:

- (i) be treated as part of the costs and expenses of the winding up if the debtor is later wound up;
- (ii) have priority over preferential debts if the debtor is later wound up;
- (iii) 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
- (iv) be secured by a security interest on the property subject to an existing security interest of the same or a higher property 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 existing security interest.

1 mark. Sourcing for alternative financing etc?

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.

[Type your answer here]

Singapore adopted the UNCITRAL Model Law on Cross-Border Insolvency ("the Model Law") on 10 March 2017. Accordingly, a foreign representative can apply to the High Court of Singapore for the recognition of foreign proceedings.

The key requirements for a Singapore Court to recognise a foreign insolvency proceeding are set out in schedule 3, chapter 3 of the IRD Act. The application requirements are set out in Article 15 and the factors which influence the Court's decision to recognise a foreign proceeding are outlined in Article 17.

In practice, the first reported decision of the Hong Kong Court on the recognition of a foreign insolvency proceeding under the Model Law is in *Re: Zetta Jet Pte Ltd and Others* [2018] SGHC 16.

Lack of elaboration. No mention of the effect. 0.5 mark.

*** End of Assessment ***

37.5 out of 50