



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?

This case guides on the factors to consider when evaluating insolvency under the cash flow test. The Court of Appeal clarified that the cash flow should be the determinant test for insolvency and stated a number of factors to consider when carrying out this evaluation. These were: -

- 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 those that will be realizable 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 the projected future sales of 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 shareholder, 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 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.

- a) The 30 – day moratorium following the filing of an application for the court to order a meeting of the creditors to vote on a proposed arrangement.
- b) Cross – class cramdown which allows a scheme of arrangement to be approved notwithstanding the votes from one or more classes of creditors opposing the scheme.
- c) Treatment of rescue financing obtained by a debtor which took after Section 364 of the U.S Bankruptcy Code.
- d) Moratoria having extra – territorial effect.

These were already present in 2017. 0 marks.

Question 2.3 [maximum 4 marks]

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

One of the alternatives to formal bankruptcy is a voluntary arrangement. Under Section 276 of the IRDA, 2018, it is stated that any insolvent debtor who intends to make a proposal to the insolvent debtor's creditors for a composition in satisfaction of the insolvent debtor's debts or a scheme of arrangement of the insolvent debtor's affairs, which is referred to as a voluntary arrangement under that Part of the Act, may apply to the Court for an interim order.

In the application, the debtor appoints a licensed insolvency practitioner as the nominee to oversee the implementation of a voluntary arrangement with the creditors. Where the interim order is granted, the nominee submits a report in which he states that in his opinion, the creditors' meeting should be convened to consider the proposal and the date, place and time where the meeting will be convened (Section 280, IRDA, 2018).

At the creditors' meeting, the voluntary arrangement will be put to a vote of the creditors and it must be approved by a special resolution of the creditors at the meeting. If approved by the requisite majority, the arrangement will bind all creditors who had notice of and were entitled to vote at the meeting (Section 282, IRDA, 2018).

If, however, the debtor fails to comply with any of the obligations under the voluntary arrangement, the nominee or any creditor bound by the Voluntary Arrangement may bring a bankruptcy application against the debtor.

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.

One of the claims that can be made is in respect of impeachable transactions. These involve the following: -

- a) Transactions at an undervalue.
- b) Transactions in which an unfair or undue preference was given.

For transactions at an undervalue, the liquidator or judicial manager must show that the value of the consideration received from the transaction is significantly less than the value of the consideration provided and that as a result of the transaction, the company was or became insolvent. The relevant period for purposes of clawing back the assets is 3 years from the date of the winding – up application or judicial management application, regardless of whether the transaction was with an associate of the company or an unrelated party.

For the transactions in which the unfair preference was given, it must be shown that the beneficiary in this transaction is a creditor or guarantor of any of the debtor's debts, that the company was insolvent at the given the preference, that as a result of the preference, the creditor or guarantor is in a better position than it would have been in the event of liquidation or judicial management and that there was a desire to prefer the creditor or guarantor by the creditor. To claw back these assets lost in the transactions, the contested transaction must have happened within 2 years from the date of the winding – up application or date of the judicial management application where the preferred party is an associate and one year for unrelated parties.

How are powers enhanced under IRDA? Wrongful trading? Third party funding? 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.

Under Section 94 of the IRD Act, 2018, it is shown that where a company considers that the company is, or is likely to become, unable to pay its debts and there is a reasonable probability of achieving one or more of the purposes of judicial management, instead of applying to the court for a judicial management order, the company may a resolution of the company's creditors for the company to be placed under the judicial management of a judicial manager.

Once the resolution is obtained, the company must give at least 7 days' written notice in the prescribed form of its intention to appoint an interim judicial manager to the latter and 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. This appointment will be premised on, among other things, whether the proposed judicial manager has lodged a statutory declaration in accordance with Section 94(3)(e) and the directors of the debtor has lodged theirs in accordance with Section 94(3)(f) if the IRD Act 2018.

For a judicial management application, the appointment is made by Court and not by a resolution of the debtor's creditors. Under Section 91, the company or creditor(s) passes a resolution authorising the company or creditor to make an application for a judicial management order. The grounds for the grant of the order abide by those to be proved when pursuing voluntary judicial management.

Therefore, the key difference is in the mode of appointment of the judicial manager.

Needs more elaboration and effort to answer. 3 marks.

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

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

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

The Angostura Group has two key Singapore incorporated subsidiaries:

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

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

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

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

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

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

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 6 marks]

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

Question 4.1.1 (2 marks)

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

The company must file an application that shows that the company proposes, or intends to propose, a compromise or an arrangement between the company and its creditors or any class of those creditors and that the creditors are called to consider and vote on the same. Further to the application, the company is required to file the following: -

- a) 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;
- b) 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 or section 71(3)(a) relating to the intended compromise or arrangement is placed before those creditors;
- c) A list of every secured creditor of the company;
- d) 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

It will therefore be critical to review Juniperus' application and the supporting documentation mentioned above to confirm whether amongst the creditors with whom the compromise or arrangement is to be discussed, the bond holders have been mentioned as a category of creditors to be considered and a particular scheme has been proposed or a description of the proposed scheme has been given to show how their interests will be dealt with.

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?

An application to court will be made by Casuarina after the moratorium under Section 64(1) is granted and what needs to be shown in the application is that Casuarina will play a necessary and integral role in the compromise or arrangement to be proposed by Juniperus which, by then, is under moratorium.

Incomplete answer. 0.5 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. The moratorium will apply to prevent the following from happening:

- a) The granting of an order or passing of a resolution for the winding up of the company;
- b) The appointment of a receiver or manager over any property or undertaking of the company;
- c) Court Proceedings, save for those specifically provided for under the Companies Act and the IRDA, except where leave of court has been granted.
- d) Execution, distress or other legal process except with the leave of the Court and subject to such terms as the Court imposes;
- e) Enforcement of any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes; and
- f) Re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except with the leave of the Court and subject to such terms as the Court imposes.

The moratorium applies to all creditors over whom the Singaporean Court has *in personam* jurisdiction. This is especially true where the proceeding against the company in Singapore is considered and determined to be a foreign main proceeding and a creditor who seeks to seek orders for the above actions resides or carries on business in another jurisdiction that adopted the UNCITRAL Model Law.

2 marks

Question 4.2 [maximum 9 marks in total]

As things transpired, Juniperus and Casuarina were granted moratorium protection for a period of three (3) months and are expected to apply for an extension to this moratorium period for an additional six (6) months upon expiry of the original three- (3) month period. The working group of bondholders intends to oppose any extension application.

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

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

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

Question 4.2.1 [maximum 5 marks]

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

Under Section 210 of the Companies Act, an application must be made to the court by the company or any creditor of the company seeking an order that the meeting of the creditors or any class of them be convened to consider the proposals. Before the scheme becomes binding on all creditors, it must, amongst other things, be shown to be supported by creditors representing three-fourths/75% in value present at the creditors' meeting (as per Section 210(3) of the Act) and sanctioned by the court (as per Section 210(3) of the Act).

The prepack scheme proposed under Section 71(1) of the IRDA does not the creditors' meeting to be convened. This Section states that despite Section 210 of the Companies Act but subject to this section, where a compromise or an arrangement is proposed between a company and its creditors or any class of those creditors, the Court may, on an application made by the company, make an order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under section 210(1) of that Act or held. **What must be shown?**

Answer too brief. 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?

First of all, there must be an application made either under Section 210 of the Companies Act or Section 64(1) of the IRDA scheme of arrangement in place. It will then be necessary to show within the application that the rescue financing being sought is necessary for the survival of the Group and that this financing is necessary to achieve a more advantageous realisation of the assets of the Group as compared to winding up (Section 67(9) of the IRDA). **What else has to be satisfied? 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.

The UNCITRAL Model Law has force in Singapore by virtue of Section 252 of the IRDA. This is, of course, with necessary modifications such as the standard of recognition based on public policy. As such, and premised on the Court's determination in *Re Zetta Jet Pte Ltd and Others* [2018] SGHC 16, a foreign insolvency proceeding will be recognised as such if the debtor has its center of main interest in Singapore. **Not necessarily**. The center of main interest is presumed to be the State in which the debtor is incorporated/registered unless the contrary is proved. To prove otherwise, it would require the applicant to show that the COMI is another place other than the registered office with which third parties are most closely associated with, the place ascertainable by third parties.

Has not answered the question. Reflects lack of grasp of the topic. 0 mark.

*** End of Assessment ***

30.5 out of 50