



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?

In this case, the Singapore Court of Appeal confirmed that the relevant test is the cash flow test and that it is the sole test to determine insolvency/inability to pay debts under section 125(2)(c) of the IRD Act. This is significant as there are often disputes between balance sheet vs cash flow solvency. **What happened to balance sheet test?**

Further, the court provided a (not inclusive) list of cash flow test considerations:

- The quantum of debts due or will be due soon;
- Whether payment is or will soon be demanded;
- Whether the company has failed to pay any debts, the amount of such and time period;
- The length of time passed since the winding up proceedings were commenced;
- The value of the current assets and total assets realizable;
- The state of the business;
- Any other income; and
- Any other key arrangements with lenders.

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.

1. Section 440 introduced a new restriction of ipso facto clauses upon the formal insolvency of a Singapore company.
2. Section 239 introduced a new provision in relation to wrongful trading whereby the court can declare a knowing party personal liable for any debts of the company.
3. Section 186(1) introduced the power to stay or terminate the winding up of a company upon the application of the liquidator, creditor or shareholder, and if proof is provided that all proceedings should be stayed/terminated.
4. Section 223(1) provided that in an insolvent winding-up, a secured creditor is not entitled to post liquidation interest if the secured asset isn't realized within 12 months.
Not really a new feature this is just an amendment.

1.5 mark.

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 are voluntary arrangements whereby a formal agreement is made between a debtor and the creditors. The debtor has to appoint a nominee who is a licenced insolvency practitioner to oversee the voluntary arrangement.

In this scenario, the Court can grant an interim moratorium order whereby no bankruptcy application or other proceedings/executions may be proceed against the debtor without leave of the court.

If an interim order is made, the nominee practitioner must submit a report to the court regarding their opinion on whether a creditor's meeting should be convened; following such, they will summon a creditors meeting.

The voluntary arrangement proposal would then need to be approved via special resolution at this meeting and if approved by the majority, would bind all creditors who were entitled to vote.

The debtor must comply with the voluntary arrangement terms, otherwise, the nominee or a creditor is permitted to bring bankruptcy application.

Concise answer. 4 marks.

QUESTION 3 (essay-type questions) [15 marks in total]

Question 3.1 [maximum 8 marks]

Write a brief essay in which you discuss some of the claims that a liquidator or judicial manager can bring and how the IRDA has enhanced their ability to do so.

A liquidator or judicial manager can seek to claw back assets which were improperly transferred, on the basis that either, an unfair preference was given, or the transaction was at an undervalue. This can be found at sections 224 to 229 of the IRDA. Certain elements must also be shown to prove such depending on the transaction. This action is only available to the liquidator or judicial manager once the appointment has occurred.

A liquidator or judicial manager can seek to make a director personally liable if they knowingly incurred a debt they knew the company could not repay. They may also be liable if they carried on the business with the intent to defraud creditors.

The IRDA has introduced the concept of wrongful trading which now allows a court to declare that a person who knew that the company was trading wrongfully (or ought to have known) is liable for the Company's debts. Wrongful trading involves the company incurring debts without a reasonable prospect of being able to pay such debts in full. Alternatively, it may also arise if by virtue of entering into the transaction the company becomes insolvent. This can be found in section 239 of the IRDA and does not require criminal liability to be found initially which is very beneficial.

Under the IRDA, liquidators and judicial managers are statutorily empowered to seek third-party funding in order to pursue certain causes of action, including those which are personal to them. This can be found in section 144 of the IRDA. This has assisted greatly as generally there are insufficient funds for appointees to bring claims and, whilst, litigation funding was previously available, the liquidator had to assign the proceeds of the claim to third parties and could not assign the right to pursue personal actions. In particular it is often the case that directors may have transferred all the assets out of the company pre-appointment, leaving the estate asset-less and the liquidator with no funds to commence a claw-back action (as described above).

Could have elaborated further on the elements of the voidable transactions. 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.

Via the court-led method, to place a company under judicial management, the company or its creditors must make a court application and request the court makes a judicial management order. However, via this new voluntary process, per Section 94(1) of the IRDA, there is a process for initiating a voluntary judicial management, without needing a court application first. This is only possible if:

1. The company is unable or likely will become unable, to pay its debts;

2. There is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1); and
3. A creditors' resolution is obtained.

Section 94 also confirms the manner in which the creditor meetings should be conducted, the relevant notice requirements and the timeframes.

This process differs from a judicial management application as no application is required to be made to the court to obtain the judicial management, simply a creditors resolution is required to be obtained by majority in number and value of creditors present and voting.
What other differences?

This process is beneficial as there is no need to incur court expenses and there should be more time efficiencies. It was also thought that an out-of-court process would reduce any stigma and therefore increase the rate of judicial management appointments.

Answer is too brief. Lack of detail.

3.5 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?

The company (Juniperus) needs to file an application in accordance with section 64 and will obtain an automatic 30 day moratorium upon filing. The company must:

- Publish notice in the Gazette and at least one English local daily newspaper, and send a copy of the Gazette notice to the Registrar of Companies
- Send notice of the application to each creditor meant to be bound by the scheme and who is known to the company
- File evidence of support from the scheme creditors
- File a list of every secured creditor
- File a list of all unsecured creditors (or top 20 largest unsecured creditors).

Details of the scheme?

When making the order, the Court must also order the company to submit financials to enable the company's creditors to assess the feasibility of the scheme.

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?

Where the court has made an order under section 64(1), the related company (Casuarina) may apply for an order under section 65(1). Casuarina must:

- Publish notice in the Gazette and at least one English local daily newspaper, and send a copy of the Gazette notice to the Registrar of Companies
- Send notice of the application to each creditor for the related company who will be impacted.

What substantive requirements must be met? 0 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?

Yes, a key feature of section 64 is that moratoria have extra territorial effect; whereby proceedings can be commenced/continued, no execution process can be commenced/continued, and no security enforcement action can be commenced/continued (without leave of the court).

Any action by the bondholders or the banks/lenders would be stayed. This would apply to the Casuarina Intra-Group Loan, whereby holders of the Angostura Bonds were given security over the shares of each of Juniperus and Casuarina - this action would be stayed.

Please elaborate and explain in personam effect. 1 mark.

Question 4.2 [maximum 9 marks in total]

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

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

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

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

Question 4.2.1 [maximum 5 marks]

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

Section 210 involves the company or a creditor (or a liquidator in the case of a company being wound up), making an application in relation to a compromise/arrangement between a company and its creditors/shareholders. The company is only able to apply if:

- no winding up order or resolution has been made;
- the company undertakes to make an application to sanction a scheme as soon as practicable;
- and it has not applied for protection under section 210(10).

Convene meeting and voting?

The company must also publish notice (in the Gazette and daily English paper), send notice to its creditors, and obtain evidence of support of the scheme from its creditors.

A key difference between the two options is creditor involvement. In scheme pursuant to Section 210, a creditors' meeting is held. Whereas, in scheme pursuant to Section 71 no creditors' meetings are held. This may be a key factor of difference for the two subject Singapore companies as its creditors may not be supportive at a creditors meeting.

Section 71(1) sets out the Singapore court's power (despite section 210 of the Companies Act) to make an order approving the compromise or arrangement, even though no creditors' meeting has been ordered under section 210(1). The application for such is made by the company and the company must have:

- Provided, to each creditor who will be bound by the compromise, a statement containing;
 - the company's financial information/assets/business/prospects,
 - information on how the compromise/arrangement will affect the creditor's rights; and
 - Any other information to enable the creditor to make an informed decision.
- Published notice of the scheme; amongst other things.

Needs to show creditors would have voted in favour had meeting been called.

In a section 71 scheme, the management of the company stays in control throughout the moratorium and implementation periods. The court's role is also largely a supervisory role.

Same for both prepackaged and conventional scheme.

Incomplete answer. Also some confusion in understanding of the concepts. 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?

Per section 64 of the IRDA, the debtor-in-possession style of restructuring makes available a US style of financing or rescue financing. Rescue financing (post-commencement financing) must either be (or be both of):

- Necessary for the company's survival; and/or
- Necessary to achieve a more beneficial realization of the company's assets when compared to the potential realizations in a winding up scenario.

Under either a scheme or judicial management, the Singapore Court can make an order that rescue financing will:

- Be treated as part of the expenses of the winding up, if the debtor is wound up;
- Receive priority over preferential debts, in the case of a winding up; or

- Be secured if required (pursuant to certain terms depending on the asset).

What other requirements? 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 the Model Law now and foreign representatives may apply for recognition of foreign proceedings via the High Court of Singapore, which the court can only deny if recognition would be contrary to public policy. There is no requirement for reciprocity.

The Reciprocal Enforcement of Commonwealth Judgments Act allows judgments from the UK, Australia and other commonwealth countries to be registered in Singapore and provides a statutory process for the recognition and enforcement. The Singapore High Court may grant recognition on a case-by-case basis if it is just and convenient. Singapore courts will also look at where the foreign debtor's centre of main interest is.

Should a foreign representative in the US be appointed this may likely be in breach of the stay, as such, and as seen in *re Zetta Jet Pte Ltd*, the Singapore courts may reject any recognition application on the grounds that the US appointment is *contrary*¹ to Singapore public policy i.e. it was in breach of the stay. Limited recognition may be granted to the US insolvency representative only in order to apply to set aside the stay.

Please elaborate further on the requirements. 0.5 mark.

*** End of Assessment ***

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¹ Noting, that Singapore did not incorporate “manifestly contrary” per the Model Law and instead adopted a lower bar of just “contrary”.