



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 significance of the decision in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd*, is where a company is deemed unable to pay its debts the creditors is prima facie entitled to a winding-up order. The cash flow test should be the sole determinative test under section 125(2)(c) of the IRD Act.

The court detailed that the following factor should be considered under the cash flow test:

- The debts that will be due in the reasonably near future;
- Payment is being demanded by a creditor, or is likely to be demanded;
- If the company has failed to pay its debt;

- The length of time passed since the commencement of the winding up; and
- The value of the company's current assets and the realizable amount in the future.

These are non exhaustive factors. Also what happened to the balance sheet test? 2.5 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.

Section 64 of the IRD Act 2018, introduced a debtor in possession restructuring regime with the following new features:

- Automatic moratorium for 30 days upon filing court application with;
- The availability of US-style debtor-in-possession finance or rescue finance;
- Availability of cross-class cramdown in scheme of arrangement; and
- The availability of pre-package scheme of arrangement.

These already present in the 2017 amendments. 0 marks.

Question 2.3 [maximum 4 marks]

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

An alternative to formal bankruptcy includes a voluntary arrangement, this is a formal arrangement between a debtor and its creditors to satisfy debts overseen by a nominated individual.

The debtor appoints the nominee for the voluntary arrangement. They must be a licenced insolvency practitioner.

If a debtor is going to make a proposal to the creditors, the court may grant an interim moratorium order in which:

- No bankruptcy application can be made against the debtor;
- No other proceedings can be commenced against the person or property of the debtor without leave from the court;

In the case that an interim order has been made, the nominee must submit a report to the Court that details, in their opinion, a creditors meeting should be summoned and is so the date, time and place of the meeting. Unless the court determines otherwise the nominee will summon a creditors meeting.

The voluntary arrangement must be approved through special resolution by the creditors at the creditors meeting. The voluntary arrangement will then bind the creditors who voted. **It will bind all the creditors.**

If the debtor does not comply with the obligations under the voluntary arrangement, the nominee or creditor may bring a bankruptcy application against the debtor.

3.5 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 apply to the Court to seek to claw back the assets previously transferred in transactions where:

- An unfair or undue preference was given; or
- The transaction was conducted at an undervalue.

Unfair Preference Transaction

The liquidator / judicial manager must show the following elements to proceed with unfair preference transactions:

- The beneficiary is a creditor or grantor for any of the company's debts or liabilities;
- The company was insolvent or became insolvent as a result of the transaction;
- The company has done anything which puts the preferred party in a better position than the preferred party would otherwise have had if the transaction was not entered in the event of the company's liquidation or judicial management; and
- The company was influenced in deciding to enter the transaction by a desire to prefer the preferred party, as an associate of the company.

The time period which assets may be clawed back for an unfair preference is two years from the date of the winding-up application or the date of the judicial management application where the preferred party is an associate and one year for unrelated parties.

Undervalue Transactions

The liquidator / judicial manager must show the following elements to proceed with undervalue transactions claims:

- The company makes a gift to the recipient or the company enters into a transaction where the value of the consideration received is significantly less than the value of the consideration provided; and
- The company was or became insolvent as a result of the transaction.

The company is presumed to have undertaken a transaction at an undervalue if the preferred party is a connected party of the company. Assets can be clawed back for three years from the date of the winding-up application or the judicial management application, regardless of whether the undervalue transaction was with an associate or not.

It must be noted that these provisions are only available once the company is placed into liquidation / judicial management.

Other claims that a liquidator / judicial manager can bring include extortionate creditor transactions, fraudulent trading, wrongful trading and assessment of damages against officers.

How have the liquidators/judicial managers powers been enhanced under the IRDA? Incomplete answer. 4 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.

If a company is likely to become unable to pay its debts; a company can be put into voluntary judicial management application by creditors resolution. Voluntary judicial management is

commenced by a creditors' resolution by a majority in value (of the total amount of the creditors' claims) and in number the creditors present and voting apposed to a single creditor.

Furthermore, an interim judicial manager has to be appointed before the creditors vote on the resolution. The interim judicial manager is appointed through a shareholders of board resolution, and a statutory declaration must be lodged Official Receiver.

After appointment of the judicial manager, who must be a licensed insolvency practitioner, the company has to lodge a notice of appointment with the Official Receiver, and publish the notice in the Government Gazette and in an English local newspaper.

A company cannot enter voluntary judicial management if there is already a pending court application for a judicial management which has not been withdrawn or decided by the court.

Commencing a judicial management application is different as the company or at least one of its creditors may an organisation application to the court, supported with an affidavit detailing the grounds for application. The applicant nominates a judicial manager who is a licences insolvency practitioner. Pending a successful application the court will make an order appointing the judicial manager.

Answer lacks detail on the procedure and also no real comparison with court JM. 3 marks. Demonstrates a lack of grasp of the concepts.

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?

In order to obtain moratorium protection order under section 64(1) IRDA the application must contain: evidence of support from the company's creditors, if no scheme has been proposed, details of the intended compromise or arrangement ensure that there is enough details to enable the court to see if the proposal is feasible and details of every secured creditor and the largest unsecured creditors.

When making the application, the company must publish a notice in the Gazette and one local English language newspaper and send notice to the creditors. This will need to be evidenced in the application.

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?

In accordance with section 65(1) IRDA, where an order is made under section 64, a subsidiary such a Juniperus or Casuarina of the subject company can apply for a moratorium as well.

The application for a moratorium by a subsidiary is filed through an ex parte originating summons with a supporting affidavit. It should be filed concurrent with Angostura's application.

Once filed the company must send notice of the application to each creditor.

What are the requirements? Please elaborate. 0.5 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?

The section 64 of the IRD sought by Juniperus, will provide a moratoria having extra-territorial effect. **Please elaborate.**

However, Casuarina, sought a section 65 of the IRD, so they will not have the extra-territorial effect. **Not correct.**

You have not answered the question properly. 0 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?

The steps that need to be taken to launch a subsequent scheme of arrangement under section 210 of the Companies Act for it to become binding on the company's creditors are the following:

- The company must apply to the Court for leave to convene a creditors' meeting to consider and, if appropriate, approve the proposed Scheme of Arrangement.

Concurrently the company may seek a moratorium on further proceedings in any action or proceed against the company.

- At the creditors' meeting, the scheme of arrangement must be approved by a majority of the creditors present and voting in each class (more than 50%) i.e. the Juniperus Bondholders and the majority must represent 75% in value of the voting class. Once the majority is achieved, the minority will be bound by the scheme. This "cram down" effect is unique to schemes of arrangement.
- The company will need to get a court sanction of the scheme as the scheme will be binding to the non-consenting creditor. Once sanctioned the scheme will become binding.

The prepackaged scheme proposed under section 71(1) of the IRDA requires just one application to Court to approve the scheme without convening a creditors meeting as opposed to section 210, where leave for the creditors' meeting must be sought and then sanctioned by the Court. This could save costs for the liquidation estate.

Sets out the key points but can be elaborated on further especially on prepacks. 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?

For Angostura Group to obtain rescue financing, the financing must be:

- Necessary for the survival of a debtors that obtains the financing; and / or
- Necessary to achieve a better realization of the assets of a debtor that obtains the financing, than on a winding-up of the debtor.

Additionally, the court may make an order that rescue financing will:

- Be treated as a cost and expense of the winding-up if the debtor is wound up;
- Be given priority over preferred debts;
- Be secured by a security interest on property.

What other requirements need to be shown? 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 key requirements in order for a Singapore court to recognise a foreign insolvency proceeding are:

- The insolvency proceeding is made by a court of competent jurisdiction;
- That court must have jurisdiction on the basis of:
 - o The debtor's domicile or residence; or
 - o Submission by the debtor to the jurisdiction of the court.
- The foreign bankruptcy order must be final and conclusive; and
- No defenses to recognition apply.
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For a Singapore court to recognise a foreign insolvency proceedings it must not be "contrary" to public policy, in Model Law (which Singapore adopts) details that foreign insolvency proceedings must not be "manifestly contrary".

If the Court recognises the proceedings, relief of an automatic stay on all foreign proceedings may be provided.

Answer is too brief could do better with some elaboration. 1 mark.

*** End of Assessment ***

30.5 out of 50