



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 case *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] ("**Sun**") (SGCA 60) is that when a company is deemed to be unable to pay its debts, a creditor is *prima facie* entitled to obtain a winding-up order.

The Court of Appeal decided that a cash flow test should be the sole and determinative test under 125(2)(c) of the Insolvency, Restructuring and Dissolution Act. A list of factors which should be considered under the cash flow test includes but is not limited to:

- the timing of debts when they are due or will be due in the near future;

- whether payments for those debts are being demanded at the current time or are likely to be demanded;
- whether the company has failed to pay any of its debts, the amount of each debt, and for how long the company has been unable to pay the debt;
- the amount of time that has passed since commencing the winding up proceedings;
- the value of the company's current assets, the assets that will be realisable in the near future and the ability to realise same;
- the operational nature of the company's business to decipher anticipated net cash inflow from the business;
- any further income streams or payments due to the company in the near future; and
- company arrangements with prospective lenders (such as its bankers and shareholders) to determine whether any shortfalls in liquidity and realisable assets are forthcoming and that the cash flow could be made up by borrowings which would be repayable at a time later than the debts.

What happened to the balance sheet test? 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.

The concept of a debtor-in-possession restructuring regime was introduced into the IRDA (section 64) via section 211 of the Companies (Amended) Act 2017 which introduced the following key features:

- 1) the concept that upon filing an application, there is an automatic moratorium period of 30 days after the application filing with the Court and that the moratorium can be further extended by the Court.
- 2) The concept of cross-class cramdowns which allows for schemes to be approved even if one or more classes of creditors have rejected the proposed scheme (with the overall effect to minimise overall influence of minority creditors).
- 3) The availability of pre-packaged schemes of arrangement
- 4) The availability of U.S style debtor-in-possession or rescue financing.

These already in 2017 amendments. 0 marks.

Question 2.3 [maximum 4 marks]

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

One alternative to a formal bankruptcy is a Voluntary Arrangement (“VA”) whereby it is a formal arrangement between a debtor and their creditors in order to come to an agreement to satisfy the debts which is overseen and monitored by a nominee. This nominee must be a licenced insolvency practitioner.

When the debtor wishes to make such a proposal to its creditors, the Court may grant interim moratorium order which allows for:

- No bankruptcy application to be made or proceeded with against the debtor wishing to make the proposal to creditors;
- No other proceedings, execution or legal processes are to be commenced or continued against the personal / property of the debtor (without leave of the Court); and

- If the interim order is made in respect of a company (or any partner associated with the company), then no bankruptcy application may be made / proceeded against the company (except with the leave of Court) and no other proceedings, execution or legal processes are to be commenced or continued against the company or its property (assets) or against the person or property of any partner of the company (without the leave of Court).

When the interim moratorium order is made, the nominee must report to the Court to state whether in his opinion, a meeting of the debtor's creditors should be summoned (stating the date, time and place of the proposed meeting) and then to summons the meeting, unless otherwise directed by the Court.

The VA must be approved by way of special resolution by the creditors at the meeting. The VA (if approved by the requisite majority) will bind all creditors who have been provided notice and were entitled to vote at the meeting. If the debtor fails to comply with the terms under the VA, the nominee or any creditor bound by the VA may 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.

A liquidator or judicial manager can apply to the Court in order to claw back assets previously transacted whereby it was unfair or undue preference was provided or if the transaction was conducted at undervalue.

A liquidator or judicial managers must show the following four elements in order to proceed with an unfair preference claim:

- The beneficiary of the transaction (preferred party) is a creditor or guarantor for any of the company's debts or liabilities
- The company was insolvent (or became insolvent as a consequence) at the time of providing the preference
- The company has done anything to place the preferred party in a better position than it otherwise would have been should the transaction not have been entered into; and
- The company was influenced by desire in its decision to enter into the transaction (the company is assumed to have been influenced by desire to prefer if the preferred party is an associate of the company).

For an unfair preference, the relevant time to claw back assets is two years from the winding up application or the date of the judicial management application whereby the preferred party is an associate (it is one year for an unrelated party).

A liquidator or judicial managers must show the following two elements in order to proceed with a claim for an undervalue transaction:

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

It is presumed the company has undertaken an undervalue transaction if the preferred party is an associate of the company. The relevant time to claw back the asset(s) is three years from the date of the winding-up application or the date of the judicial management application where the preferred party is an associate of the company (it is one year for unrelated parties).

Other claims that may be brought by liquidators or judicial managers include extortionate creditor transactions claims, fraudulent trading claims, wrongful trading claims and assessing damages claims against delinquent officers of the company.

The above-mentioned claims to be undertaken by a liquidator or judicial manager can be very time consuming and therefore costly. The IRDA has enhanced the ability of liquidators / judicial managers to obtain third-party funding to enable them to pursue claims (should there be insufficient funds). Liquidators and judicial managers are now statutorily empowered to seek the funding for certain causes of action, including those which are personal to them (they were not able to do this prior to the IRDA). Court or committee approval is required if the claims are in respect of transactions that are deemed undervalued or have unfair preference transactions, extortionate creditor transactions, fraudulent and wrongful trading and assessing damages against delinquent officers of the company.

How about wrongful trading? Decent effort. 6 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.

Section 94 (1) of the IRDA introduces a new voluntary process for initiating a judicial management without the requirement to apply to Court if:

- the company is (or likely is to become) unable to pay its debts.
- there's a reasonable possibility of achieving one or more of the purposes of the judicial management per section 89(1) of the IRDA, namely:
 - a) the survival of the company, or the whole or part of its undertaking, as a going concern;
 - b) the approval under section 210 of the Companies Act or section 71 of a compromise or an arrangement between the company and any such persons as are mentioned in the applicable section; and
 - c) a more advantageous realisation of the company's assets or property than on a winding up.
- a resolution of the company's creditors is obtained.

Under section 94(11) of the IRDA, the company's creditors may, by way of resolution, apply for the company to be placed under the voluntary judicial management of a judicial manager (as opposed to applying to Court for a judicial management order) provided at the meeting convened (which is in compliance with section 94(3) of the IRDA) the approval of a majority in number and value of the creditors is present and voting. Voluntary judicial management can

only commence if the requisite majority of creditors resolves to place the company under judicial management. If such requisite majority is not obtained, the process ends. It is noted however that once the company is placed into judicial management, the judicial management process will then continue under the supervision of the court in the same manner as a court commenced process.

Process of appointing a IJM?

Voluntary judicial management aims to minimise expenses, formalities and any timing delays in comparison to a court ordered process and provides distressed companies with another viable option to commence a restructuring.

A notable difference between a Court initiated judicial management application and a voluntary judicial management application is that the newly introduced creditors' resolution process via the IDRA requires the consent of a holder of a floating charge over the whole (or significantly the whole) of the company's asset(s) for the appointment of a voluntary judicial manager. This is different from the Court process whereby the holder of a floating charge can only block the judicial management if the Court is of the view that the prejudice that would be caused against the floating charge if the order were made is disproportionately greater than the prejudice that would be caused to unsecured creditors if the application were dismissed.

Some good comparison however answer would have been enhanced with more detail on the procedure especially appointment of interim JM. 4.5 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?

This is to obtain a moratorium for a proposed compromise or arrangement between Juniperus and the bondholders under section 64(1) of the IRDA.

Juniperus may only make the application if (under section 64(2) of the IDRA):

- a) no order has been made and no resolution passed for the winding-up of Juniperus;
- b) Juniperus makes or undertakes to do so as soon as practicable an application to sanction a scheme of arrangement;
- c) Juniperus has not applied for protection under section 210(10) of the Companies Act (a provision that also provides for moratorium protection).

Upon the making of the application, Juniperus must publish a notice in the Gazette and in at least one English local daily newspaper and send notice to the creditors. The application must also include (per section 64(4) of the IDRA):

- a) evidence of support from the Juniperus' creditors;
- b) where no scheme has been proposed, a brief description of the intended compromise or arrangement containing sufficient details to enable the Court to determine if it is feasible and merits consideration by creditors; and
- c) a list of every secured creditor and the largest unsecured creditors.

Further, when the Court is making an order, it may continue the moratorium for such period as the Court thinks fit. The Court will also order the company to submit to it sufficient information relating to Juniperus' financial affairs to enable the bondholders to assess the feasibility of the compromise or arrangement, including but not limited to the valuation of significant assets, details surrounding the disposal of any property and financial / profitability reports.

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?

Section 65 of the IRDA deals with the Court granting moratorium order relating to subsidiaries or relate companies (i.e. Casuarina) which are integral in the compromise or arrangement to be proposed by the company (i.e. Juniperus) under the section 64 moratorium.

Casuarina may make the application under section 65(1) of the IRDA only if all of the following conditions are satisfied:

- a) no order has been made and no resolution has been passed for the winding up of Casuarina;
- b) the order under section 64(1) made in relation to Juniperus is in force;
- c) Casuarina plays a necessary and integral role in the compromise or arrangement relied on by Juniperus to make the application for the order under section 64(1) of the IRDA;
- d) the compromise or arrangement mentioned in paragraph (c) will be frustrated if one or more of the actions that may be restrained by an order under section 65(1) of the IRDA are taken against Casuarina;
- e) the Court is satisfied that the creditors of Casuarina will not be unfairly prejudiced by the making of an order under section 65(1) of the IRDA.

When Casuarina makes the application under section 65(1) of the IRDA to the Court:

- a) Casuarina must publish a notice of the application in the Gazette and in at least one English local daily newspaper, and send a copy of the notice published in the Gazette to the Registrar of Companies; and
- b) unless the Court orders otherwise, Casuarina must send a notice of the application to each creditor of Casuarina who will be affected by an order under section 65(1) of the IRDA and who is known to Casuarina.

Detailed answer. 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?

The moratoria sought by Juniperus and Casuarina can be ordered to have extra-territorial under Sections 64(5)(b) and 65(4)(b) of the IRDA, respectively, whereby the Court can make an order under sections 64(1) and 65(1) of the IRDA to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere. **What acts will this apply to? E.g. enforcement of security? 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?

In order to launch a subsequent scheme of arrangement under section 210 of the Companies Act, a meeting of the creditors (i.e. Juniperus Bondholders) is to be held and a majority in number representing three-fourths in value of the creditors in the class of the Juniperus bonds are present and voting (in person or by proxy) at the meeting. If this condition is met, then the scheme of arrangement is binding between Angostura and the class of creditors, being the Juniperus bondholders. Angostura will need to obtain court sanction for the scheme, given the scheme will be binding to the non-consenting creditors. Once sanctioned (**by who?**), the scheme will become binding. **Need leave of court to convene meeting.**

Section 71 of the IRDA is where a compromise or an arrangement is proposed between a company and its creditors or any class of those creditors and may avoid the need for a meeting of the creditors of the class (by way of application to the Court) as opposed to the need of conducting a creditors meeting ordered by the Court under section 210(1) of the Companies Act. Elaborate further.

Answer is too brief. 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?

Angostura Group must have firstly made an application under section 210(1) of the Companies Act (or section 64(1)) and then to make another application to the Court in order to obtain rescue financing. The Court will only consider the application if it is necessary for

the survival of Angostura to obtain the financing and/or if it is necessary to achieve a more advantageous realisation of the assets that it holds via financing (as opposed to being wound up).

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.

The implementation in 2017 of the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") in Singapore was introduced via the Companies Act, whereby the Model Law established a framework for recognition of cross-border insolvency proceedings.

The recognition of foreign insolvency proceedings is split into two categories:

- foreign main proceedings; and
- foreign non-main proceedings.

What are the requirements?

Foreign main proceedings are cases pending in the country where the debtor has its center of main interest. If the Court recognises a case as a foreign main proceeding, the Model Law provides an automatic stay on (amongst other things), actions concerning the "debtor's property, rights, obligations, or liabilities" within the territory of Singapore.

If the Court recognises a case as a foreign non-main proceeding, the Model Law provides for discretionary relief, which may also include an automatic stay, subject to the fact that all creditors are "adequately protected".

The Court has acknowledged that the recognition of the foreign appointment of insolvency practitioners would raise certain issues, such as the effective recognition and enforcement of foreign orders requiring the court's assistance which could have potentially extensive effects on third parties.

Good distinction between main and non main. Could have elaborated a bit more on the requirements. 1.5 mark.

*** End of Assessment ***

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