



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 the case *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] relates to the concept that where a company is deemed unable to pay its debts, the creditor is *prima facie* entitled to a winding-up order. The Court of Appeal decided that the cash flow test should be the sole test under 125(2)(c) of the IRD Act to determine whether a creditor is unable to pay its debts. The court set out a list of factors relating to the cash flow test which I set out below:

- Quantum of all debts which are due or will reasonably be due in the near future;

- If payment is being demanded or will likely be demanded;
- If the company has failed to pay any of its debts (review the quantum and timeline of the failed repayments);
- Length of time since the commencement of the winding-up proceedings;
- The value of the company's current and realisable assets;
- The state of the company's business (with regards to expected net cash flow);
- Any other income or payment which the company may receive in the near future; and
- Any arrangements between the company and prospective lenders (with regards to whether borrowings could repay debts over a shortfall of liabilities less assets).

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

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.

- 30-day automatic moratorium upon the filing of an application with the Court;
- Availability of US-style debtor-in-possession (“**DIP**”) or rescue financing;
- Cross-class cramdown in schemes of arrangement; and
- Moratoria having extra territorial effect.

These were already in the 2017 amendments. 0 mark.

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 debt repayment scheme which is a pre-bankruptcy scheme administered by the Official Assignee which allows a debtor to enter into a debt repayment plan with its creditors and avoid bankruptcy. The Court may refer the debtor to the Official Assignee to assess his eligibility to enter into the scheme if the following criteria are satisfied:

- Debt in respect of the bankruptcy application does not exceed the prescribed amount; **what is the amount? This is important.**
- Debtor is not an undischarged bankrupt and has not been a bankrupt within the period of five years before the date on which the bankruptcy application is made;
- The debtor has no Voluntary Arrangement or Debt Repayment Scheme currently in effect or within five years before the date the bankruptcy application is made; and
- The debtor is not a sole proprietor, a partner of a firm (Cap 391), or a partner in a limited liability partnership.

If he satisfies the Official Assignee with the criteria above, the debtor must then submit a statement of his affairs and a debt repayment plan not to exceed five years. If the Official Assignee approves, he will convene a creditors' meeting to review the plan which will be binding on all creditors. The Debt Repayment Scheme approved will also be accompanied by a moratorium. If a debtor does not meet all conditions, the Official Assignee may assign him a certificate of failure marking the end of the scheme, and allowing creditors to 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 a judicial manager can apply to the Court for a 'claw-back claim' in regard to assets previously transferred in transactions where there was an unfair preference or there was an undervalued transaction.

To prove to the Court that a transaction was an unfair preference, the liquidator or judicial manager must show the below four elements:

- The beneficiary of the transaction is a creditor or guarantor for one or some of the company's debts or liabilities
- The company was insolvent at the time or became insolvent as a consequence of providing the preference;
- The company has done something to place the preferred party in a better position than it otherwise would have been without the transaction in place; and
- The company was influenced by a desire to prefer the preferred party, particularly if the preferred party is an associate of the company.

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

To prove to the Court that a transaction was at an undervalue, the liquidator or judicial manager must show the below two elements:

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

If the preferred party is an associate of the company, the company is presumed to have undertaken a transaction at an undervalue. The time period to claw back the asset is three years from the date of the wind-up application or judicial management application (regardless if an associate is involved).

The IRDA has enhanced the ability of a liquidator or judicial manager to bring claims such as with the new wrongful trading provision, allowing them to bring claims on a person if they knew that the company was trading wrongfully or if an officer of a company should have known that the company was trading wrongfully, given the circumstances.

Notably, distressed companies do not usually have sufficient assets or money which restricts the ability of a liquidator or a judicial manager to pursue claims. Under IRDA, both judicial managers and liquidators are statutorily empowered to seek third-party funding for certain causes of action, provided that they receive authorisation by the Court or the committee of inspection is required. Now, under IRDA, liquidators or judicial managers are empowered to seek third-party funding to seek claims in relation to undervalued transactions, unfair preference transactions, extortionate credit transactions, fraudulent trading, wrongful trading,

and assessment of damages against delinquent officers of the company. How is this different from third party funding under common law?

Good effort and concise answer. 7 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 provides for a new voluntary process to initiate judicial management without having to apply to Court given the following conditions:

- The company is or is likely to become, unable to pay its debts;
- There is a reasonable probability that this process could achieve one or more of the purposes of judicial management mentioned in section 89(1); and
- A resolution of the company's creditors is obtained.

A company must give at least seven days' written notice in the prescribed form regarding its intention to appoint an interim judicial manager to the proposed interim judicial manager and to any person who has appointed or may be entitled to appoint a receiver and manager of the company's property (under the terms of any debentures if subject to a charge).

A company may appoint an interim judicial manager under section 94(3) of the IRDA if all of the following conditions are met:

- The appointment is authorised by way of a resolution of the company's members (or its board of directors if authorised in the company's constitution);
- The seven day notice period described above has expired;
- Not more than 21 days have passed since the seven day notice period expired;
- All persons who received the written notice consented in writing to the appointment of the interim judicial manager;
- The proposed interim judicial manager has lodged a statutory declaration with the Official Receiver and the Registrar of Companies that states:
 - o He does not have a conflict of interest;
 - o In his view, one or more purposes of judicial management set out in section 89(1) can be achieved; and
 - o He provides his consent to be appointed.
- The company's directors have lodged with the Registrar of Companies a statutory declaration stating:
 - o The company is or is likely to become, unable to pay its debts;
 - o The company will convene a creditors' meeting within 30 days from when the statutory declaration was lodged; and
 - o The directors view that one or more purposes of judicial management set out in section 89(1) can be achieved.
- The proposed interim judicial manager is a licensed insolvency practitioner and is not an auditor of the company.

Regarding the creditors' meeting (discussed above) held no later than 30 days after the date the statutory declaration was lodged, the company must:

- Provide at least 14 days of written notice to the company's creditors along with:

- A statement listing the names and amount of claims of all creditors; and
- A full statement of the company's affairs (along with valuations of the company's assets).
- Cause notice of the creditors' meeting to be published at least 10 days before the meeting is held in an English local daily newspapers.

What happens thereafter? How about voting at the creditors' meeting?

A key difference in the voluntary judicial management process and the Court-led judicial management process is that the voluntary process (out-of-court) is much less expensive and can have results accomplished on a quicker timeline than a Court-led process. Also, judicial management order will be discharged after 180 days unless extended by the court, whilst there is no such similar regulation with regards to the Voluntary Judicial Management application. **Not true it is also 180 days.**

4 marks. Could have provided more detail and also done better on the comparison.

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?

To obtain moratorium protection under section 64(1) IRDA, the company must file an application for entry into a scheme of arrangement which will trigger an automatic moratorium period for 30 days after the date the application is made. This moratorium can be extended as the Court sees fit. Depending on the Court's discretion, the Court may order the company to submit additional financial information to enable creditors to properly assess the feasibility of the scheme including asset valuations, details on the disposal of the company's property, and profitability documents.

Left out the key requirements. Please read the section carefully. 0.5 mark.

Question 4.1.2 (2 marks)

What must be presented to the court in order to obtain moratorium protection order under section 65(1) IRDA?

Section 65(1) of IRDA provides guidance to the application which can be made to the Court by a company's subsidiary or related company which is seen to be integral to the scheme of arrangement proposed by the company. The related company or subsidiary may only make the application if all of the below conditions are satisfied:

- No order has been made and no resolution has been passed for the winding up of the related company;
- There must be an order granted by the Court under section 64(1) regarding the company;

- The related company is integral to the scheme;
- The scheme will be hindered if the related company is restrained by the said scheme; and
- The Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the order granted under section 65(1).

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 regime set forth in section 64 of the IRDA provides for an automatic moratorium for 30 days upon the filing of an application with the Court. This moratoria is to have extra territorial effect. Specifically, it is noted in section 64(5)(b) that an order granted by the Court can be expressed 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, as it relates to the creditors and acts imposed upon by the moratoria. **What acts are enjoined? 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?

Under section 210 of the Companies Act, if a scheme is proposed between a company and its relevant stakeholders, the Court may order a meeting of the liquidator (if the company is being wound up), the company and any creditor, member or holder of shares in the company. A resolution to adjourn the meeting can be passed if approved by a majority in number representing 75% or more in value of the company's stakeholder present and voting. **There has to be an application to court.**

If the compromise is approved by a majority in number and 75% or more in value of the creditors and shareholders present and voting at the meeting, the scheme is approved by order of the Court. **Lodging of the order?**

In contrast, section 71(1) of the IRDA provides for the Court to order the approval of a “pre-pack” scheme proposed by the company even without the convening of a meeting of creditors which would normally be ordered under section 210(1) of the Companies Act. The Court can only approve a scheme (without a meeting of the company’s creditors held) if the company has provided a statement to each creditor that contains the following information:

- Details concerning the company’s property, assets, business activities, financial condition and prospects;
- Details on the manner in which the terms of the scheme will affect the rights of the creditor;
- Details regarding any material interests of the directors of the company and the effect that the compromise has on those interests; and
- Details as necessary to enable the creditor to make an informed decision on the proposed compromise.

The Court also cannot approve the compromise unless it is satisfied that, had a creditors meeting been summoned, the conditions set out in section 210 (3AB) would have been satisfied.

4 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?

Rescue financing is defined as financing that is necessary for the survival of the debtor it is provided to or necessary to achieve a better realisation of the debtor’s assets as opposed to a winding-up of the debtor. Rescue financing, as a part of the “debtor-in-possession” regime introduced by IRDA, is provided for in section 64 of the IRDA. Therefore, the Angostura Group should make an application to the Court under section 64 in relation to a proposed compromise with its creditors. Then, the Angostura Group should make a separate application to the Court for the company to access rescue financing to attempt to ensure its survival.

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.

It is noted that Angostura commenced local insolvency proceedings and emergency recognition proceedings in the United States. Singapore adopted the UNCITRAL Model Law on Cross-Border Insolvency (the “**Model Law**”) on 10 March 2017. With the Model Law in place, a foreign representative can apply to the High Court of Singapore for the recognition of foreign proceedings. Notably the difference of the Model Law adopted in Singapore to the UNCITRAL Model Law is that there is no requirement for reciprocity with the State in which the foreign proceeding is occurring.

Singapore courts can recognise foreign insolvencies commenced where the debtor’s centre of main interest is located, even if the country is different from where the company was incorporated.

Please elaborate further on the requirements. Also what is the effect of recognition? 0.5 mark.

*** End of Assessment ***

33.5 out of 50