



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?

If the company is unable to pay its debt, the creditor is entitled to a winding-up order. However, in the *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd*, the Singapore Court of Appeal stated that the cash flow test should be the sole and determinative test under Section 125(2) (c) of the IRD Act. The court also provided the non-exhaustive list of factors which should be considered under the cash flow test:

- The quantum of debt which is due or will be due in near future
- Payment being demanded or is likely to be demanded for those debt
- The length of time that has passed since the commencement of winding-up proceedings

- The value of company's current assets and assets that will be realizable in the near future
- The state of company's business, in order to determine its expected net cash flow from the business post deduction of expenses from the future sales.
- Any other income or payment which company may receive in the near future
- Arrangement between the company and prospective lenders such as its bankers and shareholders to determine whether any shortfall in assets and cashflow could be made up by borrowing which would be repayable at a time later than the debt.

How about 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 IRD Act 2018 came into effect on 30 July 2020, it has taken into consideration various recommendations of the insolvency law review committee. Subsequently the committee has incorporated those to strengthen Singapore as an International Center of Debt Restructuring.

- IRD Act 2018 has consolidated the personal and corporate insolvency and restructuring laws which were previously set out in the Bankruptcy Act and Companies Act. This removes the need to cross-reference between these Acts.
- Division 3 (*regulation of insolvency practitioners*) of the IRD Act 2018 has introduced minimum qualifications, conditions for the grant and renewal of licenses and a disciplinary framework for insolvency practitioners. This is administered by the Ministry of Law's Insolvency and Public Trustee's office.
- Previously there was no restriction on the application of *ipso facto* clause. Under Section 440 (*Certain contractual rights limited*) of IRD Act 2018, there is a new provision that limits the exercise of certain contractual rights. This means it may no longer be possible to rely on *ipso facto* clause to terminate a contract with an insolvent company.
- The Section 239 (*responsibility of wrongful trading*) of the IRD Act 2018 introduces the new concept of wrongful trading, which imposes personal liability for the company's debt on a person if they know that company was trading wrongfully or as an officer of the company, he would have known that the company was trading wrongfully.
- Section 94 (1) of the IRD Act 2018 introduces a new voluntary process for initiating judicial management without having to first apply to court if certain conditions are met.

2 marks

Question 2.3 [maximum 4 marks]

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

A Voluntary Arrangement is a formal arrangement made between a debtor and his creditor for the satisfaction of its debts overseen by a nominee.

The process involved in the voluntary arrangement is:

- Debtor needs to appoint a nominee as part of any proposal for a Voluntary Arrangement. The nominee should be a licensed insolvency practitioner.
- Court needs to grant an interim moratorium order pursuant to which, no bankruptcy application must be made or proceeded with against the debtor or the firm except with leave of the court and no other proceedings, execution or other legal process may be commenced or continued against the person/ firm or property of the debtor/ firm's

property or property of any partner in the firm without leave of the court. **Court may or may not grant.**

- If interim order is made, the nominee must submit a report to the court which states whether in his opinion, a meeting of the debtor's creditors should be summoned and if so the date, time, and place at which the meeting should take place.
- Once, approved by court the nominee will summon a creditors meeting
- The Voluntary Arrangement then must be approved by special resolution by the creditors at the creditors meeting
- If approved by the requisite majority, then it will bind on all creditors who had received the notice of meeting and were entitled to vote.
- However, if debtor fails to comply with any of the obligation under the Voluntary Arrangement, the nominee or any creditor bound by the Voluntary Arrangement can bring bankruptcy application against the debtor.

3.5 marks. Minor inaccuracy.

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.

The section 144 of the IRD Act 2018, mentions that the liquidator or judicial manager may with the authority of either Court or committee of inspection carry on the business of the company as far as it is necessary for the beneficial winding-up, however not after the 4 weeks of the winding up order. Pay any class of creditors in full subject to section 203 which sets out the preferential claims and their respective priorities. Make any compromise or arrangement with creditors or person claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent; appoint a solicitor to assist him in his duties.

While distributing the assets of a company in liquidation, the secured creditors will be paid out first out of the assets that are charged or mortgaged in their favour, while the remainder of the assets will be distributed among other creditors. The order of priority in the insolvency proceedings under IRD Act 2018 is as follows:

- a) Cost and expenses of the winding-up incurred by liquidator
- b) Wages and salary and certain other employee benefits (up to maximum amount of five month's salary or SGD 12,500 whichever is lesser)
- c) Certain retirement and termination benefits provided under contract of employment, collective agreements or awards made by the industrial Arbitration court (up to maximum amount of five month's salary or SGD 12,500 whichever is lesser)
- d) Worker's injury compensation
- e) Contribution to provident funds
- f) Remuneration of vacation leave
- g) Taxes (including claims that are deemed to rank equally with taxes)
- h) Unsecured creditors

The debts above are usually referred as preferred debts as they rank ahead of unsecured debt. However, as mentioned above secured creditors will generally be paid ahead of the preferred debt, the preferred debt referred to in a), b), c), e) and f) above will be paid ahead of the debts secured by a floating charge. Debts secured by a fixed charge are paid ahead of unsecured debts. In the judicial management there is no statutory preferential or priority claims that apply to corporate rescue proceedings.

The IRD Act allows judicial managers and liquidators to seek creditors, members or third-party funders to fund potential litigations in connection with avoidance provisions in

exchange for an assignment of the proceeds recovered from said proceedings. This will therefore assist insolvency practitioners to pursue the recovery of funds for the benefit of all creditors, where the debtor company does not have any funds left in the company. The judicial manager or liquidator must seek approval from the committee of inspection or committee of creditors or meeting of creditors or the Court. **How does this differ from previously?**

You have not talked about the various avoidance actions like unfair preference and undervalue transactions. And also wrongful trading.

3 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.

The process of commencing a voluntary judicial management application is set out in Section 94 (1) of the IRD Act 2018. A voluntary judicial management can be initiated without an application to the court. However, in this case, the company must first obtain a creditors resolution which needs to be approved by a majority in number and value of the creditors for the company to be placed under judicial management. To initiate the judicial management the company is or is likely to become unable to pay its debt and there is a reasonable probability of achieving one or more of the purposes of judicial management as mentioned in section 89 (1) i.e., the survival of the company or whole or part of its business as a going concern or a more advantageous realisation of the company's assets than in winding up order. The procedure to initiate the voluntary judicial management is also set out in Section 94, however this are not limited to:

- The 7 days' written notice of intention to appoint interim judicial manager to be given to proposed interim judicial manager and to any creditor who may appoint a receiver and manager.
- Shareholders' resolution to be made for the appointment of the interim judicial manager.
- Within 3 days of the appointment of the interim judicial manager, the company must provide a written notice of the appointment and it to be lodged with the Official Receiver and the Registrar of Companies.
- The company must give to creditors at least 14 days' written notice of the meeting together with a statement showing the names of all creditors and the amounts of their claims; and a full statement of the company's affairs.
- The company must convene a meeting of creditors which to be held not later than 30 days after the date of lodgement of the proposed interim judicial manager's statutory declaration.
- At the creditors' meeting, the creditors may appoint one of the creditors, the interim judicial manager or the director as the chairperson who will determine whether the meeting is being held at a time and place convenient to the majority. Where a majority in number and value of the creditors present and voting resolve to do so, the company is placed under judicial management.

The judicial management is the creditor in possession procedure. The voluntary judicial management minimises the delay and expenses in applying to court for a judicial management order. Given the court is not involved in this process, it allows the distressed company to channel its resources to its rehabilitative efforts and more importantly, the out-of-court judicial management mechanism reduces stigma associated with judicial management as there is no need to resort to a formal judicial process via the Court. As mentioned above, thought the voluntary judicial management

is cost-effective approach, it should be noted that the company's business and affairs are will be laid bare before the creditors take a vote at the creditors meeting and if insufficient votes are obtained creditor can initiate a winding up petition. In both the cases, the moratorium restraining potential enforcements or legal processes will begin upon the company lodging a notice of appointment of interim judicial manager.

No proper compare and contrast e.g. IJM not mandatory for court JM. Detailed write up on the procedure nonetheless. 4 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?

An automatic moratorium for 30 days can be obtained upon filing of an application with the Court. The moratorium can be extended further by order of the court. However, the application can only be made where company proposes or intends to propose a compromise or an arrangement between the company and its creditors or any class of them. The company can only make application if:

- No order has been made and no resolution has been passed for winding-up of the company
- The company makes or undertakes to soon present the application to sanction the scheme of arrangement
- The company has not applied for protection under section 210(10) of the Companies Act (a provision that provides for moratorium protection).

The court may order the company to submit information relating to company financial affairs to enable creditors to assess the feasibility of the compromise or arrangement., including the valuation of significant assets, details on any disposal of property, profitability documents etc.

What other requirements? 1 mark. Please read the section carefully. Creditor support?

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?

There is no provision dealing with the group of companies. However, under section 65 the Court can grant moratorium orders relating to subsidiaries or related companies which play a necessary and integral role in the compromise or arrangement to the proposed the company under section 64 moratorium. The company must provide the application which would be similar to as mentioned in the section 64 (1) and also conditions for application remains the same.

Incomplete answer. 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?

Yes, moratoria have an extra-territorial effect. An automatic 30-day moratorium arises upon the filing of an application with the court where the debtor proposes or intends to propose scheme of arrangement. The court may extend the moratorium upon the application of the debtor. Under the judicial management, an automatic moratorium on legal proceedings against the company comes into effect upon the filing of the judicial management application. If the judicial management order is made, then a more extensive moratorium will come into effect for the period of the judicial management. The Court or the judicial manager has a discretion to allow otherwise prohibited proceedings or enforcement actions to be commenced or continued.

Please explain how it is extraterritorial and what the effect? Does it stay enforcement of security? 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 scheme of arrangement can be initiated when company intends to propose a compromise to its creditors via scheme of arrangement. On the application from the company or any creditor of the company, the court can order a meeting of the creditors or class of creditors. Company can appoint the scheme manager to facilitate the restructuring process. The scheme manager will prepare the scheme proposal and adjudicate on the creditor's proof of debt. The scheme manager will administer the scheme after it is approved by the creditors. Court's role is to supervise and oversee the restructuring process and ensure that all the information is disclosed to the creditors. Court may also obtain regular updates from the company on the progress of the restructuring.

Approval threshold at meeting? Court has to approve the scheme.

The IRD Act 2018, allows a scheme to be approved even if one or more class of creditor have rejected the proposed scheme, the rationale for introducing this provision was to minimize the overall influence of minority creditors. However, for the court to approve the cram-down certain conditions should be met like a majority in number of creditors meant to be bound by the arrangement and who are present and voting should have agreed to the arrangement; 75% of the creditors in value meant to be bound by the arrangement and who were present and voting and the court must be satisfied that the arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class. Under the IRD Act the unsecured creditors can be crammed down without requiring the members of the company to divert their shares. However, under the Companies Act to cram down a class of unsecured creditors existing members were required to divert their shares, but there was no set procedure for shareholders to compulsorily divert their shares as part of the scheme of arrangement and the cramdown was therefore dependent on the members voluntary divesting their shares. **You have confused cramdown with prepack. 2 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?

The rescue financing is financing that is either necessary for the survival of a debtor or necessary to achieve a more advantageous realization of assets of a debtor, than on a winding-up of that debtor. If the company has made the application under section 210(1) of the Companies Act or section 64(1), company can apply for the rescue financing.

However, the court may on an application by the company make one or more of the following orders

- If company is wound up, the debt arising from rescue financing will be treated as if it were part of the costs and expenses of the winding up mentioned in section 203(1)(b);
- It will have priority over all the preferential debts if the debtor is later wound up.
- By secured by the security interest on property of the company, which is not otherwise subject to any security interest, If company is not able to obtain unsecured rescue financing.

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.

As Singapore has adopted the UNCITRAL Model Law on Cross Border Insolvency. It now allows foreign representatives to apply to the High Court of Singapore for recognition of foreign proceedings. It also provides international corporation and communication between courts and representatives and for concurrent proceedings. There is no requirement of reciprocity with the State in which the foreign proceeding is occurring.

However, the court can deny recognition only if recognition is manifestly contrary to public policy.

But, before adoption of the Model Law, the courts in Singapore depended on common law principals of recognition. Under those principals, it was held that courts can recognize foreign insolvencies when they take place in the jurisdiction where the debtor company is registered. The courts also further stated that it will recognize the foreign proceedings commenced where company's COMI is located, even if that is different from where the company is registered.

Please elaborate further on the requirements and effect. 0.5 mark.

*** End of Assessment ***

30.5 out of 50