



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] 9 marks

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Which of the following **is not** one of the roles of a scheme manager?

- (a) To administer the scheme after it has been approved by the creditors.
- (b) To run the business of the debtor company.**
- (c) To prepare the scheme of arrangement proposal.
- (d) To adjudicate on the proofs of debt filed by the creditors.

Question 1.2

Which of the following forms of security **need not** be registered?

- (a) A fixed charge.
- (b) A mortgage.
- (c) A pledge.**
- (d) A floating charge.

Question 1.3

Which of the following factors may enable a foreign debtor to establish a “substantial connection” to Singapore?

- (a) The debtor has chosen Singapore law as the law governing a loan or other transaction.
- (b) The debtor is registered as a foreign company in Singapore.**
- (c) The debtor is carrying on business in Singapore.
- (d) Any of the above.

Question 1.4

What percentage of each class of creditors must approve a scheme of arrangement for it to be binding?

- (a) Over 50% in value.
- (b) 50% or more in value.
- (c) Over 75% in value.
- (d) 75% or more in value.

Question 1.5

Which of the following is **not** one of the statutory duties of a bankrupt?

- (a) To make discovery of and deliver all his property to the Official Assignee.
- (b) To attend any meeting of his creditors as may be convened by the Official Assignee.
- (c) To execute such powers of attorney, conveyances, deeds and instruments as may be required.
- (d) To not travel overseas under any circumstances whatsoever.

Question 1.6

Which of the following **is not true** of the Model Law as enacted in Singapore?

- (a) It allows foreign representatives to apply to court for the recognition of foreign proceedings.
- (b) The court can deny recognition only if recognition is "manifestly contrary" to public policy.
- (c) It provides for concurrent insolvency proceedings.
- (d) It provides for international co-operation and communication between courts and representatives.

Question 1.7

Which of the following new reforms **were not** introduced by way of the 2017 amendments to the Companies Act?

- (a) The automatic moratorium.
- (b) The cross-class cram down.
- (c) Restrictions on *ipso facto* clauses.
- (d) Pre-packaged scheme of arrangement.

Question 1.8

Who amongst the following **may not** bring a judicial management application?

- (a) The company by way of a members' resolution.
- (b) The liquidator by way of an application to court.**
- (c) The directors pursuant to a board resolution.
- (d) The creditors either together or separately.

Question 1.9

Which one of the following **is not** one of the statutory duties that a bankrupt is subject to?

- (a) Make discovery of and deliver all his property to the Official Assignee.
- (b) Disclose all property disposed of by gift or settlement without adequate valuable consideration within the five years immediately preceding his bankruptcy.
- (c) Not being able to travel overseas at all.**
- (d) Attend meetings with the Official Assignee and answer all relevant questions.

Question 1.10

Which of the following **is not** one of reasons for which the Court will appoint an interim judicial manager:

- (a) The preservation of the company's property or business from dissipation or deterioration.
- (b) The more advantageous realisation of the property than in a liquidation.**
- (c) To bridge the gap between the application for judicial management and the hearing of the judicial management application.
- (d) To safeguard the interests of the company as well as its creditors.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 4 marks]

What is the significance of the decision in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60 and what did the Court of Appeal decide?

In *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60 the Singapore Court of Appeal decided that the inability to pay debts provided by section 125 (2) (c) of the IRD Act as a requirement to apply for a compulsory winding up against a company should be proved through the cash flow test.

That test must consider, between other aspects: all the debts due in the present and near future, if the payment of those debts were demanded or would be in a near future, if the company already demonstrates being unable to pay any debt, the amount and the period

that this payment wasn't made, the current assets and those which will be realisable in the near future, the state of the company's business, etc. **These are non exhaustive factors. Please elaborate.**

In this test, it is possible to see how important it is to prove, in detail, the actual financial distress that the company is experiencing and if it's a problem that will really affect the continuation of the company's business in the near future or if it is a temporary situation, which could be the case, to apply for a type of corporate rescue instead of a liquidation.

How about 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.

Four examples of new features introduced by the amendment of the IRD Act in 2017 are (i) the restriction of the ipso fact clause (section 440 of the IRD Act); (ii) the provision of a new and simplified proceeding to assetless or companies with little assets (section 209 to 211 of the IRD Act; (iii) the new notion of wrongful trading with the inclusion of personal liability (section 239 of the act); and (iv) the voluntary judicial management, that can be initiated without needing to apply to the court.

2 marks

Question 2.3 [maximum 4 marks]

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

One of the alternatives to formal bankruptcy is the **Voluntary Arrangement**. As the name says, it is a proceeding initiated by the debtor and has the goal to renegotiate the debts with the creditors (section 276, IRD Act). When the Court makes an interim order to initiate the Voluntary Arrangement, it may grant a moratorium to avoid the beginning or continuing of actions against the person or property of the debtor, including a bankruptcy application (section 278, IRD Act).

That interim order is in effect for 42 days after the debtor makes that application and that period can be extended by the Court.

Where an interim order has been 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 which the meeting should take place. Then, unless otherwise directed by the Court the nominee will summon a creditors meeting.

In that proceeding, the debtor appoints a licensed insolvency practitioner as a nominee, who will be responsible to supervise the process and act as a trustee, so one of its responsibilities is to preside over the meeting with creditors that will vote in the arrangement proposed by the debtor and report the decision to the Court.

The purpose made by the debtor must be approved by the majority of creditors to be bound and the consequence, if the debtor doesn't follow the agreement, is that one of the creditors may make an application for bankruptcy. **75% needs to approve.**

What happens if there is a default?

Answer has left out a few key points. 1 mark.

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 liquidator and a judicial manager may bring actions to void transactions made in the suspect period (prior to the beginning of the liquidation or judicial management) that has the potential to interfere in the company's assets and, consequently, the fair distribution between creditors. Two examples are actions against transactions that (i) give creditors or guarantors unfair preference or (ii) were undervalued.

To bring action to invalid transactions that give a creditor or guarantor unfair preference, the liquidator or judicial manager may apply to the Court, proving that the company does or suffers anything that "*has the effect of putting that person into a position which, in the event of the company's winding up, will be better than the position that person would have been in if that thing had not been done*" (section 225 (3) (b) of the IRD Act).

In that case, the liquidator or judicial manager must also prove that the company had the intention of giving that creditor or guarantor the preference (section 225 (4)), that the transaction occurred in 2 years before the commencement of the insolvency proceeding, and that the company was unable to pay its debts in that period or became unable as a consequence of the transaction (section 226 (1) (b) and (2)). **Related vs unrelated parties?**

Once the unfair preference has been proven, the Court may make an order to "restore the position to what it would have been if the company had not given that unfair preference" (section 225 (2)).

On the other hand, the action to void undervalue transaction, the liquidator or judicial manager must prove that the company gave a gift or made a transaction with someone at an undervalue in 3 years before the commencement of winding up or judicial management, time that the company was insolvent or becomes so as a consequence of this transaction (sections 224 (3) and 226 (2)).

The liquidator or judicial manager must prove that the company wasn't acting in good faith and didn't believe that this transaction would benefit the company (section 224 (4)).

Another important thing that should be considered is if the person who benefits from the transaction is or isn't "*connected with the company*", because when we talk about a connected person, there's a presumption that the company was unable to pay its debts or becomes so as a result of the transaction (section 226 (3)).

If all the requirements are verified, the Court may also make an order to restore the position that existed before the transaction (section 225, (2)).

How are the powers enhanced? Please discuss third party funding and wrongful trading. 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.

The Judicial Management is a creditor-in-possession restructuring procedure that usually needs to be filled by the directors of the company (by board resolution), the company itself (by members resolution), or one or more creditors in the Court.

The applier must prove in the moment of the application that the company is or will become unable to pay its debts and there's a probability that after the proceeding the company will be rescued totally or partially from the financial distress or that the realisation of its assets made by the Judicial Manager will be profitable than the realisation through a winding-up proceeding.

The Voluntary Judicial Management is a type of judicial management introduced by the IRD Act 2018. Different from the judicial management, this proceeding is initiated out-of-court by the company when it gets a resolution of the company's creditors approving the judicial management.

The company still needs to prove that the company is or will soon be unable to pay its debts and that the expected result of the proceeding will rescue the company or at least will be better than a result achieved by a winding-up proceeding, but the main difference is that the company can choose a interim judicial manager (following the requirements of the section 94 (3) of the IRD Act) and is mandatory the assembly of a creditors meeting where, between other subjects, it will be deliberated if the company will be placed under judicial management (which depends on the approval of the majority of creditors in number and value - section 94 (11) (d)) and, once approved, the creditors must appoint a formal judicial manager, who will replace the interim one

Once the creditors approve the initiation of judicial management, a judicial order is not necessary, but the company must write a notice to the Official Receiver and to the Register of Companies informing that one interim judicial manager was appointed (section 94 (5)).

Lack of detail on the process and inadequate comparison. 3 marks.

QUESTION 4 (fact-based application-type question) [15 marks in total]

PT Angostura Textiles Tbk (Angostura, and together with its subsidiaries, the Angostura Group) is an Indonesia-incorporated company listed on the Indonesia stock exchange. Angostura is a substantial market player in textile production in South East Asia and China. Its primary lines of business are:

- fibre production with assets and factories in Malaysia, Thailand and Cambodia;
- textile manufacturing with assets and factories in Indonesia, Vietnam and China; and
- garment manufacturing and distribution facilities with assets and factories in Indonesia, Vietnam and the United States.

The Angostura Group has two key Singapore incorporated subsidiaries:

- Juniperus Textiles Pte Ltd. (Juniperus) which is wholly owned by Angostura; and
- Casuarina Garments Pte Ltd (Casuarina) which is wholly owned by Juniperus.

Each entity in turn owns all, or substantially all, of the shares in the relevant entities incorporated in the local relevant overseas jurisdiction.

The Angostura Group had traditionally funded its business via bank lending, with a combination of bilateral and syndicated loan facilities advanced directly to Angostura. As at 2019, the group had raised SGD 2 billion in bank lending, all of which was guaranteed by Angostura Indonesian subsidiaries.

In late 2019, as COVID-19 started to spread around the world, the Angostura Group sought to take advantage of the situation by expanding its garment manufacturing business into personal protective equipment. To fund this expansion, Juniperus issued SGD 200 million in retail bonds (the Juniperus SG Bonds) on the Singapore Stock Exchange (SGX) which were guaranteed by Angostura. The proceeds of the Juniperus Bonds were on-lent to Casuarina

who lent them via an offshore intercompany loan to Angostura (the Casuarina Intra-Group Loan). To ensure bondholders had rights in connection with the Casuarina Intra-Group Loan, holders of the Angostura Bonds are given security over the shares of each of Juniperus and Casuarina. The Juniperus Bonds are governed by a New York law.

In late 2020, Angostura's business experienced significant supply-chain disruptions as a result of the COVID-19 pandemic. During this time, Angostura started informing some of its bank lenders that they may require waivers on certain terms in their loans and potentially further time to repay certain amounts owing. In early 2021, Angostura appointed legal and financial advisors to provide it with advice as to the best steps to take. Shortly thereafter, a trade creditor filed a PKPU petition in Indonesia against Angostura and its Indonesian subsidiaries. Further to this, Juniperus and Casuarina filed for protection, under sections 64(1) and 65(1) respectively, of the Insolvency Restructuring and Dissolution Act (Act No 40 of 2018) (the IRDA). Angostura then announced that Juniperus will launch a separate Singapore Scheme of Arrangement under section 210 of the Companies Act (Cap 50) to restructure the Juniperus Bonds after the conclusion of the Indonesian PKPU, which will largely mirror the terms in the PKPU.

The bondholders of the Juniperus Bonds are concerned the moratoria being sought will prevent them from participating in the PKPU proceedings in Indonesia and enforcing their security over the shares in Juniperus and Casuarina, respectively. They have therefore decided to object to the Singapore moratorium applications.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 6 marks]

The working group of the bondholders has asked its advisors to provide it with a written analysis covering the following critical issues for the Angostura Group. Please provide analysis on the following issues:

Question 4.1.1 (2 marks)

What must be presented to the court in order to obtain moratorium protection order under section 64(1) IRDA?

The company must prove that it proposes or intends to propose an arrangement with all or part of its creditors. If the arrangement was already proposed, the company must prove that the creditors involved in the arrangement support the plan; or in the case of the company, where there is the intention to propose the arrangement, its necessary to prove to the court that the arrangement is feasible.

Besides that, the company has to publish the notice of the application in the official gazette, in at least one English daily newspaper and needs to notify its creditors (the court may dismiss this requirement) and provide to the court (i) a list of its secured and unsecured credits; and (ii) documents to demonstrate the financial situation of the company (section 64 (3), (4) and (6)).

What other requirements? 1 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) provides the possibility of extending the moratorium granted to a company to its subsidiary, holding company or ultimate holding company. It's a possibility available to companies related to the one that applied for the moratorium under section 64(1) – called the 'subject company'. They receive the same benefit in order to guarantee the success of the arrangement proposed or that will be proposed by the subject company.

It's important to note that the relation between the companies isn't just a formal organization of a company group, but the subsidiary or holding company must prove that it plays an important role in the arrangement proposed or that will be proposed by the subject company and any action taken against that related company can compromise the success of the arrangement.

What other requirements? 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?

If the company proposes or intends to propose an arrangement between part or all its creditors, the company may apply for a moratorium that can have extra territorial effect if the company requires that this order must be applied to a specific person or act that takes place outside of Singapore, according to section 64 (5) (b) of IRD Act.

In that case, the extra territorial effect and the person or act must be expressed by the Courts decision.

Have not answered the question properly. Please explain in personam jurisdiction. 0.5 mark.

Question 4.2 [maximum 9 marks in total]

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

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

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

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

Question 4.2.1 [maximum 5 marks]

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

Section 210 (1) of the Companies Act establishes a proceeding where a liquidator, a company or its creditor, member or holder may apply to a court to have an order that consists of organizing a meeting with the interested parties to vote on an arrangement.

The arrangement may be proposed between the company and its creditors, members or holders (totally or partially) and needs to be approved by the majority of the participants voting (creditor, members or holders, depends on the object of the arrangement), which must represent three-fourths of the value managed in that specific case, to bind all parts of the arrangement.

If a company decides to apply for a Court to commence a scheme of arrangement, the company will need to specify to the court which creditors will be involved in the negotiation and these creditors will need to be divided in different classes that will vote separately in the arrangement. The court will call a meeting and notify the creditors involved in the scheme. These creditors will vote to approve or reject the arrangement. With the creditor's approval, the company must adhere to the court's decision. **Court sanction?**

The prepack scheme of arrangement is like a simplified version of the scheme of arrangement, as the prepack proceeding allows the court to approve the scheme of arrangement without a meeting to deliberate the arrangement.

In that case, the company must prove that the proposed arrangement (i) was detailed for the creditors involved; (ii) was announced to these creditors and the public in general; (iii) is supported by the creditors in the same proportion as if the meeting had been held.

For this application, the company may require a pre-vote of the arrangement by the creditors involved in order to prove their support to the court.

Covers some key points but could elaborate further. 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?

The rescue financing (or post-commencement financing or DIP financing) is a type of financing where a company had to either (i) achieve the rescue of the company in a restructuring proceeding (like a scheme of arrangement); or (ii) have a more advantageous realization of the assets if the rescue wasn't possible.

In that case, if the company that has submitted an application to initiate a scheme of arrangement (under section 210(1) of the Companies Act or section 64(1) of the IRD) or had commenced a judicial management, the company may apply to the court to grant a super priority to this financial credit rescue (section 67(1), 101(1) of the IRD Act).

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.

Since 2017, Singapore has adopted the UNCITRAL Model law to deal with cross-border insolvency cases, so the foreign insolvency proceeding can be recognized through an application made by the foreign representative of the foreign proceeding.

To do this, the foreign representative must apply to the Singapore Courts with the documents stipulated in article 15 (2) of the Model Law, which includes proof of the decision that initiated the foreign proceeding (with the proof that this specific court had international jurisdiction over the case) and the power granted to the foreign representative.

Once recognized, it will be possible to grant a moratorium or stay of the actions and executions against the debtor, depending on the type of proceeding (if main or secondary, according to article 20 of the Model Law).

It's important to note that the Singapore Court may refuse to grant any order that is contrary to the public policy of Singapore (article 6 of the model law).

Answer is too brief. Please elaborate further. 1 mark.

*** End of Assessment ***

29 out of 50