



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**.

Commented [DB1]: Please read and follow the instructions. I had to do this for you.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total] 10 mark

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?

It is a settled principal that "Unable to pay its debts" is the most common ground to initiate liquidation/insolvency of a debtor. In the *Sun Electric Power Pte Vs RCMA Asia Pte Ltd* the courts of Singapore clarified that "Cash Flow Test should be the sole and determinative test to get initiated the bankruptcy/liquidation" of a debtor.

In the judgement the courts give an exhaustive list of the factors which needs to be considered under the cash flow test:- **Non-exhaustive**

- a) Quantum of debts which shall be due for payment in reasonable near future
- b) Whether payment is demanded/likely to be demanded against these debts
- c) Whether the company has already failed to pay any of its debts? If yes then the quantum of payment due and time period of such a default
- d) Duration of winding up process underway
- e) value of current assets and other assets that can be realized in near future.
- f) State of the company's business, including assessment of the cashflow positive/negative status of the operations. Whether the operations will yield profits or losses and the quantum of the same
- g) Any other income or payment that the company may receive in the near future
- h) Any funding arrangement of the company with prospective lenders, which may enable the company to tide over the present financial distress

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.

Some of the new features that were introduced by the IRDA are:-

- 1) Restriction of the IPSO-FACTO clause of termination of a contract. With introduction of this feature the contracts in force when a company becomes insolvent shall not be deemed to be terminated ipso-facto on the ground that one of the contracting party is insolvent. The contract shall remain in force
- 2) New provisions regarding wrongful trading- Any person who was knowingly party to the wrongful trading of the company shall be personally responsible for the debts and liabilities of the company
- 3) Section 209-211 of the IRD Act 2018 introduced a new procedure for the early dissolution of the company in liquidation, thereby giving impetus to early disposal of dissolution cases of companies wherein the recoverable assets were even not enough to pay for the dissolution process cost.
- 4) Availability of third party funding to judicial managers and liquidators- Third party funding will enable the judicial managers and liquidators to pursue claims and debtors of the company to increase the recovery for the creditors. Under the new provisions of IRD Act , the liquidators/judicial managers are statutorily empowered to seek third party funding for certain cause of actions.

2 marks

Question 2.3 [maximum 4 marks]

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

Voluntary Arrangements is one of the alternatives to the formal bankruptcy and is a formal arrangement between a debtor and creditor for satisfaction of the debts. The scheme is overseen by a nominee (licensed insolvency practitioner) appointed by the debtor.

Step-1 (Application)- When a debtor wishes to make a proposal to the creditor the court must give the debtor an interim-moratorium whereby (a) No Bankruptcy application be proceeded with against the debtor (b) No proceeding/execution or any other legal process may be commenced/continued against the debtor or his property without the order of the court.

Step-2 (Submission of report to the court) – The nominee must submit to the court a report containing his opinion about the possibility of the approval of the arrangement scheme and whether a meeting of the debtor and creditor be called for. The nominee will call for the meeting until and otherwise directed by the courts

Step-3 (Approval of the Arrangement)- The voluntary arrangement must be approved by the creditors via a special resolution and once approved the arrangement becomes binding on all the stakeholders

However in case of failure of the debtor to comply with the proposals of the voluntary arrangement scheme, the nominee or any creditor bound by the arrangement may bring about 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.

[Apologies, I have not been able to understand the question, to my mind the draft of the question is missing some element]

You are supposed to explain unfair preference and undervalue transaction and how IRDA has enhanced ability to bring claims via third party funding and wrongful trading. 0 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.

Judicial Management is one of the "Corporate Rescue Mechanism" under the Singapore Insolvency Laws to rescue and revive a stressed corporate.

As such Singapore has a "creditor friendly" insolvency culture (akin to Chapter 11 Bankruptcy system of USA) (as manifested in the Scheme of Arrangement mechanism), yet under Judicial Management system it is the court appointed (therefore the word Judicial) Insolvency practitioner as the "Manager" who shall replace the existing management of the company and the run the company as a going concern and till the time a viable rescue plan is not approved.

The Initiation of Judicial Management can be Voluntary (as per section 94(1) of the IRDA) or Initiated by application in court (Section 89(1) of the IRDA)

Voluntary Judicial Management can be initiated without an application being filed before the court if :-

- a) Company has defaulted or is likely to default in paying its debts
- b) There is a reasonable possibility of achieving the objectives of corporate rescue as per the system of Judicial Management with court application (section 89(1) of IRDA)
- c) The Resolution of the company creditors approving the Judicial Management is obtained

The section 94 also contains indepth procedure of conduct of the voluntary judicial management process. Prior to the enactment of the Section 94 of the IRDA, a company could only be placed under judicial management by an order of the court and this meant that the distressed company had to spend precious time and resource in making an application to court and such time and resources could be better utilized in rehabilitating the company.

To initiate the voluntary judicial management , the company must first realize that it has either defaulted in paying its dues or is likely to default in the near future. Also it must contemplate whether it may resolve its stressed situation by restructuring/can protect the assets of the company by restructuring , ie must be ascertained that corporate rescue is possible.

Once the company is sure that corporate rescue is possible, then the company shall approach its creditors and seek their permission to initiate a voluntary judicial management vide a resolution to be given by the creditors giving their permission for the initiation of the judicial management (thereby called voluntary judicial management).

The judicial management process under section 89 involves an application to be filed by either the Company or its directors or the Creditors before the courts to initiate the process. This process of application to court as already mentioned is time consuming and cumbersome.

Have not really answered the question on setting out the procedure and comparing voluntary with court JM. 2 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?

In order to obtain moratorium protection under section 64(1) of IRDA the company must present before the court:-

- a) An application whereby the company proposes or intends to propose a compromise or arrangement between the company and its creditors or class of creditors
- b) The application must clearly state that :-
 - (i) That there is no winding up order issued against the company
 - (ii) The company undertakes that it will very soon submit an application under section 210(1) for the court to order a summon of meeting of creditors to consider the compromise /arrangement or submit an application under section 71(1) of IRDA wherein the court may approve the compromise/arrangement proposed by the company.
 - (iii) Company has made no application under section 210(10) of the companies act

The submission of the bondholders against this moratorium application of Juniperus would be that there will no useful purpose by granting the moratorium as there is no possibility of

any scheme of arrangement/compromise being approved/accepted by the creditors (bondholders) of Juniperus and on the contrary the imposition of moratorium will result in irreparable damage to the bondholders (creditors).

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?

When a moratorium under section 64(1) is ordered for a company (herein after called the Subject Companies) then its subsidiary/holding company (hereinafter called related company) can apply for a moratorium under section 65(1) of the companies act.

In order to obtain moratorium protection under section 65(1) of IRDA the related company must present before the court that:-

- (i) That there is no winding up order issued against the related company
- (ii) That the order under section 64(1) is in force against the related company
- (iii) That the related company plays a necessary and integral part in the scheme of compromise and arrangement to be proposed by the subject company
- (iv) That the compromise and arrangement scheme of the subject company shall be frustrated if the actions restrained by the court under section 65(1) are taken against the related company
- (v) That the creditors of the related company shall not be prejudiced by the order 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?

Yes, the Moratoria sought by Juniperus and Casuarina has Extra-Territorial effect.

The Moratoria will apply to :-

- a) All actions / recovery proceedings initiated by the creditors against the company shall be stayed
- b) Any proceedings for sale of assets of the company by the creditors/ members of the company shall be stayed
- c) Any proceedings for sale/transfer of shares /ownership of the company by the shareholder shall be stayed. This has an important implication on Juniperus as a moratoria will stay all proceedings of change of control/management of the company Juniperus due to any proceedings against the holding company of juniperus (ie Angosutra)
- d) Juniperus shall not be subject to any resolution under the PKPU proceedings undergoing in Indonesia on the Angosutra Group

Please explain in personam jurisdiction. 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?

To initiate the scheme of arrangement under section 210 of the companies act, an application needs to be filed by Juniperus and Casuarina before the courts proposing an arrangement with (a) The Bond Holders (the creditors) (b) The shareholders of the company ie Angostura Group. The courts will in a summary way direct a meeting of the creditors of the company with the company so as to approve/reject the scheme of arrangement and also order a moratorium in the interim.

Once the proposals of the scheme of arrangement are acceptable to the creditors and is approved by them by 75% of the value of creditors , **majority in number** the scheme is put before the courts for approval. It is only when the courts have too approved the scheme that the arrangement becomes binding on all the stake holder

The scheme of arrangement under section 210 of the companies act can be approved for implementation by the courts only after the creditors of the company has approved the proposed scheme of arrangement , whereas under section 71(1) of IRDA the scheme of arrangement can be approved by the courts even if there has been no meeting whatsoever between creditors and the company for approval of the scheme of arrangement. **Please elaborate. What are the requirements?**

Answer is too brief. 2.5 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 generally refers to financing provided to troubled companies for the purpose of restructuring. However the rescue funding for a troubled company cannot be raised till a priority/super charge be given to the rescue funding lender, ie putting rescue funding lender ahead of the existing lenders in priority of charge of the asset

Under the IRDA and amendment to companies act in 2017, the Court now have the power to order a "super priority" for debts incurred by the company in respect of rescue financing. Under section 211E of the Companies Act , Court can grant such super priority if :-

- The funds provided are necessary for the company's survival or for the whole or any part of the undertaking of that company to remain as a going concern; or
- The funds provided are necessary to achieve a more advantageous realisation of the company's assets of a company than on a winding up of that company
- The Super charge can be given only when the company has tried all other alternative mechanism to raise rescue funding which does not require super charge.

Decent effort. 2 marks.

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 such Singapore has adopted the UNCITRAL Model Law on Cross Border Insolvency in 2017, pursuant to that foreign representatives are now able to apply to the High Court of Singapore for recognition of foreign proceedings. Under the Model Law as incorporated in the Amendment Act, there is no requirement of reciprocity with the state in which the foreign proceeding is occurring.

Under the UNCITRAL Model Law, a Court can deny to recognize a foreign insolvency proceedings if the recognition of the same is "manifestly contrary" to public policy, however the Singapore Model Law omits the word "manifestly".

In order to recognize a foreign insolvency proceedings the Singapore court will require:-

- a) Order of the commencement of foreign insolvency proceedings and appointment of the foreign representative
- b) Proof of COMI and Country of Registration of the company against which the insolvency proceedings have been commenced. Singapore courts can recognize the proceedings which have been commenced in either of the jurisdiction can **recognise even if not from COMI**
- c) Proof of "*substantial connection of the company with Singapore*":- **not a requirement**
 - (i) it had assets located in Singapore
 - (ii) it had substantial business in Singapore
 - (iii) Singapore law had been used as the governing law for its business transactions
 - (iv) the foreign company had submitted to the jurisdiction of the Singapore courts for the resolution of disputes relating to its business transactions
 - (v) Singapore was the company's COMI

On recognition of the foreign insolvency proceedings, there is immediate moratorium on the actions / recovery proceedings against the asset of the company located in Singapore.

Does not quite grasp the concept of recognition. Also lack of detail. 0.5 mark.

*** End of Assessment ***

29.5 out of 50