



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 most common ground to wind up an insolvent company is on account of the company being "unable to pay its debts". This was the decision made in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd*. In the Singapore Court of Appeal, the appellant appealed against this finding. It was then clarified by the Singapore Court of Appeal that the cash flow test should be the sole and determinative test under section 125(2) of the Insolvency, Restructuring and Dissolution Act. The Court of Appeal also set out a non-exhaustive list of factors that should

be considered under the cash flow test. Such factors include, but are not limited to, the following:

- The quantum of all debts which are due, or will be due in the reasonably near future.
- Whether payment is being demanded, or is likely to be demanded, for those debts.
- The length of time that has passed since winding up proceedings commenced.

What happened to the balance sheet test? Answer could be slightly more detailed. 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.

- i. The Court is empowered to make a decision whether a person who knowingly took part in wrongful trading (Section 239 of the IRDA) is personally responsible for the company's debts or liabilities.
- ii. Both judicial managers and liquidators are statutorily empowered to seek third-party funding for certain causes of action.
- iii. Sections 209 and 210 of the IRDA give grounds on which the Official Receiver or the appointed liquidator may seek early dissolution of the company, subject to meeting certain criteria.
- iv. Section 440 of the IRDA limits the exercise of certain *ipso facto* clauses/contractual rights by reason only that the company is insolvent or certain proceedings have commenced.

2 marks

Question 2.3 [maximum 4 marks]

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

One alternative process to formal bankruptcy is a Voluntary Arrangement, which is a formal arrangement between a debtor and his/her creditors in satisfaction of the debtor's debts.

To commence the process, the debtor will appoint a nominee, who must be a licensed insolvency practitioner. The debtor must then prepare a proposal, which will set out the terms of the proposed voluntary arrangement, and must present the proposal to the intended nominee, along with a written notice of the proposal. The intended nominee will then confirm whether or not they consent to act as nominee.

When seeking to present a proposal to his/her creditors, the debtor may apply to the Court for an interim moratorium order. If such an order is made, the nominee must, prior to expiration of the order, submit a report to the Court stating whether they are of the opinion that a meeting of the debtor's creditors should be summoned, stating the date, time and place of the proposed meeting. Unless otherwise directed by the Court, the debtor must then summon a meeting of creditors.

At the meeting of creditors, in order for the Voluntary Arrangement to be implemented, this must be approved as a special resolution (by a majority of not less than 75% in value of those creditors present and entitled to vote), and this will be binding on all creditors who received notice and were entitled to vote.

If the Voluntary Arrangement is approved, the debtor must adhere to the terms of the approved proposals document and the appointed nominee, whose appointment is ratified by the creditors, will oversee that the debtor does adhere to the terms.

Should the debtor fail to adhere to the terms of the Voluntary Arrangement, the nominee or a creditor bound by the terms of the Voluntary Arrangement may bring a bankruptcy application against the debtor.

4 marks

QUESTION 3 (essay-type questions) [15 marks in total]

Question 3.1 [maximum 8 marks]

Write a brief essay in which you discuss some of the claims that a liquidator or judicial manager can bring and how the IRDA has enhanced their ability to do so.

Following the commencement of liquidation of a company, the appointed liquidator or judicial manager (the “**Office Holder**”), is empowered by the IRDA to pursue a number of impeachable transactions in order to claw back assets for the liquidation estate. This can be pursued on certain grounds.

Unfair Preference Transaction

The Office Holder can seek to claw back assets in instances where there have been transactions that were unfair or where preference was given.

In order to prove an unfair preference transaction has taken place, the Office Holder must prove the following four elements:

- i. The beneficiary of the transaction (the preferred party) is a creditor, or guarantor, for any of the company’s debts;
- ii. The transaction took place at a point in time when the company was insolvent, or the company became insolvent as a consequence of the transaction;
- iii. The company has done anything to put the preferred party in a better position in the event of its liquidation than it would have otherwise been had the transaction not taken place; and
- iv. The company had a desire to prefer the preferred party, which influenced its decision to enter into the transaction.

The relevant time-frame for an Office Holder to claw back assets from an unfair preference transaction is:

- In instances where the preferred party is an associate, two (2) years from the date of the winding up application or from the date of the judicial management application; and
- In instances where the preferred party is an unrelated party, one (1) year from the date of the winding up application or from the date of the judicial management application.

The IRDA can empower the Office Holder in its attempts to claw back assets in cases where there has been an unfair preference. Pursuant to Section 225 of the IRDA, where an unfair preference transaction is considered to have taken place, the Office Holder may apply to the court for an order under this section. The court may then make such order as it thinks fit for

restoring the position to what it would have been had the company not given the unfair preference.

Transaction at an Undervalue (“TUV”)

A TUV is considered to have taken place where the preferred party is considered an associate of the company. To prove that a TUV has taken place, the Office Holder must show the two following elements:

- i. The company makes a gift to the recipient or the value of consideration received is significantly less than the value of the consideration provided; and
- ii. The company was insolvent at the time of the transaction or became insolvent as a result of it.

The relevant time-frame for an Office Holder to claw back assets from a TUV is three (3) years from the date of the winding up application or from the date of the judicial management application.

The IRDA can empower the Office Holder in its attempts to claw back assets in cases where there has been a TUV. Pursuant to Section 224 of the IRDA, where a TUV is considered to have taken place, the Office Holder may apply to the court for an order under this section. The court may then make such order as it thinks fit for restoring the position to what it would have been had the company not entered into the TUV.

How have their powers been enhanced? You have not answered the question completely.
4.5 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.

A voluntary judicial management application may be brought when, pursuant to section 94 of the IRDA, a debtor company considers that:

- i. It is, or is likely to become, unable to pay its debts; and
- ii. There is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1).

For a voluntary judicial management application, the debtor company may approach and seek a resolution of the creditors of the company to approve the appointment of a judicial manager.

The company must first appoint an interim judicial manager, but may only do so if the conditions listed under sections 94(3) and 94(13) of the IRDA are met. If these conditions are met, the company must give 7 days' written notice of its intention to appoint an interim judicial manager to:

- i. The proposed interim judicial manager; and
- ii. Any other person required under section 94(2)(b) of the IRDA.

Following the appointment of the interim judicial manager, the company must:

- i. Lodge a written notice of the interim judicial manager's appointment with the Official Receiver and the Registrar of Companies within 3 days; and
- ii. Publish a notice of the interim judicial manager's appointment in the Gazette and in any English newspaper within 7 days.

Once a statutory declaration has been made as required under section 94(3)(e) of the IRDA, the company must convene a meeting of its creditors. The creditors must be given 14 days' written notice of the meeting and a notice of the meeting must be published in any English local daily newspaper at least 10 days prior to the meeting.

At the meeting of creditors, a resolution may be passed to place the company under the judicial management of a judicial manager if this is resolved by a majority in both number and value of the creditors that are present and voting.

It should be noted that, pursuant to section 94(12) of the IRDA, any judicial manager must be a licensed insolvency practitioner and must not be the auditor of the company. This is also the case for a judicial management application.

The underlying reason for a voluntary judicial management application is the same to that of a judicial management application; however, a voluntary judicial management application is an out of court procedure and differs in this respect to that of a judicial management application, which requires an application to be made pursuant to section 91 of the IRDA.

A judicial management application also differs in that it may be brought by any of the following:

- i. The debtor company (pursuant to a resolution of its members);
- ii. The debtor company's directors (pursuant to a resolution of the board); or
- iii. The debtor company's creditors, either together or separately.

Could have been enhanced with a bit more comparison. Decent effort nonetheless. 5 marks.

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

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

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

The Angostura Group has two key Singapore incorporated subsidiaries:

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

- Casuarina Garments Pte Ltd (Casuarina) which is wholly owned by Juniperus.

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

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

In late 2019, as COVID-19 started to spread around the world, the Angostura Group sought to take advantage of the situation by expanding its garment manufacturing business into personal protective equipment. To fund this expansion, Juniperus issued SGD 200 million in retail bonds (the Juniperus SG Bonds) on the Singapore Stock Exchange (SGX) which were guaranteed by Angostura. The proceeds of the Juniperus Bonds were on-lent to Casuarina who lent them via an offshore intercompany loan to Angostura (the Casuarina Intra-Group Loan). To ensure bondholders had rights in connection with the Casuarina Intra-Group Loan, holders of the Angostura Bonds are given security over the shares of each of Juniperus and Casuarina. The Juniperus Bonds are governed by a New York law.

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

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

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 6 marks]

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

Question 4.1.1 (2 marks)

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

An automatic moratorium for 30 days is granted upon the filing of an application with the court by Juniperus. The moratorium can be extended by order of the court.

Have not answered the question. 0 marks.

Question 4.1.2 (2 marks)

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

There must be a moratorium order already made in relation to section 64(1) of the IRDA.

An application for a moratorium must be filed with the court by the subsidiary, holding company or ultimate holding company of the subject company (in this case, Casuarina, which is the wholly owned subsidiary of Juniperus).

Have not answered the question. 0 marks.

Question 4.1.3 (2 marks)

Can the moratoria sought by Juniperus and Casuarina be ordered to have extra-territorial effect? If so, what acts and / or creditors will the moratoria apply to?

The moratoria do have extra-territorial effect. **How? Please elaborate.**

The effects of the moratoria will be that the winding up proceedings brought in Indonesia by the PKPU petition cannot continue against Juniperus or Casuarina without leave of the court. **There is no PKPU petition against these two entities.**

In this instance, the bondholders may seek to enforce their security by appointing a receiver or manager over the shares in Juniperus or Casuarina. However, the moratoria will restrain the appointment of a receiver or manager over the property of Juniperus or Casuarina.

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 launch a scheme of arrangement, Juniperus and Casuarina must make a court application pursuant to section 64(1) of the IRDA. The filing of such an application triggers the commencement of an automatic moratorium for a period of 30 days. A section 64(1) application can only be made if all of the conditions as set out under section 62 of the IRDA are met.

When making the section 64(1) application, Juniperus and Casuarina must publish a notice in the Gazette and at least one English newspaper and must send a notice to all of their respective creditors.

As part of the section 64(1) application, Juniperus and Casuarina must file:

- i. Evidence of support from their customers;
- ii. A brief description of the intended compromise or arrangement, with sufficient enough information for the court to determine if it is feasible and merits consideration by their creditors;
- iii. A list of their secured creditors; and
- iv. A list of all unsecured creditors that are not related to the debtor company, or if there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims are the largest amongst all such unsecured creditors.

Within 14 days after the making of an order pursuant to section 64(1), the company must lodge a copy of the order with the Registrar of Companies.

Leave to convene creditors' meeting?

The court may then order that Juniperus and Casuarina must file within a set time frame specific information, including that set out under section 64(6).

When seeking implementation of a scheme arrangement, the court may order that a meeting of the creditors or the bondholders of the companies be convened pursuant to section 210(1) of the Companies Act. However, this is not always necessary and the court may make an order pursuant to section 71(1) approving the compromise or arrangement proposed by Juniperus and Casuarina without the need for a meeting of the creditors or the bondholders. If the court does make an order pursuant to section 71(1), the terms of the Scheme of Arrangement are binding on the companies and their creditors, bondholders or class(es) of creditors as the Scheme is meant to be binding on. **What is needed to be shown?**

Has left out a number of elements including voting at a meeting. Focus of the question is not so much on moratorium. 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?

In order to gain access to rescue financing, Juniperus and Casuarina must have made an application pursuant to section 210(1) of the Companies Act or section 64(1) of the IRDA. The companies must then make an application to the Court pursuant to section 67(1) of the IRDA and will be able to access rescue financing following an order being made by the Court.

What other elements are there? Incomplete answer. 0.5 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.

Singapore has adopted the UNCITRAL Model Law on Cross-Border Insolvency, which requires that the Singapore court must recognise insolvency proceedings that have commenced in another jurisdiction. **It is not a must.** This would allow the insolvency proceedings commenced in the USA to be recognised in Singapore. As the Juniperus Bonds are governed by New York Law, recognition of the USA insolvency proceedings should provide Juniperus with further protection under the moratorium to prevent bondholders enforcing security.

Please elaborate. How is recognition granted? What requirements? 0.5 mark.

*** End of Assessment ***

32.5 out of 50