



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?

- i) The significance of the decision meant that in Singapore, future determinations on deciding whether a company will be unable to pay its debts will solely be based off the cash flow test.
 - a. There are other mechanisms to decide on whether an entity is unable to pay its debts such as the balance sheet test or legal action test. This will no longer be applicable in Singapore.
 - b. If a winding up order is presented against an entity and they are cash flow insolvent, a creditor will be entitled to a winding up order.

- ii) The Court of Appeal decided that the cash-flow test should be the sole determinative mechanism used to determine whether a company is unable to pay its debts. As part of this decision, they laid out a number of factors that should be considered namely: **these are non exhaustive**
- a. Quantum of all debts due, or that will be due in the near future
 - b. Whether these payments are demanded or likely to be
 - c. Whether the company has failed to pay debts in the past
 - d. The length of time passed since commencement of winding up proceedings
 - e. The value of the company's realizable assets
 - f. The reasonableness of a companies projected future cash flows based on business plans
 - g. Any other income the company is set to receive in the future
 - h. Current borrowings and loans from lenders and the terms under which these borrowing were taken

3.5 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.

- The IRD Act now restricts the provision of Ipso fact clauses.
- A new procedure was introduced to allow for the early dissolution of an entity in cases where it was clear there were no assets available to pay for the administration of the proceedings. This procedure is set out in Sections 209 to 211 of the IRD Act.
- Unsecured creditors can be crammed down in cases of schemes of arrangement, without the need for shareholders to divest their shares. **Not a new feature**
- The IRD Act introduced minimum requirements and conditions for the grant and renewal of licenses, and a disciplinary framework for insolvency practitioners.

1.5 marks

Question 2.3 [maximum 4 marks]

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

- An alternative to formal bankruptcy available to Companies in Singapore would be entering into a voluntary arrangement between a debtor company and its creditors.
- The debtor company must firstly appoint a nominee to oversee the process. This individual must also be a licensed insolvency practitioner.
- If a debtor company applies to the Court with such a proposal, they may grant an interim moratorium which will prevent a bankruptcy application being made against that company, nor any other proceedings, without leave from the court.
- Once an order is made, the nominee must submit an report to the court stating whether they feel a creditors meeting should be held. Unless objected by the court, a meeting will subsequently be scheduled by the nominee.
- This voluntary arrangement will then have to be approved by special resolution at this meeting by a requisite majority. If approved, this will bind all creditors to the arrangement, even if the minority have objected to the proposed arrangement.
- If the resolution is passed, and the debtor company fails to comply with any element of the voluntary arrangement in the future, any creditor or the nominee may commence formal bankruptcy proceedings against the company.

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.

- Some of the claims that a liquidator or judicial manager can bring in Singapore are as follows:
- Under Section 144 IRD 2018, a liquidator, may with permission from the court or a committee of inspection, commence legal proceedings against third parties on behalf of the company.
- Both a liquidator and a judicial manager may also claw back any assets transferred in a transaction, in the two years prior to the date of the winding up application or the date of the judicial management application, where they deem said transaction to be fraudulent, or if assets were sold for less than their market value.
- A liquidator may pursue claims against former directors where it can be proved that a director carried out trading of a business with an intent to defraud the company as prescribed in Section 237(1) of the Companies Act.
- The IRDA has enhanced a liquidators and judicial manager's ability to do so by introducing new measures which have given more legal powers to these individual when seeking to launch claims. **How?**
- The IRD places a moratorium on the payment of any liabilities and prevents any action being taken against the company, without leave from the court, thus providing liquidators and judicial managers more scope to pursue claims as they see fit.

Lack of explanation and detail on the elements of the various claims. 2.5 marks. Wrongful trading and third party funding?

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 laid out in Section 94 of the IRD. It lays out the process behind commencing an application. Firstly, the criteria required prior to entry is that:
 - The company is, or is likely to be insolvent
 - There is a chance of achieving one part of the aims of the judicial manager, as prescribed in Section 89(1)
 - The debtor company has obtained a creditors resolution supporting the entry into judicial management.
- The Company must convene a meeting of creditors where they will summarise the rationale behind entry into judicial management, and if appropriate, how a scheme of arrangement is to be carried out.
- A judicial management application must also be filed with the Companies registry.
- Notice must be provided to all creditors at least 7 days before the commencement of the meeting

- This notice must also be published, outlining the agenda, date, time and location of meeting if held in person
- At this meeting the relevant timelines will be discussed with regard to how long the judicial management will last which is usually 180 days, or how long as the court may subsequently direct.
- At the creditor meetings, the proposed judicial manager will discuss the purpose of the application, whether it be to implement a scheme of arrangement, to preserve the business as a going concern, or to obtain a more advantageous position when realising the company's assets.
- Creditors of the company will then vote, where a majority in both number and value is required for a resolution to be passed, prior to appointing a judicial manager.
- This process will then be brought under the direction of the court, in the same way as a judicial management application that was filed in court.
- This differs from a court filed judicial management application in that:
- There is no need for an application to be sanctioned by the Court, prior to entering into judicial management.
- Prior to the implementation of Section 94 of IRDA, a company could only be placed under judicial management by order of the court. Companies can now by-pass this requirement.
- A voluntary judicial management application vs. a court filed judicial management, is also seen to be a lot more cost and time effective, which would be seen to benefit some company's greatly, if an expeditious commencement is required, or if cash flow issues are at a premium.

Lack of detail and also comparison does not go beyond stating the obvious. No mention of IJM also. 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?

Juniperus may only file an application for a scheme of arrangement under Section 64(1) of IRDA if:

- No order has been made, or resolution passed for the winding up of the Company's
- Both entities intend to undertake an application to sanction their proposed scheme as soon as possible; and,
- Neither company has applied for protection under section 210(1) of the Companies Act.

- The directors of the Company must also publish a notice in the Singapore Gazette, detailing a summary of the intended scheme or compromise, and must include evidence of support from the Companies creditors i.e. the bondholders.
- It seems Juniperous may be unsuccessful in making an application under Section 64(1) unless another class of creditor is in support of the scheme of arrangement.

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?

- In order for a moratorium to be obtained from the Court for Casuarina under Section 65(1), Juniperous must have already filed a proposal for a moratorium under Section 64(1). **It just needs a moratorium.**
- Under Section 65, the Court can grant a moratorium to subsidiary entities i.e. Casuarina, if the subsidiary entity plays a significant role in the proposed restructuring.
- It seems here that Casuarina would definitely form part the proposed scheme of arrangement relating to Juniperous, therefore it would more than likely be obtained, subject to the outcome of Juniperous' application.

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?

- A key feature of Section 64 of the IRD states that moratoria, if obtained by the Court does have extra territorial effect.
- Although not specifically referenced in Section 65 **it is**, this is also more than likely the case for Casuarina in that their moratoria will have extra territorial effect, if obtained from the Court

Please elaborate. What effects are there? 0 mark. Have not answered the question.

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 Company needs to submit financial information relating to the Company's affairs which may include the valuation of the assets held in other southeast Asian countries, projected forecasts upon commencement of the scheme and a summary of the feasibility of the scheme.
- Unlike Section 210 of the Companies Act, when applying for a prepack scheme proposed under section 71(1) of the IRDA, there must be approval from creditors representing at least 75% in value the debt held by the Company. This process is also usually more expeditious.

Have not answered the question at all. Lack of detail. 0 mark.

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?

- Angostura must prove to the Court that the financing is secured by a security interest not otherwise subject to any other security interest.
- Angostura must be secured by subordinate security interest that is subject to existing security interest, if Angostura was unable to obtain financing from any other party.

Have not really explained the requirements. 0 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.

- A Singapore court may recognize a foreign insolvency proceeding if there are just grounds under UNCITRAL model law. The Courts will use Guidelines for Communication and Co-operation between courts in cross border insolvency matters also known as JIN guidelines.
- There is also no requirement of reciprocity for the state in which the foreign proceeding is occurring.
- Once recognized, in most circumstances, the insolvency proceedings will enjoy the same powers as contained in the original powers granted to that third party in their local jurisdiction. **Like what?**
- The Singapore model law adopted in 2017 has also been adopted by the United States. This will make Angostura's protection order application in United States easier to be sanctioned by the Singapore Courts if they wish to pursue this.

Lack of detail. 0.5 marks. Effect of recognition?

*** End of Assessment ***

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