



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?

The matter related to the test of insolvency, relating to the cash flow test of whether the company was able to pay its debts as and when they fell due.

The Court of Appeal held that pursuant to s125(2)(c) of the IRDA Ct, that the cash flow test is the only and conclusive test for insolvency. The Court also confirmed the factors that should be considered, including: **Non exhaustive. Please be accurate.**

- The quantum of debts that could reasonably fall due
- The demand for payment
- The length of time debts haven't been paid for
- The time since winding up proceedings commenced
- Realisable value of assets
- A company's cash flow, sales and expenses
- Any other potential future income
- Arrangements in place with lenders, shareholders or banks

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.

Under the IRDA, then following changes were made before the 2017 amendments:

- Judicial Managers have the ability to dispose of secured assets, under s100
- Companies that can be wound up can apply under s90 for judicial management
- Under s117, for a judicial management proposal to be binding, it must be approved by a majority of each class of creditor and three quarters in value of those voting
- Provisions were introduced to limit the use of *ipso facto* clauses, under s440
- The personal and corporate legislation were consolidated **Not a new feature per se.**
- Qualifications were made to be an IP and for the granting of licenses

Only these. 1 mark.

Question 2.3 [maximum 4 marks]

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

An alternative process to bankruptcy could be a Voluntary Arrangement. This would be a formal agreement between the creditors and a debtor, to satisfy debts.

A debtor must appoint and nominee to oversee the VA, who is a qualified IP. The debtor can then make a VA proposal to their creditors, with the option of an Interim Order to provide a moratorium. The moratorium would provide the following:

- Stop any bankruptcy applications being made
- Stay of all legal proceedings
- No bankruptcy proceedings against firms or its partners
- Stay of all proceedings against the firms or its partners

If an Interim Order is made, the nominee is required to file a Court Report, stating whether a creditors meeting is required and the necessary details. Unless the Court disagrees, the meeting will be summoned.

The VA can be approved by special resolution at the creditors meeting. Once approved, all creditors entitled to vote and with notice are bound by the VA.

If the debtor fails to meet their obligations under the VA, the Nominee or creditors can bring an application to the Court for bankruptcy proceedings against them.

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.

A liquidator or judicial manager has the ability to bring impeachable transactions against individuals or companies. They can apply to the Singapore Court to seek claw back of the assets. These include:

- Unfair preferences
- Undervalue transactions

An Unfair Preference requires the liquidator or judicial manager to show that 4 key points have taken place;

- The beneficiary is a creditor (including guarantors) of a company debt
- When the transaction took place, the company was insolvent
- The beneficiary is in a better position that if the transaction had not been entered into in the insolvency procedure
- The company was influenced by a desire to prefer the beneficiary (this is presumed where the beneficiary is an associate)

The relevant look back period is 2 years prior to the application to wind up the company or the judicial management application, where it is to an associate. If the beneficiary is not connected, then the look back period is 1 year.

An Undervalue Transaction requires the liquidator or judicial manager to show that 2 key points have taken place;

- A gift was made for no consideration or significantly less than the true value
- At the time, the company was insolvent, or became insolvent as a result of the transaction

Where the transaction is to an associate, it is presumed to have been at an undervalue.

The look back period is 3 years from the application to wind up the company or the judicial management application, for associates and non-associates.

These claw back provisions are only able to be used once a company is in liquidation or judicial management. Creditors therefore may seek these insolvency proceedings to allow a liquidator or judicial manager to challenge the transactions.

An Associate is classed as a spouse or relative of the directors, any employee or connected company or director thereof.

How have powers been enhanced? Third party funding and wrongful trading? 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.

Judicial Management is a debt restructuring process, which appoints an IP as a Judicial Manager. Then Judicial Manager then becomes responsible for the affairs, business and property of the company. The aim is to achieve a better result than if the company were to be wound up.

The main effect is that the company receives the benefit of a moratorium, which protects it against legal proceedings. The moratorium lasts automatically for 180 days from the date of Resolution being passed or Court Order.

During the period prior to the Judicial Management officially commencing, the IRD 2018 gives an interim moratorium against legal proceedings against the company, winding up proceedings, enforcement of charges or taking security.

In a Creditors Resolution, the interim moratorium commences upon the notice of appointment for the Interim Judicial Manager being filed. It will then end either on the appointment of the Judicial Manager or when creditors reject the Judicial Management.

However, for a Court Order, the interim moratorium commences from the filing of the application and ends on the decision being made by the Court, as to whether the order should be granted or not.

The process is similar to a Scheme of Arrangement, however the Judicial Management does not allow management to continue running the business, and uses an IP. This has a practical effect where creditors are unhappy with management's control of the company. **This is irrelevant to question.**

There are two methods to place a company into Judicial Management, either by Creditors Resolution or by applying to the Court.

The Creditors Resolution must be passed by a majority of creditors, in value and in number present (voting). However, a single creditor has the ability to file a Court application for Judicial Management.

The Creditors Resolution then requires the Shareholders or Board passing a resolution to appoint a Judicial Manager. The Resolutions will be filed alongside Statutory Declarations to the Official Receivers and ACRA. The Judicial Manager must also provide their consent to the process.

Once appointed, the company must file a notice of appointment with the Official Receiver and ACTA, and publish a notice in a Government Gazette and English newspaper.

A Creditors Resolution cannot be commenced if there is already a Court application for a Judicial Manager in place. An application can be withdrawn or leave can be provided by the Court.

Alternatively, Judicial Management can also be achieved by a Court process. Pursuant to s94 of the IRD 2018, the Singapore Court has power to make a Judicial Management Order and appoint a Judicial Manager.

The Company and/or any number of creditors has the ability to file an application. This application must be supported with an affidavit confirming the grounds for the Judicial Management.

The Applicant for the process will nominate an IP, who is licenced to act as the Judicial Manager. The Court or Minister of Finance has the ability to appoint an alternative IP if they see fit.

The Court will make the Order provided that the company is insolvent and that it will result in a better outcome than if wound up. This could be by survival on a going concern basis, approving a Scheme of Arrangement or a better return to creditors than if wound up.

However, the Court may set aside the application if it is not in creditors interest, creditors oppose the order, if it may not succeed or if it not the best process in the circumstances. Also, if a QFC holder opposes the Order being made, then the Court will always dismiss the application.

Poorly structured answer. No compare and contrast with court JM. Also have not explained voluntary JM process in sufficient detail. 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?

Pursuant to s64 of the IRDA provides an automatic moratorium for 30 days from the date of the application.

The application is for when a company is proposing, or has the intention to propose, an arrangement or compromise with creditors. The following must be included in the application:

- Evidence that no order or resolution has been made to wind up the company
- Confirmation of the intention to apply for sanction for a scheme of arrangement
- That the company has not sought protection pursuant to s210 of CA
- Evidence of the creditors support **of?**
- If not scheme is proposed, details of the compromise
- List of all creditors **(not all creditors)**

Too brief and not expressed clearly. 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?

An application under s65 or the IRDA will proceed the order being granted under s64. The following must be included in the application:

- Evidence of no resolutions being passed to wind up the company
- The order obtained under s64
- Any related companies which are linked to the arrangement or compromise **please explain**
- Evidence that no creditors are being unfairly prejudiced by the application

Too brief and not expressed clearly. 1 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?

S64 of the IRDA was first brought in under s211 of the CA in 2017. It allowed debtor in possession restructuring regimes. One of the key features was that the moratoria had an extra territorial effect. **How so? Explain in personam jurisdiction.**

Therefore, this will allow the moratoria sought by Juniperus and Casuarina to have an extra territorial effect.

The moratoria will apply to against:

- Legal proceedings against the company
- Any winding up proceedings
- Any enforcement of charges
- Any further security being taken

As a result, this will impact the enforcement action in Indonesia and create an automatic stay on the proceedings. **Are you sure?**

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?

S210 of the CA covers any arrangements or compromises between the company and its creditors or members.

Any liquidator, company, creditor or member can bring an application to the Singapore Court. The Court will then order a meeting of the creditors (or members if the application is brought by the members). The meeting may be adjourned if three quarters of the creditors or members approve a resolution for adjournment.

Once the meeting has been held and the approval requirements are met, all creditors are bound by the compromise or agreement. The arrangement or compromise will not take full effect until it is filed with the Registrar, unless specified earlier by the court. Any officer found in default will be liable to a fine of up to \$2,000.

In practice, an application is made to the Court for a Scheme, which should disclose all material information and details about the company, creditors and the arrangement. The application can be made by a creditor, member, liquidator or judicial manager.

Notice of the meeting must then be circulated to all creditors. The notice must contain details of the meeting and an explanation of the scheme that is being proposed.

At the meeting, the Chairperson will adjudicate on all proof of debts to decide which should be admitted for voting purposes. To achieve an approval of the scheme, 50% of all creditors must approve, in presence and voting. Of these, the creditors must represent 75% of the value of the claims.

Finally, the scheme is then sent to the Court of approval and an Order stating the same. Then the Order and Scheme can be filed with ACRA.

Alternatively, there is a pre packaged method under s71 of the IRDA. This allows the Court to approve a scheme (assuming certain requirements are met) without calling a creditors meeting to vote on it.

The process is seen to be much quicker and less costly than the Companies Act method. The requirements that must be met are:

- All creditors must be put on notice of the scheme.
- ACRA must be provided with notice
- Advertisement must be placed in the Gazette and an English paper
- The Court must be satisfied that the scheme would be approved if creditors had voted

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?

To meet the requirements of Rescue Finance, it must meeting the following criteria:

- Be essential for the debtor to survive
- Achieve a better outcome than if assets are realised through winding up proceedings

Under an Arrangement, Rescue Finance is a cost of the liquidation, preferential and has security interest applied.

The remedy has been sourced from s364 of the US Bankruptcy Code and was passed in the IRD Act 2018, following the amendments in 2017.

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.

In March 2017, Singapore adopted the UNCITRAL law, through the 2017 amendments. The first case of foreign insolvent proceedings being recognised in Singapore was *Re Zetta Jet Pte Ltd*.

At present, the following to registration regimes must be met:

- The judgment must be registered under the Reciprocal Enforcement of Commonwealth Judgments Act
- The judgment must be registered under the Reciprocal Enforcement of Foreign Judgments Act.

Once registered, it can then be enforced in Singapore, without new proceedings being commenced in Singapore. The foreign judgment can have the estoppel effect in relation to rights of action.

The Singapore law will only recognise foreign insolvency proceedings if the above conditions are met.

Have confused model law with registration regimes. 0 mark.

*** End of Assessment ***

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