



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.

Commented [TG1]: May do with permission

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.

Commented [TG2]: Can with consent

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?

Pursuant to section 125© of the IRD Act, a Company is deemed unable to pay its debt by:

- A creditor who the company owes more than SGD 15,000 has served a demand which is unsatisfied or set aside
- Execution or other process issued on a judgment in favour of a creditor (by the court) has not been satisfied in part or in full
- It is proven to the satisfaction of the court that they are unable to pay their debts as they fall due

Sun Electric Power Pts Ltd v RCMA Asia Pte Ltd is significant in that as part of the ruling it was also defined a non-exhaustive list of factors which should be considered when proving 'cannot pay debts as they fall due' or in other words, the cash flow test, these were:

- 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 these debts
- The length of time that has passed since the commencement of the winding up proceedings
- The value of the Company's current assets and assets that will be realizable in the reasonable future
- The state of the company's business, in order to determine its expected cash flow from the business by deducting from projected sales the cash expenses which would be necessary to generate those sales
- Any other income or payment which the company may receive in the reasonably near future
- Arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realizable assets and cash flow could be made up by borrowings which would be payable at a time later than the debts

Balance sheet test? 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.

Section 186(1) of the IRD Act 2018 gives the Court power to stay or terminate the winding up of the Company at any time on application of:

- The liquidator
- A creditor
- A contributory

Section 186(3) allows the Court to give directions for the resumption of the management and control of the Company to its directors and relevant management team.

Previous to this the Court only had powers to stay winding up proceedings.

The amended also furthered to include details of how parties wishing to object to the termination of the winding up might do so.

The amendment also gives provision for the termination of the winding up on the basis the Company is discovered to be, or subsequently turns out to be solvent.

Only one feature stated. 0.5 mark.

Question 2.3 [maximum 4 marks]

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

One alternative to formal bankruptcy is for the debtor to enter a voluntary arrangement.

A voluntary arrangement is an agreement, which is legally binding, between a debtor and his creditors in order to settle the standing debts which are included within the agreement, these will be settled in part for most cases.

The proposal for a voluntary arrangement has to be put forward to creditors by an insolvency practitioner on behalf of the debtor, and must act as a 'nominee' before such time as the proposal is agreed.

A voluntary arrangement may be put forward after the petition for bankruptcy should the bankrupt seek an interim order from the court. **Elaborate on interim order.**

The nominee will call for a meeting of creditors, should a majority, being 75% or more, of creditors voting at the time, consent to the agreement it will be legally binding to call creditors who were entitled to vote, whether or not they chose to at the meeting.

The Nominee will then become a Supervisor, and will monitor the debtors compliance with the arrangement, typically this will involved the Debtor making contributions monthly which would then go to pay creditors *pari passu*.

What if there is a default?

Once all payments have been made and final distribution the VA would be conclude, the debts would not be pursuable following the closure of the agreement ie the shortfall from the distributions.

There may be debts which are not able to fall within the arrangements – for example child maintenance arrangements.

The proposal may exclude certain assets as long as these are disclosed to the creditors and agreed – for example a property may not be included and may stay in the debtors possession, consideration will be applied for the asset – this could for example b a third party payment of a value representative of the asset value to compensate the creditors for this asset not being released for the agreement

Voluntary Arrangements offer more flexibility for the Debtor compared to bankruptcy, which in turn can (generally) offer a better return for the creditors than Bankruptcy, the debtor may be able to continue to work for example to increase the contributions, and there may be third party funds available (for example from a family member) which would not be offered in Bankruptcy.

Have not covered two key points. 2 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.

Under the IRA Act, liquidators and judicial managers are now able to gain third-party funding in order to pursue certain causes of action in pursuit of claims.

This will need to be sanctioned by the Court and the committee (if one has been appointed)

This is in relation to transactions which are deemed at an undervalue, unfair preference, fraudulent and wrongful trading, all of which are explained in further detail below.

Claims at an undervalue

For a transaction at undervalue, the office holder will need to evidence:

- The company made a gift, or entered into the transaction where the consideration was significantly less than the value provided; and
- The Company was, or became, insolvent as a result of same
- The time period for which this transaction must fall, is within three years of the onset of the insolvency proceedings

Unfair Preference

The Liquidator/Judicial manager will need to evidence:

- The preferred party is a creditor/guarantor
- The Company was insolvent, or become so as a result of, the transaction
- The Company did so (had the desire) to put one creditor in a better position, had the transaction not happened and the Company entered insolvency proceedings
- The transaction will have to fall within one year of the commencement of proceedings (if not associated) and two years if the creditor is associated

Fraudulent Trading

If it is proven that any business carried out was with the intent to defraud creditors of the company, pursuant to section 237(1) a Director can be personally liable for same. The liquidator and the Judicial Manager is able to pursue these claims, and seek third party funding to support same.

Wrongful Trading

Wrongful trading is hereby a debt incurred without reasonable prospect of meeting that debt in full when the company is insolvent, or becomes insolvent as a result of such debt.

Pursuant to section 239 of the IRD 2018, personal liability can be imposed, and a claim pursued for a Company's debt on a person if:

- They knew that the company was trading wrongfully;
- As an officer of the company, ought, in all circumstances, to have known that the company was trading wrongfully

Should explain that wrongful trading is new. How about third party funding? 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 creditor-in-possession procedure.

The Judicial Manager takes control of the Company for a period of 180 days, subject to extension.

Pursuant to Section 94(1) of the IRD Act 2018 the voluntary process for initiating judicial management without applying to the court may commence if:

- The company is, or likely to become, unable to pay its debts
- There is reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1); and
- A resolution of its creditors is obtained

Further to section 94, the Company may obtain a resolution of the Company creditors for the Company to be placed under the judicial management of a judicial manager

The judicial manager must be a licenced insolvency practitioner who is not an auditor of the company.

A judicial manager may not be appointed if:

- (a) if an application for a judicial management order has been made under section 91(1), and that application has not been withdrawn or decided by the Court;
- (b) after the company has gone into liquidation;
- (c) if the company is a banking corporation or is a finance company licensed under the Finance Companies Act 1967;
- (d) if the company is a licensed insurer licensed under the Insurance Act 1966; or
- (e) if the company belongs to such class of companies as the Minister may by order in the Gazette prescribe.

In order to do this the following will need to be done:

A notice of proposed Judicial Management must give 7 days notice of the proposed to:

- Proposed judicial manager
- Any person who has appointed, or who may be able to appoint a receiver

Following the notice period above, if not rejections are received the resolution for the appointment should be made no later than 21 days after the elapsing of the notice.

Consent must be granted from – the proposed judicial manager and any person holding security or able to appoint a receiver as defined by section 94 subsection (2).

Resolution of member (or Directors if the articles dictate otherwise)

Proposed judicial manager must lodge with the official receiver and registrar a declaration stating, they are not conflicted to take the appointment, purpose may be achieved and they consent to take the appointment.

The Companies Directors then must lodge with the registrar of companies a declaration stating:

- The company is or is likely to be unable to pay its debts
- The company will summon a meeting of creditors no later than 30 days after the lodging of same
- The directors believe that the purpose is likely to be achieved

In terms of the meeting of creditors:

- Creditors must have 14 days notice
- Creditors must be provided a statement of company creditors
- Creditors must be provided with a statement of affairs
- Meeting must be advertised at least 10 days before date of same

A director must be appointed to attend the meeting

At the meeting:

- Creditors may appoint the chair
- Chair person must determine whether the meeting is being held at a time and place convenient to the majority (in value) of creditors

- Company is placed under judicial management of the manager if a majority in number and value pass the resolution to do so

Comparison with court JM? 4 marks.

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

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

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

The Angostura Group has two key Singapore incorporated subsidiaries:

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

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

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

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

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

The bondholders of the Juniperus Bonds are concerned the moratoria being sought will prevent them from participating in the PKPU proceedings in Indonesia and enforcing their

security over the shares in Juniperus and Casuarina, respectively. They have therefore decided to object to the Singapore moratorium applications.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 6 marks]

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

Question 4.1.1 (2 marks)

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

The Company must publish a notice of the application in the Gazette and in at least one English local daily newspaper, and send a copy of the notice to the Registrar of companies

Unless the court orders otherwise, the Company must send a notice of the application to each creditor meant to be bound by the intended or proposed compromise and who is known to the Company

The Company must file the following with the Court together with the application:

- Evidence of support from the company's creditors of the proposed arrangement
- In a case where the arrangement has not been proposed to date, sufficient information to allow the Court to assess whether an intended arrangement is feasible and merits consideration from the company creditors
- A list of every secured creditor
- A list of all unsecured creditors

2 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?

Section 65(1) relates to granting a moratorium further to an order already in place pursuant to section 64, for a company that is a subsidiary a holding company or a ultimate holding company of the subject company (company holding the moratorium under 64)

The conditions for such application are:

- No order has been made and no resolution passed for the winding up of the related company
- The order under section 64(1) made in relation to the subject company is in force
- The related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application 64(1)
- The arrangement mentioned in point above, will be frustrated if one or more of the actions that may be restrained by an order, are taken against the related company
- The court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under subsection (1).

When making the application to the court:

- It must be demonstrated that a notice of the application has been placed in the Gazette and in at least one English local daily newspaper, and that such notice was sent to the Registrar
- Related Company must have sent notice of the application to each creditor of the Company and who is known to the Company

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 Singapore Court can order the moratorium to have extraterritorial effect and apply to assets and actions outside of Singapore, only if the creditor is in Singapore and under the jurisdiction of the Singapore Court.

Which acts are enjoined? 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?

Process of launching a scheme under 210:

- Compromise or an arrangement between the Company and its creditors, the company and its members or the company and holders of units of shares
- Application is made to the Court by; the liquidator (if the Company is being wound up), or the Company or any creditor, member or holder of units of shares
- The Court will order a meeting of creditors, members or holder of shares
- Should the following conditions be met, the scheme will be approved by the court and legally binding to all:

- Unless the Court may order otherwise a Majority approve (or designated class), being at least three quarters of the value of the creditors, member, or holder of share. This is in relation to those eligible to, and voting on the day in person or by proxy. If Creditors do not chose to vote they are not included in the calculation for approval, but in any case will be legally bound to the agreement.
- Agreement is approved by order of the court

Pre-Pack scheme under section 71(1):

In regard to section 71(1), this details the process by which a compromise or agreement is proposed between the Company and its creditors, but the difference being that this is approved by the Court, without a meeting of creditors.

Should the court approve the arrangement then it will be legally binding to all creditors. **need to show requisite threshold of creditors would have voted in favour had meeting been called.**

The following will need to be the case for the Scheme to be approved:

- Each creditor (to be bound by the agreement) must have been presented with a statement containing: Company's assets and liabilities, financial prospects and business activities; information on the matter in which the terms of the compromise will take affect including the creditors rights, such information that is necessary for the creditor to make an informed decision.
- The company has published an advert in the gazette and one English daily newspaper and same filed with the Registrar of Companies
- Company has send a notice and copy of the application to each creditor to be bound by the arrangement
- The court must be satisfied that had a meeting of creditors been summoned the conditions under section 210(3AB) (a) and (b) would have been met
- The arrangement will be approved by Court Order

4 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 financiering should be:

- Necessary for the survival of the debtor making the application of same
- Necessary to achieve a more advantageous return to the body of creditors as a whole

In order for this to be granted the Company will need to;

- Treat the financing as part of the costs and expenses of a winding up should this proceed the arrangement
- Finance claim will be preferential
- There should be security granted for the financing
- May also be creditor with existing finance of which is extended for the purpose

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.

10 March 2017 Singapore adopted UNCITRAL Model Law on Cross-Border Insolvency through its adoption of the 2017 Amendment Act. Zetta Jet Pte Ltd and Zetta Jet USA Inc

A foreign judgment may be registered in Singapore in accordance with Reciprocal Enforcements of Commonwealth Judgments Act. This is in relation to judgments from the United Kingdom and Australia and other commonwealth countries registered in the High Court of Singapore.

A judgment must:

- Be final and conclusive by the law of the Country
- Be from a court where they had international jurisdiction over the parties for whom the judgment was given

If the Court was to grant recognition, the judgment would be as if it was issued within Singapore and the same mechanisms for recovery would apply.

Confused registration of judgments with model law. 0 mark.

*** End of Assessment ***

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