



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 9 marks

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

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 decision by the Court of Appeal in the case of *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* have provided clarification to the test for "unable to pay its debts" pursuant to Section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA").

The Court of Appeal in the case have decided that the cash flow test should be the sole and determinative test under section 125(2)(c) of IRDA 2018. The Court of Appeal have

set out a non-exhaustive list of factors which should be considered under the cash flow test:

- (a) the quantum of all debts which are due or will be due in the reasonably near future;
- (b) whether payment is being demanded or is likely to be demanded for those debts;
- (c) whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;
- (d) the length of time that has passed since the commencement of the winding up proceedings;
- (e) the value of the company's current assets and assets that will be realisable in the reasonably near future;
- (f) the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;
- (g) any other income or payment which the company may receive in the reasonably near future; and
- (h) arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

How about balance sheet? 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.

- The cross-class cram down; **No**
- Restrictions on ipso facto clauses
- New wrongful trading provision;
- Pre-packaged Scheme of Arrangement **No**

1 mark

Question 2.3 [maximum 4 marks]

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

One of the alternatives to formal bankruptcy is a Debt Repayment Scheme. The process involved in a Debt Repayment Scheme are:

1. When a bankruptcy application is made against the debtor in High Court, the High Court may refer the debtor to the Official Assignee for an assessment of the debtor's eligibility and suitability to enter into the Debt Repayment Scheme if the following criteria is satisfied:

- a. The total liabilities in respect of the bankruptcy application does not exceed SGD150,000.00
 - b. The debtor has not been a bankrupt or is subject to the Debt Repayment Scheme or a Voluntary Arrangement in the last 5 years;
 - c. The Debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act (Cap. 391) or a partner in a limited liability partnership.
2. Upon satisfaction of the Debt Repayment Scheme criteria, the debtor will be required to submit a statement of his affairs and his debt repayment plan with a repayment of not exceeding 5 years to the Official Assignee.
 3. Upon acceptance of the debtor's repayment plan, the Official Assignee will convene a creditors meeting to review the repayment plan. The repayment plan shall be binding on all creditors upon approval of the same. A moratorium will be in effect for the period of the debt repayment scheme.
 4. Should the debtor fail to comply with the conditions of the Debt Repayment Scheme, the Official Assignee may issue a failure of the scheme which will bring the scheme to an end. Thereafter, creditors may file 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.

Should the liquidator or judicial manager believes that the company has entered into impeachable transactions leading up to the liquidation or judicial management, the liquidator may bring a claim to void the previous transaction entered into by the company and clawback the assets to be available to the whole body of creditors. The two types of transactions which can be impeach are (1) unfair or undue preferences transactions and (2) transactions which are conducted at an undervalue.

To establish unfair preference, the liquidator or judicial manager must show four elements:

- a. The beneficiary of the transaction i.e the preferred party is a creditor or guarantor for any of the company's liabilities;
- b. The company was insolvent at the time of giving the preference or become insolvent as a consequence of giving preference;
- c. The company has done anything which puts the preferred party in a better position than the preferred party would otherwise have been had the transaction not been entered in the event of the company's liquidation or judicial management;
- d. the company was influenced in deciding to enter the transaction by a desire to prefer the preferred party, noting that the company is presumed to have been influenced by a desire to prefer if the preferred party is an associate of the company.

The liquidator or judicial manager may claw back the assets which is transacted in an unfair preference manner within one (1) year period from the date of the winding-up application or the date of the judicial management application. Where the preferred party is an associate and connected to the company, the relevant time period which the assets may be clawed back is two (2) years from the date of the winding-up application or the date of the judicial management application.

Meanwhile, to establish a transaction at an undervalue, the liquidator or judicial manager must show two elements:

- a. the company makes a gift to the recipient or the company enters into a transaction where the value of the consideration received is significantly less than the value of the consideration provided; and
- b. the company was or becomes insolvent as a result of the transaction.

The relevant time period during which assets may be clawed back is three years from the date of the winding-up application or the judicial management application, regardless of whether the undervalue transaction was with party connected to the company or not.

The liquidator or judicial manager can also bring a claim against persons who are a party to the company or the officer of the company for wrongful trading pursuant to Section 239 IRDA 2018. Where a person or officer of the company have continued to incurred liabilities without reasonable prospect of meeting them in full when the company is insolvent, the liquidator or judicial manager can apply to have the court declare such person or officer of the company to be personally responsible without any limitation of liability for all or any of the debts or other liabilities of the company as the Court directs. **How is this different from before**

The liquidator or judicial manager can also bring a claim against persons who are a party to the company for fraudulent trading pursuant to Section 238 IRDA 2018. Where it appears that the business of a company has been carried on with the intend to defraud creditors or for any other fraudulent purposes, the liquidator or judicial manager can apply to have the court declare such person who knowingly a party to the carrying of the business in that manner to be personally responsible without any limitation of liability for all or any of the debts or other liabilities of the company as the Court directs.

The current legislation under IRDA 2018 have brought some enhancement to the ability of liquidator or judicial manager in bringing the claims as discussed above.

Prior to IRDA 2018, the provisions relating to impeachable transactions are found in Bankruptcy Act. The Companies Act provides that the provisions under the Bankruptcy Act shall also apply in the case of corporate insolvency, with modifications. In some cases, this have resulted in inconsistencies to the applications of the provisions in a corporate insolvency context. Under IRDA 2018, these inconsistencies is mitigated as IRDA 2018 have separately dealt with the provision for impeachable transactions for personal and corporate insolvency.

For claims related to wrongful trading, IRDA 2018 have widen the ambit of personal liability risk when the company is insolvent is not only restricted to the directors but the liquidators and judicial manager can bring an action against employees or counterparties of the company if they were a party to the company trading wrongfully. The quantum of the liability can potentially be high as a person can potentially be liable for all debts of the company. **Good point.**

**How about third party funding?
Decent effort. 6 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.

Where the company (a) is, or is likely to become, unable to pay its debts; and (b) there is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in Section 89(1) IRDA 2018, the company may consider entering into judicial management. Under IRDA 2018, the company is able to enter judicial management without court order and instead obtain a resolution from the company's creditors to enter judicial management pursuant to Section 94 of IRDA 2018. The process of commencing this voluntary judicial management application includes:

- i. The company to give at least seven days notice of its intention to propose to be placed under judicial management to the proposed interim judicial manager and to any person who has appointed, or is or may be entitled to appoint, a receiver and manager of the whole (or substantially the whole) of the company's property under the terms of the debentures given by the company secured by floating charge or fixed and floating charge.
- ii. The members of the company or board of directors (where so authorised by the constitution of the company) resolve to appoint the interim judicial manager.
- iii. The security holder after being notified under (i) have consented to the appointment of the interim judicial manager and the proposed interim judicial manager has consented to his appointment.
- iv. The interim judicial manager must be appointed no later than 21 days from the date of the notice under item (i).
- v. The interim judicial manager and the board of directors will then lodged the necessary documents and declarations pursuant to IRDA 2018 with the Official Receiver and Registrar of Companies.
- vi. The company shall then notify its creditors of the creditors meeting which is to be held within 30 days after the date of lodgement by the interim judicial manager with the Official Receiver and Registrar of Company.
- vii. If the majority in numbers and value of the creditors present and voting resolve to place the company under judicial management, the company shall be placed under judicial management. If the requisite majority is not obtained, then the judicial management application process ends.

The voluntary judicial management process differs from the existing judicial management by order of court is that the company do not need to make an application to court to place the company in Judicial Management but instead only be required to obtain the requisite resolution from its creditors to be placed under judicial management. Another notable difference between the two process is that under the voluntary judicial management, the security holder is required to provide consent for the appointment of interim judicial manager to proceed. However under the Court Judicial Management process, security holder can only block the judicial management order should the court decide that it would cause a greater prejudice to the security holder if the Judicial Management Order is given.

Good answer. Concisely written covering key points. 7 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 following is to be presented to Court to obtain moratorium protection following application under section 64(1) IRDA:

- (a) evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement;
- (b) in a case where the company has not proposed the compromise or arrangement to the creditors or class of creditors yet, a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors when a statement mentioned in section 211(1)(a) of the Companies Act or section 71(3)(a) relating to the intended compromise or arrangement is placed before those creditors;
- (c) a list of every secured creditor of the company;
- (d) a list of all unsecured creditors who are not related to the company or, if there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims against the company are the largest among all such 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?

The Court order obtained under 64(1).

What are the requirements? 0 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?

Yes. The moratoria applied under Section 64 IRDA will apply to creditors from:

- Passing a resolution to wind-up both companies;
- Appointing a Receiver and Manager over properties and undertaking of both companies;
- Continuing proceedings or commencing any other legal process against both companies except with leave of court.
- Enforcing any rights of forfeiture under any lease in respect of the premise occupied by the companies except with leave of court.

Explain in personam jurisdiction and how creditors within jurisdiction of singapore court will be bound. 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?

When Scheme of Arrangement is to be proposed, the applicant, which can be the company itself, company creditors, company members, company's liquidator and company's judicial manager shall:

1. Make application to court for the Scheme of Arrangement. The court will order a meeting of the creditors, the members of the company, the holders of units of shares of the company or a class of such persons to be called.
2. Issue notices for such meeting as directed by the court and issue statements explaining the proposed Scheme.
3. Review the Proofs of Debt submitted by the prospective scheme creditors and admit them for voting.
4. Put the proposed Scheme to be agreed by the Scheme creditors during the meeting. The proposed Scheme is agreed when majority in number representing three fourth in value of Scheme creditors have given their agreement to the Scheme.
5. Report outcome of the meeting to the court and obtain the approval on the Scheme by order of the court.
6. Upon obtaining copy of the court order, lodge the same with Accounting and Corporate Regulatory Authority.

The Scheme of Arrangement proposed under Section 210 of the Companies Act differs from a prepack scheme proposed under Section 71(1) IRDA in that under the Companies Act, the court directed that a meeting is to be held by the scheme creditors to agree to the proposed Scheme before the court provides its sanction. Meanwhile under IRDA, the court can approve the scheme without calling for a meeting to vote on the scheme if the court is satisfied that the proposed scheme would have been approved if the creditors had voted on it.

Concise answer. 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?

[In order to access rescue financing, the debtor will need to apply to court pursuant to Section 67 IRDA where the debtor would not have been able to obtain financing from any other person unless it was secured. The Debtor will then need to issue the notice of the application to each creditor of the company.

What 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.

[The key requirement for a Singapore court to recognise a foreign insolvency is that the foreign proceeding is within the meaning provided under Article 2(h) of the Singapore Model Law and that the person or body making the application is a foreign representative within the meaning of Article 2(i) of the Singapore Model Law. Upon recognition, all action or execution against the debtor is stayed. The right to dispose the property of the debtor is also suspended.

Please elaborate further. 1 mark.

*** End of Assessment ***

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