



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 or Avenir Next 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: 202223-336.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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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]

**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 **1m**

**Which one of the following insolvency tools is not available in Singapore?**

- (a) Judicial management.**
- (b) Administration.**
- (c) Court winding-up.**
- (d) Scheme of arrangement.**

Question 1.2 **1m**

**Who may apply to court to place a debtor company into judicial management?**

- (a) A contingent creditor.**
- (b) The debtor company.**
- (c) A prospective creditor.**
- (d) Any of the above.**

Question 1.3 **1m**

**Which of the following factors may support a foreign debtor's case 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 centre of main interests of the debtor is located in Singapore.**

**(c) The debtor has a place of business in Singapore.**

**(d) Any of the above.**

Question 1.4 **1m**

**What percentage of each class of creditors must approve a scheme of arrangement for it to pass?**

**(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 **1m**

**Which of the following in respect of the automatic moratorium under section 64(1) of the Insolvency Restructuring and Dissolution Act (IRD Act) is incorrect?**

**(a) The automatic moratorium lasts for 30 days.**

**(b) The automatic moratorium may be extended.**

**(c) The automatic moratorium can be obtained without filing an application to court.**

**(d) The debtor has to either propose or intend to propose a scheme of arrangement.**

Question 1.6 **1m**

**Which of the following types of contracts are excluded from the *ipso facto* restriction in section 440 of the IRD Act?**

**(a) Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.**

**(b) Any contract that is a licence, permit or approval issued by the Government or a statutory body.**

**(c) Any commercial charter of a ship.**

**(d) Any contract for a loan with a financial institution.**

Question 1.7 1m

**Which of the following is one of the three statutory objectives of a judicial management?**

- (a) **To allow the directors to oversee the restructuring of the company.**
- (b) To preserve all or part of the company's business as a going concern.**
- (c) **As a means for the secured creditors to realise their security.**
- (d) **To liquidate the company in a fast-track and cost-efficient manner.**

Question 1.8 1m

**Which one of the following is not a debtor who can apply for personal bankruptcy in Singapore?**

- (a) **An individual domiciled in Singapore.**
- (b) **An individual who owns property in Singapore.**
- (c) **An individual who has been carrying on business in Singapore for the last year.**
- (d) An individual whose parents live in Singapore.**

Question 1.9 1m

**Which of the following in respect of rescue financing is incorrect?**

- (a) **Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing.**
- (b) **Rescue financing is financing that is necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding-up of that debtor.**
- (c) Rescue financing enjoys preferential treatment automatically without the sanction of court.**
- (d) **Rescue financing may be sought in a judicial management process.**

Question 1.10 **1m**

**Who may apply to court to place a company into liquidation?**

- (a) The company itself.**
- (b) A creditor of the company.**
- (c) A shareholder of the company.**
- (d) Any of the above.**

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 4 marks] **4m**

**Explain the concept of a cross-class cram-down in a scheme of arrangement and what the requirements are before a court would order a cram-down.**

*In general, a cross-class cram-down empowers a court to approve a plan even though one or more classes of creditors may have rejected the proposed plan, based on the idea that minority creditors may not frustrate the success of a restructuring. In both, a judicial management or a scheme of arrangement, a court may order a cross-class cramdown – that is, the court may order the scheme to be binding on the company on all classes of creditors – if: (1) a majority *in number* of creditors meant to be bound by the arrangement (and those who were present and voting, in person or by proxy) agreed to the plan or arrangement in question; (2) a majority *in value* of creditors represent 75% in value of the creditors meant to be bound by the plan or the arrangement (and present and voting); and (3) the court feels satisfied that the plan does not unfairly discriminate between two or more classes of creditors, and that the plan is “fair and equitable” to each dissenting class. To fall under the ‘fair and equitable’ category, no creditor in the dissenting class could receive less than what it would be entitled in the event the restructuring were to fail, or the plan mustn’t provide a creditor with a claim that would be subordinate to that of a dissenting class. These requirements closely track the “absolute priority” rule under Chapter 11 of the United States Bankruptcy Code.*

***[discuss what is fair and equitable wrt unsecured and secured creditors - s 70]***

Question 2.2 [maximum 2 marks] **2m**

**Name two objectives of the IRD Act.**

*The Insolvency Restructuring and Dissolution Act (IRD Act)’s objectives, as effected in July 2020, enabled Singapore to (1) introduce a new omnibus restructuring law to*

*consolidate all personal and corporate insolvency laws; (2) establish a regulatory regime of insolvency practitioners; and (3) enhance the country's insolvency and restructuring laws. The new law replaced the prior Companies Act*

Question 2.3 [maximum 4 marks] **[4m]**

**State four factors that should be considered under the cash flow test in determining whether a company is "unable to pay its debts" under the IRD Act.**

*Under the IRD Act, a creditor is *prima facie* entitled to a winding-up order for a company if based on the cash flow test, the company is deemed "unable to pay its debts." Several factors, comprising a non-exhaustive list, may be considered by courts evaluating whether a company is unable to pay its debts such that a winding-up order could be granted.*

*Four such factors include: (1) the amount of the company's debt that is either due or will soon be due in the reasonably near future; (2) whether the company has already failed to pay any debts and how much those debts will be, as well as how long they have been in default for; (3) the value of a company's current assets, as well as assets that could be realizable in the near future; and (4) the state of the company's business – and in particular, financial information that may be used to determine the expected net cash flow from the business by deducting cash expenses from future sales (broadly speaking).*

QUESTION 3 (essay-type question) [15 marks]

Question 3.1 [maximum 8 marks] **8m**

**Write a brief essay on**

**(i) rescue financing; and**

**(ii) wrongful trading**

**under the IRD Act.**

Rescue Financing. *The 2020-effectuated IRD, which closely tracks the United States Bankruptcy Code, also brought in the availability of US-style debtor-in-possession financing, known under the IRD as "rescue financing." Rescue financing is financing obtained either (1) because such funding was necessary for the survival of a debtor; or (2) because such funding was necessary to achieve a better realization of assets of the debtor, than it would in a winding-up scenario. Rescue financing, which a court may grant either in a scheme of arrangement or a judicial management process, carries its own priority rules. Rescue financing could either be: (i) treated as part of the costs and expenses of a winding up (if the debtor is, ultimately, wound up); (ii) accorded priority*

over other preferential debts in a winding-up scenario; (iii) secured by a security interest on property of the debtor that isn't otherwise encumbered or be secured by a subordinate interest on property that the debtor is subject to an existing security interest if the debtor wouldn't have been able to obtain unsecured rescue financing otherwise; or (iv) secured by an interest of the same or higher priority if the debtor wouldn't have been able to otherwise obtain rescue financing unless it was secured, so long as the other creditors with security interests in that collateral have their interests "adequately protected." These measures, like the new IRD itself, closely tracks the U.S. Bankruptcy Code.

Wrongful Trading. *Wrongful trading is defined as the "incurrence of debt or other liabilities without reasonable prospect of meeting them in full, when the company is insolvent, or becomes insolvent as a result of such debt." Taking its foundation from English insolvency laws, Section 239 of the IRD Act removes the requirement for criminal liability to first be established, and instead imposes liability on a person – on a personal basis – for a company's debts if that person (1) knew the company was trading wrongfully; or (2) was an offer of the company who, under the totality of the circumstances, should have known that the company was trading wrongfully. By imposing personal liability on people who either knew or should have known that the company was entering into a series of transaction that constituted wrongful trading, the IRD empowers courts to make a declaration of personal liability on such a person upon the application of any party (or person interested in becoming a party to) to the carrying on of business with a company. Such a person may apply for a declaration either for a particular course of conduct, series of transactions, or a singular transaction, if any of these events or acts would have constituted wrongful trading.*

Question 3.2 [maximum 7 marks] **7m**

**Write a brief essay in which you discuss the differences between the judicial management and scheme of arrangement processes.**

*The "scheme of arrangement" and "judicial management" processes are each corporate restructuring and rescue tools under Singapore's overall insolvency system. While they both have some court involvement and include the ultimate proposal of some restructuring plan, there are several key differences between each system.*

*At the threshold level, a judicial management includes the appointment of an insolvency practitioner, who acts as the judicial manager and takes over from the debtor's directors and manages to run the business, similar to a traditional insolvency process. In contrast, a company's management in a scheme of arrangement process remains in control, with no third party or insolvency practitioner granted control of the company. Moreover, the creditors in a scheme of arrangement process negotiate and vote on a restructuring plan, giving them a chief role in the overall restructuring. In contrast, creditors in a judicial management process play a less prominent role and instead, convene as a committee to consider the judicial manager's proposals.*



*The role of courts also differ between both systems. In a scheme of arrangement process, a court's role is less hands-on and more supervisory. Courts are implicate mostly to oversee hearings related to applications brought by parties, or to manage or extend moratorium deadlines. While in a judicial management a court *does* all these things, the court has a greater role, from beginning with appointing the judicial manager, to hearing applications by creditors whenever they are dissatisfied with the judicial manager's acts.*

*Schemes of arrangement, unlike judicial management orders, do not have specific conversation mechanisms from corporate rescue to liquidation. In a scheme of arrangement context, when the court-granted moratorium finishes with no scheme approved, creditors or the company may choose to apply for a winding-up, or even a judicial management process. However, in a judicial management, unless the court extended the 180 moratorium, a judicial management order will be discharged after 180 days and the court has discretion to decide whether the company may or should be placed into liquidation. As to the moratorium itself, a scheme of arrangement's moratorium could be extended upon application of the debtor, while a judicial management's moratorium can be more extensive, and the court has discretion to choose whether to allow otherwise prohibited proceedings or enforcement actions to be commenced or continued.*

*Lastly, a proposed scheme manager's job is to administer a scheme AFTER creditors approve it, whereas a judicial manager runs the entire company and takes over the powers from the board of directors. The judicial manager also has the power – among other things – to sell and borrow money or security, dispose assets, and effectively take over the business during the course of the judicial management process.*

***[there are also differences in disclaimer of onerous property and avoidance provisions]***

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

***ABC Limited (the Company) is incorporated in Singapore and is the ultimate holding company of a group of construction and property companies (the ABC Group). As at 31 December 2021, the ABC Group owns and operates 16 construction drilling rigs outside of Singapore in Australia and the United Kingdom. The Company's directors and major shareholders are Mr X and Mr Y, who collectively own 57% of the shares in the Company. Mr X and Mr Y are based in Singapore.***

***The ABC Group traditionally funds its business via bank lending, with project financing facilities advanced directly to the underlying project companies within the ABC Group.***

***As the ABC Group's ultimate holding company, the Company's assets comprise largely of its investments in its subsidiaries and intercompany receivables from its subsidiaries. The Company does not have fixed assets and operational cashflows and is dependent on dividends and receivables from its subsidiaries to meet its own financial obligations. The main operating subsidiaries of the ABC Group are Alpha Pte***

**Ltd and Beta Pte Ltd (both incorporated in Singapore and wholly owned by the Company).**

**The ABC Group recently expanded its business into property ownership and owns property in Australia via another subsidiary, Charlie Pty Ltd, which is incorporated in Australia. The properties in Australia are mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law. Mr X and Mr Y are the majority directors of Charlie Pty Ltd.**

**To finance its growing operations, the Company issued a Multicurrency Medium Note Programme (MTN) under which the Company could raise unsecured debt financing of up to USD 600 million. Funds raised by the Company under the MTN were either advanced to its subsidiaries as intercompany loans, or injected as capital into its subsidiaries. As at 31 December 2021, the total unpaid amount under the MTN notes was approximately USD 267 million.**

**The Company also provided corporate guarantees to financial institutions to guarantee the performance of its subsidiaries under various facility agreements. As at 31 December 2021, the Company had provided seven guarantees to various lenders, for a total liability of approximately USD 160 million.**

**Besides the above liabilities, the Company has also obtained shareholders' loans of USD 120 million from Mr X and Mr Y. These shareholders' loans are repayable on demand.**

**In recent years, the ABC Group's business has been adversely impacted by an extremely challenging operating environment and instability, which has caused various entities in the ABC Group to default on their bank facilities, including entities whose debts are guaranteed by the Company.**

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 4 marks] **3m**

**The bank lenders have come together to form a working group and the working group has asked its advisors to provide it with a written analysis covering the following critical issues for the Company. In particular, the bank lenders are considering the possibility of placing the Company into judicial management. Provide analysis on the following issues:**

- (a) Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order. (2 marks)**
- (b) Assuming that the Company is placed under judicial management, what requirements must be satisfied in order for the Company to be able to access rescue financing under the IRD Act? (2 marks)**

*(a) At a threshold level, ABC Limited must have at least SGD 15,000 in debt, for a liquidated sum immediately payable to a creditor, and have at least some business in Singapore (if not its centre of main interests or its incorporation). An application would need to be made by the Company, its directors, or its creditors, and the Company must be unable to pay its debts with a reasonable probability that it could be rehabilitated/preserved as a going concern/or creditor interests would otherwise be served. For ABC Limited to enter judicial management proceedings, ABC Group's bank lenders would likely first need to trigger the guarantees, which would then put ABC Limited on the hook. If the Company is then unable to pay or it becomes clear that a JM proceeding is needed to protect its own creditor interests, or that the Company is unable to pay, then these facts may be presented to the court to obtain a judicial management order.*

**[See s 89 to 91 of IRDA]**

*(b) To obtain rescue financing in a judicial management proceeding, the Company would need to show that the funding was necessary for its survival or that doing so would lead to a better realization of its assets. Since the Company largely has unsecured notes under the MTN facility and is otherwise encumbered by the corporate guarantees to ABC Group, it is likely that a senior rescue financing facility would not implicate the requirements of rescue financing for facilities with existing security interests, where there would be a need to then adequately protect the existing lenders.*

**[discuss priority orders available under s 101]**

Question 4.2 [maximum 6 marks] **4m**

**As things transpired, the Company was placed under judicial management.**

**The bank lenders are now considering whether Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd should also be placed into judicial management. Provide analysis on the following issues:**

**(a) What are the steps that need to be taken in order to place Alpha Pte Ltd and Beta Pte Ltd under judicial management out of court? (3 marks)**

*Alpha and Beta could be placed under judicial management out of court with the requisite approvals from creditors, so long as they reach a resolution to do so. Under Section 94 of the IRD Act, Alpha and Beta could voluntarily be placed into judicial management without needing first to approach courts if they are, or likely to become, unable to pay their debts, a requisite majority of creditors make a resolution to put them in a JM, and that one or more of the statutory purposes of a judicial management are fulfilled.*

**[discuss steps under s 94]**

**(b) Is Charlie Pty Ltd eligible to be placed into judicial management in Singapore and, if so, what must be demonstrated for it to be so eligible? (3 marks)**

*Foreign companies may be put into judicial management, so long as they are either registered as a foreign company in Singapore, have their centre of main interests in Singapore, have substantial assets in Singapore, Singapore law governs a loan or other transaction, or that they have submitted to the jurisdiction of Singapore courts for the resolution of disputes relating to a loan or some other contacts. Since Charlie Pty Ltd, an Australian company, has properties mortgaged to a Singapore bank pursuant to a bank facility governed by Singapore law, Charlie Pty Ltd has sufficient contacts to be eligible to undergo a judicial management proceeding in Singapore.*

**[discuss that companies liable to be wound up in SG can be placed under JM, and that they need to show substantial connection to SG]**

Question 4.3 [maximum 5 marks]

**Assuming Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd are also placed into judicial management in Singapore.**

**Please provide analysis on the following issue:**

**(a) Would the assets owned by the ABC Group in jurisdictions outside of Singapore be protected? If there is no automatic protection, what can be done to obtain such protection? (5 marks) 1m**

*In general, the court may be open to granting a moratorium order not just to a company undergoing judicial management, but also its subsidiaries and related companies, if they play a vital or integral role in the proposed restructuring plan. Since most of ABC Group's portfolio companies are the operating companies in question, a restructuring plan could implicate these companies and therefore, a court might grant them moratorium protection.*

*As to the assets themselves, ABC Group could explore enforcement or recognition applications in other jurisdictions through the UNCITRAL Model Law of Insolvency, which could enable a judicial manager to have another jurisdiction recognize the judgment of Singapore courts in order to extend the moratorium to assets in their respective jurisdictions based on principles of recognition.*

**[an automatic moratorium arises under s 96 over property (s88), but whether there is protection overseas depends on recognition regime of that relevant jurisdiction]**

**\* End of Assessment \***

43m - well done!