



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.

For a scheme of arrangement to be binding, it should be passed and approved as follows :

- (i) A majority in number in each class of creditors who are present and vote (in person or through proxy) at the meetings convened by court; and**
- (ii) The majority in number must represent 75% or more in value of that class of creditors who are present and vote at the meeting.**

However, the concept of cross-class cramdown was introduced to minimize the overall impact of certain minority creditors such that the scheme may be approved despite have one or more classes of creditors have rejected the same.

Under s.70 of the IRD Act, the court (on the application of the company, or of a creditor of the company who has obtained the leave of the Court to make an application) can still order that a scheme of arrangement be binding on the company and all classes of creditors (not shareholders) if :

- a. a majority in number of the creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) at the relevant meeting, have agreed to the compromise or arrangement;**
- b. the majority in number of creditors (as above) represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) at the relevant meeting; and**

- c. ***the Court is satisfied that the compromise or arrangement does not discriminate unfairly between 2 or more classes of creditors, and is fair and equitable to each dissenting class.***

To determine whether it is fair and equitable to each dissenting class, the following test is adopted :

- (i) ***no creditor in the dissenting class receives less under the scheme of arrangement than in other scenarios where the proposal does not become binding; and***
(ii) ***in the dissenting class which are unsecured creditors, each creditor in the class should be treated equally and those claims subordinate to them shall not receive any distribution until they are paid in full.***

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

Name two objectives of the IRD Act.

- (1) ***Introduce a new omnibus legislation consolidating the personal and corporate insolvency and restructuring laws***
(2) ***Enhance insolvency and restructuring laws of Singapore***

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.

- (1) ***The quantum of all debts which are now due or will be due in reasonably near future***
(2) ***Whether payment of the debts is being demanded or is likely to be demanded***
(3) ***The value of the company's current assets and those which are realisable in reasonably near future***
(4) ***Any other income or payment which is receivable by the company in reasonably near future***

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.

(i) Rescue Financing

Rescue financing is financing that is necessary for the survival of a debtor and/or to achieve a more advantageous realisation of the debtor's assets, comparing to winding-up of the debtor.

Rescue financing is available to debtors which are under scheme of arrangement and judicial management process in accordance with s.67 and s.101 of the IRD Act respectively. Applications are to be made to the Court by the debtor (in scheme of arrangement) and judicial manager (in judicial management) and accordingly, the Court may make an order that such rescue financing obtained by the debtor shall :

- a. be treated as part of the costs and expenses of the winding-up if the debtor is wound-up at the end***
- b. enjoy priority over preferential debts if the debtor is wound-up at the end***
- c. be secured by a security interest on property of the debtor (which is not subject to existing security interest) or be secured by a subordinate security interest (which is subject to existing security interest), if the debtor would not have been able to secure unsecured rescue financing from other***
- d. be secured by a higher priority security interest on property which is subject to existing security interest, if the debtor would not have been able to secure rescue financing unless secured in such manner and sufficient protection is given to the existing security interest***

(ii) Wrongful Trading

New provision in relation to wrongful trading is added to Singaporean insolvency legislation regime by the IRD Act. The Court is now empowered to make a declaration that a person who is a knowingly party to the company which has traded wrongfully, to be personally responsible for the debts or liabilities so incurred.

A company is seen as trading wrongfully if it incurs debts or liabilities without reasonable prospect of meeting them in full in case the company is insolvent or becomes insolvent as a result of incurring such debts or liabilities.

However, a company or a person party to the carrying on of business with a company may apply to court for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading.

Under s.239 of the IRD Act, person liabilities would be imposed on a person regarding a company's debt if :

- (1) the person knew that the company was trading wrongfully; or***

(2) the person as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully.

The new provision of s.239 of the IRD Act was borrowed from the English insolvency legislation and unlike the previous position, criminal liability is no longer required to be established before the provision has any effect.

Question 3.2 [maximum 7 marks] **5m**

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

Scheme of arrangement ("SA") and judicial management ("JM") are both corporate rescue procedures available in Singapore and governed by Part 5 and Part 7 of the IRD Act respectively.

To enter into SA, the application is to be made by the company who proposes or intends to propose a compromise or arrangement between it and its creditors. On the other hand, JM can be initiated by the company, its directors or its creditors in case the company is unable to pay its debts while there is reasonable prospect of rehabilitating the company (and any purpose under s.89(1) of the IRD Act is achievable). **[a company need not apply for s64 moratorium before it can propose a scheme under s210 CA if it does not need that protection]**

Upon filing of SA application, there would be an automatic 30-day moratorium under s.64 of the IRD Act for the company to propose a SA with its creditors. Such period may be extended by the court upon application of the company. Upon filing of JM application, there would be an automatic moratorium on legal proceedings against the company and a more extensive moratorium will come into effect in case a JM order is made during the period (extendable period of 180 days). However, the court or the judicial manager may allow certain prohibited proceedings to be commenced or continued. **[the 30 day moratorium arises upon application under s 64 for a moratorium, not the filing of any application for leave to call a scheme meeting or sanction of a scheme]**

SA is a debtor-in-possession regime but it is more desirable that the company would appoint a scheme manager to oversee the restructuring process. The scheme manager shall administer the scheme after it has been approved by creditors, who is also responsible for preparing the scheme, adjudicating claims and chairing meetings. In the case of JM, a judicial manager would be appointed by the court and all responsibilities, functions and powers of the board of directors would be transferred to him on appointment, in addition to taking custody of the company's assets. **[scheme manager is appointed in the scheme, and typically is the financial advisor advising the debtor prior to the scheme meeting]**

Scheme manager or judicial manager both have the power to dispose of the property of the company. In case of SA, the court may require submission of information in relation to disposal/acquisition under s.64(6) of the IRD Act and restrain disposal of property, etc. upon application of creditors under s.66 of the IRD Act. In case of JM, judicial manager may exercise its powers under First Schedule to the IRD Act in disposing of the company's assets.

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

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)

According to s.89(1) of the IRD Act, purposes of judicial management are as follows :

- (i) the survival of the company, or the whole or part of its undertaking, as a going concern;**
- (ii) the approval under section 210 of the Companies Act or section 71 of a compromise or an arrangement between the company and any such persons as are mentioned in the applicable section;**
- (iii) a more advantageous realisation of the company's assets or property than on a winding up.**

In order to obtain a judicial management order, it must be presented to the Court that, under s.91(1) of the IRD Act, "the company is or is likely to become unable to pay its debts" and "the making of the order would be likely to achieve one or more of the purposes of judicial management mentioned in section 89(1)".

(b)

Under s.101(10) of the IRD Act, for the Company to obtain rescue financing, such financing must be either :

- (i) necessary for the survival of the Company, or of the whole or any part of the undertaking of the Company, as a going concern**
- (ii) necessary to achieve a more advantageous realisation of the assets of the Company than on a winding up of it**

[also discuss the priority orders that are available pursuant to a court application]

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

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)**

For Alpha Pte Ltd and Beta Pte Ltd to be placed under judicial management without having to first apply to the court, it can be done by the new voluntary judicial management process introduced by s.94 of the IRD Act.

Under s.94(1) of the IRD Act, the 2 companies may obtain a resolution of the company's creditors for them to be placed under the judicial management if they are, or likely to become, unable to pay their debts and there is reasonable probability of achieving one or more of the purposes of judicial management as in s.89(1) of the IRD Act.

Steps to be taken are given in details in s.94 of the IRD Act. Proper written notices should be given before appointment of the interim judicial manager and convening of the meeting of creditors. At the meeting, the companies shall be placed under judicial management if it is resolved by a majority in number and value of the creditors present and voting. According, it would be also resolved by majority that a person to be appointed as judicial manager.

- (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)**

Under s.88(1) of the IRD Act, a company may be placed into judicial management if it is eligible to be wound up under the IRD Act. Foreign company like Charlie Pty Ltd (incorporated in Australia) is also eligible if it has "substantial connection" with Singapore according to s.246 of the IRD Act.

According to s.246(3) of the IRD Act, the Court in deciding whether a company has a substantial connection with Singapore, may rely on the presence of one or more of the following matters :

- (1) Singapore is the centre of main interests of the company;**
- (2) the company is carrying on business in Singapore or has a place of business in Singapore;**
- (3) the company is a foreign company that is registered under Division 2 of Part XI of the Companies Act;**
- (4) the company has substantial assets in Singapore;**
- (5) the company has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction; and**
- (6) the company has submitted to the jurisdiction of the Court for the resolution of one or more disputes relating to a loan or other transaction.**

It appears that Charlie Pty Ltd is eligible to be placed into judicial management in Singapore as there is such "substantial connection" from the following factors :

- (i) Its properties in Australia are mortgaged to a Singapore bank pursuant to a banking facility that is governed by Singaporean law**
- (ii) Its majority directors (Mr. X and Mr. Y) and holding company (ABC Limited) are based and incorporated in Singapore thus it should conduct the administration of its interests on a regular basis and it should be ascertainable by third party (the COMI issue)**

Question 4.3 [maximum 5 marks] 5m

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)**

Under s.99(1) of the IRD Act, upon making of judicial management order, judicial manager takes custody of the company's property and such property include those both in Singapore or elsewhere according to s.88(1) of the IRD Act.

There is no automatic protection for assets owned by the ABC Group in jurisdictions outside of Singapore. To obtain such protection, the judicial manager(s) should look into the books of account of the companies to locate those overseas assets.

Once the assets are located, the judicial manager should seek recognition of the judicial management order in the jurisdictions where the assets are located.

Depending on the locations of the assets, there are several regimes which the Singaporean proceedings may be recognized, namely the Reciprocal Enforcement of Commonwealth Judgments Act, Reciprocal Enforcement of Foreign Judgments Act and the Choice of Courts Agreement 2016.

Seeking of recognition could be easier in countries which have adopted the UNCITRAL Model Law on Cross-Border Insolvency, which Singapore had adopted since 2017.

Once the judicial management order is recognized, the judicial manager may enforce the same in accordance with local regulations and take possession of the assets or enforce relevant rights, as appropriate.

*** End of Assessment ***

47m - well done!