



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] **2m**

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 Singapore's Insolvency, Restructuring and Dissolution Act (the "IRD Act"), the concept of cross-class cram-down was introduced. This allows the court to approve a scheme of arrangement even though a minority class of creditors has not voted in favour of it, subject to certain safeguards.

In the IRD Act, this can occur if:

- 1. The scheme is approved by a majority of creditors representing at least 75% in value of total debts.*
- 2. The court finds that creditors wouldn't get a better outcome if the company were wound up.*
- 3. The scheme does not unfairly discriminate between creditors and is fair to the dissenting class.*

]

[discuss what is fair and equitable under s 70]

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

Name two objectives of the IRD Act.

[
The IRD Act in Singapore main objective include the aim to:

- A. *Introduce laws concerning insolvency and restructuring that consolidates these laws (which were previously spread out) to provide clarity and increase efficiency.*
- B. *Enhance Singapore's insolvency and restructuring laws where companies facing financial difficulties have mechanisms to restructure their debts and potentially avoid liquidation.*

]

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.

[

The following should be considered under the cash flow test in determining whether a company is "unable to pay its debts" under the IRD Act:

- a) *Taking into account all current and near-future debts of the company.*
- b) *Assessing if creditors are asking for or likely to ask for their money back to pay for the company's outstanding debts owed.*
- c) *If the company has failed to pay any of its debts, the amount of such debt, and the duration of non-payment will be considered.*
- d) *The duration since the start of liquidation proceedings which observes the time elapsed since winding-up proceedings began.*
- e) *Looking at the company's current assets (company's worth) and those that can be easily converted into cash in the near future.*
- f) *The condition of the company's operations to evaluate expected net cash flow and reviewing the company's business status to determine the net cash flow by subtracting cash expenses needed to generate projected future sales from those sales.*

]

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

Question 3.1 [maximum 8 marks] **6m**

Write a brief essay on

(i) **rescue financing; and**

(ii) **wrongful trading**

under the IRD Act.

[

(i) Rescue financing.

The Insolvency, Restructuring and Dissolution Act (IRD Act) of Singapore provides a path for 'rescue financing' to financially distressed companies seeking to restructure their debts. This mechanism aims to facilitate business turnaround and improve the chances of company survival. The basis of this tool drew inspiration for the USA style debtor in possession finance (DIP).

Rescue financing, as defined in the IRD Act, represents critical funding necessary either for a debtor's survival or to achieve a more advantageous realisation of assets than would be possible under liquidation. It is often sought during a judicial management process or a scheme of arrangement.

Rescue financing doesn't automatically enjoy preferential treatment or priority over existing creditors. Such a priority is granted only by the court per the IRD Act on application by the debtor company. The court may also make an order that the rescue finance be treated as part of the costs of the liquidation if the debtor is later wound up.

[discuss what are the priority orders available]

(ii) Wrongful trading

Under the IRD Act, wrongful trading is a provision designed to protect creditors from directors who, in the knowledge of their company's insolvency, continue trading, thereby aggravating losses for creditors.

Section 239 of the IRD Act introduces a new wrongful trading provision. It stipulates that if a company incurs debt or liabilities without reasonable prospect of meeting them in full, and the company subsequently goes into insolvent liquidation, the directors may be personally liable for these debts. The court may declare this if it determines that the director knew, or ought to have concluded, there was no reasonable prospect of avoiding insolvent liquidation. This has been adopted from English insolvency law and criminal liability no longer needs to be established.

In essence, the IRD Act underscores the need for responsible corporate behaviour, emphasising that directors have a legal obligation to act in the best interest of their creditors when insolvency becomes inevitable.

In conclusion, the IRD Act's provisions on rescue financing and wrongful trading demonstrate Singapore's commitment to providing a healthy legal system for corporate restructuring and insolvency, balancing the need for business rescue options and safeguarding creditors' interests from directors gross negligence.

][discuss that a declaration can be sought by company or interested person as to whether a transaction is wrongful trading]

Question 3.2 [maximum 7 marks] **4m**

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

[
In Singapore, the Insolvency, Restructuring and Dissolution Act (the "IRD Act") includes two important tools for corporate rescue or restructuring, namely, judicial management and scheme of arrangement. Both of these corporate rescue tools strive to assist companies facing financial challenges, but their processes differs as follows:

Judicial Management

A key difference with regards to Judicial management is the involvement or control by the court, as the court appoints the insolvency practitioner as the judicial manager. This court appointed judicial manager takes over the control of the company from the existing management and directors. This method is used when a company is insolvent or nearing insolvency but holds a good prospect of recovery or keeping its business operational.

The court appointed judicial manager possesses the authority to propose and execute a restructuring plan, which is subsequently presented for approval by the creditors. This process is considered to be more of an insolvency process, a common criticism of this restructuring tool. Creditors have little involvement with the Judicial management process and only has a say insofar the limited powers granted to their formation of a creditors meeting.

Scheme of Arrangement

On the other hand, a scheme of arrangement is a more flexible process that enables a company to arrive at an agreement with its creditors or shareholders to reorganize its debts or similar arrangement. It stands apart from judicial management as it doesn't require the company's insolvency, and the current management and directors remains in control.

In a scheme of arrangement, the company proposes a compromise or restructuring plan to its creditors or members. This plan needs approval from a majority, representing at least 75% in value, of each class of creditors who are voting at the meeting. Once the court sanctions the scheme, it becomes binding for all creditors, even those minority creditors who didn't vote in favour.

The main differences between the two processes are mainly the degree of court involvement and the change in the company's control. Judicial management demands a higher level of court involvement as it is essentially an insolvency process and under this process there is a transfer of control from the existing management to the judicial manager. In contrast, a scheme of arrangement is a more collaborative process between the parties involved (Creditors and debtors and management), keeps the current management in place, and can be initiated regardless of the company's solvency status and this requires less court involvement.

]

[other differences such as objectives, moratoria, 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) Judicial management serves as a rescue tool for a company that is insolvent or approaching insolvency, providing it with the opportunity to survive, restructure, or achieve a more advantageous realisation of its assets for creditors than would be possible in liquidation. The procedure involves a judicial manager taking over the management of the company from current management (including Directors).

For the court to grant a judicial management order, the company or its creditors must demonstrate that the company is or will be unable to pay its debts, and that the order is likely to achieve one of the purposes set out in the IRD Act. These purposes are survival of the company, the approval of an arrangement between the company and its creditors, or a more beneficial realisation of the company's assets than on a winding up. The case of ABC Limited appears to align with these statutory purposes given its financial distress and debt defaults.

(b) Access to rescue financing is a key element in the judicial management process under the IRD Act. Rescue financing refers to funds provided to an insolvent company to enable its survival, the carrying on of its business, or the achievement of a better outcome for creditors.

In order for the Company to access rescue financing under the IRD Act, the following requirements must be met:

The judicial manager needs to be satisfied that the rescue financing is necessary for the survival of the company, or for achieving a better return for the creditors as a whole than would likely be the case if the company were wound up without the financing.

*The judicial manager must apply to the court for an order authorising the rescue financing. This includes requests to grant the rescue financing provider a priority over existing. **[discuss the different levels of priority available]***

Given the ABC Group's defaults on bank facilities and significant outstanding debts, the conditions for accessing rescue financing may exist, provided the judicial manager can successfully demonstrate that the financing is necessary and would provide a better outcome for creditors.

]

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)***

[

Placing a company into judicial management outside of court requires the company's creditors and members to agree to this voluntarily. Here are the steps:

- 1. The company must convene a meeting of its creditors to propose and discuss the resolution of placing the company into judicial management.*
- 2. If at least 75% in value of each class of creditors at the meeting approves the proposal, the company can proceed with judicial management.*
- 3. The company needs to identify and appoint a qualified insolvency practitioner as the judicial manager.*

] [see s94 for the steps]

(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)

[
As Charlie Pty Ltd is an Australian entity, it can only be placed into judicial management in Singapore under certain circumstances. As it's a foreign debtor it needs to be shown that there is "substantial connection" with Singapore. To do so a foreign company can be placed under judicial management in Singapore if it shows one of the following:

- 1. Singapore is the centre of main interests (COMI) of the company, or*
- 2. The company has an establishment in Singapore or has a place of business in Singapore, or*
- 3. the debtor has chosen Singapore law as the law governing a loan or other transaction.*

Charlie Pty Ltd has operations or assets in Singapore, it has Singaporean directors, and it has financing which is governed by Singapore law.

Hence the court in Singapore can make the determination that Charlie Pty Ltd is eligible for judicial management in Singapore.

]

[discuss that it needs to be a company liable to be wound up in Singapore, hence the requirement of substantial connection]

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) 3m

[
Singapore's judicial management covers a company's entire assets, including those outside the country but the protection of assets abroad will depend on other nations cross border policies and their recognition of Singapore's judicial system.

For the ABC Group, this means that the Australian and UK assets might not be automatically protected by the judicial management order from Singapore. The cross-border implications of insolvency procedures rely on each nations jurisdiction's rules and the principles of cross border insolvency.

So, in order to secure the ABC Group's assets in Australia and the UK, the judicial manager might have to appeal to the courts in those countries for them to recognize the judicial management order from Singapore.

] [
[refer to the moratoria that arises in SG instead of just saying that the JM covers a company's entire assets]

*** End of Assessment ***

38m