



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.

The concept of cross-class cram-down¹ in a scheme of arrangement is to assist in the rehabilitative context in Singapore. This concept forms part of a restructuring regimes where the debtor stays in possession throughout the restructuring period. This specific procedure allows a rescue plan to be facilitated by imposing it on minority creditors who are dissenting. Certain classes of creditors who may form a majority are able to impose a scheme of arrangement that the majority agree to on the dissenting minority creditors. The procedure under the IRD Act allows unsecured creditors to be crammed-down without the need to divest any share they may have in the company (as was previously required).

In the context of a scheme of arrangement² the court can intervene and order that the scheme be binding but on all classes of creditors, save for shareholders as long as the following are satisfied:

- *The majority of creditors (regarding numbers) agree to be bound by the scheme of arrangement and that they represent three fourths (regarding value) of all creditors who are to be bound and that group all vote.*
- *The court agrees that it is fair to all creditors, including those who agree and disagree. The court are unlikely to deem a scheme of arrangement fair where i) those dissenting will be disadvantaged by the scheme as opposed to outside the scheme, ii) the 'absolute priority rule' prevails (this ensures all creditors who are senior are paid in full before those subordinate creditors)³.*

¹ IRD Act, s.64

² Idem, Pt 5, s.70

³ Ibid and Pt 7, s.117

[discuss requirement that there is no unfair discrimination and what is fair and equitable - s 70]

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

Name two objectives of the IRD Act.

Two objectives of the IRD Act are as follows:

- 1. To create a piece of legislation that encompassed insolvency laws relating to individuals, companies and restructuring processes, making insolvency law more user friendly.*
- 2. To create a regime that insolvency practitioners can use.*

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.

In order to determine if a company is not able to pay its debts under the cash flow test pursuant to the IRD Act⁴, some of the following factors must be present - the four factors below form part of a non-exhaustive list:

- 1. Consideration about whether a debt has been demanded or could be demanded.*
- 2. Consideration about the amount of all debts owed and a due or could become due soon.*
- 3. Whether the company was owed payment by others which would be considered an income that they may expect to receive soon.*
- 4. Whether any financial institutions may be prepared to lend monies to the company which would be repaid at a future point but later than when the debt is currently due.*

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***

⁴ IRD Act, s.125(2)(c)

under the IRD Act.

- i. *Rescue financing (also called debtor-in-possession financing “DIP”), is the term used to describe when a debtor tries to demonstrate to the court, post-commencement of the winding-up of the company, that it is necessary and/or necessary in order to obtain a better realisation of any assets that are sold than it would do if the company was wound-up.*

The debtor will need to satisfy the court that it has refinancing and could order that it is secured against any unsecured property or, where property is subject to existing security it still be secured so long as the exiting security is the same or height in priority. The court may also order that any refinancing is used towards costs or has priority over other preferential debts, should the debtor ultimately be wound-up. Any other lenders will only obtain preferential status if, court approves and there is provision for this in the rescue financing. The court can order DIP if a debtor makes an application whether as part of a scheme of arrangement⁵ or by judicial management⁶

Singapore have been trying to raise their profile as an international hub⁷ and made some of the aforementioned changes and a part of the way to do this was by adopting some of the US Bankruptcy Code⁸.

- ii. *Wrongful trading is captured pursuant to the IRD Act⁹, which means that those individuals involved in any wrongful trading can be held personally liable for all the debts of the company. Those who have knowledge of the wrongdoing or should have known. Those considered by the court to have an interest in transactions which may appear to be wrongful trades can apply to the court for a declaration that they are not. This new provision lightens the burden of qualifying liability by no longer requiring the criminal standard of proof to be shown.*

[discuss what is wrongful trading, and also that an interested person can apply to court for declaration that a transaction is not 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.

⁵ IRD Act, s.67

⁶ Ibid, s.101

⁷ Report to the Committee to strengthen Singapore as an International Centre of debt Restructuring, 20 April 2016 (<https://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-the-report-of-the-committee-to-strengthen/>)

⁸ US Bankruptcy Code, s. 364

⁹ IRD Act, s.239

Judicial management in Singapore falls under the remit of the court, whether by application to court or resolution passed by the creditors. In a scheme of arrangement where the company is applying, then charge holder consent is not a requirement. The first apparent difference being that the consent of creditors is not necessary.

In order to initiate a scheme of arrangement more categories or group types can apply for a scheme of arrangement, including the company, creditors, members, liquidator or judicial manager. However, there is a difference and limitation on those who may apply for judicial management which only include, the company directors or creditors.

A key difference between judicial management and a scheme of arrangement is that an insolvency practitioner is appointment by the court in relation to the former and they take the place of the directors¹⁰, while in relation to the latter, the debtor remains in possession of the running of the company throughout.

Generally creditors have more involvement and say in a scheme of arrangement where the debit remains in possession of the company and seeks to agree a scheme with the creditors. In judicial management the creditors, although involved via liquidation committee involvement¹¹, have less say in the the management of the process which can be a significant difference for them.

While the court is involved in both processes, judicial management generally falls under the remit and supervision of the court but with a scheme of arrangement the sanction of the court is required at certain points but the whole process is not directly under the supervision of the court, although there is some involvement during the process.

The court appoints a judicial manager in the judicial management processes but under a scheme of arrangement, whilst the court can appoint a scheme manager, it does not do this automatically - it is often the whoever is putting forward the scheme who appoints the scheme manager and not the court.

[discuss differences in moratoria, objectives, disclaimer of onerous property, 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.

¹⁰ Ibid, s.99

¹¹ IRD Act, 109

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] **0m**

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) The purpose of judicial manage is to permit the company to achieve on of the three purposes of placing a company into this type of management. The three purposes of judicial management include The following will need to be presented to court in order to obtain a judicial management order

b) On the assumption that the company is placed under judicial management, the following requirement need to be satisfied to be able to access rescue financing under the IRD Act.

[see s 89 to 91 of IRDA, as well as s101]

Question 4.2 [maximum 6 marks] **2m**

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)

In order to place APL, BPL under judicial management out of court would be using the voluntary process under s. 94(1) of the IRD Act. However, this is only permissible if the company is or will be unable to pay its debts, one of the purposes of judicial management is a potential outcome¹² and creditors pass a resolution in relation to engaging this process.

[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)

¹² IRD Act, s.89(1)

In relation to CPL, it may be possible for them to be placed under judicial management, however they will need to show the following before the court will grant this. It is not capable of utilising the voluntary process.

[see s 88 for definition of company that can be placed under JM, and s 246]

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**

ABC Group own 16 rigs which appear to be operating in the UK and Australia, therefore outside Singapore. They would not automatically be protected if placed into judicial management, however, further attention would need to be paid to the contracts and facilities as there may be certain kinds of security that may assist or clauses which may afford some protection. Any secured creditors have the ability of realising their security outside of any insolvency process so long as, if under judicial management, they have the consent of the court¹³ though they may not be able to recover interest if the security was provided within 12 months.

[discuss that moratorium arises in SG, but need to consider recognition and enforcement of moratorium in the relevant jurisdictions - whether they adopted model law or have recognition laws]

*** End of Assessment ***

31m

¹³ IRD Act, 223(2)