



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 **0m**

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] **3m**

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.

[A cross-class cram-down is a situation where a court, on the application of a company or a creditor, orders a compromise or arrangement to be binding on dissenting creditors. This is provided for in s. 70 IRD Act and is subject to the following requirements:

- a) A proposal for a compromise or arrangement is presented to creditors at a duly convened meeting of the creditors of the company;*
- b) The creditors were placed in two more classes for purposes of voting on the compromise;*
- c) The majority of creditors representing three- fourths of the value of the creditors agreed to the compromise or arrangement;*
- d) The compromise or arrangement did not discriminate unfairly between two or more classes or creditors and is fair and equitable to each 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 was enacted in 2018 and its objectives were:

- a) To amend an consolidate laws relating to making compromise or arrangement with creditors, receivership, corporate insolvency and winding up;*
- b) To regulate insolvency practitioners]*

Question 2.3 [maximum 4 marks] **3m**

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.

[Section 125(2) of the IRD Act provides for the following criteria for determining inability to pay debts that includes a requirement in sub-section (c) to prove to the satisfaction of court that the company is unable to pay its debts. Factors that should be considered include:

- a) The quantum of all debts due at present and in the near future;*
- b) Whether payment has been demanded or is likely to be demanded;*
- c) Expected net cash flows from the company’s business; and*
- d) Any other income or payment which the company may receive in the reasonably near future.*

[see Sun Electric Power v RCMA]

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

Question 3.1 [maximum 8 marks] 5m

Write a brief essay on

(i) rescue financing; and

(ii) wrongful trading

under the IRD Act.

[(i)Rescue Financing is part of the measures for restructuring or rescuing a debtor in financial distress. The key rescue mechanisms provided for in the IRD Act are the scheme of arrangement and Judicial Management. The former is a debtor in possession mechanism while the latter involves appointment of a Judicial manager who is an insolvency practitioner.

A key aspect of rescue is the ability to obtain new financing. A debtor may not be in position to obtain finance in the normal course of business either because all assets have been pledged to existing creditors or it is simply not feasible to provide credit due to the precarious condition of the debtor. The absence of new financing may significantly cripple efforts to rescue or restructure the business.

Insolvency frameworks including the IRD Act (s.67-for rescue financing in scheme of arrangement and 101-for rescue financing in judicial management) provide special protections or incentives for rescue financing, otherwise known as post commencement financing. These broadly relate to super priority status given to rescue finance that is equal to, or higher in ranking than existing security interests, priority over preferential debts, or treatment as part of the costs of winding up.

[discuss what constitutes rescue financing, and what are the priority orders available pursuant to a court application]

(ii) Wrongful trading

Wrongful trading is defined in s.239(12) of the IRD Act as where a company, when insolvent, incurs debts or other liabilities without reasonable prospect of meeting them in full or incurs debts or other liabilities that it has no reasonable prospect of meeting in full and result in the company becoming insolvent.

An officer of the company and any person who was party to wrongful trading may be held personally liable for the debts and liabilities of the company.

Knowledge of the status/affairs of the company is a key requirement in order to establish liability for wrongful trading as the Act requires that the party should either have knowledge that the party is trading wrongfully or ought to have that knowledge. Officers of the company such as directors are presumed to have such knowledge.

An action for wrongful trading may be brought by a judicial manager, liquidator, official receiver or creditor or contributory of the company.]

[discuss that it doesn't require criminal liability for civil liability to be imposed and that an interested person can apply for a 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.

Both Judicial management and Scheme of Arrangement are restructuring tools provided for in the Insolvency, Restructuring and Dissolution Act of 2018 (IRD Act). Judicial management is provided for in part 7 of the IRD Act. The key features of judicial management are that the company is or is likely to be unable to pay its debts but there is a reasonable likelihood of rehabilitating the company. An application is made to court to appoint a judicial manager. A scheme of arrangement is one of the tools available to a company in financial distress to enter into a compromise or arrangement with its creditors. It is provided for in part 5 of the Insolvency, Restructuring and Dissolution Act of 2018 (IRD Act). The key features of a scheme of arrangement include an application to court made by the company, moratorium, requirement for creditors to approve the scheme, and powers of court to cram down dissenting creditors.

The following are the key differences between judicial management and a scheme of arrangement:

- a) *An application to place a company under judicial management may be made by the company, directors, or any creditor (including contingent or prospective*

creditors) of the company (s.90, 91 IRD Act) while a scheme of arrangement application can only be made by the company (s.64 IRD Act);

- b) *Judicial Management involves the appointment of a judicial manager, who is an insolvency practitioner, who takes control of the company, while under a scheme of arrangement, the management including the directors, retain control of the company. This means that the scheme of arrangement is a debtor in possession process;*
- c) *One of the key requirements for an application for appointment of a judicial manager, is that there should be a reasonable probability of rehabilitating the company or preserving part of its business as a going concern or that the interests of its creditors would be better served otherwise than by resorting to a winding up (s.90 IRD Act). A scheme of arrangement application only requires the company to either show creditor support for such compromise or arrangement or to provide court with information about the intended compromise to enable court assess its feasibility and whether it merits creditor consideration.*
- d) *Judicial management does not have a mechanism for making a plan binding on dissenting creditors while under a scheme of arrangement, the court has powers to cram down dissenting creditors (s.70 IRD Act). [see s117(d) IRDA re cram down of a in a scheme proposed in course of a JM]*

[other differences include that regarding moratorium, disclaimer of onerous property, avoidance]

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] **4m**

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)**

[Judicial Management Proceedings

Judicial management seeks to achieve any of the following (s.89(1)(a)-(c) IRD Act:

- a) the survival of the company in whole or part of its undertaking as a going concern;**
- b) approval of a compromise or arrangement;**

c) achieving a more advantageous realisation of the company's assets or property than in winding up.

In order to obtain a judicial management order, the following must be presented to court:

- a) A resolution of the members or board of directors of the company;*
- b) Particulars of an insolvency practitioner nominated to act as judicial manager;*

Rescue financing

For a company under judicial management to access rescue financing, the following requirements must be complied with (s. 101 IRD Act):

- a) The judicial manager must make an application to court and notify all creditors of the company;*
- b) Once the order is made, the judicial manager must lodge a copy of the order with the Registrar of Companies]*

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)***

[Alpha, Beta and Charlie are separate legal entities. Placing ABC Ltd into judicial management does not automatically place the subsidiaries into the same proceedings. Proceedings must be commenced separately for each legal entity. The bank lenders as creditors may place a company under judicial management without applying to court for an order. This is permitted by section 94 of the IRD Act provided the following are complied with:

- a) The company must send at least 7 day's written notice of intention to appoint an interim judicial manager to the proposed interim judicial manager and anybody who has or may be entitled to appoint a judicial manager under the terms of a debenture secured by a floating or fixed charge;*
- b) A resolution of the members or directors of the company;*
- c) The appointment should be made after the 7 days' notice but before the expiry of 21 days after the notice period;*
- d) Consent of the persons notified in a) above;*
- e) Filing of a statutory declaration by the proposed judicial manager indicating that he or she is not conflicted; consents to the appointment; and that one or more purposes of judicial management can be achieved;*

- f) *Filing a Statutory Declaration by the directors of the company stating that the company is or is likely to become unable to pay its debts, that the company will summon a creditor's meeting within 30 days, and that they believe one or more of the purposes of judicial management is likely to be achieved;*
- g) *Filing of the appointment of the interim judicial manager with the Official Receiver and Registrar of Companies and publishing it in the gazette and local daily newspaper;*
- h) *Giving notice (of at least 14 days and publishing it in the local daily newspaper) of a creditor's meeting together with a statement of the affairs of the company;*
- i) *Convening a creditor's meeting within 30 days of filing the statutory declaration of the directors;*
- j) *The company must appoint at least one director to attend the meeting and be in position to disclose the affairs and circumstances leading to the proposed judicial management;*
- k) *The persons attending the meeting are required to appoint a chairperson to preside over the meeting where a resolution to place the company under judicial management is passed and a judicial manager is appointed by a decision of the majority in number and value of the creditors present and voting]*

(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)

[Section 88 of the IRD Act defines a company, for purposes of the provisions on judicial management as one that is eligible to be wound up under the Act. Therefore, the issue is whether a foreign company can be wound up under the Act.

According to the facts, Charlie Pty Ltd, although a subsidiary of the group, was incorporated in Australia. It is not stated that it is registered in Singapore as a foreign company. That notwithstanding, it would be treated an unregistered foreign company under section 245 of the IRD Act. The key test under section 246 is whether the company has a substantial connection to Singapore? This is established by sub-section (3)(e) - the company has chosen Singapore law as the law governing a loan or other transaction. According to the facts, the properties of Charlie Pty Ltd are mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law. Therefore, it is eligible to be wound up under Singapore law. This satisfies the requirement of section 88 of the Act.]

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) 5m

[Placing ABC Group and its subsidiaries into judicial management creates an automatic stay/moratorium which protects the assets in Singapore. This does not extend to assets outside Singapore.]

According to the facts, the jurisdictions outside of Singapore where ABC Ltd has assets are Australia and the United Kingdom. Both jurisdictions have adopted the Model Law on Cross Border Insolvency. Therefore, it will be necessary to apply for recognition of the insolvency proceedings in Australia and the United Kingdom. Judicial management is an insolvency proceeding within the meaning of Article 2(k) of the Third Schedule to the IRD Act.

According to the facts, ABC Ltd was incorporated in Singapore, the majority directors and shareholders are resident in Singapore and although it has subsidiaries with assets and operations in multiple jurisdictions, Singapore is the choice of governing law for the financing transactions. Therefore, all these facts point to Singapore as the Centre of Main Interests. This should support recognition of the insolvency proceedings commenced in Singapore as main proceedings under articles 15 and 17(2)(a) of the Model Law. Article 19 provides for interim protection if needed. If recognised as main proceedings, the assets will be protected under article 20(1)(b) and (c).

If there are any other assets outside Australia and the United Kingdom, it will be important to establish whether those jurisdictions have adopted the Model Law on Cross Border Insolvency or an equivalent and follow the same process as above. If not, it will be necessary to explore other options such recognition and enforcement of judgements under common law or any relevant statute or multilateral framework.]

*** End of Assessment ***

41m - well done!