



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] **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.**

*The concept of a cross-class cram down effectively allows a scheme of arrangement to be approved in circumstances where there may be one or more class(es) of dissenting creditors.*

*Cross-class cram down does not apply to shareholders and any compromise to equity must be agreed by a vote with the requisite majorities.*

*For a class to approve a scheme of arrangement the following conditions must be met:*

- The majority in number of those voting must approve the scheme; and*
- The majority must represent 75% or more in value of those voting.*

*If there is a dissenting class the court may still approve the scheme if they consider it fair and equitable to do so.*

*To reach this determination the court must be satisfied that the proposed return to the dissenting class is better or equal to the return in the most likely alternative - likely to be either judicial management or liquidation - the no worse off test. The court should also be satisfied that the absolute priority rule is not breached in respect of the dissenting class. Finally, the court must also be satisfied that taken as a whole the voting requisites set out above are met.*

***[discuss what is fair and equitable - s 70]***

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

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

*The IRD Act came into effect in July 2020, two of its overarching objectives were:*

- 1. To enhance Singapore's insolvency and restructuring laws.*
- 2. To combine the corporate and personal restructuring and insolvency laws into one combined legislation.*

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.**

*The four factors which should be considered are:*

- 1. The income expected from ongoing business activities;*
- 2. The asset position of the company and whether those assets are realisable in the short term;*
- 3. Whether the company has access to any funding e.g. banking facilities or there is any expected capital fund raising.*
- 4. The liability due date profile and whether or not the company has already defaulted on certain liabilities.*

**[see Sun Electric Power v RCMA]**

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

Question 3.1 [maximum 8 marks] **7m**

**Write a brief essay on**

- (i) rescue financing; and**
- (ii) wrongful trading**

**under the IRD Act.**

*In both a scheme of arrangement and a judicial manager process the debtor can make an application to court to seek approval to use rescue financing.*

*The purpose of rescue financing must be either:*

- It is necessary for the survival of the debtor; or*
- The outcome of the realisation of the assets would be better as a result of obtaining rescue financing, than if the company was simply wound up.*

*The amendments regarding rescue financing which were set out in the 2017 Amendment Act were largely based on the provisions of the US Bankruptcy Code -*

*under which debtor-in-possession ('DIP') financing is a well-established tool in rescue procedures.*

*Given that rescue financing is provided at a time when the company is insolvent or at least facing financial difficulties the court may order that the rescue financing will:*

- *Be treated as a cost/expense in any subsequent winding-up;*
- *Sit above any preferential creditors if the company is later wound up;*
- *In cases where unsecured financing is not an option, be secured by an unencumbered asset or alternatively be subordinated behind an existing secured creditor;*
- *In cases where subordinated secured financing is not an option, be secured in priority or equal ranking to an existing secured creditor, subject to sufficient equity being available.*

*The new wrongful trading provision which came into effect in July 2020, refers to a time at which the company is insolvent, or cannot avoid becoming insolvent, and the actions of the officers of the company in that timeframe.*

*If an officer of the company knew or ought to have known, given their knowledge of the company and any professional qualifications e.g. an accountancy qualification, that the company was insolvent or could not avoid becoming insolvent, and that company continued to incur liabilities that there was no prospect of meeting in full, that officer could be found guilty of wrongful trading.*

*Under the legislation the officer could be found personally liable for the debts incurred in that period.*

*Under previous legislation in Singapore a criminal liability had to be established which has a significantly higher threshold.*

***[discuss that an interested person can apply for a declaration as to whether a transaction is wrongful trading]***

**Question 3.2 [maximum 7 marks] 6m**

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

*Both the judicial manager and the scheme of arrangement processes are viewed as corporate rescue processes in Singapore.*

*The scheme of arrangement is a debtor led process under which the officers of the company, in most circumstances, continue to trade the business going forwards. A scheme manager may be appointed to effectively implement the scheme, for example, chairing the creditors meetings and dealing with proof of debts. But the key feature of a scheme is that the officers retain control.*



*In a judicial manager process an insolvency practitioner takes control of the company and steps into the shoes of the former officers.*

*On application to the court to propose or with the intention to propose a scheme, a moratorium of 30 days will be granted in which time no creditor can take any enforcement action against the company.*

*Upon the appointment of a judicial manager an automatic moratorium is granted, which is in place for the lifetime of the proceedings.*

*The scheme of arrangement can only be sanctioned by the court, there is no out of court process for the commencement of the scheme.*

*The judicial manager process can be commenced by an order of the court, but it is also possible for an out of court process which requires creditors to pass a resolution.*

*A scheme of arrangement allows the debtor to propose a compromise to its creditors which may differ to the outcome of a judicial manager process - due to the expected rescue of the business the compromises proposed to creditors could differ from the usual priority waterfall. To approve the scheme creditors and shareholders need to vote in favour of the proposed compromise or the court must be satisfied that the scheme leaves them no worse off.*

*In a judicial manager process the insolvency practitioner is bound by the insolvency priority waterfall in the IRD and cannot seek to enforce alternative compromises with the creditors.*

*Prior to the scheme of arrangement being sanctioned by the court each class of creditor and shareholders has an opportunity to vote on the proposal. The scheme is sanctioned after voting.*

*A judicial manager presents its proposals to the creditors and shareholders post their appointment. Both processes benefit from the cross class cramdown if required and conditions are met.*

*Under a scheme of arrangement the debtor does not have the ability to disclaim onerous leases.*

*A judicial manager is able to disclaim onerous leases entered into prior to their appointment.*

*In many jurisdictions a scheme of arrangement is not viewed as an insolvency proceeding - although in Singapore the provisions for a scheme are within the IRD.*

*A process such as a judicial manager process, which is very similar to an administration process in the UK, is widely regarded as an insolvency proceeding.*

***[other differences include avoidance provisions, and objectives of the proceedings]***

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) The application can be brought by the creditors of the company - these can be contingent or prospective. Given that ABC Limited has provided guarantees totalling £160m on facilities which are now in default, the banks are a contingent creditor and to the extent the principal lender cannot repay the loan they can call upon ABC Limited.***

***The working group must be of the view that:***

- 1. The company is or will become unable to pay its debts; and***
- 2. There is a reasonable prospect of the survival of the company either in whole or in part, or that there would be a better outcome for creditors rather than simply winding the company up.***

***[discuss objectives of JM - s 89]***

***b) The working group may be able to access rescue financing if on application to the court they are able to prove either:***

- Rescue financing is necessary for the survival of the company; or***
- Rescue financing will result in a better outcome for creditors than if the company was immediately wound up.***

***[discuss that a court application is required to seek priority orders]***

Question 4.2 [maximum 6 marks] **5.5m**

***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)***

*When the IRD came in effect s94(1) introduced a new voluntary process which allows companies to be placed under judicial management outside of a court order.*

*If the bank lenders want to consider this process for Alpha and Beta, the following three conditions must be fulfilled:*

- *The companies must be unable to pay their debts;*
- *One of the objectives of the judicial manager process must be considered achievable in each of the companies; and*
- *The creditors of each of the companies must pass a resolution.*

*The companies themselves acting by their directors will need to initiate the out of court process.*

*The companies must provide 7 days' notice of its intention to appoint an interim judicial manager. The interim manager will make a statutory declaration confirming that they are conflict free and accept the appointment and that they believe that one of the objectives of the judicial manager process can be achieved.*

*Within 30 days of this statutory declaration a meeting of creditors is held and the resolution is presented to the meeting.*

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

*Foreign debtors are capable of being placed under judicial management in Singapore if a 'substantial' connection/ can be established. In this case the following points are pertinent:*

- *Charlie Pty Ltd was incorporated in Australia and its main assets are situated in Australia.*
- *Its parent company ABC Limited is based in Singapore.*
- *The directors, Mr X and Mr Y are based in Singapore.*

- *The lender is a Singapore based bank and it has entered into financing facilities governed by the law of Singapore.*

*Point two to four above would indicate that Charlie Pty Ltd has a substantial connection to Singapore.*

**[also mention that a company may be placed into JM if it is liable to be wound up in SG]**

Question 4.3 [maximum 5 marks]

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

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

- (a) Would the assets owned by the ABC Group in jurisdictions outside of Singapore be protected? If there is no automatic protection, what can be done to obtain such protection? (5 marks) 3m***

*The ABC Group owns and operates 16 drilling rigs in Australia and the UK. They also own properties in Australia through Charlie Pty Ltd.*

*It is open to the ABC Group seek recognition of the judicial manager proceedings in both Australia and the UK.*

*Whilst Singapore has signed up to the Model Law - the Model Law is not reciprocal and therefore it would depend upon the stance of the jurisdiction in which they were seeking recognition whether or not recognition was likely to be granted.*

*Both Australia and the UK have adopted the Model Law and whilst the Singaporean insolvency practitioner would still be required to apply for recognition, unless the act was seen to be in contradiction to the laws of either jurisdiction, recognition is highly likely to be granted.*

*This would ensure that the Singapore process was recognised in the relevant jurisdictions and the assets were able to be protected and dealt with in accordance with the IRD.*

**[also discuss the moratorium that arises in SG, but how that may not be effective if the counterparty suing / enforcing against property is not in SG]**

**\* End of Assessment \***

**42.5m - well done!**