



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 **0m**

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.

This concept concerns binding dissenting creditors to the terms of a scheme of arrangement where they have rejected the scheme. In the first instance, creditors are grouped together in classes which are comprised of creditors with similar rights and characteristics. The scheme is put to vote in each class. It is approved where a majority in number of each class of creditors present and voting by person or proxy and such majority in number represents 75% in value of the respective class of creditor present and voting. Where one or more classes of creditor have not approved the scheme, a court can still order the scheme to be binding on creditors (i.e their rights or claims are “crammed down”) where:

1. A majority in number of creditors meant to be bound by the scheme present and voting have voted in favour of the scheme and
2. That majority in number represents 75% in value of the creditors present and voting and
3. The court is satisfied that the scheme does not discriminate unfairly between two or more classes and is fair and equitable to each dissenting class. A court will look to what the dissenting class will receive on the alternative to the scheme (such as liquidation) and ensure the scheme does not provide for a lower amount than in the alternative scenario.

[discuss what is fair and equitable - s 70]

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

Name two objectives of the IRD Act.

To consolidate personal and corporate insolvency and restructuring laws in one piece of legislation and to shift the focus from a historically creditor friendly jurisdiction (due to the English common law connection) to a more debtor friendly regime in order to establish the jurisdiction as a hub for international restructurings.

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

State four factors that should be considered under the cash flow test in determining whether a company is “unable to pay its debts” under the IRD Act.

1. The amount of the debts which are due or will be due in the reasonably near future;
2. Whether payment is being demanded or is likely to be demanded for those debts;
3. Whether the company has failed to pay any of its debts, the amount of such debt, and for how long the company has failed to pay it; and
4. The value of the company’s current assets that will be realisable in the reasonably near future.

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.

The key restructuring procedures in Singapore are schemes of arrangement and judicial management. *Rescue financing* is available in both procedures and concerns financing that is necessary for the survival of a debtor that obtains the financing and/or is necessary to achieve a better outcome on the realisation of the assets of the debtor than on the winding up of the debtor.

Such financing may be afforded priority in certain circumstances following an application to court. An application may be made by a debtor to obtain an order to the effect that any rescue financing obtained by the debtor will (a) be part of the costs and expenses of the winding up if the debtor is later wound up; (b) enjoy priority over preferential debts if the debtor is later wound up; (c) be secured by a security interest on property where the property is unencumbered or be secured by subordinate security where the property is encumbered but the debtor would not have been in a position to obtain unsecured rescue financing otherwise; or (d) be secured on a property with an existing security interest of the same or higher priority than the existing security interest if the debtor would not have been in a position to obtain rescue financing unless it was secured in this manner and there is adequate protection for the existing security interest.

These measures largely mirror similar powers under the US Bankruptcy code and its debtor in possession financing.

A company trades *wrongfully* if the company incurs debt or liabilities without reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent from incurring the debt or liability. Personal liability for the company’s debts may be placed on a person if they knew the company was trading wrongfully or as an officer of the company in all of the circumstances, ought to have known that the company was trading wrongfully (s239 IRD Act). In practical terms, directors leave themselves open to personal liability in continuing to trade without considering corporate rescue processes and/or insolvency. Where insolvency occurs and a liquidator is appointed, the liquidator will investigate the business and affairs of the company and consider whether the company engaged in wrongful trading. Section 239(10) of the IRD Act provides that a company or any person party to, or interested in becoming a party to, the carrying on of business with a company, may apply to the courts for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading.

[discuss also that there is no requirement for imposition of criminal liability]

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

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

Both processes have a similar end goal in the rehabilitation of the debtor company. However, certain differences do exist between them.

Following the making of a judicial management order, the responsibilities, functions and powers of the board of directors are transferred to the judicial manager. This is not the case under a scheme of arrangement where the scheme manager administers the scheme after it has been approved – the directors remain in control of the debtor company during the scheme of arrangement process.

Onerous contracts may not be disclaimed in schemes of arrangement. However, in judicial management, judicial managers have the power to disclaim onerous contracts entered into by the company prior to the judicial management order.

Judicial managers can apply to court to seek to claw back assets transferred where an unfair preference was given or the transaction was concluded at an undervalue within 2 years of the date of the judicial management application for related parties or 1 year for unrelated parties. The scheme of arrangement process does not allow for impeaching transactions.

The officers of the debtor company may be found personally liable for the debts of the company in certain circumstances in the judicial management process. When a company becomes insolvent in judicial management, and where a director knowingly was a party to the contracting of a debt when at the time there was no reasonable or probable grounds for being able to pay the debt or where the business of the company was being carried out with the intention to defraud creditors of the company, the director(s) can be held personally liable for the debts of the company. Officer liability does not arise in schemes of arrangement given the nature of the process – there is no analysis or investigation of the affairs of the company involved.

[discuss differences on objectives, moratoria, duration]

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 purpose of judicial management is to restructure the debts of the Company through the approval of a compromise or an arrangement between the Company and its creditors; ensure the survival of the Company or the whole or part of its business as a going concern or a more advantageous realisation of the Company's assets than through a winding-up order. To obtain the order, evidence must be presented to the court to show that the Company is or is likely to become unable to pay its debts and the survival of the Company or the whole or part of its business as a going concern or a more advantageous realisation of the Company's assets than through a winding-up order will result from the making of the order.
- (b) The financing must be necessary for the survival of the Company or a more advantageous realisation of the assets if the Company than on a winding up. The Company will likely need to provide security for the financing in order for it to be granted and a such and application to court for super priority in respect of the rescue financing will also be required.

[discuss what orders for priority are available under s 101]

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)

Section 94 of the IRD Act introduces judicial management without a court order through a creditors' resolution. Both companies would propose to its creditors that it enter judicial management and, with the approval of a majority in number and value of the creditors present and voting, be placed under judicial management. S94 of the IRD Act sets out the steps that need to be taken by the directors of both companies in convening the creditors meeting and include:

- Providing creditors with at least 14 days' notice of the meeting together with a statement showing the names of all creditors and the amounts of their claims.
- A full statement of the company's affairs and showing the method of valuation and how the valuation was arrived at.
- Notice of the meeting published at least 10 days in advance in a local newspaper.
- A director must attend at the meeting a disclose the company's affairs and the circumstances leading up to the proposed judicial management.
- The approval of a majority in number and value of the creditors present and voting is required to place the company under judicial management.

(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)

Only a company that may be wound up under the IRD Act may be placed into judicial management. Charlie Pty Ltd must demonstrate a “substantial connection” with Singapore - this may be done by evidencing the fact that the loan financing and secured on the Australian property was provided by a Singapore bank and is governed by Singapore law.

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

An automatic moratorium on legal proceedings against the ABC Group comes into effect on the filing of the judicial management application. No step may be taken to enforce any security over any property of the companies during the moratorium. Where the order is made a more extensive moratorium will come into effect for the period of the judicial management.

[but the moratorium (even though it covers property outside SG) doesn't have effect overseas unless insolvency proceedings recognised by the courts in that relevant foreign jurisdiction and moratorium available. Need to consider whether that foreign jurisdiction has adopted model law or has recognition regime.]

* End of Assessment *

40m