



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 0m

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 cramdown was first introduced in the 2017 Amendment Act. Subject to certain conditions, it allows a scheme of arrangement with creditors to be approved notwithstanding one or more classes of creditors having rejected the proposed scheme. The rationale for introducing the provision was to minimise the overall influence of minority creditors.]

To cramdown on classes of dissenting creditors, three requirements must be met:

- a) Taken as a whole, all the creditors (irrespective of class) must have approved the scheme by a majority in number representing 75% in value of the overall debt.*
- b) The court must be satisfied that the scheme does not discriminate unfairly between 2 or more classes of creditors.*
- c) The court must be satisfied that the scheme is fair and equitable to each dissenting class.*

For a scheme to be “fair and equitable”, it must first at least give the dissenting class an amount that is equal to what they would receive in the “most likely scenario if the compromise or arrangement does not become binding”.

In addition, where the dissenting class comprises secured creditors, each dissenting secured creditor must receive either:

- a) deferred cash payments totalling its claim and the preservation of its security;*
- b) a charge over the proceeds of the sale, if the secured assets are to be sold; or*
- c) the “indubitable equivalent” of its security.]*

[Comment: To also refer to the requirement where the dissenting class are unsecured creditors]

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

Name two objectives of the IRD Act.

[The objectives of the IRD Act are stated below:

- (1) introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws*
- (2) establish a regulatory regime for insolvency practitioners*
- (3) enhance Singapore's insolvency and restructuring laws.]*

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.

[Some of the 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 are stated

- (1) the quantum of all 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) the length of time that has passed since the commencement of the winding-up proceedings*
- (4) the value of the company's current assets and assets that will be realisable in the reasonably near future.]*

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

Question 3.1 [maximum 8 marks]

Write a brief essay on

- (i) rescue financing; and **4m****
- (ii) wrongful trading **3m****

under the IRD Act.

*[(i) **Rescue Financing** - "Rescue financing" is defined as any financing that satisfies either or both of the following conditions:*

(a) financing that is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of the company, as a going concern

(b) financing that is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company.

There are four levels of priority that the court can grant in respect to rescue financing

(a) to treat the debt as if it were a cost or expense of the winding up;

(b) to elevate the debt in priority over all preferential debts and other unsecured debts if the company would not have been able to obtain such financing without it being granted such priority;

(c) for the debt to be secured by a security interest not otherwise subject to any existing security or to confer a subordinate security interest on the debtor's company property already subject to an existing interest: and

(d) for the debt to be secured by a security interest of the same or higher priority than an existing security interest.

(ii) Wrongful trading

The IRDA introduces the concept of wrongful trading, which provides that a company trades wrongfully if:

(a) the company, when insolvent, incurs debts or liabilities without reasonable prospect of meeting them in full; or

(b) the company incurs debts or liabilities that it has no reasonable prospect of meeting in full and that result in the company becoming insolvent.

The IRD Act contains the provisions for personal liability for the company's debts on a person if:

(a) they knew that the company was trading wrongfully: or

(b) as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully]

[Comment: To also compare the old section which required an imposition of criminal liability first]

Question 3.2 [maximum 7 marks] 7m

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

[(1) Scheme of Arrangement introduces a debtor-in-possession restructuring regime which has following key features.

- (a) an automatic moratorium for 30 days upon the filing of an application with the court*
- (b) the availability of a cross-class cramdown in schemes of arrangement*
- (c) the availability of pre-packaged schemes of arrangement and*
- (d) moratoria having extra territorial effect.*

While in judicial management, insolvency practitioner takes over control of the business and property of the debtor company for a period of 180 days, subject to any further extensions granted by the court.

(2) Threshold for entering corporate rescue

Scheme of Arrangement

The application can only be made where the company proposes, or intends to propose, a compromise or an arrangement between the company and its creditors. The company may only make the application if

- a) no order has been made and no resolution passed for the winding up of the company*
- b) the company makes or undertakes to do as soon as practicable an application to sanction a scheme of arrangement*
- c) the company has not applied for protection under section 210(10) of the companies act)*

Judicial Management

- (a) A court may only make a judicial management order if the court*
 - (i) Is satisfied that the company is or will be unable to pay its debts*
 - (ii) Considers that the making of the order would be likely to achieve one or more of the following purposes namely;*
 - a. The survival of the company, or the whole or part of its undertaking as a going concern*
 - b. The approval under section 210 of the Companies Act of a compromise or arrangement between the company and any such persons as are mentioned in that section; or*
 - c. The more advantageous realisation of the company's assets than would occur in a winding up*

(3) Moratoria

Scheme of Arrangement

An automatic 30-day moratorium arises upon the filing of an application for a moratorium under Section 64 of the IRD Act with the court where the debtor proposes or intends to propose a scheme of arrangement with its creditors. The court may extend the moratorium upon the application of the debtor.

Judicial Management

An automatic moratorium on legal proceedings against the company comes into effect upon the filing of the judicial management application. If a judicial management order is made, a more extensive moratorium will come into effect for

the period of the judicial management. 125 The court, or the judicial manager, has a discretion to allow otherwise prohibited proceedings or enforcement actions to be commenced or continued.

(4) Process of appointing office holders

Scheme of Arrangement

While this is a debtor-in-possession type regime, it envisages the debtor company appointing a proposed scheme manager to facilitate the restructuring process.

Judicial Management

Upon the making of a judicial management order, the court will appoint a judicial manager. An interim judicial manager can be appointed by the court, on application of the company or any of its creditors. This is generally done for one of the following reasons:

(a) the assets or business of the company are at risk of being dissipated or deteriorating;

(b) to "bridge the gap" between the application for judicial management and the hearing of the judicial management application; and

(c) to safeguard the interests of the company as well as its creditors.

(5) Rules that apply to the sale of assets outside the ordinary course of business

Scheme of Arrangement

There is no blanket prohibition on the sale of assets outside the ordinary course of business.

However:

(a) pursuant to section 64(6) of the IRD Act, the court can require that information relating to the acquisition, disposal of property or grant of security be submitted to the court not later than 14 days of the disposition; and

(b) pursuant to section 66 of the IRD Act, the court may, upon an application made by a creditor, make an order restraining the company from disposing of property other than in good faith and in the ordinary course of business and/or an order restraining the transfer of shares in or altering the rights of any member of the company.

Judicial Management

Pursuant to the list of specific powers extended to Judicial Managers set out in the First Schedule to the IRD Act, a judicial manager has power to sell or otherwise dispose of the property of the company by public auction or private contract. A judicial manager may also dispose of property secured by a floating charge subject to satisfying certain conditions.]

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]

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)

1m

(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) 1m

[

(b) A court may only make a judicial management order if the court

(iii) Is satisfied that the company is or will be unable to pay its debts

(iv) Considers that the making of the order would be likely to achieve one or more of the following purposes namely;

a. The survival of the company, or the whole or part of its undertaking as a going concern

b. The approval under section 210 of the Companies Act of a compromise or arrangement between the company and any such persons as are mentioned in that section; or

c. The more advantageous realisation of the company's assets than would occur in a winding up

Therefore, the presentation should be made to the court by the lenders in such a way that the above conditions are met, to obtain a judicial management order.

[Comment: to refer to placement of company into the control of a judicial manager to explore rehabilitation]

(c) *Assuming the company is placed under judicial management, either or both of the following must be satisfied for the Company to be able to access rescue financing under the IRD Act.*

- (a) *financing must be necessary for the survival of a company*
- (b) *financing must be necessary to achieve a more advantageous realisation of the assets of a company than on a winding up of the company.*

]

[Comment: to refer to the application to court for priority to be granted in respect of the rescue financing]

Question 4.2 [maximum 6 marks]

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) 0m**

[Type your answer here]

[see s94 IRDA]

- (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) 3m**

[Yes, Charlie Pty Ltd is eligible to be placed into judicial management in Singapore. To demonstrate the same, Charlie Pty Ltd should have "substantial connection" with Singapore. This can be demonstrated by one or more than one following factors.

- a) *The centre of main interests of the debtor is located in Singapore.*
- b) *The debtor is carrying on business in Singapore or has a place of business in Singapore*
- c) *The debtor is registered as a foreign company in Singapore*
- d) *The debtor has substantial assets in Singapore*
- e) *The debtor has chosen Singapore Law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction*
- f) *The debtor has submitted to the jurisdiction of the Singapore courts for the resolution of one or more disputes relating to a loan or other transaction.*

So, as mentioned into the case here. Charlie Pty Ltd has properties on Australia mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law. Hence, one of the conditions for establishing “substantial connection” with Singapore is demonstrated and hence Charlie Pty Ltd is eligible to be placed into judicial management in Singapore.]

Question 4.3 [maximum 5 marks] **0m**

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)

[Type your answer here]

[Comment: Refer to the moratorium under s96, read with s88; but that an application for recognition should be sought in the relevant jurisdictions; otherwise to commence parallel proceedings if recognition is not available.]

*** End of Assessment ***

37m