



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.

A cross-class cram-down allows a scheme of arrangement to be approved notwithstanding the rejection of the scheme by one or more classes of creditors.¹ The stated purpose was to limit the influence of minority creditors.

A court will grant a cross-class cram-down on creditors (but not shareholders) if:²

- a) A majority in number of participating creditors voted in favour of the arrangement;*
- b) That majority represents three-fourths in value of the participating creditors; and*
- c) The arrangement does not discriminate unfairly between two or more classes and is fair and equitable, having regard to the absolute priority rule. Fair and equitable means, in effect, that each class of creditor would otherwise receive if the arrangement was not approved by the court.*

[discuss what is fair and equitable as set out in s 70]

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

Name two objectives of the IRD Act.

- 1. Enhance Singapore's insolvency and restructuring laws; and*
- 2. Establish a regulatory regime for insolvency practitioners.³*

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. Quantum of debts that are due or will fall due in the reasonably foreseeable future;*
- 2. Value of current assets that are realisable or will be realisable in the reasonably foreseeable future;*
- 3. Whether the company has failed to pay any of its debts, the quantum of same and the time period in which failure has occurred; and*
- 4. Whether due or overdue debts are being demanded or likely to be demanded.⁴*

¹ Section 70 of the IRD Act.

² Guidance text, pages 57-58.

³ Guidance text, page 65.

⁴ Guidance text, page 35.

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.

- (i) Rescue financing**

The Insolvency Restructuring and Dissolution Act (IRD Act) consists of two main rehabilitative procedures, being: 1) the scheme of arrangement; and 2) judicial management.

Scheme of arrangement is dealt with under s64 of the IRD Act, and introduces a debtor-in-possession restructuring regime. This is in contrast with judicial management, which involves an insolvency practitioner taking over control of the debtor company.^{5, 6}

Both⁷ mechanisms allow for rescue financing in the appropriate circumstances and upon a court order. Rescue financing can involve obtaining financing that is necessary for the survival of the debtor and/or necessary to achieve a better realisation of debtors (compared to a liquidation).⁸ For example, emergency financing to complete a customer project to convert WIP into billings. The court order can include that the rescue financing, be:

- treated as a cost of the winding-up (if same was to occur);*
- provided with priority over preferential debts;*
- secured over unencumbered property; and/or*
- secured over encumbered property, in appropriate circumstances.⁹*

- (ii) Wrongful trading**

On an application by a prescribed person,¹⁰ section 239 of the IRD Act imposes personal liability for company debts on a person if:

- The person knew the company was trading wrongfully; or*

⁵ Guidance text, page 48.

⁶ Section 88 of the IRD Act.

⁷ Sections 67 and 101 of the IRD Act, respectively.

⁸ Guidance text, page 54.

⁹ Guidance text, page 55.

¹⁰ Section 239(5) of the IRD Act.

- *As an officer of the company, ought, in all the circumstances to have known the company was trading wrongfully.*

Trading wrongfully is defined in section 239(12) of the IRD Act as including circumstances where a company incurs a debt without reasonable prospect of being able to pay same.

It is a defence for the relevant person if they can demonstrate that they acted honestly and (after having regard to all the circumstances) they should be relieved of liability by the court: section 239(2) of the IRD Act.

[discuss that an interested person or the company can seek a declaration from court as to whether a transaction is wrongful trading, and that no criminal liability is required for imposition of civil liability]

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.

Scheme of arrangement is dealt with under s64 of the IRD Act, and introduces a debtor-in-possession restructuring regime. It is the management/director team that ultimately puts forward the relevant arrangement/scheme for the consideration of creditors. This is in contrast with judicial management, which involves an insolvency practitioner taking over control of the debtor company.^{11, 12}

The following table highlights some of the key differences between the two regimes:

	Scheme of Arrangement	Judicial management
Control ¹³	<i>Vests with management under a debtor-in-possession process. However, a scheme manager can be appointed. Also, the role of the scheme manager is limited to administering the scheme.</i>	<i>Vests in an insolvency practitioner. The judicial manager's role is far broader than the scheme manager's role and includes the power to sell assets.</i>
Court supervision ¹⁴	<i>Supervisory only, and is generally limited to an oversight role of the restructuring process and monitoring disclosure obligations.</i> <i>Granted automatic stay for 30 days (subject to further</i>	<i>The insolvency practitioner is appointed by the court.¹⁶</i>

¹¹ Guidance text, page 48.

¹² Section 88 of the IRD Act.

¹³ Guidance text, pages 15 and 52-53.

¹⁴ Ibid.

¹⁶ Section 99 of the IRD Act.

	Scheme of Arrangement	Judicial management
	extension(s) granted by the court).¹⁵	
Role of creditors ¹⁷	<i>Liase/negotiate with management, vote on the scheme and challenge the company's decision on creditor classifications (if applicable).</i> <i>Not all creditors have to be involved.¹⁸</i>	<i>Creditors can form a creditors committee. ¹⁹ A committee (in the appropriate circumstances), can give directions to the judicial manager.²⁰</i> <i>Has no power over management.</i>
Impeachable transactions ²¹	<i>No such power granted under schemes of arrangement</i>	<i>Judicial manager granted such power under section 224 to 299 of the IRD Act (in the appropriate circumstances).</i>
Timing ²²	<i>Process lasts circa 30 days (subject to extension) and requires the publishing of a notice in the Government Gazette and in one English local daily newspaper</i>	<i>Process lasts approximately 180 days (subject to further extension).</i>
Debtor eligibility ²³	<i>Governed by s64 of the IRD Act. But no relevance to the test for judicial management.</i>	<i>Must be eligible to be wound-up under the IRD Act, ²⁴ including foreign debtors that have a substantial connection to Singapore.²⁵</i>
Conversion to liquidation ²⁶	<i>No conversion mechanism. Once the moratorium expires, the scheme of arrangement ends. Creditors may then apply to wind-up the company.</i>	<i>The end of the judicial management period does not automatically result in a liquidation. Rather, the court has discretion to do so.</i>
Disclaimers	<i>Onerous contracts cannot be disclaimed</i>	<i>Onerous contracts can be disclaimed: s230 IRD Act.</i>

¹⁵ Section 64 of the IRD Act.

¹⁷ Guidance text, pages 15-16.

¹⁸ Guidance text, page 58.

¹⁹ Section 109 of the IRD Act.

²⁰ Companies Regulations, reg 86(3).

²¹ Guidance text, pages 40-41.

²² Guidance text, pages 48-50.

²³ Guidance text, page 48-49.

²⁴ Section 88 of the IRD Act.

²⁵ Section 246 of the IRD Act.

²⁶ Guidance text, pages 50-51.

[timing wise, there is an automatic moratorium that arises upon application for a moratorium under s 64, but the scheme process may take some time as it involves obtaining leave from court to call a scheme meeting, proposing a scheme at a meeting, and then seeking sanction of court if the requisite approvals are obtained]

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)

Judicial management is a feature of the corporate rescue tools in Singapore that involves an insolvency practitioner (ie judicial manager) taking over control of the debtor company, on appointment by the court.²⁷ The effect of the judicial manager's appointment is to take over the responsibility for running of the company from the directors.

To obtain a judicial management order from the court, the court must be satisfied that:²⁸

- *The debtor company is unable to pay its debts; and*
- *The order would likely achieve one of the following purposes:*
 - *Survival of the company (or a part of same) as a going concern;*
 - *It is an approval or compromise under s210 of the Companies Act; or*
 - *The order would result in a greater return than if the debtor company was wound-up.*

(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)

Rescue financing can be obtained in the appropriate circumstances and upon a court order.²⁹ Rescue financing can involve obtaining financing that is necessary for the survival of the debtor and/or necessary to achieve a better realisation of debtors (compared to a liquidation).³⁰ The court order can include that the rescue financing, be:

- *treated as a cost of the winding-up (if same was to occur);*
- *provided with priority over preferential debts;*

²⁷ Section 88 of the IRD Act. See also the guidance text, page 48.

²⁸ Section 9(1) of the IRD Act.

²⁹ Section 101(1) of the IRD Act.

³⁰ Guidance text, page 54.

- *secured over unencumbered property; and/or*
- *secured over encumbered property, in appropriate circumstances.*³¹

Section 101(2) of the IRD Act requires that the judicial manager send a notice of the application to each creditor of the debtor company.

Section 101(5) of the IRD Act requires that the judicial manager lodge a copy of the order with the Registrar of Companies within 14 days of the date of the order.

³¹ Guidance text, page 55.

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 provides the statutory basis for creditors placing Alpha and Beta into judicial management. The company must obtain a resolution of the company's creditors that it be placed into judicial management only if it considers that it is, or is likely to become, unable to pay its debts and one of the purposes of s89(1) of the IRD Act applies.

Before obtaining said resolution, the company must:

- i) Give at least 7 days written notice (7 Day Notice) to the proposed licensed³² interim judicial manager and any of the company's relevant secured creditors;³³*
- ii) Obtain approval by way of resolution of the members/directors of the company (subject to the terms of the company's constitution);³⁴*
- iii) Obtain this resolution within 21 days after the 7 Day Notice;³⁵*
- iv) The parties in i) must have validly consented in writing;³⁶ and*
- v) The company has lodge the relevant statutory declaration with the Registrar of Companies.³⁷*

To obtain the resolution from the creditors, the company must convene a meeting of the creditors in accordance with ss94(7)-(11) of the IRD Act.

(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)

Judicial management only applies eligible companies under the IRD Act,³⁸ which includes foreign debtors. Foreign debtors must have a substantial connection with Singapore.³⁹

Substantial connection can be established by one or more of the following:

³² Section 94(3)(g) of the IRD Act.

³³ Section 94(2) of the IRD Act.

³⁴ Section 94(3)(a) of the IRD Act.

³⁵ Section 94(3)(c) of the IRD Act.

³⁶ Sections 94(3)(d) and 94(3)(e) of the IRD Act.

³⁷ Section 94(3)(f) of the IRD Act.

³⁸ Section 88 of the IRD Act.

³⁹ Section 246 of the IRD Act.

- a) *COMI of the debtor is located in Singapore;*
- b) *The debtor is carrying on business in Singapore or has a place of business in Singapore. Charlie Pty Ltd is not carrying on a business in Singapore;*
- c) *The debtor is registered as a foreign company in Singapore. The factual matrix does not provide any information about whether Charlie is a registered foreign company;*
- d) *The debtor has substantial assets in Singapore. Charlie is said to only have assets in Australia;*
- e) *The debtor has chosen Singapore law under contract for a loan, etc. The facts says that the Australian property owned by Charlie is secured by a loan to a Singaporean bank, which is said to be governed by Singaporean law. It is therefore likely that this limb is satisfied;*
- f) *The debtor has submitted to the jurisdiction of Singaporean law, at least in relation to a particular loan. Again, Charlie's loan with the Singapore bank is said to be governed by Singapore law. It is therefore likely that this limb is satisfied.*

Accordingly, given limbs e) and f) (at least) are met, Charlie likely qualifies for judicial management as a foreign company.

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)***

Section 65 of the IRD Act provides the basis for providing protection to the ABC Group. Section 99 of the IRD Act provides the basis for a judicial manager having the power to deal in assets of the relevant companies.

[discuss that a moratorium in SG arises upon JM orders, but whether it can stop any proceedings outside of SG depends on whether the JM order is recognised in that relevant foreign jurisdiction]

*** End of Assessment ***

41m