



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 **0m**

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] **4m**

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 power to cramdown refers to an inter-class or cross-class cramdown, which enables the court to impose an arrangement on dissenting classes of creditors. With this new development, a scheme of arrangement under Singapore law no longer requires the approval of all classes of creditors. Instead, where the requirements as given in the IRD Act are satisfied, the plan can be imposed on all classes notwithstanding classes that comprise a majority of dissenting creditors.

Requirements for the court to order a cram-down.

(1) *Majority requirement*

Sections 70(3)(a) and (b) IRDA introduces a majority requirement. For the court to exercise its powers of cramdown on dissenting classes, more than 50% of the total number of creditors who were present and voting must have agreed to the plan and such majority in number must represent at least 75% in value of total claims.

(2) *Non-discrimination rule*

Secondly, the plan cannot discriminate unfairly between two or more classes of creditors. See Section 70(3)(c) IRDA. While this is commonly understood to be equal pay-outs to similarly situated classes, it is unclear at present what this requirement entails under Singapore law.

(3) *“Fair and equitable”*

The plan also needs to be ‘fair and equitable’; s 70(3)(c) IRDA. When read with s 70(4) IRDA, Singapore law appears to have adopted features of creditor protection. These two features include the best interest of creditors test and the absolute priority rule.

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

Name two objectives of the IRD Act.

- (i) *Establish a regulatory regime for insolvency practitioners*
- (ii) *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.

- (a) the quantum of all debts which are due or will be due in the reasonably near future; whether payment is being demanded or is likely to be demanded for those debts; whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;
- (b) the value of the company's current assets and assets which will be realisable in the reasonably near future;
- (c) the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;
- (d) any other income or payment which the company may receive in the reasonably near future; and

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

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

Write a brief essay on

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

under the IRD Act.

- (i) Rescue Financing

Rescue financing is defined as any financing that satisfies either or both 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 that company, as going concern and/or
- (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.

Rescue financing allows the debtor company to continue doing business and pay suppliers and other debtors. This is important for companies in financial trouble and so facing higher costs of borrowing.

Under judicial management as well as the scheme of arrangement, the court may on application made by the debtor, make an order that the rescue financing obtained by the debtor will

- (a) Be treated as costs and expenses of winding up
- (b) Enjoy priority over preferential debts, if the debtor is wound up
- (c) Be secured by an interest over a property not earlier offered to any other creditor

These are the extraordinary measures borrowed from US Bankruptcy Code

(ii) Wrongful Trading

The IRD Act introduced 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 results in the company being insolvent

Examples of wrongful trading include: Paying yourself a high salary which the company cannot afford. Purposefully amassing high debts to the possible detriment of creditors. Entering into credit agreements despite knowing that repayment terms cannot be honoured.

The courts are empowered to declare that any person who was a knowing party to a company's wrongful trading be personally liable for its debts or liabilities if found guilty without the need to establish criminal liability. The previous regime was viewed as unsatisfactory as criminal liability had to be found as a prerequisite before the making of an application to impose civil liability against the officer of the company. The current regime under the IRDA makes it easier for liability to be established as the standard of proof for civil liabilities is lower than for criminal liabilities. As such, directors of distressed companies considering entering into contracts will have to exercise greater care. However, the courts may relieve the person from personal liability if the courts are satisfied that the person acted honestly, having regard to all the circumstances of the case, and ought fairly to be relieved from personal liability.

Section 239(10) of the IRDA 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.

Question 3.2 [maximum 7 marks] **3m**

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

The main difference between judicial management and scheme of arrangement processes is that a scheme of arrangement operates under the supervision of the company's management, while judicial management is supervised by an external judicial manager instead

A scheme of arrangement is a compromise or an arrangement between a company and its creditors or members that has been sanctioned by a court.

Judicial management is a method of restructuring debt. A judicial manager is appointed to manage the operation. Legal proceeding against the company will be suspended during this period. This judicial management can be discharged at any point of time.

Scheme of arrangement is a debtor- driven process while judicial management is creditor led process. Since the directors continue to run the business in scheme of arrangement, there is less stigma involved.

Under Judicial Management, an insolvency practitioner is appointed as judicial manager who replaces the company's directors and management and takes over the responsibility for running the company.

[discuss differences regarding moratoria, duration, objectives, disclaimer of onerous property, avoidance provisions]

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 working group of the bank lenders may file an application before the court for placing the company ABC Limited under judicial management and prove

- (i) The company is (or will be) unable to pay its debts and**
- (ii) There is a reasonable probability of rehabilitating the company, or of preserving all or part of its business as a going concern, or otherwise the interests of the creditors would be better served than by resorting to a winding up.**

[discuss what is objectives of JM - s 89]

(b) Requirements to be satisfied by ABC Limited under judicial management in order for the company to be able to access rescue financing under the IRD Act are as under:

- (i) It is necessary for the survival of the company and/or**
- (ii) It is necessary to achieve a more advantageous realisation of assets of the company than on the winding up.**

[also discuss that a court application is needed for the priority listed in IRDA]

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) 2m

The banking lenders can place Alpha Pte Ltd and Beta Pte Ltd under judicial management out of court through creditors' resolution.

The creditors' committee would appoint an insolvency practitioner as a judicial manager

The requisite notices and documents have been filed and a creditors' meeting called.

However, it is advised that the creditors' apply for judicial management of Alpha Pte Ltd and Beta Pte Ltd to the same court where they have applied for judicial management of ABC Ltd

[discuss steps under s 94]

(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) 1m

The group of creditors can apply for judicial management of Charlie Pty Ltd in Singapore on the following grounds:

- (i) The centre of main interests of the debtor Charlie Pty Ltd is located in Singapore*
- (ii) The debtor (Charlie Pty Ltd) has chosen Singapore law as the law governing the loans*
- (iii) The debtor (Charlie Pty Ltd) has submitted to the jurisdiction of the Singapore courts for resolution of one or more disputes relating to loan transactions.*

[discuss that a company liable to be wound up can be placed under JM, and that a substantial connection needs to be shown, then discuss what those factors are.]

Question 4.3 [maximum 5 marks] 1m

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)

Yes, The assets owned by ABC Group in jurisdiction outside of Singapore be protected under the judicial management order issued by the court under provisions of IRD Act.

Here in this case ABC Group has companies incorporated in Singapore or companies which are incorporated outside of Singapore are covered under IRD Act on the following grounds:

- (i) The centre of main interest of the debtor is located in Singapore*
- (ii) The debtor has substantial assets in Singapore*
- (iii) The debtor has chosen Singapore as the law governing a loan or other transaction. The*

Besides Singapore has also adopted UNCITRAL Model under which the Insolvency Practitioners from Singapore can apply to the court in the other country for recognition of Singapore proceedings. Moreover The Reciprocal Enforcement of Commonwealth Judgments Act (REJCA) permits judgments from Singapore to be registered in Australia.

So under the above provisions the assets of ABC Group situated outside Singapore can be protected.

[there is a moratorium that arises, but it depends on the recognition laws of the relevant jurisdiction whether that moratorium will be recognised and enforced (eg whether that country adopted Model law), and not whether Singapore had adopted the Model law. Also discuss scope of moratorium and effect in SG (s 96 read with s 88)]

*** End of Assessment ***

37m