



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E

SINGAPORE

This is the summative (formal) assessment for Module 8E ***of this course and must be submitted by all candidates who*** selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 8E. ***In order to pass this module, you need to obtain a mark of 50% or more for this assessment.***

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment8E]. An example would be something along the following lines: 202223-336.assessment8E. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 9 pages.**

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow. Select only ONE answer. Candidates who select more than one answer will receive no mark for that specific question.**

Question 1.1 **1m**

Which one of the following insolvency tools is not available in Singapore?

- (a) Judicial management.**
- (b) Administration.**
- (c) Court winding-up.**
- (d) Scheme of arrangement.**

Question 1.2 **1m**

Who may apply to court to place a debtor company into judicial management?

- (a) A contingent creditor.**
- (b) The debtor company.**
- (c) A prospective creditor.**
- (d) Any of the above.**

Question 1.3 **1m**

Which of the following factors may support a foreign debtor's case to establish a "substantial connection" to Singapore?

- (a) The debtor has chosen Singapore law as the law governing a loan or other transaction.**
- (b) The centre of main interests of the debtor is located in Singapore.**

(c) *The debtor has a place of business in Singapore.*

(d) **Any of the above.**

Question 1.4 **1m**

What percentage of each class of creditors must approve a scheme of arrangement for it to pass?

(a) *Over 50% in value.*

(b) *50% or more in value.*

(c) *Over 75% in value.*

(d) **75% or more in value.**

Question 1.5 **1m**

Which of the following in respect of the automatic moratorium under section 64(1) of the Insolvency Restructuring and Dissolution Act (IRD Act) is incorrect?

(a) *The automatic moratorium lasts for 30 days.*

(b) *The automatic moratorium may be extended.*

(c) **The automatic moratorium can be obtained without filing an application to court.**

(d) *The debtor has to either propose or intend to propose a scheme of arrangement.*

Question 1.6 **1m**

*Which of the following types of contracts are excluded from the *ipso facto* restriction in section 440 of the IRD Act?*

(a) *Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.*

(b) *Any contract that is a licence, permit or approval issued by the Government or a statutory body.*

(c) *Any commercial charter of a ship.*

(d) **Any contract for a loan with a financial institution.**

Question 1.7 1m

Which of the following is one of the three statutory objectives of a judicial management?

- (a) To allow the directors to oversee the restructuring of the company.**
- (b) To preserve all or part of the company's business as a going concern.**
- (c) As a means for the secured creditors to realise their security.**
- (d) To liquidate the company in a fast-track and cost-efficient manner.**

Question 1.8 1m

Which one of the following is not a debtor who can apply for personal bankruptcy in Singapore?

- (a) An individual domiciled in Singapore.**
- (b) An individual who owns property in Singapore.**
- (c) An individual who has been carrying on business in Singapore for the last year.**
- (d) An individual whose parents live in Singapore.**

Question 1.9 1m

Which of the following in respect of rescue financing is incorrect?

- (a) Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing.**
- (b) Rescue financing is financing that is necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding-up of that debtor.**
- (c) Rescue financing enjoys preferential treatment automatically without the sanction of court.**
- (d) Rescue financing may be sought in a judicial management process.**

Question 1.10 **1m**

Who may apply to court to place a company into liquidation?

- (a) The company itself.**
- (b) A creditor of the company.**
- (c) A shareholder of the company.**
- (d) Any of the above.**

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 4 marks] **3m**

Explain the concept of a cross-class cram-down in a scheme of arrangement and what the requirements are before a court would order a cram-down.

Cross-class cram-down allows a scheme of arrangement to be approved even if one or more classes of creditors have rejected the proposed scheme, subject to certain conditions. This means that the court can order that the scheme is still binding on the company and all classes of creditors (but not shareholders) if certain requirements are met. Previous to adoption of current cramdown in 2017, the cramdown regime regulated in the Companies Act required that existing members divested their shares. Under the IRD Act, unsecured creditors can be crammed down without requiring the members are divested of their shares. Under a scheme of arrangement there are some requirements that must be met to obtain a court order for cram-down:

- 1) A majority in number of creditors meant to be bound by the arrangement.*
- 2) That majority represents three-fourths in value of the creditors meant to be bound by the arrangement.*
- 3) The court is satisfied that the arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class. (An arrangement will not be fair if a dissenting creditor receives less than what the creditor estimates to receive in the most likely scenario if the proposal does not become binding, or if the dissenting class are unsecured creditors, each creditor must receive a value equal to the amount of creditor's claim)*

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

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

Name two objectives of the IRD Act.

Two objectives of the IRD Act are:

- 1) To introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws.*
- 2) To establish a regulatory regime for insolvency practitioners*

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.

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 are:

- 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) 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.*
- 4) 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.*

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

Question 3.1 [maximum 8 marks] **6m**

Write a brief essay on

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

under the IRD Act.

Rescue financing were introduced to IRD Act by section 211 of the Companies (Amendment) Act 2017, as a part of a debtor-in-possession regime, taken from the US

Bankruptcy Code and designed to enhance Singapore reputation as an international restructuring hub.

Rescue financing is a type of financing that is necessary for the survival of a debtor or to achieve a more advantageous realization of the assets of a debtor than on a winding-up of that debtor. It is available on scheme of arrangement and judicial management processes.

A distinct feature of rescue financing is a super priority condition, because if the company is finally wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were part of the costs and expenses of the winding up. Also rescue financing needs to be obtained after the company has entered into a judicial management or scheme of arrangement process (because of that is also called post-commencement financing). The company needs the approval of the court to grant the super priority status and hence to obtain the rescue financing.

There are some cases with successful rescue financing: Asiatravel.com Holdings Ltd, Swee Hong Ltd and Design Studio Group Ltd.¹ In the end, rescue financing is an important tool for companies in financial distress, as it can provide the necessary funds to continue operations and restructure the company. However, it is important to consider that rescue financing is not a guarantee of success, and companies must still take steps to address the underlying causes of their financial difficulties.

About wrongful trading, is regulated as an offence in section 239 of the IRD Act. This section states that the judicial manager, the liquidator, the official receiver or any creditor or contributory of the company (in this last case with the leave of the judicial manager, the liquidator, or the court) may apply to the court to declare that any person who was a party to the company trading in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court directs, if that person knew that the company was trading wrongfully or as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully. According to subsection 12 of section 239, a company trades wrongfully if the company, when insolvent, incurs debts or other liabilities without reasonable prospect of meeting them in full or the company incurs debts or other liabilities that it has no reasonable prospect of meeting in full and that result in the company becoming insolvent.

[discuss that it doesn't require criminal liability to be imposed, and that an interested person can apply to court for a declaration that a particular transaction is not wrongful trading]

Question 3.2 [maximum 7 marks] **4m**

¹ Obtained from <https://ccla.smu.edu.sg/sgri/blog/2020/11/19/super-priority-rescue-financing-singapore>

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

One of the main differences between judicial management and schemes of arrangement is the role of the court. In a scheme of arrangement, the court's role is largely supervisory and limited to overseeing the restructuring process, ensuring due disclosure of information to creditors, and ultimately convening scheme meetings and sanctioning the scheme. In contrast, in a judicial management, the court plays a more active role, as it appoints an insolvency practitioner as the judicial manager, who replaces the company's directors and management and takes over responsibility for the running of the company.

Another key difference is the level of control that the company's directors retain. In a scheme of arrangement, the directors continue to run the business, and they would have more familiarity with the business compared to a court-appointed judicial manager. In contrast, in a judicial management, the powers of the company's directors cease, and the judicial manager takes over the affairs, business, and property of the company.

A further difference is the stigma associated with each process. A scheme of arrangement is a debtor-driven process, while a judicial management is creditor-led. There is less stigma involved in a scheme of arrangement, which could be especially important for a public listed company.

[discuss the differences in moratoria, objectives, duration, 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 purpose of judicial management, according to section 89 of the IRD Act, is the survival of the company, or the whole or part of its undertaking, as a going concern; the approval of a compromise or an arrangement between the company and their creditors, members or holders of unit of shares, as section 210 of the Companies Act states; or a more advantageous realisation of the company's assets or property than on a winding up.

To obtain a judicial management order, the bank lenders need to demonstrate that the Company is, or is likely to become, unable to pay its debts and that there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern, or that the interests of creditors would be better served otherwise than by resorting to a winding up. Also, the creditors need to demonstrate that one or more of the purposes will be achieved by the appointment of a judicial manager.

(b) To access rescue financing during the judicial management, the judicial manager may present an application to the court to grant super priority status for the financing if the company is wounded up. According to section 101 of the IRD Act, the judicial manager also needs to send a notice of the application to each creditor of the company, and if the court make an order granting the rescue financing, the judicial manager must lodge a copy of the order with the Registrar of Companies within 14 days after the order was issued.

[also discuss what is definition of rescue financing under IRDA]

Question 4.2 [maximum 6 marks] **2m**

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)

The bank lenders or the judicial manager of ABC Limited need to apply for an order to put Alpha Pte and Beta Pte under judicial management, with a proof of the requirements outlined in section 90 of the IRD Act, in the same way as indicated in question 4.1 (a) above.

[see s 94 for voluntary JM]

(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)

Yes, a foreign company could be placed into judicial management if can be provided that the foreign debtor has a substantial connection with Singapore, according to section 246(1)(d) and 246(3) of the IRD Act. In this case, the substantial connection is that the debtor has chosen Singapore Law as the law governing the bank loan.

[also mention that the foreign debtor has to be a company liable to be wound up in Singapore]

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) 4m**

The assets in jurisdictions outside Singapore would not be automatically protected. To obtain the protection, the judicial manager needs to seek the recognition of the proceedings in the jurisdictions where ABC Group have assets, in order to obtain control over those assets.

The recognition of foreign insolvency proceedings in other jurisdictions is governed by the UNCITRAL Model Law on Cross-Border Insolvency, which has been adopted in Singapore. The Model Law provides a framework for the recognition of foreign insolvency proceedings, and allows for the coordination of those proceedings with local insolvency proceedings. In order to obtain recognition of the Singapore judicial management proceedings in other jurisdictions, the judicial manager would need to apply to the courts in those jurisdictions and demonstrate that the Singapore proceedings are collective insolvency proceedings, and that they are taking place in the jurisdiction where the debtor has its center of main interests. The judicial manager would also need to demonstrate that the recognition of the Singapore proceedings would be consistent with the public policy of the jurisdiction where recognition is sought. In the case of Australia, it also adopted the Model Law in 2008², so the recognition would be straight.

[also discuss that there is a moratorium that arises in SG, but it would need to be recognised for it to have any effect in that relevant jurisdiction]

*** End of Assessment ***

38m

² According to UNCITRAL website <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border-insolvency/status>