



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 0m

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

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

Question 1.3 1m

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

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

Question 1.4 1m

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

- (a) Over 50% in value.
- (b) 50% or more in value.
- (c) Over 75% in value.
- (d) 75% or more in value.

Question 1.5 1m

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

- (a) The automatic moratorium lasts for 30 days.
- (b) The automatic moratorium may be extended.
- (c) The automatic moratorium can be obtained without filing an application to court.
- (d) The debtor has to either propose or intend to propose a scheme of arrangement.

Question 1.6 0m

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

- (a) Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.
- (b) Any contract that is a licence, permit or approval issued by the Government or a statutory body.
- (c) Any commercial charter of a ship.
- (d) Any contract for a loan with a financial institution.

Question 1.7 1m

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

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

Question 1.8 1m

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

- (a) An individual domiciled in Singapore.

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

Question 1.9 0m

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.

Ans:-

The concept of Cross-class cram down:-

It allows a scheme of arrangement with creditors to be approved notwithstanding one or more classes of creditor having rejected the proposed scheme. The purpose for introducing the provision was to minimise the overall influence of minority creditors.

Following are requirements to be fulfilled before a court would order cramdown which will be binding on creditors & the company :-

- (a) a majority in number of creditors meant to be bound by the compromise or arrangement, and who were present and voting have agreed to the compromise or arrangement;
- (b) that majority in number of creditors represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting and
- (c) The court is satisfied that the compromise or arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissenting class. A compromise or arrangement will not be fair and equitable to a dissenting class unless:
 - (i) no creditor in the dissenting class receives, under the terms of the scheme proposal, an amount that is lower than what the creditor is estimated by the court to receive in the most likely scenario if the scheme proposal does not become binding; and
 - (ii) where the creditors in the dissenting class are unsecured creditors, the terms of the compromise or arrangement:
 - I. must provide for each creditor in that class to receive property of a value equal to the amount of the creditor's claim or
 - II. must not provide for any creditor with a claim that is subordinate to the claim of a creditor in the dissenting class, or any member, to receive or retain any property on account of the subordinate claim or the member's interest.

[also discuss where dissenting class is secured creditors]

Question 2.2 [maximum 2 marks] 2m

Name **two** objectives of the IRD Act.

Ans:-

Following are objectives of the IRD Act:-

- (a) introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws;
- (b) establish a regulatory regime for insolvency practitioners; and
- (c) 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.

Ans:-

Following are some of the factors which needs to be considered under the cash flow test for determining a company is “unable to pay its debts” under the IRD Act:-

- (a) whether payment is being demanded or is likely to be demanded for those debts;
- (b) 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;
- (c) the length of time that has passed since the commencement of the winding-up proceedings and
- (d) 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] 6m

Write a brief essay on

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

under the IRD Act.

Ans:-

(i) Rescue financing :- Rescue financing is financing that is either or both:

- (a) necessary for the survival of a debtor that obtains the financing;
- (b) 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.

Under both the scheme of arrangement and judicial management processes, a Singapore court may, on application by the debtor, make an order that any rescue financing obtained by a debtor will:

- (a) be treated as part of the costs and expenses of the winding-up if the debtor is later wound up;
- (b) enjoy priority over preferential debts if the debtor is later wound up;
- (c) be secured by a security interest on property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property of the debtor that is subject to an existing security interest if the debtor would not have been able to obtain unsecured rescue financing from any other person; or
- (d) be secured by a security interest on property subject to an existing security interest, of the same or a higher priority than the existing security interest, if the debtor would not have been able to obtain rescue financing from any other person unless it was secured in such a manner and there is adequate protection for the interests of the existing security interest.

(ii) Wrongful trading:-

Section 239 of the IRD Act introduces the new concept of wrongful trading, which imposes 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.

This provision no longer requires criminal liability to be established before taking effect.

Wrongful trading is defined as the incurrence of debt or other liabilities without a reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of such debt.

As per new provision inserted to the IRD Act, the court is empowered to make a declaration that any person who was a knowingly party to the company trading wrongfully, is personally responsible for the debts or liabilities of the company. A company or any person party to, or interested in becoming party to, the carrying on of business with a company.

[discuss that it doesn't require imposition of criminal liability first, and that an interested person can apply for declaration that a transaction is not 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.

Ans:-

i) A key difference between judicial management and schemes of arrangement is that judicial management entails the appointment of an insolvency practitioner as the judicial manager, which appointment is made by the court. The judicial manager replaces the company's directors and management and takes over responsibility for the running of the company. Same is not the case in the scheme of arrangement. Here, a debtor-in-possession situation exists.

ii) Creditors play a limited role for management of the company as the same is in custody of a judicial officer (court appointed Insolvency practitioner) in case of judicial management against which, creditors play quite a more active role in case of scheme of arrangement.

iii) Scheme of arrangement is debtor-in-possession process while judicial management is judicial manager, (Insolvency practitioner appointed by court) control process.

iv) Scheme of arrangement is the company initiated process while generally, judicial management is creditor initiated process & in few cases, it can be the company initiated process too.

v) The restructuring proposal is implemented as per scheme of arrangement as approved by the lenders and subsequently by the court while in case of judicial management, there may not be any such scheme of arrangement to implement.

[discuss difference in 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)

Ans:-

(a) An application for judicial management should only be made where a company, or where a creditor or creditors of the company, consider that:

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 that otherwise the interests of creditors would be better served than by resorting to a winding-up.

A company can also enter into judicial management by resolution of its creditors.

A court may only make a judicial management order if the court:

- (a) is satisfied that the company is or will be unable to pay its debts;
- (b) considers that the making of the order would be likely to achieve one or more of the following purposes, namely:
 - (i) the survival of the company, or the whole or part of its undertaking as a going concern;
 - (ii) 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
 - (iii) the more advantageous realisation of the company's assets than would occur in a winding-up.

b) Conditions to be fulfilled for obtaining rescue financing:-

- (a) It should be necessary for the survival of a debtor that obtains the financing;
- (b) 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.

[also discuss the types of priority that can be sought pursuant to a court application]

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**

Ans:-

The Company or its creditors needs to make a necessary application in the court for the same. If the company is satisfied with the companies' inability to pay its debts, it may order to put both the companies under judicial management.

[see s 94 IRDA 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) **3m**

Ans:-

Only a company eligible to be wound up under the IRD Act may be placed into judicial management. This includes foreign debtors, provided the foreign debtor has a "substantial connection" with Singapore. This can be established by the demonstration of one or more of the 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; and / or
- (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.

In the given case, point nos. (a) to (d) are not applicable to Charlie Pty Ltd but if point nos. (e) and / or (f) are made applicable, it can be placed into judicial management as given in IRD Act, 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) **2m**

Ans:-

As Singapore has adopted the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) through its adoption of the 2017 Amendment Act. Through this, Singapore became the 42nd State in the world to have enacted legislation based on the Model Law.

So if related assets are located in a jurisdiction which has adopted UNCITRAL Model Law, orders of Singapore Courts will be recognised in jurisdictions which are outside Singapore. Otherwise, a separate application needs to be moved to a local court for recognising such proceedings of Singapore courts.

[discuss moratorium arising in SG, but that does not protect against proceedings commenced in a relevant foreign jurisdiction automatically and recognition needs to be sought. That would depend on recognition laws in that jurisdiction, and not whether SG has adopted the Model Law.]

*** End of Assessment ***

33m