



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] 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.

Section 211 of the Companies (Amendment) Act 2017 introduced section 64 of the IDR Act, introducing a debtor-in-possession restructuring regime including the availability of cross-class cramdown in schemes of arrangement. This allows a scheme of arrangement with its creditors to be approved despite one or more classes of creditors rejecting the proposed scheme, subject to conditions. This concept exists to reduce the influence of minority creditors.

In judicial management (section 117(d)) and via schemes of arrangements (section 70), despite one or more creditor classes not approving the scheme, a Singaporean Court can order the scheme bind the company and all classes of creditors (excluding shareholders) where:

- 1. A majority *in number*, present and voting, of those creditors intended to be bound by the compromise / arrangement approve it;**
- 2. Such majority in number equals at least $\frac{3}{4}$ *in value* of the creditors to be bound, present and voting; and**
- 3. The Court accepts that the compromise / arrangement is not unfairly discriminatory as between two or more creditor classes and is fair and equitable to each dissenting class.**

In relation to (3) above, a compromise / arrangement is not fair and equitable to a dissenting class unless (a) no creditor receives less than what they would in the most likely scenario if the scheme did not proceed and (b) where a dissenting class comprises dissenting creditors, the proposal must ensure that each creditor receives property in value equal to their creditor claim and must ensure that no creditor with a

subordinate claim receives or retains property on account of that subordinate claim or their interest.

[s211B CA was repealed and replaced by s 64 IRDA. See requirements on fair and equitable in s 70 IRDA]

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

Name two objectives of the IRD Act.

The IDR Act was an omnibus legislation that was introduced in order to repeal / replace the former legal regime to consolidate all personal and corporate insolvency and laws for restructuring into a single legislation.

The IDR Act was also introduced to shift the former creditor in possession focus of the Singaporean insolvency regime towards introducing a new debtor in possession feature via existing schemes of arrangement, in order to promote Singapore as an international hub for restructurings.

Question 2.3 [maximum 4 marks] **0m**

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.

Pursuant to section 312 of the IDR Act, a debtor is presume unable to pay their debts where the debt is immediately due and payable, and:

- 1. An order for enforcement of a judgment debt against the debtor is returned unsatisfied in whole or in part;***
- 2. The debtor exited or stayed outside Singapore intending to defeat, delay or obstruct the recovery of debt by a creditor;***
- 3. A statutory demand served on the debtor remains unsatisfied after at least 21 days following service of the demand, which remains unsatisfied; or***
- 4. The Official Assignee has revoked a certificate of completion of debt repayment scheme or issued a certificate of failure to repay or inapplicable of a debt repayment scheme.***

[see Sun Electric Power v RCMA]

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.

Two key aspects of the IDR Act include rescue financing and wrongful trading.

Rescue financing is that which is necessary for a debtor to survive and / or required to achieve a better realisation of assets when compared to that which could be achieved in a winding up. Rescue financing may be obtained on application to the Singaporean Court in respect of both judicial management and schemes of arrangement, pursuant to sections 101 and 67, respectively. Orders for rescue financing for a debtor can include:

- 1. That the rescue financing receives priority over preferential debtors, should the debtor be later wound up;**
- 2. That the rescue financing is secured by a security interest in the property of the debtor that is not otherwise encumbered;**
- 3. That the rescue financing form part of the costs and expenses of the winding up, should the debtor later be wound up; or**
- 4. That the rescue financing be secured by reference to an already encumbered interest, with the same or higher priority.**

These significant remedies are largely derived from section 364 of the US Bankruptcy Code, and were introduced in 2017 in order to promote the attractiveness of Singapore as a hub for international restructuring.

Interrelated with the rescue provisions of the IDR Act are the wrongful trading provisions, including section 239 of the IDR Act, which places directors at risk for potential personal liability for wrongful trading where corporate rescue proceedings fail and the company is liquidated. Further, the Singaporean Court is empowered to declare that any person knowingly a party to the trading wrongfully, be personally liable for the debtors and liabilities of said company.

A Company trades wrongfully where it incurs debts or liabilities without the reasonable prospect of meeting them in full where a company becomes insolvent or where it becomes so insolvent as a result of the transaction, such as rescue financing. As above, section 239 imposes personal liability on a director where that director knew the company was trading wrongfully or as a company officer, ought to have known the same, in all of the circumstances. Thus, a director is potentially subject to this personal liability should they meet the definition of wrongful trading in respect of entry into rescue financing.

[Discuss also that an interested person can seek a declaration from court as to whether a transaction is 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.

In 2017, when the IDR Act was introduced, a debtor in possession scheme of arrangement tool was introduced in Singapore, with features such as debtor in possession financing, the option for cross class cramdown and an automatic stay. The new process can be commenced where a company intends on proposing a compromise or arrangement to creditors via a scheme of arrangement. The company can obtain a moratorium on claims during the scheme process and remain in control as a debtor in possession whilst it proposes a restructuring plan by way of scheme of arrangement (section 64(1) of the IDR Act). Management are also kept in place during the moratorium period, and during implementation of the scheme. The company is responsible for preparing and presenting the scheme proposal, assisted by its advisors. During this process, a creditors role is to liaise and negotiate with the company in respect of and to vote on the restructuring proposal - they may also challenge class allocations, if required. Court's are largely supervisory in this process, focussing on ensuring adequate disclosure is made by the company.

Judicial management, another rescue tool in Singapore, differs to the scheme of arrangement process in a number of ways. Principally, judicial management involves the appointment of insolvency practitioner(s) to act as judicial manager - such appointment is Court-made. The judicial manager sits in place of the directors and management and takes control over day to day operations of the company. On appointment, the company's directors lose power and the judicial manager gains control of the company's affairs, property and business (section 99 of the IDR Act). In a judicial management process, creditors play a very limited role in running the company (section 108 of IDR Act) - they will usually form a committee, in order to consider proposals from the judicial manager and where dissatisfied with the information supplied by the judicial manager, can apply to Court for relief (See regulation 86(3) of the Companies Regulation).

[discuss differences in moratoria, duration, avoidance provisions, objectives]

QUESTION 4 (fact-based application-type question) [15 marks]

ABC Limited (the Company) is incorporated in Singapore and is the ultimate holding company of a group of construction and property companies (the ABC Group). As at 31 December 2021, the ABC Group owns and operates 16 construction drilling rigs outside of Singapore in Australia and the United Kingdom. The Company's directors and major shareholders are Mr X and Mr Y, who collectively own 57% of the shares in the Company. Mr X and Mr Y are based in Singapore.

The ABC Group traditionally funds its business via bank lending, with project financing facilities advanced directly to the underlying project companies within the ABC Group.

As the ABC Group's ultimate holding company, the Company's assets comprise largely of its investments in its subsidiaries and intercompany receivables from its subsidiaries. The Company does not have fixed assets and operational cashflows and is dependent on dividends and receivables from its subsidiaries to meet its own financial obligations. The main operating subsidiaries of the ABC Group are Alpha Pte Ltd and Beta Pte Ltd (both incorporated in Singapore and wholly owned by the Company).

The ABC Group recently expanded its business into property ownership and owns property in Australia via another subsidiary, Charlie Pty Ltd, which is incorporated in Australia. The properties in Australia are mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law. Mr X and Mr Y are the majority directors of Charlie Pty Ltd.

To finance its growing operations, the Company issued a Multicurrency Medium Note Programme (MTN) under which the Company could raise unsecured debt financing of up to USD 600 million. Funds raised by the Company under the MTN were either advanced to its subsidiaries as intercompany loans, or injected as capital into its subsidiaries. As at 31 December 2021, the total unpaid amount under the MTN notes was approximately USD 267 million.

The Company also provided corporate guarantees to financial institutions to guarantee the performance of its subsidiaries under various facility agreements. As at 31 December 2021, the Company had provided seven guarantees to various lenders, for a total liability of approximately USD 160 million.

Besides the above liabilities, the Company has also obtained shareholders' loans of USD 120 million from Mr X and Mr Y. These shareholders' loans are repayable on demand.

In recent years, the ABC Group's business has been adversely impacted by an extremely challenging operating environment and instability, which has caused various entities in the ABC Group to default on their bank facilities, including entities whose debts are guaranteed by the Company.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 4 marks]

The bank lenders have come together to form a working group and the working group has asked its advisors to provide it with a written analysis covering the following critical issues for the Company. In particular, the bank lenders are considering the possibility of placing the Company into judicial management. Provide analysis on the following issues:

- (a) **Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order. (2 marks)**
1m

The purpose of judicial management proceedings (see section 9(1) of the IDR Act) include ensuring the survival of the company or whole of part of its business as a going concern, or to achieve a better realisation of the company's assets when compared to that which could be achieved by winding up, or the making of the order for judicial management would result in approval under section 210 of the Companies Act of a compromise / arrangement is more likely to be achieved. In order to obtain a judicial management order, an application for judicial management should be presented to the Court by the company (by way of members' resolution), the directors (board resolution) or creditors (section 91 of the IDR Act).

[see s 89 to 91 of IRDA]

- (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)** **2m**

If judicial management orders are made, satisfying the requirements of section 9(1) of the IDR Act, the Company may access rescue financing under the IDR Act in circumstances where it can prove to the Court that the rescue financing is required for the survival of the debtor and / or it is required to achieve a more advantageous realisation of assets when compared to that via a winding up of the debtor. Section 101 of the IDR Act sets out the orders that can be achieved in respect of rescue financing.

Question 4.2 [maximum 6 marks]

As things transpired, the Company was placed under judicial management.

The bank lenders are now considering whether Alpha Pte Ltd, Beta Pte Ltd and Charlie Pty Ltd should also be placed into judicial management. Provide analysis on the following issues:

- (a) **What are the steps that need to be taken in order to place Alpha Pte Ltd and Beta Pte Ltd under judicial management out of court? (3 marks)** **0m**

There are no specific legislative provisions concerning group of companies, which this questions is directed at, i.e. the ABC Group. However, pursuant to section 65 of the IDR Act, the Singapore Court can grant a moratorium over the subsidiaries or related companies that play a necessary or integral role in any compromise / arrangement that will be proposed via the section 64 moratorium. The Company will therefore need to

include in its scheme proposal, and then explain to the Court, the necessary or integral role that Alpha Pte Ltd and Beta Ltd will play in any compromise / arrangement for which sanction will be sought.

[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) 3m

Only companies that are eligible to be wound up under the IDR Act can be placed into judicial management (per section 88 of the IDR Act). A foreign debtor, such as Charlie Pty Ltd (an Australian incorporated company) can be placed into judicial administration in Singapore provided it can be shown to have a "substantial connection" with Singapore, as required by section 246 of the IDR Act. This can be established by showing that one or more of the following factors apply to Charlie Pty Ltd:

- 1. The debtor's COMI is Singapore.**
- 2. The debtor is registered as a foreign company in Singapore.**
- 3. The debtor has substantial assets in Singapore, or it has chosen Singaporean law to govern any loan or transaction or disputes.**
- 4. The debtor carries on business in Singapore or has a place of business there; or**
- 5. The debtor submitted to the Court's jurisdiction of 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

On the filing of the judicial management application, an automatic moratorium on legal proceedings against the Company enters into effect, including preventing any steps to enforce security over any property of the company (section 95 of the IDR Act). The section does not indicate whether or not it has extra-territorial effect.

Further, once any judicial management order is made, a more extensive moratorium will come into effect for period of the judicial management, pursuant to section 96(4) of the IDR Act. Orders may also be sought from the Singaporean Court for the moratorium to have extra-territorial effect, like in the case of Zipmex Group of Companies (HC/OAs 381-385/2022).

[see s88 of IRDA which defines property to include that outside of SG. But protection in that particular jurisdiction would depend on whether recognition is available]

*** End of Assessment ***

32m