



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 **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 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.**

*Where a company is in a scheme of arrangement, a cross-class cramdown allows the scheme to be approved despite one or more classes of creditor rejecting the proposed scheme.*

*The Court will approve the scheme as binding on the company and all classes of creditors (but not shareholders) provided that the following requirements are satisfied:*

- a) a majority in number of creditors meant to be bound by the compromise or arrangement, and who were present and voting (either in person or by proxy) 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 (either in person or by proxy); 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 must provide for each creditor in that class to receive property of a value equal to the amount of the creditor's claim; or 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 creditors are secured creditors - s 70]**

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

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

- 1. Introduce a new omnibus legislation that consolidates personal and corporate insolvency and restructuring laws; and*
- 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.**

*In accordance with the Court's findings in Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd, the factors to be considered under the cash flow test include the following:*

- 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; and*
- 4. the length of time that has passed since the commencement of the winding-up proceedings.*

**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 is available for distressed companies where the financing required is necessary for the survivor of the debtor company and/or is necessary to achieve a more advantageous realisation of the debtor 's assets than on a winding-up of that debtor.*

*It is available to companies that are in schemes of arrangement or under judicial management. Upon an application from the debtor, the Court can order that any rescue financing which the debtor obtains is to:*

- (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.*

*It is a debtor friendly remedy which can help a company avoid liquidation.*

*Section 239 of IRD Act brought in a new offence of wrongful trading. That section provides that if, in the course of a judicial management or winding up of a company or in any proceedings against a company, it appears that the company has traded wrongfully, the Court may 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 –*

- (a) 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.*

*Wrongful trading occurs where debts or liabilities are incurred without reasonable prospect of the company meeting them in full when the company is insolvent, or the company becomes insolvent as a result of the incurrence of such debt or liabilities.*

***[discuss that it doesn't require imposition of criminal liability and that an interested person can seek a court declaration that a transaction is not wrongful trading]***

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

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

*Although the processes of judicial management and schemes of arrangement are methods of corporate rescue available under Singapore Law, there are a number of differences between them.*



*In a judicial management procedure, the Court appoints a judicial manager who is an insolvency practitioner, to manage the company's affairs for a period of 180 days, subject to any further extension that may be granted. It is a creditor driven process.*

*By contrast, a scheme of arrangement is a debtor in possession process which provides the company with a range of options for the purposes of restructuring the business and avoiding insolvency, including the availability of rescue financing and a cross class cramdown.*

*In judicial management, the judicial manager usurps the functions of the directors of the business, whereas in a scheme of arrangement the company's directors continue to manage the business.*

*A scheme of arrangement may be seen as a more attractive option to debtors given that it enables the company to maintain control of its affairs and carries less stigma than judicial management, which is seen as closer to an insolvency process that may indicate to third parties difficulties in the company's financial affairs.*

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

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**

**(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) 1m**

**(a) The purpose of judicial management proceedings is as set out in section 89(1) IRD Act, namely to enable the company or a whole or part of its undertaking to survive, to approve a compromise or arrangement between the company and any parties which are listed in section 210 Companies Act, or to enable a more advantageous realisation of the company's assets than would occur in a winding up. In order to obtain a judicial management order, the company must**

*nominate a person who is a licensed insolvency practitioner, but is not the auditor of the company, to act as a judicial manager and that person must file with the Court a statutory declaration that the person is not in a position of conflict of interest in accepting the appointment and performing the role of judicial manager.*

**[see s 91 of IRDA on what the court must be satisfied of]**

*(b) In order to access rescue financing under the IRD Act, where the company has been placed into judicial management, the judicial manager will need to make an application under section 101 IRD Act seeking an order under that section, including that if the company is 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. the judicial manager will need to give notice of the application to each creditor of the company and the creditors can oppose the application.*

**[discuss what constitutes rescue financing under 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) 3m**

*A new voluntary procedure for appointment of a judicial manager has been introduced by section 94(1) IRD Act. To put Alpha and Beta into judicial management through this process an application to court has to show that the companies are or are likely to become unable to pay their debts, there is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1) of IRD Act; and the creditors should have approved the procedure by a resolution.*

**(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**

*Charlie Pty Ltd is incorporated in Australia. Foreign debtors can be subject to judicial management provided that the applicant can show it has a substantial connection with Singapore. We know that Charlie Pty Ltd has granted a mortgage of the properties in Australia which it owns to a Singapore bank pursuant to a bank facility that is governed*

*by Singapore law. A substantial connection with Singapore can be shown where the debtor has chosen Singapore law as the law governing a loan or other transaction.*

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) 3m**

*There is no automatic protection, as Singapore law does not recognise the concept of insolvency proceedings for a group of companies. Separate insolvency proceedings must be filed for each company. Insolvency proceedings could be instituted in the jurisdictions where the assets are located and applications for recognition of those proceedings could be made to the Singapore court. Singapore has adopted the Model Law and the JIN Guidelines. In accordance with Article 21 of the Model Law, upon recognition of a foreign proceeding (whether or not that is a foreign main proceeding), the foreign representative can ask the court to grant relief including a stay of execution against the debtor's assets or staying the commencement or continuation of actions concerning those assets.*

[yes, but also discuss the moratoria for each of the 3 companies and recognition could be sought in relevant jurisdictions, without having to institute fresh proceedings]

\* End of Assessment \*

39m