



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.**

*The concept of cross-class cramdown was introduced in the 2017 Amendment Act (now contained in the IRD Act). A cross-class cramdown in a scheme of arrangement, subject to certain conditions, allows a scheme of arrangement to be approved regardless one or more classes of creditor having rejected the proposed scheme. The reason for introducing the provision was to minimise the overall impact of minority creditors.*

*In the previous cross-class cramdown regime from the Companies Act, existing members were required to divest their shares in order to cram down a class of unsecured creditors. There was no set procedure for shareholders to be compulsorily divested of their shares under the scheme of arrangement and the cramdown was as a result dependent on members voluntarily divesting their shares. Now, under the IRD Act, unsecured creditors can be crammed down without the requirement of other members divesting of their shares.*

*Before ordering a cross-class cramdown, the court requires: (i) a majority in number of creditors meant to be bound by the arrangement and who are present and voting (either in person or via proxy) have agreed to the arrangement; (ii) that the majority in number of creditors consists of 75% in value of creditors to be bound by the arrangement, and who were present and voting (either in person or via proxy); and (iii) the court is satisfied that the arrangement does not unfairly discriminate between two or more classes of creditors and is fair and equitable to each dissenting class.*

***[discuss what is fair and equitable - s 70 IRDA]***

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

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

*The objectives of the IRD Act are to: (i) introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws; (ii) establish a regulatory regime for insolvency practitioners; and (iii) 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.**

*Under the IRD Act, to determine whether a company is 'unable to pay its debts', the following factors should be considered under the cash flow test: (i) the quantum of all debts which are due or will fall due in the reasonably near future; (ii) whether payment is being demanded or is likely to be demanded for the debts; (iii) whether the company has failed to pay any of its debts, the quantum of these debts, and for how long the company has failed to pay them; (iv) the length of time that has passed since the commencement of the winding-up proceedings; (v) the value of the current assets and assets that will be realisable in the near future of the company; and (vi) any other income or payment which the company may receive in the reasonably near future. This list is not exhaustive.*

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

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

**Write a brief essay on**

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

**under the IRD Act.**

- (i) Under the IRD Act, rescue financing is financing that is either or both: (i) necessary for the survival of a debtor that obtains the financing; (ii) necessary to achieve a more advantageous realisation of the assets of the debtor that obtains the financing than on the winding-up of that debtor. Under both judicial management and the scheme of arrangement, a Singapore court can, on application by the debtor, make an order that any rescue financing obtained by the debtor will: (i) enjoy priority over preferential debt if the debtor is subsequently wound up; (ii) be treated as part of the costs and expenses of the winding-up if the debtor is subsequently wound-up; (iii) be secured by a security interest on property**

*of the debtor that is not otherwise subject to any security interest, or be secured by a subordinate security interest on property of the debtor that is already subject to security interest if the debtor would not have been able to obtain unsecured rescue financing from any other party; and (iv) be secured by a security interest on property subject to an existing security interest, of the same or a higher priority than the current security interest, provided the debtor would not have been able to obtain rescue financing from an other party unless it was secured in this manner and there is adequate protection for the interests of the existing security interest.*

*The above are extraordinary measures which are derived largely from section 364 of the US Bankruptcy code. The measures were introduced as part of the package of amendments as set out in the 2017 Amendment Act (prior to the IRD coming into effect in 2020), and which were designed to heighten Singapore's reputation as an international restructuring hub.*

- (ii)** *Wrongful trading was introduced under Section 239 of the IRD Act. Under this concept, personal liability for the company's debts can be imposed on an individual if: (i) they knew that the company was wrongfully trading; or (ii) as an officer of the company, ought, in all circumstances, to have known that the company was wrongfully trading. The wrongful trading provision is adopted from English insolvency legislation and no longer requires that criminal liability be established before taking effect. The previous provision prior to the enactment of this new wrongful trading position also held this effect. Wrongful trading can be defined as the incurrence of debt or other liabilities with no reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent due to the debt.*

*A company or any person party to, or interested in becoming party to, carrying on business with a company, can apply to the court for a declaration that a particular transaction or conduct would not constitute wrongful trading.*

**Question 3.2 [maximum 7 marks] 5m**

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

*In Singapore, judicial management and schemes of arrangement are both alternatives to formal liquidation proceedings.*

*One key difference between judicial management and schemes of arrangement is that judicial management results in the appointment of an insolvency practitioner as the judicial manager, who is court appointed. The judicial manager replaces the company's directors and management and assumes responsibility for running the*



*company. In a scheme of arrangement, the company's existing management continues to operate the business.*

*With regard to converting from corporate rescue to liquidation, there are some differences between judicial management and schemes of arrangement. In schemes of arrangement, there is no specific conversion mechanism to convert to liquidation. If the moratorium granted under the IRD Act section 64 lapses, with no scheme sanctioned, creditors of the company or the company can apply for winding-up or any other corporate rescue process (including judicial management) either by creditor application or otherwise. In a judicial management, the judicial management order will be discharged after 180 days unless this is extended by court. There is no limit on the number of extensions the court may grant. Judicial management orders can also be dismissed if: (i) the creditors decline to approve the proposals of the judicial manager; (ii) the judicial manager opines that the purposes set out in the judicial management order cannot be achieved; or (iii) the judicial manager has acted or will act in a manner that would be prejudicial to the creditor interests or the interests of members of the company. A discharge of the judicial management order does not result in automatic liquidation but the court has discretion to order that the company be placed in liquidation thereafter.*

*With respect to the thresholds required to enter into both corporate rescue methods, for a scheme of arrangement, in order to enter into moratorium protection a company makes an application provided the following requirements have been met: (i) no order has been made and no resolution passed for the winding-up of the company; (ii) the company undertakes to do so as soon as practicable an application to sanction a scheme of arrangement; and (iii) the company has not applied for protection under section 210(10) of the Companies Act already. Whilst making the application, the company is required to publish a notice in the Government Gazette as well as in at least one English local daily newspaper to notify creditors. The applications must also include: (i) evidence of support from the creditors of the company; (ii) where a scheme of arrangement has not been proposed, a brief description of the intended compromise or arrangement containing adequate details to allow the court to determine if it is feasible and warrants consideration by creditors; and (iii) a list of every secured creditor and the largest unsecured creditors. In contrast, for judicial management, a court will grant a judicial management order if they are: (i) satisfied that the company is or will be unable to pay its debts; (ii) considers that the granting of the order will likely achieve (a) the survival of the company, or the whole or part of it as a going concern; (b) approval under section 210 of the Companies Act of an arrangement between the company and any such persons as are mentioned; or (c) a more advantageous realisation of the company's assets than would take place in a winding-up.*

***[discuss moratorium - s64 application needed, whereas moratorium arises automatically in JM; avoidance provisions, objectives in JM v SOA]***

**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)**

**2m**

**(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**

*a.) The purpose of judicial management proceedings is to facilitate the restructuring of financially distressed companies. Judicial management provides a rescue mechanism for the company to obtain court protection whilst an independent judicial manager takes control of its affairs. The primary objectives of judicial management proceedings are to preserve the company's assets and develop a restructuring plan that can lead to its revival and survival.*

*To obtain a judicial management order a company must present evidence to the court that it is likely to become insolvent and that a judicial management order is needed for one of the following purposes: (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 an arrangement between the company and any persons mentioned in that section; or (iii) a more advantageous realisation of the company's assets than would happen should the company be wound up.*

*b.) In order for the company to access rescue financing under the judicial management order the rescue financing must be either or both: (i) necessary for the survival of a debtor that obtains the financing; and (ii) necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, compared to the winding-up of that debtor. Under the judicial management order, the Singapore court can, on application by the debtor, grant an order than any rescue financing obtained by the debtor will: (i) be treated as part of the expenses of the winding-up if the debtor is subsequently wound-up; (ii) have priority over preferential debts if the debtor is subsequently wound-up; (iii) be secured by a security interest on property that is subject to an existing security interest, of the same or higher priority than the current security interest (should the debtor not be able to access rescue financing from any other source and there is adequate protection of the*

*interests of the existing security interest); or (iv) be secured by a security interest on property of the debtor that is not otherwise subject to a security interest.*

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***

*Alpha Pte Ltd ("Alpha") and Beta Pte Ltd ("Beta") cannot be placed under judicial management out of court as judicial management is a court-supervised process that requires court approval for the appointment of a judicial manager to assume responsibility for the companies' affairs. Even though their parent company has been placed under judicial management, its subsidiaries are considered separate legal entities with their own financial obligations. Placing Alpha and Beta into judicial management would require separate court applications for each subsidiary.*

***[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) 2.5m***

*Charlie Pty Ltd ("Charlie") may be eligible to be placed into judicial management in Singapore if it can be proved that it is a foreign debtor that has a 'substantial connection' to Singapore. Charlie is incorporated in Australia however the Australian properties Charlie owns are mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law. Also, Mr X and Mr Y who are the majority directors of Charlie are based in Singapore. It could therefore be argued that Charlie has a 'substantial connection' to Singapore as it has chosen Singapore law as the law governing its bank loan and for the other reasons outlined below, it could be determined its COMI lies in Singapore.*

***[discuss that it needs to be a company liable to be wound up in SG - ie have a substantial connection to SG]***

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**

*Whether the assets owned by the ABC Group in jurisdictions outside of Singapore are protected may depend on the laws of the jurisdictions where the assets are located, i.e. Australia and the UK in this case. The judicial management process is typically focused on the assets and affairs of the company in Singapore. To obtain such protection, the judicial manager should consult the insolvency laws of the relevant jurisdictions in which the assets are located.*

[discuss scope of moratorium in SG too, and also talk about whether recognition is available in the relevant jurisdictions]

**\* End of Assessment \***

**40.5**