



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 cross-class cram-down is a mechanism that allows the approval of a scheme of arrangements and bind all creditors, except for the shareholders, even if the scheme submitted to creditors' vote is rejected in one or more classes of creditors.

The requirements for cross-class cram-down are the following:

- (i) the majority in number of creditors meant to be bound by the scheme of arrangement and who were present and voting (either in person or by proxy) have agreed to the scheme provisions;*
- (ii) the majority in number of creditors shall represent three-fourths in value of the creditors meant to be bound by the scheme of arrangements, and who were present and voting (either in person or by proxy);*
- (iii) court is satisfied that the scheme of arrangement does not discriminate unfairly between two or more classes of creditors and is fair and equitable to each dissent class, considering that a scheme of arrangements will not be fair and equitable to dissenting creditors unless: no creditor in the dissenting class receives, under the terms of the scheme proposal, an amount that is lower than what creditor is estimated by the court to receive in the most likely scenario if the scheme proposal does not become binding, and where 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.*

[discuss also where dissenting creditors are secured creditors - s 70 IRDA]

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

Name two objectives of the IRD Act.

Establish a regulatory regime for insolvency practitioners; and introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws.

In regard to the establishment of a regulatory regime for insolvency practitioners, division 3 of the IRD Act provides for minimum qualifications, conditions for granting the renewal of licenses and disciplinary framework for insolvency practitioners.

On its turn, consolidation of personal and corporate insolvency and restructuring laws, the IRD Act comprises the provisions of the Bankruptcy Act and Companies Act.

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.

Among the factors that should be considered under the cash flow test when rendering a company as unable to pay its debts under the IRD Act, one can mention: (i) the quantum of all debts which are due or will be due in the reasonably near future; (ii) whether payment is being demanded or is likely to be demanded for those debts; (iii) 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 (iv) the length of time that has passes since the commencement of the winding-up proceedings.

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.

Rescue financing is understood as the 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 a debtor that obtains the financing, than on

a winding-up of that debtor. This type of financing is usually available in both schemes of arrangements and judicial management and highlights the reputation of Singapore as an international restructuring hub since it is aimed at the rescue of companies in financial distress. However, it can also be used for liquidation purposes, as better explained below.

In regard to the rescue financing undertaken within schemes of arrangements and judicial management proceedings, court may render a decision rendering that rescue finance obtained by a debtor will be treated as a part of the costs and expenses of the winding up if the debtor is later wound up, enjoy priority over preferential debt in case the debtor is later wound-up, and be secured by a security interest property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property.

According to Section 239 of the IRD Act, is defined as the incurrance of debt or other liabilities without reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of such debt. Therefore, wrongful trading applies regardless the establishment of criminal liability. When a company is under financial distress it usually has no funds to pursue claims and need to obtain such funds with third-funding-parties. In this regard, the IRD Act expressly authorizes judicial managers and liquidators to seek for this type of funding aimed at recovering certain claims, unclosing ones involving wrongful trading.

It is also worth to highlight that the very on rescue financing could, according to the situation, be deemed as a wrongful trading itself if proven to have occurred without reasonable prospect, as provided by Section 239 of the IRD Act.

[discuss that interested persons can seek a declaration as to whether any transaction is 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.

The scheme of arrangements and judicial management proceedings are both rescue proceedings under the IRD Act, that means, such proceedings intend to maintain business activities and restructure company's indebtedness.

The similarities do not end there, in both proceedings court may render a decision rendering that rescue finance obtained by a debtor will be treated as a part of the costs and expenses of the winding up if the debtor is later wound up, enjoy priority over preferential debt in case the debtor is later wound-up, and be secured by a security interest property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property.

Also, in both proceedings, in sum, a restructuring plan is submitted to creditor's vote and if approved, provides the means for restructuring company's debt.

The Scheme of arrangements can be described as a debtor-driven proceeding, in which debtor is kept in the management of its business and assets since they would be more familiar to the company. In such a proceeding the 'plan' is drafted, with the help of a financial advisor and submitted by the very own debtor. Therefore, the role of the courts in this proceeding is merely to supervise the process and grant the necessary measures for creditor debtor negotiations like the moratorium protection.

On the other hand, judicial management is a creditor-driven proceeding under IRD Act that aims at the survival of the company or whole or part of its business as a going concern. As a difference to the scheme of arrangements, the judicial management proceeding demands the appointment of an insolvency practitioner as the judicial manager of the company. In other words, management loses control of the business activities and company's assets, what causes this proceeding to have more of a stigma than the scheme of arrangements, what could harshly impact listed companies. Creditors can play minor roles in the management of the debtor, especially if a Creditor Committee is constituted, which have the powers to request information from the judicial manager relating to the carrying out of his functions, as the committee may reasonably require and also request to court to determine directions to the judicial manager, which can be granted at court's discretion.

[discuss differences in objectives, moratoria, 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)**

2m

Judicial management is a creditor-driven proceeding under IRD Act that aims at the survival of the company or whole or part of its business as a going concern. The judicial management proceeding demands the appointment of an insolvency practitioner as the judicial manager of the company. In other words, management loses control of the business activities and company's assets, what causes this proceeding to have more of

a stigma than the scheme of arrangements, what could harshly impact listed companies.

Creditors can play minor roles in the management of the debtor, especially if a Creditor Committee is constituted, which have the powers to request information from the judicial manager relating to the carrying out of his functions, as the committee may reasonably require and also request to court to determine directions to the judicial manager, which can be granted at court's discretion.

To obtain a judicial management order, court must be satisfied that the company is or is likely to be unable to pay its debts and that by granting the judicial management, the objectives of such a proceeding would be achieved (survival of the company or whole or part of its business as a going concern).

(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

For the company to obtain rescue financing, court must be satisfied that the measure 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 a debtor that obtains the financing, than on a winding-up of that debtor.

[discuss also the 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

Alpha Pte Ltd and Beta Pte Ltd are companies that are incorporated in Singapore, thus, IRD Act applies to the case.

To obtain a judicial management order, court must be satisfied that Alpha Pte Ltd and Beta are or are likely to be unable to pay their debts and that by granting the judicial management, the objectives of such a proceeding would be achieved (survival of the company or whole or part of its business as a going concern).

[see s 94 of 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) 2.5m

Pt. 7, Section 88 provides of the IRD Act provides that only a company that is eligible to be wound-up under Singapore Law may be placed under judicial management. Therefore, it is necessary that the debtor complies with one or more of the following: debtor has its centre of main interests located in Singapore; is carrying on business in Singapore or has a place of business in Singapore; is registered as a foreign company in Singapore; has substantial assets in Singapore; 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 the debtor has submitted to the jurisdiction of Singapore courts for the resolution of one or more disputes relating to a loan or other transaction.

According to the exercise above, Charlie Pty Ltd, is incorporated in Australia, its properties in Australia are mortgaged to a Singapore bank pursuant to a bank facility that is governed by Singapore law, and Mr X and Mr Y, who are based in Singapore are the majority directors of Charlie Pty Ltd. Therefore, Charlie Pty Ltd complies with one or more of the abovementioned legal requirements, having the Singapore courts jurisdiction over a judicial management that is to be filed by the company.

Also, to obtain a judicial management order, court must be satisfied that the company is or is likely to be unable to pay its debts and that by granting the judicial management, the objectives of such a proceeding would be achieved (survival of the company or whole or part of its business as a going concern).

[refer to "substantial connection"]

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

Singapore adopted the model law rules on cross-border insolvency and therefore does not rely on reciprocity among the signatory States. In this regard, the recognition of the Singaporean judicial management would rely on other States policies towards the recognition of a foreign insolvency proceeding and foreign judgements rendered by Singaporean Courts.

All things considered, ABC Group could file for secondary proceedings in the jurisdictions adopting the Model Law or file for the respective insolvency proceeding or competent measure to protect ABC Groups' assets spread throughout other jurisdictions.

[discuss the scope of moratoria in SG, and how that's not enough as it depends on the relevant jurisdiction]

*** End of Assessment ***

37.5m