



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 **0m**

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 a cross-class cramdown is, when certain requirements are fulfilled, it allows a scheme of arrangement with creditors to be approved by the court despite the dissent of one or more classes of creditors.

The requirements that must be met before a cross-class cramdown can be ordered are:

- **The agreement of the majority, which is defined as 75% in value or more, of the creditors who will be bound by the compromise or arrangement, and who were present and voting.**
- **The court is satisfied that the scheme is fair and equitable to the dissenting creditors and does not discriminate unfairly between two or more classes of creditors. This means that the court must ensure that each creditor in the dissenting class, if they are unsecured creditors:**
 - **receive property of a value equal to the amount of the creditor's claim; or**
 - **must not provide for any creditor who has a claim lower than the claim of a creditor in the dissenting class, or any member, to receive or retain any property because of a subordinate claim or member's interest.**

[discuss what it is fair and equitable under s 70]

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

Name two objectives of the IRD Act.

Two objectives of the IRD Act are:

- *To introduce a new omnibus legislation that consolidates and enhances Singapore’s personal and corporate insolvency and restructuring laws; and*
- *To establish a regulatory regime for the 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.

The four factors that should be considered under the cash flow test are:

- *The amount of all debts that will be due in the reasonably near future and whether payment is being or likely to be demanded for those debts;*
- *Whether the company has failed to pay any of its debts, and the amounts of those debts, as well as for how long the company has been unable to pay them;*
- *The state of the company’s business. By deducting the expenses required for the generation of a sale, from the projected future sales, the company can determine its expected net cash flow.*
- *Any arrangements which the company has with prospective lenders such as bankers and shareholders. This would help determine is any shortfall in liquid and realisable assets and cash flow can be made up by borrowing from these lenders and then repaying the debts later in the future.*

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

Question 3.1 [maximum 8 marks] **6m**

Write a brief essay on

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

under the IRD Act.

- i.) Section 64 of the IRD Act allows for the availability of rescue financing. Rescue financing can be used in two main situations. The first situation is when it is necessary for the survival of the debtor that will obtain the financing. It can also be used when it is necessary to achieve a realization of the assets which is more advantageous than the on a winding-up order.**

A Singapore court may make an order for rescue financing under both the scheme or arrangement as well as judicial management. When the court does make the order that the debtor can obtain rescue financing, the costs that occur during the rescue will be treated as part of the costs and expenses of the winding-up of the debtor is the debtor is later wound up. These finances will

also be prioritized over any preferential debts if the debtor is later wound up as well.

Finally, these finances will also be secured by a security interest on the property of the debtor which is not subject to any other security interest or held by a subordinate security interest, if the debtor had not been able to obtain unsecured rescue financing. The financing can also be secured on a property subject to a security interest of the same or higher priority, if the debtor had not been able to obtain any other rescue financing. This will only be done if there is adequate protection for the interest of the existing security interest.

[Discuss the different levels of priority that can be sought from the court]

ii.) Wrongful trading is when a company incurs debts or liabilities without a reasonable prospect of fulfilling these when the company is insolvent. It also can mean that the company becomes insolvent due to these debts and liabilities.

According to Section 239 of the IRD Act, the court is not empowered to make a declaration that if there was any individual knew that he company was wrongfully trading, or an officer of the company in all circumstances knew the company was wrongfully trading, they will be personally held responsible for the debts or liabilities of the company.

This provision was adopted from the English insolvency rules. However, it does not require for a criminal liability to be established before taking effect.

[discuss that an interested person can seek a declaration from court whether a 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.

Judicial management and scheme of arrangement processes are two methods in Singapore used as corporate rescue tools for financially distressed companies. A key difference between a scheme of arrangement and the judicial management is that judicial management appoints an insolvency practitioner who will replace the company's directors and management and will also take over responsibility of the running of the company. On the other hand, the scheme of arrangement process is when a company proposes a compromise to its creditors and is given a moratorium while it proposes its restructuring plan. The management of the company also stay in control over the company throughout this process.

Another difference between judicial management and scheme of arrangement process is the role of the creditors in the processes. In judicial management, the creditors' involvement is limited to engaging with the insolvency practitioner regarding the proposals of the judicial manager which may or may not have yet been approved. However, the creditors do not have a role in the main decision making as this lies with the judicial manager. In contrast, in the scheme of arrangement, creditors play a crucial role in the decision-making process, as the restructuring plan proposed by the company has to be approved by the majority of creditors in order to be applied.

Finally, the last key difference is the role of the courts between judicial management and the scheme of arrangements. In the judicial management, the court plays a crucial role as the company must apply to the court for judicial management and the judicial manager is appointed by the court as well. However, in the scheme of arrangements is mainly supervisory and generally limited to overseeing the restructuring process.

[debtor company needs to specifically apply for a moratorium. It is not automatically given when a company wishes to propose a scheme of arrangement. Discuss also disclaimer of onerous property and avoidance provisions. Discuss also objectives of JM, which can include proposing a scheme of arrangement]

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] **2m**

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

- (a) Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order. (2 marks)**
- (b) Assuming that the Company is placed under judicial management, what requirements must be satisfied in order for the Company to be able to access rescue financing under the IRD Act? (2 marks)**
 - a.) The purpose of judicial management is to serve as a corporate rescue tool for financially distressed companies by appointing an external judicial manager to oversee the operations of the company and implement changes.**

In order to obtain a judicial management order, ABC Group must present to the court the evidence that ABC Group cannot or will not be able to pay its debts, there is a reasonable prospect of the Company's survival, and that obtaining the order would be in the best interests of the creditors and shareholders of the Company.

[see ss 89 to 91]

b.) The Company must satisfy either or both of the following requirements:

- **That rescue financing is necessary for the survival of the Company.**
- **And/or necessary to achieve a more advantageous realization of the assets of the Company that obtains the financing, than on a winding-up of the Company.**

[also discuss that a court application is needed to seek the priority under s 101]

Question 4.2 [maximum 6 marks] **0m**

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)

(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)

a.) There are no provisions dealing with groups of companies, however, under section 65, the court can grant moratorium to subsidiaries if they play a necessary and integral role in the restructuring plan proposed by the company. As such, if Alpha Pte Ltd and Beta Pte Ltd were to be put under judicial management, they would have to go through a separate application for each one separately.

[see s 94 for steps to put company into voluntary JM]

b.) As stated above, Singapore does not have any provisions for dealing with group companies. As such, depending on the proposal by the judicial manager it would have to be determined if Charlie Pty Ltd is eligible to be placed into judicial management. If it is determined that it is, the judicial manager would have to seek recognition in Australia for the moratorium to apply to Charlie Pty Ltd as well.

However, it may also be that due to the Model Law being adopted in both Singapore and Australia, the process may be easier as Australia would then recognize the judicial management due to the model law.

[see s88 and s264. A company liable to be wound up in SG can be put into JM. A company liable to be wound up is one with a substantial connection to SG.]

Question 4.3 [maximum 5 marks] **0m**

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)

This would depend on if the assets owned by ABC Group are in jurisdictions that apply the same rules as Singapore, such as the Model Law. If that is the case, then it can streamline the recognition process. However, if this is not the case, then the judicial manager would have to seek recognition in those jurisdictions and seek protection over the assets in those jurisdictions.

[first discuss that there is a moratorium in SG upon a JM order made and it covers property of the debtor company whether in Singapore or overseas. But whether there is protection in that particular jurisdiction depends on the recognition laws of that jurisdiction (eg whether it adopted the Model law, or has its own recognition laws)

*** End of Assessment ***

30m