



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 a cross-class cram-down, which was first introduced in 2017, allows a creditor's scheme of arrangement to be approved even though one or more classes of creditors have rejected the proposed scheme of arrangement. The purpose of the cross-class cram-down is to limit the overall influence of minority creditors. Prior to the IRD Act, cross-class cram-down provisions in the Companies Act required existing members to divest their shares even though there was not a compulsory divestment procedure. Under the IRD Act, a court can order that a proposed scheme of arrangement is binding on the company even though it was rejected by one or more classes of creditors if:

- a. A majority in number of creditors meant to be bound by the scheme of arrangement, and who were present and voting have agreed to the scheme of arrangement;*
- b. That majority in number of creditors represents three-fourth in value of the creditors meant to be bound by the scheme of arrangement, and who were present and voting; and*
- c. The 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 dissenting class.*

[Comment - also discuss what is fair and equitable]

Question 2.2 [maximum 2 marks] **1m**

Name two objectives of the IRD Act.

Two objectives of the IRD Act which came into force on 30 July 2020 were:

- a. Repeal and replace the legislation regime that existed; and*
- b. Consolidate all personal and corporate insolvency and restructuring laws into one piece of legislation.*

[comment - include another objective]

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.

*A creditor is prima facie entitled to a winding up order if a company is deemed “unable to pay its debts” under s152(2) of the IRD Act. The court in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* set out a list of factors that should be considered under the cash flow test which included the following:*

- a. The quantum of all debts which are due or will be due in the reasonable near future;*
- b. Whether payment is being demanded or is likely to be demanded for those debts;*
- c. The length of time that has passed since the commencement of the winding-up proceedings; and*
- d. The value of the company's current assets and assets that will be realisable in the reasonably near future.*

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

Rescue Financing which was first introduced by the 2017 Amendment Act was part of a debtor- in-possession restructuring regime which was taken largely from the US Bankruptcy code. Rescue Financing which allows a debtor to obtain post-commencement financing is financing which is:

- a. necessary for the survival of the debtor; and/or**
- b. necessary to achieve a more advantageous realisation of the assets of the debtor than a winding-up of the debtor.**

Section 67 of the IRD Act provides for Rescue Financing under a scheme of arrangement and section 101 of the IRD Act provides for Rescue Financing under judicial management. Under the IRD Act, the court can order that any Rescue Financing obtained by a debtor will:

- a. if the debtor is later wound -up be treated as part of the costs and expenses of the winding-up;**
- b. if the debtor is later wound- up enjoy priority over preferential debts;**
- 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 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 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.**

Wrongful Trading

Wrongful Trading which was introduced by section 239 of the IRD Act was adopted from the English insolvency legislation. A company trades wrongfully if the company incurred debts or liabilities without any reasonable prospect of satisfying them in full when the company is insolvent or becomes insolvent as a result of the debts or liabilities incurred.

A person who was a knowingly party to the company's wrongful trading can be declared personally liable for the debts and liabilities of the company by the court. A person is a knowingly party if:

- a. The person 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.*

An application can be made to the court by the company or any person party to, or interested in becoming party to, the carrying on of business with the company for a declaration that a specific transaction or series of transaction would not constitute wrongful trading.

[comment - also discuss that criminal liability need not be first established]

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.

Judicial management and a scheme of arrangement are both corporate rescue mechanisms. However, a scheme of arrangement is a debtor- driven process while a judicial management is creditor-led. In a scheme of arrangement, the directors and management of the company remain in control while in a judicial management the judicial manager appointed by the court replaces the directors and management. In a scheme of arrangement, the compromise is presented to the creditors by the company and its advisors while the judicial manager presents the

The application for the entry into a scheme of arrangement is made by the company where no resolution or order is made for the winding up of the company, the company undertakes to make a sanction application and the company hasn't applied for protection under section 210(10) of the Companies Act. Notice of the application must be published in the Gazette and in at least one English daily newspaper and send to the creditors.

An application for judicial management on the other hand can be made by a company, director or creditor. An application is made where the company is unable to pay its debt and there is a reasonable probability of rehabilitating the company or preserving all or part of its business as a going concern, or that otherwise the interests of the creditors would be better served than by resorting to a winding -up. A judicial management order will be discharged after 180 days if no extension is granted.

A judicial manager is responsible for realising the assets of the company and is required to submit a statement of proposals to the creditor within 60 days of their appointment. In a scheme of arrangement, the proposed scheme manager is responsible for restructuring the company. A judicial management unlike a scheme of arrangement has a stigma attached to it.

[comment - discuss differences in objectives of JM which includes scheme whereas scheme is only for a scheme, and moratorium, and also JM tools in respect of liability provisions]

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 corporate rescue mechanism which is creditor-led. This is where a judicial manager upon appointment will take control of the business and property of the company for a period of at least 180 days.

An application is made where the company is unable to pay its debt and there is a reasonable probability of rehabilitating the company or preserving all or part of its business as a going concern, or that otherwise the interests of the creditors would be better served than by resorting to a winding -up.

The Court will only make an order where:

- a. The court is satisfied that the company is or will be unable to pay its debts*
- b. Considers that the making of the order would be likely to achieve the survival of the company, approval under section 210 of the companies act or it would be more advantageous realisation of the company's assets.*

(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

Upon the granting of a judicial management order, the company will automatically have access to the access rescue financing under the IRD Act such as the moratorium.

[comment - discuss what is rescue financing and that court application is required to obtain priority]

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 and Beta can only be placed under judicial management by an order of the court. Unlike a scheme of arrangement, a judicial order is made by court upon the application by the company, director or creditor.

[comment - see s94 IRDA]

- (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) 2m***

In order for a company to be placed under judicial management, it must be eligible to be wound up under the IRD Act. Charlie is incorporated in Australia and would be a foreign debtor. Charlie must be shown to have one or more of the following:

- a. The centre of main interests is located in Singapore;*
- b. It is registered as a foreign company in Singapore;*
- c. It is carrying on business in Singapore or has a place of business in Singapore;*
- d. It has substantial assets in Singapore;*
- e. Has submitted to the jurisdiction of Singapore; and*
- f. Has chosen Singapore law as the governing law.*

[comment - refer to requirement of "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) 0m***

Yes, the assets of the ABC Group will be automatically protected once the entities are placed under judicial management.

[comment - there is no automatic protection overseas - seek recognition of insolvency proceedings and moratorium]

*** End of Assessment ***

35m