



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 **0m**

**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 0m

**What percentage of each class of creditors must approve a scheme of arrangement for it to pass?**

(a) *Over 50% in value.*

(b) *50% or more in value.*

**(c) Over 75% in value.**

(d) *75% or more in value.*

Question 1.5 1m

**Which of the following in respect of the automatic moratorium under section 64(1) of the Insolvency Restructuring and Dissolution Act (IRD Act) is incorrect?**

(a) *The automatic moratorium lasts for 30 days.*

(b) *The automatic moratorium may be extended.*

**(c) The automatic moratorium can be obtained without filing an application to court.**

(d) *The debtor has to either propose or intend to propose a scheme of arrangement.*

Question 1.6 0m

**Which of the following types of contracts are excluded from the *ipso facto* restriction in section 440 of the IRD Act?**

(a) *Any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed.*

**(b) Any contract that is a licence, permit or approval issued by the Government or a statutory body.**

(c) *Any commercial charter of a ship.*

(d) *Any contract for a loan with a financial institution.*

Question 1.7 **1m**

**Which of the following is one of the three statutory objectives of a judicial management?**

- (a) To allow the directors to oversee the restructuring of the company.**
- (b) To preserve all or part of the company's business as a going concern.**
- (c) As a means for the secured creditors to realise their security.**
- (d) To liquidate the company in a fast-track and cost-efficient manner.**

Question 1.8 **1m**

**Which one of the following is not a debtor who can apply for personal bankruptcy in Singapore?**

- (a) An individual domiciled in Singapore.**
- (b) An individual who owns property in Singapore.**
- (c) An individual who has been carrying on business in Singapore for the last year.**
- (d) An individual whose parents live in Singapore.**

Question 1.9 **1m**

**Which of the following in respect of rescue financing is incorrect?**

- (a) Rescue financing is financing that is necessary for the survival of a debtor that obtains the financing.**
- (b) Rescue financing is financing that is necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a winding-up of that debtor.**
- (c) Rescue financing enjoys preferential treatment automatically without the sanction of court.**
- (d) Rescue financing may be sought in a judicial management process.**

Question 1.10 **1m**

**Who may apply to court to place a company into liquidation?**

- (a) The company itself.**
- (b) A creditor of the company.**
- (c) A shareholder of the company.**
- (d) Any of the above.**

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 4 marks] **2m**

**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.**

*[Cross-class cramdown is an instrument which allows a court to recognise the binding force of the rescue plan despite the lack of unanimity among the creditors. Cross-class cramdown allows the creditors and the debtor to overcome the position of the dissenting creditors on the rescue plan.]*

*Under the current cross-class cramdown regime provided by the IRD Act, a court can order that the scheme is binding on the company and all classes of creditors if:*

- 1. 75% of the creditors present and voting have agreed to the compromise and arrangement and*

*The court finds that the compromise or arrangement does not discriminate between several classes of creditors and is fair and equitable towards each class.<sup>1</sup>]*

***[Comment: also discuss what is fair and equitable where dissenting class are secured or unsecured creditors - s70(4)]***

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

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

[

- 1. Introduce omnibus legislation which consolidates commercial and consumer bankruptcy regimes;*

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<sup>1</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.16, pages 54-55.

2. *Provide a legislative framework for insolvency practitioners;*
3. *Enhance Singapore's bankruptcy and restructuring laws<sup>2</sup>.]*

Question 2.3 [maximum 4 marks] **1m**

**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 debtor is presumed to be unable to pay their debts if the debt is immediately due and payable and one of the following circumstances takes place:*

1. *The creditor has lodged a statutory demand however the debtor has neither complied with it not challenged it within 21 days since the demand;*
2. *An enforcement order against the debtor has been returned unsatisfied;*
3. *The debtor remains outside Singapore in order not to perform their payment obligations towards the creditor;*
4. *The Official Assignee recognised failure of a debt repayment scheme<sup>3</sup>*

**[Comment - see *Sun Electric Power v RCMA Asia*]**

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

Question 3.1 [maximum 8 marks]

**Write a brief essay on**

- (i) **rescue financing; and 2m**
- (ii) **wrongful trading 2m**

**under the IRD Act.**

*[Rescue financing is the contribution which takes place after commencement of the scheme of arrangement or judicial management and allows the debtor to preserve its business and/ or realise debtor's assets in a more advantageous way.*

*Rescue financing was borrowed from section 364 of the US Bankruptcy code.*

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<sup>2</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 9.1, page 62.

<sup>3</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.2.8, page 17.

*Upon debtor's application the court may qualify rescue financing as part of costs and expenses of the winding-up or recognise priority of rescue financing over preferential debts and its status as secured by the debtor's property.<sup>4</sup>*

**[Comment: discuss what is definition of rescue financing, and also what priority orders a court may grant. Also refer to legislative provision]**

*Wrongful trading is a concept which allows to hold the company's management or officers personally liable for its debts. Under Section 239 of the IRD Act, any interested party may apply to court to hold any person responsible for the debtor's wrongful trading personally liable for its debts. Wrongful trading involves incurring debts or liabilities without the reasonable prospect of meeting them in the future or such debts and liabilities which lead to the company's insolvency.*

*A person can be held liable for the company's wrongful trading if they knew or ought to have known due to their position that the company was trading wrongfully.<sup>5]</sup>*

**[Comment: discuss the previous provision requiring imposition of criminal liability, and how a declaration can be sought for declaration that it is not wrongful trading]**

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

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

[While both the judicial management and the scheme of arrangement are corporate rescue procedures, they are different.

First, the scheme of arrangement involves a debtor in possession restructuring tools allowing the debtor to negotiate the restructuring plan with the creditors. In case of judicial management, debt restructuring is made via the insolvency practitioner appointed by the court – the judicial manager.

**[Comment: there are also other objectives, not necessarily debt restructuring in a JM]**

Second, the scheme of arrangement allows debtor's management to remain in control whereas judicial management means involves the cease of the management's powers as soon as the judicial manager is appointed. In the scheme of arrangement a debtor can appoint a scheme manager.<sup>6</sup> Such scheme manager has limited powers related to supervising the scheme. To the contrary, the judicial manager takes over management powers.<sup>7</sup>

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<sup>4</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.12, pages 51-52.

<sup>5</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 9.5, pages 63-64.

<sup>6</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.9, page 49.

<sup>7</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.10, pages 50-51.



Third, in the scheme of arrangement the court's role is merely supervisory, in the judicial management it is more involved in the debtor-creditors affairs.<sup>8</sup>

Forth, while the scheme of arrangement does not provide any mechanism of conversion into the liquidation, at the judicial management the court is entitled to issue the order to commence liquidation.<sup>9</sup>

Fifth, the scheme of arrangement implies a thirty-day moratorium upon filing an application. This term can be extended by court at the debtor's application. Judicial management results in a moratorium for the whole period of the procedure.<sup>10</sup>

[comment: a debtor wishing to propose a scheme of arrangement does not need to apply for a moratorium if it does not wish to. It is a separate application to facilitate the scheme of arrangement process – seeking leave of court to call a scheme meeting, proposing a scheme, voting on a scheme, and seeking court sanction if approved]

Sixth, the scheme of arrangement does not provide for a specific mechanism of disposal of assets. Assets disposal may be restricted by court upon the creditor's application. The judicial manager has powers to dispose of debtor's assets.<sup>11]</sup>

#### 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***

<sup>8</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.1.3, pages 11-13.

<sup>9</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.5, pages 47-48.

<sup>10</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.8, page 49.

<sup>11</sup> Foundation Certificate in International Insolvency Law, Module 8E Guidance Text, Section 6.5.11, page 51.

**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) 1m**

*[Judicial management is a corporate rescue procedure which aims at rehabilitation of the debtor's liabilities and settlement thereof with the creditors under the supervision of the court appointed judicial management.]*

*In order to obtain the order introducing judicial management, the creditors together or one creditor should provide evidence that:*

- 1. ABC Limited is incorporated in Singapore or is a foreign company which has a substantial connection with Singapore. ABC Limited is incorporated in Singapore.*
- 2. ABC Limited is or will be unable to pay its debts. ABC Limited has various liabilities. Besides, it is a holding company of the ABC Group which provided guarantees to secure the group companies' debts. Group companies have defaulted their bank facilities which means that ABC Limited will have to pay their debts. Furthermore, ABC Limited has undertaken obligations under the MTN Programme to invest the borrowed funds into the group companies. Accordingly, the default of the ABC Limited subsidiaries creates a risk that the company will be unable to pay its debts.*
- 3. There is a reasonable probability that ABC Limited will be rehabilitated or creditors' interests will be preserved better than by resorting to a winding up. First, ABC Limited has shareholders who have granted it loans repayable on demand. Second, ABC Limited has property in Australia which will be difficult to sell through a winding up proceedings (court order to levy execution on this property will have to be recognized and enforced in Australia). Therefore, is more reasonable to negotiate with the shareholders Mr X and Mr Y whether they can not demand repayment of loans and help to sell Charlie Pty Ltd to satisfy the creditors debts.*

*In order to access the rescue financing, ABC Limited shall demonstrate that it will be necessary for the company's survival or necessary to achieve a more advantageous realisation of assets.]*

***[Comment: also explain that a court application is required for the super priority under s 101]***

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***

*[In order to introduce judicial management, the bank lenders should provide evidence that:*

1. *they are eligible to apply for judicial management in respect of each company. Judicial management application may be brought by the company, its directors or its creditors. In case ABC Limited lenders are not lenders of the three subsidiaries, they can negotiate that the companies themselves or their directors apply for judicial management.*
2. *the subsidiaries are incorporated in Singapore or are foreign companies which have a substantial connection with Singapore. ABC Limited is incorporated in Singapore. While Alpha Pte Ltd and Beta Pte Ltd are incorporated in Singapore, Charlie Pty Ltd is a foreign company which has a substantial connection with Singapore because its contract is governed by Singapore law.*
3. *subsidiaries are or will be unable to pay its debts. Since Alpha Pte Ltd and Beta Pte Ltd are operating companies and Charlie Pty Ltd is a company which holds assets in Australia. Therefore, they are unlikely to generate their own income and they are likely to depend on the ABC Group revenue. Therefore, since the ABC Group entities are already in default, they are likely to default or already defaulted on their obligations as well.*
4. *there is a reasonable probability that the subsidiaries will be rehabilitated or creditors' interests will be preserved better than by resorting to a winding up. Since the subsidiaries are dependent on the ABC Group assets and guarantees and Charlie Pty Ltd has assets in Australia it will be more efficient to negotiate out-of-court rescue scheme.]*

**[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) 3m**

*[Charlie Pty Ltd is a foreign company so in order to qualify for judicial management in Singapore it should demonstrate that it has a substantial connection with Singapore. Substantial connection can be demonstrated by the fact that its contract is governed by Singapore law]*

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**

*[Under Singapore law, any moratorium has a local effect. Singapore Law cannot grant protection over ABC Group's assets located abroad. To the contrary, the company has to apply to foreign courts to seek insolvency protection.<sup>12</sup>]*

[Comment - the moratorium covers property outside Singapore (s88) but if you need protection outside, then there is a need to apply for recognition in the relevant jurisdictions. If recognition is not available, then consider whether to commence parallel proceedings.]

**\* End of Assessment \***

**28m**

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<sup>12</sup> [Ch. 08 The Law of Contract www.singaporelawwatch.sg](http://www.singaporelawwatch.sg), Section 30.5.11