



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 **0m**

**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] **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 cramdown allows a scheme of arrangement with creditors to be approved despite one or more classes of creditors rejecting the proposed scheme. The reason for the cramdown was to minimise the influence of minority creditors.

The requirements before a court ordered a cram-down are:

- A majority of the creditors are bound by the compromise or arrangement and where present and voting have agreed to the compromise or arrangement;
- A majority of creditors represents three fourths in value of the creditor body are bound by the compromise who were present and voting; and
- The court is satisfied that more than two or mor creditors are not unfairly treated under the compromise or arrangement. The court will consider the compromise or arrangement is not fair and equitable unless:
  - no creditor in the dissenting class receives an amount that is lower than what the creditor is estimated if the scheme proposal is not binding
  - the creditors in the dissenting class are unsecured, the terms of the compromise or arrangement must: provide for them to receive property of a value equal to their claim, or they must not provide for any creditor with a claim that is subordinate to that of the dissenting class, or any member to receive or retain any property on account of the subordinate claim or the member's interest.

**[Comment: to also discuss the requirements where the dissenting class is secured]**

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

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

Two objectives are:

- Introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws
- Establish a regulatory regime for 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.**

Four factors that should be considered are:

- The sum of debts that are due or will be due soon;
- Whether payment is being demanded or will likely to be demanded;
- If the company has failed to pay its debts, the sum of the debt and how long they have not paid it; and
- The amount of time that has passed since the commencement of winding up proceedings

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

**Question 3.1 [maximum 8 marks]**

**Write a brief essay on 2m**

**(i) *rescue financing; and***

Rescue financing is a type of financing that is needed for the survival of debtor that obtains the financing and so that the debtor can achieve a more advantageous realisation of the assets of a debtor that obtains the financing, rather than that of a winding-up.

Rescue financing is used in both a scheme of arrangement and judicial management. Rescue financing can be obtained by an application by the debtor. The court can make an order that the rescue financing will:

- be treated as part of the costs and expenses of the winding up procedures if the debt be wound up;
- have priority over preferential debts if wound up;
- have security interest on property of the debtor not subject to any security interest, or be secured by a subordinate security interest on property of the debtor that is subject to an existing security interest if the debtor wouldn't have obtained financing from any other person; or
- be secured on security interest on property that is subject to an existing security interest, if it is of the same or a higher priority than the existing security interest. If the debtor would not have been able to obtain rescue financing from anyone else unless it was secured in a manner and there is sufficient protection for the interests of the existing security interest.

***[Comment: to discuss what is rescue financing as defined in IRDA, and what is its purpose]***

**(ii) wrongful trading 3m**

**under the IRD Act.**

Wrongful trading is incurring debt without the intent to pay them off in full when the company is insolvent or becomes insolvent due to this debt.

In the IRD Act section 239 a new concept of wrongful trading, has been enacted. It imposes personal liability for the company's debts on a person if they knew that the company was wrongfully trading or if an officer knew that the company was wrongfully trading. The provision is adopted from English insolvency law, criminal liability is no longer needed.

Any company, person or part interested in carrying on business with a company may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading.

**[Comment: other than intent, a company also trades wrongfully if it incurs debt without reasonable prospect of meeting them in full]**

**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.**

A scheme of arrangement is a debtor-in-possession type procedure, with tools that allows the debtor to obtain debtor in possession financing, an automatic moratorium and cross class clam down. They allow debtors breathing room to restructure the company and for negotiations to be agreed and implemented. The management of the company in a scheme stays in control compared to that of judicial management. In a scheme there is less court involvement compared to that of judicial management, the court is used mainly in a supervisory role rather than being fully involved.

Judicial management is different from a scheme because an insolvency practitioner must be appointed as the judicial manager by the court. The judicial manager once appointed will replace the directors and management and assume their responsibilities and run the company. The powers of the directors cease, and the judicial manager takes over the affairs of the company. Compared to a scheme of arrangement where creditors are involved in negotiations and the restructuring of the company their involvement is minimal, as the judicial manager is the one who handles the management of the company. Creditors will however form a creditors committee; they can be given the power to require the judicial manager to provide them with information that relates to how they are handling the proceedings. If the creditors committee is not satisfied, they can apply to the court and seek directions from the court.

**[Comment: to also discuss what a scheme of arrangement is, which is something that a judicial manager can also propose. Also discuss that a moratorium arises in a scheme of arrangement proceeding pursuant to an application under s64, whereas a moratorium arises automatically in a judicial management proceeding. Rescue financing is also available in judicial management]**

**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)**  
**1m**
- (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**

A judicial management order must be made by the Court under section 91 or by the creditors under section 94. The purpose of judicial management is to either achieve the survival of the company and keep it continuing as a going concern, for the compromise or arrangement between the company and anyone set out in section 210 or 71 of the Companies Act, to achieve or better realisation of the company's assets or property rather than in a winding up.

**[Comment: discuss s 91 IRDA requirements]**

The requirements to access rescue financing are that it is either necessary for the survival of a debt that seeks to obtain the financing or necessary to achieve a better realisation of the assets.

**[Comment - to also discuss the application to court required for grant of 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**

As the bank lenders are creditors, they can bring a judicial management application. They need to show that Alpha Pte and Beta Pte cannot or will not be able to pay their debts and there is a likelihood of rehabilitation and that a resolution of creditors is obtained.

**[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**

A company must be eligible to be wound up under the IRD Act to be placed into judicial management. This can be foreign debtors which have a substantial connection with Singapore. The Company is a subsidiary of the ABC Group which has their ultimate holding company ABC Limited located in Singapore. The properties in Australia have mortgages that are governed by Singapore law which is one of the factors that can be considered when deciding if judicial management can be commenced. So yes, Charlie Pty can be placed into judicial management.

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) 4m**

When a company enters judicial management an automatic moratorium on any legal proceedings against the company is put into effect. A more extensive moratorium will come into effect during judicial management. The assets that are located in the country where the judicial management is commenced will be under protection of the automatic moratorium, however if there are assets outside of that country, they may have to obtain recognition and assistance in other jurisdictions so that the assets may be protected.

[Comment: an automatic moratorium arises at the time of the company making an application for judicial management. It also arises upon an order being made. The moratorium covers property outside of Singapore (s88) but yes an order for recognition may need to be sought and if no recognition available, parallel proceedings.]

**\* End of Assessment \***

**35m**