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**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 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: 202122-336.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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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**

Which of the following **is not** one of the roles of a scheme manager?

1. To administer the scheme after it has been approved by the creditors.
2. To run the business of the debtor company.
3. To prepare the scheme of arrangement proposal.
4. To adjudicate on the proofs of debt filed by the creditors.

**Question 1.2**

Which of the following forms of security **need not** be registered?

1. A fixed charge.
2. A mortgage.
3. A pledge.
4. A floating charge.

**Question 1.3**

Which of the following factors may enable a foreign debtor to establish a “substantial connection” to Singapore?

1. The debtor has chosen Singapore law as the law governing a loan or other transaction.
2. The debtor is registered as a foreign company in Singapore.
3. The debtor is carrying on business in Singapore.
4. Any of the above.

**Question 1.4**

What percentage of each class of creditors must approve a scheme of arrangement for it to be binding?

1. Over 50% in value.
2. 50% or more in value.
3. Over 75% in value.
4. 75% or more in value.

**Question 1.5**

Which of the following is **not** one of the statutory duties of a bankrupt?

1. To make discovery of and deliver all his property to the Official Assignee.
2. To attend any meeting of his creditors as may be convened by the Official Assignee.
3. To execute such powers of attorney, conveyances, deeds and instruments as may be required.
4. To not travel overseas under any circumstances whatsoever.

**Question 1.6**

Which of the following **is not true** of the Model Law as enacted in Singapore?

1. It allows foreign representatives to apply to court for the recognition of foreign proceedings.
2. The court can deny recognition only if recognition is “manifestly contrary” to public policy.
3. It provides for concurrent insolvency proceedings.
4. It provides for international co-operation and communication between courts and representatives.

**Question 1.7**

Which of the following new reforms **were not** introduced by way of the2017 amendments to the Companies Act?

1. The automatic moratorium.
2. The cross-class cram down.
3. Restrictions on *ipso facto* clauses.
4. Pre-packaged scheme of arrangement.

**Question 1.8**

Who amongst the following **may not** bring a judicial management application?

1. The company by way of a members’ resolution.
2. The liquidator by way of an application to court.
3. The directors pursuant to a board resolution.
4. The creditors either together or separately.

**Question 1.9**

Which one of the following **is not** one of the statutory duties that a bankrupt is subject to?

1. Make discovery of and deliver all his property to the Official Assignee.
2. Disclose all property disposed of by gift or settlement without adequate valuable consideration within the five years immediately preceding his bankruptcy.
3. Not being able to travel overseas at all.
4. Attend meetings with the Official Assignee and answer all relevant questions.

**Question 1.10**

Which of the following **is not** one of reasons for which the Court will appoint an interim judicial manager:

1. The preservation of the company’s property or business from dissipation or deterioration.
2. The more advantageous realisation of the property than in a liquidation.
3. To bridge the gap between the application for judicial management and the hearing of the judicial management application.
4. To safeguard the interests of the company as well as its creditors.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [maximum 4 marks]**

What is the significance of the decision in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60 and what did the Court of Appeal decide?

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

State **four (4)** new features that were only introduced in the IRDA **and were not in force** at the time of the 2017 amendments to the Companies Act.

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

Describe the process involved in one of the alternatives to formal bankruptcy.

[Type your answer here]

**QUESTION 3 (essay-type questions) [15 marks in total]**

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

Write a brief essay in which you discuss some of the claims that a liquidator or judicial manager can bring and how the IRDA has enhanced their ability to do so.

[Type your answer here]

**Question 3.2 [maximum 7 marks]**

Write a brief essay in which you discuss the process of commencing a voluntary judicial management application. In your answer you should also discuss how this differs from a judicial management application that is filed in court.

[Type your answer here]

**QUESTION 4 (fact-based application-type question) [15 marks in total]**

PT Angostura Textiles Tbk (Angostura, and together with its subsidiaries, the Angostura Group) is an Indonesia-incorporated company listed on the Indonesia stock exchange. Angostura is a substantial market player in textile production in South East Asia and China. Its primary lines of business are:

* fibre production with assets and factories in Malaysia, Thailand and Cambodia;
* textile manufacturing with assets and factories in Indonesia, Vietnam and China; and
* garment manufacturing and distribution facilities with assets and factories in Indonesia, Vietnam and the United States.

The Angostura Group has two key Singapore incorporated subsidiaries:

* Juniperus Textiles Pte Ltd. (Juniperus) which is wholly owned by Angostura; and
* Casuarina Garments Pte Ltd (Casuarina) which is wholly owned by Juniperus.

Each entity in turn owns all, or substantially all, of the shares in the relevant entities incorporated in the local relevant overseas jurisdiction.

The Angostura Group had traditionally funded its business via bank lending, with a combination of bilateral and syndicated loan facilities advanced directly to Angostura. As at 2019, the group had raised SGD 2 billion in bank lending, all of which was guaranteed by Angostura Indonesian subsidiaries.

In late 2019, as COVID-19 started to spread around the world, the Angostura Group sought to take advantage of the situation by expanding its garment manufacturing business into personal protective equipment. To fund this expansion, Juniperus issued SGD 200 million in retail bonds (the Juniperus SG Bonds) on the Singapore Stock Exchange (SGX) which were guaranteed by Angostura. The proceeds of the Juniperus Bonds were on-lent to Casuarina who lent them via an offshore intercompany loan to Angostura (the Casuarina Intra-Group Loan). To ensure bondholders had rights in connection with the Casuarina Intra-Group Loan, holders of the Angostura Bonds are given security over the shares of each of Juniperus and Casuarina. The Juniperus Bonds are governed by a New York law.

In late 2020, Angostura's business experienced significant supply-chain disruptions as a result of the COVID-19 pandemic. During this time, Angostura started informing some of its bank lenders that they may require waivers on certain terms in their loans and potentially further time to repay certain amounts owing. In early 2021, Angostura appointed legal and financial advisors to provide it with advice as to the best steps to take. Shortly thereafter, a trade creditor filed a PKPU petition in Indonesia against Angostura and its Indonesian subsidiaries. Further to this, Juniperus and Casuarina filed for protection, under sections 64(1) and 65(1) respectively, of the Insolvency Restructuring and Dissolution Act (Act No 40 of 2018) (the IRDA). Angostura then announced that Juniperus will launch a separate Singapore Scheme of Arrangement under section 210 of the Companies Act (Cap 50) to restructure the Juniperus Bonds after the conclusion of the Indonesian PKPU, which will largely mirror the terms in the PKPU.

The bondholders of the Juniperus Bonds are concerned the moratoria being sought will prevent them from participating in the PKPU proceedings in Indonesia and enforcing their security over the shares in Juniperus and Casuarina, respectively. They have therefore decided to object to the Singapore moratorium applications.

**Using the facts above, answer the questions that follow**.

**Question 4.1 [maximum 6 marks]**

The working group of the bondholders has asked its advisors to provide it with a written analysis covering the following critical issues for the Angostura Group. Please provide analysis on the following issues:

**Question 4.1.1 (2 marks)**

What must be presented to the court in order to obtain moratorium protection order under section 64(1) IRDA?

[Type your answer here]

**Question 4.1.2 (2 marks)**

What must be presented to the court in order to obtain moratorium protection order under section 65(1) IRDA?

[Type your answer here]

**Question 4.1.3 (2 marks)**

Can the moratoria sought by Juniperus and Casuarina be ordered to have extra-territorial effect? If so, what acts and / or creditors will the moratoria apply to?

[Type your answer here]

**Question 4.2 [maximum 9 marks in total]**

As things transpired, Juniperus and Casuarina were granted moratorium protection for a period of three (3) months and are expected to apply for an extension to this moratorium period for an additional six (6) months upon expiry of the original three- (3) month period. The working group of bondholders intends to oppose any extension application.

The bondholders have instructed the Juniperus Bonds' trustee under the relevant indenture to be ready to enforce their security over the shares in Casuarina as soon as practicable. The Juniperus Bonds appear to be traded heavily in the market, with private equity funds looking to buy up significant stakes in order to enforce the security over shares in Casuarina.

To try and protect against this risk, Angostura also commenced local insolvency proceedings and emergency recognition proceedings in the United States.

**Taking these additional facts above into consideration, answer the questions below.**

**Question 4.2.1 [maximum 5 marks]**

What are the steps that need to be taken in order to launch a subsequent scheme of arrangement under section 210 of the Companies Act? How does the process for a scheme proposed under section 210 of the Companies Act differ from a prepack scheme proposed under section 71(1) of the IRDA?

[Type your answer here]

**Question 4.2.2 [maximum 2 marks]**

What requirements must be satisfied in order for the Angostura Group to be able to access rescue financing under the IRDA?

[Type your answer here]

**Question 4.2.3 [maximum 2 marks]**

Explain the key requirements in order for a Singapore court to recognise a foreign insolvency proceeding and what the effect will be if the court were to do so.

[Type your answer here]

**\* End of Assessment \***