



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] 10 marks

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?

- (a) To administer the scheme after it has been approved by the creditors.
- (b) To run the business of the debtor company.**
- (c) To prepare the scheme of arrangement proposal.
- (d) 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?

- (a) A fixed charge.
- (b) A mortgage.
- (c) A pledge.**
- (d) A floating charge.

Question 1.3

Which of the following factors may enable a foreign debtor 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 debtor is registered as a foreign company in Singapore.
- (c) The debtor is carrying on business in Singapore.
- (d) 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?

- (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

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

- (a) To make discovery of and deliver all his property to the Official Assignee.
- (b) To attend any meeting of his creditors as may be convened by the Official Assignee.
- (c) To execute such powers of attorney, conveyances, deeds and instruments as may be required.
- (d) 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?

- (a) It allows foreign representatives to apply to court for the recognition of foreign proceedings.
- (b) The court can deny recognition only if recognition is “manifestly contrary” to public policy.
- (c) It provides for concurrent insolvency proceedings.
- (d) 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 the 2017 amendments to the Companies Act?

- (a) The automatic moratorium.
- (b) The cross-class cram down.
- (c) Restrictions on *ipso facto* clauses.
- (d) Pre-packaged scheme of arrangement.

Question 1.8

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

- (a) The company by way of a members’ resolution.

(b) The liquidator by way of an application to court.

(c) The directors pursuant to a board resolution.

(d) 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?

(a) Make discovery of and deliver all his property to the Official Assignee.

(b) Disclose all property disposed of by gift or settlement without adequate valuable consideration within the five years immediately preceding his bankruptcy.

(c) Not being able to travel overseas at all.

(d) 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:

(a) The preservation of the company's property or business from dissipation or deterioration.

(b) The more advantageous realisation of the property than in a liquidation.

(c) To bridge the gap between the application for judicial management and the hearing of the judicial management application.

(d) 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?

The *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd*¹ is the leading case that the Court of Appeal clarified cash flow insolvency test is the sole applicable test under s 254(2)(c) of the Companies Act and set out a non-exhaustive list of factors for consideration. In that case, the Court of Appeal decided, the single test intended by s 254(2)(c) of the Companies Act is not the balance sheet test.² The cash flow test is the sole applicable test under s 254(2)(c) of the Companies Act.³

Moreover, the Court of Appeal set out a non-exhaustive list of factors which should be considered under the cash flow test, including: (a) the quantum of all debts which are due or

¹ [2021] SGCA 60

² Ibid, At [62]

³ Ibid, At [65]

will be due in the reasonably near future; (b) whether payment is being demanded or is likely to be demanded for those debts; (c) whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it; (d) the length of time which has passed since the commencement of the winding up proceedings; (e) the value of the company's current assets and assets which will be realisable in the reasonably near future; (f) the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales; (g) any other income or payment which the company may receive in the reasonably near future; (h) arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.⁴

It also should be noted, in the *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd*, the Court of Appeal dismissed the appeal on the basis that the appellant was cash flow insolvent, and that the Judge of the first instance did not err in winding it up pursuant to s 254(1)(e) read with s 254(2)(c) of the Companies Act.

4 marks

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.

The IBDA, as an omnibus insolvency legislation without the need to cross-reference, has consolidated personal and corporate insolvency rules in Singapore. The following four new features were only introduced in the IRDA and were not in force at the time of the 2017 amendments to the Companies Act.

1. New restrictions on the operation of *ipso facto* clauses. As provided in the section 440 of the IRDA, subject to certain exclusions, the enforcement of *ipso facto* clauses is restricted after the commencement, and before the conclusion, of any proceedings by a company. These restrictions were not in force at the time of the 2017 amendments to the Companies Act.

2. New wrongful trading provisions. According to section 239 of the IRDA, subject to certain conditions, a person may incur wrongful trading liability, if: (a) the person knew that the company was trading wrongfully; (b) the person, as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully. This new "wrongful trading" concept was not part of the 2017 amendments to the Companies Act and it was introduced by the IRDA.

3. A new voluntary process for initiating judicial managements. According to section 94(1) of the IRDA, the company may, instead of applying to the Court for a judicial management order, obtain under subsection 94(11) a resolution of the company's creditors for the company to be placed under the judicial management of a judicial manager in accordance with the requirements in section 94. The voluntary process was not part of the 2017 amendments to the Companies Act.

4. A new procedure for the early dissolution of "assetless" company in liquidation. According to section 209-211 of the IRDA, if a liquidator of a company has reasonable cause to believe that: (a) the realisable assets of the company are insufficient to cover the expenses of the winding up; and (b) the affairs of the company do not require any further investigation. Hence, after the introduction of early dissolution by IRDA, it is possible now to use public resources and funds to administer cases and complete an early dissolution, where the debtor's asset is not sufficient to cover the administration cost of the proceeding.

⁴ Ibid, At [70]

2 marks. Good detailed answer.

Question 2.3 [maximum 4 marks]

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

The voluntary arrangement under IRDA is one of the alternatives to formal bankruptcy.

According to IDRA, the voluntary arrangement is a formal arrangement for a composition in satisfaction of the insolvent debtor's debts or an arrangement of the insolvent debtor's affairs.⁵ The voluntary arrangement is applicable to individual and firm debtor. It can only be purposed by the debtor and conducted under the supervision of a nominee. According to the IDRA, the process involved in voluntary arrangement, in chronological order, is as followed.

1. Prepare to propose a voluntary arrangement with or without interim orders. In order to conduct a voluntary arrangement. A debtor needs to make a proposal of voluntary arrangement and must appoint a nominee in such proposal to act as trustee or otherwise for the purpose of supervising its implementation. The nominee must be an eligible licensed insolvency practitioner.⁶

2. Apply for Interim orders. An insolvent debtor who intends to make a proposal may apply to the court for an interim order under Part 14 of the IDRA.⁷ and when the application under section 276 is pending, the court may stay any action, execution or other legal process against the debtor or its property. To decide upon the application, the court should consider the conditions listed in section 278, and make an interim order when all the prescribed conditions are satisfied, or it think it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.⁸ Once an interim order is granted, the effect of the order includes: (a) no bankruptcy application may be made or proceeded with against the debtor; (b) no other proceedings, execution or other legal process may be commenced or continued against the debtor or its property without the leave of the Court.⁹ Moreover, the interim order will cease to have effect 42 days, unless the Court otherwise directs.¹⁰

3. Submit of report on debtor's proposal. Once an interim order is made, the nominee should submit a report to the court stating the opinion of the nominee on whether a meeting of the creditors should be summoned to consider the debtor's proposal, and if so, the date, time and place of the proposed meeting.¹¹ And the debtor is required to submit the prescribed documents under subsection 280(2), including a document setting out the terms of the proposed voluntary arrangement and a statement of the debtor's affairs. For a nominee, failure to submit the report may lead to replacement of the nominee.¹² And on the application of the nominee, the 42 days period can be further extended by court if it thinks fit.

4. Summon of creditors' meeting. According to section 281, to pass a proposal effectively, the nominee must summon to the meeting creditors every of the debtor in his or her awareness. And if the nominee has already reported to the court under section 280 that a meeting of the debtor's creditors should be summoned, the nominee must summon that meeting in accordance with the nominee's report, unless the court otherwise directs.

5. Approve the proposal. According to section 281, a creditors' meeting summoned under section 281 may approve the proposed voluntary arrangement by a special resolution with or without modification, but any modification made must be subject to the consent of the

⁵ Insolvency, Restructuring and Dissolution Act 2018 s 276.

⁶ Insolvency, Restructuring and Dissolution Act 2018 s 277.

⁷ Insolvency, Restructuring and Dissolution Act 2018 s 278.

⁸ Insolvency, Restructuring and Dissolution Act 2018 ss 276.

⁹ Insolvency, Restructuring and Dissolution Act 2018 ss 276(3).

¹⁰ Insolvency, Restructuring and Dissolution Act 2018 ss 276(4).

¹¹ Insolvency, Restructuring and Dissolution Act 2018 ss 280(1).

¹² Insolvency, Restructuring and Dissolution Act 2018 ss 280(2).

debtor.¹³ After such meeting, the nominee has the duty to report the result of the meeting to the court and serve a copy of the report on such persons as may be prescribed.¹⁴ If the meeting has approved a proposed voluntary arrangement, with or without modifications, the approved arrangement will bind every person who had notice of and was entitled to vote at the meeting. And if the meeting has declined to approve the debtor's proposal, the court may discharge any relevant interim order.¹⁵ Moreover, According to section 281, any debtor, nominee or person entitled to vote at a creditors' meeting summoned may apply to the court for a review of the decision of the meeting on the prescribed grounds under section 285.

6. Implement and supervise the implementation of the approved voluntary arrangement. Where a voluntary arrangement is approved by a creditors' meeting, the nominee has the duty to supervise the implementation of the voluntary arrangement and may apply to the court for directions in relation to any particular matter occurred.¹⁶ However, if the debtor fails to comply with the obligations under a voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement is empowered to make a bankruptcy application against the debtor in accordance with Part 16 of the IDRA.¹⁷

Very detailed. 4 marks.

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.

Under the IRDA, a liquidator or judicial manager can bring claims to avoid certain transactions entered into by the debtor prior to the commencement of the proceedings. The claims which can be brought by a liquidator as well as judicial manager are as followed.

1. Unfair preferences.¹⁸ Unfair preferences are essentially transactions which made a creditor in a better position than it would have been in a hypothetical liquidation situation.¹⁹ According to section 225 and 226, in order to bring a successful avoidance proceeding against unfair preference, there are four conditions need to be satisfied: (a) the preferred party is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; (b) the company was insolvent at the time of the preferring act; (c) the debtor does anything or suffers anything to be done which has the effect of putting that person into a better position than that person would have been in the event of the company's winding up; (d) there was a positive desire by the debtor to prefer the preferred party and the debtor have been influenced in deciding to give the unfair preference.²⁰ And the "relevant time" period for avoiding an unfair preference is one year prior to the commencement for the unrelated parties, and two years prior to the commencement for an "associate" of the company.

Moreover, as unfair preference can easily occur between related parties and it is always hard for an insolvency officeholder to prove subjective intentions involved in such transactions, the IRDA provides a rebuttable presumption of the debtor company's desire to prefer an "associate" of the company. According to subsection 225 (5), if the transaction made with the "associate", the debtor's desire to prefer the associate is presumed to exist,

¹³ Insolvency, Restructuring and Dissolution Act 2018 ss 281(2).

¹⁴ Insolvency, Restructuring and Dissolution Act 2018 ss 283(1).

¹⁵ ss 283(2), Insolvency, Restructuring and Dissolution Act 2018.

¹⁶ s 286, Insolvency, Restructuring and Dissolution Act 2018.

¹⁷ s 287, Insolvency, Restructuring and Dissolution Act 2018.

¹⁸ Insolvency, Restructuring and Dissolution Act 2018 s 225.

¹⁹ CORPORATE RESTRUCTURING AND INSOLVENCY IN ASIA 2020, The Asian Business Law Institute, p658

²⁰ Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd [2010] 4 SLR 1089.

unless the contrary is shown. To rebut this presumption, it should be proved that the transaction was not influenced by any desire to prefer the associate. This shift of burden of proof provided by IDRA has enhanced the ability of a liquidator or judicial manager to bring a successful claim to recover an unfair preference.

2. Undervalue transactions.²¹ According to section 225, the undervalue transactions include: (a) the debtor makes a gift to that person or otherwise enters into a transaction with a party with no consideration to receive; (b) the debtor enters into a transaction with a party for a consideration that is significantly less in value than the consideration provided by the debtor. And according to subsection 226 (2), as a condition for avoidance of that transaction, at the time of the undervalue transaction, the debtor must be insolvent or become insolvent as a result of that transaction. Moreover, the relevant time to avoid an undervalue transaction is three years prior to the making of a winding-up or judicial management application.

However, for any transaction in a market economic environment, it is hard to prove a consideration value provided by a counterparty is significantly less than the consideration provided by the debtor. Similar to unfair preference, undervalue transactions also easily occur between connected parties. In this regard, the IRDA also provides a useful rebuttable presumption. If a transaction is entered by a company with a connected party (otherwise than by reason only of being the company's employee), it is presumed that the requirement under section 225 (b) is satisfied, in another word, the transaction is presumed to be at undervalue, unless the contrary is shown. This rule of IDRA greatly lightens the burden of proof on the insolvency officeholders to make such a claim.

3. Extortionate credit transactions.²² According to section 228, on the application of the judicial manager or liquidator, the court may make an order with respect to the credit transaction which is or was extortionate and was entered into within 3 years before the commencement of the proceeding. As to how to prove a transaction is an extortionate credit transaction, the IDRA also provided a rebuttable presumption. If the terms of the transaction required grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or are harsh and unconscionable or substantially unfair, it is presumed that transaction is extortionate, unless the contrary is proved. This rule also makes it easy for the insolvency officeholders to claim an extortionate credit transaction. As once an insolvency officeholder can prove objectively that a transaction is extortionate, then the burden of proof has shifted to the counterparty to prove otherwise.

In summary, the IDRA has provided clear rules and grounds for the liquidators and judicial managers to bring various claims. It also provides useful presumptions applicable in certain circumstances where the avoidable transaction is highly likely to happen and hard to prove. These design help to lighten the burden of proof of the liquidators and judicial managers and enhance their ability to bring a successful claim.

Does not cover third party funding and also wrongful trading. Otherwise very detailed write up on the voidable transactions however does not show how IRDA has enhanced the ability to commence such actions. 5 marks.

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.

The voluntary judicial management is a newly introduced process to initiate judicial management. It is also an out-of-court appointment procedure.²³ According to section 94 of

²¹ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 224.

²² Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 228.

²³ CORPORATE RESTRUCTURING AND INSOLVENCY IN ASIA 2020, The Asian Business Law Institute, p622

the IDRA, where a debtor company considers it is or is likely to become insolvent and there is a reasonable probability of achieving one or more of the purposes of judicial management prescribed under section 89(1), the debtor can voluntarily initiate a judicial management by a resolution of the creditors of the company, instead of applying to the court for a judicial management order. The process for voluntarily initiating judicial management is as followed.

1. Fulfil the notice requirements. If the debtor purpose to obtain a creditor resolution to initiate an voluntary judicial management, it is required to give at least 7 days' written notice in the prescribed form of its intention to appoint an interim judicial manager to the following parties:(a) the proposed interim judicial manager; (b) any person who has appointed, or is or may be entitled to appoint, a receiver and manager of the whole (or substantially the whole) of the debtor's property under the terms of any debentures of the debtor secured by a floating charge or by a floating charge and one or more fixed charges.²⁴

2. Appoint an interim judicial manager. After the notices are given as required, there are still other conditions to be satisfied before a licensed insolvency practitioner can be appointed as an interim judicial manager. These requirements include: (a) authorise the appointment by a members' resolution, or a resolution of its board of directors where so authorised by the company's constitution; (b) the aforementioned notice period has expired; (c) within 21 days after the date of the aforementioned notice; (d) charge holder within the notice scope has consented in writing to the appointment of the interim judicial manager;(e) the proposed interim judicial manager has lodged a statutory declaration with the prescribed content with the Official Receiver and the Registrar of Companies. If all the conditions above are satisfied, the interim judicial manager has been successfully appointed.

3. Lodge a notice. Once an interim judicial manager is appointed, the debtor is required to lodge a written notice of the appointment in the prescribed form with the Official Receiver and the Registrar of Companies within 3 days. And within 7 days after the lodgement of the notice, the debtor should publish a notice of the appointment in the Gazette and in an English local daily newspaper. The failure to comply this requirement is an offence and should be liable on conviction to a fine not exceeding \$5,000.²⁵

4. Convene a creditors' meeting. After the lodgement of the statutory declaration mentioned above, the debtor must convene a meeting of the company's creditors not later than 30 days after the date of lodgement of the statutory declaration, at a time and place convenient to the majority in value of the creditors, to consider a resolution for the debtor to be placed under judicial management. To convene such a meeting, the debtor should give written notice to the creditors at least 14 days before the meeting together with the prescribed statements under subsection 94 (8), and publish a notice of the meeting of the creditors to be published at least 10 days before the date of the meeting in an English local daily newspaper. On such a meeting of creditors, at least one director of the debtor company should attend the meeting and the secretary of the company must attend the meeting. They are required by law to disclose the debtor's affairs and the circumstances leading up to the proposed judicial management to the meeting.

5. Pass a resolution by creditors' meeting, at the meeting convened as mentioned above, the procedure of the meeting is as followed: (a) the creditors may appoint one of the creditors, the interim judicial manager, or any director appointed to be chairperson of the meeting;(b) the chairperson must make a final decision whether the meeting is being held at a time and place convenient to the majority in value of the creditors;(c) if the chairperson decides that the meeting is not being held at a time and place convenient to that majority, the meeting will lapse and a further meeting must be summoned by the debtor as soon as is practicable; (d) if a majority in number and value of the creditors present and voting resolve to place the debtor under the judicial management, the debtor will be placed under the judicial management of a judicial manager;(e) if the meeting passes a resolution to place the debtor under the judicial management of a judicial manager, the meeting must approve the

²⁴ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 94. (2)

²⁵ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 94. (14)

appointment of a judicial manager by a majority in number and value of the creditors. After the resolution of the creditors meeting being passed, the debtor has successfully initiated the voluntary judicial management.

Moreover, the process to initiate voluntary judicial management differs from the court-involved procedure under section 90 in many aspects. First, only the creditors' resolution can initiate the voluntary judicial management, but in the court-involved procedure, any eligible creditor or director is empowered to make application for initiating judicial management to the court. Second, in the voluntary judicial management, the grounds under section 91 only need to be considered by the debtor company itself, without the need for court's consideration. And in the court-involved procedure, the grounds are considered by a court. Third, in the voluntary judicial management, the debtor (a members' resolution or a resolution of its board of directors where so authorised by the company's constitution) has the right to appoint an interim judicial manager. In the court-involved procedure, it is the court's power to appoint a judicial manager, and the applicants can only purpose an insolvency practitioner as nominee. Fourth, while in the voluntary judicial management, the debtor and the purposed interim judicial manager need to lodge prescribed documents the Official Receiver and the Registrar of Companies, there is no such requirements in court-involved procedures. **Please look at the subsidiary legislation carefully.** Fifth, as to convene a creditors' meeting and pass a resolution is the prerequisite to initiate voluntary judicial management, it is not a necessary requirement for a court-involved procedure.

Very detailed. Good answer. 6 marks.

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?

According to section 64(1) of the IRDA, if a debtor company proposes or intends to propose a scheme between the debtor and its creditors, on application of the debtor company, the court should grant moratorium protection by orders.

In order to obtain the moratorium protection, the debtor company is required to satisfy all the conditions listed in section 64 (2), including no order has been made, no resolution has been passed for the winding up of the company and no application has been made under section 210(10) of the Companies Act 1967.

Moreover, according to section 64 (4), when making the application for the moratorium protection under section 64, the following documents must be presented to court:

- (a) in a case where the company has purposed the scheme, evidence of support from the company's creditors for the intended or proposed scheme, together with an explanation of how such support would be important for the success of the intended or proposed scheme;
- (b) in a case where the company has not proposed the scheme yet, a brief description of the intended scheme containing sufficient particulars to enable the court to assess whether the intended scheme is feasible and merits consideration by the company's creditors when a prescribed statement relating to the intended scheme is placed before those creditors;
- (c) a list of all secured creditor of the company;

(d) a list of all unrelated and unsecured creditors or, if there are more than 20 such unsecured creditors, a list of its 20 largest unrelated and unsecured creditors.

It also should be noted, according to section 64 (3), certain publicity and notice requirements should also be satisfied, which include: (a) publish a notice of the application in the Gazette and in at least one English local daily newspaper, and send a copy of the notice published in the Gazette to the Registrar of Companies; (b) send a notice of the application to each creditor meant to be bound by the intended or proposed scheme and who is known to the company, unless the court orders otherwise.

Detailed. 2 marks.

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?

According to section 65 (1) of the IRDA, in a case where an order under section 64 is already granted to a debtor company, a subsidiary or other type of related company (called “related company”) of the debtor company can apply to the court for extending the moratorium protection to such subsidiaries or related companies by orders.

In order to obtain moratorium protection under section 65(1) of the IRDA, all the conditions listed in the section 65 (2) should be satisfied, hence the related company need to present the following facts or evidence to satisfy the court in its application:

- (a) no order has been made and no resolution has been passed for the winding up of the related company;
- (b) the order under section 64(1) made in relation to the subject company is in force;
- (c) the related company plays a necessary and integral role in the scheme relied on by the subject company to make the application for the order under section 64(1);
- (d) the scheme will be frustrated if one or more of actions that can be restrained are taken against the related company;
- (e) the creditors of the related company will not be unfairly prejudiced by the making of an order under the section 65(1).

Moreover, according to section 65 (3), a related company making the application should also satisfy the following publicity and notice requirements: (a) publish a notice of the application in the Gazette and in at least one English local daily newspaper, and send a copy of the notice published in the Gazette to the Registrar of Companies; (b) the related company must send a notice of the application to each creditor of the related company who will be affected by an order and who is known to the related company, unless the court orders otherwise.

2 marks.

Question 4.1.3 (2 marks)

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

The answer is yes and no. As provided in section 64 (5) of the IDRA, the court’s orders relating to moratoria protection under section 64 (1) can be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere. This means the moratoria has a *de facto* extra-territorial effect. However, as pointed out in *Re IM Skaugen SE [2019] 3 SLR 979*, such effect should not be understood as “extraterritorial” in nature. Instead, it operates *in personam* in nature against the acts and parties enjoined within the Singapore court’s jurisdiction.²⁶

²⁶ Re IM Skaugen SE [2019] 3 SLR 979 at [86].

Therefore, as to what acts and creditors will the moratoria apply to, it should be noted first that the application scope of a moratoria should strictly follow the court's extension order. Further, as the moratoria with *de facto* extra-territorial effect operates in personam, only the acts of any party within the Singapore and the acts of any party sought to be enjoined within the Singapore court's jurisdiction, can be applied to.²⁷

2 marks. Good citing of case law.

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?

Since the Juniperus and Casuarina have already obtained the moratorium protection under section 64. The steps need to be taken to launch a scheme of arrangement are as followed.

1. Under the granted moratorium protection, Juniperus and Casuarina should carry out negotiations of the debt restructuring proposal with the creditors, members or any class of them who may be affected by the scheme. In this case, negotiations with the working groups of bondholders and relevant private equity funds are of great importance. Since the bondholders intend to oppose the extension of moratorium and enforce their security, to obtain their support for the proposed scheme is crucial to the success restructuring of the Juniperus.

2. After the proposal of scheme is prepared, the Juniperus should apply to the court for leave to summon a meeting of the creditor to vote on the scheme.²⁸ it should be noted that, in this case, any creditor, member or holder of units of shares of the company is empowered to make the application.

3. After the obtaining of the court's leave to summon the meeting, Juniperus should issue the notice of the meeting accompanied by a statement explaining the effect of the scheme to the creditors under section 211(1);²⁹

²⁷ Ibid.

²⁸ Companies Act s 210(1).

²⁹ Companies Act s 211(1)(a).

4. If the meeting is duly convened, the majority in number representing three-fourths in value of the creditors or creditors in each class present and voting at the meeting can pass a resolution to approve the scheme.³⁰

5. After the approval of a scheme by the creditors' meeting. The court will hold a sanction hearing to consider the granting of the court's approval. At that hearing, the court will exercise its discretion in deciding whether to approve the scheme and make any alteration or condition as it thinks just.

6. If the court makes an approval order, the order should be lodged with the Registrar. After an approval order being so lodged, on and from the date of lodgment or such earlier date as the court may specify in the order, the order takes effect.³¹ Once an order takes effect, it will bind the debtor company and all the relevant classes of creditors sought to be bound by the scheme.³²

Moreover, the "pre-pack" scheme process under section 71(1) of the IDRA differs from the aforementioned scheme process under section 210. The differences are as follows.

First, the "pre-pack" scheme process does not include any court's order or statutory requirements to summon the relevant creditor's meetings.

Second, only the debtor company is empowered to apply for the court's approval on a pre-packed scheme.³³

Third, the notice and publicity requirements are different. In the prepack scheme process, the company is required to provide the creditors meant to be bound with the pre-pack scheme and a statement setting out information on the company's property and financial prospects, how the proposed scheme will affect their rights, and such other information as is necessary to enable them to make an informed decision on whether to approve the scheme.³⁴ And the debtor also should publish a notice of the application in the Gazette and in at least one English local daily newspaper, and is required to send a copy of the notice published in the Gazette to the Registrar of Companies.³⁵

Forth, in the pre-pack scheme process, no voting of meeting is required to satisfy the requisite approval threshold. The debtor and applicant only need to prove to the court that the requisite approval threshold is satisfied. In practice, the submission of lock-up or creditor-support agreements signed by the requisite majorities of creditors can be enough to meet the approval threshold.³⁶

Very well written answer that evinces good understanding of the concepts. 5 marks. Well done.

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?

For the companies within the Angostura Group, it should be noted that only the companies commence schemes and judicial management proceedings under Singapore law are able to access rescue financing under the IRDA. Hence in this case, as the proceedings already commenced were not Singapore proceedings, the rescue financing provisions are not available to those foreign proceedings.

³⁰ Companies Act s 210(13AB).

³¹ Companies Act s 210(5).

³² Companies Act s 210(3AA).

³³ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 71 (1).

³⁴ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 71(3).

³⁵ Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 71(4).

³⁶ CORPORATE RESTRUCTURING AND INSOLVENCY IN ASIA 2020, The Asian Business Law Institute, p 607.

However, If Singapore schemes and judicial management proceedings are commenced against the companies within the Angostura Group, then the relevant companies can access to rescue financing by making applications to Singapore courts. According to subsection 67(9) and 101(10) of the IDRA, to grant a rescue financing application, the following one or more conditions should be satisfied:

- (a) the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;
- (b) the financing is necessary for the court's approval under section 210(4) of the Companies Act 1967 or section 71(5) of a compromise or an arrangement mentioned in section 210(1) of the Companies Act 1967 or section 71(1) (as the case may be) involving a company that obtains the financing;
- (c) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company.

Upon the application made by a company or judicial manager for rescue financing, if the court is satisfied that the all the requirements mentioned above are met, the court may grant a rescue financing with the "super-priority" status under section 66 and 101 of the IDRA accordingly.³⁷

Could have set out more details such as unable to source for alternative financing etc. 1 mark.

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.

Singapore has adopted the UNCITRAL Model law with micro modification via its Amendment Act 2017. Hence, for a Singapore court to recognise a foreign insolvency proceeding, the following key requirements listed in Article 17 of the tenth Schedule of the Company Act need to be satisfied.

1. The proceeding is a foreign proceeding within the meaning of Article 2(h), including, *inter alia*, being a collective proceeding, under a law relating to insolvency or adjustment of debt, and subject to control or supervision by a foreign court;
2. The person or body applying for recognition is a foreign representative within the meaning of Article 2(i);
3. The application meets the requirements of Article 15(2) and (3);
4. The application has been submitted to the competent court as provided in Article 4.
5. The application subject to public policy exception. As provided in Article 6, if the action would be contrary to the public policy of Singapore, Singapore court will refuse to recognize foreign proceedings and provide assistance. It should be noted that the Singapore has deliberately omitted the term "manifestly" in Article 6 of the Model Law, which means the threshold applicable to public policy exception should be lower than other jurisdictions.

As requirement for reciprocity is needed under Singapore law, If all the requirements mentioned above are satisfied, the Singapore court should recognize a foreign insolvency proceeding as foreign main proceeding or foreign non-main proceeding pursuant to Article 17(2), and has the power to make any modification as the court thinks fit. **No requirement for reciprocity.**

As to the effect of recognition in Singapore, the particular effect depends on whether the proceeding in question is recognized as main proceeding or non-main proceeding. If the foreign insolvency proceeding can be recognized as a foreign main proceeding, then the automatic effect under Article 20 will come into play, including an automatic stay. And the court can grant any relief under Article 21 by request of the foreign representative on a discretionary basis. However, if the foreign insolvency proceeding can only be recognized as

37

a foreign non-main proceeding, then only the discretionary effect by request under Article 21 is available to the foreign insolvency proceeding, which is up to the court to decide.

Detailed answer save for a minor inaccuracy. 2 marks.

*** End of Assessment ***

45 out of 50