INSOL INTERNATIONAL
FOUNDATION CERTIFICATE
IN INTERNATIONAL INSOLVENCY LAW

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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] 7 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 significance of the judgement in the case of Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd, is that prior to this judgement the courts in Singapore applied both the cash flow test and the balance sheet test to assess solvency/insolvency of the Company. However, in this case, the Court of Appeal held that the cash flow test is the only test under section 254(2)(c) of the Companies Act to determine whether a company is unable to pay its debts. The court also set out a non-exhaustive list of factors which should be considered under the cash flow test. This included determination of quantum of debt, failure of the company to pay when demanded, period of such default, value of realizable assets of the Company, state of business of the Company, likely earning of the company etc.

The Court of Appeal clarified that the plain words of the provisions do not envisage two or more different tests. The only test that is to be applied in the context is whether, it is proved to the satisfaction of the Court that the Company is unable to pay its debts. The balance sheet test which compares total assets and liabilities, has no direct correlation with the fact whether the company is unable to pay its debts as it does not show the current status of the company]

Good succinct response. 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.

[IRDA Amendments are based upon the recommendations of the Insolvency Law Review Committee with a view to achieve objective of making Singapore as an International Centre for Debt Restructuring that why the amendment increases access by foreign companies to the debt restructuring regime in Singapore. Further, IRD Act is aimed at consolidating both the personal and corporate insolvency and restructuring law, which were earlier contained in two different pieces of legislations namely the Bankruptcy Act and the Companies Act. Basically, the following features were introduced by way of amendment:

a. Limiting enforcement of ipso facto clauses in debt restructuring. Section 440 of the IRD Act, limit exercise of such right or clause.
b. Section 239 has introduced provisions relating to liability in the context of wrongful trading and provide for personal liability for the debt of company.
c. New feature also includes premature termination of winding up based on the application of liquidator or creditor or a contributory where it is shown to the satisfaction of the Court that such proceeding out to be stayed or terminated.
d. Enhanced moratorium for both scheme of arrangement and judicial management which broaden the scope of protection afforded to a distressed company. It also incorporates more extensive cram-down provisions,
e. It also adopted UNCITRAL Model Law to facilitate cross-border insolvencies.]

D and E were already in force during the 2017 amendments. 1.5 marks. Could have mentioned Voluntary judicial management.

**Question 2.3 [maximum 4 marks]**

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

[Part 14 of the Restructuring and Dissolution Act (IRDA) deals with voluntary arrangements which provide alternative route to tackle insolvency or impending insolvency. Under this part followings are entitled to avail these provisions:

(a) Individual debtor who is an undischarged bankrupt, or
(b) Firm against which a bankruptcy order has been made and from which bankruptcy the partners in the firm have not been discharged.

The process afford calm period to the company to work out the plan and a non-stigmatic approach to address insolvency.

Following are the important factors which govern the Scheme of Arrangement:

- ⇒ **Moratorium**: Under section 278 of IRD Act, the Court may stay any action, execution or other legal process also stay any action, execution or other legal process against the debtor in respect of whom the application has been made or against the property of such debtor.
- ⇒ **Requirements**: The Court needs to be satisfied that the debtor intends to make a proposal for a voluntary arrangement and no previous application for an interim order has been made by or in respect of the debtor during the period of 12 months immediately before the date of the application; and the nominee appointed by the debtor's proposal is qualified and willing to act in relation to the proposal.

- ⇒ Based on the opinion of the nominee, creditors meeting would be arranged (section 280), based upon documents in support of voluntary arrangement.
- ⇒ It is followed by consideration and implementation of debtor's proposal at the meeting of ceditors (section 282)
- ⇒ nominee must report the result of the meeting to the Court and serve a copy of the report on such persons as may be prescribed.
- ⇒ creditors' meeting summoned under section 281 may consider and approve the proposed voluntary arrangement, with or without modifications, the approved arrangement takes effect as if made by the debtor at the meeting (section 284).

- ⇒ Under section 285 of IRD Act, court can also revoke or suspend the proposal approved in the meeting of creditor or revise the same.
- ⇒ Implementation and supervision: Nominee supervise implementation of the voluntary arrangement (section 286)
- ⇒ Where the debtor fails to comply with any of the debtor's obligations under a voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement may make a bankruptcy application against the debtor in accordance with Part 16.(section 287)]

Some details are missing e.g. need special resolution of creditors to approve. 3.5 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 common law, as long as the Company is solvent, its directors owe their duty towards shareholder(s) but this duty shifts from shareholders to creditors when the company becomes insolvent or staring at impending insolvency. The reason for this shift is obvious since the management of the company is with the shareholders, the creditors need to be protected when the company at staring at insolvency so that interest of creditor are not jeopardised. There is another angle to this, which is to strengthen the system to ensure that credit process continue to flow and creditor remain protected and unaffected due to change in the financial status of the company.

The system of avoidance transaction is structured to ensure the above. The law is developed on the principle that the creditors are not put to any disadvantageous position on account of the Company and its directors entering into any preferential or undervalued or wrongful transactions during the twilight period. To achieve the objective, it is important that the insolvency law provide a structure to deal with such type of transactions. IRD Act also provide for such powers to liquidator and to a judicial manager. IRD Act has redrafted these provisions, but, their substantive effect remains the same.

Section 224 of IRD Act provides for setting aside of undervalue transactions, section 225 for unfair preferences, section 228 deals with extortionate transactions, and 229 with avoidance of certain floating charges. Under the unamended IRD Act, it was an offence for an officer of a company to cause it to contract a debt if, at the time the debt was contracted, he or she had no reasonable or probable reason to believe that the Company will be able to repay the debt. The scope of this offence has been expanded and now this liability extends to any person who was a party to such trading, in addition to directors, company secretary and executives of the company if such knowledge could be imputed on them.

It is not that all the transactions entered into the twilight period that would be liable to be set aside, transactions that are entered into between the company and third parties in the ordinary course of business or with the approval of the court, would continue to remain enforceable in the normal course. However, for a transaction to be declared to be an undervalue or preferential transaction, following conditions are to be satisfied:

a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities;
b) company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company's winding up, will be better than the position that person would have been in if that thing had not been done and that
c) the company was insolvent or became insolvent as a consequence of the transaction, at the time of giving preference;
d) the Company was influenced in deciding to enter the transaction by a desire to prefer the party, nothing that the company is presumed to have been influenced by a desire to prefer is an associate.

The relevant look back period for this purpose is two years (for an associate) from the date of winding up application or the date of judicial management application and one year for unrelated party.

The effect on an order under the above provisions is that the transaction or transfer of assets is nullified and the assets vest back in the company.

Where the party to the transaction have paid any amount for the transaction or transfer of the assets, such party would be entitled to file claim with the liquidator or judicial manager for the amount so paid.]

Does not talk about how JM/liquidators are enhanced under the IRDA such as litigation funding being made available statutorily, new wrongful trading provisions. Seems to have conflated requirements for unfair preference with undervalue transactions. 3.5 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.

[Insolvency, Restructuring and Dissolution Act, 2018 provide many alternatives to address insolvency or impending insolvency of a company such as scheme of arrangements and judicial management. While the legislation is a creditor friendly mechanism, however, under IRD Act, various options have been enabled which facilitate debtor in possession features. This include mechanism in the form of 'Scheme of Arrangement', Judicial Management. Judicial Management provides for appointment of a judicial manager by the Court. This judicial manager replaces the Board of Directors of the Company and carryon the affairs of the Company during the process. This process also carries a sort of stigma as the existing management loose its control over the affairs of the company.

For this purpose, the Court need sto be satisfied with the fact that the company is or is likely to become unable to pay its debts; and the judicial management could ensure survival of the company or ensure beneficial outcome for its creditors.

The second method of putting a company into judicial management is by a creditors' resolution which is commenced through a creditors' resolution by a majority in value (both present and contingent) and in number of creditors present and voting. For this, it is necessary that there should not be filed any application against the company for appointment of a judicial manager. This process could be followed where the company is or will be unable to pay its debts and there is reasonable probability of rehabilitating/ rescuing the company. This mechanism is also allowed where it will be in the interest of preserving business of the company as a going concern or it will be in the interest of creditors and it would be better option than winding up. While there is not much of difference as regards the court initiated judicial management and creditor resolution initiated judicial management as regards the broad process is concerned, save and except the approval required for initiation, approval of plan and conclusion of the process. This is inaccurate. There are differences. A holder of a floating charge over the whole (or substantially the whole) of the debtor's assets may block an out-of-court judicial management application as its consent is required for the appointment of the interim judicial manager. Whereas in an application to Court for judicial management, the floating charge holder's ability to veto the judicial management application is not absolute and the Court will take into consideration the interests of the unsecured creditors. For the out-of-court judicial management mechanism, an interim judicial manager is appointed whereas for court judicial management this is not necessarily the case.

Creditors initiate the process once a resolution is passed. It is followed by appointment of an interim judicial manager through a shareholder's resolution or board resolution.

A statutory declarations is filed with the Official Receiver and the Accounting and Corporate Regulatory Authority (ACRA) as regards consent of the interim judicial

manager to act as such along with declaration that the company intends to undergo judicial management. Once judicial process is commenced, the company has to file notice with the Official Receiver and ACRA and also public a notice in the Government Gazette.

Judicial management process cannot be applied to a company which is already gone into liquidation, a banking company under the Banking Act, a finance company under the Finance Companies Act, an insurance company under the Insurance Act and to such companies as may be specified in the Gazette.

With a view to provide proper space to the Company and its creditors to work out a resolution/restructuring plan, an interim moratorium commences from the date of filing of the application which put a moratorium on legal action against the company.

The interim moratorium operates:

- **For judicial management commenced by court order:** from the making of the application till the time when the court makes its decision on whether to grant the order.
- **For judicial management commenced by creditors' resolution:** from the date of notice of appointment for an interim judicial manager till formal judicial manager has been appointed, the interim judicial manager's term has ended or when the creditors reject the resolution for judicial management.

While the process is available for 180 days but it can be extended from time to time. Under this process, the judicial manager has wide powers to deal with the business and assets of the company. The judicial manager can also borrow money against security of the assets of the Company and also take and defend legal actions. Judicial Manager must also file a statement of proposals to the creditors within 60 days of appointment.

The Judicial Manager prepare plan for restructuring and such proposal are then considered at the meeting of creditors. Once a plan is approved by a majority in number of each class of creditors present and voting (either in person or by proxy) at the meeting and such majority in number also represent three-quarters in value of the respective class of creditor present and voting, this becomes binding.

One important factor which is common under these rescue schemes, be it scheme of arrangement or the judicial management, is under both the arrangements, if any such plan deals with the equity in any manner, such proposal would need to be approved by shareholders by passing a resolution in EGM or by a scheme of members.

Since, it is a creditor oriented process, there are no specific provisions dealing with any specific type of contracts, or supply of essential goods and services, or netting of claims. However, judicial manager has powers to look into onerous contracts and impeachable/wrongful transactions.

Judicial management comes to an end when the judicial manager applies to court to be discharged, either because he has achieved his purposes or because he believes that the purposes can no longer be achieved.]

Not sure why scheme of arrangement is mentioned. Process of initiation of a voluntary JM is not set out in sufficient detail. Also lack of comparison with court ordered JM. 3 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?

[Section 64(1) of IRD Act, deals with powers of the Court to restrain legal action or proceedings against a company where the Company proposes, or intents to propose Compromise. A company can make the application under sub-section (1) only if all of the following conditions are satisfied:

- ◊ no order has been made and no resolution has been passed for the winding up of the company;
- ◊ Company makes, or undertakes to the Court to make as soon as practicable application under section 210(1) of the Companies Act;

The application also need to be supported with evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement. If the company has not proposed the compromise or arrangement to the creditors yet, then a brief description of the intended compromise or arrangement is to be filed.

Need to submit list of secured/top 20 unsecured creditors

Timing of filing of such an application is also critical in the light of the judgement in the case of Kobian Pte Ltd where the Court rejected the application for moratorium as it was substantially delayed. It is highly important to seek support of sufficient number of creditor for the proposed action of the Company.]

1.5 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?

[Section 65 is an important and critical provisions where the Company has other important subsidiaries or its main business activity is run through subsidies, as an order under this section could afford protection to the company as well as its subsidiaries. The process can be availed by a company after the Court has made an order under section 64(1) of IRDA. However, for this purpose an application is to be moved under subsection (1) and if the following conditions are satisfied:

- ◊ That an order has been made and no resolution has been passed for the winding up of the related company; and order under section 64(1) made in relation to the subject company is in force;
- ◊ that the related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application for the order under section 64(1);
- ◊ the compromise or arrangement will be frustrated if actions are taken against the related company and that the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under subsection (1).]

2 marks

**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?

[Since, the case involved many overseas companies and subsidiaries, it has cross border implications and consideration of the issue whether an order of moratorium by a court in Singapore would operate and have effect in other jurisdictions where subsidiaries might be located. A worldwide moratorium is an important mechanism in cross-border restructuring regime. Under Singapore regime, an automatic 30-day moratorium arises by court order upon the filing of an application for a moratorium in a scheme of arrangement. However, the real issue that remains is whether such order will have worldwide recognition.

Since, Singapore has implemented UNCITRAL Model Law on Cross Border Insolvency, there is no requirement of reciprocity as far as the issue of recognition of foreign proceedings is concerned. However, enforcement of judgement is still is one of the factors which would be looked into in the light of arrangements that are in place in jurisdiction where such order is sought to be enforced. Singapore has Reciprocal Enforcement of Commonwealth Judgements Act and Reciprocal Enforcement of Foreign Judgement Act, in place for this purpose.

However, the issue of worldwide effect of such order still remains open. This issue was involved in the case of Zetta Jet Pte Ltd, where some of its entities filed Chapter 11 bankruptcy proceedings in the US Bankruptcy Court where a worldwide moratorium came into effect. At the same time, some of subsidiaries of Zetta obtained an injunction order from the Singapore High Court. But when the question of effect of such order in US arose, the US court decided that the Singapore Injunction did not impact the US court's ability to continue adjudicating and rule in the US Proceedings.

As a consequence to the above, the Singapore High Court declined to grant full recognition of the US Proceedings on grounds that "flouting of the Singapore injunction undermined the

administration of justice in Singapore". Instead the court granted limited recognition only to allow the trustee to apply to set aside the Singapore Injunction.]

So the moratoria sought by Juniperus and Casuarina will have extra-territorial effect only to a limited extent to enable the Court in foreign jurisdiction to consider the related issue to allow the representative of Singapore proceedings access and to appeal against the order passed in foreign proceedings. Singapore representative may also seek co-operation and co-ordination based on UNCITRAL Model Law.]

Creditors to be bound need to be subject to the jurisdiction of the Singapore court 1.5 marks

**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?

[Section 210 of the Companies Act, 1967 deals with the powers of Court where a compromise or an arrangement is proposed between the company and its creditors or any class of them, its members or any class of them or holder of unit of share etc. A Company, its creditors or member or holder of unit of share or a liquidator (where company is being wound up) can initiate the process. It is necessary that :

- ◊ The company apply to the Court for leave to convene a creditors' meeting and also seek a moratorium on further proceedings in any action or proceeding against the company;
- ◊ the proposed Scheme of Arrangement must be approved by a majority of the creditors and 75% in value
- ◊ pursuant to the approval by the Creditor or any class of them, as the case may be, the company should apply for approval of the court so that it remain binding on all the stakeholders (involved in the process). Has to be approved by all classes unless there is a cramdown

- ◊ Access to Scheme of Arrangement regime is also available to foreign companies if it is able to show that it has substantial connection with Singapore or / assets located in Singapore/ or has substantial business in Singapore or where the foreign company had submitted to the jurisdiction of the Singapore courts for the resolution of disputes relating to its business transactions; and/or where Singapore was the company's centre of main interests.

**Pre-Packed Schemes of Arrangement**: this was introduced by way of 2017 amendments. under this pre-packed scheme, Court can approve a Scheme of Arrangement without the need for a creditors' meeting. However, the company must satisfy the Court that had a creditors' meeting been summoned, the proposed Scheme would have been approved by the statutory majority.

The issue was considered by the Singapore High Court in *Re IM Skaugen SE* case and connected matter, where it transpired that if the scheme is for overall restructuring the group and creditors did not object to application, the application has high degree of chances to succeed. The Court in the above cases observed that the objections to the application were not fatal to the moratorium application because a scheme was yet to be proposed, and before it was, its terms could be drafted so as to address the concerns. The Court held that the test was "***that of whether on a broad assessment, there was sufficient evidence for the court to determine that there was a reasonable prospect of the compromise or arrangement working and being acceptable to the general run of creditors***" ]

3 marks

**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?

[Section 67 of IRD Act contain provisions providing for super priority for rescue financial during the rescue process thereby enable a company to obtain rescue finance to finance its restructuring proposals. The same way Angostura Group can approach the High Court of Singapore for leave of the Court to obtain rescue financing with super priority. For this purpose it has to show to the Court that:

- No creditors would be unfairly prejudiced from the arrangement and the rescue financing is in their best interests, and creditors are adequately protected.
- there is a good probability that the restructuring will succeed, and it would create new value for the debtor,
- that no better financing proposals are available, and that it has made reasonable efforts to procure alternative finance,
- that the terms of grant of finance are reasonable and that the terms and conditions were finalised in good faith, for proper purpose and are fair, reasonable and adequate.]

1.5 marks. Needs to constitute "rescue financing" as defined under section 67(9) of the IRDA.

**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.

[As Singapore has adopted UNCITRAL Model Law on Cross-Border Insolvency, the relative provisions are incorporated in IRD Act by way of Third Schedule. The Law applies where assistance is sought by a foreign court or a foreign representative in connection with foreign proceedings and where such foreign proceedings and Singapore proceedings are taking place concurrently or the stakeholders participating in foreign proceedings are also interested in Singapore proceedings.
As per Article 4, High court of Singapore is the Competent Court for such proceedings. Chapter 3 of the Schedule deals with the process for recognition of foreign proceedings. As per Article 15, a foreign representative need to apply for recognition of foreign proceedings by way of an application which should be accompanied by a certified copy of the decision commencing foreign proceedings and appointing the applicant as the foreign representative in alternative the application may be supported by other evidence acceptable to the Court of existence of foreign proceedings and appointment of the foreign representative.

A translated copy of the above mentioned order also need to be provided to the court along with list of all foreign proceedings and Singapore proceedings as known to the applicant.

Under Article 17 and subject to Article 6, the Court would grant recognition to foreign proceedings:

- if the proceedings satisfy the requirement of a foreign proceedings under Article 2(h)
- the application meets the requirements under Article 15 (2) and (3);
- It is filed before the Court of competent jurisdiction as mentioned under Article 4.

Foreign proceedings may either be recognised as 'foreign main proceedings' or 'foreign non-main proceedings' depending upon place of COMI or Place of establishment in a foreign state.

It is to be noted that under Article 6 of the Model Law, the court could decline recognition to foreign proceedings if such recognition will contrary to the public policy of Singapore. In the case of Zetta, it was held that omission of the word 'manifestly' from Article 6 of the Singapore Model Law meant that the standard of exclusion on public policy ground was lower. ]

2 marks. Detailed answer.

*** End of Assessment ***

**34 out of 50**