



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] 9 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 decision of *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60 ("the Case") clarified the test of inability to pay debts in winding-up proceedings under section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act ("IRDA").

In the Case, the Court of Appeal held that cash flow test should be the sole and determinative test for determining whether the company is "unable to pay its debts". The Court also set out a list of factors to be considered under the cash flow test, they are briefly listed in the followings:-

- (a) The quantum of all liabilities which are due or will be due in the reasonably coming future;
- (b) Any demanding payment for those liabilities or payment which is likely to be demanded;
- (c) Any failure of payments of the company's debts, the relevant quantum and time of failure;
- (d) Length of time since the commencement of winding-up proceedings;
- (e) Value of the company's current assets and those assets which will be realized in the reasonably coming future;
- (f) The business state of the company, including the projected future sales and the cash expenses which would be required for generating those sales;
- (g) Any receivable income and payment in the reasonably coming future; and
- (h) Arrangements of the company with the prospective lenders, for instance bankers and shareholders, to determine any borrowings which would be repayable at a later time after the debts.

3 marks. Could have explained what the previous position was e.g. balance sheet test being one of the tests.

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 following four features are newly introduced in the IRDA and were not in force at the time of the 2017 amendments to the Companies Act:-

- (a) Introduction of the ipso facto regime, under section 440 of the IRDA, restricting exercise of certain contractual rights, for instance termination or acceleration when the company is undergoing judicial management or scheme of arrangement proceedings.
- (b) Introduction of an out-of-court process for the company to enter into judicial management with the approval of the creditors of the company pursuant to section 94 of the IRDA. Before the IRDA, company would only enter into such process by an order of Court.
- (c) Change the relevant time periods for Avoidance of Transactions. Under section 226 of the IRDA, the relevant timeframe for undervalue transaction become three years, but not previously five years from the time of commencement of the winding up or judicial management. For the relevant timeframe for unfair preference, it is amended to one year for unconnected persons, where the timeframe for connected persons has not changed. And the relevant timeframe for the avoidance of floating charge has been amended to two years for connected persons and one year for unconnected persons, which was previously six months for both limbs.
- (d) Establishment of a new insolvency practitioner licensing and regulatory regime under division 3 of the IRDA. There is also stipulation on the minimum required qualifications and the criteria for the granting and renewal of the licences.

4 marks. Good detailed answer that shows understanding of the concepts.

Question 2.3 [maximum 4 marks]

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

A Voluntary Arrangement is one of the alternatives to formal bankruptcy. Under this voluntary arrangement, the following processes are involved:-

- (a) The debtor who intends to make a Voluntary Arrangement proposal ("the Proposal") to his creditors may apply to the Court for an interim order. If the Court granted an interim

moratorium order, there would be no bankruptcy application or other proceedings, execution or legal process may be made or proceeded against the person or the property of the debtor pursuant to section 276 of IRDA.

- (b) The debtor must appoint a nominee of licensed insolvency practitioner to act either as trustee or for the purpose of supervising the implementation in his Proposal as stipulated under section 277 of IRDA.
- (c) According to section 280 of IRDA, when the interim order has been made, the nominee must submit a report to the Court before the order ceases to have effect, normally it would be 42 days after the making of the interim order, stating that whether a meeting of the debtor's creditors should be summoned for considering the Proposal and the relevant meeting time and place. Unless the Court directs otherwise, the nominee must summon the meeting ("the Meeting") in accordance to the nominee's report pursuant to section 281 of IRDA.
- (d) The proposed voluntary arrangement must then be approved by special resolution by the creditor at the Meeting pursuant to section 281 of IRDA. The approved proposal will then bind all creditors who have had notice of and were entitled to vote at the Meeting as stipulated under section 284 of IRDA.
- (e) Upon the conclusion of the Meeting, the nominee must file a report of result to the Court and serve a copy of the report on the prescribed persons under section 283 of IRDA.
- (f) If the Meeting declined to approve the Proposal, the Court may discharge any interim order pursuant to section 283 of IRDA.
- (g) The Proposal takes effect and if the debtor fails to comply with any obligations under the Proposal, the nominee or the binding creditors may bring a bankruptcy application against the debtor pursuant to section 287 of IRDA.

4 marks. Good complete answer.

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, there are some amendments which have enhanced the ability of the liquidator or judicial manager in claiming.

(a) Application to impose civil liability against company's officer of wrongful trading

Firstly, it is about the wrongful trading issue. Under the old sections 339(3) and 340(2) of the Companies Act, there was a combined effect that a criminal conviction was a pre-requisition for making of a civil claim against an officer of the company for insolvent trading.

However, provisions under the IRDA have lowered the threshold for establishing personal liability in insolvent trading. Pursuant to section 239(1) of the IRDA, it stipulates that a company trades wrongfully if debts or liabilities incurred without reasonable prospect of meeting them in full. This provides an easier threshold for the liquidator or judicial manager to bring out application on the relevant company's officer in wrongful trading to establish his

civil liability since the standard of proof for civil liability is much lower than the one required in criminal liability.

Further to section 239(1) of the IRDA, the Court is empowered to declare that “any person who was knowingly party to the company trading wrongfully shall be liable for the company’s debts and liabilities so incurred”. Despite there is no ascertaining of the test for degree of “knowledge” adopting by the Court, the IRDA has already deleted the pre-requisition of criminal conviction.

But the liquidator or judicial manager should be reminded that this new amendment is subject to the declaration of the company or company’s counterparty that the relevant transaction(s) does not constitute wrongful trading. The relevant person may also be relieved from personal liability if he would satisfy the Court that he acted honestly.

(b) Third-party funding seeking

Secondly pursuant to section 224 to 229 of the IRDA, a liquidator or judicial manager can make application to the Court to claw back assets which had been previously transferred in an undervalue, unfair or undue preference transactions.

Before the IRDA, this was hardly achieved due to insufficient assets for pursuing claims or taking recovery action(s) in the insolvent companies. It was uncertain if an insolvent company could enter into a third-party funding agreement for pursuing a claim against a wrong-doing party. Parties could rely on the actively developed case law on when such third-party agreement could be made. In *Re Vanguard Energy Pte Ltd* [2015] SGHC 156; *Solvadis Commodity Chemicals GmbH v Affert Resources Pte Ltd* [2018] 5 SLR 1337, the Court allowed litigation funding under appropriate circumstances in the context of insolvency. Under another case, *Neo Corp Pte Ltd (in liquidation) v Neocorp Innovations Pte Ltd* [2006] 2 SLR(R) 717, the liquidator was only able to assign the proceeds of the claims against third-parties but not on the right to pursue action on insolvency offences.

The situation is enhanced upon the enactment of the IRDA. Pursuant to section 99, 144(1)(g) and paragraph (f) of the First Schedule of the IRDA, the liquidator or judicial manager is empowered to assign proceeds of an action under the undervalue, unfair preference, extortionate credit transaction(s), fraudulent trading, wrongful trading and assessment of damages against delinquent officers which are stipulated under sections 224, 225, 228, 238, 239 and 240 of the IRDA. In other words, both the liquidator and the judicial manager are now statutorily empowered to enter into third-party agreements for obtaining funds in relation to the above aspects.

But it should be reminded that in order to safeguard the exercise of the power of the liquidator or the judicial manager, their actions have to be complied with the Insolvency, Restructuring and Dissolution (Assignment of Proceeds of an Action) Regulations 2020 (“the Regulations”). For instance, they are required to obtain approval from specified persons before entering into an assignment under section 4(6) of the Regulations. Moreover, the liquidator or judicial manager is prohibited from receiving any commissions, fees or share of proceeds from a third-party funder when entering into the funding agreement with the company concerned pursuant to section 5(3) of the Regulations.

Furthermore, another restriction of the provisions is that it does not extend to third-party funding against counterparty for unpaid receivables or breach of contract. It had been clarified in the Insolvency, Restructuring and Dissolution Bills that “the enactment of section 99 of the IRDA was not an intention to affect the funding arrangements under common law, such as funding for investigation of potential causes of action for financially distress companies.”

Despite with the restrictions, this new enhancement still increase the chance for the liquidator or judicial manager to make funds for court actions and thus improve realization or recovery of the insolvent company's wrongfully transferred assets.

(c) Removal of personal liability of the judicial manager

Last but not least, the IRDA has re-enacted section 2271 of the Companies Act. Previously under the Companies Act, the judicial manager was deemed to be the agent of the company and he will be personal liable for contracts adopted by him. In practice, the judicial manager would always disclaim such liability. Therefore, pursuant to section 102 of the IRDA, the judicial manager's personal liability has been omitted.

To conclude, being a liquidator or judicial manager under the IRDA has much more statutory power when performing their duties of making claims in the view to improve assets realizations and recoveries. **This does not go towards enhancing the JM's power to bring claims.**

Good write up on third party funding. Essay could have talked about the various avoidance actions such as unfair preference and undervalue transactions and how some of the lookback periods have changed. 5.5 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 IRDA provides another way for a company to enter into judicial management. Upon a majority in number and value of the creditors present and voting, the judicial management process will commence in the same manner as the judicial management application which filed in the Court ("Court-filed Judicial Management") and also under the supervision of the Court. When commencing a voluntary judicial management application, there are some differences from the Court-filed Judicial Management. Below will be briefing discussed the major process during judicial management application and the respective differences between voluntary application and Court-filed Judicial Management:-

(a) Commencing the application

For the Court-Filed Judicial Management, it is possible for a single creditor to file application to Court for judicial management as stipulated in section 91 of the IRDA.

Different from the Court-filed Judicial Management, voluntary judicial management is commenced by a resolution which is approved by the majority in value of the total amount of the claims of the creditors and in number of creditors present and voting pursuant to section 94(11) of the IRDA.

(b) Appointing interim judicial manager

Under the Court-filed Judicial Management, an interim manager can be appointed by the Court on the application of the company or any creditors with grounds, for example, if the assets or business of the company are at risk of being dissipated or deteriorating; or if there is a need for "bridging the gap" between the application and the hearing of the said application; or if the interests of the company and the creditors has to be safeguarded.

This is difference from voluntary judicial management, as an interim judicial manager has to be appointed for the voluntary judicial management before the meeting of the creditors for the resolution for a formal judicial manager. The interim judicial management under the voluntary application is appointed by filing either by a shareholder's resolution or a board resolution. It is stipulated in detail under section 94 of the IRDA in relation to the appointment of the interim judicial manager:-

- (i) Section 94(2) of the IRDA stipulated that the a at least 7 days' written notice ("the Notice Period") in relation to the intention of appointing an interim judicial manager in prescribed form must be given to the proposed interim judicial manager and to 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 company's property of any debentures secured with floating charge or fixed charges (collectively "the Recipients").
- (ii) By satisfying the following conditions, interim judicial manager may be appointed upon the expiry of the Notice Period, and within the next 21 days, and with the written consents from the Recipients pursuant to section 94(3) of the IRDA:-
 - 1) The proposed judicial manager has to lodge a statutory declaration with the Official Receiver and the Registrar of Companies declaring that she consents to be appointed as the interim judicial manager, she is not in a position of conflict of interest and one of more purposes of judicial management mentioned in section 89(1) of the IRDA can be achieved.
 - 2) The company's directors also has to lodge a statutory declaration with the Registrar of Companies that the company is or is likely to become unable to pay its debts, a creditors' meeting will be summoned to be held not later than 30 days after the date of lodging the statutory declaration by the interim judicial manager, and the directors believe that one or more purposes of judicial management mentioned in section 89(1) of the IRDA is likely to be achieved.
 - 3) The proposed interim judicial manager is a licensed insolvency practitioner but not the auditor of the company as stipulated under section 94(3)(g) of the IRDA.
- (iii) Under section 94(5) of the IRDA, after the appointment of the interim judicial manager, the company must cause a written notice of the appointment in a prescribed form within 3 days with the Official Receiver and the Registrar of Companies, and must cause such notice to be published in the Gazette and in an English local daily newspaper within 7 next days.

(c) Applying interim moratorium

Under the IRDA, there is interim moratorium for protecting the company from certain actions brought by the creditors, for instance, commencing proceedings against the company, enforcing of charges on or security over the company's property, before formal judicial management commences. This mechanism is available to both court-filed and voluntary judicial management. However, the operation periods would be different:-

For the Court-filed Judicial Management, an interim moratorium will be started from the making of the application until the court makes decision on the application.

For the voluntary judicial management, an interim moratorium will be commenced once a written of appointment for an interim judicial manager has been lodged and will be ceased when either a formal judicial manager has been appointed or when the creditors reject the resolution for judicial management.

(d) When there is other judicial management application

For the application for the voluntary judicial management, a company cannot make such application if there is a pending decision from court for another judicial management order which has yet to be withdrawn or granted.

Despite of the above differences when making the voluntary judicial management application from the Court-filed judicial management application, the subsequent processes for the commenced judicial management, no matter commenced by which manner, are the same.

Very detailed comparison. However, essay needs to set out completely the procedure for entering into voluntary judicial management. 5 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?

To obtain moratorium protection order under section 64(1) of IRDA by a company (“the Subject Company”), the followings must be presented by Juniperus to the Court:-

- (a) Evidence of support from the creditors of Juniperus for the intended or proposed compromise or arrangement and its importance explanation;
- (b) If such intended compromise or arrangement is not proposed to the creditors or a class of creditors yet, a brief description of such intended compromise or arrangement with sufficient particulars should be submit to Court for the consideration of feasibility and merits;
- (c) A list of secured creditor of Juniperus;
- (d) A list of unsecured creditors who are not related to Juniperus or, if there are over 20 of them, a list of 20 unsecured creditors who claims are the largest among others;
- (e) Information of Juniperus’s financial affairs, including valuation report of Juniperus’s significant assets, acquisition, disposal or grant of security information, periodic financial reports of Juniperus and its subsidiaries, including Casuarina, forecasts of the profitability and the cash flow from operations of Juniperus and its subsidiaries.

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?

Pursuant to section 65(1) of IRDA, a subsidiary, a holding company or an ultimate holding company of the Subject Company (“the Related Company”) may apply to the Court for a moratorium protection order. To obtain such order, Casuarina, the wholly owned subsidiary of Juniperus, must present the followings to the Court with the application:-

- (a) There is no order has been made and no resolution has been passed of the related company;
- (b) The order under section 64(1) of IRDA had been made in relation to Juniperus is in force;
- (c) There is a necessary and integral role of Casuarina in Juniperus’s compromise or arrangement for making its application for a moratorium protection order under section 64(1) of IRDA;
- (d) Any frustration to the compromise or arrangement of Juniperus if one or more actions that may be restrained by a moratorium protection order against the Casuarina under section 65(1) are taken; and
- (e) The creditors of the Casuarina will not be unfairly prejudiced by making a moratorium protection order under section 65(1) of IRDA.

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?

To apply for a moratorium, Casuarina has to prove that she is an important integral role in compromising of the Scheme of Arrangement launched by Juniperus (“the Scheme”) and if an action being taken against her as the subsidiary, the Scheme will be frustrated.

Under the current Singapore regime, the moratoria sought by Juniperus and Casuarina may have extra-territorial effect subject to the Court order. Taking reference from a case law, *Re Zetta Jet (2)*, the Court took a strong position against those parties who violates its worldwide moratorium.

However, this is subject to the requirement of in personam jurisdiction. The order of the Court will only have extra-territorial effect when the act is taking place in Singapore or elsewhere only if the creditor is in Singapore or within the Singapore Court’s jurisdiction.

2 marks. Concise but detailed answer.

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?

Steps for taking subsequent scheme of arrangement

Pursuant to section 210 of the Companies Act, the company has to perform as follows to launch a scheme of arrangement:-

- (a) To apply leave from Court for convene a creditors' meeting for approving the proposed scheme of arrangement. Moratorium may be sought on any further proceedings against the company;
- (b) To obtain approval by a majority of the creditors present and voting in each class. This majority must represent 75% in value of the voting class. The scheme will then be bound on those dissenting minority under the cram down effect.
- (c) To apply for Court's sanction of the scheme of arrangement thereafter to prevent abuse as the scheme will be bound on those dissenting creditors.
- (d) To lodge the Court order sanctioning the approved scheme of arrangement with the Registrar of Companies, so that the said scheme will become binding on all creditors.

Pursuant to section 211B of the Companies Act which was introduced on the 2017 amendments to the Companies Act. An automatic moratorium of 30 days is allowed even the company intends to propose a scheme of arrangement. And moratoriums would be granted on the application of a subject company's holding or subsidiary for the sake of group-wide restructurings. Extraterritorial effect could also be granted as long as the creditor was in Singapore or within the jurisdiction of the Court.

In these circumstances, a subsequent scheme of arrangement would be applied to Court pursuant to section 211B of the Companies Act and the processes as mentioned above under section 210 of the Companies Act should be completed.

Difference from the proposed prepack scheme

In view of the situation facing by Juniperus and Casuarina, the creditors, being the bondholders might not agree with the proposed plan. Prepack scheme under section 71(1) of the IRDA may be applicable.

Under section 71(1) of the IRDA, there is a condition that if a compromise or an arrangement is proposed between a company and its creditors or any class of those creditors. Upon this condition is satisfied, the Court may, on the application made by the company, make an order approving the said compromise or arrangement without any meeting of the creditors or class of creditors as required under section 210(1) of the Companies Act.

This prepack scheme under section 71(1) is different from the scheme of arrangement under section 210 of the Companies Act that meeting of creditor is not a requisition for the scheme. However, under the prepack scheme, the proposed arrangement should have been made with the compromise of the creditors. **Need to show that creditors would have agreed had the meeting been called.**

4 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?

A debtor and its related companies may be able to access for rescue financing, for instance judicial management and scheme of management, under section 64 and 65 of the IRDA. Further, when a foreign debtor has “substantial connection” with Singapore, it may also be granted rescue financing. Pursuant to section 246(3) of the IRDA, it stipulates that the following factors which Court would be considered when determining if the foreign company in concerned has substantial connection with Singapore for granting rescue financing under the IRDA:-

- (a) The debtor’s centre of main interest is located in Singapore;
- (b) Singapore is the place of business of the debtor;
- (c) The debtor is a registered foreign company in Singapore;
- (d) The debtor has substantial assets in Singapore;
- (e) Singapore law has been chosen as the governing law in relation to a loan, transaction or the resolution of the disputes arisen therein; and/or
- (f) Jurisdiction of the Singapore Courts is submitted for the resolution of the disputes relating to a loan or transaction.

In this case, Angostura Group may be able to access rescue financing under the IRDA since the subsidiaries, Juniperus and Casuarina were both incorporated in Singapore. The above subsection (b) may be applicable. Moreover, Juniperus had issued bonds on the Singapore Stock Exchange. With substantial assets in Singapore, therefore, higher chance for Juniperus to be granted rescue financing by the Singapore Courts.

Has not answered the question on meeting the elements for rescue financing. Perhaps has misread the question. Not asking about whether applicable to foreign company.

0 marks.

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.

A foreign insolvency proceeding may be recognized by Singapore Court by registration if the judgment, which has in personam effect, is for a fixed sum of money from a foreign court of law which is final and conclusive by the law of that country and that court had international jurisdiction as defined by Singapore law over the parties. There are two statutory registration regimes:-

- (a) Registration under the Reciprocal Enforcement of Commonwealth Judgments Act:-
Under this Act, monetary judgments from the superior courts of the United Kingdom and other gazette jurisdictions could be registered in the Singapore High Court.
- (b) Registration under the Reciprocal Enforcement of Foreign Judgments Act:-
Under this Act, both money and non-monetary judgments may be registered. But only Hong Kong SAR has been a gazette country recognized for this registration regime.

Nevertheless, if the foreign judgment is “manifestly contrary” to the public policy of Singapore, the Singapore Court can deny recognition of the same. In the case law, *Re Zetta Jet Pte Ltd*, the Singapore High Court invoked the public policy exception as the recognition would undermine the administration of justice in Singapore. To strike a balance with affording fairness to the foreign insolvency representative, therefore, recognition only granted for the purposes of applying to set aside or appeal the Singapore injunction.

Upon registered, the foreign judgment may be enforced against in Singapore as if it was a judgment issued from the Singapore High Court. No new proceedings has to be commenced. The said judgment potentially has an estoppel effect on a specific issue or on a cause of action.

In view of the above, the emergency recognition proceedings of Angostura in the United States might not be recognized by the Singapore Court since the United States is not the defined international jurisdictions under the Reciprocal Enforcement of Commonwealth Judgments Act nor the Reciprocal Enforcement of Foreign Judgments Act.

Has misread the question which is asking about recognition pursuant to the Model Law. 0 marks.

*** End of Assessment ***

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