INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

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?

One of the most common grounds for winding up a company is that the company is "unable to pay its debts", which occurs when the company falls under one of the criteria outlined in Section 125(2) of the IRD Act.

Where a company is deemed to be "unable to pay its debts", the creditor is entitled to a winding- up order.

The case of Sun Electric Power Pte Ltd v. RCMA Asia Pte Ltd, is important because in this case the Singapore Employment Tribunal:

1. It clarified that the cash flow test should be the sole and determinative test under section 125(2)(c) of the IRD Act.
2. It set out the following non-exhaustive list of factors to be considered under the cash flow test:
    a. The amount of all debts due or to become due in the reasonably foreseeable future;
    b. whether payment of such debts is required or likely to be required;
    c. If the company has defaulted on any of its debts, the amount of the debt and for how long the company has defaulted;
    d. The time elapsed since the commencement of the winding-up proceedings;
    e. The value of the company's current assets and assets that will be realisable in the reasonably foreseeable future;
    f. The company's business statement, to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses that would be necessary to generate those sales;
    g. Any other income or payments that the company may receive in the reasonably foreseeable future; and
    h. Arrangements between the company and potential lenders, such as its bankers and shareholders, to determine whether any shortfall in liquid and realisable assets and cash flow could be offset by loans that would be repayable at a later point in time than the debts.

What was the previous position before this case? 3 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 IRD Act 2018 introduced, among others, the following 4 new features:

1. **Limitation of certain contractual rights / ipso facto clauses in debt restructuring**

Prior to the enactment of the IRD Law of 2018, there was no restriction on the application of ipso facto clauses in debt restructuring.

This scenario changed, with section 440 of the IRD Act 2018. This section limits the exercise of certain contractual rights merely because certain proceedings have been initiated in respect of a company, or the company is insolvent. As a result, it is no longer possible to rely on the ipso facto clauses to terminate a contract with an insolvent company.

However, such contractual rights can be exercised on other grounds provided for in the contract, such as non-payment of money owed by the company.

Notwithstanding this new rule, Section 440(5) establishes the following list of contracts that are excluded from this exception:

1. Any eligible financial contract to be prescribed;
2. Any contract that is a licence, permit or approval issued by the government or an official body;

3. Any contract that may affect the national interest, or the economic interest, of Singapore, as may be prescribed;
4. Any commercial charter of a ship;
5. Any agreement within the meaning of the Convention as defined in section 2(1) of the International Interests in Aeronautical Matters Act (Cap. 144B); or
6. Any agreement that is the subject of a treaty to which Singapore is a party, as may be prescribed.

2. New provision on illicit trade

With the IRD Act, a new wrongful trading provision is included, under which the court has the power to declare that any person who has knowingly participated in the wrongful trading of the company is personally liable for the debts or liabilities of the company.

For this purpose, a company is to be understood as trading unlawfully if the company incurs debts or liabilities without a reasonable prospect of satisfying them in full when the company is insolvent, or becomes insolvent as a result of incurring such debts or liabilities. Likewise, unlawful trading is the incurring of debts or other liabilities without a reasonable prospect of satisfying them in full when the company is insolvent or becomes insolvent as a result of such debts.

Such personal liability for the debts of the company to a person arises, if:

- knew that the company was operating illegally; or
- as an officer of the company, he should have known, in all the circumstances, that the company was trading unlawfully.

3. Proof of debt

The IRD Act 2018 introduces the following three sections regarding the debt test: This is an amended section rather than a new feature.

- *Section 223(1) (Realisation of security)*: Provides that in the insolvent liquidation of a company, a secured creditor is not entitled to interest on the secured debt after the commencement of the liquidation if the security is not realised within 12 months.

- *Section 223(2) (Realisation of security)*: Provides that where a company is in judicial management and a secured creditor has obtained the Court's permission of the judicial manager to realise any security, the secured creditor is not entitled to interest on the secured debt if the security is not realised within 12 months.

- *Section 327 (Effect of bankruptcy order)*: Provides that a secured creditor is not entitled to interest on the secured debt if it fails to notify the official transferee of its intention within 30 days of the bankruptcy order, or if it fails to realise the security within 12 months (or such other period as determined by the official transferee).

4. Appointment of a liquidator in Singapore for foreign companies

Section 250 of the IRD Act 2018 allows the Court to appoint a foreign company liquidator for Singapore, provided that:

- The foreign company goes into liquidation or is dissolved at its place of incorporation or origin; and
- The person, who is the liquidator appointed by the place of incorporation of the foreign company, or the receiver, files an application.

This applies to a foreign company that establishes a place of business or conducts business in Singapore, regardless of whether the foreign company is registered in Singapore. This was possible under the 2017 amendments.

1 mark.

Question 2.3 [maximum 4 marks]

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

The alternatives to a formal bankruptcy process, both for individuals and legal persons, will be outlined below with an emphasis on the "receivership" process for companies:

1. **For Individuals**

A Voluntary Arrangement is a formal agreement between a debtor and its creditors for the satisfaction of their debts supervised by a representative. A debtor must appoint a nominee (who is an authorised insolvency practitioner) as part of any proposed voluntary arrangement.

2. **For companies**

Companies can try to reach an informal agreement with their creditors without the help of the courts. However, the following court-assisted rehabilitation procedures are also available:

- Schemes of arrangement:

  Section 64 of the IRD Act 2018, introduces a debtor-in- possession restructuring scheme which has the following key features:
  - an automatic 30-day moratorium following the filing of an application with the Tribunal. The moratorium may be extended by order of the Tribunal;
  - the availability of US-style debtor-in-possession (DIP) or rescue financing;
  - the availability of a cramdown between classes in the outline agreements;
  - the availability of pre-packaged schemes of arrangement; and
  - moratoria with extraterritorial effect

- Judicial management

  This is a creditor-in-possession procedure for the court to appoint a receiver (or an interim receiver manager) where it is shown that the company is or may become unable to pay its debts and one or more of the following purposes will be achieved by the appointment:
  - The survival of the company or the whole or part of its business as a going concern or
  - A more advantageous realisation of the company's assets than through a liquidation order.

  This order may be requested by:

  - The company (by virtue of a resolution of the members);
  - Its directors (pursuant to a resolution of the board); or
  - Its creditors (including contingent and potential creditors), either jointly or severally.

If the court appoints an independent insolvency practitioner, he or she will take control of the company's affairs and assets for a period of 180 days, subject to any further extensions granted by the court . There is no limit to the number of extensions the court may grant. A judicial management order can also be released if:

- Creditors refuse to approve the receiver's proposals;
- The judicial manager considers that the purposes specified in the judicial management order cannot be achieved;
- The insolvency practitioner has acted or will act in a way that unfairly prejudices the interests of the company's creditors or shareholders.

The discharge does not imply automatic liquidation, but the Court has the power to order the liquidation of the company.

In any event, the Court shall not issue a judicial management order:

- After the company has gone into liquidation;
- Where the company is located:

    - A bank licensed under the Banking Act;
    - A finance company licensed under the Finance Companies Act;
    - An insurance company authorised under the Insurance Act; or
    - Where the company belongs to such class of companies as the Minister may by order in the Gazette prescribe

According to Article 117 of the IRD Act 2018, for a proposal to be binding on the company, the judicial manager and the creditors or class of creditors, it has to be approved by:

1. A majority in number of each class of creditors present and voting (in person or by (a) a majority in number of each class of creditors present and voting (in person or by proxy) at meetings convened by the Court; and

2. Such majority in number must represent three-quarters in value of the respective class of creditors present and voting.

This question is in relation to personal insolvency and not corporate insolvency. Lack of elaboration. 1 mark.

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.

The IRD Act includes in its sections 224 to 229, a series of actions by which the liquidator or receiver may attack certain transactions known as "untaxable transactions" before a tax court for the purpose of recovering previously transferred assets. In order to do so, such assets must have been transferred in transactions which:

1. **An unfair or undue preference has been given**

For an unfair preferential transaction, the liquidator or receiver must demonstrate the following four elements:

- The preferred party (the beneficiary of the transaction) is a creditor or guarantor of one of the company's debts or liabilities;
- The company was insolvent (or became insolvent as a result of the transaction) at the time the preference was given;
- The company has done something that puts the preferred party in a better position than it would have been had the transaction not taken place in the event of the liquidation or receivership of the company; and
- The company was influenced in its decision to enter into the transaction by the desire to prefer the preferred party, noting that the company is presumed to be influenced by the desire to prefer if the preferred party is an associate of the company.

For this application to succeed, the action must be requested within two years from the date of the winding-up petition or from the date of the application for judicial management where the preferred party is an associate and one year for unrelated parties. How are the time periods different now as compared to previous?

2. **The transaction took place at a lower value**.

For a below-value transaction, the liquidator must demonstrate two elements:

- The company makes a gift to the recipient or the company enters into a transaction in which the value of the consideration received is significantly less than the value of the consideration provided; and
- The company was or became insolvent as a result of that transaction.

The firm is presumed to have entered into an undervalued transaction if the preferred party is an associate of the firm.

In this case, a successful action must be brought within three years from the date of the winding- up petition or receivership petition, regardless of whether the below-value transaction was with an associate or not.

Does not describe how powers have been enhanced. Wrongful trading? Litigation funding?

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.

Section 94(1) (*Power of Court to make an order for judicial management and appoint a judicial manager*) of the IRD Act 2018 introduces a new voluntary process to initiate judicial management without first applying to the Court. In order to do so, the following conditions must be met:

- That the company is, or is likely to be, unable to pay its debts;
- There is a reasonable likelihood of achieving one or more of the purposes of the judicial management; and
- A resolution is obtained from its creditors.

For its part, the IRD law establishes the following procedure for the initiation of the voluntary judicial management process, which is not limited to:

- The manner in which meetings of creditors are to be conducted;
- Notification requirements; and
- The corresponding deadlines.

Please elaborate on this. Too brief an answer.

According to the information in the guidebook, it can be deduced that under this voluntary process, an insolvency administrator would not be appointed to take control of the company's business and assets. Not correct an interim judicial manager is appointed to take control of the assets.

The above characteristics differ from a judicial management in the following aspects:

- The judicial management, which is brought before the courts, requires the intervention of a court, which decides to appoint a judicial administrator. All responsibilities, functions and powers of the board of directors are transferred to the receiver. The liquidator also assumes responsibility for all assets of the company.

Confused concepts. Why is liquidator and receiver mentioned?

- For the appointment of such a receiver it is necessary that the company be deemed to be:
    - The company is or will be unable to pay its debts; and
    - There is a reasonable likelihood of rehabilitating the company, or of preserving all or part of its business as a going concern, or that the interests of creditors would otherwise be better served than by resorting to liquidation.

Lack of understanding of the concept and no comparison with the court appointed process. 2.5 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?

The IRDA 2008 allows a company that proposes or intends to propose a scheme of arrangement to its creditors to apply to the High Court of Singapore ("Court") for a moratorium restraining proceedings against the company under section 64 of the IRDA.

Under this regulatory framework, the application for protection of Juniperus must be submitted by ex parte subpoena together with an affidavit of support. Juniperus must ensure that the following requirements are met:

1. The definition of "undertaking" in section 63(3) IRDA
2. All applicable conditions and requirements under section 64 of the IRDA.

Section 64 of the IRD Act 2018, provides for an automatic moratorium for 30 days after the date on which the application is made. The application can only be made where the company proposes, or intends to propose, a compromise or arrangement between the company and its creditors, or any class of creditors. The company can only make the application if:

- No order has been issued and no resolution has been passed for the liquidation of the company;
- The company submits or undertakes to do so as soon as possible an application to sanction a settlement plan;
- The company has not applied for the protection of section 210(10) of the Companies Act (a provision which also provides for the protection of the moratorium).

The application can only be made where the company proposes, or intends to propose, a compromise or arrangement between the company and its creditors, or any class of creditors. The company can only make the application if:

The application must also include:

- Evidence of support from the company's creditors;
- Where has not proposed a plan, a brief description of the envisaged compromise or arrangement containing sufficient detail to enable the Court to determine whether it is feasible and merits consideration by creditors; and
- A list of all secured creditors and the largest unsecured creditors.

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?

As a first step, it should be noted that there are no provisions relating to groups of companies, but under Article 65, the Court may grant moratorium orders relating to subsidiaries that play a necessary and integral role in the undertaking or arrangement proposed to the company under the Article 64 moratorium.

Therefore, where an order under section 65 of the IRDA has been made under section 64, a subsidiary of such a company may also apply for such a moratorium. Therefore, where an order has been passed on Juniperus, Casuarina may also apply for such moratorium.

As in the case of the Juniperus moratorium application, the Casuarina moratorium application as a related company, must be submitted by ex parte subpoena together with an affidavit of support.

The application for a moratorium on Casuarina as a Juniperus-relatedcompany must be submitted at the same time as the application for a Juniperus moratorium, and the hearing will be set together with the application for a Juniperus moratorium.

Likewise, Casuarina, as the related undertaking, must ensure that it complies (i) with the definition of 'undertaking' in Article 63(3) of the IRDA and (ii) that all applicable conditions and requirements of Article 65 of the IRDA are met.

Please read 65(2) carefully. 1 mark.

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?

Yes, section 64 of the IRD Act 2018 provides that the "scheme of arrangement" enshrines a moratorium regime with extraterritorial effect.

Therefore, it is possible that the automatic 30-day moratorium that arises upon filing with the court when the debtor proposes or intends to propose a plan of arrangement may be extended territorially. How about the actual moratorium?

Under the moratorium:

1. No bankruptcy petition may be filed or processed against the debtor;
2. No other legal proceedings, enforcement or prosecution may be instituted or continued against the debtor's person or property without the court's authorisation.

Accordingly, holders (both domestic and foreign) of the Juniperus SG Bonds would not be able to bring actions against Juniperus or its assets. Similarly, holders of the Angostura Bonds, who have a security interest in the shares of Juniperus and Casuarina, would not be able to enforce such security interest to pursue or seek to realise the shares of Juniperus or Casuarina.

Only binds creditors within jurisdiction of Singapore court.

1 mark.

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?

Under section 210, a company may have an automatic 30-day moratorium in its favour from the filing of the relevant application. Beyond 30 days? In addition, such an application could be filed as long as the company intended to propose a plan, and the following characteristics were met.

- No order has been issued and no resolution has been passed for the liquidation of the company;
- The company submits or undertakes to do so as soon as possible an application to sanction a settlement plan;
- The company has not applied for the protection of section 210(10) of the Companies Act (a provision which also provides for the protection of the moratorium).

It will also be necessary for the company to publish an advertisement in the Gazette and in at least one local English daily newspaper when making an application, and to send a notice to creditors.

The application must also include:

- Evidence of support from the company's creditors;
- Where no plan has been proposed, a brief description of the proposed compromise or arrangement containing sufficient detail to enable the Court to determine whether it is feasible and merits consideration by the creditors; and
- A list of all secured creditors and the largest unsecured creditors.

After hearing the application, the Court is empowered to grant a longer moratorium, depending on the circumstances, which would give the company time to properly formulate the proposed plan and submit it to the creditors.

The Court may also order the company to submit to the Court sufficient information concerning the company's financial affairs to enable creditors to assess the viability of the compromise or arrangement, including valuation of significant assets, details of any disposals of assets, financial reports and profitability documents.

Under this section (section 210) the company must make or undertake to make an application to have the court orders the convening of a meeting of creditors or of a class of creditors in connection with the compromise or arrangement proposed or intended to be proposed.

Thus, under this section a company wishing to enter into a composition will have to make an application to the court for the court to order a meeting of creditors to vote on the proposed composition.

Where the court orders a meeting of creditors to be convened, the company must state in each notice of meeting that: If a creditor fails to submit his proof of debt in the manner and within the time limit specified in the notice convening the meeting, he will not be allowed to vote at the meeting. The chairman of the creditors' meeting, appointed by the court, shall be responsible for settling the proofs of claim.

At that meeting, the plan must be approved by a majority in number representing three quarters in value of the creditors or class of creditors. Once approved the miamos was binding even on those who had not voted. How about court sanction? Lodgement of order with the register of companies?

On the other hand, section 71(1) of the IRDA allows the subject company to make or be obliged to make an application on a pre-pack basis.

Under this scenario, a court is allowed to sanction a restructuring plan even if the court has not ordered a meeting of creditors. Therefore, instead of making two applications to the court (i.e. one for the court to hold a meeting of creditors and one for the court to sanction the plan), the company will only have to make one application to the court (i.e. one for the court to sanction the plan).

In order for the court to accept this application, it must comply with the requirements of that section, which are mainly the following:

1. The company has provided the creditors that are supposed to be bound by the arrangement with the relevant information necessary for the creditors to make an informed decision.
2. Notice of the company's application to the court has been published to creditors in accordance with the terms of that section.
3. The court is satisfied that if a meeting of creditors had been convened, the company would have obtained the required level of support from its creditors as would be required in a normal scheme of arrangement.

Thus, one of the conditions to be satisfied under section 64 of the IRDA is that the subject company makes, or undertakes to the Court to make, as soon as practicable: (1) an application under section 210(1) of the Companies Act for the Court to order the convening of a meeting of creditors or a class of creditors in relation to the compromise or arrangement proposed or intended to be proposed; or (2) an application under section 71(1) of the IRDA to approve the compromise or arrangement proposed or intended to be proposed, on the terms set out above which implies that creditors do not have to be called.

3.5 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?

The following describes the requirements that each Angostura Group company must meet in order to qualify for rescue financing:

1. The Angostura group must demonstrate that the financing meets at least one of the following characteristics:
    a. Necessary for the survival of the debtor who obtains the financing ;
    b. Necessary to achieve a more advantageous realisation of the assets of a debtor
    c. Obtaining the financing than in a liquidation of that debtor.

Under both the scheme of arrangement and judicial management, a Singapore Court may, on application by the debtor, make an order for any redemption finance obtained by a debtor:

- Be treated as part of the costs and expenses of the liquidation if the debtor is subsequently liquidated;
- Have priority over preferential debts if the debtor is subsequently liquidated;
- be secured by a security interest in assets of the debtor that are not subject to any other security interest, or be secured by a subordinate security interest in assets of the debtor that are subject to an existing security interest if the debtor would not have been able to obtain unsecured redemption financing from any other person; or
- Being secured by a security interest in property subject to an existing security interest of equal or higher priority than the existing security interest, if the debtor would not have been able to obtain redemption financing from any other person, unless it has been so secured and there is adequate protection of the interest in the existing security interest.

Need to elaborate on the requirements. Please refer to the cases such as Re Attiilan. 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 adopted the Model Law through the Amendment Act. This model law now allows foreign representatives to apply to the Singapore High Court for recognition of foreign proceedings.

- For the Singapore High Court to recognise the foreign insolvency proceeding, the foreign insolvency proceeding and the foreign representative must meet the requirements of the Model Law for recognition.

- It is also important to note that the Singapore version of Article 6 differs from Article 6 of the UNCITRAL Model Law on Cross-Border Insolvency. The Singapore version deliberately omits the word "manifestly".

- This has been recognised as a vital issue because, according to the Singapore Court, this means that the public policy exclusion standard in Singapore is lower than in jurisdictions where the Model Law has been enacted unchanged.

- Once recognition of the foreign proceeding is achieved, the foreign representative shall be entitled to participate in a proceeding concerning the debtor under Singapore.

- Finally, it should be noted that the Model Law as incorporated in the Amending Act does not require reciprocity with the State in which the foreign proceeding takes place and that the Singapore courts have confirmed that recognition is also possible for voluntary rehabilitation or insolvency proceedings.

What sort of relief is granted? What are the requirements? 1 mark.

*** End of Assessment ***

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