



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E

SINGAPORE

This is the **summative (formal) assessment** for **Module 8E** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 8E. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment8E]**. An example would be something along the following lines: 202122-336.assessment8E. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total] 10 marks

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

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

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

Question 1.2

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

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

Question 1.3

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

- (a) The debtor has chosen Singapore law as the law governing a loan or other transaction.
- (b) The debtor is registered as a foreign company in Singapore.
- (c) The debtor is carrying on business in Singapore.
- (d) Any of the above.**

Question 1.4

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

- (a) Over 50% in value.
- (b) 50% or more in value.
- (c) Over 75% in value.
- (d) 75% or more in value.

Question 1.5

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

- (a) To make discovery of and deliver all his property to the Official Assignee.
- (b) To attend any meeting of his creditors as may be convened by the Official Assignee.
- (c) To execute such powers of attorney, conveyances, deeds and instruments as may be required.
- (d) To not travel overseas under any circumstances whatsoever.

Question 1.6

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

- (a) It allows foreign representatives to apply to court for the recognition of foreign proceedings.
- (b) The court can deny recognition only if recognition is "manifestly contrary" to public policy.
- (c) It provides for concurrent insolvency proceedings.
- (d) It provides for international co-operation and communication between courts and representatives.

Question 1.7

Which of the following new reforms **were not** introduced by way of the 2017 amendments to the Companies Act?

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

Question 1.8

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

- (a) The company by way of a members' resolution.
- (b) The liquidator by way of an application to court.**
- (c) The directors pursuant to a board resolution.
- (d) The creditors either together or separately.

Question 1.9

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

- (a) Make discovery of and deliver all his property to the Official Assignee.
- (b) Disclose all property disposed of by gift or settlement without adequate valuable consideration within the five years immediately preceding his bankruptcy.
- (c) Not being able to travel overseas at all.**
- (d) Attend meetings with the Official Assignee and answer all relevant questions.

Question 1.10

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

- (a) The preservation of the company's property or business from dissipation or deterioration.
- (b) The more advantageous realisation of the property than in a liquidation.**
- (c) To bridge the gap between the application for judicial management and the hearing of the judicial management application.
- (d) To safeguard the interests of the company as well as its creditors.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 4 marks]

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

The Court of Appeal clarified that in determining whether the company is deemed to be unable to pay its debt under section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act 2018 (the **IRD Act**), the cash flow test is the sole and determinative test. The Court in this case has also set out a non-exhaustive list of factors which should be considered under the cash flow test, which include:

- (a) The quantum of all debts which are due or will be due in the reasonably near future;

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

What was the previous position? 1.5 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 IRDA imposes restrictions on ipso facto clauses (ie clauses that allows a party to terminate or modify the operation of a contract upon the occurrence of certain events such as a counterparty's insolvency or being subject to restructuring proceedings).

The IRDA introduces wrongful trading provisions whereby an officer of a company may be found liable if he or she ought to have known that the company traded wrongfully (ie incurred liabilities without reasonable prospects of meeting them in full).

The IRDA introduces that a company may be placed under judicial management through a creditors' resolution without a court order.

The IRDA introduced regulatory regime for insolvency practitioners.

2 marks.

Question 2.3 [maximum 4 marks]

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

[One of the alternatives to formal bankruptcy is voluntary arrangement. A voluntary arrangement is a formal arrangement between a debtor and his creditor for the satisfaction of his debts. The debtor must appoint a licensed insolvency practitioner as a nominee to oversee the process. If a debtor intends to make such a proposal to the creditors, he may apply to the Court for an interim moratorium order. Once an interim moratorium is granted, no bankruptcy application may be made or proceeded with against the debtor, and no other proceedings, execution or other legal process may be commenced or continued against the debtor or property of the debtor without leave of the Court.

Once an interim order is made, the nominee must submit a report to the Court which states whether in his opinion, a meeting of the creditors should be summoned and if so, the

date, time and place. Unless otherwise directed by the Court, the nominee will summon a creditors meeting, in which the creditors will vote to approve the proposed voluntary arrangement. If the proposal is approved by a special resolution passed by a majority in number and at least three fourth in value of the creditors present personally or by proxy at the creditors' meeting and voting on the resolution, the voluntary arrangement will bind all creditors who have had notice of and were entitled to vote at the meeting.

If the debtor fails to comply with any of the obligations under the voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement may bring bankruptcy application against the debtor.]

4 marks

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

Question 3.1 [maximum 8 marks]

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

A liquidator or judicial manager may make claims relating to avoidance of undervalue and unfair preference transactions, extortionate credit transactions, wrongful or fraudulent trading and assessment of damages against delinquent officers.

Transaction under value

Where a company made a gift to the recipient or the company entered into a transaction where the value of consideration received was significantly less than the value of the consideration provided within three years of the date of the winding up application or the date of the judicial management, and at a time that the company was insolvent or became insolvent as a result of the transaction, the transaction was conducted at an undervalue, and a liquidator or judicial manager can apply to the Court to seek to claw back assets transferred.

Unfair preference

Where a company has done anything to put a creditor or guarantor of the company (the preferred party) in a better position than they would have been in the event of the company's liquidation or judicial management had the transaction not been entered, with a desire to prefer the preferred party, within one year (or two years in the case where preference was given to an associate) of the date of the winding up application or the date of the judicial management, and at a time the company was insolvent or became insolvent as a consequence of the transaction, the company has given unfair preference and a liquidator or judicial manager can apply to the Court to seek to claw back assets transferred.

If the preferred party is an associate of the company, it is presumed that the company has been influenced in deciding to give the unfair preference by a desire to prefer the preferred party.

Extortionate credit

Where a company has entered into an extortionate credit transactions within three years of the date of winding up application or the date of judicial management, liquidators or judicial managers may apply to the Court to have the transaction voided. Transactions are considered extortionate if having regard to the level of risk in such transactions, the

transaction requires grossly exorbitant payments to be made or are harsh and unconscionable or substantially unfair.

Fraudulent trading

Liquidators or judicial managers may apply to the Court, if it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, for a declaration that any person who was knowingly a party to the carrying on of the business in that manner is personally responsible.

Wrongful trading

IRDA introduced the wrongful trading provision. A company trades wrongfully if it incurred debts or other liabilities without reasonable prospect of meeting them in full when it was insolvent or became insolvent as a result. Liquidators or judicial managers may apply to the Court for a declaration that any person who was a party to the company's wrongful trading is personally liable. Under the IRDA, it is not required to establish that the person who participated in wrongful trading knew the company was trading wrongfully. IRDA makes it easier to establish liabilities for wrongful trading. **how is this different from previously?**

Funding

Furthermore, IRDA gives liquidators (section 144(1)(g)) and judicial managers (section 99 and paragraph (f) of the First Schedule) the express statutory power to assign the proceeds of an actions relating to avoidance of undervalue and unfair preference transactions, extortionate credit transactions, wrongful/fraudulent trading and assessment of damages against delinquent officers. Before the enactment of the IRDA, liquidators were only able to assign the proceeds of the company's claims to third parties and not the right to pursue these actions. IRDA gives liquidators and judicial managers greater ability to seek third-party funding by assigning the right of action in circumstances where the companies do not have sufficient funds to pursue these claims.

Good effort. 7 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.

To commence a voluntary judicial management, the company must follow the following steps.

The company propose an interim judicial manager, who is a licensed insolvency practitioner and is not the auditor of the company.

The company must give to the proposed interim judicial manager and any person who holds a floating charge over the whole or substantially whole of the company's assets at least seven days' notice of its intention to propose to be placed under judicial management.

The company must also have the members of the company to resolve to appoint the proposed interim judicial manager. If required, the company must hold a general meeting and send out notice of the meeting to members in order for the members to consider, discuss and approve such resolution. If the board of directors are authorised by the constitution of the company to approve appointment of a interim judicial manager, the resolution of members can be dispensed with by a resolution of the board of directors.

The holders of the floating charge consents in writing to the appointment of the interim judicial manager.

The proposed interim judicial manager gives consent in writing, and lodges with the Official Receiver and the Registrar of Companies, a statutory declaration by the proposed interim judicial manager stating that he/she consents to be appointed, is not in a position of conflict of interest, and in his/her view one or more purposes of judicial management mentioned in the IRDA can be achieved.

The board of directors lodges with the Official Receiver and Registrar of Companies a statutory declaration stating that the company is or is likely to become unable to pay its debts, the company will summon a meeting of the company's creditors to be held on a date not later than 30 days after the date of lodgement of the statutory declaration by the proposed interim judicial manager, and the directors believe that one or more of the purposes of judicial management mentioned in the IRDA is likely to be achieved.

Once the above steps have been taken, the interim judicial manager can be appointed. The appointment must be no later than 21 days from the date of the notice to the floating charge holders and the proposed interim judicial manager.

Upon the appointment of the interim judicial manager, the company must lodge a written notice of appointment with the Official Receiver and Registrar of Companies, and within 7 days after the lodgement, publish a notice of the appointment in the Gazette and in an English local daily newspaper.

The company must hold a creditors' meeting held within 30 days after the date of the lodgement of statutory declaration by the interim judicial manager. Before holding the meeting, the company must give at least 14 days' written notice to all its creditors of the meeting. The notice must contain the information prescribed in the IRDA. The notice of the creditors' meeting must be published in an English local daily newspaper at least 10 days before the date of the meeting.

The board of directors must appoint at least one of them to attend the creditors' meeting. The secretary of the company must also attend the creditors' meeting. At the meeting, the company secretary and the attending director must disclose the company's affairs and the circumstances leading up to the proposed judicial management. If a majority in number and in value of creditors present and voting resolved to place the company under judicial management, the company will enter judicial management. Then the meeting must approve, by a majority in number and value of creditors of the company present and voting appointment of a person as judicial manager.

In voluntary judicial management, floating charge holder may veto the proposal to place the company in judicial management. In Court ordered process, a floating charge holder may oppose an application but the Court will only dismiss the application if it is satisfied that the prejudice that would be caused to the floating charge holder will be disproportionately greater than the prejudice that would be caused to unsecured creditors if the application is dismissed.

The voluntary judicial management process does not require a Court order, or making any application to the Court. If consent of the floating charge holder and the requisite majority of creditors' approval can be obtained, this process will be faster than by a Court order.

Perfect detailed answer! 7 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 get moratorium protection under section 64(1) of the IRDA, Juniperus must show to the Court that (A) no order has been made and no resolutions has been passed for the winding up of the company. (B) the company makes or undertakes to the Court to make as soon as practicable an application under section 210 of the Companies Act for the Court to summon a meeting of the creditors, and (C) the company does not make an application under section 210(10) of the Companies Act for retraining proceedings.

Furthermore, the following documents must be filed with the Court:

- (a) evidence of support from the creditors for the intended or proposed compromise or arrangement together with an explanation of how much support would be important for the success of the intended or proposed compromise or arrangement;
- (b) a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the creditors;
- (c) a list of every secured creditor of the company;
- (d) a list of all unsecured creditors who are not related to the company. If there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims against the company are the largest among all such unsecured creditors; and
- (e) any other documents that the Court may order under section 64(6) relating to the company's financial affairs, including valuation report of each of the company's significant assets, periodic financial reports of the company and its subsidiaries, forecast of the profitability and the cash flow from the operations of the company and its subsidiaries.

Detailed and well written. 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?

The application can only be made if the Court has made an order under section 64(1) of the IRDA. In order to get protection under section 65(1) Casuarina (or other subsidiaries,

holding companies or the ultimate holding company of Juniperus) must show to the Court that:

- (a) the order under section 64(1) in relation to Juniperus is in force;
- (b) no order has been made and no resolutions has been passed for the winding up of the applicant company;
- (c) the applicant company plays a necessary and integral role in the compromise or arrangement relied on by Juniperus;
- (d) the compromise or arrangement will be frustrated if one or more of the actions that may be restrained by an order under section 65(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?

The orders have extra-territorial effect in a sense that the moratoria apply to creditors over which the Court has in personam jurisdiction, whether the act in question will take place in Singapore or elsewhere. For example, the moratoria may restrict creditors reside in Singapore to commence or continuing any proceedings against Juniperus and Casuarina in foreign jurisdictions unless with the leave of the Court.

However, the PKPU proceedings in Indonesia have been brought against Angostura and its Indonesian subsidiaries and not Juniperus or Casuarina. The moratoria will not restrict creditors' ability to participate in the PKPU proceedings.

The moratoria will also restrict legal process against properties of Juniperus and Casuarina. Shares in Juniperus are not properties of either Juniperus or Casuarina, and therefore, creditors may enforce share charge over the shares in Juniperus. Shares in Casuarina are held by Juniperus, and therefore properties of Juniperus. Hence, creditors will need to seek leave of the Court to enforce the charge over shares in Casuarina.

2 marks. Good application of the facts.

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?

To launch a scheme of arrangement under section 210 of the Companies Act, Juniperus must apply to the Court for leave to convene a meeting of creditors to consider a proposed scheme of arrangement. Juniperus will need to disclose to the Court information relating to whether and how the creditors' meeting is to be conducted, which includes the classification of creditors and the proposal's realistic prospects of success.

If leave is granted, the company may hold a creditors' meeting to approve the proposed scheme in accordance with the Court direction. If at the meeting, a majority in number, representing three quarters in value of the creditors or class of creditors present and voting (in person or by proxy) approved the proposed scheme, Juniperus will attend another Court hearing requesting the Court to sanction the scheme.
Lodgement with ACRA.

If Juniperus has not acquired approval of the requisite majority of all classes of its creditors, it may apply to the Court to cram down on the classes of creditors that did not vote in favour of the scheme. The Court may make such orders if it is satisfied that the proposed arrangement does not discriminate unfairly between the classes of creditors and is fair and equitable to the dissenting class.

As described above, a scheme of arrangement under section 210 requires two Court hearings, the leaving hearing and the sanction hearing, and a creditors' meeting. A prepack scheme under section 71(1) of the IRDA requires only one Court hearing. Usually the company will seek agreement from the creditors prior to the Court application, by soliciting votes or using support agreements. On application, if the Court is satisfied that (1) the company has provided the creditors to be bound by the arrangement with sufficient information for them to make an informed decision, (2) if a creditors' meeting had been summoned, the company would have obtained approval from the requisite majority, and (3) the notice of the company's application has been published to the public, the Court may sanction the scheme without the need to hold a creditor's meeting.

Detailed. 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?

In order to access the rescue financing under the IRDA, the financing must be either (1) necessary for the survival of the company or of the whole or any part of the undertaking of that company, as a going concern; or (2) necessary to achieve a more advantageous realisation of the assets of the company, than on a winding up of that company.

Please elaborate further. 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.

In order to get recognition in Singapore, the following requirements must be met:

- The foreign proceedings must be a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.
- The person applying for recognition in Singapore must be a foreign representative which is defined as a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding.
- It must be submitted to the Court evidence of the existence of the foreign proceeding and of the appointment of the foreign, and a statement identifying all foreign proceedings and Singapore insolvency proceedings in respect of the debtor that are known to the foreign representative.
- The application has been submitted to the High Court in Singapore.
- Recognition is not contrary to Singapore's public policy.
- The foreign proceeding is taking place in the State of the debtor's centre of main interests (COMI), or where the debtor has an establishment.

If recognition is granted and the foreign proceeding is taking place at the debtor's COMI, the foreign proceeding will be recognised as the foreign main proceeding, and automatic moratorium and other relief under the Model Law will apply, which include a stay of execution against the debtor's assets, and a stay of commencement or continuance of individual actions concerning the debtor's property, rights, obligations or liabilities. If the foreign proceeding is recognised as a foreign non-main proceedings, the Court may grant such relief upon application if they are necessary to protect the property of the debtor or the interests of the creditors.

However the recognition of foreign proceeding will not prevent commencement of a Singapore insolvency proceeding in respect of the same debtor provided that the debtor has property in Singapore. The Singapore proceeding, if commenced, will be restricted to property that is located in Singapore. Where the Singapore insolvency proceeding is commenced, the reliefs granted in relation to the foreign proceedings will be reviewed, modified or terminated if inconsistent with the proceeding in Singapore.

2 marks.

*** End of Assessment ***

45.5 out of 50