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?

[Type your answer here]

Answer:

I. Significance of the decision:

The Singapore Court of Appeal in Sun Electric Power Pte Ltd v. RCMA Asia Pte Ltd [2021] SCGA 60 clarified that the cash flow test should be the only and conclusive test under Section 254(2)(c) of the Companies Act (now Section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act, 2018 ("IRDA") to determine whether a company is unable to pay its debts. The Court of Appeal also offered clarification on matters pertaining to statutory demands made pursuant to Section 254(2)(a) of the Companies Act (now Section 125(2)(a) of the IRDS), including partial payments on statutory demands and who should be in charge of overseeing and paying for an appeal against a winding up order.

II. Decision of the Court of Appeal:

A. Test under Section 254(2)(c) of the Companies Act:

According to the Court of Appeal the cash flow test should be the exclusive and deciding test under Section 254(2)(c) of the Companies Act. Where distinct insolvency criteria were envisaged, the legislature made that clear in the act. The ability of a corporation to "pay its debts" is not directly correlated with the balance sheet test.

A non-exhaustive list of variables that should be taken into account when applying the cash flow test was provided by the Court of Appeal. The factors include:

- The amount of all debts that are due or will be due in the reasonably near future;
- whether or not payment is being demanded or is likely to be demanded for those debts;
- whether or not the company has defaulted on any of its debts, the amount and length of time of such default; the amount of time since the start of the winding up proceedings;
- the value of the company's current assets and assets that will be liquidated;
- any other income or payment that the company may receive in the reasonably near future;
- the state of the company's business, 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; and
- agreements between the company and prospective lenders, such as its holders and shareholders, to determine whether any shortfall in liquid and real assets exists.

Accordingly, the Court of Appeal concluded that there was no justification for challenging the Judge's determination that the appellant was insolvent after applying the cash flow test and weighing the available information.

B. Observation on Section 254(2)(a) of the Companies Act:

The Court of Appeal held that a company which makes partial payment of debt demanded in a statutory demand should not be deemed unable to pay its debts under Section 254(2)(a) of the Companies Act. Further it also held that the term "to the reasonable satisfaction of the creditor" applied to "secure or compound for it" only, and not to "pay the sum".

C. Appealing a winding up order

The Court of Appeal further held that a company has the right to appeal a winding up order regardless of whether a stay order is granted, and that it is a necessary corollary of the company's right to appeal that its directors be allowed to control the conduct of the appeal. However, the Court of Appeal was of the view that Directors and shareholders controlling the conduct of the appeal should expect to pay any costs incurred by the company in prosecuting the appeal out of their own pockets, the Court of Appeal has ruled. However, they can apply for an indemnity from the company if the appeal fails otherwise, they would be held personally liable towards such payment.

Detailed answer. 4 marks.

Question 2.2 [maximum 2 marks]

State **four (4)** new features that were only introduced in the IRDA **and were not in force** at the time of the 2017 amendments to the Companies Act.

[Type your answer here]

Answer:

The IRDA 2018 introduced the following feature which were not in force at the time of the 2017 amendments to the Companies Act:

- **Section 94(1) of the IRDA:** Introduces a new voluntary approach based on the certain condition for commencing judicial management without having to petition to the first court.
- **Section 209 to 2011 of the IRDA 2018:** Allows for the early dissolution of a distressed corporate debtor that is under liquidation.
- **Section 239 of the IRDA:** Introduces the idea of unlawful trading by holding individuals personally liable for corporate debts if they are aware of wrongful trading or, in the case of officers of the firm, should have known that the corporation was dealing improperly.
- **Section 440 of the IRDA:** Restricts the use of ipso facto provisions if a firm initiates a case related to any applications made under judicial management or a scheme of arrangement process.

2 marks

Question 2.3 [maximum 4 marks]

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

[Type your answer here]

Answer:

Voluntary Arrangement

In accordance with Section 276 of the IRDA of 2018, any insolvent debtor who plans to propose to their creditors a composition in fulfilment of their obligations or a plan of

arrangement of their affairs may apply to the court. Except with the Court's permission, no bankruptcy application may be filed or pursued against the firm or any of its partners. The Court may stop any action, execution, or other legal procedure against the debtor for whom the application has been made or against such debtor's property while an application for an interim order according to Section 276 of the IRDA, 2018 is proceeding. Any legal actions brought against a firm's partners are likewise subject matter of jurisdiction of the Bankruptcy Court as well.

Any request for a Voluntary Arrangement must include the nomination of a nominee by the debtor. A description of the debtor's affairs and a document outlining the conditions of the voluntary arrangement that the debtor is proposing must be submitted by the debtor to the nominee.

The Court may, on the debtor's motion, replace the nominee with another eligible to function as a nominee or prolong the time period for which the interim order is in force if the nominee fails to provide the report required by Section 280 within the allotted time. A nominee is required by Section 280 to notify the Court in accordance with Section 281 that a meeting of the debtor's creditors has to be called. The temporary injunction prohibiting the gathering must be continued for whatever long the court deems necessary. If the Court determines that the candidate has violated Section 280, it may revoke the temporary order.

If deemed appropriate, a creditors' meeting called pursuant to Section 281 may adopt the proposed voluntary arrangement with or without modifications. No amendment under Section 281(3) may change the plan to the point that it no longer qualifies as the debtor's voluntary arrangement proposal. Any debtor who makes a false statement or engages in any other form of fraud to persuade creditors to accept a proposal is subject to a fine and/or imprisonment. Need a special resolution of creditors to approve.

In the event that the voluntary arrangement authorised unfairly disadvantages the interests of the debtor or any of its creditors, any individual who is qualified to vote at a creditors' meeting may petition the court for a review of the meeting's decision. The Court may, in its discretion, postpone or cancel any permission granted at the earlier meeting and require that a further meeting be held to examine a revised plan.

Any interim order pertaining to the debtor may, if the Court deems it just, have its validity extended for the amount of time the Court deems appropriate. Once a voluntary arrangement has been accepted by a creditors' meeting called according to Section 281, the nominee is responsible for overseeing its execution. To perform the nominee's duties, the Court may select another individual.

What happens if the debtor defaults?

2.5 marks. Left out some of the key points. Answer does not appear to grasp the concept.

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.

[Type your answer here]

Answer:

In 1987, Judicial Management was brought into Singapore's restructuring and insolvency scene as a result of Pan Electric Industries Limited's failure, which had caused the Singapore Stock Exchange to be closed for an unprecedented three days in 1985. Judicial Management, which was modelled after the English administrative system, was created as a tool for possibly viable businesses to restructure their debts and rebuild their reputations.
The steps for a Judicial Management were outlined in Sections 227AA to 227X of the Companies Act before the IRDA. The Firms Act was updated in 2017 to improve the Judicial Management system. Among other changes, a legislative provision was added to enable super-priority to be granted to rescue finance and the bar for companies to join Judicial Management was decreased. With certain adjustments to further increase its user-friendliness, the 2017 amendments to the Judicial Management statute were essentially transferred into the IRDA. This question is not asking about reform to JM.

Third-party funding

There was considerable ambiguity over whether a business may enter into a third-party funding arrangement to pursue a claim against persons who had wronged the business prior to the introduction of the IRDA. These firms typically lack the resources to prosecute claims, thus third-party funding agreements are a tempting alternative that the company may take advantage of in order to perhaps increase the realization of the company's assets. Despite the uncertainties, the Singapore Courts have actively established case law on the circumstances under which bankrupt corporations may enter into third-party agreements.

A judicial manager now has the express legislative authority to allocate the profits of an action brought under Sections 224, 225, 228, 238, or 240 of the IRDA thanks to the introduction of Section 99 of the IRDA, coupled with the new paragraph (f) of the First Schedule. These Sections deal with the prevention of unfair preference and undervalue transactions, extortionate credit transactions, wrongdoing/fraudulent dealing, and the calculation of damages for defaulting officials. This would be good news for struggling businesses who want to recover assets that have been unlawfully transferred or get a better realization of their assets but lack the resources to take legal action.

It is essential to remember that Section 99 of the IRDA forbids third-party funding against a counterparty for unpaid receivables or contract breaches. The passage of Section 99 of the IRDA was not "intended to affect other funding Arrangements that are allowed under common law, such as funding for causes of action that belong to the company as its property, and funding for the investigation of potential causes of action for financially distressed companies," according to the Insolvency, Restructuring and Dissolution Bill's provisions. Therefore, despite Section 94 of the IRDA, the regulations established by case law regarding when third-party funding agreements will be approved by the Court will still be in effect.

Applicable to liquidators as well.

Impeachable Transactions

A liquidator or judicial manager may ask the court to order the return of assets that have been transferred in transactions where an unfair or unreasonable preference was given or when the transaction was carried out at a lower value under the Liquidation of a Company.

The liquidator or judicial manager must demonstrate the following four factors in an unjust preferential transaction:

i. The company was insolvent at the time of giving the preference;

ii. the company has taken any action that places the preferred party in a better position than the preferred party would have been had the transaction not been entered in the event of the company's liquidation;
iii. the preferred party is a creditor or guarantor for any of the company's debts or liabilities; and
iv. the desire to prefer the preferred party had a role in the business's decision to enter the transaction. It should be noted that the company is believed to have been motivated by a want to prefer if the chosen party is an associate of the firm.

In cases where the preferred party is an affiliate, the relevant time limit is two years from the date of the winding-up application or the date of the judicial management application; for unrelated parties, it is one year.

The liquidator must prove two things in order to prove a transaction at an undervalue:

i. the company gave the recipient a gift or entered into a transaction where the value of the consideration received was substantially less than the value of the consideration given; and
ii. the company was or became insolvent as a result of that transaction.

If the favored party is a corporate affiliate, the transaction was deemed to have been entered into at an undervalue. Regardless of whether the undervalue transaction involved an associate or not, the relevant time period during which assets may be reclaimed is three years from the date of the winding-up application or the judicial management application.

It is important to keep in mind that claw back provisions are only accessible to a liquidator or judicial manager once the firm is put under their control. Accordingly, directors should be aware that creditors may want to put the business into judicial or liquidation management so that the liquidator or manager can use those options.

Conclusion

The Judicial Management system that is now in existence under the IRDA is not significantly different from the one that was established following the 2017 Amendments, prior to the IRDA's start. However, considerable innovation has occurred, particularly with the introduction of the out-of-court Judicial Management procedure, third party funding, and impeachable transaction, which speed up and simplify the settlement of distress and recovery through the IRDA.

This is not what the question is asking.
Also need to discuss wrongful trading briefly.

4.5 marks. Does not appear to understand the question.

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.

[Type your answer here]

Answer:

A firm in financial trouble may also turn to judicial management as a type of corporate rescue to stave off collection efforts from creditors and gain time to come up with a plan to save the

company, reach a settlement with them, or execute a controlled asset sale to get the highest price possible.

A firm is no longer required to file an application with the court to be put under judicial control. A firm has the possibility to be put under judicial supervision if its creditors agree to do so, according to Section 94 of the IRDA. The voluntary judicial management procedure can start if a resolution is approved by a majority of the creditors who are present and voting, both in terms of number and value, and without having to pay any court costs.

The procedure is as follows:

1. Give the proposed interim judicial manager and any creditor who may name a receiver and manager under the provisions of a debenture secured by a floating charge or by a floating charge and one or more fixed charges seven days' written notice of your intention to appoint an interim judicial manager.

2. The temporary judicial manager is appointed following a decision by the shareholders;

    a. Written approval for the appointment must have been given by the proposed temporary judicial manager and creditors with the power to choose a receiver and manager;
    b. The proposed interim judicial manager must have filed the following statutory declaration with the Official Receiver and Registrar of Companies:
        i. He doesn't have a conflict of interest;
        ii. He believes that one of the judicial management's goals can be accomplished.
        iii. He agrees to serve as the temporary judicial manager;
    c. The directors of the company must have filed a statutory declaration with the Registrar of Companies stating that the following are true:
        i. the company is or is likely to become unable to pay its debts;
        ii. the company will call a meeting of the company's creditors to be held not later than 30 days after the filing of the interim judicial manager's statutory declaration; and
        iii. they believe that one of the goals of the judicial management can be accomplished.

3. The business must arrange for a formal notification of the interim judicial manager's appointment to be filed with the Official Receiver and the Registrar of Companies within three days of the appointment;

4. The firm must send creditors a complete account of its financial situation as well as at least 14 days' written notice of the meeting, together with a list of all creditors and the amounts of their claims.

5. The firm is required to call a meeting of its creditors, which must take place no later than 30 days from the day the proposed temporary judicial manager's statutory statement was filed.

6. Where a majority in number and value of the creditors present and voting resolve to do so, the company is placed under judicial management. A moratorium restraining potential enforcements or legal processes will begin upon the company lodging a notice of appointment of interim judicial manager. Companies should first negotiate with their creditors and understand the likelihood of support before pulling the trigger on the voluntary judicial management process.

Conclusion

It should be emphasised that while this is a cost-effective strategy, the company's operations and financial situation will be made public before the creditors cast a vote at the creditors meeting. This places the business in a very precarious situation where, in the event that insufficient support is obtained, a creditor could easily file a winding-up petition based on the company's statutory declaration that it is or is likely to be unable to pay its debts as well as the financials that are disclosed to all creditors. Therefore, before initiating the voluntary judicial management procedure, businesses should first engage in negotiations with their creditors and gauge the possibility of support.
Last but not least, Section 93 of the IRDA creates a new way for creditors to request an order requiring or restricting any action by the company while the application for judicial management is pending, including an order prohibiting the company from disposing of its property other than in good faith and in the normal course of the company's business. Previously, under the CA, the debtor could only receive this relief if they applied for a scheme of arrangement moratorium. This was logical considering that under the Section 211B CA system, the company's directors retain control and creditors needed security to guarantee that the company's assets would not be lost while the moratorium was in effect. Although this is a helpful addition, it is unclear at this moment what the Court will need to do in order to approve the application and how this would affect the appointment of temporary judicial managers (who are typically chosen in order to stop the loss of the company's assets).

Companies can now voluntarily place themselves under judicial administration by passing a resolution of the creditors that is supported by a majority of the company's creditors in terms of both number and value, rather than needing to go to the court. This is a very helpful tool to have available for businesses looking to reorganise since it prevents the need to file a time- and money-consuming application with the court for judicial management.

Comparison with court ordered winding up? 4.5 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?

[Type your answer here]

Answer:

According to IRDA Section 64(1), when a court action is filed and the debtor wants or plans to submit a scheme of arrangement, a 30-day moratorium is automatically imposed. Further,

as per Section 64(7) of the IRDA, the Court may prolong this moratorium at the debtor's request.

Thus, to obtain the moratorium an application has to be made by the Angostura ensuring that none of the conditions under Section 64(2) are been satisfied.

What are the conditions and requirements? 0 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?

[Type your answer here]

Answer:

According to Section 65, the Court may impose a moratorium on certain subsidiaries or associated businesses if they are essential to the compromise or arrangement that the corporation must offer in order to be exempt from the Section 64 moratorium. The associated firm submitting the application must, however, meet the requirements listed below:

(a) no order or resolution on the associated company's dissolution has been made or adopted;
(b) the order issued according to Section 64(1) with respect to the subject company is still in effect;
(c) the related business is a crucial and important component of the compromise or arrangement that the subject company relied upon in its application for the order pursuant to Section 64(1);
(d) if one or more of the acts that may be halted by an order under Section 65(1) are taken against the connected firm, the compromise or agreement described above will be thwarted;
(e) The Court is certain that the issuance of an order under Section 65 won't adversely disadvantage the associated company's creditors.

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?

[Type your answer here]

Answer:

As per Section 64(5) of the IRDA, An order of the Court under Section 64 may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court whether the act takes place in Singapore or elsewhere. Accordingly the moratoria sought by Juniperus and Casuarina can be ordered to have extra-territorial effect .

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?

[Type your answer here]

Answer:

Introduction:

A plan of arrangement is a compromise or agreement between a corporation and its creditors or members that has been approved by a court, according to Section 210(3AA) of the Companies Act. According to Section 210(1) of the Companies Act, a business that desires to engage into such an arrangement must file a legal application with the court. The corporation will now need to provide facts that will help the court decide whether and how to adjourn the creditors' meeting.

Application Process:

A compromise or agreement between the firm and its creditors, or any class of creditors, must be proposed or intended by the company in order for the application to be considered. The business can only submit the application if

- No order has been issued and no resolution has been adopted calling for the corporation to be dissolved;
- The business submits an application to approve a plan of arrangement or promises to do so as soon as is practical;
- In accordance with section 210(10) of the Companies Act, the firm has not requested protection.

The corporation must notify the creditors and publish a notice in the Gazette and at least one local daily newspaper in English when filing an application. The application also needs to contain:

- documentation from the creditors of the business;

- in the absence of a proposed plan, a concise explanation of the desired compromise or arrangement with enough information to allow the Court to decide whether it is workable and warrants consideration by creditors; and

- a list of the biggest unsecured creditors as well as each secured creditor.

Leave to convene creditors' meeting?

As per Section 210(3AB) of the Companies Act, the proposed arrangement must be accepted by a majority of the creditors or class of creditors present and voting, either in person or by proxy, if permission to call a creditors' meeting is granted. This majority must reflect three-quarters of the proposed arrangement's value. In this regard, the creditors must be classified separately when their rights are so dissimilar from one another that they could not rationally consult with one another in the interest of their common interest.

Following the creditors' meeting, the corporation will go before the court once more and ask that the proposed arrangement be approved. The creditors who dissented at the meeting may appear before the court to express their concerns or objections to the proposed scheme, even if the firm has obtained the necessary threshold of approval from the creditors of the proposed plan in the meeting. The court has the option to either accept the proposed scheme outright or with any modifications or restrictions it deems appropriate.

Therefore, the necessity for judicial approval assures that small creditors are safeguarded from any planned restructuring by the firm and that the corporation will not be arbitrarily denied a restructuring.

Comparison

A pre-pack scheme allows for a court to sanction a scheme of arrangement even though no meeting of creditors has been ordered by the court. Instead of making two applications to the court, a company will only need to make one application (i.e., once for the court to hold a creditors' meeting). A restructuring plan can be approved within two months from application. Not necessarily.

In order to provide some level of protection for its creditors, a firm requesting a pre-pack plan of arrangement may request votes from its creditors prior to filing the application with the court, or utilise lock-up or creditor-support agreements. In a so-called "pre-pack" plan, the cram-down provision that is provided under an ordinary scheme of arrangements is not accessible.

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?

[Type your answer here]

Answer:

The following essential prerequisites must be satisfied in order for the Court to approve a rescue finance order:

- **Reasonable attempts were made to get rescue finance without using super priority:** Super priority, which only applies to Sections 67(1)(b) to (d) of the IRDA (previously Sections 211E(1)(b) to (d) of the Act) and is anticipated under Section 67(1)(a) of the IRDA, is necessary for the firm to be able to acquire the rescue finance.

What other requirements? Application must have been made for scheme meeting or a moratorium.

- **Protection that is adequate:** The interests of the holder of the existing security interest are adequately protected – only applies to Section 67(1)(d) of the IRDA; and

- **Meets the criteria for rescue financing:** The proposed financing must be "rescue financing" as described in Section 67(9) of the IRDA, which includes I financing required for a firm to survive and/or (ii) financing required to realise assets more profitably than on a winding-up.

1.5 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.

[Type your answer here]

Answer:

Under the Model Law, a foreign representative6 can apply to the Singapore High Court for recognition of foreign insolvency proceedings. The application must be accompanied by

- a certified copy of the decision commencing the foreign insolvency proceedings and appointing the foreign representative; and
- a statement identifying all insolvency proceedings in respect of the debtor that are known to the foreign representative.

Please elaborate. 0.5 marks. Answer is too brief. What is the effect?

*** End of Assessment ***

34.5 out of 50