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?

The significance of the decisions in Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd [2021] SGCA 60 is that in this decision the Singapore Court of Appeal clarified that 'the cash flow test' is the sole and determinative test which should be applied under Section 125(2)(c) to show or determine whether a company is unable to pay its debts. This section lays down the grounds on which a company may be wound up. The court also provided the following list of non-exhaustive list of factors that may be considered under the cash-flow test:

- The quantum or amount of all debts which are due or will be due in the reasonably near future;
- Whether a payment is being or is likely to be demanded for those debts;
- Whether the company has failed to pay any of its debt, the quantum of the unpaid debt and duration for which it has failed to pay it;
- The duration or time that has passed since the commencement of the winding-up proceedings;
- The value of the company's current assets and assets that will be realizable in the reasonably near future;
- The state of the company's business, to determine its expected net cash flow from the business by deduction of cash expenses necessary for generating sales from the projected future sales;
- Any other income or payment that the company may receive in the reasonably near future; and
- Arrangements between the company and its prospective creditors, such as bankers or shareholders, to determine whether any shortfall in liquid and realizable assets and cash flows could be met through borrowings which would be repayable at a time later than the debts.

What happened to the balance sheet test? 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.

Four 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 are:

1) **New wrongful trading related provisions**: Section 239 of the IRDA introduces a new concept of wrongful trading which allows a court to hold any person who was knowingly a party to the company which was trading wrongfully personally liable for the debts or liabilities of the company
2) **Voluntary judicial management**: Section 94 of the IRDA provides a way to initiate a voluntary judicial management without having to apply to the court first.
3) **Restriction on *ipso facto* clauses**: Section 440 of the IRDA imposes restrictions on right to terminate contracts on the grounds that proceedings have commenced against the company or that it has become insolvent.
4) **Summary procedure for dissolution of a company**: Section 210 of the IRDA allows for early dissolution of a company administered by a liquidator when the liquidator has reasonable cause to believe that the realizable assets of the company are insufficient to meet winding-up expenses and the company's affairs do not require any further investigation.

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 arrangements. The process involved in voluntary arrangements is dealt with under Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) and is as follows:

- Proposal by debtor and appointment of nominee in proposal: An insolvent debtor may propose a voluntary arrangement i.e., a formal arrangement between itself and its creditors for the satisfaction of its debts. As a part of the proposal the debtor must

appoint a nominee in the proposal, for the purpose of supervising the implementation of the proposal. Such a nominee must be a licensed insolvency practitioner. Importantly, according to Section 276(2), no partner in an insolvent firm can apply for a voluntary arrangement unless all or a majority of the partners in the firm join or intend to join in the making of the proposal for a voluntary arrangement.

- Interim order of court: A debtor who intends to make such a proposal to its creditors can apply to the court for an interim moratorium order, pursuant to which:
  - No bankruptcy application can be made or proceeded against the debtor;
  - No other proceedings, execution or other legal process may be commenced or continued against the person or the debtor's property without the permission of the court.

  In cases where the interim order relates to a firm, then till such order remains in force:
  - No bankruptcy application may be made or proceeded against the firm or except with the court's permission against any partner of such firm;
  - No other proceedings, execution or other legal process may be commenced or continued against the firm or the firm's property or against the person or the property of any partner in the firm without the permission of the court.

  According to Section 276(4) of the IRDA, such interim order ceases to have effect 42 days after it is made, unless the court directs otherwise.
- Submission of report by the nominee: According to Section 280 of the IRDA, when an interim order has been made, the nominee must submit a report to the court which states whether in his or her opinion a creditor's meeting should be summoned to vote on the proposal. If in the nominee's opinion a creditor's meeting should be held then the report to the court should also state the date, time and place at which, the nominee proposes the meeting should be held.
- Approval of voluntary arrangement: The voluntary arrangement will then need to be approved by a special resolution of the creditors at the creditors' meeting. Once approved, it binds all creditors who had the notice of and were entitled to vote at the meeting.
- Failure to comply with obligations under voluntary arrangement: According to Section 287 of the IRDA, in case the debtor fails to comply with any of its obligations under the voluntary arrangement, then the nominee or any of the creditors bound by the voluntary arrangement may file a bankruptcy application against the debtor.

Detailed answer. 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.

Claims that can be brought by a liquidator or judicial manager are dealt with under Section 224 to 229 of the IRDA which deal with adjustment of certain impeachable transactions. The claims that can be brought by the liquidator or judicial manager under these provisions are:

1. **Claims in relation to transactions where an unfair or undue preference was given**

   In order to prove an unfair or undue preference, the liquidator or judicial manager must show:
   - The party benefitting from the concerned transaction is a creditor or guarantor for the company's debts or liabilities;

- The company was either insolvent or became insolvent as a result of the transaction at the time the preference was given;
- The company had done anything which puts the preferred party in a better position than it would have otherwise been in had the transaction not been done, in the event of liquidation or judicial management of the company;
- The company was influenced by a desire to prefer the party benefitting from the transaction in its decision to enter into the transaction (this desire is assumed in case the preferred party is an associate of the company)

Relevant time period: The period of review for undue preference transactions is two years before the date of the winding-up or judicial management application and for transactions with associates/related parties and one year for unrelated parties.

Possible court order: In case a transaction is proved to be one giving undue preference then the court may make an order as it sees fit in order to restore the position of the company as it would have been if the transaction had not taken place (i.e., require any property transferred to be vested in the company, release or discharge any security given by the company).

2. **Claims in relation to undervalue transactions**

In order to prove an undervalue transaction, the liquidator or judicial manager must show:

- The company made a gift to a party or entered into a transaction where the value of consideration received was much lesser than the value of the consideration provided;
- The company was either insolvent or became insolvent as a result of the transaction at the time of the transaction.

In case the transaction is with an associate of the company, then it is assumed that the transaction was conducted at an undervalue. Potential defences to an undervalue transaction is that the company entered into the transaction in good faith and to carry on its business or that at the time the transaction was entered into there were reasonable grounds to believe that the transaction would help the company.

Relevant time period: The period of review for undervalue transactions is three years before the date of the winding-up or judicial management application and for transactions with both related and unrelated parties.

Possible court order: In case a transaction is proved to be undervalued, then the court can pass orders similar to the ones it can pass for unfair preference i.e., it can pass an order as it sees fit to restore the position of the company as it would have been without the transaction taking place.

3. **Claims in relation to extortionate credit transactions**

In order to prove an extortionate credit transaction, the liquidator or judicial manager must show:

- The transaction involved provisioning of credit to the company;
- The transaction is presumed to be extortionate if having regard to the risk accepted by the person providing the credit, the terms of the transaction were such that required grossly exorbitant payments to be made or the transaction is harsh, unconscionable or substantially unfair.

Relevant time period: The period of review for extortionate credit transactions is three years before the commencement of winding-up or judicial management.

Possible court order: A court order that setting aside the whole or part of any obligation created by the transaction or varying the terms of the transaction, among others.

Enhancement of ability to pursue these claims under IRDA: A distressed or insolvent company may not have sufficient funds to pursue these claims. Prior to IRDA, courts had

allowed third-party funding of litigation in the insolvency context but the liquidator was only allowed to assign the proceeds of the company's claims to third parties but not the right to pursue these claims or actions which were personal to the liquidator or judicial manager.

With the IRDA, Section 144(1)(g) and the First Schedule of the IRDA empowers both liquidators and judicial managers to seek third-party funding for certain cause of actions (such as claims relating to undervalue transactions, unfair preference transactions and fraudulent or wrongful trading and damage assessment against delinquent officers of the company), including the ones personal to them. However, this assignment requires authorisation of the court or the committee of inspection.

Third party funding will allow liquidators and judicial managers to pursue these claims and lead to potential recoveries for creditors.

How about wrongful trading? Good effort. 6 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 of the IRDA lays down the process of commencement of a voluntary judicial management application which is as follows:

Eligibility for voluntary judicial management application: In cases where:

- The company is or is likely to become unable to pay its debts;
- There is a reasonable probability of achieving one or more of the following purposes: (a) survival of the company, or the whole or part of its undertaking, as a going concern; (b) approval of compromise or arrangement between the company under Section 210 of the Companies Act with any such persons referred to under that Act; or (c) the more advantageous realisation of the company's assets as opposed to a winding-up.

Process to initiate voluntary judicial management application:
In case a company is eligible under the above-mentioned conditions, instead of applying to the court for a judicial management order, it can obtain its creditors resolution to put it under a voluntary judicial management. In addition, certain other conditions also need to be fulfilled.

The company must provide 7 days written notice to the proposed interim judicial manager and to anyone who may be entitled to appoint a receiver or manager of the company. No objection must be received for 21 days after such notice is made.

Further, a company may appoint an interim judicial manager only if the following conditions are met:

- the action should also be authorised by the shareholders or the board of directors of the company (if so authorised under the constitution of the company).
- The proposed interim judicial manager should be a licensed insolvency practitioner and not be an auditor of the company.
- The proposed interim judicial manager is also required to lodge a declaration with the Official Receiver and Registrar of Companies confirming that he has no conflict of interest, and that in his judgement, the voluntary judicial management process will achieve one or more of the objectives stated under section 89(1). As part of the

declaration, the proposed interim judicial manager should also confirm that he has consented to act as a proposed interim judicial manager.

- The company's directors also have to file a statement with the Registrar of Companies stating that the company is or is likely to become unable to pay its debts and that the directors are also of the view that the voluntary judicial process will achieve one or more of the objectives stated under Section 89(1). As part of the declaration, the directors should confirm that within 30 days of the proposed interim judicial manager filing his statement, the company will convene a meeting of its creditors.

Once the interim judicial manager is appointed, the company has to inform the Official Receiver of the Registrar of Companies within 3 days of his appointment. Within 7 days of such intimation, the company also has to publish an advertisement in the Gazette as well as in an English local daily that an interim judicial manager has been appointed by the company.

How about the meeting of creditors?

The process for initiating voluntary judicial management is different from process for a judicial management application filed in court in the following ways:

- Difference in who can initiate the application: According to Section 91 of the IRDA, the application for a judicial management application in court is brought by (a) the company pursuant to a shareholders' resolution (b) company's directors through a board resolution or (c) its creditors (including its contingent or prospective creditors), either together or separately. The court will then make a judicial management order if it is satisfied that the company is or is likely to become unable to pay its debts and it considers that making such an order would be likely to achieve one or more of the following purposes: (a) survival of the company, or the whole or part of its undertaking, as a going concern; (b) approval of compromise or arrangement between the company under Section 210 of the Companies Act with any such persons referred to under that Act; or (c) the more advantageous realisation of the company's assets as opposed to a winding-up.
  This is different from a voluntary judicial management application which can only be initiated by a company by obtaining a creditors resolution.

What other differences?

Incomplete on the procedure. Still a decent effort. 4 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?

In order to obtain moratorium protection order under Section 64(1) of the IRDS, the following must be presented to the court along with Juniperus' application for an order under Section 64(1):

- Evidence of support from the company's creditors for the proposed compromise or arrangement along with explanation of how such support will be important for the success of the intended compromise or arrangement.
- If no scheme has been proposed, a brief description of intended compromise or arrangement with sufficient details to enable the court to determine whether the proposal is feasible and merits consideration by creditors
- A list of every secured creditor of the company
- A list of all unsecured creditors of the company who are not related to the company or in case there are more than 20 such unsecured creditors then a list of 20 unsecured creditors whose claims are the largest.

An application under section 64(1) of IRDA can only be made if:
- No order or resolution has been passed to wind-up the company;
- The company undertakes to as soon as practicable make an application to sanction a scheme of arrangement
- The company has not applied for moratorium protection under Section 210(10) of Companies Act.

Moreover, when a company makes an application under section 64(1), it must publish a notice of its application in the Gazette and in at least one English local daily newspaper and also to each creditor meant to be bound by the arrangement (unless the court orders otherwise). When making an order under Section 64(1) of the IRDA the court must order the company to submit sufficient information relating to its financial affairs to enable creditors to assess feasibility of its proposals, such as valuation report on its assets, details of disposal of its assets, periodic financial reports and profitability forecasts.

Detailed. Well done. 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?

An application to obtain moratorium protection under Section 65(1) of the IRDA made by Casuarina must be presented with the following documents and must meet the following conditions:
- An order under Section 64(1) made in relation to a subject company i.e., Juniperus, its holding company is already in force;
- No order or resolution has been passed to wind-up Casuarina;
- Casuarina plays a necessary and integral role in the compromise or arrangement proposed by Juniperus to make the application under Section 64(1);
- Juniperus' proposed compromise or arrangement will be frustrated if protection under Section 65(1) is not granted to Casuarina
- Creditors of Casuarina will not be unfairly prejudiced if the court makes an order under Section 65(1)
- Similar to requirements under Section 64, Casuarina will also be required to publish a notice of its application in the Gazette and in at least one English local daily newspaper and also to each creditor meant to be bound by the arrangement (unless the court orders otherwise)

Good. 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?

Yes, the moratoria sought by Juniperus and Casuarina can be ordered to have extra-territorial effect.

The moratoria will apply to any enforcement action against Juniperus or Casuarina by their creditors. This means that the moratoria granted will prevent bondholders from enforcing their security over the shares of Juniperus or Casuarina. Even though the bonds are governed by New York law, the moratoria has extra-territorial effect and applies to any enforcement action against Juniperus and Casuarina anywhere. In personam effect? Please explain.

The moratoria will not affect the bondholders' ability to participate in the PKPU proceedings in Indonesia as those relate to Angostura (which guaranteed the Juniperus bonds) and its Indonesian subsidiaries and the moratoria will not apply to ability to participate in the PKPU proceedings.

What is the effect of the moratorium on enforcement of security?

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?

Steps that need to be taken to launch a subsequent scheme of arrangement under section 210 of the Companies Act are:

- The company may make an application to the court to order a meeting of the creditors;
- Once the meeting is convened, the creditors may vote on the company's proposal under the scheme of arrangement;
- If the majority of creditors representing three-fourths in value of each class of creditors approve the scheme then the court may sanction the scheme. The court's order sanctioning the scheme is then filed with the Registrar of Companies.

The process for a scheme proposed under section 210 of the Companies Act differs from a prepack scheme under section 71(1) of the IRDA as the prepack scheme under section 71(1) allows the court to make an order approving the compromise or arrangement even though no meeting of creditors has been ordered or held under section 210 of Companies Act. What are the requirements for this?

Could have done with a bit more elaboration. 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?

According to Section 67(9) of the IRDA, in order for the Angostura Group to be able to access rescue financing under the IRDA, it will need to show that:

- the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern; or
- the financing is necessary to achieve a more advantageous realisation of the company's assets than on a winding up of that company.

What other requirements?
Under a scheme of arrangement, the Singapore court may then make an order that any rescue financing obtained by the debtor is to be treated as winding-up expense in case the debtor is later wound-up or enjoy priority over preferential debts if the debtor is wound-up later, among others (as specified under Section 67 of the IRDA)

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.

The key requirements in order for a Singapore court to recognize a foreign insolvency proceeding are listed in Third Schedule of the IRDA. Key requirements for recognition are as follows:

- the concerned foreign insolvency proceeding qualifies as a "foreign proceeding" under Article 2(h) in the schedule
- the person applying qualifies as 'foreign representative' under Article 2(i) in the schedule
- the application meets the requirements relating to documents and statements to be filed along with it as specified in Article 15(2) and (3) in the schedule
- the application has been submitted to the competent court as mentioned in Article 4 of the schedule.
- **Recognition of a foreign insolvency proceeding can only be denied if recognition is contrary to public policy as opposed to "manifestly contrary" to public policy which is generally the threshold under UNCITRAL Model Law on Cross-Border Insolvency.**

The exact effect of the recognition of foreign insolvency proceeding depends on whether the foreign insolvency proceeding is recognised as a foreign main or foreign non-main proceeding. Generally, the effect of recognition of a foreign insolvency proceeding allows for a stay on enforcement action against the debtor's property.

Concise answer that covers the key points. Could have been better with a little more elaboration. 2 marks.

*** End of Assessment ***

40.5 out of 50