



**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?

[In the said matter the Hon'ble Court clarified that the cash flow test should be the sole determinative test to decide if the company is "unable to pay its debts".

The court further stated the non-exhaustive list of factors that may be considered for testing the liquidity of the company:

1. Quantum of debt due or falling due in the reasonably near future;
2. Whether debt has been demanded or likely to be demanded;

3. Whether the Company has failed to pay any of its debt and for how long it has remained unpaid;
4. The length of time that has passed since commencement of winding up proceedings;
5. The value of current and realizable assets in the near future;
6. The expected net cash flow from projected future sales and expenses
7. Any other income or payment receivable or payable in the reasonably near future; and
8. If there was any prospective financing arrangement in place to make up any shortfall in cash flow.]

What happened to balance sheet? 3 marks.

**Question 2.2 [maximum 2 marks]**

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

[The IRD Act 2018 introduced the following features:

1. New provision under section 440 restricting the operation of ipso facto clauses once the proceedings under judicial management or a scheme of arrangement is commenced with certain exceptions.
2. Section 209 to 211 introduced a summary procedure under statutory framework for early dissolution of a company in liquidation that had insufficient assets to pay for administration.
3. Section 94(1) sets out a new voluntary process for initiating judicial management without having to first apply to the Court if the company is or likely to become unable to pay its debt; there is reasonable probability of achieving purpose of judicial management as mentioned in section 89(1); and a creditor's resolution is obtained.
4. The judicial managers and liquidators are statutorily empowered to seek third-party funding for certain causes of action as against litigation funding that was permitted prior to IRD Act.]

2 marks

**Question 2.3 [maximum 4 marks]**

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

[Voluntary Arrangement is a **formal arrangement** between debtor and his creditors for composition in satisfaction of the insolvent debtor's debts by **applying to the Court** for an interim moratorium order ("interim order"). Firm will make application only if majority partners will join. However an undischarged bankrupt or partners of firm against which a bankruptcy order has been made and not been discharged cannot apply.

Every debtor making a proposal must appoint a **nominee** to act either as trustee or supervising its implementation and has to be a licensed insolvency practitioner.

Where an application for an interim order is pending, the Court may stay or allow any proceedings, action, execution or other legal process against the debtor in respect of whom the application has been made or against the property of such debtor or any partner in the debtor firm.

The Court shall **make an interim order** where it is satisfied that the debtor intends to make a proposal, no previous application for an interim order has been made during the period of 12 months preceding the application and a qualified nominee who appointed is willing to act.

On interim order being made by the Court, no bankruptcy application and no other proceedings, execution or other legal process may be commenced or continued against the person or property of the debtor any partner in the debtor firm without the leave of the Court. The order ceases to have effect 42 days after the making unless the Court otherwise directs.

The nominee must before the cessation of the interim order **submit a report** to the Court stating his opinion on whether a meeting of creditors should be summoned to consider the proposal and if summoned, the proposed date, time and place such meeting to be held. The report is to be prepared after the debtor has submitted the proposed arrangement and a statement of affairs containing assets, creditors, debts and other liabilities. The Court may extend time to hold the creditor's meeting. Failure on part of the nominee in submitting may lead the Court for his replacement or may extend the time under the order.

Where **meeting is to be summoned** the nominee shall notice all creditors of whose claim and address is known to him. The voluntary arrangement has to be approved by a special resolution of creditors present and voting at the meeting.

The Court may discharge the interim order on **non-compliance by debtor** or any other reason the creditor's meeting could not be summoned. The nominee or any creditor 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.

[The judicial manager or liquidator under section 224 may bring a claim against a person by applying to the Court for an order for restoring the position of a **undervalue transaction** with that person entered into at the 'relevant time'. Undervalue transaction would be a where the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration or for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company. However it would not be considered undervalue if the transaction has been entered in good faith and for the purpose of carrying on its business and at the time there were reasonable grounds for believing that the transaction would benefit the company. Relevant time is within the 3 year period before the commencement.

The judicial manager or liquidator under section 225 may bring a claim against a person by applying to the Court for an order for restoring the position of an **unfair preference** with that person entered into at the 'relevant time'. Unfair preference would be where the person is one of the company's creditors or a surety or guarantor for any of its debts or other liabilities and the person has been put in a better position in the event of the company's winding up. Where the person is connected to the company, unfair preference is presumed. Relevant time for a person who is connected is within the 2 year period before the commencement and in any other case one year before the commencement.

The judicial manager or liquidator under section 228 may bring a claim where the company is or has been a party to an **extortionate transaction** for or involving the provision to that company of credit and the transaction was entered into within 3 years before the commencement. The credit transaction shall be extortionate if the terms of it are or were such as to require grossly exorbitant payments to be made or it is harsh and unconscionable

or substantially unfair. The Court may order to set aside the whole or part of any obligation created by the transaction and/or shall vary the terms of the transaction or the terms on which any security for the purposes of the transaction is held and/or require any person who is or was party to the transaction to pay the company or the liquidator any sums paid to that person and/or require any person to surrender to the company or the liquidator any property held by the person as security for the purposes of the transaction and/or direct accounts to be taken between any persons.

The judicial manager or liquidator under new provisions of section 239 by applying to the Court may bring a claim against the person guilty of offence if it appears that the company has **traded wrongfully**. Company would be considered trading wrongfully where it incurs debt or liabilities without reasonable prospects of meeting them in full when it is insolvent or becomes insolvent as a result of incurring the debt or liability. The Court may make order by imposing personal liability for company's debt or liabilities on person who knowingly traded wrongfully or as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully. Further the person guilty of an offence shall be liable on conviction to a fine not exceeding SD10,000 or to imprisonment for a term not exceeding 3 years or to both.

The judicial manager or liquidator under section 238 by applying to the Court may bring a claim against the person who knowingly a party to the company **trading fraudulently** or with intent to defraud its creditors. The Court may make order by imposing personal liability without any limitation, for all or any of the debts or other liabilities of the company. Further the person guilty of an offence shall be liable on conviction to a fine not exceeding SD15,000 or to imprisonment for a term not exceeding 7 years or to both.

The judicial manager or liquidator under section 223 may bring a claim against secured creditors who does not realise the **secured creditor's security** within 12 months after the commencement and have entitled themselves to interest in respect of the debt after the commencement.

The judicial manager or liquidator under section 240 may bring a claim against **delinquent officers** where it appears that they have taken part in the formation or promotion of the company or have misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company. The Court may compel such officer to repay or restore all or part of the money or property with interest or contribute by way of compensation.

The IRDA introduced a new provision under section 440 restricting the operation of **ipso facto** clauses under certain circumstances thereby allowing judicial managers or liquidators to claim performance from the other person under an agreement where company is party and the other person at any time after the commencement, and before the conclusion, of any proceedings was not to terminate or modify any obligations under the agreement by reason company's insolvency. **Not really a claim brought by the JM/liquidator.**

IRDA now has statutorily empowered the judicial manager or liquidator to seek **third-party funding** for certain cause of actions including those which are personal to them as listed in para (f) of the First Schedule and section 144(1)(g) of the Act respectively. In the earlier regime they did not have right to pursue actions that are personal to them.] **Please elaborate on this.**

**Decent 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 set out the process for **initiating** a voluntary judicial management where a company considers it is or is likely to become, unable to pay its debts and there is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1). The company shall without applying to the court and by resolution of creditors place it under a under the judicial management of a judicial manager. The purpose of initiating judicial management is similar under both processes however under section 90 applications for judicial management is made to Court.

A company that proposes to pass a creditors resolution for placing the company under judicial management voluntarily must give at least 7 days' **written notice** of its intention to appoint an interim judicial manager to the proposed interim judicial manager and to any person who may be entitled to appoint a receiver and manager of property under secured charge. Under section 91(1), the application to Court for judicial management is made by a company or its directors (pursuant to a resolution of its members or the board of directors) or any creditor.

Company shall nominate an **Interim judicial manager**, who is an insolvency practitioner and not the auditor of the company, and shall be appointed only if all the conditions are met that include the appointment being authorised by way of a resolution of the members of the company or by its board of directors; the notice period has expired but not more than 21 days have elapsed after the date of the notice; each person who is noticed has consented in writing to the appointment; the proposed interim judicial manager has lodged with the Official Receiver and the Registrar of Companies, his consent with a statutory declaration of his non-conflict of interest and that one or more purposes mentioned in section 89(1) can be achieved. An interim judicial manager must not be appointed if an application for a judicial management order is pending with the Court. In a judicial management process, judicial manager is appointed by Court whereas under the voluntary process an interim judicial manager is appointed. For interim JM becomes a JM once appointed at the creditors meeting. **For interim JM becomes a JM once appointed at the creditors meeting.** However, Court may, if it thinks fit, appoint an interim judicial manager under section 92 on specific application. Under judicial management process the applicant (company, director or creditor or Minister in public interest) must nominate a judicial manager who files with the Court a statutory declaration.

The company's directors need to lodge with the Registrar of Companies a **statutory declaration** stating that the company is or is likely to become unable to pay its debts, will summon a meeting of creditors to be held on a date not later than 30 days after the date of lodgment of the statutory declaration and one or more purposes mentioned in section 89(1) can be achieved. No requirement of such declaration under judicial management process.

After the lodgment of the statutory declaration, the company must convene a **meeting of the creditors** of the company to be held not later than 30 days after the date of lodgment of the statutory declaration by the directors. A minimum 14 days' written notice is to be issued mentioning the time and place that be convenient to the majority in value of the creditors. The notice is to be accompanied by a statement showing the names of all creditors, their claim amounts and a full statement of the company's affairs including assets and its valuation. The notice is to be published at least 10 days before the date of the meeting in an English local daily newspaper. The Company is not required to call a creditor's meeting prior to making application to the Court for being placed under judicial management. However, a notice of the application must be published in the *Gazette*, in an English local daily

newspaper, sent to the Registrar of Companies and to any person who may be entitled to appoint a receiver and manager of property under secured charge.

The **directors** of the company must appoint at least one of their number to attend the meeting of creditors. Appointed director and the secretary of the company, must attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed judicial management.

Under section 93 the Court may place restrictions on acts while the application for judicial management is pending. These acts include restraining the company from disposing of its property other than in good faith and in the ordinary course of the business or from transferring any share in, or altering the rights of any member of the company. No such restrictions are placed in the voluntary judicial management process.]

**Decent effort. 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?

[The company in order to obtain moratorium shall present to the Court the satisfaction of the following conditions:

- a) no order has been made and no resolution 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 to sanction a scheme of arrangement under section 210(1) of the Companies Act or under section 71(1) of IRDA;
- c) the company has not applied for protection under section 210(10) of the Companies Act.

The application must be accompanied by creditor's support for the proposed compromise or arrangement; where the arrangement or compromise is yet not proposed sufficient particulars to enable the Court to assess its feasibility; a list of secured creditor; a list of all unrelated unsecured creditors or if more than 20 then a list of largest 20 such unsecured creditors.]

**2 marks**

**Question 4.1.2 (2 marks)**

What must be presented to the court in order to obtain moratorium protection order under section 65(1) IRDA?

[Where the Court has made an order under section 64(1) for a Company (Subject Company) its related company may obtain moratorium order under section 65(1). The related company shall present to the Court the satisfaction of all the following conditions:

- a) no order has been made and no resolution has been passed for the winding up of the related company;
- b) the order under section 64(1) made in relation to the subject company is in force;
- c) the related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application for the order under section 64(1);
- d) the compromise or arrangement will be frustrated if moratorium is not placed on certain actions as provided in section 65(1);
- e) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of moratorium order.]

**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?

[Juniperus and Casuarina “in turn owns all, or substantially all, of the shares in the relevant entities incorporated in the local relevant overseas jurisdiction”. Both company’s COMI is in Singapore and thus the moratoria shall have extra-territorial effect over jurisdictions where their assets are placed and those jurisdictions have adopted the UNCITRAL Model Law or have reciprocal arrangements with Singapore. **It is worldwide.** However, the local creditors in those jurisdictions shall not be prejudiced. **Explain in personam effect. Who is bound?**

The acts on which moratoria shall apply include:

- a) restraining the passing of a resolution for the winding up of the company;
- b) restraining the appointment of a receiver or manager over any property or undertaking of the company;
- c) restraining the commencement or continuation of any proceedings (other than proceedings under section 210 or 212 of the Companies Act, section 64, 66, 69 or 70) against the company, except with the leave of the Court and subject to such terms as the Court imposes;
- d) restraining the commencement, continuation or levying of any execution, distress or other legal process against any property of the company, except with the leave of the Court and subject to such terms as the Court imposes;
- e) restraining the taking of any step to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes;
- f) restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act (Cap. 61)), except with the leave of the Court and subject to such terms as the Court imposes.]

**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?

[Application under section 210 of the Companies Act is filed by the company or any creditor, member or shareholder of the company.

The Court may, on the application, order a meeting of the creditors, the members, the holders of units of shares, or a class of such persons, to be summoned.

The notice summoning the meeting is sent to a creditor, member or holder of units of shares of the company shall include the place and manner in which meeting is to be attended and be accompanied by a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons.

Where a member's resolution directs the accountants or solicitors of the company to submit reports, such reports shall be made available at the registered office of the company for inspection by the shareholders, creditors and holders of units of shares at least 7 days before the date of meeting.

The compromise or an arrangement is binding where a majority in number and representing three-fourths in value of —

- a) the creditors or class of creditors;
- b) the members or class of members; or
- c) the holders of units of shares or class of holders of units of shares, present and voting either in person or by proxy at the meeting agrees to the compromise or arrangement and is approved by order of the Court.

The Court order shall have no effect until a copy of it is lodged with the Registrar. The order takes effect on and from such date of lodgment.

One **fundamental difference** with the process under **section 77 of IRDA** allows the Court to make an order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under section 210(1) of Companies Act or held. However, the Court is to be satisfied that had a meeting of the creditors or class of creditors been summoned, the majority would have been satisfied. **Wrong section number.**

Further under Companies Act, a statement explaining the effect of the compromise or arrangement is to be provided to a creditor, member or holder of units of shares of the company. However, under section 77 only creditors are provided with information that includes company's property, assets, business activities, financial condition and prospects; terms of the compromise or arrangement will, if it takes effect, affect the rights of the creditor; and other information as is necessary to enable the creditor to make an informed decision. **Not that different for both.**

Furthermore the company shall publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, has to send a copy to the Registrar of Companies and send the notice and a copy of the application to each creditor meant to be bound by the compromise or arrangement.] **Same for both.**

**4 marks**

**Question 4.2.2 [maximum 2 marks]**

What requirements must be satisfied in order for the Angostura Group to be able to access rescue financing under the IRDA?

[The Angostura Group can access rescue financing if it has proposed scheme of compromise or arrangement under section 210(1) of the Companies Act or under section 64(1) of IRDA.

The Company shall make an application to the Court for claiming rescue financing as super priority.

The Company shall state the priority of its debts and where the rescue financing is to be obtained by creating security interest on property of the company, the status of any existing security interest.

The Company shall send a notice of the application to each creditor and on the making of the Court order the same shall be lodged with the Registrar of Companies within 14 days after the date of an order.]

**What other requirements? 0.5 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.

[Subject to Article 6 in the Third Schedule of IRDA, a proceeding must be recognised where it is a foreign proceeding within the meaning of Article 2(h); the person or body applying for recognition is a foreign representative within the meaning of Article 2(i); the application meets the requirements of Article 15(2) and (3); and the application has been submitted to the Court mentioned in Article 4 i.e. the High Court in Singapore. **Elaborate on the requirements.**

Under Article 6, Court can deny recognition where it is 'manifestly contrary' to public policy. However, in Singapore the word 'manifestly' has been omitted. **What is the effect of this??**

The effects under Article 20 upon of recognition of foreign proceeding that is a foreign main proceeding and subject to paragraph 2 will be —

- a) commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations or liabilities is stayed;
- b) execution against the debtor's property is stayed; and
- c) the right to transfer, encumber or otherwise dispose of any property of the debtor is suspended.]

**Could have done better with a bit more elaboration on requirements. 1 mark.**

**\* End of Assessment \***

**40 out of 50**