



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).
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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 *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60, the question of whether a cash flow test and/or a balance sheet test was appropriate to determine whether a company is unable to pay its debts pursuant to section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act 2018 ("the IRDA") was addressed. The Singapore Court

of Appeal clarified that the cash flow test should be the sole and determinative test under this section.¹

In addition, the Court of Appeal set out a non-exhaustive list of factors that should be considered under the cash flow test, including:²

- The quantum of all debts which are due or will be due in the reasonably near future;
- Whether the payment is being demanded or is likely to be demanded for those debts;
- Whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;
- The length of time which has passed since the commencement of the winding up proceedings;
- The value of the company's current assets and assets which will be realizable in the reasonably near future;
- The state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;
- Any other income or payment which the company may receive in the reasonably near future; and,
- Arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realizable assets and cash flow could be made by 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 include:

1. A new provision restricting the operation of *ipso facto* clauses in certain circumstances.³
2. A new concept of wrongful trading which imposes personal liability for the company's debts on a person in certain circumstances.⁴

¹ Chan, Andrew et al., "Singapore Court of Appeal clarifies test for inability to pay debts in winding up proceedings," at <https://www.allenandgledhill.com/perspectives/articles/18849/sgkh-court-of-appeal-clarifies-test-for-inability-to-pay-debts-in-winding-up-proceedings?agreed=cookiepolicy>, accessed 19 July 2022.

² *Ibid.*

³ Langhorne, Shaun & Lim, Debby, Module 8E Guidance Text: Singapore, INSOL International (2021), p. 36.

⁴ *Idem*, p. 63.

3. A new procedure for the early dissolution of a company in liquidation.⁵
4. A new licensing regime that sets out minimum qualifications, conditions for the grant and renewal of licenses and a disciplinary framework for insolvency practitioners.⁶

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 a voluntary arrangement.

Any insolvent debtor who intends to make a proposal to its creditors for a voluntary arrangement may apply to the Court for an interim order.⁷

During the period for which an interim order is in force:⁸

1. No bankruptcy application may be made or proceeded with against the debtor (whether it be an individual debtor, a firm, or, except with the leave of the Court, any partner in the firm).
2. No other proceedings, execution or other legal process may be commenced or continued against the person or property of the debtor (or, in the case of a firm, the firm or its property or the person or property of any partner in the firm), without the leave of the Court.

Every debtor making a proposal for a voluntary arrangement must appoint a licensed insolvency practitioner as a nominee to act either as trustee or otherwise for the purpose of supervising its implementation.⁹

The Court may, unless certain exceptions are met, make an interim order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.¹⁰ It should be noted that an interim order ceases to have effect 42 days after the making of that interim order unless the Court otherwise directs.¹¹

When an interim order has been made, the nominee must, before the order ceases to have effect and after having considered the terms of the voluntary arrangement and statement of the debtor's affairs, submit a report to the Court stating whether a meeting of the debtor's creditors should be summoned to consider the proposal and if so, the time and place of the proposed meeting. If the Court is satisfied that a meeting of the debtor's creditors should be summoned to consider the proposal, the Court must direct that the period for which the interim order has effect is extended to allow time for the meeting to be held and the nominee to report the results of the meeting to the Court.¹²

⁵ *Idem*, p. 41.

⁶ *Idem*, p. 62.

⁷ Insolvency, Restructuring and Dissolution Act 2018, s 276(1).

⁸ *Idem*, s 276(3).

⁹ *Idem*, s 277.

¹⁰ *Idem*, s 279(2).

¹¹ *Idem*, s 276(4).

¹² *Idem*, s 280.

Subsequent to the report to Court recommending that a meeting of the debtor's creditors be held, the nominee must summon that meeting.¹³ Such a meeting, if the meeting thinks fit, by special resolution may resolve to approve the proposed voluntary arrangement, with or without modifications.¹⁴ The nominee must report the result of the meeting to the Court and if the debtor's proposal was not approved, the Court may discharge any interim order that is in force in relation to the debtor.¹⁵

Where the debtor's proposal, with or without modifications, was approved by creditors, the approved arrangement takes effect as if made by the debtor at the meeting and binds every person who had notice of and was entitled to vote at the meeting. In addition, the interim order in force in relation to the debtor ceases to have effect at the end of 28 days after the date the report of the meeting results was made to the Court.¹⁶ Where a voluntary arrangement has been approved by creditors, the nominee must supervise its implementation.¹⁷

It should be noted that where a debtor fails to comply with any of its obligations under the voluntary arrangement, the nominee or any creditor bound by the voluntary arrangement may make a bankruptcy application against the debtor.¹⁸

Detailed. 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.

Once a company is placed into liquidation or judicial management, the liquidator or judicial manager, as the case may be, can apply to the Court to commence claw back claims against various parties including directors, shadow directors, creditors, sureties, or guarantors of the company where:¹⁹

1. An unfair or undue preference was given; or
2. The transaction was conducted at an undervalue.

In respect of unfair preferences, the Court may make such order as it thinks fit for restoring the position of the company to what it would have been if the company had not given that unfair preference. A company gives an unfair preference to a person if:²⁰

- a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
- b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company's

¹³ *Idem*, s 281.

¹⁴ *Idem*, s 282(1).

¹⁵ *Idem*, s 283.

¹⁶ *Idem*, s 284.

¹⁷ *Idem*, s 286(1).

¹⁸ *Idem*, s 287.

¹⁹ Langhorne, Shaun & Lim, Debby, Module 8E Guidance Text: Singapore, INSOL International (2021), p. 37.

²⁰ Insolvency, Restructuring and Dissolution Act 2018, s 225.

winding up, will be better than the position that person would have been in if that thing had not been done.

It should be noted that if the recipient of an unfair preference was connected with the company, the company is presumed (unless otherwise shown) to have been influenced in deciding to give the unfair preference by a desire to put that person in a better position than they otherwise would have been. Such desire is required to be shown to the Court prior to any order being made against the recipient.²¹

In respect of transactions at undervalue, the Court may make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction. A company enters into a transaction with a person at an undervalue if:²²

- a) 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
- b) the company enters into a transaction with that person 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.

In addition, if it appears that the company in liquidation or judicial management has traded wrongfully, a liquidator or judicial manager can apply to Court for a declaration that any person who was a party to the company trading in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs, if that person:²³

- a) knew that the company was trading wrongfully; or
- b) as an officer of the company, ought, in all the circumstances, to have known that the company was trading wrongfully.

It should be noted that the provision on wrongful trading was introduced by the IRDA and provides an additional avenue of recoveries for liquidators and judicial managers.²⁴

How about third party funding? 5 marks. This was a decent effort.

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.

Where a company considers that 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, the company may, instead of applying to the Court for a judicial management order, obtain a resolution of the company's creditors for the company to be placed under the judicial management of a judicial manager.²⁵

²¹ *Ibid.*

²² *Idem*, s 224.

²³ *Idem*, s 239.

²⁴ Langhorne, Shaun & Lim, Debby, Module 8E Guidance Text: Singapore, INSOL International (2021), p. 63.

²⁵ Insolvency, Restructuring and Dissolution Act 2018, s 94(1).

A company that proposes to obtain such a resolution of creditors must give at least 7 days' written notice of its intention to appoint an interim judicial manager to the proposed interim judicial manager and any person who has appointed, or is or may be entitled to appoint, a receiver and manager of the whole (or substantially the whole) of the company's property.²⁶

A company may appoint an interim judicial manager in respect of a voluntary judicial management only if all the following conditions are met:²⁷

- a) the appointment is authorized by way of a resolution of the members of the company or board of directors, where applicable;
- b) the 7 days' notice period pursuant to section 94(2) of the IRDA (mentioned above) has expired;
- c) not more than 21 days have elapsed after the date of the notice of intention to appoint an interim judicial manager pursuant to section 94(2) of the IRDA (mentioned above);
- d) each person to whom notice was given pursuant to section 94(2) of the IRDA (mentioned above) consented to the appointment;
- e) the proposed interim judicial manager has lodged, with the Official Receiver and the Registrar of Companies, a statutory declaration stating that:
 - a. he/she is not in a position of conflict of interest;
 - b. one or more purposes of judicial management can be achieved; and,
 - c. he/she consents to be appointed as interim judicial manager.
- f) the company's directors have lodged with the Registrar of Companies a statutory declaration stating that:
 - a. the company is or is likely to become unable to pay its debts;
 - b. the company will summon a meeting of the company's creditors to be held on a date not later than 30 days after the date of lodgement of the proposed interim judicial manager's statutory declaration (mentioned above); and,
 - c. the directors believe that one or more of the purposes of judicial management is likely to be achieved.
- g) the proposed interim judicial manager is a licensed insolvency practitioner, and is not the auditor of the company.

Pursuant to section 94(5) of the IRDA, upon the appointment of the interim judicial manager, the company must, within 3 days after the appointment, cause a written notice to be lodged with the Official Receiver and the Registrar of Companies and, within 7 days after the lodgement of such notice, cause a notice of appointment to be published in the *Gazette* and in an English local daily newspaper.²⁸

The term of the appointment of the interim judicial manager ends upon the expiry of 30 days after the date of the appointment, or such extension as the Official Receiver may allow, and the appointment of a judicial manager, or rejection of the resolution to place the company under judicial management.²⁹

After the lodgement of the proposed interim judicial manager's statutory declaration (mentioned above), the company must convene a meeting of its creditors to be held not later

²⁶ *Idem*, s 94(2).

²⁷ *Idem*, s 94(3).

²⁸ *Idem*, s 94(5).

²⁹ *Idem*, s 94(6).

than 30 days after the lodgement of such statutory declaration.³⁰ The notice requirements pursuant to section 94(8) of the IRDA must be met.³¹

At the meeting of creditors, if a majority in number and value of the creditors present and voting resolve to do so, the company is placed under the judicial management of a judicial manager so appointed.³²

In respect of judicial management applications filed with Court, in addition to a company or its directors (via its members or board of directors), any creditor may make an application for an order that the company be placed under the judicial management of a judicial manager. The grounds to be met for a judicial management order are the same as those under section 94(1) for voluntary judicial management (mentioned above).³³ In addition, the independent and qualification requirements of the proposed judicial manager and the statutory declaration requirements of the proposed judicial manager must be met.³⁴

In the case where a company makes an application for a judicial management order or lodges a written notice of appointment of an interim judicial manager (in respect of a voluntary judicial management), an automatic moratorium takes effect.³⁵

Would have been enhanced if more compare and contrast with court ordered winding up. 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.

³⁰ *Idem*, s. 94(7).

³¹ *Idem*, s. 94(8).

³² *Idem*, s. 94(11).

³³ *Idem*, s. 91(1).

³⁴ *Idem*, s. 91(3).

³⁵ *Idem*, s. 95(1).

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 a moratorium protection order under section 64(1) of the IRDA, the company must file the following with the Court together with the relevant application:³⁶

- a) evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement;
- b) in a case where the company has not proposed the compromise or arrangement to the creditors or class of creditors yet, a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess

³⁶ *Idem*, s 64(4).

whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors;

- c) a list of every secured creditor of the company; and,
- d) a list of all unsecured creditors who are not related to the company or, if there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims against the company are the largest among all such unsecured creditors.

It should be noted that there is an automatic moratorium period of 30 days upon the filing of an application under section 64(1) of the IRDA.³⁷

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?

Section 65 of the IRDA relates to applications made by a company that is a subsidiary, a holding company or an ultimate holding company ("**Related Company**") of the company who obtained an order under section 64(1) of the IRDA ("**Subject Company**") (discussed above).³⁸

Sufficient evidence must be presented to the court as proof that the following conditions are satisfied.³⁹

- 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) of the IRDA 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) of the IRDA;
- d) the compromise or arrangement will be frustrated if one or more of the actions that may be restrained by the moratorium order are taken against the Related Company; and,
- e) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of a 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?

A moratorium order 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.⁴⁰ Therefore, such orders do have extra-territorial effect and may apply to any act of any creditor.

³⁷ *Idem*, s 64(14).

³⁸ *Idem*, s 65(1).

³⁹ *Idem*, s 65(2).

⁴⁰ *Idem*, ss 64(5)(b) and 65(4)(b).

What acts does the moratorium apply to? 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?

Where a scheme of arrangement is proposed between a company and its creditors, members, or holders of units of shares, or any class of them, one of the following may make a court application to order a meeting of creditors, members, holders of units of shares, or any class of them, to consider such proposal:⁴¹

- a) in the case of a company being wound up – the liquidator; and,
- b) in any other case –
 - a. the company; or,
 - b. any creditor, member or holder of units of shares.

Generally a majority in number (i.e. more than 50%) of creditors, members, or holders of units of shares or class of them, as the case may be, present and voting either in person or by proxy at the meeting must agree to the proposal. In addition, such majority must represent at least 75% in value of creditors, members, or holders of units of shares or class of them, as the case may be. Court approval of the scheme of arrangement is also then required.⁴²

Assuming the required approval threshold is reached for each meeting held and court approval is obtained, the scheme of arrangement becomes binding on all creditors, members, or holders of units of shares or class of them, as the case may be. In the case of a company in the course of being wound up, the scheme of arrangement is also binding on the liquidator and contributories of the company, otherwise it is binding on the company.⁴³

⁴¹ Companies Act 1967, s 210.

⁴² *Idem*, s 210(3AB).

⁴³ *Idem*, s 210 (3AA).

Where a scheme of arrangement is proposed between a company and its creditors or any class of them, a court application may be made by the company for the approval of such proposal without requiring a meeting of creditors or class of creditors to be held as required by section 210 of the Act (as discussed above).⁴⁴ Are you talking about prepacks? Please be clear in your answer. Upon court approval, the scheme of arrangement is binding on the company and the creditors or class of creditors.⁴⁵ **How is creditor approval shown?**

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?

Rescue financing means any financing that satisfies either or both of the following conditions:⁴⁶

- a) 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; and/or,
- b) the financing is necessary to achieve a more advantageous realization of the assets of a company that obtains the financing, than on a winding up of that company.

What other requirements? 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.

A Singapore court must recognize a foreign insolvency proceeding if:⁴⁷

- a) it is a foreign proceeding which, in the context of insolvency, is defined as a collective judicial or administrative proceeding in a foreign State under a law relating to insolvency in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of liquidation.⁴⁸
- b) the person or body applying for recognition is a foreign representative which, in the context of insolvency, is defined as one who is authorized in a foreign proceeding to administer the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding.
- c) the application meets the requirements as set out in Articles 15(2) and (3) of the Third Schedule of the IRDA; and,
- d) the application has been submitted to the General Division of the High Court in Singapore.⁴⁹

Court has discretion. Not a "must". How about public policy considerations?

⁴⁴ Insolvency, Restructuring and Dissolution Act 2018, s 71(1).

⁴⁵ *Idem*, s 71(2).

⁴⁶ *Idem*, s 67(9).

⁴⁷ *Idem*, Third Schedule Article 17(1).

⁴⁸ *Idem*, Third Schedule Article 2(h).

⁴⁹ *Idem*, Third Schedule Article 4(1).

Upon recognition of a foreign insolvency proceeding that is a foreign main proceeding (a foreign proceeding taking place in the State where the debtor has its centre of main interests⁵⁰):⁵¹

- 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.

For completeness, upon the recognition of a foreign non-main proceedings (a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an "establishment"⁵²), where necessary to protect the property of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief including those automatically provided to foreign main proceedings mentioned above.⁵³

1.5 marks.

*** End of Assessment ***

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⁵⁰ *Idem*, Third Schedule Article 2(f).

⁵¹ *Idem*, Third Schedule Article 20(1).

⁵² *Idem*, Third Schedule Article 2(g).

⁵³ *Idem*, Third Schedule Article 21(1).