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**.

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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?

Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd [2021] SGCA 60 established the following 3 principles.

1. Cash flow test as the sole applicable test for the purpose of determining Insolvency.

The Court of Appeal held that in winding-up proceedings, the cash flow test, as opposed to the balance sheet test, should be the sole and determinative test to prove to the court that the company is unable to pay its debts under the section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA))

The Court of Appeal also set out a non-exhaustive list of factors which should be considered under the cash flow test:

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

2. Threshold amount /partial payment test for putting a company into Insolvency

The Court of Appeal held that a company that pays the debt demanded in the statutory demand in part within the prescribed period (3 weeks), such that the remaining amount payable falls below threshold amount should not be deemed unable to pay its debts.

3. Safeguards against the directors and/or shareholders abusing the control of the appeal against a winding up

The Court of Appeal established that directors and/or shareholders not only fund the appeal if the court later finds the appeal to be unmeritorious, but also liable for adverse party to party costs.

4 marks. Detailed answer.

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.

Following are the 4 new features of IRDA

1. Summary dissolution procedure.

Many companies facing financial trouble do not even have assets to pay for their liquidation costs. To address this problem, the new IRDA includes a summary procedure (section 209 – 211 of IRD Act 2018) to dissolve companies that have insufficient assets to pay for the administration of the winding up.

2. Restriction of ipso facto clauses

An ipso facto clause is a contractual provision that allows one party to the contract to terminate or modify the operation of the contract upon the occurrence of a specified insolvency related event in respect of another party.
Section 440 of IRD Act 2018 restricts the ability of certain parties to terminate their contracts on the sole basis that the debtor has initiated a restructuring procedure. Section 440(5) does have list of contracts that are excluded.

3. Availability of third-party funding to judicial managers and liquidators

Distressed companies do not usually have sufficient funds to pursue claims. Third-party funding agreements are a useful tool to enable a distressed company to pursue such claims and realise a greater recovery for its creditors.
Earlier liquidator was only able to assign the proceeds of the company's claims to third parties but not the right to pursue an action under the various avoidance provisions and insolvency offences, such as wrongful trading, as such actions are personal to the judicial manager or liquidator.
Now both judicial managers and liquidators are statutorily empowered to enter into agreements with third parties in relation to obtaining funds and, in connection thereto, assigning the proceeds for certain cause of action, including those which are personal to them.

4. New wrongful trading provision

The IRDA introduces a new "wrongful trading" provision (Section 239) under which a company is considered to have traded wrongfully if it incurs debts or liabilities when insolvent (or becomes insolvent because of incurring debts or liabilities) without reasonable prospect of meeting them in full.

2 marks

Question 2.3 [maximum 4 marks]

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

Voluntary Arrangement (VA) process is one of the alternatives to formal bankruptcy

VA is a formal arrangement made between a debtor and his creditors for satisfaction of its debt. Following is the process of VA

1. Debtor must appoint a licence insolvency practitioner as a nominee who will oversee /administered the VA.
2. Debtor may apply to the court of moratorium if he intends to make a proposal to creditors.

3. Once court grants an interim order, nominee must submit a report to court which gives his opinion on requirement of a creditor's meeting and date/time. Where an interim order has been made, the nominee must submit a report to the Court which states whether in his opinion, a meeting of the debtor's creditors should be summoned and if so, the date, time and place which the meeting should take place. Then, unless otherwise directed by the Court the nominee will summon a creditors meeting.
4. Interim moratorium is applicable once interim order is made.
5. VA is put to vote in the creditor meeting. If approved by requisite majority, the VA becomes binding on debtor and creditors. What is the majority?
6. Nominee monitors the implementation of the VA.
7. If the debtor fails to comply with the obligations under the VA, the nominee or any creditor bound by VA can initiate bankruptcy application against the debtor.

Some inaccuracies. 3 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.

If the company had entered into certain voidable transactions, the liquidator or judicial manager can seek clawback action from the court. This is only possible when the company is in liquidation or judicial management.

A. Claiming back assets from Unfair Preference Transactions

If the company being wound up had been involved in an unfair preference transaction leading up to the commencement of winding up, the liquidator may apply for an order to void the transaction. This would restore the relevant assets such that more are available to creditors.
The liquidator must show the following 4 elements to establish unfair preference:

1. The beneficiary of the transaction, also known as the preferred party, is a creditor or guarantor for any of the company's debts or liabilities
2. The company was insolvent at the time of giving the preference, or became insolvent because of the transaction
3. The company does anything that puts the preferred party in a better position, than the preferred party would have been in the event of the company's liquidation, had the transaction not been entered into and
4. The company was influenced in deciding to enter the transaction by a desire to prefer the preferred party.

Unfair preferences given to a connected person up to 2 years before the date of winding up application or the date of the Judicial management application can be scrutinised for clawback. For person preferred is not connected to the company, the period is limited to 1 year before the commencement of winding up.

B. Claiming back assets from undervalued transactions

To determine if a transaction is at an undervalue, the liquidator must show the following 2 elements:

1. Any one of the following 2 situations:
    a. The company makes a gift to the recipient; or
    b. The company enters into a transaction where the value of consideration received is significantly less than the value of the consideration provided; and
2. The company was insolvent at the time of the transaction or became insolvent because of that transaction.

To be voidable, the disputed transaction must have taken place within 3 years prior to the commencement of the company's winding up. This timeperiod does not change depending on whether the counterparty had been a connected person.

C. Wrongful Trading

Company is deemed to "trade wrongfully" if

1. the company, when insolvent, incurs debts or liabilities without reasonable prospect of meeting them in full; or

2. the company incurs debts or liabilities that it has no reasonable prospect of meeting in full and that result in the company becoming insolvent.

The courts are empowered to declare that any person who was a knowing party to a company's wrongful trading be personally liable for its debts or liabilities if found guilty without the need to establish criminal liability.
Should state that this is a new provision under the IRDA.

Third Party Funding --
IRDA has strengthen the ability of liquidator and judicial manager to make such claims by making available third-party funding. How was it previously?
Both judicial managers and liquidators are now statutorily empowered to enter into agreements with third parties in relation to obtaining funds and, in connection thereto, assigning the proceeds in respect of transactions at an undervalue, unfair preferences, extortionate credit transactions, fraudulent trading, wrongful trading, and damages against delinquent officers.

5.5 marks. 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.

Judicial management is a process that allows the rehabilitation of a financially distressed company, or to realise its assets in a more advantageous way than if the company were to be wound up. A judicial manager is appointed who supervises the Judicial management process as well as operations of the company during the process.
A voluntary judicial management is when the company itself initiates the process of judicial management For court ordered the company can also initiate.

Under the Insolvency, Restructuring and Dissolution Act 2018, there are two main ways to put a company under judicial management i.e. Applying to court and Passing a creditors' resolution.

1. Applying to Court

The company and/or at least one of its creditors may file an application. In the application, the applicant must nominate a judicial manager. The nominee must be a licensed insolvency practitioner who is not the auditor of the company. Court has the power to change the Judicial manager on approval of the application.

Interim moratorium applies from the making of the application to the time when the court makes its decision on whether to grant the order.

The court may make an order for judicial management if:

1. It is satisfied that the company is or is likely to become unable to pay its debts; and
2. It considers that placing the company under judicial management would be likely to achieve at least one of the following purposes:
    I. The company's survival, or its undertaking as a going concern (whether in whole or in part)
    II. The approval of a scheme of arrangement; or

III. The more effective use of the company's assets to satisfy creditors' claims, compared to if the company was wound up.

2. Passing a creditors' resolution

The second method of putting a company into judicial management is by a creditors' resolution. The requirements for such a method are same as those for a court-ordered judicial management, with the main difference being that the judicial management is commenced through a creditors' resolution by a majority in value (of the total amount of the creditors' claims) and in number of creditors present and voting rather than just by a single creditor (which is possible for a court application for judicial management).

A further difference is that an interim judicial manager must be appointed before the creditors meet to vote on the resolution for a formal judicial manager.

The interim judicial manager is appointed by filing either a shareholder's resolution or board resolution for the appointment and lodging statutory declarations with the Official Receiver and The Accounting and Corporate Regulatory Authority (ACRA) stating the interim judicial manager's consent to be appointed as such, and that the company intends to undergo judicial management.

After the appointment, the company then also has to lodge a notice of appointment with the Official Receiver and ACRA and publish the notice in the Government Gazette and in an English local daily newspaper.

Company cannot be put into judicial management via creditor's resolution if there is already a pending court application for a judicial management order which has not yet been withdrawn or decided by the court.

Interim moratorium applied once a written notice of appointment for an interim judicial manager has been lodged and ending when either a formal judicial manager has been appointed, the interim judicial manager's term has ended or when the creditors reject the resolution for judicial management.

Answer could have been better organised and also more details on the process for voluntary JM. 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?

Section 64 IRDA -- Power of Court to restrain proceedings, etc., against company

To obtain moratorium protection order under section 64(1) the following must be presented to the court (conditions as per Section 64(2) to be met) -

1. No order has been made and no resolution has been passed for the winding up of the company
2. The company makes, or undertakes to the Court to make as soon as practicable —
    a. an application under section 210(1) of the Companies Act for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement mentioned in subsection (1); or
    b. an application under section 71(1) to approve the compromise or arrangement mentioned in subsection (1);
3. the company does not make an application under section 210(10) of the Companies Act.

Incomplete. What other requirements have to be presented? 1 mark.

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 IRDA -- Power of Court to restrain proceedings, etc., against subsidiary or holding company

To obtain moratorium protection order under section 65(1) the following must be presented to the court (conditions as per Section 65(2) to be met) -

1. No order has been made and no resolution has been passed for the winding up of the related company
2. The order under section 64(1) made in relation to the subject company is in force
3. 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)
4. The compromise or arrangement mentioned in paragraph (3) will be frustrated if one or more of the actions that may be restrained by an order under subsection 65(1) are taken against the related company
5. The Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under subsection 65(1).

2 marks

Question 4.1.3 (2 marks)

Can the moratoria sought by Juniperus and Casuarina be ordered to have extra-territorial effect? If so, what acts and / or creditors will the moratoria apply to?

Singapore has adopted The UNCITRAL Model Law on Cross-Border Insolvency (Model Law). Singapore courts orders can be implemented/recognised in other jurisdiction which also have adopted the model law. Not necessarily

Angostura Group has presence in Singapore Malaysia, Thailand, Cambodia, Indonesia, China, Indonesia, Vietnam, and the United States.
Out of the jurisdictions, Malaysia and the United States have also adopted the Model Law.
Hence moratoria sought by Juniperus and Casuarina can be ordered to have extra-territorial effect in Malaysia and the United States.

Additionally, the Juniperus Bonds are governed by a New York law. Singapore Supreme Court has adopted Guidelines for communication and Cooperation between Courts in Cross-Border Insolvency Matter. These Guidelines are also adopted by Southern District of New York. Hence this moratorium will be applicable to the Bondholders.

Please explain in personal extraterritorial jurisdiction and also effect of the moratorium. 0.5 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?

A scheme of arrangement is an agreement, between a company in financial distress and its creditors, to assist the company in fulfilling its debt obligations. This is a debtor in possession process.

Following are the steps involved to launch a scheme of arrangement under section 210 of the Companies Act.

1. An application requesting creditor's meeting is made to the court by either company, creditor, company member, judicial manager, or liquidator.
2. The company can only make an application if,
    a. No order has been made and no resolution passed for winding-up of the company
    b. The company makes or undertakes to do so as soon as practicable an application to sanction a scheme of arrangement
    c. The company has not applied for protection under section 210(10) of the companies act.
3. The company must simultaneously publish a notice in the Gazette and at least one English local newspaper and sent notice to the creditors.
4. An interim moratorium will automatically kick in on filing of application. This moratorium takes effect until the court hears the application or until 30 days after the date of the application, whichever is earlier
5. The application includes details of scheme to enable the court to determine if the scheme is feasible and merits consideration by creditors. It should also include list of every secured creditor and largest unsecured creditors.
6. If the court approves the creditors' meeting, the company will send notice(s) summoning the meeting, as well as statement(s) explaining the effects of the proposed scheme to all creditors.
7. A scheme manager may also need to be appointed by the company or court to administer and manage the scheme or facilitate negotiations.
8. Chairman of the scheme meeting (scheme manager) reviews proof of debt submitted by creditors and chooses to admit/reject the proof.
9. During the meeting, the scheme creditors will cast their votes. If at least 50% of the creditors or class of creditors (present and voting) holding at least 75% in value of debt claims agree to the proposed scheme, the court will then decide whether to approve it. (more than 50% in number, and more than or equal to 75% in value)
10. For the court to approve the scheme, it must be satisfied that:
    a. All statutory requirements for the scheme have been complied with
    b. The creditors present at the meeting were representative of the class of creditors
    c. The statutory majority did not coerce the minority at the meeting to promote interests detrimental to them; and
    d. The scheme is one which a man of business or an intelligent and honest man, being a member of the class concerned and acting in his interest, would reasonably approve
11. Copy of the court order is logged with ACRA and the scheme becomes binding on company and all scheme creditors (including dissenting creditors)

In a pre-packed scheme, the court can approve a scheme fulfilling following requirements even without calling a creditors' meeting to vote on it.

a. Each creditor must have been provided a notice containing information on the company and the proposed scheme. The notice must also be filed with ACRA as well as published in the Gazette and at least one English local daily newspaper; and
b. The court must be satisfied that the proposed scheme would have been approved if the creditors had voted on it.

Fairly detailed. 5 marks. Good job.

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?

Section 67 of IRDA grants court the power to approve rescue finance.

Case law - Re Design Studio Group Ltd and other matters [2020] SGHC 148. Singapore court mentioned the following factors, broadly similar to the factors which guide US bankruptcy courts in similar cases.

1. The creditor's interests: whether the other creditors would be unfairly prejudiced from the arrangement or beneficial to them.
2. The viability of the restructuring: how the rescue financing will be used, whether it would create new value for the company.
3. Alternative financing: whether better financing proposals are available, whether there were proposals that did not require super-priority.
4. Terms of the proposed financing: whether the terms were reasonable and in the exercise of sound business judgment.

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.

Singapore has adopted The UNCITRAL Model Law on Cross-Border Insolvency (Model Law). This allows foreign representatives to apply to the High Court of Singapore for recognition of foreign insolvency proceedings.
Singapore divides foreign insolvency proceedings into two categories: "foreign main proceedings" and "foreign non-main proceedings" which is in line with the Model Law.
If a Singapore court recognises a case as a foreign main proceeding, the Singapore Model Law provides an automatic stay on within the territory of Singapore.
If a Singapore court recognises a case as a foreign non-main proceeding, the Singapore Model Law provides for discretionary relief, which may also include an automatic stay subject to the requirement that all creditors are adequately protected.

Please elaborate further on the requirements to be satisfied. 1 mark.

*** End of Assessment ***

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