



## **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] 9 marks**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

#### **Question 1.1**

Which of the following **is not** one of the roles of a scheme manager?

- (a) To administer the scheme after it has been approved by the creditors.
- (b) To run the business of the debtor company.
- (c) To prepare the scheme of arrangement proposal.
- (d) To adjudicate on the proofs of debt filed by the creditors.

#### **Question 1.2**

Which of the following forms of security **need not** be registered?

- (a) A fixed charge.
- (b) A mortgage.
- (c) A pledge.
- (d) A floating charge.

#### **Question 1.3**

Which of the following factors may enable a foreign debtor to establish a “substantial connection” to Singapore?

- (a) The debtor has chosen Singapore law as the law governing a loan or other transaction.
- (b) The debtor is registered as a foreign company in Singapore.
- (c) The debtor is carrying on business in Singapore.
- (d) Any of the above.

#### Question 1.4

What percentage of each class of creditors must approve a scheme of arrangement for it to be binding?

- (a) Over 50% in value.
- (b) 50% or more in value.
- (c) Over 75% in value.
- (d) 75% or more in value.**

#### Question 1.5

Which of the following is **not** one of the statutory duties of a bankrupt?

- (a) To make discovery of and deliver all his property to the Official Assignee.
- (b) To attend any meeting of his creditors as may be convened by the Official Assignee.
- (c) To execute such powers of attorney, conveyances, deeds and instruments as may be required.
- (d) To not travel overseas under any circumstances whatsoever.**

#### Question 1.6

Which of the following **is not true** of the Model Law as enacted in Singapore?

- (a) It allows foreign representatives to apply to court for the recognition of foreign proceedings.
- (b) The court can deny recognition only if recognition is "manifestly contrary" to public policy.**
- (c) It provides for concurrent insolvency proceedings.
- (d) It provides for international co-operation and communication between courts and representatives.

#### Question 1.7

Which of the following new reforms **were not** introduced by way of the 2017 amendments to the Companies Act?

- (a) The automatic moratorium.
- (b) The cross-class cram down.
- (c) Restrictions on *ipso facto* clauses.**
- (d) Pre-packaged scheme of arrangement.

#### Question 1.8

Who amongst the following **may not** bring a judicial management application?

- (a) The company by way of a members' resolution.
- (b) The liquidator by way of an application to court.**
- (c) The directors pursuant to a board resolution.
- (d) The creditors either together or separately.

#### **Question 1.9**

Which one of the following **is not** one of the statutory duties that a bankrupt is subject to?

- (a) Make discovery of and deliver all his property to the Official Assignee.
- (b) Disclose all property disposed of by gift or settlement without adequate valuable consideration within the five years immediately preceding his bankruptcy.
- (c) Not being able to travel overseas at all.**
- (d) Attend meetings with the Official Assignee and answer all relevant questions.

#### **Question 1.10**

Which of the following **is not** one of reasons for which the Court will appoint an interim judicial manager:

- (a) The preservation of the company's property or business from dissipation or deterioration.
- (b) The more advantageous realisation of the property than in a liquidation.**
- (c) To bridge the gap between the application for judicial management and the hearing of the judicial management application.
- (d) To safeguard the interests of the company as well as its creditors.

### **QUESTION 2 (direct questions) [10 marks]**

#### **Question 2.1 [maximum 4 marks]**

What is the significance of the decision in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] SGCA 60 and what did the Court of Appeal decide?

[Type your answer here]

The significance of the decision in *Sun Electric Power Pte. Ltd. v RCMA Asia Pte. Ltd.* [2021] SGCA 60 (the "Sun Case") is that it clarified that the cash flow test should be the sole and determinative test under section 125(2)(c) of the Insolvency Restructuring and Dissolution Act (the "Act").

The Court of Appeal has dismissed the appeal in the Sun Case.

The relevant pertinent and significant points of the judgment as delivered by Judith Prakash JCA in the Sun Case are as follows, amongst others, that the cash flow test is the sole applicable test under section 254(2)(c) of the Companies Act to determine whether a company is unable to pay its debts. The cash flow test assesses whether the company's current assets exceed its current liabilities such that it is able to meet all debts as and when they fall due. "Current assets" and "current liabilities" refer to assets which will be realizable and debts which will fall due within a 12-month timeframe. The court also set out a non-exhaustive list of factors which should be considered under the cash flow test: (i) the quantum of all debts which are due or will be due in the reasonably near future; (ii) whether payment is being demanded or is likely to be demanded for those debts; (iii) 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; (iv) the length of time which has passed since the commencement of the winding up proceedings; (v) the value of the company's current assets and assets which will be realizable in the reasonably near future; (vi) the state of the company's business, in order to determine its expected net cash flow from the business in deducting from projected future sales the cash expenses which would be necessary to generate those sales; (vii) any other income or payment which the company may receive in the reasonably near future; and (viii) 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 up by borrowings which would be repayable at a time later than the debts.

Applying the cash flow test and considering the evidence, the Court of Appeal in the Sun case found that there was no reason to disturb the High Court's findings that the appellant was insolvent. The Court of Appeal also found that the High Court did not err in exercising its discretion to wind up the appellant. It ruled that where a company is unable or deemed to be unable to pay its debts, the creditor is prima facie entitled to a winding up order *ex debito justitiae*, and that while there could be exceptions to this general rule, the Court of Appeal found there were no countervailing factors on the facts of the case.

How about 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.

[Type your answer here

The following new features were only introduced in the IRDA:

- (a) early dissolution of a company which does not have sufficient assets to fund the administration of the liquidation pursuant to sections 209 to 211 of the IRDA;
- (b) pursuant to sections 134 and 135 of the IRDA, official receiver is no longer the default liquidator; and that subject to the consent of the official receiver, the official receiver can only be nominated to be appointed as liquidator if the applicant has taken reasonable steps to appoint a private liquidator but has failed to obtain consent from a private liquidator to be appointed; and
- (c) pursuant to section 124(1) of the IRDA, a director is now one of the eligible applicants to apply to court for a company to be wound up, whether or not being wound up voluntarily; and
- (d) pursuant to section 186(1)(b) of the IRDA, the court can make an order the winding up on a day specified in the order.]

Not really new features. 0.5 mark.

### Question 2.3 [maximum 4 marks]

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

[Type your answer here

Voluntary Arrangement scheme (“VA”) is one of the alternatives to formal bankruptcy where a debtor makes a formal arrangement with the creditor/s for the satisfaction of debts as overseen by a nominee. The insolvent debtor, intending to carry out a voluntary arrangement, must not be an undischarged bankrupt as set out in section 275 of the IRDA.

The following will need to be considered:-

(a) An insolvent debtor, who is not an undischarged bankrupt, intends to make a proposal for a voluntary arrangement under Part 14 of the IRDA;

(b) A nominee must be appointed: Pursuant to section 277(1) of the IRDA, a debtor must appoint a nominee as part of any proposal for a VA. Pursuant to section 277(2) of the IRDA, no person may be appointed as a nominee unless that person is a licensed insolvency practitioner;

(c) Application to the court: Pursuant to section 276(1) of the IRDA, any insolvent debtor who intends to make a proposal to the insolvent debtor’s creditors for a composition in satisfaction of the insolvent debtor’s debts or a scheme of arrangement of the insolvent debtor’s affairs may apply to the court for an interim order under Part 14 on Voluntary Arrangements of the IRDA;

(d) Effect of the application for an interim order: moratorium. Pursuant to section 278(1) of the IRDA, at any time when an application under section 276 for an interim order is pending, the court may stay any action, enforcement order or other legal process against the debtor in respect of whom the application has been made or against the property of such debtor, and the following will be the effects:- (i) no bankruptcy application may be made or proceeded with against the debtor; and

(ii) no other proceedings, execution or other legal process may be commenced or continued against the person or property of the debtor without the leave of the court; and where the interim order is in respect of a firm – (1) no bankruptcy application may be made or proceeded with against the firm or, except with the leave of the court, any partner therein; and (2) no other proceedings, execution or other legal process may be commenced or continued against the firm or its property or against the person or property of any partner in the firm, without the leave of the court;

(e) Nominee’s Report on Debtor’s Proposal: pursuant to section 280(1) of the IRDA, where an interim order has been made, the nominee is under legal obligation to 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;

(f) Creditor/s Meeting: pursuant to section 281(1) of the IRDA, where a nominee has reported to the court that a meeting of the debtor’s creditors should be summoned, the nominee must, unless the court otherwise directs, summon that meeting in accordance with the nominee’s report. Thereafter, pursuant to section 281(2) of the IRDA, the nominee must summon the meeting every of the debtor’s creditors of whose claim and address the nominee is aware;

(g) Decision of creditors’ meeting: pursuant to section 282(1) the VA must be approved in creditors’ meeting by special resolution resolve to approve the proposed VA, whether with or without modification. Special resolution requires majority of more than 75% of those present and voting in favour of the resolution. Once approved by the required majority, the VA will then bind all creditors who have had notice of and were entitled to vote at the meeting;

(h) Report of Decision to Court: pursuant to section 283 of the IRDA, after the conclusion of the creditors’ meeting summoned under section 281 of the IRDA, the nominee must report the result of the meeting to the court and serve a copy of the report on such persons as may be prescribed. Where the creditors’ meeting has declined to approve the debtor’s proposal, the court may discharge any interim order which is in force in relation to the debtor;

(i) Effect of VA Approval: pursuant to section 284 of the IRDA, where the creditors' meeting summoned under section 281 of the IRDA has approved the proposed VA, with or without modifications, the approved arrangement: (i) takes effect as if made by the debtor at the meeting; and (ii) binds every person who had notice of and was entitled to vote at the meeting, whether or not the person was present or represented at the meeting, as if the person were a party to the arrangement; (iii) the interim order in relation to the debtor ceases to have effect at the end of the 28 days after the date the report was made to the court under section 283 of the IRDA; (iv) where the proceedings on a bankruptcy application have been stayed by an interim order, which ceases to have effect as set out in item (iii), the application is, unless the court otherwise orders, deemed to have been dismissed;

(j) Review, Implementation and supervision of the approved VA: the decision of the VA may, on application to the court, be reviewed on the ground that (i) the VA approved by the meeting unfairly prejudices the interests of the debtor or any of the debtor's creditors; or (ii) there has been material irregularity at or in relation to the meeting. Pursuant to section 286 of the IRDA, the nominee must supervise the implementation of the VA, which supervision may be reviewed by the court upon application by the debtor or creditor who is dissatisfied by any act, omission or decision of the nominee; and

(k) Consequences of Failure by Debtor to Comply with VA: pursuant to section 287 of the IRDA, where a debtor fails to comply with any of the debtor's obligations under a VA, the nominee or any creditor bound by the VA may make a bankruptcy application against the debtor.]

Very 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.

[Type your answer here

Pursuant to sections 224 to 229 of the IRDA, upon the liquidation of a company, a liquidator or judicial manager can apply to the court to seek to claw back (a) assets previously transferred in transactions at undervalue or (b) when the company has given an unfair preference to any person, both at relevant time.

Section 226 of the IRDA provides that the time at which a company enters into a transaction at an undervalue or gives an unfair preference is a relevant time if the transaction is entered into or the preference given:

(a) in the case of a transaction at an undervalue, within the period starting 3 years before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial management or winding up as the case may be;

(b) in the case of an unfair preference which is not a transaction at an undervalue and which is given to a person who is connected with the company (otherwise than by reason only of being a company's employee), within a period starting 2 years before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial proceeding or winding up, as the case may be; and

(c) in any other case of an unfair preference, within the period starting one year before the commencement of the judicial management or winding up (as the case may be) and ending on the date of the commencement of the judicial management or winding up as the case may be.



It is imperative to understand who are “connected with the company” and when is the commencement of the judicial management or winding up proceedings.

Who are connected person? Section 217 (2)(b) of the IRDA provides that a person is connected with a company if (i) the person is a director of the company or an associate of such a director; or (ii) the person is an associate of the company.

On the commencement of judicial management or winding up, section 217 (1) provides the following:

(a) a judicial management, in relation to a company, is commenced:

(i) in a case where the judicial manager is appointed by the court, the time when the application for the judicial management order was made; or

(ii) in a case where the judicial manager is appointed by the creditors of the company, the time when the copy of the notice of appointment of the interim judicial manager is filed with the registrar of companies and the official receiver.

(b) a winding up, in relation to a company, means:

(i) by way of court order in a voluntary winding up, at the commencement of the voluntary winding up, which is: (1) in the case where the company is being wound up voluntarily and a provisional liquidator has been appointed before the resolution for a voluntary winding up was passed, the time when the statutory declaration in prescribed form was lodged with the registrar of companies, or (2) in any other case where the company is being wound up voluntarily, the time of the passing of the resolution for voluntary winding up; or

(ii) in a case where a company is being wound up under an order of the court on an application made while the company was in judicial management, the time of the commencement of the judicial management.

An undervalued transaction is a transaction which the company received compensation which is significantly less than what the transaction is valued to be at. To establish that a transaction is at an undervalue, the liquidator must show the following 2 elements: (a) the company makes a gift to the recipient or the company enters into a transaction where the value of consideration received is significantly less than the value of the consideration provided; and (b) the company was or became insolvent as a result of that transaction. There is a presumption that a company may have undertaken a transaction at an undervalue if the preferred party is an associate of the company. The clawback period is 3 years from the date of the winding up application or the judicial management application, regardless of whether the undervalue was at an associate or not.

For unfair preferences, the liquidator or judicial manager must show that the 4 elements are present: (a) the preferred party (the beneficiary of the transaction) is a creditor or a guarantor for any of the company’s debts or liabilities; (b) the company was insolvent (or became insolvent as a consequence of the transaction) at the time of giving the preference; (c) the company has done anything which puts the preferred party in a better position than the preferred party would otherwise have been had the transaction not been entered in the event of the company’s liquidation or judicial management; and (d) the company was influenced in deciding to enter the transaction by a desire to prefer the preferred party, noting that the company is presumed to have been influenced by a desire to prefer if the preferred party is an associate of the company. The clawback period is 2 years from the date of the winding up application or the date of the judicial management where the party is an associate, and 1 year for unrelated parties.

Under the IRDA, there is a good faith exception being provided such that the property or benefit obtained by the counterparty to the transaction with the company cannot be clawed back if the other party had been an unconnected person and unaware of the circumstances of

the undervalued transaction. The other exceptions include, where the transaction is for the purpose of carrying on its business and where there has been reasonable grounds at the time to believe that it would benefit the company.

The claw-back provisions are enhanced under the IRDA by providing for a mechanism by which the liquidator or the judicial manager can set aside certain transactions entered into by the company prior to the commencement of the winding up and judicial management proceedings. In addition, the liquidator or the judicial manager can apply for an order in relation to the transaction at under value or unfair preferences to restore position of the relevant assets back to the company. In addition, :

**Very convoluted answer that includes material that is not relevant. Does not answer how JM/liquidators powers are enhanced. Should discuss wrongful trading and third party funding. 4 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.

[Type your answer here

Pursuant to the provisions of the IRDA, there are 3 ways to put a company under the judicial management, (a) by the company by way of a members' resolution, (b) by its directors by way of a board resolution, and (c) by the company's creditors (including contingent and prospective creditors), either together or separately.

Section 90 of the IRDA provides that where a company, or any creditor of the company, considers (a) that the company is, or is likely to become, unable to pay its debts; and (b) that there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern, or that the interest of creditors would be better served otherwise than by resorting to a winding up, an application may be made to the court for an order that the company should be placed under the judicial management of a judicial manager. Section 91 of the IRDA provides for the power of the court to make judicial management order and appoint a judicial manager.

In a voluntary judicial management ("VCM") proceeding by way of members' resolution or through its directors pursuant to a board resolution, the following is considered in the commencement of the VCM:

- (a) pursuant to section 91 of the IRDA may make an application for an order that the company should be placed under the judicial management of a judicial manager;
- (b) in the application, the following should be observed: (i) the applicant must nominate a person who is a licensed insolvency practitioner, but is not the auditor of the company, to act as a judicial manager; (ii) the person nominated to act as a judicial manager must file with the court a statutory declaration that the person is not in a position of conflict of interest in accepting the appointment and performing the role of judicial manager;
- (c) where a nomination is made by a company, (i) a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination, and (ii) the court may, if satisfied as to the number and value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate another person in place of the applicant's nominee and, if the court sees fit, adopt their nomination;
- (d) Notice of the Application - where an application for a judicial management order is made to the court, (a) notice of the application must be published in the Gazette and in English local daily newspaper, and a copy of the notice must be sent to the registrar of companies; and

(e) Judicial Management Order – the court may make a judicial management order in relation to the company if (a) the court is satisfied that the company is or is likely to become unable to pay its debts, (b) and the court considers that the making of the order would be likely to achieve one or more of the purposes of the judicial management as set out in section 89(1) of the IRDA, such as:-

- (i) the survival of the company, or the whole or part of its undertaking, as a going concern;
- (ii) the approval of schemes of arrangements or compromised; or
- (iii) a more advantageous realisation of the company's assets or property than on a winding up. (the "Purposes")

One of the key features of the IRDA is the introduction of out of court judicial management. Section 94 of the IRDA, however, provides judicial management by resolution of creditors where a company considers that (a) the company is, or is likely to become, unable to pay its debts, and (b) there is a reasonable probability of achieving one or more of the Purposes as set out above, the company may, instead of applying for 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 observing the following:-

- (a) written notice – a company that proposes to obtain a resolution of the company's creditors for the company to be placed under the judicial management must give at least 7 days' written notice in the prescribed form of its intention to appoint an interim judicial manager. The notice must be given to (i) the proposed interim judicial manager, and (ii) to 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 under the terms of any debentures of the company secured by a floating charge or by a floating charge and one or more fixed assets;
- (b) appoint of interim judicial manager can be made if all of the following conditions are met:
  - (i) the appointment is authorized by way of a resolution of the members of the company or, where so authorized by the constitution of the company, by resolution of its board of directors;
  - (ii) the notice period of at least 7 days has expired;
  - (iii) not more than 21 days have elapsed after the date of the said notice;
  - (iv) each person to whom the notice mentioned has consented in writing to the appointment of the interim judicial manager;
  - (v) the proposed interim judicial manager has lodged, with the official receiver and the registrar of companies, a statutory declaration by the proposed interim judicial manager stating that (1) the proposed interim judicial manager is not in a position of conflict of interest, (2) in the view of the proposed interim judicial manager, or more of the Purposes of judicial management can be achieved, and (3) the proposed interim judicial manager consents to be appointed as interim judicial manager;
  - (vi) the company's directors have lodged with the registrar of companies a statutory declaration stating that (1) the company is or is likely to become unable to pay its debts, (2) 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 the lodgement of the statutory declaration; and (3) the directors believed that one or more of the Purposes is likely to be achieved; and
  - (vii) the proposed interim judicial manager is licensed insolvency practitioner, and is not the auditor of the company;
  - (viii) upon the appointment of the interim judicial manager, the company, the company must (1) within 3 days after the appointment of the interim judicial manager, cause a written notice of the appointment to be lodged in the prescribed form with the official receiver and the registrar of companies, and (2) within 7 days after the lodgement of the notice, cause a notice of the appointment to be published in the Gazette and in an English local daily newspaper.

The VJM differs from a court-sanctioned judicial management primarily on the necessity of a court order to put the company in a judicial management whereas the VJM requires the approval of the majority of its members and/or directors (in certain circumstances), and the required notices, documents, and calling of creditors' meeting have been complied with.]

Answer could have been more concise. It is repetitive and does not answer the comparison aspect properly. 3.5 marks.

**QUESTION 4 (fact-based application-type question) [15 marks in total]**

PT Angostura Textiles Tbk (Angostura, and together with its subsidiaries, the Angostura Group) is an Indonesia-incorporated company listed on the Indonesia stock exchange. Angostura is a substantial market player in textile production in South East Asia and China. Its primary lines of business are:

- fibre production with assets and factories in Malaysia, Thailand and Cambodia;
- textile manufacturing with assets and factories in Indonesia, Vietnam and China; and
- garment manufacturing and distribution facilities with assets and factories in Indonesia, Vietnam and the United States.

The Angostura Group has two key Singapore incorporated subsidiaries:

- Juniperus Textiles Pte Ltd. (Juniperus) which is wholly owned by Angostura; and
- Casuarina Garments Pte Ltd (Casuarina) which is wholly owned by Juniperus.

Each entity in turn owns all, or substantially all, of the shares in the relevant entities incorporated in the local relevant overseas jurisdiction.

The Angostura Group had traditionally funded its business via bank lending, with a combination of bilateral and syndicated loan facilities advanced directly to Angostura. As at 2019, the group had raised SGD 2 billion in bank lending, all of which was guaranteed by Angostura Indonesian subsidiaries.

In late 2019, as COVID-19 started to spread around the world, the Angostura Group sought to take advantage of the situation by expanding its garment manufacturing business into personal protective equipment. To fund this expansion, Juniperus issued SGD 200 million in retail bonds (the Juniperus SG Bonds) on the Singapore Stock Exchange (SGX) which were guaranteed by Angostura. The proceeds of the Juniperus Bonds were on-lent to Casuarina who lent them via an offshore intercompany loan to Angostura (the Casuarina Intra-Group Loan). To ensure bondholders had rights in connection with the Casuarina Intra-Group Loan, holders of the Angostura Bonds are given security over the shares of each of Juniperus and Casuarina. The Juniperus Bonds are governed by a New York law.

In late 2020, Angostura's business experienced significant supply-chain disruptions as a result of the COVID-19 pandemic. During this time, Angostura started informing some of its bank lenders that they may require waivers on certain terms in their loans and potentially further time to repay certain amounts owing. In early 2021, Angostura appointed legal and financial advisors to provide it with advice as to the best steps to take. Shortly thereafter, a trade creditor filed a PKPU petition in Indonesia against Angostura and its Indonesian subsidiaries. Further to this, Juniperus and Casuarina filed for protection, under sections 64(1) and 65(1) respectively, of the Insolvency Restructuring and Dissolution Act (Act No 40 of 2018) (the IRDA). Angostura then announced that Juniperus will launch a separate Singapore Scheme of Arrangement under section 210 of the Companies Act (Cap 50) to restructure the Juniperus Bonds after the conclusion of the Indonesian PKPU, which will largely mirror the terms in the PKPU.

The bondholders of the Juniperus Bonds are concerned the moratoria being sought will prevent them from participating in the PKPU proceedings in Indonesia and enforcing their security over the shares in Juniperus and Casuarina, respectively. They have therefore decided to object to the Singapore moratorium applications.

**Using the facts above, answer the questions that follow.**

**Question 4.1 [maximum 6 marks]**

The working group of the bondholders has asked its advisors to provide it with a written analysis covering the following critical issues for the Angostura Group. Please provide analysis on the following issues:

**Question 4.1.1 (2 marks)**

What must be presented to the court in order to obtain moratorium protection order under section 64(1) IRDA?

[Type your answer here

Pursuant to section 64(1) of the IRDA, a company can seek from the court moratorium protection from creditors and remain in control as a debtor-in-possession while it proposes the restructuring plant to be implemented via a scheme of arrangement.

Pursuant to section 64(2) of the IRDA, the company may make an application only if all of the following conditions are satisfied:-

- (a) no order has been made and no resolution has been passed for the winding up of the company;
- (b) the company seeks, or undertakes to the court to make as soon as practicable (i) an application for compromise or scheme of arrangement for the court to order to be summoned a meeting of the creditors or class of creditors in relation the compromise of arrangement, or (ii) an application to approve the compromise or scheme of arrangement, and (iii) the company does not make an application to restrain proceedings pursuant to section 210(10) of the companies act 1967.

Pursuant to section 64(4) of the IRDA, the company must file the following with the court together with the moratorium application:

- (i) the 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;
- (ii) 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 whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors when a statement explaining the effect of the compromise or arrangement in in particular stating any material interests of the directors;
- (iii) a list of every secured creditor of the company; and
- (iv) 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.

Pursuant to section 64(6), when making a moratorium order, the court must order the company to submit to the court, within such time as the court may specify, sufficient information relating to the company's financial affairs to enable the company's creditors to assess the feasibility of the intended or proposed compromise or arrangement, including such of the following information as the court may specify:

- (i) a report on the valuation of each of the company's significant assets;
- (ii) if the company acquires or disposes of any property or grants security over any property, information relating to the acquisition, disposal or grant of security, such information to be submitted not later than 14 days after the date of the acquisition, disposal or grant of security;
- (iii) periodic financial reports of the company and the company's subsidiaries; and
- (iv) forecasts of the profitability, and the cash flow from the operations, of the company and the company's subsidiaries.]

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?

[Type your answer here

Pursuant to section 65(2) of the IRDA, the related company may make the application only if all of the following conditions are satisfied:

- (a) no order has been made and no resolution has been passed for the winding up of the related company;
- (b) no order under section 64(1) on moratorium made in relation to the subject company is in force; **there should be an order**
- (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 of moratorium under section 64(1);
- (d) the compromise or arrangement mentioned in the preceding paragraph will be frustrated if one or more of the actions that may be restrained by an order under subsection (1) 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 an order under section 64(1).

Section 64(1) of the IRDA provides for moratorium on the following:-

- (a) passing a resolution for the winding up of the company;
- (b) appointment of a receiver or manager over any property or undertaking of the company;
- (c) commencement or continuation of certain proceedings, except with the permission of the court and subject to the terms as the court imposes;
- (d) issuance, continuation or execution of any enforcement order or other legal process, or the levying of any distress, against any property of the company, except with the permission of the court and subject to such terms as the court imposes;
- (e) 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 permission of the court and subject to such terms as the court imposes; and
- (f) enforcement of right of re-entry or forfeiture under any lease in respect of any premises occupied by the company, except with the permission of the court and subject to such terms as the court imposes.

Pursuant to section 65(3), when the related company makes the application to the court,

- (a) the related company must publish a notice of the application in the Gazette and in at least one English local daily newspaper, and send a copy of the notice published in the Gazette to the registrar of companies, and

(b) unless the court orders otherwise, the related company must send a notice of the application to each creditor of the related company who will be affected by an order and who is known to the related company. ]

2 marks

**Question 4.1.3 (2 marks)**

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

[Type your answer here

Yes, the moratorium has extraterritorial effect and allows the Singapore courts to restrain the commencement of proceedings covered under Section 64 of the IRDA outside of Singapore courts provided that the Singapore court has in personam jurisdiction of the party seeking to be enjoined.

Sections 64 (1) and (8) of the IRDA provides for moratorium on the following:-

- (a) no order may be made, and no resolution may be passed for the winding up of the company;
- (b) appointment of a receiver or manager over any property or undertaking of the company;
- (c) commencement or continuation of certain proceedings, except with the permission of the court and subject to the terms as the court imposes;
- (d) issuance, continuation or execution of any enforcement order or other legal process, or the levying of any distress, against any property of the company, except with the permission of the court and subject to such terms as the court imposes;
- (e) 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 permission of the court and subject to such terms as the court imposes; and
- (f) enforcement of right of re-entry or forfeiture under any lease in respect of any premises occupied by the company, except with the permission of the court and subject to such terms as the court imposes.

2 marks

**Question 4.2 [maximum 9 marks in total]**

As things transpired, Juniperus and Casuarina were granted moratorium protection for a period of three (3) months and are expected to apply for an extension to this moratorium period for an additional six (6) months upon expiry of the original three- (3) month period. The working group of bondholders intends to oppose any extension application.

The bondholders have instructed the Juniperus Bonds' trustee under the relevant indenture to be ready to enforce their security over the shares in Casuarina as soon as practicable. The Juniperus Bonds appear to be traded heavily in the market, with private equity funds looking to buy up significant stakes in order to enforce the security over shares in Casuarina.

To try and protect against this risk, Angostura also commenced local insolvency proceedings and emergency recognition proceedings in the United States.

**Taking these additional facts above into consideration, answer the questions below.**

**Question 4.2.1 [maximum 5 marks]**



What are the steps that need to be taken in order to launch a subsequent scheme of arrangement under section 210 of the Companies Act? How does the process for a scheme proposed under section 210 of the Companies Act differ from a prepack scheme proposed under section 71(1) of the IRDA?

[Type your answer here

Section 210 of the Singapore Companies Act gives companies with financial difficulties some breathing space by entering into a compromise with its creditors, subject to the approval at a creditors' meeting by creditors who represent both a simple majority in number and 75% in value of the voting creditors (whether voting in person or by proxy) (the "Scheme"). Under the Scheme, the court may, on the application of the company or any creditor of the company, order a meeting of the creditors or class of creditors. The application must comply the following: **Leave of court to convene creditors meeting?**

- (a) must be supported by a majority in number of the creditors representing  $\frac{3}{4}$  in value of a class of creditors present;
- (b) it must be sanctioned by the court; and
- (c) a copy of the order sanctioning the scheme must be lodged with the registrar of companies

The Scheme differs the scheme set out in section 71(1) of the IRDA because under the latter provision, the court is empowered to approve compromise or arrangement without meeting of creditors. Pursuant to section 71(3) of the IRDA, however, the court must not approve a compromise or an arrangement unless:

- (a) the company has provided each creditor meant to be bound by the compromise or arrangement with a statement in prescribed form and contains (i) information concerning the company's property, assets, business activities, financial condition and prospects, (ii) information on the manner in which the terms of the compromise or arrangement will, if it takes effect, affect the rights of the creditor, (iii) such other information as is necessary to enable the creditor to make an informed decision whether to agree to the compromise or arrangement. ]
- how does the Court know that the requisite threshold of creditors have approved?**

**3 marks.**

#### **Question 4.2.2 [maximum 2 marks]**

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

[Type your answer here

Angostura Group has to make out that it has a substantial connection to Singapore, which would then render it liable to be wound up under the IRDA and therefore eligible to access rescue financing under the IRDA. The "substantial connection" with Singapore can be established by the demonstration of one or more of the following factors:

- (a) the centre of main interest of the debtor is located in Singapore;
- (b) the debtor is carrying on business in Singapore or has a place of business in Singapore;
- (c) the debtor is registered as a foreign company in Singapore;
- (d) the debtor has substantial assets in Singapore;
- (e) the debtor has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more dispute arising out of or in connection with a loan or other transaction; and/or
- (f) the debtor has submitted to the jurisdiction of the Singapore courts for the resolution of one or more disputes relating to a loan or other transaction.



The Agostura case is similar to a decided case in Singapore of PT MNC Investama TBK [2020] SGHC 149.]

Has not answered the elements to obtain rescue financing. 0 marks.

**Question 4.2.3 [maximum 2 marks]**

Explain the key requirements in order for a Singapore court to recognise a foreign insolvency proceeding and what the effect will be if the court were to do so.

[Type your answer here

The Model Law, which is the UNCITRAL Model Law on Cross-Border Insolvency has the force of law in Singapore.

In the case of Zeta Jet Pte. Ltd. [2018] SGHC 16, the High Court ruled that under Section 15 of the Singapore Model Law, a foreign insolvency representative may apply to the High Court in Singapore for recognition of the foreign insolvency proceeding in which the foreign representative has been appointed; that recognition essentially allows, among other things, the foreign representative to function as the insolvency representative in Singapore, with accompanying powers. It was further ruled that under Article 17 of the Singapore Model Law, the Court must grant recognition if the various requirements are met such that a foreign proceeding is recognised as a foreign main proceeding, if the foreign proceeding takes place where the debtor has its centre of main interests (“COMI”), or as a foreign non-main proceeding where the debtor has an establishment there, as defined under Article 2(d) of the Singapore Model Law; and whether or not the foreign proceeding was properly commenced is not relevant to the granting of recognition. The Court added, however, that under Article 6 of the Singapore Model Law, to which Article Article 17 is subject, a Singapore court may refuse recognition if such recognition would be “contrary” to the public policy in Singapore, while recognising that Article 6 of the Model Law on the other hand requires recognition to be :manifestly contrary” to public policy for it to be refused.]

Please elaborate on the requirements and the effect of recognition. 1 mark.

**\* End of Assessment \***

**34 out of 50**