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?

In June 2021, the Court of Appeal in Sun Electric Power Ptd Ltd v RCMA Asia Pte Ltd [2021] SGCA 60 decided that the cash flow test, as opposed to the balance sheet test, should be the sole and determinative test in winding-up proceedings to prove that a company is unable to pay its debts under section 125(2)(c) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA").

The cash flow test assesses the company's present capacity to meet its liabilities as and when they become due while the balance sheet test assesses the company's total assets against its liabilities. One of the reasons the Court of Appeal made such a decision was that the balance sheet test had no correlation with whether a company "*is* unable to pay its debts". Insofar as the balance sheet test is concerned, it merely reveals the quantum of debts that will soon be due and the realisable assets but not the company's present ability to pay its debts.

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

a) the quantum of all debts which are due or will be due in the reasonably near future;
b) whether the payment is being demanded or is likely to be demanded for those debts;
c) 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;
d) the length of time which has passed since the commencement of the winding up proceedings;
e) the value of the company's current assets and assets which will be realisable in thee reasonably near future;
f) 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;
g) any other income or payment which the company may receive in the reasonably near future; and
h) arrangements between the company and prospective lenders, such as its bankers and shareholders, in order 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.

In determining that only the cash flow test be used and setting out the above list, any person commencing a winding-petition against a company must be able to provide enough information to the satisfaction of the court to prove that a company is unable to pay its debts pursuant to Section 125(2)(c) of the IRDA using the cash flow test alone.

Detailed answer. 4 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 introduced in the IRDA include, amongst others;

(a) Restrictions on ipso facto clauses which prohibits a party from terminating contracts or taking certain actions against an insolvency company by reason of its insolvency or commencement of a scheme of arrangement or judicial management;
(b) Voluntary judicial management where a company can be placed in judicial management without applying to court by way of a resolution of its creditors;
(c) Introduction of "wrongful trading" provision wherein the court is empowered to make a declaration that any person who was a knowing party to the company trading wrongfully is personally responsibly for debts or liabilities of the company; and
(d) New procedure for the early dissolution of a company in liquidation with insufficient assets to support the administration of the winding up, which may be utilized by the Official Receiver and private liquidators (who have obtained prior consent of the Official Receiver).

2 marks

Question 2.3 [maximum 4 marks]

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

Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") provides for voluntary arrangements as an alternative to bankruptcy. As provided in Section 276, a voluntary arrangement is a formal arrangement where an "insolvent debtor 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".

Where an insolvent debtor intends to make such a proposal, he may apply to Court under Part 14 for an interim order. An interim order granted under Section 276 provides that:

a) No bankruptcy application may be made or proceeded with against the debtor; and
b) 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.

An insolvent debtor making a proposal under Part 14 must appoint a Nominee, who must be a licensed insolvency practitioner, to act as trustee or otherwise for the purpose of supervising the implementation of the voluntary arrangement as per Section 277.

Where an interim order is granted, the Nominee is to prepare a report on the debtor's proposal. Section 280 provides that the Nominee must submit a report to the Court stating whether a meeting of the debtor's creditors should be summoned to consider the proposal and the date, time and place of the meeting. In order to prepare the report, the insolvent debtor must submit to the Nominee the terms of the voluntary arrangement as well as a statement of the debtor's affairs. Unless the Court otherwise directs, the Nominee will summon the meeting of the debtor's creditors.

At the meeting summoned by the Nominee, the creditors may approve the proposed voluntary arrangement by way of special resolution. An approved voluntary arrangement binds every person who had notice of and was entitled to vote at the meeting, whether or not that person was present (Section 284, IRDA).

Once the approved voluntary arrangement has taken effect, the Nominee must supervise the implementation of the voluntary arrangement.

What happens if there is a breach or default?

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.

Division 3 of Part 9 of the IRDA provides for the adjustment of prior transactions which include transactions at undervalue and unfair preferences.

A company enters into a transaction at an undervalue if:

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.

Where a company is in judicial management or is being wound up and the company has at the relevant time (that is within 3 years before the commencement of the judicial management or winding up) entered into a transaction at an undervalue, the judicial manager or liquidator can apply under Section 224 of the IRDA and the court may make an order as they see fit to restore the position of the company as if the transaction had not happened.

With regards to unfair preferences, a company gives an unfair preference to a person if:

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

Where the company gives an unfair preference to a person, the relevant time is two years before the commencement of judicial management or winding up if that person is connected to the company or one year for any other unfair preference. A judicial manager or liquidator can apply to court under Section 225 of the IRDA and the court may make an order as they see fit to restore the position of the company as if the transaction had not happened.

The IRDA also sets out provisions for a judicial manager or liquidator to make directors of insolvent companies liable for offences. The IRDA has enhanced this ability of a judicial manager or liquidator with the introduction of wrongful trading. but how?As provided in Section 239, a company trades wrongfully if —

a) the company, when insolvent, incurs debts or other liabilities without reasonable prospect of meeting them in full; or
b) the company incurs debts or other liabilities —
    i. that it has no reasonable prospect of meeting in full; and
    ii. that result in the company becoming insolvent.

On application by a judicial manager or liquidator under Section 239, the court may declare that any person who was a party to the wrongful trading be 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 —

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.

With regards to fraudulent trading, Section 238 provides that if in the course of the judicial management or winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the judicial manager, liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business 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.

How about third party funding? Have really answered the question on how powers have been enhanced. 5 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.

Judicial management by resolution of creditors (or commonly referred to as voluntary judicial management) was introduced through the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"). Before that, a judicial management order could only be granted by the Court upon application by the company and/or any of its creditors. Under Section 94, a company that is or likely to become unable to pay its debts and there is reasonable probability of achieving one or more purposes of judicial management, may obtain a resolution of the company's creditors for the company to be placed under the judicial management of a judicial manager.

In commencing a voluntary judicial management, the company must give at least 7 days' written notice of its intention to appoint an interim judicial manager to the proposed interim judicial manager and to any person who 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. In a judicial management application to Court, there is no provision to give notice of its intention but the person making the application is to give notice of the application pursuant to Section 91(4).

After the expiry of the 7 days' notice period and not more than 21 days after the date of the notice, an interim judicial manager may be appointed by way of resolution of the members of the company (or board of directors if authorised by the constitution of the company). The proposed interim judicial manager and each person the notice was sent to must have consented in writing to the appointment of the interim judicial manager. Other conditions to appoint an interim judicial manager include:

- proposed interim judicial must be a licensed insolvency practitioner and is not an auditor of the company;
- proposed interim judicial to lodge statutory declaration with Official Receiver and Registrar of Companies; and
- company's directors to lodge statutory declaration with Registrar of Companies.

In a judicial management application to Court, only the Court has the power to appoint an interim judicial manager upon application by the person applying for the judicial management order (Section 92).

The company must convene a meeting of the creditors of the company to be held not later than 30 days after the lodgement of the statutory declaration by the proposed interim judicial manager to consider a resolution for the company to be placed under judicial management (Section 94(7)). Section 94 further sets out the manner in which the meeting is to be summoned including notice period and accompanying documents. There is no such provision in the IRDA for a meeting of creditors in a judicial management application to the Court.

In the meeting of creditors, the company will be placed under judicial manager if a majority in number and value of the creditors present and voting resolve to do so (Section 94(11)(d)) and where the resolution passes, the meeting must approve by a majority in number and value of creditors present and voting, the appointment of the judicial manager (Section 94(11)(e)). In a judicial management application to Court, only the Court has the power to make a judicial management order and appoint a judicial manager (Section 91(1)). The Court however, will take into account the wishes of the creditors if a majority in number and

value of the creditors oppose the nomination of a proposed judicial manager if the nomination was made by the company.

Pursuant to Section 95, the effect of application for judicial management order or filing of written notice of appointment of interim judicial manager are the same. Once a resolution is passed by the creditors of the company to place the company in judicial management, the process of judicial management will be the same as if the Court had granted a judicial management order over the company.

Not enough comparative aspect with court JM. Still a decent effort. 4.5 marks.

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

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

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

The Angostura Group has two key Singapore incorporated subsidiaries:

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

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

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

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

In late 2020, Angostura's business experienced significant supply-chain disruptions as a result of the COVID-19 pandemic. During this time, Angostura started informing some of its bank lenders that they may require waivers on certain terms in their loans and potentially further time to repay certain amounts owing. In early 2021, Angostura appointed legal and financial advisors to provide it with advice as to the best steps to take. Shortly thereafter, a

trade creditor filed a PKPU petition in Indonesia against Angostura and its Indonesian subsidiaries. Further to this, Juniperus and Casuarina filed for protection, under sections 64(1) and 65(1) respectively, of the Insolvency Restructuring and Dissolution Act (Act No 40 of 2018) (the IRDA). Angostura then announced that Juniperus will launch a separate Singapore Scheme of Arrangement under section 210 of the Companies Act (Cap 50) to restructure the Juniperus Bonds after the conclusion of the Indonesian PKPU, which will largely mirror the terms in the PKPU.

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

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 6 marks]

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

Question 4.1.1 (2 marks)

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

Pursuant to Section 64(4), a subject company must file the following with the Court upon application for a moratorium protection order under Section 64(1):

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 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.

The Supreme Court of the Republic of Singapore has also issued a guide for the conduct of applications for moratoria under Sections 64 and 65 of the IRDA which supplements the IRDA and applies to every application with effect from 15 February 2021. Appendix A of the guide sets out a detailed list of information to be provided in an application under Section 64 of the IRDA.

Detailed and good reference to the guide. 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 does not specifically provide what is required to be presented with the application but Section 65(2) sets out that a related 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 related company;
a) the order under section 64(1) made in relation to the subject company is in force;
b) 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);
c) the compromise or arrangement mentioned in paragraph (c) will be frustrated if one or more of the actions that may be restrained by an order under Section 65(1) are taken against the related company;
d) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under Section 65(1).

The Supreme Court of the Republic of Singapore has also issued a guide for the conduct of applications for moratoria under Sections 64 and 65 of the IRDA which supplements the IRDA and applies to every application with effect from 15 February 2021. Appendix B of the guide sets out a detailed list of information to be provided in an application under Section 65 of the IRDA.

Good answer. 2 marks.

Question 4.1.3 (2 marks)

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

Yes, pursuant to Section 64(5) and Section 65(4), an order made under Section 64(1) and Section 65(1) 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.

A moratoria order granted under Section 64(1) or Section 65(1) applies to all creditors, even secured creditors, and may restrain:

a) the appointment of a receiver or manager over any property or undertaking of the company;
b) commencement or continuation of any proceedings (other than proceedings under Section 210 or 212 of the Companies Act)
c) commencement, continuation or levying of any execution, distress or other legal process against any property of the company
d) the taking of any step to enforce any security over any property of the company; or
e) the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company.

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?

Pursuant to Section 210 of the Companies Act, when any person (that can only be the liquidator (in the case of a wound-up company), the company, any creditor, any member or any holder of unit of shares) proposes a scheme of arrangement, the court may on application by said person, order a meeting of creditors/members/holders of units of shares in the manner ordered by the court to consider the scheme. At the meeting of creditors/members/holders of units of shares, the scheme shall be approved if a majority in number and such majority represents three-fourth in value of the creditors/members/holders of units of shares present and voting, vote in favour of the scheme. If the scheme is subsequently approved by order of court, the scheme is binding on all members of creditors/members/holders of units of shares whether or not they were present at the meeting. The court order approving the scheme must be lodged with the Registrar to take effect. Once all these conditions are met, the scheme of arrangement is launched.

Under Section 71(1) of the IRDA, the court may approve a scheme proposed between the company and its creditors (or any class of those creditors) even though no meeting was ordered under Section 210 of the Companies Act or held. This is commonly referred to a prepack scheme and involves extensive negotiations with creditors before being presented to the court which saves on time and costs.

The main difference between a scheme of arrangement under Section 210 of the Companies Act and a prepack scheme is the manner in which the scheme is proposed to the creditors. A scheme of arrangement under Section 210 is proposed to the creditors at the meeting ordered by the court while a prepack scheme will be informed to creditors before any application to court is done. Main difference is no meeting for prepack but have to prove that creditors would have voted in favour had meeting been called.

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?

Pursuant to Section 67(9) of the IRDA, rescue financing must satisfy either or both of the following conditions:

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;

b) the financing is necessary to achieve a more advantageous realisation 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.

Under Article 17 of the Singapore Model Law which is the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), if the following conditions are met, the foreign insolvency proceeding must be recognised by the Court:

a) it is a foreign proceeding within the meaning of Article 2(h) of the Singapore Model Law;
b) the person or body applying for recognition is a foreign representative within the meaning of Article 2(i) of the Singapore Model Law;
c) the application meets the requirements of Article 15(2) and (3) of the Singapore Model Law; and
d) the application has been submitted to the Court mentioned in Article 4 in the Singapore Model Law.

The Court will also decide if the foreign insolvency proceeding is a foreign main proceeding or foreign non-main proceeding based on the debtor's centre of its main interest.

Upon recognition of a foreign insolvency proceeding, there will be a stay and suspension as set out in Article 20 of the Singapore Model Law. The effects of recognition include:

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

Good succinct answer. 2 marks.

*** End of Assessment ***

41 out of 50