



**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E**

**SINGAPORE**

This is the **summative (formal) assessment** for **Module 8E** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 8E.** In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

## **INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment8E]**. An example would be something along the following lines: 202122-336.assessment8E. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

## **ANSWER ALL THE QUESTIONS**

### **QUESTION 1 (multiple-choice questions) [10 marks in total] 10 marks**

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

#### **Question 1.1**

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

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

#### **Question 1.2**

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

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

#### **Question 1.3**

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

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

#### Question 1.4

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

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

#### Question 1.5

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

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

#### Question 1.6

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

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

#### Question 1.7

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

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

### Question 1.8

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

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

### Question 1.9

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

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

### Question 1.10

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

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

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

### Question 2.1 [maximum 4 marks]

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

Sun Electric Power considered Section 125(2) of the Insolvency, Restructuring and Dissolution Act (the IRDA). Under 125(2)(c) one of the tests for eligibility for a winding up is where 'it is proved to the satisfaction of the Court that the company is unable to pay its debts and in determining whether a company is unable to pay its debts the court must take into account the contingent and prospective liabilities of the company'. In *Sun Electric Power* the Singaporean Court of Appeal held that the cash flow test is the relevant test for determining whether section 125(2)(c) applies.

It went on to elaborate 8 factors which should be considered when examining this test. This list is not exhaustive. These are:

1. the amount of all debts due or due in the reasonably near future;
2. whether these debts are being demanded or are likely to be demanded;
3. whether there has been a failure to pay on any of these debts, in what amount and for how long they have been outstanding;
4. the period that has occurred since the start of the winding up proceedings;
5. the value of any company assets that are able to be sold in the reasonably near future;
6. the state of the business of the company to allow for an estimation of likely surplus cash flow to meet the debts
7. any other likely income which the company may receive in the reasonably near future; and
8. any prospect of a consensual agreement with any person which may result in borrowings able to make up any shortfall where such borrowings would have a later repayment than the outstanding debts.

**Balance sheet? 3 marks.**

### **Question 2.2 [maximum 2 marks]**

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

Four aspects added by the IRDA include:

1. minimum standards and qualifications, the conditions for grant of an renewal of license and the supervisory framework for IPs
2. the IRDA brought in a prohibition on ipso facto clauses
3. new wrongful trading liability for company directors
4. the ability for the court to terminate a winding up process for a company

**2 marks**

### **Question 2.3 [maximum 4 marks]**

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

A voluntary arrangement (VA) is an alternative to formal bankruptcy for individuals. The statutory footing for a VA is section 276(1) of IRDA

This is an arrangement made between a debtor and his creditors to create a plan for the satisfaction of the debts. A nominee oversees this plan. The nominee must be a licensed IP.

As a part of a VA the court may give an interim moratorium order under which, in the case of an individual:

- no one can proceed with a bankruptcy action against the debtor; and
- no other sort of proceeding or execution may be commenced or continued against the debtor unless leave of court has been obtained;

in the case of a firm:

- no bankruptcy application or order can be made against the firm, and excepting with leave, any partner of the firm, and

- no other proceeding, execution or alternative legal process may be started or continued against the firm or, unless leave has been granted to do so, any partner of the firm.

Where an interim moratorium order has been granted, the nominee must report to the court and state whether in his opinion a creditors meeting should be held. If one is required in the opinion of the nominee, the nominee must propose the time and location of the meeting. The nominee will be responsible for summoning the meeting.

The creditors meeting will then approve by special resolution the terms of the VA which will bind all creditors with notice of the meeting.

In the event that the bankrupt fails to comply with the VA then any creditor is entitled to proceed with a bankruptcy application.

**4 marks**

### **QUESTION 3 (essay-type questions) [15 marks in total]**

#### **Question 3.1 [maximum 8 marks]**

Write a brief essay in which you discuss some of the claims that a liquidator or judicial manager can bring and how the IRDA has enhanced their ability to do so.

The general powers of a liquidator are set out in s. 144 IRDA which may be exercised with the leave of court or a committee of inspection.

The liquidator or judicial manager will seek to maximise the asset pool for distribution as a part of their role. As such they have powers to look at previous transactions and behaviour with a view to undoing the transactions or making others liable for the losses incurred by behaviour.

A liquidator or judicial manager may apply to court to seek a claw back of assets where the transaction in which the assets were disposed of was whether it was an unfair or undue preference to someone else or the asset was transferred at an undervalue.

Unfair preference

For an unfair preference to be established it must be demonstrated to the court that four factors were present:

1. the party which benefited from the preference is a creditor of or guarantor of the debts of the insolvent company;
2. the company was already insolvent or because insolvent as a result of the suspect transaction;
3. the company has done something that puts the other party in a better position that that party would have been if the insolvent company had not done it
4. the company was influenced by a desire to prefer the party who benefitted. There is a presumption that there was a desire to prefer if that other party is an associate of the company.

The liquidator or judicial manager may look back for two years from the date of the winding up application or judicial management application where the transaction took place with an associate. If the transaction took place with a counterparty other than an associate then the look back period is only one year.

## Transaction at an undervalue

For an unfair preference to be established it must be demonstrated to the court that two factors were present:

1. the company subject to the process either gives something to a recipient or the recipient pays significantly less than the true value for an asset of the company; and
2. the company was or became insolvent as a result of the gift or disposal.

In relation to 1, there is a presumption that it is done at an undervalue where the counterparty is an associate of the company. The relevant period in which an liquidator or judicial manager can look back to examine transaction for undervalue is three years for all transactions.

As well as these reversible transactions liquidators and judicial managers will also review all the secured transactions to ensure that all security was properly taken and properly registered. If not then they will challenge it.

Similarly they will look to ensure all claims submitted are substantiable by reviewing the company records. They will challenge any claims that they consider to be unenforceable.

They may also find grounds for a fraudulent trading claim against the directors. This is a new provision introduced under IRDA section 239. The court can impose a personal liability for company debts where a person

- knew the company was wrongfully trading; or
- an officer of the company approved company debts when he ought to have known in all the circumstances that the company was trading wrongfully.

A company wrongfully trades where, it is insolvent or becomes insolvent as a result and it incurs debts or other liability where there is no reasonable prospect of the liability being repaid. **How is provision different from insolvent trading?**

In the event of a successful wrongful trading declaration from the court the person who was responsible is personally liable to meet the debts or liability of the company. That in turn increases the assets available for distribution by the liquidator or judicial manager.

IRDA has also changed the accrual of interest for secured creditors thereby increasing the available pool. Section 223(1) and 223(2) influence the accrual of interest. In an insolvency winding up a secured creditor is not entitled to charge interest on its debt if the security is not realised within 12 months. IN the case of a judicial management and the security holder has obtained the consent of the court or judicial manager to enforce the security, the secured party is not entitled to interest on the debt if the security is not enforced within 12 months of the consent. **Not so relevant here**

**How about third party funding? 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.

Firstly it must be established that the company is eligible for judicial management ('JM') (IRDA s. 88). This would apply to all Singaporean companies and also to foreign debtors who can show a substantial connection to Singapore. Facts relevant to determining a foreign entities connection to Singapore include:



1. the centre of main interests for the debtor being in Singapore
2. the carrying on of business in Singapore
3. a registration as a foreign company in Singapore
4. the presence of significant assets in Singapore
5. the use of Singapore law as governing law in a debt transaction or in the law to determine disputes in relation to a loan
6. the submission to the Singapore courts for resolutions of loan related disputes

As framed in the question, a judicial management application can be brought by:

- an application to court, or
- a creditor resolution.

### **A court application:**

A company or a creditor may apply to court by a court application with an affidavit setting out the grounds. The applicant must nominate a judicial manager albeit the court has the right to appoint another manager. The judicial manager is the person to whom the activities and functions of the directors are moved. They also have the powers set out in Schedule One of the IRDA.

An application for judicial management may only be made where the applicant considers and the court agrees that:

- the company is presently or will become unable to meet its debts as they fall due; and
- there is a reasonable prospect of rehabilitating the company, preserving some or all of it as a going concern or otherwise that the interests of the creditors would be better served in a judicial management than in a winding up (i.e. their return is likely to be higher), section 9(1) IRDA.

Even where the s.91 tests are met the court has the ability to refuse to appoint a judicial manager considering factors such as the interests of the creditors, any opposition to JM, the prospects of success and the better suitability of other options such as winding up. The court must dismiss a JM application where there is a floating charge in place which opposes a JM order and the court believes that the prejudice to the floating charge holder outweighs the prejudice to the unsecured creditors if a JM order was granted.

A court will also not make a judicial management order with respect to a company that is already in liquidation or where it is one of the entities specified in IRDA s. 91(8).

### **A creditors resolution:**

The requirements for judicial management for a creditors resolution method are similar to the court ordered appointment but the JM is commenced through a resolution by the majority in value of the company's creditors by value and by number present.

When JM is commenced by this route an interim judicial manager must be appointed prior to the creditor vote by shareholder resolution or board resolution.

A company cannot be put into JM where there is a pending or being considered application to the court under a court appointed route.

### **Interim moratorium ('IM'):**

The commencement of IM differs depending on which of the two routes you use. Where a court order is used the IM starts from the time when the court grants the JM order. Where it

is a creditors resolution method, the IM starts from the time the notice of appointment of a judicial manager is entered at the Official Receiver and ACRA.

From the commencement of JM the JM process is the same irrespective of which of the two commencement routes are used. **Misses the point.**

**Lack of detail on the procedure of voluntary JM and also comparison with court JM not quite covered correctly. 2.5 marks.**

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

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

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

The Angostura Group has two key Singapore incorporated subsidiaries:

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

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

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

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

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

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

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

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

**Question 4.1 [maximum 6 marks]**

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

**Question 4.1.1 (2 marks)**

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

The court must be satisfied that the entity is Singaporean or has sufficient connection with Singapore (please see above for 3.2 answer for the indicative factors).

An application for a 64(1) moratorium can only be made where the company proposes a compromise between the company and its creditors or a class of them. The company must demonstrate:

- The company is not subject to a winding up order and no resolution has been made for a winding up;
- The company will as soon as reasonably practicable make an application for a scheme of arrangement to effect the compromise; and
- No application has been made under Section 210(10) of the Companies Act giving rise to a moratorium.

When applying the company must provide to the court:

- Sufficient evidence of the support from the company's creditors to the proposals;
- If no scheme documentation has been agreed, a description of the proposed debt compromise which is comprehensive enough for the court to establish that the proposals have merit and are implementable;
- A list of all the company's secured creditors and its large unsecured creditors.

When considering the application the court may order the company to provide it with such further information as it requires to ascertain the suitability of the Section 64 process.

The details of any application must be published in the Gazette and at least one English language newspaper in Singapore and also sent to its creditors.

If the application is successful then the court will automatically grant a moratorium of 30 days or such other period as it considers applicable.

**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 deals with 'related companies' to a company that has successfully obtained a section 64 moratorium, being subsidiaries, holding companies or ultimate holding companies of the moratorium granted company.

The related company may only make a s 65 (1) application where:

- No winding up order is in force against it;
- The s. 64(1) order is in force in relation to the group company;
- The related company has an integral role in the group of companies and the proposed scheme such that the proposed scheme for the group company under s. 64(1) would be compromised without the 65(1) moratorium;
- The court is satisfied that the moratorium will not unfairly prejudice the creditors of the applicant related company.

The details of any application must be published in the Gazette and at least one English language newspaper in Singapore and also sent to its creditors.

If the application is successful then the court will automatically grant a moratorium of 30 days or such other period as it considers applicable.

**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?

The moratorium under s. 64 is expressed to have extra territorial effect in that 64 (4) (b) provides that the court order may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the court, whether the fact takes place in Singapore or elsewhere.

In practice this means that the moratorium will apply to any party over whom the Singapore courts have jurisdiction and in any place where the courts of that place recognise the extra territorial effect of the moratorium. This is the same situation as stays issued under the US Bankruptcy Act.

Clearly any moratorium will be effective in Singapore. But it will not be effective in places and against counterparties which do not recognise the extra territorial effect of S. 64. For example

it is very unlikely that the Indonesian courts would give effect to any s. 64 moratorium in Indonesia as they are generally nationalistic in their approach. As to counterparties, this will depend on whether the counterparty has general business in Singapore and therefore is generally subject to the jurisdiction of the Singapore courts. Where a counterparty breaches a moratorium outside of Singapore but has established business in Singapore that Singapore business may be disrupted if a contempt judgement is obtained against the counterparty. This is the basis on which the US extends its Bankruptcy Act moratoriums worldwide; fear of the effect of sanction for breach on the counterparty's ability to use the US Dollar and do business in the USA.

**What acts are enjoined? Enforcement of security? 1 mark.**

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

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

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

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

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

#### **Question 4.2.1 [maximum 5 marks]**

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

There is no conversion mechanism to convert from a s. 64 moratorium discussed above to a scheme of arrangement.

The company, its creditors, its shareholders, its liquidator or its judicial manager has standing to apply to court for a scheme of arrangement. The application must disclose all relevant information and its creditors by class. **Application to convene scheme meeting.**

The company will usually then appoint a scheme manager whose role is to adjudicate on proofs of debts, chair the scheme meetings and usually also supervise the implementation of the scheme.

The company must then call a scheme meeting for its creditors who must vote on the proposal by class. At least 50% of the creditors or class of creditors present and voting must vote in favour and those creditors must represent 75% of the value of the debt claims. After this the court will decide whether to approve the scheme or not. The court must be satisfied that:

- The legal requirements for the scheme have been met;
- The creditors who voted were representative of the class in which they voted;
- There was no coercion of minorities by majorities;
- The scheme is one which an honest intelligent man possessed of business acumen acting in his own interest would approve.

The court also has a cram down power on dissenting classes and approve a scheme notwithstanding the dissent where:

- A majority in number of creditors present at the scheme meeting voted in favour of the scheme
- Those creditors equaled or exceeded 75% of the overall debt claims; and
- The court is satisfied that the scheme is fair and equitable to the dissenting classes and does not discriminate unfairly between classes.

A pre-pack under 71(1) differs to a scheme because no meeting of creditors is required to approve it. The court may approve it where:

- Notices of the scheme and company were given to each creditor and files with the ACRA and advertised in the Gazette and at least one English language Singaporean newspaper; and
- The court is satisfied that the scheme would have been approved had a scheme meeting and vote been held on the proposed scheme.

**Detailed answer. 4 marks. Could have been clearer on application to convene scheme meeting.**

**Question 4.2.2 [maximum 2 marks]**

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

The court, upon application by the debtor company, make an order of rescues financing where a company is in judicial management or is proposing a scheme of arrangement, may make an order that that new financing will:

- Be treated as a part of the costs and expenses of any future winding up of the company;
- Enjoy priority over preferential debts in a future winding up;
- Be secured on assets of the debtor which are free from security, or be secured on assets on which there is existing security with the new security to be subordinate to the existing security if there would otherwise be no available rescue financing; or
- Be given the same or a higher ranking of security over assets on which there is existing security if, otherwise the debtor would not be able to obtain rescues financing from any lender without such security and provided that the interests of the existing secured creditors are adequately protected.

**But what requirements must be met? 0 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. A foreign representative under a foreign insolvency proceeding may apply to the Singapore court for recognition. There is no requirement for reciprocity of recognition in the state from which the application is made. In its adoption Singapore allows for a refusal of recognition where the recognition would be contrary to public policy (as opposed to manifestly contrary). This difference was examined by the Singapore courts in the *Re Zetta Jet Pte* case in 2018 which affirmed there is a distinction in Singapore from the Model Law because of the omission of the word 'manifestly' from the Singaporean legislation.

**Please elaborate also what is effect of recognition. 0.5 mark.**

**\* End of Assessment \***

**36 out of 50**