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**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: **[studentnumber.assessment8E]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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 **8 pages**.

**ANSWER ALL THE QUESTIONS**

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

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 objectives of the IRDA?

1. To establish a regulatory regime for insolvency practitioners.
2. To introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws.
3. Adoption of the UNCITRAL Model Law on Cross-Border Insolvency.
4. To enhance Singapore’s insolvency and restructuring laws .

**Question 1.2**

Who may apply to court to stay or terminate the winding up of a Company?

1. A creditor.
2. A contributory.
3. The liquidator.
4. Any of the above.

**Question 1.3**

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

1. The debtor has chosen Singapore law as the law governing a loan or other transaction.
2. The centre of main interests of the debtor is located in Singapore.
3. The debtor has substantial assets in Singapore.
4. 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?

1. Over 50% in number.
2. 50% or more in number.
3. Over 75% in number.
4. 75% or more in number.

**Question 1.5**

Which of the following in respect of the automatic moratorium under Section 64(1) of the IRDA **is incorrect**?

1. The automatic moratorium lasts for 30 days.
2. The automatic moratorium may be extended.
3. The automatic moratorium can be obtained without filing an application to Court.
4. The debtor has to either propose or intend to propose a scheme of arrangement.

**Question 1.6**

Which of the following **does not** lead to the discharge of a judicial management order?

1. A receiver is appointed over the assets of the company.
2. The creditors decline to approve the judicial manager’s proposals.
3. The judicial manager is of the view that the purposes specified in the judicial management order cannot be achieved.
4. The judicial manager has acted or will act in a manner that would be unfairly prejudicial to the interests of creditors or members of the company.

**Question 1.7**

Which of the following **is one of the three** aims of a judicial management?

1. To allow the directors to oversee the restructuring of the company.
2. Preserving all or part of the company’s business as a going concern.
3. As a means for the secured creditors to realise their security.
4. To liquidate the company in a fast-track and cost-efficient manner.

**Question 1.8**

Which one of the following **is not** a corporate rescue mechanism in Singapore?:

1. Informal creditor workouts.
2. Judicial Management.
3. Receivership.
4. Scheme of arrangement.

**Question 1.9**

Which one of the following countries **is not** one of the jurisdictions that Singapore has modelled its insolvency laws on?

1. England and Wales.
2. Brunei.
3. The USA.
4. Australia.

**Question 1.10**

Which one of the following points regarding the landmark decision of *Re Zetta Jet Pte Ltd* is **not correct**?

1. The High Court did not grant full recognition of the US Chapter 7 proceedings.
2. The US bankruptcy proceedings continued in breach of the Singapore injunction.
3. This is the first reported decision where a Singapore court has been faced with the question of public policy in an application for recognition of a foreign insolvency proceeding.
4. The Court held that the omission of the word “manifestly” from Article 6 of the Singapore Model Law meant that the standard of exclusion on public policy grounds was higher than in jurisdictions where the Model Law had been enacted unmodified.

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

**Question 2.1 [maximum 4 marks]**

Explain the elements of **two** types of impeachable transactions under Singapore insolvency law and what defences there may be to the two you have identified.

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

What is the objective and significance of the JIN Guidelines?

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

How can a bankrupt obtain

1. an annulment; and
2. a discharge

of his bankruptcy under the Singapore IRDA?

[Type your answer here]

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

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

Write a brief essay on

1. the restrictions on *ipso facto* clauses; and
2. wrongful trading

under the Singapore IRDA.

[Type your answer here]

**Question 3.2 [maximum 7 marks]**

Write a brief essay in which you discuss the differences between a judicial management and liquidation.

[Type your answer here]

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

Paladin Energy Corporation Ltd (PEC) is a Cayman-incorporated company listed on the Singapore stock exchange. PEC was formed to become the dominant market player in all aspects of energy in South East Asia and China. Its primary lines of business are:

* oil and gas exploration and production with assets and fields in Malaysia, Thailand and Cambodia;
* Renewable energy, specifically solar and wind, with projects in Malaysia, Vietnam and the United States; and
* Water and waste to energy with plants in Singapore and China.

PEC has three wholly-owned Singapore incorporated subsidiaries that run each of the three lines of business:

* PEC Oil and Gas Pte Ltd;
* PEC Renewables Pte Ltd; and
* PEC WWE Pte Ltd.

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

PEC had traditionally funded its business via bank lending, with project financing facilities advanced directly to a combination of the three Singapore subsidiaries referenced above and directly to the underlying project companies. As at 2016, the group had raised SGD 2 billion in bank lending, all of which was guaranteed by PEC.

In 2018, PEC wanted to take advantage of an opportunity to expand their water and waste to energy business and raised an additional SGD 1 billion in retail bonds for working capital purposes. Water (and energy needs in general) is of strategic importance to Singapore given its geographical position and many retail investors took up the bond issue. The retail bonds were stated to be specifically subordinated to all other debt of the PEC group.

PEC traded positively throughout 2018 and 2019. However, in late 2019 it started informing some of its bank lenders that they may require waivers on certain terms in the loan and potentially further time to repay certain amounts owing. In early 2020, PEC appointed legal and financial advisors to provide it with advice as to the best steps to take. Shortly thereafter, PEC announced that it had filed for protection under section 211B of the Companies (Amendment) Act 2017. Further to this, PEC Oil and Gas Pte Ltd, PEC Renewables Pte Ltd and PEC WWE Pte Ltd filed for protection under section 211C of the Companies (Amendment) Act 2017.

Into the first six (6) months’ extension of the moratorium, the bank lenders decide that they have lost their patience and no longer have confidence in PEC’s management. They have therefore decided to apply to court to place PEC under judicial management.

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

**Question 4.1 [maximum 7 marks]**

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

* Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order; **(2 marks)**
* Assuming that PEC is placed under judicial management, what requirements must be satisfied in order for PEC to be able to access rescue financing under the IRDA?; **(2 marks)**
* What are the steps that need to be taken in order to place PEC’s subsidiaries under judicial management out of court? **(3 marks)**

[Type your answer here]

**Question 4.2 [maximum 8 marks in total]**

As things transpired, PEC was placed under judicial management. Private equity funds are actively talking to PEC’s Judicial Managers in order to determine whether or not they might make an investment in PEC, or acquire its assets. One particular private equity fund, Forty Thieves Capital, is particularly interested in acquiring debt relating to the various projects across the oil and gas, renewables and water lines of business with a view to either enforcing over the security of the assets to realise value, or to see if a loan-to-own-type structure can be successfully implemented. Ideally, they would like to do this outside of the judicial management proceedings.

To try and protect against this risk, PEC has commenced local insolvency proceedings in Malaysia, China and the United States to seek protection for the companies that own assets in each of those jurisdictions.

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

**Question 4.2.1 [maximum 4 marks]**

Do the judicial management moratoria obtained by PEC and its subsidiaries have extra-territorial effect such that assets owned by the group in jurisdictions outside of Singapore will also be protected?

[Type your answer here]

**Question 4.2.2 [maximum 4 marks]**

What cross-border insolvency laws are available in Singapore to recognise foreign insolvency proceedings? Explain the general 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]

**\* End of Assessment \***