
# 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**.

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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**

Commented [DB1]: 32/50

**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?

(a) To establish a regulatory regime for insolvency practitioners.

(b) To introduce a new omnibus legislation that consolidates the personal and corporate insolvency and restructuring laws.

(c) Adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

(d) 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?

(a) A creditor.

(b) A contributory.

(c) The liquidator.

(d) Any of the above.

**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 centre of main interests of the debtor is located in Singapore.

(c) The debtor has substantial assets 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 number.

(b) 50% or more in number.

(c) Over 75% in number.

(d) 75% or more in number.

Answer is A

**Question 1.5**

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

(a) The automatic moratorium lasts for 30 days.

(b) The automatic moratorium may be extended.

(c) The automatic moratorium can be obtained without filing an application to Court.

(d) 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?

(a) A receiver is appointed over the assets of the company.

(b) The creditors decline to approve the judicial manager's proposals.

(c) The judicial manager is of the view that the purposes specified in the judicial management order cannot be achieved.

(d) 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?

(a) To allow the directors to oversee the restructuring of the company.

(b) Preserving all or part of the company's business as a going concern.

(c) As a means for the secured creditors to realise their security.

(d) 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?:

(a) Informal creditor workouts.

(b) Judicial Management.

(c) Receivership.

(d) Scheme of arrangement.

Answer is C

**Question 1.9**

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

(a) England and Wales.

(b) Brunei.

(c) The USA.

(d) Australia.

**Question 1.10**

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

(a) The High Court did not grant full recognition of the US Chapter 7 proceedings.

(b) The US bankruptcy proceedings continued in breach of the Singapore injunction.

(c) 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.

(d) 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.

**8 marks**

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

Commented [DB2]: 8.5/10

**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.

[Under Singapore Insolvency Law, the two types of impeachable transactions are
a) Undervalue Transactions , and
b) Unfair preferences

In case of undervalue transactions, it is the scenario where an individual is adjudged bankrupt and has within the relevant period entered into a transaction which will constitute a transaction at an undervalue if:

(a) the bankrupt makes a gift or otherwise enters into a transaction for no consideration;

(b) the bankrupt enters into a transaction where the consideration is marriage; or

(c) the bankrupt enters into a transaction for consideration which is significantly less, in money's worth, of the consideration originally provided by the bankrupt.

The relevant period for transactions at an undervalue is a period of three years preceding the date the bankruptcy application was made or the date upon which the bankruptcy order was made. In either case the three-year period ends on the day of the making of the bankruptcy order.

A transaction will be an unfair preference if:

a) the other person is one of the bankrupt's creditors or a surety or guarantor;

b) the bankrupt has anything which has the effect of putting the person into a better position than they would otherwise have been upon the bankrupt's bankruptcy; and

c) in giving the preference the bankrupt must be influenced by a desire to prefer the other party such they would be in a better position on bankruptcy.

The relevant period for an unfair preference, which is not a transaction at an undervalue and which is given to an associate, is two years preceding either the date of the application was made or the date the bankruptcy order was made, in either case ending on the day the bankruptcy order was made.

In the case of an unfair preference which is not a transaction at an undervalue, the relevant period is one year preceding either the date of making the bankruptcy application or the date the bankruptcy was made.

A defence to the above is where an individual has acquired an interest in the bankrupt person's property from a person other than the bankrupt, or has received a benefit or their preference from the transaction, if the same was done in good faith and for value, the transaction will stand. Such a transaction or benefit will not be in good faith if the individual had notice of the surrounding circumstances and the relevant proceedings, or was an associate of the bankrupt, or was connected with the individual with whom has entered into the transaction.]

One element will be the transaction resulting in the debtor becoming insolvent or the debtor was insolvent during the time of the transaction. **3.5 marks.**

**Question 2.2 [maximum 2 marks]**

What is the objective and significance of the JIN Guidelines?

[The JIN (Judicial Insolvency Network) guidelines address key aspects and the modalities for communication and cooperation amongst Courts, Insolvency Representative and other parties involved in the Cross Border Insolvency proceedings including the conduct of joint hearings. The overarching claim of the guidelines is the preservation of the enterprise value and reduction of legal costs. A good roadmap is provided showing how courts can and should communicate]

What is the significance? **1 mark**

**Question 2.3 [maximum 4 marks]**

How can a bankrupt obtain

(i) an annulment; and

(ii) a discharge

of his bankruptcy under the Singapore IRDA?

[Under Singapore IRDA Legislation, the provisions provide for a Court to annul a bankruptcy if:-

(a) the order ought not to have been made on grounds existing at the time;

(b) debts and expenses of the bankruptcy have been paid or secured to the satisfaction of the Court;

(c ) distribution of the estate will take place in Malaysia or the majority of creditors are residents in Malaysia and the distribution ought to happen there.

The application for annulment must be made within 12 months of the bankruptcy order being made, unless leave is given for the application to be made later.

Whereas in a Discharge by Court, the Official Assignee, the bankrupt or any other person having an interest may apply to the Court for an order of discharge any time after the bankruptcy order is made. Upon the application being made, the Court will hear any creditor before making an order for discharge. Upon application the Court may refuse to discharge; make an order discharging the bankruptcy absolutely; or make an order discharging on conditions as it thinks fit, including conditions with respect to future income or property. The Official Assignee may, in his discretion, issue a certificate of discharge in certain circumstances.]

**4 marks**

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

Commented [DB3]: 8/15

**Question 3.1 [maximum 8 marks]**

Write a brief essay on

(i) the restrictions on *ipso facto* clauses; and

(ii) wrongful trading

under the Singapore IRDA.

[Restrictions on *ipso facto* clauses
Considering the Insolvency context, an *ipso facto* clause is a provision in the contract that allows one party to terminate or modify the operation of the contract, or provides for this to occur automatically by reference to the counterparty's insolvency. The exercise of such contractual termination clauses can make it difficult for companies to be restructured or rescued within a formal insolvency regime. Why so? Accordingly, many insolvency regimes seek to restrict the operation of *ipso facto* clauses.

Earlier under Singapore law, there are no restrictions on the exercise/application of *ipso facto* clauses upon the formal insolvency of a Singapore company. The IRD Act 2018 introduced a new provision restricting the operation of *ipso facto* clauses in certain circumstances. These provisions in Singapore Law is based on the corresponding provisions in Canadian insolvency legislation.

In Singapore, provisions of section 440 of the IRD Act 2018 restrict the enforcement of *ipso facto* clauses once any of the proceedings relating to any applications under judicial management or a scheme of arrangement involving the supercharged scheme process are commenced by a company.

However, certain contracts is expressly excluded from the restrictions. These restrictions as provided by the provisions of Section 440(5) include to cover contracts such as
i) any prescribed eligible financial contract,
ii) any contract that is a license, permit or approval issued by the government or a statutory body,
iii) Any contract that is likely to affect the national interest, or economic interest of Singapore, as may be prescribed
iv) any commercial charter of a ship;
v) any agreement within the meaning of the Convention as defined in Section 2(1) of the International Interests in Aircraft Equipment Act, and lastly
vi) any agreement that is the subject of a prescribed treaty to which Singapore is a party.

Although contracts will remain in force, counter parties are not required to continue advancing funds or credit to an insolvent company. The provisions of Section 440 does not prevent the termination of contracts other than the ipso facto clause.

Finally, the provisions of section 440(4) provide the Singapore courts with an overriding power to rule on the applicability of the restrictions and their extent if the applicant can demonstrate that it will suffer significant financial hardship as a result.

From the above, it is seen that it may no longer be possible to rely on *ipso facto* clauses to terminate a contract with an insolvent company. It may also allow companies to continue key contracts and provide a measure of relief in restructuring efforts

Wrongful Trading
Wrongful trading is defined as the incurrence of debt or other liabilities without a reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of such debt

As per the provisions relating to wrongful trading, the court is empowered to make a declaration that any person who had knowledge and was a party to the company trading wrongfully, is personally responsible for the debts or liabilities of the company. A company or

any person who is party to, or interested in becoming party to, the carrying on of business with a company, may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading. A company is considered to trade wrongfully if the company incurs debt or liabilities without reasonable prospect of meeting them in full when the company is insolvent, or becomes insolvent as a result of the incurrence of such debt or liability.

Section 239 of the IRD Act 2018 introduces the new concept of wrongful trading, which imposes personal liability for the company's debts on a person if:

(a) they 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.

This particular provision is adapted from the English insolvency legislation and does not require criminal liability before taking effect.] How is this different from insolvent trading?

Decent effort. However the wrongful trading section could have more analysis and commentary. **5 marks.**

**Question 3.2 [maximum 7 marks]**

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

[There are various rescue tools as per Singapore Insolvency Law. Judicial Management is one of them. Judicial management entails the appointment of an insolvency practitioner as the judicial manager, which appointment is made by the court. The judicial manager replaces the company's directors and management and takes over responsibility for the running of the company.

On the court granting an order for judicial management, the judicial manager, an independent insolvency practitioner, will take control of the business and property ofthe company for a period of 180 days, subject to any further extensions granted by the court. Upon the appointment of a judicial manager by the Court, the powers of the company's directors cease and the judicial manager takes over the affairs, business and property of the company.

A judicial management application may be brought by:

(a) the company (pursuant to a members' resolution);

(b) its directors (pursuant to a board resolution); or

(c) its creditors (including contingent and prospective creditors), either together orseparately.

An application for judicial management should only be made where a company, or where a creditor or creditors of the company, consider that:

(a) the company is or will be unable to pay its debts; and

(b) there is a reasonable probability of rehabilitating the company, or of

preservingall or part of its business as a going concern, or that otherwise the interests of creditors would be better served than by resorting to a winding-up.

In a judicial management process, the Creditors play a limited role in the management and direction of the company. Creditors generally form a creditors committee. A meeting of creditors is summoned to consider the judicial manager's proposals and such proposals have been approved. Where the committee of creditors is dissatisfied with the extent or the nature of information being furnished to it by the judicial manager, it can apply to the Court and the Court, if satisfied about the representations, may give such appropriate directions to the judicial manager as it considers appropriate. A judicial management process is basically a rescue process

Whereas in a liquidation, the Companies Act is the main legislation as applicable to liquidation of and winding-up ofcompanies as well as re-organisations in Singapore. The objective of liquidation in Singapore is to ensure a fair and orderly distribution of the company's assets among creditors and contributories and to terminate the existence of the company by its eventual dissolution. The winding-up or liquidation ofa company may be either voluntary or ordered by the Court. The three modes of winding-up are:

(a) members' voluntary liquidation (MVL);

(b) creditors' voluntary liquidation (CVL); or

(c) compulsory liquidation (CL).

In a Members' Voluntary Liquidation, it is only available if a company is solvent. In addition to a members' resolution for winding-up, if the directors are of the opinionthat the company is solvent, directors must provide a declaration of solvency in accordance with section 293 of the Companies Act, stating that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up. If these conditions are satisfied, the winding-up will proceed as a members' voluntary winding-up.

In a creditors' voluntary liquidation, where a company is unable to pay its debts and directors are unable to provide the declaration of solvency accordingly, the company may be voluntarily wound up by way of a creditors' voluntary winding-up.

Whereas in a compulsory winding up , it is initiated by making an application to thecourt to wind up the company on specific grounds, including that the company is unable to pay its debts. If an inability to pay debts is shown, or other grounds are established, the court will usually:

i) make a winding-up order; and

ii) appoint a liquidator as nominated by the petitioning creditor.

In a liquidation process, there is no focus on rehabilitating the company or maintaining the going concern process, it is more of a termination of the Company's existence and dissolution of the same. The assets are distributed among the creditors. It may either be voluntary or by the court. In a judicial management process, the Court has to be involved and it is an insolvency process.] How about out of court judicial management?

You have just listed the elements of each process without doing any proper compare and contrast. This does not really answer the question. **3 marks.**

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

Commented [DB4]: 7.5/15

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)**

[Confirmation of the purpose of judicial management proceedings and what must be presented to the court in order to obtain a judicial management order

Under Singapore Insolvency Laws, the purpose of Judicial management process is designed to allow the rehabilitation of a financially distressed company, in this case PEC, or to realise its assets in a more advantageous way than if the company were to be liquidated.

For the Court to make a judicial management order, the Court should be:

(a) satisfied that PEC is or will be unable to pay its debts;

(b) consider that the making of the order would be likely to achieve one or more ofthe following purposes, namely:

(i) the survival of PEC, or the whole or part of its undertaking as a going concern;

(ii) the approval under section 210 of the Companies Act of a compromise or arrangement between PEC and the Bank Lenders/creditors or any such persons as are mentionedin that section; or

(iii) the more advantageous realisation of PEC's assets than would occur in a winding-up.

A decent summary of the key features. **1 Mark.**

Coming to the Second point,
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
Rescue Financing under the Singapore Insolvency Legislation have been largely inspired from the provisions of Section 364 of the US Bankruptcy Code. These provisions were introduced by the Amendments in the 2017 Amendment Act, before being subsumed into the IRD Act 2018.
Rescue financing is financing that is either or both:

(a) necessary for the survival of a debtor that obtains the financing;

(b) necessary to achieve a more advantageous realisation of the assets of a debtorthat obtains the financing, than on a winding-up of that debtor.

Under judicial management, a Singapore Court may, on application by PEC, make an order that any rescue financing obtained by PEC will:

(a) be treated as part of the costs and expenses of the winding-up if the debtor is later wound up;

(b) enjoy priority over preferential debts if the debtor is later wound up;

(c) be secured by a security interest on property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property of the debtor; or

(d) be secured by a security interest on property subject to an existing security interest, of the same or a higher priority than the existing security interest, .

Some furether explanation as to the different levels of priority and what must be estabiiushed for each, include the concept of adequate protection, would have enhanced the answer. **1 Mark.**

What are the steps that need to be taken in order to place PEC's subsidiaries under judicial management out of court

Under the Singapore Insolvency Legislation, there are no specific provisions dealing with groups of companies, Prior to 30 July 2020, a Subsidiary could apply for such an order under section 211C of the Companies Act (as in force immediately before that date) and now under section 65 the Court can grant moratorium orders relating to subsidiaries or related companies which play a necessary and integral role in the compromise or arrangement to be proposed by the company under the section 64 moratorium.

PEC's Application for Moratorium is to be filed by way of an *ex parte* originating summons together with a supporting affidavit. PEC is to ensure that it satisfies the definition of "company" in section 63(3) of the IRDA and that all applicable conditions and requirements under section 64 of the IRDA are satisfied.

As with PEC's Application for Moratorium, the subsidiaries' Application for Moratorium is to be filed by way of an *ex parte* originating summons together with a supporting affidavit. The subsidiaries are to ensure that it satisfies the definition of "company" in section 63(3) of the IRDA and that all applicable conditions and requirements under section 65 of the IRDA are satisfied.

From above it is clear that for the subsidiaries to have the moratorium extended to it, the same can be done if it can be established that that:
(1) the Subsidiaries play a necessary and integral role in the compromise or arrangement;
(2) the compromise or arrangement will be frustrated if the moratorium is not extended to the Subsidiaries ; and
(3) the creditors of the Subsidiaries will not be unfairly prejudiced by the extension of the moratorium to the Subsidiaries..

By way of a creditors' resolution instead of by way of a court order, PEC's subsidiaries can be placed under the judicial management, by obtaining the approval of a majority of its creditors in number and value present and voting at a creditors' meeting convened to consider a resolution to place it under judicial management.]

The majority of the answer focuses on section 65 which is not relevant to judicial management. Well done for identifying the creditor resolution path for JM. **1.5 Marks.**

**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?

[Section 64 of the IRD Act 2018, as first introduced by section 211 of the Companies (Amendment) Act 2017, introduces a debtor-in-possession restructuring regime which has the following as one of the key features i.e moratoria having extra territorial effect.
The same was adopted from the features of the United States Bankruptcy Code , basically Chapter 11 in which automatic moratorium from the date an application is made plus the capacity for a pre-application moratorium and a moratorium in relation to related entities of the debtor company, in each case with extra-territorial effect. The Singapore Courts may now grant a moratorium extending to creditor actions outside of Singapore if the creditor is in Singapore or within the jurisdiction of the Singapore courts. This amendment leverages upon Singapore's position as one of the key financial centres in Asia: as many banks and financial institutions have a presence or branch in Singapore, they will be subject to the in personam jurisdiction of the Court. If, therefore, these banks and financial institutions (as creditors of the debtor company) act in breach of the moratorium by bringing action(s) or proceedings(s) against the debtor company overseas, they can be held in contempt of the Court. This is what gives the moratorium its extraterritorial effect.
From the above it is clear that with the judicial management moratoria, PEC and its subsidiaries will have its group assets protected]

This sets out the rationale behind the changes introduced by section 211 (now section 64) but these are different to JM. JM has always been on the statute books and its moratorium cannot extend extra-territorially in the way section 64 is specifically expressed to do so. **2 Marks.**

**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.

[A foreign judgement may be recognised in Singapore or enforced by an action at

Common law through the Singapore courts. Some foreign judgments may have to be registered in Singapore to be enforced.

There are two types of statutory registration regimes.

a) Under the Reciprocal Enforcement of Commonwealth Judgments Act which enables judgments from the United Kingdom and Australia, and certain specified Commonwealth countries to be registered in the Singapore High Court.
b) Secondly under the Reciprocal Enforcement of Foreign Judgments Act, where so far, only Hong Kong SAR has been a country recognised for registration.

Once the judgment is registered, the same may be enforced against in Singapore as if it was a judgment issued from the Singapore High Court without fresh proceedings to be commenced.

A foreign judgment that is recognised potentially has an estoppel effect on a specific issue or on a cause of action. Singapore common law recognises certain foreign judgments if certain conditions are met.

A judgment for a fixed sum of money from a foreign court of law is capable of recognition if it is
(a) final and conclusive by the law of that country; and
(b) where that court had international jurisdiction (as defined by Singapore law) over the parties.

In the landmark decision of *Re Zetta Jet Pte Ltd* the Singapore High Court considered the question of public policy under the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, as adopted by Singapore in the Tenth Schedule to the Companies Act (the SingaporeModel Law). 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 foreigninsolvency proceeding.]

The answer does not address in any detail the Model Law which is now the main path for recognition of foreign processes. The Model Law is entirely different to recognition of judgments. A more detailed analysis of this would have assisted. **2 Marks.**

*** End of Assessment ***