



**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**

Commented [DB1]: 33/50 = 66%

**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]**

**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.

Commented [DB2]: 7.5/10

The two types of impeachable transactions and their elements are as follows: -

1. Unfair preferences: - The transaction will be considered as unfair preferential transaction if an adjusted bankrupt within the relevant period given an unfair preference to any person provided: -

- a) the other person is one of the bankrupt's creditor or a guarantor or a surety
- b) the result of such transaction is putting the person in better position than they otherwise have been upon the bankrupt's bankruptcy.
- c) there is an intention or desire to give preference to such person by the bankrupt so that they would be in better position.

2. Undervalue transactions: - The transaction will be considered as Undervalue transaction if an adjusted bankrupt within the relevant period enters into a transaction with any person at an undervalue provided: -

- a) the transaction is a gift or without consideration or the consideration is significantly less than the monetary value of the asset/property transferred by the bankrupt.
- b) the transaction where the consideration is marriage.

The defence to the above said impeachable transactions are: -

The transaction will not be considered as undervalued or unfair preferential transaction if the other person or recipient of the interest in bankrupt's property and benefit out of such transaction has entered in the transaction in good faith and for value, provided he should not be an associate or connected person to bankrupt.

**Some of the elements are missing as are the clawback periods. 2.5 marks.**

**Question 2.2 [maximum 2 marks]**

What is the objective and significance of the JIN Guidelines?

The objectives of the JIN Guidelines are as follows: -

- a) the identification, preservation, and maximisation of enterprise value and the reduction of legal costs.
- b) the efficient and timely coordination and administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;
- c) minimisation of inconvenience to the parties in Parallel Proceedings.

The importance of these guidelines is that, in Singapore in the matters of cross border insolvency, the JIN guidelines shall be considered in cases involving Parallel Proceedings and where the exchange of information and reliefs requested.

**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?

On application to annul within 12 months of bankruptcy order unless extension is granted, the court may grant annulment if: -

- a) the order ought not to be made on grounds existing at the time,
- b) all the expenses and debts of bankruptcy has been paid or secured to the satisfaction of court,
- c) the distribution of estate will take place or ought to happen in Malasia or the majority of creditors are residents of Malasia.

On application to court for an order of discharge can be made any time after the order of bankruptcy by the official assignee, the bankrupt or any other person having interest in it. The court may: -

- a) refuse to discharge
- b) make an order of absolute discharge or conditional discharge.

The official assignee may also at his discretion may issue a certificate of discharge but it is prohibited in certain circumstances.

**Concise answer. 4 marks.**

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

Commented [DB3]: 7/15

**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.

i) the restrictions on ipso facto clauses: - ipso facto clause is a provision in contract that enables one party to terminate or modify the operation of contract by reference to the counterparty's insolvency. Before 2018 there was no restrictions on ipso facto clauses. Later with the introduction of section 440 of IRDA 2018, now it is possible to limit the exercise of certain contractual rights (ipso facto clauses) by the reason that the company is insolvent. However, it does not prevent rights from being exercised by the reasons of other grounds. Now the companies are allowed to continue key contracts and provide a measure of relief in insolvency.

**When can a debtor company avail itself of section 440?**

Further section 440(5) talks about the list of contracts that are excluded from the above said exception, which includes: -

- a) any eligible financial contract as may be prescribed
- b) any contractual licence, permit or approval issued by the government or a statutory body
- c) any contract that is likely to impact national interest or economic interest of the Singapore
- d) any commercial charter of ship
- e) any contract covered under the meaning of convention under section 2(1) of the International Interest in Aircraft Equipment Act
- f) any agreement subject to the treaty entered by the Singapore.

ii) wrongful trading: - it refers to incurrence of debt and other liabilities without a reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent due to such debt.

A new provision adopted from English insolvency legislation, section 239 (Responsibility of wrong trading) of IRDA 2018 was introduced which imposes personal liability of debt on a person if: -

- a) he knew that the company was involved in wrongful trading
- b) as an officer of the company, ought, in all circumstances to have known that the company was trading wrongfully

Now, the court may hold any person personally liable if he was the knowingly party to the company's wrongful trading.

**How is wrongful trading different from insolvent trading?**

**The essay fails to state some of the key elements of both. Also, there is hardly any analysis and commentary, especially on the significance of these provisions. 4 marks.**

### **Question 3.2 [maximum 7 marks]**

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

Judicial management is an insolvency process or a corporate rescue **intended more to be corporate rescue** where a judicial manager is appointed by the court to conduct the day-to-day affairs of the company and run insolvency process since he replaces the directors or management of the company. **Nothing mentioned about liquidation.**

A committee of creditors is also formed which further approves the proposals of judicial manager with or without modification. It is considered as a systematic way of corporate rescue where a court appointed dedicated professional takes the responsibility of insolvency process in a prescribed manner. **How about in liquidation?**

The insolvency professional takes charge of the company as judicial manager for 180 days (extension may be provided) and during these 180 days he is required to complete the insolvency process where the objective is to rescue the company as a going concern in full



or part so that maximization of value can be done or survive the company so that jobs can be saved or value can be preserved. **How about in liquidation?**

Only the companies eligible to be wound up can apply for judicial management under section 90 of IRDA 2018 which also includes foreign debtors. The application for judicial management can be bought up by the company itself, its directors and its creditors.

However, an application can only be made if the company is or will be unable to pay its debts and their reasonable probability of rehabilitation of company and its assets value can be preserved in better way than liquidation. Further an automatic moratorium on legal proceedings against the debtor/company comes into effect with judicial management. **How about liquidation?**

The liquidation or winding-up has the purpose of terminating the existence of company by its eventual dissolution with the objective is to ensure a fair and orderly distribution of assets of the company among its creditors and contributories.

The liquidation can be either voluntary or upon the order of court and the modes can be either compulsory liquidation or creditors' voluntary liquidation or members' voluntary liquidation. Here a liquidator is appointed who is responsible for equitable distribution of company's assets in accordance to the provisions of IRDA 2019.

As discussed earlier the main objective of judicial management is rescue and preserve maximum value of company as a going concern whereas in liquidation the main objective is to recover and realise the company's assets in most advantageous manner and equitable distribution of them among the creditors. Generally judicial management is considered as more advantages than Liquidation. **How so?**

Further, on discharge of judicial management the court may order for liquidation however there can no vice versa since there is no existence of company after liquidation but where possible the liquidator may apply for considering scheme of arrangement before the conclusion of liquidation process but it is rather considered as distribution mechanism instead of corporate rescue.

**There is hardly any compare and contrast. Some sections just describe JM without discussing liquidation. And also key elements for comparison are not mentioned, such as the scope of the moratorium. 3 marks.**

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

Commented [DB4]: 10.5/15

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: -

The purpose of judicial management proceeding shall be to initiate corporate rescue under the supervision of court so that the value of the PEC business/assets can be preserved from further deterioration, keep PEC as a going concern and prevent the management to control or take undue advantage or do wrongful trading by replacing them by judicial manager and vest the powers with committee of creditor. Further, the main objective behind the judicial management proceeding shall be to recover maximum amount against the debt to PEC.

To obtain the court's order for judicial management proceeding, the following must be presented: -

The PEC is eligible to be wound up under the IRDA 2018 and application under section 90 for judicial management can be made. The provisions of section 90 of IRDA 2018 are: -

Where a company, or any creditor of the company, considers —

- a) that the company is, or is likely to become, unable to pay its debts; and
- b) that there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern, or that the interests of creditors would be better served otherwise than by resorting to a winding up,

an application may be made to the Court under section 91 for an order that the company should be placed under the judicial management of a judicial manager.

Further, since section 90 also applies on foreign debtors provided it has substantial connection with Singapore which can be established by demonstrating one or more of the following:

- i. centre of main interest is located in Singapore
- ii. debtor is carrying out business in Singapore or has a place of business in Singapore
- iii. debtor is registered as foreign company in Singapore
- iv. debtor has substantial assets in Singapore
- v. debtor has chosen Singapore law as the law governing a loan or transaction
- vi. debtor has submitted to the jurisdiction of the Singapore courts for the resolution of one or more disputes relating to loan or other transaction.

In the given case PEC has substantial connection with Singapore since its shares are listed on Singapore stock exchange and also has entered loan agreement as a guarantor along with its Singapore subsidiaries.

**A good summary of the purpose and requirements. How would it apply for JM if it has the benefit of section 64 moratorium protection? 1.5 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?

The debtor must make an application to court, allowing them to take rescue finance or DIP financing. The debtor has to prove that the rescue finance is: -

- i) necessary for the survival of the debtor, or/and
- ii) necessary for achieving a more advantageous realisation of debtor's assets than on winding up.

**More detail required. What are the types of rescue financ, with what priority and what are the requirements? 1 Mark.**

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

Section 94 of the IRDA introduces judicial management without a court order, where companies can now be placed under judicial management through a creditors' resolution if: -

- i) the company is, or is likely to become, unable to pay its debts; and
- ii) there is a reasonable probability of achieving one or more of the purposes of judicial management mentioned in section 89(1)

The steps include but not limited to: -

- a) the manner creditor meetings should be conducted
- b) notice requirements
- c) relevant timelines

**More detail would have assisted but you have identified the key provision in section 94. 2 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?

A worldwide moratorium is one of the most important protections and tools available to a debtor in the Singapore cross-border restructuring regime.

In Singapore, the court can order the moratorium to have extraterritorial effect and apply to acts taking place in Singapore or elsewhere only if the creditor is in Singapore or within the jurisdiction of the Singapore courts. As a result of this requirement for *in personam* jurisdiction, the Singapore courts have previously reasoned that "the court's jurisdiction to grant a moratorium restraining acts outside Singapore is really in substance akin to granting injunctive relief.

Reference taken from a recent Singapore High Court case, "*Zetta Jet Pte Ltd and Others (Asia Aviation Holdings Pte Ltd, intervener) [2019] SGHC 53 ("Re Zetta Jet (2)")*"

Conclusion

In the given case, since the creditors of PEC are in Singapore or within the jurisdiction of the Singapore courts therefore the moratoria may have extra-territorial effect and the assets owned by the group in jurisdictions outside of Singapore will also be protected.

**The moratorium for JM and for section 64 / schemes is different. The JM moratorium is not expressed to be able to apply extra territorially like section 64. The cases references are section 211 / 64 applications, not JMs. 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.

The following are the cross-border insolvency laws available in Singapore to recognise foreign insolvency proceedings: -

- a) In 2017 Singapore adopted UNCITRAL Model Law on cross-border insolvency which enables Singapore to recognise foreign insolvency proceedings.
- b) JIN Guidelines (Guidelines for communication and cooperation between the courts in cross-border insolvency matters. It helps in reduction in time and legal cost with exchange and implementation of information and execution.
- c) RECJA (Reciprocal Enforcement of Commonwealth Judgement Act) It enable judgements of United Kingdom, Australia and some other common wealth countries to be registered and enforced in Singapore. Further, another regime is The Reciprocal Enforcement of Foreign Judgement Act, where so far Hong Kong SAR is the only gazetted country recognised for registration.
- d) Recognition of Judgements of Foreign courts: - foreign court judgements may be enforced by an action at common law through the Singapore courts.

The general requirements in order for a Singapore court to recognise a foreign insolvency proceeding are as follows: -

A foreign representative can apply to the Singapore Court for recognition of foreign insolvency proceedings. The application must be accompanied by

(a) a certified copy of the decision/order commencing the foreign insolvency proceedings and appointing the foreign representative; and

(b) a statement identifying all insolvency proceedings in respect of the debtor that are known to the foreign representative.

Further, the recognition is largely a formalistic process and generally, upon an application being made by a foreign representative in the proper form, foreign insolvency proceedings will be mandatorily recognised. However, the Model Law does make a distinction between recognition of the foreign insolvency proceedings as either a main proceeding or a non-main proceeding, with each engendering different reliefs and consequences.

The effect of a foreign insolvency being recognised as a main proceeding includes

(a) stays of actions or enforcement proceedings by individual creditors against the debtor or its assets; and

(b) a suspension of the debtor's right to transfer or encumber its assets. These reliefs flow automatically upon recognition of foreign insolvency proceedings as a main proceeding.

When foreign insolvency proceedings are recognised as a non-main proceeding, separate applications must be made to a Singapore court for appropriate relief. In such cases, relief would only be granted if the court is satisfied that the interests of the creditors and other interested persons are adequately protected. \*\*\*

\*\*\*<https://www.mondaq.com/insolvencybankruptcy/603442/singapore-implements-the-uncitral-model-law-on-cross-border-insolvency>

**A good summary of the legislation and of the operation of the Model Law. 4 Marks.**

**\* End of Assessment \***