INSOL INTERNATIONAL
FOUNDATION CERTIFICATE
in INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8E

SINGAPORE

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

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

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

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

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[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]: 39/50 = 78% well done!

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.

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.

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.

10 marks

QUESTION 2 (direct questions) [10 marks]

Commented [DB2]: 8/10

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.

ANSWER

U/s 225 of the IRDA (Unfair Preferences), on application of the judicial manager or liquidator, the court may order claw back of unfair preferential transactions to restore the position of the company as if that unfair preference had not been granted by the company.
In order to successfully void fraudulent preference, the following elements must be tested:

- Preferential transaction should have been entered into six months prior to commencement of winding-up for unrelated parties and two years for associates (suspect period)
- The preferred party should be a creditor, surety or guarantor for antecedent debts or liabilities
- The company was insolvent at the time of the transaction or became insolvent as a result of the transaction
- The preferred party is in a better position as a consequence of the unfair preference than he would have ordinarily been had the unfair preference not been made in the event of distribution of assets during liquidation
- Act of giving unfair preference was influenced by a desire to put the creditor, surety or guarantor in a better position post the transaction. The threshold for judging the element of desire for preferential transactions with associates and connected parties is lower
- Additionally, intent may be circumstantial and could be proven by having recourse to the 'badges of fraud' listed in US state fraudulent transfer law

Defence for avoiding claw back of unfair preferential transactions would be:

- Transactions made outside the suspect period
- Transactions made in the ordinary course of business or financial affairs of the corporate debtor
- Any transfer creating security interest in the asset acquired by the debtor to the extent that security interest secures new value and was given after signing the security agreement
- Transactions done in good faith and for value with unconnected parties
- Any transfer of interest in a property in the possession of the debtor but owned by a person who is not debtor facing insolvency

U/s 224 of the IRDA (Transactions at undervalue), on application of the judicial manager or liquidator, the court may order setting aside and restitution of under value transactions entered into by the debtor for no consideration or for a consideration lower than the value of the consideration provided by the insolvent debtor.

In order to successfully void under value transactions, the following elements must be tested:

- Under value transaction should have been entered into 5 years prior to commencement of winding-up (suspect period)
- Transactions made as a gift or is a gratuitous transaction
- Transactions with party involving transfer of asset(s) by the debtor for a consideration the value of which is significantly less than the value of the consideration provided by the debtor and such transaction has not taken place in the ordinary course of business
- Where an individual is bankrupt and enters into a transaction where the consideration is marriage

Defence for avoiding claw back of under value transactions would be:

- Transactions made outside the suspect period
- Sale on a higher than valuation obtained through a public auction or as determined by an independent valuer
- Transactions made in the ordinary course of business or financial affairs of the corporate debtor
- Transactions done in good faith and for value with unconnected parties
- For individuals, transaction effectuated in exempted assets

The lookback periods appear to still be those under the Companies Act and the not the updated ones in the IRDA. This is nonetheless still a decent answer. **3 marks.**

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

ANSWER

The objective of JIN Guidelines is to improve efficiency and effectiveness of parallel proceedings in cross-border insolvency "*by enhancing co-ordination and co-operation amongst courts under whose supervision such proceedings are being conducted*".

Significantly, JIN Guidelines have facilitated the approach of using protocols or cross border insolvency agreements for co-ordination and co-operation and provided a specific framework that insolvency practitioners may have reference to while administering international insolvency cases.

Please elaborate further. What other countries have adopted JIN? 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?

ANSWER

Annulment of bankruptcy under Singapore IRDA

By the Court

Under section 392 of the Singapore IRDA, an application for annulment must be made within 12 months of the bankruptcy order being made, unless leave is given by the court for the application to be made later.

The Court to whom application is made by the bankrupt may annul the bankruptcy if:

- The order ought not to have been made on grounds existing at that time;
- Debts and expenses of the bankruptcy have been paid or secured to the satisfaction of the court;
- Distribution of the estate will take place in Malaysia; or
- Majority of creditors are Malaysian residents and distribution ought to happen there under Malaysian bankruptcy law

Annulment of the bankruptcy by the Official Assignee

Under section 393 of the Singapore IRDA, a certificate annulling bankruptcy may be issued where it appears to the Official Assignee that debts for which proof has been provided and admitted and all expenses of bankruptcy have been repaid by the bankrupt.

Discharge of the bankrupt by Court

Under section 394 of the Singapore IRDA, The application is served on each creditor who has filed proof of debt and is eligible for court hearing before an order of discharge is given. The court may make an order discharging the bankrupt absolutely or with conditions. Conditions may be with respect to future income or property of the bankrupt.

Discharge by Official Assignee

Under section 395 of the Singapore IRDA, The Official Assignee may, in his discretion, issue a certificate of discharge subject to certain conditions.

Good answer. **4 marks.**

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

Commented [DB3]: 13/15

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.

ANSWER

(i) the restrictions on ipso facto clauses under the Singapore IRDA.

Section 440 of the IRDA – Certain contractual rights limited

The Singapore IRDA introduced new provision u/s 440 making certain ipso facto clauses inoperative upon debtor entering formal insolvency. This is directly inspired by a similar provision in the Canadian insolvency laws. Other jurisdictions, similarly, have restrictions on triggering ipso facto clauses on the debtor entering a formal insolvency procedure. Restrictions u/s 440 of IRDA, 2018 are applicable to judicial management and the super charged scheme, where contracts have been entered after enactment of the IRDA. Good that you have pointed out which contracts are applicable. However, there is no blanket restrictions on exercise of contractual rights under other legitimate grounds such as default in payment of money for goods and services, leased property or any other valuable consideration provided after commencement of proceedings or when requiring further financing.

U/s 440(4) of the IRDA, a counter party to agreement with an insolvent debtor may apply to the court seeking relief from application of this section, where, it can be demonstrated that restricting application of ipso facto clauses would cause applicant significant financial hardship to the counter-party.

Section 440 (5) provides a carve-out and states that sub-section 440(1) does not apply to legal rights under the following contracts:

a) Eligible financial contracts as may be prescribed;
b) License, permit or approval issued by the Government or a statutory body;
c) Contract affecting national or economic interest of Singapore;
d) Any commercial charter of ship;

e) Any agreement within the meaning of the Convention as defined in section 2(1) of the International Interests in Aircraft Equipment Act (Cap. 144B); or
f) Any agreement that is the subject of a treaty to which Singapore is a party, as may be prescribed

Restrictions on exercise of ipso facto clauses for debtors under insolvencies can also be used by foreign companies, if it can demonstrate substantial connection to Singapore and restriction does not expressly confine its effects to contracts governed by Singapore law.

(ii) Wrongful trading under the Singapore IRDA.

Section 239 of the IRDA – Responsibility for wrongful trading

Under section 239, IRDA introduces a new concept of "wrongful trading" to Singapore insolvency law adopted from English insolvency law. Wrongful trading is defined to mean incurrence of debt or other liabilities without a reasonable prospect of meeting them in full when the company is insolvent or become insolvent as a result of such debt (Section 239(12) of IRDA). How is this different from insolvent trading?

Section 239, fixes personal liability for debts and liabilities on a person who knowingly indulged in wrongful trading. Personal liability for the company' debts and liabilities is fixed on a person if (a) they knew that the company was trading wrongfully or (b) as an officer of the company, ought, to have known that the company was trading wrongfully.

When insolvency is imminent, wrongful trading provisions ensure that officers of the company do everything in their capacity to minimize potential losses to the company's creditors. Sub-section 2 of section 239, introduces defence which allows the adjudicating authority to relieve the person declared responsible from personal liabilities if (a) the person acted honestly and (b) having regard to the circumstances of the case, the person ought to have fairly to be relieved from personal liability. Further, the adjudicating authority will identify the date (a reference date) when wrongful trading commenced and quantify the cost to the creditors of the decision to continue to trade when the officer/directors should have concluded that insolvency is inevitable after which officers of the company may be asked to re-imburse the incremental losses to the extent decided by the court.

Very insightful discussion on both wrongful trading and section 440. **8 marks.**

Question 3.2 [maximum 7 marks]

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

ANSWER

1. Meaning

Liquidation or winding-up is a formal insolvency process for where the liquidator takes over the affairs of the company, realises the assets and distributes proceeds to creditors and contributories after which the existence of the company is extinguished.

Judicial management is a corporate rescue tool where the insolvency practitioner or judicial manager is appointed by the court to take over the responsibility of running the company. Judicial management is an alternate to liquidation. Main purpose of judicial management is to either resurrect the company back into sound financial health or realise the assets for the creditors without significant evaporation of value and without winding-up.

2. Procedure

There are three modes of winding-up, members' voluntary winding-up, creditors' winding-up and compulsory winding-up (ordered by the court). Members' liquidation is made under a director's declaration of solvency on the occurrence of an event that provides for winding-up under the articles of association or expiry of the duration fixed in the articles of association whereas creditors' and compulsory winding-up is triggered when company is unable to pay it's debts (exceeding SGD 10,000) and demand is neglected by the debtor. 15,000 is the threshold.

Either the company, its directors or creditors (contingent as well as prospective) may petition appointment of a judicial manager in a company which is or is likely to become insolvent. Only a company eligible to be wound-up under the IRDA, 2018 may apply for judicial management u/s 90. The IRDA, has introduced out-of-court judicial management process where a company place itself into judicial management by a creditors' resolution where the company is unable to pay it's debts.

Only companies registered in Singapore can be compulsorily wound-up under IRDA, 2018 whereas not only Singapore registered companies but also foreign incorporated companies with a "substantial connection" to Singapore can avail benefits of judicial management under IRDA (subject to specific industries related exemptions such as banking, finance and insurance companies). Foreign companies that are unregistered can also be found up in Singapore if they can establish substantial connection.

3. Term of the Plan

There is no fixed term for winding-up, the liquidator needs to complete all the listed winding-up procedures before making application to the court for release and dissolution of the company.

A judicial management order typically lasts for 180 days unless extended by the court and there is no limit to the number of extensions that can granted. It may also be discharged prematurely in case the creditors fail to approve the judicial managers' proposal or if the purposes listed in the rescue plan cannot be achieved or where the judicial manager acted unfairly prejudicing the interests of the members or creditors of the company.

4. Moratorium

In a winding-up, moratorium is imposed from commencement of the winding-up and stays in force till the winding-up order is made by the court. The company, creditors or the contributory can apply to the court to restrain proceedings. Once the winding-up order is made, any action against the company requires the leave of the court.

During the period of judicial management, a moratorium (interim and final) against legal proceedings is comes into effect to preserve the company assets to enable the judicial manager to formulate a rescue plan. Once the plan is accepted, the moratorium is lifted. A moratorium u/s 64 of IRDA provides a stronger protection to the judicial manager and restraints creditors from enforcing their security rights giving a chance to assess the financial situation of the corporate debtor and facilitates preparation of a proper rescue plan.

The moratorium for JM prevents creditors from enforcing security but not the moratorium for liquidation.

5. Appointment of office holder

For the period pending determination of the winding up, a court has the power to appoint a provisional liquidator, if there is a prima facie case for winding-up and the court is satisfied that in the circumstances a provisional liquidator should be appointed. The liquidator may be the Official Receiver or a private liquidator. In a creditors' winding up, the directors must immediately appoint a provisional liquidator and in a members' liquidation, a members meeting may pass a special resolution in favour of winding-up and appointing of a liquidator.

An interim judicial manager may be appointed by the court or on the application of the company or its creditors under the specific circumstances where company's assets are at a risk of being dissipated or deteriorated in the intervening period between application and hearing by the court and for safeguarding the interests of the company and its creditors.

How are a provisional liquidator and interim JM similar/different?

6. Rescue/Emergency financing

In winding-up or liquidation there is no provision for emergency or rescue financing. Rescue financing is permitted under judicial management as resolution process costs and such transactions are not subject to impeachment.

7. Payment of priority claims

While distributing the assets of a company in liquidation, a statutory order of priority needs to be followed. There are no statutory preferential claims or priorities that apply to judicial management

8. Disclaiming onerous contracts

Judicial managers, unlike liquidators, do not have the power to disclaim onerous contracts entered into by the company prior to the judicial manager's orders. How does a judicial manager deal with existing contracts of the company?

9. Release and discharge of Officers

Upon completion of the liquidation, the liquidator applies to the court for the company to be dissolved, for him to be released as liquidator and to discharge the liquidator from all liability in respect of his conduct in the course of winding-up.

A judicial manger is discharged on the acceptance of the judicial management plan by the creditors and the court or where the plan is rejected by the creditors, on the court's order that the company be placed into liquidation.

This is a decent effort, however the answer could have been better refined for a higher score. **5 marks.**

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

Commented [DB4]: 8/15

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)**

ANSWER

For the court to issue a judicial management order, the court has to be satisfied that the company is or is likely to be unable to pay its debts and by placing the company under judicial management, the purpose of judicial management can be achieved so that the company's survival is ensured or the company operates in whole or in parts as a going concern or for more advantageous realisation of the company's assets than through liquidation or winding-up or for a compromise and arrangement u/s 210 of the Companies Act.

In order to obtain a judicial management order, the company, its creditors or its directors may apply to the court for a judicial management order or creditors at a meeting pass a resolution to obtain a judicial management order by majority in number and value of creditors present and voting.

Answer could focus more on the purpose of JM I.e. what does it do and the specific requirements to be satisfied. **1 Mark.**

- 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)**

ANSWER

Requirements satisfied in order for PEC to be able to access rescue financing under the IRDA are given in 67(9) of the IRDA:

Rescue finance means any financing that satisfies either or both the following conditions:

a. The financing is necessary for the survival of a company that obtains financing, or whole any part of the undertaking of that company, as a going concern; or
b. The financing is necessary to achieve a more advantageous realisation of the assets of the company that obtains financing, than on winding-up of that company

Could address the 4 different types of priorities of rescue finacing and conditions for the same also. **1 Mark.**

- What are the steps that need to be taken in order to place PEC's subsidiaries under judicial management out of court? **(3 marks)**

ANSWER

There is no specific legislation or rules governing informal creditor workouts. Trade or business practices that have developed over a period of time have been captured by the Association of Banks in Singapore (ABS) and have promulgated these principles through its "*Principles & Guidelines for Restructuring Corporate Debt – the Singapore Approach".*

Since informal creditor work-outs is a process where the corporate debtor negotiates with creditors on the scope, timelines, roles and sacrifices, finally culminating into a debt restructuring agreement addressing mainly creditors contractual and security rights.

ABS Guidelines recommends the following steps to secure an informal creditor work-out:

- Standstill provision for information collation and analysis
- Seeking unanimous support from lenders
- Equitable treatment of lenders
- Active involvement of senior management of the corporate debtor
- Appointment of lead bank as the chief co-ordinator
- Appointment of a steering committee and its Chairman to represent lenders
- Appointment of a Special Accountant or an Independent Financial Advisor

- Approval for new money financing for rescue financing
- Facility for mediation for dispute resolution
- Buyer of debt sold down should be encourage to continue participation in the on-going creditor work-out
- Maintain confidentiality to mitigate negative impact on the debtor

Well done for thinking outside the box but the question was focused on Judicial Management and section 94 which allows a company to commence JM via a creditor resolution I.e. not a court application. **1 Mark.**

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?

ANSWER

Foreign debtors with "substantial connection" to Singapore can avail judicial management moratoria. In order to avail the moratoria with extra-territorial effect, substantial connection to Singapore is established on the following factors:

- COMI of the debtor is located in Singapore
- The debtor is carrying on business in Singapore or has a place of business in Singapore
- The debtor is registered as a foreign company in Singapore
- The debtor has substantial assets in Singapore
- The debtor has chosen Singapore law as law governing loan agreements or other transactions, or the law governing the resolution of one or more disputes arising out of or in connection with loan or other transactions
- The debtor has submitted to the jurisdiction of the Singapore courts for the resolution of one or more disputes relating to a loan or other transactions

This conflates JM and section 64 moratorium. Section 64 has an express provision dealing with extra territoriality whereas JM does not. **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.

ANSWER

Singapore has adopted the UNICTRAL Model Law on Cross Border Insolvency (MLCBI) via the Amendment Act, 2017 which allows for recognition of foreign insolvency proceedings. The MLCBI incorporated in Singapore through the Amendment Act has no requirement for reciprocity with the state in which foreign proceeding is occurring. Recognition for foreign proceedings can be denied only in cases where they are contrary to public policy under Singapore Law.

A foreign representative may apply to the Singaporean court for recognition of the foreign proceedings to which he is appointed. The application for recognition must be accompanied by:

a. A certified copy of the decision commencing foreign insolvency proceedings and appointment of a foreign representative; or
b. A certificate from the foreign court affirming the existence of the foreign proceedings; or
c. In absence of evidence referred to points a and b above, any other evidence acceptable to the court of the existence of a foreign proceeding and appointment of a foreign representative
d. A statement identifying all insolvency proceedings in respect of the debtor that are known to the foreign representative
e. The court may also require translation of documents supplied in support of the application into English, where applicable

A foreign proceeding can be recognised as a main proceeding basis the Centre of Main Interest (COMI) of the debtor (generally the registered office) or as a foreign non-main proceeding basis the presence of an establishment in the jurisdiction. (Article 17, para 2 of the MLCBI)

Once a foreign proceeding is recognised as the main proceeding, automatic relief is granted including the stay of actions against the debtor's assets and suspension of any rights to alienate or dispose-off assets. When a foreign proceeding is recognised as the non-main proceeding, relief in form of stay of actions against the debtor's assets and suspension of any rights to alienate or dispose assets is granted at the discretion of the court after giving consideration to local creditor and employee concerns.

Good answer. **3 Marks.**

*** End of Assessment ***