



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]: 32/50 = 64%

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 .

Answer is C

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.

Answer is A

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.

7 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]: 9/10

[The two types of impeachable transactions under Singapore insolvency law are Undervalued Transaction and Extortionate Transaction.

A transaction made by the bankrupt to be called as undervalued will have the following elements:

- Gift is made or otherwise transaction has been entered for no value.
- The consideration for entering into transaction is marriage.
- Transaction entered at a very low consideration.

A transaction made by the bankrupt to be called as extortionate will have the following elements:

- Transaction requires payment of exorbitant payments.
- Transaction is unconscionable or substantially unfair.

However if pursuant to such transaction an individual has acquired an interest in the bankrupt's property from a person apart from the bankrupt and transaction has been done in good faith and for value, thereafter benefit has been received then such transaction stands good. However if the individual entering into abovementioned transaction has been aware about relevant proceedings against bankrupt or is an associate of bankrupt, then such transaction will not be termed as to be entered in good faith.]

Please go into more detail on the elements such as the relevant lookback period. 3 marks.

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

[The Judicial Insolvency Network Guidelines are the maiden set of guidelines developed by insolvency judges to promote cooperation and communication between courts from various jurisdictions when they are faced with two or more proceedings on the same subject across the globe. The guidelines supplement the procedural rules of the courts and do not have any effect on the substantive laws.

There are 14 guidelines set out under four main heads namely, Communication between courts, Adoption & Interpretation, Appearance in Court and Consequential provisions. The provisions aim to reduce the amount of legal costs incurred during cross-border insolvency proceedings and also to preserve the value of financially distressed businesses and their assets. The guidelines aim at providing the framework for parties in cross-border restructuring and insolvency to customise protocols to facilitate court-to-court communication and cooperation in every case.]

2 marks. Detailed and clear answer.

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?

[A bankrupt may obtain an annulment by making an application to the court within a time frame of 12 months of the bankruptcy order or in an extended time if permitted by the court. Upon application, the court may grant annulment if:

- The order ought not to have been made on the grounds existing at the time;
- Distribution of estates will take place in Malaysia or majority of creditors live in Malaysia and distribution ought to take place there.
- Debt and expenses of bankruptcy have been paid or secured as per court's satisfaction.

Application for obtaining discharge from bankruptcy can be filed before court either by bankrupt himself or by the Official Assignee or by any other interested person at any time after the bankruptcy order has been made by the court. Every such application must be served to each creditor who has filed a proof of debt in bankruptcy and the Court may hear any of the creditors before announcing discharge order. It is upto the discretion of court whether the bankrupt to be discharged absolutely or subject to certain conditions.]

Concise answer that covers the key points. Good job. 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.

[Restriction on ipso facto clauses]

Initially there were no provisions pertaining to the restriction on the application of *ipso facto* clauses under Insolvency, Restructuring and Dissolution Act, 2018 (IRDA). However later on as the insolvency regime developed further in Singapore, a need was felt to introduce statutory provisions pertaining to the exercise of contractual rights in respect of the corporate debtor upon declaration of its insolvency or during the time when insolvency proceedings are going on.

Similar provisions were added under Section 440 of IRDA i.e ***Certain Contractual Rights Limited***. However such a provision won't prohibit the exercise of contractual rights on grounds other than that of insolvency. However this provision will not prevent the termination of contracts on grounds other than on *ipso facto clauses*. Such a relief will allow companies to continue key contracts when insolvency proceedings are being carried out thereby providing ease during restructuring of the distressed entity.

However under the virtue of Section 440 of IRDA, following set of contracts are exceptions:

- Eligible financial contracts.
- License, permit or approval issued by the government or its statutory body.
- Commercial charter of a ship.

- Contract that may impact national or economic interest of Singapore.
- Agreement within the meaning of term "Convention" as defined under International Interest in Aircrafts Equipment Act.
- Agreements that are subject to a treaty to which Singapore is a party.

When can a debtor company avail itself of the protection of section 440?

Wrongful Trading

Initially there were no provisions pertaining to wrongful trading under Insolvency, Restructuring and Dissolution Act, 2018 (IRDA). However later on as the insolvency regime developed further in Singapore, a need was felt to introduce statutory provisions pertaining to the prevention of wrongful trading. Provisions pertaining to wrongful trading were introduced under Section 239 of IRDA i.e **Responsibility for Wrongful Trading**. Wrongful Trading means incurring debt or other liabilities without reasonable prospect of meeting them in full when the company is declared insolvent or becomes insolvent pursuant to such default. **There was insolvent trading previously. How is this different?**

It implies that any person who was knowingly party during the wrongful trading of the company may be held personally responsible by the court towards company's debts and liabilities during the insolvency of the corporate debtor or if the corporate debtor has been declared as insolvent pursuant to the debts and liabilities arising out of wrongful trading.

Pursuant to the provisions of Section 239 of IRDA, personal liability for indulgence in wrongful trading arise when the concerned person is aware of the fact that that company is trading wrongfully or is known to be aware about company's wrongful trading on account of the prevailing circumstances.]

Decent effort. There could have been more analysis and commentary for insolvent trading. Also what are the elements? 5 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

- It is a corporate rescue tool practised in Singapore in which an insolvency practitioner is appointed as judicial manager by the virtue of a court's order who step in the shoes of board of directors of the corporate debtor and takes over the responsibility of running the business and affairs of the company and also takes over the properties of the company.
- Creditors play a limited role in judicial management. **Not really. The Statement of Proposals have to be approved by the creditors. This contradicts your next section.**
- A Committee of Creditors is constituted to consider the proposals put forward by judicial manager who is also responsible for furnishing information to the Committee of Creditors as and when required by them. Upon failure to do so, creditors may approach court and court may accordingly issue directions to the appointed judicial manager.
- It is similar to corporate insolvency resolution process and is opted by corporates in a limited manner because of associated stigma of being declared as insolvent.

Liquidation

- Liquidation is a process which is associated with distribution of proceeds realised from assets sales of the company that went into liquidation. Liquidation can either be voluntary or compulsory. Voluntary liquidation can further be at the discretion of creditors or the members of the corporate.
- Upon announcement of liquidation of the corporate, liquidator steps in the shoes of board of directors of the company. However liquidator/member of the company at their discretion may continue vesting of some powers in the hands of existing board of directors of the company undergoing liquidation.
- Liquidation of the company is followed by dissolution.
- There is no specific procedure for conversion of liquidation into corporate rescue tool however a scheme of arrangement providing for distribution of proceeds as a part of liquidation process may get approval from the court.]

There is on proper compare and contrast. All this does is to explain each mechanism individually. **3 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)**

[The purpose of judicial management proceeding is survival of PEC and its three subsidiaries as a going concern while preserving the value of their assets. Since lenders of PEC have an apprehension that company is likely to become unable to pay its debt and considering the probability of rehabilitating the company while preserving all or part of its business as a going concern, therefore an application should be made to the Court under Section 91 of IRDA for an order that the company should be placed under the judicial management of a judicial manager.]

An explanation of the requirements for JM would assist. Note also the company has the benefit of a moratorium – how does the JM application get made (a carve out from the orders or bringing them to an end would be required). 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)**

[In order to obtain access to rescue financing under IRDA, following requirements should be met in regard to financing:

- It is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern and
- It is necessary to achieve a more advantageous realization of the assets of a company that obtains the financing, than on a winding up of that company.]

Address the 4 levels of priority and different requirements for each. 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)**

[Where the creditors of PEC's subsidiaries are of view that company or any part of its undertaking is likely to default on loan repayment but also such company has possibility

of restructuring and achieving the purpose of judicial management, then instead of applying to the Court for a judicial management order, a resolution may be passed by the company's creditors to place the subsidiaries under the judicial management of a judicial manager in accordance with the requirements of Section 94 of IRDA.]

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?

[The Singapore Companies (Amendment) Act 2017 which came into force in May 2017 introduced significant new legislative tools to rescue distressed companies and significantly enhanced Singapore's schemes of arrangement and judicial management processes. The Act also introduced into Singapore law the UNCITRAL Model Law on Cross Border Insolvency facilitating the recognition of cross border insolvency processes in Singapore.

The amendments introduced in 2017 also provided for extra territorial moratorium on the assets of corporate debtor situated outside Singapore upon the discretion of judicial manager or upon passing of such order by the courts of Singapore subject to any incidental conditions, if any.]

The new amendments which allow for extra-territoriality do not apply to JM. JM and the section 64 IRDA process are different. 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.

[Singapore adopted UNCITRAL Model Law on Cross Border Insolvency in 2017 to deal with the issues pertaining to the cross border insolvencies. In order to recognise a foreign insolvency proceeding in Singapore, an application has to be made to the High Court of Singapore for its recognition and further enforcement. The foreign insolvency proceeding

recognised by the court has an estoppel effect on certain issues. However the court may deny recognition if the insolvency proceeding is against the public policy of Singapore.

The Reciprocal Enforcement of Commonwealth Judgements Act allows insolvency judgments from United Kingdom and Australia to be recognised in Singapore High Court and Reciprocal Enforcement of Foreign Judgment Acts at present allows insolvency judgments from Hong Kong SAR to be recognised in Singapore High Court.

Upon recognition, the foreign insolvency judgments may be enforced in Singapore in such a manner as if the judgement has originally been passed by the Singapore High Court only without commencing any fresh proceeding.]

More detailed assessment of the Model Law requirements and the effect of recognition once granted would be good but well done for raising the other applicable legislation. **2 Marks.**

*** End of Assessment ***