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]: 39.5/50 = 79% 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.

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.

**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.

**9 marks**

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

Commented [DB2]: 9.5/10

**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.

Undervalue transactions in bankruptcy: A transaction will be deemed to be 'undervalue' where the transaction was made as a gift, or for no consideration (i.e. no value); or where the only

consideration for that transaction is marriage; or where the consideration for the transaction is significantly less (in dollar terms) than the consideration given for the original purchase price paid.
An Unfair Preference in bankruptcy arises where the recipient is one of the bankrupt's creditors; the effect of the transfer places that person in a better position than that they ordinarily would have had subject to the bankrupts bankruptcy; and in the giving of the transaction by the bankrupt, the intention of the transaction was to allow for the recipient to be placed in a better position compared on the bankruptcy of the bankrupt.

The only available defence to the above transactions is where the person has either received the property of the bankrupt from a person other than the individual bankrupt, or the transaction was done in good faith and for value, including in circumstances where the individual may not have been aware of the potential bankruptcy.

Please elaborate on the elements further. What is the lookback period for both? **3 marks**.

**Question 2.2 [maximum 2 marks]**

What is the objective and significance of the JIN Guidelines?

The overarching objective of JIN Guidelines is to improve the efficiency and effectiveness of cross-border proceedings relating to insolvency, through the continued enhancement of the coordination and cooperation amongst the relevant Courts where such proceedings are being conducted. The JIN Guidelines operate to improve the interests of all stakeholders, including in the realization, preservation and identification of the assets of the debtor.[1]

The adoption of the JIN Guidelines is significant within Singapore, as this is the first time that Singapore has adopted any framework relating to judicial communication and co-operation in relation to bankruptcy matters. This is a significant step forward for the jurisdiction in becoming a financial and legal hub.[2]

Concise answer. Would have been helpful if you set out some of the other countries involved in the JIN Guidelines. **1.5 marks**.

**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 can obtain an annulment through the Court, if the bankrupt can demonstrate to the Court that one of the following applies to them:

[1] https://www.supremecourt.gov.sg/docs/default-source/module-document/registrarcircular/rc-1-2017---issuance-of-guidelines-for-communication-and-coorporation-between-courts-in-cross-border-insolvency-matters-.pdf
[2] https://www.supremecourt.gov.sg/news/media-releases/paving-the-way-for-improved-coordination-of-cross-border-insolvency-proceedings--adoption-of-the-guidelines-for-communication-and-cooperation-between-courts-in-cross-border-insolvency-matters

1. debts and expenses of the bankruptcy have been paid or secured to the Court's satisfaction;[3] or
2. a distribution of the estate of the estate will take place in Malaysia[4] or majority of creditors are residents in Malaysia;[5] or
3. the order ought not to have been made on grounds that existed at the time that the orders were made.[6]

This application has to be taken out within 12 months of the bankruptcy order.

An annulment may also take place where the Official Assignee may issue a certificate to annul the bankruptcy certificate in circumstances where all debts and expenses related to the bankruptcy are paid.[7]

A discharge may take place either by Order of the Court, or by the issuing of a certificate by the Official Assignee. For a discharge by the Court to occur, the Official Assignee, the bankrupt or any other person with an interest may make the application to the Court.[8] Otherwise, the Official Assignee may in their discretion issue a certificate that discharges the bankrupt from bankruptcy.[9] A creditor also has the right to object to the issuing a certificate under s395 in certain circumstances.[10]

Good answer that covers the key points. **4 marks**.

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

Commented [DB3]: 12/15

**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.

The concept of ipso facto clauses and wrongful trading are relatively new concepts relating to insolvency within Singapore, and are new provisions within the Insolvency, Restructuring and Dissolution Act (IRDA) which came into effect on 30 July 2020. Both ipso facto clauses and wrongful trading will be discussed in the below.

**Ipso facto clauses and the IRDA**

Ipso facto clauses allow a party to terminate or modify the operation of a contract upon the occurrence of certain events of default such as the restructuring or insolvency of a party to certain contract. These modifications can include the acceleration of payments, termination of the contract or modification of any rights or obligations. [11]

[3] IRDA s392(1)(b)
[4] IRDA s392(1)(c)
[5] IRDA s392(1)(d)
[6] IRDA s392(1)(a).
[7] IRDA s393(1).
[8] IRDA s394(1)
[9] IRDA s395(1).
[10] IRDA s396.
[11] Tan, Meiyen and Han, Keith; A Comparative Look at the Ipso Facto Regime; [2021] SAL Prac 12, page 3.

In Singapore, and prior to the enactment of the IRDA, there were no restrictions on one party to a contract exercising their right to terminate a contract upon the other party's insolvency or entering into a restructuring procedure. In a practical sense, the use of ipso facto clauses severely impact upon a company that is insolvent or enters into a restructuring procedure because this immediately limits the company's ability to operate as a going concern by loss of revenue. Evidently, given the nature of the restructuring options, including judicial management or scheme of arrangement under the IRDA relies on a business being able to continue trading, and as such a counterparty to a contract electing to either terminate or modify a contract will cause a significant drop in revenue, or force the company to attempt to make payments it may not necessarily be able to make.

Section 440(1) of the IRDA states:

"No person may, at any time after the commencement, and before the conclusion, of any proceedings by a company:

terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement (including a security agreement) with the company; or
terminate or modify any right or obligation under any agreement (including a security agreement) with the company,
by reason only that the proceedings are commenced or that the company is insolvent.

Evidently, the operation of s440 is aimed at attempting to preserve the status quo of any contracts that the debtor company is currently a party and assist in any restructuring procedure.[12] The regime is still limited in that the ipso facto regime does not prevent the counterparty from finding another way to cause the contract to be terminated, rather it is only in circumstances where the company has engaged in either judicial management or a scheme of arrangement.

**Wrongful Trading and the IRDA**

The introduction of the IRDA saw reforms to the fraudulent and insolvent trading provisions within Singapore, but also saw the introduction of the wrongful trading provisions. As a starting point, a company is trading wrongfully if either of the following occurs:

the company, whilst insolvent, incurs debts or liabilities without a reasonable prospect of meeting them in full;[13] or
the company incurs debts or liabilities that it has no reasonable prospect of meeting in full and that will ultimately result in the company becoming insolvent.[14]

The new responsibility for wrongful trading occurs where during the process of judicial management; winding up or any proceedings against a company, the Court is given the power to make an order that the person who was party to the company trading in this manner is personally responsible (with no limitation of liability), for all or any of the debts of the company (as may be directed by the Court) if that person knew that the company was trading wrongfully, or as an officer of the company, ought to have known that the company was trading wrongfully.[15]

[12] Tan, Meiyen and Han, Keith; A Comparative Look at the Ipso Facto Regime; [2021] SAL Prac 12, page 4.
[13] IRDA s239(12)(a)
[14] IRDA s239(12)(b).
[15] IRDA s239(1).

This new legislative provision is an extremely powerful tool for creditors and liquidators to rely upon, particularly given that these provisions extend outside of the 'debtor' company rather than sonly directors or officers of the debtor company, meaning that creditors or the liquidator may be able to pursue other persons, even including financiers or other stakeholders.[16] Similarly, the wrongful trading provisions do not require any form of criminal liability for a person to be held personally liable for the wrongful trading, unlike insolvent and fraud trading which first requires criminal liability to hold a director a director personally liable.[17]

Excellent analysis of both! **8 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 and liquidation are both useful tools in Singapore when it comes to insolvency and restructuring. Whilst both are useful tools, they are also considerably different, and their objectives and outcomes are different. These differences, and the uses of each judicial management and liquidation will be discussed in the following.

Judicial management:

First and foremost, judicial management, unlike liquidation is, by definition, a corporate rescue mechanism under the IRDA. The purpose of judicial management is to ensure the survival of the company, or part or whole thereof as a going concern;[18] to enable the approval pursuant to section 210 of the Companies Act or section 71 of either a compromise or an arrangement between the company and applicable persons;[19] or to provide a more advantageous realisation of the company's assets or property than on a winding up.[20]

In terms of the process of judicial management, an insolvency practitioner is appointed as a manager of the Company by a court, in circumstances where the company is unable, or likely to become unable to pay its debts, and that there is a reasonably probability of rehabilitating the company; or preserving all or part of the company as a going concern, or a stated above, the interests of creditors would be better served as opposed to through a winding up process.[21] Once appointed, the judicial manager must ensure that they perform their functions to achieve the purposes of judicial management,[22] as set out above, and ensure that they perform their duties in the interests of the creditors as a whole,[23] as quickly and efficiently as possible,[24] and remember that upon appointment, their role is that of an officer of the Court.[25]

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[16] Steele, Stacey; Insolvency Law Response to COVID-19: What does the Temporary Relief from Wrongful Trading tell us about Singapore's New Insolvency Law Regime, Page 2 <https://law.unimelb.edu.au/__data/assets/pdf_file/0012/3397089/Steele_Wrongful-Trading-Singapore.pdf>
[17] Steele, Stacey; Ramsay, Ian and Miranda Webster; Insolvency Law Reform in Australia and Singapore: Directors' Liability for Insolvent Trading and Wrongful Trading, International Insolvency Review, Vol 28, No.3, 2019, pp 363-391, page 397.
[18] IRDA s89(1)(a).
[19] IRDA s89(1)(b).
[20] IRDA s89(1)(c).
[21] IRDA s90.
[22] IRDA s89(1).
[23] IRDA s89(2).
[24] IRDA s89(3).
[25] IRDA s89(4).

Under the judicial management process, the creditors have a limited role except where the Creditors Committee is convened.[26] The Creditors Committee is given the power to require the judicial manager to provide it with information with respect to the conduct of the judicial management process.

Singapore, like many jurisdictions around the world, has number of forms of liquidation available. The three types of liquidation are members voluntary liquidation, creditors voluntary liquidation and compulsory liquidation.

Despite the various forms of liquidation, the intent of each process is effectively the same – that is, to bring the Company to an end by dissolution, and to ensure that a fair distribution amongst creditors and other stakeholders occurs.

As the name suggests, a Members Voluntary Liquidation is only available to a company that is solvent, and requires the support of the members. As well as a members resolution to wind up the company, the directors must also ensure that they provide a declaration of solvency.[27]

A Creditors Voluntary Liquidation occurs where the company is insolvent (i.e. are unable to pay the debts), and the directors are unable to make the same solvency declaration. In this scenario, the company must convene a meeting of its creditors, as well as its members and approve the plan for voluntary winding up.

Compulsory Liquidation can occur where any number of persons may be able to present to the Court, an application for a company to be wound up. These eligible persons can include the company itself, any director (note that it is any, not all), any creditor; the liquidator and even a judicial manager.[28] The Court may then order the winding up on any number of grounds, but notably the company has resolved to be wound up by the court, the company is unable to pay its debts or the directors have acted in a manner that is either unfair to members or in their own interests.[29]

Unfortunately, judicial management has often been criticised because it will often not result in a successful turn around and eventually an application will be made to convert the process away from judicial management to liquidation pursuant to section 118 of the IRDA. Often, the judicial management process is seen as the first step towards the liquidation of a company,[30] which limits the acceptance of such a procedure. However, arguments can be made for directors to favour judicial management, for their own protection from civil or criminal penalties in the event that there are any allegations of wrongful or fraudulent trading (although arguably a judicial manager can still bring such claims against the directors).[31] The same could be said for liquidation.

Compared to a judicial management process, there is more creditor involvement in liquidation despite the existence of the Creditors Committee as detailed above. Further, the outcomes between the two processes are quite different, in that liquidation results in the inevitable closure of a company whilst judicial management hold on to the hope that there may be an ability to effectively turn the company around, or at least a portion of the company around. It would also be prudent to consider the role of the creditor within judicial management, in that

[26] IRDA s109(1).
[27] IRDA s163.
[28] IRDA s124(1).
[29] IRDA s125(1).
[30] Report of the Insolvency Law Committee: Final Report 2013, at Chapter 6, paragraph 11; Committee to Strengthen Singapore as an International Centre for Debt Restructuring, Report of the Committee (2016) paragraph 2.12.
[31] IRDA s239.

as a creditor, it may be favourable to replace the management of the failing company, and have the company be turned around and receive a better outcome, which is one the purposes of judicial management. Creditor involvement in JM is also significant because the Judicial Manager would need to get his statement of proposals approved by majority of the creditors.

The essay appears to set out the features of JM and liquidation separately without a detailed compare and contrast. Nonetheless there is some analysis which makes this a fairly decent effort. **4 marks.**

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

**Commented [DB4]:** 9/15

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)**

Pursuant to section 89(1) of the Insolvency, Restructuring and Dissolution Act 2018, the purpose of Judicial Management is for the survival of the company (or part thereof) as a going concern, to reach a compromise or arraignment between the Company and a creditor (or class of creditors), or to have a better realisation of the assets and property of the Company than may otherwise occur through a winding up. In making an application to the Court for judicial management, it must be demonstrated that the company is, or will likely become unable to pay its debts;[32] and that the granting of such an order would serve the purposes of judicial management.[33]

The answer provides the basic requirements of the purpose of a JM and what must be presented to the court but there are various other matters which could have also be mentioned, for example, nomination of the JM and who nominates, advertising and notice requirements and the input secured creditors have in respect of a JM application. **1 Mark.**

Rescue financing is available where it is necessary for either or both the survival of the debtor company (including a part of that company or the whole) as a going concern;[34] or to ensure that a more advantageous realisation of the assets of a debtor than through a winding up order;[35] or where the financing is necessary for the Court's approval under section 210(4) of the Companies Act or section 71(5) of a compromise or arrangement [as] set out in section 210(5) of the Companies Act or section 71(1) involving the company that obtains the financing.[36]

[32] IRDA s91(1)(a).
[33] IRDA s91(1)(b).
[34] IRDA s101(10)(a).
[35] IRDA s101(10)(c).
[36] IRDA s101(10)(b).

The answer would benefit from a more direct focus on the specific requirements of the company in order to access and have the court order rescue financing, rather than the purpose of it. The key aspects are the 4 different types of rescue financing and what are the requirements to satisfy each type. **1 Mark.**

Given that PEC is currently involved in judicial management proceedings, the subsidiaries may be placed into judicial management by a resolution of the creditors.[37] The company must give at least seven days notice of its intention to propose to be placed under judicial management to the proposed interim judicial manager and any person who holds a charge over a majority of the company's assets;[38] members resolve to appoint the interim judicial manager; holders of the charge agree to the appointment of the interim judicial manager;[39] the interim judicial manager is appointed within 21 days of the notice above,[40] the interim judicial manager and the board of directors are to lodge documents with the Official Receiver and the Registrar of Companies;[41] and the company must give notice to all creditors of a creditors meeting taking place within 30 days of the lodgement of documents by the interim judicial manger.[42]

The fact that PEC is already under JM is not strictly relevant to the question – the legislative changes now allow for companies to be placed in JM without court order if the condition are fulfilled. The answer does step through the key parts of the legislation but could do with some expansion on some of the concepts rather than just quoting the act. **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 only way that the moratoria may apply to PEC and subsidiaries may apply to the assets outside of Singapore is through the prevention of further execution or legal process without the consent of the judicial manager or leave of the Court as set out in sections 96(4)(c), (d) or

[37] IRDA s94 (1).
[38] IRDA s94 (2).
[39] IRDA s94 (3)(d).
[40] IRDA s94 (3)(c).
[41] IRDA s94 (3)(e) and (f).
[42] IRDA s94 (11).

(e). Arguably, where the Singapore Courts have in personam jurisdiction over the party seeking any such relief appropriate applications could be made within Singapore to restrain that party from commencing any other proceedings.

Further, it is arguable that where the Model Law has been adopted by the other jurisdiction, an application would be able to be made to the relevant courts for recognition. An interesting case, whilst it applied to schemes of arrangement, was the UK decision of H & CS Holdings Pte Ltd v Glencore International AG[43], where a UK Court recognised the foreign main proceedings in Singapore, a granted relief pursuant to the moratoria set out in Singapore.

Given that PEC has sought relief in other jurisdictions, it is likely that the at least the United States assets may be protected upon recognition under the Model Law, however in Malaysia and China it may be difficult to make such protections available.

A good answer for what is a difficult area. A few points to note. The in personam jurisdiction argument is relevant primarily to the section 64 moratorium. The key case here is *IM Skaugen*. It would not strictly be necessary to seek both model law recongition in the US and commence local insolvency proceedings. Malaysia and China proceedings will have been commenced because recongition under the Model Law is not possible. One of the limiting factors of Jm is that it is not possible for ask for extra territorial application. **2.5 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 has the adopted the UNCITRAL Model Law on Cross-Border Insolvency through the 2017 amendment to the Companies Act. Further the Supreme Court of Singapore has also adopted the Judicial guidelines. These are both important statutes for the recognition of foreign insolvency proceedings, however have some distinct differences. As an example, the Singapore legislation omits the word manifestly in terms of the public policy considerations, meaning that the Court has significantly more flexibility in accepting an application should the court. In the event of recognition pursuant to the Model Law (i.e. foreign main proceeding of foreign non-main proceedings.) However, depending on the cause of action or issue (including insolvency related judgments) any such recognition may cause an estoppel effect, severely limiting some causes of action under Singapore law.

Singapore has also enacted *Reciprocal Enforcement of Commonwealth Judgments Act* (RECJA), as well as the *Reciprocal Enforcement of Foreign Judgments Act* (REFJA). The REFJA is very limited in its application as only Hong Kong is a gazetted country that is recognised for any form of recognition under this Law.

Further, Singapore has enacted the RECJA, which as the name suggests recognises judgments from both the United Kingdom and Australia (as the most commonly recognised), but also from a number of other Commonwealth Countries.[44] However, it is important to note that this legislation will be repealed and as such Singapore will move to a single statutory regime.[45]

[43] [2019] EWHC 1459 (Ch)
[44] https://cacj-ajp.org/singapore/legal-system/singapore-laws/key-legislation/reciprocal-enforcement-of-commonwealth-judgments-act/
[45] Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019

The key focus of this question is the Model Law and what is required in order for Singapore to recognise a foreign insolvency proceeding and its effect. This is touched upon briefly but could do with much greater explanation. Well done for pointing out the other legislation but a great exmaination of the Model Law would have asissted the answer. **2.5 marks.**

*** End of Assessment ***