



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

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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]

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 2.1

There are many impeachable transactions prior to and during the insolvency of a debtor. Two of them are:

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1. Undervalued Transactions: It is a transaction by way of which a debtor transfers certain asset at an undervalued rate causing loss to the debtors estate. It can be transferred during the relevant period of three years prior to bankruptcy either by way of a gift, as a consideration of marriage, or in normal course at an undervalued rate.
2. Unfair Preferences: It is a transaction by way of which debtors gives an unfair preference to one of the person being a an associate and a creditor, surety or a guarantor during two years prior to bankruptcy and this puts the recipient in a position which is better than that would have been otherwise upon bankruptcy with a desire to give preference to such parties. In case the recipient is not an associate then the relevant period is one year.

Defences available:

- Received in good faith and for a value.
- Not an associate of the bankrupt.
- No knowledge of the circumstances surrounding bankruptcy of the debtor.

Please elaborate further on the elements of each. **3 marks.**

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

Answer 2.2

The Judicial Insolvency Network (JIN) Guidelines are the guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters. It is of significant importance to smoothen the insolvency process.

The objective of such guidelines are to improve the efficiency and effectiveness of parallel proceedings in an international insolvency by enhancing cooperation and coordination among the relevant courts involved.

The Supreme Court of Singapore has adopted the JIN guidelines on February 1, 2017.

Could do with more elaboration. 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 2.3

The Bankrupt may obtain **Annulment** by making an application to the Court within 12 months of the Bankruptcy order. The court will grant an annulment only if the following conditions are satisfied:

- All the debts and expenses of bankruptcy should have been either paid or secured to the satisfaction of the court.
- Either the distribution of the assets will take place in Malaysia or majority of the creditors reside in Malaysia due to which the distribution will happen there.
- The order should have been made at pre-existing grounds.

The Bankrupt may obtain a **Discharge** after serving an application on every creditor who has filed a claim, and the court will hear every such person before passing the order. Accordingly the court may either reject the application or accept the application with or without certain conditions.

The application can be made wither by the Official Assignee, Bankrupt or any other person.

All the points are covered. **4 marks**. The Official Assignee can also issue a certificate of discharge.

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

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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 3.1

- (i) Restrictions on *ipso facto* clauses.

Ipso facto clauses are contractual provisions which allows termination or modification of the contract by one party if the other party becomes insolvent. Such termination may also be automatic by way of a provision in the contract.

This is an area of huge concern in every insolvency law because on the one hand the debtor gets chance to negotiate its debts by way of a statutory moratorium, but on the other hand the existing arrangements get terminated due to such *ipso facto* clauses. Due to this many insolvency laws contain provisions regarding the treatment of such clauses.

Section 440 of the IRD Act of Singapore, the enforcement of such *ipso facto* clauses should be barred if the proceedings relating to Judicial Management or a Super-Charged Scheme of Arrangement are commenced. However, this is not plainly applicable to all the contracts. Section 440(5) lists down contracts excluded from this restriction:

- Prescribed eligible financial contracts.
- Statutory licenses and approvals.
- Contracts of National Importance.
- Commercial charter of a ship.
- International convention arrangements for aircrafts.
- Arrangement subject to treaty to which Singapore is a party.

Such provisions have provided clarity regarding the termination or modification of contracts during insolvency.

(ii) Wrongful Trading.

During and prior to insolvency, the debtor or the employees of his business tend to incur debt and liabilities which often are the cause of insolvency.

In Singapore, if the person involved in wrongful trading was knowingly a party to such a transaction then the Court would hold him personally responsible for the debts and liabilities of the company.

Section 239 of the IRD Act deals with the responsibility for wrongful trading. According to this a personal liability would be imposed on the person if, the person doing wrongful trading knew that the company was trading wrongfully. He would also be liable being an officer of the company if he knew about the wrongful trading.

Decent effort although there should have been more commentary on the wrongful trading provision. **5 marks.**

Question 3.2 [maximum 7 marks]

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

Answer 3.2

Objective: Judicial Management is a process which is focused towards achieving a quick resolution and rescue of the debtor. Whereas, Liquidation is the process of winding up the debtor, selling the assets and dissolving the same. **JM is not necessarily quick and may not always lead to rescue.**

Powers of Management: In a Judicial Management, the powers of directors and management cease to exist as they are replaced by the Judicial Manager. In a Liquidation also the powers of management cease except for the purpose of their support required to assist the Liquidator. **Both are similar.**

Appointment: A judicial manager is appointed by the Court. However, in the Liquidation the creditors will nominate the Liquidator which in turn may be appointed by the Court in case of a Compulsory Liquidation.

Time-Period: Judicial Management process runs for 180 days whereas there is no time-limit for the Liquidation process. **JM order can be extended.**

Lack of compare and contrast. Discussion is too brief and also displays a lack of understanding of the two processes. 2.5 marks.

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

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:

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- 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)

Answer 4.1

- The creditors must be able to show to the court that the company is unable to pay its debts and making an order would result in likelihood of the survival of company or successful implementation of a Scheme of Arrangement under the companies act or at least an advantageous realisation of assets than it would realise during the winding up.

The answer goes some way of explaining the purpose and what must be presented but falls short in the specifics. The answer would benefit from a more detailed assessment of what JM is for and what it can achieve, including the impact on creditors as well as setting out what must be presented to the court and the key conditions. **1 Mark.**

- The debtor will have to make an application to the court to obtain rescue financing. The financing will be available only if it is necessary for the survival of debtor or helps in achieving a better realisation of assets. There are certain conditions to be met after obtaining the rescue financing such as:
 - Treating the finance as winding up process cost which is given a priority during the repayment.
 - Enjoying priority over preferential debts.
 - Secured by an unencumbered asset or subordinate security interest on an encumbered asset if the debtor would not have been able to obtain rescue financing.

You have identified the different types of rescue financing which is an important feature in the provision as each have different priorities, but this does not set out the requirements which must be established. A key factor here is the impact on the existing creditors and the true extent to which the financing is needed and if so how existing creditors re protected. **1 Mark.**

- Section 94 of the IRD Act, 2018 contains provisions for appointment of a Judicial Manager out of court. It is termed as 'Voluntary Judicial Management'. It can be initiated if the company is unlikely to pay its debts but there is a reasonable possibility of achieving one of the objectives of Judicial Management. However, a resolution of creditors is required before initiating a voluntary process.

You have identified the correct provision which is great but the answer could address the requirements, as set out in that section, in more detail in order to answer the question. **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 4.2.1

The Moratoria having an extra-territorial effect of protecting the subsidiaries would not be available under the judicial management process and PEC has done the right thing by initiating insolvencies in respective countries to protect the assets and avail a statutory stay to effectively administer its assets.

The answer zeros in on the key issue – JM does not provide for extra territorial protection so foreign procedures are likely needed. The answer could point out that the JM could apply for recognition in the US under the Model law and could consider any possible recognition routes in the other jurisdictions. **3 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 4.2.2

Singapore has adopted UNCITRAL's MLCBI. Since the adoption of model law, Singapore allows foreign representatives to apply to the High Court of Singapore to recognise the foreign proceedings.

Further since each of the three companies has its Head Office and Registered Office in Singapore, there are chances that the COMI may lie in Singapore due to which the assets might ultimately get administered from Singapore which would result in PEC meeting its objective of infusing fresh investment through PE funds.

Some good points are made here but the answer does not really address the question. The requirements for recognition of a foreign proceeding in Singapore could be set out in more detail spelling out the difference between foreign main proceedings (where the foreign proceeding is in the COMI of the debtor) or foreign non-main proceedings (where the foreign proceeding is where the debtor has an establishment) as well as the effect of recognition (which varies depending on which). The comment on COMI is interesting but it is fact specific and may not apply to PEC itself (Cayman incorporated). Further explanation of the

thinking of the relevance of COMI for the PE funds to achieve their purposes would help the reader. **2 Marks.**

*** End of Assessment ***