



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).
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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]: 32.5 out of 50 = 65%

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [DB2]: 7 out of 10

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.

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.

Answer is C

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.

Answer is B

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.

ANSWER:

Commented [DB3]: 7 out of 10

1. An unfair or undue preference was given

This type's defenses is the transaction do not meet one of below factors:

- (a) the preferred party (the beneficiary of the transaction) is a creditor or guarantor for any of the company's debts or liabilities;
- (b) the company was insolvent (or became insolvent as a consequence of the transaction) at the time of giving the preference;
- (c) the company has done anything which puts the preferred party in a better position than the preferred party would otherwise have been had the transaction not been entered in the event of the company's liquidation; and
- (d) the company was influenced in deciding to enter the transaction by a desire to prefer the preferred party, noting that the company is presumed to have been influenced by a desire to prefer if the preferred party is an associate of the company.

It also can be argued the time limited was pass. The relevant time period during which assets may be clawed back for an unfair preference is two years from the date of the winding-up application where the preferred party is an associate and six months for unrelated parties.

2. Transaction at an undervalue

This type's defenses is the transaction do not meet one of below factors:

- (a) the company makes a gift to the recipient or the company enters into a transaction where the value of consideration received is significantly less than the value of the consideration provided; and
- (b) the company was or became insolvent as a result of that transaction. The company is presumed to have undertaken a transaction at an undervalue if the preferred party is an associate of the company.

The relevant time period during which assets may be clawed back is five years from the date of the winding-up application, regardless of whether the undervalue transaction was with an associate or not.

No discussion of the defences and incorrect clawback period. 2.5 marks.

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

ANSWER:

In a related development, on 1 February 2017, the Supreme Court of Singapore adopted the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (the JIN Guidelines). The Guidelines have also been adopted by the US Bankruptcy Courts for the District of Delaware and the Southern District of New York, two of the leading jurisdictions for cross-border insolvency. This is the first time that a judicial communication and co-operation framework for cross-border insolvency has been adopted in Singapore.

Direct lifting from the text. 0.5 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?

ANSWER:

1. Annulment

The Court may annul a bankruptcy if:

- (a) the order ought not to have been made on grounds existing at the time;
- (b) debts and expenses of the bankruptcy have been paid or secured to the satisfaction of the Court;
- (c) distribution of the estate will take place in Malaysia or the majority of creditors are residents in Malaysia and the distribution ought to happen there.

An application to annul must be made within 12 months of the bankruptcy order being made, unless leave is given for the application to be made later.

2. Discharge

1) Discharge by Court

The Official Assignee, the bankrupt or any other person having an interest may apply to the Court for an order of discharge any time after the bankruptcy order is made.

Any application must be served on each creditor who has filed a proof of debt in the bankruptcy and the Court will hear any creditor before making an order for discharge.⁸⁰ Upon application the Court may: (a) refuse to discharge; (b) make an order discharging the bankruptcy absolutely; or (c) make an order discharging on conditions as it thinks fit, including conditions with respect to future income or property.

2) Discharge by the Official Assignee

The Official Assignee may, in his discretion, issue a certificate of discharge but is prohibited from doing so in certain prescribed circumstances.

4 marks

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

Commented [DB4]: 9.5 out of 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:

1. Ipsa Facto clause

The term "ipso facto" is a Latin word which means "by the fact itself". In the insolvency context, ipso facto clauses refer to clauses, which are usually contained in a commercial contract which allow one party to terminate or modify the contract upon the other party's insolvency. To illustrate this, if Party A and Party B enter into a commercial contract containing an ipso facto clause, if Party A subsequently becomes insolvent (i.e. it is unable to pay its debts when they fall due), then Party B can rely on the ipso facto clause to immediately terminate the contract and to thereafter stop performing any further contractual obligations it may have owed under the contract.

Such ipso facto clauses have often proven detrimental to businesses which are technically insolvent and that are trying to undergo restructuring. These ipso facto clauses cause a cascading effect which makes it difficult for such companies to obtain rescue financing and to trade their way out of debt.

Before the enactment of the IRDA, such ipso facto clauses were not restricted. This was detrimental for struggling companies that sought to restructure their assets, as they lost valuable contracts due to this clause even though they might be in a position to fulfil their contractual obligations going forward. Therefore, to address this problem, the IRDA included section 440(1) which restricts the use of this clause to terminate contracts solely due to the insolvency of the counterparty. **Please elaborate more on how section 440 works.**

The enactment of this provision aligns the country's restructuring framework with that of countries like the UK, the US and Australia which place similar restrictions on ipso facto clauses.

2. Wrongful trading

The IRDA introduces a new concept of "wrongful trading", where a company is deemed to "trade wrongfully" if it incurs debts or other liabilities, when insolvent (or becomes insolvent as a result of incurring such debts or other liabilities), without reasonable prospect of meeting them in full. Any director, company secretary or any executive officer of the company (an "Officer") does not need actual knowledge to be found liable for wrongful trading. An Officer may be found liable for wrongful trading if he or she ought to have known that the company was trading wrongfully. In addition, any person (this is wider than just an Officer) party to such wrongful trade, who knew that the company was trading wrongfully, may be liable for such wrongful trading.

The courts are empowered to declare that any person who was a knowing party to a company's wrongful trading be personally liable for its debts or liabilities if found guilty without the need to establish criminal liability. The previous regime was viewed as unsatisfactory as criminal liability had to be found as a prerequisite before the making of an application to impose civil liability against the officer of the company. The current regime under the IRDA makes it easier for liability to be established as the standard of proof for civil liabilities is lower than for criminal liabilities. As such, directors of distressed companies considering entering into contracts will have to exercise greater care. However, the courts may relieve the person from personal liability if the courts are satisfied that the person acted honestly, having regard to all the circumstances of the case, and ought fairly to be relieved from personal liability.

Section 239(10) of the IRDA provides that a company or any person party to, or interested in becoming a party to, the carrying on of business with a company, may apply to the courts for

a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading.

In sum, it is important for persons involved in the affairs of a company to be especially vigilant where a company is insolvent or is approaching insolvency. Decisions on whether a company is solvent or approaching insolvency should be well documented in the event that the directors are subsequently required to justify their decisions and actions. Directors and officers should also ensure that they receive regular financial reports on the company so that they are apprised of its financial position and cash flow. If the company is approaching insolvency, directors should be wary of incurring debts and liabilities which might fall foul of the wrongful trading provisions.

Good detailed write up and analysis on wrongful trading. 7 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. Liquidation

Generally, proceedings for the liquidation of an insolvent company in Singapore can be effected by way of a creditors' voluntary liquidation or through compulsory liquidation.

Creditors' voluntary liquidation

A creditors' voluntary liquidation is initiated by the company itself by passing a special resolution for voluntary liquidation and convening a creditors' meeting. The company will nominate a person to act as liquidator. If the nomination is rejected by its creditors, the creditors can nominate and choose a liquidator. A creditors' voluntary liquidation can be converted into a compulsory liquidation by an application to the Singapore court.

Compulsory liquidation

In a compulsory liquidation, the company, its creditors (including contingent or prospective creditors), members or directors, can apply to court for a winding up order. The court may appoint the Official Receiver or an approved provisional liquidator after the making of a winding up application and before the making of a winding up order. A winding up order may be granted if the court is satisfied that the company is unable to pay off its debts. Typically, this will be deemed as such if:

- 1) a creditor has served a statutory demand on the company for a sum in excess of SGD 10,000 and the company neglected for 3 weeks to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor
- 2) the creditor can prove to the court that the company is unable to pay its debts (including contingent and prospective debts if any), or
- 3) there is an unsatisfied judgement, decree or order against the company.

2. Judicial Management

The company, its directors or creditors can apply to the Singapore High Court to place under judicial management a company which is, or is likely to become, insolvent.

3. Compare

Compulsory liquidation

In a compulsory liquidation, the company, its creditors (including contingent or prospective creditors), members or directors, can apply to court for a winding up order. A winding up order may be granted if the court is satisfied that the company is unable to pay off its debts.

Voluntary liquidation

A voluntary liquidation may proceed by way of a creditors' voluntary liquidation ("CVL") where a company is insolvent. A CVL is initiated by way of the company passing a special resolution that it is wound up voluntarily, if the company's directors believe that the company cannot pay its debts, in full, within 12 months after the commencement of the winding up. Under a CVL, the company must convene a meeting of its creditors (who will have the ability to nominate their chosen liquidator).

Judicial Management

The company, its directors or creditors can apply to the Singapore High Court to place under judicial management a company which is, or is likely to become, insolvent. Judicial management is typically used by a company as a tool to restructure its debts to resume business as a going concern. The court, in exercising its discretion to grant a judicial management order, will consider, among others, whether a more advantageous return or realisation of the company's assets when compared to a liquidation scenario will be achieved. When a judicial management order is in force, the judicial manager appointed will replace the company's existing management. The judicial manager will formulate a judicial management proposal for the realisation of assets which must be approved by the company's creditors. During the period of judicial management, a moratorium against legal proceedings is automatically put in place to preserve the company's assets. The judicial management lasts for 180 days from the date the relevant judicial management order is made.

How about out of court JM?

4. Conclusion

The Judicial Management procedure have many new advantages. **This is not what the question is seeking.**

Singapore's judicial management procedure is similar to the administration regimes enacted in the U.K. and Australia, which provide for the appointment of an independent manager to operate and run the company instead of a liquidator to wind it up. In Singapore, a judicial manager's mandates are rescuing the company, obtaining approval of a scheme of arrangement, and achieving a more advantageous realization of the company's assets than what would be realized in a winding-up proceeding.

The Act makes it easier for companies (other than certain excluded entities, such as banks) or creditors to obtain a judicial management order by lowering the threshold requirements for court approval. Previously, a company could apply for a judicial management order if it "is or will be" unable to pay its debts. Under the Act, the standard is modified to require that the company "is or is likely to become" unable to pay its debts. In addition, under previous law, a party with the ability to appoint a receiver for the company had the absolute power to prevent

the appointment of a judicial manager. The Act now obligates any such party to demonstrate that the appointment of a judicial administrator would cause disproportionately greater prejudice than the prejudice to unsecured creditors if judicial management were denied.

Not much comparison. All the answer does is to discuss each process. 2.5 marks.

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

Commented [DB5]: 9 out of 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)**

ANSWER:

1. The purpose of judicial management proceedings and what must be presented.

The purpose of the judicial management is : (i) the survival of the company, or the whole or part of its undertaking as a going concern; (ii) the approval under section 210 of the Companies Act of a compromise or arrangement between the company and any such persons as are mentioned in that section; or (iii) the more advantageous realisation of the company's assets than would occur in a winding-up.

Here, the banks maybe want to change the management of the company, so the purpose is the survival of the company, or the whole or part of its undertaking as a going concern, or to get a reconstruct under an arrangement .

They have to submit the evidences about:

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

Well done for picking up the change in management. 1.5 Marks.

2. What requirements must be satisfied in order for PEC to be able to access rescue financing under the IRDA

A Singapore Court may, on application by the debtor, make an order that any rescue financing obtained by a debtor will:

- (a) be treated as part of the costs and expenses of the winding-up if the debtor is later wound up;

- (b) enjoy priority over preferential debts if the debtor is later wound up;
- (c) be secured by a security interest on property of the debtor not otherwise subject to any security interest, or be secured by a subordinate security interest on property of the debtor that is subject to an existing security interest if the debtor would not have been able to obtain unsecured rescue financing from any other person; or
- (d) be secured by a security interest on property subject to an existing security interest, of the same or a higher priority than the existing security interest, if the debtor would not have been able to obtain rescue financing from any other person unless it was secured in such a manner and there is adequate protection for the interests of the existing security interest.

Would have been good to set out in more detail what is required to be shown in order to secure the rescue finance. **1.5 Marks**

3. The steps that need to be taken in order to place PEC's subsidiaries under judicial management out of court

There are no provisions dealing with groups of companies, but under section 65 the Court can grant moratorium orders relating to subsidiaries or related companies which play a necessary and integral role in the compromise or arrangement to be proposed the company under the section 64 moratorium. So, creditors can apply the court to grant moratorium orders to do it.

Section 94 allows a JM to be appointed via a creditors resolution. **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:

YES, it can be protected because all the three countries also respect the Model Law's principle.

The Model Law as adopted in Singapore is substantially in the same form as the original Model Law and also provides for international co-operation and communication between courts and representatives, and for concurrent insolvency proceedings.

Article 13 of the IRJ Model Law(the Model Law on Cross - Border Recognition and Enforcement of Insolvency Related Judgments) provides a clear and predictable criteria for when a court must recognize and enforce an insolvency-related judgment.

It requires an application for recognition and enforcement to be granted, subject to limited exceptions under articles 7 and 14 (discussed infra), if:

- (a) the insolvency-related judgment is a judgment that is legally effective and enforceable in the originating state;
- (b) the application is brought by a proper party under article 11(1);
- (c) it includes the necessary documents set forth in article 11(2); and
- (d) the judgment comes from a competent court or authority, as set forth in article 4, or arises by way of defense or as an incidental question before such court or authority.

This criteria is intend to provide a procedural framework for granting recognition expeditiously without the receiving court making any determinations on the merits of the insolvency-related judgment or the validity of the foreign insolvency Proceeding.

This doesn't really address the question. The question was would a JM moratoria ordered by the SG court apply outside of Singapore? The answer is no. Unlike section 64 moratoriums the JM is not expressed to be extra-territorial. 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:

A judgment (which has an in personam effect) from a foreign court may be recognised in Singapore or enforced by an action at common law through the Singapore courts.

Some foreign judgments may be registered in Singapore to be enforced. There are two statutory registration regimes. The first regime is that under the Reciprocal Enforcement of Commonwealth Judgments Act which enables judgments from the United Kingdom and Australia, and certain specific Commonwealth countries to be registered in the Singapore High Court. The second regime is that under the Reciprocal Enforcement of Foreign Judgments Act, where so far, only Hong Kong SAR has been a gazetted country recognised for registration.

Once registered, the foreign judgment may be enforced against in Singapore as if it was a judgment issued from the Singapore High Court without fresh proceedings to be commenced.

A foreign judgment that is recognised potentially has an estoppel effect on a specific issue or on a cause of action. Singapore common law recognises certain foreign judgments if certain conditions are met.

A judgment for a fixed sum of money from a foreign court of law is capable of recognition if it is (a) final and conclusive by the law of that country; and (b) where that court had international jurisdiction (as defined by Singapore law) over the parties.

Certain limited defences are available to resist recognition and enforcement of a final foreign judgment. In the landmark decision of *Re Zetta Jet Pte Ltd*¹⁴¹ the Singapore High Court considered the question of public policy under the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, as adopted by Singapore in the Tenth Schedule to the Companies Act (the Singapore Model Law). In this case, 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 lower than in jurisdictions where the Model Law had been enacted unmodified.

While the Court declined to lay out specifically what would trigger the public policy bar in Singapore, it held that the standard would at least require the denial of an application for recognition of foreign proceedings by a foreign insolvency representative appointed under proceedings restrained by the Singapore court.

Well done for identifying the various possible avenues but from a restructuring processes point of view, the key issue to focus in on is the Model Law and the requirements that must be satisfied. Well done for picking up on the Zetta Jet case but that is for recognition of foreign insolvency processes, not a judgment as such. **3 Marks.**

*** End of Assessment ***