



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]: 30.5 out of 50 = 61%

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

Commented [DB2]: 9 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 .

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]

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.

[When a company liquidates, the liquidator may apply to the court to seek the recovery of assets previously transferred in the following transactions: (a) The granting of unfair or inappropriate preferences; Or (b) the value of the deal is lower. For unfair preference trades, the liquidator must show the following four elements:

Commented [DB3]: 7 out of 10

(a) the preferred party (the beneficiary of the transaction) is the creditor or guarantor of any debt or indebtedness of the Company; (b) the Company was insolvent (or insolvent as a result of the transaction) at the time the priority was granted; (c) The Company does anything that puts the preferred party in a better position than the preferred party at the time of the liquidation of the Company; And (d) the firm is influenced by the preference of the preferred party in its decision to proceed with the transaction, noting that if the preferred party is a partner of the firm, the firm is considered to be influenced by the preference. The relevant period for the recovery of assets due to unfair priority shall be two years from the date of the liquidation application and six months for the related party. For a transaction with a lower value, the liquidator must show two elements: (a) a gift from the company to the payee, or a transaction in which the value of consideration received by the company is significantly lower than the stated value; (b) the transaction caused the Company to go bankrupt or has gone bankrupt. If the preferred party is a partner of the firm, the firm is presumed to have made a low value transaction. The relevant period for recoverable assets is five years from the date of the winding-up application, regardless of whether the undervalued transactions are related to partners or not. It should be remembered that a recovery clause may be provided to a liquidator only after the liquidator has entered the liquidation phase. Therefore, directors should be aware that creditors may seek to put the company into liquidation so that the liquidator can take advantage of these actions.]

There is no discussion of the defences and also the clawback periods are incorrect. 2.5 marks.

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

[On 10 March 2017, Singapore adopted the 2017 Amendments and adopted the Model Law on Cross-border Insolvency (THE Model Law). Singapore thus became the 42nd state in the world to enact legislation under the Model Law. Prior to the adoption of the Model Law, Singapore courts relied on common law principles to resolve cross-border insolvency issues. Prior to the adoption of the Model Law in recent years, a series of decisions in Singapore courts revealed the strong dynamics of universalism in judicial philosophy and illustrated how Singapore courts work, through the incremental development of the common law, universalism needs to be modified. Singapore is one of the few Asian countries to have passed a model law enacted more than a decade ago in the United States, United Kingdom and Australia. To date, 44 states in 46 jurisdictions have adopted the Model Law. On 1 February 2017, the Supreme Court of Singapore adopted the Guidelines on Communication and Cooperation between Courts in Cross-border Insolvency Matters (JIN Guidelines). The Guidelines have also been approved by the U.S. Bankruptcy Court for the District of Delaware and the Southern District of New York, two major jurisdictions in cross-border bankruptcy. This is the first time that Singapore has adopted a judicial communication and co-operation framework for cross-border insolvencies. 133 The Model Law, adopted through amendments, now allows foreign representatives to apply to the High Court of Singapore for recognition of foreign proceedings. The Model Law adopted by Singapore was in much the same form as the original Model Law and also provided for international cooperation and exchange between courts and representatives, as well as simultaneous insolvency proceedings. It is worth noting that the model Law incorporating amendments does not require reciprocity with the State in which the foreign proceedings take place. Despite the above, however, it should be noted that, under the Model Law on Unlawful Orders, the court can refuse recognition only if it recognizes a "clear violation" of public policy. However, the Model Law promulgated by Singapore omitted the word "obvious".

The first decision of the High Court of Singapore on the recognition of foreign insolvency proceedings following the adoption of the Model Law was in the case of *Rezeta Jet LTD*. Prior to the adoption of the Model Law, Singapore's courts relied on the common law principle of recognition. In accordance with these principles, it has long been held that a court may recognize a foreign bankruptcy if it occurs in the jurisdiction in which the debtor company is registered. The Singapore court also extended this period further, confirming that in Singapore, courts can also recognize foreign insolvencies that begin at the location of the debtor's principal centre of interest, even if this is different from where the company is registered. Singapore's courts have also expanded the common law so that interim orders can aid foreign rehabilitation proceedings (not just formal foreign bankruptcy proceedings). Moreover, unlike earlier English case law, Singapore courts have confirmed that voluntary rehabilitation or insolvency proceedings can also be recognised. In addition, Singapore's courts have expanded the common law to address the inadequacies of the domestic insolvency law. In *Life Link Pty LTD (Creditors Voluntary Liquidation) and Others v. Tan Lystina and others*, the High Court of Singapore held that the director's priority in paying related entities whose companies were on the brink of bankruptcy was contrary to her fiduciary duty to protect the interests of the company's creditors. In a significant extension of the law, directors are personally liable for these payments. This protects creditors in cases where they may otherwise have no recourse.]

The answer does not seem to understand the distinction between the Model Law and the JIN Guidelines. There also appears to be blind copying from the Guidance 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?

[A court may revoke an bankruptcy if: (a) the order should not have been made on grounds then existing; (b) The debts and expenses of bankruptcy have been discharged or guaranteed and are discharged by the court; (c) The distribution of the estate will take place in Malaysia or the majority of creditors are residents of Malaysia and the distribution should take place there. An application for cancellation must be made within 12 months of the bankruptcy order, except where subsequent applications are allowed.

Released by the court, the official assignee, the bankrupt or any other interested person may apply to the court for discharge of the bankruptcy order at any time after it has been made. Any application must be served on each creditor who has filed proof of debt in bankruptcy, and the court will hear any creditor before making an order to discharge the debt. Upon application, the court may : (a) refuse to perform its duties; (b) an absolute discharge of bankruptcy is ordered; (c) issue a discharge order on such conditions as he thinks fit, including conditions relating to future income or property.

Release by a formal assignee, who may, at his discretion, issue a certificate of discharge but is prohibited from doing so under certain conditions.]

4 marks

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

Commented [DB4]: 8 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.

[Previously, there were no restrictions on the application of international de facto provisions. Under section 440 (Certain Contractual Rights Limited Companies) of the IRD Act 2018, there is a new provision that restricts the exercise of certain contractual rights only if certain litigation has been initiated by the company, or if the company is bankrupt. This does not prevent these contractual rights from being exercised for other reasons specified in the contract, such as non-payment of the amounts owed by the Company. In the subsequent regulations also need to develop some engraving scheme.

This means that it may no longer be possible to terminate contracts with insolvent companies on de facto terms. It may also allow companies to continue to sign key contracts and provide a mitigation measure in restructuring efforts. However, section 440 (5) provides a list of contracts excluded from this exception. These include: (a) eligible financial contracts that may be agreed; (b) a permit, permit or approval contract issued by a government or statutory body; (c) contracts that may affect the national or economic interests of Singapore; (d) any commercial charter of the ship; (e) any agreement within the meaning of this Convention as defined in section 2 (1) of the International Interests of Aircraft Equipment Act. 144 b); Or (f) any agreement between the parties to the agreement signed by Singapore. The scope of the "qualified financial contract" in paragraph a) above is of great importance to financiers contracted with Singapore companies. **Does not really apply to most corporate loans.** Clause 440 does not prevent termination of the contract for reasons other than the de facto terms.

Under a new clause on wrongful transactions, the court has the power to declare that anyone who is knowingly a party to a company's wrongful transactions is personally liable for a company's debts or liabilities. Any company or any party doing business with or intending to participate in the company may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions does not constitute an improper transaction. If the company becomes insolvent as a result of such indebtedness or liability, the company trades incorrectly. Section 239 of the IRD Act 2018 (liability for erroneous transactions) introduces a new concept of erroneous transactions, where a person is personally liable for a company's debts: (a) they know that the company's transactions are highly irregular; Or (b) as a senior officer of the Company, should have known, in all cases, that the company's transactions were improper. This applies to UK insolvency law and does not require criminal liability until it comes into force. An erroneous trade is defined as one in which a debt or other debt is incurred with no reasonable prospect of the company going bankrupt or being bankrupt as a result.]

There is some decent analysis in the answer just that English may not be your native language. In any case the answer demonstrates an understanding and grasp of the concepts. However, it would have been enhanced if you compared wrongful trading with insolvent trading. 5 marks.

Question 3.2 [maximum 7 marks]

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

[Judicial administration, another corporate rescue tool in Singapore, requires the appointment of an insolvency practitioner as the judicial Manager, which is made by the court. The judicial manager succeeds the directors and management of the company and is responsible for the management of the company. The criticism of the judicial administration is that it is more like a bankruptcy process than a corporate bailout, with not enough companies being "saved" given the stigma associated with bankruptcy appointments and proceedings. After the judicial manager is appointed by the court, the powers of the directors of the company cease and the judicial manager takes over the affairs, business and property of the company. Creditors have a limited role in the management and direction of the company, as this is the task of the judicial manager. However, creditors usually form a creditors' committee. This may take place when a meeting of creditors is convened to consider and approve the judicial Manager's proposal, with or without modification. The creditors' committee (once appointed) may be empowered to request the presence of the Judicial Manager and to provide such information as the Committee may reasonably request regarding the performance of its functions. If the creditors' committee is dissatisfied with the extent or nature of the information provided to it by the Judicial Manager, an application may be made to the court and the court, satisfied that the statement is well established, may give directions to the Judicial Manager as it thinks fit.

Judicial administration is a process of creditor possession. On the application of the Company or its creditors, the court may appoint a judicial manager, if it proves that the Company is or may be unable to pay its debts, and by appointing one or more of the purposes outlined in the Act (such as the company or all or part of its business as a going concern or the realisation of the company's assets more favourably than through a winding up order). If the court grants the judicial administration order, then the Judicial Manager, an independent insolvency practitioner, will control the business and property of the Company for 180 days, subject to any further extension granted by the court.

Applications for judicial administration may be made by: (a) the company (by resolution of the shareholders); (b) its directors (by resolution of the Board); Or (c) its creditors (including contingent and potential creditors), joint or separate creditors. An application for judicial administration may be made only if the Company or the company's creditors consider that: (a) the Company is or will be insolvent; (b) there is a reasonable probability that the company will be reinstated or retained as a going concern in whole or in part, otherwise the interests of creditors will be better than winding up.

The judicial administration order will be lifted after 180 days, and there is no limit to the number of extensions the court may grant unless extended by the court. The judicial administration order may also be revoked if: (1) the creditor refuses to approve the judicial Manager's proposal; 103 (b) In the opinion of the judicial Administrator, the purpose set out in the judicial administration Order cannot be achieved; Or (c) the judicial Manager has acted or will act in such a way as to unfairly prejudice creditors or members of the company. Discharge does not mean automatic liquidation, but the court has the power to order the company to liquidate.

The court may make a judicial administration order only if (a) it is satisfied that the Company has been or will be unable to pay its debts; (b) considers that the order is likely to achieve one or more of the following purposes, namely, (i) the survival of the Company or its operations in whole or in part; (ii) approve a compromise or arrangement under section 210 of the Companies Act between the Company and any person referred to in that section; Or (iii) the realization of the company's assets is more advantageous than liquidation. The Court

will consider whether the appointment of a judicial officer will fulfil one or more of the purposes set out in [Section 91 of the IRD Act of 2018] "and the Supreme Court will not make a judicial administration order: (a) after the Company has entered a liquidation phase; (b) where the Company is located: (i) a bank licensed under the Banking Act. 19); (ii) a financial company licensed under the Finance Companies Act. 108); (iii) an insurer licensed under the Insurance Act. 142); Or (4) the company is a company as prescribed by the Minister by order in the Gazette.

The automatic suspension of the company takes effect upon filing of the judicial administration application process. If a judicial administration order is made, a broader suspension will be imposed for the duration of the judicial administration. The court or the judicial manager shall have the authority to permit the commencement or continuation of other prohibited proceedings or enforcement actions.

In addition to all the powers and duties of a director, he assumes the powers provided for in Table 1 attached to the IRD Act 2018. These powers include, but are not limited to : (a) the power to sell or otherwise dispose of company property by public auction or private contract; (b) The right to borrow and secure company property; (c) appoint lawyers, accountants or other professionals to assist him in the performance of his functions; And (d) the power to initiate or defend any action or other proceedings in the name of the Company. The Judicial Manager also has the power to dispose of secured assets under section 100 of the IRD Act 2018. Assets secured with floating charges may be disposed of at the discretion of the judicial Manager. However, variable fee holders must have equal priority over the proceeds. The judicial Manager must also present a proposal to creditors at a creditors' meeting within 60 days of the appointment.

Unlike the liquidator, the administrator has no right to deny the onerous contracts signed by the company prior to the order of the judicial manager.

The provisions concerning the liquidator's power to shelve transactions for low-value, concessional and extortion credits also apply to judicial administrators. Provisions relating to the liquidator's right to apply to the court for orders relating to transactions involving fraudulent creditors also apply to the administrator.

Section 94 (1) of the IRD Act 2018 {power of the Court to make judicial administration orders and appoint judicial Managers) introduces a new voluntary procedure for not first applying to the court for judicial administration when: (a) the company is or may be unable to pay its debts; (b) there is a reasonable likelihood of achieving one or more of the purposes of the administration of justice referred to in article 89 (1); And (c) have obtained a resolution from their creditors. Article 94 also provides for procedures for this voluntary initiation of judicial administration proceedings. This includes, but is not limited to: (a) the manner in which creditors' meetings are held; (b) Notification requirements; And (c) the relevant timetable.

After the appointment of the liquidator, all the powers of the directors of the company cease at the time of voluntary winding-up, except where the liquidator or the members of the company approve the continued exercise of those powers or duties. The directors' powers also end when a court order forces the closure of a company. However, if the liquidator is satisfied that the nature of the estate or business of the company or the general interest of the creditors or contributors requires such appointment, the liquidator may apply to the court for the appointment of directors as special administrators to assist the liquidator. A creditors'

committee may also be established when a creditor submits a certificate of creditor's rights to verify his or her claims and voting rights.]

Unfortunately, while the answer is very detailed it falls short of the expectations. There is no compare and contrast and all it does is to discuss judicial management then followed by liquidation. **3 marks.**

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

Commented [DB5]: 6.5 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)**

[1. Judicial administration is a process of creditor possession. On the application of the Company or its creditors, the court may appoint a judicial manager, if it proves that the Company is or may be unable to pay its debts, and by appointing one or more of the purposes outlined in the Act (such as the company or all or part of its business as a going concern or the realisation of the company's assets more favourably than through a winding up order). If the court grants the judicial administration order, then the Judicial Manager, an independent insolvency practitioner, will control the business and property of the Company for 180 days, subject to any further extension granted by the court. The court may make a judicial administration order only if (a) it is satisfied that the Company has been or will be unable to pay its debts; (b) considers that the order is likely to achieve one or more of the following purposes, namely, (i) the survival of the Company or its operations in whole or in part; (ii) approve a compromise or arrangement under section 210 of the Companies Act between the Company and any person referred to in that section; Or (iii) the realization of the company's assets is more advantageous than liquidation.

2 Marks.

2. Rescue financing means both: (a) necessary for the survival of the debtor receiving the financing; (b) The asset of the debtor whose financing must be realized is more advantageous than the liquidation of that debtor. Under the "overcharged" scheme and judicial administration, the Courts of Singapore may, on the debtor's application, make an order that any salvage funds obtained by the debtor will: (a) be deemed to be part of the cost of winding up if the debtor is subsequently wound up; (b) Later repayment by the debtor takes precedence over the senior debt; (c) Secured by a security interest in the debtor's property, not by a security interest in the debtor's property, or by a subordinate security interest in a subordinate security interest in the Debtor's Property if the debtor is unable to obtain unsecured salvage financing from any other person; Or (d) secured by a security interest in the property conforming to the existing security interest, with the same or higher priority than the existing security interest, if the debtor is unable to obtain relief funds from any other person unless so secured and the interest of the existing security interest is adequately protected. These are special remedies/measures taken mainly from section 364 bankruptcy law in the United States. The measures are part of a package of amendments in

2017 until the PASSAGE of the IRD Bill in 2018, aimed at enhancing Singapore's reputation as an international centre for restructuring.

2 Marks

3. The main change implemented by the 2017 amendments is the introduction of features of the debtor possession style, using certain tools such as the debtor can occupy financing, combining existing arrangements terms, giving the debtor time and space to restructure its affairs, and other proposals to creditors through the arrangements. A "surcharge" scheme, which can be activated if the company intends to offer a compromise to creditors through a scheme of arrangement. As part of the "surcharge" plan, the Company may seek suspension protection from creditors (from the courts) and maintain control as a debtor, while proposing to implement the restructuring plan through the Plan of Arrangement. The management of the Company also maintains control throughout the period of suspension and the implementation of the Plan of Arrangement. The company is responsible for proposing restructuring plans with the assistance of financial advisors and implementing them through relevant arrangements. Thus, the creditor's role is to liaise and negotiate the regrouping plan with the debtor, note the proposed restructuring plan/plan and, if necessary, challenge the company's classification and voting of creditors in the plan. The court's role is largely a watchdog role, generally limited to supervise the restructuring process, ensure the information disclosed to creditors, know the debtor company restructuring from the regular progress, supervision and relevant parties apply for extension or ending the suspended and other problems related to the restructuring process of hearings, and eventually plan meeting and approval plans hearings.

Article 211 section 64 of the IRD Act 2018 introduces the debtor's possession reorganization system, which has the following key features: (a) Automatic suspension of the application for 30 days following the application to the court. The period of suspension may be extended further by order of the court; (b) Provide U.S. style debtor-in-possession financing (DIP) or bailout financing; (c) Availability of cross-class compression in scheduling schemes; (d) Prepackaged arrangements are available; And (e) Morality has additional territorial implications.]

Unfortunately this does not address the question. 0 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?

[On 10 March 2017, Singapore adopted the 2017 Amendments and adopted the Model Law on Cross-border Insolvency (THE Model Law). Singapore thus became the 42nd state in the world to enact legislation under the Model Law. Prior to the adoption of the Model Law, Singapore courts relied on common law principles to resolve cross-border insolvency issues. Prior to the adoption of the Model Law in recent years, a series of decisions in Singapore courts revealed the strong dynamics of universalism in judicial philosophy and illustrated how Singapore courts work, through the incremental development of the common law, universalism needs to be modified. Singapore is one of the few Asian countries to have passed a model law enacted more than a decade ago in the United States, United Kingdom and Australia. To date, 44 states in 46 jurisdictions have adopted the Model Law. On 1 February 2017, the Supreme Court of Singapore adopted the Guidelines on Communication and Cooperation between Courts in Cross-border Insolvency Matters (JIN Guidelines). The Guidelines have also been approved by the U.S. Bankruptcy Court for the District of Delaware and the Southern District of New York, two major jurisdictions in cross-border bankruptcy. This is the first time that Singapore has adopted a judicial communication and co-operation framework for cross-border insolvencies. The Model Law, adopted through amendments, now allows foreign representatives to apply to the High Court of Singapore for recognition of foreign proceedings. The Model Law adopted by Singapore was in much the same form as the original Model Law and also provided for international cooperation and exchange between courts and representatives, as well as simultaneous insolvency proceedings.]

This does not address the question which relates to whether a JM moratorium can apply outside of Singapore by virtue of the Singapore order. 0.5 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.

[Judgments of foreign courts (which have effect on persons) may be recognized in Singapore or enforced through common law proceedings in Singapore courts. Some foreign judgments may be registered in Singapore for enforcement. There are two statutory registration systems. The first is under the Mutual Enforcement of Federal Judgments Act, which allows judgments of the United Kingdom and Australia, as well as certain Commonwealth countries, to be registered in the High Court of Singapore. The second system is that, under the Mutual Enforcement of Foreign Judgments Act, only the Hong Kong Special Administrative Region has so far been gazetted as a registered state. Once the ruling is registered, foreign judgments can be enforced in Singapore, just as judgments issued by the High Court of Singapore do, without the need to start new proceedings. A recognized foreign judgment may have an estoppel effect on a particular issue or cause of action. Singapore common law recognises certain foreign judgments subject to certain conditions being met. A judgment of a fixed sum awarded by a foreign court is (a) the final and definitive judgment of the law of that country; (b) The Court has international jurisdiction (as defined in Singapore law) over the parties. Certain limited defenses may resist recognition and enforcement of foreign judgments. In a landmark decision, the High Court of Singapore considered public policy issues under the Model Law on Cross-border Insolvency

adopted by the United Nations Commission on International Trade Law (Singapore Model Law). This is the first reported decision by a Singapore court to face a public policy issue when applying for recognition of a foreign insolvency proceeding.]

More focus on the UNCITRAL Model Law and the key requirements and effects would have been good. **2 Ma**

*** End of Assessment ***