



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: **[202021IFU-314.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]

Commented [DB2]: 8 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.

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.

8 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.

[The two types of impeachable transactions are undervalued transactions – where an individual is adjudged bankrupt and has within the relevant period entered into a transaction with any person at an undervalue, the official Assignee may apply to the court to restore the position to what it would have been if the individual has not entered into the

Commented [DB3]: 7.5 out of 10

transactions. The transactions will constitute a transaction at an undervalue if the bankrupt makes a gift or otherwise enters into transactions for no considerations; the bankrupt enters into a transaction where the consideration is marriage; the bankrupt enters into a transaction for consideration which is significantly less in money worth, of the consideration originally provided by the bankrupt. The levant period for transactions at an undervalue is three years before either the date the bankruptcy application was made or the date upon which the bankruptcy order was made. **And if he becomes bankrupt or was bankrupt during the transaction.**

Second types of transaction is extortionate credit transactions: where an individual is adjudged bankrupt and has been a party to a transaction for or involving the provisions of, credit to him, the official assignee may seek an order setting aside or seeking other relief in regard to such credit transactions. A transactions shall be extortionate if, having regard to the risk accepted by the credit provider; the terms required grossly exorbitant payments to be made; or it is harsh and unconscionable or substantially unfair. **What is the clawback period for this?**

The defences are that where an individual has acquired an interest in the bankrupts property from a person other than the bankrupt, or has received a benefit or their preference from the transactions, if this was done in good faith and for value the transaction will stand. The transaction will not be in good faith if the individual had notice of the surrounding circumstances and the relevant proceedings, or was an associate of the bankrupt or was connected with individual with whom has entered into the transactions]

3 marks

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

[The objective of JIN Guidelines are universalism and were framed so that the Singapore courts have incremental development of the common law. **Not quite.** The guidelines have also been adopted by the US Bankrupt Courts for the District of Delaware and the Southern District of New York, two of the leading jurisdictions for cross0border insolvency. This will allow judicial communication and co-operation framework for cross-border insolvency to be adopted in Singapore]

0.5 marks. Incomplete answer. What is the significance of JIN?

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?

[Annulment and Discharge: The court may annul a bankruptcy if the order ought not to have been made on ground existing at the time the debts and expenses of the bankruptcy have been paid or secured to the satisfaction of the court; the distribution of the state will take place in Malaysia or the majority of creditors are residents in Malaysia and the distribution ought to happen. An application to annul must be made within 12 months

of the bankruptcy order being made. 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 upon application the court may refuse to discharge, make an order discharging the bankrupt absolutely or make an order discharging on conditions as it thinks fit, including conditions with respect to future income or property. Discharge by the official assignee, can simply issue a discharge stating that the reasons, however it is prohibited from doing so In certain circumstances.]

4 marks

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

Commented [DB4]: 7.5 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.

[i] The restrictions on *Ipso facto* clauses: The exercise of contractual termination clauses can make it difficult for companies to be restructured or rescued within a formal insolvency regime **why difficult?** therefore in some insolvency regimes the operation is restricted of *ipso facto* clauses. Section 440 of the IRD Act 2018 restricts the enforcement of *ipso facto* clauses once any proceeding relating to any application under judicial management or a scheme of arrangement involving the “supercharged” scheme process are commenced by a company. There are certain exceptions to it that are excluded a) any eligible financial contract as may be prescribed; b) any contract that is a licence, permit or approval issued by the government or a statutory body; c) any contract that is likely to affect the national interest, or economic interest, of Singapore, as may be prescribed; d) any commercial charter of a ship, e) any agreement within the meaning of the convention as defined in section 2(1) of the international interest in Aircraft Equipment Act or any agreement that is the subject of a treaty to which Singapore is party, as may be prescribed. Section 440 does not prevent the termination of contracts on grounds other than the *ipso facto* clause. **Some analysis on how section 440 aids restructuring would be useful.**

1. ii) Wrongful trading provision: The court is empowered to make a declaration that any person who was a knowingly party to the company trading is personally responsible for the debts or liabilities of the company. A company or any person to, or interested in becoming party to the carrying on of business with a company, may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions would constitute wrongful trading. A company trades wrongfully if the company incurs debts or liabilities without reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of the incurring of such debt or liability. Section 239 was introduced which is the responsibility of wrongful trading, it introduces the new concept of wrongful trading which imposes personal liability for the company's debts on a person if they knew that the company was trading wrongfully or as the company, ought, in all circumstances to have known that the company was trading wrongfully. **How is this different from insolvent trading?** This provision is from the English insolvency legislation and does not have a criminal liability.

Wrongful trading is defined as the incurrence of debt or other liabilities without a reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of the debt.]

Still lacking in analysis and commentary. 5 marks.

Question 3.2 [maximum 7 marks]

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

[

Judicial Management	Liquidation
<p>A corporate rescue tool. The judicial manager is appointed by the court to oversee the management and running of the company. The Court may make an order for judicial management if it is satisfied that the company is or is likely to become unable to pay its debts; and it considers that placing the company under judicial management would be likely to achieve at least one of three purposes of a judicial management. This is a creditor led rescue tool</p>	<p>This process is adopted in a voluntary winding up. The powers of the company directors cease, except in so far as the liquidator or the members of the company with the liquidators consent approve the continuance of such powers or duties. The power of directors also cease when the court orders that a company be compulsorily wound up.</p> <p>A liquidator may, apply to the Court to appoint the directors a special managers to assist the liquidator, if the liquidator is satisfied that the nature of the estate or business of the company, or in the interest of the creditors or</p>

	contributes to such requirements.
Not many companies are being rescued by this tool. The power of the company's director cease and the judicial manager takes over the affairs, business and property of the company. Judicial management process has to be completed within a period of 180 days, unless any further extension is granted by the court.	Companies Act is the main legislation dealing with corporate liquidation. The formal system for entering liquidations is to ensure a fair and orderly distribution of the company's assets among creditors and contributes to terminate the existence of the company by its eventual dissolution. The three modes of winding up are a) members voluntary liquidation; b) creditors voluntary liquidation c) compulsory liquidation
The creditor committee once appointed can be granted the power to require the judicial manager to attend before it and furnish it with such information relating to the carrying out of his functions as the committee may reasonably require.	There is an obligation to file for judicial management, this isn't the case in liquidation. No prescribed circumstances for which a company must file for liquidation. Where directors do not have a genuine belief of a company's ability to pay its debt as they fall

	due, for so long as the company keeps on trading, the directors risk the duties.
<p>Alternative to formal liquidation can be judicial management. Judicial management can be initiated by the company, its directors or creditor. Judicial management can be converted into Liquidation.</p> <p>An automatic moratorium on legal proceedings is imposed on legal proceedings against the company comes into effect upon the filing of the judicial management application.</p> <p>A judicial manager has power to sell or otherwise dispose of the property of the company by public auction or private contract. A judicial manager may also dispose of property secured by a floating charge subject to satisfying certain conditions</p>	<p>Common ground is that the debtor is unable to pay its debts. Debt of sum exceeding SGD 10,000 has been due. Liquidation can be converted into a corporate rescue mechanism like scheme of arrangement, this cannot be adopted in a corporate rescue procedure. Claw back procedure is available to liquidator once the company is placed into liquidation. The directors should be alive that the creditors might seek to place the company into liquidation.</p> <p>A court will not make a judicial management order if the company has already gone into liquidation.</p>

Type your answer here]

The comparisons in each side of the table don't match up and talk about different elements.
2.5 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)**

To obtain the judicial management order they have to satisfy that PEC is or will be unable to pay its debts further it is considered that the order would be likely to achieve one or more of the purpose. It will be for the survival of the company, or the whole or part of its undertaking as a going concern; the approval under section 210 of the Companies Act of a compromise or arrangement between the company and such persons as mentioned and the more advantageous realisation of the company's assets than would occur in a winding up.

1.5 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)**

For PEC to avail rescue financing it has to prove that it is necessary for the survival of a debtor that obtains the financing and it is necessary to achieve a more advantageous realisation of the assets of a debtor that obtains the financing, than on a wind-up of that debtor.

Pls set out the different types of rescue financing possible and what must be established to obtain it. 1 Mark.

- What are the steps that need to be taken in order to place PEC's subsidiaries under judicial management out of court? **(3 marks)**

[PEC subsidiary should have a substantial connection with Singapore, which can be established by the demonstration of one or more of the following factors: That the centre of main interests of the debtor is located in Singapore; the debtor is carrying on business in Singapore or has a place of business in Singapore; the debtor is registered as a foreign company in Singapore; the debtor has substantial assets in Singapore the debtor has chosen Singapore law as the law governing a loan or transactions, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction; and or the debtor has submitted to the jurisdiction of the Singapore Courts for the resolution of one or more disputes relating to a loan or other transaction]

Section 94 of IRDA allows a JM to be appointed out of court by 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?

[In Judicial management an automatic moratorium is imposed on legal proceedings against the company comes into effect upon the filing of the judicial management application. If a judicial management order is made then a more extensive moratorium will come into effect for the period of the judicial management. The Court, or the judicial manager, has a discretion to allow otherwise prohibited proceedings or enforcement actions to be commenced or continued. Upon the appointment of a judicial manager by the Court, the powers of the company's director cease and the judicial manager takes over the affairs, business and property of the company]

The question here is does the JM moratoria apply outside of Singapore automatically. The answer is no as the JM order, unlike section 64, is not expressed to be able to apply extra-territorially. **1 Mark**

Question 4.2.2 [maximum 4 marks]

What cross-border insolvency laws are available in Singapore to recognise foreign insolvency proceedings? Explain the general requirements in order for a Singapore court to recognise a foreign insolvency proceeding and what the effect will be if the court were to do so.

[Singapore has adopted the Model law on Cross-Border Insolvency, prior to the adoption of the Model law the Singapore Courts depended on common law doctrines to address the cross-border insolvency issues. The amendment act now allows foreign representatives to apply to the High Court of Singapore for the recognition of foreign proceeding. A judgement from a foreign court is recognised in Singapore or enforced by an action at common law through the Singapore Court. First requirement for recognition is that under the Reciprocal Enforcement of Commonwealth Judgement Act enables judgments from the United Kingdom and Australia, to be registered in the Singapore High Court. The second regime under Reciprocal Enforcement of Foreign Judgement Acts, only Hong Kong, SAR has been gazetted country recognised for registration, Once registered, the foreign judgment is enforced against in Singapore as if it was a judgement issued from the Singapore High Court without fresh proceedings to be commenced. A foreign judgement that is recognised potentially has an estoppel effect on a specific issues or on a cause of action. Singapore common law recognises certain foreign judgments if certain conditions are met. A judgement 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.]

A decent summary of the options. More detail on the effects of recognition under the Model Law would have been good. **2**

*** End of Assessment ***