



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]: 41 out of 50 = 82%

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.

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.

S.No	Particulars	Undervalued	Unfair Preference
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Commented [DB3]: 8 out of 10

Elements	<ul style="list-style-type: none"> • The bankrupt makes a gift or otherwise enters into a transaction for no consideration. • The consideration for the transaction is marriage; or • The consideration for the transaction is significantly less in money or the consideration provided by the bankrupt. • The company become insolvent as a result of that transaction. Or was insolvent at the time of the transaction. 	<ul style="list-style-type: none"> • Person with whom the transaction took place is bankrupt's creditor or surety or guarantee, • The transaction puts the person in a better position than they would have. • The bankrupt must be influenced by a desire to prefer the other party such they would be in a better position on bankruptcy. • The company become insolvent as a result of that transaction. Or was insolvent at the time of the transaction.
Defences	<ul style="list-style-type: none"> • The transaction was performed in the ordinary course of business. • It is necessary for the bankrupt to perform the transaction and no other option to secure the asset or property. 	<ul style="list-style-type: none"> • The transaction was performed in good faith and in ordinary course of business. • The party who acquired such property bought it in good faith for value and without notice of the undervalue or unfair preference.

Incomplete elements and also no mention of the clawback periods. **3 marks.**

Question 2.2 [maximum 2 marks]

What is the objective and significance of the JIN Guidelines?

The JIN Guidelines are the first set of guidelines developed by insolvency judges to promote cooperation and communication between courts from various jurisdictions when they are faced with two or more proceedings on the same subject across the globe. They are meant only to supplement the procedural rules of the courts and do not have any effect on the substantive laws. The provisions aim to reduce the amount of legal costs incurred during

cross-border insolvency proceedings, and in doing so, preserve the value of financially distressed businesses and their assets. JIN Guidelines also insolvency representatives and other parties address key aspects of and the modalities for communication and cooperation amongst courts, insolvency representatives and other parties involved in cross-border insolvency proceedings.

One such instance is the provision of a platform for the conduct of a joint hearing between the courts. Under the JIN Guidelines, the courts can simultaneously hear the proceedings in one court, permit a foreign counsel to appear in front of it and communicate with the other court in advance of such a joint hearing to establish the procedures for the orderly making of submissions and rendering of decisions.

Good succinct and well written answer. 2 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?

When a bankrupt repays his debt in full or makes a settlement offer which is accepted by a majority (in number) of his creditors representing at least 75% of the total debt owed, the Bankruptcy Order made against him will be annulled. In the case of a settlement offer, the outcome of the annulment is dependent on the creditors. If the creditors accept the proposal, a Certificate of Annulment will be issued under Section 95A of the Bankruptcy Act (Chapter 20). The annulment of the Bankruptcy Order has the effect of putting the debtor in the same position as if no Bankruptcy Order had been made against him, but it does not release the debtor from any provable debts which have not been filed against him when the bankruptcy was in force.

A bankrupt may apply to the High Court to grant him an Order of Discharge. The Official Assignee may also apply to the High Court for the bankrupt's discharge under Section 124 of the Bankruptcy Act (Chapter 20) if the proven debts exceed S\$500,000. The High Court will take into consideration the views of the Official Assignee and the bankrupt's creditors before deciding whether to discharge him from bankruptcy. The High Court will consider facts such as the bankrupt's age, earning capacity and his assets before deciding whether to discharge him. In addition, the High Court will also consider the amount of monthly instalment payments the bankrupt has contributed to his bankruptcy estate for the benefit of his creditors, whether any bankruptcy offences were committed, and generally, whether the bankrupt has co-operated fully with the Official Assignee in the administration of the bankruptcy estate. The Official Assignee may discharge the bankrupt from bankruptcy provided at least three years have lapsed since the commencement of the bankruptcy and where the proven debts do not exceed S\$500,000.

How about the other grounds of annulment? See section 392. 3 marks.

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

Commented [DB4]: 12 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.

THE RESTRICTIONS ON IPSO FACTO CLAUSES

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 falls 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.

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.

section 440 of the IRDA restricts a party from:

- (a) terminating, amending, or claiming an accelerated payment or forfeiture of a term under any agreement; or
- (b) terminating or modifying any right or obligation under any agreement (including a security agreement),

with a company by reason only that the company has commenced proceedings for judicial management or a scheme of arrangement or that the company is insolvent. The restriction applies to contracts entered into on or after 30 July 2020. The restriction does not have retroactive effect.

The restriction is not all encompassing. Certain contracts are excluded from the restriction. In addition, a counterparty may obtain a declaration from the court that such restriction does not apply to it on the basis that restricting the application of ipso facto clauses would likely cause the applicant significant financial hardship.

Section 440 ensures that genuine restructuring efforts are not thwarted.

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.⁹ 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.

Very detailed and well written essay with the requisite analysis. 8 marks.

Question 3.2 [maximum 7 marks]

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

S.no	Title	Liquidation	Judicial Management
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1	Meaning	The liquidation of a company is the process by which a company is brought to an end, and the assets and property of the company are redistributed.	Judicial management generally refers to situations where a company is unable to pay its debts but the Court finds that the inability is due to mismanagement or an event that can be overcome.
		Governed by Part X, Companies Act	Governed by Part VIII A, Companies Act (Cap 50)
2	Statutory framework	For winding up	For rehabilitative purpose
3	Purpose	A liquidation generally occurs where the company is insolvent and the purpose of the liquidation is to collect its assets, determine the outstanding claims against the company, and satisfy those claims in the manner and order prescribed by law.	Judicial management seeks to assist this type of company to overcome a temporary setback without going out of business. An order will be made by court placing the company under judicial management.
4	Procedure	In court procedure	An out-of-court appointment procedure. However, The court retains ultimate oversight of the judicial management of a company
5	Types	compulsory or voluntary basis	By order of court or by creditors resolution
6	Who can initiate	application may be filed to the High Court by the company, its creditors, its contributories, the liquidator, the judicial manager or the Minister for Finance.	initiated by the company, its directors or its creditors (including contingent or prospective creditors), by filing an application to the High Court
7	Control of insolvency proceedings	The powers conferred and duties imposed on the company's directors effectively cease when the winding up order is made. The liquidator takes the company's property into his or her custody or under his or her control, ⁶⁸ and may carry on the business of the company for the first four weeks so far as is necessary for the winding up thereof. Thereafter, the liquidator can only carry on the company's business with authority of either the court, or the committee of inspection	Likewise, on appointment of a judicial manager, all powers conferred and duties imposed on the directors are exercised and performed by the judicial manager in their place, ⁷² who does all things as may be necessary for the management of the company's affairs, business and property, and such other things as the court may sanction
8	Appointment & Grounds	Compulsory winding up by the court is initiated by the filing of an application to the High Court. Voluntary winding up takes place out of court and involves only filings to the Accounting and Corporate Regulatory Authority (ACRA) Grounds of winding up: <ul style="list-style-type: none"> • Section 254, Companies Act • Common ground company is unable to pay its debts • Company deemed to be unable to pay its debt if, upon statutory 	involves the appointment of a judicial manager who takes control of the company to achieve one or more of the following statutorily-specified objectives: a. the survival of the company; b. the approval of a scheme of arrangement; or

	demand being made for payment of exceeding \$10,000, company fails to make payment	c. a more advantageous realisation of the company's assets than on a winding up.
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Some basic comparison but it does go enough into the differences of the processes after a liquidator/JM has been appointed e.g. dealing with ongoing contracts, powers of investigation, scope of moratorium. **4 marks.**

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

Commented [DB5]: 12 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.

Currently the scheme of arrangement is operating under the supervision of the company's management but Judicial management may be more useful in cases where the creditors consider the company management to be untrustworthy because judicial management is supervised by an external judicial manager instead by the management of the insolvent company. Bankers must satisfy the court that the making of a judicial management order will cause disproportionately greater prejudice to the said creditor than the prejudice caused to unsecured creditors if the judicial management order is not made.

1.5 Marks

Answer 2

Rescue financing is financing that is necessary for the survival of the company as a going concern, or to achieve a more advantageous realization of the company's assets than would be realized on a winding-up. The IRDA empowers the court, on the application of the company, to order that superpriority be granted to a person that provides rescue financing to the company.

Superpriority may be granted by the court upon the application of the company if it can establish that:

- (1) reasonable efforts were made to secure rescue financing without superpriority and the person would not provide the financing without it;
- (2) there is adequate protection for the interests of the holder of the existing security in the event that security is "primed", ie where the rescue financing is secured by security over already secured property of the company; and
- (3) the financing constitutes "rescue financing".

Good and succinct answer. 1.5 Marks.

Answer 3

Section 94 of the IRDA now provides that instead of applying to Court for a Judicial Management order, a company can be placed under Judicial Management if a majority of the creditors (in number and value) so approve after requisite notices and documents have been filed and a creditors' meeting called.

Once the company is placed into Judicial Management pursuant to Section 94, it is under the supervision of the Court and in the same manner as a Court-ordered Judicial Management to ensure that there is no abuse. The important steps which needs to be placed to keep PEC's subsidiaries under judicial management out of court are.

- a) Subsidiaries are, or likely to become, unable to pay its debts
- b) There is a reasonable probability of achieving purpose and objective of judicial management order.

Hence, the resolution of its creditors gets obtained.

Well done! 3 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?

Normally, the moratorium arising from Judicial Management does not have extra-territorial effect; in other words, it is unlikely to be capable of barring foreign proceedings.

However, the exception is the Enhanced Moratorium arising from section 211B of the Companies Act may be ordered to apply to extraterritorial acts, so long as the person is in Singapore or within the jurisdiction of the Singapore High Court. This extraterritorial feature is a newer development arising from changes in Singapore's Companies (Amendment) Act 2017, which introduced various enhancements for debt restructuring purposes. The Court has taken a cautious approach to this, indicating that the extraterritorial feature would only be ordered for specific acts or acts of a specific party within the jurisdiction of the Singapore Courts. This feature was recently recognised in an English judgement: *H & CS Holdings Pte Ltd v. Glencore International AG* [2019] EWHC (Ch).

Hence, under the new section 211B(5), a moratorium under the new section 211B may be ordered to have extraterritorial effect for PES subsidiaries.

Well done for separating the JM moratorium from the 211B as they are different. 3 Marks.

Question 4.2.2 [maximum 4 marks]

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

Previously, Judgement of foreign countries was recognised in Singapore or enforced through common law. There are two statutory registration regimes in place in Singapore. The first regime is Reciprocal Enforcement of Commonwealth judgements which enables judgments from the United Kingdom and Australia, and certain specific commonwealth countries to be registered in Singapore High Court. The second regime is under the reciprocal enforcement of Foreign Judgement Act, under this only Hong Kong and SAR has been a gazetted country recognised for registration. Singapore common law recognises certain foreign judgement if below mentions conditions are met:

- a. Judgement should be of fixed sum of money from a foreign court of law and should be capable of recognition.
- b. It should be final and conclusive award by the law of the country and court must have international jurisdiction over parties.

In a landmark decision of *Re Zetta Jet Pte Ltd*, a number of issues were raised but Singapore High Court considered only two main areas:

- i) the determination of the COMI,
- ii) whether recognition would be contrary to public policy.

It was held that the breach of Singapore injunction by the US trustee, the public policy exception was invoked, as to allow recognition would undermine the administration of justice in Singapore.

Recently, the UNCITRAL Model Law on Cross Border Insolvency was adopted with certain modifications in Singapore under new section 354B(1). There are few defenses which are available to resist recognition and enforcement of foreign insolvency proceeding. There are certain defenses available to resist recognition and enforcement of foreign awards.

- a. Under Article 17 of the Singapore Model Law, the Court must grant recognition if the various requirements are met. A foreign proceeding is recognized as a foreign main proceeding, if the foreign proceeding takes place where the debtor has its COMI, or as a foreign nonmain proceeding where the debtor has an establishment there, as defined under Article 2(d). Whether or not the foreign proceeding was properly commenced is not relevant to the granting of recognition.
- b. Under Article 6 of the Singapore Model Law, to which Article 17 is subject, a Singapore court may refuse recognition if such recognition would be "contrary" to the public policy of Singapore. Article 6 of the Model Law on the other hand requires recognition to be "manifestly contrary" to public policy for it to be refused.

Another good and succinct answer. **3 Marks.**

*** End of Assessment ***