



**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]: 36 out of 50 = 72%

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

Commented [DB2]: 10 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.**

**10 marks**

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [maximum 4 marks]**

Explain the elements of **two** types of impeachable transactions under Singapore insolvency law and what defences there may be to the two you have identified.

[Undervalue transactions-

A transaction is a undervalue transaction when bankrupt enters into a transaction-

1. without any consideration like gift
2. where the consideration is marriage
3. for consideration which is significantly less

Relevant period is 3 years before either the date the bankruptcy application was made or the date upon which the bankruptcy order was made.

Defence to the undervalue transaction can be transactions done in good faith and unaware of the any such proceedings.

Unfair Preferences-

A transaction would be unfair transaction if-

1. the other person to the transaction is bankrupt's creditor, surety or guarantor.
2. It makes the other person in a better position than it earlier was
3. While giving such preference the bankrupt must be influenced by a desire to prefer the other party such they would be in a better position on bankruptcy

The relevant period for unfair transaction given to an associate is two years before either the date the bankruptcy application was made or the date upon which the bankruptcy order was made and otherwise one year.

Defence to unfair transaction can be that it was done in good faith or the transaction was prior to the relevant period.] This goes towards elements rather than defence.

Also the transaction resulted in insolvency or the debtor was insolvent at the time of the transaction.

**3 marks**

### **Question 2.2 [maximum 2 marks]**

What is the objective and significance of the JIN Guidelines?

[In 2017 Supreme court of Singapore adopted the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (JIN Guidelines). These guidelines are also adopted by the US Bankruptcy Courts for the District of Delaware and the Southern district of New York. The adoption of JIN guidelines allows foreign representatives to apply to the High courts of Singapore for recognition of the foreign proceedings. It also provides for international co-operation and communication between courts and representatives, and for concurrent insolvency proceedings.]

**What is the significance? 1 mark.**

### **Question 2.3 [maximum 4 marks]**

How can a bankrupt obtain

- (i) an annulment; and
- (ii) a discharge

of his bankruptcy under the Singapore IRDA?

[(i) The Court may annul a bankruptcy

1. if the application is made within 12 months of the bankruptcy order being made, unless such leave is given.
2. On filing of such application, Court may annul a bankruptcy if the order was not made on grounds existing at the time.
3. The debts and expenses of the bankruptcy was paid or secured to the satisfaction of the court.
4. Distribution of the assets will take place in Malaysia or majority creditors are Malaysia residents and distribution takes place there.

(ii) Bankrupt can obtain discharge by Court by applying at any time after the bankruptcy order is made and the application will be served to every creditor who filed a claim in the bankruptcy process and court will hear any creditor before making an order of discharge.]

Who else can apply and what are the orders that the court can make?

**3 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

Earlier there were no restriction on the exercise of ipso facto clauses under Singapore Insolvency Law. The IRD Act, 2018 introduced Section 440 restricting the operation of ipso facto clause in certain circumstances which restricts the ipso facto clauses once any proceeding relating to any application under judicial management or a scheme of arrangement involving the supercharged scheme processes are commenced by the company. The section 440 does not prevent any other contractual right from being exercised due to any other reason. This makes ipso facto clause restrictive in nature and it may not be possible to execute ipso facto clause applicable for company in insolvency. Restriction in ipso facto clause also helps the insolvent company a relief for better restructuring. **How so?**

Section 440(5) also provides certain exceptions which can be executed even during the insolvency. These exceptions are:

1. Any eligible financial contract as may be prescribed
2. Any contract that was created to provide licence, permit, or approval issued by government or a statutory body.
3. Any contract that is likely to affect the national or economic interest of Singapore.
4. Any commercial charter of a ship.
5. Any agreement within the meaning of the Convention as defined in Section 2(1) of the International Interests in Aircraft Equipment Act.
6. Any agreement that is the subject of a treaty to which Singapore is a party.

(ii) wrongful trading

Wrongful trading is introduced by the Section 239 of the IRD Act, 2018. Wrongful trading is defined as the incurrence of debt or liabilities without a reasonable prospect of meeting them in full when the company is insolvent or becomes insolvent as a result of such debt. Under Section 239, the courts can declare any person who is knowingly party to the wrongful trading is personally responsible for debts and liabilities of the company. Any person interested in becoming a party in carrying a business with the company can make a declaration before the court that the transactions made are to be considered in ordinary course of business and not to be constituted as wrongful trading.

There are certain elements which makes a person personally liable under Section 239 of the IRD Act, 2018.

1. Person or party knew that the company was trading wrongfully, or
2. as an officer of the company, ought, in all circumstances, they understand the company was trading wrongfully.]

**Essay is too brief and there is a lack of commentary/analysis. 4 marks.**

**Question 3.2 [maximum 7 marks]**

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

[Liquidation ensures a fair and orderly distribution of the company's assets among creditors and contributories to terminate the existence of the company by its eventual dissolution. While, Judicial management is typically used by a company as a tool to restructure its debts to resume business as a going concern.

The liquidation of an insolvent company can be performed by way of-  
Creditors' voluntary liquidation- It is initiated by the company itself by passing a special resolution for voluntary liquidation and convening a creditors' meeting. The company will nominate a person to act as liquidator. If the nomination is rejected by its creditors, the creditors can nominate and choose a liquidator.

Compulsory liquidation- The company, its creditors, members or directors, can apply to court for a winding up order. The court may appoint the Official Receiver or an approved provisional liquidator after the making of a winding up application and before the making of a winding up order. A winding up order may be granted if the court is satisfied that the company is unable to pay off its debts.

Under Judicial Management, the court exercises its discretion in grant a judicial management order. The Court considers whether a more advantageous realisation of the company's assets can be achieved in comparison to the liquidation value. When a judicial management order is in force, the judicial manager appointed will replace the company's existing management. The judicial manager will formulate a judicial management proposal for the realisation of assets which must be approved by the company's creditors. During the period of judicial management, a moratorium against legal proceedings is automatically put in place to preserve the company's assets. The judicial management lasts for 180 days from the date the relevant judicial management order is made. **How about out of court judicial management?**

In a winding up scenario, directors are required to disclose to the liquidator all the assets and transactions. Whereas upon the making of a judicial management order, all powers and duties imposed upon the directors of the company are transferred to the judicial managers. However, it is common for the directors to continue to work together with the judicial managers to assist in the rehabilitation of the company.

In Judicial management, the appointment of Judicial manager is through court. Whereas on the appointment of liquidator, in creditor's voluntary liquidation, is done by company. Appointment of liquidator can be modified by the creditor's committee and creditors decision will prevail. All the powers of company's directors cease, except in case liquidator approves the continuation of such director's power and duties.



Judicial management is a creditor in possession procedure. The creditors will vote with 75% of the voting share to approve the rescue plan whereas there is no approval required in liquidation.]

There is hardly any compare and contrast. In general the essay lacks detail, it does not go into scope of moratorium, ability of liquidator/JM to bring claims etc. **3.5 marks.**

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

Commented [DB5]: 11.5 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)**

[  
i) Judicial management may be more useful in comparison to scheme of arrangement in cases where the creditors consider the company management to be untrustworthy. 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.

There are few basic requirements which needs to be fulfilled to obtain a judicial management order-

- a) Application need to be filed by company itself after attaining member's resolution or by its directors pursuant to the board resolution or through its creditors.
- b) Once the application is filed, court will pass order, if the court
  - i) is satisfied that the company is or will be unable to pay its debts
  - ii) considers that making a judicial management order will help company in rescue and survival and beneficial to run it as a going concern; or undergoing in judicial management proceedings will give more advantageous realisation of the company's assets than in winding up.

**1.5 Marks**

- ii) There are 2 requirement that must be satisfied by PEC to be able to access rescue financing. As per section 211E of the companies act, the court has the power to grant super priority for the financiers, if:
  - a) The funds provided are necessary for the company's survival or for the whole or any part of the undertaking of that company to remain as a going concern; or
  - b) The funds provided are necessary to achieve a more advantageous realisation of the company's assets of a company than on a winding up of that company.

**More detail on different types of rescue financing available would have been good. 1 Mark.**

- iii) 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

need 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.
- c) A resolution of its creditors is obtained.]

**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?

[The moratorium arising from Judicial Management does not have extra-territorial effect and thus unlikely to be capable of barring foreign proceedings.]

Section 211B of the Companies Act provides for the Enhanced Moratorium. This can be ordered to apply to extraterritorial acts, so long as the person is in Singapore or within the jurisdiction of the Singapore High Court. The Court has also indicated 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. The moratorium obtained will apply to acts taking place in Singapore or elsewhere so long as the PES's creditor is in Singapore or within the jurisdiction of the Court. This section specifically applies to a moratorium in respect of a related or subsidiary company ordered under the new section 211C(1) (new section 211C(4)).]

**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.

[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.

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.

- 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.]

**3 Marks**

**\* End of Assessment \***