INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 1

(INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW)

This is the **summative (or formal) assessment for Module 1** of this course and is compulsory for all registered candidates on the Foundation Certificate. The mark awarded for this assessment will determine your final mark for Module 1. 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 MS Word format, using a standard A4 size page and a 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: **[studentID.assessment1summative]**. An example would be something along the following lines: 202223-363.assessment1summative. **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 "studentID" with the student ID 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 **15 November 2022**. The assessment submission portal will close at **23:00 (11 pm) GMT on 15 November 2022**. 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 **10 pages**.

ANSWER ALL THE QUESTIONS

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

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

Civil Law and English (Common) Law countries have the same historical roots. Select from the following the **best response** to this statement.

(a) This statement is untrue because English Insolvency Law developed from Roman law principles, and Civil Law Systems were based on the statute of Marlborough of 1267.

(b) This statement is untrue since Civil Law developed from early Roman law principles relating to debt recovery and English Insolvency Law developed via legislation, especially from the 16th century onwards.

(c) This statement is true since, on a principle basis, the developments of insolvency law as a system is the same in all systems.

(d) The statement is true since both systems developed from a pro debtor approach towards the notion of over-indebtedness.

Question 1.2

Both Civil Law and English Law systems in general allowed for a rather liberal discharge of debt for over-indebted debtors right from the inception of these systems. Select from the following the **best response** to this statement.

(a) This statement is untrue since in both systems the notion of discharge only developed at a later stage.

(b) This statement is true since in both systems insolvency and rehabilitation procedures developed with discharge as a way of departure.

(c) This statement is untrue since discharge of debt never became part of any of these systems.

(d) This statement is true since creditors in both systems had an accommodative approach towards over-indebted debtors.

Question 1.3

England and America each have their own single unified piece of insolvency legislation which apply to both personal and corporate insolvency. Select from the following the **best response** to this statement.

(a) This statement is true since England has the unified 1986 Insolvency Act and the USA has the 1978 Bankruptcy Code. Both Acts cover personal and corporate insolvency.

(b) This statement is untrue since in England the Insolvency Act 1986 deals only with personal insolvency.

(c) This statement is untrue because the USA has separate Acts dealing with corporate liquidation and rescue.

(d) The statement is true since in England its companies' legislation deals with corporate insolvency and rescue.

Question 1.4

There are no good reasons to distinguish between insolvency rules pertaining to individuals (consumers, natural person debtors, also referred to as personal insolvency) and those insolvency rules applying to corporations or companies since in both instances the applicable insolvency rules are intrinsically collective in nature. Select from the following the **best response** to this statement.

(a) The statement is true since global insolvency law systems provide exactly the same rules to cover all aspects of insolvency in both instances, ie personal insolvency and corporate insolvency.

(b) The statement is untrue since there are pertinent differences in the treatment of certain aspects in insolvency of an individual and that of a company, like the fact that individuals are not "dissolved' after their estate assets have been liquidated as is the case once the assets of a company have been liquidated and it is finally wound up.

(c) The statement is untrue since insolvency law rules are not collective in nature.

(d) The statement is true since insolvent companies usually survive their liquidation and may continue to conduct business after the debt has been discharged through the liquidation process.

Question 1.5

All countries have one and the same set of rules to apply in the case of recognition of a foreign insolvency order. Select from the following the **best response** to this statement.

(a) The statement is untrue since the systems differ and some countries have no formal cross-border insolvency rules in place at all.

(b) This statement is true because all member states of the UN have adopted the UNCITRAL Model Law on Cross-Border Insolvency.

(c) This statement is true because the UNCITRAL Model Law on Cross-Border Insolvency applies directly to all UN member States.

(d) This statement is true since the International Court of Justice has a set of global cross-border insolvency principles that apply globally.

Question 1.6

The domestic corporate insolvency laws of a particular country make no mention of the possibility of a foreign element in a liquidation commenced locally. There is also no locally applicable treaty or convention on insolvency proceedings in place.

In a local liquidation commenced in that country, to what other area of domestic law can the local court refer in order to resolve an insolvency related international law issue that has arisen because of concurrent insolvency proceedings over the same debtor in a different country?

(a) Public International Law.

(b) UNCITRAL Legislative Guide on Insolvency Law.

(c) World Bank Principles for Effective Insolvency and Creditor Rights Systems.

(d) Private International Law.

Question 1.7

Private international law raises questions of the conclusive effect of a foreign judgment and the enforcement of a foreign judgment. A German court has issued a judgment in a German insolvency which has a connection with England. The foreign insolvency office holder seeks recognition and enforcement in an English court of the insolvency order made in the German insolvency proceedings.

Which of the following statements, concerning the request for recognition and enforcement in England, is **true**?

(a) The English Court hearing the request for recognition and enforcement may apply the EU Recast Insolvency Regulation (2015).

(b) It is relevant factor for the English Court hearing the matter to consider whether Germany has adopted the UNCITRAL Model Law on Cross-border Insolvency 1997, or not.

(c) The English Court will be able to consider the request based on its 2006 Insolvency Regulations (the adopted UNCITRAL Model Law on Cross-Border Insolvency) and / or common law principles.

(d) The German order will be automatically recognised in England due to a cross-border insolvency treaty between England and Germany.

Question 1.8

Which of the following **best describes** international insolvency law?

(a) It is public international law governing insolvency law between States.

(b) It is private international law governing insolvency law between States.

(c) It may involve aspects of both public international law and private international law.

(d) It involves a simple classification within either public international law or private international law.

Question 1.9

To date, the most successful soft law approach to international insolvency law issues has been the Model Law on Cross-border Insolvency. Select from the following the **best response** to this statement.

(a) This statement is untrue because not all States have adopted the Model Law on Cross-border Insolvency.

(b) This statement is untrue because of the requirement for reciprocity in relation to the Model Law on Cross-border Insolvency.

(c) This statement is true because the Model Law on Cross-border Insolvency creates regulations which binds each State and has been the most influential response to international insolvency law issues.

(d) This statement is true because the Model Law on Cross-border Insolvency has been adopted by numerous States and is gaining momentum as an influential response to international insolvency law issues.

Question 1.10

Latin American States have some of the most long-lasting multilateral agreements regarding international insolvency issues. Select from the following the **best response** to this statement.

(a) This statement is untrue because the Bustamante Code was concluded in 1928, which was only a few years before the Nordic Convention of 1933.

(b) This statement is untrue because North America was not a party to these agreements.

(c) This statement is true because agreements such as the Escazú Agreement have been extremely long lasting.

(d) This statement is true because of agreements such as the Montevideo Treaties and Havana Convention on Private International Law.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

Briefly indicate the historical roots of the various insolvency law systems to be found in African jurisdictions.

African countries still largely follow the laws of the respective forms colonial powers. Since the African continent has been colonized by several countries, the roots of insolvency laws are also diverse. Some countries have an English law tradition, others follow the civil law rules and it is possible to have mixed legal systems, such as South Africa and Namibia, since both Roman-Dutch law (civil law) and English law influenced their respective legal systems.

It is to be noticed the historical differences between civil and common law. In short, in civil law, the bankruptcy started off as a collective debt-collecting mechanism that favoured creditors (pro-creditor). The debt execution developed from the debtor pledging his own body for the repayment of the loan and he could be imprisoned, sentenced to death or sold as a slave in order to secure repayment of the debt.

This concept has suffered various reformulations, and, in a later stage, civil law system has adopted the concept of a discharge of debts – "fresh start" or "rehabilitation" and the abolishment of imprisonment for debt, providing a far more "humane" face.

On the English Law, the concept of discharge was also introduced after the 18th century with the Statute of Ann of 1705, which made it an important piece of legislation. Before that, the development if insolvency under this system also first provided for individual debt-collecting procedures prior to the development of a collective procedure. The first law designed specifically as a true bankruptcy statue rather than a fraud-prevention law was the Act of Elizabeth of 1570.

Question 2.2 [maximum 3 marks]

Indicate what important events and / or developments gave rise to some insolvency law reform in Eastern Asia and provide two examples of such reform initiatives.

The aftermath of the 1998 financial crisis gave rise to some insolvency law reforms over Eastern Asia and since then there has been a greater push for financial integration in Asia.

We can raise as examples Indonesia and Thailand, this last one specifically overhauled its bankruptcy laws.

We can mention that Singapore is also now becoming a major role-player in the region, passing a new Insolvency, Restructuring and Dissolution Act to consolidate Singapore's corporate and personal insolvency and restructuring laws into a unified Act.

There are also an increasing number of countries in the Asia-Pacific region that have adopted the Model Law on Cross-Border Insolvency, including substantial economies such as Philippines and Singapore.

Nowadays Asian Business Law Institute (ABLI) and the International Insolvency Institute (III), aims to publish a set of *Asian Principles of Business Restructuring* which will seek to eliminate some inefficiencies origin by the different approaches in this matter.

Question 2.3 [maximum 4 marks]

Briefly indicate the various initiatives undertaken to assist with the resolution of international insolvency issues between North America and Canada and the success or otherwise of these initiatives.

The insolvency treaties between North America and Canada has begun in 1970s, which, initially failed to reach an agreement since it was, probably, too ambitious in it scope. Subsequently, more practical progress has been made through both States' adoption of the Model Law and, importantly, through mechanisms such as Protocols.

It is important to highlight the role of American Law Institute (ALI) in assisting with international resolutions in the area of insolvency among the NAFTA countries, including, of course, the North America and Canada. The ALI Transnational Insolvency Project was an initiative to improve co-operation in international insolvencies across the NAFTA States, and resulted in Recommendations for legislation or International Agreement, commencing with a recommendation that each NAFTA country adopt the Model Law on Cross-border

insolvency, also, address automatic stays, notice to creditors, priority claims, binding effect of reorganisation plans, among others.

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

Question 3.1 [maximum 5 marks]

It is said that one of the difficulties in designing a proper cross-border insolvency dispensation is the fact that domestic insolvency laws and approaches towards insolvency in various jurisdictions are not the same and in fact sometimes differ vastly. Discuss the possible historical reasons for the difference in approaches regarding the treatment of voidable dispositions, given the way such rules developed in English law and civil law jurisdictions respectively. In your answer you must provide a context or framework for the treatment of these rules in insolvency systems and indicate why these rules are important in insolvency.

First of all, it is important to highlight the meaning of voidable dispositions, which can means either fraudulent conveyances or preferences. A fraudulent conveyance entails a disposition of property by the insolvent, usually in the form of a donation or undervalue transaction, that causes or increases the debtor's insolvency. Preferences are characterised by the settlement of a pre-existing debt to a creditor, or by affording such a credit real security for a pre-existing unsecured debt, thereby improving the creditor's position once insolvency commences. In summary, these are fraudulent acts adopted by the debtor to undermine the equality of creditors and also the insolvency procedure.

The commencement of the insolvency procedure is important on the voidable dispositions matters, since it will be the starting point for its verification. As professour André Boraine stated, "Avoidance provisions in bankruptcy usually relate to an effective or relevant date established by statute, or a judicial ruling that indicates the formal commencement of bankruptcy proceedings. The effective date is extremely important in order to calculate relevant time periods for the purposes of avoidance provisions. Usually this date is set as the date of formal bankruptcy, but it is sometimes set as the earlier date on which the petition to apply for formal bankruptcy is filed"[1].

The English Law forms the basis of fraudulent conveyance law in Act of Elizabeth of 1570 whilst in civil law the remedy started with the *actio pauliana*. In practice, legislation dealing with these matters may differ in detail regarding the requirements for the remedies to be Applied. It is important to state that both, English law and civil law, developed those rules directed against fraudulent conveyances, disposition, transfer or transactions within the framework of individual property execution procedures.

The English Law, notably the Act of Elizabeth of 1570 was known as the first law designed specifically as a true bankruptcy statute, rather than as a fraud-prevention law. By this act, the most important thing to understand and which reflects directly on the importance of voidable dispositions is the transference of the jurisdiction of the supervision of the estate from the commissioners to the Lord Chancellor. **The bankruptcy proceeding could be opened by a creditor following an "act of bankruptcy" by the debtor**. The creditors could thus petition to the Lord Chancellor to convene a bankruptcy meeting, who could then also appoint bankruptcy commissioners to supervise the process. The commissioners would examine the debtor's transactions and property.

[1] https://repository.up.ac.za/bitstream/handle/2263/13901/Boraine_Comparative%282009%29.pdf?sequence=1&isAllowed=y

The Act of Elizabeth above mentioned brought additional "acts of bankruptcy".

The statute, however, protected those transfers effected in return for good consideration made lawfully and bona fire, and thus without knowledge of the fraud.

It is also important to remind that in 1542 Act, which provided for a form of compulsory sequestration, to be Applied to a dishonest and absconding debtor. The fundamental principal of this Act was that in the case of a fraudulent debtor, there should be a compulsory administration and distribution on the basis of equality amongst all the creditors.

The civil law, on the other hand, can be traced to Roman Law and Table 3 of the Twelve Tables dealt with the execution of judgments. On the origin, the repayment of the debt was so important that debt execution developed from the debtor pledging his own body for the repayment of the loan and he could be imprisoned, sentenced to death of sold as a slave in order to secure repayment of the debt. We can concluded that debt collection initiated as individual.

Further in time, as a result of *Lex Mercatoria*, by the development of debt collection and insolvency law was the gradual move from execution Against the person towards a dispensation of execution against the assets of the debtor. The bankruptcy started off as a collective debt-collecting mechanism that favoured creditors (pro-creditor).

The voidable dispositions emerged with the entry into force of *action pauliana*.

Also according to professor André Boraine "Two praetorian remedies of Roman law – *the restitutio in integrum and interdictum fraudatorium* – were initially available to recover property fraudulently transferred by the debtor. These earlier remedies caused the eventual embodiment of the well-known *actio Pauliana*, which clearly stems from the codification of Justinian, much earlier than the Act of Elizabeth of 1571. Roman law, like early statutes in English law, first directed its attention to dispositions that were fraudulent"[2]. On regard of *action pauliana,* the intention of the debtor would be considered to enshrine fraud, whereas the property was obtained by lucrative title.

Those rules are important in insolvency since it curbs the debtor and/or the companies director, prior to commencement of the insolvency proceeding, from disposing of the company's assets to the prejudice of its creditors by selling it undervalue and to preserve those assets for the benefit of the general body of creditors.

Question 3.2 [maximum 5 marks]

A Dutch commentator on international insolvency law defines international insolvency law as that part of the law that:

> "[i]s commonly described in international literature as a body of rules concerning certain insolvency proceedings or measures, which cannot be fully enforced, because the applicable law cannot be executed immediately and exclusively without consideration being given to the international aspect of a given case."

However, the author concedes that this definition has limitations. Briefly discuss the reasons why the definition is perceived to have limitations.

[2] https://repository.up.ac.za/bitstream/handle/2263/13901/Boraine_Comparative%282009%29.pdf?sequence=1&isAllowed=y

According to the author, this definition is limited since it is connected to the existence of a national legal framework of insolvency law. International Insolvency law involves not only the border line limitation. Nowadays common markets with a free flow of goods, services, capital and persons – labour – requires an overarching, standardised regulation of insolvency matters. According to Firman, it has even been claimed that in modern times the majority of significant corporate collapses involve more than one State and that international insolvencies are therefore the norm and not the exception.

With that in mind, co-ordination and co-operation between courts of different States in a cross-border situation is indispensable. Reason why treaties between countries has raised. Following this concept specialist on the matter are continuously trying to devise solutions for dealing with insolvency issues on a transnational basis, minimizing the remaining barriers and allowing the enforcement of insolvency proceedings or measures.

Question 3.3 [maximum 5 marks]

Briefly discuss treaties or conventions as a source for cross-border insolvency law. In your answer you should also indicate if these are viewed as a successful way in establishing such rules by providing examples in this regard.

It is important to understand that when it comes to international insolvency law, there is not a single set of insolvency rules that applies globally, since states adopts different legal systems and have some form of bankruptcy / insolvency. However, due to globalisation, trade and movement of assets across borders, creditors may be compelled to deal with the estate of their debtor in a number of States in an attempt to reclaim their debts. Such a scenario will inevitably give rise to cross-border legal and in many instances cross-border or transnational insolvency law issues.

In an attempt to alleviate the difficulties encountered in the above hypotheses, State become signatories to treaties and conventions – known as classic public international instruments – binding themselves and affecting their law accordingly. As part of domestic law enforceable in the courts, these may then form part of a State's "hard law" on insolvency.

Beside many failures over the past years, those methods – treaties and conventions, in general, are viewed as a successful way in establishing common and democratic principles to be followed on cross-border insolvency, facilitating the co-operation and communication between States. Nevertheless, on this matter, more success has been gained through the use of "soft law" options. A range of multilateral organisations have focussed their efforts on this approach over recent decades.

As example of a successful multilateral treaty we can mention the Nordic Convention from 1993 concluded by Scandinavian States. The convention recognises the law of the place of adjudication as determining almost all member States without the need for further formalities, such as registration.

Another example is a treaty signed also in 1993 that took effect from 1995 among Africa and Middle East countries, known as "Organisation pour L'Harmonisation en Afrique du Droit des Aaffaires" (OHADA).

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

Flor Prim Pty Ltd (FPPL) is a company incorporated with its head office and significant operations in Encanto as well as being registered as a foreign company in Asgard, where it also carries on business. FPPL therefore carries on business in more than one State. Lobo Lending Ltd (Lobo) is incorporated and has its head office in Asgard.

FPPL is managing to meet its debts as they fall due in Encanto. However, due to various staffing issues combined with market turndown in Asgard, FPPL is struggling financially in Asgard. FPPL has fallen behind with payments due and owing to Lobo. FPPL's CEO approaches Lobo to discuss possible informal payment arrangements.

If you require additional information to answer these questions, briefly state what it is and why it is relevant.

Question 4.1 [Maximum 5 marks]

What are the main differences between "formal" insolvency proceedings and "informal" insolvency arrangements? What key advantages and disadvantages should Lobo consider regarding any informal out-of-court workout arrangement it could enter with FPPL, compared with its formal debt recovery options?

Formal insolvency proceedings are those commenced under the insolvency law and governed by that law, which, usually, include both liquidation and reorganization or rescue proceedings. Informal insolvency processes, on the other hand, are not always regulated by the insolvency law and can be defined as "personal" work outs, which is the same as saying that the debtor can negotiate voluntary with their creditors. Often these types of negotiations have been developed through the banking and commercial sectors and typically provide for some form of restructuring of the insolvent debtor. While not regulated by an insolvency law, these voluntary negotiations nevertheless depend for their effectiveness upon the existence of an insolvency law, which can provide indirect incentives or persuasive force to achieve reorganization.
Lobo should considered as an advantages the fact that formal insolvency proceeding usually are more rapid and less bureaucratic, which can provide a faster repayment of the debt. Also, in an out-of-court workout Lobo can negotiate in a more liberal way, meaning, Lobo can settle a workout differently than others creditors. On the other hand, in a formal debt recovery Lobo will have more predictability about the receipt of the debt, even as of the commencement of formal insolvency proceedings entails several effects and consequences, such as legal position or status of the insolvent debtor, also the company will be concurring with other creditors.

It will improve the answer knowing if Asgard has specialized bankruptcy courts, since specialized courts usually have more assertive judgments on the matter making the procedure more effective.

Question 4.2 [Maximum 5 marks]

Assume that instead of the scenario described above, Lobo obtained a formal court order against FPPL for a court-supervised insolvency proceeding in Asgard. The Asgardian insolvency representative then discovered there was already a concurrent insolvency proceeding commenced against FPPL in Encanto. Detail difficulties that may arise for the insolvency representative pertaining to co-operation and co-ordination and the international insolvency instruments that have been developed to assist with respect to those difficulties. In your answer make sure to comment as to whether the development of these international insolvency instruments is important and why, or why not.

An additional information about the approach of Asgar d and Encanto (universalism or territorialistm) would improve the answer since this comes up against the form of cooperation and coordination between States.

It is known that insolvency proceedings can be commenced in more than one State and, once opened, each proceeding giving rise to cross-border matters and one of the biggest challenges would be how to co-ordinate multiple concurrent insolvency proceedings against the same debtor. On this aspect, the representative would have to understand the approach adopted by Encanto, such as, universalism or territorialism principals, if it is pro-creditor or pro-debtor system. The difficulties regarding co-ordination and co-operation would be attached to the recognition of the foreigner representative, the conflict of laws, differences in domestic norms have a particular impact on the position of creditors and the priorities they assert in insolvency and others. Each State would apply its own laws and no or very limited extraterritorial effects would be granted to foreign proceedings.

A number of initiatives have been taken in order to create debate around the issues and to provide international best practice standards, which would facilitate the co-operation and co-ordination. As an example, The World Bank's *Principles for Effective Insolvency and Creditor/Debtor Regimes;* The Uncitral *Legislative Guide on Insolvency* and a project by the European Commission called *Bankruptcy and fresh start: stigma on failure and legal consequences of bankruptcy.* The development of those instruments is important, even if they are not yet flawless, since it brings greater legal security for creditors and even debtors. They seek to create mechanisms to harmonize the application of insolvency, further improving the domestic law of the countries, since the guidelines can be incorporated. A generally higher standard of national insolvency laws would go a long way to resolving many of the problems experienced in cross-border insolvency, but does not -yet – address what is really needed, that is, co-operation and co-ordination in the case of multiple concurrent insolvency proceedings.

Question 4.3 [Maximum 5 marks]

Assume that instead of the hypothetical facts mentioned above, FPPL is an incorporated company with offices in the UK, and throughout Europe and other non-European countries. Lobo is its major creditor and is incorporated in a country in Europe. An insolvency proceeding against FFPL was opened in the UK by a minor creditor on 30 June 2022. A month later, Lobo was considering also opening proceedings in another country in Europe. Discuss whether the European Insolvency Regulation Recast would apply with respect to the UK commenced insolvency proceedings, and the consequences of same. In answering this question set out what further information, if any, you might need.

Since the insolvency proceeding was opened in UK in June 2022, it must be said that the EIR Recast (European Insolvency Regulation) does not apply anymore in UK following it exit from the European Union, ceasing in 31 December of 2020.

The EU Regulation establishes rules on the jurisdiction to commence insolvency proceedings and which law applies to such proceedings, providing automatic recognition to insolvency proceedings across the EU and subject to certain safeguards it ensures that the insolvency proceedings can be enforced, allowing insolvency officeholders to deal with assets wherever they may be in the bloc.

Considering that FPPL is incorporated in the UK and it had a winding-up order in English Court but have international insolvency elements, such as creditors and assets located outside UK jurisdiction, liquidators have a duty to take into custody and under their control all the tangible and intangible property to which the company is entitled and of which it remains the legal owner. The ability of liquidators to do so, in a practical sense, will depend upon the

extent to each the winding-up and their appointment as a liquidator is recognised in the foreign State in which the assets are situated. As said before, since UK is no longer a European Member and the EIR Recast ceased its application, consequently, the recognition of the officeholder is not automatic and must be pursuit according to the rules applied to the case.

Even if FPPL is not incorporated in the UK, the English Court has jurisdiction to wind up a foreign company. This jurisdiction may be based on that foreign company complying with a requirement to register its presence and nominating a resident person or persons to accept service of process and other formal notices on its behalf.

New EU insolvency proceedings can seek recognition and enforcement in the UK under our Cross-Border Insolvency Regulations, stating that UK adopted UNCITRAL Model Law.

The procedure that applies to UK insolvency proceedings seeking to deal with assets in the other EU jurisdictions is dependent on each country's own approach, that being said, knowing the country Lobo is incorporated is essential to understand how the insolvency proceedings will develop.

*** End of Assessment ***