



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2B

THE EUROPEAN INSOLVENCY REGULATION

This is the **summative (formal) assessment** for **Module 2B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 2**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 2B. 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: **[student number.assessment2B]**. An example would be something along the following lines: 202021IFU-314.assessment2B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the word “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.**
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- 6.1 If you selected Module 2B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2021**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2021. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 2B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2021** or by **23:00 (11 pm) BST on 31 July 2021**. If you elect to submit by 1 March 2021, you **may not** submit the assessment again by 31 July 2021 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 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

The EIR 2000 was the first European initiative to ever attempt to harmonise the insolvency laws of EU Member States.

- (a) True, before the EIR 2000, the EU has not sought to harmonise the insolvency laws of EU Member States.
- (b) False, there was another EU Regulation regulating insolvency law at EU level before the EIR 2000.
- (c) False, an EU Directive regulating insolvency law at EU level existed before the EIR 2000.
- (d) False, the EU sought to draft Conventions with a view to harmonising the insolvency laws of EU Member States as early as the 1960s, but these initiatives failed.**

Question 1.2

In 2017, the EIR Recast replaced the EIR 2000. Recasting the EIR 2000 was deemed necessary by various stakeholders. Why?

- (a) Through its case law, the CJEU had altered the literal meaning of several provisions of the EIR 2000. Newly formulated rules, in line with the CJEU interpretation, were therefore needed.
- (b) The EIR 2000 was generally regarded as a successful instrument in the area of European insolvency law by the EU institutions, practitioners and academics. However, a number of its shortcomings were identified by an evaluation study and a public consultation.**
- (c) The fundamental choices and underlying policies of the EIR 2000 lacked support from the major stakeholders (businesses, public authorities, insolvency practitioners, etc.). A new Regulation was therefore needed to meet their expectations.
- (d) The EIR 2000 proved to be inefficient and incapable of promoting co-ordination of cross-border insolvency proceedings in the EU.

Question 1.3

The EIR Recast is an instrument of predominantly procedural nature (including private international law issues). Nevertheless, it contains a number of substantive provisions.

Which one of the following provisions constitutes a harmonised (stand-alone) rule of substantive law?

- (a) Article 18 EIR Recast (“Effects of insolvency proceedings on pending lawsuits or arbitral proceedings”).
- (b) Article 31 EIR Recast (“Honouring of an obligation to a debtor”).
- (c) Article 40 EIR Recast (“Advance payment of costs and expenses”).
- (d) Article 7 EIR Recast (“Applicable law”).

B was the correct answer.

Question 1.4

Why can it be said that the EIR Recast is more “rescue-oriented” than the EIR 2000?

- (a) The EIR Recast is more rescue-oriented because it harmonises substantive aspects of domestic proceedings.
- (b) The EIR Recast is more rescue-oriented because all domestic rescue procedures fall within its scope.
- (c) The EIR Recast is more rescue-oriented because its scope was extended to cover pre-insolvency proceedings and secondary proceedings can be rescue proceedings.
- (d) It is incorrect to say that the EIR Recast is more rescue-oriented than the EIR 2000, as the latter was already heavily focused on rescue.

C was the correct answer.

Question 1.5

The EIR Recast introduced the concept of “synthetic proceedings”. What are “synthetic proceedings”?

- (a) Where an insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court asked to open secondary proceedings should not, at the request of the insolvency practitioner, open them if they are satisfied that the undertaking adequately protects the general interests of local creditors.
- (b) Where secondary proceedings are opened, synthetic proceedings mean that these secondary proceedings are automatically rescue proceedings, as opposed to liquidation proceedings.
- (c) Synthetic proceedings mean that insolvency practitioners in all secondary proceedings should treat the proceedings they are dealing with as main proceedings for the purpose of protecting the interests of local creditors.
- (d) Synthetic proceedings mean that for the case at hand, several main insolvency proceedings can be opened, in addition to several secondary proceedings.

A was the correct answer.

Question 1.6

The EIR Recast kept the concept of the “centre of main interests” (COMI) of the debtor, which already existed in the EIR 2000. What were the amendments adopted in relation to this concept?

- (a) The COMI of the debtor is not presumed to be “at the place of the registered office” anymore and the debtor will need to confirm where his COMI is before the beginning of each case.
- (b) Although the COMI of a debtor is still presumed to be “at the place of the registered office”, it is now possible to rebut this presumption, albeit only by the courts.
- (c) The rule that a company’s COMI conforms to its registered office is now an irrefutable presumption.
- (d) Although the COMI of a debtor is still presumed to be “at the place of the registered office”, it should now be possible to rebut this presumption based on Article 3 EIR Recast and Recital 31.

D was the correct answer.

Question 1.7

Which one of the following claims **does not** fall within the definition of a “related action” under the EIR Recast?

- (a) Claim to hold a director of the insolvent company liable for causing its insolvency.
- (b) Claim of the insolvent company against its contracting party, arising from non-performance of the (pre-insolvent) contractual obligations by the latter.
- (c) *Actio pauliana* claim filed by the insolvency practitioner.
- (d) Claim of the advance payment for the costs of the insolvency proceedings.

Question 1.8

The dispute in the main proceedings, pending before the Spanish court, is between Abogados SA (Spain) and Fema GmbH (Germany), concerning an action to set aside two payments (“contested payments”) in the amount of EUR 800,000, made pursuant to a sales agreement of 10 September 2019, governed by English law. The contested payments had been made by Abogados SA to Fema GmbH before the former went insolvent. The insolvency practitioner of Abogados SA claims that under applicable Spanish law the contested payments shall be set aside. This is due to the fact that Fema GmbH must have been aware that Abogados SA was facing insolvency at the time that the payments were made.

Considering the facts of the case and relevant provisions of the EIR Recast, which one of the following statements is the **most accurate**?

- (a) The contested payments shall not be avoided if Fema GmbH proves that such transactions cannot be challenged on the basis of the insolvency provisions of English law (Article 16 EIR Recast).

- (b) To defend the contested payments Fema GmbH can rely solely, in a purely abstract manner, on the unchallengeable character of the payments at issue on the basis of a provision of the *lex causae*.
- (c) The contested transactions cannot be avoided if Fema GmbH can prove that the *lex causae* (including its general provisions and insolvency rules) does not allow any means of challenging the contested transactions, and provided that the parties did not choose that law for abusive or fraudulent ends.
- (d) The insolvency practitioner will always succeed in his claim if he can clearly prove that under the *lex concursus*, the contested payments can be avoided (Article 7(2)(m) EIR Recast).

Question 1.9

In which of the following scenarios may the recognition of a foreign insolvency proceeding be denied under the EIR Recast?

- (a) Where the decision to open the insolvency proceedings was taken in flagrant breach of the right to be heard, which a person concerned by such proceedings enjoys.
- (b) The judgment, subject to recognition, was passed with incorrect application of the applicable substantive law.
- (c) The court, which has opened insolvency proceedings (originating court), most certainly did not have international insolvency jurisdiction to do so under the EIR Recast.
- (d) The rule applied by the court, which has opened insolvency proceedings (originating court), is unknown or does not have an analogue in the law of the jurisdiction, in which recognition is sought.

Question 1.10

The French tax authority asserts to have a tax claim against a Spanish, LPZ Corp (debtor). The debtor is subject to the main insolvency proceeding (*Concurso*) in Spain. In addition, a secondary insolvency proceeding (Examinership) relating to LPZ Corp has been opened in Ireland.

Assume that:

- Under French law, creditors (except employees) must file proof of their claim within two (2) months from the publication in the French legal gazette of a notice of the judgment opening the insolvency proceedings.
- Under Irish law, the period within which creditors must file their claims is 15 days, as set in the order opening secondary insolvency proceedings against LPZ Corp.

The French tax authority intends to file its claim in the Irish proceedings. Within which time period can the French tax authority do so?

- (a) Within two (2) months following the publication date, as guaranteed by the French law (law applicable to the creditor).
- (b) Within 15 days, as stipulated in the applicable *lex concursus secundarii* (law of the insolvency proceeding at issue).

(c) Within 30 days following the publication of the opening of insolvency proceedings in the insolvency register of Ireland.

(d) Within the time limit prescribed by the *lex concursus* of the main insolvency proceeding (Spanish law).

C was the correct answer.

Marks awarded: 5 out of 10.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] 2

The following **two (2) statements** relate to particular provisions / concepts to be found in the EIR Recast. Indicate the name of the provision / concept (as well as the relevant EIR Recast article), addressed in each statement.

Statement 1. “The possibility for companies to move their COMI is a legitimate exercise of the freedom of establishment.”

Statement 2. “This concept provides an instrument which makes allowance for special, domestic privileges while maintaining the procedural integrity of the main proceeding, thus preserving the principle of unity.”

[Statement 1: The possibility for companies to move their COMI is a legitimate exercise of the freedom of establishment

Provision/Concept: Centre of Main Interest (Article 3(1), EIR Recast)

Statement 2: This concept provides an instrument which makes allowance for special, domestic privileges while maintaining the procedural integrity of the main proceeding, thus preserving the principle of unity.

Provision/Concept: Stay on opening of second insolvency proceeding (Article 38, EIR Recast)]

Question 2.2 [maximum 3 marks] 3

Where several insolvency proceedings have been opened against the same company, there should be proper co-operation between the actors involved in these proceedings. The EIR Recast has introduced co-operation and communication obligations. List **three (3) provisions** (articles) of the EIR Recast, which mandate co-operation and communication in the context of main and secondary insolvency proceedings.

[Following articles of EIR Recast mandates Co-Operation And Communication in the context of main and secondary insolvency proceedings:

- Article 41 : Co-Operation And Communication between insolvency practitioners
- Article 42 : Co-Operation And Communication between court
- Article 43: Co-Operation And Communication between insolvency practitioners and court]

Question 2.3 [maximum 3 marks] 1

The EIR Recast is more rescue-oriented than its predecessor the EIR 2000. Name **three (3) provisions** (articles) of the EIR Recast which explain why this statement is true.

[EIR Recast is more rescue-oriented than EIR 2000 because EIR Recast addressed and responded to the need of widening the scope of insolvency and restructuring proceeding, for achieving more cooperation between the insolvency practitioners and courts of different jurisdiction, introducing the concept of dealing with enterprise group insolvency, providing for data protection pertaining to the insolvency matters and maintenance of repository of creditors information for easy access.

Also EIR Recast also provided for recognition and enforcement of judgments issued in insolvency proceeding and the norms applicable on insolvency matters. EIR Recast also co-existed with numerous already prevailing regulations in EU member state thereby dealing with jurisdiction and recognition and enforcement of judgements in more seamless manner. It also provided for Annex A which gave a huge clarity on what proceedings, EIR Recast is applicable while also defining its temporal, personal and geographical scope.]

The question specifically asked you to list three articles but you did not do so.

Question 2.4 [maximum 2 marks] 1.5

It is widely accepted that the opening of secondary proceedings can hamper the efficient administration of the debtor's estate. For this reason, the EIR Recast has introduced a number of legal instruments to avoid or otherwise control the opening, conduct and closure of secondary proceedings. Provide **two (2) examples** of such instruments and briefly (in 1 to 3 sentences) explain how they operate.

1. **Right to give an undertaking in order to avoid secondary insolvency proceedings:** Article 36 of EIR Recast provides for this instrument, which implies a unilateral promise given by the insolvency practitioner of main insolvency proceeding to the local creditors. This undertaking covers the assets located in member state where secondary proceeding may be requested and implies that the distribution of secondary asset pool will comply with the distribution and priority rights under the national law as if the secondary insolvency proceedings have been commenced in the member state.
2. **Stay on the opening of secondary insolvency proceedings:** This instrument provides that the stay of secondary insolvency proceeding doesn't takes place automatically but requires request from the insolvency practitioner of main proceeding or debtor in possession.] **Which article is this?**

Marks awarded: 7.5 out of 10.

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

In addition to the correctness, completeness (including references to case law, if applicable) and originality of your answers to the questions below, marks may be awarded or deducted on the basis of your presentation, expression and writing skills.

Question 3.1 [maximum 5 marks] 5

Explain why the adoption of the new European regulation was needed and recommended by the European Commission in 2012.

[European Insolvency Regulation 2000 (“EIR 2000”) became the maiden instrument dealing with the subject of cross border insolvency in European Union and to harmonise the regulations and procedure on the same which in turn improved the efficiency and effectiveness of the cross border insolvency proceedings. It contained 33 Recitals, 47 Articles in 5 Chapters and three Annexes. EIR 2000 was based on modified universalism and established the concept of main insolvency proceeding and centre of main interest.

However the applicability of EIR 2000 was not uniform and allowed opening of secondary insolvency proceeding in the state where corporate debtor is having its establishments which will further require coordination between main and secondary insolvency proceeding. Like every economic piece of legislation requires a review with the passage of time and its usage , same was the demand for EIR 2000.

On 1st June 2012, European Commission was supposed to present its report on the implementation of the EIR 2000 and amendments required in it, if any. European Union was of the view that to strengthen the insolvency sphere in European Union, several provisions of EIR 2000 require amendments whereas considering the development in the cross border insolvency space, several new provisions are also need to be introduced that will provide for widening the scope of insolvency and restructuring proceeding, achievement of more cooperation between the insolvency practitioners and courts of different jurisdiction, introducing the concept of dealing with enterprise group insolvency, data protection pertaining to the insolvency matters and maintenance of repository of creditors information for easy access.

Consequently European Union proposed a new set of Insolvency Regulations known as EIR Recast that were adopted in 2015 but came in force on 26th June, 2017. EIR Recast provided for recognition and enforcement of judgments issued in insolvency proceeding and the norms applicable on insolvency matters. EIR Recast also co-existed with numerous already prevailing regulations in EU member state thereby dealing with jurisdiction and recognition and enforcement of judgements in more seamless manner. It also provided for Annex A which gave a huge clarity on what proceedings, EIR Recast is applicable while also defining its temporal, personal and geographical scope.]

Question 3.2 [maximum 5 marks] 5

Compare the EIR Recast with the EIR 2000: choose **three (3)** major improvements and / or innovations of the EIR Recast. Explain how these improvements and / or innovations should stimulate a more efficient administration of insolvency proceedings spanning across several EU Member States.

[a) Insolvency Registers

- Under EIR 2000, every member state had its own respective insolvency registration system and interface and exchange of information between distinct registration system was not insured. However pursuant to the enactment of EIR Recast, every member state was required to maintain in their jurisdiction one or several registers containing information pursuant to the insolvency proceedings being filed timely and updated on real time basis.
- Also EIR Recast provided for entering minimum information in Insolvency Registers like date of opening of insolvency proceeding, court where it is opened, type of insolvency proceeding etc. which was very less in comparison to the information required to be provided when EIR 2000 was in force. EIR Recast provided for the establishment of decentralised system of disseminating information where data pertaining to the insolvency proceeding of any member state can be referred.

b) Communication and Co-operation during insolvency proceedings

- EIR 2000 contained only one article i.e Article 31 that mandated insolvency practitioners of main and secondary insolvency proceedings to communicate information to each other.
- However EIR Recast provided for a comprehensive framework to achieve cooperation and coordination between the insolvency practitioners, between different courts and also between the insolvency practitioners and courts of main and secondary insolvency proceeding thereby ensuring safeguard of creditors interest and preservation of the value of the assets of the corporate debtor.

c) Provisions for Group Insolvency

- EIR 2000 had no framework to deal with multinational enterprise group's insolvency.
- EIR Recast provided a dedicated chapter (Chapter V) on the subject with detailed provisions on COMI of members of corporate group, administration of insolvency proceedings of different companies belonging to same group, cooperation and communication during group insolvency and also coordination of insolvency proceedings pertaining to the group.]

Question 3.3 [maximum 5 marks] 3.5

Select **two (2)** major flaws and / or omissions of the EIR Recast. Explain why you consider them to be flaws and / or omissions and how they can be corrected or remedied.

[Following flaws exists in EIR Recast that needs timely address to retain its efficaciousness:

- a) EIR Recast allows opening of multiple secondary insolvency proceeding against the same corporate debtor in different jurisdiction of European Union resulting in multiple proceedings running against same corporate debtor further adding up cost, burden on judicial bandwidth and huge time involvement thereby leading to erosion of value of the assets of the corporate debtor.
- b) Achieving coordination between the main and secondary insolvency proceedings when they differ in their objective.

To ensure EIR Recast doesn't become out-dated with time, the above mentioned concerns require timely address by way of:

- a) Instead of allowing multiple insolvency proceedings, arrangements should be in place to provide for consolidation of proceeding against same corporate debtor in order to minimise time, cost and judiciary intervention.
- b) There should be enough tools and instruments in place that ensures mitigation of risk involve when the objective behind main and secondary insolvency proceeding coincides in order to safeguard stakeholders interest.] **What type of tools?**

Marks awarded: 13.5 out of 15.

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

Prêt A Jouer (PAJ) is a France-registered toy shop company. The company opened its first store in Strasbourg in 2011. One of PAJ's warehouses is in Madrid (Spain) and PAJ rents out this warehouse to other toy companies. In 2013, PAJ concluded a line of credit

agreement with a Spanish bank where it maintains a bank account. During the same year, PAJ announced that it had plans to expand to the Spanish adult gaming market, as the latter was expected to grow annually by over 10%. As a result, PAJ started negotiations with local distributors and some (non-binding) memoranda of understanding have been signed.

However, like many other toy businesses, PAJ has faced the challenges of increased fixed costs and it has underestimated competition with web-based companies and an increasing preference for video games. For a few years now, PAJ has been beset by financial difficulties and, having witnessed the ongoing demise in revenue and fall in profits, it decided to file a petition to open safeguard proceedings (*procédure de sauvegarde*) in France. The petition was filed with the Strasbourg Court on 23 June 2017.

Question 4.1 [maximum 5 marks] 5

Assume that the EIR 2000 applies. Does the Strasbourg Court have international jurisdiction to open the requested insolvency proceeding? (Explain why it does or does not have jurisdiction.) Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

[Yes, Strasbourg Court has international jurisdiction to open the requested insolvency proceeding on the request of PAJ since is a France registered toyshop company. As Strasbourg is a city in France and in this case the centre of main interest i.e registered office of PAJ is in France. Giving reference to the provisions of Article 3(1) of EIR 2000, PAJ is authorised to initiate main insolvency proceeding in Strasbourg.

The most landmark and settled case of CJEU based on the above jurisprudence is ***Eurofood IFSC Ltd.*** (Case C-341/04, ECLI:EU:C:2006:281 (May 2, 2006)). In the referred case law, CJEU highlighted the autonomous meaning of the term “Centre of Main Interest” and emphasised on EIR Recast’s registered office presumption.]

Question 4.2 [maximum 5 marks] 5

Assume that the Strasbourg Court opens the respective proceeding on 29 June 2017. Will the EIR Recast be applicable? Your answer should address the EIR Recast’s scope and contain **all** steps taken to answer the question.

[Steps to check the applicability of material, temporal, personal and territorial scope of EIR Recast are as follows:

- a) Centre of Main Interest of PAJ is in Member State of European Union i.e France.
- b) PAJ doesn’t falls in excluded categories like banks and insurance companies.
- c) Insolvency proceedings initiated against PAJ are listed under Annex A of EIR Recast.
- d) Proceedings are opened after 26th June 2017.

Therefore, EIR Recast is completely applicable on PAJ’s insolvency proceedings.]

Question 4.3 [maximum 5 marks] 2.5

A Spanish bank files a petition to open secondary insolvency proceedings in Spain with the purpose of securing a Spanish insolvency distribution ranking. Given the facts of the case, can such proceedings be opened in Spain under the EIR Recast? Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

[Since PAJ has an establishment in Spain (warehouse), therefore initiation of secondary insolvency proceeding is admissible in Spain, also Spain being the part of Member State of European Union giving reference to the provisions of Article 3(2) EIR Recast. Unlike main insolvency proceeding that has universal scope, the effects of secondary insolvency proceedings are restricted to the assets of the corporate debtor situated in the jurisdiction of the Member state where secondary insolvency proceeding has initiated.

In the matter of *Interedil*, CJEU held that establishment means a place where economic activity is being carried out in presence of human beings. Mere presence of goods or bank accounts in a jurisdiction won't authorise the creditors to open secondary insolvency proceeding.]

Your answer is incorrect.

Based on the facts, it would seem that the finding of an establishment would not be made out in Spain, as these facts do not qualify as "non-transitory economic activity with human means and assets" (Article 2(10) of the EIR Recast). The EIR Recast does not have requirements as to form i.e. that there has to specifically be a corporate branch or representative office, in order for there to be an establishment. The EIR Recast places more importance on the substance, looking at both human resources and assets. Nevertheless, the facts of the case suggest that the threshold for there to be considered an establishment in Spain has not been reached, as there is only a bank account and intentions to expand into the adult gaming market in Spain, and the signing of some non-binding memoranda of understanding.

In the CJEU decision in *Interedil Srl v Fallimento Interedil Srl*, the Court stated at paragraph 64 that the term "establishment" under the EIR Recast requires the presence of a structure consisting of a "*minimum level of organisation and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of goods in isolation or bank accounts does not, in principle, meet that definition.*" Although there is no explicit time limit on how long the activity has gone on for, an occasional place of operations would not be considered as an establishment. This assessment is an objective one, rather than viewed through the subjective lens of the debtor (see paragraph 71 of the Virgós-Schmit Report).

Applied to this case, this is significant because it cannot be said that because there was the intention to enter the Spanish market (by signing non-binding MOUs), that this demonstrated sufficient connection for there to be an establishment in Spain.

The same *Interedil* decision also held that if the bodies responsible for the management and supervision of the debtor are in the same place as its registered office, and the management decisions of the company are in fact taking place there, the registered office presumption (i.e. the COMI is presumed to be the same place as the registered office) cannot be refuted. In this case, the facts do not expressly say that the management takes place in France, although given that the first store was opened there, this is possible.

In this case, in consideration of the facts and the relevant case law, it appears that the minimum level of organization and stability has not been demonstrated for Spain. Therefore, it would not be possible to open secondary insolvency proceedings in Spain.

Marks awarded: 12.5 out of 15.

*** End of Assessment ***

Marks awarded: 38.5 out of 50.