



FORMATIVE ASSESSMENT: MODULE 1

INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW

This is a **formative assessment** relating to **Module 1** and is designed to provide candidates on the Foundation Certificate course with some direction and guidance as to the form and content of assessments on the course as a whole. The submission of this assessment is **not compulsory** and the mark awarded will not count towards the final mark for Module 1 or the course as a whole. However, students are encouraged to submit this assessment as part of their orientation for the submission of the formal (summative) assessments for all the modules on the course.

The Marking Guide for this assessment will be made available on the Course Administration page of the course web pages after the submission date on 15 October 2021.

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.assessment1formative.]**. An example would be something along the following lines: 202122-514.assessment1formative. **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 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 **15 October 2021**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 15 October 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 **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

It should be relatively easy to develop a single system to deal with cross-border insolvency since all jurisdictions have more or less the same local insolvency law rules.

- (a) This statement is true since all countries have implemented the UNCITRAL Model Law on Cross-Border Insolvency.
- (b) This statement is untrue since there are huge differences in both the approach and insolvency legislation of various jurisdictions.**
- (c) This statement is true since all systems have at least the same general insolvency concepts.
- (d) The statement is true since the historical roots of all insolvency systems are the same.

Question 1.2

The Statute of Ann, 1705 was a very important piece of legislation for the development of English insolvency law.

- (a) This statement is true since this Act introduced imprisonment of debt.
- (b) This statement is untrue because it dealt with the distributions of the proceeds derived from the proceeds of selling the assets of the estate.
- (c) This statement is true since it introduced the notion of discharge.**
- (d) This statement is true since it introduced fraudulent conveyances into English law.

Question 1.3

The purpose of the UNCITRAL Legislative Guide (2004) has direct application in all the member States of the UN.

- (a) This statement is true because UNCITRAL's model legislative guidelines apply automatically to all member States.
- (b) This statement is true because all member States supported its automatic implementation in their respective jurisdictions.

(c) This statement is untrue because the Legislative Guide serves merely as soft law and contains best practice to be considered when countries revise their own insolvency legislation.

(d) This statement is untrue since the Legislative Guide is only available for use by developing countries when reforming their own insolvency laws.

Question 1.4

Modern rescue proceedings have replaced liquidation as an insolvency procedure in most systems.

(a) This statement is true since business rescue is important for socio-economic reasons.

(b) This statement is true because liquidation is viewed as a medieval and outdated process.

(c) This statement is untrue since there is still a need for both liquidation and rescue procedures in insolvency systems.

(d) This statement is untrue since some systems have no formal rescue procedure.

Question 1.5

The principles and requirements for avoidable dispositions and executory contracts are the same in all jurisdictions – hence these do not pose problems in a cross-border insolvency matter.

(a) The statement is untrue, the requirements and principles do differ and pose problems in a cross-border case.

(b) This statement is untrue because the insolvency laws of the State where the original insolvency order is issued will apply to all the other States involved in the matter.

(c) This statement is untrue since avoidable dispositions and executory contracts do not pose any problems in a cross-border case.

(d) The statement is untrue since avoidable dispositions and executory contracts may be disregarded in a cross-border case.

Question 1.6

The domestic corporate insolvency statute of a country makes no mention of the possibility of a foreign element in a liquidation commenced locally. The country has ratified a regional treaty on insolvency proceedings that contain provisions on concurrent insolvency proceedings over the same debtor in a neighbouring treaty state.

In a local liquidation commenced under the domestic corporate insolvency statute, to what law can the local court refer in order to resolve an international law issue that has arisen because of concurrent insolvency proceedings in the neighbouring state?

(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

Which one of the following documents mandates co-operation or communication between courts in concurrent insolvency proceedings on the same debtor, which are being conducted in different nation states?

- (a) ALI / III Global Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases (2012).
- (b) EU Cross-Border Insolvency Court-to-Court Communications Guidelines (2014).
- (c) UNCITRAL Model Law on Cross-border Insolvency (1997).
- (d) JIN Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (2016).

Question 1.8

Latin and Middle America states have ratified various multilateral conventions and treaties that address international insolvency issues. While they promote unity of proceedings in the treaty states where a debtor has a single commercial domicile, they acknowledge the possibility of concurrent proceedings.

Which of the following conventions and treaties does **not** provide for judicial co-operation where there are surplus funds remaining in a proceeding in one treaty state and there are concurrent insolvency proceedings over the same debtor in another treaty state?

- (a) Montevideo Treaty on International Commercial Law (1889).
- (b) Montevideo Treaty on International Commercial Terrestrial Law (1940).
- (c) Montevideo Treaty on International Procedural Law (1940).
- (d) Havana Convention on Private International Law (1928).

Question 1.9

The Council Regulation on Insolvency Proceedings (European Insolvency Regulation) (2000), which applies in all European Union member states except Denmark, was reviewed after a decade's operation. An amended European Insolvency Regulation (EIR) Recast (2015) was adopted in 2015 and took effect in June 2017.

Which of the following aspects of international insolvency is **not** addressed in the EIR Recast?

- (a) Proceedings to restructure a debtor that is facing the likelihood of insolvency.
- (b) Definition of "centre of the debtor's main interests".

(c) A centralised insolvency register of insolvency proceedings opened in member states.

(d) Co-operation and co-ordination provisions applicable to corporate groups.

Question 1.10

An unsecured Creditor is owed monies by the Debtor for services it supplied locally. It has issued proceedings to recover the debt in the local Court. The Debtor has moved its registration and head office to the local country from its original place of incorporation in a foreign country. The Creditor is incorporated and has its head office in that foreign country. The contract to supply, which was created by exchange of emails sent between the head offices, denominates the debt in the currency of the foreign country. The Debtor is being wound-up in the foreign country and the foreign liquidator seeks recognition and a stay in the local Court proceedings. What aspect is an international insolvency issue?

(a) The local Court's jurisdiction over the Debtor.

(b) The standing of the foreign Creditor to sue for its debt in the local Court.

(c) The foreign liquidator's standing to request a stay of the local proceedings.

(d) The fact that the debt owed to the Creditor is in a foreign currency.

Marks awarded 10 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

Explain what the term "international insolvency law" means.

International insolvency law is also known as cross-border insolvency law. It is the area of the law that is concerned with the insolvency of a debtor with cross-border presence i.e. connections with more than one country or jurisdiction.

According to Wessels,¹ international insolvency law is 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."

In defining international insolvency law, Wessels² also refers to definitions of other commentators and proposes that "international insolvency" or "cross-border insolvency" should be considered as a situation "... in which an insolvency occurs in circumstances which in some way transcend the confines of a single legal system, so that a single set of domestic insolvency law provisions cannot be immediately and exclusively applied without regard to the issues raised by the foreign elements of the case."

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¹ B Wessels, *International Insolvency Law* (Kluwer, 2006), p1

² B Wessels, *International Insolvency Law* (Kluwer, 2006), p1

Question 2.2 [maximum 5 marks]

Differentiate between the concepts of universality and territoriality in cross-border insolvency.

Universality in cross-border insolvency is the concept that there should only be a single insolvency proceeding against a debtor. This single insolvency proceeding should deal with all of the debtor's assets and liabilities, that is, assets and liabilities that are within the State in which the insolvency proceeding is commenced as well as assets and liabilities that are in other States. The insolvency representative or other officeholder appointed in this single insolvency proceeding should have the power to take control of and administer all of the debtor's assets located around the world. All of the debtor's creditors around the world should have the right to participate in the insolvency proceeding and claims of creditors in the same category (such as secured, unsecured and preferred) should be treated equally. Any order or decision made in this single insolvency proceeding will have an effect on the debtor's assets, liabilities and creditors around the world.

On the other hand, territoriality in cross-border insolvency is the concept that insolvency proceedings may be commenced against a debtor in every State in which the debtor has assets and liabilities. Each insolvency proceeding should only deal with the debtor's assets and liabilities that are within the State in which the insolvency proceeding is commenced. The insolvency representative or other officeholder appointed in each insolvency proceeding should only have the power to take control of and administer the debtor's assets that are within that State. There may also be restrictions in each insolvency proceeding, on which creditors can file their claim.

These theories also involve recognition and effect (as well as jurisdiction) in that for example, with universalism, recognition and effect requires that other States recognise that one set insolvency proceedings (that all agreed is the appropriate jurisdiction) and recognise it as having extraterritorial effect in their States.

3.5

Question 2.3 [maximum 3 marks]

Describe **three** recent examples of developments in the Middle East region to reform domestic insolvency laws or to address international insolvency Issues.

The United Arab Emirates reformed its domestic insolvency laws in 2016 via the Federal Law by Decree No. (9) of 2016 on Bankruptcy and in 2019 via the Federal Decree Law No. (19) of 2019 on Insolvency. Saudi Arabia reformed its domestic insolvency laws in 2018 through the Bankruptcy Law while the Dubai International Financial Centre reformed its domestic insolvency laws in 2019 via the Insolvency Law, DIFC Law No. 1 of 2019.

In respect of international insolvency issues, the United Nations Commission for International Trade Law ("UNCITRAL") Model Law on Cross-Border Insolvency (1997) was adopted by Bahrain in 2018 and the Dubai International Financial Centre in 2019.

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Total marks awarded 8.5 out of 10

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

Question 3.1 [maximum 5 marks]

Write a brief note on the differences regarding the objectives of insolvency for individuals and corporations.

The following are the differences regarding the objectives of insolvency for individuals and corporations as highlighted by Sealy and Hooley:³

- (a) in respect of individuals, the objectives of insolvency are –
 - (i) to protect the debtor from harassment by his creditors;
 - (ii) to enable the debtor to make a fresh start, especially in less blameworthy cases (where insolvency has not been brought about by the actions or conduct of the debtor); and
 - (iii) to reduce indebtedness by allowing the debtor to make contributions from present and future income to the estate while at the same time taking the debtor's personal circumstances into consideration.
- (b) in respect of corporations, the objectives of insolvency are –
 - (i) where possible, to preserve the business, or viable parts thereof. Preserving the business may not necessarily mean preserving the corporation; and
 - (ii) where personal liability has been abused, to impose personal liability on responsible persons.

Sealy and Hooley⁴ also go on to highlight the following similarities regarding the objectives of insolvency for individuals and corporations –

- (a) to ensure *pari passu* distribution as far as possible, except in so far as creditors who have priority;
- (b) to ensure that secured creditors deal fairly towards the debtor and other creditors;
- (c) to investigate the reasons for failure; and
- (d) to reclaim voidable dispositions where the insolvent debtor dealt improperly with assets.

This was well answered and almost addressed all of the issues.
4.5

Question 3.2 [maximum 5 marks]

Write a brief note on the difficulties that may be encountered when dealing with insolvency law in a cross-border context relating to pertinent differences in the relevant systems.

The main difficulty in dealing with cross-border insolvency matters is the fact that there is no global insolvency law system or a global court to deal with cross-border insolvency matters. Hence, one has to look at the insolvency systems of the individual States to determine how the State deals with insolvency matters. In this regard, different States may have different approaches to insolvency matters whether purely domestic insolvency matters or insolvency matters with cross-border elements.

Some of the difficulties that may be encountered when dealing with insolvency law in a cross-border context relating to pertinent differences in the relevant systems are as follows –

- (a) defining the term “insolvency”. In general, “insolvency” refers to a situation where the debtor's liabilities exceed his assets. However, in some jurisdictions, the debtor's

³ M A Clarke *et al*, *Commercial Law* (Oxford University Press, 2017), chap 28

⁴ M A Clarke *et al*, *Commercial Law* (Oxford University Press, 2017), chap 28

inability to pay debts is sometimes considered sufficient to commence insolvency proceedings. Hence, there may be a difficulty in defining the term “insolvency” at an international level;⁵

- (b) defining and ascertaining the insolvency procedures. Different States may apply different procedures to deal with non-payment of debts;⁶
- (c) ascertaining the position of creditors and their claims. Where there are creditors making claims against the debtor in more than one State, there may be conflict between the position and claims of the creditors in one State versus another State.⁷ For example, a creditor may be deemed a preferred creditor in one State but not another;
- (d) obtaining recognition of an insolvency proceeding and the insolvency representative in a foreign State.⁸

Further detail would be beneficial. For example, consideration of Westbrook’s 9 key issues.

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Question 3.3 [maximum 5 marks]

What multilateral steps have been taken in the 21st century to promote harmonisation of domestic insolvency laws? In your opinion, how much impact are these likely to have in addressing international insolvency issues? Include reasons for your opinion.

The multilateral steps that have been taken in the 21st century to promote harmonisation of domestic insolvency laws include –

- (a) the *Legislative Guide on Insolvency Law* by UNCITRAL (“Legislative Guide”). One of the recommendations in the Legislative Guide is for State’s insolvency laws to have a modern, harmonised and fair framework to deal with cross-border insolvency cases. The Legislative Guide also recommends that States enact the UNCITRAL Model Law on Cross-Border Insolvency;
- (b) the *Principles for Effective Insolvency and Creditor / Debtor Regimes* by the World Bank (“Principles”). In respect of cross-border insolvency matters, the Principles advocate the requirement for a State’s legal system to have clear rules on jurisdiction, recognition of foreign judgments, cooperation among courts in different countries and choice of law;
- (c) the report on the *Harmonisation of Insolvency Law at EU Level* by the European Parliament (“Report”). The Report identifies the differences in the insolvency laws and rules of European Union (“EU”) member states. The Report also identifies a number of areas of insolvency law where harmonisation at EU level would be worthwhile and achievable; and
- (d) the *Action Plan on Building a Capital Markets Union (CMU)* by the European Commission (“Action Plan”). In the Action Plan, the European Commission stated that “Convergence of insolvency and restructuring proceedings would facilitate greater legal certainty for cross-border investors and encourage the timely restructuring of viable companies in financial distress”.

In my opinion, these multilateral steps are likely to have a good impact in addressing international insolvency issues, for the following reasons –

⁵ Judge Hakan Friman; I F Fletcher, *Insolvency in Private International Law – National and International Approaches* (Oxford: Oxford University Press, 2nd ed, 2005), pp 3-5

⁶ Judge Hakan Friman

⁷ PJ Omar, “The Landscape of International Insolvency”, (2002) 11, *IIR* 173, p 175

⁸ J L Westbrook, “Developments in Transnational Bankruptcy”, (1995) 39, *St Louis University Law Journal* 753, pp 753-757

- (a) a total of 49 States have adopted the UNCITRAL Model Law on Cross-Border Insolvency. This means that subject to the modifications made, the cross-border insolvency laws in these States are harmonised;
- (b) the International Monetary Fund (IMF) and the World Bank may refer countries to the Legislative Guide and Principles and sometimes require bankruptcy reform in developing countries as a condition for loan support. This would promote harmonisation of the domestic insolvency laws in these countries;⁹
- (c) when a State in a region adopts the UNCITRAL Model Law on Cross-Border Insolvency into its domestic insolvency law, this may encourage other States within the region to also adopt the Model Law in order to promote economic activities between the States; and
- (d) adopting international best practice standards may promote a State's international trade. This would be a good incentive for States to harmonise its domestic insolvency laws with international standards such as the UNCITRAL Model Law on Cross-Border Insolvency and the Principles.

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Marks awarded 13.5 out of 15

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

Nadir Pty Ltd ("Nadir") is a company registered in Utopia. Originally it was incorporated in the neighbouring country of Erewhon before moving its registration and head office to Utopia one month ago. Apex Pty Ltd ("Apex") is incorporated and has its head office in Erewhon. Apex and Nadir enter into a contract by exchange of emails between their head offices for Apex to supply goods to Nadir in Utopia. Nadir has failed to pay for the goods which have been delivered in accordance with the contract. Apex issues court proceedings against Nadir in Utopia for monies owing for the goods sold and delivered.

Meanwhile, Nadir also owes monies to creditors in Erewhon. One Erewhon creditor obtains a court winding-up order against Nadir in Erewhon and a liquidator is also appointed by that court.

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

Question 4.1 [maximum 5 marks]

Assume the UNCITRAL Model Law on Cross-border Insolvency has been adopted by Utopia without modification, except as required to domesticate it. For example, the Cross-border Insolvency Act of Utopia names its local laws relating to insolvency and its competent court under the Act. The Erewhon liquidator's investigations detect that Apex is suing Nadir in Utopia. The liquidator would like to stop Apex court action against Nadir in Utopia. Advise the Erewhon liquidator on the potential relevance of the Cross-border Insolvency Act of Utopia.

Since Utopia has adopted the UNCITRAL Model Law on Cross-Border Insolvency without modification, under the Cross-border Insolvency Act of Utopia –

- (a) the Erewhon liquidator may apply to the competent court in Utopia for the recognition of the Erewhon insolvency proceeding in which the liquidator was appointed;¹⁰

⁹ However, I Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* (Oxford University Press, 2018), p 40.

¹⁰ Based on Article 15(1), UNCITRAL Model Law on Cross-Border Insolvency (1997).

- (b) the Erewhon court proceeding may be recognised as either a foreign main proceeding or foreign non-main proceeding depending on where Nadir has its centre of main interest.¹¹
(Additional information required to answer the question: What is the date of commencement of the Erewhon insolvency proceeding? Since Nadir was incorporated in Erewhon and had its head office in Erewhon until one month ago, the fact of whether the Erewhon insolvency proceeding commenced before or after Nadir moved to Utopia would be relevant in determining Nadir’s centre of main interest. Determination of the centre of main interest will in turn determine if the Erewhon insolvency proceeding is a “foreign main proceeding” or “foreign non-main proceeding”.);
- (c) if the Erewhon proceeding is recognised as a foreign main proceeding, commencement or continuation of individual actions and individual proceedings against Nadir in Utopia will be stayed. This includes Apex’s court action against Nadir. However, this provision will not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against Nadir. This means that if limitation may set in in respect of any claims against Nadir, the claimant may file the claim to stop the running of the limitation period. Once the claim has been preserved, the action continues to be covered by the stay;¹² and
- (d) if the Erewhon proceeding is recognised as a foreign non-main proceeding, a stay of Apex’s court action against Nadir will not be automatically granted but will be at the discretion of the Utopian competent court.¹³

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Question 4.2 [maximum 2 marks]

Would it make any difference to your answer in question 4.1 in the following two alternative scenarios to Apex suing for its debt?

- (a) Apex had filed proceedings to wind-up Nadir, but the matter had not yet been heard.
- (b) Apex had obtained a court order to wind-up Nadir in Utopia prior to the Erewhon winding-up order.

For alternative scenario (a), the answer is yes, it would make a difference to my answer in question 4.1. If Apex had filed proceedings to wind-up Nadir, but the matter had not yet been heard, the following will apply –

- (i) upon recognition of the Erewhon insolvency proceeding, the Erewhon liquidator will be entitled to participate in the winding-up proceedings filed by Apex in Utopia;¹⁴
- (ii) Apex will be allowed to proceed with the winding-up proceedings. However, this is only if Nadir has assets located in Utopia. The effects of the winding-up proceedings filed by Apex will be restricted to the assets of Nadir that are located in Utopia and to the extent necessary to implement provisions on cooperation and coordination with foreign courts and foreign representatives, to other assets of Nadir that, under the laws of Utopia, should be administered in the winding-up proceedings initiated by Apex;¹⁵

¹¹ Based on Article 17(2), UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹² Based on Article 20, UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹³ Based on Article 20, UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹⁴ Based on Article 12, UNCITRAL Model Law on Cross-Border Insolvency (1997)

¹⁵ Based on Article 28, UNCITRAL Model Law on Cross-Border Insolvency (1997).

- (iii) the Utopian competent court will ensure that any discretionary relief¹⁶ granted at the request of the Erewhon liquidator is consistent with the winding-up proceedings filed by Apex;¹⁷ and
- (iv) if the Erewhon winding-up proceedings are recognised by Utopia as a foreign main proceeding, the stay and suspension of individual actions and proceedings¹⁸ will not be automatically granted.¹⁹

For alternative scenario (b), the answer is yes, it would make a difference to my answer in question 4.1. If Apex had obtained a court order to wind-up Nadir in Utopia prior to the Erewhon winding-up order, the following will apply –

- (i) the Utopian competent court will ensure that any discretionary relief²⁰ granted at the request of the Erewhon liquidator is consistent with the winding-up proceedings filed by Apex;²¹ and
- (ii) if the Erewhon winding-up proceedings are recognised by Utopia as a foreign main proceeding, the stay and suspension of individual actions and proceedings²² will not be automatically granted.²³

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Question 4.3 [maximum 8 marks]

NB: This question is not related to Questions 4.1 and 4.2

A court has ordered the commencement of an insolvency proceeding against a corporate debtor in the State of its incorporation and head office. The company has operated business in a number of States and has assets (real property or interest in land, other tangible assets and intangible assets); creditors (including taxation / revenue authorities) and directors in several States.

Select a country for the company's incorporation and, based on the insolvency laws of the country you select and the brief facts provided, describe four key international insolvency issues facing the insolvency representative in this scenario. For each issue, what domestic laws or international instruments apply to assist the insolvency representative address these four issues?

I have selected the United Kingdom ("UK") as the State of incorporation of the debtor. Discussed below are the four (4) key international insolvency issues facing the insolvency representative in this scenario and the domestic laws and international instruments of the UK that will apply to assist the insolvency representative to address these four (4) issues.

Firstly, the insolvency representative will have to determine if the UK courts have jurisdiction to hear the insolvency matter in respect of the debtor which has cross-border presence. Since the debtor is incorporated in the UK, section 117 of the UK Insolvency Act 1986 provides that the UK has jurisdiction to wind-up the debtor.

¹⁶ As described in Articles 19 and 21, UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹⁷ Based on Article 29(a)(i), UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹⁸ As described in Article 20, UNCITRAL Model Law on Cross-Border Insolvency (1997).

¹⁹ Based on Article 29(a)(ii), UNCITRAL Model Law on Cross-Border Insolvency (1997).

²⁰ As described in Articles 19 and 21, UNCITRAL Model Law on Cross-Border Insolvency (1997).

²¹ Based on Article 29(a)(i), UNCITRAL Model Law on Cross-Border Insolvency (1997).

²² As described in Article 20, UNCITRAL Model Law on Cross-Border Insolvency (1997).

²³ Based on Article 29(a)(ii), UNCITRAL Model Law on Cross-Border Insolvency (1997).

Secondly, the insolvency representative will need to determine the law to apply to the proceedings. In this regard, the UK Insolvency Act 1986 provides that in a UK winding-up under the Insolvency Act 1986, English law applies to matters of procedure and substance.²⁴

Thirdly, the insolvency representative will need to gain recognition for the UK insolvency proceedings in the other States in which the debtor operates business or has assets, creditors, or directors. If the other States have adopted the UNCITRAL Model Law on Cross-Border Insolvency, the insolvency representative will be able to apply for the recognition of the UK insolvency proceeding in the competent courts of the other States.

Fourthly, the insolvency representative will need to take custody and control of the debtor's assets in the other States. If the other States have adopted the UNCITRAL Model Law on Cross-Border Insolvency, the insolvency representative will be able to seek in the competent courts of the other States, for an order that the administration, realisation and distribution of the debtor's assets in that State be entrusted to the UK insolvency representative.

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Marks awarded 13 out of 15
MARKS AWARDED 45/50

*** End of Assessment ***

²⁴ | F Fletcher, *The Law of Insolvency*, London (Sweet and Maxwell, 5th ed, 2017), [30-052-053]