



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 9 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

Explain what the term "international insolvency law" means.

While most jurisdictions adopt some form of a law governing collective debt collection procedures, each may have varied rules, policies or procedures governing insolvencies. Therefore, there is no single set of consistent or uniform rules or laws that constitute international insolvency law.

However, the term "international insolvency law" is used to refer to the body of rules and laws that would apply in a situation where insolvency proceedings may transcend the boundary of one jurisdiction and be the subject of two legal jurisdictions. For example, the insolvency proceeding against a debtor A is incorporated in the UK but also has assets in India then its insolvency proceedings will be affected by the laws of both UK and India. International organizations such as International Insolvency Institute and INSOL International are making efforts to harmonise insolvency laws to ensure consistency and predictability in its application.

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Question 2.2 [maximum 5 marks]

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

'Universality' and 'territoriality' broadly refer to two ways or principles to address cross-border insolvency issues. The concept of universality refers to the principle of there being only one universal insolvency proceeding in one jurisdiction which governs all cross-border insolvency

related matters for the insolvent entity (i.e., its offshore assets, foreign creditors who should be treated equally, among others). The jurisdiction could be selected on the basis of the debtor's centre of main interest. While its proponents believe that it is the best way to ensure low costs and fair treatment of all creditors, actual adoption of such a principle faces the challenge of conflicts and difficulty in establishing and determining the main jurisdiction. More importantly, nations would be wary of adopting an approach that not only requires it to respect and trust foreign insolvency law systems but may require to cede its jurisdiction over certain matters, if the COMI and assets of the debtor are in different jurisdictions, to another State.

The concept of territoriality refers to the principle that an insolvency proceeding can be pursued in any and all jurisdictions where the debtor has assets or sufficient connection. This effectively means that there may be concurrent insolvency proceedings in different jurisdictions at the same time. This concept is focused on protecting and prioritizing local interests and creditors who may not be on equal footing if they were forced to participate in a foreign insolvency proceedings (due to costs or other factors). This approach is also not without its challenges, which include – conflict between approaches adopted in concurrent insolvency proceedings, high costs, possibility of the debtor being solvent in one jurisdiction but insolvent in another and lack of predictability.

Practically, many States adopt some sort of a middle ground between these two approaches or what is popularly known as 'modified universalism' or 'modified territorialism'. The success of these middle paths relies on co-operation and co-ordination amongst courts and insolvency representatives involved in concurrent insolvency proceedings in different jurisdictions.

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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.

Recent examples of developments in the Middle East region to reform domestic insolvency laws or to address international insolvency issues include:

- (a) Adoption of UNCITRAL Model Law on Cross-Border Insolvency by Bahrain in 2018 and by Dubai International Financial Centre in 2019;
- (b) Reformation of its domestic insolvency laws by Saudi Arabia in 2018: Saudi Arabia enacted a new domestic insolvency law in 2018, following reforms to its domestic company law. The 2018 reforms allowed restructuring of defaulting debtors by providing them an alternate option to bankruptcy.
- (c) Reformation of its domestic insolvency laws by UAE in 2016 and 2019: Overhaul of insolvency laws by UAE in 2016 greatly increased the scope of insolvency law and created a tool for efficient restructuring in line with best international practices in insolvency law.

3

Marks awarded 10 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.

Policies and laws governing insolvency for individuals encompass socio-cultural concerns in comparison to insolvency policies for corporations which is usually based on commercial and economic concerns. According to the UNCITRAL Legislative Guide on Insolvency Law (2004), insolvency laws for individuals are focused on concerns such as effect of bankruptcy on the person, relief for unpayable debt and the notion of discharge to provide the individual a fresh start after the bankruptcy proceedings are complete.

On the other hand, for corporate insolvencies, the objective of insolvency policies is to ensure maximisation of value for all stakeholders such as creditors, employees etc., the need to encourage extension of credit, preserving entrepreneurial activity while ensuring predictability of outcome in case of insolvencies.

There is scope to elaborate, for example excluded assets with respect to individuals.

3.5

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.

A cross-border insolvency involving two or more jurisdictions which follow varied approaches with respect to different aspects of insolvency can lead to several challenges and difficulties including:

- (a) **Definition or meaning of insolvency:** The different jurisdictions may follow different definitions of insolvency. For example, while certain jurisdictions adopt an approach based on balance sheet insolvency (i.e., the entity's liabilities are higher than its assets), others rely on commercial or cash-flow insolvency (i.e., the debtor's cash flows are not sufficient to meet its payment obligations)
- (b) **Recognition of foreign insolvency representative:** Different jurisdictions follow different approaches and requirements for whether a foreign-appointed insolvency representative (i.e., insolvency representative appointed under the insolvency laws of another jurisdiction) will be recognized and granted powers over assets of the debtor lying in another jurisdiction.
- (c) **Difference in priorities and waterfall according to which different types of creditors can be paid out:** The waterfall according to which different types of creditors can be paid out may be different in different jurisdictions. For instance, some jurisdictions may give a higher priority to labour dues, whereas others may prioritise government dues (or what is popularly referred to as 'crown debt' in common law jurisdictions). If a debtor has creditors and assets in multiple jurisdiction who accord different priority to different types of creditors then distribution may become a challenge.
- (d) **Provisions for moratorium or automatic stay against creditor actions:** The different jurisdictions involved in a cross-border insolvency may also have different requirements or provisions for automatic stay against creditor actions after initiation of insolvency proceedings. This can also give rise to a situation where the creditor may

be barred from taking enforcement action in one jurisdiction but the other jurisdiction where the debtor's assets are present, does not recognize the foreign insolvency proceeding and allows creditors to enforce against its asset. This can lead to chipping away of the debtor's assets and may prove disadvantageous to distribution of its assets on a collective basis.

- (e) **Equal and fair treatment of creditors:** Different jurisdictions may also have different rules regarding treatment of foreign creditors. Certain jurisdictions might favour recoveries for domestic creditors over foreign creditors which again poses a significant hurdle to ensuring an efficient and predictable insolvency process.

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

4.5

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.

Multilateral steps that have been taken in the 21st century to promote harmonisation of domestic laws include:

- (a) **UNCITRAL Legislative Guide on Insolvency Law (2004):** The UNCITRAL guide provides a comprehensive guide to different principles and approaches that can form part of a nation's domestic insolvency law. It serves as a guide to assist nations in developing their insolvency regimes. It is split in four parts covering areas such as key objectives of insolvency law, critical features of insolvency law, treatment of enterprise groups or what is popularly referred to as 'group insolvency' and responsibilities of those who are managing entities that are facing imminent threat of insolvency.
- (b) **World Bank's Principles for Effective Insolvency and Creditor/Debtor regimes:** This sets out the international best practices for establishing transparent and efficient legal framework for debtor and creditor rights. Primarily, it sets out principles for rights of creditors and debtors, risk management, legal and institutional framework for implementation of such regime.
- (c) **European Parliament's report on Harmonisation of Insolvency Law at EU Level (2010):** This report conducted a study of the insolvency law systems in the EU and highlighted areas where harmonisation would be needed. These areas included a common test of insolvency and rules relating to filing of claims in insolvency proceedings, among others.

In my opinion, while these initiatives are 'soft-law' initiatives and are not binding on countries, they will still go a long way in assisting with harmonisation of domestic insolvency laws. Globalisation has exacerbated the need for countries to adopt efficient and predictable insolvency systems in order to attract offshore investors as well as creditors to set up businesses and finance local borrowers.

Many countries such as Singapore and India have recently reformed their insolvency law systems to move towards efficient insolvency systems and improve the ease of doing business in their countries. The urgent need to attract foreign investment will encourage more countries to adopt solutions suggested in these multinational initiatives on insolvency law and help address international insolvency issues.

5

Marks awarded 13 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.

The Erewhon liquidator can seek recognition of the Erewhon winding-up order against Nadir in Utopia by relying on provisions relating to recognition of foreign insolvency proceedings under the UNCITRAL Model Law on Cross-border Insolvency (UMLCBI). The UMLCBI which has been adopted by Utopia requires that foreign representative seeking recognition (i.e., the Erewhon liquidator) furnish copies of the necessary evidence required to prove commencement of foreign proceedings and appointment of the foreign representative. Therefore, the Erewhon liquidator will be required to provide certified copies of the Erewhon winding-up order and documents relating to his appointment.

From the time of application by the Erewhon liquidator to recognize the Erewhon proceedings, the Utopia court may at the request of the liquidator stay enforcement and execution actions against Nadir in Utopia, therefore potentially staying the Apex court action, if such relief is needed urgently to protect creditors.

If the Utopia court finds that the centre of main interest of Nadir is not in Erewhon then it may recognize the Erewhon winding-up proceedings as a “foreign non-main proceeding”. According to UMLCBI, once the Erewhon winding-up order is recognized by Utopia (whether as foreign main or non-main proceeding) the Utopia court may stay commencement of or continuation of pending actions against Nadir in Utopia, at the request of the Erewhon liquidator.

The additional information that would be relevant to this answer would be understanding where the centre of main interest (COMI) of Nadir lies. While the presumption would be that Nadir’s COMI would lie in Utopia, its place of registration, this presumption is rebuttable on the basis of other factors such as where its main administration happens, location of its financing among others. Moreover, the fact that Nadir’s registration was only shifted from Erewhon to Utopia a month ago may also play a role in rebutting this presumption. The reason ‘COMI’ would be relevant is because that would determine whether the Erewhon proceedings are recognized

as 'foreign main' or 'foreign non-main' and the implications of the two are slightly different under the UMLCBI.

Another additional information that would be relevant to this answer is whether Utopia and Erewhon have entered into any treaty to govern cross-border insolvency issues between them. If yes, then one would need to examine the provisions of the treaty to assess how the insolvency of Nadir would play out and be treated in the two jurisdictions.

It would be beneficial to refer to specific provisions of the MLCBI.

5

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.

The scenario under (a) where the matter to wind-up Nadir had not yet been heard would not make any difference to the answer in 4.1 as in effect that also results in a situation where a winding-up proceeding has commenced in another jurisdiction before any such proceeding in Utopia.

See the model answer.

The scenario under (b) would make a difference to the answer in 4.1. This is because in case the winding-up proceeding had commenced in Utopia prior to Erewhon's winding-up order then the liquidator appointed in the Utopia proceeding could seek to stop any winding-up order in Erewhon. Whether Erewhon would recognize the Utopia winding-up order would depend on whether it has adopted UMLCBI or follows common-law principles for recognition of foreign insolvency proceedings or if Utopia and Erewhon have entered into any treaty to govern cross-border insolvency issues between them. Moreover, given that Nadir's registration is in Utopia, once winding-up proceedings had commenced in Utopia, even if winding-up orders were passed in Erewhon, it may treat any such foreign insolvency proceeding as 'non-main'.

Refer to Article 29 on concurrent insolvency proceedings, under which the local proceedings in Utopia maintain pre-eminence over the foreign proceedings in Erewhon.

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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?

This question has been answered on the assumption that the corporate debtor is incorporated in India and has assets in other jurisdictions such as Hong Kong and the United States of America and creditors in various other jurisdictions. In case the corporate debtor is undergoing insolvency proceedings in India (which is known as the corporate insolvency resolution process and is equivalent to a rescue proceeding where a third party (other than the existing management of the insolvent entity) is allowed to bid for the insolvent entity), four key international insolvency issues facing the insolvency representative appointed in India are:

- (a) **Seeking recognition and automatic stays in jurisdictions where the debtor has assets:** One of the key challenges before the insolvency representative appointed under Indian law would be to seek recognition of the Indian insolvency proceedings in jurisdiction such as the US and Hong Kong where the debtor has assets and get an automatic stay against creditor enforcement actions in these regions. This will be key to ensuring that creditors don't initiate enforcement actions against debtor's properties in these regions as that will lead to chipping away of the debtor's estate without fair distribution amongst all stakeholders.

Applicable domestic/International instruments: India has not entered into any treaties or cross-border insolvency protocols or agreements with Hong Kong or the USA. Hong Kong has not adopted the UNCITRAL Model Law on Cross-Border Insolvency (UMLCBI) and therefore, will rely on common law principles to determine whether to recognize Indian insolvency proceedings.

US has adopted the UMLCBI, and the insolvency representative could rely on the procedures set out for recognition of foreign insolvency proceedings under the UMLCBI to seek recognition of the Indian insolvency proceedings in the US.

- (b) **Ensuring access and control over its offshore assets:** Recognition of insolvency proceedings may only be the first step. Assuming that the relevant jurisdictions such as Hong Kong and US extend recognition to the Indian insolvency proceeding, the next step for the insolvency representative would be to seek additional reliefs such as access and control over the debtor's assets in these jurisdictions.

The applicable domestic/international instruments for this point (b) are the same as (a).

- (c) **Binding offshore creditors by the restructuring plan agreed to in India:** Assuming that the insolvency proceeding in India is complete, the next challenge will be to bind offshore creditors to the terms of the restructuring plan (or what is referred to as the 'resolution plan' in Indian insolvency proceedings). This will be critical to ensuring that there is a discharge of claims against the debtor in accordance with the restructuring plan and creditors do not continue to pursue claims against the debtor in other jurisdictions even after the insolvency proceeding is complete.

Applicable domestic/International instruments: The applicable instruments will depend on whether India has entered into any treaties or agreements with the State where such offshore creditors are based or have initiated enforcement action in. UMLCBI would be relevant to the extent that any of these jurisdictions have adopted it.

- (d) **Ensuring co-operation with any foreign insolvency representative appointed in any other State:** In case there are any concurrent insolvency proceedings initiated in

any other jurisdiction other than India against the debtor, the insolvency representative will need to ensure that there is co-ordination and co-operation with foreign representatives appointed in such proceedings to make sure that the insolvency proceedings are conducted in an efficient manner.

Applicable domestic/International instruments: Despite several discussions on this front, India has not adopted UMLCBI. Therefore, in case of any concurrent foreign insolvency proceedings, the courts in India will apply common-law principles to determine how the foreign proceeding will be treated under Indian law. In the past, in the case of the insolvency of Jet Airways, an Indian airline, the court had ordered the Indian insolvency representative and the foreign representative appointed in insolvency proceedings commenced in Netherlands to enter into an agreement to deal with cross-border insolvency issues.

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Marks awarded 13.5 out of 15
TOTAL MARKS 45.5/50

*** End of Assessment ***