



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.

International insolvency law (also known as cross-border insolvency law) relates to an insolvency proceeding that involves more than one State. Insolvency law of different States may differ – such that there is no single set of insolvency law or procedures that could be applied immediately and exclusively. The application of the international insolvency law must have regard to foreign elements of the case.

Wessels and Fletcher are authoritative sources. While you have combined their information into other words, it could perhaps better convey your personal understanding.

1.5

Question 2.2 [maximum 5 marks]

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

The concept universality (universalism) is one where there should only be one insolvency proceeding covering all the debtor's assets, locally and overseas. Once an insolvency proceeding against the debtor is initiated in one State, no other insolvency proceeding should be initiated against the same debtor. The place where the insolvency proceeding takes place could be where the debtor has its main place of business. It is based on the premise that all the debtor's assets would be placed in

the control of a single officeholder. All creditors worldwide should have the opportunity to participate in the insolvency proceeding and be treated on an equal basis.

The concept of territoriality (territorialism) is the opposite of universality. The concept is based on the premise that each State should have its own insolvency proceeding relating to the debtor's assets. Therefore, there may be multiple (concurrent) proceedings relating to the debtor's assets. Creditors will file claim against the debtor in the State where a transaction relates, that is the claim will be filed within the confined of the national boundary. The effect of this is that the assets of the debtor in a State (State X) will be used to satisfy the claims of the creditors in that State (State X).

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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.

Some countries in the Middle East have reformed their domestic insolvency law recently. For example, UAE, Saudi Arabia and Dubai have reformed their domestic insolvency laws between 2016 to 2019 [Elaboration in this respect is warranted]. They have had history of working with the World Bank, the OECD and INSOL International on reforming their laws. Their reform was based on the World Bank's Principles for Effective Insolvency and Creditor Rights Systems (2005).

In addition, Bahrain (in 2018) and Dubai (in 2019) have adopted UNCITRAL Model Law on Cross-Border Insolvency in 2018.

2.5

Marks awarded 9 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.

Individual - When a debtor is placed in insolvency (bankruptcy), it protects him from harassment by creditors for debts owing to creditors, especially where the insolvency is the result of external factor(s) that is beyond his control (for example – business closure was due to pandemic). The individual debtor will be required to pay or contributes his future income to pay the debts, partially or in full, depending on the circumstances.

Corporations - An officeholder (liquidator) will be appointed to take control over the debtor's company, to realise the assets and pay off liabilities owing to creditors. The balance of debts remaining unpaid (if any) will remain 'unrecoverable' by creditors – the creditors will have no choice but to write it off. However, where there was fraud, the office-bearer may recover from the directors personally. Such amount will be added to the pool of assets for repayment to the creditors.

Similarities - In both individuals and corporations, the office-bearer may recover voidable or void dispositions. Money recovered will be added to the pool of assets for repayment to the creditors. Further, creditors are to be treated equally, observing the *pari passu* principle, except where creditors have (statutory) priority.

Differences – Unlike corporations, individuals will continue to exist and earn income. The law of a State may allow an insolvent individual to keep certain kind of asset (for example, a car so that he can continue to earn his living). In some States, the law provides an insolvent individual with a fresh start (all past debts will be forgiven) after a certain number of years. The insolvent individual therefore is given a 'second chance'. In the case of a corporation, it will be dissolved (the legal entity ceases to exist) at the end of the liquidation.

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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.

Insolvency proceeding against a debtor may be commenced in more than one State, giving rise to concurrent proceedings. Each independent State has its own legislation giving rise to potential conflict of laws. There are also practical aspects (difficulties) on the willingness to co-ordinate and co-operate.

Fletcher spoke about three fundamental difficulties – (a) which jurisdiction should an insolvency proceeding be opened? (b) what country's law is to be applied and (c) what effect will it have on enforcement.

As an illustration, the Airline of State A flies to and has businesses in many countries. There will be creditors (debts not paid) in these countries. When the Airline is insolvent, which jurisdiction should an insolvency proceeding be opened? Should it be in State A? If it does, what about contracts where both parties had agreed to be subject to laws

in State B? If the contract has an underlying asset, say, an aircraft, could the creditor in State B enforce the contract by taking possession of the aircraft?

Examples of other difficulties include the following –

- 1) Recognition - Would the office-bearer of one State (State A) be recognised by the other State (State B)? If not, the officer-bearer (example, liquidator) of State A will have no standing in the State B, and his requests for information or claims against the debtor will be ignored.
- 2) Moratorium – When an insolvency proceeding is opened in State A, would the creditors be prevented (moratorium) from taking a recovery action against the debtor or assets of the debtor in State B?
- 3) Creditors' participation – When an insolvency proceeding is opened in State A and an office-bearer is appointed, will the creditors of State B be allowed to participate? If they do, would they be treated equally (pari passu)?
- 4) Executory contracts – There will be executory contracts (contracts that are existing and have not been completed yet – there are remaining rights and obligations to be performed). Would the law of State A allow for disclaiming such a contract on the basis that it is onerous (the burden of continuing with such a contract exceeds the benefits)?
- 5) Claims procedures – Are there clarity on claims procedures? For example, what are the documents to be provided to the office-bearers for the claim? If the claims are provided, how long does the office-bearer has in deciding whether to accept or reject the claim. If the claim by a creditor is rejected, what is the appeal procedure?
- 6) Priorities and preferences – Are there priorities or preferences provided by the local legislation. For example, claims by employees. Will they be accorded priorities?
- 7) Avoidable transaction – What are the laws relating voidable or void transaction. For example, when a debtor knows that an insolvency proceeding will be initiated by a creditor, the debtor chooses to pay a creditor(s) [undue preference transaction] knowing that other creditors will be put in a less advantageous position.

There is scope to elaborate by discussing Westbrook's 9 key issues. Conflicts and discharges warrant discussion.

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 have been taken together to address international insolvency issues – they take the form of regional groupings resulting in treaties and conventions (hard laws). They also take the form of professional bodies (International Bar Association [IBA] and INSOL International) getting together proposing a range of solutions (soft laws).

To the extent that multilateral steps have developed into hard laws, the impact on harmonisation is highly effective. Examples are (a) Nordic Convention on Bankruptcy (1933) and (b) European Insolvency Regulation (EIR Recast 2015).

However, where it takes the form of 'soft laws', it is also making an impact. *UNCITRAL Legislative Guide on Insolvency Law (2004)*, while being a 'soft law' has been adapted and 'hard coded' in domestic laws in several Middle East countries recently. Singapore has also recently adapted and adopted it.

The World Bank has also produced guidelines on insolvency, entitled *Principles for Effective and Creditor / Debtor Regimes (World Bank Principles)*. It is a 'soft law' which is also making an impact. International Monetary Fund (IMF) and World Bank sometimes require law reform in domestic laws as a condition for loan. *UNCITRAL Legislative Guide* and *World Bank Principles* are taken as best practice standard for insolvency regimes.

Key aspects of World Bank Principles include the following:

- i. There is a clear and speedy process in obtaining recognition and granting of relief relating to foreign insolvency proceedings.
- ii. Foreign office-bearer must have access to domestic courts and authorities, and domestic courts and authorities are to co-ordinate and cooperate relating to insolvency proceedings'
- iii. Foreign and domestic creditors are not to be discriminated; they are to be treated equally (*pari passu*)

A key aspect of *UNCITRAL Model Law on Cross-Border Insolvency (UNCITRAL MLCBI)* is the emphasis on co-operation and co-ordination. It places obligations on courts and insolvency representatives (office-bearers) from different States to communicate and co-operate with each other. This is done with the view of ensuring that the debtor's estate is administered orderly with the view of maximising returns to creditors.

While adoption of the MLCBI may harmonise various domestic insolvency laws in so far as they address international insolvency issues, the question addresses more broadly the harmonisation of domestic insolvency laws in general. See the 'model' answer on this sub-question.

There are now a range of guidelines available on communications, co-ordination, and co-operation. For example,

a) In North America,

- American Law Institute (ALI) developed ALI NAFTA Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (2000); and
- ALI and International Insolvency Institute (III) developed the (a) ALI-III Global Principles for Cooperation in International Insolvency Cases and (b) Global Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases (2012).

b) In Europe – European Union and III developed the EU JudgeCo Guidelines, comprising 26 EU JudgeCo Principles and 18 EU Cross-Border Insolvency Court-to-Court Communications Guidelines (2015).

- c) In Asia (Singapore), the Judicial Insolvency Network (JIN) conference (2016) contributed to the drafting of Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (JIN Guidelines). The objective is to improve the efficiency and effectiveness of parallel proceedings in international insolvency, by focusing on co-ordination and co-operation in insolvency proceedings.

The approach among independent States is to adopt modified universalism (or modified territorialism). While there is no single insolvency regime governing independent States, inroads (impacts) have been made relating to co-ordination and co-operation in the (harmonious) administration of cross-border insolvency of debtors.

What is your opinion on how much impact these are likely to have in addressing international insolvency issues?

3.5

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.

Nadir moved its registration and head office to Utopia one month ago. Nadir is therefore a legal entity in Utopia. It is assumed that Nadir’s business operations in Erewhon is either a branch or a representative office.

The facts do not indicate whether Erewhon has similarly adopted Cross-Border Insolvency Act. It also does not indicate whether there is any treaty between the two States (Utopia or Erewhon) on a cross-border insolvency.

Scenario A – (a) Erewhon has not adopted Cross-Border Insolvency Act or (b) Utopia and Erewhon do not have a treaty relating to cross-border insolvency between the two States.

- It is unlikely that the liquidator in Erewhon would be able to stop the legal proceeding by Apex in Utopia. The court in Utopia will have jurisdiction over the legal dispute between Nadir and Apex.
- The liquidator in Erewhon may continue with the proceeding in Erewhon. The liquidator may realise the assets (if any) of Nadir in Erewhon. The proceeds of realisation will be used to repay creditors entitled to the claim. The surplus of money (if any) after repayment to the creditors belongs to Nadir.

Scenario B – (a) Erewhon has adopted Cross-Border Insolvency Act or (b) Utopia and Erewhon has a treaty relating to cross-border insolvency.

- The liquidator in Erewhon may intervene in the legal proceeding in Utopia.
- The liquidator may ask for the legal proceeding by Apex to be suspended or apply to the court in Utopia to place Nadir in liquidation.

The Cross-border Insolvency Act (CBIA) of Utopia has adopted the UNCITRAL Model Law on Cross-border Insolvency (MLCBI) as part of Utopia's domestic laws. The MLCBI as drafted by UNCITRAL does not require reciprocity so it does not matter whether Erewhon has adopted the MLCBI or not.

2

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.

Scenario A

It makes no difference. The court in Utopia has jurisdiction to hear the matter.

Scenario B

Upon commencement of liquidation (Nadir) in Erewhon, an insolvency proceeding against Nadir in Utopia may be stayed, if the court is of the view that Nadir's COMI (Centre of Main Interest) is in Erewhon. It is also possible that the court in Utopia may allow for concurrent proceedings.

- (b) Apex had obtained a court order to wind-up Nadir in Utopia prior to the Erewhon winding-up order.

Scenario A

It makes no difference. The court in Utopia has jurisdiction to hear the matter.

Scenario B

Upon commencement of liquidation in Utopia (primary proceeding), an insolvency proceeding in Erewhon (secondary proceeding) may be stayed. However, the court in Erewhon may also allow for concurrent proceeding.

The MLCBI is significant for its provisions on concurrent insolvency proceedings in 4.2.

1

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?

The country selected is Malaysia – a Commonwealth country with a common law system. It has not adopted UNICTRAL Model law. It does not have reciprocal arrangement with other countries in relation to a single insolvency regime. It is also not a signatory to JIN. However, it is a member of treaty relating to Cape Town Convention.

When a court ordered the commencement of an insolvency proceeding (example, liquidation) in Malaysia, all proceedings against the debtor (Debtor A) will be stayed unless leave (permission) of court is obtained.

As it has not adopted cross-border insolvency regime –

- 1) Assets of Debtor A - legal proceedings against Debtor A assets may still proceed in other States. In relation to tangible assets, the creditors of other States may be able to take executory proceedings against the assets. It would be difficult to take executory proceedings against intangible assets (for example, goodwill or trademarks) where the assets are likely to be owned by the State of its incorporation (Malaysia).
- 2) Creditors of Debtor A – If the contractual claim is governed by the Malaysian law, the creditor will be able to file claims against the estate of Debtor A in Malaysia. For example, Malaysia provides reciprocal recognition of judgements with a number of countries under Reciprocal Enforcement of Judgement Act 1958. (REJA 1958). It provides that a judgement obtained in the UK or Singapore can be registered in Malaysia. Once registered, the judgement is enforceable in Malaysia. Foreign creditors claim outside Malaysia (other than countries covered under the REJA 1958) will have no claim in Malaysia.
- 3) Where creditors are tax authorities – It is a foreign debt. It is not a debt in Malaysia. Malaysia will not be able to recognise such a claim, unless REJA applies. For example, amount owing to tax authority in the UK that has resulted in a judgement can be registered in Malaysia under REJA 1958.
- 4) Directors' liabilities – Creditors who have a valid claim in Malaysia may initiate a proceeding against them for negligence, insolvent or fraudulent trading. Foreign creditors will not have a valid claim unless exception applies as mentioned above.
- 5) A foreign insolvency representative (office-bearer) – It should not stop the Malaysian court from granting co-operation or co-ordination to other States.

As an illustration – the Malaysian court may recognise the court appointed liquidator over ABC International Hotel (which has a branch in Malaysia) in the UK.

- 6) Issues on international business operations (multiple legal proceedings) – It would be disruptive to Debtor A without a co-ordinated framework on the administration of the estate. Creditors of other States will take different proceedings against the assets of Debtor A. As an illustration, an airline in Malaysia will find it difficult to operate or have its operations disrupted if there is a ‘mad scramble’ to take possession of assets of the airline in other States.
- 7) Pari Passu treatment of creditors – Creditors globally will have unequal treatment. For example, creditors in State X that have a lot of assets will be able to recover more than creditors in State Y where there are no assets.
- 8) Cape Town Convention has been coded in the Malaysian law under The International Interests in Mobile Equipment (Aircraft) Act 2006 (“Act”). This Act provides for recognition and possession of equipment (ex – aircraft) by foreign creditors. This Act prevails over the domestic insolvency law regime if the assets involved falls within the definition of “equipment” and “interest” as defined in the Act.

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**Marks awarded 10 out of 15
MARKS AWARDED 41.5 /50**

*** End of Assessment ***