



## 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.

By adopting the definition of "international insolvency law" proposed by Wessels and Fletcher, it is the body of rules concerning certain insolvency proceedings or measures, that cannot be fully enforced and should be considered in a situation where insolvency occurs in circumstances which in some manner / way transcends the confines of a single legal system, whereby the single set of domestic insolvency law provisions available are unable to immediately and exclusively be applied and / or executed without regard to the issues raised by the foreign elements of the case.

**These 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.

(a) Under the universality concept, there should only be one insolvency proceeding applicable to all of the debtor's assets and debts worldwide while under the territoriality concept, insolvency proceedings may be commenced in every state / jurisdiction where the debtor has assets but they are limited and restricted territorially to assets within the state / jurisdiction where the proceedings are initiated.

- (b) Under the concept of universality, ideally, once an insolvency proceeding is initiated no other insolvency or execution proceedings could be initiated against the debtor's assets while under the territorial concept, insolvency proceedings could be initiated concurrently in more than one state / jurisdiction where the debtor has assets with each state / jurisdiction applying its own laws.
- (c) The universality concept provides for the officer holder to be provided with the necessary tools to control and obtain all the assets of the debtor regardless which state / jurisdiction the assets are within while the territoriality concept would suggest that the office holder would only have mandate which is confined to the national borders of the state / jurisdiction where insolvency proceeding is initiated.
- (d) Under the universality concept, all creditors worldwide would be given the chance to participate in the insolvency proceeding with all claims being treated and consider on an equal basis while under the territoriality concept, it is often that only local interests and local creditors who act within the domestic market are considered thereby only local assets are evaluated before credit is given.
- (e) One of the downside to the universality concept is that it may cause uncertainty in the domestic markets and that the local country standards may be indeterminate thus lacking in clarity and susceptible to strategic manipulation. On the other hand, one of the downside of the territoriality concept is that a debtor may be declared insolvent in one state / jurisdiction while remain to be solvent in another (where it owns assets).

**There is scope to elaborate regarding recognition and effect 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.**

**4**

### **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 three recent examples are:

- (a) In 2016 and 2019, the UAE have reformed their domestic insolvency laws via *inter alia* the Federal Law by Decree No. (9) of 2016. Under the Federal Law by Decree No. (9) of 2016 ways were identified to avoid bankruptcy cases and liquidation of debtors' assets which includes consensual out-of-court financial restructuring, composition procedures, financial restructuring and potential to secure new loans under terms set by the law.
- (b) In 2018, Saudi Arabia reformed their domestic insolvency law by approving a new bankruptcy law which includes general regulations, preventive actions, measure for financial restructuring and settlement procedures.
- (c) In relation to international insolvency, the Model Law on Cross-Border Insolvency was adopted by Bahrain in 2018 and by the Dubai International Financial Centre in 2019.

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**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 objectives of an individual insolvency include to protect the debtor from being harassed by the creditors and to reduce indebtedness of the debtor by making contributions from present and future income to the estate while taking into consideration the debtor's personal circumstances. In insolvency which are not particularly caused by the actions or conducts of the debtor, the objective of insolvency is to enable the debtor to make a fresh start. To further this objective, under individual insolvency, in some systems / jurisdictions, there is a notion of exemption or exclusion of assets of the insolvent individual to ensure that such individual would have assets to maintain himself or his dependants.

On the other hand, in insolvency involving corporations, the main objectives include to preserve the business (as far as it is possible) or viable parts of the business, which is not necessarily the company itself. In circumstances where there are abuse of personal liability such as breach of professional negligence by certain members of the corporations, the objective would include imposing personal liability of those individuals.

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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.

One of the most glaring difficulties which may surface when dealing with insolvency law in a cross-border context relating to differences in the relevant systems is the lack of common insolvency language which includes terminologies. For example, some systems recognise that "insolvency" (the reason for commencing insolvency) is a situation where the total of outstanding liabilities of the debtor exceeds the assets of the debtors and some degree of durability of this state of negative net worth is present. Some systems also recognises that "insolvency" includes situations where the debtor is unable to pay debt as it falls due (liability crisis) is sufficient for insolvency proceedings to be initiated against the debtor. In respect of the definition of "insolvency proceedings", international conventions and other instruments have attempt to define the same, with or without exhaustive lists of proceedings as "insolvency proceedings". Friman had mentioned the importance of sufficiently defining or ascertaining insolvency and the proceedings involved in a cross-border insolvency.

Apart from differences in definitions of different systems, there is also difference in the domestic / local laws of different systems. The conflict of domestic laws of the relevant systems involved in a cross-border insolvency will further complicate the issues as there may be differences in qualification such as security, set-off, netting arrangements, retention of title clauses and other means of protecting titles available to creditors within the domestic law. In other words, there would be an inevitably difficulty in breaching the gap between the differing domestic law in a cross-border insolvency.

To further expand on the difference in law in different systems, an example includes the determination of proof of foreign law in the common law systems is a question of fact whereas in the civil law systems, the proof of foreign law is a question of law.

**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 21<sup>st</sup> 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.

In 2004, UNCITRAL Legislative Guide on Insolvency Law was introduced which addresses a wide range of aspects in insolvency law with Part One Recommendation 6 recommending the enactment of the UNCITRAL Model Law on Cross-Border Insolvency which will assist in addressing effectively cross-border insolvency matters. Since then UNCITRAL has also introduced amongst others, the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018).

In the early 2000's, the World Bank produced guidelines on the regulation of insolvency (i.e. Principles for Effective Insolvency and Creditor / Debtor Regimes) and revised the same in year 2005, 2011, 2015 and with the most recent revision in April 2021. There are instances where the International Monetary Fund (IMF) and World Bank would refer countries to the UNCITRAL Legislative Guide. Therefore, the World Bank Principles together with the UNCITRAL Legislative Guide are regarded as the best practice standard for insolvency standard.

Efforts are also made by the European Union where in 2010, the European Parliament published a report on the Harmonisation of Insolvency Law at EU level. The most recent effort seen at the European Union is the review of the Action Plan on Building a Capital Markets Union (dated 30.9.2015) and the publishing of its final report on 10.6.2020 (entitled 'A new Vision for Europe's capital markets').

In my view, the abovementioned steps (non-exhaustive list) which seeks to promote harmonisation of domestic insolvency law will not be immediately effective in dealing with internal insolvency issues but they are definitely step(s) forward into the right direction. Taking the UNCITRAL Model Law as an example – the Model Law does not only streamlines and provides certainty in cross-border insolvency issues to its member states, I believe it also bears a trickling effect to the neighbouring jurisdiction of its members states. In other words, a non-member state who did not or perhaps have not enacted the UNCITRAL Model Law when faced with cross-border insolvency issue may seek guidance by looking to the persuasive precedence of its neighbouring jurisdiction (especially in a common law system) who has enacted the Model Law. This would then influence the progression of the common law and the eventual reform of law in the non-member state as it would need to be in-line with the progress of insolvency standards (adopting the phrase in a loose manner). I believe, the guidelines prepared and made available by the UNCITRAL are comprehensive guidelines and a good starting point (and beyond) for states / jurisdictions who have yet to reform its insolvency law, but would find the need to do so especially since there are an inevitable increase in cross-border insolvency matters in the wake of the recent COVID-19 pandemic thereby the crucial need of cooperation and coordination between jurisdictions. However, the concerning factor in this aspect is how fast would different jurisdiction reform and / or adopt cross-border insolvency mechanisms to breach the gaps within its domestic insolvency law.

**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.**

**4**

**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.

Firstly, it is pertinent to note that while Utopia has adopted the Model Law, it did not domesticate it. Therefore, the relevant binding law in the Utopian Court is the Cross-border Insolvency Act of Utopia. The Erewhon liquidator may consider filing a stay in proceedings application to temporarily stay proceedings initiated by Apex against Nadir in the Utopian Court while seeking recognition and enforcing the Erewhon winding up order in the Utopian Court.

Additional information required includes:

- (a) Whether Erewhon have also adopted the UNCITRAL Model Law. This would determine how effective the communication and cooperation would be between the courts of both the jurisdictions involved and whether the Erewhon would need to apply for recognition before the Utopian Court.  
**The MLCBI is significant for its provisions on recognition and relief in 4.1 and on concurrent insolvency proceedings in 4.2. Its provisions on cooperation and coordination are secondarily important as the liquidator is primarily seeking advice about staying court proceedings in Utopia. 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.**
- (b) The need to ascertain if there are reciprocity provisions under the Cross-border Insolvency Act of Utopia. This would determine if the Utopian Court will recognise the Erewhon winding up order and the recognition of the standing of the Erewhon liquidator in its local court if Erewhon is not a member state of the Model Law.
- (c) If the Erewhon winding up order is recognised, whether there are provisions for automatic stay under the Cross-border Insolvency Act of Utopia / what are the moratorium (automatic or otherwise) under the said act.
- (d) There is also a need to determine in which jurisdiction are the assets of Nadir at. Whether Nadir has sufficient assets within the Erewhon jurisdiction to repay the debt owing to the Erewhon creditor. This is to ascertain if there is a need for the Erewhon liquidator to intervene in the foreign insolvency proceeding at Utopia initiated by Apex.

- (e) Whether the Utopian Court is leaning towards a universalism, territorialism or unified universalism approach. This will determine whether the Utopian Court would be more prone to protect the creditor and / or debtor within its own jurisdiction or otherwise.

3.5

**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.
- (a) This scenario will not make much difference to the answer of question 4.1 as the Erewhon liquidator would still want to stop the Apex court proceedings.
- (b) This situation would make a difference because the Utopia liquidator is likely to apply to stay / prevent Erewhon from filing the winding up application against Nadir / apply for a stay of its winding up application in the Erewhon Court. If this is the case, the Erewhon creditor may need to recover its debt owing from Nadir by proving its debt under the liquidation at Utopia – subject to the Utopia insolvency regime (whether it accommodates for foreign creditors).

**Apply the MLCBI provisions on concurrent insolvency proceedings (see Article 29)**

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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?

The company is incorporated in the United Kingdom.

Some of the international insolvency issues likely to be faced by the insolvency representative are:

- (a) The differing national approaches to insolvencies / domestic insolvency laws of the States where the company has assets in. This includes whether the States adopts a pro-creditor or pro-debtor system or whether the State has exclusion / priority system for the likes of revenue authorities.

- (b) The standing / recognition of the insolvency representative in different states would also differ.
- (c) The insolvency representative's ability to accept proofs of debts lodged by foreign creditors in relation to the company's liabilities incurred overseas or governed by foreign law.
- (d) The insolvency representative would also have to determine the domestic laws on choice of law in assessing for example, certain debts / claims which have transnational effect.
- (e) To identify what is the moratorium in view of an insolvency proceeding (foreign or otherwise) and whether there is any automatic moratorium including stay in proceedings in any ongoing insolvency proceedings in the different States.
- (f) The international insolvency representatives would also need to determine the different rights, duties, liabilities and limitations of directors and other officers of corporations at the different States.

To address the abovementioned issues, domestic laws or international instruments applicable are:

- (g) The domestic insolvency law in the UK adopts the approach of recognising and co-operating with foreign insolvency proceedings. This has been given judicial cognisance as seen in the case of *McGrath v Riddle* [2008] UKHL 21 where the House of Lords stated that it is an established practice in common law to give directions to ancillary liquidator to direct remittal of English assets, notwithstanding any differences between the English and foreign systems of distribution. It has also been argued that the co-operation between courts in exercising jurisdiction in a cross-border insolvency does not only stem from the court's inherent jurisdiction (i.e. common law), it has also been recognised under the Insolvency Act 1986. This is explained by Lord Scott in the Appeal of the *McGrath v Riddle* case.
- (h) Under the domestic insolvency law of the UK, the English Courts are empowered to wind up a foreign company which is incorporated under the law of a country other than the UK or an unregistered company with "sufficient connection" with England and Wales (as provided under the Insolvency Act 1986).
- (i) The relevant international instrument is the UNCITRAL Model Law on Cross-border Insolvency ("Model Law") which encourages harmonisation of domestic insolvency laws. The UK incorporated the Model Law via the Cross Border Insolvency Regulations 2006 SI 2206 / 1030 (CBIR).
- (j) The insolvency representative would have to identify whether the states where the company owns assets in are member states of the UNCITRAL Model Law which would translates to the courts of the member states to be more willing to recognise the insolvency proceeding initiated in the UK. Therefore, the insolvency representative can rely on the Model Law in dealing with other member states. On the contrary, for non-member states where the company owns assets, there may be difficulty in managing the assets in those states, depending on the relevant domestic insolvency laws.
- (k) For example, if the company has assets in any of the EU states, the insolvency representative would have to apply to the domestic court in the EU state for recognition / standing of the insolvency representative in its domestic jurisdiction.

5.5  
Marks awarded 9.5 out of 15  
MARKS AWARDED 41/50

**\* End of Assessment \***