



**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 1
(INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW)**

This is the **summative (or formal) assessment** for **Module 1** of this course and is compulsory for all registered candidates on the Foundation Certificate. The mark awarded for this assessment will determine your final mark for Module 1. In order to pass this module you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment1summative]**. An example would be something along the following lines: 202122-545.assessment1summative. **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 ID 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 November 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 15 November 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

Unlike (former) continental insolvency rules, the English insolvency laws provided for a rather liberal discharge of debt provision since 1570. Select the **most accurate response** to this statement from (a) – (d) below.

- (a) This statement is correct since the English insolvency system was viewed as a pro-creditor system since its early development.
- (b) This statement is correct since the English insolvency system, unlike continental systems, never provided for imprisonment for debt of insolvents and preferred to treat debtors in a humane way.
- (c) **This statement is incorrect since a statutory discharge of debt was only introduced in 1705 in England.**
- (d) This statement is incorrect since most of the continental insolvency rules provided for a liberal discharge of debt even before English law considered the introduction of such a dispensation.

Question 1.2

English insolvency law was not affected by the Covid-19 pandemic to date. Select the **most accurate response** to this statement from (a) – (d) below.

- (a) This statement is correct since the UK decided to merely provide financial aid to financially troubled entities and individuals.
- (b) This statement is correct since the legislative reform process in the UK is too slow to effect amendments to an elaborate piece of legislation such as its Insolvency Act of 1986.
- (c) This statement is correct since the English insolvency law already provided special rules to deal with extreme socio-economic situations like those brought about by global disasters such as the Covid-19 pandemic.
- (d) **The statement is incorrect since the UK did review parts of its insolvency rules and amended some, amongst other things, to deal with the negative economic fall out of the pandemic.**

Question 1.3

Since the Dutch insolvency system is rather outdated when compared with English or American insolvency / bankruptcy laws, it does not provide for a modern scheme of arrangement that could be used to reorganise or rescue a company in distress. Select the **most accurate response** to this statement from (a) – (d) below.

- (a) This statement is correct since the Dutch insolvency system does not provide for a discharge of debt and without such a dispensation in place, a scheme of arrangement will not be functional.
- (b) This statement is correct since the Dutch government has not approved such legislation yet.
- (c) This statement is incorrect since the Dutch in fact introduced new legislation in this regard in 2000 already.
- (d) This statement is incorrect since the Dutch quite recently adopted legislation in this regard and it became operational on 1 January 2021.

Question 1.4

There is no real need for the reform and establishment of a more uniform set of cross-border insolvency rules since the courts of the various States around the globe are well-equipped to deal with such issues by way of judicial discretion and since the broad rules of local insolvency legal systems are largely the same. Select the **most accurate response** to this statement from (a) – (d) below.

- (a) This statement is correct since courts cooperating across jurisdictional borders are familiar with global insolvency principles.
- (b) This statement is correct since courts across the globe are inclined to apply comity as a principle to assist foreign estate representatives to deal with cross-border insolvency matters in a coherent way.
- (c) The statement is not correct since both local insolvency systems as well as cross-border insolvency rules differ quite significantly in many respects.
- (d) This statement is correct since apart from the wide discretion that judges in general have, the UNCITRAL Model Law on Cross-Border Insolvency has been adopted by the majority of UN Member States, hence these rules are well-known to judges across the globe.

Question 1.5

Universalism has become the main approach regarding the application of cross-border insolvency rules around the globe since the majority of States follow a strict adherence to comity. Select the **most accurate response** to this statement from (a) – (d) below.

- (a) The statement is not correct because very few States allow insolvent estate representatives to deal with assets of a foreign debtor situated in their own jurisdiction without some form of a (prior) local procedure to recognise the foreign insolvency proceeding.

- (b) The statement is correct because universality has become the norm in the majority of States in cross-border insolvency matters since the introduction of the UNCITRAL Model Law on Cross-Border Insolvency in 1997.
- (c) The statement is correct because the prevalent approach of modified territoriality amounts to a universal embracement of universalism amongst the majority of States around the globe.
- (d) The statement is not correct because important international policy-making bodies such as the International Monetary Fund (IMF), the World Bank Group and the United Nations still support strong territoriality in cases of cross-border insolvency cases.

Question 1.6

A number of initiatives have been pursued in international insolvency in order to stimulate debate and to develop international best practice standards. Which of the following statements is **most accurate** regarding the World Bank's *Principles for Effective Insolvency and Creditor / Debtor Regimes*?

- (a) They were developed in 2000 and are the international best practice standards for insolvency regimes.
- (b) They were recently revised in 2021 and, together with the UNCITRAL Legislative Guide, form the international best practice standard for insolvency regimes.
- (c) They were recently revised in 2020 and, together with the UNCITRAL Model Law on Cross- border Insolvency, form the international best practice standard for insolvency regimes.
- (d) They were initially released in 2011 and are the international best practice standards for insolvency regimes.

Question 1.7

Which of the following **does not** focus on communication among States in international insolvencies?

- (a) ALI - III Global Guidelines for Court-to-Court Communications in International Insolvency Cases.
- (b) The JIN Guidelines.
- (c) The JIN Modalities.
- (d) The Nordic Convention 1933.

Question 1.8

Which of the following **best describes** the fundamental legal issues that arise in an international legal problem?

- (a) Choice of forum, choice of law, and choice of jurisdiction.

- (b) Choice of forum, recognition and effect accorded foreign proceedings in the same matter, and choice of law.
- (c) Choice of effect, choice of recognition, and choice of law.
- (d) Choice of forum, recognition and effect accorded foreign proceedings in the same matter, and choice of parties.

Question 1.9

Which of the following statements **best describes** the *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*?

- (a) It is not intended to be prescriptive and is intended to provide information for insolvency practitioners and judges on practical aspects of co-operation and communication in cross-border insolvency cases to illustrate how the resolution of issues and conflicts that might arise in cross-border insolvency cases could be facilitated by cross-border co-operation.
- (b) It is prescriptive and provides information for insolvency practitioners and judges on practical aspects of co-operation and communication in cross-border insolvency cases to illustrate how the resolution of issues and conflicts that might arise in cross-border insolvency cases must be facilitated by cross-border co-operation.
- (c) It is prescriptive and provides information for judges on practical aspects of recognition and enforcement in cross-border insolvency cases.
- (d) It is not prescriptive and provides information for judges on practical aspects of recognition and enforcement in cross-border insolvency cases.

Question 1.10

What **best describes** the overriding objective of the ALI - III Global Guidelines for Court-to-Court Communications in International Insolvency Cases?

- (a) To interfere with the independent exercise of jurisdiction by the relevant States' courts and ensure an effective outcome.
- (b) In urgent situations only, to interfere with the independent exercise of jurisdiction by the relevant States' courts in order to ensure an effective outcome.
- (c) To enhance co-ordination and harmonisation of insolvency proceedings that involve more than one State through communications among the States involved.
- (d) To enhance co-ordination and harmonisation of insolvency proceedings that involve more than three States through communications among the States involved.

Marks awarded 10 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

Briefly indicate three significant (historical) developments regarding debt collection procedures in English law that shaped the way of thinking concerning modern insolvency law.

[(a) The Statute of Marlbridge 1267 introduced imprisonment for non-payment of debt. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law. The abolishment of imprisonment would more seem to be a development that shaped modern insolvency thinking.**

(b) In the 1570 Act. the administration of the estate of bankrupts (performed by commissioners prior to this) was transferred to the jurisdiction of the Lord Chancellor. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law.**

(c) The Statute of Ann of 1705 introduced the concept of a statutory discharge. **It would be beneficial to elaborate upon how this shaped modern insolvency thinking, for example by discussing modern concepts of fresh start.**

(d) Imprisonment was abolished in 1869 by the Debtor's Act. The next significant development after this was the act of 1883.] **It would be beneficial to elaborate upon how this shaped the decriminalisation of modern insolvency.**

2

Question 2.2 [maximum 3 marks]

Following the Covid-19 pandemic, States across the globe had to introduce measures to deal with the negative economic fall out of this pandemic. Briefly indicate three insolvency and insolvency-related measures so introduced in the UK.

[(a) The Corporate Insolvency and Governance Act 2020 was passed into law on 26 June 2020. The 3 insolvency and insolvency-related measures introduced by this legislation are as follows:

(b) Termination of supply contracts are prohibited when there is an insolvency situation such as where a company enters into administration. Suppliers may be excused from performing their obligations if performance of obligations causes hardship to the supplier's business.

(c) Moratorium period for non-finance pre-moratorium debts may be triggered by a company in certain situations such as a company that is seeking a rescue or restructuring, a licensed insolvency practitioner will supervise the company and represent the creditors' interest. The insolvency practitioner verifies that the rescue of the company as a going concern is likely, approves sales of assets outside the ordinary course of business and approves the grant of new security over assets.]

2

Question 2.3 [maximum 4 marks]

Briefly explain the concept of treaties and "soft law" and indicate how these may be used to establish cross-border insolvency rules in States.

- [(a) Treaties are binding agreements that are entered at an international level, most commonly into between or among countries. Country that agree to be a party of a treaty are required at the domestic or national level (within the country) to give effect to the terms of the treaty by enacting local/national legislation (i.e., 'hard law') so that it can be enforced in the courts...
- (b) There have been treaties addressing various points relating to insolvency laws (e.g., absconding debtors, gathering of assets, jurisdictions, recognition, enforcement of bankruptcy, winding-up, arrangements and compositions.
- (c) Examples of treaties that address insolvency laws are the Nordic Convention 1933, the Istanbul Convention, Council of Europe Treaty series 136 and in the European Union, the EIR Recast.
- (d) "soft law" refers to initiatives advanced by non-government organisations or special interest organisations.
- (e) The Model Law on Cross Border Insolvency is widely considered as one of the most successful examples of soft law having influence on reform or development of international insolvency law.
- (f) The Model Law is a draft legislation designed by UNCITRAL and recommended for adoption, with or without modification. The individual states then assess its suitability for incorporation into its domestic/local laws.]

4

Marks awarded 8 out of 10

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

Question 3.1 [maximum 5 marks]

Briefly discuss the various possible different sources of insolvency laws in any State and how they may interact with each other.

- [(a) The most common source or authority for insolvency law in any state are laws that deal specifically with bankruptcy of an individual or winding-up of a company or entity. Usually these laws prescribe the applicable procedure and eligibility conditions for these laws to be invoked. **It would be beneficial to discuss insolvency legislation as either a code or multiplicity of legislation and how it varies from State to State**
- (b) There are also other legislations that are not specific to bankruptcy or winding-up but due to the subject matter, it would be necessary to have provisions that deal with the consequences of an act of bankruptcy or an act of winding-up or court orders issued pursuant to specific bankruptcy or winding-up legislation. Examples of such other legislations would be legislation that deals with land law, probate and administration.
- (c) While there is legislation that is specific to insolvency as well as legislation that are not specific but contain provisions that become applicable in an insolvency situation, another source law would be common law and it would usually be relied on or invoked when existing legislation does not have specific provisions to address a particular insolvency situation. Invoking common law principles in such situations which do not have a treatment prescribed in statute]

4

Question 3.2 [maximum 5 marks]

A number of difficulties arise in cross-border insolvencies, including as a result of differences in laws between States. Harmonisation of insolvency laws is pursued. In an attempt to bring the “cross-border” aspects and the “insolvency” aspects together, Fletcher asks three very pertinent questions. Discuss these pertinent questions / issues raised by Fletcher.

- [(a) The 3 questions relate to how a state (specifically a local or domestic court) may deal with insolvency proceedings that have a foreign element. Usually national/domestic laws would not have any specific legal or statutory provisions that come into play or are triggered when there is a foreign element. Examples of issues that arise in an insolvency proceeding that has a foreign element are as follows:
- (i) whether an insolvency practitioner for the foreign jurisdiction will have locus in the domestic/local court (in terms of having the foreign insolvency proceedings recognised in the domestic/local court);
 - (ii) distribution of the assets in the domestic/local jurisdiction (e.g., would the creditors in the local jurisdiction have priority over local assets or should local and foreign creditors be considered as being equal or part of a class);
 - (iii) whether the courts in the domestic/local jurisdiction are required to enforce orders issued by courts in a foreign jurisdiction;
 - (iv) whether certain transactions should be avoided (e.g., preference payments, certain types of contracts, etc.)
- (b) The 3 questions raised by Fletcher when there is a foreign element in insolvency proceedings are as follows:
- (i) in which jurisdiction may insolvency proceedings be opened?
 - (ii) what country’s law should be applied in respect of different aspects of the case?
 - (iii) what international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)?
- (c) These 3 questions offer perspective to a domestic or local court on competing issues/interest in insolvency proceedings that have a foreign element and how to apply relevant legal consideration or priority when trying to resolve or reconcile such issues.
- (d) With respect to point (i) in paragraph (b) above, the emphasis is on the existence of any connection between the parties in the proceedings and the jurisdiction.
- (e) With respect to point (ii) in paragraph (b) above, consideration should be given to how or whether a court order of foreign law would be recognised in the domestic court.
- There is scope to elaborate upon choice of law issues**
- (f) With respect to point (iii) in paragraph (b) above, once a domestic court has determined that it has sufficient jurisdiction for insolvency proceedings, it would still be necessary for the domestic court to ascertain the applicable law (as in, which country)]

In answering the three questions posed by Fletcher, could insolvency proceedings possibly be opened concurrently in more than one State, each State would apply its own laws? What cooperation difficulties does this raise ?

3

Question 3.3 [maximum 5 marks]

It is said that “co-ordination agreements are sometimes known as Protocols or Cross-border Insolvency Agreements. Their growing acceptance internationally is evident in the work by the ALI-III in their *Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases*; by UNICTRAL in their *Practice Guide on Cross-border Insolvency Agreements*; and by the Judicial Insolvency Network in their *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters...*”

It is also said that “While court approval of such agreements for the purposes of co-ordinating insolvency proceedings is encouraged by the MLCBI, they in fact pre-date the Model Law.”

Briefly discuss a prominent case law example for this last quotation.

- [(a) The case of Maxwell Communications Corporation is an example of cooperation and communication between courts of 2 different jurisdictions that pre-date the Model Law.
- (b) This case concerned insolvency proceedings that were commenced in the UK and the USA. There were insolvency representatives appointed by the court in the respective jurisdictions.
- (c) Examples of key issues that had to be addressed were as follows:
 - (i) transfer of funds that constitute preference payments (depending on the laws of the respective jurisdictions);
 - (ii) how the business and operations in both jurisdictions are to be managed during insolvency proceedings as the business was primarily operated through its offices in London and its key assets situated in the USA;
 - (iii) distribution of assets to creditors in both jurisdictions (depending on the laws of the respective jurisdictions).
- (d) Recognising the complications and conflicts that would arise when there are multiple insolvency proceedings that exist concurrently, the judges in the respective jurisdictions instructed the insolvency representatives in each jurisdiction to coordinate their respective efforts and to extend cooperation to each other in order to carry out the liquidation exercise filed by the company itself in both jurisdictions.
- (e) The liquidation efforts were directed towards being able to maximise the value of the estate and to harmonise proceedings to minimise expense, waste and jurisdictional conflict.
- (f) The insolvency representatives documented mutually agreed principles in a document called the “Protocol”.
- (g) Developing further on the Protocol, a reorganisation plan and scheme of arrangement was which addressed assets in both jurisdictions were jointly agreed and filed.
- (h) The Maxwell case is a powerful example that shows how much ground can be covered in an orderly fashion when there are cooperation and coordination efforts employed in the insolvency process.]

This answer displays a good understanding. There is some scope to elaborate.

4

Marks awarded 11 out of 15

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

Rydell Co Ltd (Rydell) is an incorporated company with offices in the UK and throughout Europe. Its centre of main interest (COMI) is in the UK. Rydell supplies engine parts for large vehicles, including airplanes, and has had a downturn in business due to border closures and travel restrictions throughout the Covid-19 pandemic.

Rydell's main creditor is Fernz Co Ltd (Fernz) which is incorporated in a country in Europe that is a member of the EU. Fernz is considering commencing proceedings or pursuing other options with respect to recovering unpaid debts from Rydell.

There are a number of other creditors owed money by Rydell, who are located throughout different countries in Europe which are all members of the European Union.

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 7 marks]

An insolvency proceeding against Rydell was opened in the UK by a minor creditor on 18 June 2020. A month later, Fernz was considering also opening proceedings in another country in Europe which was a member of the European Union.

Discuss if and how the European Insolvency Regulation Recast would apply. Also note what further information, if any, you might require to fully consider this question.

- [(a) The European Insolvency Regulation Recast ("EIR Recast") would still be applicable in the UK for insolvency proceedings initiated prior to 11 p.m. on 31 December 2020 (due to Brexit). The insolvency proceedings must be one that falls within the description in Annex A of the regulations.
- (b) The EIR Recast establishes the applicable principles for determination of the property jurisdiction for insolvency proceedings, the applicable law to be applied in the proceedings as well as the applicable principles for recognition where there are other insolvency proceedings commenced. **It would be beneficial to discuss relevant articles**
- (c) In considering whether insolvency proceedings should be initiated by Ferns in another EU member state, it is necessary for Ferns to ascertain whether the EU member state is a jurisdiction where Rydell has an establishment, If Rydell does not have an establishment in that EU member state, that EU member state will not be eligible to initiate insolvency proceedings. **It would be beneficial to elaborate on what is required to determine the existence of an establishment and what further information might be required**
- (d) It is noted from the given narrative that Rydell has offices throughout Europe. If Ferns decides to initiate insolvency proceedings in an EU member state, this assumes Ferns will be able to persuade the court in that EU member state that Rydell has an establishment in its jurisdiction.

- (e) Insolvency proceedings initiated in the EU member state will be restricted to the assets of Rydell in that EU member state.
- (f) Under the auspices of the EIR Recast, the proceedings in the that EU member state will be considered a secondary insolvency proceeding because Rydell's centre of main interests in is the UK and insolvency proceedings have already been commenced in the UK by the minor creditor.
- (g) The EIR Recast provides that the insolvency proceedings commenced in the UK will be automatically recognised in the other EU member states as the main proceeding and the laws of the UK will be the applicable law for the insolvency proceedings and provides a mechanism for coordination and cooperation among other EU member states with respect to insolvency proceedings.
- (h) Also, while the EIR Recast is still in force, Fern need not commence separate insolvency proceedings and may instead participate in the proceedings that were commenced in the UK by lodging a claim on Rydell. Foreign creditors are permitted to lodge claims in insolvency proceedings and the UK court or the insolvency practitioner appointed by the court is required to immediately inform all known foreign creditors. Fern can conduct a search on Rydell in the UK to ascertain the status of Rydell.]

4.5

Question 4.2 [maximum 3 marks]

How would your answer to 4.1 differ if the proceedings were opened in the UK on 18 June 2021 instead of 18 June 2020? Also note what further information, if any, might become relevant.

- [(a) Commencing on and from 11 p.m. on 31 December 2020, the EIR Recast ceased to apply in the UK. This is due to the UK's exit from the European Union.
- (b) In general, without the regime provided by the EIR Recast, there are a range of other legislative options pertaining to insolvency proceedings that Fern will have to consider and assess based on the applicable facts, which legislative options would be most advantageous for Fern, such as
 - (i) the application of the UNCITRAL Model Law on cross Border Insolvency – For this to be applicable, it would be necessary to know what which EU member state Fern is from. Not all EU member states adopted the Model Law; or
 - (ii) the application of the law of the country that Fern is from - If Fern is from a country that did not adopt the Model Law, it would still be necessary to know which country Fern is from. The insolvency laws of that state will have to be studied to ascertain it has any 'cross-border' insolvency laws that may be helpful to Fern (e.g., recognition provisions, assistance provisions).
 - (iii) the application of the UK Insolvency Act 1986, section 426 – where proceedings are instituted in Fern's jurisdiction, it would be helpful to ascertain whether UK courts have authority to recognise and render cooperation to a foreign court in a foreign insolvency proceeding as well as authority to determine which laws would apply to the foreign insolvency proceeding (i.e., UK law or the law representing Fern's jurisdiction. It would still be relevant to know which country Fern is from because the Insolvency Act 1986 has a list of countries that are recognised by a UK court.]

Question 4.3 [maximum 5 marks]

Consider an alternative situation now. What if Rydell were unregistered with its COMI in a country in Europe that was a member of the European Union, instead of the UK, and formal insolvency proceedings were opened in the UK on 18 June 2021? What UK domestic laws would be relevant to consider whether the minor creditor could commence those formal insolvency proceedings in the UK?

- [(a) EU laws ceased to apply to the UK after 11 p.m. on 31 December 2020. A UK domestic law that may be relevant to consider would be section 221(5) of the Insolvency Act 1986.
- (b) This assumes that Rydell does not satisfy the requirements under the Companies Act 2006 (Part 34), pertaining to overseas companies.
- (c) In order to rely on section 221(5) of the Insolvency Act 1986, the minor creditor will have to show that formal insolvency proceedings in the UK is warranted on the basis of any of the following circumstances:
 - (i) that Rydell is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs (with the established precedent that Rydell must have “sufficient connection” with England and Wales); or
 - (ii) that Rydell is unable to pay its debts; or
 - (iii) that it would be just and equitable for Rydell to be wound-up (so that the court if it agrees with this position. may exercise its jurisdiction to wind-up Rydell).
- (d) Regarding the established precedent to show that there must be “sufficient connection” with England and Wales, it would be necessary for the minor creditor to demonstrate that the insolvency proceedings in the UK satisfies the following requirements:
 - (i) There is sufficient connection with England and Wales, which does not necessarily have to be assets situated in England and Wales (e.g., the governing law set out in agreements signed by the minor creditor and Fern is the law of England and Wales);
 - (ii) That there is a reasonable possibility that if a winding-up order is made, it would be of benefit to the minor creditor in its capacity as the applicant in the insolvency proceedings (which appears to be the case);
 - (iii) One or more persons interested in the distribution of the assets of Rydell is an entity that the UK court has jurisdiction over (assumes the minor creditor falls within this condition as well).
- (e) It would also be relevant to consider whether the insolvency proceedings commenced by the minor creditor in the UK will be recognised in the EU member state where Rydell is registered or has its COMI. As EU laws ceased to apply to the UK after 11 p.m. on 31 December 2020, an assessment of the availability of recognition, cooperation and coordination mechanisms in a foreign jurisdictions will be determined by whether the EU member state has adopted UNCITRAL Model Law on Cross Border Insolvency (There are not many EU states that have adopted the Model Law) or whether the EU member state has domestic laws that provide recognition, cooperation and

coordination mechanisms where the for insolvency proceedings that originate from foreign jurisdictions.]

5
Marks awarded 12.5 out of 15
TOTAL MARKS 41.5 /50

*** End of Assessment ***