INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

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).

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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.

English debt collection procedures have their roots in strict creditor-friendly[1] Roman law, and provided for individual debt collecting procedures prior to the development of a collective procedure.[2] According to Fletcher[3], the following Roman law procedures gave rise to the development of collective debt collecting mechanisms: *cessio bonorum* (assignment of property); *distractio bonorum* (forced liquidation of assets) and *remission* and *dilatio* (compositions with creditors). These Roman law principles went on to provide a structure for the development of insolvency law[4]. **This pertains to Roman historical development rather than English developments per se.**

Debtors were initially viewed as "quasi-criminals" or "offenders". The English Bankruptcy Act of 1542 (the "EBA") provided for a form of compulsory sequestration and also provided for the appointment of commissioners, who could proceed against a debt upon a creditor's application[5]. The cornerstone of the EBA was that a fraudulent debtor should face compulsory administration and distribution on a *pari passu* basis to their creditors, which are both key principles in modern insolvency law[6]. **It would be beneficial to elaborate on these modern insolvency principles.**

The Statute of Ann of 1705[7] introduced the provision by which a "conforming" debtor, i.e. a debtor who had co-operated during debt proceedings, would obtain a statutory discharge. This concept of releasing a debtor from personal liability is yet another key principle in modern insolvency law[8].

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.

The Corporate Insolvency and Governance Act 2020 (CIGA 2020) contains both permanent and temporary measures, which relate to insolvency law and corporate governance. CIGA is designed to assist businesses affected by the pandemic[9].Three insolvency and insolvency-related measures introduced under CIGA are:

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[1] Paolo Di Martino, The Historical Evolution of Bankruptcy Law in England, the US and Italy up to 1939: Determinants of Institutional Change and Structural Differences, (Manchester University, 2008)

[2] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 4.1.1)

[3] I F Fletcher, The Law of Insolvency, London (Sweet and Maxwell, 5th ed, 2017), Ch 1, p 6; and see generally L E Levinthal, "The Early History of Bankruptcy Law", (1918) 66 Uni of Pennsylvania Law Review and American Law Register, p223

[4] Levinthal, supra note 4, p232

[5] Calitz, supra note 3, p13

[6] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 4.1.1)

[7] Calitz, supra note 3, p9

[8] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 4.1.1)

[9] Ali Shalchi, Corporate Governance and Insolvency Act 2020, (House of Commons Library 5 October 2021)

(i) A new restructuring plan. Courts can sanction a "cross-class cram down" restructuring plan voted for by creditors, which binds dissenting creditors, if it is "fair and equitable" to do so.

(ii) Temporarily relaxed requirements to the "debtor in possession" moratorium procedure. During this temporary period, (a) A UK company can obtain a moratorium on creditor action against it and (b) A creditor cannot issue proceedings without the court's permission. The moratorium is overseen by an insolvency practitioner, whilst day to day running of the company is overseen by the company's directors. The temporary provisions expired on 30 September 2021.

(iii) Suspension of serving statutory demands, which are void if served on a UK company during the "relevant period", defined as the period between March 2020 and 30 September 2021.

3

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.

Treaties are the product of government to government/State to State cooperation, whilst "soft law" refers to guidelines developed by various influential multilateral organisations. Treaties and "soft law" are both used to find solutions to international insolvency law[10].

By becoming signatories to treaties, States bind themselves and usually go on to incorporate the same into their domestic law. Once a treaty becomes domestic law enforceable in the State's courts, it forms part of that State's "hard law" on insolvency. An example of how treaties are used to establish cross-border insolvency rules is the Nordic Convention of 1933 (the "NC"). The NC was signed by Denmark, Finland, Iceland and the other Nordic countries. Pursuant to the NC, a bankruptcy declared in one of the Nordic countries is recognized in the others as automatically applying to the bankrupt's property in those countries.[11]

It is not always possible to get States to agree to incorporate "hard law" solutions to international insolvency issues. This is where "soft law" options come in. The most successful "soft law" initiative has been the UNCITRAL Model Law on Cross-border Insolvency (the "MLCBI"), which is draft legislation that can be voluntarily adopted by States with or without modification[12]. The MLCBI has now been adopted by several States, such that it is an influential part of international insolvency law[13].

4

Marks awarded 9 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.

[10] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 6.1.2.3)

[11] Carl Hugo Parment, The Nordic Bankruptcy Convention- An Introduction (Frankfurt am Main, Germany, May 2004)

[12] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 6.1.2.3)

[13] I Mevorach, The Future of Cross-border Insolvency: Overcoming Biases and Closing Gaps (Oxford University Press, 2009)

The main source of insolvency law in any State is usually legislation or code, i.e. statutory provisions[14]. However, States can have a combination of provisions to address insolvency, which are briefly set out below.
In common law jurisdictions, States (and the courts, which interpret and enforce insolvency law on their behalf) may also rely on the principles contained in common law authorities or precedents as guidance on how the legislation should be applied, or to fill any gaps (also known as lacunae) in the legislation[15].

Some States may have a single piece of legislation, which is the sole source of insolvency law. The USA has a single unified Bankruptcy Code, which is federal legislation and as such, applies throughout the USA.

It is also common for States to have multiple pieces of legislation, which all deal with different aspects of insolvency. It is therefore often necessary to consider the different legislative provisions together, in order to understand the insolvency system of that State in full[16]. An example of this is the BVI, where both the Insolvency Act 2003 and the Insolvency Rules 2005 need to be considered in tandem.

There is a final category of legislation and, in the case of common law jurisdictions, authorities, which may be a source of provisions that can affect the application of insolvency law. These are rules, legislation and authority relating to the vesting of real rights such as ownership or real security. Whilst such provisions are not generally contained within insolvency statute, they can obviously affect the way insolvency law is applied[17].

5

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.

Fletcher asks the following three questions:

(i) In which jurisdictions 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)?[18]

The question of jurisdiction is highly relevant to insolvency proceedings, as it is often determinative of the applicable law, and therefore the manner in which the insolvency proceedings can be pursued and managed. A would be claimant would be wise to consider jurisdiction carefully before issuing proceedings in any given State. Key considerations are where the respondent is domiciled, and where most of the respondent's assets are located.

Multiple insolvency proceedings could be opened in more than one State. Each State would then apply its own laws in respect of in respect of proceedings issued therein, and little to no extra-territorial effects would be granted to foreign proceedings. This presents problems when trying to encourage cooperation and coordination between different States[19], especially where

[14] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 4.2.2.3)
[15] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 4.2.2.3)
[16] Ibid.
[17] Ibid.
[18] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 5.3)
[19] Ibid.

multiple proceedings have been issued by a single claimant creditor or group of creditors, whose aim is to recover funds from a single debtor who is headquartered in one State, and has assets in other. Therefore, the question of what country's law should be applied to different aspects of an insolvency proceeding should be at the forefront of a prospective claimant's mind.

Using the above example of a claimant creditor trying to recover its funds. The creditor will want to know that a judgment obtained in State A, can be used to secure a debtors assets located in State B, so that the overall aim of recovering funds due to the creditor is achieved. Thus, the question of what international effects will be accorded to proceedings conducted in State A is another key element of an international insolvency strategy.

There is scope to elaborate on choice of law issues.
4.5

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.

The "seat" of Maxwell Communications Corporation ("MCC")'s business was London, from where the business was managed. However, most of MCC's assets were located in the USA[20]. MCC was therefore a large multinational corporation, which became insolvent. As a result of this corporate structure, proceedings were brought in the US and UK in relation to transactions entered into by MCC in the lead up to its insolvency. The cross-border insolvency proceedings saw Chapter 11 proceedings brought in the USA and administration proceedings brought in the UK[21].

The courts needed to decide what country's law would apply to the transactions. The judges in *Maxwell* recognised that in most avoidance cases, there would be important elements of the challenged transaction taking place in more than one country and, therefore, no legal mechanism could avoid the need for a "choice of law" analysis[22]

Both sets of proceedings were coordinated through an "Order and Protocol" agreement approved by the courts in the UK and US[23].The aim of the agreement was to maximise the value of the estate and to harmonise the proceedings in order to minimise expenses, waste and jurisdictional conflict[24] The US court appointed an examiner pursuant to the Chapter 11 proceedings, and ordered him to work alongside the UK administrators, in accordance with

[20] JL Westbrook, "The Lessons of Maxwell Communications", (1996) Fordham Law Review 64 2531, pp2531 to 2533
[21] Ibid
[22] Ibid
[23] See the summary in UNICITRAL Practice Guide on Cross-Border Insolvency Cooperation 2009, pp. 128-129.
[24] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 7.2.2)

the "Order and Protocol" agreement. This was probably the first successful world-wide plan of coordinated liquidation, or at least the first reported decision in relation to the same[25]. It predated the UNCITRAL Model Law on Cross-border Insolvency.

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

4.5

Marks awarded 14 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.

The European Insolvency Regulation Recast (the "EIRR") would apply to an insolvency proceeding brought in the UK before 31 December 2020. Therefore, it applies to the above insolvency proceeding against Rydell, which was brought on 18 June 2020.

If the other proceedings Fernz is contemplating opening in another EU Member State, is intended to be brought pursuant to the EIRR, then those proceedings can probably be brought, if that Member State is any State apart from Denmark, which is excluded from the EIRR and if the contemplated proceedings fall within one of the categories permitted under the EIRR. Namely, EIRR proceedings issued in another (eligible) Member State would in theory be possible, if they were winding up proceedings, or rescue or pre-insolvency proceedings. **It would be beneficial to elaborate on the concept of 'establishment'**

If issued, those proceedings would still be secondary to the main insolvency proceeding in the UK, which is Rydell's COMI. This is because the concept of COMI is central to cross border insolvency in the EU and determines the jurisdiction in which main insolvency proceedings can be commenced pursuant to the EIRR[26].

[25] JL Westbrook, "The Lessons of Maxwell Communications", (1996) Fordham Law Review 64 2531, pp2531 to 2533

[26] James Forsyth, European Union: The Recast European Insolvency Regulation: What is Changing? (TLT Solicitors for Mondaq, 12 June 2017).

Fernz would need to confirm why it is bringing secondary proceedings and the Member State in which it intends to issue those proceedings. If the reason Fernz wants to bring secondary proceedings is because, for example, Fernz is being supported in the main proceeding by a foreign creditor, there may be alternatives to bringing secondary proceedings, such as any office-holder appointed in the main proceedings giving an undertaking to treat any claims by the foreign creditor in the same way as they'd be treated in the secondary proceeding, in accordance with Article 36 of the EIRR. Again, in theory, such secondary proceedings would not even be necessary, because a judgment obtained in the main proceedings would broadly be offered automatic recognition.

Specifically, Fernz would need to determine whether Rydell has assets in the Member State, which could form a basis for secondary proceedings to be brought.

Fernz would also need to confirm that the fact that any such secondary proceedings would remain limited to Rydell's assets in that Member State would not be an issue for Fernz's overall debt recovery strategy, i.e. that it would not be counter-productive to the main proceedings.
There is scope to discuss relevant articles of the EIR Recast

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.

If Fernz issued proceedings in the UK on 18 June 2021, they could not have been issued pursuant to the EIRR as that legislation ceased to be applicable to the UK on 31 December 2020. Notwithstanding the loss of the EIRR, there remains a legislative framework for recognition of insolvency proceedings and decisions relating to the same as between the UK and EU Member States, namely, the Cross-Border Insolvency Regulations 2006 (the UK's enactment of the UNCITRAL Model Law on Cross-Border Insolvency). **It would be beneficial to discuss what further information might be relevant in this regard.**

If Fernz was still considering issuing proceedings in an EU Member State, it should still consider whether such proceedings are necessary, as the UK proceedings could probably still be recognized in the EU Member State, subject to the local laws of the individual Member State concerned. Therefore the cost, ramifications and necessity of issuing proceedings in an EU Member State should be considered carefully, as against merely seeking recognition of any UK decision. Both routes might involve court applications and procedural issues which need to be considered in full by an expert, which would obviously entail some cost to Fernz[27].

2

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?

The English court has jurisdiction to wind up a foreign company, i.e. a company incorporated under the law of a country other than the UK[28]

[27] Norton Rose Fulbright, Impact of Brexit on Insolvency (UK Publication, February 2021)
[28] UK Companies Act 2006, section 1044 defines an "overseas company"

If Rydell were unregistered with its COMI in an EU Member State and formal insolvency proceedings were opened in the UK on 18 June 2021, the applicable UK domestic law would be section 221(5) of the UK Insolvency Act 1986, which provides for court-ordered winding up of unregistered companies formed under foreign law, if:

(a) the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
(b) the company is unable to pay its debts;
(c) the court is of the opinion that it is just and equitable that the company should be wound up[29]

If a minor creditor had unpaid debts owed to it by Rydell, it could commence formal insolvency proceedings in the UK on the basis of s.221 (5) (b), i.e. on the basis that the unregistered foreign company was unable to pay its debts.

It would be beneficial to discuss 'sufficient connection'

3.5
Marks awarded 10 out of 15
TOTAL MARKS 43/50

*** End of Assessment ***

[29] Foundation Certificate in International Insolvency Law Module 1 Guidance Text (para 6.2.2)