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 8 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.

The English Law has been instrumental through various legislatures and enactment for shaping the way of thinking with respect to concerning modern insolvency law:

The English Bankruptcy Act 1542 provided for appointment of body of commissioners, who on a creditor's application could proceed against a training debtor who has fled from the country, who has barricaded himself in his home or has neglected to pay the debts or otherwise defrauded his debtors. The fundamental principal of the act contained that in case of fraudulent debtor, there was compulsory administration and distribution based on equity among creditors. This helped in shaping two most significant principal of modern insolvency law i.e., Pari-Pasu treatment of creditors and collective participation of Creditors

The act of Elizabeth was the first law designed specifically for bankruptcy rather than ask a fraud prevention act and creditor could initiate bankruptcy following an act of bankruptcy by the Debtor. This shifted the focus from Fraud prevention to act of bankruptcy, this is one of the significant contributions for shaping the modern insolvency law. **Elaboration is warranted.**

The Statute of Ann 1705 was an important piece of legislature as it introduced the notion of a Statutory discharge. The discharge was not an automatic entitlement and the commissioners had to confirm that the debtor has confirmed and had cooperated during the proceeding. This became another significant pillar for shaping the modern insolvency law. **It would be beneficial to elaborate, for example by explaining the modern concern of fresh start.**

Through above mentioned enactments, English Law has influenced and helped in shaping the modern insolvency law around the world.

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.

Various jurisdiction around the world has amended their respective insolvency laws and regulation to support businesses from this black swan event. UK by enacting the Corporate Insolvency and Governance Act, 2020 provided businesses with more options to help them through the COVID-19 crisis, some of which are as follows:

The new rules gave businesses a minimum of 20 days of protection from certain creditor actions, with an insolvency practitioner acting in the role of monitor. During this period, the directors remain in charge of the business, and can extend the moratorium period by a further 20 days if, after day 15 of the initial period, they still need time to formulate a turnaround plan, without the approval of creditors. Any extension beyond 40 days requires creditor approval. The moratorium shifted the focus on company recovery rather than asset realisation.

The Act also provided for temporary relief till 30 September 2020 from being subject to a winding up petition and from wrongful trading provisions where a business could demonstrate its difficulties arise from trading conditions arising from the COVID-19 pandemic.

A new restructuring plan has been introduced which will be binding on all creditors to that plan even if they vote against it (a "cross-class cram-down"), including safeguards for creditors and suppliers to ensure they are paid while a solution is sought.

2.5

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.

The term soft law denotes agreements, principles and declarations that are not legally binding. Soft law instruments are predominantly found in the international sphere especially with respect to insolvency and bankruptcy procedures such as UNCITRAL or European Union Regulation (EIR Recast).

Soft law has been very instrumental in establishing the cross-border rules and resolution in states across the globe. Some of the regulations which are significant are:

1. Model Law on Cross- Border Insolvency (MLCBI) developed by UNCITRAL **It would be beneficial to note this is arguably the most successful and why**
2. European Union Regulation on Insolvency Proceeding

Development of soft laws has resulted in following:

1. Uniform regulation on the recognition of insolvency proceedings and insolvency representative across the globe in different jurisdiction. This approach accepts that there are likely to be concurrent insolvency proceedings.
2. Co-operation and Co-ordination to promote recognition and enforcement. This has helped in achieving some success in resolving international insolvency issues. This will result in maximising the value of estate of the insolvent debtor and minimising the cost of insolvency process.

In the times when businesses have gone global and businesses are not limited to a jurisdiction or a country, these soft laws in form of regulation and laws have resulted in better recovery of businesses and rehabilitation of insolvent businesses such as Eurofood or Lehman Brothers insolvency.

This sub-question also required explanation of treaties. Elaboration is needed in that respect.

2.5

Marks awarded 7 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.

While understanding the insolvency law of any state it is important to understand what primary source of law is. For Example: Indian State has a consolidated law for Insolvency in form of Corporate and Consumer Insolvency, whereas state like UK has different statue for corporate and consumer law. Based on the structure of the government in the state, insolvency law may different. Example: Countries follow federal structure of government may have a single

consumer law applicable around whole state whereas some states may have multiple law based on its structure. Further, general law related to mortgage or other aspects of insolvency may have a different impact on how the insolvency law is developed.

However, all the insolvency laws around the globe have some of the common features which are listed as below:

1. *Commencement of Insolvency Proceedings and Gateways:*
   All the insolvency systems, systems have designed procedure to initiate formal insolvency or bankruptcy process. Generally, this procedure is by the way of court order. In some country, there are specialised courts for this purpose such as USA, whereas in some countries general courts decides this matter.

2. *Effects of Insolvency*
   All the insolvency laws around the states have focused on collective action of creditors rather than Individual action. Therefore, all the laws provide for moratorium on individual actions of creditors for recovery etc. Other important aspect is to decide what does an estate of bankruptcy or individual comprises of. Some states have exempted certain assets to be part of estate especially for individual based on the general laws of the country. Some of the other common features are exception from executory contracts, vulnerable/voidable transaction etc.

3. *Administration of the estate*
   Majority of insolvency systems provide for an officeholder of some description to be appointed to oversee the insolvency process. The appointment procedure, qualification and regulation of officeholders differ significantly from system to system. Creditors normally participate in the insolvency process through creditor's meeting, creditor's committees r committees of inspection etc.

Your answer could have instead been structured to discuss the sources of law across all States and to recognise how and why there may be differences between certain States. You started your answer in this way and raise some relevant considerations. It would be beneficial to elaborate further, for example by discussing common law in common law countries as filling any gaps in law.

3.5

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.

Cross Border Insolvency has always been an difficult to complete on account of recognition of foreign representatives, priorities and preferences, COMI, choice of jurisdiction etc. However, fletcher tried to bring aspects of insolvency for cross-border aspects together and asked three pertinent questions:

1. In which Jurisdiction may insolvency proceedings be opened?
2. What country's law should be applied in respect of different aspects of the case?
3. What international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)

These questions resolved around the pertinent issues of Cross- Border Insolvency. With respect to jurisdiction of insolvency proceeding is always a in question. Insolvency proceeding may be opened concurrently in more than one state each, out of all such insolvency proceeding which is to be taken as main proceeding and other as non-main proceedings. In

order to resolve this, UNCITRAL has come up with the concept of COMI (Centre of Main Interest), where a debtor having majority of business in one state for initiating main proceedings and other states for non-main proceedings.

With respect of choices of law or jurisdiction is very important aspect to be taken care of. Some states have debtor friendly insolvency laws Ex USA, Singapore whereas some jurisdiction has creditor friendly regime Ex UK, Netherland etc. For choice of jurisdiction will always be a question, a creditor will try to initiate the insolvency proceeding in a creditor friendly regime and were as debtor will prefer a debtor friendly regime, this may result in concurrent insolvency proceeding with more than one being designed with main or base proceedings. UNICITRAL through COMI has also tried to resolve this issue by shifting focus to centre of main interest where company's major business activities take place. However, even with regulation in place, this issue is still option where we have seen court under different jurisdiction naming their respective jurisdiction as COMI.

With respect to issues related to enforcement and effects of international proceedings is one of the main issue as principal of reciprocity is still in question in many places. Orders of one court for enforcement or sale or recovery may not to be recognised by one court. This will result in delay and lower recovery for creditors in an insolvency proceeding.

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.

In order to resolve issues of cross- border insolvency, states around the world have taken many steps in recent past including development of common insolvency regulations in form of UNCITRAL Model Laws for Cross Borders or formation of Judicial Insolvency Network etc. However, such arrangements are not new, as there have been various incidents where courts around jurisdictions and states have cooperated even without having a model law or written regulation in place. One of the recent examples can be seen in India, where in the case of Jet airways Limited, Indian administrator cooperated with Dutch Administrator in concurrent insolvency proceeding through a court approved protocol, when there is cross-border recognition in India. The same was noted in the proceedings of Maxwell Communication Proceedings plc cross-border insolvency case in 1991 where concurrent principal proceedings on the United States (Chapter-11 proceedings) and England (administrator proceedings) were coordinated through an "order and Protocol" approved by the court in the respective states.

This matter involved two primary insolvency proceedings initiated by single debtor, one in United States and other in United Kingdom. This resulted in appointment of two different and separate insolvent representative in the two states, each charged with a similar responsibility. The United States and English judges raised their respective counsel the idea that an insolvency agreement between two administrations could resolve conflicts and facilitate the exchange of information.

Under the agreement, two goals were set to guide the insolvency representatives that were maximising the value of estate and harmonising the proceedings to minimize the expenses, waste and jurisdictional conflict. Under the agreement, representatives also agreed on the on terms related to keeping the debtor as going concern, retaining the present management etc for meeting the said objective in the interest of stakeholders and debtors. However, the agreement has left out some of the issues which were debatable such as distribution of assets of the debtor etc.

This approach of the parties voluntarily putting up an agreement for cooperation without any guiding framework or regulation in a complex international insolvency and obtaining the approval of the courts has given an opportunity for development of regulation and better frameworks.

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

4.5

Marks awarded 13 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.

As per the limited information available, Insolvency in UK of Fernz will be governed by UK Insolvency law. If the Fernz is considering to open proceedings in another country, then such proceeding will be recognised as secondary proceedings since UK is the COMI in this matter.

Under the secondary proceedings, The insolvency of Ryndll's estate will be limited to the assets within the territory of the respective Member State and the applicable insolvency law follows the domestic insolvency regime of said Member State. The secondary provision will be only aiming towards winding up of the entity or the business of Ryndll's in that state. There will be coordination among the both the proceedings in form of sharing of information, data, electronic registers etc.

In order to fully consider this question following information is required

1. *Location of the head office/corporate office/registered office of the company:* As per EU rules, traditionally COMI is the state where company's registered or corporate office is. This will help in establishing what is the COMI of debtor. If its present in UK, then COMI will be UK, if proved otherwise.
2. *Location of the core-assets in form of manufacturing facilities*: For the purpose of COMI, even if the registered office is located in UK but its facilities are present all over the EU, then UK being COMI can be challenged by multiple creditors in multiple EU member states,
3. *Details of the assets present in the other EU countries*: This will help in establishing whether it will be rewarding to open proceeding in other EU states as secondary proceedings, if substantial assets are present in particular EU Member state other than UK being COMI.
4. *Under which statue the company was incorporated*: This information can be used to establish COMI, if Ryndll is incorporated under UK Company law, then it would add to the merit of UK being COMI. However if it established under other EU member statue then this can go against UK being COMI. Further UK even allows insolvencies of unregistered corporates in UK.
5. *Jurisdiction to which its agreements with secured creditors are subject*: This information can be used to establish COMI, if Ryndll's secured creditors have decided to make other member EU state as jurisdictions for its contract then this can another factor for deciding COMI.
6. *Jurisdiction to which its trade agreements are subject to*: This information can be used to establish COMI, if Ryndll's major or all trade creditors have decided to make other member EU state as jurisdictions for its contract then this can another factor for deciding COMI.
7. *Jurisdiction to which its employee contracts are covered*: This information can be used to establish COMI, if Ryndll's major or all employees have decided to make other member EU state as jurisdictions for its contract then this can another factor for deciding COMI.
8. *Location from where company's management works*: This information can be to decide the COMI. If the top or executive management is settled in UK, then UK will COMI, however if they are working or settled in another state of EU, then COMI can be challenged.

You were asked to discuss if and how the European Insolvency Regulation Recast would apply. It would be beneficial to discuss the EIR recast in detail.

3

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 the proceedings were open on 18th June 2021, then there will lots of difference. As UK has existed EU on 1st January 2021, therefore the European Insolvency Regulation Recast won't be applicable on the proceedings. Even though regulation won't be applicable, there would be an effective legal framework for recognition of inbound proceedings and judgments from EU Member States to the UK, including the Cross-Border Insolvency Regulations 2006. Recognition of UK proceedings and judgments in the EU will be subject to the local laws of the individual Member States concerned.

There won't be major difficulties in recognition of UK's insolvency proceeding, however it would require additional application filling with the member state and approval of the court. This could also result in forum shopping by creditors by making application in the member

state where company has some substantial assets, and which is more friendly or favourable to them.

It would be beneficial to discuss the need for information as to whether the relevant countries in Europe had adopted the MLCBI and if not what laws would need to be considered in those countries.

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?

Under UK Law, an unregistered company that can't pay its debts, the provisions of insolvency legislation apply to the winding up of the company as they would to a registered company. However, the order will be only made if the amount owed to the creditor is more than £ 5000. Therefore, in the given case the proceeding can only be initiated against unregistered entity in UK only if amount owed to more than £ 5000. If the insolvency proceeding is started in UK after exit of UK from European Union and COMI being EU state, then the insolvency will be as per UK insolvency law until the proceedings is initiated in the member state of EU.

UK is also signatory to UNCITRAL Model Law on Cross Border Insolvency. If the EU state also signatory to UNCITRAL, then UK proceeding will recognised as Non-Main Proceeding and proceeding where there is COMI will be designated as Main Proceeding. If there is non main proceeding initiated in UK, then proceedings will be limited to assets in UK.

If the proceeding is initiated in member state after UK proceeding, then mutual recognition will be subject to the local laws of the individual Member States concerned.

It would be beneficial to discuss s221(5) Insolvency Act 1986 and how it pertains to unregistered companies.

.5

Marks awarded 5.5 out of 15

TOTAL MARKS 33.5/50

*** End of Assessment ***