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).

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.

There have been a number of changes in English law which have shaped English insolvency law, however some key examples are:

- the change from individual to collective debt collection procedures; **When did this happen in English history and how? In what way did it shape modern insolvency thinking. Elaboration is warranted.**
- the concept of supervision of the estate initially by a commissioner, then to the Lord Chancellor to the present position of supervision by the Official Receiver; and **Further elaboration is warranted.**
- the notion of discharge as introduced by the Statute of Ann of 1705, allowing parties (individuals and corporates) to have the benefit of a clean slate (subject to co-operation on the part of bankrupt individuals).

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 incorporation of the Corporate Insolvency and Governance Act 2020 ("Act"), which came into effect on 25 June 2020, brought in a number of changes; some temporary, and some provisions enacting permanent changes.

The temporary measures in response to the economic fall out of the pandemic were:

- Schedule 10 brought in restrictions on the use of winding up petitions. The restrictions prevented petitions relying on statutory demands served between 1 March 2020 and 30 September 2020, and subsequently extended to 30 September 2021. Petitioners also needed to be able to satisfy that the debt was not a covid related debt. Further temporary measures apply until 31 March 2022. These include:
    - The increase of the debt threshold to £10,000; and
    - A requirement to send a notice with prescribed content and inviting debtor proposals for settlement within 21 days before being able to proceed.
- There is also a new practice code and a bill is before Parliament to introduce a legally binding arbitration process for commercial landlords and tenants unable to reach agreement (Commercial Rent (Coronavirus) Bill).
- A relaxation of the wrongful trading provisions (albeit not changing the misfeasance provisions) such that the director would not be held personally liable for any worsening of the financial position of the company or its creditors during the period 1 March to 30 September 2020 and in the period 26 November 2020 to 30 June 2021.

The Act introduced a stand alone moratorium process and the restructuring plan (Part 26A Companies Act 2006) and also the restriction on suppliers from terminating contracts by reason of an insolvency (now inserted into the Insolvency Act 1986 at section 223B) and prohibits termination but also stops a supplier doing "any other thing", i.e. varying terms such as increasing pricing. The provision provided for an exemption in circumstances of the

officeholders consent or permission of the court where it was satisfied the continuation of the contract would cause hardship on the supplier. There were temporary exclusions for small suppliers.

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.

The term soft law is used to denote agreements, principles and declarations that are not legally binding. Soft law instruments are predominantly found in the international sphere. UN General Assembly resolutions are an example of soft law. Hard law refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court.[1]

Irit Mevorach, a Professor of International Commercial Law at the School of Law of the University of Nottingham and the co-Director of the University of Nottingham Commercial Law Centre comments that "*The general view in the field of cross-border insolvency has been that a global treaty is the ultimate ideal, reflecting the aspiration to eventually reach a purely universalist system. Other 'softer' instruments, including the UNCITRAL Model Law on Cross-Border Insolvency, are therefore generally viewed as interim measures. A broader analysis of instrument choice, informed by international law theory and practice, shows, however, that the assumption that treaties represent hard, binding, law, while non-treaty instruments are non-binding soft laws, requires a reconsideration. Furthermore, economic analysis of international law, reinforced by behavioural perspectives, highlights the disadvantages of treaties, especially where they attempt to regulate complex problems among multiple participants. The so-called soft law instruments that are utilized in various international law subsystems may in fact be 'harder' than a treaty. Specifically, a model law approach can possess the characteristics of hard law, while retaining flexible features that induce participation.*"[2] **It would be beneficial for you to explain treaties in greater detail and with your own words as well.**

The European Insolvency Regulation 2000 was a successful and influential piece of hard law and was amended to create the current multilateral instrument under the Recast regulations. UNCITRAL is an example of a highly successful "soft law" and the draft insolvency legislation provides a uniform starting point for developing countries. With increasing numbers of states adopting the MLBCI is influencing international insolvency law and allowing a greater universalism approach by creating unified approaches by those states adopting it.

3

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.

Whilst it will depend to a certain extent on the system of law in each state, the usual starting point is domestic laws incorporated into a state's legislative framework. Common law countries will also have the benefit of case law, providing judicial commentary on the interpretation of the legislation. This in turn assists in the development of the application in an international

[1] https://www.ecchr.eu/en/glossary/hard-law-soft-law/

[2] https://www.law.ox.ac.uk/business-law-blog/blog/2018/04/future-cross-border-insolvency-overcoming-biases-and-closing-gaps

context. Some states have amended their domestic insolvency laws to address international considerations, i.e. the reference to an "overseas company" in the Companies Act 2006 and the provisions in the Insolvency Act 1986 to wind up a company formed under foreign law. A number of states also provide for recognition and co-operation with foreign insolvency proceedings. Australia and New Zealand have also made provisions (section 580-581 Corporations Act 2001 (Cth)(Australia) and section 8 of the Insolvency (Cross Border) Act 2006 (NZ)). Outside of domestic law, International Instruments may have been enacted. Firstly, multilateral bodies by way of regulations and treaties but secondly, commercial and professional bodies may also provide proposals or lobby on a range of issues, i.e. R3 in England and Wales, routinely provides technical support but also lobbies the government on important policies/issues in Insolvency and represents a wide range of professionals including but not limited to solicitors, barristers, lenders, investors, insolvency practitioners and receivers.

It would be beneficial to discuss insolvency legislation as either a code or multiplicity of legislation, common law in common law countries as filling any gaps in law, and general law and its relevance and impact upon insolvency law. You touch upon some aspects of this but not all and elaboration is warranted.

2.5

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.

FORUM/JURISDICTION

- Whether a court can hear a matter will require the examination of the connection of the issue, dispute, assets and/or parties with the jurisdiction.
- Whilst it will depend on the issue at hand, this usually requires a subjective examination. In a contractual dispute, this may be a simple exercise if the parties have signed up to an exclusive jurisdiction (and/or choice of law) provision. In a liquidation, similarly, it would usually be that the Court commencing the proceedings also deal with other issues. However, in other matters, it may require a more in depth analysis of what a creditor may believe is the company's COMI, i.e. where it traded, where its offices and officers were located, the location of its bank and the tax authority to which it was registered. Parties may look to take advantage of jurisdictional disputes where one states Courts are more favourable to it and seek to make arguments accordingly, i.e. costs orders

CHOICE OF LAW

- Even where a local court has determined it has jurisdiction to hear a matter, it may be that it is not the local law that should apply, but a different state's law. For instance it may be an English liquidation but the dispute relates to a contract involving an overseas party who argues that the contract related to business undertaken in that state and as such local law should apply. Different systems of law adopt different approaches and under English law, it is an argument for parties to invoke, which they will invariably do to the extent that a particular domestic law is more favourable.

INTERNATIONAL EFFECTS ACCORDED TO PROCEEDINGS

- Recognition of foreign processes and judgments can be a significant issue and to the extent recognition cannot be achieved, it might be that multiple insolvency processes, and proceedings may be necessary to achieve the desired outcome. It is in such

circumstances that multilateral treaties can assist and/or other such soft law instruments, such as UNCIRAL Model Law on Recognition and Enforcement of Insolvency Related Judgments and/or

It would be beneficial to elaborate upon the questions themselves.
Also, 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 ?

3.5

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 1991 *Maxwell Communications Corporation Plc* case is an example of concurrent primary Chapter 11 proceedings in the United States and an English administration co-ordinated through an "Order and Protocol" approved by the courts in the respective states.[3] The proceedings were initiated by the same debtor in two states. On the initiation of the judges two goals were set:

1. Maximising the value of the estate
2. Harmonising the proceedings to minimise expense, waste and judicial conflict.

It was agreed the US Court would defer to the English proceedings once it was determined certain criteria were fulfilled, such as retaining some existing management to maintain going concern value but on the basis the English IP could appoint new and independent directors. Further restrictions were placed on the English IP, such as prior notice to be given before entering into any major transactions and not to incur debt without the consent of the US counterpart. The protocol purposely didn't prescribe certain matters in order to retain flexibility and officeholder discretion/autonomy.

This answer displays a satisfactory understanding. To improve your responses, ensure they are commensurate with the mark allocation – while Q 3.3 asks for a brief note, it is for 5 marks.

4

Marks awarded 10 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.

[3] WG 16 FCIIL Guidance Text Mod 1 Introduction to International Insolvency Law 2021 and UNICTRAL Practice Guide on Cross-Border Insolvency Cooperation 2009, pp, 128-129.

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.

Whilst the UK left the EU on 31 January 2020, during the transition period, the European Insolvency Regulation Recast continued to be applied and the UK was treated for the most part as if it were still an EU member state with most EU law continuing to apply.

The Recast Insolvency Regulation was imported into English law by the European Union Withdrawal Act 2018 (EUWA) at the end of the transition period UK RIR (unamended) will continue to apply, in the UK, to:

- Main insolvency proceedings opened under it before the end of the transition period.
- Secondary proceedings in respect of the same debtor opened after the end of the transition period where the main proceedings were opened before the end of the transition period.
- Proceedings under Article 6 (actions deriving directly from the insolvency proceedings and closely linked with them) where the main proceedings were opened before the end of the transition period.[4]

As the proceedings against Rydell were opened in the UK prior to the European Regulation on Insolvency Proceedings ("EIR") ceasing to apply in the UK, the proceedings would be automatically recognised throughout the EU. The EIR only ceased to apply to English insolvency proceedings opened after 31 December 2020.

We have no information as to whether the Rydell and Fernz business was conducted under a contract with jurisdiction and choice of law provisions to determine the suitability of whether secondary proceedings would be of any benefit. Further, if Fernz has security, and/or whether the agreement provides for any executory lien, i.e. if Fernz has paid for parts but they have not been delivered and they are identifiable stock. It is not clear what insolvency process has been commenced in England; this may affect the approach taken by Fernz.

It would be beneficial to discuss in further detail how such secondary proceedings are permitted where the debtor has an "establishment". An establishment is defined as meaning "any place of operations … where the debtor carries out a non-transitory economic activity with human means and assets"

It would be beneficial to consider the need for further information as to whether Rydell has an establishment in the other country in Europe where the other proceedings were intended to be commenced by Fernz.

[4] Thomas Reuters Practical Law – The Recast Insolvency Regulation

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.

As the transitional provisions ceased to have effect on 31 December 2020, EIR would not apply if the proceedings were opened in the UK in June 202. Accordingly, recognition of the English insolvency proceedings in the EU would depend on the local law of each member state. As only four member states have adopted UNCITRAL Model law, permitting cross-border recognition upon application, recognition would not be automatic.

It would be useful to know which state Fernz is located in, which member state it is considering bringing proceedings (to consider if the Model law would apply and/or the domestic law's approach to recognition) and any contractual obligation setting out choice of law/jurisdiction.

3

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 Insolvency Act 1986 provides the English Court with jurisdiction to wind up a foreign company which is incorporated under the law of a country other than the UK, and jurisdiction may also be established to wind up an "unregistered company", in the following circumstances:
a) if 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) if the company is unable to pay its debts; and
c) if the court is of the opinion that it is just and equitable for the company to be wound up.

The court must be satisfied that there is "*sufficient connection*" with England and Wales[5], taking into account three core requirements:

"1) There must be a sufficient connection with England and Wales which may, but does not necessarily have to, consist of assets within the jurisdiction;
2) There must be a reasonable possibility, if a winding-up order is made, of benefit to those applying for a winding-up order.
3) One or more persons interested in the distribution of assets of the company must be persons over whom the court can exercise jurisdiction."[6]

Accordingly, you would need further information to be able to consider if there was a "sufficient connection" with England and Wales.

[5] *Re Latreefers In* [2001] BCC 174 (CA)
[6] Fletch, *supra note 4, [30-017], referring to* Re Real Estate Development Co *[1991 BCLC 210 (Ch D), per Knox J*

In any event the Corporate Insolvency and Governance Act 2020 and the temporary restrictions on winding up would appear to prevent the creditor seeking to wind up the Company as the facts set out that the Rydell "*has had a downturn in business due to border closures and travel restrictions throughout the Covid-19 pandemic*"; accordingly, it seems unlikely that the minor creditor would be able to satisfy the Covid test to be able to proceed with a winding up petition.

This is well answered
5

Marks awarded 13 out of 15
TOTAL MARKS 41/50

*** End of Assessment ***