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 9 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.

[Type your answer here]

1. The Insolvency Act 1986 is the main piece of legislation regulating English Insolvency Law. The Insolvency Act 1986 is an example of unified insolvency legislation as it deals with personal and corporate bankruptcy within the same Act. The famous Cork report led to the introduction of this Act. The Act duplicates many of the provisions as they apply to both individuals and companies, importantly highlighting the many similarities in both categories of insolvency. **What development here shaped modern insolvency law? Elaboration is warranted.**

2. The Insolvency Act 2000 amended aspects of the Insolvency Act 1986 and the Directors Disqualification Act 1986. Provisions of the 2000 Act include: providing small companies with the option for a moratorium, allowing management to put forward a rescue plan to creditors; speeding up the process of bringing disqualification orders against directors of insolvent companies who are deemed by the Courts to be unfit to be involved in the management of a company; and, revising the procedures for prosecution.

3. In 2009 Debt Relief Orders ("DRO") were introduced into English Insolvency Law. Further amendments were made in 2017 allowing for an online application for bankruptcy relief. A DRO is aimed at individuals with low levels of unmanageable debt who have no available assets or income to offer their creditors and bankruptcy would be considered a disproportionate response.
Rather than describing legislation, it would be beneficial to explain the developments that occurred and how they shaped modern insolvency law. It would be beneficial to consider developments such as the abolishment of imprisonment for debt which shaped the non-criminal nature of insolvency, or the introduction of a fresh start through statutory discharge.

1

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.

[Type your answer here]

On 26 June 2020, the United Kingdom ("UK") Government passed into law the Corporate Insolvency and Governance Act 2020 ("the Act"), which sets out certain reforms to insolvency law. The Act included a temporary ban on filing winding up petitions and statutory demands forming the basis for a winding up petition for the period 1 March 2020 to 30 June 2020. The ban was enforceable where coronavirus had a financial effect on the debtor. Accordingly, a creditor could still file if they had reasonable grounds for suspecting coronavirus did not have a financial effect on the debtor or the debtor would not have been able to pay its debt notwithstanding the effects of coronavirus. The temporary ban was later extended to 31 March 2021. The ban provided businesses with greater opportunity to potentially reach a fair agreement with creditors.

In addition to the Act, the UK Government proposed a suspension of the law of wrongful trading. Section 214 of the Insolvency Act 1986 provides that directors are personally liable to the company for wrongful trading if they continue to trade when: (1) they knew, or ought to have known, that there was no reasonable prospect of their company avoiding insolvency; and, (2) they failed to take every step to minimise the potential loss to creditors. The government did not suspend this law, but from 1 March 2020 to 31 June 2020 (later extended to 31 March 2021), there would be the presumption that the directors have not worsened the company's financial position. This concept helped to mitigate additional coronavirus related penalties that a court may impose on directors and other office holders under section 214. Some firms and financial services were exempted from this law.

The UK also introduced the Coronavirus Act 2020 ("the Coronavirus Act") which was fast tracked through parliament and received Royal Assent on 25 March 2020. The Coronavirus Act included provisions where for the period 26 March 2020 to 30 June 2020 (later extended to 31 March 2021), landlords were no longer able to end a lease and take possession owing to rent arrears. However, the accrued arrears and interest for the period remained payable after 31 March 2021. Additionally, landlords and investors were asked to work collaboratively with high street businesses unable to pay their bills during the pandemic. This provision provided the necessary protection to tenants by delaying when landlords could enforce eviction, allowing them to financially survive throughout the pandemic.

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.

[Type your answer here]

Treaties are an international instrument in which multiple states become signatories and bind themselves and affect their domestic law according to the relevant treaty. Treaties have been used in international insolvency in Europe. For example, in the 19th century Europe agreed bilateral treaties on jurisdiction, recognition and enforcement related to bankruptcy, winding up, arrangements and compositions involving their State.

As opposed to 'hard law' which regulates international insolvencies, 'soft law' influences regulation. While there has historically been variable success in achieving hard law solutions to international insolvency law issues, more success has been gained using soft law options. An example of a successful soft law approach is the United Nations Commission on International Trade Law's ("UNCITRAL") development of the Model Law on Cross-border Insolvency ("MLCBI"). MLCBI does not take from a treaty, but rather provides a draft legislation that UNCITRAL recommended member States to adopt, with or without modifications.

4

Marks awarded 8 out of 10

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

Question 3.1 [maximum 5 marks]

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

[Type your answer here]

States will generally have either an English Law or Civil Law orientated foundation. Aspects of a States origin of law will generally be reflected in its insolvency laws. Influential factors of a States insolvency laws include local legal culture, basic rights and the way in which a system deals with related matters such as the security rights provided for or the approach to labour issues.

The Civil Law system originated in mainland Europe and can be traced to Roman Law, specifically the execution of judgements. Debt execution developed from a debtor pledging his own body for the repayment of a loan and he could be imprisoned, sentenced to death or sold as slave in order to secure repayment for his debt. Fletcher states that the roots of Bankruptcy Law are found in the procedures in Roman times of: assignment of property; forced liquidation of assets; and, compositions with creditors. The law developed from a collective debt-collecting mechanism that favoured creditors and later developed to involve concepts such as discharge of debts and the abolishment of imprisonment for debt, providing insolvency law with a much more humane face. Generally, Civil law holds case law secondary and subordinate to statutory laws.

In English Law, often referred to as Common Law, sources of law are primarily legislation and case law. Secondary sources are textbooks and commentaries by legal writers, opinions from legal experts and decisions of the courts of other jurisdictions. From its origins in medieval England, the Common Law framework originates from judicial case law and provides precedential authority to prior court decisions. Accordingly, as opposed to Civil Law, a greater emphasis is placed on the concept of precedent.

States can adopt a Common Law system, Civil Law system, or a combination of both. In a cross-border insolvency context, a State whose law originates from Common / English Law may have an instance where the insolvency matter is involved in a different State which has Civil Law origins (or vice versa). In such an instance consideration would need to be made for the origin of the insolvency proceedings and the specific laws of each State, primarily each States international insolvency legislation (if any).

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. 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.

1.5

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.

[Type your answer here]

The three questions raised by Fletcher are:

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)?

Insolvency proceedings could be opened concurrently in more than one State. Each State

would apply its own laws, including its choice of law rules, and no or very limited extraterritorial effects would be granted to foreign proceedings. Where a court can and will, hear and determine the matter is the primary concern of jurisdiction. This requires examination of the connection with the jurisdiction of the parties or the dispute. For example, in a liquidation, typically the initial matter for determination by the court is the commencement order which enforces the liquidation of the corporation. During the course of the liquidation other issues may arise some of these which may be cross-border insolvency issues involving foreign elements. Examples of foreign elements can be assets, creditors or foreign corporate officers in another state.

Where there is a foreign judgement on the same matter, recognition and enforcement or effect should be considered. More specifically, foreign judgements raise questions concerning the court that issued the judgement, the type of judgement and the effect of the judgement. The type of judgement can be significant. In particular, whether it is a judgement commencing insolvency proceedings against a debtor (i.e. to liquidate a company) or an order during the course of an insolvency proceedings (i.e. an order that a third party pay monies to the estate following a successful action setting aside a voidable disposition). This division underpinned the deployment of the UNCITRAL Model Law on Recognition and Enforcement Insolvency-Related Judgements (2018) ("MLREIRJ"). MLREIRJ provides guidance on which law applies to the recognition and enforcement of an insolvency-related judgement issued in a State that is different to the State in which recognition and enforcement is sought.

Where a local court determines that it will hear a matter, it then has to consider the law to apply. Different law systems adopt different approaches. In a Common Law system, choice of law issues only arise if the parties invoke them, otherwise the law of the forum applies. This will generally happen where the application of foreign law is advantageous to that party. In Common Law, proof of foreign law is a question of fact. In Civil Law, the application of foreign law is considered regardless of whether it is pleaded by the parties or not.

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.

[Type your answer here]

A prominent example is *Maxwell Communications Corporation plc* cross-border insolvency case in 1991 ("the Maxwell case"). The Maxwell case involved two primary insolvency proceedings initiated by one debtor. One in the United States ("US") and one in the United Kingdom ("UK"). A separate insolvency practitioner was appointed in each state, both charged with a similar responsibility. Judges from both the US and UK courts independently raised with their respective counsel the prospect of an insolvency agreement between the two appointments in order to resolve conflicts and facilitate the exchange of information.

There were two goals under the agreement. One, maximising the value of the estate and harmonising the proceedings to minimise costs. Two, the parties agreed that the US court

would defer to the UK court proceedings in certain circumstances, under certain agreed criteria.

Examples of the specificities are: some existing management would be retained in the interests of maintaining the debtor's going concern value, however, the UK insolvency representative would be allowed to appoint new independent directors with the consent of the US insolvency practitioner; the UK insolvency representative could only incur debt or file a reorganisation plan with the consent of the US insolvency representative, or the US Court; and, the UK insolvency representative to give prior notice to the US insolvency representative prior to undertaking any major transactions on behalf of the debtor, although less significant transactions, in both nature and amount, did not require such notice.

5

Marks awarded 11.5 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.

[Type your answer here]

The European Insolvency Regulation (2000) ("EIR") originally came into force in 2002. The EIRs purpose was to provide rules to determine proper jurisdiction for a debtor's insolvency proceedings and the applicable law to be used in those proceedings, and to require mandatory recognition of those proceedings in other EU member states. After ten years the EIR was reviewed and proposals put forth by the European Commission. Following extensive trialogue between the European Commission, European Parliament and European Council, the final text of the Recast Insolvency Regulation was approved by the European Parliament on 20 May 2015. Accordingly, the Recast Insolvency Regulation (Regulation (EU) No. 2015/848) ("EIR Recast") entered into force on 26 June 2015, applying to insolvency proceedings from 26 June 2017.

Rydell's COMI is in the United Kingdom. This is confirmed by Article 3.1 of the EIR Recast which states *"The centre of main interest shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties."*

The insolvency proceeding was opened by the minor creditor in the United Kingdom on 18 June 2020. The EIR Recast cease to apply to the United Kingdom from 11pm on 31 December 2020. Therefore, the EIR Recast will still apply to Rydell.

Article 7.1 of the EIR Recast states that *"the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened…"* Accordingly, the applicable law in this instance will be United Kingdom Law.

Following the proceedings being opened in the United Kingdom, Fernz are now considering opening proceedings in another country in Europe, which is also a part of the European Union. Pursuant to Article 19 of the EIR Recast the original proceedings in the United Kingdom (once a judgement has been handed down) will be recognised in all other Member States from the moment that it becomes effective in the United Kingdom. Articles 3.2 and 3.3 of the EIR Recast further elaborate that: Fernz would be able to open proceedings in a Member State only if Rydell has an establishment within that territory and the effects of those proceedings would be restricted to the assets Rydell has in that state; and, where Furnz opens a proceeding in a member state, it will be a secondary proceeding to that opened in the United Kingdom.

Articles 8 to 18 of the EIR Recast discuss specific matters such as: third parties' rights in rem; set-off; reservation of title; contract of employment; detrimental acts and more. In this specific question there is insufficient information to address the various aspects of each article.

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.

5.5

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.

[Type your answer here]

As from 11pm on 31 December 2020, the EIR Recast ceased to be applied in the United Kingdom following its exit from the European Union. Accordingly, if the proceedings are opened on 18 June 2021, the law of the United Kingdom and the relevant domestic laws of each of the individual European Member States will apply absent of the cooperation of the EIR Recast. The United Kingdom has implemented UNCITRAL's MLCBI in the Cross Border Insolvency Regulations 2006, however the outcome of any further proceedings brought by Fernz will be dependant on the specific European State in which the proceedings is brought and any assets Rydell has in that State.

If Fernz receive judgement for their insolvency proceedings in the relevant European State, they will be able to seek recognition of the proceedings as foreign non-main proceedings in the United Kingdom, as Rydell's COMI is in the United Kingdom.

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?

[Type your answer here]

The United Kingdom have adopted UNCITRAL's MLCBI in the Cross Border Insolvency Regulations 2006.

Pursuant to Article 17 of the Cross-Border Insolvency Regulations 2006, given that Rydell's COMI is in a European Member State, upon the recognition of the European Member State proceedings in the United Kingdom, the United Kingdom proceedings will be considered the foreign non-main proceedings. Therefore, should Fernz commence proceedings in the European State, those proceedings will be considered the foreign main proceedings in the United Kingdom.

Pursuant to Article 20 of the Cross-Border Insolvency Regulations 2006, the effect of recognition of the foreign main proceedings include: a stay being placed on continuation of individual actions or proceedings concerning Rydell's assets, rights, obligations or liabilities; a stay being placed on execution against Rydell's assets; and, the right to transfer, encumber or otherwise dispose of any assets of Rydell will be suspended. Pursuant to the Cross-Border Insolvency Regulations 2006, the European Member State Insolvency Representative may be entrusted with the administration or realisation of all or part of Rydell's estate which is located in the United Kingdom.

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

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Marks awarded 9 out of 15
TOTAL MARKS 37.5/50

*** End of Assessment ***