



**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.

[Firstly, appointment of an independent commissioner, a body to oversee debt collection, the participation of Creditors and the *pari passu* distribution of debtor's assets introduced since the 13th century through to the early 19th century which led to subsequent enhancement of the English Law were some of the significant developments. **What were these significant modern developments?**

Debtors were imprisoned which according to Calitz, they were viewed as “quasi-criminals” or “offenders” which many schools of thoughts have debunk the assessment of debtors being criminals. However, there may be other economic factors which may account for their insolvency state. The imprisonment of debtors who were unable to pay their debts as a principle were eventually abolished.¹ **It would be beneficial to elaborate upon how this shaped modern principles that insolvency law should not be criminalised.**

Fletcher elaborated another significant development which entails the appointment of an independent persons to have an over sight responsibility in the debt collection who was or were termed as commissioners to supervise the debtor's estate. Now, such individuals in modern proceedings are referred as Insolvency Practitioners, a very proactive development in the English Law. The commissioners would not only assess the debtor's estate and other transactions thereof, but have the power to transfer or dispose of debtor's assets. This in view of this contributed to the developments regarding debt collection procedures in the English Law.²

Fletcher clearly opines that even though bankruptcy which commenced in the early favoured the creditors, it gave equal treatment of debtor's assets.

Another historical context appraised in the 19th Century is the Chamberlain principles to a good bankrupt which in sum affirms creditors rights over debtor's assets, appointment on an independent official supervisor to carry out an audit into the affairs of the debtor and the examination of the circumstances which led to the insolvency of the debtor]

2.5

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 Royal Assent of the Corporate Insolvency and Governance Act 2020 (CIGA 2020) on 25 June 2020 following the COVID-19 pandemic which caused a major disruption to business not only UK but the whole world. UK introduced both permanent and temporary measures to manage distressed companies. These were some three (3) measures introduced: the restructuring element in the act, relax the provision of

¹ J.C. Calitz “*Historical overview of state regulation of south African Insolvency Law*” (2010) p 13

² I.F. Fletcher, “*The Law of Insolvency*, London (Sweet and Maxwell, 5th ed, 2017) p9

suspension of Directors trading while insolvent, statutory filings and the strict timelines were reviewed among others.³

First was the introduction of the restructuring elements to allow companies to reorganize and allow them to restructure. This moratorium allows temporarily distressed companies but viable some “breathing space” executive a restructuring plan through the appointment of an Insolvency Practitioner with oversight responsibilities of the company. In such circumstances, creditors who would otherwise take actions against the company need leave from the Courts and there is a more organized proceeding with maximum participation by Creditors through voting among others.⁴

Secondly, there was the removal of directors’ wrongful trading while insolvent. This takes away the individual liability of a director trading while insolvent.

Finally, easing of the requirement for Annual general meetings and the stator filings such as returns among others during the period. There were among the measures taken UK]

3

Question 2.3 [maximum 4 marks]

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

[Treaties or convention are agreements which ultimately binds two or more countries together in recognition and implementation of its laws. These opens up for enforcement of laws to deal with insolvency issues. Evidently, a number of bilateral and multilateral treaties in their recognition, jurisdiction and enforcement. An example is the Nodiac Convention (1933) and Montevideo Treaties (1889) and (1940) among others. Some were not successful especially in the early 19th century in Europe. In treaties, ones state or countries to this agreement signs, the insolvency proceedings becomes binding on them.

“Soft Law” body of knowledge and special guide which have been carefully designed to facilitate cross-border issues. “Soft law” such as the UNCITRAL These can be used to establish cross-border insolvency. This are option promulgated by multinational organisations such as the Hague Conference on Private International Law, United Nations Commission on International Trade Law (UNCITRAL), Unification of Private Law (UNIDROIT) , World Bank, INSOL among others with special guidelines to assist nations in matters of procedures in enforcement of their law. They may be adopted by a country to facilitate their insolvency system. Soft Law can establish Cross-Border proceedings when the other country or state of which the insolvent debtor exist are signatories to this guide. Soft Law are often illustrative and option seeks to harmonise laws and defines where appropriate the approach to use accordindly.]

It would be beneficial to make reference to the UNCITRAL Model Law on Cross-Border Insolvency which is arguably the most successful example of ‘soft law’ in the field of cross-border insolvency to date.

3.5

Marks awarded 9 out of 10

³ House of Common Library – “New business support measures: Corporate Insolvency and Governance Act 2020” (see at <https://commonslibrary.parliament.uk/research-briefings/cbp-8971/> Accessed 3 November 2021)

⁴ See <https://www.orricks.com/en/Insights/2020/10/COVID-19-UK-The-Corporate-Insolvency-and-Governance-Act-2020-The-UK-Restructuring-Plan>

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.

[The United State of America (USA) has a unified code which regulates insolvency proceedings. The Bankruptcy Code (1978) for instance takes precedence in the entire states due to the federal piece of legislation it processes. The Code provides key areas such Chapter 7 (Liquidation), Chapter 9 (Municipalities), Chapter 11 (reorganisation), Chapter 12 (Family Farmer), Chapter 13 (rescheduling of debt (repayment plan) which interact with each other. There are other legislation which also form the bases of the USA law which connects with issues which involves taxes, labour issues, fraud or criminal in nature. These laws interact with each other and the Courts reserves the rights to apply such law when an insolvency practitioner presents a matter which the court considers the right forum to hear the matter. Another interesting area which Review Commission of 1990's led to the promulgation of the Bankruptcy Abuse Prevention and Consumer Protection Act, 2005 (BAPCPA). This reforms generally introduces "Fresh start" to debtors when they apply such actions thereof. Also, in 2019 there was an introduction of Sub-Chapter V of Chapter 11 which deals with reorganisation of small businesses. In view of these, the America Insolvency law interact which each other. Ultimately, the code recognises UNCITRAL Model Law provisions]

Take care to answer the question put to you. You've not been asked to pick a State to consider nor to consider the US, rather you've been asked to consider the sources of laws in any State. This question requires you to consider different types of sources of law and how they interact.

Your answer could have instead been structured to discuss the sources of law across 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

Question 3.2 [maximum 5 marks]

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

[Fletcher asked three main question

"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)?"⁵

First of all, the issues about the jurisdiction to open a proceeding clearly raises the concern about the choice of forum. This takes into account the forum in which the parties to the

⁵ See Fletcher, *supra* note 56, pp 3 to 5

proceedings may consider. Typically, most insolvency proceedings within a local jurisdiction are commenced at a High Courts. Also, there may be other issues which may arise and must be heard at other specified Courts which directly affects the insolvency proceedings. For instance, labour or criminal issues among others which may require a specialized Courts to handle such proceedings. Fletcher raises these concerns in an attempt to proffer recommendations in dealing with foreign proceedings and a consideration of local courts may hear the case.

Secondly, the issues about the law to be applied at a different aspect of the case hinges around recognition of the judgement, enforcements and the possible cause and effect. In an attempt to execute a foreign judgement, issues such as the type of judgments, the Courts that issued the judgement and the effect of the judgement are very paramount and must be taken into account. Fletcher opines that in executing an insolvency judgement, it becomes apparent that the matter many not set aside any incumbrances in the debtors estate rather the full enforcement whether commencement order was sort after or involving in matters that compels the debtor to pay its debts at a specified duration.

Finally the law to address the proceedings. Fletcher examined the appropriate approach in dealing with a matter before a court particular which are foreign in nature. Obviously, certain systems have law determines the particular approach to adopt to deal with the matter and depends on the parties choice of the law. The issues of choice of law is very critical which reemphasis the forum it so applies. In common law system, the adoption of approach gives rise to many questions as a result of different issues.

“proof of foreign law is a question of fact whereas in civil law systems, foreign law is presumed to be a question of law to be applied regardless of whether it is pleaded by the parties or not”^{6]}

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.

[Dating back in 5 November 1991, the Swiss Bank Office in London declared Maxwell Private Business 57.5 million pounce and demanded a repayment. Other Banks also joined with an estimated 3billion pounce as huge loans undertaken by Maxwell Corporation. This case was multifaceted as it showed a breakdown of good corporate governance among others.⁷ Maxwell Communications Corporation plc cross-border insolvency case epitomizes Court-to-

⁶ Foundation Certificate in International Insolvency Law, “*Introduction to Insolvency Law*”, INSOL pp 45

⁷ Thomas Clarke “*Case Study: Robert Maxwell: Master of Corporate Malfeasance*” (1993)

<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8683.1993.tb00028.x> retrieved 11/11/2021

Court communication and voluntary approach by the insolvency partitioners assigned the duties to oversee the proceedings in the United State and England where both Courts approved an agreement which became binding on both parties. The Protocol established by both jurisdictions having stated in the UNCITRAL Practice Guide served as an example in co-operation and communication between courts and practitioners. This as a result reduced complexities regarding the Court processes and fillings, maximize the value of the debtors estate, reduce cost or expenses among others.

“The case of Maxwell Communication Corporation plc. Involved two primary insolvency proceedings initiated by a single debtor, one in the United State and the other in the United Kingdom, and the appointment of two different and separate insolvency representatives in the two different and separate insolvency representatives in the two States, each charged with a similar responsibility. The United State and English judges independently raised with their respective counsel the idea that an insolvency agreement between the two administrations could resolve conflicts and facilitate the exchange information.

Under the agreement, two goals were set to guide the insolvency representatives: maximizing the value of the estate and harmonizing the proceedings to minimize expenses, waste and jurisdictional conflict. The parties agreed essentially that the United State court would defer to the English proceedings, once it was determined that certain criteria were present.

Specificities included that some existing management would be retained in the interest of maintaining the debtor’s going concern value, but the English Insolvency representatives would be allowed, with the consent of their United States counterpart, to select new and independent directors; the English insolvency representative should give prior notice to the United State insolvency representative before undertaking any major transaction on behalf of the debtor, but were pre-authorized to undertake ‘lesser’ transactions. Many issues were purposely left out of the agreement to resolved during the course of proceedings. Some of those issues, such as distribution matters, were later included in an extension of the agreement.”⁸

These as a result received some commendation by the International Bar Association and other likeminded bodies which has subsequently paved way for an efficient structure and practical body of knowledge in resolving cross-border insolvency issues.]

5

Marks awarded 9.5 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.

⁸ See Summary – UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation 2009, pp. 128 -129

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.

[Clearly, since the proceedings is opened on 18th June 2020, European Union Regulation (EU) 2015/ 1848 insolvency proceedings (Recast) would apply. Since the EIR Recast would not be operational, after 31 December 2020, the consideration of the year of which the insolvency proceedings will be effective in June 2020 with the EIR in place will give Fernz an opportunity to appoint an insolvency practitioner to open the proceedings, conduct and bring to closure According to Article 7.1 of the EIR Recast “save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effect shall be that of ...the ‘State of opening of proceedings”⁹ In this case the minor creditor must first be established whether their charge are secured and has the capacity to open such proceedings in the UK. All things been equal, the proceedings opened in UK and will be binding. Here the “centre of debtors main interest” is the UK.]

It would be beneficial to consider secondary proceedings and matters pertaining to establishment under the EIR Recast.

3.5

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.

[Clearly the EIR Recast ceases to have effect after 31st December 2020. Since UK no longer belong to the EU, all the proceedings opened within UK must apply. Here, 18th June 2021, the creditor opening insolvency proceedings against Rydell must come under the UK Corporate Insolvency and Governance Act, 2020 and provisions regarded within the remit of UKs laws and applications so thereof enforced.]

It would be beneficial to discuss the MLCBI and considerations regarding information needed regarding other relevant local laws.

1.5

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?

⁹ Foundation Certificate in International Insolvency Law, “Introduction to Insolvency Law” “EIR recast”, INSOL pp 54

[Under Section 221(5) Insolvency Act 1986 gives an opportunity for an unregistered company to be wound up however must demonstrate a reasonable cause of action, must have sufficient connection to the English law, and Court grant leave for the proceedings to commence. Since the proceedings is opened in 18th June 2021, the Corporate Insolvency and Governance Act will kick in accordingly.]

To improve your responses, ensure they are commensurate with the mark allocation – the question is for 5 marks.

3

**Marks awarded 8 out of 15
TOTAL MARKS 36.5/50**

*** End of Assessment ***