



**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.

The first **English Bankruptcy Act of 1542** introduced two fundamental principles upon which modern insolvency laws are based, namely the *pari passu* distribution principle and the collective participation by creditors principle. This Act stated that in the case of a fraudulent debtor, the available assets should be administered and distributed on the basis of equality among the creditors.

Another significant development in the history of English debt collection procedures is the **Statute of Ann (1705)** as it introduced the concept of a statutory discharge, which is an injunction against the initiation or continuation of the recovery of a debt.

Moreover, the **1883 Act** provided three principles under the auspices of President of the Board of Trade, Joseph Chamberlain, and is regarded as the foundation of today's English bankruptcy system. The principles are (1) the insolvent debtor's assets belong to the creditors and should therefore be under the full control of the creditors without/ with the least possible interference, (2) the trustee should be under official supervision concerning its pecuniary administration and his accounts should be audited, and (3) there should be an independent examination of the debtor's conduct and reasons leading the business into insolvency.

Additionally, the **Cork Report 1982**, which resulted from a comprehensive review of the English Bankruptcy Law, led to the promulgation of the Insolvency Act in 1986.

It's good that you address development of collective debt collecting procedures and the introduction of statutory discharge. There is scope to discuss how this relates to 'fresh start'. It would be beneficial to consider abolishment of imprisonment for debt or to elaborate on the introduction of formally regulatory procedures.

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.

Following the COVID-19 pandemic, the UK introduced three reform measures to deal with insolvency(-related) matters under the Corporate Insolvency and Governance Act on 26 June 2020. These reforms can also be found in the map created by *INSOL International and World Bank Group Global Guide 2021* ([uk-12-may2021-final.pdf](https://www.azureedge.net/uk-12-may2021-final.pdf) ([azureedge.net](https://www.azureedge.net/))).

Firstly, it introduced a **new restructuring plan** combining features of the US Chapter 11 process. Companies (whether solvent and insolvent) encountering financial difficulties, are given the opportunity to manage creditors, with the option of a cross-class creditor cram down, which gives the court the power to force creditors (whether secured or unsecured) from any class to agree to the plan, if the purpose of the plan is to address those financial difficulties.

Secondly, **new moratorium rules** and periods were introduced which enables companies to use a payment holiday from most of their non-finance pre-moratorium debts and to be protected against creditor enforcement actions (including enforcement action) while seeking a rescue or restructuring. During the moratorium, directors retain most of their management powers, with a monitor (licensed insolvency practitioner) representing the creditors' interests.

Thirdly, the rules on **wrongful trading liabilities** and the **suspension of winding-up petitions and statutory demands** were moderated or relaxed. With regard to the wrongful trading liabilities, a presumption was introduced that the directors have not worsened the company's financial position between the periods of 1 March 2020 until 31 March 2021. The Act also includes a temporary ban on filing winding-up petitions and statutory demands forming the basis for a winding up petition during the same period, where coronavirus has had a "financial effect" on the debtor, which allows businesses a better opportunity to reach a fair agreement with creditors.

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 difference between hard and soft law is that international insolvency could be regulated by way of **binding through hard law** or by way of **influencing through soft law**.

There are various hard law instruments available, such as **treaties and conventions** to use in cross-border insolvency matters to which States bind themselves, after becoming signatories and adjust their domestic laws accordingly. **It would be beneficial to explain treaties in more detail.**

However, history has shown that this approach has somewhat been unsuccessful - save for the Nordic Convention of 1933 - as can be seen from the Istanbul Convention of 1990 created by the European Convention on Human Rights as there were insufficient signatories and ratifications for it to enter into force. The EU, however, has been successful in regulating cross-border insolvency between the Member States, through the European Insolvency Regulation 2000 (and Recast 2015).

It is argued that more success has been attained through the use of soft law, namely through eg **guides and model laws** created by international organizations including The Hague Conference on Private International Law, International Institute for the Unification of Private Law (UNIDROIT), United Nations Commission on International Trade Law (UNCITRAL).

A prominent soft law instrument would be Model Law on Cross-Border Insolvency (MLCBI) 1997, which was recommended by UNCITRAL for the Member States to adopt whether with or without modification.

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.

There are different possible sources of insolvency laws in different States, depending on their legal systems. These sources are usually legislations or codes in civil law systems and also common law principles in common law systems to fill in any potential legal gap left open by the codified pieces of legislation.

Some systems, such as the US, have a unified piece of insolvency or bankruptcy legislation such as **unified codes or acts**, much like the US Bankruptcy Code of 1978.

Other systems have a multiplicity of legislation, or **fragmented legislation** which need to be analysed in conjunction with each other in order to get a full overview of all the rules concerning insolvency matters. Examples are States in which the individual and corporate bankruptcies are codified in different/ separate statutes.

Other sources include principles from “**general (applicable) law**” or non-bankruptcy laws, which could also significantly influence (**interact with**) bankruptcy law eg the vesting of ownership rights or security.

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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.

Prof. em. Ian Fletcher asked three questions to bring the insolvency and cross-border aspects together.

Firstly, he asks what the **choice of forum** is to exercise jurisdiction in the matter. In other words, one should ask which court has the power to commence, hear, and provide a judgement on a matter. In order to answer this question, the connection of the dispute with the jurisdiction is to be evaluated. Such cross-border disputes give rise to foreign elements eg foreign assets or officers.

Second, Fletcher asks the status of the foreign proceeding ie what **recognition and effect/enforcement** is accorded to the foreign proceeding. These are private international law questions. The type of judgment is a significant matter in cross-border cases and could be divided into two types: (1) a judgement commencing the insolvency proceeding, or (2) a court order during an insolvency proceeding.

Lastly, the **choice of law** question should be answered when dealing with cross-border insolvencies. The court, once it has decided that it will hear the case, needs to determine which law is applicable. This is a question of fact and the answer depends on the different national approaches. For example, in common law jurisdictions there is a general rule that the law of the forum/ *lex fori* applies unless the parties argue otherwise. Unlike the common law jurisdictions, civil law jurisdictions presume that foreign law is to be applied regardless of what the parties invoke or argue.

There is scope to elaborate. This answer displays a satisfactory understanding. To improve your responses, ensure they are commensurate with the mark allocation –Q 3.2 is for 5 marks.

4

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.

Chapter IV of the UNCITRAL Model Law on Cross-Border Insolvency authorises (or mandates) certain provisions on the cooperation and coordination of concurrent proceedings through cooperation and direct communication between courts or foreign representatives (see Articles 25 and 26 of the Model Law). Article 27(d) of the Model Law provides for the means or forms of cooperation between courts by way of approving or implementing agreements on the coordination of proceedings. These **coordination agreements** are also known as **Protocols or Cross-border Insolvency Agreements**.

These agreements provide courts the opportunity to defer to the jurisdiction of another court where eg a particular action may be possible in the second court but not in the first. Deferrals may lead to legal actions that were previously commenced in a court being dismissed in order to allow another court in which a parallel action has been commenced to make a decision.

A prominent case that actually predates the Model Law is the **Maxwell Communications Corporation plc** case of 1991. This case concerned two concurrent primary insolvency proceedings in the US and England, Chapter 11 and administration proceedings respectively, and were coordinated through a Protocol (or Order) by the courts in the involved jurisdictions/States (see pages 11-12 of the UNICTRAL Practice Guide at [UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation](#)). As there were two appointed insolvency representatives tasked with similar duties, both the US (NY) and English courts determined that an insolvency agreement between the two representatives and administrations could resolve any potential conflict and facilitate exchange of information (for the smooth running of the administration and for avoiding conflicts). This Agreement set out two common goals, namely (1) the maximization of the value of the estate and (2) the harmonization of the concurrent proceedings to minimize expenses, waste, and jurisdictional conflicts.

In this particular case, the English court deferred to the jurisdiction of the United States court, which enables for the creditors to be subject to an avoidance action. The US Court determined that the law of the jurisdiction having the greatest interest in the outcome should govern, which in this case is the English law.

The Agreement approved by both courts distributed functions between themselves and provided for cooperative administration such as the granting of power to the English insolvency representative to administer all assets and operations of the debtor group's business, incur expenses etc, subject to agreement and/or approval by its US counterpart.

Thus, a key element which was set out in that Agreement is the consensual nature of the insolvency representatives, ie an action could only be undertaken if there is a consent from the foreign insolvency representative. Another example is the pre-authorized actions by both insolvency representatives. A third example would be the prior notice provisions for certain actions. Lastly, if certain issues were not provided for in the Agreement (perhaps on purpose), they would be resolved during the course of the proceedings or later included in an extension of the Agreement.

Other cases named as examples in the UNCITRAL Practice Guide are the **Nakash** and the **Matlack** cases (see page 18).

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Marks awarded 14 out of 15

QUESTION 4 (fact-based application-type question) [15 marks in total]

Rydell Co Ltd (Rydell) is an incorporated company with offices in the UK and throughout Europe. Its centre of main interest (COMI) is in the UK. Rydell supplies engine parts for large vehicles, including airplanes, and has had a downturn in business due to border closures and travel restrictions throughout the Covid-19 pandemic.

Rydell's main creditor is Fernz Co Ltd (Fernz) which is incorporated in a country in Europe that is a member of the EU. Fernz is considering commencing proceedings or pursuing other options with respect to recovering unpaid debts from Rydell.

There are a number of other creditors owed money by Rydell, who are located throughout different countries in Europe which are all members of the European Union.

If you require additional information to answer the questions that follow, briefly state what information it is you require and why it is relevant.

Question 4.1 [maximum 7 marks]

An insolvency proceeding against Rydell was opened in the UK by a minor creditor on 18 June 2020. A month later, Fernz was considering also opening proceedings in another country in Europe which was a member of the European Union.

Discuss if and how the European Insolvency Regulation Recast would apply. Also note what further information, if any, you might require to fully consider this question.

It is important to note that the European Insolvency Regulation Recast 2015 (EIR 2015) is only **directly applicable to EU Member States**. The United Kingdom has ceased to be member of the EU due to Brexit, and hence, the EIR 2015 does not apply anymore from (23:00) 31 December 2020 onwards, unless the main proceedings were commenced prior to the **deadline**.

In this case, the minor creditor opened proceedings on 18 June 2020, thus before the deadline. However, as a side note, one missing piece of information is whether this is a (purely) local or a cross-border proceeding. The whereabouts of the minor creditor is not revealed in the facts of the case. This could raise questions as to whether this should be considered as a purely internal situation, and whether the EIR 2015 would be applicable in such cases.

Another missing piece of information is the **type of (insolvency) proceeding**, and whether or not it is listed in the **Annex (A)** of the EIR 2015 for it to be applicable, see also Article 1.

If Fernz intends to initiate (concurrent) proceedings as well, the EIR 2015 allows for the possibility to have a **main proceeding** (at the place of the debtor's centre of main interests or **COMI** ie the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties), see Article 3(1) of the EIR 2015, and **subsidiary territorial proceedings** (at the place(s) where the debtor has **establishments** ie any place of operations where the debtor carries out a non-transitory economic activity with human means and assets) in order to protect local interests, see Article 2(10) of the EIR 2015. Article 3(4)(1) of the EIR 2015 stipulates that these subsidiary proceedings could either be secondary proceedings if opened after the main proceedings, or be independent/territorial proceedings if they are opened prior to the main proceedings.

A final necessary piece of information would be the (suspect) periods. According to Article 2(10), the economic activity or the establishment should have been in the Member State three months prior to the request to open the main insolvency proceedings.

As the **minor creditor** initiated the proceedings in the UK, ie where the debtor has its COMI, it could be regarded as the **main proceeding**.

On the other hand, as **Fernz** would like to open proceedings in another country, one month after the initiation of the proceedings by the minor creditor. This should then be regarded as a **secondary proceeding**. The effects of the secondary proceeding are restricted to the assets of the debtor situated in that Member State's territory, leading to a separate insolvency estate with a separate applicable *lex concursus*, and limiting the universal scope of the main insolvency proceeding initiated in the UK.

Good. There is scope to elaborate regarding relevant Articles of the EIR Recast.

6

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.

In this case, the answer to the previous question would **change**.

Such a scenario exceeds the temporal scope of the EIR 2015 and its applicability in the UK. The Regulation would not apply after 23:00 on 31 December of 2020.

The missing relevant information would be regarding the applicable law on the proceeding, which depends on the local UK insolvency law.

In such situations, questions arise with regard to, *inter alia*, to what extent is the local law different from the EIR 2015? Does the MLCBI apply if the EIR 2015 does not? Would the UK proceedings be recognized with regard to assets located in other Member States, and vice-versa?

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?

As the EIR 2015 is not applicable **post-deadline** of 31 December 2020, the UK should consider other international/cross-border insolvency laws applicable within its territory.

As the COMI is not located within the territory of the UK, there is a foreign element involved in the case. The question is which UK-sources would apply in such **cross-border circumstances**.

In dealing with cross-border insolvency proceedings, the **UNCITRAL Model Law on Cross-Border Insolvency** could prove an alternative in order to answer the question whether the minor creditor could commence formal proceedings in the UK despite it not having its COMI within the territory. The UK adopted and incorporated the Model Law with some amendments in its own national legal system under the **Cross-Border Insolvency Regulations (CBIR)** in 2006.

Section 426 of the Insolvency Act of 1986 should be **disregarded** since it is applicable to the overseas courts from certain listed jurisdictions (ie former colonies).

However, the **UK Insolvency Act 1986** and the Insolvency Rules 2016 are main sources of the domestic insolvency system of the UK.

Thus, to answer the question of jurisdiction of a UK court to decide upon a case with a foreign element (but falling out of the scope of the EIR Recast), the court has the jurisdiction to wind-up a foreign or unregistered company (ie a company that is incorporated in another territory than the UK) based on **Section 221(5) of the UK Insolvency Act 1986**. Certain conditions do apply, however, namely that (a) the company is dissolved, ceased to carry on business, or only carries out business to wind-up, (b) the company cannot pay its debts, or (c) the company should be wound up since it would meet the justness and equitableness in the eyes of the court. In practice, the courts look for sufficient connections with the UK. This criteria is fulfilled if the following three core requirements are met, namely (1) a sufficient connection with the England and Wales, without necessarily having assets in the territory, (2) if a winding-up order is made, there should be a reasonable possibility that it will benefit to those applying for the order, and (3) one or more interested parties in the distribution of assets of the company must be parties over whom the court can exercise jurisdiction.

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Marks awarded 14 out of 15
TOTAL MARKS 46/50

*** End of Assessment ***