



**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**.

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## **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.**

1. The English Bankruptcy Act of 1542 permitted a creditor to make an application to a body of commissioners who could proceed against a trader who had accrued debts and was neglecting to pay them. These commissioners would have the power to act on behalf of the group of creditors as a whole. The Act also permitted that where the debtor was a fraudulent debtor, there would be a compulsory administration of the estates and distributions on a *pari passu* basis among creditors.

In modern day insolvency most regimes still have a body/tribunal/qualified practitioners who act on behalf of the collective creditors of an individual or an estate, for example in the UK this role is carried out by qualified insolvency practitioners under the supervision of the Court. Creditors thereby continue to this day to have collective participation in the relevant insolvency proceedings as set out in the 1542 Act (although with considerable developments of course).

This law also contained provisions for a *pari passu* distribution which is fundamental to modern insolvency law.

2. The 1570 Act of Elizabeth was the first act to transfer the collective debt recovery proceedings to the supervision of the Courts, specifically the Lord Chancellor. The Lord Chancellor could then convene a bankruptcy meeting and appoint bankruptcy commissioners to supervise the process.

It remains common under modern insolvency law for the court to determine whether or not bankruptcy proceedings should go ahead and if so to appoint qualified practitioners to administer the estate under the supervision of the court - as set out in point 1 above.

3. The Statute of Ann of 1705 was hugely important because it introduced a statutory discharge, far ahead of many European countries. This concept has had a huge bearing on modern insolvency law as it allows companies and individuals an opportunity to have a clean slate and to have an opportunity to begin again, or continue to trade. Arguably without the introduction of this concept, regimes permitting the restructuring of debt (e.g. Schemes of Arrangement) would not have developed.

This is well answered  
3

#### 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.**

1. Suspension of the issuance of winding up petitions and statutory demands. The legislation **It would be beneficial to say which legislation** imposed provisions such that if a failure to pay a debt was caused by Covid-19 and/or the resulting restrictions, no winding up order could be made within a specified period of time. Also any statutory demands served on a company between 1 March 2020 and 30 September 2020 were void.

2. It relaxed wrongful trading liability rules so that businesses that sought to stay afloat during the pandemic wouldn't be penalised and directors would not be held personally liable for what may otherwise have been considered wrongful trading.
3. New moratorium rules were introduced which helped struggling business pursue a rescue or restructuring plan.

2.5

### Question 2.3 [maximum 4 marks]

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

Treaties are public international instruments which, once signed by a State, become binding on that state and as such have a direct effect on the domestic laws of that state. These are referred to sometimes as "hard law" because they can be enforced by the domestic courts within the relevant state.

Hard laws can be used to establish cross-border insolvency rules by, for example, addressing issues arising in international insolvency such as recognition and effect of foreign proceedings, choice of forum or conflict of laws. State A could sign a treaty which would compel the courts of State A to recognise foreign insolvency proceedings commenced in State B (also a signatory to the treaty).

In comparison, "soft law" approaches are persuasive and trying to influence states, they are not legally binding on states. They are more often guidelines and templates on best practice that can be adopted by States. The best example is the UNCITRAL Model Law on Cross-Border Insolvency which is draft legislation which States can adopt in whole or in part. Having a more unified set of laws across States helps to establish clear and workable cross-border rules.

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Marks awarded 9.5 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.**

Any State may have multiple forms of insolvency laws - for example Treaties/Conventions to which it is a signatory, domestic statutes, the adoption of published Principles/Guidance/Model Laws and commonwealth jurisdictions many have developed common law which is binding through the courts.

Using the UK by way of example, the UK's primary legislation is the 1986 Insolvency Act. Although this has been subsequently amended, it was designed to be a piece of unified insolvency legislation dealing with both personal and corporate insolvency. If the insolvency laws of the UK (or any State) were governed only by domestic legislation, they could take an entirely territorial approach and would be under no obligation to recognise any foreign proceedings (although the Insolvency Act does actually contain provisions for this).

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However, the UK later opted to adopt a different source of law ("soft law") in the form of the UNCITRAL Model Law on Cross-Border Insolvency. By virtue of the adoption of this, it became part of the domestic legislation and enforceable by the Courts within the UK.

By virtue of the UK's prior membership of the EU, it was also bound by the Council Regulation on Insolvency Proceedings (European Insolvency Regulation, EIR) (subsequently amended to the EIR Recast). As a result, the UK and other member states, regardless of their domestic legislation, had to comply with the EIR Recast. This included recognising the jurisdiction of the courts of any other member state where the debtor's centre of main interest was located. By virtue of being a member of the EU, member States could not insist upon complete territoriality of insolvency proceedings and reliance on domestic legislation.

If the UK courts or other member states did not uphold the provisions of the EIR Recast, the laws could be enforced by the court system of the EU.

**Take care to answer the question put to you. You've not been asked to pick a State to consider nor to consider the UK, 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 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.**

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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.***

1. In which jurisdictions may insolvency proceedings be opened?

Insolvency proceedings may be opened in multiple jurisdictions simultaneously. Proceedings could, for example, be opened where the debtor's centre of main interest is, where the debtor has assets, where the debtor has separate branches or offices, potentially even where it has subsidiaries.

This can cause difficulties where multiple insolvency proceedings are running simultaneously. Particularly where some states with proceedings may take a more territorial approach and not permit assets to be dissipated to foreign creditors before domestic creditors. This interferes with a fundamental principle of insolvency proceedings which is that distributions (within the same classes of creditors at least) should be *pari passu*.

2. What country's law should be applied in respect of different aspects of the case?

At present that can be a real lack of certainty for debtors (or investors considering the risks at the outset) as to which country's laws may apply in the event of an insolvency of a multi-national company. Which laws will be applied, and whether it will be domestic or foreign law, will often depend on which state the proceedings are commenced in. For

example in common law systems the law is presumed to be that of the forum unless the parties specifically invoke choice of law. Where there are multiple proceedings in multiple states, a situation could arise with multiple conflicting laws being applied.

The fact that the law to be applied can vary creates a lack of certainty for debtors/investors as the applicable law may be depend on which state the first insolvency proceedings are opened in or where the debtor's centre of main interest lies which is not always easily discernible.

The approach in universalism would be that there is one proceeding in one State (likely whether the COMI lies) which has jurisdiction to deal with all of the debtors international debts and assets and applies the single law of that state. This could be argued to be the ideal although it is perhaps unrealistic to achieve.

Modified universalism, however, is more common and more achievable. In this approach a primary proceedings is opened (ideally in the COMI but not necessarily) and it is recognised across any States where the debtor operates or has assets or debts. Those States should, in my view, apply the substantive law of the primary proceedings and domestic law should only be utilised for any administrative or procedural elements required to be carried out in the secondary proceedings.

It is worth noting that different laws may be applied to different matters. For example, it is possible that the law of one state might be applied to any employment matters arising and another may apply to rights in rem or detrimental acts.

3. What international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)?

Consider whether a court will recognise a foreign liquidation proceeding and what impact that will have. For example will the court enforce the foreign order and give it some kind of effect – in whole or in part. This may include placing a stay on proceedings in the local jurisdiction as a result of the foreign order for winding up.

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### Question 3.3 [maximum 5 marks]

It is said that “co-ordination agreements are sometimes known as Protocols or Cross-border Insolvency Agreements. Their growing acceptance internationally is evident in the work by the ALI-III in their *Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases*; by UNICTRAL in their *Practice Guide on Cross-border Insolvency Agreements*; and by the Judicial Insolvency Network in their *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters...*”

It is also said that “While court approval of such agreements for the purposes of co-ordinating insolvency proceedings is encouraged by the MLCBI, they in fact pre-date the Model Law.”

**Briefly discuss a prominent case law example for this last quotation.**

In *Re Chow Cho Poon (Private) Limited* [2011] NSWSC 300 was an Australian case in which Chow Cho Poon (Private) Limited (the “Company”) was a company incorporated under the Companies Act of the Republic of Singapore. The High Court of Singapore ordered that the Company be wound up and Mr. Chong appointed liquidator. A further order was made that Mr. Chong be authorised to open/close/operate certain bank accounts.

In the Australian action the liquidator and Company sought various declarations, including recognition of the appointment of the liquidator, recognising the order of the High Court of Singapore, a declaration that the liquidator may open/close/operate the Company's bank accounts in Australia and a declaration that the liquidator is authorised to do anything in connection with the Australian bank accounts that he would be entitled to do under the law of Singapore.

The Corporations Act of Australia has provisions that in such a circumstance the Australian courts must act in aid of and be auxiliary to certain foreign courts, of which Singapore is one.

The judge considered the potential conflict between provisions within the Corporations Act and those provisions of the MLCBI which had been adopted in Australia (which include requirements to cooperate with foreign courts and foreign representatives) by virtue of schedule 1 and section 6 of the Cross-Border Insolvency Act. The provisions of the MLCBI were said to take precedent in the event of any conflict.

The judge concluded that the application by the liquidator did not ultimately engage the relevant articles under the provisions of the MLCBI as adopted and as such he could proceed under section 581(2)(a) of the Corporations Act without any conflict.

The judge raised the possibility, however, that there may have been a non-statutory resolution, without reference to either the domestic statutes or the MLCBI (such jurisdiction would pre-date the adoption of the MLCBI). He referenced the possibility that the court could have used its inherent jurisdiction potentially to make the declarations sought. The judge recognised, at paragraph 78, the *"Notions of comity that have, in recent years, facilitated recognition and effectuation of foreign insolvency administrations by the deployment of the local court's inherent jurisdiction"*.

[above taken directly from the case:  
<https://caselaw.nsw.gov.au/decision/54a634513004de94513d85b4>]

**Take care to read the question carefully. It required a case example regarding the second quote, which could require a case that pre-dates the MLCBI. A relevant case is *Maxwell Communications Corporation plc***

**0**  
**Marks awarded 6 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.***

The EIR Recast would apply as the EIR Recast applies to insolvencies where the main proceedings were opened prior to 11pm on 31 December 2020. The EIR Recast allocates jurisdictional competence to the court of the member state in which Rydell's centre of main interest ("COMI") lies. In this case that is the UK.

The default position under the EIR Recast is that the law applicable to the insolvency proceedings and their effect will be that of the UK, that being the State of the opening proceedings.

As such, even if Fernz opened insolvency proceedings in another EU member state, they would only ever be subsidiary territorial proceedings and would remain secondary proceedings with the UK proceedings remaining the primary or main proceedings.

In accordance with the terms of the EIR Recast, Fernz would only be permitted to open such secondary proceedings if this was necessary within that EU member state and if the EU member State did not recognise the authority of the UK courts and the insolvency practitioners appointed as liquidators over Rydell's estate without the facilitation of the Secondary Proceedings. Fernz could also only open secondary proceedings if Rydell had an establishment within the EU member State in which Fernz was intending to open secondary proceedings. To satisfy this, Fernz would need to demonstrate that Rydell had a place of operations when Rydell was carrying out non-transitory economic activity with human means and assets. The secondary proceedings would only relate to assets within member state where the secondary proceedings were located.

Further information needed:

- Which EU member State is Fernz considering opening proceedings in?
- What is the purpose of the secondary proceedings?
- Are secondary proceedings required in that EU member State in order to give recognition to the Primary Proceedings?
- Does Rydell have an establishment within that EU member State?
- Are the primary proceedings a straight forward winding up or some form of rescue/restructuring proceedings?
- Where are the assets of Rydell located (i.e. which state or states)?

The above answer is premised on the basis that the proceedings Fernz seeks to open are insolvency proceedings. If Fernz were seeking to commence some other form of proceedings, e.g. a procedure equivalent to issuing a writ seeking to recover the debt, it is likely that such action would be prohibited and leave of the court in the EU member state required – however, this may vary from state to state.

**There is some scope to elaborate regarding relevant articles of the EIR Recast**

**6.5**

**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.**

The EIR Recast does not apply to proceedings commenced in the UK after 11pm on 31 December 2020. However, the EIR Recast does permit the recognition of insolvency proceedings outside of the EU for the purposes of coordinating proceedings within and outside of the EU.

Whether or not the UK proceedings would be recognised in a member state in which Fernz was seeking to open another new proceeding may ultimately depend on the laws of that member state, including whether it is a member state which has likewise adopted the MLCBI.

- Which EU member State is Fernz considering opening proceedings in?
- What is the purpose of the proceedings?
- Has the EU member state adopted the MLCBI or some form of it?
- Where are Rydell's assets located – which state or states?
- Where is Rydell operating?
- Where is Rydell's COMI?

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**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?**

If Rydell is carrying on business in the UK, even if not registered, the corporate insolvency laws of the UK can permit proceedings to be commenced. This is in accordance with the Insolvency Act 1986 (as amended). Even though Rydell's COMI is within an EU member state, not the UK, the UK can accept jurisdiction if the court considers there is a sufficient connection to warrant it. This is a matter of fact and degree but if Rydell is operating within the UK and/or has assets in the UK the court may consider that sufficient. **It would be beneficial to elaborate upon 'sufficient connection'**

If proceedings had already been opened in an EU member state then the Insolvency Act 1986 (as amended) deals with possibility of English courts providing aid and assistance to certain foreign courts. Alternatively England has also adopted the UNCITRAL Model Law on Cross-Border Insolvency (see the Cross-Border Insolvency Regulations 2006).

So depending on which EU member state insolvency proceedings have been opened in, the minority creditor may still be able to open proceedings in the UK by virtue of these routes to recognition.

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

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**Marks awarded 11.5 out of 15  
TOTAL MARKS 37/50**

**\* End of Assessment \***