INSOL INTERNATIONAL
FOUNDATION CERTIFICATE
IN INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 1

(INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW)

This is the **summative (or formal) assessment** for **Module 1** of this course and is compulsory for all registered candidates on the Foundation Certificate. The mark awarded for this assessment will determine your final mark for Module 1. In order to pass this module you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment1summative]**. An example would be something along the following lines: 202122-545.assessment1summative. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words "studentID" with the student ID allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6. The final submission date for this assessment is **15 November 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 15 November 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

7. Prior to being populated with your answers, this assessment consists of **9 pages**.

Commented [DB1]: Please do me the courtesy of reading and following the instructions. If you do not then I have to do it for you!

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one **that makes the most sense and is the most correct**. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Unlike (former) continental insolvency rules, the English insolvency laws provided for a rather liberal discharge of debt provision since 1570. Select the **most accurate response** to this statement from (a) – (d) below.

(a) This statement is correct since the English insolvency system was viewed as a pro-creditor system since its early development.

(b) This statement is correct since the English insolvency system, unlike continental systems, never provided for imprisonment for debt of insolvents and preferred to treat debtors in a humane way.

(c) This statement is incorrect since a statutory discharge of debt was only introduced in 1705 in England.

(d) This statement is incorrect since most of the continental insolvency rules provided for a liberal discharge of debt even before English law considered the introduction of such a dispensation.

Question 1.2

English insolvency law was not affected by the Covid-19 pandemic to date. Select the **most accurate response** to this statement from (a) – (d) below.

(a) This statement is correct since the UK decided to merely provide financial aid to financially troubled entities and individuals.

(b) This statement is correct since the legislative reform process in the UK is too slow to effect amendments to an elaborate piece of legislation such as its Insolvency Act of 1986.

(c) This statement is correct since the English insolvency law already provided special rules to deal with extreme socio-economic situations like those brought about by global disasters such as the Covid-19 pandemic.

(d) The statement is incorrect since the UK did review parts of its insolvency rules and amended some, amongst other things, to deal with the negative economic fall out of the pandemic.

Question 1.3

Since the Dutch insolvency system is rather outdated when compared with English or American insolvency / bankruptcy laws, it does not provide for a modern scheme of arrangement that could be used to reorganise or rescue a company in distress. Select the **most accurate response** to this statement from (a) – (d) below.

(a) This statement is correct since the Dutch insolvency system does not provide for a discharge of debt and without such a dispensation in place, a scheme of arrangement will not be functional.

(b) This statement is correct since the Dutch government has not approved such legislation yet.

(c) This statement is incorrect since the Dutch in fact introduced new legislation in this regard in 2000 already.

(d) This statement is incorrect since the Dutch quite recently adopted legislation in this regard and it became operational on 1 January 2021.

Question 1.4

There is no real need for the reform and establishment of a more uniform set of cross-border insolvency rules since the courts of the various States around the globe are well-equipped to deal with such issues by way of judicial discretion and since the broad rules of local insolvency legal systems are largely the same. Select the **most accurate response** to this statement from (a) – (d) below.

(a) This statement is correct since courts cooperating across jurisdictional borders are familiar with global insolvency principles.

(b) This statement is correct since courts across the globe are inclined to apply comity as a principle to assist foreign estate representatives to deal with cross-border insolvency matters in a coherent way.

(c) The statement is not correct since both local insolvency systems as well as cross-border insolvency rules differ quite significantly in many respects.

(d) This statement is correct since apart from the wide discretion that judges in general have, the UNCITRAL Model Law on Cross-Border Insolvency has been adopted by the majority of UN Member States, hence these rules are well-known to judges across the globe.

Question 1.5

Universalism has become the main approach regarding the application of cross-border insolvency rules around the globe since the majority of States follow a strict adherence to comity. Select the **most accurate response** to this statement from (a) – (d) below.

(a) The statement is not correct because very few States allow insolvent estate representatives to deal with assets of a foreign debtor situated in their own jurisdiction without some form of a (prior) local procedure to recognise the foreign insolvency proceeding.

(b) The statement is correct because universality has become the norm in the majority of States in cross-border insolvency matters since the introduction of the UNCITRAL Model Law on Cross-Border Insolvency in 1997.

(c) The statement is correct because the prevalent approach of modified territoriality amounts to a universal embracement of universalism amongst the majority of States around the globe.

(d) The statement is not correct because important international policy-making bodies such as the International Monetary Fund (IMF), the World Bank Group and the United Nations still support strong territoriality in cases of cross-border insolvency cases.

Question 1.6

A number of initiatives have been pursued in international insolvency in order to stimulate debate and to develop international best practice standards. Which of the following statements is **most accurate** regarding the World Bank's *Principles for Effective Insolvency and Creditor / Debtor Regimes*?

(a) They were developed in 2000 and are the international best practice standards for insolvency regimes.

(b) They were recently revised in 2021 and, together with the UNCITRAL Legislative Guide, form the international best practice standard for insolvency regimes.

(c) They were recently revised in 2020 and, together with the UNCITRAL Model Law on Cross- border Insolvency, form the international best practice standard for insolvency regimes.

(d) They were initially released in 2011 and are the international best practice standards for insolvency regimes.

Question 1.7

Which of the following **does not** focus on communication among States in international insolvencies?

(a) ALI - III Global Guidelines for Court-to-Court Communications in International Insolvency Cases.

(b) The JIN Guidelines.

(c) The JIN Modalities.

(d) The Nordic Convention 1933.

Question 1.8

Which of the following **best describes** the fundamental legal issues that arise in an international legal problem?

(a) Choice of forum, choice of law, and choice of jurisdiction.

(b) Choice of forum, recognition and effect accorded foreign proceedings in the same matter, and choice of law.

(c) Choice of effect, choice of recognition, and choice of law.

(d) Choice of forum, recognition and effect accorded foreign proceedings in the same matter, and choice of parties.

Question 1.9

Which of the following statements **best describes** the *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*?

(a) It is not intended to be prescriptive and is intended to provide information for insolvency practitioners and judges on practical aspects of co-operation and communication in cross-border insolvency cases to illustrate how the resolution of issues and conflicts that might arise in cross-border insolvency cases could be facilitated by cross-border co-operation.

(b) It is prescriptive and provides information for insolvency practitioners and judges on practical aspects of co-operation and communication in cross-border insolvency cases to illustrate how the resolution of issues and conflicts that might arise in cross-border insolvency cases must be facilitated by cross-border co-operation.

(c) It is prescriptive and provides information for judges on practical aspects of recognition and enforcement in cross-border insolvency cases.

(d) It is not prescriptive and provides information for judges on practical aspects of recognition and enforcement in cross-border insolvency cases.

Question 1.10

What **best describes** the overriding objective of the ALI - III Global Guidelines for Court-to-Court Communications in International Insolvency Cases?

(a) To interfere with the independent exercise of jurisdiction by the relevant States' courts and ensure an effective outcome.

(b) In urgent situations only, to interfere with the independent exercise of jurisdiction by the relevant States' courts in order to ensure an effective outcome.

(c) To enhance co-ordination and harmonisation of insolvency proceedings that involve more than one State through communications among the States involved.

(d) To enhance co-ordination and harmonisation of insolvency proceedings that involve more than three States through communications among the States involved.

Marks awarded 9 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

Briefly indicate three significant (historical) developments regarding debt collection procedures in English law that shaped the way of thinking concerning modern insolvency law.

1. The abolishment of the imprisonment for the non-payment of debt in 1869 by the Debtors Act without which the concept of a discharge of debts ("fresh start") would not have been able to develop. The concept of the discharge of debts is a fundamental principle of modern insolvency law.
2. The 1570 act ("Act of Elizabeth") which is said to have been the first law designed specifically as a true bankruptcy statute, rather then as a fraud prevention law. The Act of Elizabeth allowed a bankruptcy proceeding to be opened by a creditor following an "act of bankruptcy" and allowed for creditors to petition to Lord Chancellor (in relation to an act of bankruptcy) to convene a meeting to appoint a commissioner to administrator the estate. As part of this bankruptcy commissioners could be appointed to supervise the process, this has developed into the modern-day appointment of liquidators and the act of petitioning a court in relation to a debt is a key principal of modern insolvency law.
3. The Statute of Ann of 1705 introduced the notion of a statutory discharge, the discharge itself was not an automatic entitlement but if the criteria were satisfied the debt could be discharged, this added a new layer to the debt collection procedures and the discharge of a bankrupt person is a key principal of modern personal insolvency law.

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. The relaxation of wrongful trading liability for company directors, removing the possibility that a director is personally liable for such.
2. A restriction on winding up petitions
3. Temporary modifications to the moratorium regime, being the relaxing of the conditions for obtaining and extending a moratorium and there being a temporary rule-making power. It is noted that this moratorium is overseen by a monitor e.g. insolvency practitioner, but the directors are still responsible for the company's day-to-day operations.

Further elaboration would improve the mark for this sub-question. While it does say 'briefly', the sub-question is for 3 marks.

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.

A treaty is a formal, legally binding written agreement usually entered into by sovereign states and international organizations, rather than by multi-lateral organisations. States become signatories of a treaty and that establishes obligations between the participants of the treaty.

As a result the terms of the treaty become binding to them and affect their domestic law accordingly. Treaties can be used in the case of cross border insolvency rules to set a common standard of rules which each signing state must abide by therefore creating a standardised set of rules/processes across various states that are legally enforceable in the relevant court of law of each of the treaty's participants. In practice regional groups of nation states such as the European Union have drafted treaties to address international insolvencies within their geographical region. Treaties can also harmonise domestic insolvency laws between participants.

Soft law denote agreements, principles and declarations that are not legally binding, therefore, unlike a treaty the terms of a treaty, soft laws are not legally enforceable. However, an advantage of soft law is that it enables the participations of a range of multilateral organisations (to be distinguished from the states/governments working on treaties or conventions) and therefore enables there to be more stakeholders and input from a larger number of parties. In addition, soft law can be created and applied by the participants whom it directly affects, for example by practitioners and lawyers who work in insolvency and therefore can be tailored to be more applicable to real world scenarios and is not as impacted by geopolitical situations.
More detail would have improved the mark awarded for this sub-question. It would be beneficial for example 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

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 main sources of law that typically apply in a particular state can usually be found in the legislation or codes of that state. If the State's system is based on common law they may also rely on common law principles to cover any possible gaps in the existing legislation.

It is also possible to have a single unified piece of bankruptcy legislation covering all aspects of bankruptcy such as the Bankruptcy Code 1978 in the USA. Alternatively, a state may have an array of legislation that exists that need to be studied in conjunction with each other in order to understand the system in full, for example, where the laws for individual bankruptcy is contained in one statute whilst the laws relation to the winding up of a company is contained in a different statute.

In addition to the above, which can be collectively described as bankruptcy specific legislation there can also be legal principles that form part of the "general law" of a state, these can also be referred to as non-bankruptcy law. One such example of this would be the rules that regulate ownership and rights to security. Whilst such rules wouldn't be found in insolvency specific legislation they have a significant impact on insolvency law generally.

In summary, as demonstrated above there is the potential for a state to have numerous sources of insolvency specific, or, general laws that impact insolvency laws and as such insolvency practitioners need to take a wholistic view and consider how each law interacts with each other and the subsequent impact for their insolvency proceedings.

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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.

Fletcher's three pertinent questions are:

1. In which jurisdictions 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?)

The questions raised by Fletcher in many ways get to the core of the issues faced in cross border insolvencies and the solutions to these questions would go a long way to achieving harmonisation for cross border insolvencies. The underlying issues highlighted by the questions can be exampled as, in a case where the domicile of a company is in a different State to the location of its assets, creditors or other significant parties, the insolvency proceedings could possibly be opened concurrently in more than one State. Should this occur each state would apply its own laws (including its choice-of-law rules) and if each State granted zero or limited extraterritorial effects to foreign proceedings the insolvency of this company would be highly complex and likely result in numerous stakeholders fighting over the same assets across multiple jurisdictions and venues within those jurisdictions. This would be unlikely to result in a positive outcome for the company, its creditors and/or stakeholders.

Fletcher's first question can also be described as the choice of forum to exercise jurisdiction in the matter. This requires an assessment of the connection with the parties or the dispute, it is a well-established principle in many countries around the world that the law applicable to insolvency shall be the law of the jurisdiction where the company has its centre of main interest (COMI). Whilst this is generally considered to be the State in which the company is registered, it will otherwise be found in the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. This would frequently include considerations of the company's management operations, location of its human resources or even the domicile of its directors. The orderly process of determining the appropriate forum/jurisdiction is crucial in ensuring that multiple insolvency proceedings against the same company are not commenced at the same time across multiple jurisdictions.

Taking the example previously outlined if the appropriate forum is determined to be the company's State of incorporation and insolvency proceedings are commenced there, this would be the local court. Additional steps may need to be taken in the State/s in which the assets are located in order for the liquidator to effect an orderly liquidation, this would likely begin with the liquidator obtaining recognition of the insolvency proceedings in the foreign State, this can also be described as recognition of a foreign proceeding. Such recognition typically seeks to provide the liquidators with the powers detailed in the in the foreign jurisdiction's legislation and as a result they can take actions in said jurisdiction and petition/appear before the foreign court in future should issues arise in that jurisdiction. An example of such recognition would be Chapter 15 in the USA.

Once recognition in the foreign State is obtained, it is likely that the liquidator would need to comply with the laws of that State when dealing with the assets rather then the laws of the local court which may differ. Therefore, a situation may arise where a liquidator has to comply with/act in accordance with the different laws of each State even if dealing with the same type of asset. For example in a case where the company owned property in two different States it

could be that the local laws of each State require the liquidator to perform different actions for each property.

Should the liquidator fail to obtain recognition in the foreign jurisdiction it may render them powerless or significantly reduce their ability to take control of or effect the assets located in that jurisdiction, or, bring any litigation in that jurisdiction which would have a detrimental impact on the liquidation.

There is scope to elaborate on issues of choice of law

4.5

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.

One prominent case law example would be Maxwell Communication Corporation Plc's cross border insolvency case. Maxwell Communication Corporation plc' insolvency involved two primary insolvency proceedings initiated by a single debtor, one in the United States and the other in the United Kingdom. As a result, separate insolvency representatives were appointed in each the two States, each charged with a similar responsibility.

The United States 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 of information. Per the agreement the insolvency representatives were instructed to maximise the value of the estate and harmonise the proceedings to minimise expense, waste and jurisdictional conflict.

The agreement also set out criteria to determine the relevant court of jurisdiction for certain matters relating to the liquidation, for example, the US court would defer to the English proceedings in relation to decisions around the Company's management/board of directors. The English practitioners requested the consent of the US proceedings to incur any debts or file a reorganisation plan or before undertaking a major transaction. However, they were allowed to conduct smaller transactions. Whilst the agreement defined certain criteria for the relevant jurisdiction for some matters it was not all encompassing and certain issues were purposefully not included/defined in the agreement to be resolved during the proceedings, this also gave the liquidators a degree of flexibility and the ability to resolve other matters as they arose/more details became available.

On 1 July 2009, the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation was adopted (approximately 20 years after Maxwell Communication Corporation Plc's insolvency) and illustrates how communication and co-operation can be achieved in competing proceedings. Maxwell Communications Corporation plc would likely have been good guidance when drafting the UNICTRAL Practice Guide and demonstrated that flexibility is required to resolve the particular issues of each proceeding and that the provision of criteria to cover certain events/circumstances can aid in resolving potential jurisdictional issues which could serve as examples and be built open.

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Marks awarded 14.5 out of 15

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

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

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

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

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

Question 4.1 [maximum 7 marks]

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

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

At the time the petition was filed the European Insolvency Regulation Recast was applicable to the UK (prior to its exit from the EU), As such and per the EIR Recast, jurisdictional competence is allocated to the courts in the relevant jurisdiction in the "centre of the debtor's main interests" (COMI). As Rydell's COMI is stated as being in the UK, in this example the UK proceedings are the main proceedings, such that the UK courts have the jurisdictional competence to deal with the matter. As a result of this determination, it would be UK laws that will also govern the conduct of the proceedings and the eventual closure of the proceedings. In addition, per the EIR Recast the UK proceedings/liquidators are provided with automatic recognition in all member states, **It would be beneficial to set out relevant articles from the EIR Recast**

It is possible that subsequent proceedings may be commenced by Fernz in another EU member state, under the EIR Recast, should Rydell have an 'establishment' in such state. An establishment may be another place of operations with staff and assets. In the question it is cited that Rydell has operations throughout Europe which would likely require employees as well as potentially factories/production premises for the vehicle /aeroplane parts produced by Rydell. Further details would be required as to the nature of Rydell's European operations to make a determinative assessment as to whether it has an "establishment" in another European State.

On the assumption that this requirement for an 'establishment' is satisfied in the other European country, Fernz would be entitled to open proceedings in the other European country. These proceedings would be the 'secondary proceedings' as they are subsequent to the UK proceedings (on the basis that the UK is Rydell's COMI). **It would be beneficial to clearly state what further information is required**

It is worth noting that from 11pm on 31 December 2020, the EIR Recast no longer applied to the UK following its exit from the European Union.

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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.

Assumption – The proposed proceedings to be brought by Feraz still occur after the proceedings in the UK

From 11pm on 31 December 2020 the European Insolvency Regulation Recast ceased to apply to the UK following its exit from the European Union. As a result the UK proceedings/liquidators would not have automatic recognition in all member states. In addition, proceedings brought by Fernz in a country located in the EU will not be connected to the UK proceedings and will not be considered to be secondary proceedings. In addition, this raises the possibility that Fernz could argue that the COMI of Rydell is not in fact the UK as per the EIR Recast "special weight is to be attached to creditors' perceptions of where a company's COMI is located".

It would be beneficial to consider the MLCBI and further information that might be relevant.

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?

As the timeframe given in this example is post 31 December 2020 the EIR Recast will not apply, the English domestic laws will apply to UK insolvency proceedings (relevant legislation includes, the Insolvency Act 1986). As there are international components to Rydell, the domestic laws on choice of law are also applicable.

Prior to considering whether the minor creditor can commence proceedings consideration will need to be given to The Corporate Insolvency and Governance Act 2020 ("CIGA 2020"). CIGA 2020 voided statutory demands if they were served on a company during March 2020 to September 2021. It is likely that any statutory demands issued by the minor creditor to Rydell in this relevant period are therefore voided. In this case the minor creditor would be unable to commence proceedings, however, as this information is unknown the relevant domestic UK laws are detailed and considered with regards to the minor creditors ability to commence liquidation proceedings.

The following will need to be considered in determining whether the minor creditor could commence insolvency proceedings in the UK:

- Competent Jurisdiction – As Rydell in an unregistered company, Section 221(5) Insolvency Act 1986 is applicable. This section provides for a court ordered winding up of an unregistered company if:

a. The company is dissolved, ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
b. If the company is unable to pay its debts;
c. If the court is of the opinion that it would be just and equitable to wind up the company.

Using the information provided in the question as assessment of whether Rydell meets any of the three criteria detailed above is provided subsequently:

a. It appears that Rydell has suffered a downturn in business it has not ceased its business and is still carrying on a business. Therefore Rydell does not appear to satisfy criteria (a).

b. It appears likely that Rydell is unable to pay its debts, both due to the downturn in business it suffered and from the information that the major creditor, Fernz, has outstanding debts it is seeking to recover. Therefore, it appears that criteria (b) is satisfied.

c. Further information would be required to determine if there were any reasons for Rydell to be wound up on a just and equitable basis.

2. Sufficient Connection – There are three core requirements that the courts must also consider:

1. There must be sufficient connection with England and Wales. This does not mean that the Company needs assets in the UK, but additional information regarding Rydell's operations would be required to understand/determine if any of its operations are located in England or Wales or if any other major creditors are in the UK.

As the creditor is only a minor creditor, it is likely that the court would require more significant connections to be established would. As in the specific question it is detailed that Rydell's COMI is in the EU, and that its major creditor is also located in the EU, it may be the case that the minor creditor would not be able to establish sufficient connection to England and Wales.

2. There must also be a reasonable possibility that, if a winding up order is made, the petitioner will benefit from such.

- Based on the information, it is not clear what benefits a UK winding up will bring. Based on the question, none of the assets are in the UK, therefore, it needs to be considered how effective a UK liquidator will be. As the EIR Recast no longer applies, the UK liquidator will not have the automatic benefit of recognition in the EU, such that they may struggle to realise assets and will be required to take additional steps which may be more appropriate to be carried out by an EU liquidator.

3. One or more persons who are interested in the assets of the estate must be persons that the court can exercise jurisdiction.
- This is satisfied if the minor creditor is a UK entity or subject to the UK courts.

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Marks awarded 11.5 out of 15
TOTAL MARKS 44/50

*** End of Assessment ***