INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 1

(INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW)

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

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

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

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

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

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

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

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

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

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

ANSWER ALL THE QUESTIONS

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

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

Question 1.1

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

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

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

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

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

Question 1.2

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

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

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

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

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

Question 1.3

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

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

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

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

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

Question 1.4

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

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

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

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

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

Question 1.5

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

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

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

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

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

Question 1.6

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

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

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

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

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

Question 1.7

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

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

(b) The JIN Guidelines.

(c) The JIN Modalities.

(d) The Nordic Convention 1933.

Question 1.8

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

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

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

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

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

Question 1.9

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

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

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

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

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

Question 1.10

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

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

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

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

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

Marks Awarded 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 Insolvency/Bankruptcy laws began to take roots in Europe between 13th and 17th century. The general idea of the insolvency laws was to develop debt collection procedures, which metamorphed from individual debt collection to collective debt collection/bankruptcy procedure. Over the period of time there was a gradual move from execution of the debtor to dispensation of the assets of the debtor.

While the origin of the Debt collection procedures in the English law can be traced to Statue of Marlbridge introduced in 1267, wherein there was provisions for imprisonment of debtor however the main important developments in English law that shaped the modern insolvency laws are as under:-

1) The First English Bankruptcy Act of 1542 was a law with provisions to declare the dishonest and absconding debtors as quasi-criminals and a procedure to appoint body of commissioners to proceed against such offenders. The concept of "collective participation" by creditors and "Pari Passu" distribution of debtors assets among creditors were introduced in this act
2) 1570 Act or the Act of Elizabeth as it is known , provided for more laws on insolvency and even refined the procedure for initiation of bankruptcy. It introduce the concept of Lord Chancellor being given charge of the bankrupt estate (as was given to Body of Commissioners earlier). However the act had no provisions of 'discharge" of the debtor
3) Statue of Ann 1705 for the first time introduced the concept of "discharge" , which is a very important plank of the modern day insolvency laws and objectives. **How so? Elaboration is warranted.**
4) Finally the English Insolvency laws were reformed in 1883, wherein the office of "official receiver" was created. The law of 1883 is considered to be the foundation of the present English Insolvency System and is based on the principals of "fair procedure with adequate supervision and means to discourage dishonesty"

The question asked you to indicate significant developments, rather than legislations per se. You needed to identify the developments and explain how they shaped the way of thinking with respect to modern insolvency law. Some further elaboration was warranted to do this effectively.

2.5

Question 2.2 [maximum 3 marks]

Following the Covid-19 pandemic, States across the globe had to introduce measures to deal with the negative economic fall out of this pandemic. Briefly indicate three insolvency and insolvency-related measures so introduced in the UK.

In response to the Covid-19 pandemic , Corporate Insolvency and Governance Act 2020 was passed by the UK Parliament (Royal assent given on 25/6/2020) provides many temporary reliefs and some permanent changes to the insolvency laws of UK.

1) **Suspension of Wrongful Trading**- The directors of an insolvent company will not be held responsible for the worsening of the financial position of the company during the covid period. This actually suspends the old law of director could become personally liable towards creditors if the fail to minimize the losses to the creditors once the company is on it way to insolvency proceedings

2) **Restriction on use of winding up process-** A creditor will not be able to file a winding up petition against a company in the period 27/4/2020 to 31/3/2021 until the creditor can prove that there has been no financial effect of Covid on the company or the creditor can prove that company was unable to pay its debt regardless of Covid
3) **Ban on Statutory demand served being used to present a winding up petition**. – This was enacted basically with an aim to provide relief to the tenants from the landlords in case of default by the tenants on payment of rent, however later on the relief was passed on to all the companies.

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.

Both Treaties as well as "soft laws" are the bedrock of the Cross Border Insolvency regime.

Treaties such as the EIR, Montevideo treaties, Havana Convention, Nordic Convention are stringent piece of Multilateral/Bi-lateral agreements entered into between different states pertaining to cross border insolvency. In these treaties the member states agrees to policies pertaining to removing difficulties in cross-border insolvencies and the agreements so entered are binding on their domestic "hard laws" on Insolvencies, agreements of the treaties have overriding effect on the domestic laws of the member states. The various issues on which the members can enter into agreements are as under :-

a) Establish a rule for recognising the jurisdiction of the member state under which a cross border insolvency is to be conducted/adjudicated. In other words policies to manage concurrent insolvency proceedings are also agreed upon
b) Cooperate and coordinate through their courts and authorities with each other in case of cross border insolvency
c) Recognition of insolvency proceedings initiated in one member state by other member states. Enforcement of judicial orders issued by a member state.
d) Non-discrimination among the creditors and stakeholders of the member states

Thus Treaties seek to regulate the international insolvency laws by way of binding "hard laws"

Soft Laws . There are quasi-legal instruments which seek to regulate the International Insolvencies. These quasi-legal instruments are actually all encompassing and have been drafted and created by Multilateral organizations like:-

a) UNCITRAL has issued the Model Laws on Cross Border Insolvency- MLCBI. The Part-I and Part-II of MLCBI contains draft insolvency laws which can be referred to and incorporated to their domestic insolvency laws by the signatory state.
b) World Bank has issued "Principles for Effective Insolvency and Creditor/Debtor Regimes"

The Soft Laws are more of guiding principals and not a prescriptive in nature and are certainly not binding on the member state, rather the aim of the soft laws is to harmonize the domestic laws of the member states with the global insolvency best practices.

4

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.

The various possible sources of Insolvency laws in any state could be :-

a) Constitution of the State- The basic system of law adopted by the state, whether "common law" or "civil law" is derived from the constitution of that state, and the choice of the law effects the ethos and procedures of the Insolvency law of that state.
   It is the constitution which defines the freedom and rights that a person can enjoy with respect to starting a business, thereby effecting the creation/winding-up of business and business formats.
   Even the powers (jurisdiction) enjoyed by various courts and tribunals to adjudicate arise from the constitution itself.
b) Historical Trade Practises and Commercial Customs- There will be prevailing commercial customs and practises, which form the starting point for any insolvency law of the state. The common practises being followed for centuries and decades forms an important inputs to develop the insolvency laws of the state
c) Various Multilateral treaties that the state may have entered into pertaining to Insolvency /trade/commercial laws help shape the insolvency laws of the state
d) Various "soft laws" drafted by organizations like UNCITRAL, IMF, WORLD Bank , JIN etc
e) Banking Laws and Banking Acts of a state play a very important role in determining the approach of the insolvency laws of the state. (whether debtor in control / Creditor in control)
f) Companies Act of the state. This law contains the various laws pertaining to formation and dissolution of the company, therefore acts as an important source for the insolvency laws
g) Contracts Act, Transfer of Property Act
h) Taxation laws, labour laws – they too influence the insolvency laws of a state

It would be beneficial to discuss legislation (whether as a code of insolvency law or a multiplicity of insolvency legislations) and common law where it applies.

3

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.

The Three (3) pertinent questions raised by Fletcher in an attempt to bring the "cross border" and "insolvency" together are:-

1) **In Which Jurisdiction may Insolvency Proceedings be opened?**
   In case of Cross Border Insolvency the company undergoing insolvency proceedings will be having assets and business interests in many countries and each such country will be having different set of laws, difference in approach and difference in ideology towards resolution of insolvency situation. Each country shall try to protect the interest of the stakeholders residing in that country. Therefore there will be an obvious conflict of interest between all the countries wherein the assets of the insolvent company be located. Hence deciding the Jurisdiction wherein the Insolvency Proceedings shall be opened is a very important aspect of Cross Border Insolvency, as only once when there is an agreement with respect to the Jurisdiction of the Insolvency proceedings whether by the principal of COMI or whether by principal of "territorialism" , can the insolvency proceedings proceed.

2) **What Countries law should be applied in respect of different aspects of the case?**

There will be many aspects to be taken care of before a resolution to the insolvency of a company can be achieved. There will be aspects like :-

(a) Who Can initiate an Insolvency
(b) Creditor in control/ Debtor in control
(c) Policies towards retrenchment of Labour
(d) Treatment of Statutory dues
(e) Treatment of small unsecured/operational creditors
(f) Policy towards wrongful trading by the ex-management
(g) Termination of onerous contracts

That will be dealt differently under different system of laws and different jurisdiction. Therefore there has to be an agreement as to which countries law should be used for a particular aspect depending upon the uniqueness and peculiarity to the stressed situation of the company undergoing insolvency. Since the assets of the insolvent company shall be in many countries, each country having a different approach and law on different aspects (obviously will have different objectives to be fulfilled from the insolvency proceedings) , therefore there is an imperative need to decide as to which country law shall be applicable on which aspect of the case, so that there is a uniformity of the treatment given to all the creditors and there is no conflict in the process

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

There could be a situation wherein the insolvency proceedings are conducted at a particular forum (in the state wherein the company has turned defaulter) but in actuality the company is not a defaulter in other jurisdictions. Therefore the assets and establishment of the company in other countries wherein the company is not defaulter (apart from the country wherein the insolvency proceedings are conducted) shall be effected by the orders of insolvency issued by the adjudicating forum

There will be issues of enforcement of the insolvency orders issued by the adjudicating forum in other countries as each country would try to ringfence the assets of the company within its jurisdiction for the benefit of the stakeholders who are its citizen.

There will be multiplicity of claims and counterclaims and hence the process of insolvency will be long drawn and costly for all the creditors whatsoever irrespective of the country to which they belong.

Similarly there will be a discrimination in the distribution of the assets of the company among the creditors

In answering the three questions posed by Fletcher, could insolvency proceedings possibly be opened concurrently in more than one State, each State would apply its own laws? What cooperation difficulties does this raise ?

3.5

Question 3.3 [maximum 5 marks]

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

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

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

The case of Maxwell Communications Corporation PLC infact predated the MLCBI as during this particular case all the problems that arise in “cross border insolvency” were actually realised and a workable structure was created so as to maximize the value of the estate at minimum expense, wastage and judicial expenses.

In this case a concurrent insolvency proceedings were initiated against Maxwell Communications in UK and USA in 1991. 2 separate insolvency professionals were appointed (one in each Jurisdiction). The courts of UK and USA independently raised the idea of coordination and cooperation between the 2 jurisdictions , so that both the jurisdiction cab work together to maximise the value of the estate.

Therefore the first issue that was settled was the issue of jurisdiction , in which the USA courts deferred to the UK courts. Thereby minimizing the judicial conflict and cost of the process

In order to maximize the value of the assets of the company, it was decided to maintain the company as a going concern till the time a new management is not identified through the resolution plan. The insolvency resolution professionals of both the jurisdictions worked in tandem , with UK representative taking the bulk of responsibility with the concurrence of the USA representative. Thereby presenting an excellent example of cooperation and coordination and settlement of the approach to be taken pertaining to various approaches and unique aspects of an insolvency.

Thereby we can say that the Maxwell case predates the MLCBI and is actually an impetus for the release of MLCBI later in 1997

5
Marks awarded 11.5 out of 15

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

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

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

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

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

Question 4.1 [maximum 7 marks]

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

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

As on 18/6/2020 the EIR (Recast) was applicable on UK and the Covid-19 reliefs by UK were not announced. Therefore the Proceedings opened in UK shall be deemed to be the "main proceedings" as for Rydell the COMI (Centre of main interest) is UK. And as per EIR guidelines, the principal of COMI is well recognised and also an insolvency proceeding initiated in any EU country shall be recognised by all the other EU countries. **It would be beneficial to discuss recognition.**

Application of EIR (Recast) on the Insolvency proceedings implies that there will be :-

a) The Jurisdiction of the Insolvency is well settled and shall be accepted by all the members of EU
b) The applicable law is also well settled, as that of the country of COMI
c) Mandatory automatic recognition of the proceedings in other EU countries
d) Methods by which cooperation and coordination will be achieved between more the member states.

It would be beneficial to discuss relevant articles of the EIR Recast.

Further information would be useful would be :-

a) Whether the Minor creditor holds qualified Floating charge on the asset of Rydell so as to be able to initiate insolvency proceedings
b) Will the out of court proceedings as will be initiated by minor creditor be recognised in other countries without the same being authorised by the UK courts.

Secondary proceedings and matters pertaining to establishment should be discussed.

4

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.

UK ceased to be a member of EU from 1/1/2021, therefore the insolvency proceedings if started from 18/6/2021 , ie after the Brexit, then the EIR will not be applicable on the insolvency proceedings started in UK and therefore the other EU countries shall not recognise the insolvency proceedings started in UK and the creditors of Rydell in other EU countries shall be free to initiate insolvency proceedings in their jurisdiction as well.

Moreover the proceedings will sustain in UK only if it has been proved that the default by Rydell would have happened even if there was no covid-19 situation as there has been a "Restriction on use of winding up proceedings" as part of covid insolvency relief announced by UK on 26/6/2020 vide Corporate Insolvency and Governance Act 2020.

It would be beneficial to discuss the need for information as to whether the relevant countries in Europe had adopted the MLCBI and if not what laws would need to be considered in those countries.

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?

If Rydell is registered with its COMI in any other county of EU (apart from UK) then it implies that the provisions of EIR Recast cease to be applicable on UK (as UK has exited from EU on 1/1/2021) and therefore in case of any insolvency initiated against Rydell in a country apart from UK the same shall not be automatically recognised by UK, similarly in case any proceedings initiated in UK shall not be recognised by other countries of EU.

Now to consider initiation of proceedings against Rydell in UK by a minor creditor the applicable domestic UK law is schedule B1 of the Enterprise Act of 2002. As per this schedule the minor creditor shall be able to get appointed an administrator out of court (in case the minor creditor holds a qualifying floating charge on the assets of Rydell)

Here it must be noted that the UK had given temporary insolvency relief pertaining to Covid-19 vide Corporate insolvency and Governance Act 2020 on 25/6/2020, whereby the insolvency proceedings against Rydell shall be initiated only when it has been proved that the financial default by Rydell is not because of Covid-19 situation but would have happened anyways even if there was no covid-19

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

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Marks awarded 6.5 out of 15
TOTAL MARKS 37.5/50

*** End of Assessment ***