



**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.

Three significant (historical) developments regarding debt collection procedures in English law that shaped the way of thinking concerning modern insolvency law are:

1. The Act of Elizabeth. This is historical as it was the first law designed as a bankruptcy statute to aid creditors. It laid the foundation to deal with insolvency and bankruptcy and aimed to prevent fraudulent transactions that impeded creditors or more so their collection efforts.
2. The Statute of Ann is also historical as it introduced the notion of statutory discharge which is exists today. **It would be beneficial to elaborate upon modern principles of fresh start in this respect.**
3. The 1883 Bankruptcy Act is also historical as it introduced the office of the Official Receiver who had the responsibility of administrating the debtors' estate before the commencement of the bankruptcy procedure or of the friendly agreement with creditors. Its objective which was to impose greater official control over bankruptcy proceedings remains relevant to date. **There is scope to elaborate.**

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.

To deal with the negative economic fallout of Covid-19, the UK parliament passed the Corporate Insolvency Governance Act 2020 which introduced several insolvency-related measures to deal with the negative economic effect. Three of the insolvency related measures are listed below:

1. A new restructuring plan. This was passed to help companies struggling with debt obligations. In essence the Courts can sanction a restructuring plan that binds creditors if it is "fair and equitable". Creditors are given the option to vote on the plan, but the court can impose it on dissenting creditors which known as "cross-class cram down".
2. A free-standing moratorium. This is to give UK companies a "breathing space" to pursue a rescue or restructuring plan. During this moratorium no creditor action can be taken against the company without the court's permission.
3. Suspension of serving statutory demands. Statutory demands were void if served on a company during the "relevant period" (between 1 March 2020 and 30 September 2021).

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.

Soft law refers to quasi-legal instruments which do not have any legally binding force such as the UNCITRAL rules. These quasi-legal instruments are generally rules or instruments that interpret or inform our understanding of binding legal rules. These may be used to establish cross-border insolvency rules as it encourages States to use them as guideline to create, amend or interpret rules which has the effect of comity of rules among States. Whereas a treaty is any legal binding agreement, covenant, instrument, protocol or covenant etc. between nations. Signatories to treaties are internationally bound by the treaties and are required to enact laws to give effect to the arrangements under the treaty. Once the laws are enacted and forms a part of a State's domestic law it can be enforced in that State's court. This is used to attain harmonization of laws between States and an example of a multinational treaty that seeks to attain this is the Nordic Convention on Bankruptcy which was entered between countries such as Norway, Sweden, Denmark, Iceland and Finland. This treaty deals with enforcement of judgments in relation to insolvency proceedings. **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.

There are several possible different sources of insolvency law that may exist in a State for example the United Kingdom (**UK**) that may interact together to attain one unified outcome i.e., regulate debt recovery and provide worktable solutions for recovering debts. They are as follows:

1. Domestic laws which includes common law and legislations:
  - i. Common law is a body of law that is derived from judicial decisions. This body of law is relied on to provide the general principles of insolvency usually not addressed by statute. **It would be beneficial to discuss how this common law fills the gaps in laws in common law jurisdictions.**
  - ii. As it relates to legislations, an example of legislation that governs insolvency in the United Kingdom is the Insolvency Act 1866 which is said to be an example of a unified insolvency legislation since it deals with: (i) both personal and corporate bankruptcy and (ii) provides the general rules governing insolvency. It is supported by subsequent statutory authorities and orders such as:
    - (i) The Debt Relief Order which is another way to deal with debts provided that they are under a certain amount. This order provides an individual with relief from paying certain debts (usually 12 months). It is often utilized to have your debts written off if you have a relatively low level of debt and have few assets. This works to support the intent of legislators in debt recovery. It offers a more simplified, quicker and cheaper alternative to bankruptcy as an insolvency measure and aims to provide a low-cost debt remedy aimed at the financially excluded who



have relatively levels of debt, little surplus income and few assets.

- (ii) The Corporate Insolvency and Governance Act which also aims to support the previously mentioned legislations since it updates the insolvency regime to deal with the present realities such as the economic fall-out due to Covid-19.

**It would be beneficial to discuss insolvency legislation as either a code or multiplicity of legislation and explaining how this varies from State to State.**

2. International law which includes soft laws, treaties and conventions etc.:

- i. Soft laws are non-binding international instruments which are used to provide guidance to parliament as to rules they implement and aim to provide a draft model of the ideal insolvency legislation. They can become hard law through legislations. They are also used to encourage judicial comity and coordination of States in relation to the rules and regulations that govern corporate insolvency. The UK as adopted the UNCITRAL Model Law on Cross-Border Insolvency as a part of its domestic law.
- ii. Treaties and conventions are binding international instruments. These interacts with domestic law as States who become signatories bind themselves to conform to the treaty (which entails international insolvent principles) and by doing so, they are then implemented by Parliament through legislation which then forms apart of local domestic law which can be enforced in court. Prior to its departure from the European Union, the UK was bound by a well-known multilateral instrument which is the EIR Recast. This binds countries a part of the European Union to a set of common set of rules and regulations. Although, the UK is no longer bound to the EIR Recast, it has influenced the UK to enact a 'slimmed down version of the EIR Recast' i.e., UK Insolvency (Amendment) (EU Exit) Regulations 2019 (the "**Retained EIR**") which has preserved aspects of the EIR Recast such as the jurisdiction of the English courts to open insolvency proceedings in relation to debtors who have their COMI in England.

**It would be beneficial to discuss general law and its relevance and impact upon insolvency law.**

**2.5**

### **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 questions raised by Fletcher were:

- 1. In which jurisdictions may insolvency proceedings be opened?
  - This question is arguably the most pertinent question since in order to bring cross- border insolvency proceedings it must first be established which Court has jurisdiction to hear the matter. This is important because the validity of the proceedings hinges on the proceedings being properly brought before the proper court. To determine the proper forum, it is therefore necessary to consider the parties' location/ incorporation and whether there are any

connections to the jurisdiction. In cross-border insolvencies we also see the importance of harmonization of laws since a clear structure like that of the European Union (pursuant to the Recast Insolvency Regulation) provides judicial certainty and eliminates confusion and judicial embarrassment.

2. What country's law should be applied in respect of different aspects of the case?
  - This question is important as a Court must consider the appropriate law to apply to cross-border insolvency proceedings. Generally, the Court will usually apply the law of the forum i.e. its State. However, there are exceptions to this where the parties have invoked a different law by way of agreement or there is a treaty that determines the applicable law.
3. What international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)?
  - This is a significant question to consider as some foreign countries have enacted legislations that enforce "Reciprocal Enforcement of Judgments" between certain States. Therefore, these countries will recognize and enforce a foreign judgment from the foreign forum as legal and binding in its jurisdiction and there will be no need to reargue the case on its merits. This aids cross-border insolvency proceedings and serves to be effective. Therefore, it is necessary to consider whether a forum is likely to recognize a foreign judgment or whether local proceedings will need to be pursued in that State.

**In answering the three questions posed by Fletcher, could insolvency proceedings possibly be opened concurrently in more than one State? 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.**

A prominent case law example for this quotation is *Maxwell Communication Corporation Plc 1991* which is said to be the most important transnational avoidance case ever to be decided. In this case, insolvency proceedings were commenced by a single debtor in the United Kingdom where the Company had administered most of its financial affairs such as loans and grant of securities. Similar proceedings were also commenced by the same debtor in the United States where the Company's principal assets were located such as its operating companies. Both the United States and the United Kingdom judges encouraged the idea of a Protocol Agreement with the appointed administrators and approved the Protocol Agreement. This facilitated the exchange of information between the administrators in the United Kingdom and the United States to deal with the assets. This allowed for harmonization of the proceedings and a joint effort to realize assets and avoid judicial conflict.

As we are aware, the Model Law was introduced in 1997 to provide suitable solutions to the issues plaguing cross-border insolvency proceedings and to provide co-ordination and corporation among States. However, in light of the 1991 decision of *Maxwell Communication Corporation Plc* we see that the Courts have long recognized the importance of harmonisation of decisions and had introduced a suitable solution which was later acknowledged and accepted internationally.

**This answer displays a satisfactory understanding. To improve your responses, ensure they are commensurate with the mark allocation – while Q 3.3 asks for a brief note, it is for 5 marks. It would be beneficial to elaborate with respect to the case.**

**3**  
**Marks awarded 9 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.

Prior to Brexit, the European Recast Insolvency Regulation (the **Regulations**) applied to the UK and all states of the European Union (the **EU**) except Denmark. Following the UK's exit from the EU, the UK law provided that the Regulations continued to apply to insolvency proceedings within the UK provided that the main proceedings were opened before the end of the Transition Period (31 January 2020 - 31 December 2020). Therefore, the Regulations would continue to apply to the UK proceedings commenced as at 18 June 2020 and to any other proceeding commenced a month's later. Therefore, considering that Rydell's centre of main interest (COMI) is in the UK, if the proceedings were to commence before the Transition Period expired, the Regulations would apply and the UK will automatically be recognised as the proper forum for main proceedings throughout the EU. Also, the judgment of the proceedings would be widely recognized in all other EU countries with the same effect. However, if it can be proven that Rydell has any establishment within states in the EU, the EU Court may permit other creditors such as Fernz to bring secondary territorial proceedings in an EU State. Therefore, further information that would become relevant is:

1. Whether Rydell has any 'establishment' in the Europe i.e., any place of operation where non-transitory economic activities are carried out. This is important because the Regulations provide that EU country may also open insolvency proceedings against the debtor if the debtor has a place of operation in an EU country other than the one where the debtor's main interests are centred.
2. Whether Rydell have any assets located in the EU? This will assist with determining whether secondary proceedings should be brought as the law provides that 'secondary proceedings' are limited to the assets held in that country.
3. Is the debt unsecured? This is important since the Regulation provides that that companies will be rescued by avoiding the opening of parallel secondary proceedings where the interests of local creditors are otherwise guaranteed.
4. Is there any agreement which states that the dispute is to be governed by arbitration? This will determine whether the parties are bound to arbitrate instead of bring proceedings in Court.
5. What is the sum that is owed and when did the debt become due? This is important as liquidation proceedings can only be brought against a debt that is due and owing.
6. Who are the other creditors and what is their status (secured or unsecured), This important as assets will be distributed in the order of priority in liquidation proceedings. Also, secured creditors are entitled to use their security to recover their money.

**There is scope to elaborate, for example with respect to what is required for establishment.**

**6**

**Question 4.2 [maximum 3 marks]**

How would your answer to 4.1 differ if the proceedings were opened in the UK on 18 June 2021 instead of 18 June 2020? Also note what further information, if any, might become relevant.

My answer would differ if the proceedings were opened in the UK on 18 June 2021 instead of 18 June 2020 because prior to 1 January 2021, the UK primary legislation that dealt with cross-border restructuring and insolvency between the UK and other EU member states was the European Recast Insolvency Regulation. This legislation provided a common set of rules for all EU members in relation to the determination of the proper jurisdiction for a debtor's insolvency proceedings, the substantive law to be applied to the proceedings, and the automatic recognition of proceedings. Therefore, the proceedings initiated on 18 June 2020 in the UK would have been governed by European Recast Insolvency Regulations whereas the proceedings initiated on 18 June 2021 would not have been and UK domestic law would apply.

Information that might become relevant is what is whether the debt is secured or unsecured and whether Fernz has reasonable grounds to believe that Covid-19 did not have a financial effect on the company or the debt issues would have arisen regardless of COVID-19.

**It would also be beneficial to look to the MLCBI or other local laws and seek information in this respect.**

**2**

**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?

I would consider the *UK Insolvency Act 1986*, particularly *section 221(5)* which provides that an unregistered foreign company may be wound up in the UK in certain circumstances:

1. If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
2. If the company is unable to pay its debts; or
3. If the court is of the opinion that it is just and equitable that the company should be wound up.

It is important to also consider case law on the area since the cases sets out the grounds on which a foreign company can be wound up. They are as follows:

1. There must be a sufficient connection with England and Wales; **There is some scope to elaborate on 'sufficient connection'**
2. There must be a realistic possibility of benefit to those applying for the winding up order; and
3. One or more persons interested in the distribution of a company's assets must be persons over whom the Court can exercise jurisdiction.

**4.5**  
**Marks awarded 12.5 out of 15**  
**TOTAL MARKS 40.5/50**

**\* End of Assessment \***