



**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.

1. English Bankruptcy Act of 1542 – the development of the collective participation of creditors. This has shaped the thinking of modern insolvency to include all classes of creditors in the insolvency process where creditors can participate in the process rather than be dictated to on the outcome. This is particularly important in ensuring reorganisations result in a going concern outcome rather than a liquidation scenario.
2. English Bankruptcy Act of 1542 – Pari Passu distribution of available assets. This development shaped the equal distribution of recovered assets for the benefit of creditors allowing a fair representation in the process.
3. The 1570 Act or the Act of Elizabeth – where the supervision of the estate was transferred from the commissioners to the Lord Chancellor. The development of this and shaping the way of modern insolvency law, is that it allowed a creditor to open proceedings against a debtor after an act of bankruptcy which is the basis of modern insolvency appointments where an independent party is assigned to oversee and review the matters of the debtor. This process allows for creditors to bring **this seems incomplete**

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. A new restructuring plan introduced in the UK<sup>1</sup> – a debtor in possession model with the aim to allow the organisation to continue as a going concern. This process was to be overseen by a monitor as an officer of the court and prevented creditors from pursuing enforcement during the 20 day moratorium, providing time to develop a plan and get approval. This process assists in dealing with the negative effects of the pandemic where the underlying business in good condition but temporary economic conditions have hampered its performance and needs assistance in dealing with its creditors.
2. Suspension of winding up petitions and statutory demands<sup>2</sup> – a temporary ban on winding up petitions and statutory demands was introduced during the pandemic effective 1 March 2020 extended through to 31 March 2021. A creditor could still file if they believed Coronavirus did not have an effect financially on the debtor or the debt would not have been paid without the financial effect of Coronavirus. This provided time for genuinely impacted businesses to work through solutions to continue and reduce temporarily impacted induced winding ups.
3. Moratorium on landlords and lease evictions<sup>3</sup> – Through to 31 March 2021, landlords were no longer able to end a lease and take possession because of rental arrears. The outstanding rent and interest accumulated on the unpaid rent would still be payable

<sup>1</sup> “INSOL International – World Bank Group Global Guide”, at <<[https://insol.azureedge.net/cmsstorage/insol/media/documents\\_files/covidguide/30%20april%20updates/uk-12-may2021-final.pdf](https://insol.azureedge.net/cmsstorage/insol/media/documents_files/covidguide/30%20april%20updates/uk-12-may2021-final.pdf)>>, accessed 15 November 2021.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

after 31 March 2021. This was to ensure tenants were not evicted and could work through temporary issues due to introduced Covid-19 measures.

**It would be beneficial to refer to the introducing legislation also.**

**2.5**

**Question 2.3 [maximum 4 marks]**

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

Treaties are public international instruments and usually involved being put in place by States and governments such as the European Union. Treaties can be used to establish cross-border insolvency rules in States because they can be imported into domestic law principles. States or members of collective bodies can become signatories or members and bind themselves to the treaties which in turn affect their domestic insolvency law.<sup>4</sup> **It would be beneficial to discuss ‘hard law’ concepts also.**

Soft law is not formal legislation employed by governments and is developed by multilateral organisations that provide a guide on an approach to insolvency rules, rather than through governments and the State itself being the only contributor. The organisations can produce the initiative or model for adoption. Soft law has been used to establish cross border insolvency rules by providing the guide to adopt such as UNCITRAL, the Model Law and draft legislation that states can adopt with or without changes of their own.<sup>5</sup> **It would be beneficial to also discuss the relative success of hard vs soft law.**

**3**

**Marks awarded 8.5 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.

In any State, it is not limited to one source of different insolvency laws. While the historical roots of insolvency laws come from either the civil law or English law, more recent sources of insolvency laws in any State is the legislation or codes that each State will have. These will vary from State to State. **It would be beneficial to discuss differences in insolvency legislation as either a code or multiplicity of legislation**

The other possible source is common law principles. While the legislation and codes can provide the foundation for the State, they interact with each other where there are gaps in the existing legislation, common law principles will plug the possible gaps.<sup>6</sup>

Legal principles, which form part of general law have a large influence on insolvency laws in states and between states can vary greatly. The legal principles are derived from non-insolvency law and interact with insolvency laws as insolvencies encompass different forms where there is asset possession, operations of companies and security interest of creditors.<sup>7</sup>

**4**

<sup>4</sup> Boraine, Dr Andre and Mason, Rosalind, *Introduction to Insolvency Law*, London (2021/22).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.



**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/issues raised by Fletcher are:

1. “In which jurisdiction may insolvency proceedings be opened?”<sup>8</sup> seeks to address which State an insolvency procedure can be started in as States have different legislation and codes. Due to the differences in legislations, this question asks whether a court can and will determine the matter. To determine whether a court has jurisdiction or not, the cross border parties involved or the underlying dispute need to demonstrate the connection to a jurisdiction.
2. “What Country's law should be applied in respect of different aspects of the case?”<sup>9</sup> looks at the issue of multiple jurisdictions being involved in proceedings, there are going to be a range of different legislations, codes, treaties, soft law and legal principles between them. In common law jurisdictions, to address this issue, it only becomes an issue when the parties choose to apply the law outside of the forum that applied. The choice will usually be determined where it would provide an advantage in seeking recognition elsewhere. In civil law jurisdictions, the foreign law applicability is not a question of fact but a question as to whether the law sees fit that it is relevant.
3. “What international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)?”<sup>10</sup> is the third question raised by Fletcher and can be broken down into both recognition, the conclusive effect of a judgement and enforcement which is the execution of the judgment or compliance with said terms. The cross border aspect of this issue is important because it involves the foreign states being in agreement with the process undertaken to agree that that judgement should be recognised and that then that the outcomes and settlement can be implemented.

The three issues arise due to the differences in systems between states and the lack of agreement on approaches to insolvency in states. The importance in asking the above questions brings the focus back on to how states can agree where there are competing insolvency aspects, reach a state of cooperation and is a major focus of the modern insolvency regime to be applicable and replicable across borders.

**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 ?**

**4**

**Question 3.3 [maximum 5 marks]**

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

<sup>8</sup> I Fletcher, *Insolvency in Private International Law* (Oxford University Press, 2nd ed, 2005).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

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 above quotation looks at how there are examples in practice where cross border agreements have been reached before the Model Law examples were introduced. A case example that demonstrates the cooperation of foreign courts is the Maxwell Communication Corporation plc case in 1991 between the jurisdictions of the United States and England. The timing of the case being heard in 1991 means that it pre-dates UNCITRAL’s practice guide adopted in 2009, ALI-III’s Guidelines in 2012 and the Judicial Insolvency Network’s Guidelines of 2016.

The case of Maxwell involves both courts in respective States agreeing to a way forward through a “Order and Protocol” which recognised the concurrent proceedings and set a way the courts could deal with the interests<sup>11</sup>. In Maxwell, both England and the United States had separate insolvency representatives, initiated by the same debtor. The judges conferred with one another that by agreeing on an insolvency agreement there could be an better resolution and flow of information. The agreement reached by the court was to maximise the benefit of creditors and bring together the proceedings and with this workable structure assigning which court would defer to each other and underlying specific protocols including what could occur in each jurisdiction, with or without respect to the other.

This coordination of jurisdictions allowed an agreement that could navigate the complex international insolvency when considering Chapter 11 in the United States and administration proceedings in England. The case and those similar, provided a workable foundation on cross border coordination to become the basis of agreements like UNCITRAL and examples of how communication between States facilitate a streamlined process.

**This answer displays a good understanding. There is some scope to elaborate.**

**4**

**Marks awarded 12 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]**

<sup>11</sup> United Nations, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*, United Nations Publications, Vienna (2009).

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.

Important information to consider when determining if and how the European Insolvency Regulation Recast would apply to this circumstance include:

- examining what is meant by proceedings being opened in the UK;
- if Rydell could have proceedings brought against it under the European Insolvency Regulation Recast; and
- the relevance of the UK leaving the European Union.<sup>12</sup>

The further information that would be required to fully consider if proceedings can be brought against Rydell would be whether the definition of the Rydell insolvency proceeding being opened meets the same definition and standards of European Insolvency Regulation Recast being opened. This would be considered important because it helps underpin that the proceedings were valid and underway as of 18 June 2020 and for the proceedings to be recognised under the European Union's legislation prior to Brexit. As well as if the proceedings were opened appropriately, other aspects of whether the European Insolvency Regulation Recast applies is the fact that Rydell's centre of main interest is in the UK and that is where the minor creditor has brought proceedings. Under the European Insolvency Regulation Recast, the regulation defines the main proceeding to be where the debtor's main interest are, which in this case is the UK and as a result proceedings can be brought against Rydell under the Recast. Secondary proceedings can also be commenced under the European Insolvency Regulation Recast. Secondary proceedings are where the debtor is carrying out economic activity in another member state of the European Union, outside of its centre of main interest and is not transitory activity. The further information to understand if Fernz proceedings would be valid is whether Rydell's activities in the other European countries meet this definition under secondary proceedings.

As Great Britain left the European Union effective 11pm 31 December 2020, it is no longer required to oblige with the European Union's agreements automatically after that date. Transitional requirements of proceedings were introduced for the European Insolvency Regulation Recast where main proceedings were started before 31 December 2020, the other member states of the European Union would continue to recognise the UK proceedings and vice versa. Further information is required to determine whether these transitional agreements apply because there are exceptions to their application which are if the court determines the interests of a creditor, debtor or shareholder of the debtor will be materially prejudiced or determined it will be grossly against public policy they will not apply.

**Well answered. There is some scope to elaborate on specific provisions of the EIR Recast.**

**6**

#### **Question 4.2 [maximum 3 marks]**

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

<sup>12</sup>"Impact of Brexit on insolvency", <<<https://www.nortonrosefulbright.com/en/knowledge/publications/fc0fb698/impact-of-brexit-on-insolvency>>>, accessed 15 November 2021.

The European Insolvency Regulation Recast ceased to apply in the UK after 31 December 2020, as 18 June 2021 is when the main proceedings were underway and they were not started prior to 31 December 2020, the European Insolvency Regulation Recast would not apply.

Further information is required to determine if the court deemed the UK was the appropriate jurisdiction for the matter to be heard and if so, the minor creditor would still be able to commence proceedings against Rydell on 18 June 2021 in the UK. This proceeding though would not be under the European Insolvency Regulation Recast and instead the Insolvency (Amendment) (EU Exit) Regulations 2019 would apply and gives UK courts the power to open proceedings after 31 December 2020 where its for the purpose of a reorganisation or insolvency restructure and the debtors main interest were in the UK or elsewhere in the European Union but with interests in the UK.

This would then allow for the minor creditor to bring proceedings, although not under the European Insolvency Regulation Recast and would also allow Fernz to bring proceedings if the appropriate criteria was met for the secondary proceedings.

**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?

In the situation where Rydell were unregistered with its COMI in another member state, the UK courts may still have the jurisdiction to proceed with a court order winding up under the Insolvency Act 1986 (UK), rather than the European Insolvency Regulation Recast. The Insolvency Act 1986 would apply because the minor creditor would not be able to commence proceedings as a member state after 31 December 2020 and would not be a main proceeding as they are not in the same jurisdiction. The Insolvency Act 1986 (UK) court ordered winding up could apply for the minor creditor against Rydell in the following circumstances:

- 1) If Rydell was dissolved or ceased to carry on business, or in the process of winding down its business.<sup>13</sup> From the information available, while Rydell is experiencing a downturn in business, the information does not disclose it is currently being dissolved or in the process of winding down so from available information this would not be available for the minor creditor.
- 2) If Rydell was unable to pay its debts. From the information, Rydell has unpaid amounts owing to the minor creditor, Fernz and others.<sup>14</sup> In order for the English Court to determine if this was applicable, the minor creditor would have to demonstrate Rydell is unable to pay its debts usually by something similar to a statutory demand and if that remains unpaid would be grounds that Rydell is unable to pay its debts.

<sup>13</sup> Boraine, Dr Andre and Mason, Rosalind, *Introduction to Insolvency Law*, London (2021/22).

<sup>14</sup> Ibid.

- 3) If the UK court is of the opinion that it is just and equitable that Rydell should be wound up.<sup>15</sup> This is more subjective and would require further backing information to substantiate against Rydell that it is just and equitable of which the information is not provided in the question.

**It would be beneficial to refer to s221(5) specifically**

From the above circumstances, the English courts still need to demonstrate sufficient connection with the UK meaning assets within the jurisdiction, a likely benefit for winding up the Rydell and interested party, the minor creditor, being subject to the UK jurisdiction which appears is the case from the information.

In review of available information, under the Insolvency Act 1986 (UK) and not the European Insolvency Regulation Recast, the minor creditor may be able to commence formal insolvency proceedings against Rydell on 18 June 2021.

**4.5**

**Marks awarded 12 out of 15**

**TOTAL MARKS 42.5/50**

**\* End of Assessment \***

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<sup>15</sup> Ibid.