



**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.

Whilst not originally provided for in English law, imprisonment for the non-payment of debt was introduced following the Statute of Marlbridge of 1267.

Over time, developments were made in English law, with the first Bankruptcy Act being introduced in 1542. Subsequently, the Act of Elizabeth was introduced (in 1570) during Queen Elizabeth I's reign. The Act of Elizabeth resulted in supervision of a bankrupt's estate moving from a commissioner to the Lord Chancellor – acting as a regulator (of sorts). As a result of such developments, bankruptcy proceedings could be opened, and a debtor's property (/assets) and transactions (/liabilities) would be examined, with the debtor being obligated to transfer its property (/assets) to the Lord Chancellor (or commissioners, if instructed to supervise the process by the Lord Chancellor), who would then deal with the division of assets. NB, the aforementioned Bankruptcy Act of 1542 called for a collective participation by creditors and a pari passu distribution among them, of the available assets. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law.**

The Statute of Ann was introduced in 1705, which introduced the notion of a statutory discharge – this was not an automatic entitlement and the Lord Chancellor (/commissioners) had to confirm that a debtor had conformed and cooperated during the proceedings. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law.**

NB, imprisonment for the non-payment of debt was later abolished following the introduction and implementation of the Debtors Act in 1869. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law.**

1.5

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.

The Corporate Insolvency and Governance Act 2020 ("CIGA") came into force on 26 June 2020. CIGA introduced the biggest reforms to the UK's corporate insolvency framework for almost twenty years, and a number of these reforms were implemented as a result of the COVID-19 pandemic.

One such reform related to changes in moratorium rules. Under CIGA, a moratorium ("the Moratorium") was made available to distressed companies (both solvent and insolvent) to provide them with short-term breathing space (i.e. free from creditor action) in order for the companies to review their options and resolve their financial issues. The Moratorium lasted for an initial period of 20 business days and was to be overseen by a licenced Insolvency Practitioner who would keep the Moratorium under review. During the last five days of the initial period, this Moratorium could be extended for up to 12 months – potentially even longer with the Court's consent. It was expected that the Moratorium would be utilised by small and

medium sized companies as any entities with over £10m in capital markets arrangements were not eligible for the Moratorium.

Another measure implemented by CIGA – the Restructuring Plan – was aimed more towards larger companies and was a standalone tool for insolvency professionals to facilitate the restructuring of financially distressed companies’ finances and operations, via a Court-supervised process. The Restructuring Plan combined features of the existing scheme of arrangement procedure and the US Chapter 11 process. It is important to note that even if a class of creditor votes against a Restructuring Plan, it may still be implemented following Court sanction, providing that a class of creditor holding an economic interest has approved the same, and that none of the dissenting class would end up in a worse position in the (most likely) alternatives of Administration or Liquidation.

CIGA also resulted in a temporary suspension of s214 of the Insolvency Act 1986 (“the Act”), i.e. the section relating to wrongful trading. This was to assist UK directors in an effort to tackle the extreme trading conditions caused by COVID-19, without the risk of personal liability.

In addition, Schedule 10 of CIGA restricted the presentation of debt related winding up petitions, in circumstances where a company could not pay its bills (rent included) due to COVID-19. These restrictions were extended on a number of occasions, and subsequently lifted on 30 September 2021.

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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” is often used to describe types of quasi-legal policy instruments, such as ‘codes of conduct’ and ‘guidelines’ etc. Whilst “soft law” options may not be legally binding, in terms of finding solutions to internal insolvency law issues, more success has been gained through the use of “soft law” solutions, as opposed to the variable success achieved when using “hard law” alternatives. Given the above, a range of multilateral organisations have focussed their efforts on “soft law” approaches in recent decades.

In the mid-1990s, the United Nations Commission on International Trade Law (“UNCITRAL”) developed a Model Law on Cross-Border Insolvency (“MLCBI”), which has proved to be the most successful “soft law” approach to date. As suggested by its name, MLCBI was a model law, namely draft legislation that UNCITRAL recommended its member states adopt, with or without modification (as opposed to taking the form of a treaty or convention). MLCBI is gaining momentum as a powerful and influential response to international insolvency law as a result of the spread of UN member states, in addition to the economic size and sheer number of the same.

Under international law, a ‘treaty’ relates to any legally binding agreement between nations. Once a State becomes a signatory to a treaty or convention, it affects said State’s domestic law(s) – as regards domestic laws enforceable in the Courts, these may form part of a State’s “hard law” on insolvency.

Treaties and conventions first appeared in Europe in the 13th century and were used as a means of dealing with absconding debtors and collecting/realising assets. More modern (and developed) forms of bilateral treaties/conventions appeared in the 19th century, and these aimed to address/recognise bankruptcy and winding up related enforcement. Despite “soft law” solutions appearing to be more successful than treaties or other “hard law” alternatives, the Nordic Convention (1993) proved to be an effective multilateral treaty.

4
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.

Not a single set of a insolvency rules apply globally and as such, a State's insolvency laws have various sources.

At present, the main sources of law(s) that apply in a State are usually found in codes and/or legislation, although it should be noted that common law principles may be used to plug potential gaps in existing legislation in systems that remain based on the common law.

Furthermore, a number of legal principles that form part of a State's general law (i.e. not bankruptcy or insolvency specific law) will also have an effect in insolvency – namely, rights of real security or the rules relating to the vesting of real rights (ownership etc.). Whilst not found in insolvency legislation, these legal principles have a significant impact upon insolvency law. NB, jurisdictions' legal systems can differ significantly in respect of the aforementioned 'general law' and as such, effect differences within their insolvency laws, leading to potential international insolvency law issues.

As noted previously, in the mid-1990s, the United Nations Commission on International Trade Law ("UNCITRAL") developed a Model Law on Cross-Border Insolvency ("MLCBI"). As suggested by its name, MLCBI was a model law, namely draft legislation that UNCITRAL recommended its member states adopt, with or without modification (as opposed to taking the form of a treaty or convention). MLCBI is gaining momentum as a powerful and influential response to international insolvency law and can be used to assist in situations such as those detailed above, above where jurisdictions' 'general laws' (and subsequently insolvency laws) differ, State to State.

In addition to the sources covered above, some systems have a single, unified piece of legislation covering all aspects of bankruptcy. For example, the Bankruptcy Code 1978 is federal legislation and therefore applies throughout the United States. In a number of other States/systems, a variety of legislations exist – these must be reviewed and studied alongside one and other in order to fully understand the laws of the State/system. An example of this is where individual/bankruptcy laws are different to the corporate laws relating to the winding up of a company – such as, in Australia.

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.

Fletcher proposes that "international insolvency" or "cross border insolvency" should be considered as a situation "... in which an insolvency occurs in circumstances which in some way transcend the confines of a single legal system, so that a single set of domestic insolvency law provisions cannot be immediately and exclusively applied without regard to the issues

raised by the foreign elements of the case.”

In an attempt to bring the “cross-border” aspects and the “insolvency” aspects together, Fletcher asks the following, three very pertinent questions:

- 1) In which jurisdictions may insolvency proceedings be opened?
- 2) What country’s law should be applied in respect of different aspects of the case?
- 3) What international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)?

To answer the questions asked by Fletcher (above) and in an effort to explain some of the issues that may be faced when attempting to bring about co-operation and co-ordination between States: insolvency proceedings can be opened (concurrently) in more than one State, with each State applying its own laws and choice-of-law rules, and finally, no or very limited international effects could be accorded to foreign proceedings.

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 ?

This answer displays a satisfactory understanding. To improve your responses, ensure they are commensurate with the mark allocation – while Q 3.2 asks for a brief note, it is for 5 marks.

3

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 example relating to the above-mentioned quote is the Maxwell Communications Corporation plc (“Maxwell”) cross border insolvency case in 1991 (“the Maxwell Case”). In this case, concurrent principal proceedings were co-ordinated in England (Administration proceedings) and the United States (Chapter 11 proceedings) through an “Order and Protocol” approved by the Courts in both states. It was envisaged that the “Order and Protocol” (i.e. an insolvency agreement between the two administrations) would facilitate the exchange of information (i.e. co-operation and communication) and resolve conflicts.

The UNCITRAL Practical Guide provides a useful summary on the Maxwell Case and notes that two goals were set to guide the respective insolvency representatives (“IRs”) – namely, maximising realisations and harmonising the proceedings to mitigate conflict, expense, and waste. In addition, “the parties agreed essentially that the United States’ court would defer to the English proceedings, once it was determined certain criteria were present.”

Some such criteria included that some existing management would be retained in the interests of maintaining Maxwell's going concern value, albeit the English IRs would be able to select new and independent directors, providing they had the United States' IRs' consent. Furthermore, the English IRs were only to incur debt or file a reorganisation plan (amongst other things) with the consent of the United States' IRs, or United States' Court.

Following the success of the Maxwell Case, its approach received additional impetus through the work of professional bodies including the IBA and its Concordat. Furthermore, guidance surrounding the practical aspects of communication and co-operation in cross-border insolvencies (focussing on the use and negotiation of cross-border agreements, like in the Maxwell Case) is provided to insolvency practitioners and judges within the UNCITRAL Practice Guide on Cross-Border Insolvency Co-operation – a guide implemented by the Commission on 1 July 2009.

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

4.5

Marks awarded 12.5 out of 15

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

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

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

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

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

Question 4.1 [maximum 7 marks]

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

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

At the time of the insolvency proceeding against Rydell, on 18 June 2020 ("the Insolvency Date"), the UK was a member of the European Union ("EU"). As a result, the European Insolvency Regulation Recast ("EIR Recast") may apply to the proceeding – I note that Rydell has a number of other creditors who are located throughout different countries in Europe (all of whom are members of the EU), but the question does not confirm whether Rydell has any creditors located outside of the EU or Europe. Confirmation as to where the 'minor creditor' who initiated the insolvency proceeding is located would be useful. For example, if the 'minor creditor' was based in a State outside of the EU, it may be able to register an insolvency proceeding in its own State, as opposed to Rydell's.

The EIR Recast expanded upon the provisions relating to a debtor's COMI by: acknowledging corporate groups through enhanced co-operation and co-ordination provisions; extending secondary proceedings to include rescues; providing an electronic register and standard forms; and recognising the existence of insolvency proceedings outside the EU for the purposes of co-ordinating proceedings both inside and outside of the EU.

The question confirms that Rydell's COMI is the UK. As such, under the EIR Recast, the primary proceedings will be held in the UK.

Notwithstanding the above, the EIR Recast allows for secondary proceedings to be brought about in other EU member states, providing a debtor has an "establishment" in that jurisdiction. An "establishment" is defined as being any place of economic activity – be those assets, or human resources.

Had Fernz commencing/initiated proceedings with respect to recovering unpaid debts from Rydell before the Insolvency Date, these proceedings could have been deemed to be "independent" proceedings. However, given that the question suggests Fernz is to take action after the Insolvency Date, such proceedings may be considered "secondary" proceedings. The question does not confirm whether or not Rydell has an "establishment" in any other jurisdiction but suggests that Fernz was considering also opening proceedings in another country in Europe which was a member of the EU. In order to determine how Fernz' proceedings would be classed (i.e. whether they be independent or secondary), we would need to know whether Rydell had an "establishment" (i.e. economic activity) in the country Fernz intends to bring about the proceedings.

In the event that Rydell did not have an "establishment" in country Fernz intends to bring about proceedings, regardless of the timing of the same, the EIR Recast would not apply and such proceedings would be deemed to be "secondary".

This is well answered. There is some scope to elaborate regarding 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.

At 11pm on 31 January 2020, the UK ceased to be a member of the EU. As a result, under UK Law, the EIR Recast no longer applies to proceedings commenced in the UK after 11pm on 31 December 2020.

In light of the above, the EIR Recast would not apply to any of the proceedings referred to in 4.1. **What is the result of that?**

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?

Section 221(5) of the Insolvency Act 1986 – re the Court ordered winding up of unregistered companies.

To improve your responses, ensure they are commensurate with the mark allocation – the question is for 5 marks.

1

**Marks awarded 8.5 out of 15
TOTAL MARKS 39.5/50**

*** End of Assessment ***