



**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 9 out of 10**

## QUESTION 2 (direct questions) [10 marks]

### Question 2.1 [maximum 3 marks]

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

- The first English Bankruptcy Act of 1542 provide for a form of compulsory sequestration, to be applied to a dishonest and absconding debtor. The Act also provided for the appointment of a body of commissioners who, on a creditor's application, could proceed against a trading debtor who fled from the country, who barricaded himself in his house, or who neglected to pay his debts or otherwise defrauded his debtors. This Act contained two fundamental principles: collective participation by creditors and a pari passu distribution. **It would be beneficial to elaborate on their modern relevance.**

The Act of Elizabeth in 1570 provided for a bankruptcy proceeding where creditors could petition the Lord Chancellor to convene a bankruptcy meeting, who could then appoint bankruptcy commissioners to supervise the process. The commissioners would then typically examine the debtor's transactions and property and the debtor was obligated to transfer his or her property to the commissioners. They could also summon persons to appear for questioning and they could even commit people to prison. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law.**

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The Statute of Ann of 1705 introduce the notion of statutory discharge. The discharge was not an automatic entitlement and the commissioners had to confirm that the debtor had "conformed" and had co-operated during the proceedings. **It would be beneficial to elaborate and clearly state how this shaped the way of thinking concerning modern insolvency law.**

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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 UK adopted a number of insolvency related reform measures following the Covid-19 pandemic. Corporate Insolvency and governance Act 2020 was passed, which sets out certain reforms to insolvency law that amongst others:

- Introduced a new restructuring plan and new moratorium rules;
- The relaxation of wrongful trading liability; and
- The suspension of winding-up petitions and statutory demands.
- **Further elaboration would improve the mark for this sub-question. While it does say 'briefly', the sub-question is for 3 marks.**

2

### 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.

States become signatories of Treaties and as such these States are bound by the rules which will result in an efficient and effective manner as cost of additional recognition and other judgments will not be incurred thus maximizing the value of the estate. This will also ensure that representatives in different estate will not look to contest issues in a jurisdiction to give them a more favourable outcome if the two States are signatories to the Treaty.

On the other hand, soft laws are used to influence regulations of States. States can review the draft legislation; depending on the needs of the State, they can use this legislation with or without modification. In a cross-border insolvency, two States may have similar rules in place depending on the part of the guidelines that was modified.

**Further elaboration would improve the mark for this sub-question. While it does say 'briefly', the sub-question is for 4 marks. 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.**

2.5

Marks awarded 6 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, there are a number of different sources that a party can sought to when dealing with issues or disputes in an insolvency proceeding.

In a domestic insolvency, there are local Companies Acts and insolvency related legislation. These are the first sources of law in an insolvency and liquidation process. For example, in Bermuda, the laws in which proceedings are governed is in the Companies Act 1981, the Companies (Winding-Up) Rules 1982 and the Bankruptcy Act 1989.

**It would be beneficial to discuss insolvency legislation as either a code or multiplicity of legislation depending on the state**

A State can also look for sources of insolvency law with an international dimension. These are public international law which governs States (when adopted domestically) and private international law which governs parties.

Samples of a public international law are treaties and conventions to which States become signatories and as such bind themselves and affect their domestic law (Winding-up rules or Bankruptcy acts) which forms part of the State's hard law on insolvency. In Europe, there is the Nordic Convention 1933.

More success has been gained using "soft law" option, the most successful approach which is the Model Law on Cross-border Insolvency ("MLCBI") developed by the United Nations Commission on International Trade Law ("UNCITRAL"). This is draft legislation that UNCITRAL recommended member States to adopt, with or without modification. States can use these soft laws as guidance to the winding up rules or bankruptcy acts to fill in some gaps.

**It would be beneficial to discuss common law in common law countries as filling any gaps in law, and general law and its relevance and impact upon insolvency law.**

1

#### **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.

Insolvency proceedings could possibly be opened concurrently in more than one State. This is because no single set of insolvency rules applies globally to insolvency; especially insolvencies that have connections with more than one State. Each state apply its own laws (including its choice-of-law rules), and no or very limited extraterritorial effects would be granted to foreign proceedings.

Fletcher asked three pertinent questions to discuss the subject around harmonisation of insolvency laws which are as follows:

- In which jurisdictions may insolvency proceedings be opened?  
This will depend on the jurisdiction that parties or the dispute are connected to, which will require examination of the same. In an insolvency which results in the liquidation of a Company, the initial commencement of the proceeding can be started in the local jurisdiction (commencement order). As the insolvency practitioner (“IP”) discovers new issues, particularly issues which involves foreign elements (such as asset or examinable corporate officers in another State), the IP will have to seek direction from the Courts in the foreign jurisdiction. Similarly, in cases where liquidation procedure was commenced in the foreign jurisdiction that has connection with the local jurisdiction, the foreign representative will be required to seek direction from the local Court.
- What country’s law should be applied in respect of different aspects of the case?  
If the local court determined that it would hear the matter, it may then have decide upon the law to apply. Different systems of law adopt different approaches to an issue. In a common law system, choice of law issues only arises if the parties invoke them, otherwise the law of the forum applies. For example, if there is a dispute that is treated differently by the local court compare to the foreign court, a party in the legal proceeding may call upon the law applied in that foreign jurisdiction where there is an advantage to apply foreign law. Otherwise, the law in the jurisdiction where the dispute was brought upon will apply.
- What international effects will be accorded to proceedings conducted at a particular forum (including issues of enforcement)?  
Where there is a requirement of a foreign judgement on the same matter, private international law raises questions of recognition and enforcement. Foreign judgment raises questions concerning the court that issued the judgment, the types of judgment and the effect of the judgment. In insolvency, the type of judgment may be significant i.e. if it is a judgment which results in a commencement of an insolvency proceedings against a debtor (an order to liquidate the Company) or an order which results in a third party requiring to pay monies to the estate following a successful action for a voidable disposition. Guidance on the application of law can be found using the guidance in UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgment (2018).

5

### **Question 3.3 [maximum 5 marks]**

It is said that “co-ordination agreements are sometimes known as Protocols or Cross-border Insolvency Agreements. Their growing acceptance internationally is evident in the work by the

ALI-III in their *Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases*; by UNICTRAL in their *Practice Guide on Cross-border Insolvency Agreements*; and by the Judicial Insolvency Network in their *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters...*”

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

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

The Maxwell Communications Corporation plc cross-border insolvency case in 1991 is a prominent case that deal with this issue. There was a single debtor that went through a concurrent principal insolvency proceeding; Chapter 11 proceeding in the United States and administration proceeding in England. Order and Protocol were approved by the courts in the respective States.

The judges in the two states independently raised with their respective counsel the idea that an insolvency agreement between the two administration could resolve conflicts and facilitate the exchange of information. It was resolved that the United States court would defer to the English proceedings under certain conditions (see below). The two States goal was to maximize the value of the estate by harmonizing proceedings to minimize expense, waste and jurisdictional conflict.

The conditions that the English court would need to meet are as follows:

- some existing management would be retained in the interest of maintaining the debtor’s going concern value;
- the English representatives should only incur debt or file a reorganization plan with the consent of the United States representative or court; and
- the English representatives should give prior notice to the United States representatives before undertaking any major transaction on behalf of the debtor.

The case provided a sample of voluntarily putting in place a workable structure to co-ordinate a complex international insolvency and obtaining the approval of the courts.

**5**

**Marks awarded 11 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.

European Insolvency Regulation (“EIR”) (2000) influenced broader multilateral developments in international insolvency law. This has been reviewed and slightly amended so that the current multilateral “instrument” on international insolvencies within the European Union is Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast) (EIR Recast). The EIR Recast ceased to apply in the UK from 31 December 2020 post-Brexit.

The case talks about Rydell being an incorporated company with offices in the UK and throughout Europe, however it is unclear as to where Rydell was incorporated. The case also needs to be clear with where Fernz is considering opening proceedings as the question states that that country “was” a member of the European Union (“EU”). The latter is important as the European Insolvency Regulation Recast (“EIR Recast”) grants an automatic recognition to EU Member States including the UK (prior to 1 January 2021).

EIR Recast was set up in order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects. Provisions on jurisdictions, recognition and applicable law would be binding and directly applicable to Member States including the UK.

Assuming that Fernz is opening insolvency proceedings in a Member State, Section 24 of the EIR Recast provides guidance on that Fernz will be able to open proceedings in that Member State as secondary proceedings:

*“where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.”*

Furthermore, section 28 of the EIR Recast provides guidance on the administration of the insolvency proceedings. The case discusses that COMI is in the UK, however section 30 of the EIR Recast states that this presumption can be rebuttable. During the insolvency proceedings, if there is a shift of COMI between UK to the Member State that Fernz is opening proceedings, representatives will be required to inform the creditors of new location of the administration of proceedings:

*“When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means”*

*“In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that*

*is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State."*

**It would also be beneficial to elaborate upon establishment with respect to any secondary proceedings and what further information would be required in that respect.**

**4**

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

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

If the proceedings were opened in the UK on 18 June 2021 instead of 18 June 2020, the rules under EIR Recast would only continue to apply to insolvency proceedings and actions were opened prior to 31 December 2020 ("transition date"), as stated in the European (Withdrawal Agreement Act 2020. EIR Recast would cease to apply to any proceedings opened after the transition date.

The situation will have an effect on the following:

- UK courts will have a wider jurisdiction to open insolvency proceedings where a debtor's COMI is in another member state than is currently the case and the courts of the remaining member states will no longer be prevented from opening main proceedings in respect of a debtor with its COMI in the UK. This makes it more likely that we will see multiple (parallel) proceedings in relation to a single debtor.
- Member states will not be obliged to recognise UK insolvency proceedings (which would previously have been the subject of mandatory automatic recognition across the EU) and the UK will not be obliged to recognise proceedings in the remaining member states pursuant to the Recast Regulation. If a remaining member state will not recognise the UK insolvency proceedings, it may be necessary to open parallel insolvency proceedings in that jurisdiction.
- The rules regarding applicable law in the Recast Regulation will fall away. UK proceedings will seek their local laws including, but not limited to Insolvency Act 1986 and Companies Act 2006
- The coordination and cooperation measures in the Recast Regulation will cease to apply between the UK and the remaining member states

**It would be beneficial to consider whether the MLCBI would apply, depending on further information, and if not what other information would be required regarding local laws.**

**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?

The Insolvency (Amendment) (EU Exit) Regulations 2020 ("Insolvency Amendment Regulations") dealt with necessary amendments to EU insolvency legislation with effective date of 31 January 2020 ("exit date"). The effect of this amendment is to give jurisdiction to the UK courts to open insolvency proceedings following the exit date, where the proceedings are opened for the purpose of rescue, adjustment of debt, reorganisation or liquidation and:

- The COMI is in the UK; or
- The COMI is in a Member State and there is an establishment in the UK.

The Insolvency Amendment Regulations also extends cases for UK courts (i) to wind up any foreign company which might be wound up as an unregistered company under UK insolvency laws regardless of whether the COMI is in a Member State, provided the court considers there to be sufficient connect to warrant this; and (ii) to place a company having its COMI in an EEA state, into administration in the UK.

There are two scenarios here:

1. Creditor(s) opened proceedings in a Member State where COMI is located or a Member State that has connection with Rydell prior to the minor creditor opening proceedings in the UK:

Other possible legal proceedings in another member State will have an automatic recognition under the EIR Recast. However, minor creditors who are seeking to open insolvency proceedings in the UK will be required to seek recognition (as secondary proceeding) and judgments will be subject to the local laws of that member State (including EU law). Recognition to be sought by these minor creditors will continue to be guided by the legal framework of the Cross-Border Insolvency Regulations 2006, the Great Britain's enactment of the UNCITRAL Model Law on Cross-Border Insolvency.

2. Minor creditor opened proceedings in the UK prior to any other creditors in a Member State:

The court can wind up the Rydell as an unregistered company under the UK Insolvency Act 1986 sections 220 and 221 if the following criteria are met:

- Rydell is unable to pay its debt;
- The Court is of opinion that is just and equitable that Rydell should be wound up.

The minor creditor can also look towards s 426 of the Insolvency Act 1986 which enables any court in the UK to assist those courts with the corresponding insolvency jurisdiction in any part of the UK or any relevant country territory, and to apply comparable insolvency law applicable by either court. However, requests for assistance must come from foreign courts rather than directly from foreign officeholders; a letter of request must be sent from the foreign court to the relevant court in the UK.

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

1

**Marks awarded 6.5 out of 15  
TOTAL MARKS 32.5/50**

**\* End of Assessment \***