



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2B
THE EUROPEAN INSOLVENCY REGULATION

This is the **summative (formal) assessment** for **Module 2B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 2**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 2B. 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).
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- 6.1 If you selected Module 2B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 2B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
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

The EIR 2000 substantively harmonised the national insolvency law of the Member States.

- (a) False. The objective of an EU regulation is not legal harmonisation.
- (b) True. Since the entry into force of the EIR 2000, the insolvency laws of the Member States are similar.
- (c) False. The objective of the EIR 2000 was not to harmonise aspects of national insolvency laws but to provide non-binding guidelines only.**
- (d) False. While the EIR 2000 attempted to harmonise national insolvency laws, its focus was on procedural aspects of insolvency law, not substantive ones.

D was the correct answer.

Question 1.2

The EIR 2000 was the first ever European initiative to attempt to harmonise the insolvency laws of Member States.

- (a) False. The EU sought to draft Conventions with a view to harmonising the insolvency laws of EU Member States as early as the 1960s, but these initiatives failed.**
- (b) False. There was another EU Regulation regulating insolvency law at EU level before the EIR 2000.
- (c) True. Before the EIR 2000, the EU has not sought to harmonise the insolvency laws of EU Member States.
- (d) False. An EU Directive regulating insolvency law at EU level existed before the EIR 2000.

Question 1.3

The EIR Recast was urgently needed because the EIR 2000 was considered dysfunctional and ineffective.

- (a) True. The EIR 2000 proved to be inefficient and incapable of supporting the effective resolution of cross-border cases over the years.

- (b) True. As a result, the EIR 2000 lacked the support of major stakeholders such as insolvency practitioners, businesses and public authorities who considered the instrument fruitless.
- (c) False. While a number of shortcomings were identified by an evaluation study and a public consultation, the EIR 2000 was generally regarded as a successful instrument by most stakeholders, including practitioners, businesses, the EU institutions and insolvency academics.
- (d) False. The EIR 2000 was considered a complete success to support cross-border insolvency cases and, as a result, the wording of the EIR Recast mirrored its 2000 predecessor.

Question 1.4

Why can it be said that the EIR Recast did not overhaul the *status quo*?

- (a) The EIR Recast is a copy of the EIR 2000. Its structure and the wording of all articles are similar.
- (b) Although the EIR Recast includes relevant and useful innovations, it has stuck with the framework of the EIR 2000 and mostly codified the jurisprudence of the CJEU.
- (c) The EIR Recast has not added any new concept to the text of the EIR 2000.
- (d) It is incorrect to say that the EIR Recast has not overhauled the *status quo* at all. On the contrary, the EIR Recast has departed from the text of its predecessor and is a completely new instrument which has rejected all existing concepts and rules.

Question 1.5

Why can it be said that the EIR Recast is more rescue-oriented than the EIR 2000?

- (a) The EIR Recast is more rescue-oriented because all domestic rescue procedures fall within its scope.
- (b) The EIR Recast is more rescue-oriented because it harmonises all substantive aspects of national insolvency laws.
- (c) It is incorrect to say that the EIR Recast is more rescue-oriented than the EIR 2000, as the latter was already heavily rescue-focused.
- (d) The EIR Recast is more rescue-oriented because its scope was extended to cover pre-insolvency proceedings and secondary proceedings can now also be rescue proceedings.

Question 1.6

During the reform process of the EIR 2000, what main elements were identified as needing to be revised within the framework of the Regulation (whether adopted or not)?

- (a) The scope of the Regulation was to be expanded to cover pre-insolvency and hybrid proceedings; the concept of COMI was to be refined; secondary proceedings were to be extended to rescue proceedings; rules on publicity of insolvency proceedings and lodging of claims were to be amended; provisions for group proceedings were to be added.

- (b) Rules on co-operation and communication between courts were to be refined; the concept of COMI was to be abandoned and a new jurisdictional concept was to be found; the Recast Regulation was to apply to Denmark.
- (c) The Recast Regulation was to apply to private individuals and self-employed; a common European-wide insolvency proceeding was to be added to the Regulation.
- (d) The Regulation was meant to fully embrace the universalism principle by abandoning the concept of secondary proceedings; the Regulation was meant to mostly promote out-of-court settlement and abandon all intervention of a judicial or administrative authority in cross-border proceedings.

Question 1.7

The EIR Recast introduced the concept of “synthetic proceedings”. What are they?

- (a) “Synthetic proceedings” means that for the case at hand, several main proceedings can be opened, in addition to several secondary proceedings.
- (b) “Synthetic proceedings” means that when secondary proceedings are opened, these are automatically rescue proceedings, as opposed to liquidation proceedings.
- (c) “Synthetic proceedings” means that insolvency practitioners in all secondary proceedings should treat the proceedings they are dealing with as main proceedings for the purpose of protecting the interests of local creditors.
- (d) “Synthetic proceedings” means that when an insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court asked to open secondary proceedings should not, at the request of the insolvency practitioner, open them if they are satisfied that the undertaking adequately protects the general interests of local creditors.

Question 1.8

In which of the following scenarios may the recognition of a foreign insolvency proceeding be denied under the EIR Recast?

- (a) The rule applied by the court, which has opened insolvency proceedings (originating court), is unknown or does not have an analogue in the law of the jurisdiction, in which recognition is sought.
- (b) The judgment, subject to recognition, was passed with incorrect application of the applicable substantive law.
- (c) Where the decision to open the insolvency proceedings was taken in flagrant breach of the right to be heard, which a person concerned by such proceedings enjoys.
- (d) The court, which has opened insolvency proceedings (originating court), most certainly did not have international insolvency jurisdiction to do so under the EIR Recast.

C was the correct answer.

Question 1.9

In a cross-border dispute, the main proceedings before the Italian court opposes FemaSrl (registered in Italy) and Lacroix SARL (registered in France). The case concerns an action to set aside four contested payments that amount to EUR 850,000. These payments were made pursuant to a sales agreement dated 5 August 2020, governed by German law. The contested payments have been made by FemaSrl to Lacroix SARL before the former went insolvent. The insolvency practitioner of the company claims that under applicable Italian law, the contested payments shall be set aside because Lacroix SARL must have been aware that FemaSrl was facing insolvency at the time the payments were made.

Considering the facts of the case and relevant provisions of the EIR Recast, which one of the following statements is the **most accurate**?

- (a) The insolvency practitioner will always succeed in his claim if he can clearly prove that under the *lex concursus*, the contested payments can be avoided (Article 7(2)(m) EIR Recast).
- (b) The contested transactions cannot be avoided if Lacroix SARL can prove that the *lex causae* (including its general provisions and insolvency rules) does not allow any means of challenging the contested transactions, and provided that the parties did not choose that law for abusive or fraudulent ends.
- (c) To defend the contested payments Lacroix SARL can rely solely, in a purely abstract manner, on the unchallengeable character of the payments at issue on the basis of a provision of the *lex causae*.
- (d) The contested payments shall not be avoided if Lacroix SARL proves that such transactions cannot be challenged on the basis of the insolvency provisions of German law (Article 16 EIR Recast).

Question 1.10

The French Social Security authority asserts to have a social security contribution claim against an Irish company, Cupcake Cottage Ltd. Cupcake Cottage is subject to the main insolvency proceeding (Examinership) in Ireland. In addition, a secondary insolvency proceeding (*Concurso*) relating to the same company has been opened in Spain.

Assume that:

- Under French law, creditors (except employees) must file proof of their claim within two (2) months from the publication in the French legal gazette of a notice of the judgment opening the insolvency proceedings.
- Under Spanish law, the period within which creditors must file their claims is one month, as set in the order opening secondary insolvency proceedings against Cupcake Cottage.

The French tax authority intends to file its claim in the Spanish proceedings. Within which time period can the French tax authority do so?

- (a) Within two (2) months following the publication date, as guaranteed by the French law (law applicable to the creditor).
- (b) Within one month, as stipulated in the applicable *lex concursus secundarii* (law of the insolvency proceeding at issue).

(c) Within 30 days following the publication of the opening of insolvency proceedings in the insolvency register of Spain.

(d) Within the time limit prescribed by the *lex concursus* of the main insolvency proceeding (Irish law).

Total marks: 8 out of 10.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] 2

The following **two (2) statements** relate to particular provisions / concepts to be found in the EIR Recast. Indicate the name of the provision / concept (as well as the relevant EIR Recast article), addressed in each statement.

Statement 1. “This article introduces a legal regime for the avoidance of secondary insolvency proceedings, based on the unilateral promise given by the main insolvency practitioner to local creditors that they will receive treatment ‘as if’ secondary proceedings had in fact been open.’

Statement 2. “The proper functioning of the internal market requires that cross-border insolvency proceedings should operate effectively. This requires judicial cooperation.”

[Answer]

Statement 1 : As per **Article 36 of EIR Recast dealing in synthetic proceedings** introduces a legal regime for the avoidance of secondary insolvency proceedings, based on the unilateral promise given by the main insolvency practitioner to local creditors that they will receive treatment ‘as if’ secondary proceedings had in fact been open.

Statement 2: As per **Article 49 of EIR Recast when EU Convention required unanimity**, when UK was unable to join it meant that it couldn't be adopted, legal basis for European Insolvency law had changed, thus, the power to make provisions in judicial matters having cross border implications in so far as “The proper functioning of the internal market”]

Question 2.2 [maximum 3 marks] 1

The EIR Recast is built upon the concept of modified universalism, as pure universalism has been deemed idealistic and impractical for the time being. Provide **three (3) examples** of provisions from the EIR Recast, which highlight this modified universalism approach.

[Under the pure universalist vision of insolvency, the insolvency proceedings would be decided by one court (that is, at the place of the debtor’s “centre of administration”), applying one set of procedural and substantive rules. From the very beginning, this highly centralised and optimistic approach proved to be unrealistic, as the national insolvency law remained divergent on matters such as ranking and the priority of claims, transaction avoidance and directors’ liability. The preoccupation with the protection of local interests led to both Conventions adopting a position under which the rights of preferential creditors remained to be regulated by local preference (ranking) rules. This led to the break-up of insolvency estates into national “sub-estates” and effectively killed off the unity and universalism of insolvency proceedings.

The EU Convention [Regulation] took a middle ground approach between unity / universality of the early EEC Conventions and plurality of the Istanbul Convention. Like the Istanbul Convention, the EU Convention allowed the opening of several insolvency proceedings against the same debtor– one main and one or more secondary proceedings. However, compared to the Istanbul Convention, the scheme of main / secondary proceedings prescribed in the EU Convention was much more structured, predictable and efficient. Main insolvency proceedings enjoyed universal scope, covering the totality of the debtor’s assets. The prevalence of main proceedings with extensive extraterritorial powers of the main IP brought it closer to the universalist model. This compromise between universality and plurality (territoriality) received the name of modified or limited universalism.]

Why are you discussing Conventions when the question is about Regulation 2015/848?

Question 2.3 [maximum 3 marks] 3

Cross-border co-operation and communication between courts is now an obligation under the EIR Recast. This was not the case under the EIR 2000. List **three (3) provisions** (recitals and/or articles) of the EIR Recast that deal with this newly introduced obligation.

[Answer

Cross-border co-operation and communication between courts under EIR Recast originates from the idea of trust and sincere co-operation, the provisions highlighting the same are as follows:

- i) As per Article 42 of EIR Recast a new comprehensive framework for co-operation and communication between courts was introduced to enable distribution of debtor’s assets and and safeguarding creditor’s interest in an effective and efficient manner.
- ii) Court-to-court co-operation may be implemented by any means that the court considers appropriate. It can result in co-ordination related to the appointment of insolvency practitioners. A court may appoint a single insolvency practitioner for many insolvency proceedings in regard to the same debtor, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualification and licensing of the insolvency practitioner (Recital 50 EIR Recast).
- iii) The courts are authorized to co-ordinate the surveillance of the debtor’s assets and affairs, concur the conduct of hearings and the approval of protocols, where necessary (Article 42(3) EIR Recast).
- iv) Under the EU Judge Co Guidelines, courts may consider conducting joint hearings (Guideline 10) and utilising numerous means of electronic communication (Guideline 8).]

Question 2.4 [maximum 2 marks] 2

It is widely accepted that the opening of secondary proceedings can hamper the efficient administration of the debtor’s estate. For this reason, the EIR Recast has introduced a number of legal instruments to avoid or otherwise control the opening, conduct and closure of secondary proceedings. Provide **two (2) examples** of such instruments and briefly (in 1 to 3 sentences) explain how they operate.

[It is widely accepted that the opening of secondary proceedings can hamper the efficient administration of the debtor’s estate it can also result in additional cost to the debtor as well as the courts and can also lead to fragmentation of the insolvency estate into main and secondary, that is why the EIR Recast has introduced a number of legal

instruments to avoid or otherwise control the opening, conduct and closure of secondary proceedings, example of such provisions are listed below:

- i) **Right to give an undertaking also known as “synthetic” or “virtual” secondary proceedings:** As per **Article 36 of EIR Recast dealing in synthetic proceedings** introduces a legal regime for the avoidance of secondary insolvency proceedings, based on the unilateral promise given by the main insolvency practitioner to local creditors that they will receive treatment ‘as if’ secondary proceedings had in fact been open.”
According to this article, for avoiding the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral assurance concerning the assets located in the Member State in which secondary insolvency proceedings could be opened, that at the time of distributing those assets or the proceeds received subsequent to their realization, he will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State.
- ii) **Stay of the opening of secondary insolvency proceedings: Recital 45 EIR Recast** states that the stay of the opening of secondary proceedings preserves the efficiency of the stay granted in the main insolvency proceedings by assuring the integrity of the insolvency estate, the stay provides a breathing space for the debtor to negotiate a restructuring deal with its creditors.]

Total marks: 8 out of 10.

QUESTION 3 (essay-type questions) [15 marks in total]

In addition to the correctness, completeness (including references to case law, if applicable) and originality of your answers to the questions below, marks may be awarded or deducted on the basis of your presentation, expression and writing skills.

Question 3.1 [maximum 5 marks] 2.5

In 2012, the European Commission recommended that the European Insolvency Regulation be amended by focusing on specific aspects of the instrument. Explain what these aspects were and how they have been introduced in the EIR Recast.

[Not later than 01 June 2012, EU had to submit a report on application of EIR 2000 with proposal for its adaptation. Though it recognised the success of EIR 2000 but recommended certain modified rules and new rules which are as follows:-

1. Broadening the scope of restructuring proceedings
2. Rules on recognition and enforcement of judgements
3. Stronger rules of cooperation between insolvency practitioners and courts
4. Possibility of group insolvency
5. Data protection through general modernisation of legal rules
6. Inter connectivity of insolvency registers leading to more and better information to creditors]

Good but you have not explained how they have been introduced in the EIR Recast.

Question 3.2[maximum 5 marks] 3

While the EIR 2000 was considered to work well overall, several innovative concepts and rules were introduced in the EIR Recast to improve the manner in which the Regulation supports the administration of a cross-border case in an efficient manner. Describe **three (3)** improvements/innovations that made their way into the EIR Recast.

[The EIR 2000 was considered to work well overall, several innovative concepts and rules were introduced in the EIR Recast to improve the manner in which the Regulation supports the administration of a cross-border case in an efficient manner. Some of those improvements are listed below

- I. In exceptional circumstances, **Article 3(4) EIR Recast** allows opening of secondary (territorial) proceedings prior to opening of main proceedings, the opening of secondary proceedings limits universal scope of main insolvency proceedings. secondary proceedings also set out to protect local interests and augments the handling of complex insolvency estates.
- II. EIR Recast adheres to an independent interpretation of the concept of establishment. The concept of an “establishment” is important for opening of secondary proceedings, as such proceedings can only be opened in a Member State in which the debtor has an establishment. As per **Article 2(10) EIR Recast**, “establishment” means any place of operations where a debtor carries out or has carried out in the **three-month period** prior to the request to open main insolvency proceedings a **non-transitory economic activity** with human means and assets. The EIR Recast has only defined the time period to the definition set out in Article 2(h) EIR 2000.
- III. Article 3(3) EIR 2000 contained a limitation that secondary proceeding must be winding up proceeding, it hindered attempts to restructure businesses spanned across Europe with several establishments located in different Member States. While, EIR Recast abolished such requirement.]

Question 3.3[maximum 5 marks] 2.5

While the EIR Recast was welcomed by most stakeholders, it was also criticised by some as a “missed opportunity” and “modest”. List **two (2) flaws** or shortcomings of the EIR Recast and explain how you consider they could be corrected.

[The EIR Recast was welcomed by most stakeholders, it was also criticised by some as a “missed opportunity” and “modest”, group-coordination proceeding regulation will miss the aim of attaining the efficient administration of group insolvency proceedings, including co-ordinated restructuring of the group. The arguments that can be advanced are as follows:

First, the group co-ordination proceedings being voluntary (Recital 56 EIR Recast) and easy opt-out option without explanation or good cause (Article 64 EIR Recast) make group co-ordination proceedings a meaningless instrument. Moreover, even if such proceedings have been instituted, the insolvency practitioners are not obliged to follow the co-ordinator’s recommendations or the group co-ordination plan in whole or in part (Article 70 EIR Recast). The system is non-committal.

Second, the fact that the creditors of the group members are not asked about the opening or opting-out from the group co-ordination proceedings could make such proceedings artificial, without true creditor involvement and support. For instance, Article 63 EIR Recast states the

court seized with the request to open the group co-ordination proceedings to give the insolvency practitioners involved the opportunity to be heard. No similar right is given to the afflicted creditors.

Third, the initiation of an additional proceeding (group co-ordination proceedings) adds a layer of complexity, resulting in time consuming actions and increased costs. Ambiguity in prospects, rules (for example, on conflict of interest), the non-binding nature and the sustenance of potentially large costs (translation, travel, fees of a group co- Ordinator and his assistants) may outdo the possible benefits. This cost-benefit analysis can explain why, almost a year and a half since the EIR Recast has entered into force, to our knowledge there have been no group proceedings opened.

]

Yes but you were also required to explain how these can be corrected.

Total marks: 8 out of 15.

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

Cardinal Home is an Ireland-registered furniture company. The company opened its first store in Cork, Ireland in 2009 and has warehouses across Europe, including in Milan, Italy. In 2010, Cardinal Home entered into a credit agreement with an Italian bank since it was planning to expand its reach to the Spanish luxury furniture market, expected to grow by over 8% annually. It opened a bank account with the bank and started negotiating with local distributors, thus signing some (non-binding) memoranda of understanding with them.

Cardinal Home grew and performed well for several years. However, the impact of the economic and financial crisis of the late 2000s eventually hit the company who suffered financial difficulties from 2016. On 22 June 2017, it filed a petition to open examinership proceedings in the High Court in Dublin, Ireland.

Question 4.1 [maximum 5 marks] 5

Assume that the EIR 2000 applies. Does the Dublin High Court have international jurisdiction to open the requested insolvency proceeding? (Explain why it does or does not have jurisdiction.) Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

[EIR 2000 is the first major cross border insolvency binding instrument regulating the insolvency in the member states. As per Article-3(1) of the EIR 2000, main insolvency proceedings can be initiated only where debtor's COMI exists and such proceeding will have universal scope and encompass all debtor's assets throughout the EU. The Cardinal Home registered office is in Ireland hence, COMI exists in Ireland. Therefore, Dublin High Court have international jurisdiction to open the requested insolvency proceeding and it is a primary insolvency proceeding and Lex Concursus rule shall prevail.

CJEU is the Court of Justice of the EU acting as the guardian of EU laws. The CJEU also provides interpretations of EU law when requested by national judges. The Court, thus, constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of Member States, ensures the uniform application and interpretation of EU law including EIR. CJEU has authoritative power to decide on the issues/disputes arising out of contradictory judgements in member states concerning European laws. However the case does not talk about any contradictory judgements by Ireland and Spanish courts hence, jurisdiction of CJEU is ruled out here.]

Question 4.2 [maximum 5 marks] 2.5

Assume that the Dublin High Court opens the respective proceeding on 30 June 2017. Will the EIR Recast be applicable? Your answer should address the EIR Recast's scope and contain all steps taken to answer the question.

[EIR Recast came into force on 26 June 2017, replacing the original EIR 2000 which broadens the scope of restructuring proceedings, rules on recognition and enforcement of judgements, stronger rules of cooperation between insolvency practitioners and courts, possibility of group insolvency, data protection and inter connectivity of insolvency registers. As Dublin High Court opens the insolvency proceeding on 30 June 2017 and Ireland is part of EU therefore, EIR recast shall be applicable on this case. Therefore, Dublin High Court continues to have international jurisdiction over this case as primary proceeding.]

Some steps are missing here:

- The EIR Recast will be applicable. The logical order of the steps to be taken is the following:
- Article 3(1) EIR Recast. COMI of Cardinal Home is in the EU (and not in Denmark), i.e. in Ireland (as stated in the answer to Question 4.1.). YES
- Article 1(2) EIR Recast. Cardinal Home is not a credit institution, insurance undertaking or any other 'excluded' entity. YES
- Article 2(4), Recital 9, Annex A EIR Recast. The opened proceeding '*Examinership*' is listed in Annex A to the EIR Recast. YES
- Article 2(7), 84(1), 92 EIR Recast. The proceeding in question was opened on 30 June 2017, i.e. after the EIR Recast has entered into force. The filing date (22 June 2017) is not determinative for the temporal scope. YES

Question 4.3 [maximum 5 marks] 1.5

An Italian bank files a petition to open secondary insolvency proceedings in Italy with the purpose of securing an Italian insolvency distribution ranking. Given the facts of the case, can such proceedings be opened in Italy under the EIR Recast? Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

[Article-3(2) of the EIR Recast allows for the opening of secondary proceedings, which run parallel to main insolvency proceedings and have effect only on assets situated within the state of secondary proceedings only (Recital-23). Therefore, it is territorial in nature (Recital-40). Since, Cardinal Homes has establishment operational activity in Italy therefore, secondary proceedings can be opened in Italy.

CJEU is the jurisdictional court of EU, therefore in case of any dispute w.r.t main or secondary proceedings or other matters relating to EU law, CJEU shall have supreme jurisdiction like in case of Eurofood IFSC Ltd.]

While your reasoning is sound, the answer is incomplete and incorrect because the facts of the case do not support the finding of an establishment of Cardinal Home in Italy. The presence of assets (leased-out warehouse) in isolation, contractual relations with a local bank (including maintenance of a bank account) and *occasional* negotiations with local distributors do not qualify as 'non-transitory economic activity with human means and assets.' The requisite minimum level of organisation and a degree of stability (see para. 64 in *Interedil*) is missing.

Total marks: 9 out of 15.

End of Assessment

Total marks: 33 out of 50.