



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).
4. You must save this document using the following format: **[studentID.assessment2B]**. An example would be something along the following lines: 2021122-526.assessment2B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the word “studentID” with the student number 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.**
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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.**

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.

Question 1.9

In a cross-border dispute, the main proceedings before the Italian court opposes Fema SrL (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 Fema SrL 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 Fema SrL 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).

C was the correct answer.

Total marks: 9 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.”

[Statement 1 relates to synthetic secondary proceedings and the relevant provision is article 36 of EIR recast which provides for the right of an insolvency practitioner to give an undertaking in order to avoid secondary insolvency proceedings. The undertaking relates to respect or compliance with the distribution and priority rights in the member state where the assets of the debtor are located and secondary insolvency proceedings could be opened. The undertaking is given to local creditors and is required to be in official language in writing and should be approved by the known local creditors.

Statement 2 is in paragraph 3 of the recital to EIR Recast and relates to the concept of court to court cooperation and communication between courts in article 42 of EIR Recast. The article mandates cooperation between courts where main and secondary proceedings have been opened, to the extent that such cooperation is not incompatible with the procedural rules governing the proceedings.]

Question 2.2 [maximum 3 marks] 2

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.

[Modified universalism is a concept that was first articulated by Prof. Jay Westbrook (2000) and subsequently by other insolvency scholars such as Bork (2017) and Mevorach (2018). It seeks to have a centralised resolution of cross border insolvencies through main proceedings in a state where the debtor has a center of main interests and where necessary, secondary proceedings in states where the debtor has an establishment. This approach recognises that a single universal resolution mechanism is impractical but seeks to minimise costs, conflicts and inconsistencies associated with multiple proceedings. The following provisions in the EIR Recast reflect the modified universalism approach:

- a) Article 3(2)-(4) which permit opening of secondary proceedings in a territory where the debtor has an establishment. Other relevant provisions on secondary proceedings are in Chapter III(articles 34-40).
- b) Article 33 on public policy exception which permits a member state to refuse to recognise proceedings or enforce a judgement if doing so would be contrary to public policy. **This does not indicate modified universalism.**

- c) Articles 41-44 on cooperation and communication between insolvency practitioners, courts and insolvency practitioners and courts.

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.

[Cross border cooperation and communication is provided for in chapter III (articles 41-44) of EIR Recast covering the following:

a) cooperation and communication between insolvency practitioners in main and secondary proceedings.

b) Cooperation and communication between courts in order to facilitate coordination of main and secondary proceedings, provided such cooperation is not incompatible with the rules applicable to each of the proceedings.

c) Cooperation and communication between insolvency practitioners and courts where main or secondary proceedings are pending or have been opened.]

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.

[The first instrument introduced by the EIR Recast to avoid secondary proceedings is the synthetic proceeding in article 36 which allows an insolvency practitioner to give an undertaking to creditors in a member state where a debtor has an establishment and secondary proceedings could be opened, that he will comply with the rules on priority and distribution in that state.

The second instrument is in article 37 EIR Recast which put a 30 day time frame for requesting to open secondary proceedings in a member state where an undertaking to comply with local law distribution and priority rules has become binding.]

Total marks: 9 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] 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.

[The EIR Recast provided for the following that were found to be gaps in the EIR 2000:

- a) The first is the scope of proceedings to which the regulation applies. Recital 8 of EIR 2000 restricted the application of the regulation to insolvency proceedings involving legal or natural persons or traders or individuals. This narrow scope was reflected in Annex A that lists the categories of proceedings for each country. For example, the category of proceedings to which the regulation applied in Ireland were compulsory winding up by court, bankruptcy, administration in bankruptcy of persons dying insolvent, winding up in bankruptcy of partnerships, creditors voluntary winding up, arrangements and company examinership.

EIR Recast broadened the scope of proceedings to which it applies. Recital 10 of EIR Recast provides that the regulation should apply to proceedings which promote the rescue of economically viable but distressed businesses, restructuring proceedings, proceedings which leave the debtor fully or partially in control of its affairs, as well as debt discharge or debt adjustment proceedings. This broader approach is reflected in the categories of proceedings of the various countries in Annex A. For example, for Ireland, the scope of proceedings mentioned above was broadened to include debt relief notice, debt settlement arrangement, and personal insolvency arrangement

- b) Clarification of the Debtor's Center of Main Interests. This is critical to determination of main and secondary proceedings. Article 3(1) of EIR 2000 provided for a rebuttable presumption that the location of registered office of the debtor was the center of main interests. However, article 3(1) of EIR Recast provides a more objective criteria for determining center of main interests including place where the debtor conducts the administration of its interests on a regular basis and applies a third party test to ascertaining this.
- c) EIR 2000 did not provide for a mechanism for obtaining information about insolvency proceedings that have been filed and for creditors to lodge their claims. EIR Recast addressed this gap by providing for establishment and interconnection of insolvency registers (articles 24 and 25) as well as related matters such as costs (article 26), conditions of access (article 27), publication of notices in member states (article 28), and registration in public registers (article 29).
- d) EIR 2000 did not provide for group insolvencies. Chapter V of EIR Recast provides for insolvency proceedings of members of a group of companies and contains provisions on cooperation and communication, and coordination.
- e) Data protection was also one of the gaps in EIR 2000 and is provided for in chapter VI of EIR recast.]

Question 3.2 [maximum 5 marks] 5

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 improvements in the EIR Recast were:

- a) Article 6 EIR Recast (jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them) is one of the clauses that seeks to ensure efficiency in the administration of cross border insolvencies as it seeks to avoid risk of irreconcilable decisions on matters such as avoidance actions.
- b) EIR Recast also provides for a more comprehensive mechanism for dealing with pending proceedings. EIR 2000 only provided for pending law suits to be governed by the law of the member state in which the suit is pending. The rationale for a *lex fori* as opposed to a *lex concursus* approach to these proceedings is to avoid uncertainty and disruption that may result from parties having to anticipate the effects of foreign insolvency laws on pending proceedings. Article 18 of EIR Recast adopts the same principle but extends it to arbitral proceedings as well. This ensures consistency of treatment between judicial and arbitral proceedings.
- c) Article 32 of EIR Recast provides for recognition of insolvency related judgements such as those arising from insolvency related proceedings, preservation measures and actions to set aside acts detrimental to creditors. Recognising such judgements in a manner similar to recognition of insolvency proceedings ensures effective administration of insolvency proceedings.]

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 provides a more elaborate and efficient framework for resolution of cross border insolvencies. However, the following innovations/improvements in the regulation may present shortcomings:

- a) The provisions on communication and cooperation between insolvency practitioners, courts and insolvency practitioners and courts seek to mitigate the challenges associated with multiple proceedings and ensure effective coordination of main and secondary proceedings. However, the regulation does not provide for consequences of non-compliance with these regulations.
- b) The provisions on insolvency proceedings of members of a group of companies (chapter V EIR Recast) addressed a major gap in EIR 2000. However, the provision have some shortcomings that may undermine the possibility/potential for group resolution. The entity approach appears to contradict the fundamental principles of the regulation such as value maximisation, procedural efficiency and equal treatment of creditors to the extent that it undermines the potential for a group restructuring. Non-involvement of creditors in decision concerning coordination of proceedings and the option of opt out make frustrate the process. Another key limitation is that the process would not apply to members of the group outside the EU.

Yes but you were also required to discuss how you consider these flaws could be corrected.

Total marks: 12.5 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.

[Article 3 of EIR 2000 granted courts in member states jurisdiction to open insolvency proceedings in a territory in which the debtor's main interests is situated. The facts indicate that Cardinal Homes was registered in Dublin but had operations in other European states. According to Article 3(1) of EIR 2000, the place of the registered office of a company was presumed to be its center of main interests in the absence of proof to the contrary. This position was confirmed in **Re Eurofoods IFSC Ltd** where the question of COMI arose in relation to an Irish Subsidiary of an Italian company. The ECJ ruled that in the absence of rebuttable factors (objective and easily ascertainable by third parties), if a debtor was a subsidiary company and its registered office was different from that of the parent company, the COMI of the subsidiary was presumed to be the place of its registered office. Therefore, High Court in Dublin has international jurisdiction to open the requested proceedings on the basis of the presumption that the Centre of Main Interests (COMI) of the company is in Ireland because it was registered in Ireland (article 3.1).

The requested proceedings (company examinership) are collective insolvency proceedings and there within the scope of proceedings in articles 1 and 2 and annex A of EIR 2000.]

Question 4.2 [maximum 5 marks] 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.

[The EIR Recast was adopted in 2015 and entered into force on June 26 2017. Therefore, if the proceedings were opened on June 30, 2017, the EIR would apply on the basis of temporal scope. However, there are other considerations that need to be taken into account to determine whether the EIR Recast is applicable.

It is important to determine whether proceedings are within the scope of proceedings to which the EIR Recast applies. Article 1 of EIR Recast provides that the regulation applies to collective proceedings, including interim proceedings, which are based on laws relating to insolvency including rescue, reorganisation and liquidation proceedings. Article 2 provides that insolvency proceedings should be within the meaning of Annex A. Company examinership is among the proceedings listed for Ireland in Annex A.

According to article 3 of the EIR Recast, it applies to proceedings involving natural or legal person and therefore, Cardinal home, being a company registered in Ireland, and the proceedings being within the scope of those provided for in in articles 1 and 2, the regulation is applicable.

The EIR Recast applies to all EU member states except Denmark. The proceedings were opened in the Dublin High Court in Ireland. Ireland is a member of the EU and therefore the EIR Recast applies.]

Question 4.3 [maximum 5 marks] 3

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 EIR Recast provides that where the debtor's center of main interests is situated in a territory of a member state, another member state shall have jurisdiction to open insolvency proceedings against that debtor if it possesses an establishment within that territory and the effects of the proceedings are restricted to assets of the debtor within that territory.

Establishment is defined in article 2 as any place of operations where the debtor carries or has carried out non- transitory economic activity.

Article 3(3) of the EIR Recast provides that where insolvency proceedings have been opened in accordance with paragraph 1 (international proceedings- in this case main insolvency proceedings opened in the High Court of Dublin), any proceedings opened subsequently shall be secondary proceedings. Chapter III of EIR Recast contains detailed provisions on secondary proceedings.

According to the facts, Cardinal home had warehouses in various EU members states including Milan, Italy. Therefore, the Italian bank can file secondary proceedings in Italy. In the **Burgo Group SpA v Illochroma SA** case, the CJEU permitted opening of secondary proceedings in the member state where the debtor was registered since main proceedings has been opened in another member state.

While your reasoning is sound, the answer is 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: 13 out of 15.

*** End of Assessment ***

Total marks: 43.5 out of 50.