



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.**

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).

B was the correct answer.

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).

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 – provision of the universality of the main insolvency proceeding with the observance of the creditor’s rights to lodge its claims and receive its debits, Article 36 (1) EIR Recast.

Statement 2 – cooperation and coordination between all actors involved in the insolvency proceeding to guarantee effectiveness to the insolvency proceeding with an efficient administration of the insolvency estate, equal treatment between creditors and the effective realization of the assets (articles 41-43 and 56-58).

Question 2.2 [maximum 3 marks]

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.

Three examples of provisions made by the EIR Recast in adoption to the modified universalism approach is (i) the possibility of the opening of main and secondary proceeding, where the main proceeding has universal scope, and the secondary has territorial scope (article 3 (1) and (2)); (ii) the possibility to stay the opening of secondary proceeding to allow negotiations in the main proceeding (article 38 (3)); and (iii) the possibility of the insolvency practitioner of the main proceeding avoids the opening of secondary proceeding (article 36, EIR Recast).

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.

To provide more efficiency of the insolvency proceeding’s purpose (which implies, in the end, in the benefit to the creditors and the continuation of the debtor’s business, in some cases), the EIR Recast provides several rules to guarantee an effective co-ordination between the participants of the main and secondary proceedings, especially the courts and the insolvency practitioners.

To the court specifically, the EIR Recast establishes that the courts of the main and secondary insolvency proceedings must cooperate with each other, even before the decision

to open the proceeding (article 41 (1), EIR Recast). They should communicate to receive information about the creditor's rights (article 41 (2)), the debtor's assets and affairs, to approve protocols (both in article 41 (3), EIR Recast) and they may also cooperate by "coordinating the appointment of insolvency practitioner" which includes the possibility of appointment of just one for more than one proceeding (Recital 50, EIR Recast).

In addition, the courts can indicate a person or body to act on their behalf if that measure is able to facilitate the communication (article 41 (2), EIR Recast).

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 example is the undertaking to avoid the opening of secondary proceeding, inserted in article 36 EIR Recast. This instrument allows the insolvency practitioner in the main insolvency proceeding to prevent the opening of a secondary proceeding if it ensures the local creditors that all its rights under the national law will be respected as if the secondary proceeding have been opened.

The second example is the possibility to stay the opening of secondary proceeding, granted in article 38 (3) EIR Recast. In that case, the insolvency practitioner of the main insolvency proceeding may request the stay of the opening of secondary proceeding if it proves that the opening of this secondary proceeding is able to threaten the success of a negotiation between creditors and debtor in course.

Total marks: 10 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.

As specified by the European Commission in December/2012, the EIR 2000 needed to be reformulated to adhere to the insolvency practice naturally developed after 12 years since the EIR started to operate.

The most important things that needed to be reformulate or adjusted were (i) the creation of a general regulation to restructuring proceeding; (ii) the regulation of a proceeding for groups of companies; and (iii) strength of rules concerning cooperation and coordination.

The restructuring proceeding has the aim of rescuing the debtor from bankruptcy. This type of proceeding is very important to debtors who are going through financial distress but have a viable business. To introduce this point, the EIR Recast established expressly in Recital 10 and article 1 that the scope of the regulation is not just to regulate proceeding to liquidate companies but also the restructuring ones.

The second important point was the necessity to regulate insolvency proceeding that can interfere with a whole group of companies who have mixed assets and affairs. The EIR Recast, different from its predecessor, includes a whole chapter (Chapter V) to regulate this type of proceeding (articles 56-83).

Finally, better communication between actors of the proceeding was needed to give more effectiveness to cross-border insolvency proceeding in general. Different from the EIR 2000, the EIR Recast expressly established mandatory rules for courts and insolvency practitioners to cooperate with each other (articles 41-43 and 56-58).

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.

As recommended by the European Commission in December/2012, the EIR Recast brought – or at least tried to bring– solutions to problems identified while its predecessor was enforced, either improving tools already present in EIR 2000 or implementing new ones. For example, the EIR Recast introduced the possibility of an insolvency proceeding for an enterprise group, named Group Coordination Proceeding.

The opening of a group coordination proceeding regarding enterprise groups is not mandatory, but the EIR Recast allows for the possibility of this proceeding when it's requested by the insolvency practitioner of one proceeding (article 61 (1)) and when it's not requested, the regulation obligates communication and coordination between the courts and insolvency practitioners when the insolvency proceeding of more than one company of an enterprise group is opened in different Member States (articles 56-58).

Another innovation is the possibility of restructuring proceedings being regulated by the EIR Recast. Different from EIR 2000 that just applies to proceedings to "*entail the partial or total divestment of a debtor and the appointment of a liquidator*" (article 1, EIR 2000), the EIR Recast applies specifically to proceedings that have the purpose of "rescue, adjustment of debt, reorganization or liquidation" (article 1, (1), EIR Recast).

The inclusion of restructuring proceedings under the scope of the EIR Recast is an important tool to provide a coordinated and effective proceeding to help a debtor that is going through financial distress but has the possibility to maintain its activity.

The EIR Recast also brought specific rules to improve the communication to creditors, especially the foreign ones, giving to them real opportunity to participate in the insolvency proceeding and forcing the insolvency practitioner to publicise the notice of the opening of insolvency proceeding in any other Member State where the debtor has an establishment (article 28 (1)) and the obligation of the court to notify the known foreign creditors about the proceeding (article 54 (1)).

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.

We can't deny that the EIR Recast brought important innovations for the treatment of cross-border insolvency proceedings under the European Union. However, in some aspects, specially dealing with enterprise groups, the EIR Recast missed the opportunity to provide a more effective measure to guarantee an efficient insolvency proceeding.

For example, the EIR Recast doesn't provide rules for a substantive or even procedural consolidation between insolvency proceedings opened against different debtors that are part of the same enterprise group.

Sometimes, especially when the debtors who are part of the same group act as a single big company and have cross-guarantees and intra-group loans, at least a procedural consolidation is necessary to guarantee effectiveness to the insolvency proceeding and especially the creditors.

Besides that, although the EIR Recast allows the insolvency practitioner appointed in an insolvency proceeding opened against one debtor that is part of an enterprise group to require the opening of a group coordination proceeding (article 61), which is a mechanism to guarantee better coordination between the different insolvency proceedings; this is not mandatory.

In addition, even if the insolvency practitioner decided to open the group coordination proceeding, there is no provision to hear or even communicate with the creditors affected by this proceeding, which can bring prejudice to the creditor's rights and even the effectiveness of this group proceeding.

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

The EIR 2000 prescribed its application to the proceeding opened against the debtor that had its COMI in the Member States where the regulation was ratified, which is the case in Ireland.

The proceeding could be main one, when opened where the debtor has its COMI, or secondary, when opened where the debtor has an establishment (article 3, paragraph 1 and 2).

The EIR 2000 didn't provide a clear definition of COMI as its successor, the EIR Recast, did; but the Recital 13 stipulates that the COMI "*should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties*". As a result of this vague definition, the CJEU clarifies in the judgment of the Eurofood IFSC Ltd case (case C-341/04, ECLI:EU:C:2006:281 – May 2, 2006), that the interpretation of COMI is independent from eventual definition provided by the

domestic/national law of a specific case and should be an objective place, which is ascertainable by third parties.

In that case, one of the main discussions was if Eurofood's COMI should be considered in Ireland, the place where the company has its registered office, or in Italy, the place where the Eurofood parent company had opened a main insolvency proceeding.

As mentioned above, the CJEU understood that according to EIR 2000, the COMI should be an objective place, ascertainable by third parties. As Eurofood was a company registered and with operations in Ireland and the connection to Italy was just the parent company, the CJEU concluded that the Irish court was much more accessible by creditors than the Italian court.

Following this definition to this specific case, considering that Cardinal Home is a company registered in Ireland and has operated there for many years, it is possible to conclude that the Irish Court has international jurisdiction to open the mentioned proceeding.

On the other hand, if the Dublin High Court has the jurisdiction to open this proceeding is a matter to be decided by national law, as the EIR only establishes international jurisdiction (Recital 15). So, if the Irish domestic law grants that jurisdiction to Dublin High Court, the main proceeding could be opened there.

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.

In order to conclude if the EIR Recast is applicable, it is important to analyse all scopes of the regulation, i.e., the temporal, material, personal, and territorial.

Concerning the temporal scope, the EIR Recast provides in article 92 all insolvency proceedings opened from 26/06/2017 in the Member State that adopted the regulation. Considering that this case is dated after 26/06/2017, the EIR Recast would be applicable.

The EIR Recast provides, on the other hand, that it applies to proceedings listed in Annex A (article 2 (4)). Since the examinership is in that annex, the EIR Recast would also be applied in the material scope.

For the territorial scope, the regulation applies when the centre of main interest of the debtor is located in any Member States of the European Union (except for Denmark), which includes Ireland (Recital 87), so in this aspect, the EIR Recast would also apply.

Finally, the EIR Recast applies if the debtor is a "natural person or legal person, a trader or an individual" (Recital 9).

After analysing all aspects of the EIR Recast we can conclude that its terms are applicable to the opening of examinership in Dublin High Court.

Question 4.3 [maximum 5 marks]

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.

Firstly, it is important to note that the opening of a main proceeding results in the application of the national law of the Member State where the proceeding was opened (article 7, EIR Recast) because the main proceeding has a universal scope, as understood by all debtor assets and affairs. The opening of a secondary proceeding limits the scope of the main

proceeding, which won't affect anymore of the debtor's asset located inside of the Member State where the secondary proceeding was opened.

It is also important to note that the EIR Recast ensures to foreign creditors the right to lodge its claims in the main or secondary proceeding (article 45 (1)), but as explained above, the applicable law, including the ranking of credits and preferences, is the *lex concursus* or the *lex concursus secundarii*.

The secondary insolvency proceeding, which is the one opened after the opening of the main proceeding (article 3 (3), EIR Recast), has the goal to protect local interests, especially local creditors' rights and it can be opened where the debtor has an establishment (article 3 (2), EIR Recast) which, according to article 2 (10), means a place where a debtor had, until 3-months before the opening of main proceeding, "*a non-transitory economic activity with human means and assets*".

The case in the Cardinal Home study operates in Italy and has a warehouse in Milan, so it's possible to conclude that the company has an establishment in Italy. If the proceeding opened in Dublin is considered a main proceeding and the Italian creditor wants to protect his ranking rights under the Italian law, it is possible to open a secondary insolvency proceeding under the Italian Court.

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 *Interdil*) is missing.

Total marks: 13 out of 15.

*** End of Assessment ***

Total marks: 44.5 out of 50.