



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 1

(INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW)

***This is the summative (or formal) assessment for Module 1 of this course and is compulsory for all registered candidates on the Foundation Certificate. The mark awarded for this assessment will determine your final mark for Module 1. In order to pass this module you need to obtain a mark of 50% or more for this assessment.***

## INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment1summative]. An example would be something along the following lines: 20223-363.assessment1summative. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student ID allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 15 November 2022. The assessment submission portal will close at 23:00 (11 pm) GMT on 15 November 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 10 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

**Civil Law and English (Common) Law countries have the same historical roots. Select from the following the best response to this statement.**

- (a) This statement is untrue because English Insolvency Law developed from Roman law principles, and Civil Law Systems were based on the statute of Marlborough of 1267.**
- (b) This statement is untrue since Civil Law developed from early Roman law principles relating to debt recovery and English Insolvency Law developed via legislation, especially from the 16<sup>th</sup> century onwards.**
- (c) This statement is true since, on a principle basis, the developments of insolvency law as a system is the same in all systems.**
- (d) The statement is true since both systems developed from a pro debtor approach towards the notion of over-indebtedness.**

Question 1.2

**Both Civil Law and English Law systems in general allowed for a rather liberal discharge of debt for over-indebted debtors right from the inception of these systems. Select from the following the best response to this statement.**

- (a) This statement is untrue since in both systems the notion of discharge only developed at a later stage.**
- (b) This statement is true since in both systems insolvency and rehabilitation procedures developed with discharge as a way of departure.**
- (c) This statement is untrue since discharge of debt never became part of any of these systems.**

**(d) This statement is true since creditors in both systems had an accommodative approach towards over-indebted debtors.**

Question 1.3

**England and America each have their own single unified piece of insolvency legislation which apply to both personal and corporate insolvency. Select from the following the best response to this statement.**

**(a) This statement is true since England has the unified 1986 Insolvency Act and the USA has the 1978 Bankruptcy Code. Both Acts cover personal and corporate insolvency.**

**(b) This statement is untrue since in England the Insolvency Act 1986 deals only with personal insolvency.**

**(c) This statement is untrue because the USA has separate Acts dealing with corporate liquidation and rescue.**

**(d) The statement is true since in England its companies' legislation deals with corporate insolvency and rescue.**

Question 1.4

**There are no good reasons to distinguish between insolvency rules pertaining to individuals (consumers, natural person debtors, also referred to as personal insolvency) and those insolvency rules applying to corporations or companies since in both instances the applicable insolvency rules are intrinsically collective in nature. Select from the following the best response to this statement.**

**(a) The statement is true since global insolvency law systems provide exactly the same rules to cover all aspects of insolvency in both instances, ie personal insolvency and corporate insolvency.**

**(b) The statement is untrue since there are pertinent differences in the treatment of certain aspects in insolvency of an individual and that of a company, like the fact that individuals are not "dissolved" after their estate assets have been liquidated as is the case once the assets of a company have been liquidated and it is finally wound up.**

**(c) The statement is untrue since insolvency law rules are not collective in nature.**

**(d) The statement is true since insolvent companies usually survive their liquidation and may continue to conduct business after the debt has been discharged through the liquidation process.**

Question 1.5

**All countries have one and the same set of rules to apply in the case of recognition of a foreign insolvency order. Select from the following the best response to this statement.**

- (a) The statement is untrue since the systems differ and some countries have no formal cross-border insolvency rules in place at all.**
- (b) This statement is true because all member states of the UN have adopted the UNCITRAL Model Law on Cross-Border Insolvency.**
- (c) This statement is true because the UNCITRAL Model Law on Cross-Border Insolvency applies directly to all UN member States.**
- (d) This statement is true since the International Court of Justice has a set of global cross-border insolvency principles that apply globally.**

Question 1.6

**The domestic corporate insolvency laws of a particular country make no mention of the possibility of a foreign element in a liquidation commenced locally. There is also no locally applicable treaty or convention on insolvency proceedings in place.**

**In a local liquidation commenced in that country, to what other area of domestic law can the local court refer in order to resolve an insolvency related international law issue that has arisen because of concurrent insolvency proceedings over the same debtor in a different country?**

- (a) Public International Law.**
- (b) UNCITRAL Legislative Guide on Insolvency Law.**
- (c) World Bank Principles for Effective Insolvency and Creditor Rights Systems.**
- (d) Private International Law.**

Question 1.7

**Private international law raises questions of the conclusive effect of a foreign judgment and the enforcement of a foreign judgment. A German court has issued a judgment in a German insolvency which has a connection with England. The foreign**

*insolvency office holder seeks recognition and enforcement in an English court of the insolvency order made in the German insolvency proceedings.*

*Which of the following statements, concerning the request for recognition and enforcement in England, is true?*

- (a) The English Court hearing the request for recognition and enforcement may apply the EU Recast Insolvency Regulation (2015).*
- (b) It is relevant factor for the English Court hearing the matter to consider whether Germany has adopted the UNCITRAL Model Law on Cross-border Insolvency 1997, or not.*
- (c) The English Court will be able to consider the request based on its 2006 Insolvency Regulations (the adopted UNCITRAL Model Law on Cross-Border Insolvency) and / or common law principles.*
- (d) The German order will be automatically recognised in England due to a cross-border insolvency treaty between England and Germany.*

Question 1.8

*Which of the following best describes international insolvency law?*

- (a) It is public international law governing insolvency law between States.*
- (b) It is private international law governing insolvency law between States.*
- (c) It may involve aspects of both public international law and private international law.*
- (d) It involves a simple classification within either public international law or private international law.*

Question 1.9

*To date, the most successful soft law approach to international insolvency law issues has been the Model Law on Cross-border Insolvency. Select from the following the best response to this statement.*

- (a) This statement is untrue because not all States have adopted the Model Law on Cross-border Insolvency.*
- (b) This statement is untrue because of the requirement for reciprocity in relation to the Model Law on Cross-border Insolvency.*

**(c) This statement is true because the Model Law on Cross-border Insolvency creates regulations which binds each State and has been the most influential response to international insolvency law issues.**

**(d) This statement is true because the Model Law on Cross-border Insolvency has been adopted by numerous States and is gaining momentum as an influential response to international insolvency law issues.**

Question 1.10

**Latin American States have some of the most long-lasting multilateral agreements regarding international insolvency issues. Select from the following the best response to this statement.**

**(a) This statement is untrue because the Bustamante Code was concluded in 1928, which was only a few years before the Nordic Convention of 1933.**

**(b) This statement is untrue because North America was not a party to these agreements.**

**(c) This statement is true because agreements such as the Escazú Agreement have been extremely long lasting.**

**(d) This statement is true because of agreements such as the Montevideo Treaties and Havana Convention on Private International Law.**

Marks awarded 10 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

**Briefly indicate the historical roots of the various insolvency law systems to be found in African jurisdictions.**

**Countries from Africa still mainly use laws which were previously implemented by the colonial powers. Example would be countries like Nigeria, Zambia, Kenya, Botswana, and other eastern African states like Tanzania abide by the English law. The Portuguese law are found in countries like Mozambique and Angola whereas the French law are applied for Francophone states of West Africa. The judicial system that prevail in South Africa is based on a mixed system of the Roman-Dutch law and the English one. So, both civil and common laws applied to South Africa. The former imported laws are still being used in African countries, but numerous African countries have begun to establish new modern law.**

3

Question 2.2 [maximum 3 marks]



**Indicate what important events and / or developments gave rise to some insolvency law reform in Eastern Asia and provide two examples of such reform initiatives.**

East Asia

**The consequences after the financial crisis of 1998, which affected countries of East Asia most importantly Indonesia and Thailand and they revamped their respective bankruptcy legislature.**

**Singapore who also a major player in the East Asian countries has in October 2018 introduce an innovative Insolvency, Restructuring and Dissolution Act to amalgamate the corporate and personal insolvency and restructuring law to a combine Act which was effective as from 30 July 2020.**

Russia

**By 1992, Russia has developed its insolvency law by implementing some general provision in the process of reorganisation and afterward by introducing the 2002 Bankruptcy law. The new law has introduced rigorous measures in term of qualifications of the insolvency representative and on the ethical conduct and creditors exercise significant control.**

China

**Since 1979, there has been some evolution in the insolvency law of China which lead to the Bankruptcy law of 2006. And it applies to corporate and not sole traders. The People's Republic of China became effective as from 1st of January 2021 and it regulates the identification of the property of the debtors and the right of creditors.**

3

Question 2.3 [maximum 4 marks]

**Briefly indicate the various initiatives undertaken to assist with the resolution of international insolvency issues between North America and Canada and the success or otherwise of these initiatives.**

**During the 1970s, Canada and the United States started working on a bilateral treaty in respect of the insolvency procedure but was not materialised. Afterward, more progress were made by the espousal of the Model Laws especially by Protocols although there have been bilateral co-operation and co-ordination in their respective law and legal doctrine cases, The American Law Institute (ALI) has help with resolution on the insolvency problems between the North American Free Trade Agreement(NAFTA) states of Mexico, United States and Canada. ALI has enhanced co-operation on the international issues in respect of insolvency between the NAFTA countries and Professor Westbrook was selected to form an advisory groups which consisted with experts of the three states to introduce international statement which would be appropriate to solve the international issue of insolvency. Hence Principles of Cooperation between the countries were introduced and validated by the ALI Council in 2000. It was oriented towards the process of insolvency for corporate and legal entities which were involved in commercial operations only and not natural persons, non-profit groups and financial institutions.**

**The Principles were oriented toward the following:**

- **General Principles;**
- **Procedural Principles; and**
- **Guidance on law and International Agreement.**

**There has been much emphasis which were laid on Co-operation and coordination to recognise and enforce law like the ALI Transnational Insolvency Project where the ALI NAFTA established guidelines for Court to Court communications on issues of Cross-Border Cases.**

**Protocol which was used by the US and Canadian Court in the Nortel Networks case was another successful initiative.** [There is some scope to elaborate regarding \*Re Nortel Networks Corporation\* \[2016\] ONCA 332; \*In re Nortel Networks, Inc.\*, 669 F.3d 128](#)

3.5

Marks awarded 9.5 out of 10

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

**Question 3.1 [maximum 5 marks]**

***It is said that one of the difficulties in designing a proper cross-border insolvency dispensation is the fact that domestic insolvency laws and approaches towards insolvency in various jurisdictions are not the same and in fact sometimes differ vastly. Discuss the possible historical reasons for the difference in approaches regarding the treatment of voidable dispositions, given the way such rules developed in English law and civil law jurisdictions respectively. In your answer you must provide a context or framework for the treatment of these rules in insolvency systems and indicate why these rules are important in insolvency.***

***Insolvency law is about a collective debt-collecting process; hence we have to prevent creditors from enforcing their individual debts as from the start of the insolvency process. But considerations must be initiated on transaction which occurred before the insolvency process started. The insolvency representative will have to investigate transaction occurred before his/her appointment to prevent fraud like the company may hide asset for later benefits or favouritism toward one creditor at the expenses of other creditors. Preventing precipitous loss in the company asset value or the creation of transaction for out-of-court settlement. The insolvency representative must investigate and make necessary arrangement to set aside these transactions and recoup the asset back.***

***Violable transactions can be in term of fraudulent activities like disposal of asset at lower value or giving preference like paying some creditors which are closed and may help in the future.***

**The Actio Paulina in civil law systems will applied to violable dispositions whereas in common law, the Act of Elizabeth of 1570 will be the remedy for common law system. Hence, the remedies that will be available for both systems will differ.**

**These rules are important as the insolvency representative may apply to court for an order so as the voidable transactions be declared null and void and hence he can take procession of these assets and dispose it at the market value where more fund will be available for distributions to the creditors and no creditor is better off at the expense of the other creditors.**

This is a good answer. There is some small scope to elaborate and consider additional matters.

4.5

Question 3.2 [maximum 5 marks]

**A Dutch commentator on international insolvency law defines international insolvency law as that part of the law that:**

***“[i]s commonly described in international literature as a body of rules concerning certain insolvency proceedings or measures, which cannot be fully enforced, because the applicable law cannot be executed immediately and exclusively without consideration being given to the international aspect of a given case.”***

**However, the author concedes that this definition has limitations. Briefly discuss the reasons why the definition is perceived to have limitations.**

**The definition of Wessels is viewed to have limitations as he conceded that the law is associated to the existing national legal procedure of insolvency which prevails in the country. He moreover makes reference to other author who reveal such limitation as below.**

**Fletcher states that international insolvency go beyond the restricted law of a single legal system and as such, the laws that prevail in the states cannot be applied instantly and entirely without considering the foreign elements which is involved in the case.**

**Firman advance that it is not by accident/chance that USA has applied in their Constitution that insolvency matter should be a federal law and not a state law as it transcends the states where there is unrestricted flow of products, services, capital, and workers in the market. Hence one law should**

**be applied to all the states. As nowadays, there are commercial trading on international level and most of the substantial failures of corporations are involved in more than one country, international insolvencies laws are required to regulate these failures as local insolvency laws are ill-equipped. There is a requirement for different countries courts to coordinate and collaborate on international insolvency issues against same debtors having transactions/assets in different countries. Legal matter initiated in different countries may compete or be incompatible like liquidation may be initiated in one country and restructuration in other country leading to unnecessary loss. The debtor may be solvent in one country and insolvent in other country leading to creditors may be better off in one country and not in the other state. Also, there may be risk of fraud and forum shopping if not regulated.**

5

Question 3.3 [maximum 5 marks]

**Briefly discuss treaties or conventions as a source for cross-border insolvency law. In your answer you should also indicate if these are viewed as a successful way in establishing such rules by providing examples in this regard.**

**Treaties and conventions are described as public international instruments whereby states sign and are bind by the agreement which will influence their domestic law. There have been many attempts to have treaties and conventions on insolvency laws but without success.**

**In the 13<sup>th</sup> and 14<sup>th</sup> centuries, there were conventions regulating bad debtors and later on the collection of assets. As from the 19<sup>th</sup> century, more modern treaties and conventions on laws were introduced, recognitions, and enforcement in respect to insolvency proceeding were established. One of a rare treaty which was successfully was the Nordic Convention (1933) of the Scandinavian countries. In Europe also there has been some unsuccessful one like the Council of Europe. In 1990, the Istanbul Convention was concluded but not ratified. However, it led to the progress of a European response in respect to issue of international insolvency among the members. The European Insolvency Regulation (EIR) (2000) although not by way of convention was successful as it affects broader multilateral improvement in international insolvency regulation.**

**The Hague Conference in which the Model Treaty on Bankruptcy was an initiative which was not ratified but led to international debate on rules of international insolvency in respect of allocation of jurisdiction to court where a corporation**

**registered seat is found assuming no fraud or the entity is not fictitious. The Hague Conference which is now known as "The World Organisation for Cross-Border Co-operation and co-ordinates with the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade (UNITRAL) which led to the UNCITRAL guideline of Insolvency Law (2004).**

**A successful initiative was the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI). Although not a treaty or Convention, the MLCBI is now being adopted by many states and it is gathering momentum as an important guideline to international insolvency law.**

**Other successful treaties/conventions would be:**

- 1. The Montevideo Treaties (1889) and (1940) and the Havana Convention on Private International law (1928) between the Latin America countries.**
- 2. The Principles of Cooperation within the NAFTA states.**
- 3. The OHADA Treaties between the African countries.**

5

Marks awarded 14.5 out of 15

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

**Flor Prim Pty Ltd (FPPL) is a company incorporated with its head office and significant operations in Encanto as well as being registered as a foreign company in Asgard, where it also carries on business. FPPL therefore carries on business in more than one State. Lobo Lending Ltd (Lobo) is incorporated and has its head office in Asgard.**

**FPPL is managing to meet its debts as they fall due in Encanto. However, due to various staffing issues combined with market turndown in Asgard, FPPL is struggling financially in Asgard. FPPL has fallen behind with payments due and owing to Lobo. FPPL's CEO approaches Lobo to discuss possible informal payment arrangements.**

**If you require additional information to answer these questions, briefly state what it is and why it is relevant.**

**Question 4.1 [Maximum 5 marks]**

**What are the main differences between "formal" insolvency proceedings and "informal" insolvency arrangements? What key advantages and disadvantages should Lobo consider regarding any informal out-of-court workout arrangement it could enter with FPPL, compared with its formal debt recovery options?**

**Formal insolvency proceedings would mean the insolvency process is regulated by the laws and both FPPL and Lobo would have to bind by the rules of the law, example both entities would have to do such thing and follow the processes as stipulated in the Insolvency law on whether it is a liquidation processor a restructuring process.**

**Informal insolvency processes (out-of-court agreement) would not (always) be governed by the prevailing law. It means that there would be voluntary negotiation among both parties to find a solution. It is normally found in the banking and commercial industry and would provide some way for the restructuring of the debtor's business. Its efficiency and effectiveness would be influenced by the insolvency law as the law would give indirect inducements or influential force for restructuring.**

**Advantages for informal proceedings (disadvantage of formal proceeding) are:**

- 1. It is less costly than going to court.**
- 2. No publicity that the company is in financial difficulty and hence the company would be able to dispose of the assets at least at market price.**
- 3. The debtor may try to find amicable solutions with the creditors for example it may differ re-payment in several tranches and the creditor may accept as the debtor is in financial difficulty and hence he may not be in a position to refuse.**

**Disadvantages of informal proceeding (advantage of formal proceeding)**

- 1. Once the process of liquidation/restructuring has started, creditors will be discouraged to bring any legal action against the debtor.**
- 2. The actions of creditors who would initiate legal procedure will be stayed and a moratorium would be in placed to prevent any legal proceeding from creditors.**
- 3. Any court order in respect to the liquidation process/restructuring will be binding on both the debtors and the creditors. and dissenting creditors**

**It would also be beneficial to note that it is made more complex by FPPL carrying on business in more than one State because: it is more complicated and costly to monitor the other creditors.**

**4**

**Question 4.2 [Maximum 5 marks]**

**Assume that instead of the scenario described above, Lobo obtained a formal court order against FPPL for a court-supervised insolvency proceeding in Asgard. The Asgardian insolvency representative then discovered there was already a concurrent insolvency proceeding commenced against FPPL in Encanto. Detail difficulties that may arise for the insolvency representative pertaining to co-operation and co-ordination and the international insolvency instruments that have been developed to assist with respect to those difficulties. In your answer make sure to comment as to whether the development of these international insolvency instruments is important and why, or why not.**

**Additional information would be whether there is any Treaty or Convention between Encanto and Asgard and if there is a formal insolvency law (public and private international laws) in these countries**

**to understand if there could be the problem of recognition and effect of foreign proceeding.**

**Are the countries pro-debtors or pro-creditors to understand if Lobo would be able to recoup the fund**

**From FPPL.**

**The difficulties that insolvency representative will encounter would be that if there is no co-operation and co-ordination among the courts are:**

**There is high risk of numerous insolvencies proceeding which could be initiated against FPPL and these proceeding may compete against each other. From the question, we can see that there is a concurrent insolvency proceeding which has been initiated against FPPL in Encanto.**

**Another problem may be liquidation versus restructuration. These issues may create losses of capital for Lobo as FPPL is able to manage its debt in Encanto.**

**It would be very difficult to say which law of the two countries will prevail on issues like security rights and on the priority of payment leading to a race between the creditors where only the fittest one will be the winner. This would be against the principle of equality (par conditio creditorum).**

**The also may be risk in respect of fraud and forum shopping.**

**To address these difficulties, there have been may attempts to solve these issues, leading to international best practice standards like:**

- ***"The World Bank's Principle for Effective Insolvency and Creditor/Debtors.***
- ***Soft law like UNITRAL legislative Guide on Insolvency.***
- ***The Bankruptcy and fresh start of the European Commission.***
- ***The ALI Guidelines Applicable to Court-to Court Communications in Cross-Border Cases (2000)***
- ***EIR- European Guidelines on Communication and Cooperation (2007)***

**Having Treaties and Conventions between the two countries on how to regulate international insolvency matter.**

**Another approaches would be;**

1. ***Universalism where only one main proceeding will prevail.***
2. ***Modified universalism where there can be one main proceeding and secondary proceeding in other country.***
3. ***Co-operative territorialism which will induce communication and collaboration between courts.***
4. ***Contractualism where entities are required to insert a clause in their articles of association, which country law will prevail.***



**5. Co-operation as per protocol like in the Maxwell case.**

**These instruments are important and will help on better communication between courts and insolvency representatives of Asgard and Encanto which will solve the problems that has been mentioned above.**

This is answered reasonably well. There are some additional matters that could be raised. But it is done well.

4.5

Question 4.3 [Maximum 5 marks]

**Assume that instead of the hypothetical facts mentioned above, FPPL is an incorporated company with offices in the UK, and throughout Europe and other non-European countries. Lobo is its major creditor and is incorporated in a country in Europe. An insolvency proceeding against FPPL was opened in the UK by a minor creditor on 30 June 2022. A month later, Lobo was considering also opening proceedings in another country in Europe. Discuss whether the European Insolvency Regulation Recast would apply with respect to the UK commenced insolvency proceedings, and the consequences of same. In answering this question set out what further information, if any, you might need.**

**The European Insolvency Regulation (EIR) state that the main proceeding would be where the centre of main interest (COMI) is and would allow for secondary proceeding in other country where FPPL has an establishment. The main proceeding would be in UK and Lobo proceeding would be a secondary one.**

**The European Insolvency Regulation Recast(EIR Recast) is an amended version of the EIR extends the area of pre-insolvency/hybrid proceeding, enlarging the provision of COMI, and accepting that there can be foreign proceeding in and outside the EU.**

**As the proceeding against FPPL was initiated on 30<sup>th</sup> of June 2022 and the UK is not a member of the EU since 31<sup>st</sup> of December 2020 at 11 PM, only proceeding which was initiated before the 31 December 2020 would apply to the EIR Recast. Hence the EIR Recast would no longer apply to UK companies. It would be beneficial to explain the significance of this in terms of lack of automatic reciprocity.**

**If the matter is outside of the EIR Recast, The English court will be able to take actions base on the below. The authoritative text of Pr. Fletcher will be drawn. It would be beneficial to also raise the MLCIB as a possibility**

**Whether the court will have jurisdiction to hear the case which involve international insolvency where the other entity is incorporated outside UK. The Foreign company has to record his presence and has to delegate a local person on which service of process, or any other formal notices will be served.**

**S.221 (5) of Insolvency law of UK enable court to liquidate unregistered entities providing they meet the following criteria:**



- 1. The entity is already wound-up or has ceased operation or still operate with the aim to be liquidated.**
- 2. The entity is not able to meet his liability.**
- 3. It is fair to wind up the entity.**

**With respect to Paragraph (a), English court would require "sufficient connection" with the UK and the below 3 principle would be prerequisite.**

- 1. Sufficient connection to England and Wales but no need to have assets in the jurisdiction.**
- 2. The applicant should benefit from the liquidation order.**
- 3. The court should be able to have jurisdiction on the creditor/s received dividend on distribution.**

**On international insolvency, the liquidator would have to take control of all the assets of the entity and hence the liquidation order has to be recognised in the foreign jurisdiction and should also accept foreign claims incurred by the foreign creditors under the foreign law.**

**Local law shall also be relevant on the choice of law with respect to international insolvency. Procedure and substance by be based on the Insolvency Act 1986 but foreign law may be applicable on the foreign claims.**

3.5

Marks awarded 12 out of 15

\* End of Assessment \*

**TOTAL MARKS AWARDED 46/50**

**An excellent paper - a thorough response that addresses the questions asked and substantiates the answers well.**