



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).**
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- 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 16th 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 8 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.

When classifying roots of systems, most systems tend to either be Civil law or Common law, but the African systems are affected by history, culture, and local laws in each country. Most of the older laws are a basis of the current law. However, they are introducing many new more modern laws. Africa is one of the emerging and developing systems, but due to Africa inheriting its laws from colonies dates back many years, there are mixed laws between the countries.

The countries which follow English common law are:

- Nigeria
- Kenya
- Botswana
- Zambia

- *Tanzania and other Eastern Africa Countries*

Countries which follow civil law are:

- *Angola (Portuguese law)*
- *Mozambique (Portuguese law)*
- *West Africa (French law)*

Some countries have a mixed legal system from founding colonies due to both English Common law and Civil Law (Roman-Dutch law) being present:

- *South Africa*
- *Namibia*

A lot of the countries in Africa are introducing new and more modern law. OHADA was developed, which is the Organisation for the Harmonisation of Business Law in Africa. This is where a treaty has been signed to assist with renewal and harmonisation of the local laws. Of which all members of the OHADA have adopted UNCITRAL to assist in the uniformity of laws.

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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.

In 1998 there was the financial/political crisis which began in Thailand, due to Bangkok unpegging the Thai Baht from the US Dollar. This spread and affected the whole of the East Asia, this destabilized the Asian economy and then affected the world on a whole when it spread to Russia and Brazil. Due to the urgency of efforts to strengthen the international financial system. These events led to insolvency law reform in Eastern Asia. The outdated court systems, bad enforcement of existing bankruptcy laws and the outdated laws were no longer appropriate in today's business all was impacting the need for reform, laws which were still in play were:

- *Indonesia's Bankruptcy Ordinance (1904) which was based on Dutch laws from 1896*
- *Thailand's laws from 1940*
- *Philippine Insolvency Law from 1909*

One of the issues which were focused on was the implementation of an effective insolvency system and debtor- creditor regime. The strong system is needed to be able to prevent, mitigate and resolve crisis.

Objectives that the new insolvency reform created:

- *To maximise the value of the firm*
- *To provide fair and predictable regime for the debtor's assets*
- *To provide an orderly regime for the distribution of the proceeds of debtors assets*

Two examples of reform initiatives:

- 1) In 2018, Singapore passed a new Insolvency, Restructuring and Dissolution Act which came into play in 2020. This assists in the consolidation of the personal and corporate laws of insolvency.*
- 2) In Indonesia, they have a restructuring process called PKPU which stands for Suspension of Debt Payment Obligations. The new law is Indonesian Law No 37 of 2004 on Bankruptcy and Suspension of Payments which is the Bankruptcy Law. They have two key restructuring and insolvency regimes, one for business rescue and one for liquidation of business.*

RETA - Regional Technical Assistance is an initiative to provide forum for developing member counties and administration to discuss problems. It has been formed to provide technical assistance on the reform

All the reforms have the same principle in common, which is to make it easier for the insolvent companies to restructure and return to running economically stable businesses.

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.

There have been a few attempts to assist with the resolution with insolvency issues. But due to existing laws and case laws on comity, this has assisted with cooperation and coordination between the North America and Canada to begin with.

In 1970s North America attempted to get a treaty signed but this initiative failed due to it being too ambitious, as well as countries not being very willing to give up their laws.

The American Law Institute Transnational Insolvency Project has come up with guidelines to assist with international insolvency cases between USA, Canada, and Mexico. It is called the ALI NAFTA Guideline Applicable to Court-to Court Communications in Cross Border Cases (2000). This initiative used to improve the co-operation of NAFTA states which is the North American Free Trade Agreement States. Unfortunately, NAFTA principles focus on insolvency of corporations and not individuals or Not for profits.

It is recommended for all NAFTA Countries to adopt the Model Law. Adoption of Model Law and protocols have since assisted with the resolution between the countries. But this is always an ongoing process of trying to get to a single set

of guidelines and rules to assist with making the rules more predictable and clearer.

There is scope to elaborate. While the question says 'briefly' it is for 4 marks. There was scope to discuss, for example, *Re Nortel Networks Corporation* [2016] ONCA 332; *In re Nortel Networks, Inc.*, 669 F.3d 128

2.5

Marks awarded 8.5 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.

In insolvency law, the goal is to collectively join the debts and stop individuals from continuing with individual claims. What is important to determine is when the debts took place, either prior to commencement or after. Then, the prior claims could be investigated separately and set aside. This assists in equal treatment for the creditors, prevents fraud, creates a framework to encourage out of court settlements.

Voidable dispositions are either fraudulent conveyances or preferences. Of which the conveyance is a disposition by the insolvent by a donation or low valued transaction, that makes the debtors position of insolvency worse. Or Preferences which is the settlement of a pre-existing debt to a creditor, this improves the creditors position.

With regards to Conveyance - In Civil Law there is Actio Paulina which is the basis. And in Common Law the Act of Elizabeth of 1570 is the basis.

There is no one single set of insolvency rules, and this is due to many countries having their own rules and are often reluctant to give up their rules and adopt new rules. The differences stem from history and the local general laws which had different approaches to bankruptcy and insolvency. All countries had their own systems which dealt with bankruptcy and insolvency but there are fundamental differences in the rules and procedures and create a more uniform approach to cases.

Most legal systems are based on two points of view

1) CIVIL LAW- Roman Law was the backbone of Civil Law

This goes back to the Roman Law which debt execution was created from the debtor giving up his one body for repayment of the loan of which then he may be sentenced to slavery to be able to repay the debts otherwise either, executed or imprisoned. This was referred to as debt collecting procedure. This was a very brutal method against debtors.

Bankruptcy law was the first law which was the individual's laws and then insolvency law which was the collective debt collecting mechanism which was when the debtor was insolvent, and this was called insolvency law.

This system was a pro creditor form of collecting debts. Of which did not include the rehabilitation of debtors. There was no discharge of debt. But this allowed for a more Humane way of treating persons.

Based on the history, the CIVIL law countries take a more territorial approach to jurisdiction

2) COMMON LAW- English Law was the backbone of Common Law

English law only brought in imprisonment into the bankruptcy law in the 1300s by the Statue of Marlbridge of 1267. In 1500s a Bankruptcy Act was provided for, which was for compulsory sequestration to the debtor. For fraudulent debtors there was a compulsory admin and distribution of assets between creditors. It encourages collective participation of creditors and ranked distribution of the asset's considerations. Debtors were seen as criminals.

The Act of Elizabeth was then introduced for specifically bankruptcy but not discharge.

In 1705 the Statute of Ann was introduced which had the statutory discharge law. Prior to this it was still a brutal method for debtors to recover.

But then was removed in 1869 by the Debtors Act.

In 1883 a new office was introduced. Official Receiver Office, which had a responsibility to look after the debtor's estate prior to the bankruptcy procedures.

In the 1900s there was 3 laws named for bankruptcy. This law is seen as a foundation of the current laws.

The assets belong to the creditors

All assets and accounts are subject to supervision

Independent exam on the debtors conducts and circumstances.

The above foundations were kept in place until the Insolvency Act of 1986. This was an example of a unified insolvency legislation which has both corporate and personal bankruptcy in one Act.

In the 2000s there was an amended version of the Insolvency Act, of 2000 which introduced a debt relief order.

In 2006, cross border rules were adopted - UNCITRAL model law. Which promoted the cooperation and communication.

Based on the history, the Common law countries take a more universalism approach to jurisdiction

There is a constant effort to get the laws to cooperate and compromise to get closer to a single set of rules. There are a few different organisations who are slowly becoming more and more known as a general guide for all to use to update rules and follow. This is UNCITRAL and the World Bank. UNCITRAL developed a practice Guide on Cross Border Insolvency Agreements to provide a framework for the cooperation and communication under the MLCBI.

There is scope to elaborate and directly explain the importance of the rules.

3

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.

Wessels states that the definition is limited due to:

There is no single body of rules as it has not been able to be achieved. It is connected to the existence of a national legal framework. He believes that each cross-border insolvency be dealt with as a situation and not as one single process. This is due to the fact that the single set of domestic laws cannot be applied and used until they are considered with foreign elements and issues that come up. With the advances in this day in age, there is greater connection between persons and entities, internationally which causes more cases of cross border insolvency.

National borders are getting thinner and resulting in foreign laws becoming more necessary and more common. Domestic laws do not have the correct focus to be able to assist with cross border issues and have limitations. In most countries, general laws are outdated or systems having different views - pro creditor vs pro debtor or even territorial or universalism.

Therefore, coordination and cooperation are imperative to create predictability.

There is some scope to elaborate

4

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 are conventions which import into domestic laws to assist with conflicts in laws. If there is no treaties in place, then the private international law will assist with the international aspect of the law.

Treaties and conversions have been used to try harmonising domestic laws and create uniform rules and practices.

Treaties are an important step towards getting to a common single law. There are many different treaties which are still in place:

- *The montevideo treaties 1889 and 1940*
- *Havana convention on Private International Law 1928*
-

There are no treaties in the Asian Area, but Asia Pacific have started to adopt model law.

There were bilateral international conventions for both absconding debtors and gathering of assets in Europe. And in 1900s there were more modern treaties on the jurisdiction, recognition, and enforcement of bankruptcy. In 1990 there was a convention which was signed but was not ratified by enough countries, so it did not have important influence.

Most multilateral international insolvency conventions were not successful. The Nordic Convention 1933 was a very successful multilateral treaty.

Due to the lack of formal treaties, which would address the international insolvency problems. UNCITRAL has been used to develop a case-by-case basis for techniques and ways to resolve conflict.

There is scope to elaborate. While the question says 'briefly' it is for 5 marks.

4

Marks awarded 11 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 proceedings are proceedings that are conducted under insolvency law and are governed by the law. This includes liquidations, business rescues and reorganisations. This is commenced by a court order. This process could limit the debtors' assets/estates once placed into liquidation.

Informal proceedings are proceedings which are not regulated but are a negotiation/compromise between the debtors and the creditor. This is commenced by administrative processes outside of the courts. This can include corporate rescue

Key advantages of informal work arrangements:

- *Less costs incurred when not going through a court system, seeing FPPL is struggling financially in Asgard*
- *No publicity for the debtor, who already has staffing issues and market turndown in Asgard*

Key disadvantages of informal work arrangements:

- *No moratorium in place preventing other creditors from commencing liquidation proceedings. Lobo is not aware if there are other creditors which could start proceedings.*
- *No way to bind creditors to agreement reached, and they are already battling with staffing issues and market turndown in Asgard, so FPPL is struggling financially in Asgard. But Lobo is not aware of the current status of the business in Encanto. We would want to know how the entity is doing in Encanto to determine if it's just the Asgard area having issues or the whole entity.*

Key advantages for formal debt recovery option:

- *Moratorium preventing legal procedures being taken*
- *Creditors can be bond to the workout proposed, seeing there are already issues with staffing and market downturn, they may need to be bound to an creditor's repayment plan.*

Key disadvantages for formal debt recovery option:

- **Publicity, this could ruin FPPLs reputation and cause more issues.**
- **Expensive, which FPPL are already having issues starting to show.**

5

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.

Due to FPPL having their principal place of business and head office in Encanto but being registered in Adgard. Of which the place of business would probably be seen as Encanto. Therefore, if Lobo obtained a court order in Asgard, this could cause the need for co operation and coordination between Asgard and Encanto for the court order and dealings with assets of the debtor.

We are unsure of the laws in Asgard and Lobo and whether there is a treaty between them or if they both utilize UNCITRAL. As many laws are outdated and not suited to modern day. If there was a higher standard for local general laws nationally this could assist in the ultimate goal of getting cooperation and coordination between countries. Many countries see the approaches from different ways and are not willing to out throw their current laws. Some countries are pro creditor, and some are pro debtor.

Some countries prioritise domestic laws, labour laws, government taxes. This causes difficulties with ranking the creditors. We are unsure as to how Lobo and Asgard treat these items.

Due to all the differences in local laws. Regulations, history, and types of foundations. International organisations are working to devise a solution to deal with insolvency issues, for example UNCITRAL. If this was adopted by both countries, it could assist with the approach and the cross-border insolvency court order.

Elaboration is warranted. It is good that you raise the MLCBI. Reference to article 27 is warranted. Reference to additional international insolvency instruments is also warranted.

2.5

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) (2000) was more successful as it has influenced broader multilateral developments in law. In 2020 the EIR Recast no longer applies to the UK, due to the UK exiting the European Union. Lobo, the major creditor and a European company is wanting to open proceedings against FPPL which main centre of business and incorporation is in the UK.

Due to this being a July 2022 proceedings, the UK is no longer apart and this would result in the EIR not applying to the UK. But there has been amendments to the EIR to replace annexures which would allow the EIR to be effective for most member states which occurred in January 2022.

The UK had used the EIR for almost two decades when the split for Brexit took place, by using the laws for such an extended period it had assisted in making the cross border proceedings more efficient. So now without this, it could result in a more costly and unpredictable laws due to differences in local laws. The UK Insolvency officeholders will need to apply recognition and cooperation based on domestic laws of the member states when dealing with the European countries.

The UK has taken advantage of the UNCITRAL model law for Cross border proceedings. Of which European office holders can apply to the UK courts for recognition and relief even though it was not as powerful as it was when it was all member states. This would assist with Lobo wanting to open proceedings in Europe against a UK company. The UK schemes and arrangements will be recognised by the EU but are being questioned. And we will need to wait and see how the new UK system works.

But ultimately, we would need to know which member state we are dealing with in Europe to be able to determine what the domestic laws are. Currently there are 27 members states in EU of which there could either be, some recognition and relief available with out application OR Recognition and relief available on application to the court OR some even have no recognition regime for the UK.

5

Marks awarded 12.5 out of 15

*** End of Assessment ***

TOTAL MARKS 40/50

A very good paper that generally addresses the questions asked and substantiates its answers.