INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

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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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 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.

The historical roots of African Countries Insolvency law systems can be traced to their respective colonial powers.

Those who were colonized by Britain such as Nigeria, Kenya, Botswana, Zambia, Tanzania, Uganda have English law tradition. They have common law systems.

Angola and Mozambique colonized by Portuguese have civil law tradition based on Portuguese law.

The francophone countries which mainly belong to OHADA (i.e. Harmonization en Afrique de Droit des Affaires) have their civil law based on French Law.

South Africa and Namibia have mixed legal systems both the Roman-Dutch (Civil Law) and English law have influences on their respective legal systems.

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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.

The events of the 1998 financial crises which affected some countries in East Asia especially Indonesia and Thailand, led to reforms in Insolvency law. Thailand overhauled its Bankruptcy laws.
Singapore being a major financial center in the region played a major role. In October 2018, Singapore consolidated its Insolvency, Restructuring and Dissolution Act to Corporate and Personal Insolvency and Restructuring law as a Unified Act. This came to effect on 30th July 2020.

Asian Development Bank (ADB) initiated reforms within the region and it commissioned Ronald Harmer. His report sought to advance several good practice standards which were applicable to Corporate Insolvency.

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.

In 1970, a process of Canada and US working towards a bilateral insolvency treaty was initiated. This could be regarded too ambitious and eventually it failed to reach an agreement.

Then later, a practical progress was made through the process of the two countries adopting a model law through protocols. This was not after efforts in bilateral co-operation and coordination based on the existing legislation and long-standing case law around mutual understanding.

American Law Institute (ALI), US based professional body, took steps in assisting to the resolution of International Insolvency issues among the North American free Trade Agreement (NAFTA) countries namely, US, Canada, and Mexico.

The ALI, initiative was to improve co-operation in International Insolvencies across the NAFTA states. In so doing, it appointed Professor Westbrook as designated Report and formed advisory groups with experts from each of the three countries.

This led to the preparation of co-operation among NAFTA countries, and these were approved by the ALI Council and members in 2000.

The NAFTA principles focus on insolvency of corporate and other legal entities engaged in commercial operations. They exclude the insolvency of individuals (natural persons). They also exclude rules regarding insolvency of non-profit organisations and of financial institutions.

The principles are structure around:

- General Principles – Co-operation, Recognition, Moratorium, Information, Sharing of Value, National Treatment and Adjusted of Distribution.

- Procedural Principles (27 in all and grouped under the following)
- Topic A -The structure of an International Bankruptcy Case.
- Topic B – Initiation – recognition; Stay; Court Access; Information& Communication.
- Topic C- Administration–Single full bankruptcy proceedings; Parallel proceedings; Corporate groups;
- Topic D -Resolution – Distribution

The following recommendations were also made:

- Legislation or International Agreement commencing with a recommendation that each NAFTA country adopt the Model Law on Cross- Border Insolvency.

Other recommendations address the following

- Automatic Stay;
- Notice to creditors;
- Priority claim;
- Binding effect of reorganisation plans;
- Adoption of procedural principles that cannot be implemented under existing domestic laws;
- And simplified authentication of documents.

These initiatives have made Insolvency Laws in USA and Canada to reflect the modern law in Insolvency.

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

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Marks awarded 9 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.

Voidable dispositions can be classified as either fraudulent disposition of property without receiving adequate value in return or preferences. **There is scope to elaborate.**

A voidable disposition can be set aside by the court and any benefits received by the beneficiary will need to be repaid to the insolvent estate.

Actio Pauliana which is an action in Roman (civil) law intended to protect creditors from fraudulent legal transaction forms the basis of remedy of fraudulent conveyance law in civil law system.

Act of Elizabeth of 1570, an act of Parliament in England which laid the foundation for fraudulent transaction to be unwound in Insolvency or bankrupt forms the basis of remedy in English Law.

Treatment of these rules involve the following:

Some states have statutory provisions in place while these are not.

In some system, there is a provision for an Insolvency regulator or at least an official administrative office, that has certain prescribed functions. While some, these functions are overseen by courts.

In places where no statutory dispensation, local courts can be appointed on an ad-hoc basis for the order that may allow for a foreign insolvency representation to deal with cases in the local jurisdiction.

In common law states, the Court can be appointed to assist in providing a remedy in the absence of statutory rule covering such support.

Rules of private international law may also be applied or there may be a treaty or convention regulations

.

Most insolvency systems provide for an office holder of some description to be appointed to oversee the insolvency process.

The fact that someone or corporate declared bankrupt or insolvent must be published, this informs everyone who may have an interest regarding the status of the debtor.

These rules had played significant role and reduce the incidences of voidable dispositions.

It would be beneficial to elaborate upon the importance of the rules.

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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.

This definition was provided by Wessels

The limitations he noted are as follows:

- The international Insolvency law is connected to the existence of a national legal framework of Insolvency which varies from one country to another.

- He also referred to various other definitions that exposes such limitations, such as the one provided by Fletcher where he proposed that:

"International Insolvency" or "Cross-border insolvency should be considered as a situation…" in which an insolvency occurs in circumstances which in some way transcend the confines of a single legal system, so that the single set of domestic insolvency law provisions cannot be immediately and exclusively applied without regard to the issues raised by the foreign elements of the case."

USA, in the wisdom of its founding fathers realized the intricacies involved, declared in their constitution which date more than 200 years ago, that insolvency law is a federal question, an aspect that should be addressed by federal law and not state law.

A common market which is now a global practice, with flow of goods, services, capital, and labour requires an overacting standardized regulation of insolvency matter.

Recognition of Insolvency proceedings in one state where the debtor holds assets at the commencement of proceedings in another state of the common market, cannot depend solely on the goodwill of the first state. European Union, where common market exists also realised this.

Considering the present new world economy order, where investments and the establishment of branches and subsidiaries in foreign countries are common, capital markets have been deregulated and foreign exchange controls relaxed and, in some cases, scrapped, national borders are becoming increasingly irrelevant, the international insolvencies are therefore norm and not the exception.

It has highlighted that domestic legal systems are not sufficiently equipped to deal with insolvencies and its attendant implications across national borders. This is obvious in the present circumstances where there is a great deal of mobility of people, high speed at which assets can be transferred from one place to another and the complexity of many businesses' transaction.

The high likelihood of risk of multiple insolvency proceedings against the same debtor occurs especially without coordination and co-operation between courts of different states in a cross-border situation. This will lead to unnecessary capital losses for the creditors. It is also impossible to predict which law will ultimately govern the many questions that may arise on question such as security rights and priority payments in an insolvency.

It may arise in risk of fraud and detrimental form shopping in return to cross-border insolvency proceedings.

It may make the creditors to be running among themselves on assets, this singular effect could run counter to one of the most basic global principles of insolvency, the principle of equality between creditors (par conditio creditorium).

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.

Some states have ratified or acceded to treaties or conventions which have been imputed into their domestic law principles to resolve insolvency issues that have a connection with another state.

These treaties and conventions which are regarded as public international instruments form part of a state's hard law on insolvency which are binding.
In Europe, bilateral international insolvency conventional appears from the 13th – 14th centuries. These addressed absconding debtors and later gathering in assets.

There were more modern form of bilateral treaties or conventions on jurisdiction, recognition and enforcement related to bankruptcy, winding up, arrangements and composition involving their states in 19th century.

Nordic Convention (1933). This was concluded among five Scandinavian states: Denmark, Iceland, Norway and Sweden in 1933.

This convention granted local recognition to the legislature, executive or judiciary acts connected will bankruptcy and composition adjudication in the other member states. It also promotes the ideas of universality of a nominated insolvency adopting unity of proceedings whilst permitting concurrent proceedings in limited circumstances.

It does accord special recognition and enforcement of a "domiciliary" adjudication in the other member states, this, in the state containing the registered office of a corporate debtors.

It recognises the law of the place of adjudication as determining almost all the effects of the order in all member states without the need for further formalities, such as registration. There is an immediate general staying of creditor action. An insolvency administration is recognised abroad and may directly require the assistance of the other states' courts and public authorities in respect of property situated there.

This has been described as a successful convention and remarkable for the comity its display.
What is your opinion? Do you agree? Why?

Europe efforts at achieving multilateral international insolvency conventions were unsuccessful for many years. In 1990, it concluded Istanbul convention, council of Europe Treaty Section No 136 which was a convention on certain International Aspects of Bankruptcy. This convention was not ratified by a sufficient number for it to enter into force. Nevertheless, it had an important influence on the development of a European Union response to the problem of international insolvencies among its member states.

There was an adoption of a Model Treaty on Bankruptcy at the 1925 Hague Conference on Private International Conference. This was not ratified but has contributed to the international deliberations on regulating international insolvency e.g. It allocated jurisdiction in respect of a co-operation to the court where the statutory registered seat was located if it be neither fraudulent not fictitious.

You provide some relevant discussions. I'd love to see you elaborate on the success or otherwise.

4

Marks awarded 12 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?

The insolvency proceedings may be commenced on a formal basis; this procedure would be by way of a court order. **Not all formal insolvency administrations require a court order.**

Formal workout is a statutory corporate rescue mechanism. Formal procedures are designed to try to help rescue the business.

Formal statutory procedures usually provide for a commencement procedure, an automatic stay/moratorium, provisions dealing with the displacement of existing management by the appointment of an independent office holder (or in some states, debtor in possession provisions where existing manager remain in charge of the process

Informal process is a procedure which may be opened by way of an administrative process outside the ambit of the courts.

Informal workout is an out of court agreed between the parties. It is a privately negotiated agreement between the parties i.e., Insolvency and the creditor.

The success of an informal workout will depend on the attitude/disposition and conduct of the creditors.

Formal

Advantages

(i) There is the benefit of a statutory moratorium preventing any legal proceedings being taken against the corporate (for say liquidation or the enforcement of execution proceedings)

(ii) It may be possible to bind dissenting creditors to whatever workout is proposed by the office holder or the corporation itself.

Disadvantages

(i) There is a publicity regarding the financial distress of the company which can have a negative impact on the goodwill of the corporation.

(ii) The formal mechanism may be quite expensive, especially if there is court involvement (which is often the case)

Informal
Advantages

(i) The cost is significantly lower in that the courts are not involved.

(ii) There is no publicity regarding the fact that the debtor company is experiencing financial difficulties

Disadvantages

(i) There is no moratorium in place preventing other creditors from approaching the courts and commencing an insolvency proceeding.

(ii) There are no way binding dissenting creditors to any agreement reached.

Also, 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.

4.5

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.

- The difficulties that may arise for the insolvency representative pertaining to co-operation and co-ordination can be addressed in three questions raised by Fletcher:
- 1. The Choice of forum to exercise jurisdiction in a matter
- In which jurisdiction may insolvency have opened?
-
- 2. The recognition and effect accorded foreign proceedings in the same matter

Where there is a foreign judgement on the same matter, private international law raises question of recognition and enforcement.

- What international effects will be accorded to proceedings conducted at a particular form.

- 3. The choice of law to apply to the matter
-
- What country's law should be applied in respect of different aspect of the case?

The instruments that have developed to assists with respect to these difficulties are

(1) UK Law
- UK Insolvency Act 1986 Act.
-
-
- 2. The UNCITRAL Legislative Guide together with the World Bank Principles form the international best practice standard for Insolvency regimes (the Insolvency Standard).

World Bank's Principle C15 States:
"Insolvency, proceedings may have international aspects, and a country's legal system should establish clear rules pertaining to jurisdiction, recognition for foreign judgments, co-operation among courts in different countries, and choice of law, key factor to effective handling of cross-border matter typically include:

(1) A clear and speedy process for obtaining recognition of foreign insolvency proceedings.
(2) Relief to be granted upon recognition of foreign insolvency proceedings
(3) Foreign insolvency representative to have access to court and other relevant authorities.
(4) Courts and insolvency representatives to cooperate in international insolvency proceeding; and
(5) Non-discrimination between foreign and domestic creditors

3. European Guidelines on Communication and Cooperation (2007)
In Europe, within the context of the EIR and developed under the aegis of INSOL Europe's academic wing by Wessel and Virgos, the European Guideline on communication and cooperation 2007 contain non-binding rules and a Draft portion for international insolvency subject to the EIR.

4.IBA Cross Border Insolvency Concordant (1996)- it proposed coordinated, subject in appropriate cases to a governance protocol setting out the responsibilities and jurisdiction of each proceeding.

5.UNCITRA Model Law on Cross-Border Insolvency. It places obligation on both courts and insolvency representatives in different state to communicate and cooperate to the maximum extent possible.

6. In North America, the America Law Institute (ALI) Transnational Insolvency Project developed the ALI NAFTA Guidelines Applicable to Court-to-Court communication in Cross-Border Cases (2000) for international insolvencies involving the United States of America, Canada and Mexico.

7.In 2017, the conference of European Restructure and Insolvency Law (CERIL), in collaboration with INSOL Europe, established a Joint working Group to review the Guidelines considering recent practice, focusing on the duty to co-operate and communicate under the EIR Recast.

8.A project resulted in the EU Judge Co Guidelines, comprising 26 EU Judges & Co Principle and 18 EU Cross – Border Insolvency Court-to-Court Communication Guidelines 2015 was founded by the European Union and the III.
Their objective is to "Strengthen efficient and effective communication between Courts in EU member States in insolvency cases with Cross Border effects.

9.Initiative emanated from the inaugural Judicial Insolvency Network (JIN) conference in Singapore in 2016 contributing to the drafting of Guidelines for communication and cooperation between Courts in cross border Insolvency Matter (JIN Guidelines). These have since been adopted by courts in countries in the America, Asia, and the United Kingdoms.

The development of these instruments with adopting the UNCITRAL Model Law on Cross-Border Insolvency have demonstrated the importance of cooperation as coordinated as a strategy to address International Insolvency matters. This has helped in the development of Cross-Border Insolvency International

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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 FFPL 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.

UK ceased to be a member of European Union on 31 January 2020. The EIR Recast no longer applies as from 31 December 2021. The Insolvency proceedings was opened on 30 June 2022 which has passed the transition period (For it to be applied , the main proceedings must open prior to expiry of transition period at 11pm on 31 December 2020)

Meanwhile English Court is acting under the aid and assistance statutory provisions in Insolvency Act 1986 s 246 to recognise and cooperate with a foreign insolvency proceeding.
It would be beneficial to consider the MLCBI

3.5
Marks awarded 13 out of 15

*** End of Assessment ***

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

TOTAL MARKS 44/50