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).***

4. ***You must save this document using the following format:*** [studentID.assessment1summative]***. An example would be something along the following lines: 202223-363.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 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 the legal traditions found in African countries have been affected by colonialism, which played a major role in this regard. Botswana, Kenya, Nigeria, Tanzania and Zambia have been largely influenced by English law, while countries such as Angola and Mozambique have based their domestic insolvency laws on Portuguese law.
At the same time, French law has also greatly influenced the legal traditions in Francophone African countries, particularly in West Africa. For their part, Namibia and South Africa have developed mixed systems on the basis of English and Dutch legal systems. Notwithstanding the fact that many legal systems in African countries have been largely modeled on imported laws, many systems in the region have developed more modernized laws.

Nowadays, noteworthy initiatives, including the adoption of the UNCITRAL Model Law on Cross-Border Insolvency, have been supported by OHADA, the Organization for the Harmonization of Business Law in Africa, in the context of insolvency law reform.

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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 1998 financial crisis in East Asia strongly impacted the field of insolvency law reform in the region. Singapore enacted the new 'Insolvency, Restructuring and Dissolution Act' with a view to unifying personal and corporate insolvency and restructuring laws. In addition, significant insolvency law reforms have also been introduced in Thailand following the aforementioned economic crisis.

In this light, it is important to mention that many East Asian countries have adopted the UNCITRAL Model Law on Cross-Border Insolvency. Among others, Singapore, Japan, the Philippines and the Republic of Korea have enacted the Model law. There is some scope to elaborate on other reforms in these countries in response to the crisis.

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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.

Important initiatives have been taken to address international insolvency law issues for the North American region. Over the years, extensive jurisprudence on comity as well as legislation on cooperation and coordination have been increasingly present in this geographical area, while protocols have also been systematically used. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency has been another successful development. Moreover, NAFTA ('North American Free Trade Agreement') countries, i.e. the United States, Canada and Mexico, in cooperation with the American Law Institute have developed the ALI Transnational Insolvency Project through which Principles of Cooperation among these NAFTA countries were adopted in 2000 by the ALI Council and Members. NAFTA Principles mainly involve corporate insolvency and exclude insolvency relating to natural persons, financial institutions and NGOs. The Principles focus on cooperation and recognition in the context of a debtor's bankruptcy and conclude with 'Recommendations for Legislation or International Agreement'. The adoption of the UNCITRAL Model Law on Cross-Border Insolvency (1997) is also recommended.

Furthermore, among other countries around the globe, courts in Canada and the U.S. have further adopted the JIN Guidelines ('Guidelines for Communication and

Cooperation between Courts in Cross-Border Insolvency Matters') in the area of cooperation and coordination of parallel proceedings. This initiative was launched at the Judicial Insolvency Network conference in Singapore in 2016.

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 8 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.

The roots behind the different concepts of voidable transactions are primarily historical in nature. On the one hand, fraudulent conveyance law in civil law jurisdictions has developed through the actio Pauliana, while in the English law system the basis of this remedy has been the Act of Elizabeth of 1570, introduced during the reign of Queen Elizabeth I. Substantive differentiations in this respect are observed in terms of the applicable requirements for those remedies.

As regards the framework for the treatment of those rules in the area of insolvency, it is important to underscore that some transactions that occur before the commencement of insolvency proceedings may be subject to judicial scrutiny. The aforementioned transactions might take the form of donations or undervalued transactions or result in the breaching of the equitable treatment rationale by giving preference to a particular creditor. Those transactions should, depending on the jurisdiction, be set aside and the benefits returned to the insolvency estate. Rules on avoidance (this specific term is used in the UNCITRAL Legislative Guide on Insolvency Law, 2. Terms and definitions, '(c)', page 4) are essential to combat fraud in the field of concealment of assets, ensure the equitable treatment of creditors and preserve the value of the insolvency estate. Provisions on avoidance are also key to encouraging out-of-court arrangements among creditors and the insolvent debtor.

This is answered well. There is some scope to elaborate with respect to the importance of the provisions.

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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.

The first limitation regarding the above-mentioned definition relates to the fact that it is linked to the existence of a single insolvency law framework. The interconnection and the applicability of multiple 'sets of rules' pertaining to domestic insolvency laws is a crucial perspective of international insolvency law. Indeed, cross-border insolvency cases occur when the dispersal of a debtor's activities and assets involves multiple claims and interests implicating more than one legal system. Creditors may come from several countries other than the country where insolvency proceedings have been initiated. In this regard, those considerations may also apply in the context of multinational enterprises, as indicated by Westbrook (2000) (see B. Wessels, International Insolvency Law (Kluwer, 2006), page 2).

A second limitation refers to the wording used 'insolvency proceedings or measures'. The definition provided by Fletcher uses the word 'insolvency' which encompasses a wider spectrum of financial distress and related procedures.

At the same time, the definition in question does not make reference to the existence of contractual arrangements, also known as 'workouts', which play a fundamental role in the area of 'the prevention, regulation and administering of discontinuity in legal relationships of persons who have legal rights and find themselves in financial difficulty' (B. Wessels, International Insolvency Law (Kluwer, 2006), page 1). We can easily envisage such an arrangement taking place between the debtor and creditors, all of whom could originate from two or more jurisdictions.

Bos (2000) provides an interesting definition of international insolvency law by attempting to reconcile, one might say, the distinct nature of substantive insolvency law with private international law, the latter being the point of departure for international insolvency law (see B. Wessels, International Insolvency Law (Kluwer, 2006), page 2).

In any event, providing with an accurate - to the extent possible - definition of international insolvency law is a rather challenging endeavor due to the absence of a uniform global insolvency law framework, the divergencies in concepts and policy, and the multifaceted legislative and procedural approaches in domestic bankruptcy laws. Equally, the inherent difficulties in defining the terms 'insolvency' and 'insolvency proceedings' should not be set aside.

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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 in the field of insolvency law become binding on States as soon as they are signed and become part of a State's 'hard law'. Such mechanisms affect the internal domestic order of each signatory State. Between the 13th and 14th centuries, bilateral conventions treated matters of assets and absconding debtors. After the 19th century, more sophisticated types of bilateral conventions began to appear, an important example being the Nordic Convention of 1933. Other noteworthy, though less successful, examples include, for instance, the Istanbul Convention of 1990 ('Convention on Certain International Aspects of Bankruptcy') concluded by the Council of Europe that positively impacted the resolution of cross-border insolvency matters within the European Union.

Nevertheless, the cornerstone of international insolvency law issues with respect to the European Union region is the European Insolvency Regulation adopted in 2000 and its successor, the EIR Recast (Regulation (EU) 2015/848). In this light, there has been a recent amendment to the EIR Recast resulting in Regulation 2021/2260 of 15 December 2021. Other successful examples of cross-border insolvency law conventions are the Montevideo Treaties of 1889 and 1940 as well as the Havana Convention on Private International Law of 1928.

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

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Marks awarded 14 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?

Important elements regarding formal proceedings include the existence of a commencement procedure, an automatic stay, the application of provisions regarding the total or partial displacement of the debtor and the appointment of an insolvency representative, the role of stakeholders, and the development and monitoring of a restructuring plan. In a formal proceeding, it might be imperative to provide new capital into the company, to discharge some of the debts, to pursue the selling of non-core assets and so on. Conversion of a reorganization proceeding into a liquidation may also be considered. These agreements may be adopted through a formal statutory restructuring mechanism.

On the other hand, informal procedures include out-of-court workouts that are contractual and enforceable in nature and are agreed by the parties. It should be noted that an out-of-court workout may be the result of a pre-established agreement, the objectives of which may be, for example, a deferment or extension of payment or even debt discharge.

Lobo Lending Ltd, in considering informal or formal procedures, should take into account the following considerations. In an out-of-court scenario costs are considerably lower and there is no publicity obligation as regards the financial distress of the debtor. In contrast, the absence of a stay against creditors and the lack of a mechanism that could bind dissenting creditors make informal workouts less attractive to some degree. In terms of formal debt recovery procedures, the stay of proceedings and the mechanism to bind dissenting creditors are existing features, despite the publicity requirements and higher costs often associated with court proceedings.

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.

Challenges that may arise in respect of cooperation and coordination of concurrent insolvency proceedings relate to the fact that the debtor (and therefore the debtor's affairs) may be linked to more than one jurisdiction and that there may be multiple concurrent insolvency proceedings commenced at the same time. Some of the issues that require the development of proper cooperation and coordination rules concern the recognition of insolvency proceedings (in the present case, the recognition, eventually, of the Asgardian proceedings in Encanto), the question of relief as well as the access of the insolvency representative (Asgardian insolvency representative) to foreign courts (court of Encanto).

The international mechanisms that have been developed to resolve these issues include, for instance, the 'IBA Cross-Border Insolvency Concordat' of 1996 which suggests the coordination and effective administration of concurrent proceedings on the basis of governance protocols. The UNCITRAL Model Law on Cross-Border Insolvency (1997) sets out obligations regarding both courts and insolvency representatives for the establishment of a fair and efficient framework of communication and cooperation in different States. Agreements concerning the coordination of proceedings play a crucial role in this context.

In addition, the 'ALI NAFTA Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases' of 2000 as well as the ALI-III 'Global Principles for Cooperation in International Insolvency Cases' and the 'Global Guidelines for Court-to-Court Communications in International Insolvency Cases' (2012) constitute other significant examples in that area.

In the European region, the 2007 'European Guidelines on Communication and Cooperation' comprise non-binding rules and a draft protocol for international insolvencies. At the same time, the 'EU JudgeCo Guidelines' on communication and cooperation among EU courts and the 'JIN Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters' constitute other important tools for the effectiveness of concurrent proceedings.

In general, the development and adoption by countries of these or similar international instruments is essential to the establishment of an efficient framework to address cooperation and coordination issues in view of parallel proceedings.

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.

In accordance with the facts of the case, FFPL is a company registered in the UK with offices in several European and non-European countries. Lobo, as its major creditor, considers opening an insolvency proceeding in a country in Europe, while proceedings have already been brought against FPPL in the UK by a minor creditor.

Before continuing with the analysis of the case, information on whether the State of the eventual commencement of proceedings triggered by Lobo is located in the European Union and whether that country has also adopted the UNCITRAL Model law on Cross-Border Insolvency (the 'MLCBI') is particularly essential, especially for the purposes of the recognition proceedings.

With respect to the UK commenced insolvency proceedings, it is important to note that at 11 PM on January 31st, 2020, the United Kingdom ceased to be a member of the European Union. This fact indicates that the European Insolvency Regulation does not apply to proceedings initiated after December 31st of 2020. Therefore, in case the insolvency representative linked to the proceeding initiated by Lobo proceeds with the opening of those proceedings in that country and eventually with the recognition of those proceedings in the UK, the UNCITRAL Model law may be more relevant in this regard. Conversely, in the event the insolvency representative of the UK commenced proceedings proceeds with the recognition of those proceedings in other EU and non-EU countries (considering that FPPL has affairs in other EU and non-EU countries outside the UK), an important question is whether the country at issue concerns an EU country or not. An EU country would normally be subject to the EIR Recast as well as its recent amendments that took place in 2017 and 2021, while a non-EU country would not be subject to the EIR. In that latter case the essential question would be whether that country has enacted the MLCBI or not.

Given that FPPL is a company incorporated, inter alia, in the UK, in EU countries and in non-EU countries, the legal framework of the European Insolvency Regulation on cooperation and coordination of cross-border insolvency proceedings in respect of members of a group of companies may also be applicable and, therefore, useful in this case. The latter consideration is important since the EIR Recast has been amended in 2017 to also include coordination of proceedings both inside and outside the EU.

Upon request of an insolvency practitioner, any court competent for the proceedings of a member of a group of companies may commence group coordination proceedings.

Moreover, the consequences of the UK insolvency proceedings relate to the following key aspects. First of all, an automatic stay/moratorium would stay creditor actions against the debtor, especially if the UK proceedings are recognized as foreign main proceedings. A second consideration relates to identifying which assets comprise the insolvency estate of the company. A third consideration involves recognizing and identifying that there may be limitations as well as rights and obligations for the directors and other persons controlling the company at issue, such as personal liability or disqualification. In accordance with the local laws of the jurisdiction in question, there may be various ways of treating executory contracts, rights of set-off and rules on avoidance. Of course, in the present context of insolvency proceedings opened in the UK, the treatment and the characteristics of those matters depend on local UK laws, such as the Insolvency Act of 1986, the Cross-Border Insolvency Regulations of 2006 (enacting the MLCBI in the UK) and common law principles.

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Marks awarded 14.5 out of 15

*** End of Assessment ***

TOTAL MARKS 46.5/50
Excellent paper.