



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.

Depending upon which colonial power a given African nation was possessed by, the African nation's legal system, including its insolvency law system, was and is to an extent still today, influenced by the colonial power's legal system, i.e., either a common law or a civil law system. See WIKIPEDIA, *Colonisation of Africa* at https://en.wikipedia.org/wiki/Colonisation_of_Africa. ("The principal powers involved in the modern colonisation of Africa are Britain, France, Germany, Portugal, Spain and Italy."). However, many African nations are in the process of modernizing and harmonizing their insolvency law systems. Notably, many African nations are members of OHADA (Organisation pour l'Harmonisation en Afrique du Droit des Affaires) which goal it is to harmonize its member states' insolvency laws. See *General Overview* at <https://www.ohada.org/en/general-overview/> (OHADA's goal and mission is "[t]o harmonize business Law in Africa in order to guarantee legal and judicial security for investors and companies in its Member states.") In 2015, the

OHADA member States adopted the UNCITRAL Model Law on Cross-Border Insolvency, among other things, in order to modernize their insolvency laws.

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

Elaboration regarding various countries and their historical law is warranted. Please note Wikipedia is not a reputable source.

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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.

Multiple efforts are under way in the region to harmonize and implement more modern and international insolvency laws. Although there are no treaties and conventions that have been adopted or ratified, some important initiatives can be noted.

For example, following the 1998 financial crisis, Thailand updated its insolvency laws. How so? Also, Singapore enacted a unified Act (Insolvency, Restructuring and Dissolution Act) which consolidates its laws on personal and business insolvencies in 2020. Also, an increasing number of States in the region, including Singapore, have adopted the Model Law on Cross-Border Insolvency. Further, two organisations - the Asian Business Law Institute and the International Insolvency Institute, are working on a joint project to develop Asian Principles of Business Restructuring focusing on implementing business reorganization procedures for in- and out-of-court restructurings in the Asian and Pacific region.

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

2.5

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.

Although the United States and Canada attempted to enter into a treaty in the 1970s, those early attempts failed. However, both nations have since adopted the Model Law and various Protocols to build upon their previous track record of co-operating and co-ordinating. A notable case where these mechanisms came into play is the *Norte*/bankruptcy case that was pending in the United States Bankruptcy Court for the District of Delaware in the USA and in Canada. The United States and Canada, along with Mexico, are also NAFTA (North American Free Trade Agreement) states. There have been successful initiatives led by the American Law Institute (ALI). ALI initiated the ALI Transitional Insolvency Project focusing on advancing the co-operation between NAFTA

states in connection with international insolvency matters. The project ultimately led to the establishment of the Principles of Cooperation (the "NAFTA Principles" which address only business insolvencies, not personal bankruptcies) which were approved in 2000.

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

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 5.5 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.

The concept of a "voidable transaction" constitutes a critical component in any modern insolvency system. In most, if not all systems, potential fraudulent conveyances and preferences must be investigated and pursued by the appointed estate representative or trustee (depending upon the system), if warranted, in an attempt to retrieve assets that belong to the debtor's estate and ultimately to the creditors. The equal distribution of estate proceeds, if available, to creditors, is one of the hallmarks in any modern insolvency system.

The actio Pauliana provides the historical foundation for the development of voidable dispositions in civil law countries/systems and the Act of Elizabeth 1570 provides the framework for the same in common law jurisdictions/systems. While the concept of "voidable dispositions" is recognized and provided for under both systems, different historical frameworks and laws in civil law and common law jurisdictions caused domestic laws regarding these transactions to differ in terms of how these transactions might be pursued by estate professionals and also with respect to the applicable remedies. As a result, international efforts and attempts to harmonize insolvency laws for courts and parties, including creditors, are critical in resolving international insolvency cases, including issues in respect of voidable transactions.

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

There is some scope to elaborate further.

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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 Dutch commentator, Bob Wessels whose definition of international insolvency law is implicated in this question, himself views the definition as “limited since it is connected to the existence of a national legal framework of insolvency law.” INSOL Module 1 Guidance Text page 34. What I believe Mr. Wessels is referring to when he states that the definition is limited is that any kind of international efforts in harmonizing international insolvency laws are complicated by the fact that international laws, treaties and/or conventions on international insolvency law, cannot be immediately applied as each country must first take steps to implement/adopt these rules before they can be applied in a case with international implications. Therefore, given the different historical, cultural and socio-economic backgrounds and domestic legal frameworks of each country, a truly satisfying definition of international insolvency law that might not be viewed as “limited” might not be achievable.

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

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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 play an important part in the implementation and development of international insolvency laws. They can become “hard law” if adopted by a given country that decides to become a signatory to a treaty and/or convention. One well-known example of a successful implementation of

such a convention is the Nordic Convention of 1933, an early implementation of a multilateral treaty entered among various Scandinavian countries, including Sweden and Norway, among others.

Although many early European efforts to implement a treaty or convention with respect to insolvency laws have failed (for example, the Istanbul Convention which was not ratified by a sufficient number of states), some success was achieved by regulation through the European Insolvency Regulation (EIR)(2000) (has since been amended and is now referred to as EIR (Recast)). Its implementation has aided and promoted important developments in international insolvency law. (Note: since BREXIT, no longer applicable to UK). More specifically,

The European Insolvency Regulation of 29 May 20001 was designed to ensure that the insolvency laws of European Union (EU) Member States could operate 'efficiently and effectively' in cross-border cases (i.e. in cases with one or more cross-border features, such as the location of assets or creditors abroad). To achieve this, the Regulation limits the circumstances in which insolvency proceedings can be opened in Member States and supplies rules to regulate the scope and effects of, and the interrelationship between, those proceedings that are validly opened under it. The overall idea is to enable the resolution of insolvency in a single set of proceedings, opened in one Member State but effective in others, or at least—in cases where the Regulation permits proceedings to be opened in more than one Member State in relation to the same debtor—through the coordination of such proceedings.

See An Introduction to the European Insolvency Regulation, as Made and as Recast, available at <https://academic.oup.com/book/41066/chapter-abstract/349777093?redirectedFrom=fulltext&login=false> (internal citations omitted).

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

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

3.5

Marks awarded 12.5 out of 15

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

Flor Prim Pty Ltd (FPPL) is a company incorporated with its head office and significant operations in Encanto as well as being registered as a foreign company in Asgard,

where it also carries on business. FPPL therefore carries on business in more than one State. Lobo Lending Ltd (Lobo) is incorporated and has its head office in Asgard.

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

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

Question 4.1 [Maximum 5 marks]

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

1. Differences between "formal" insolvency proceedings and "informal" insolvency arrangements:

(a) A formal insolvency proceeding (many, but not all jurisdictions, provide for liquidation and restructurings proceedings) is one that is in most instances commenced publicly and governed under the insolvency laws of a given jurisdiction. For example, in the United States, a corporate debtor may commence a chapter 11 proceeding, among others, in a specialized bankruptcy court pursuant to the provisions of the Bankruptcy Code.

(b) An informal insolvency proceeding, on the other hand, does not necessarily, although it can, involve court supervision or involvement and or the application of a given insolvency law. In most instances, an informal insolvency proceeding involves parties (for example, debtor(s) and creditors) that negotiate out-of-court work-outs which are contractual in nature. Although the insolvency laws of a given jurisdiction might not be directly applicable, pursuant to the UNCITRAL Legislative Guide, "these voluntary negotiations nevertheless depend for their effectiveness upon the existence of an insolvency law, which can provide indirect incentives or persuasive force to achieve reorganization." See *Legislative Guide on Insolvency Law*, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf.

2. Advantages/Disadvantages Lobo should consider

(a) Advantages:

(i) An informal work-out might be more cost-efficient. Formal bankruptcy proceedings can be very expensive as many professionals and court fees are involved and have to be paid.

- (ii) No publicity as an agreement would be negotiated between the parties and not publicly filed on a court docket.**
- (iii) No strict application of insolvency laws required and therefore more flexibility in reaching an agreement.**
- (iv) Lobo would not have to deal with the international aspect of the insolvency case which could complicate the matter and be very expensive (tracing FPPL's assets, etc.).**

(b) Disadvantages:

- (i) No court-supervision and expertise provided.**
- (ii) No formal court order that could be enforced in case of another default or non-compliance by Lobo with the agreement. In that case, Lobo would have to be limited to the termination and default remedies under the agreement.**
- (iii) In a formal proceeding, Lobo, as a creditor, would likely receive a distribution. This is not the case under an informal work-out.**

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

It would be beneficial to also consider matters such as the absence of moratorium and the inability to bind dissenting creditors in an informal workout. 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.

3.5

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.

In order to answer this questions more fully, I would need to know whether the jurisdictions of Asgard and Encanto have, among other things, adopted the Model law, are parties to any treaties and/or conventions with respect to international insolvency issues or whether any regulation or protocols are applicable under the facts of this case. If this is not the case, private international law would likely govern this matter.

The Asgardian insolvency representative might encounter the following issues and difficulties in enforcing the order:

- (a) Enforcement of the formal court order in Encanto. Does Encanto provide for the recognition and enforcement of a foreign court's order?**
- (b) The tracing of assets in Encanto might be cumbersome. It is also unclear whether Lobo is a secured creditor with a security interest. If that is the case, certain domestic security laws might be at play.**
- (c) The willingness and likelihood of the Encanto court to co-operate and co-ordinate with the insolvency representative.**
- (d) The issue of "insolvency" because FPPL, pursuant to the facts, meets its debt obligations in Encanto.**
- (e) The representative will also face "conflict of law" issues. For example, the laws in Encanto with respect to security interests, set-off, etc., might differ from the laws in Asgard. It will also depend upon what choice of law provision the debt agreement between FPPL and Lobo provides for.**
- (f) Will the estate representative have standing to enforce the order in Encanto?**
- (g) Does the domestic insolvency law in Encanto provide for a certain "waterfall" with respect to payments/distributions to creditors?**

If the jurisdictions of Asgard and Encanto have adopted the Model Law, courts and estate representatives in both jurisdictions, are obligated to co-operate with each other in resolving this matter. More specifically, chapter IV of the MLCBI obligates courts and foreign representatives to directly communicate with each other. Maybe there are other Protocols or Cross-Border Insolvency Agreements applicable under the facts of this case which would aid the representative and the courts in these efforts.

The development and the implementation of the Model Law are significant. Many companies and group of companies operate globally in jurisdictions with sometimes vastly different domestic procedural and substantive insolvency laws. The increasing adoption of the Model Law worldwide as well as the ratification of conventions and treaties which then become "hard law" have greatly increased the successful resolution of international insolvencies (for example, the Nortel case in which Canada and the USA successfully worked together). Although not perfect, these developments continue to provide frameworks that aid in the resolution of international insolvency matters and provide an important foundation to be built upon in the future.

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

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

3.5

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 EIR Recast is no longer applicable in the UK because of Brexit. More specifically, the EIR Recast does not apply to cases that have been commenced post December 31, 2020. Pursuant to the facts, the proceedings against FPPL have been commenced in the UK in 2022. Therefore, the EIR Recast does not apply. Elaboration on consequences is relevant.

However, FPPL operates in other European countries. The facts are, however, devoid of any specifics regarding FPPL's business operations. All it states is that FPPL has "offices in the UK, and throughout Europe and other non-European countries." Although it is generally possible for a creditor, such as Lobo, to initiate a proceeding in another European country where the EIR Recast applies, it is unclear under the facts where FPPL's "centre of the debtor's main interests" (COMI) is. The facts are also devoid of any information that would be needed to evaluate where FPPL's "establishment" could be as the EIR Recast also provides/allows "subsidiary territorial proceedings." If it could be determined where FPPL's "establishment" and/or COMI is, Lobo would be allowed under the EIR Recast to open either an "independent" or "subsidiary" proceeding (which would also first require the determination of FPPL's COMI).

Source, unless otherwise indicated, INSOL Module 1 Guidance Text.

It would also be beneficial to discuss the MLCBI.

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Marks awarded 10 out of 15

* End of Assessment *

TOTAL MARKS 38/50

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