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 9 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.

African insolvency law is still strongly influenced by the law introduced by the colonial powers. For this reason, the English legal tradition and thus also insolvency law based on the English model can be found in countries such as Nigeria, Kenya, Botswana and Zambia, as well as in some countries in the eastern part of Africa, such as Tanzania. Countries such as Angola and Mozambique, on the other hand, follow legal approaches from Portuguese law and consequently have an insolvency law system that follows civil law. The African countries of West Africa, which have a French influence, have a legal system that follows French law. Only a few countries, such as South Africa and Namibia, have a mixed legal system based on both Roman-Dutch law and English law.

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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 development of insolvency law in Southeast Asia experienced a significant boost because of the financial crisis that occurred in East Asia in 1998, affecting Indonesia and Thailand in particular. This event gave rise to more numerous forms of insolvency law, and Thailand undertook a revision of its own insolvency law.

Singapore has seen rapid development in the revision of its insolvency law. Singapore has become one of Southeast Asia's major players by enacting a new Insolvency Restructuring and Dissolution Law in October 2018 that merged consumer insolvency law as well as corporate insolvency law into a single law.

Another reform has emerged through the development of a soft law initiative in cooperation between the Asian Business Law Institute and the International Insolvency Institute. Together, these two institutes developed the Asian Principles of Business Restructuring, which reported a report on corporate restructuring and insolvency in the Southeast Asian region in 2020.

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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.

Initially, the United States and Canada worked toward a bilateral agreement in cross-border insolvency in the 1970s. However, agreement could not be reached in this context due to overly ambitious goals. From a practical point of view, cooperation in the field of insolvency law has improved through the respective adoption of model law as well as special mechanisms such as the so-called protocols. This development was already preceded by bilateral cooperation and coordination based on the already existing legislation and case law around "comity".

A significant further step in cooperation with respect to cross-border insolvency matters is through an initiative of the American Law Institute (ALI), which was aimed at examining the treatment of international insolvency issues between North American Free Trade Agreement (NAFTA) countries. Principles for cooperation among NAFTA countries were developed, focusing on insolvency of corporations and other legal entities.

In 2001, in the context of the ALI NAFTA Transnational Insolvency Project, " Guidelines for Communication between Courts in Cross-Border Cases" were developed and adopted by the International Insolvency Institute (III).

In 2021, the ALI was able to state that the "Global Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases" have played a leading role in the restructuring of airlines in cross-border cases in particular.

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

2.5

Marks awarded 8.5 out of 10

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

Question 3.1 [maximum 5 marks]

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

In the original civil law found in Roman law, a measure against a debtor was realized in enforcement against the debtor's "persons." A person who owed performance to a creditor and did not pay this debt offered his own body as repayment. The effect could be saved, sentenced to death or was sold as a slave. Between the 13th and 17th centuries, the principle of "bankruptcy" subsequently developed, which for the first time enforced a procedure in dealing with debtors in which enforcement was directed not against the person, but rather against the person's assets. However, the principle of bankruptcy was initially applied only to "merchants".

The concept of bankruptcy was therefore a characteristic of insolvency law that was very clearly "creditor-friendly". Approaches that provided for debt discharge and were thus intended to give the debtor more perspective developed much later. The approach of civil law therefore represents an approach that is fundamentally "creditor-friendly". Countries whose insolvency law is based on the principles of civil law therefore practice an insolvency law that is creditor friendly.

In the first insolvency law, which is in the English law aspects, the debtor was also considered a "criminal", but the measures were aimed at the preservation of assets and the best equal distribution of assets to creditors. The main measure available to a defaulting debtor was "forced administration". English law has always been very legislative about insolvency. Significantly, the Statute of Ann of 1705 created for the first time a principle of statutory discharge of the debtor. Thus, a discharge of the debtor could be provided in any case if so-called "commissioners" confirmed the cooperation of the debtor. Further reforms of insolvency law under English law

followed and as early as 1883 the office of the so-called "Official Receiver" was introduced, who administered the debtor's assets.

Consequently, English insolvency law was geared to the inclusion of the debtor in the insolvency proceedings at a very early stage. If the debtor cooperated, he was also offered the prospect of discharge at an early stage. Thus, English law has been rather "debtor-friendly" in its approach to insolvency law, and countries whose insolvency law has its origins in English law are consequently also allowed to have an insolvency law today that is more "debtor-friendly" in its outcome.

As to the historical roots of this aspect of insolvency law (voidable transactions): the *actio Pauliana* forms the basis of fraudulent conveyance law in civil law systems, whilst the Act of Elizabeth of 1570 is the basis for this remedy in English law.

To create principles for the design of cross-border insolvency law, the focus must first always be on a detailed analysis of the insolvency law systems of the respective countries beyond whose borders an insolvency matter extends. The commonalities of the respective systems already provide a foundation for the principles of cross-border element. Regulations must be created against this where collisions of these insolvency law systems occur. Against the background of the above explanations, such collisions occur where a creditor-friendly system meets a debtor-friendly system.

In such a collision, situations may arise in which a creditor is timely secured in one country but could lose its claim in the other. Similarly, the debtor might be promised relief in one country while having no prospect of relief at all in the other. Such a mixed situation can lead to a flight of creditors to one system while the debtor flees to the other.

Since the respective insolvency law systems are regularly not only influenced by English law in terms of civil law, but also by numerous other aspects, including cultural aspects, which have an impact on the formulation of insolvency law, the solution cannot regularly be found in focusing on just one country and its insolvency law for the handling of an insolvency law system. What is needed is a structural framework with which an audit concept can be developed that takes account of the various insolvency law systems. The "UNCITRAL Legislative Guide on Insolvency Law" is therefore particularly suitable as an examination concept for the design of a cross-border insolvency law since it offers just typified approaches for the design of such a legal framework.

This sub-question required a focus on voidable transactions – framework and importance.

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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 of international insolvency law therefore reaches its limits, since it speaks of "international aspects" which must be considered in cross-border insolvency cases. This reference already presupposes the existence of an international insolvency law or, more precisely, even of a clear international legal framework. Such a legal framework does not exist de facto.

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

3.5

Question 3.3 [maximum 5 marks]

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

International treaties and conventions are instruments that serve to bind to data regarding the subjects regulated in the conventions and express themselves directly on the domestic law. Regulations from such conventions regularly become "hard domestic law".

Such international conventions create facts and make it possible in an immediate way to establish a foundation for regulations to shape international insolvency law facts. Since such conventions can be concluded by an unlimited number of states, they are very well suited to creating legal certainty in cross-border situations over a large area, especially against the background of direct domestic binding.

A major barrier to such conventions is obviously the need for agreement between all the participating states, which have regularly established their own insolvency law systems, but which are limited by national borders. The conventions directly interfere with national law, which means that a piece of national sovereignty is always surrendered.

One of the few multilateral conventions that has gone down in history as a successful agreement is the Nordic Convention (1933) from the Scandinavian region. It is true that European efforts to reach an international convention to regulate cross-border insolvency matters were unsuccessful over a long period of time. The so-called Istanbul Convention, which came into being in 1990 and was also signed by eight

states, was, despite its failure, a very important step for Europe in establishing insolvency law on the basis of a cross-border convention.

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

4

Marks awarded 8 out of 15

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

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

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

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

Question 4.1 [Maximum 5 marks]

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

"Formal" insolvency proceedings are those which are initiated in accordance with the rules of a statutory insolvency law and are strictly governed by the provisions of such statutory statutes. Formal proceedings regularly include simple insolvency proceedings as well as elements of liquidation, restructuring and also reorganization proceedings.

Informal proceedings in connection with insolvency law are basically outside the statutory regulations and are carried out voluntarily between the parties involved in insolvency proceedings. In some cases, such proceedings are also supported by "formal" insolvency proceedings. Informal proceedings are regularly realized through agreements between the debtor and creditors that include aspects of restructuring.

In the context of the planned "informal" agreement between FPPL and Lobo in the present case, it should first be emphasized that an agreement is made specifically only with the one creditor Logo. By making a payment agreement with Lobo, it can be changed that unrest occurs in the circle of other creditors. The advantage lies thereby substantially in the fact that economic and financial difficulties do not penetrate at first

outward. In addition, it is regularly possible to keep costs considerably lower than in formal proceedings involving a court if agreements are reached with creditors. One disadvantage of the informal procedure is, of course, that no judicial measure can be created to prevent other creditors from also wishing to enforce their claims and possibly seeking recourse to court on their own.

It would be beneficial to elaborate, for example with respect to privacy, ability to bind dissenting creditors.

3

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.

If insolvency proceedings are opened in both countries concerned with regard to one and the same debtor in a cross-border insolvency case, the first essential question is how parallel insolvency proceedings against the same debtor can be coordinated and, in particular, whether the respective insolvency law systems provide for corresponding regulations for this case. Whether the states involved have enacted their own national insolvency laws or whether one of the states is included in an international insolvency law association so that national and international insolvency law regulations exist, it will regularly have to be taken into account that in both systems a cross-border situation is not sufficiently assessed.

In the case of countries with their own insolvency law systems, a frequent problem is that the respective country regularly does not recognize foreign regulations or their effects. Often, different political motivations in the creation of these systems clash with the respective insolvency law systems. Thus, in a state where the focus of insolvency law is based on civil law, a creditor-friendly insolvency law may have prevailed. In the other state, on the other hand, an insolvency law may have prevailed that is, again, debtor friendly in terms of English law. This may result in a race to the bottom among creditors or in so-called "forum shopping", which may be a consequence of such conflicting systems.

Territorial approach in such a situation can consequently bring numerous problems. In such a situation of cross-border insolvency, the coordination of different insolvency law systems can be based on already established international initiatives, which were created just for such coordination. Once again, the "UNCITRAL Legislative Guide on Insolvency law" should be highlighted as it offers guidance to countries in such a

conflict situation to enable coordination. The World Bank's "Principles for Effective Insolvency and Creditor/Debtor Regimes" and the European Union's project "Bankruptcy and fresh start: stigma on failure and legal consequences of bankruptcy" also serve the same purpose. These initiatives are to be consulted in particular if binding international regulations do not already exist among the countries involved in this cross-border insolvency situation.

In my opinion, the above-mentioned guidelines contribute significantly to a positive development in the harmonisation of national insolvency law systems. Against the background of the potential for conflict in cross-border insolvency cases described above, there is an urgent need for concepts that create common structures for resolving insolvency issues. Since many countries are guided by national legislation, guidelines such as those from UNCITRAL or the World Bank can support harmonisation efforts.

There are some additional international instruments w hich I'd love to see you consider.
4

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.

The European Insolvency Regulation has been slightly amended and revised and is now implemented in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). A further change was made by Regulation 2021/2260 of 15 December 2021, which replaced Annexes A and B and entered into force for most Member States in January 2022.

The applicability of the European Insolvency Regulation to the United Kingdom ended at 23:00 on 31 December 2020 following the exit of the United Kingdom. Consequently, the recast European Insolvency Regulation does not apply to the insolvency proceedings opened in the United Kingdom on 30 June 2022 in respect of the assets of FPPL. What is the consequence of this?

Assuming that the European Insolvency Regulation could apply to the insolvency proceedings opened against FPPL's assets, this would have the following effect: This doesn't apply as stated by you above.

Under the European Insolvency Regulation, the jurisdiction of an insolvency court in the Member State where the centre of the debtor's main interests is located (COMI) is generally provided for. The European Insolvency Regulation provides for the jurisdiction of an insolvency court in the Member State in which the centre of the debtor's main interests is located (COMI), leaving the possibility of conducting "territorial" ancillary proceedings in connection with a cross-border insolvency in another state. According to the European Insolvency Regulation, this applies if a branch exists in another state. These proceedings are then to be understood as ancillary proceedings or so-called secondary proceedings.

For the present insolvency proceedings opened in the United Kingdom, this has the consequence that in the first step it would have to be examined where specifically FPPL has the centre of its main interests. In accordance with the principle of the European Insolvency Regulation, the main insolvency proceedings would be conducted in this state. In all other states in which FPPL has branches and conducts business, which would also have to be determined in the next step, it would have to be examined whether proceedings or secondary insolvency proceedings would have to be opened. What is important here is what activities FPPL has pursued in these other states.

Furthermore, it must be taken into account that the European Insolvency Regulation, as already emphasised, applies solely to members of the European Union. Insofar as the FPPL also operates branches or is otherwise active in countries that are not members of the European Union and has assets there, the European Insolvency Regulation does not apply, as in the example of the United Kingdom. In this case, it is necessary to work out precisely which other countries are affected and to determine whether there are certain guidelines in this country, such as those of UNCITRAL or the World Bank, which provide instruments for cross-border insolvencies. In this context, it is essential to find out whether the same guidelines are accepted between the countries concerned or whether there are further agreements between these countries.

It is essential that the competent insolvency administrator, who was appointed when the insolvency proceedings over the FPPL's assets were opened, obtains information about any other insolvency proceedings that may already have been opened in other countries and quickly establishes contact with the responsible parties in these countries in order to promote the coordination of joint proceedings or cooperation between the various parties involved at an early stage.

There is scope to elaborate re the MLCBI and further information that might be beneficial.

4

Marks awarded 11 out of 15

*** End of Assessment ***

TOTAL MARKS 36.5/50

A good paper that correctly identifies many of the issues raised and satisfactorily substantiates several answers.