



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5E

JERSEY

1 = 8/10
2 = 7.5/10
3 = 15/15
4 = 12.5/15
43/50

This is the summative (formal) assessment for Module 5E ***of this course and must be submitted by all candidates who*** selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 5E. ***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 Microsoft Word format, using a standard A4 size page and an 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.assessment5E]. An example would be something along the following lines: 202223-336.assessment5E. 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 number 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 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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

Which court can hear an appeal in respect of a Jersey legal matter?

- (i) Royal Court.**
- (ii) Court of Appeal.**
- (iii) Petty Debts Court.**
- (iv) Privy Council.**

Choose the correct answer:

- (a) Option (ii).**
- (b) Options (ii) and (iv). - CORRECT (B)**
- (c) Option (i).**
- (d) All of the above are correct.**

Question 1.2

Debtors that can become subject to Désastre in Jersey under the Bankruptcy (Désastre) (Jersey) Law 1990, include the following:

- (a) A dissolved company that was registered in Jersey under the Companies (Jersey) Law 1991.**
- (b) An individual who was ordinarily resident in Jersey until 18 months ago, but has had no connection to Jersey since that time.**

(c) An incorporated Limited Partnership.

(d) An individual who has never been ordinarily resident in Jersey or carried on business in Jersey, but owns movable property in Jersey.

Choose the correct answer:

(a) All of the above.

(b) Options (i), (iii) and (iv).

(c) Option (ii) and (iv).

(d) Options (i) and (iii). - CORRECT (D)

Question 1.3

Which parties can make an application for Désastre under the Bankruptcy (Désastre) (Jersey) Law 1990?

(i) The Viscount.

(ii) The Jersey Financial Services Commission.

(iii) A creditor with a claim of GBP 2,000.

(iv) The debtor.

Choose the correct answer:

(a) Options (ii), (iii) and (iv).

(b) All of the above.

(c) Options (ii) and (iv). - CORRECT (C)

(d) Option (i).

Question 1.4

Which statutory processes provide a moratorium against action being brought by non-secured creditors?

(i) Summary winding-up.

- (ii) **Creditors' winding-up.**
- (iii) **Just and equitable winding-up.**

- (iv) **Désastre.**

- (v) **Dégrévement or Realisation.**

- (vi) **Debt Remission Order.**

- (vii) **Remise de Biens.**

- (viii) **Compromises or arrangements.**

Choose the correct answer:

- (a) **Options (i), (ii), (iii), (iv), (vi), (vii) and (viii).**
- (b) **Options (i), (ii), (iii) and (iv).**
- (c) **Options (i), (ii), (iii), (vii) and (viii).**
- (d) **All of the above. - INCORRECT (A)**

Question 1.5

Which liquidation processes under Part 21 of the Companies (Jersey) Law 1991, as amended, are available in respect of solvent companies?

- (i) **Summary winding-up.**
- (ii) **Creditors' winding-up through court.**
- (iii) **Creditors' winding-up not through court.**
- (iv) **Just and equitable winding-up.**

Choose the correct answer:

- (a) **Option (i).**
- (b) **Options (i) and (ii).**
- (c) **Options (i), (iii) and (iv). - CORRECT (C)**
- (d) **All of the above.**

Question 1.6

Which one of the following statements is correct?

- (a) Jersey is part of Britain, the UK and the EU.**
- (b) Jersey is part of Britain and the EU but not the UK.**
- (c) Jersey is part of Britain but not the UK and not the EU. - CORRECT (C)**
- (d) Jersey is not part of Britain, or the UK or the EU.**

Question 1.7

Jersey is an attractive destination for international finance, due in part to its:

- (i) Tax neutrality.**
- (ii) Political independence.**
- (iii) Economic stability.**
- (iv) Legal and regulatory infrastructure.**

Choose the correct answer:

- (a) All of the above. - CORRECT (A)**
- (b) Options (i), (iii) and (iv).**
- (c) Options (i), (ii) and (iii).**
- (d) Options (i), (ii) and (iii).**

Question 1.8

Which type of mortgage can be created by agreement between two or more parties as to the granting and taking of security expressed in the form of a contract passed before the Jersey court?

- (a) A conventional hypothec. - CORRECT (A)**
- (b) A judicial hypothec.**
- (c) A pledge.**

(d) A legal hypothec.

Question 1.9

Which statutory processes require a liquidator to be on the approved register of liquidators?

(i) Summary winding-up.

(ii) Creditors' winding-up through court.

(iii) Just and equitable winding-up.

(iv) Creditors' winding-up not through court.

Choose the correct answer:

(a) Options (i), (ii) and (iii).

(b) Options (ii) and (iii).

(c) Options (ii) and (iv). - INCORRECT (B)

(d) All of the above.

Question 1.10

Which other responsibilities are overseen by the office of the Viscount, besides insolvency functions?

(a) Coroner. - CORRECT (A)

(b) Data Protection.

(c) Farming and fishing.

(d) Prison services.

8/10

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks]

Describe the powers that are available to a Viscount in respect of a *Désastre* and to a liquidator in respect of a winding-up.

The powers of the Viscount and a liquidator are very similar.

Viscount

Under article 26 of the Bankruptcy (Désastre) (Jersey) Law 1990 (the “Désastre Law”) the Viscount’s general powers include carrying out legal proceedings, referring disputes for arbitration, compromising or making arrangements with the debtor’s creditors and debtors, carrying on the debtor’s business in so far as it is beneficial for its disposal, exercising rights over property that debtor could have done and appoint power of attorneys. He may also disclaim onerous property (article 15), pursue transactions at undervalue and preference (17), and sell the debtor’s property (27).

Also the power to borrow money and to pay creditors

Liquidator

In a summary winding up, article 149 states that the directors can no longer exercise their powers once a liquidator is appointed and instead the liquidator may exercise those powers.

Powers as required to realise assets, discharge liabilities and distribute assets

In a creditors’ winding up, article 170 authorises the liquidator to pay creditors and compromise debts due by or to the debtor with sanction of the creditors’ committee or court. Without the need for sanction, the liquidator may also exercise any other power of the company for the purpose of a beneficial winding up. Article 171 allows the liquidator to disclaim onerous property and he may also pursue transactions at undervalue (article 176), preferences (176A), wrongful or fraudulent trading (177 and 178) and extortionate credit transaction (179).

J&E liquidator will have specific powers as granted by the Jersey court

1.5/3

Question 2.2 [maximum 2 marks]

Describe briefly the practical reasons why Jersey may not have a statutory or customary corporate rescue and turnaround procedure equivalent to an English administration or US Chapter 11:

The nature of the majority of companies registered in Jersey are special purpose vehicles and holding companies or group companies used for a variety of purposes such financial structuring, acquiring property or financing a project. They are usually set up for a limited purpose and in order to protect the parent or primary company from financial risk. They are not the trading companies that onshore jurisdictions have

developed rescue packages for in order to help rescue the business (if not the company) and preserve jobs and livelihoods.

The Jersey Court has also shown that it is open to using the current proceedings available to achieve the same results as a rescue package might. The just and equitable winding-up in particular lends itself to flexibility being used to facilitate quasi-pre-pack sales or reinstatement of dissolved companies into liquidation for asset recovery and distribution.

2/2

Question 2.3 [maximum 2 marks]

Describe the ways in which a creditor might take enforcement action in Jersey.

Secured creditors are able to enforce their security outside of an insolvency process by serving written notice on the debtor following a default. If the creditor then wishes to take possession or sell the asset they must serve the debtor with 14 days written notice of possession or sale. The debtor may waive their right of notice, also in writing.

Secured creditors may also apply for a judgement from the Petty Debts or Royal Courts and then, if the debtor defaults on the judgement, for Dégrevement. The action is over a single property, not the whole estate and the debtor's creditors are offered the property in order of lowest ranking first, with unsecured creditors being offered the property as a single body. Whichever creditor accepts the property must clear all senior charged debts but they can also sell the property unencumbered and do not have to return any surplus to the debtor.

For moveable property an option open to creditors is called Réalisation. This is where the assets are sold, usually at public auction, and the proceeds shared amongst the creditors in the usual order of priority used in insolvencies.

Creditors may also enforce debts by applying for Désastre (bankruptcy) or a creditors' winding up (liquidation). If the debtor is an individual the creditor may only use Désastre but either may be used for companies. The creditor must be due JEP 3,000 or more in order to apply under either action. The Viscount is appointed under Désastre and a liquidator is appointed under a creditors' winding up. Under Désastre the creditor must show that the debtor has realisable assets and indemnify the Viscount for costs and liabilities. These are not requirements under a creditors' winding up but the costs of applying for the winding up is likely to be borne by the creditors. Both of these actions apply to the whole of the debtor's estate.

2/2

Question 2.4 [maximum 3 marks]

What claims potentially rank as priority claims in a *Désastre*?

Article 32 of the *Désastre* covers the order of payment of unsecured debts and states that the Viscount's fees and expenses in managing the process must be paid first. The creditors are then paid in the following order with each group required to be paid in full before the next group receives payment. Where a group cannot be paid in full, the creditors within that group is paid in equal proportions.

1. Arrears of wages incurred in the 6 months prior to the declaration of *Désastre* (the "declaration") and all outstanding holiday pay and bonuses,
2. Outstanding payments due to the Health Insurance Fund, the Social Security Fund, Income Tax, preferential rent due to a landlord, judgement debts older than 10 days prior to the declaration and parochial rates due for a maximum period of two years, and
3. All other unsecured creditors

Depositors where the debtor is a banking business

2/3

7.5/10

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

Question 3.1 [maximum 7 marks]

Write a short essay to describe the personal insolvency options available in Jersey, being *Désastre*, *Dégrévement* and *Réalisation*, Debt Remission Order and *Remise de Biens*.

Désastre is the Jersey bankruptcy option and the most commonly used form of personal insolvency proceeding. It can be instigated by a creditor or the debtor and can apply to both individuals and companies. It is administered by the Viscount, in whom the worldwide debtor's estate vests, and whose primary duty is to realise the debtor's estate for the benefit of the creditors. Although the length can be changed, for individuals, typically takes 4 years as per Part IX of the Bankruptcy (*Désastre*) (Jersey) Law 1990. At the end of the 4 years the Viscount will apply to the Court for the debtor's discharge, the effect of which is to release the debtor from all debts provable in the *Désastre*, except those incurred fraudulently.

Creditor owed at least £3,000 can apply

Dégrévement and *Réalisation* are remedies available to creditors to take possession of the debtor's assets and realise them to satisfy debts. *Dégrévement* applies to immovable assets and *Réalisation* to moveable assets. *Attournés* are appointed to act on behalf of the creditor and administer the process.

There is a precise order of dealing with the creditors in a Dégrèvement. At the hearing the unsecured creditors will be asked if they wish to accept or renounce the property. If they accept it they are liable to pay all creditors with a security over the property and any priority claims. If there was a surplus after the payments, the unsecured creditors may keep it. In practice it is rare for unsecured creditors to accept the property so it will next be offered to the lowest ranking secured creditor. If they accept it they must pay the superior secured creditors and any priority debts. Again the accepting creditor may then keep and surplus. This continues up the ranking until the property is offered to the top ranking secured creditor. Although they could renounce the property in theory, in practice they will accept the property and pay any priority claims.

Réalisation is a procedure where the debtor's moveable assets will be sold at public auction. The attournés will take possession of the debtor's moveable assets, excluding certain protected items, make an inventory of them and sell them. The proceeds are lodged with the Treasurer of the States of Jersey and the attournés advertise for claims in the Jersey Gazette. Once the claims are agreed the net proceeds, after the costs of the realisation, are distributed to priority and preferential debts and then to the unsecured creditors. Creditors who previously held a security over the moveable assets do not have a preference here.

At the end of either of these processes any unsettled debt will remain with the debtor and the creditor may pursue settlement by other means.

A Debt Remission Order (DRO) is a form of relief available to debtors under the Debtor Remission (Individuals) (Jersey) Law 2016. Anyone can apply so long as they meet certain conditions. The debtor must be over 18 and have lived in Jersey for the previous 5 years, they must have acted in good faith in relation to their assets and liabilities, have assets worth no more than JEP 5,000 and debts of value of no more than JEP 20,000, and their disposable income must be less than JEP 100 per month. The DRO creates a moratorium over the debts during the process and the debtor is discharged from any remaining debt at the end. The DRO lasts for 12 months, is administered by the Citizens Advice Bureau and run by the Viscount.

Remise de biens is a remedy available to debtors to facilitate their rescue and rehabilitation. The debtor gives up all their property and rights and agrees to act in accordance with the advice of two Jurats in order to protect themselves from creditors and effect an orderly sale of the property. The Jurats will sell the debtor's property and, so long as the secured creditors are paid in full and something has been paid to unsecured creditors the debtor will be discharged from any remaining debt. The process typically takes between 6 and 12 months.

6/7

Question 3.2 [maximum 8 marks]

Write a short essay describing in detail the creditor claims process in respect of a creditors' winding-up. In your essay, you should refer to at least the following:

- (i) The relevant Jersey law that applies.**
- (ii) Which areas are covered under the relevant Jersey law.**
- (iii) Advertising for claims and notice periods.**
- (iv) Which debts are provable.**
- (v) Interest on debts.**
- (vi) Proving of debts and the cost of proving.**
- (vii) Examination of proofs of debts.**
- (viii) Adjudication and the process of admitting or rejecting claims.**

Article 166 of the Companies (Jersey) Law 1991, as amended (the "Companies Law") states that the rules for the creditor claim process in a creditors' winding up are the same as those in the Bankruptcy (Désastre) (Jersey) Law 1990 (the "Désastre Law") and that references to désastre and Viscount are to read as winding up and liquidator.

Part VII of Désastre Law covers Proofs of Debts. Article 29 allows all debts of the debtor at the time of the declaration to be provable in the winding up whether they are present, future, certain or contingent, with contingent debts being estimated by the debtor. Interest incurred up to the declaration date on unsecured debt is also provable (interest on secured debt continuing up to the date of settlement of the secured debt), as is anyone making a loss due to the liquidator disclaiming onerous property as per Article 15. These creditors must submit their claims within 28 days of being served the notice of the disclaimer.

Article 30 states that every creditor will prove their debt at the prescribed time and manner and shall bear the cost of proving the debt unless the Court allows otherwise. The time and manner for proving is laid out in rules 3 & 4 of the Bankruptcy (Désastre) Rules 2006 (the "Rules") which covers filing and evidence of claims. Under the Rules the liquidator must publish an advert in the Gazette, and anywhere else he thinks appropriate, calling for claims to be submitted by a certain date which must be between 40 and 60 days of the commencement of the winding up. If a creditor does not submit their claim in time they will not be able to take part in the distribution of the assets. Rule 10 allows the liquidator to extend or shorten deadlines if he thinks fit.

Article 30 and Rule 5 allow any creditor who has submitted a claim to examine the claims of other creditors so as soon as practicable after the deadline to submit claims, the liquidator must fix a period of time and a place where the claims may be inspected. He must publish a notice of the inspection in the Gazette, and anywhere else he thinks appropriate, and serve a copy on the debtor.

Any interested person who wishes to object to a claim must submit their grounds for objection to the liquidator within 1 month of the end of this inspection period. If the liquidator rejects the opposition then he must give notice to the objector.

The liquidator will then adjudicate the claims under article 31 and Rule 7 and may accept or reject, wholly or in part, and must give notice to any creditor whose claim has been rejected, wholly or in part, specifying the reason for the rejection and that the creditor has 21 days to request the liquidator to apply to the court to review the decision.

8/8

14/15

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

XYZ Limited, is a major high-street retailer registered in England with stores throughout England as well as a store in Jersey. Like many retailers, XYZ has struggled in recent times due to the change in shopping habits of the British public. Sales have fallen, as customers increasingly look for cheaper alternatives online, and XYZ is struggling to meet its ongoing rent commitments at its many stores. The majority of XYZ's stores have been loss-making for some time, including its store in Jersey. XYZs secured lender, Big Bank PLC, has become increasingly concerned at the situation. Big Bank has the benefit of fixed and floating charges over XYZs assets.

In December 2018, Big Bank confirmed that it would no longer continue to provide financial support and would not allow a further extension of facilities in order to meet the rental payments which were due on 25 December.

(a) Big Bank has obtained legal advice in England in relation to its rights as secured creditor. You have been approached in Jersey to comment on Big Bank's rights. Please draft a note in this regard. (3 marks)

The Jersey Court is unlikely to recognise a foreign legal instrument like the fixed and floating charge but it is likely to recognise a foreign judgement. Under the Judgements (Reciprocal Enforcement)(Jersey) Law 1960, as amended, the creditor of a judgement made by a superior court of a reciprocating country (defined as the judgement creditor) can apply to have the judgement registered in the Royal Court. The judgement will then be treated as if made by the Royal Court and enforceable in Jersey. This would then grant Big Bank the right to apply

to the Court for enforcement actions such as Désastre, creditors' winding up, dégrèvement if the property is immovable or to enforce contractual rights over moveable property.

England and Wales is listed as a reciprocating country in the Judgements (Reciprocal Enforcement)(Jersey) Act 1973 and the courts listed as superior are The Supreme Court of the United Kingdom, the House of Lords, the Court of Appeal and the High Court of Justice. If Big Bank can obtain a judgement from one of these courts that is final and conclusive and can be enforced by execution they would have 6 years from the date of judgement to apply to the Jersey Court so long as the debt has not been fully satisfied at the time of application.

If, for some reason, Big Bank cannot apply to an England & Wales court then Scotland, Northern Ireland, Isle of Man and Guernsey are also reciprocating countries. Failing that, article 49 of the Désastre Law would allow a court in Australia or Finland or a non-superior court in the UK, Isle of Man or Guernsey to request assistance in enforcing the judgement. Customary law may also allow recognition of the judgement and its enforcement if the foreign court granting the judgement was of a competent jurisdiction and there is no conflict of law.

The Jersey Court is unlikely to grant assistance if the foreign court did not have jurisdiction nor if enforcing the judgement would be contrary to public policy, Big Bank had committed any fraud, or if the proceedings to obtain the judgement were contrary to natural justice.

Advice should consider whether Big Bank has security over Jersey immovable property or movable property. If Big Bank has security over Jersey immovable property (for example a mortgage over the building) then they can apply to court in Jersey for a Désastre or Dégrèvement. If they have security over movable property then they may apply to court in Jersey to enforce their contractual rights. Secured creditors will have priority over all other creditors in Désastre and Liquidation scenarios, and the fact that a debtors becomes subject to an insolvency proceeding does not affect the enforcement powers of the secured party

1.5/3

The directors of XYZ identify a party that is interested in acquiring the business of XYZ. Following a brief period of negotiation conducted with the oversight of a proposed administrator, and with approval of Big Bank, the directors of XYZ began the process to place XYZ into administration in England, in order to allow a "pre-packaged" sale of the business to occur.

(b) The Jersey store is owned by a separate Jersey company, ABC Limited, but ABC's centre of main interest is considered to be in England. Is it possible to place ABC into English administration (following the Regulation (EU) 2015/848 of the

European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast) (the Recast EIR)? (3 marks)

This scenario is set pre-Brexit and the Recast EIR applied in England at the time so the English Court has jurisdiction to place the company into administration because of the COMI being in England. Big Bank could also appoint an administrator out of court under Schedule B1 of the UK Insolvency Act 1986 under the terms of its fixed and floating charge.

Post-Brexit the Insolvency (Amendment)(EU Exit) Regulations 2019 would have the same effect.

If Big Bank could not show to the English Court's satisfaction that the COMI was in England the Jersey Court has jurisdiction to request assistance from the English Court to place the company into administration in England by way of letter of request. The first case of this was OT Computers Limited [2002] JLR N10 where the company made the application itself. In REO (Powerstation) Limited [2011] JRC 232A the Court considered in detail its jurisdiction to issue a letter of request and noted that there was no doubt that it had jurisdiction to issue a letter of request on an application by a creditor.

Would need to demonstrate that English administration would achieve the best possible outcome for the debtor and creditors than local processes.

2/3

- (c) If it is not possible to place ABC into English administration, then are there alternative Jersey insolvency processes that will allow a pre-packaged sale to occur? Are there any potential problems with achieving a sale as a going concern? (3 marks)**

The directors could apply to the Jersey Court to have the company wound up on the grounds that it is just and equitable. The liquidator would normally be restricted to the business of winding up the company's affairs so the winding up application would have to include a request to authorise the liquidator to trade the business in order to sell it. The Court has shown itself to be quite open to hearing just and equitable applications.

*In the Matter of the Representation of Collections Group [2013] JRC 096, the first occasion the Court had been asked to authorise a pre-pack sale, Sir Michael Birt agreed that the just and equitable route was appropriate because neither a creditor's winding up nor a *désastre* would be able to achieve the sale in time. He was concerned over the risk of a "Phoenix" arrangement where the beneficial owners acquire the assets of the company without the burden of the creditor. Sir Michael commented in detail on the Statement of Insolvency Practice, SIP16, issued by the Joint Insolvency Committee in England and Wales, which sets out*

specific guidance to insolvency practitioners around pre-packaged sales and directed liquidators to pay careful attention to SIP16. He also asked the director of the companies to take to the witness box to confirm that the existing beneficial owners had no connection to the company that intended to buy the company.

A compromise or arrangement could also be proposed. The directors, shareholder or a creditor could apply to the Court to make an order to call a creditors meeting or meetings of classes of creditor to consider the proposed compromise. 75% in value of the creditors present & voting at the meetings must agree to the proposal and it must be sanctioned by the Court to have it binding on all creditors. This could be done outside of a winding up process if the company could get creditor agreement under a private law contractual agreement but if the company was to then enter an insolvency proceeding, unless 100% of the creditors had consented, the arrangement may be set aside as a preference. Creditors are required to be given sufficient notice to consider the proposals and this on top of the court process may be prohibitive to achieving the sale in time.

3/3

(d) Would the approach be different if the Jersey store was a branch of XYZ as opposed to a separate Jersey company? How might article 49 of the Bankruptcy Law be used? (3 marks)

If the Jersey store was a branch the approach could be to place the company into administration in England and then the administrator could apply for recognition in Jersey in order to deal with the Jersey situated assets and liabilities.

*Reciprocity is an important part of the Court's decision to assist and in *Re Montrow Intl Ltd 2007 JLR N 49* the court held that the principles that English courts applied to requests for assistance were similar to the principles the Jersey Court applied to requests for assistance under customary law. England is also listed as a "relevant country" that the Court may assist.*

Under article 49, the English Court could submit a letter of request to the Jersey Court asking for assistance in various insolvency related matters including recognition of the administrator as officeholder, asset or information disclosures, freezing of assets and examination of witnesses.

*Practice Direction - RC 05/17, issued following a judgement in the case of *Re Dick 2000 JLR N4a*, states that an application for assistance in insolvency matters should not be brought to the Court unless the applicant has consulted with the Viscount in order to make sure the order sought is terms which suit Jersey's domestic law.*

3/3

(e) What if XYZ Limited was a Polish company with Polish stores and a store in Jersey, but all other details remain the same (and assume that Poland has an administration process that is the same as that in England)? Would the UNCITRAL Model Law on Cross-Border Insolvency 1997 (the Model Law) or the Recast EIR assist with recognition in Jersey? (3 marks)

Article 49 suggests that the Jersey Court may have regard for the Model Law if it considers it appropriate but Jersey is not a signatory to the Model Law. Jersey is also not a member of the EU so the Recast EIR is not applicable.

As stated above, reciprocity is an important consideration and the fact that Poland has adopted the Model Law without adding any reciprocity requirements and would therefore recognise a Jersey proceeding.

However article 49 also states that the Court shall have regard to the rules of private international law and the customary law of Jersey is to have that regard. The Court is therefore likely to recognise a foreign officeholder administering an insolvency proceeding in a foreign jurisdiction where there is a valid connection between the foreign insolvency law and the debtor. In re F & O Finance AG a Swiss court received assistance from the Jersey Court so it would be possible for a Polish company insolvency to be recognised in Jersey.

3/3

12.5/15

*** End of Assessment ***