



FORMATIVE ASSESSMENT: MODULE 1

INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW

This is a formative assessment relating to Module 1 and is designed to provide candidates on the Foundation Certificate course with some direction and guidance as to the form and content of assessments on the course as a whole. The submission of this assessment is not compulsory and the mark awarded will not count towards the final mark for Module 1 or the course as a whole. However, students are encouraged to submit this assessment as part of their orientation for the submission of the formal (summative) assessments for all the modules on the course.

The Marking Guide for this assessment will be made available on the web pages for Module 1 as well as the Course Administration page for this course after the submission date of 15 October 2023.

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.assessment1formative]. An example would be something along the following lines: 202223-336.assessment1formative. 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 15 October 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 15 October 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

It should be relatively easy to develop a single system to deal with cross-border insolvency since all jurisdictions have more or less the same local insolvency law rules.

- (a) This statement is true since all countries have implemented the UNCITRAL Model Law on Cross-Border Insolvency.***
- (b) This statement is untrue since there are huge differences in both the approach and insolvency legislation of various jurisdictions.***
- (c) This statement is true since all systems have at least the same general insolvency concepts.***
- (d) The statement is true since the historical roots of all insolvency systems are the same.***

Question 1.2

The Statute of Ann, 1705 was a very important piece of legislation for the development of English insolvency law.

- (a) This statement is true since this Act introduced imprisonment of debt.***
- (b) This statement is untrue because it dealt with the distributions of the proceeds derived from the proceeds of selling the assets of the estate.***
- (c) This statement is true since it introduced the notion of discharge.***
- (d) This statement is true since it introduced fraudulent conveyances into English law.***

Question 1.3

The purpose of the UNCITRAL Legislative Guide (2004) has direct application in all the member States of the UN.

- (a) This statement is true because UNCITRAL's model legislative guidelines apply automatically to all member States.***
- (b) This statement is true because all member States supported its automatic implementation in their respective jurisdictions.***
- (c) This statement is untrue because the Legislative Guide serves merely as soft law and contains best practice to be considered when countries revise their own insolvency legislation.***
- (d) This statement is untrue since the Legislative Guide is only available for use by developing countries when reforming their own insolvency laws.***

Question 1.4

Modern rescue proceedings have replaced liquidation as an insolvency procedure in most systems.

- (a) This statement is true since business rescue is important for socio-economic reasons.***
- (b) This statement is true because liquidation is viewed as a medieval and outdated process.***

(c) This statement is untrue since there is still a need for both liquidation and rescue procedures in insolvency systems.

(d) This statement is untrue since some systems have no formal rescue procedure.

Question 1.5

The principles and requirements for avoidable dispositions and executory contracts are the same in all jurisdictions - hence these do not pose problems in a cross-border insolvency matter.

(a) The statement is untrue, the requirements and principles do differ and pose problems in a cross-border case.

(b) This statement is untrue because the insolvency laws of the State where the original insolvency order is issued will apply to all the other States involved in the matter.

(c) This statement is untrue since avoidable dispositions and executory contracts do not pose any problems in a cross-border case.

(d) The statement is untrue since avoidable dispositions and executory contracts may be disregarded in a cross-border case.

Question 1.6

The domestic corporate insolvency statute of a country makes no mention of the possibility of a foreign element in a liquidation commenced locally. The country has ratified a regional treaty on insolvency proceedings that contain provisions on concurrent insolvency proceedings over the same debtor in a neighbouring treaty state.

In a local liquidation commenced under the domestic corporate insolvency statute, to what law can the local court refer in order to resolve an international law issue that has arisen because of concurrent insolvency proceedings in the neighbouring state?

(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

Which one of the following documents mandates co-operation or communication between courts in concurrent insolvency proceedings on the same debtor, which are being conducted in different nation states?

- (a) ALI / III Global Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases (2012).**
- (b) EU Cross-Border Insolvency Court-to-Court Communications Guidelines (2014).**
- (c) UNCITRAL Model Law on Cross-border Insolvency (1997).**
- (d) JIN Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (2016).**

Question 1.8

Latin and Middle America states have ratified various multilateral conventions and treaties that address international insolvency issues. While they promote unity of proceedings in the treaty states where a debtor has a single commercial domicile, they acknowledge the possibility of concurrent proceedings.

Which of the following conventions and treaties does not provide for judicial co-operation where there are surplus funds remaining in a proceeding in one treaty state and there are concurrent insolvency proceedings over the same debtor in another treaty state?

- (a) Montevideo Treaty on International Commercial Law (1889).**
- (b) Montevideo Treaty on International Commercial Terrestrial Law (1940).**
- (c) Montevideo Treaty on International Procedural Law (1940).**
- (d) Havana Convention on Private International Law (1928).**

Question 1.9

The Council Regulation on Insolvency Proceedings (European Insolvency Regulation) (2000), which applies in all European Union member states except Denmark, was

reviewed after a decade's operation. An amended European Insolvency Regulation (EIR) Recast (2015) was adopted in 2015 and took effect in June 2017.

Which of the following aspects of international insolvency is not addressed in the EIR Recast?

- (a) Proceedings to restructure a debtor that is facing the likelihood of insolvency.
- (b) Definition of "centre of the debtor's main interests".
- (c) A centralised insolvency register of insolvency proceedings opened in member states.
- (d) Co-operation and co-ordination provisions applicable to corporate groups.

Question 1.10

An unsecured Creditor is owed monies by the Debtor for services it supplied locally. It has issued proceedings to recover the debt in the local Court. The Debtor has moved its registration and head office to the local country from its original place of incorporation in a foreign country. The Creditor is incorporated and has its head office in that foreign country. The contract to supply, which was created by exchange of emails sent between the head offices, denominates the debt in the currency of the foreign country. The Debtor is being wound-up in the foreign country and the foreign liquidator seeks recognition and a stay in the local Court proceedings. What aspect is an international insolvency issue?

- (a) The local Court's jurisdiction over the Debtor.
- (b) The standing of the foreign Creditor to sue for its debt in the local Court.
- (c) The foreign liquidator's standing to request a stay of the local proceedings.
- (d) The fact that the debt owed to the Creditor is in a foreign currency.

Marks awarded: 5 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

Explain what the term "international insolvency law" means.

Insolvency law, often referred to as bankruptcy law, encompasses the body of rules and principles that regulate proceedings concerning individuals or entities in a financial state where

their assets are insufficient to cover their liabilities or where the debtor cannot repay his debts due to cash flow problems.

When we consider the international dimension, reflecting the globalization process, where individuals or entities have assets in various states or companies engage in cross-border activities, we encounter what is known as international insolvency law.

This specialized legal framework governs the resolution of insolvency for individuals or entities (such as corporations or organizations) with operations or interests that span multiple jurisdictions. It establishes the rights and responsibilities of creditors, debtors, and other stakeholders involved in cases where an insolvent entity operates or holds assets and liabilities across different countries.

2

Question 2.2 [maximum 5 marks]

Differentiate between the concepts of universality and territoriality in cross-border insolvency.

In the field of cross-border insolvency, there are two main theories: universalism and territorialism.

Universalism advocates for a single insolvency proceeding encompassing all of the debtor's global assets and debts. The chosen State typically aligns with the debtor's primary center. All creditors worldwide are included, and their claims are treated equally. This approach is cost-effective and better suited to the demands of globalization, especially for large multinational corporations operating in international markets. However, it necessitates a high level of trust in foreign legal systems and their insolvency proceedings due to the extraterritorial effects of decisions.

On the other hand, the territorial approach permits multiple concurrent insolvency proceedings in States where the debtor possesses assets. However, these proceedings are limited to the respective assets in each State.

This system prioritizes safeguarding national interests and local creditors, focusing on the unique circumstances and concerns of each jurisdiction.

In cross-border insolvency cases, both universal and territorial systems present challenges due to potential lack of cooperation and coordination among State authorities. Solutions seek to promote the coexistence of both systems, striving for enhanced cooperation and efficiency.

There is scope to elaborate with respect to recognition and effect in that for example, with universalism, recognition and effect requires that other States recognise that one set insolvency proceedings (that all agreed is the appropriate jurisdiction) and recognise it as having extraterritorial effect in their States.

3.5

Question 2.3 [maximum 3 marks]

Describe three recent examples of developments in the Middle East region to reform domestic insolvency laws or to address international insolvency issues.

In efforts to face international insolvency challenges, the Gulf Cooperation Council nations comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates have maintained a close collaboration with the World Bank for around four decades. Notably, they facilitated the inception of the first regional and comparative examination of insolvency frameworks in the Middle East and North Africa (MENA) region in 2009. This significant endeavor was a collaborative initiative involving the Hawkamah Institute for Corporate

Governance, the World Bank, the OECD, and INSOL International. The assessment was primarily guided by the World Bank's Principles for Effective Insolvency and Creditor Rights Systems (2005), serving as a benchmark for best practices. **what impact did this have on reforming domestic insolvency laws or addressing international insolvency Issues in the Middle East?**

Several instances of enhanced national insolvency legislation can be cited as follows: the UAE in 2016 and 2019, Saudi Arabia in 2018, and Dubai in 2019. Furthermore, it is worth noting that Bahrain adopted the Model Law on Cross-Border Insolvency in 2018, a stride mirrored by the Dubai International Financial Centre in 2019. **More detail would have improved the mark awarded for this sub-question.**

2

Marks awarded 7.5 out of 10

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

Question 3.1 [maximum 5 marks]

Write a brief note on the differences regarding the objectives of insolvency for individuals and corporations.

Insolvency for individuals centers on securing debt relief and a fresh start to rebuild their financial lives. The primary objective is to reorganize finances, reduce the burden of debt, and create a sustainable budget to regain financial stability. Individuals strive to preserve essential personal assets like homes, cars, and necessary possessions to maintain a reasonable standard of living for themselves and their families during and after the insolvency process. **Is this a reference to exempt property? Elaboration and clarity would be beneficial.** They aim to propose a repayment plan to creditors or opt for debt discharge while minimizing the adverse impact on their credit scores to facilitate future financial transactions and opportunities, such as obtaining loans or mortgages. **Prevention of harassment is also relevant**

For corporations facing insolvency, the primary objective is to maximize the value of assets for distribution among creditors. This involves asset realization, and strategic decisions to ensure creditors receive the highest possible repayment. Additionally, corporations aim to continue operations and sustain business viability through restructuring or reorganization, negotiating debt terms, selling non-core assets, or altering business strategies to restore profitability. Avoiding liquidation is a key goal, as it helps preserve the business as an ongoing concern, sustaining jobs, client relationships, and contracts, thereby contributing to overall economic stability.

There is scope to elaborate, for example with respect to imposing personal liability on the responsible persons in a corporate context.

4

Question 3.2 [maximum 5 marks]

Write a brief note on the difficulties that may be encountered when dealing with insolvency law in a cross-border context relating to pertinent differences in the relevant systems.

Dealing with insolvency law in a cross-border context presents a complex landscape due to differences in legal systems. These disparities are mostly encompassed by the variations in the following aspects:

1. Pro-Debtor vs. Pro-Creditor Systems

In a pro-debtor system, the legal framework is more lenient towards debtors, aiming to provide them with a chance for rehabilitation and a fresh start. This could mean offering debt restructuring options, prioritizing debt forgiveness, or implementing laws that protect essential assets of the debtor.

On the other hand, pro-creditor systems prioritize the rights and interests of creditors. The legal mechanisms in these systems often emphasize debt recovery and repayment, potentially leading to a more aggressive approach towards liquidation of assets to satisfy creditors' claims.

The challenge arises in a cross-border scenario when an insolvent entity operates in multiple jurisdictions with varying legal orientations. Determining which legal approach takes precedence can be intricate, impacting the outcome of insolvency proceedings and the rights of both debtors and creditors involved.

2. Handling Security Titles:

Different legal systems have distinct approaches to handling security titles, such as mortgages, liens, or pledges, which secure loans or debts. The variation lies in the recognition, enforcement, and priority of these security interests in insolvency proceedings.

Some jurisdictions may have a centralized and standardized approach to registering security interests, providing clarity on the priority of claims. In contrast, others might follow a more decentralized or informal system, leading to potential conflicts when addressing cross-border insolvency cases.

Harmonizing the treatment of security titles becomes vital when dealing with insolvency across borders. Conflicting rules regarding the priority and validity of these titles can result in disputes among creditors and complexities in asset distribution, potentially delaying the resolution process.

Navigating these differences and ensuring a fair and efficient resolution in cross-border insolvency cases necessitates enhanced international cooperation, harmonization of laws, and mechanisms to address conflicts and inconsistencies. Initiatives and conventions, like the UNCITRAL Model Law on Cross-Border Insolvency, aim to provide a framework for handling such challenges and promoting a more consistent approach in cross-border insolvency matters.

Further detail would be beneficial. For example, consideration of Westbrook's 9 key issues.
3.5

Question 3.3 [maximum 5 marks]

What multilateral steps have been taken in the 21st century to promote harmonisation of domestic insolvency laws? In your opinion, how much impact are these likely to have in addressing international insolvency issues? Include reasons for your opinion.

Listed below are some of the steps taken in the 21st Century to facilitate alignment of national insolvency regulations can be seen as measures aimed at standardizing domestic insolvency laws:

- **Legislative Guide on Insolvency Law**, 2004, the United Nations Commission on International Trade Law (UNCITRAL): intended for use as a reference by national authorities and legislative bodies when formulating new laws or reviewing existing ones. It covers various aspects of insolvency law and has been expanded over

subsequent years. Notably, it addresses cross-border insolvency, emphasizing the need for a modern, harmonized, and equitable framework to effectively manage cross-border insolvency cases, recommending the enactment of the UNCITRAL Model Law on Cross-Border Insolvency.

- **Principles for Effective Insolvency and Creditor/Debtor Regimes**, 2005, The World Bank: guidelines provided on insolvency regulation. Undergone revisions in 2011, 2015, and in April 2021. Hold importance as the International Monetary Fund (IMF) and the World Bank at times stipulate bankruptcy reform as a prerequisite for loan support to developing countries. These organizations may refer to the Legislative Guide and Principles, promoting the convergence of insolvency laws.

The UNCITRAL Legislative Guide and the World Bank Principles jointly constitute the international best practice standard for insolvency regimes, known as the **Insolvency Standard**.

- **Report on Harmonization of Insolvency Law**, 2010, the European Parliament: highlighting disparities in domestic insolvency laws within the EU and identifying several areas of insolvency law where harmonization at the EU level would be beneficial and feasible.
- **Action Plan on Building a Capital Markets Union (CMU)**, 2015, the European Commission: emphasized the importance of converging insolvency and restructuring procedures, enhancing legal certainty for cross-border investors and promoting timely restructuring of financially viable companies in distress. It has since been reviewed, and the High-Level Forum (HLF) released its Final Report on the CMU.

The steps taken in the 21st century to promote the harmonization of domestic insolvency laws are likely to have a significant impact in addressing international insolvency issues, by the following reasons:

Reducing the significance of Cross-Border Insolvency: Alignment of domestic insolvency laws, helps in streamlining the resolution process, making it more efficient and predictable across jurisdictions. This reduces the complexity and challenges associated with international insolvency cases.

Effective Cross-Border Insolvency Frameworks: Recommendations such as known as **Insolvency Standards** encourage countries to adopt modern and harmonized frameworks for dealing with cross-border insolvency. This ensures that insolvency cases involving multiple jurisdictions can be handled more effectively and fairly, providing a structured approach to address the complexities of international insolvency.

International Best Practices and Standards: The **Insolvency Standards** serve as international best practice standards for insolvency regimes. When countries adopt these guidelines, they are likely to have more effective insolvency frameworks in place. These standards provide a benchmark for nations, promoting consistency and raising the bar for insolvency practices globally.

Influence on Developing Countries: The **Insolvency Standards** are often referenced by international financial institutions like the IMF and the World Bank. They may use these standards as a condition for providing financial support to developing countries. This influence encourages countries to adopt reforms that align with these standards, promoting a convergence of insolvency laws at an international level.

EU Harmonization Efforts: The European Parliament's initiative to harmonize insolvency laws at the EU level indicates a regional commitment to standardize insolvency practices. This endeavor can serve as a model for other regions or groups of countries looking to harmonize their insolvency laws, enhancing cooperation and reducing cross-border insolvency complexities within those regions.

In summary, these efforts to harmonize and standardize domestic insolvency laws are likely to significantly impact the resolution of international insolvency issues by creating a more predictable, efficient, and equitable framework for cross-border insolvency cases. The

adoption of international best practices and collaboration at regional and global levels contribute to a more cohesive approach related to challenges that transcend national boundaries.

5

Marks awarded 12.5 out of 15

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

Nadir Pty Ltd (Nadir) is a company registered in Utopia. Originally it was incorporated in the neighbouring country of Erewhon before moving its registration and head office to Utopia one month ago. Apex Pty Ltd (Apex) is incorporated and has its head office in Erewhon. Apex and Nadir enter into a contract by exchange of emails between their head offices for Apex to supply goods to Nadir in Utopia. Nadir has failed to pay for the goods which have been delivered in accordance with the contract. Apex issues court proceedings against Nadir in Utopia for monies owing for the goods sold and delivered.

Meanwhile, Nadir also owes monies to creditors in Erewhon. One Erewhon creditor obtains a court winding-up order against Nadir in Erewhon and a liquidator is also appointed by that court.

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

Question 4.1 [maximum 5 marks]

Assume the UNCITRAL Model Law on Cross-border Insolvency has been adopted by Utopia without modification, except as required to domesticate it. For example, the Cross-border Insolvency Act of Utopia names its local laws relating to insolvency and its competent court under the Act. The Erewhon liquidator's investigations detect that Apex is suing Nadir in Utopia. The liquidator would like to stop Apex court action against Nadir in Utopia. Advise the Erewhon liquidator on the potential relevance of the Cross-border Insolvency Act of Utopia.

In this described scenario, Nadir Pty Ltd (Nadir) is registered in Utopia after initially being incorporated in Erewhon. Apex Pty Ltd (Apex), on the other hand, is based in Erewhon. One creditor obtains a court winding-up order in Erewhon against Nadir and an appointment of a liquidator is appointed by the court. The potential implications of the UNCITRAL Model Law on Cross-border Insolvency, as adopted by Utopia, can be assessed concerning the Erewhon liquidator's attempt to halt Apex's legal action against Nadir in Utopia.

Given that Utopia has adopted the UNCITRAL Model Law on Cross-border Insolvency, the Erewhon liquidator could possibly utilize the provisions of this law to seek recognition and support from the Utopian court.

Below are key aspects to take into account:

- a) Recognition of Foreign Insolvency Proceedings: The Erewhon liquidator, designated through a court-issued order, may pursue recognition of their appointment and the ongoing insolvency proceedings in Erewhon by the Utopian court. Such acknowledgment would affirm the Erewhon liquidator's legitimacy and standing in

Utopia.

- b) Suspension of Apex's Court Action: Once the foreign insolvency proceedings are acknowledged, the Utopian court might grant a suspension of Apex's legal action against Nadir in Utopia. This is essential for ensuring a synchronized and just resolution of Nadir's insolvency across different jurisdictions.
- c) Cooperation and Communication: The Utopian court could facilitate communication and collaboration between the Erewhon liquidator, and any insolvency expert involved in Nadir's proceedings in Utopia. This collaboration aims to streamline the insolvency process and safeguard the interests of all relevant stakeholders.
- d) Protection of Nadir's Assets and Interests: Recognizing the foreign insolvency proceedings and subsequently halting the legal action can aid in safeguarding Nadir's assets and interests. The ultimate objective is to coordinate and facilitate a just and effective resolution of Nadir's insolvency, taking into consideration the concerns of creditors and stakeholders in both Erewhon and Utopia.

5

Question 4.2 [maximum 2 marks]

Would it make any difference to your answer in question 4.1 in the following two alternative scenarios to Apex suing for its debt?

(a) Apex had filed proceedings to wind-up Nadir, but the matter had not yet been heard.

(b) Apex had obtained a court order to wind-up Nadir in Utopia prior to the Erewhon winding-up order.

- a) The scenario described in letter A is already taken under consideration in the context of answer 4.1. The objective is to obtain recognition of the Erewhon insolvency proceedings, leading to a stay of the court action initiated by Apex in Utopia. This approach helps in fostering cooperation and coordination between the two jurisdictions to achieve a fair and efficient resolution of Nadir's insolvency, considering the interests of all parties involved.
- b) Scenario B presents us with a wind-up order of Nadir in Utopia prior to the one granted by Erewhon. Taking this information into consideration, the Erewhon liquidator and the Utopia liquidator should both engage legal protocols to formally adequate the UNCITRAL Model Law on Cross-border Insolvency, based on the recognition of the Erewhon winding-up order in Utopia or vice-versa. This would lead to the imposition of a stay on the other order in an attempt to avoid conflicting decisions. The Erewhon liquidator can petition the Utopian court for recognition of the winding-up order obtained in Erewhon against Nadir, even though it had been posterior. Under the UNCITRAL Model Law, this recognition would acknowledge the Erewhon winding-up order and the appointment of a liquidator in Utopia. These two measures would ensure that there is no parallel legal action proceeding against Nadir in Utopia.

Refer to Article 29 on concurrent insolvency proceedings, under which the local proceedings in Utopia maintain pre-eminence over the foreign proceedings in Erewhon.

0.5

Question 4.3 [maximum 8 marks]

NB: This question is not related to Questions 4.1 and 4.2

A court has ordered the commencement of an insolvency proceeding against a corporate debtor in the State of its incorporation and head office. The company has operated business in a number of States and has assets (real property or interest in land, other tangible assets and intangible assets); creditors (including taxation / revenue authorities) and directors in several States.

Select a country for the company's incorporation and, based on the insolvency laws of the country you select and the brief facts provided, describe four key international insolvency issues facing the insolvency representative in this scenario. For each issue, what domestic laws or international instruments apply to assist the insolvency representative address these four issues?

In the scenario where a court has ordered the commencement of an insolvency proceeding against a corporate debtor in the State of its incorporation and head office, that has operation business, assets, creditors and directors in several States, there are some key international insolvency issues that the insolvency representative is likely to face. Here are four key issues along with the relevant domestic laws or international instruments that can assist the insolvency representative in addressing them:

- 1) Recognition and Coordination of Proceedings Across Multiple Jurisdictions: Dealing with the complexity of insolvency proceedings in multiple jurisdictions, including recognition and coordination of these proceedings. Legal sources:
 - UNCITRAL Model Law on Cross-Border Insolvency: provides a legal framework for dealing with cross-border insolvency cases, aiding in the recognition and coordination of proceedings in different jurisdictions.
 - Local Insolvency Laws in Each Jurisdiction: The domestic laws of each jurisdiction involved would guide the insolvency representative in understanding the specific rules and procedures governing insolvency in that jurisdiction.
- 2) Protection and Realization of Multinational Assets: Addressing the diverse range of assets (tangible and intangible) held by the corporate debtor across various jurisdictions and ensuring their protection and efficient realization. Legal sources:
 - UNCITRAL Model Law on Cross-Border Insolvency: assists in facilitating the protection and realization of assets across multiple jurisdictions by providing a framework for cooperation and coordination.
 - Local Property Laws in Each Jurisdiction: Understanding the local laws related to property rights and asset realization in each jurisdiction is crucial to effectively deal with the debtor's assets.
- 3) Fair Treatment of Creditors with Cross-Border Interests: Ensuring fair treatment of creditors located in different jurisdictions, considering their varied interests and legal protections. Legal sources:
 - UNCITRAL Model Law on Cross-Border Insolvency: includes provisions for fair treatment of creditors in cross-border insolvency cases and provides a platform for coordination and cooperation.
 - Local Insolvency Laws and Contract Laws: laws related to creditor rights, contract enforcement, and priority of claims in each jurisdiction is essential to ensure fair treatment.
- 4) Handling Taxation and Revenue Authorities' Claims Across Borders: Addressing tax

claims from revenue authorities in multiple jurisdictions and ensuring compliance with tax laws. Legal sources:

- Relevant Bilateral Tax Treaties and Agreements: Bilateral tax treaties between the debtor's home country and other relevant jurisdictions can provide guidance on the treatment of taxation claims and avoid double taxation.
- Local Tax Laws and Treaties: Understanding the tax laws and treaties of each jurisdiction involved is crucial to appropriately address and negotiate tax claims with the respective revenue authorities.

Addressing these international insolvency issues requires a deep understanding of both domestic laws in each relevant jurisdiction and the application of international instruments, particularly the UNCITRAL Model Law on Cross-Border Insolvency, to ensure effective coordination and protection of rights and interests across borders.

Take care to address the question posed. For an approach more closely applied to the facts, see the 'Model' Answer for four key international insolvency issues raised by the facts and facing the insolvency representative in this scenario. You needed to identify these issues and then apply the current CBI laws from a chosen country.

4

Marks awarded 9.5 out of 15

*** End of Assessment ***

TOTAL MARKS 34/50

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