



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: 9 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

Explain what the term "international insolvency law" means.

International Insolvency Law is defined by Wessels 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".

¹

Fletcher on the other hand, defines it as "a situation.. in which an insolvency occurs in circumstances which in some way transcend the confines of a single legal system, so that a single set of domestic insolvency law provisions cannot be immediately and

¹ B Wessels, International Insolvency Law, (Kluwer Law International, 2006)

*exclusively applied without regard to the issues raised by the foreign elements of the case*².

Wessels recognises in his writing that these definitions are both limited, as they refer to the existence of a national legal framework of insolvency law, which isn't applicable in all States.

These are authoritative quotes. The answer would be improved if it also included information in your own words to indicate your personal understanding of the explanation also.

1.5

Question 2.2 [maximum 5 marks]

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

Salafia suggests that territorialism is a system based off the belief that a court's power is limited to its own country's jurisdiction and insolvency law. ³This means that should an entity have operations or assets in multiple jurisdictions, it may be necessary to open multiple insolvency proceedings in each jurisdiction.

On the other hand, universalism takes the opposite approach, that the debtor's estate is administered through the cooperation among all countries affected⁴. This means that an entity facing insolvency with operations or assets in multiple jurisdictions can be dealt with under the provisions of one insolvency law. This may be the territory in which the entity has its 'centre of main interests'.

As absolute universalism is an unrealistic concept, modified universalism as a hybrid approach has been created and is adopted by a number of States. In this approach, a 'main proceeding' is commenced in the entity's 'centre of main interests', at the same time as proceedings in other relevant States, and there is a level of co-operation between the States.

These theories also involve recognition and effect (as well as jurisdiction) 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.

² I Fletcher, *Insolvency in Private International Law* (Oxford University Press, 2nd ed, 2005)

³ Salafia, *Cross-Border Insolvency Law in the United States & Its Application to Multinational Corporate Groups*, (Connecticut Journal of Int'l Law, 2006)

⁴ EH Biery, *A Look at Transnational Insolvencies & Chapter 15 of the Bankruptcy Abuse Prevention and Consumer Prot. Act of 2005*, (Boston College Law Review, 2005)

In the middle east, a growing number of states have now adopted the UNCITRAL Model Law on cross-border insolvency. For example in UAE, both Dubai International Financial Centre and Abu Dhabi Global Market have adopted the UNCITRAL Model Law on cross-border insolvency in 2019 and 2015 respectively, and in 2018, Bahrain adopted the UNCITRAL Model Law.⁵

Whilst onshore UAE has not adopted the UNCITRAL Law, precedent has been set for onshore UAE courts recognising foreign judgements, and in addition to this, a recent UAE ministerial notice discussed “The desire to strengthen fruitful cooperation in the legal and judicial field”⁶ in respect of its relationship with Great Britain and Ireland. It goes on to confirm that UAE may enforce English judgements, encouraging further collaboration with other jurisdictions in insolvency issues.

Most recently, in December 2022, Saudi Arabia has implemented international insolvency laws based on the UNCITRAL Model Law on cross-border insolvency. Recognition can now be sought from Saudi courts by foreign officeholders, and the Saudi courts have the ability to provide various forms of judicial support, including the enforcement of foreign judgement, applying a stay of proceedings against debtors, and granting powers to the officeholder over the debtor’s assets located in Saudi Arabia.⁷

Elsewhere, in Morocco, recent reforms in insolvency law have updated the countries practices to align with those in jurisdictions with collaborative cross-border insolvency practices. Whereby previously in the Commercial Laws of Morocco, creditors were not able to substantially participate in bankruptcy processes, in accordance with the new reformed laws a ‘creditor association’ is formed at the beginning of each judicial insolvency procedure and powers are given to this association to supervise the debtor.⁸

3

Marks awarded 8 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.

Whilst personal and corporate insolvency do share some common themes, for example the staying of proceedings against the entity or individual and the pooling of assets, the objectives and reasoning for entering the insolvency process generally differ.

⁵ https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status Accessed 7 October 2023

⁶ <https://adglegal.com/wp-content/uploads/Acrobat-Document.pdf> Accessed 7 October 2023 (translated)

⁷ <https://kobrekim.com/insights/client-alert/more-routes-recovery-global-creditors-middle-east> Accessed 8 October 2023

⁸ Moroccan Bankruptcy Law, art 606

*Hooley and Sealey suggested that individuals' goals when entering an insolvency process would include protecting themselves from aggrieved creditors - the officeholder or liquidators would deal with any subsequent communications with creditors, enabling the debtor to make a fresh start.*⁹

White gives another interesting objective of personal bankruptcy: "Because individuals in bankruptcy never liquidate, there is no issue of filtering failure in personal bankruptcy. Also, an important objective of personal bankruptcy law that does not exist in corporate bankruptcy is to provide partial consumption insurance to bankrupts".¹⁰ In this context, filtering failure refers to when companies continue to operate when they should be liquidated or vice versa. Partial consumption insurance is in reference to the system whereby the debtor will pay more when their ability-to-repay is high and pay less when ability-to-pay is low, therefore taking the debtors means to pay and personal circumstances into consideration. These allowances do not apply to corporations entering insolvency.

On the other hand, Sealey and Hooley¹¹ explain that the objectives of corporations entering an insolvency process include the preservation of the business, its assets or operations that are still viable, for example in a pre-pack or administration.

Another key component of insolvency in corporations is the ability to take action against individuals that have abused personal liability. An example of this would be a claim against the director of an entity whereby the director has participated in fraudulent trading.

Exempt property is also relevant.

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.

There are a number of key components of an insolvency system that may differ between jurisdictions, thereby creating difficulties. Insolvency laws in different States can often be impacted by local legal culture, labour issues and basic rights, all of which feed into the insolvency system. Key components of an insolvency system that may vary include the following:

Distributions

⁹ M A Clarke et al, Commercial Law (Oxford University Press, 2017)

¹⁰ White, Corporate and Personal Bankruptcy Law, (National Bureau of Economic Research, 2011)

¹¹ Idem note 9

In most insolvency systems, there is a ranking system for the priority of creditors. This may include fixed and floating creditors, preferential creditors (usually employees of the entity), unsecured creditors, crown creditors and the shareholders. The priority of these groups differs between states which can cause difficulties in a cross-border context. As observed by Jose M. Garrido¹², when it comes to distributing to creditors in cross-border cases, the tendency is to revert to territorialist solutions due to the differences in priority schemes in the different countries.

Voidable transactions

Transaction avoidance provisions vary worldwide. These variances have the potential to cause difficulties in insolvencies where an entity is being wound up in more than one country when the insolvency laws of multiple jurisdictions are being invoked. As well as this, if an entity were to enter two concurrent insolvency proceedings in different countries, litigation against the debtor may occur in both countries¹³.

Set-off

*Funds owed to creditors in insolvency proceedings may be subject to set-off, and this may apply either before or after the commencement of the proceedings. There are differences from state to state as to how pre and post-commencement set off is dealt with, especially in the case of post-commencement set-off. For example, in the liquidation of Bank of Credit and Commerce International, issues arose due to the different treatment of set-off in Luxembourg and the UK, and led to creditors not being treated *pari passu*.¹⁴*

Executory contracts

Most (but not all) jurisdictions allow the officeholder the discretion to uphold contracts entered into by the entity prior to the commencement of the insolvency proceedings, usually if the completion or continuance of the contract would benefit the creditors. Another aspect of this would include employment contracts, which in some jurisdictions are terminated upon commencement, whereas in others the employees may be kept on until the officeholder dismisses them.

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.

¹² Jose M. Garrido, No Two Snowflakes the same: The Distributional Question in International Bankruptcies, 46 TEX. INT'L L.J. 459, 473 (2011).

¹³ Parry et al, Transaction Avoidance in Insolvencies (Oxford Academic Books, 2018)

¹⁴ Campbell, Issues in Cross-Border Bank Insolvency: The European Community Directive on the Reorganization and Winding-Up of Credit Institutions (2002)

<https://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/campb.pdf> accessed 7 October 2023

The 2004 UNCITRAL Legislative Guide on Insolvency Law¹⁵ (the “Legislative Guide”) was published in 2004 and sought to provide a tool for legislative reform in States across the globe, encouraging the balancing of stakeholders objectives as well as taking into consideration public policy. Key provisions of this guide include mechanisms available for resolving debtor’s financial difficulties, the various stages of an insolvency process, treatment of enterprise groups and obligations of the directors or management that make decisions in the entity when insolvency becomes imminent.

Meanwhile, the World Bank published the Principles for Effective Insolvency and Creditor/Debtor Regimes (the “World Bank Principles”). This was initially published in 1999 following the aftermath of the Asian financial crisis but was revised a number of times, most recently in 2021, following the COVID pandemic.¹⁶ These principles encourage rules making in respect of insolvency proceedings with international aspects, including those promoting the speed and clearness of the process for obtaining recognition of foreign insolvency proceedings.

Whilst the Legislative Guide is, as it suggests, a guide and countries may choose not to follow these guidelines, the World Bank may require the reforming of domestic insolvency laws in line with the Legislative Guide as a pre-requisite to the provision of loan support. This is usually in the case of developing countries which do not have modernised insolvency laws and who would be most in need to financial support, and therefore the effectiveness of these guidelines from a global perspective are great.

As well as the global guidelines promoting harmonisation of domestic insolvency laws, a number of networks, including the Judicial Insolvency Network in 2016, have been formed. This particular network aims to provide judicial thought leadership, develop best practices and facilitate communication and cooperation amongst national courts in cross-border insolvency and restructuring matters¹⁷.

The effectiveness of these types of networks clearly is hinged off the participation of those attending and contributing to the overall objectives of the network. In the case of the JIN network, which is formed of judges who may choose to be either observers or members, a set of guidelines were produced for Cooperation in Cross-Border Insolvency Matters. The guidelines provide a framework for the enhancement of communication between courts, insolvency representatives and other stakeholders in cross-border processes. However, these are still only a guideline and may be impacted by local rules, regulations and legislative norms, and at present, only 17 courts have adopted these guidelines.

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¹⁵ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf accessed 7 October 2023

¹⁶ <https://openknowledge.worldbank.org/server/api/core/bitstreams/3824fe8e-edb3-5f9b-aa28-f5afc759e562/content> accessed 8 October 2023

¹⁷ <https://openknowledge.worldbank.org/server/api/core/bitstreams/3824fe8e-edb3-5f9b-aa28-f5afc759e562/content> accessed 9 October 2023

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.

Fletcher (as above) provides key questions to ask when a matter has an international element which include the following:

- 1. The choice of forum to exercise jurisdiction in a matter***
- 2. The recognition and effect accorded foreign proceedings in the same matter***
- 3. The choice of law to apply in the matter.***

The Centre of main interests can be defined as the place where the debtor conducts the administration of its interests on a regular basis and that is therefore ascertainable by third parties¹⁸. The entity has only recently moved its head office and registration to Utopia and based on the company's original incorporation and location of head offices, as well as its creditors in Erewhon, the debtors centre of main interests was previously Erewhon rather than Utopia. Following the move to Utopia, this would now be considered its current centre of main interests.

¹⁸ EIR Recast, Art 3(1)

The supporting guide to the enactment and interpretation of the Model law¹⁹ states that “the debtor’s centre of main interests is expected to have principal responsibility for managing the insolvency of the debtor”. A main proceeding is one taking place where the debtor had its centre of main interests at the date of commencement of the foreign proceeding. It would be therefore important to note here at what time the insolvency proceeding in Erewhon commenced. If the liquidator in Erewhon was appointed prior to the company’s move to Utopia, then this considered the main proceeding.

In accordance with the Section 20²⁰ of the Model Law, a key element of the relief accorded upon recognition of a foreign “main” proceeding includes a stay of actions of individual creditors against the debtor or a stay of enforcement proceedings concerning the assets of the debtor. Therefore, if the proceedings in Erewhon are considered as the foreign main proceeding (i.e. the proceedings commenced at a time when the centre of main interests was in Erewhon), and the liquidator in Erewhon wishes to benefit from this relief, they should seek recognition in Utopia. This includes proceedings that a prospective but also proceedings that have already commenced, such as the action taken by Apex. It is notable in relation to this article that this doesn’t prevent the commencement of local proceedings in the enacting state, and if the foreign proceeding in Erewhon isn’t recognised as the main proceeding, then article 20 won’t apply.

The answer could be strengthened by more detail regarding the stay.

4

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) If Apex is filing a petition to wind-up Nadir in Erewhon, this would obviously have no impact as a liquidator has already appointed in Erewhon. There is an automatic stay of proceedings upon commencement of the liquidation. If they filed the proceedings in Utopia, once recognition is sought by the liquidator in Erewhon, the winding up order would be stayed.

¹⁹ <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf> Accessed 14 October 2023

²⁰ Ibid

(b) Concurrent proceedings may exist in this situation, and any relief granted to the liquidator in Erewhon must be consistent with the relief proceeding in Utopia, in accordance with Article 29(a)(i).²¹

2

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?

Take care to answer each sub-question

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Marks awarded 6 out of 15

* End of Assessment *

TOTAL MARKS 35.5/50

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

²¹ ibid