



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 8 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 the rules or body of rules governing insolvency whose enforceability and application depends on the consideration given to the international aspects of the case or proceeding. Fletcher on the other hand expands this concept to provide that "international insolvency" is considered as a "situation" where insolvency occurs and transcends the boundaries and jurisdiction of one state (the domestic state) into another (the foreign state) which requires that the application of the insolvency laws of the domestic state consider or regard the issues created by the foreign elements of the case.

These are authoritative sources. While you have combined their information into other words, it could perhaps better convey your personal understanding.

Question 2.2 [maximum 5 marks]

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

Universality and territoriality are two distinct approaches or theories that have been created to deal with the problems associated with cross border insolvencies. These approaches have been described as "polar opposites" since they focus on two different perspectives that may at times seem irreconcilable.

The followers of Universality believe that there should be only one insolvency proceeding covering all of the Debtor's assets irrespectively of their location. This approach considers that once a proceeding is commenced in a state no other proceedings in foreign states should be allowed and therefore all controversies should be centralized in one forum (where the Debtor's centre of interest is located) and subject to only that state's jurisdiction. This would require that all of the Debtor's worldwide assets and creditors need to subject to one proceeding and one jurisdiction. Universality responds to globalization and international markets.

The setback or difficulty with this approach is that it requires a high amount of trust in the foreign insolvency legal system and laws of the state that is denominated the centre of interest of the Debtor. There would also be issues related to choice of law and priority rules of multiple states which could be conflicting. Finally, not all worldwide creditors may be able to participate in a centralized insolvency proceeding, affecting therefore their ability to collect from the Debtor their respective claims and participate in this centralized distribution process.

Territoriality considers plural jurisdiction to insolvency proceedings of one Debtor. This theory allows for commencement of an insolvency proceeding in all of those jurisdictions or states where the Debtor holds assets. Nevertheless, it limits the proceedings to the assets and creditors located territorially in the state where the proceedings are commenced. This would allow concurrent proceeding in multiple jurisdictions. This approach is more "domestic" and confined to the national borders of the state where the insolvency proceedings are commenced.

This approach also presents its own challenges, since a Debtor may insolvent in one state (there the debts are) but solvent in another state (where its assets are) and therefore creditors of one territory would be unable to access the Debtor's assets located in other jurisdictions so that they may satisfy their claims. This approach in certain circumstances may promote inequality, hardship to creditors, and a windfall to the Debtor.

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.

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.

The following are three recent examples of developments in the Middle East region to reform domestic insolvency laws in order to address international insolvency issues:

- 1. The 2009 joint initiative of the Hawkamah Institute for Corporate Governance, the World Bank, the OECD and INSOL International for a comparative survey on insolvency systems in the region (MENA) in order to determine the best practices in the area based on the World Bank's Principles for Effective Insolvency and Creditor's Rights Systems of 2005. what impact did this have on reforming domestic insolvency laws or addressing international insolvency Issues in the Middle East?**
- 2. Reformation of domestic insolvency laws in the UAE (2016 and 2019), Saudi Arabia (2018) and Dubai (2019).
More detail would have improved the mark awarded for this sub-question.**
- 3. Bahrain's adoption in 2018 of the Model Law on Cross-Border Insolvency which was followed by the Dubai International Financial Centre in 2019.**

2

Marks awarded 7 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 is a tool available to both individuals and corporations, but their objectives may be different at times. Both types of proceedings are geared towards achieving equitable or pari passu distribution between the creditors, but in the case of individuals insolvency is also geared toward the protection of the individual from harassment from aggressive creditors and obtaining a "fresh start". Insolvency in individuals assists them to reduce indebtedness considering the individual's personal circumstances. Individuals also have the benefit of exemptions of those assets required to maintain him/herself and their dependents. This is a benefit not available to corporations. Individual insolvencies have the objective of allowing payment to creditors while balancing such rights to the individual's ability to provide for his/her basic living needs.

In the case of corporations, the objective, when possible, is to preserve the business (either entirely or those parts that are viable) not the corporate entity. Therefore, preservation of the corporation is not an objective in corporate insolvencies. The main

objective is achieving payment to creditors. Another objective is to deter abuse from those related to the corporation by imposing personal liability on those responsible for such abuse.

5

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.

The main legal systems or families related to insolvency law are either rooted in the English common law system or the Civil law system. There are certain difficulties that may be encountered in a cross-border insolvency situation should these two systems be involved, since there is no single set of insolvency rules that apply globally. These difficulties may include the inclination that each systems may have to the administration of the estate and distribution to creditors, if their approach or policy is either pro creditor or pro-debtor.

The local legal culture, diverse rules, terminology and substantive local law differences may also represent a difficulty when establishing rights of creditors, the Debtor, securities or payment priorities. There may be lack of cooperation, lack of recognition of foreign proceedings, the need to determine the applicable choice of law to establish the substantive rights of the parties involved, among others. Also, the treatment to executory contracts or other labour contracts may be determined by local law in an incompatible fashion to the cross border insolvency case/s. Another factor to be considered is if the insolvency system has a unified piece of bankruptcy legislation (i.e. the United States Bankruptcy Code) or multiple pieces of legislation that are intertwined with respect to insolvency issues.

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.

During the 21st century various multilateral steps have been taken to provide solutions to the difficulties and issues that arise within a cross-border insolvency proceeding. These have been developed by insolvency professionals and insolvency related institutions to harmonize domestic insolvency laws in the absence of a unified or universal set of insolvency rules and regulations that is applicable globally. Among these steps are the following:

- 1. UNCITRAL Model Law on Cross-Border Insolvency (2009)**

2. While adoption of the MLCBI may harmonise various domestic insolvency laws in so far as they address international insolvency issues, the question addresses more broadly the harmonisation of domestic insolvency laws in general. See the 'model' answer on this sub-question.
3. *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009)*
4. *UNCITRAL's Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment (2018)*
5. *UNCITRAL's Model Law on Enterprise Group Insolvency with Guide to Enactment (2019)*
6. *ALI NAFTA guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (2000)*
7. *Fletcher and Wessels' 2012 ALI-III Report: Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases*
8. *Judicial Insolvency Network's conferences and initiatives*
9. *UNCITRAL's Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment (2018)*

The steps taken by the different constituencies related to the insolvency profession and the global judicial system have a great impact on addressing the international insolvency issues. While they do not have the force of legislation, they provide internationally accepted guidelines and a road map which are created in a dynamic fashion. The parties involved in the creation of these steps bring to the table the knowledge and experience obtained in their jurisdiction and legal system.

These steps assist in the harmonized revision or creation of insolvency legislation in the States, as well as promote the comity and judicial assistance and cooperation needed to address cross-border issues, such as: (1) recognition of foreign representatives in domestic cases as well as the powers granted to such entity or individual in such jurisdiction in order for it to be able to carry out its obligations as such, (2) resolution by the courts of conflicting issues in various jurisdictions, (3) distribution of the Debtor's multinational assets in the benefit of creditors in different jurisdictions and (4) allow the insolvency professionals in a cross-border case to be able to work together and promote an administration of the debtor's estate that can achieve the objectives of the insolvency proceeding.

Moreover, they set examples that can be followed in this changing and evolving field, as cross-border cases are resolved and adjudicated throughout the world. In essence, the initiatives undertaken in the 21st century pave the way for a more harmonized insolvency system.

There is scope to consider political pressure, foreign investor pressure and/or loan conditions.

3.5

Marks awarded 12 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.

The Cross-Border Insolvency Act of Utopia is relevant to this case since it provides the set of domestic laws and regulations of Utopia applicable to insolvency proceedings and establishes the domestic court that will consider such matters. If Utopia adopted the UNCITRAL Model Law without modification, its insolvency system has a more accessible view with respect to recognition, cooperation and co-ordination. This is a tool that the Erewhon liquidator can use to his/her advantage in seeking the stay of the collection action commenced by Apex in Utopia.

UNCITRAL's Model Law mandates that local courts or representatives need to cooperate with foreign courts and representatives in order to implement coordinated proceedings and protocols. The Erewhon liquidator needs to identify the applicable provisions within the Cross-Border Insolvency Act of Utopia related to the following:

- 1. Access and Recognition by the Utopia domestic court of the Erewhon insolvency proceeding and the winding down order;***

2. **Any provision that would challenge Erewhon as Nadir's centre of economic interest due to the recent change in registration and move of its head office to Utopia;**
3. **Access and Recognition of him/her as the authorized representative of the Nadir estate under the Erewhon insolvency proceeding;**
4. **Procedures for requesting the automatic stay of the Utopia collection case against Nadir;**
5. **Procedures for marshalling of Nadir's assets in Utopia for the benefit of the foreign proceeding;**
6. **Reference within the Act to specific domestic laws of Utopia related to priorities, securities and any other creditor rights once a collection action is commenced in the local court's that may affect the liquidator's role and endeavours.**

The MLCBI is significant for its provisions on recognition and relief in 4.1. (Its provisions on cooperation and coordination are secondarily important as the liquidator is primarily seeking advice about staying court proceedings in Utopia.) The question requires candidates to apply the relevant MLCBI articles to the facts provided.

3

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.**

Under scenario (a), my response would remain the same, since a wind-up Order was already established in Erewhon and the liquidator would have to seek access, recognition and enforcement of the Erewhon order prior to requesting a stay of the Utopia collection action.

Under scenario (b), I would include in my response that an order to stay the collection case would not be necessary, since the same would most probably already be stayed due to the Utopia insolvency proceeding (depending on what Utopia's Insolvency Act provides regarding this matter). I would also advise the Erewhon liquidator to focus on the provisions in the Act that deal with the issues related to the determination of the primary insolvency proceeding based on the centre of interest of Nadir to establish adequate cooperation, coordination protocols or agreements between both jurisdictions and insolvency representatives, as well as the administration of Nadir's estate and distribution of the creditors in both jurisdictions. The liquidator would also need to review the provisions of the Act that address any issues related to choice of

law and which domestic laws will be applied to determine priorities, title of assets and securities.

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?

Company X is a corporation duly registered and with its central offices in the United States. It filed a bankruptcy petition seeking relief and protection under Chapter 7 of the Bankruptcy Code, 11 USC 101 et seq., which provides for the appointment of a Chapter 7 Trustee as the representative of the bankruptcy estate of Company X (hereinafter the Debtor). The four (4) key international insolvency issues that the Chapter 7 Trustee would face when trying to administer the assets of the bankruptcy estate located internationally, as well as being able to liquidate the same and provide distribution to the creditors of the Debtor are as follows:

- 1. Recognition of the Chapter 7 Bankruptcy proceeding filed in the United States by the judicial system of the foreign States and coordination of any concurrent proceeding with the Bankruptcy Court.**
- 2. Access and recognition of the Chapter 7 Trustee as the administrator of the assets of the estate and/or establishing protocols with foreign representatives appointed by the courts in the various States and the Courts for coordination and cooperation in the administration of the assets, liquidation and thereafter distribution to creditors.**
- 3. Requesting the automatic stay of any proceeding against the Debtor or its assets in each of the foreign States in order to allow for a centralized distribution process through the chapter 7 proceedings filed in the USA and/or any concurrent insolvency proceeding filed in the foreign States.**
- 4. Being able to determine the choice of law to deal with the numerous issues relating to title, priorities, securities, executory contracts, labour contracts and/or avoidance actions (preferences), among others.**

In order to be able to resolve in the best possible fashion these issues the Chapter 7 Trustee would have to rely on the following, among other legal provisions and/or guidance materials:

- 1. Recognition by the judicial system of the foreign States of the Chapter 7 Bankruptcy proceeding filed in the United States.-***
 - a. The United States Bankruptcy Code and relevant Federal Rules of Bankruptcy Procedure provisions regarding the commencement of a bankruptcy case, jurisdiction, venue and the Chapter 7 Trustee's powers and duties;***
 - b. The insolvency laws(s) (if any) of the foreign State where the Debtor's assets are located;***
 - c. UNCITRAL's Legislative Guide on Insolvency Law (2006) for guidance and***
 - d. UNCITRAL's Model Law on Cross Border Insolvency.***
 - e. Any other treaties or agreement executed by the United States and the foreign State which may deal with international insolvency issues.***
- 2. Access and recognition of the Chapter 7 Trustee as the administrator of the assets of the estate and/or establishing protocols with foreign representatives appointed by the courts in the various States and the Courts for coordination and cooperation in the administration of the assets, liquidation and thereafter distribution to creditors. -***
 - a. The United States Bankruptcy Code and relevant Federal Rules of Bankruptcy Procedure provisions establishing the bankruptcy estate and the Chapter 7 Trustee's powers and duties;***
 - b. The insolvency laws(s) (if any) of the foreign State where the Debtor's assets are located;***
 - c. UNCITRAL's Legislative Guide on Insolvency Law (2006) for guidance and UNCITRAL's Model Law on Cross-Border Insolvency;***
 - d. Also, the Chapter 7 Trustee as well as the foreign courts can use as guidance examples set by similar cases in order to see pre-established or models of such protocols used by the Courts (domestic and foreign) for the cooperation, harmonising and coordination of the proceedings in order to obtain the ultimate goal of the insolvency proceeding in the most expeditious and efficient fashion.***
 - e. Any other treaties or agreement executed by the United States and the foreign State which may deal with international insolvency issues.***
- 3. Requesting the automatic stay of any proceeding against the Debtor or its assets in each of the foreign States in order to allow for a centralized distribution process through the Chapter 7 proceedings filed in the USA and/or any concurrent insolvency proceeding filed in the foreign States.-***
 - a. The United States Bankruptcy Code's and relevant Federal Rules of Bankruptcy Procedure provisions regarding the automatic stay provisions and violations to the automatic stay;***
 - b. UNCITRAL's Legislative Guide on Insolvency Law (2006) for guidance and UNCITRAL's Model Law on Cross Border Insolvency;***

- c. *The insolvency laws (if any) of the foreign State;*
 - d. *Domestic laws of the foreign State.*
 - e. *Any other treaties or agreement executed by the United States and the foreign State which may deal with international insolvency issues.*
4. *Being able to determine the choice of law to deal with the numerous issues relating to title, priorities, securities, executory contracts, labour contracts and/or avoidance actions (preferences). Would the Court apply local (USA) law or the domestic law of each foreign State.-*
- a. *The United States Bankruptcy Code, relevant Federal Rules of Bankruptcy Procedure provisions on avoidance actions and the Trustee's other strong arm powers, classification of claims and priorities, allowance of claims process, assumption or rejection of executory contracts (including special provisions for collective bargaining contracts, if applicable);*
 - b. *Domestic laws of the state where the bankruptcy petition was filed for the determination of applicable substantive law on some of the issues;*
 - c. *The insolvency laws of the foreign state, if any;*
 - d. *UNCITRAL's Legislative Guide on Secured Transactions, Guide to Enactment and Practice Guide, if applicable.*
 - e. *Any other treaties or agreement executed by the United States and the foreign State which may deal with international insolvency issues.*

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.

5

Marks awarded 8.5 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.