



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 6 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 facilitates coordinated, fair, and efficient administration of cross-border insolvency proceedings. The goal is to maximize recovery for all creditors worldwide while respecting each country's laws and policies.

International insolvency law refers to the legal frameworks that govern cross-border insolvency proceedings when a debtor has assets or creditors in more than one country. Key aspects include:

- **Determining which country's insolvency laws will apply to the debtor's assets and claims in each jurisdiction.**

- **Coordinating insolvency proceedings that are taking place concurrently in multiple countries, such as determining which proceeding will have primary jurisdiction or requiring cooperation between courts.**
- **Providing for recognition and enforcement of foreign insolvency proceedings and orders, such as through the UNCITRAL Model Law on Cross-Border.**
- **Establishing protocols for notice, intervention, and participation by foreign creditors, trustees, and other stakeholders in cross-border insolvency cases.**
- **Determining jurisdiction over insolvency-related disputes that cross borders, such as fraudulent conveyance actions.**

2

Question 2.2 [maximum 5 marks]

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

Universality and Territoriality are key concepts in cross-boarder insolvency that describe different approaches to handling insolvency cases involving assets and entities in multiple jurisdictions.

Universality:

- **Universality in cross-border insolvency refers to administering an insolvent debtor's assets on a worldwide basis under a single law. This allows for centralized administration of the debtor's estate to maximize the value of assets.**
- **Universality promotes cooperation between jurisdictions and courts to efficiently administer assets globally.**
- **Universality, a single main insolvency proceeding. This main proceeding would have worldwide effect over the debtor's assets.**

Territoriality:

- **Territoriality does not require cooperation between parallel proceedings in different countries.**
- **Territoriality involves separate insolvency proceedings in each country where assets are located. The insolvency laws of each country govern assets within their jurisdiction.**
- **Territoriality favors local creditors over foreign creditors. Each country only administers assets within their jurisdiction under domestic insolvency law. There is no cooperation between jurisdictions.**

The choice between universality and territoriality may depend on the specific legal framework of the jurisdictions involved, as well as international agreements or conventions that may influence how cross-border insolvency cases are handled.

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.

- 1. Saudi Arabia New Bankruptcy Law (2018):** In 2018, Saudi Arabia enacted a new bankruptcy law as part of wider economic reforms. The law allows companies to file for preventative settlement, reorganization or liquidation. It streamlines bankruptcy procedures, introduces time limits, and facilitates out-of-court workouts. A key objective was to create a more creditor-friendly regime and address historically low recovery rates.
- 2. UAE Bankruptcy Law Reform (2020):** In August 2020, the United Arab Emirates (UAE) introduced significant amendments to its Federal Law No. 9 of 2016 on Bankruptcy. These amendments aimed to enhance the country's insolvency framework, making it more conducive to businesses facing financial difficulties.
- 3. GCC Unified Bankruptcy Law:** The Gulf Cooperation Council (GCC) has been working on a unified bankruptcy law that would apply to all member states in the region. The goal is to facilitate cross-border insolvency cases and enhance the business environment in the region by providing consistent rules for handling financial distress.

3

Marks awarded 10 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.

The fundamental differences between individuals and legal entities, is to prioritize the debtor in personal insolvency, providing debt relief and a fresh start. For corporations, the focus is on maximizing returns to creditors.

- For individuals, the main objective of insolvency proceedings is to provide the debtor with a fresh start. This involves relieving the individual of their unsustainable debts so they can become financially productive members of society again. The focus is on giving the individual a second chance.**
- Main focuses: Debt Relief and Fresh Start, Protection of Basic Needs, Rehabilitation and Financial Education.** [There is scope to elaborate](#)
- For corporations, the main objective is to maximize recovery for creditors. Corporate insolvency puts the interests of creditors first, with the goal being to recover as much money owed to them as possible. This may involve**

reorganizing the company to keep it operating, or liquidating assets to pay off debts.

- **Main focus: Preservation of Business, Maximizing Creditor Recovery, Minimizing Economic Disruption, Fiduciary Duties to Stakeholders.** [There is scope to elaborate](#)

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.

International efforts have been made to establish frameworks for cross-border insolvency cooperation, through UNCITRAL Model Law on Cross-Border Insolvency and regional agreements. These frameworks aim to provide a more predictable and orderly process for handling insolvency cases that span multiple jurisdictions. However, challenges persist, and successful resolution often depends on the willingness of parties and courts to work together in the spirit of international cooperation.

Cross-border insolvency proceedings can be complex due to differences between legal systems and insolvency laws across jurisdictions. Some key challenges include:

- **Conflict of Laws: Determining which country's insolvency laws will apply and which court will have jurisdiction can be complicated when assets and creditors are located in multiple countries. Differences in conflict of law rules between countries can lead to uncertainty.**
- **Recognition of Foreign Proceedings: Some countries may not recognize insolvency proceedings opened in another country. This can allow local creditors to gain an advantage by initiating separate proceedings. Lack of recognition impedes cooperation between courts.**
- **Divergent Legal Frameworks: Insolvency laws vary widely across countries in areas like priority of claims, debtor-in-possession regimes, avoidance actions, and creditor rights. This can make it difficult to find common ground between proceedings.**
- **Multiple Proceedings: The possibility of concurrent proceedings in different countries can give rise to confusion, delay, increased costs, and inconsistent results. Strategies like primary and secondary proceedings are sometimes used to mitigate issues.**
- **Locating Assets: Identifying and gaining access to assets across borders can be difficult due to bank secrecy laws, differences in information sharing, and asset tracing procedures.**

- **Creditor Inequality:** Local creditors may be treated differently than foreign creditors in some jurisdictions, raising questions about fairness. Similarly, creditors may rush to bring local proceedings to gain an advantage.
- **Cooperation Between Courts - Cross-border insolvency often requires courts to communicate, but differences in procedure and reluctance to cede control can hinder effective coordination.**

Further detail would be beneficial. For example, consideration of Westbrook's 9 key issues.
4

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.

Multilateral steps have been taken in the 21st century to promote the harmonization of domestic insolvency laws and address international insolvency issues. These initiatives aim to create a more efficient and predictable framework for dealing with cross-border insolvency cases. Some notable steps include:

- **UNCITRAL Model Law on Cross-Border Insolvency (1997):** Provides a legislative framework for countries to adopt domestic laws dealing with cross-border insolvency issues. It has been adopted by over 50 countries and promotes cooperation among jurisdictions in managing international insolvency cases.
- **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.**
- **World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes (2001):** Set out core principles for effective insolvency systems, focused on creditor rights, debtor rehabilitation, and efficient processes.
- **The American Law Institute (ALI) Global Principles for Cooperation in International Insolvency Cases (2012):** ALI published guidelines that provide a framework for courts in different jurisdictions to cooperate and communicate in cross-border insolvency cases. While not legally binding, these principles offer guidance for courts and practitioners in handling international insolvency matters.
- **EU Regulation on Insolvency Proceedings (2015):** The European Union adopted the Recast Regulation on Insolvency Proceedings in 2015. It applies directly to EU member states and establishes rules for the recognition and coordination of insolvency proceedings within the EU. It aims to enhance the effectiveness and efficiency of insolvency proceedings involving businesses with operations in multiple EU countries.

- **UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018): Provides a framework for cross-border recognition of insolvency judgments. Still in early adoption stages.**

My Opinion:

These multilateral efforts have had some positive impacts and have addressed cross-border insolvency issues. The UNCITRAL Model Law has been influential, bringing many countries closer to a common legislative approach. The World Bank Principles and Legislative Guide have also provided useful direction for insolvency reforms.

However, significant challenges remain. There is still wide divergence across countries in specific insolvency laws, procedures, and judicial approaches. Not all countries have adopted the UNCITRAL framework. Differences in legal traditions and systems limit. Politics and national interests also constrain countries from aligning laws.

Overall, while these multilateral steps have moved things in the right direction, I think their impact is still limited. True harmonization of insolvency laws remains a long-term goal requiring much more work at both multilateral and domestic levels. But these efforts provide a useful foundation to build upon through expanded adoption, advocacy, capacity-building, and ongoing enhancements.

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

3.5

Marks awarded 11.5 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.

Based on the information provided, I would need additional key details in order to analyze the jurisdictional issues:

- 1. Date Nadir moved its registration and head office to Utopia. This is important to determine if Nadir was still registered in Erewhon when it entered into the contract with Apex.**
- 2. Copy of the contracts to review Governing Law clause, specifying which jurisdiction's law will apply in case of a dispute.**
- 3. Location where the goods were delivered to Nadir. This is relevant to determine where the contract was performed.**
- 4. Date the Erewhon court issued the winding up order against Nadir. Need to know if this was before or after Nadir moved to Utopia.**
- 5. Whether Nadir has assets in Erewhon. This would be a basis for the Erewhon court to assert jurisdiction over Nadir.**
- 6. Whether the Erewhon winding up order has been recognized in Utopia. This impacts enforceability of the order.**

With this additional information, I should be able to fully analyze the jurisdictional issues between Apex's claim against Nadir in Utopia and the Erewhon winding up proceedings and liquidation order.

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.

- 1) Automatic Stay or Relief from Actions: Under the Model Law, upon recognition of a foreign proceeding, there is an automatic stay of legal proceedings or enforcement actions against the debtor's assets in Utopia. This stay is intended to prevent creditors from pursuing separate actions that could interfere with the foreign insolvency proceedings.**
- 2) Opportunity to Seek Additional Relief: The Erewhon liquidator, with the recognition of the Erewhon insolvency proceeding in Utopia, may have the ability to seek additional relief in the Utopian courts, including an order to stay or dismiss Apex's court action against Nadir in Utopia. This would help prevent conflicting or duplicative proceedings in different jurisdictions.**
- 3) Protection of Creditor Interests: The Model Law also aims to protect the interests of all creditors by providing a framework for equitable distribution of**

assets. This ensures that creditors in Erewhon and Utopia are treated fairly and consistently.

- 4) Efficiency and Cost-Effectiveness: By using the Model Law's provisions for recognition and coordination, the Erewhon liquidator can potentially avoid the costs and inefficiencies associated with simultaneous litigation in multiple jurisdictions.**

It would be beneficial to refer to specific articles of the MLCBI

4.5

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.**
- 1. In this scenario, if Apex had initiated winding-up proceedings against Nadir in Utopia but the matter had not yet been heard, the recognition and potential stay under the Model Law might be more straightforward.**
 - 2. If the Erewhon liquidator seeks recognition of the Erewhon insolvency proceeding in Utopia before the Utopian court has heard Apex's winding-up petition, the Utopian court may be more inclined to grant a stay of Apex's winding-up proceedings to avoid conflicting actions.**
- (b) Apex had obtained a court order to wind-up Nadir in Utopia prior to the Erewhon winding-up order.**
- 1) In this scenario, if Apex had already obtained a court order to wind up Nadir in Utopia before the Erewhon winding-up order, the situation could be more complex.**
 - 2) The Utopian court might need to consider whether recognizing the Erewhon insolvency proceeding and staying the Utopian winding-up order is feasible, given that a court order has already been issued.**
 - 3) The Utopian court may consider the impact of a stay on its own legal processes and whether the recognition of the Erewhon proceeding aligns with Utopian law and policy.**

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?

I choose an entity Incorporated in the State of Delaware, that had assets in Mexico and Canada.

Key international insolvency issues and the relevant laws or instruments that may apply:

Recognition of the Insolvency Proceedings in Mexico and Canada:

Issue: The insolvency representative needs to ensure that the insolvency proceedings initiated in Delaware are recognized and given effect in Mexico and Canada.

Relevant Laws/Instruments:

- United States (Delaware): The insolvency representative can rely on U.S. bankruptcy laws, including Chapter 15 of the U.S. Bankruptcy Code, to seek recognition and assistance for the foreign insolvency proceeding.***
- Mexico: Mexico has adopted the UNCITRAL Model Law on Cross-Border Insolvency, which facilitates the recognition and enforcement of foreign insolvency proceedings. The representative can use this framework to seek recognition in Mexico.***
- Canada: The Companies' Creditors Arrangement Act (CCAA) and the Bankruptcy and Insolvency Act (BIA) govern insolvency matters in Canada. The insolvency representative would need Canadian courts and authorities for recognition.***

Actions:

- File a petition in Delaware under Chapter 15 of the U.S. Bankruptcy Code to request recognition of the foreign insolvency proceeding.***
- Mexico, utilize the UNCITRAL Model Law on Cross-Border Insolvency to apply for recognition and cooperation with Mexican courts.***
- Canada, engage with Canadian courts and insolvency professionals to seek recognition and cooperation.***

Management and Realization of Land and Assets in Mexico and Canada:

Issue: The company's land and assets in Mexico and Canada need to be managed and realized for the benefit of creditors.

Relevant Laws/Instruments:

- **United States (Delaware): The insolvency representative can use U.S. bankruptcy laws to administer assets located in the United States.**
- **Mexico: Mexican law will apply for the management and realization of assets in Mexico.**
- **Canada: Canadian law will apply for assets located in Canada.**

Actions:

- **Appoint local agents or professionals in Mexico and Canada to oversee and manage the properties and assets in these jurisdictions.**
- **Develop a strategy for the orderly sale or disposition of assets in compliance with local laws and regulations.**
- **Ensure that assets are not subject to unauthorized actions or encumbrances.**

Treatment of Multijurisdictional Creditors:

Issue: Creditors are located in Delaware, Mexico, and Canada, including taxation/revenue authorities. Coordinating the treatment of claims by these creditors is complex.

Relevant Laws/Instruments:

- **In the United States (Delaware): The U.S. Bankruptcy Code governs the treatment of creditors in Delaware.**
- **In Mexico: Mexican insolvency law determines creditor treatment in Mexico.**
- **In Canada: Canadian law regulates creditor treatment in Canada.**

Actions:

- **Identify and categorize creditors in each jurisdiction based on their respective claims.**
- **Implement the priority scheme and creditor treatment provisions as per the insolvency laws of each jurisdiction.**
- **Coordinate with tax authorities to address any tax claims or liabilities appropriately.**

Jurisdictional Conflicts and Coordination of Proceedings:

Issue: Coordinating insolvency proceedings across three jurisdictions can lead to conflicts and challenges.

Relevant Laws/Instruments:

- **In addition to Chapter 15 in the United States and the UNCITRAL Model Law in Mexico, the insolvency representative may need to engage in discussions and cooperation with insolvency authorities and courts in both Mexico and Canada to address jurisdictional conflicts and coordinate proceedings effectively.**

Actions:

- **Establish clear lines of communication and cooperation with insolvency representatives, courts, and authorities in Delaware, Mexico, and Canada.**

- Identify potential conflicts of law or jurisdiction and work collaboratively to resolve them.
- Develop a cross-border insolvency protocol to streamline the administration and coordination of the proceedings.

References:

FEDERAL RULES OF APPELLATE PROCEDURE
TITLE 28 APPENDIX
FEDERAL RULES OF APPELLATE PROCEDURE
TITLE 30 APPENDIX
FEDERAL RULES OF APPELLATE PROCEDURE
TITLE II APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

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. Then apply the current USA laws on CBI to such issues.

4.5

Marks awarded 9.5 out of 15

- * End of Assessment *

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

TOTAL MARKS 37/50