INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 1

(INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW)

This is the **summative (or formal) assessment for Module 1** of this course and is compulsory for all registered candidates on the Foundation Certificate. The mark awarded for this assessment will determine your final mark for Module 1. In order to pass this module you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in 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.assessment1summative]**. An example would be something along the following lines: 202223-363.assessment1summative. **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 ID 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 November 2023**. The assessment submission portal will close at **23:00 (11 pm) GMT on 15 November 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 **11 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

The meaning of the word "bankruptcy" has a historical root pertaining to the "rupture" of a banking system. Select from the following the **best response** to this statement.

(a) This statement is untrue because the word bankruptcy does not have any historical roots and is a modern phrase.

(b) This statement is untrue since the word "bankruptcy" is believed to derive from non-English origins and has a historical root from destroying a vendor's place of business.

(c) This statement is true, although the word "bankruptcy" is not an English phrase.

(d) The statement is true and the phrase "bankruptcy" is believed to have been first adopted in England in the 12th century.

Question 1.2

Which of the following **best describes** an "executory contract" and its enforceability?

(a) An executory contract is a contract entered into by a debtor and another party, or other parties, prior to the occurrence of bankruptcy / insolvency which remains incomplete as to its performance as at the time of bankruptcy / insolvency. An insolvency representative might not proceed with an executory contract if it is onerous or unprofitable. There may be special legal rules which govern specific types of executory contracts.

(b) An executory contract is a type of contract entered into by the executive officers of a debtor company. It will normally be completed by the insolvency representative in accordance with its terms, although there may be special legal rules which govern specific types of executory contracts.

(c) An executory contract is a contract entered into by a debtor and another party, or other parties, prior to the occurrence of bankruptcy / insolvency which becomes complete upon the event of bankruptcy / insolvency of the debtor. An insolvency representative may disregard any type of executory contract.

(d) An executory contract is a contract entered into by a debtor and another party, or other parties, prior to the occurrence of bankruptcy / insolvency which may generally be disclaimed by an

insolvency representative upon the occurrence of bankruptcy / insolvency unless it is an employment contract.

Question 1.3

A German court has issued a judgment in a German insolvency which has a connection with England. The foreign insolvency office holder seeks recognition and enforcement in an English court of the insolvency order made in the German insolvency proceedings.

Which of the following statements, concerning the request for recognition and enforcement in England, is **true**?

(a) The English Court hearing the request for recognition and enforcement may apply the EU Recast Insolvency Regulation (2015).

(b) It is a relevant factor for the English Court hearing the matter to consider whether Germany has adopted the UNCITRAL Model Law on Cross-border Insolvency 1997, or not.

(c) The English Court will be able to consider the request based on its 2006 Insolvency Regulations (the adopted UNCITRAL Model Law on Cross-Border Insolvency) and / or common law principles.

(d) The German order will be automatically recognised in England due to a cross-border insolvency treaty between England and Germany.

Question 1.4

Unlike (former) continental insolvency rules, the English insolvency laws provided for a rather liberal discharge of debt provision since 1507. Select the **most accurate** response to this:

(a) This statement is correct since the English insolvency system was viewed as a pro-creditor system since its early development.

(b) This statement is correct since the English insolvency system, unlike continental systems, never provided for imprisonment for debt of insolvents and preferred to treat debtors in a humane way.

(c) This statement is incorrect since a statutory discharge of debt was only introduced in 1705 in England.

(d) This statement is incorrect since most of the continental insolvency rules provided for a liberal discharge of debt even before English law considered the introduction of such a dispensation.

Question 1.5

Private international law may involve “hard law” treaties and conventions which become enforceable as part of a State’s domestic law. Choose the correct statement:

(a) The statement is untrue since treaties and conventions are “soft law”, not “hard law”.

(b) This statement is true because States become signatories and therefore bind themselves and affect their domestic law accordingly.

(c) This statement is true and is why there has been great success with treaties and conventions.

(d) This statement is untrue because treaties and conventions are public international law, not private international law.

Question 1.6

What principles did Chamberlain consider essential to good bankruptcy law? Select from the following the **best response** to this question:

(a) The supervision of creditors, the rights of creditors to control debtor's assets with minimal interference, and the investigation of debtor's conduct and circumstances which led to insolvency.

(b) Upholding the rights of creditors to assets, investigating and reporting on debtor conduct which led to insolvency, and holding trustees to high standards of care.

(c) The need for there to be independent examination of debtor's conduct and circumstances leading to insolvency, the need for trustees to maintain independence and avoid conflicts of interest, the right for creditors to control debtor assets with least possible interference.

(d) The need for independent examination of debtor's conduct and circumstances leading to insolvency, the appropriateness of creditors having control of debtor assets with least possible interference, the need for trustees to be subject to supervision and audit.

Question 1.7

England, Australia and the United States of America (USA) each have their own respective single unified piece of insolvency legislation that applies to both personal and corporate insolvency. Select from the following the **best response** to this statement:

(a) This statement is true since England has the unified 1986 Insolvency Act, Australia has the Insolvency Act of 2001, and the USA has the 1978 Bankruptcy Code. Each of these Acts cover personal and corporate insolvency.

(b) This statement is untrue since in England the Insolvency Act 1986 deals only with personal insolvency.

(c) This statement is untrue because the USA has separate Acts dealing with corporate liquidation and rescue.

(d) The statement is untrue because Australia has separate Acts dealing with corporate insolvency and personal bankruptcy.

Question 1.8

African nations all incorporate aspects of English insolvency law. Select from the following the **best response** to this statement:

(a) This statement is untrue since some African nations have English law tradition, but others are based on civil law tradition or a mixture of different legal traditions.

(b) This statement is untrue because African nations all have a civil law tradition.

(c) This statement is true because, while some may incorporate other legal traditions, every African nation is largely based upon English law due to colonial history.

(d) This statement is true because African States each chose to adopt English insolvency laws in modern times.

Question 1.9

To date, the most successful soft law approach to international insolvency law issues has been the Model Law on Cross-border Insolvency. Select from the following the **best response** to this statement:

(a) This statement is untrue because not all States have adopted the Model Law on Cross-border Insolvency.

(b) This statement is true because the Model Law on Cross-border Insolvency has been adopted by numerous States and is gaining momentum as an influential response to international insolvency law issues.

(c) This statement is untrue because of the requirement for reciprocity in relation to the Model Law on Cross-border Insolvency.

(d) This statement is true because the Model Law on Cross-border Insolvency creates regulations which binds each State and has been the most influential response to international insolvency law issues.

Question 1.10

Opponents of universalism often argue that universalism is difficult to achieve because of the effects of globalisation. Select from the following the **best response** to this statement:

(a) This statement is untrue because modified universalism enables a "main proceeding" to be opened in the State where the centre of main interests has been determined, while being supported by secondary or ancillary proceedings in another State.

(b) This statement is untrue because universalism corresponds well to globalisation and opponents of universalism are more concerned with the impacts of universalism upon domestic markets.

(c) This statement is true because globalisation makes the principle of universalism redundant.

(d) This statement is true because modified universalism enables a "main proceeding" to be opened in the State where the centre of main interests has been determined, while being supported by secondary or ancillary proceedings in another State.

Marks awarded 10 out of 10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

Briefly discuss and compare countries whose insolvency law systems have historical roots in civil law with countries whose insolvency law systems have historical roots in English law.

Countries with historical roots in civil law tend to adopt a pro-creditor approach. The root can be traced back to Roman law. It started from individual debt collecting procedure to collective debt collection. The policies in their laws focused the recovery and execution against the debtor. It later also developed as a result of the law of the merchants being customs and usages by the merchants in continental Europe. It eventually moved away from an execution against the person towards a dispensation of execution against the debtor's assets. It is less concerned with the discharge of the debt (i.e. a fresh start or rehabilitation). However, reforms of the law (e.g. in the Netherlands) are in discussion so that it will allow re-organisation of the debtor to give it a fresh start.

By contrast, countries with historical roots in English law tend to adopt a pro-debtor approach. The first English Bankruptcy Act of 1542 established the principle of collective participation of all creditors and a para passu distribution of all assets available. Later, the Statute of Ann of 1705 introduced the notion of a statutory discharge. Then the Law of 1883 established the principle of a fair procedure and adequate supervision to discourage dishonesty. All these principles are codified in the Insolvency Act 1986 UK. It is more friendly to the debtor so that they can get a fresh start.

A better approach to answering this question would involve listing countries that are historically English based and countries that are historically civil law based and discussing their differences, especially with respect to the adoption of common law in English based countries cf codification in civil jurisdictions.

1.5

Question 2.2 [maximum 3 marks]

Briefly explain the difference(s) between the principle of universalism, the principle of modified universalism, and the principle of territorialism.

Universalism advocates that there should be only one set of insolvency proceedings covering all of the debtor's assets and debts in all jurisdictions. It adopts the concept of centre of main Interests (COMI) of the debtor and allows the law at the COMI where the insolvency proceedings were initiated to govern matters both within and outside its jurisdiction. All creditors should join the same proceedings with all claims being treated on equal basis. It requires a high level of trust on foreign legal system and foreign proceedings.

Modified universalism recognises that there may be multiple proceedings in parallel in different jurisdictions arising out of the insolvency of the debtor, one in the court of its COMI and other ancillary and supportive proceedings in other jurisdictions. The courts involved in these proceedings are expected to co-ordinate and co-operate with each other to the extent possible. This is currently the more popular approach adopted in many common law jurisdictions today.

Territorialism is based on the premises that insolvency proceedings may be opened in every jurisdiction where the debtor holds assets. However, it restricts the effect and consequences of the insolvency proceedings in one jurisdiction to its own borders only. It addresses the local interest and local creditors in the domestic markets. It does not have any extra-territorial effect. Many civil law countries adopt this principle. The drawback is that a debtor could be insolvent in one state but not in another state.

3

Question 2.3 [maximum 4 marks]

Briefly indicate initiatives undertaken to assist with the resolution of international insolvency issues in Latin America and discuss the differences between those initiatives.

There are two main multilateral treaties in Latin America on international insolvency: (1) Montevideo Treaties (1889) and (1940) and (2) Havana Convention on Private International law (1928).

1889 Treaty uses the debtor's commercial domicile as the basis for insolvency jurisdiction. It provides for one set of insolvency proceedings in the commercial domicile. However, if the debtor has two or more economically autonomous businesses, it provides for the possibility of concurrent proceedings.

By contrast, the Havana Convention is more supportive than the Montevideo Treaties of an approach that allows a single insolvency proceeding with universal effect throughout the region. It also recognises that there may be concurrent proceedings, but it does not provide for any procedures for co-operation or co-ordination in concurrent proceedings.

There is scope to elaborate for example with respect to the different members of the different agreements

3

Marks awarded 7.5 out of 10

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

Question 3.1 [maximum 7 marks]

It is said that the terms "bankruptcy" and "insolvency" may be used interchangeably. Discuss whether or not you agree with this statement, and why or why not. In your answer take care to include a discussion regarding: (i) what meaning may be ascribed to "bankruptcy" and "insolvency", (ii) the essential characteristics of "bankruptcy" and "insolvency" and (iii) any differences that may arise when a "bankruptcy" / "insolvency" involves a corporation rather than an individual.

I agree. The two words are used interchangeably in practice and in many jurisdictions. Some systems use the term "insolvency" and others "bankruptcy". It is important to note that some systems use both to mean slightly different things. For a lay person, the difference between the two are not readily clear or discerning. However, for legal practitioners, they should try to use the right term in the appropriate situation if possible to reflect their different legal meanings.

The subtle differences between the two terms are as follows:

(1) Generally speaking, bankruptcy refers to the formal state of being put into a formal bankruptcy proceeding whereby an insolvency practitioner is appointed to control the debtor's assets and financial affairs with a view to releasing the debtor from its debts, providing relief and giving them a fresh start. By contrast, insolvency is the global term that is used to refer to the financial affairs of a debtor: (a). the debtor's liability exceeds its assets (balance sheet insolvency); or (b). the debtor is unable to pay its debt when it falls due (the cash flow insolvency).

(2) When used interchangeably, the essential characteristics of bankruptcy and insolvency are: (i) actions by individual creditors against the debtor are frozen – there is an automatic stay of individual debt collection proceedings; (ii) the debtor's assets are pooled and become available to pay all

creditors – i.e. it is a collective debt collecting process; (iii) ordinary unsecured creditors are paid pari passu on a proportionate basis out of the available assets.

(3) In some jurisdictions, such as the UK and Australia, bankruptcy is traditionally used in the context of individual personal insolvency referring to ways for individuals to deal with debts that they cannot pay. By contrast, insolvency is usually used in the context of corporate and businesses and refers to the ways for body corporate to reorganize their business and discharge their debts. However, this distinction in the usage of bankruptcy and insolvency is less common in other jurisdictions.

This sub-question also required consideration of differences where involving individual vs company
6

Question 3.2 [maximum 5 marks]

Discuss some of the challenges which arise in cross-border insolvency that make it difficult to develop a single global cross-border insolvency dispensation.

Firstly, it is hard to find a common insolvency language in cross-border insolvency. The same words are used with slightly different meanings or connotations in different jurisdictions. Terminology also differs due to local legal culture, basic rights and the way in which a system deals with related matters.

Secondly, the conflict of law and priority rules in international insolvency proceedings are difficult to harmonise. The issue of applicable is complex in areas of security, set-off, netting arrangement, retention of title clauses and other means of protecting title available to creditors in national domestic laws.

Thirdly, on a deeper level, legal traditions and policy considerations towards social and economic issues may also have great influence in key aspects of the country-specific laws. It is inevitable that there will be some degree of local protectionism in play. It is hard to reconcile these and develop a single global international insolvency dispensation.

At the practical level, as Westbrook had identified (Westbrook: Global Insolvency Proceedings for a Global Market (2018) 96 Texas Law Review), the following key issues in cross border cases are also difficult to resolve:

1. standing for the foreign representative
2. moratorium on creditor action
3. creditor participation
4. executory contracts
5. co-ordinated claims procedures
6. priorities and preferences
7. avoidance provision powers
8. discharge; and
9. conflict of law clauses

As Fletcher has summarised in Insolvency in Private International Law (2nd edn, Oxford University Press 2005), to resolve these issues, the pertinent questions to ask are:

1. in which jurisdictions may insolvency proceedings be opened?
2. what country's law should be applied in respect of different aspects of the case?
3. what international effects will be accorded to proceedings conducted at a particular forum?

Currently, in the absence of a single global cross-border insolvency mechanism, the best solution is probably to take an approach of modified universalism in international insolvency to encourage and bring about co-ordination and co-operation between national courts to the extent possible.

5

Question 3.3 [maximum 3 marks]

Briefly discuss what is meant by "hard law" and what is meant by "soft law" in the context of international insolvency. In your answer you should also provide examples and discuss the varying success of "hard" and "soft" laws in providing solutions to the challenges of international insolvency.

In international insolvency, "hard law" refers to treaties and conventions that are legal binding on the national states which are signatories to these international instruments. These are public international law that governs the member states. The member states are required to import these instruments into their domestic laws so that as a part of the domestic national law, they are enforceable as "hard law" in the national courts. So far, there are a lot of attempts to draft different conventions but there is only some limited success. The Nordic Convection (1933) only applicable in the Scandinavian region is a success of such attempts. In Europe, some success has been achieved by the EU Insolvency Regulation (EIR) (2000) and EIR Recast (2015), albert not by way of convention or treaty. It is a multilateral instrument that applies to EU member states and have influenced broader multilateral development in international insolvency. It has greatly harmonised the cross-border insolvency framework within the EU.

By contrast, "soft law" refers to model laws which are drafted by non-governmental organisations such as the Hague Conference on Private International Law (the Hague Conference) and United Nations Commission on International Trade Law (UNCITRAL). These model laws are private international law and are recommended to national governments for them to adopt (with or without modification) into their own legislations. They therefore do not have any binding effect on national states. They are only effective after a state voluntarily adopts them in its own national legislation. The most successful "soft law" to date is UNCITRAL Model Law on Cross-Border Insolvency (MLCBI). It has been adopted by a lot of states in the world and is gaining momentum as an influential response to international insolvency law.

3

Marks awarded 14 out of 15

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

Norton Cars Inc is a registered company that manufactures sports cars. The company was initially incorporated in the USA and at the time operated from there. The company's main place of business as well as its headquarters were later moved to Nottingham (England), but the COMI then moved to Italy when the UK exited the European Union.

Norton Cars Inc maintains a presence and conducts business in the USA as well as various European countries, being countries which are both EU member states and non-member states.

Apart from the USA and various European states, Norton Cars Inc also distributes its cars to India, South Africa and Australia via branches of the company operating in these States.

A subsidiary of the company, Gladiator Manufacturing Ltd, manufactures and provides the engines for the sports cars in Germany.

Due to a worldwide recession, Norton Cars Inc is struggling financially due to little interest in the sports car market amongst consumers.

Question 4.1 [Maximum 4 marks]

For purposes of this part of the questions, assume Norton Cars Inc has filed for liquidation in terms of American law at the time when the headquarters were still in England.

Advise the American insolvent estate representative as to the applicable English cross-border source(s) that she may use to request recognition in terms of English Law in order to deal with the assets of Norton Cars Inc situated in England.

She can rely on the English authority in *McGrath v Riddell* [2008] UKHL 21. It is settled in English law that the primary rule of private international law in international insolvency is the principle of (modified) universalism. That principle requires that the English court, as long as it is consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to all creditors under one single system of distribution. She can also rely on the Cross-Border Insolvency Regulations 2006 to seek recognition and assistance by the English court to deal with the assets in England.

Elaboration is needed, including with respect to S 426 not being applicable as the US is not designated

2.5

Question 4.2 [Maximum 4 marks]

For purposes of this part question assume that Norton Cars Inc shifted its COMI to Italy when England exited the EU. At the same time, its main operations transpired in Germany, but its management was directed from Italy.

Advise as to the appropriate legal source(s) to be used in a cross-border insolvency matter between Italy and Germany, and also explain in which country the main proceeding should be opened in terms of applicable law.

The key legal source in this area is the EU Insolvency Regulation (EIR) (Recast) which applies to Italy and Germany both being EU member states. The goal of the EIR is to enable co-ordination and co-operation in cross-border insolvency proceedings in the member states, in particular regarding the debtor's assets and to avoid forum shopping. It provides rules for (1) international jurisdictions of courts in a Member State for the opening of insolvency proceedings, (2) the automatic recognition of these proceedings in other Member States and (3) the powers of the liquidator in other member States.

Under the EIR Recast, the courts of the member States within the territory of which the centre of the debtor's main interests (***COMI***) is situated shall have jurisdiction to open insolvency proceedings (Art 3(1)). As to the debtor's COMI, the presumption is that it should be the place of the Company's incorporation (Recital 30). But this is rebuttable if a comprehensive assessment of all the relevant factors establishes that the company's actual centre of management of its interests is located in another member state. There has been case law that discussed how to determine COMI before the EU courts. In general, there are two approaches: (1) by looking at the "contact with creditors" i.e. where the debtor can be contacted (Recital 28); or (2) by looking at "the mind of the management" i.e. where the actual centre of management and supervision of the company is (Recital 30).

In our case, the company's management is directed from Italy even though it has its main operations in Germany. On the limited information, there is a prima facie case that its COMI is in Italy and therefore the proceedings should be opened in Italy. However, as said, it is always facts sensitive to

determine where a company's COMI is, subject to a comprehensive assessment of all factors. These will include where the company keeps its books and records, where its directors meet for decisions, and where it manages its bank accounts and sales etc. If, on evidence, all these factors prove that the administration of the company is carried out in Italy, then Italy is the place of COMI and the Italian court should exercise its jurisdiction to open the insolvency proceedings with Italian laws to apply to the insolvency of the company.

4

Question 4.3 [Maximum 1 mark]

Will an Indian, South African or Australian court be eligible to apply the EU (Recast) Insolvency Regulation when considering the recognition of an EU insolvency representative duly appointed in terms of the EU regulation?

No. EU (Recast) Insolvency Regulation only applies to intra-community relations i.e. between EU member states. In cross-border insolvency cases relating to non-EU states, the rules of general international private law or specific legislation of a country should apply. In our case, the Indian, South African or Australian court will apply their own domestic insolvency laws to deal with this matter.

1

Question 4.4 [Maximum 6 marks]

For purposes of this part question assume that an insolvency procedure has been opened in terms of Italian law and an Italian insolvent estate representative has been appointed. The representative discovers assets of the insolvent company, Norton Cars Inc, in the Netherlands and Australia where the company is operating through external branches of the company respectively, but such assets are subject to real rights of security established in terms of Dutch and Australian law respectively.

(a) Which law will apply to the insolvency proceeding and with regard to the real rights of security situated in the Netherlands? (This question (a) is worth 3 marks out of the available 6 marks.)

As the insolvency proceeding has been opened in Italy being the place of COMI, it will be regarded as the main proceedings. The EU Recast Insolvency Regulation acknowledges that the national laws on security interest in member states widely differ from each other. It therefore permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings over the debtor's assets in other member states. The effects of secondary insolvency proceedings are limited to the assets located in that state (Recital 23).

Therefore, the Italian representative can rely on the Regulation and open secondary proceedings in the Dutch court over the debtor's assets located in the Netherlands. Under Recital 68 of the EIR (Recast), the basis, validity and extent of rights in rem should normally be determined in according to the lex situs and not be affected by the opening of the main insolvency proceedings. Therefore, Dutch law (including priority rules) applies in the secondary proceedings in terms of the real rights of security over the assets in the Netherlands.

3

(b) Which law will apply with regards to an insolvency proceeding in Australia and the real rights of security situated in there? (This question (b) is worth 3 marks out of the available 6 marks.)

Australia adopted the UNCITRAL Law on Cross-Border Insolvency (Model Law) in 2008. The aim of the Model law is to promote greater cooperation between courts of Australia and foreign courts. It enables recognition of foreign judicial or administrative proceedings under insolvency laws, in Australian courts. Australia is also a member of the Judicial Insolvency Network (JIN) and adopted the

JIN Guidelines. Australian courts follow the JIN Guidelines in their court practice to recognise and give effect to foreign main insolvency proceedings.

Therefore, the Italian representative can rely upon these laws and guidelines to open a secondary proceeding in Australia to seek assistance regarding the debtor's assets situated in Australia. In Australia, under common law rules, the applicable law in the case of immovable property is the law of the place where the property is situated i.e. lex situs. Therefore, for the assets in Australia, the governing law in the Australia proceedings will be the law of the state or territory of Australia where the debtor's assets are located. This will include the local priority rules governing the real rights of security on these assets.

3

Marks awarded 13.5 out of 15

*** End of Assessment ***

TOTAL MARKS 45/50

An excellent paper - a thorough response that addresses the questions asked and substantiates the answers well.