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 5 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, such as many European nations, **It would be beneficial to list some countries** typically have codified insolvency laws that are based on a varied set of legal provisions. Law in these countries are often based on Roman law and, talking about insolvency proceedings, often tend to the protection and preservation of debtor assets. Also, in civil law systems the role of the court is focused on interpreting and applying the law.

On the other hand, countries with historical roots in English law, including the United States, Australia and Canada have insolvency systems based on a common law framework. These systems are judge-made law and precedents oriented. English law focuses on the rights of individual creditors and the maximization of asset value for the benefit of creditors.]

2.5

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.

[The principle of universalism, the principle of modified universalism, and the principle of territorialism are different approaches to cross-border insolvency cases. Here's a brief explanation of each:

The principle of universalism is based on the idea that there should be a single insolvency proceeding that encompasses all the debtor's assets and liabilities, regardless of their location. Universalism relates to the acknowledgement that only one forum should have jurisdiction on the insolvency proceeding. **It would be beneficial to elaborate upon forum**

Territorialism, on the other hand, presuppose that insolvency proceedings may take place in every jurisdiction where assets 'debtors exist. On the opposite direction of universalism, the principle of territorialism claims each country has the authority to make its own decisions regarding the local insolvency proceedings of a debtor, without significant regard for the interests or decisions of other jurisdictions. **There is scope to elaborate on territorial limits**

The principle of modified universalism recognizes the need for cooperation and coordination among different jurisdictions in cross-border insolvency cases. It acknowledges that local interests and laws should be considered alongside the overarching goals of universality. In practice, this means that a "main proceeding" will be opened in the jurisdiction where the debtor has its center of main interests (COMI), while recognizing and providing support to secondary or ancillary proceedings in other relevant jurisdictions. This approach seeks to strike a balance between universalism and the protection of local interests.

2.5

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.

[Studies indicate that Latin American States agreements on international insolvency issues are amongst the most long-lasting multilateral accordances, and the fundamental initiatives are the

Montevideo Treaties (1889 and 1940) and the Havana Convention on Private International Law (1928), known as the Bustamante Code.
The Montevideo Treaties deals with i. International Commercial Law (1889), covering personal and corporate insolvency (ratified by Argentina, Bolivia, Colombia, Paraguay, Peru and Uruguay), ii. International Commercial Terrestrial law and international procedural law, both from 1940, containing titles about bankruptcy and civil meetings of creditors (ratified by Argentina, Paraguay and Uruguay). The Bustamante Code, on its turn, is known as being more supportive than the Montevideo Treaties on an approach that permits for a single proceeding with universal effect throughout the region, and was ratified by Latin and middle American states (Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela]

4

Marks awarded 9 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.

[The terms "bankruptcy" and "insolvency" should not be used interchangeably, in my opinion, although, in fact, they are still used as synonyms.
Bankruptcy refers to the Italian "banca rotta" definition, which means literally the break of the bench, referring to the situation where a merchant could not pay his debt and had his counter broken (banca rotta) by his creditors and was unable to continue working, and often was supposed to offer his own body for the repayments.
Insolvency, by its turn, is a more modern ample and – why not to say - civilised term, related also to the situation where a person cannot pay its debt, but focusing on the abolishment of imprisonment of the body of the debtor and on the construction of the discharging of debts (with the possibilities of fresh start or rehabilitation).
That said, in my opinion, bankruptcy is focused on the liquidation proceeding, since it is related to the formal state of being put into a formal bankruptcy proceeding, and insolvency accepts rescue proceedings, i.e., it's a more comprehensive term.
It is important to notice that some legal systems use the terms bankruptcy and insolvency as carrying the same meaning and some use both to mean different things (in Australia insolvency is used to corporations and bankruptcy is used to refer to the insolvency of a natural person, for example). Also, doctrine differs on the meaning and differences on both terms, and it's common to find a distinguishing between the objectives of insolvency for individuals and corporations related to this subject, such as done by Sealy And Hooley[1]:

- Individuals: to protect de debtor from the harassment by his creditors; to enable the debtor to make fresh start; to reduce indebtedness by making contributions from present and future income to the estate;
- Corporations: to preserve the business or viable parts; to impose personal responsibilities.

[1] *In* MA Clarke et al, *Commercial Law* (Owford University Press, 2017), chap 28, *apud* Module 1 Guidance Text – Introduction to International Insolvency Law 2023/2024, INSOL, p. 18.

This is a 7 mark essay sub-question and it warrants elaboration, including with respect to the essential characteristics aspect of the sub-question

4.5

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.

[Developing a single global cross-border insolvency dispensation faces several challenges due to the complex nature of cross-border insolvency cases and the major differences between legal systems.

The key challenges refer, in my opinion, to

i. Diverse Legal Systems: different countries have distinct legal frameworks and traditions. As considered in question 2.1, some adopt common law, while others adopt civil law or a hybrid system and these variations can lead to conflicting legal principles, procedures, and interpretations, making it challenging to establish a universally applicable framework for cross-border insolvency.

ii. Jurisdictional Conflicts: Determining the appropriate jurisdiction for handling cross-border insolvency cases can be also extremely complex and issues may arise regarding which country should have primary jurisdiction over the other.]

It would be beneficial for you to also consider the matters raised by Friman, Omar and Westbrook1

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.

[Hard law, in the context of international insolvency, refers to legally binding instruments, normally treaties and conventions, about insolvency issues. States who become signatories are obliged to respecting it and are supposed to accommodate their domestic law accordingly to these instruments, which means treaties and conventions signed and ratified become part of the State's hard law on insolvency.
Soft Law, by its turn, are non-treaty and non-binding instruments, also referred as "quasi-legal instruments", and work basically as guidelines that not rarely can result, in the future, in the construction of hard law instruments.
As an example of an effective soft law instrument in the context of international insolvency there can be cited the Model Law on Cross-border Insolvency (MLCBI), a draft legislation the UNCITRAL recommended member States do adopt and, according to I Mevorach[2], it is gathering momentum as an influential response to international insolvency law, since many States are reformulating their domestic laws accordingly to the MLCBI. This is, no doubt, an incredible solution to the cross-border insolvency issues since it contributes to the harmonisation of the different systems.

[2] I Mevorach *in The Future of Cross-border Insolvency: Overcoming Biases and Closing Gaps* (Oxford University Press, 2018), *apud* Module 1 Guidance Text – Introduction to International Insolvency Law 2023/2024, INSOL, p. 18.

As an example of hard law there must be cited the European Insolvency Regulation (EIR, 2000) and the latest reviewed EIR Recast, which influenced broader multilateral developments in international insolvency law.]

3

Marks awarded 8.5 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.

[England and Wales adopted the UNCITRAL Model Law on Cross-Border Insolvency in 2006, and this should be recognised in this case involving the US and England. The American insolvent estate representative should be advised to seek the recognition of the Cross-Border Insolvency Regulations of 2006 to deal with the assets of Norton Cars Inc. situated in England. More important, the estate representative should be encouraged to seek for cooperation on the insolvency proceeding, inspired by the case of Maxwell Communication Corporation, cited by the UNCITRAL Practice Guide:

> "7. This form of cooperation has emerged as a common practice, at least in certain States. The absence of formal treaties or national legislation to address the problems arising from international insolvencies has encouraged insolvency practitioners to develop, on a case-by-case basis, strategies, and techniques for resolving the conflicts that arise when the courts of different States attempt to apply different laws and enforce different requirements on the same set of parties. The terms and duration of agreements vary, and amendment or modification in the course of the proceedings takes account of the changing dynamics of a multinational insolvency to facilitate solutions for unique problems that arise in the course of the proceedings. An early use of an insolvency agreement was in the 1992 insolvency proceedings concerning the Maxwell Communication

Corporation. In those proceedings, the corporation was placed into administration in England and contemporaneously into Chapter 11 proceedings in New York, with administrators and an examiner appointed respectively."[3]

It would be beneficial to note that S 426 is not applicable as the US is not designated and to briefly consider common law.

2

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 appropriate legal source to be used in a cross-border insolvency matter between Italy and Germany should be the European Union's Regulation on Insolvency Proceedings (Recast). The main insolvency proceeding should be opened in the country where the COMI is located[4], so, in Italy (Italian laws are applicable), location where the debtor manages/administrates the operations, as explained in the question.
However, there can be other proceeding opened in Germany, as presented in the Recast: "This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. *To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment*. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union."[5]]

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?

[I am not sure if I was fully able to understand the question, but Indian, South African and Australian courts are primarily not "eligible" to apply the EU Recast Insolvency Regulation, as it is a legal framework applicable on insolvency proceedings whiting the European Union, without extraterritorial effects. However, the application of foreign insolvency proceeding should be governed by domestic law and international treaties and this appliance would depend on the laws of each of these cited jurisdictions and, again, cooperation should be sought as an important method on resolving the conflicts.]

[3]https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/practice_guide_ebook_eng.pdf cited by Module 1 Guidance Text – Introduction to International Insolvency Law 2023/2024, INSOL, p. 69.

[4] Article 3: "The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.", Recast, *in https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848*

[5] Recast, item 23, *in https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848*

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.)

[The applicable law for the insolvency proceeding and the real rights of security situated in the Netherlands will be the European Union's Regulation on Insolvency Proceedings (Recast). The main proceeding is opened in Italy (there the COMI is located) and the Italian insolvency law will be applied to the overall administration of the insolvency estate. The Recast includes rules for the recognition of security interests in different member states[6] and provide for the recognition in cross-border insolvency cases, so the Italian insolvency representative may work with Dutch law to deal with these specific rights of security situated 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.)

[In this part question, assuming that an insolvency procedure has been opened in terms of Italian law, since it's in Italy the debtor has its COMI, it is important to notice that Australia adopts the Cross-Border Insolvency Acts 2008 which gives effect to the UNCITRAL Model Law, which, in its turn, provides normative for cross-border insolvency issues and authorizes foreign representatives to apply for recognition of a foreign proceeding in Australia. It also allows for cooperation and coordination. About the real rights of security situated in Australia, the applicable law should be determined by the jurisdiction where the assets are located and would depend on Australian law, but, again: it involves coordination between the two jurisdictions.]

3

Marks awarded 13 out of 15

*** End of Assessment ***

TOTAL MARKS AWARDED 35.5/50

[6] "(22) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the applicable law in the case of particularly significant rights and legal relationships (e.g. rights *in rem* and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope", REGULATION (EU) 2015/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on insolvency proceedings (recast) *in https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848*

A very good paper that generally addresses the questions asked and substantiates its answers.