



**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2A**

**THE UNCITRAL MODEL LAWS RELATING TO INSOLVENCY**

**Commented [SL1]:** TOTAL = 36.5

73%

*This is the summative (formal) assessment for Module 2A of this course and is compulsory for all candidates who selected this module as one of their compulsory modules from Module 2. Please read instruction 6.1 on the next page very carefully.*

*If you selected this module as one of your elective modules, please read instruction 6.2 on the next page very carefully.*

The mark awarded for this assessment will determine your final mark for Module 2A. *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: [student ID.assessment2A]. An example would be something along the following lines: 202223-336.assessment2A. 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.**
- 6.1 **If you selected Module 2A as one of your compulsory modules (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is 23:00 (11 pm) GMT on 1 March 2023. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 6.2 **If you selected Module 2A as one of your elective modules (see the e-mail that was sent to you when your place on the course was confirmed), you have a choice as to when you may submit this assessment. You may either submit the assessment by 23:00 (11 pm) GMT on 1 March 2023 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2023. If you elect to submit by 1 March 2023, you may not**

***submit the assessment again by 31 July 2023 (for example, in order to achieve a higher mark).***

- 7. Prior to being populated with your answers, this assessment consists of 14 pages.***

**ANSWER ALL THE QUESTIONS**

Please note that all references to the "MLCBI" or "Model Law" in this assessment are references to the Model Law on Cross-Border Insolvency.

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Commented [SL2]: SUBTOTAL = 9 MARKS

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

Which of the following statements does not reflect the purpose of the Model Law?

- (a) The purpose of the Model Law is to provide greater legal certainty for trade and investment.
- (b) The purpose of the Model Law is to provide protection and maximization of the value of the debtor's assets.
- (c) The purpose of the Model Law is to facilitate the rescue of a financially troubled business, by providing a substantive unification of insolvency law.**
- (d) The purpose of the Model Law is to provide a fair and efficient administration of cross-border insolvencies that protects all creditors and the debtor

Question 1.2

Which of the following statements are reasons for the development of the Model Law?

- (a) The increased risk of fraud due to the interconnected world.
- (b) The difficulty of agreeing multilateral treaties dealing with insolvency law.
- (c) The practical problems caused by the disharmony among national laws governing cross-border insolvencies, despite the success of protocols in practice.

**(d) All of the above.**

Question 1.3

**Which of the following challenges to a recognition application under the Model Law is most likely to be successful?**

**(a) The registered office of the debtor is not in the jurisdiction where the foreign proceedings were opened, but the debtor has an establishment in the jurisdiction of the enacting State.**

**(b) The registered office of the debtor is in the jurisdiction of the enacting State, but the debtor has an establishment in the jurisdiction where the foreign proceedings were opened.**

**(c) The debtor has neither its COMI nor an establishment in the jurisdiction where the foreign proceedings were opened.**

**(d) The debtor has neither its COMI nor an establishment in the jurisdiction of the enacting State.**

Question 1.4

**Which of the following rules or concepts set forth in the Model Law ensures that fundamental principles of law are upheld?**

**(a) The *locus standi*/access rules.**

**(b) The public policy exception.**

**(c) The safe conduct rule.**

**(d) The "hotchpot" rule.**

Question 1.5

**For a debtor with its COMI in South Africa and an establishment in Argentina, foreign main proceedings are opened in South Africa and foreign non-main proceedings are opened in Argentina. Both the South African foreign representative and the Argentinian foreign representative have applied for recognition before the relevant court in the UK. Please note that South Africa has implemented the Model Law subject to the so-called principle of reciprocity (based on country designation), Argentina has not implemented the Model Law and the UK has implemented the Model Law without any so-called principle of reciprocity. In this scenario, which of the following statements is the most correct one?**

**(a) The foreign main proceedings in South Africa will not be recognised in the UK because the UK is not a designated country under South Africa's principle of reciprocity, but the foreign non-main proceedings in Argentina will be recognised in the UK despite Argentina not having implemented the Model Law.**

**(b) Both the foreign main proceedings in South Africa and the foreign non-main proceedings in Argentina will not be recognised in the UK because the UK has no principle of reciprocity and Argentina has not implemented the Model Law.**

**(c) Both the foreign main proceedings in South Africa and the foreign non-main proceedings in Argentina will be recognised in the UK.**

**(d) None of the statements in (a), (b) or (c) are correct.**

Question 1.6

**Which of the following statements regarding concurrent proceedings under the Model Law is true?**

**(a) No interim relief based on Article 19 of the Model Law is available if concurrent domestic insolvency proceedings and foreign proceedings exist at the time of the application of the foreign proceedings in the enacting State.**

**(b) In the case of a foreign main proceeding, automatic relief under Article 20 of the Model Law applies if concurrent domestic insolvency proceedings and foreign proceedings exist at the time of the application of the foreign proceedings in the enacting State.**

**(c) The commencement of domestic insolvency proceedings prevents or terminates the recognition of a foreign proceeding.**

**(d) If only after recognition of the foreign proceedings concurrent domestic insolvency proceedings are opened, then any post-recognition relief granted based on Article 21 of the Model Law will not be either adjusted or terminated if consistent with the domestic insolvency proceedings.**

Question 1.7

**When using its discretionary power to grant post-recognition relief pursuant to Article 21 of the Model Law, what should the court in the enacting State primarily consider?**

**(a) The court must be satisfied that the interests of the creditors and other interested parties, excluding the debtor, are adequately protected.**

**(b) The court should consider whether the relief requested is necessary for the protection of the assets of the debtor or the interests of the creditors and strike an appropriate balance between the relief that may be granted and the persons that may be affected.**

**(c) The court should be satisfied that the foreign proceeding is a main proceeding.**

**(d) All of the above.**

Question 1.8

**Which of the statements below regarding the Centre of Main Interest (COMI) and the Model Law is correct?**

**(a) COMI is not a defined term in the Model Law.**

**(b) For a corporate debtor, the Model Law does contain a rebuttable presumption that the debtor's registered office is its COMI.**

**(c) For an individual debtor, the Model Law does contain a rebuttable presumption that the debtor's habitual residence is its COMI.**

**(d) All of the above.**

Question 1.9

**An automatic stay of execution according to article 20 in the Model Law covers:**

**(a) Court proceedings.**

**(b) Arbitral Tribunals.**

**(c) Both (a) and (b).**

**(d) Neither (a) nor (b).**

Question 1.10

Commented [SL3]: Correct answer is (a).

**Article 13 grants access to the creditors in a foreign proceeding. Which of the following statements correctly describes the protection granted in Article 13?**

**(a) A foreign creditor has the same rights regarding the commencement of, and participation in, a proceeding as creditors in this State.**

**(b) A foreign creditor has the same rights as it has in its home state.**

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**(c) All foreign creditors' claims are, as a minimum, considered to be unsecured claims.**

**(d) Article 13 contains a uniform ranking system to avoid discrimination.**

**QUESTION 2** (direct questions) [10 marks in total]

**Commented [SL4]:** SUBTOTAL = 6.5 MARKS

**Question 2.1** [maximum 3 marks]

**Commented [SL5]:** 2 marks

**Under the MLCBI, explain and discuss what the appropriate date is for determining the COMI of a debtor?**

Also to be discussed: US courts (*Morning Mist Holdings Ltd v. Krys (Matter of Fairfield Sentry Ltd)*).

The Model Law does not define the term COMI. Uncertainty and unpredictability resulting from the interpretation of the COMI concept in article 16 of the MLCBI over time prompted a proposal to UNCITRAL in 2010 to provide additional information and advice on the idea. On July 18, 2013, the UNCITRAL Model Law on Cross-Border Insolvency Guide to Enactment and Interpretation (GEI) was adopted.

The date by which the debtor's COMI (or establishment) is to be ascertained is discussed by the GEI at paragraphs 157–160. The GEI suggests that the appropriate date is the date of commencement of the foreign proceeding. The GEI at paragraph 159 notes that, having regard to the evidence required to accompany an application for recognition under article 15 and the relevance accorded to the decision commencing the foreign proceeding and appointing the foreign representative, the date of commencement of that proceeding is the appropriate date for determining COMI.

**Question 2.2** [maximum 3 marks]

**Commented [SL6]:** 2 marks

**The following three (3) statements relate to particular provisions / concepts to be found in the Model Law. Indicate the name of the provision / concept (as well as the relevant Model Law article), addressed in each statement.**

Statement 3 = Art 16(3)

**Statement 1** *"This Article lays down the requirements of notification of creditors."*

Article 14 - Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]

The key objective of notifying foreign creditors as provided in paragraph 1 of Article 14 is to inform them of the commencement of the insolvency proceeding and of the time limit to file their claims. In addition, as a logical extension of the concept of equal treatment concept established by article 13, article 14 stipulates that foreign creditors must be informed whenever notification is necessary for creditors in the enacting State.

**Statement 2** *"This Article is referred to as the 'Safe Conduct Rule'."*



#### Article 10 - Limited Jurisdiction

**The Safe Conduct Rule warrants that Courts in the in the enacting state** law will not assume control over all of the debtor's assets just because the foreign representative has applied to have a foreign proceeding recognized. **This article addresses the fears of foreign representatives and creditors over exposure to an all-encompassing jurisdiction brought on by an application under the Model Law.**

**Statement 3** *"This Article contains a rebuttable presumption in respect of an undefined key concept in the MLCBI."*

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

Article 31 of the Model Law establishes a rebuttable presumption that the recognition of a foreign primary procedure is evidence that the debtor is insolvent for the purposes of initiating a domestic insolvency process for the debtor in the enacting state.

#### Question 2.3 [2 marks]

**In the IBA case appeal, the English Court of Appeal upheld the decision that the court should not exercise its power to grant the indefinite Moratorium Continuation. Please explain.**

The International Bank of Azerbaijan ("IBA") entered into a voluntary restructuring process under Azeri law. Following the commencement of this process, an application was made for an indefinite debt moratorium under an Azeri restructuring proceeding. The proceeding was recognized by the High Court as a main proceeding under the *Cross Border Insolvency Regulations 2006* (CBIR), giving rise to an initial moratorium that prevented creditors from commencing or continuing any action against the IBA in England.

It was argued that the application of the rule in Gibbs, was limited by the powers under Article 21 of the CBIR which provide that an English Court may grant any appropriate relief necessary to protect the interests of creditors (in effect, asking the Court to "sideline or circumvent the established common law rights of the English creditors by an appeal to the principle of modified universalism"). The Court assessed whether that moratorium was: 1) necessary to protect the interests of creditors; and 2) an appropriate means of achieving that protection.

The Court found that neither of those conditions were satisfied. Lord Justice Henderson said that extending the moratorium was not necessary to protect the interests of IBA's other creditors as they had already received everything to which they were entitled under the Azeri restructuring proceeding (which was at an end).

#### Question 2.4 [2 marks]

**In terms of relief, what should the court in an enacting State, where a domestic proceeding has already been opened in respect of the debtor, do after recognition of**

Commented [SL7]: 1.5 marks

Also reference to art 18 MLCBI

Commented [SL8]: 1 mark

Art 29(a) MLCBI to also be discussed

**a foreign main proceeding? In your answer you should mention the most relevant article of the MLCBI. What (ongoing) duty of information does the foreign representative in the foreign main proceeding have towards the court in the enacting State? Here too you are required to mention the most relevant article of the MLCBI.**

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Pursuant to article 12 the court, upon recognition of a foreign main proceeding in an enacting State, where a domestic proceeding has already been opened in respect of the debtor should allow the foreign representative to participate in insolvency-related proceedings conducted in the enacting State under the law of that State. Article 23 also allows the initiation in the enacting State of an action to avoid or otherwise render ineffective acts detrimental to creditors. In accordance with article 24 the Court can also allow the foreign representative to intervene in any local proceedings in which the debtor is a party.

The court may, upon recognition of a foreign proceeding, whether main or non-main, upon application by the foreign representative, entrust the distribution of all or a portion of the debtor's assets situated in this State to the foreign representative, or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are sufficiently safeguarded.

The foreign representative in the foreign main proceeding has an ongoing duty of information towards the court in the enacting State in accordance with article 18. The foreign representative shall inform the court promptly of: (a) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and (b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative. The GEI at paragraphs 168-169 notes it is possible that, after the application for recognition or the decision on recognition has been made, changes may occur in the foreign proceeding that would have affected a decision on relief or recognition had those facts been known at the time the application or decision was made.

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

**A foreign representative of a foreign proceeding opened in State B in respect of a corporate debtor (the Debtor) is considering whether or not to make a recognition application under the implemented Model Law of State A (which does not contain any reciprocity provision). In addition, the foreign representative is also considering what (if any) relief may be appropriate to request from the court in State A.**

**Write a brief essay in which you address the three questions below.**

**Question 3.1 [maximum 4 marks] [1 out of 4 marks]**

**The foreign representative is considering his options to secure the value of the debtor's assets located in State A. With reference to the Model Law's provisions on access and co-operation, explain how these rights in State A can benefit the foreign representative.**

Commented [SL9]: SUBTOTAL = 9.5 MARKS

In order to enable and promote a unified approach to cross-border bankruptcy, the Model Law offers a framework for collaboration between jurisdictions. These include: (a) granting access to the courts of the enacting State to the person in charge of a foreign insolvency proceeding (referred to as the "foreign representative"), allowing the foreign representative to request a temporary "breathing space," and enabling the courts of the enacting State to decide whether any additional relief or coordination between the relevant jurisdictions is necessary for the best resolution of the insolvency.

A foreign representation has the right to apply immediately to a court in the enacting state under Article 9. Article 9.2 grants the foreign representative from State B the ability to sue and be sued. Pursuant to paragraph 2 of article 13, foreign creditors have the same rights with regard to the beginning of and participation in a procedure under the laws of State A. Additionally, except in cases where an equivalent local claim (such as a claim for a penalty or a deferred-payment claim) has a rank lower than the general non-preference claims, the claims of foreign creditors from state B may not be ranked lower than the class of general non-preference claims from state A.

Additionally, the Court in State A may work directly with foreign courts or their representatives under the provisions of Article 25. Article 26 highlights the significant role inventing and putting into practice cooperative agreements that insolvency representatives, within the bounds of their authority, might play. The different areas of cooperation that are permitted by articles 25 and 26 are listed generally in article 27. [1]

**Your answer should include the following:**

- **Legal standing (Article 9 MLCBI):** *The key access for the foreign representative is set forth in Article 9 MLCBI. In the capacity of foreign representative, the foreign representative has automatic standing before the courts in State A without having to meet any formal requirements such as a license or any consular action. In other words, the "status" in State B of the foreign representative is automatically recognised in State A for the purpose of granting the foreign representative standing before the courts in State A. This allows the foreign representative to safeguard and pursue assets of the debtor estate in State A before its courts.*
- **Opening domestic insolvency proceedings (Article 11 MLCBI):** *The foreign representative is further specifically entitled to apply for the opening of domestic insolvency proceedings in State A, as reflected in Article 11 of the MLCBI. Whether or not the foreign representative would wish to do this will depend on what the requirements are for opening such domestic proceedings. Can these requirements be met? On the other hand, it will depend on what the foreign representative believes he/she can get in terms of (interim) relief for the foreign proceedings in State B. In other words, are domestic insolvency proceedings really needed, or just additional time and costs that should be avoided?*
- **Cooperation:** *Similar to access rights, the cooperation provisions in the MLCBI (articles 25-27) also operate independently of recognition and it is not a prerequisite to the use of the cooperation provisions that recognition of the foreign proceedings is obtained in advance. Courts in State A can freely cooperate with the foreign representative without having to worry whether the status in State B of the foreign representative can be recognised in State A.*
- **Save Time & Costs:** *The key benefits of both the access provisions and the cooperation provisions are that they save time and therefore also costs, as a result*

**of which value destruction can be avoided and value enhancement is being promoted.**

Question 3.2 [maximum 5 marks] [2.5 out of 5 marks]

**For a recognition application in State A to be successful, the foreign proceeding opened in State B must qualify as a “foreign proceeding” within the meaning of article 2(a) of the MLCBI and the “foreign representative” must qualify as a foreign representative within the meaning of article 2(d) of the MLCBI. Assuming that both qualify as such, list and briefly explain (with reference to the relevant MLCBI articles) any other evidence, restrictions, exclusions and limitations that must be considered, as well as the judicial scrutiny that must be overcome for a recognition application to be successful.**

The evidence, restrictions, exclusions and limitations that must be considered, as well as the Judicial scrutiny that must be overcome for a recognition application to be successful include:

#### Evidence

Article 15 (2) of the model law provides that when an application for recognition of a foreign proceeding is made An application for recognition shall be accompanied by:

- (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
- (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative. [1]

Consequently subparagraph C allows the court to take into account additional, acceptable evidence. The court may, but is not obligated to, ask for a translation of some or all of the documents presented with the request for recognition under paragraph 4.

The UNICTRAL Digest on Case Law Under the MLCBI reports that with respect to the “evidence required under paragraph 2, in a case where no certified documents were available as required under subparagraphs 2 (a) and (b), other evidence held to be sufficient to satisfy the requirement, including: (a) verified copies of minutes, court orders, reports to creditors and company searches in relation to the appointment and activities of the foreign representative of the debtor; (b) relevant correspondence with the registrar of companies and the relevant court registry and company searches in relation to a change in the status of the foreign proceeding, verified copies of the notices relating to that change; and (c) registration of the foreign representative as the liquidator of the debtor.

A document from the foreign corporate regulator showing that liquidators had been appointed to the debtor pursuant to the applicable legislation has also been relied upon under article 15, paragraph 2, on the basis that the regulator was an “authority” within the meaning of article 2, subparagraph (c), of the MLCBI. “

### Restrictions

According to Article 28, a proceeding under the insolvency laws of the enacting State may only be started after recognition of a foreign main proceeding if the debtor has assets there. The effects of that proceeding shall therefore be limited and is restricted to the debtor's assets located in this State and, to the extent necessary to implement cooperation and coordination under Articles 25, 26, and 27, to other assets of the debtor that, under the law of the State. Foreign proceedings and concurrent domestic insolvency proceedings can exist together. However any relief the foreign representative seeks under Article 19 and 21 is however restricted and must consistent with domestic insolvency proceedings.

### Exclusions

The enacting state has the option to exempt specific proceedings from application under the Model Law's pursuant to Article 1 paragraph 2. While it has been specifically stated that banks and insurance companies are examples of businesses that the enacting state may choose to exclude from the Model Law, the Model Law should, in theory, apply to any proceedings that qualify as foreign proceedings within the meaning of Article 2(a) of the Model Law. There may however be additional businesses, such as public utility firms, that the State may require special cross-border resolutions or that are excluded for policy reasons. [1]

The Model Law's public policy exemption provides the option to limit or exclude any action taken in support of the foreign proceeding on the basis of overriding public policy grounds.

The courts have also ruled that foreign proceedings and redress accessible under article 21 must be of a form that is admissible as evidence under the law of the recognizing court and not manifestly against public policy under article 6. Yet it is important to remember that Article 6 is only meant to be used in extraordinary situations involving issues that are fundamentally important to the State that enacted it.

### Limitations-

Article 2 states that " Upon recognition of a foreign proceeding that is a foreign main proceeding, (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed. However, paragraph 2 indicates that the scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of this article are subject to *any provisions of law of the enacting State relating to insolvency that apply to exceptions and limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of this article.*

The digest of case law stated that "in a case where the question concerned an arbitration conducted in a foreign State after the commencement of the recognition proceeding, the recognizing court held that the scope of the automatic stay under that State's enactment of Article 20 was limited to proceedings that could have an impact on the debtor's property located in, or within the territorial jurisdiction of, that State." This highlights that there may be limitations that must be considered, for a recognition application to be successful.

### Judicial Scrutiny

The Court has confirmed that the characteristics of Article 2 (a) are cumulative and should be considered as a whole. The inquiry to be made is factual in nature and, in view of article 8, the elements should be interpreted and applied in the light of their international origins.

Article 17 of the UNCITRAL Model Law gives the receiving court the authority to recognize a foreign proceeding. If it is shown that the justifications for making a recognition order were "fully or partially absent or have ceased to exist," the receiving court may reconsider its decision to treat the foreign case as "main" or "non-main." [½] see below and discussion on COMI

According to any applicable domestic law, a decision on recognition may also be appealed or subject to review. An appellate court may consider the case's merits in its entirety, including its factual components, under some national laws' appeal procedures. The provisions of the UNCITRAL Model Law have no bearing on a State's domestic appeal procedures.

**Your answer should further address the following:**

- 1. Restrictions: Existing international obligations of State A: Based on Article 3 of the Model Law, the court in State A should also check if there are no existing international obligations of State A (under a treaty or otherwise) that may conflict with granting the recognition application under the implemented Model Law in State A.**
- 2. Judicial scrutiny: While the court in State A is able to rely on the rebuttable presumptions set forth in Article 16 of the Model Law, in the context of Article 17 of the Model Law the court will have to assess whether either the COMI or at least an establishment of the debtor is located in State B where the foreign proceedings were opened. If the COMI of the debtor is in State B the foreign proceedings should be recognised as foreign main proceedings and if only an establishment of the debtor is in State B the foreign proceedings should be recognised as foreign non-main proceedings. Without a COMI or at least an establishment of the debtor in State B, recognition cannot be granted by the court in State A.**
- 3. Public policy exception: Finally, the court in State A should also ensure based on Article 6 of the Model Law that the recognition application is not manifestly contrary to public policy of State A.**

Question 3.3 [maximum 5 marks] [5 out of 5 marks]

**As far as relief is concerned, briefly explain (with reference to the relevant MLCBI articles) what pre- and post-recognition relief can be considered in the context of the MLCBI. Also address which restrictions, limitations or conditions should be considered in this context. For the purposes of this question, it can be assumed that there is no concurrence of proceedings.**

#### **Pre recognition relief**

Article 19 provides that the Court may grant urgent pre- recognition relief from the time of filing an application for recognition until the application is decided upon, at the request of the foreign representative, where it is urgently needed to protect the assets of the debtor or the interests of the creditors. Additionally, relief can also be granted of a provisional nature, including: [½]

- (a) Staying execution against the debtor's assets;
- (b) Entrusting the administration or realization of all or part of the debtor's assets located in this State.

to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy. [1/2]

According to the UNCITRAL Digest of Cases, this can include "circumstances where efforts by creditors to control or possess assets or terminate unfavorable contracts, require security deposits, tighten credit terms, or take other detrimental business actions against the creditor would interfere with the court's ability to exercise its jurisdiction under the MLCBI, interfere with and harm the debtor's efforts to administer its estates in accordance with the foreign proceeding, and undermine the foreign representative's efforts to achieve an equitable result for the benefit of all the debtor's creditors, causing immediate and irreparable injury."

Paragraph 1 (c) also provides that any of the relief mentioned in paragraph 1 (c), (d) and (g) of article 21. Paragraph 3 however stipulates the relief granted therein would terminate when the application for recognition is decided upon unless extended under paragraph 1 (f) of article 21.

At paragraphs 170-175 of the Guide to Enactment and Interpretation of the UNCITRAL MLCBI (GEI), it is highlighted that article 19 gives the court the authority to grant, upon the request of the foreign representative, the type of relief that is often only accessible in collective insolvency proceedings, as opposed to the particular types of relief that may be awarded under rules of civil procedure prior to the start of insolvency proceedings.

Additionally, paragraph 4 of Article 19 provides that the court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

### **Post recognition Relief**

Post recognition relief can be granted under Article 21 upon recognition of a foreign proceeding. Paragraph 1 states that "upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including: [1]

- (a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20;
- (b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 (b) of article 20;
- (c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20;
- (d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (e) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court;
- (f) Extending relief granted under paragraph 1 of article 19;

(g) Granting any additional relief that may be available under the laws of *the State*.

The Court may also under paragraph 2 at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected. [1]

It is also mandated under paragraph 3 (Article 3) that in granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding. [1]

Thus, it can be seen that Article 21 provides a very wide range of power that enables courts to grant any appropriate relief to effectuate the purpose of the MLCBI and to protect assets of the debtor or the interests of creditors. The issue of whether granting relief under article 21 is suitable must be resolved by the court, at its discretion and after recognition has been ordered.

The relief that can be granted under article 21, paragraph 1, is limited in several ways in that the relief must be necessary to protect the interests of the creditors (meaning the interests of the general body of creditors as a whole) or, as an alternative, to protect the assets of the debtor. Also, the relief is subject to the public policy exception under article 6. [1] Additionally, pursuant to article 22, paragraph 1, any relief sought must be balanced. Therefore the relief granted to the foreign representative and the interests of those affected by such relief, must not unduly favour one group of creditors over another.

Article 22 permits the court to subject the relief granted under article 21 to any conditions it considers appropriate. The turnover of assets to the foreign representative in paragraph 2 is subject to the stipulation that the interests of local creditors are adequately protected, as well as to the broader protection of article 22, paragraph 1, and the possibility that the court may subject that turnover to conditions under article 22, paragraph 2. Further paragraph 3 goes on to state that the court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or at its own motion, modify or terminate such relief. [1]

Question 3.4 [maximum 1 mark] [1 mark]

**Briefly explain - with reference to case law - why a worldwide freezing order granted as pre-recognition interim relief ex article 19 MLCBI, is unlikely to continue post-recognition ex article 21 MLCBI?**

In the recent case of *Protasov v. Derev*, the High Court of Justice ruled that there was no justification for a provisional freezing order to continue following the recognition of foreign bankruptcy proceedings under the UNICTRAL Model Law on Cross-Border Insolvency (the Model Law), which was put into effect in England and Wales by the Cross-Border Insolvency Regulations 2006 (the Regulations).

The Court considered whether it would be appropriate to extend the freezing order in this matter after noting that Article 19(2) specifies that any interim relief expires when the application for recognition is decided unless expressly extended under Article 21(f).

The Court noted that in accordance with Article 20(1)(c), the bankrupt's rights to deal with any of his assets are suspended upon recognition of foreign proceedings. The scope and effect of



the suspension are the same as if the bankruptcy order had been made in accordance with the Insolvency Act 1986 (IA 1986), and it is subject to the same court's powers, prohibitions, limitations, and conditions as would be in place under English law, as stated in Article 20(2)(a) and (b).

The Court noted that in accordance with Article 20(1)(c), the bankrupt's rights to deal with any of his assets are suspended upon recognition of foreign proceedings. Additionally, in accordance with Article 20(2)(a) and (b), the suspension's scope and impact are the same as if the bankruptcy order had been issued in accordance with the Insolvency Act 1986 (IA 1986), and it is subject to the same court's authority, restrictions, conditions, and prohibitions as would be the case under English law. Thus a worldwide freezing order granted as a pre-recognition interim relief is unlikely to continue post-recognition ex article 21 MLCBI.

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

Read the following facts very carefully before answering the questions that follow.

(1) Background

**The Commercial Bank for Business Corporation (the Bank) has operated since 1991. The Bank's registered office is situated in Country A, which has not adopted the MLCBI. As of 13 August 2015, the Bank's majority ultimate beneficial owner was Mr Z, who held approximately 95% of the Bank's shares through various corporate entities (including some registered in England).**

**The Bank entered provisional administration on 17 September 2015 and liquidation on 17 December 2015. Investigations into the Bank have revealed that it appears to have been potentially involved in a multi-million dollar fraud resulting in monies being sent to many overseas companies, including entities incorporated and registered in England.**

**Proceedings were commenced in the High Court of England and Wales (Chancery Division) against various defendants on 11 February 2021 (the English Proceedings).**

**An affidavit (the Affidavit) sets out a detailed summary of the legislation of Country A's specific insolvency procedure for Banks. The procedure involves initial input from the National Bank (the NB) and at the time that the Bank entered liquidation, followed by a number of stages:**

*Classification of the bank as troubled*

**The NB may classify a bank as "troubled" if it meets at least one of the criteria set down by article 75 of the Law of Country A on Banks and Banking Activity (LBBA) or for any of the reasons specified in its regulations.**

**Once declared “troubled”, the relevant bank has 180 days within which to bring its activities in line with the NB’s requirements. At the end of that period, the NB must either recognise the Bank as compliant, or must classify it as insolvent.**

*Classification of the bank as insolvent*

**The NB is obliged to classify a bank as insolvent if it meets the criteria set out in article 76 of the LBBA, which includes:**

- (i) the bank’s regulatory capital amount or standard capital ratios have reduced to one-third of the minimum level specified by law;**
- (ii) within five consecutive working days, the bank has failed to meet 2% or more of its obligations to depositors or creditors; and**
- (iii) the bank, having been declared as troubled, then fails to comply with an order or decision of the NB and / or a request by the NB to remedy violations of the banking law.**

**The NB has the ability to classify a bank as insolvent without necessarily needing to first go through the troubled stage. Article 77 of the LBBA accordingly provides that a bank can be liquidated by the NB directly, revoking its licence.**

*Provisional administration*

**The Deposit Guarantee Fund (DGF) is a governmental body of Country A tasked principally with providing deposit insurance to bank depositors in Country A. However, the Affidavit explained that the DGF is also responsible for the process of withdrawing insolvent banks from the market and winding down their operations via liquidation. Its powers include those related to early detection and intervention, and the power to act in a bank’s interim or provisional administration and its ultimate liquidation.**

**Pursuant to article 34 of the DGF Law, once a bank has been classified as insolvent, the DGF will begin the process of removing it from the market. This is often achieved with an initial period of provisional administration. During this period:**

- (i) the DGF (acting via an authorised officer) begins the process of directly administering the bank’s affairs. Articles 35(5) and 36(1) of the DGF Law provide that during provisional administration, the DGF shall have full and exclusive rights to manage the bank and all powers of the bank’s management.**

**(ii) Article 36(5) establishes a moratorium which prevents, *inter alia*: the claims of depositors or creditors being satisfied; execution or enforcement against the bank's assets; encumbrances and restrictions being created over the bank's property; and interest being charged.**

#### ***Liquidation***

**Liquidation follows provisional administration. The DGF is obliged to commence liquidation proceedings against a bank on or before the next working day after the NB's decision to revoke the bank's licence.**

**Article 77 of the LBBA provides that the DGF automatically becomes liquidator of a bank on the date it receives confirmation of the NB's decision to revoke the bank's licence. At that point, the DGF acquires the full powers of a liquidator under the law of Country A.**

**When the bank enters liquidation, all powers of the bank's management and control bodies are terminated (as are the provisional administrators' powers if the bank is first in provisional administration); all banking activities are terminated; all money liabilities due to the bank are deemed to become due; and, among other things, the DGF alienates the bank's property and funds. Public encumbrances and restrictions on disposal of bank property are terminated and offsetting of counter-claims is prohibited.**

**As liquidator, the DGF has extensive powers, including the power to investigate the bank's history and bring claims against parties believed to have caused its downfall. Those powers include:**

- (i) the power to exercise management powers and take over management of the property (including the money) of the bank;**
- (ii) the power to compile a register of creditor claims and to seek to satisfy those claims;**
- (iii) the power to take steps to find, identify and recover property belonging to the bank;**
- (iv) the power to dismiss employees and withdraw from/terminate contracts;**
- (v) the power to dispose of the bank's assets; and**

**(vi) the power to exercise "such other powers as are necessary to complete the liquidation of a bank".**

**The DGF also has powers of sale, distribution and the power to bring claims for compensation against persons for harm inflicted on the insolvent bank.**

**However, article 48(3) of the DGF Law empowers the DGF to delegate its powers to an "authorised officer" or "authorised person". The "Fund's authorised person" is defined by article 2(1)(17) of the DGF Law as: "an employee of the Fund, who on behalf of the Fund and within the powers provided for by this Law and / or delegated by the Fund, performs actions to ensure the bank's withdrawal from the market during provisional administration of the insolvent bank and/or bank liquidation".**

**Article 35(1) of the DGF Law specifies that an authorised person, must have: "...high professional and moral qualities, impeccable business reputation, complete higher education in the field of economics, finance or law...and professional experience necessary." An authorised person may not be a creditor of the relevant bank, have a criminal record, have any obligations to the relevant bank, or have any conflict of interest with the bank. Once appointed, the authorised officer is accountable to the DGF for their actions and may exercise the powers delegated to them by the DGF in pursuance of the bank's liquidation.**

**The DGF's independence is addressed at articles 3(3) and 3(7) of the DGF Law which confirm that it is an economically independent institution with separate balance sheet and accounts from the NB and that neither public authorities nor the NB have any right to interfere in the exercise of its functions and powers.**

**Article 37 establishes that the DGF (or its authorised person, insofar as such powers are delegated) has extensive powers, including powers to exercise managerial and supervisory powers, to enter into contracts, to restrict or terminate the bank's transactions, and to file property and non-property claims with a court.**

**(2) The Bank's liquidation**

**The Bank was formally classified by the NB as "troubled" on 19 January 2015. The translated NB resolution records:**

**"The statistical reports-based analysis of the Bank's compliance with the banking law requirements has found that the Bank has been engaged in risky operations."**

**Those operations included:**

**(i) a breach, for eight consecutive reporting periods, of the NB's minimum capital requirements;**

**(ii) 10 months of loss-making activities;**

**(iii) a reduction in its holding of highly liquid assets;**

**(iv) a critically low balance of funds held with the NB; and**

**(v) 48% of the Bank's liabilities being dependent on individuals and a significant increase in "adversely classified assets" which are understood to be loans, whose full repayment has become questionable.**

**Despite initially appearing to improve, by September 2015 the Bank's financial position had deteriorated further with increased losses, a further reduction in regulatory capital and numerous complaints to the NB. On 17 September 2015, the NB classified the Bank as insolvent pursuant to article 76 of the LBBA. On the same day, the DGF passed a resolution commencing the process of withdrawing the Bank from the market and appointing Ms C as interim administrator.**

**Three months later, on 17 December 2015, the NB formally revoked the Bank's banking licence and resolved that it be liquidated. The following day, the DGF initiated the liquidation procedure and appointed Ms C as the first of the DGF's authorised persons to whom powers of the liquidator were delegated. Ms C was replaced as authorised officer with effect from 17 August 2020 by Ms G.**

**Ms G's appointment was pursuant to a Decision of the Executive Board of the Directors of the DGF, No 1513 (Resolution 1513). Resolution 1513 notes that Ms G is a "leading bank liquidation professional". It delegates to her all liquidation powers in respect of the Bank set out in the DGF Law and in particular articles 37, 38, 47-52, 521 and 53 of the DGF Law, including the authority to sign all agreements related to the sale of the bank's assets in the manner prescribed by the DGF Law. Resolution 1513 expressly excludes from Ms G's authority the power to claim damages from a related party of the Bank, the power to make a claim against a non-banking financial institution that raised money as loans or deposits from individuals, and the power to arrange for the sale of the Bank's assets. Each of the excluded powers remains vested in the DGF as the Bank's formally appointed liquidator.**

**On 14 December 2020, the Bank's liquidation was extended to an indefinite date, described as arising when circumstances rendered the sale of the Bank's assets and satisfaction of creditor's claims, no longer possible.**

**On 7 September 2020, the DGF resolved to approve an amended list of creditors' claims totalling approximately USD 1.113 billion. The Affidavit states that the Bank's current, estimated deficiency exceeds USD 823 million.**

QUESTION 4.1 [maximum 15 marks] [11.5 out of 15]

**Prior to any determination made in the English Proceedings, Ms G, in her capacity as authorised officer of the Deposit Guarantee Fund (or DGF) of Country A in respect of the liquidation of the Commercial Bank for Business Corporation (the Bank), together with the DGF (the Applicants), applied for recognition of the liquidation of the Bank before the English court based on the Cross-Border Insolvency Regulations 2006 (CBIR), the English adopted version of the MLCBI.**

**Assuming you are the judge in the English court considering this recognition application, you are required to discuss:**

**4.1.1 whether the Bank's liquidation comprises a "foreign proceeding" within the meaning of article 2(a) of the MLCBI [maximum 10 marks]; and [7 out of 10]**

**4.1.2 whether the Applicants fall within the description of "foreign representatives" as defined by article 2(d) of the MLCBI [maximum 5 marks]. [4.5 out of 5]**

While not all facts provided in the fact pattern given for this Question 4 are immediately relevant for your answer, please do use, where appropriate, those relevant facts that directly support your answer.

**For the purpose of this question, you may further assume that the Bank is not excluded from the scope of the MLCBI by article 1(2) of the MLCBI.**

**4.1.1 whether the Bank's liquidation comprises a "foreign proceeding" within the meaning of article 2(a) of the MLCBI [maximum 10 marks]**

**Answer:**

The term foreign proceeding within the meaning of article 2 (a) of the MLCBI means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation. Paragraph (b) further states that foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests. This is contrasted by paragraph (c) which defines "Foreign non-main proceeding" as a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f). Paragraph f describes "establishment" as any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

Therefore in order for the liquidation of Commercial Bank for Business Corporation (the Bank) to qualify as foreign proceeding within the meaning of article 2 the following elements must be met:

- i. The proceeding must be of judicial or administrative nature;
- ii. In a foreign state;
- iii. Authorized or conducted under a law relating to insolvency;
- iv. The proceeding is for the purpose of reorganization or liquidation;
- v. Collective in nature i.e whether substantially all of the assets and liabilities are dealt with in the proceedings subject to the exceptions and exclusions of the local law;

vi. The assets and affairs of the debtor are subject to control or supervision by a foreign court.

Case law has affirmed that the characteristics of the subparagraph are cumulative and should be considered as a whole<sup>1</sup>.

It is noted that the enacting state has the option to exempt specific proceedings from application under the Model Law's pursuant to Article 1 paragraph 2. England adopted it by enacting the Cross Border Insolvency Regulations 2006 with effect from 4 April 2006, making some modifications to the text of the UNCITRAL Model Law.

Under CBIR 2006 a case involving Ukrainian debtor bank in liquidation with an individual appointed by DGF (the official body appointed in the liquidation); where both the DGF and the individual were found to be foreign representatives within the meaning of the CBIR 2006, notwithstanding that their powers were not joint and several.<sup>2</sup> Thus applying the foregoing to this scenario the proceedings herein are not excluded from recognition under English law.

Additionally the main issue to consider is whether the bank's liquidation was a 'judicial or administrative' proceeding subject to the control and supervision of a 'foreign court', so as to qualify for recognition.

The Bank herein has been liquidated per the procedure initiated by the DGF and Ms G has been duly appointed as the leading bank liquidation professional. The DGF is a governmental body in Country A and has the power to act in a bank's interim or provisional liquidation and its ultimate liquidation. The DGF law confirms that it is an economically independent institution from the National Bank and neither the public authorities nor the National Bank had the ability to interfere in the exercise of the DGF's functions and powers. Article 77 of the LBBA confirms that the DGF automatically becomes liquidator of the bank on the date it receives confirmation of the NB's decision to revoke the bank's licence. Thus, the DGF appointment is not under the control of the court. However Judicial Review is an option to anyone unhappy with the actions taken by the DGF and Ms G. its representative.

Consequently, I find that proceedings herein qualify as foreign proceedings since they are administered by the DGF and Ms G (whose appointment had to satisfy the requirement under Article 35 (1) as an authorized person.) The administrative body (DGF) and Ms G were competent to control or supervise the proceeding.

Further the other elements such as proceedings in a foreign state, authorized or conducted under insolvency are satisfied per the fact given. The proceedings are collective in nature since it concerns more than one creditor and depositors of the bank and control of the bank has been taken over by the DGF. Therefore, I am of the view that the Bank's liquidation comprises a foreign proceeding within the meaning of article 2 (a) of the MLCBI.

For full marks your response should address some of the elements in more detail. For example, the "collective nature" element should be addressed along the following lines:

1. UNCITRAL's guide for judiciary, "The Model Law on Insolvency: The Judicial Perspective" (2013) explains the requirement for proceedings to be "collective":

"The UNCITRAL Model Law was intended to apply only to particular types of insolvency proceedings. The Guide to Enactment and Interpretation indicates that the notion of a "collective" insolvency proceeding is based on the desirability of achieving a coordinated, global solution for all stakeholders of an insolvency proceeding. It is not intended that the Model Law be used merely as a collection device for a particular creditor or group of creditors who might have initiated a collection proceeding in another State, or as a tool for gathering up assets in a winding up or conservation proceeding that

<sup>1</sup> Digest on Case law on the UNCITRAL Model Law on Cross-Border Insolvency at page 17.

<sup>2</sup> See Re PJSC Bank Finance and Credit , Lexis PSL News Analysis Published date: 07/05/2021

does not also include provision for addressing the claims of creditors. The Model Law may be an appropriate tool for certain kinds of actions that serve a regulatory purpose, such as receiverships for such publicly regulated entities as insurance companies or brokerage firms, provided the proceeding is collective as that term is used in the Model Law.”

2. The Guide to Enactment and Interpretation of the UNCITRAL Model Law (2014) explains that when:

“evaluating whether a given proceeding is *collective* for the purpose of the Model Law, a key consideration is whether substantially all of the assets and liabilities of the debtor are dealt with in the proceeding, subject to local priorities and statutory exceptions, and to local exclusions relating to the rights of secured creditors. A proceeding should not be considered to fail the test of collectivity purely because a class of creditors’ rights is unaffected by it.”

3. Based on the facts provided the understanding is that *all* of the Bank’s creditors are entitled to claim in the liquidation and that their claims are met from available assets, according to the statutory order of priorities. Consequently, the conclusion can be reached that the Bank’s liquidation is a “*collective proceeding*”.

The same applies to “pursuant to a law relating to insolvency” element and the “for the purpose of reorganisation and liquidation” element.

#### **4.1.2 whether the Applicants fall within the description of “foreign representatives” as defined by article 2(d) of the MLCBI [maximum 5 marks].**

Article 2 (d) defines “foreign representatives” as a person or body, including one appointed on an interim basis authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding.

In this scenario Ms G appointment was pursuant to a Decision of the Executive Board of the Directors of the DGF, No 1513 (Resolution 1513). Resolution 1513 notes that Ms G is a “leading bank liquidation professional”. Under the appointment Ms G was delegated all liquidation powers in respect of the Bank set out in the DGF Law and in particular articles 37, 38, 47-52, 521 and 53 of the DGF Law, including the authority to sign all agreements related to the sale of the bank’s assets in the manner prescribed by the DGF Law.

Further Resolution 1513 expressly excludes from Ms G’s authority the power to claim damages from a related party of the Bank, the power to make a claim against a non-banking financial institution that raised money as loans or deposits from individuals, and the power to arrange for the sale of the Bank’s assets. Each of the excluded powers remain vested in the DGF as the Bank’s formally appointed liquidator. Thus, there is a division of power and responsibility between Ms G and DGF. Also, the powers vested in either party are not joint. However, relying on

The digest on case law<sup>3</sup> states that the courts have indicated that the focus is upon the authorization being provided “in the context of” or “in the course of” the proceeding, while the MLCBI does not define the words “person” or “body”, courts have found that a foreign representative might be a firm of accountants, if otherwise qualified, on the basis that a firm can constitute a “person” as required by subparagraph (d),<sup>91</sup> and a “body” has been interpreted as meaning “an artificial person created by a legal authority”.

<sup>3</sup> Page 10 paragraph 38.



I find instructive that guidance given at paragraph 86 of the Guide to the Enactment and Interpretation of the Model Law (GEI) which states "Subparagraph (d) recognizes that the foreign representative may be a person authorized in the foreign proceedings to administer those proceedings, which would include seeking recognition, relief and cooperation in another jurisdiction, or they may simply be a person authorized specifically for the purposes of representing those proceedings. The Model Law does not specify that the foreign representative must be authorized by the court (as defined in article 2, subparagraph (e)) and the definition is thus sufficiently broad to include appointments that might be made by a special agency other than the court." Thus Ms. G appointment was made by the board to the DGF would be proper and further relying on the reasoning of the court in Re PJSC Bank Finance and Credit, I am of the view that both Ms G. and the DGF qualify as foreign representatives.

For full marks your response should also have addressed the following:

1. Article 16(1) of the MLCBI provides:

'If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (i) of article 2 and that the foreign representative is a body or person within the meaning of sub-paragraph (j) of article 2, the court is entitled to so presume.'

**\* End of Assessment \***