



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2A
THE UNCITRAL MODEL LAWS RELATING TO INSOLVENCY

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

Commented [DDB1]: 35.5 / 50 = 71%. Good mark!

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 [BB2]: Sub-total = 8 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

Commented [BB3]: The correct answer is (c)

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

Commented [BB4]: The correct answer is (c)

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

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.

(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 [BB5]: Sub-total = 7.5 marks

PLEASE NOTE: SOURCE I UTILIZED THROUGHOUT THIS ASSESSMENT, UNLESS OTHERWISE INDICATED: Module 2A Guidance Text on UNCITRAL Model Laws Relating to Insolvency 2022/2023

Question 2.1 [maximum 3 marks] [1.5]

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

The appropriate date for a COMI determination (or whether an establishment exists) is the date of when the foreign proceeding was commenced. [1] In the event a COMI of a debtor moves close in time to when the foreign proceeding was commenced, various issues may arise. For example, one of the requirements for a COMI determination is that the COMI must be readily ascertainable by creditors of the debtor and other parties in interest. This can make the COMI determination challenging as it might not be readily ascertainable to third parties. However, courts in the US and UK have articulated a slightly different approach – the “filings approach.” This approach which focuses on the time between the commencement of the foreign insolvency proceeding and the filing of the recognition application. See, e.g., *Matter of Fairfield Sentry Ltd.* (2nd Cir. 2013). [½]

Suggested answer:

1. The MLCBI does not expressly indicate the relevant date for determining the COMI of the debtor. The same is true with respect to determining the existence of an establishment. However, the UNCITRAL Guide to Enactment suggests that the date of commencement of the foreign proceedings is the appropriate date for determining the existence of the COMI or an establishment of the debtor (see paragraph 143 of The Judicial Perspective).
2. The UNCITRAL Guide to Enactment explains (see paragraphs 159 and 160) that the date of commencement of the foreign proceeding is the appropriate date for determining

the existence of the COMI of the debtor as well as an establishment of the debtor. Where the business activity of the debtor ceases after the commencement of the foreign proceeding, all that may exist at the time of the application for recognition to indicate the debtor's COMI or establishment is that foreign proceeding and the activity of the foreign representative in administering the insolvency estate. In such a case, determination of the COMI or an establishment by reference to the date of the commencement of those proceedings would produce a clear result. The same reasoning may also apply in the case of reorganisation where, under some laws, it is not the debtor that continues to have a COMI, but rather the reorganised entity. In such a case, the requirement for a foreign proceeding that is taking place in accordance with article 17(2)(a) is clearly satisfied and the foreign proceeding should be entitled to recognition. Moreover, taking the date of commencement to determine COMI provides a test that can be applied with certainty to all insolvency proceedings. [see also pages 28/29 of the Guidance Text]

3. However, US courts may take a slightly different approach based on the *Morning Mist Holdings Ltd v. Krys (Matter of Fairfield Sentry Ltd)* (2nd Cir Appeals April 16, 2013) (which was recently followed in the UK in *Re Toisa Limited* - see footnote 94 on page 28 of the Guidance Text). The US court will most likely consider the date of the recognition application pursuant to the US Chapter 15 as the appropriate date for determining the COMI or the existence of an establishment.

Question 2.2 [maximum 3 marks] [3]

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

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

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

Answer regarding Statement 1: "Article 14. [1] Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]." The legislative comments to Article 14 state, among other things, that: "106. The main purpose of notifying foreign creditors as provided in paragraph 1 is to inform them of the commencement of the insolvency proceeding and of the time-limit to file their claims. Furthermore, as a corollary to the principle of equal treatment established by article 13, article 14 requires that foreign creditors should be notified whenever notification is required for creditors in the enacting State."

Source: UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment, available at [insolvency-e.pdf \(un.org\)](#).

Answer regarding Statement 2: "Article 10: [1] Limited Jurisdiction." Article 10 contains the so-called "Safe Conduct Rule." The rule is aimed at preventing that the court in the enacting state can assume jurisdiction of a debtor's assets for the sole reason that a foreign representative has filed a recognition

application in another state. More specifically, “94. Article 10 constitutes a ‘safe conduct’ rule aimed at ensuring that the court in the enacting State would not assume jurisdiction over all the assets of the debtor on the sole ground of the foreign representative having made an application for recognition of a foreign proceeding. The article also makes it clear that the application alone is not sufficient ground for the court of the enacting State to assert jurisdiction over the foreign representative as to matters unrelated to insolvency. The article responds to concerns of foreign representatives and creditors about exposure to all-embracing jurisdiction triggered by an application under the Model Law.”

Source: *see id.*

Answer regarding Statement 3: “Article 16. Presumptions concerning recognition.” Article 16(3) [1] contains the “COMI” presumption, which provides that “3. In the absence of proof to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor’s main interests.”

Source: *see id.*

Question 2.3 [2 marks] [1]

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 *IBA* case involved, among other issues, the question as to whether an application of a foreign representative for an indefinite continuation of the automatic moratorium should be granted under article 21 of the Model Law a result or extension of an earlier recognition order. In affirming the lower court, the Court of Appeals agreed with two creditors who opposed the “Moratorium Continuation Application.” The opposing creditors claimed that they should be able to pursue their claims against the debtor under the Gibbs Rule. The lower court denied the application and held that granting such a continued moratorium would effectively be a way around the Gibbs Rule. As such, the lower court essentially upheld the Gibbs Rule. In affirming the lower court, the Court of Appeals specifically found and held that “[a]n English court could only properly grant the stay sought by *IBA*, which is avowedly intended to prevent the English creditors from enforcing their English law rights indefinitely, if it were satisfied of two things. First, the stay would have to be necessary to protect the interests of *IBA*’s creditors. Secondly, the stay would have to be an appropriate way of achieving such protection.” Source: 2018 [2018] EWCA Civ 2802 at 86. In the Court’s opinion, “neither of those conditions [was] satisfied” under the circumstances. *Id.*

In support of its decision to affirm, the Court also noted that the continuance of the moratorium after the foreign proceeding has ended was likely not contemplated by the drafters. To that point, the Court stated that “[t]he strong implication is that, once the foreign proceeding has come to an end, and the foreign representative no longer holds office, there is no scope for further orders in support of the foreign proceeding to be made, and any relief previously granted under the Model Law should terminate.” *Id.* at 97.

Suggested answer

- According to the English Court of Appeal, the real issue was whether as a matter of settled practice the UK court should not exercise its power to grant the indefinite moratorium where to do so would (i) in substance prevent the English creditors (that is the Challenging Creditors) from enforcing their English law rights in accordance with

the Gibbs Rule ("Issue 1") and / or (ii) prolong the stay after the Azeri reconstruction has come to an end ("Issue 2").

- In respect of each issue, the English Court of Appeal held that:
 1. **Issue 1:** The UK court would need to be convinced that (a) the indefinite stay is necessary to protect the interests of IBA's creditors and (b) an indefinite stay is the appropriate way of achieving such protection. The factual evidence that can be brought before the court will ultimately decide Issue 1.
 2. **Issue 2:** Based on Article 18 of the MLCBI, the English Court of Appeal in the IBA case appeal held that had the MLCBI ever contemplated the continuance of relief after the end of the relevant foreign proceeding, it would have addressed the question explicitly and provided appropriate machinery for that purpose.

Question 2.4 [2 marks] [2]

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 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**.

The Court has, under Article 21 of the Model Law certain discretionary powers which include, upon request of the foreign representative, among other things, the staying of executions against certain assets if these executions have not been stayed automatically and granting any additional relief under that is available to office holders under the laws of the enacting State. More specifically, Article 21 of the Model Law grants the Court the powers of: "(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 to [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] under the laws of this State."

Source: [insolvency-e.pdf \(un.org\)](#)

The foreign representative has various duties towards the court in the enacting State. Among other things, the foreign representative must keep the court in the enacting state apprised of any substantial changes in the status of the foreign recognized proceeding and changes related to the foreign proceeding regarding the same debtor, among other things. These requirements are set forth in Article 18 of the Model Law which provides as follows:

"Article 18. Subsequent information
From the time of filing the application for recognition of the foreign proceeding, 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.

Source: [insolvency-e.pdf \(un.org\)](#).

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

Commented [BB6]: Sub-total = 9 marks

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] [3]

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.

The access rights granted to a foreign representative under the Model Law are set forth in Articles 9-14 of the Model Law. Among other things, the foreign representative is granted standing (locus standi) in the Court of the enacting State. Different "standing rules" apply depending upon the circumstances of a given case. For example, Article 12 provides standing to a foreign representative when a recognition of a foreign proceeding is required, while Article 11 does not require the recognition of a foreign proceeding. The so-called "Safe Conduct Rule" set forth in Article 10 of the Model Law is also beneficial to the foreign representative and the foreign proceeding as it ensures that the Court in the enacting State does not assume jurisdiction over all of the debtor's assets solely because an application for recognition has been made. Further, foreign creditors enjoy the same rights as creditors in the enacting State regarding the proceeding (Anti-Discrimination principles set forth in Article 13 of the Model Law). Foreign creditors must also receive notice of the commencement of the local proceeding and the deadline to file proof of claims, among other things (Article 14 of the Model Law).

With respect to the foreign representative's rights to co-operation, the Model Law contains Articles 25-27 that address this subject.

Article 25 of the Model Law provides, in pertinent part, that ". . . the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a [[designated person] . . . under the law of the enacting State]." Subsection 2 of Article 25 further provides that [t]he court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives."

Source: [insolvency-e.pdf \(un.org\)](#). Notably, the communication referenced above may commence prior to a recognition proceeding application has been filed. In terms of "means of communication," the Model Law, in Article 27, sets forth a list of non-exhaustive forms of appropriate communication which are further expanded upon in the Practice Guide to the Model Law.

- **Also discuss the key benefits: 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] [3]

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 Model Law's main goal, as set forth in the preamble, is "to provide effective mechanisms for dealing with cases of cross-border insolvency." The recognition and relief provisions, which are related concepts, reflect that goal. See [insolvency-e.pdf \(un.org\)](#)

Importantly, the fact pattern is devoid as to whether the foreign proceeding is a main or non-main proceedings, a critical distinction when determining the relief available.

Requirements. Article 15 provides the evidentiary requirements that must be satisfied for a foreign proceeding to be recognized under Article 17 of the Model Law. [1] Pursuant to Article 15 of the Model Law, the foreign representative must ("shall") submit with the recognition application, "(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) [i]n 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] *Id.* The foreign representative must also disclose all foreign proceedings in connection with the debtor the foreign representative is aware of. In some cases, a translation of the documents must also be submitted.

Article 16 of the Model Code provides for certain presumptions in connection with the recognition of a foreign proceeding, which includes, among others, the presumption that the documents submitted by the foreign representative in support of the application are authentic and the COMI presumption. [1] Notably, the Model Law does not define COMI; however the UNCITRAL Guide to Enactment sets forth key factors to consider in determining the COMI.

The foreign representative has the obligation to fully and honestly disclose all relevant facts to the enacting state. Otherwise, the Court could view the recognition application as abuse of process. The foreign representative also has the duty to keep the enacting state informed as to all developments in connection with the foreign proceeding (Article 18 of the Model Law).

Certain issues that may come into play in the event a state has implemented reciprocity restriction do not come into the play under the facts of this case, as State A has not implemented such rules. As such, these issues are not discussed here.

Your answer must also include a discussion on the following:

1. **Exclusions:** If the debtor is an entity that is subject to a special insolvency regime in State B, the foreign representative should first of all check if the foreign proceedings regarding that type of a debtor are excluded in State A based on Article 1(2) of the implemented Model Law in State A.
2. **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.

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] [2]

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.

With respect to what relief might be available, I first note that there are differences depending upon whether the foreign proceeding constitutes a main or non-main foreign proceeding. Here, the fact pattern is devoid of this information. As such, I will briefly discuss both.

Assuming the foreign proceeding is a foreign main proceeding (COMI in state B), the following relief will likely be available under the facts of this case. First, Article 20 of the Model Law sets forth certain mandatory relief in such a case. Among other things, certain individual actions and proceedings against the debtor may not be commenced, continued or executed (a stay is implemented automatically), and assets may not further be encumbered, transferred or disposed of. [1] Notable, the stay pursuant to Article 20(1)(a) of the Model Law “does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.” See notes to Article 20. Source: [insolvency-e.pdf \(un.org\)](#).

In addition, Article 21 of the Model Law provides the Court with certain discretionary powers in tailoring appropriate relief. Article 21 of the Model law applies to both – main-and non-main foreign proceedings). Among other things, the Court has discretion to grant, among other things, “a) [s]taying 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) [s]taying execution against the debtor’s assets to the extent it has not been stayed under paragraph 1 (b) of article 20; (c) [s]uspending 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;” *Id.* Notably, to the extent the Court in the enacting state is satisfied that creditors’ rights in the enacting state are sufficiently protected, the Court may, 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.” Article 20(2) of the Model Law.

To the extent the case at hand qualifies as a foreign non-main proceeding (merely establishment in State B), Article 20 is inapplicable. Instead, the relief just discussed under Article 21 of the Model law is available.

Moreover, in both proceedings (main-and non-main foreign proceedings), the Court may, at the request of the foreign representative, grant interim relief if necessary (“urgently needed”) to protect the assets of the debtor or interests of creditors under Article 19 of the Model Law. If granted, the relief is provisional in nature and only applies during the period of the recognition application and the granting of the same. The relief may include implementing a stay and certain post-recognition relief set forth in Article 21 of the Model Law. [1]

Importantly, as set forth in Article 23 of the Model Law, the foreign representative obtains standing under the laws of the enacting state and an intervention right (Article 24 of the Model Law) to intervene, if necessary, on behalf of the debtor, in local proceedings in which the

debtor is a party. However, these articles are drafted narrowly. For example, Article 24 specifically states that the intervention right only applies when “the requirements of the law of this State are met.” Similarly, Article 23 only grants standing to the foreign representative to initiate certain avoidance actions.

It must be noted, however, that the afore-mentioned available relief is not unlimited. In addition to the restrictive nature of Articles 23 and 24 just described above, the Court is further obligated to strike a balance between the requested relief and ensuring that the interests of creditors, among others, are protected. In addition, the Court is empowered to tailor requested relief as it deems appropriate and as set forth below:

“In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 of this article, the court **must** be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected. 2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate. 3. 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.”

Source Article 22 of the Model Law *available at: [insolvency-e.pdf \(un.org\)](#)*

Lastly, English Courts in at least four important cases have further addressed certain limitations in connection with the relief available under Article 21 of the Model Act (titled “Relief that may be granted upon recognition of a foreign proceeding”). These cases addressed, among other things, the appropriateness of granting a worldwide applicable “freezing order,” the indefinite continuation of the automatic moratorium, and the enforcement of insolvency-related *in personam* default judgment.

Suggested answer:

1. Pre-recognition interim relief: From the time of filing the recognition application until the recognition decision has been made certain interim relief as set forth in Article 19(1)(a), (b) and (c) of the Model Law can be requested. The foreign representative will have to demonstrate to the court that such relief is urgently needed to protect the assets of the debtor or the interests of the creditors. If the foreign proceedings are non-main proceedings, the court may refuse to grant interim relief if it would interfere with the administration of a foreign main proceeding (Article 19(4) of the Model Law).
2. Post-recognition relief (automatic or discretionary): In case of a foreign main proceeding, there will be automatic relief as set forth in Article 20 of the Model Law. For both foreign main and non-main proceedings, article 21 of the Model Law set forth what post-recognition relief can be requested by the foreign representative. Appropriate relief under Article 21(1) of the Model Law must be necessary to protect the assets of the debtor or the interests of the creditors. The relief set forth in Article 21(2) of the Model Law requires the court to be satisfied that the interests of the creditors in State A are adequately protected. In case of a foreign non-main proceeding there is an additional requirement that needs to be met before relief can be granted. According to Article 21(3) of the Model Law the court in such a case must also be satisfied that the relief relates to assets that, under the law of State A, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

[In this context of relief, the foreign representative of State B could also think about the need to exercise any anti-avoidance powers in State A based on article 23 of the MLCBI]

3. **Adequate protection:** Pursuant to Article 22 of the Model Law any interim relief under Article 19 of the Model Law or any post-recognition relief under Article 21 of the Model Law require the court in State A to be satisfied that the interests of the creditors and the other interested persons, including the debtor, are adequately protected and any relief may be subject to conditions as the court considers appropriate.
4. **Existing international obligations of State A:** Based on Article 3 of the Model Law, the court in State A should again verify that there are no existing international obligations of State A (under a treaty or otherwise) that may conflict with granting the requested relief under the implemented Model Law in State A.
5. **Public policy exception:** The court in State A should, based on Article 6 of the Model Law, also again verify that the relief application is not manifestly contrary to public policy of State A.

Question 3.4 [maximum 1 mark] [1]

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 an order issued in 2021 by the English High Court of Justice, in the *Igor Vitalievich Protasov and Khadzhi-Murat Derev* case, the Court denied to granting a worldwide freezing order as provisional relief under Article 19 of the Model Law. There, the applicant for the order argued that “there remain[ed] a risk of dissipation of assets by Mr Derev.” See [Protasov v Derev | \[2021\] EWHC 392 \(Ch\) | England and Wales High Court \(Chancery Division\) | Judgment | Law | CaseMine](#) at 4. The Court found that such relief was not warranted under the circumstances of this case. More specifically, the Court noted that “[i]t seems to me that that is not because of a lack of jurisdiction in the strict sense, but because the bankruptcy regime offers other forms of protection which mean that relief in the form of a freezing order or similar injunction is simply not warranted.” See *id.* at 48.

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

Commented [DDB7]: 11/15

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]

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

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]**.

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.

Response to Question 4.1.1.: Article 2(a) of the Model law defines a "foreign proceeding" as a "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" Although the fact pattern states that country A has not adopted the Model Law, for purposes of this questions the instructions clearly state that it "may further [be] assume[d] that the Bank is **not excluded** from the scope of the MLCBI by article 1(2) of the MLCBI."

As such, each criteria set forth in Article 2(a) must be (Article 2(a) is written in the conjunctive, as such all requirements must be satisfied) evaluated by the Court in the enacting state in evaluating whether the liquidation of the Bank in state A qualifies as a "foreign proceeding." The liquidation procedure is pending in a foreign state – state A, so this prong is satisfied.

a. Judicial or Administrative proceeding that is collective in nature:

The liquidation is certainly a proceeding that is administrative and regulatory in nature. Indeed, the process is overseen by various governmental bodies in State A such as the National Bank (“NA”) and the Deposit Guarantee Fund (“DGF”), among others, subject to the Law of Country A on Banks and Banking Activity (“LBBA”).

At issue could potentially be the required “collective in nature” prong of Article 2(a). With respect to this prong, the UNCITRAL Guide to Enactment provides that, the Court should consider in its evaluation “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.” Notably, as expressed in paragraph 71 of the UNCITRAL Guide of Enactment, “[t]he definition would also include those proceedings in which the debtor retains some measure of control over its assets, albeit under court supervision (e.g. suspension of payments, “debtor in possession”).” Critically, the Model Law should not be utilized “merely as a collection device for a particular creditor or group of creditors who might have initiated a collection proceeding in another State.” And it is further not “intended that the Model Law serve as a tool for gathering up assets in a winding up or conservation proceeding that does not also include provision for addressing the claims of creditors.”

Here, the facts are devoid as to exactly what rights creditors are afforded under the liquidation proceeding in State A. Indeed, it merely provides that the DGF has extensive powers, to among other things, “compile a register of creditor claims and to seek to satisfy those claims.” Therefore, it is questionable if the proceeding here is “subject to local priorities and statutory exceptions, and to local exclusions relating to the rights of secured creditors.”

The next careful inquiry the English Court should conduct is whether the LBBA constitutes a “law relating to insolvency.” With respect to this prong, the UNCITRAL Guide to Enactment also provides some guidance. More specifically, paragraph 41 notes with respect to this prong that “[t]he purpose was to find a description that was sufficiently broad to encompass a range of insolvency rules irrespective of the type of statute or law in which they might be contained and irrespective of whether the law that contained the rules related exclusively to insolvency.” The term “law relating to insolvency” was also chosen “to acknowledge the fact that liquidation and reorganization might be conducted under law that is not labelled as insolvency law (e.g. company law), but which nevertheless deals with or addresses insolvency or severe financial distress.”

Based on the facts at issue, the Court might find that the LBBA constitutes a “law relating to insolvency” as it provides for many of the same or similar rights and provisions as other insolvency statutes. For example, the powers of the DGF provided for in the LBBA are very similar to powers granted to insolvency managers/trustees/debtor-in-possession and others under other insolvency statutes. Further, the appointment of the authorized person also ensures independence as is also often required in the appointment of judicial manager or insolvency practitioners in cross-border cases. As such, a court here might therefore be satisfied that this prong is established.

The foreign proceeding must further be conducted for purposes of reorganization or liquidation. The fact pattern here states that the bank is in liquidation proceedings in State A; however, the Court must still determine whether this term satisfied the same term under the Model Law. Guidance is provided in UNCITRAL Guidance to Enactment 77-78. Here, the guidance text provides the following assistance. Proceedings that might not satisfy this prong are usually “proceedings in which the powers conferred and the duties imposed upon the foreign representative are more limited than the powers or duties typically associated with liquidation or reorganization, for example, the power to do no more than preserve assets.” Here, as described above, the liquidator has broad and similar “powers and duties that are typically associate with liquidation,” including the distribution to creditors. However, a thorough analysis and more facts are needed to determine whether this prong is satisfied.

Lastly, the foreign proceeding must be subject to control and supervision by a foreign court. This prong might be problematic as the liquidation process under the LBBA in State A does not appear to be under court supervision. Indeed, no court application appears to have been made and was needed to be made. The UNCITRAL Guidance Text provides, among other things, that “[c]ontrol or supervision may be exercised not only directly by the court but also by an insolvency representative where, for example, the insolvency representative **is subject to control or supervision by the court. Mere supervision of an insolvency representative by a licensing authority would not be sufficient.**” Similar guidance regarding this point, among others, may be found in the Judicial Perspective which “is designed to assist judges with questions that may arise in the context of an application for recognition under the UNCITRAL Model Law on Cross-Border Insolvency.” Source: [UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective | United Nations Commission On International Trade Law](#). There, paragraph 85 elaborates on that issue noting similarly that “[c]ontrol or supervision may be exercised not only directly by the court, but also by an insolvency representative where, for example, the insolvency representative is subject to control or supervision by the court. Mere supervision of an insolvency representative by a licensing authority would not be sufficient.” *Id.* at paragraph 88. However, the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment, in paragraph 74 appears to deviate from the previous statements in that it also references supervision by non-judicial authorities as follows: “in order to obviate the need to refer to a foreign non-judicial authority whenever reference is made to a foreign court, the definition of “foreign court” in subparagraph (e) includes also non-judicial authorities.” See [insolvency-e.pdf \(un.org\)](#). The question the Court therefore has to decide is whether the DGF constitutes such a “non-judicial authority.”

Here, there appears to be no court-involvement at all under the liquidation proceedings under the LBBA. Further, the DGF is an economically independent institution, and no public authorities have any rights to interfere with its functions and powers. The Court could further classify the DGF authority as a mere licensing authority. As such, the court in the enacting state will likely find that this prong is not satisfied. Such a finding would prevent for the liquidation proceeding to be able to be classified as a “foreign proceeding” as required under the Model Law.

The fact that the English Proceeding is pending at the time the Applicants are contemplating to apply for a recognition proceeding should not change this conclusion as Article 2 of the Model Law must be satisfied.

Source: [1997-model-law-insol-2013-guide-enactment-e.pdf \(un.org\)](#)

Good answer, if a bit long! Would like to have seen mention of the *Agrokor* and *Sanko Steamship* cases. 8 out of 10

Response to Question 4.1.2.:

The term “foreign representative” is defined in Article 2(d) of the Model Law which provides as follows: (d) “Foreign representative” means 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.” Notably, it is not required that the foreign representative be authorised by a foreign court. To the contrary, as the stated in the UNCITRAL The Judicial Perspective at paragraph 35, “[w]hether the “foreign representative” is authorized to act as a representative of a debtor’s liquidation or reorganization is determined by the applicable law of the State in which the insolvency proceedings began. In some cases, expert evidence of applicable law may be desirable to determine whether the particular proceeding falls within the scope of the definitions. In other cases, where the procedure at issue is well known to the receiving court, expert evidence may not be necessary. Where the decision appointing the foreign representative indicates that that person satisfies the definition in article 2, subparagraph (d), the court may rely on the presumption established by article 16, paragraph 1 of the MLCBI.”

Source: [mlcbi_judicial_perspective_2021_advance_copy.pdf\(un.org\)](#)

Here, under the facts of this case, the English Court is likely to find that the Applicant meets the definition of "foreign representative" despite not having been appointed by the Court. Here, the applicant is nevertheless "authorized to act as a representative of a debtor's liquidation or reorganization is determined by the applicable law of the State in which the insolvency proceedings began." Here in State A. **So do both Ms G and the DGF have locus standi? 3 out of 10**

*** End of Assessment ***