



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 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. 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 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).

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] 7 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 one of the following international organisations' mandate is to further the progressive harmonization of the law of international trade?

- (a) World Trade Organization.
- (b) **The United Nations Commission on International Trade Law.**
- (c) The United Nations Conference on Trade and Development.

Question 1.2

Which trend(s) and process(es) served as a proximate cause for the development MLCBI?

- (i) Rise of corporations.
- (ii) Internationalisation.
- (iii) Globalization.
- (iv) Universalism.
- (v) Territorialism.
- (vi) Technological advances.

Choose the correct answer:

- (a) Options (i), (ii), (iii), (iv) and (vi).
- (b) Options (i), (ii), (iii) and (iv).
- (c) Options (ii), (iii), (iv) and (vi).
- (d) **All of the above.**

Question 1.3

Which of the following statements incorrectly describe the MLCBI?

- (i) It is legislation that imposes a mandatory reciprocity on the participating members.
- (ii) It is a legislative text that serves as a recommendation for incorporation in national laws.
- (iii) It is intended to substantively unify the insolvency laws of the foreign nations.
- (iv) It is a treaty that is binding on the participating members.

Choose the correct answer:

- (a) Options (ii), (iii) and (iv).
- (b) Options (i), (ii) and (iv).
- (c) Options (i), (iii) and (iv).
- (d) All of the above are incorrect.

Question 1.4

Which of the below options reflect the objectives of the MLCBI?

- (i) To provide greater legal certainty for trade and investment.
- (ii) To provide protection and maximization of value of the debtor's assets.
- (iii) To provide a fair and efficient administration of cross-border insolvencies that protects all creditors and the debtors.
- (iv) To facilitate the rescue of financial troubled businesses.
- (v) To ensure substantive unification of insolvency laws of member-states.

Choose the correct answer:

- (a) Options (i), (ii), (iii) and (iv).
- (b) Options (ii), (iii) and (v).
- (c) Options (ii), (iv) and (v).
- (d) None of the above.

Question 1.5

Which two of the below hypotheticals demonstrate a more likely precursor to a "cross-border insolvency"?

- (i) An insolvency proceeding is commenced in jurisdiction A, but a significant asset is located outside of jurisdiction A.
- (ii) An insolvency proceeding is commenced in jurisdiction A and immediately transferred to a foreign jurisdiction B.
- (iii) An insolvency proceeding is commenced in jurisdiction A, in which a group of affiliated debtors has its COMI as well as all assets and liabilities.
- (iv) An insolvency proceeding is commenced in jurisdiction A, but certain liabilities are governed by laws of a foreign jurisdiction B.
- (v) An insolvency proceeding is commenced in jurisdiction A, but all *de minimis* assets are located in foreign jurisdictions.

Choose the correct answer:

- (a) Options (i) and (ii).
- (b) Options (ii) and (iii).
- (c) Options (iii) and (v).
- (d) Options (i) and (v).**

Question 1.6

A restructuring proceeding is commenced in jurisdiction A by a corporation with COMI in jurisdiction A and an overleveraged balance sheet. The court in jurisdiction A, overseeing the restructuring, entered a final and non-appealable order, approving the compromise and restructuring of the debt. The entered order, by its express terms, has a universal effect. Based on these facts alone, what is the **effect** of such order's terms in jurisdiction B if jurisdictions A and B do **not** have a bilateral agreement?

- (a) Binding within jurisdiction B.
- (b) Binding within jurisdiction B, but certain actions need to be taken.
- (c) No effect within jurisdiction B.**
- (d) Likely no effect within jurisdiction B.**
- (e) Not enough facts provided to arrive at a conclusion.

Question 1.7

Which of the following statements set out the reasons for the development of the Model Law?

- (i) The increased risk of fraud by concealing assets in foreign jurisdictions.
- (ii) The difficulty of agreeing multilateral treaties dealing with insolvency law.

- (iii) To eradicate the use of comity.
- (iv) The practical problems caused by the disharmony among national laws governing cross-border insolvencies, despite the success of protocols in practice.

Choose the correct answer:

- (a) Options (i), (ii) and (iii).
- (b) Options (i), (ii) and (iv).**
- (c) Options (ii), (iii) and (iv).
- (d) All of the above.

Question 1.8

Which of the statements below are incorrect regarding COMI under the MLCBI?

- (i) COMI is a well-defined term in the MLCBI.
- (ii) COMI stands for comity.
- (iii) The debtor's registered office is irrelevant for purposes of determining COMI.
- (iv) COMI is being tested as of the date of the petition for recognition.

Choose the correct answer:

- (a) Options (i), (ii) and (iii).**
- (b) Options (ii), (iii) and (iv).**
- (c) All of the above.
- (d) None of the above.

Question 1.9

In the event of the following concurrent proceedings, indicate the order of the proceedings in terms of their hierarchy / primacy:

- (i) Foreign main proceeding.
- (ii) Foreign non-main proceeding.
- (iii) Plenary domestic insolvency proceeding.

Choose the correct answer:

- (a) Options (ii), (i) and then (iii).
- (b) Options (i), (ii) and then (iii).

(c) Options (iii), (i) and then (ii).

(d) Options (iii), (ii) and then (i).

Question 1.10

Which of the statements below are correct under the MLCBI?

- (a) The foreign representative always has the powers to bring avoidance actions.
- (b) The hotchpot rule prioritises local creditors.
- (c) The recognition of a foreign main proceeding is an absolute proof that the debtor is insolvent.
- (d) **None of the above are correct.**

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

Question 2.1 [maximum 3 marks] 3 marks

What is the key distinction between the application of the MLCBI and the European Union (EU) Regulation on insolvency proceedings? Also describe one key benefit and disadvantage of each approach.

The MLCBI doesn't aim to harmonize the substance of insolvency laws across States. It's not a treaty, nor a convention, and doesn't enforce reciprocity. Instead, it's a recommendation that can be considered as "soft law". Therefore, it can be fully or partially integrated into a State's domestic legislation, based on the concepts of (i) providing foreign representatives and creditors access to courts; (ii) recognition of foreign proceedings; (iii) providing relief; and (iv) cooperation with foreign courts and representatives. On the other hand, the EIR (and its recast) is a regulation/convention that (was meant to and) was incorporated to the domestic law of each of the EU Member States ("hard law").

A significant advantage of the MLCBI is its ability to steer the development of domestic insolvency frameworks without requiring adjustments for the distinct traits of each jurisdiction (which can take time). Each country will harmonize the MLCBI with its domestic legal frameworks individually. However, considering that it is not binding, its effectiveness will rely on the efficiency of each country in formally integrating the MLCBI recommendations into their insolvency framework.

The European Insolvency Regulation (EIR) offers a positive [?] by ensuring consistent rules for cross-border insolvency across EU member states, fostering legal certainty and efficiency. This standardization enhances predictability for stakeholders, facilitating the resolution of cases and safeguarding creditors' interests. However, the EIR's limited scope excludes non-EU countries, potentially causing jurisdictional conflicts and legal ambiguities for cases involving international elements. Furthermore, variations in national insolvency laws among EU states may hinder seamless cooperation and harmonization under the EIR framework.

Question 2.2 [maximum 2 marks] 2 marks

Explain what the court should primarily consider using its discretionary power to grant post-recognition relief under Article 21 of the MLCBI.

Article 21(1) of the Model Law grants the court in the enacting State discretionary authority, upon recognition of a foreign proceeding, to provide relief to safeguard the debtor's assets or creditors' interests. This relief includes staying actions or proceedings, suspending asset transfers, facilitating evidence collection, entrusting asset administration to the foreign representative, extending interim relief, and granting additional relief available under domestic laws. Paragraph 2 allows the transfer of debtor's assets to the foreign representative if local creditors' interests are protected, while paragraph 4 ensures relief for a foreign non-main proceeding aligns with the enacting State's law and doesn't disrupt other insolvency proceedings.

When deciding whether to grant discretionary relief under Article 21, or when modifying or terminating any relief already granted, the court must ensure that the interests of creditors and other relevant parties, including the debtor, are sufficiently safeguarded. This requirement underscores why the court may opt to grant relief subject to conditions that it deems appropriate.

Question 2.3 [2 marks] 2 marks

Explain the protections granted to creditors in a foreign proceeding under Article 13 of the MLCBI.

Article 13 of the Model Law grants foreign creditors equal rights as those domiciled in the enacting State, maintaining the hierarchy of claims within the enacting State. Nevertheless, a foreign creditor's claim cannot be relegated to a lower priority than general unsecured claims solely based on their foreign status (anti-discrimination principle).

Also, Article 13 does not authorize the recognizing court to evaluate the merits of the foreign court's decision or issues related to the commencement of the insolvency proceeding. Its purpose is to establish clear and predictable criteria for the recognition and enforcement of insolvency-related judgments. Therefore, the decision to recognize and enforce an insolvency-related judgment, as outlined in Article 13, follows specific criteria:

- The judgment must qualify as an insolvency-related judgment;
- The requirements for recognition and enforcement, including effectiveness and enforceability in the originating State, must be met;
- Recognition must be sought by an appropriate party from a recognized court or authority, or the issue must arise incidentally before such a body;
- Necessary documents or evidence specified in Article 11(2) must be provided.
- Recognition must not violate public policy; and
- There should be no grounds for refusal as per Article 14.

Question 2.4 [maximum 3 marks] 3 marks

What is a key distinction with respect to the relief available in foreign main versus foreign non-main proceedings?

If the COMI (though not precisely defined) is in the jurisdiction where foreign proceedings are initiated, those proceedings are considered main insolvency proceedings, entailing automatic mandatory relief. However, if the debtor merely maintains an establishment in

the jurisdiction of the foreign proceedings, the proceedings are categorized as non-main proceedings, lacking automatic relief but subject to discretionary post-recognition relief by the court. Reciprocity is not mandated, and there exists an ongoing obligation to update the court on developments. Urgent interim relief may be granted before the recognition decision following the submission of the recognition application, ensuring adequate protection of the interests of the debtor's creditors and other stakeholders.

QUESTION 3 (essay-type questions) [15 marks in total] 2 marks

Question 3.1 [maximum 4 marks] 2 marks

A debtor has its COMI in Germany and an establishment in Bermuda, and both foreign main and foreign non-main proceedings as well as the recognition proceedings in the US have been opened. In this scenario, explain where the foreign proceedings must have been filed, and the likely result.

In this scenario, since the debtor's center of main interests (COMI) is in Germany, the foreign main proceeding would have been filed in Germany. The foreign non-main proceeding, on the other hand, would have been filed in Bermuda, where the debtor has an establishment. The likely result of this situation is that the German proceeding would be recognized as the foreign main proceeding, given that the debtor's COMI is located there. The Bermuda proceeding would be recognized as the foreign non-main proceeding.

In the United States, recognition proceedings would likely be initiated to recognize both the foreign main and non-main proceedings. The US court would respect the main proceeding's primacy and accord it greater deference, while also recognizing the non-main proceeding's existence and its relevance to the overall insolvency process.

Requires references to definitional and procedural provisions of MLCBI eg. Art. 2, 15, 17, 6..

Question 3.2 [maximum 3 marks] 0 mark

Joint provisional liquidators commenced a recognition proceeding in the US and immediately were sued and served with discovery in connection with their alleged tortious interference with contract rights of the US-based vendors of the foreign debtor. Explain the likely outcome.

In this scenario, the likely outcome would involve the US court addressing the lawsuit against the joint provisional liquidators and the related discovery requests.

Since the joint provisional liquidators have initiated a recognition proceeding in the US, the court would have to consider their status and the nature of the allegations against them. The court would likely evaluate whether the lawsuit and discovery requests interfere with the recognition proceeding or the provisional liquidators' duties.

If the court determines that the lawsuit and discovery requests significantly impede the recognition proceeding or the liquidators' ability to fulfill their duties, it may issue a stay or other protective orders to address the situation. This would allow the recognition proceeding to proceed without undue interference.

However, if the court finds that the lawsuit and discovery requests are unrelated to the recognition proceeding or the liquidators' duties, it may allow them to proceed independently. In such a case, the liquidators would need to defend themselves against the allegations of tortious interference with contract rights through the normal legal process.

Overall, the likely outcome would involve the US court balancing the need to protect the recognition proceeding and the joint provisional liquidators' duties with the requirements of due process and fairness in addressing the allegations against them.

Requires discussion based on Art.10 MLCBI

Question 3.3 [maximum 4 marks] 0 mark

A foreign representative who administers assets in a debtor-in-possession-like restructuring proceeding in the UK commences a recognition proceeding in the US, setting the recognition hearing 35 days after the petition date due to the availability of the court. There is no litigation pending or threatened against the foreign debtor, but US-governed leases and intellectual property licenses have *ipso facto* clauses (that is, bankruptcy-triggered terminations) that are not enforceable under the US Bankruptcy Code. Based on these facts, explain what steps, if any, should the foreign representative take to protect the assets and why?

In this scenario, the foreign representative should take proactive steps to protect the assets involved in the restructuring proceeding, particularly in light of the *ipso facto* clauses present in US-governed leases and intellectual property licenses. Here are the steps they should consider:

Notification to Counterparties: The foreign representative should promptly notify the US counterparties to the leases and intellectual property licenses about the commencement of the recognition proceeding in the US. This notification should inform them that the *ipso facto* clauses triggering termination upon bankruptcy filing are unenforceable under the US Bankruptcy Code.

Engagement with Counterparties: The foreign representative should engage in discussions with the US counterparties to reassure them about the ongoing restructuring process in the UK and the implications for the leases and licenses. Providing information about the debtor's financial situation, the restructuring plan, and the protections available under UK law may help alleviate concerns and encourage cooperation.

Seeking Protective Orders: If necessary, the foreign representative can petition the US bankruptcy court for protective orders to prevent the enforcement of the *ipso facto* clauses by the US counterparties. These orders can provide legal clarity and stability during the recognition process and ensure that the assets remain available for the restructuring proceedings in the UK.

Monitoring Legal Developments: The foreign representative should closely monitor any legal developments or challenges raised by the US counterparties regarding the *ipso facto* clauses. Being proactive in addressing any potential disputes or objections can help maintain momentum in the restructuring process and protect the assets from unwarranted actions by the counterparties.

By taking these steps, the foreign representative can mitigate the risks associated with the *ipso facto* clauses and safeguard the assets involved in the restructuring proceeding, ultimately supporting the successful completion of the restructuring efforts in the UK.

Requires discussion based upon Art. 19 MLCBI and its definitions, as well as references to the provisions of Art 20 and/or 21 MLCBI as applicable.

Question 3.4 [maximum 4 marks] 0 mark

A foreign representative, who administers the assets of an insolvent debtor in an insolvency proceeding pending in Country A (where the foreign debtor has its registered office and not much more), commenced a proceeding in Country B to recognise the foreign proceeding as the foreign main proceeding in order to sell certain assets within the territorial jurisdiction of Country B, but unfortunately the insolvency court considering the petition for recognition denied the recognition of the foreign proceeding as a foreign main proceeding. Explain what may or should the foreign representative do next? What should the foreign representative have done at the outset?

If a foreign proceeding isn't recognized as a foreign main proceeding in Country B, the foreign representative could appeal the decision or file for recognition as a foreign non-main proceeding. Alternatively, they may explore alternative strategies for selling assets or seek legal advice. At the outset, they should have conducted a thorough analysis of insolvency laws in both countries, prepared necessary documentation, considered potential challenges, and engaged with experienced legal counsel.

Art.16 MLCBI is the main reference for "rebuttable COMI presumption". References to Art.17, 21, 6 are also required

QUESTION 4 (fact-based application-type question) [15 marks in total] 2 marks

Assume you received a file for a new client of the firm. The file contains the facts described below. Based on these facts, analyse key filing strategy to ensure a successful restructuring - specifically, whether to apply for recognition of main or nonmain proceeding or both (in light of COMI / establishment analysis), what papers need to be submitted, and what relief should be requested on day one of the filing.

The client is a Cayman Islands incorporated and registered entity. It is a financial service holding company for a number of direct and indirect subsidiaries that operate in the commercial automobile insurance sector in the United States. Globe Holdings was initially formed as a Canadian company in 2009, under the laws of Ontario, Canada. A year later, following certain reverse merger transactions, it filed a Certificate of Registration by Way of Continuation in the Cayman Islands to re-domesticate as a Cayman Islands company and changed its name to Globe Financial Holdings Inc. When it re-incorporated in the Cayman Islands in 2010 (from Canada), Globe Holdings provided various notices of its re-incorporation, including in the public filings with the Securities and Exchange Commission (SEC). Around that time, Globe Holdings retained its Cayman Islands counsel Cedar and Woods, which has regularly represented Globe Holdings for over a decade. **Globe Holdings has a bank account (opened just a few days ago) in the Cayman Islands from which it pays certain of its operating expenses.** Globe Holdings often holds its board meetings virtually, and **not physically in the Cayman Islands**, and, having obtained support for a bond restructuring, all its regular and special board meetings have been organized by its local Cayman counsel virtually. The client also maintains its books and records in the Cayman Islands. Its public filings with the SEC as well as the prospectus provided in connection with the issuance of the Notes disclosed that Globe Holdings is a Cayman Islands company and explained the related indemnification and tax consequences resulting from Globe Holdings' place of reformation.

Globe Holdings has no business operations of its own. **The business is carried out through its non-insurance company non-debtor subsidiaries that are all incorporated under the**

US laws and operating in the US. All employees are in the US. The headquarters are also in the US.

In April 2017, Globe Holdings offered and issued USD 25,000,000 in aggregate nominal principal amount of 6.625% senior unsecured notes due in 2023 (referenced above as the Notes) governed by New York law.

In 2019, Globe Holdings recorded on its consolidated balance sheet a significant increase in liabilities. As a result, Globe Holdings worked with external professional advisors to undertake a formal strategic evaluation of its subsidiaries' businesses. In September 2020, Globe Holdings announced that it was informed its shares would be suspended from the NASDAQ Stock Market due to delinquencies in filing its 10-K. Thereafter, on November 6, 2020, its shares were delisted from the NASDAQ stock market.

An independent third party is actively marketing the sale of the corporate headquarters located in New York including the land, building, building improvements and contents including furniture and fixtures.

Despite these efforts to ease the financial stress, the culmination of incremental challenges consequently resulted in Globe Holdings being both cash flow and balance sheet insolvent.

Globe Holdings retained Cedar and Woods, its long-standing Cayman Islands counsel, to advise on restructuring alternatives. Upon consultations with Cayman counsel and its other professionals, Globe Holdings ultimately determined that the most value accretive path for the Noteholders was to commence a scheme under Cayman Islands law, followed by a chapter 15 recognition proceeding in the United States, most notably to extend the maturity of the Notes and obtain the flexibility to pay the quarterly interest "in kind".

Globe Holdings expeditiously secured the support of the majority of the Noteholders of its decision to delay interest payments and restructure the Notes through a formal proceeding. Thereafter, on August 31, 2021, about 57% of the Noteholders acceded to the Restructuring Support Agreement (RSA) governed by the New York law. The RSA memorialized the agreed-upon terms of the Note Restructuring. When Globe Holdings approached its largest Noteholders regarding the contemplated restructuring, their expectations were that any such restructuring would take place in the Cayman Islands, which is reflected in the RSA.

On July 4, 2023, the client, in accordance with the terms of the RSA, applied to the Cayman Court for permission to convene a single scheme meeting on the basis that the Noteholders, as the only Scheme Creditors, should constitute a single class of creditors for the purpose of voting on the Scheme.

On July 26, 2023 the Cayman Court entered a convening order (the Convening Order) on the papers, among other things, authorizing the client to convene a single Scheme Meeting for the purpose of considering and, through a majority vote, approving, with or without modification, the Scheme. The Scheme Meeting was held in the Cayman Islands at the offices of Cedar and Woods. Given the Covid-19 pandemic, Scheme Creditors were also afforded the convenience of observing the Scheme Meeting via Zoom and in person via a satellite location in New York. Following the Scheme Meeting, the chairman of the Scheme Meeting (presiding over the meeting in person) reported to the Cayman Court that the Scheme was overwhelmingly supported by the Noteholders, with 91.83% in number and 99.34% in value voting in favor of the Scheme. The Sanction Hearing was held, and an order sanctioning the Scheme (the Sanction Order), which was filed with the Cayman Islands Registrar of Companies the same day.

During all of this time, a class action litigation was in the US was brewing but has been filed yet.

Although Globe Holdings is registered in the Cayman Islands, its main business activities occur in the US, where all subsidiaries, employees, and headquarters are situated. Nevertheless, it retains substantial connections to the Cayman Islands, such as legal representation, a bank account, and virtual board meetings. Consequently, conducting a comprehensive analysis of its Centre of Main Interest (COMI) and establishment becomes imperative to ascertain whether to seek recognition of a main proceeding, a non-main proceeding, or both.

The Model Law doesn't offer a direct definition of COMI, but the UNCITRAL Guide to Enactment provides guidance on it. Similar to the COMI concept in the European Insolvency Regulation (EIR), determining COMI under the Model Law hinges on two primary factors: the location where the debtor's central administration occurs, and where this is easily identifiable by the debtor's creditors. The court may weigh these factors differently based on circumstances, but the overarching goal remains a comprehensive assessment ensuring that the foreign proceeding's location accurately corresponds to the debtor's COMI, as perceivable by its creditors. Additional factors that could inform the determination of a debtor's COMI include the location of its books and records, financing organization, primary assets or operations, principal bank, employees, commercial policy decision-making, governing law of contracts, and more. The relevant date for determining COMI or the existence of an establishment is the commencement date of the foreign proceeding. However, if the COMI changes around the time of the proceeding's commencement, establishing evidence for this may be challenging, particularly in meeting the requirement that COMI must be easily discernible by third parties, such as creditors.

While the COMI concepts in the EIR and the Model Law share similarities, they serve distinct purposes. Under the EIR, COMI determination aims to identify the jurisdiction where main insolvency proceedings should begin. On the other hand, in the Model Law, COMI determination influences the effects of recognition, particularly the relief accessible to support the foreign proceeding.

If the COMI is in the jurisdiction where foreign proceedings are initiated, those proceedings are considered main insolvency proceedings, entailing automatic mandatory relief.

In Globe Holdings' case, a comprehensive analysis is necessary to determine whether to seek recognition of main proceedings in the Cayman Islands and non-main proceedings in the US. Key documents to be submitted include scheme documents, court orders, and evidence of connections to both jurisdictions. Relief requested on day one may include automatic stays of proceedings and approval of restructuring plans.

Ultimately, Globe Holdings should strategically pursue recognition in both jurisdictions to ensure comprehensive protection and support for its restructuring efforts, leveraging its substantial connections to both the Cayman Islands and the US.

As this question is a fact-based application-type question, it requires the MLCBI provisions to be applied to the facts of the case and substantiated with references and a discussion. The answer should contain as a minimum: definitions (COMI, establishment, foreign main/non-main proceedings etc.) with respective references to (if any) MLCBI provisions. (note: marks awarded for COMI definitional discussions); discussions on the rebuttable presumption of the COMI per Article 16(3) MLCBI and alternative courses of action; the necessary papers to be submitted to the US Court per Article 15 MLCBI; conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI....

*** End of Assessment ***

Marks awarded: 21 out of 50