



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] 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 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 key distinction between the application of the MLCBI and European Union (EU) Regulation (“EUR”) on insolvency proceedings relates to their applicability scope. MLCBI is developed by the UNCITRAL as a model to be adopted by countries in their domestic laws, whilst facilitating a cooperation and coordination in cross-border insolvencies. MLCBI is not binding and it requires adoption by individual jurisdictions. EUR is binding and applicable in the European Union member states. EUR establishes uniform rules for determining jurisdiction and coordinating insolvencies across European Union borders.

MCLB:

- Benefit - flexibility and applicability to non-EU jurisdictions; promoting harmonization and cooperation in cross-border insolvencies globally.
- Disadvantage - non-binding; adoption by jurisdictions is voluntary, which may lead to inconsistencies in application and interpretation of insolvencies in different countries.

EUR:

- Benefit - binding within EU member states; uniform rules and procedures for cross-border insolvencies establish legal certainty and effectiveness and provides a clear framework.
- Disadvantage - limited applicability outside EU, which restricts effectiveness in insolvencies involving assets or parties located outside the EU and might lead to complexities.

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 provides the court with discretionary power to grant post-recognition relief. Primarily, the court should consider the fair and efficient administration of the cross-border insolvencies including evaluation of specific case circumstances including local and foreign creditors interests, debtor assets and purpose of the proceedings. The court should also consider the likelihood of maximizing debtor assets value and proportionality of sought relief. In any case, the court should be satisfied that the interests of the debtor's creditors and other interested parties are adequately protected. The court must also be satisfied that the relief relates to assets that should be administered in the foreign non-main proceeding or concerns information required in that proceeding i.e. the relief should not interfere with the administration of another insolvency proceeding and especially the main proceeding.

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 MLCBI gives foreign creditors the same rights as creditor domiciled in the enacting state without affecting the ranking of such creditors in the enacting state. Furthermore, Article 13 of the MLCBI grants creditors:

- rights to participate in foreign insolvencies by lodging claims and attending meetings/hearings;
- rights to challenge actions taken by foreign representatives; and
- rights to receive notice of commencement of foreign proceedings and any developments or decisions related to the proceedings.

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?

The relief granted in foreign main proceedings usually has universal effect as this is where the debtor's COMI is located. Furthermore, orders are binding on all creditors within and outside the jurisdiction. Furthermore, the relief obtained would be aimed at facilitating restructuring of the debtor assets on a global scale.

In foreign non-main proceedings, the relief is limited in scope as whilst the debtor has assets in this jurisdiction, it is not the primary proceeding jurisdiction. Orders would have territorial effect and would apply only within the jurisdiction where the proceedings are taking place. The obtained relief would not be binding on creditors in other jurisdictions.

QUESTION 3 (essay-type questions) [15 marks in total] 3 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 accordance with MLCBI, as the COMI of the debtor is in Germany, the foreign main proceedings must have been filed in Germany.

The foreign non-main proceedings on the other hand would have been filed in Bermuda as the debtor has an establishment there but it is not where the debtor's COMI is.

The foreign main proceedings in Germany would have universal effect and would be the primary proceedings for the debtor. The German court would issue orders which would be binding on creditors globally including in the US and in Bermuda.

The foreign non-main proceedings in Bermuda would be focusing on administering the assets of the debtor which are located in Bermuda as the proceedings would have a territorial effect.

The orders issued by the court in Bermuda would apply only within Bermuda and would not have a binding effect on creditors outside Bermuda.

In the US, recognition proceedings would include seeking recognition of the foreign proceedings conducted in Germany. Once recognized, the US court would grant comity to the proceedings in Germany and would provide them with a legal effect within the US. All US creditors would be bound by the orders which were issued by the German court in the German proceedings to the effect they have impact on assets within the US.

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.

The likely outcome would depend on the recognition proceedings, the effect of the recognition, the legal action and the stay of litigation.

The joint provisional liquidators (the "JPLs") sought recognition of the foreign insolvency proceedings. If recognition is granted by the US court, the foreign proceedings would be acknowledged and the comity to the actions taken by the JPLs would be extended. This would afford certain protections to the JPLs including stay of litigation against the foreign debtor or its assets within the US. Tortious interference with contract rights legal action would mean that vendors based in the US are pursuing claims against the JPLs for their actions against the contracts with the foreign debtor. The action might have been initiated before or after the recognition proceedings commenced.

If recognition in the US is granted by the US court, likely proceedings against the JPLs within the US would be stayed or subject to the foreign insolvency proceedings. This includes the action for tortious interference. Therefore, the US court might defer to the foreign jurisdiction overseeing the insolvency for any dispute resolutions that involve the JPLs. The recognition would also result in a stay of litigation against the debtor and its assets within the US.

The likely outcome would be that the US court would need to assess the impact of the recognition on the legal action for tortious interference in the context of the foreign insolvency proceedings. The outcome would depend on the circumstances of the case and applicable laws and the court might stay, dismiss the litigation against the JPLs or allow the action to proceed with certain condition to protect parties' interests.

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?

The foreign representative should take the following steps to protect the assets:

1. Notify the US court of the existence of ipso facto clauses in the US-governed leases and intellectual property licenses, so that it is clear what potential impact such clauses might have on the assets involved in the recognition proceedings, exposure and potential risks.
2. Petition to the US court for additional relief to protect the assets e.g. seek temporary restraining order or injunction. This would prevent the enforcement of any terminations triggered by ipso facto clauses.
3. Engage in negotiations with lessors and licensors to obtain waivers or amendments of ipso facto clauses to secure the validity of leases and licenses despite the foreign debtor insolvency status.
4. Prepare for recognition hearing to provide arguments for the necessity of protecting the assets from ipso facto clause triggered terminations.
5. Seek alternative solutions and strategies e.g. replacement leases or licenses that are not subject to ipso facto termination provisions.
6. Seek expert legal advice from legal counsels familiar with both UK and US laws in order to adopt the most effective strategy for asset protection.

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] 1 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?

The foreign representative has a few options to pursue next including:

- Appealing the decision of the court to deny recognition of the foreign proceedings. The foreign representative could request the court to review the grounds on which the recognition was denied and address deficiencies in the original petition.
- Foreign non-main proceedings recognition could be sought in Country B to still obtain certain protections and facilitate asset realisation within the jurisdiction.
- Other jurisdictions where the debtor's assets are located could be explored if recognition in country B is denied. The foreign representative could identify countries which more favourable regimes regarding recognition.
- The foreign representative should engage in negotiations with the creditors in order to gain cooperation in the asset realisation process including proposing arrangements or providing assurances in regard to creditor interests.

Steps to be taken from the beginning include:

- Examine the recognition requirements in country B and understand the criteria for determining the foreign main proceedings status.
- Engage a local legal counsel in country B to provide local expertise and knowledge on the challenges and requirements regarding the recognition.
- Prepare a petition and make sure it includes all necessary documentations to address all legal criteria in support of the foreign main proceeding recognition.

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] 4 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.

Globe Holdings (the “Company”)

1. Key filing strategy - recognition of main/non-main proceedings

a) Main proceedings

Globe Holdings is registered and incorporated in the Cayman Islands. The Company was incorporated in Canada but subsequently filed a certificate of registration to re-domesticate as a Cayman Islands Company. The Company doesn't have any physical business operations in the Cayman Islands, however it maintains its books and records in the Cayman Islands and has engaged a Cayman Islands legal counsel. Therefore, establishing a COMI in the Cayman Islands would be appropriate and beneficial to the Company. Whilst COMI could be in the Cayman Islands based on the above, the company's operations, head quarters and employees are all based in the US, which means the potential establishment would be in the US.

b) Non-main proceedings

The Company's operations are in the US. Furthermore, the Company's creditors (noteholders) are based in the US and their notes are governed by US law. Therefore, non-main proceedings under Chapter 15 would be beneficial for restructuring along with the scheme in the Cayman Islands. The proceedings would also provide protection to the Company's assets in the US.

Combining main and non-main proceedings would be most beneficial and would maximize the effectiveness of the restructurings in the two jurisdictions.

2. Next steps - papers to be submitted

a) Main proceedings - Cayman Islands:

- Application for permission to convene a scheme meeting with support for the Company's connections to the Cayman Islands e.g. engagement letter with legal counsel, incorporation documents and meeting minutes;
- The Company should also present a scheme proposal covering the restructuring plan, and any relevant amends to the notes; and
- The Company should submit affidavits from its directors covering the Company background, current status and events leading to the need for restructuring, as well as details of the noteholders' support of the proposed scheme.

b) Chapter 15 proceedings in the US:

- Petition for recognition in the US with support for the Company's insolvency proceedings in the Cayman Islands i.e. sanction order and other documents that might be relevant;

- Statement of foreign proceedings in the Cayman Islands with support on the scheme plan, process, results from noteholders votes;
- Support for the Company's connections to the US; and
- Support for the Company's status as a foreign debtor.

3. Day one - relief to be requested

For the Cayman Islands scheme, a relief can be requested to seek permission for convening the scheme meeting and provide notice to creditors under RSA. The Company could also seek interim stay to stop any creditor actions or litigations against the Company.

For the US Chapter 15 proceedings, relief should be requested to preserve the Company's assets in the US and for automatic stay of legal proceedings. A relief can also be requested for recognition of the Cayman Islands proceedings to cooperate between the two jurisdictions.

Seeking appropriate reliefs would help the Company in regard to the class action litigation which is brewing in the US as it would be proactive and would increase its chances of a successful restructuring.

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. For full marks, further application to the facts of the case would be needed. The answer should contain to the minimum:

1. Definitions (COMI, establishment, foreign main/non-mail proceedings etc.) with respective references to (if any) MLCBI provisions
2. A discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI and alternative courses of action
3. Procedures per Article 15 MLCBI
4. Conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI

*** End of Assessment ***

Marks awarded: 25 out of 50