



**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] 9 marks**

**Question 2.1 [maximum 3 marks] 2 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 European Union (EU) Regulation on Insolvency Proceedings (EIR) is a treaty. On the other hand, the MLCBI is not a treaty; it is only a recommendation to States for incorporation into their national law.

One key benefit of the EU approach (i.e., via treaty) is that it achieves a greater degree of harmony between the laws of the participating States. This is because following adoption, the EIR directly becomes part of the domestic law of each EU Member State. One disadvantage of the MLCBI is that it does not achieve the same degree of harmony between the laws of, and binding effect vis-à-vis, the participating States.

One key drawback of the EU approach is that it is difficult to agree on. By contrast, one key benefit of the MLCBI approach makes agreement easier and is less intrusive, as States retain sovereign control over which aspects of the recommendation should be adopted domestically and can take into account differing approaches in national insolvency laws and the varying propensity of States to cooperate and coordinate in insolvency matters.

**A Regulation (EU secondary law) is not a Treaty (EU primary law).**

**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 paragraph 3 states that “In granting relief under this article to a representative of a foreign non-main proceeding, **the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.**” (Emphasis added.) The court should consider whether any relief granted will interfere with the administration of another insolvency proceeding, in particular the main proceeding.

Further, Article 22 paragraph 1 states that “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.**” (Emphasis added.) The court should consider whether the grant of discretionary relief will achieve a balance between the different interests referred to in Article 22 paragraph 1, without unduly favouring one group of creditors over another.

**Question 2.3 [2 marks] 2 marks**

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

The protection relates to anti-discrimination. Foreign creditors have the same rights as creditors domiciled in the enacting State regarding the commencement of and participation in local proceedings regarding the debtor under the insolvency law of the enacting State. Such right of access does not affect the ranking of claims in the enacting State, save that the claim of a foreign creditor shall not be given lower priority than that of general unsecured claims solely because the holder of such claim is a foreign creditor. States may however continue to discriminate against foreign tax and social security claims.

**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?

Relief under Article 20 is only available in the case of a foreign main proceeding, i.e. there will be automatic mandatory relief in cases where the recognised foreign proceeding qualifies as a foreign main proceeding. The effects include:

- Stay of commencement or continuation of individual actions or proceedings concerning the debtor’s assets, rights, obligations or liabilities;
- Stay of execution against the debtor’s assets; and
- Suspension of the right to transfer, encumber or otherwise dispose of any assets of the debtor.

Conversely, for foreign non-main proceedings, automatic relief is not available, but only discretionary post-recognition relief granted by the court. Further, any relief granted under Articles 19 or 21 to a representative of a foreign non-main proceeding must be consistent with the foreign main proceeding.

**QUESTION 3 (essay-type questions) [15 marks in total] 7 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.

The foreign main proceedings must have been filed in Germany, where the debtor's COMI is. The foreign non-main proceedings must have been filed in Bermuda.

If the German proceedings were recognised first in the US, then any relief granted to the representative of the non-main Bermuda proceedings must be consistent with the German proceedings. If the application for recognition of the Bermudian proceedings or recognition of the Bermudian proceedings came first, then once the German proceedings are recognised in the US, any relief in effect under Articles 19 or 21 must be reviewed by the court and modified or terminated if inconsistent with the German proceedings.

The question targets whether the processes will be recognized as FMP/FNMP, not relief. Answer requires definitions and appropriate references (eg. Art.2 MLCBI), as well as procedural provisions eg. Art. 15, 17, 6... MLCBI

**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.

According to the Gibbs Rule, a debt governed by the law of one State cannot be discharged or compromised by a foreign insolvency proceeding. In this case, discharge of a debt under the insolvency proceeding of a foreign country will likely only be treated as a discharge under the law of the US if it is a discharge under the law applicable to the contract.

However, the Gibbs Rule will not apply if the relevant creditor submits to the foreign insolvency proceeding, on the basis that such creditor will be taken to have accepted that the law governing the foreign insolvency proceeding should determine the contractual rights that a creditor has elected to vindicate in that proceeding. In this case, and analogising from the IBA case, given that the US-based vendors have commenced a proceeding in tort, the vendors are not likely to fall within this exception to the application of the Gibbs Rule. Hence, any contractual debts owed to the vendors will not be discharged, from a US law perspective, under the foreign proceeding.

The answer should be based upon Art.10 MLCBI

**Question 3.3 [maximum 4 marks] 2 marks**

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 can seek provisional relief for the period between the filing of the recognition application in the US and the date that the application is decided upon. The relief sought

can include a stay of execution against the debtor's assets, entrusting the administration or realisation thereof located in the enacting State to the foreign representative or a Court-designated person, to protect and preserve the assets which are by their nature or by the circumstances perishable/susceptible to devaluation or otherwise in jeopardy, and/or seek any of the post-recognition relief in Article 21 of the Model Law (suspending the right to transfer, encumber or otherwise dispose of assets of the debtor; 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; granting any additional relief which may be available to a domestic liquidator or office-holder under US law).

For full marks, the discussion needs be substantiated with reference to Art.19 MLCBI. Answer should discuss Art 20 MLCBI.

**Question 3.4 [maximum 4 marks] 3 marks**

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 recognition as a foreign main proceeding was denied, the foreign representative could explore the possibility of seeking recognition of the proceeding pending in Country A as a foreign non-main proceeding in Country B. This would still allow him/her to administer the assets within Country B's jurisdiction, although with potentially different effects and limitations such as primacy being given to the foreign main proceeding as compared with the foreign non-main proceeding per Article 20/21 of the Model Law, and any relief in effect being reviewed and potentially modified or terminated once a foreign main proceeding is recognised. However, the difficulty in having the proceeding recognised as a foreign non-main proceeding is that the debtor is still required to have an 'establishment', as defined in Article 2(f) of the Model Law i.e. any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services (assuming that the Model Law indeed applies in the present context), because the debtor only has a registered office in Country A and not much more.

From the outset, the foreign representative should have considered the low likelihood of Country B to conclude that the COMI of the debtor is indeed in Country A, given that the debtor only has its registered office and not much more therein.

Reference/discussion on rebuttable COMI presumption and respective Art.16 MLCBI is necessary. Also missing are the procedural provisions per Art.15,6, 17 etc. MLCBI

**QUESTION 4 (fact-based application-type question) [15 marks in total] 3 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.

In terms of the filing strategy, the following needs to be considered.

First, in terms of whether to apply for recognition of main or non-main proceeding. Since Globe Holding (GH) is incorporated and registered in the Cayman Islands, it may wish to initially file for recognition of a main proceeding therein. While the term COMI is not defined, the Cayman Islands may arguably be considered the COMI because of the following factors:

- Regular engagement with Cayman counsel Cedar and Woods for over a decade
- Maintenance of books and records in Cayman
- Operation of a bank account in Cayman for payment of operating expenses (albeit recently opened)
- GH's reincorporation in Cayman from Canada in 2010, as shown by public filings with the SEC
- That GH had held board meetings organised by such Cayman counsel, albeit virtually
- While GH did not have any business operations in Cayman, it did not have business operations anywhere else in the world, either – this is therefore a neutral factor in the assessment of COMI

The papers submitted as part of the application for recognition should encompass the above, namely, evidence of GH's incorporation and registration in Cayman, documentation demonstrating the company's connection to Cayman, such as board meeting minutes, banking records, and engagement with Cayman counsel, and any relevant notices or filings with regulatory authorities regarding the company's status and operations in Cayman.

GH should also apply for recognition of a non-main proceeding in the US. While the COMI is likely in the Cayman Islands, it has significant assets and creditors in the US, particularly given the issuance of senior unsecured notes governed by US (NY) law in excess of USD 25 million, and the fact that its non-debtor subsidiaries' operations and employees are all there as well. To this end, the relevant threshold will be whether the Court is satisfied that GH has an 'establishment' in the US, namely, any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services'. Relevant papers to be submitted should go toward this, include evidence of the

company's operations, assets, liabilities etc. in the US as set out in the appropriate financial statements, creditor lists, and details of the subsidiaries; documentation relating to Scheme/restructuring efforts to date and agreements which appear to have been reached with creditors, including the RSA governed by NY law.

As for the specific relief which can be requested on Day 1 of filing, GH can request recognition of the Cayman restructuring Scheme as set out above and cooperation with the Cayman proceedings. It can also request provisional relief to stay pending or imminent litigation in the US, especially the class action which appears to be brewing (with the appropriate details thereof), to preserve its assets and facilitate the restructuring process.

This is a **fact-based application-type question**, meaning that the MLCBI provisions should have been applied to the facts of the case. Missing definitions per Art.2 MLCBI, Art.16 for rebuttable COMI presumption; comparison of alternative COMI situations; procedural provisions eg Art. 15, 17, 6, 22 etc. MLCBI, conclusion(s) per Art. 19, 20, 21, etc...

**\* End of Assessment \***

**Marks awarded: 26 out of 50**