



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.**
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- 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] 6 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] 8 marks

Question 2.1 [maximum 3 marks] 1 mark

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.

ANSWER:

The European Union (EU) regulation is part of the law of each member state of the European Union and is thus 'hard law' and binding upon states. Its purposes is also the unify the laws of those who are signatories to it.

The MLCBI by comparison is not binding but is used to influence the drafting of hard law in countries that opt to follow its guidance.

Requires discussion on (dis)advantages of EIR and MLCBI

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.

ANSWER:

This form of relief deals with the discretionary power of the court after recognition of the foreign proceeding to grant relief to protect the assets of the debtor/interests of the creditor at the request of the foreign representative in a foreign non main proceeding..

If exercising its power under paragraph 2 of Art 21, the Court must be satisfied that the interests of the local creditors are adequately protected.

The case of *Re Rooftop Group International Pte ltd [2020] FCA 1112* also states that "the general inclination is to grant such orders to assist the foreign representative in the

performance of her functions to the same degree and extent as would be granted to a local insolvency representative.

The English Courts interestingly have imposed certain limitations on this relief, namely: that the enforcement on an insolvency related in personam is not covered by the Model law, that applying foreign insolvency law to an English contract is not covered by the Model Law and that it did not have jurisdiction to grant to a foreign representative an indefinite continuation of the automatic moratorium that resulted from an earlier recognition order.

Question 2.3 [2 marks] 2 marks

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

ANSWER:

Article 13 of the Model Law gives foreign creditors the same rights as creditors that are based in the enacting state without changing the ranks of claims by creditors in that said enacting state.

Foreign creditors are also protected in that their claims cannot be given a lower ranking solely based on the fact that they are based in a foreign jurisdiction. This is known as the anti-discrimination principle.

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?

ANSWER:

Amongst both foreign main and non-main proceedings, under Article 21, there are reliefs which the court has the discretionary power to grant upon the request of the foreign representative. These are:

- Staying the commencement or continuation of individual action concerning the debtor's assets, rights, obligation or liabilities;
- Staying execution against the debtors assets; and
- Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor;
- Providing for the examination of witnesses, taking of evidence or delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- Entrusting the administration or realisation of all or part of the debtor's assets in the enacting state to the foreign representative;
- Extending any interim relief granted under Article 19; and
- Granting any additional relief that may be available to a domestic liquidator/office holder under laws of enacting state.

The main and primary distinction is that when a foreign main distinction is recognized, under Article 20, there are automatic reliefs which take place as opposed to at the discretion of the court. These reliefs are:

- for there to be a stay of the commencement or continuation of individual proceedings over the debtor's assets, rights or liabilities;

- a stay of execution over the debtor's assets; and
- a suspension of the right to transfer, encumber or otherwise dispose of any assets of the debtor.

As a matter of clarification, a foreign representative would not apply for a relief under Article 21 if it has already been granted that relief automatically under Article 20.

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

Question 3.1 [maximum 4 marks] 4 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.

ANSWER:

This is a scenario in which there are concurrent foreign main proceedings and foreign non-main proceedings being sought to be recognized in the United States.

As the COMI is in Germany, there foreign main proceedings must have been filed there. As Bermuda is merely an establishment of the debtor, the foreign non-main proceedings must have been filed there.

Where there are concurrent proceedings of this nature, what takes place is dependent on which proceeding was filed first.

If the foreign main proceeding from Germany was filed first, any relief which is then subsequently granted to the foreign representative in the Bermuda non main proceeding must be consistent with the foreign main proceeding.

If the foreign non-main proceeding from Bermuda was filed first, any relief which has been granted under Article 19 or Article 21 must be reviewed by the Court and must be modified or terminated if it is inconsistent with the foreign main proceeding.

In essence, the recognition of the foreign main proceeding takes preference in the eyes of the court.

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.

ANSWER: The provisional liquidators would essentially be a type of foreign representative.

An important consideration would be whether those foreign based creditors are applying for a recognition of a foreign main proceeding or a non-main proceeding.

Essentially, the liquidators would either:

- a. be given an automatic relief of a stay of the individual actions against the creditors on the basis that such actions concern the debtor's rights or obligations if the recognition proceedings concern a foreign main proceeding; or
- b. Could apply to the court for a stay of the individual actions against the creditors on the basis that if the recognition proceeding concern a foreign non-main proceeding.

It should be stated that unlike in the UK, where it has been ruled that applying foreign insolvency law to an English law governed contract is outside the scope of appropriate relief under the Gibbs rule, the case of *Re Condor Insurance Co Ltd F 3d 319* opens the door for US Courts to come to a different view.

Requires discussion based on 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?

ANSWER:

The foreign representative could apply for relief in the UK Courts but it would likely not be successful.

The English case of *Fibria Celulose S/A V Pan Ocean Co Ltd [2014] EWHC 2124 (Ch)* or the Pan Ocean case showed that application to the UK Courts for relief from a party seeking to rely on an ipso facto clause would be unsuccessful. The reasons that the Court provided in that case was that there can't be relief under Article 21(1)(a) as a notice to end a contract using an ipso facto clause is not 'the commencement or continuation of individual actions or individual proceedings' for which a stay is possible and also it cannot grant relief that would be beyond the relief it could grant in a domestic insolvency; as ipso facto clauses are legal in UK, you cannot expect the UK Courts to supplant their policy based law with that of another jurisdiction's policy based law which bans ipso facto clauses.

However, based on the logic from the UK, the action that the debtor should take would be to apply for relief in the United States under Article 21(1)(g) which empowers the court to use its discretion to 'grant any additional relief that may be available to a domestic liquidator/office holder under the laws of the enacting state'. Using the reasoning from the Pan Ocean case, the US Court would not in fact be going beyond relief available in a domestic insolvency there.

As this application for relief under Article 21(1)(g) is not one which is also available automatically under Article 20, the fact that the foreign representative is applying in relation to a foreign main proceeding or a non-main proceeding is not that important as an application for the court to exercise its discretion will have to be made regardless.

This answer primarily requires discussion based upon interim relief per Art.19 MLCBI and its definitions.

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?

ANSWER:

The foreign representative should likely commence this proceeding again but this time as a foreign non-main proceeding. The foreign representative must make sure that when they commence this proceeding, they are sure of the status of the territory for which they are applying and submit the appropriate documents/evidence as identified below.

Regarding what the foreign representative should have done, there are certain requirements for documents that have to be filed by the foreign representative as per Article 15(2). If these were omitted on the first time the proceedings were brought, it should be ensured that they are present this time. The documents are as follows: a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative, a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative. If those documents are not available, any evidence acceptable to the court of the existence of the foreign proceeding and of the foreign representative.

Most importantly, it was important for the foreign representative to understand that for them to apply as a foreign main proceeding, the Centre of Main interest (COMI) had to be in that country they represent. COMI is not defined under the model law and so therefore, the word establishment is used to identify a COMI.

An establishment for the purpose of identifying a COMI, which is used to identify whether the foreign proceeding is a foreign main proceeding or foreign non-main proceeding is defined in the Model law at Article 2(f) as “any place of operations where the debtor carries out a non-transitory economic activity with human means and goods and services.” Therefore, if the registered office in country A does not fit this description, they should have applied as a foreign representative for a foreign non-main proceeding.

Art.16 MLCBI is the main reference for “rebuttable COMI presumption” to highlight the weak COMI and support argument for applying for recognition as FNMP. References to Art.17, 21, 6 are also required for full marks.

QUESTION 4 (fact-based application-type question) [15 marks in total] 6 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.

ANSWER:

WHICH RECOGNITION:

There are many factors that go into deciding the COMI of a debtor. In this scenario Globe Holdings' COMI can either be in the Cayman Islands or the US as those are the only relevant jurisdiction mentioned in the fact scenario.

Ultimately, it is submitted that the COMI is in the Cayman Islands. The main factors in identifying the COMI for the model law are where is the location where the central administration of the debtor takes place and which is readily ascertainable as such by creditors of the debtor.

The assets that have been mentioned as belonging to the client have been the USD 25,000,000 in aggregate nominal principal amount of 6.625% senior unsecured notes due in 2023 and even though these have been governed by New York Law, these assets come from the Cayman Islands entity as opposed to any subsidiaries based in the US.

The only assets that are mentioned that are in the US are the corporate headquarters. Even though this could be an expensive asset, it cannot be taken to be valued more than the assets in the Cayman Islands without further information.

However, the fact that there are employees in New York and the physical business is in New York may be taken as a strong argument that the COMI is actually in America. However, also, even though the physical headquarters are in New York and they have employees there is no indication that the important decisions are made there. In fact, the opposite seems to be true and in fact most decision making either takes place in Cayman or virtually.

Furthermore, most importantly, and as identified in the fact pattern by the expectation that the restructuring would take place in Cayman, the creditors would likely ascertain that the administration of the debtor is based in Cayman, based on this factor and the fact that no leadership decisions seem to be based in America.

Another factor that proves that the Cayman Islands is the COMI is that all of the client's books are located there.

The Courts in America have actually ruled on similar facts before and have adopted a flexible approach identifying the Cayman Islands as the main foreign proceeding even where there are registered offices within the United States and even though some assets are governed by United States law (*re Modern Land [China] CO. 22-10707 [MG]*).

This all means that the application for recognition in the United States from the foreign proceedings in Cayman should be done by the foreign representative as a foreign main proceeding

WHAT PAPERS ARE SUBMITTED:

Once the restructuring/insolvency proceedings in Cayman have begun and a foreign representative has been appointed these documents must be submitted alongside the application for recognition in the United States:

- A certified copy of the decision commencing the proceeding in the Cayman Islands and appointing the foreign representative there; or
- A certificate from the courts in Cayman affirming the existence of the restructuring/insolvency proceedings in Cayman and of the foreign representative; or
- Some other evidence if the above is not available.

RELIEF:

Article 19 will allow for a foreign representative from Cayman to apply to the Courts of the United States for relief of a provisional nature from the time of the filing of the application for recognition until the application is decided.

In the present circumstances, the relief that should be applied for a suspension of the right of the mentioned third party from transferring or otherwise disposing of the corporate headquarters located in New York and its contents.

The answer should contain

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. The necessary papers to be submitted to the US Court per Article 15 MLCBI
4. Conclusive remarks with reference to Articles 19 - 22 MLCBI and 6 MLCBI (*reference to Art. 19 is noted*)

*** End of Assessment ***

Marks awarded: 27 out of 50