



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] 4 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 MLCBI forms part of a web of different legislative instruments and local laws, that does not cover the recognition of foreign judgments relating to insolvency proceedings. The European Union has drafted treaties and conventions to address international insolvencies within their geographical region.

Advantage of MLCBI - it has developed a clear, consistent and predictable framework for mutual recognition and cooperation in cross border restructuring and insolvency.

Disadvantage of MLCBI - it's not specifically catered to the circumstances of distinct corporate group entities in different jurisdictions. lacks consistent guidelines and depends on the inherently wide discretionary powers of courts.

Advantage of EU Regulation - It has established a framework within which insolvency proceedings taking place in any EU Member State could be automatically recognised and enforced throughout the rest of the European Union.

Disadvantage of EU Regulation - treaties dealing with insolvency law have proven to be very difficult to agree on.

A Regulation (secondary law) is not a Treaty (primary law). However, EIR is implemented across EU Member states (less Denmark) upon adoption. MLCBI is a recommendation (soft 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.

Once the court have recognised insolvency proceedings in an enacting State, then it should take the necessary steps provided under the Article 21 to grant relief under the law

of the enacting State at the request of the foreign representative and consider the assets - to protect assets of the debtor and the interests of creditors for the purpose of reorganization or liquidation.

Question 2.3 [2 marks] 2 marks

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

All foreign creditors should be treated fairly and equally. They must have the same rights as creditors in the enacting State where proceedings are taking place. Irrespective of their jurisdiction, it should not affect the ranking of claims and except that all unsecured foreign creditor's claims must be given the same priority with that of a general concurrent creditor and not any less just because the holder of such a claim is a foreign creditor.

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 foreign main proceeding, which is defined as a foreign proceeding pending in the enacting State where the debtor has its COMI, the foreign representative receives automatic mandatory relief.

The foreign nonmain proceedings are without automatic relief which is defined as a foreign proceeding pending in the enacting State where the debtor has an establishment, which means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services. In this instance, the court uses its discretionary to grant similar relief upon recognition.

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

Question 3.1 [maximum 4 marks] 0 mark

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 proceedings **[which one? Main/non-main?]** must have been filed in Bermuda because it has adopted the UNCITRAL Model Law and makes provisions to address coordination of concurrent proceedings with the aim to best achieve the objectives of both proceedings, whether local and foreign proceedings or multiple foreign proceedings. The Model law also focuses on four elements identified as key to the conduct of cross-border insolvency cases: access, recognition, relief (assistance) and cooperation between foreign and local courts and representatives which is authorized. As a result, fosters a compulsory administration and distribution on the basis of equality amongst creditors. However, a key consideration is that the Model law should not conflict with any treaty or agreement in the other State.

Although the debtor has its COMI in Germany, it applies the European Union (EU) Regulation on insolvency proceedings only applies to intra-Community relations or EU Member States **[yes, but USA is not an EU Member State, so this is irrelevant]**. Therefore,

allowing the law of the State where the main proceeding has been opened (the *lex concursus*) to regulate the insolvency proceedings and which prescribes to territorialism - as a result the principle is not fair and prejudices creditors and only the strongest creditors would benefit. [recognition proceedings are opened in the US]

The question is about the recognition of the proceedings in Germany (and Bermuda) by the USA court.

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.

Article 14(e) provides instances of what might constitute interference. The interference with the conduct and administration of the debtor's proceedings in this case the provisional liquidators their mandate revoked and they may have to pay damages, checking if the rights and interests of creditors and other stakeholders if they were adequately protected materially affected by the interference and whether the liquidation or reorganization should actually be confirmed and enforced.

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?

The foreign representative must apply to the court in the US for to enforce the ipso facto provision to protect the assets and interim relief needed upon the application of a foreign proceeding based on Article 19 of the Model Law [this is contradictory]. There is a substantive legal obligation for the owner of the intellectual property licenses to control the licensee.

However, paragraph 2 of Article 21 provides that the court in the US can exercise its discretionary power at the request of the foreign representative, whether it is in the best interests of the creditors and/or the debtor, to suspend US-governed leases and intellectual property licenses; to attempt to cancel the agreement, also ensuring that such relief will not interfere with the administration of the proceedings.

Notwithstanding the above, without the consent of the counter-party or owner, the intellectual property licenses are unassignable regardless of what the agreement or contract stipulates.

Enforcement of *ipso facto* clauses would mean that the debtor or foreign representative could almost never assume ongoing contracts or leases.⁷[?] This would prevent

debtors from performing under “beneficial contracts that otherwise would have terminated automatically or would have been terminated by the other contracting party. Enforcement of ipso facto clauses therefore undermines public policy.

Foreign insolvency proceedings do not have to meet the English law definition of insolvency proceedings in order to be recognised. Article 21(1) of the Model Law gives the English courts the necessary powers to protect the assets of the debtor or the interests of the creditors and grant relief including staying the commencement or continuation of proceedings concerning the debtor’s assets, rights, obligations or liabilities.

Your answer is contradictory. Although I understand that you would advise the representative to apply for interim relief, you also advise him/her to enforce the *ipso facto* clauses.

And what about Art 20 MLCBI?

Question 3.4 [maximum 4 marks] 0 mark

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

[Type your answer here]

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.

My strategy would be to seek both main and non-main proceedings, based on modified universalism which requires a global approach for cross-border insolvency. This approach would be the main insolvency proceedings be opened in US commencing Chapter 15 proceedings where COMI is, based on business operations carried out through its direct and indirect subsidiaries that are all incorporated under the US laws. According to the Bankruptcy Code for eligibility of being a debtor - is the presence of the debtor or its place of business or any of its assets in the United States and this would satisfy the minimum presence requirement with headquarters also in the US.

Secondly, this strategy would be supported by subordinate non-main proceedings in Cayman Islands where the establishment is founded and because the Cayman Islands has not adopted the Model Law, therefore they do not accept the provisions and stipulation in the Model Law. However, the company has stakeholders and assets in more that on state and respectively the jurisdictions must co-operate and seek effective communication during the restructuring, in order to achieve similar objectives. Although the terms of the agreement under the Restructuring Support Agreement (RSA) was that the restructuring would take place in the Cayman Islands, this does not include all interested parties - which by definition is any party whose rights, obligations or interest are affected by the insolvency proceedings including the debtor, the insolvency representative, a creditor, an equity holder, a creditor committee, a government authority or any other person so affected.

Therefore, with universalism which calls for unity and allowing for more than one insolvency proceeding pending or originating in different jurisdictions would be best suited to dealt with in the state where Globe Holdings has its COMI and where the main proceedings would be opened in the US and not Cayman Islands - who has not adopted the Model Law but are expected to co-operate with each other and take into account the American Law Institute / International Insolvency Institute (ALI/III) and the Judicial Insolvency Network (JIN) principles for judicial coordination and court-to-court communications also suitable for use in cross-border insolvency cases.

In terms of Article 19 of the Model law, from day one of filing the application for recognition until the application is decided upon, , I would request from the Court where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, based on the following noted in the case;

1. An independent third party whose actively marketing the sale of the corporate headquarters located in New York.
2. Globe Holdings approaching its largest Noteholders regarding the contemplated restructuring and not all affected and interested parties; and
3. A class action litigation brewing in the US.

Therefore this relief would be an advantage in that the chosen relief includes;

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realization of all or part of the debtor's assets located in enacting state to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; or

(c) any post-recognition relief mentioned in Article 21 of the Model Law.

- suspending the right to transfer, encumber or otherwise dispose of any 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; and
- granting any additional relief that may be available to a domestic liquidator/office holder under the laws of the enacting state. However, the Court may refuse to grant relief under this Article if such relief would interfere with the administration of a foreign main proceeding.

Therefore, in terms of Article 15 of the Model Law, a foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

An application for recognition must be accompanied by and submit the following documents;

(a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

An application for recognition shall also be accompanied by a statement identifying all foreign proceedings and proceedings under these Regulations in respect of the debtor that are known to the foreign representative.

The Court may require a translation of documents supplied in support of the application for recognition into an official language of the enacting State.

The relief granted under Article 19 terminates when the application for recognition is decided upon.

Where the main proceedings would be considered and opened, then automatic mandatory relief in terms of Article 20 of the Model Law comes into effect and this relief would demand for unity of the proceedings and pioneer a protocol for court-to-court dialogue and explore the potential for effecting streamlined global restructurings.

According to Judge Glenn (from Baker McKenzie Issue of August 2022 Chapter 15 Client Arlert) stated as follows; "The Foreign Debtors in these proceedings acted prudently in exploring their restructuring alternatives. The Court finds that the directors of the Foreign Debtors properly concluded that changing their COMI to the Cayman Islands, and, if necessary, commencing restructuring proceedings there, and also commencing Chapter 15 proceedings in the US, offered them the best opportunity for successful restructuring and survival under difficult financial conditions".

The above recommending that in appropriate situations, the practice of re-establishing COMI in a desirable jurisdiction may not be necessary to achieve the ultimate goal of gaining broad relief upon recognition of the foreign proceeding in a case such as this meant to be under Chapter 15 which would prompt the necessary assistance and support required to obtain a fair and just outcome for all stakeholder and interested parties involved, better return for creditors in their respective classes and dealing with executory contracts, which are clearly defined by the Bankruptcy Code.

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.

Further balancing of the facts in light of the MLCBI and an evaluation of the location of the COMI is required. Moreover, the answer should contain as a minimum: definitions (COMI, establishment, foreign main/non-mail proceedings etc.) with respective references to (if any) MLCBI provisions; a discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI and alternative situations, as well as respective courses of action; conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI (*references to Art. 19, 20, 21 MLCBI are noted*)

*** End of Assessment ***

Marks awarded: 21 out of 50