



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] 5 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] 3 marks

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

The key distinction between the application of the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) and the European Union (EU) Regulation on insolvency proceedings lies in their scope and approach to cross-border insolvency cases. The MLCBI provides a framework for the recognition of foreign insolvency proceedings and cooperation between jurisdictions without being limited to any specific region. It is designed to facilitate coordination and offer relief in cross-border insolvency cases on a global scale, allowing a wide range of countries to adopt and tailor the Model Law to their domestic legal systems.

In contrast, the EU Regulation on insolvency proceedings is region-specific, applying only to EU Member States (excluding Denmark). It establishes a set of rules to determine jurisdiction for opening insolvency proceedings and recognizes the principle of mutual recognition of insolvency proceedings across the EU. This regulation is designed to ensure that insolvency proceedings that are opened in one EU Member State are recognized across all other Member States, thereby facilitating the smooth administration of cross-border insolvencies within the EU.

Key Benefit of MLCBI: Its global applicability provides a flexible framework that non-EU countries can adopt, facilitating international cooperation in cross-border insolvency cases. This universality helps promote legal certainty and efficiency in the resolution of cross-border insolvencies on a worldwide basis.

Disadvantage of MLCBI: The Model Law relies on the adoption and implementation by individual countries, leading to variations in application and potentially inconsistent recognition and enforcement of foreign insolvency proceedings across different jurisdictions.

Key Benefit of EU Regulation: It provides a clear and direct mechanism for the recognition and enforcement of insolvency proceedings across EU Member States, enhancing legal certainty and predictability within the EU. The regulation also establishes jurisdictional rules and the main proceedings concept, streamlining cross-border insolvency processes within the Union.

Disadvantage of EU Regulation: Its application is limited to EU Member States, excluding Denmark and potentially not fully harmonized with non-EU countries' insolvency laws. This limitation can lead to complexities and legal challenges when dealing with insolvencies that extend beyond the EU, requiring coordination with systems outside the regulation's scope.

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.

Under Article 21 MLCBI, the court should primarily consider that the relief does not interfere with the administration of another insolvency proceeding, particularly, the main proceeding. This means that the court must be satisfied that relief the interests of local creditors in the enacting state are adequately protected.

Question 2.3 [2 marks] 2 marks

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

Article 13 gives foreign creditors the same rights as creditors domiciled in the enacting state without affecting the ranking of claims in the enacting state. It prevents discrimination to a creditor solely on the basis that they are domiciled overseas. This removes the need for separate proceedings to obtain standing. Rather, standing is automatically provided to enable foreign creditors to make claims for such breaches should they arise.

Question 2.4 [maximum 3 marks] 1 mark

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

In the case of where there are foreign main and non-main proceedings, primacy is given to the foreign main proceeding. Any relief granted to a foreign non-main proceeding must be consistent with the foreign main proceeding. If recognition to the foreign non-main proceeding comes first, the court will review any relief in effect and be modified or terminated if inconsistent with the foreign main proceeding.

Requires reference to Art. 20 and 21 MLCBI, as well as a discussion on the automatic versus discretionary natures of the relief.

QUESTION 3 (essay-type questions) [15 marks in total] 6 marks

Question 3.1 [maximum 4 marks] 2 marks

A debtor has its COMI in Germany and an establishment in Bermuda, and both foreign main and foreign non-main proceedings as well as the recognition proceedings in the US have

been opened. In this scenario, explain where the foreign proceedings must have been filed, and the likely result.

In this scenario, the foreign main proceedings must have been filed in Germany since the debtor has its Centre of Main Interests (COMI) there, according to the UNCITRAL Model Law on Cross-Border Insolvency. This is because the COMI is typically where the debtor conducts the administration of its interests on a regular basis and is thus recognizable by third parties. The foreign non-main proceedings would have been filed in Bermuda, given the debtor has an establishment there, implying a place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

The likely result in the US, where recognition proceedings have been opened, is that the US courts would recognize the German proceedings as foreign main proceedings and the Bermudan proceedings as foreign non-main proceedings. This recognition allows for coordinated relief and assistance between the US and the jurisdictions of the main and non-main proceedings, facilitating a more efficient administration of the debtor's insolvency across borders.

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

Question 3.2 [maximum 3 marks] 1 mark

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

In the given scenario, the likely outcome is that the joint provisional liquidators, having initiated recognition proceedings in the US under Chapter 15 of the United States Bankruptcy Code (which incorporates the UNCITRAL Model Law on Cross-Border Insolvency), would be protected from the lawsuit and discovery efforts regarding alleged tortious interference. This protection stems from the automatic stay provisions activated upon the recognition of foreign proceedings, which aim to halt actions against the debtor's assets or the foreign representatives in the US.

These provisions ensure that the foreign representatives can perform their duties without facing litigation or enforcement actions that could undermine the administration of the foreign insolvency proceedings. Therefore, the court is expected to stay the lawsuit and discovery against the liquidators, allowing them to focus on the debtor's asset management and protection in alignment with the principles of cross-border insolvency cooperation and coordination.

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?

In the scenario where a foreign representative administers assets in a debtor-in-possession-like restructuring proceeding in the UK and commences a recognition proceeding in the US with the recognition hearing set 35 days after the petition date, the foreign representative should proactively seek interim relief under Article 19 of the UNCITRAL Model Law on Cross-Border Insolvency as enacted in the US through Chapter 15 of the United States Bankruptcy Code. This step is essential to protect the debtor's US-governed leases and intellectual property licenses from ipso facto clauses, which could otherwise allow parties to terminate agreements due to the insolvency proceeding, but are unenforceable under US bankruptcy law.

To safeguard these assets effectively, the foreign representative should file for such interim relief immediately upon commencing the recognition proceeding. This would ensure that the debtor's assets in the US, particularly those subject to leases and licenses with bankruptcy-triggered termination clauses, are preserved and protected until the recognition hearing. This interim relief could include a stay on the termination of contracts and leases based on ipso facto clauses, thereby maintaining the status quo of the debtor's operations in the US.

The necessity for such a step arises from the gap between the filing date and the hearing date, during which period the assets and contractual rights of the debtor could be at risk due to the ipso facto clauses. By securing interim relief, the foreign representative ensures that these assets remain part of the debtor's estate available for restructuring in the UK proceeding, thus serving the interests of all creditors and supporting the restructuring effort.

Also requires references to the provisions of Art 20 and/or 21 MLCBI as applicable.

Question 3.4 [maximum 4 marks] 1 mark

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

Upon the denial of recognition of the foreign proceeding as a foreign main proceeding, the foreign representative, who administers the assets of an insolvent debtor in Country A and sought recognition in Country B, faces several avenues for action. Initially, the representative should consider appealing the decision if the legal framework in Country B allows for it and if there are grounds to believe that a reassessment could yield a different outcome, especially if the denial was based on interpretable criteria such as the debtor's COMI or the nature of the proceedings in Country A.

If an appeal is not viable or unsuccessful, the foreign representative may explore the possibility of filing for recognition of the proceeding as a foreign non-main proceeding if the debtor has an establishment in Country B, thereby still enabling some level of legal

recognition and cooperation, albeit with potentially limited scope compared to main proceedings recognition.

At the outset, to enhance the likelihood of recognition, the foreign representative should have thoroughly analyzed the legal criteria for main and non-main proceedings recognition in Country B, ensuring that the application clearly demonstrates how the proceeding in Country A meets these criteria. This includes providing comprehensive evidence of the debtor's COMI or the presence of an establishment in Country B, alongside detailed information about the foreign proceeding to assert its compatibility with Country B's legal standards for recognition.

Furthermore, engaging in preemptive discussions with key stakeholders in Country B, including potential creditors, to gauge and possibly mitigate resistance to recognition could also be beneficial. Additionally, considering the strategic timing of the application to coincide with favorable legal or economic conditions in Country B could enhance the chances of a successful recognition.

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

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

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

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

Globe Holdings has no business operations of its own. The business is carried out through its non-insurance company non-debtor subsidiaries that are all incorporated under the US laws and operating in the US. All employees are in the US. The headquarters are also in the US.

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

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

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

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

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

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

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

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

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

Given the complex international structure of Globe Holdings, with its COMI seemingly in the Cayman Islands due to its incorporation, management, and significant operational decisions being made there, but with all operational activities and subsidiaries based in the US, the strategy for filing and recognition in the US courts under Chapter 15 requires careful planning and execution to maximize protection and restructuring benefits.

1. **Determination of COMI vs. Establishment:** Initially, Globe Holdings should evaluate whether to apply for recognition of the Cayman Islands proceeding as a foreign main or non-main proceeding. Given that its COMI is likely considered to be in the Cayman Islands due to its incorporation, central administration, and the location where significant decisions are made, an application for recognition as a foreign main proceeding would be appropriate. The absence of operational activities in the Cayman Islands might complicate this determination, necessitating a detailed presentation to the US court to establish the Cayman Islands as the COMI.
2. **Documentation and Submissions:** For the recognition application, Globe Holdings should prepare comprehensive documentation, including:
 - A petition for recognition, including evidence of the Cayman Islands proceeding's existence and Globe Holdings' COMI or establishment.
 - Declarations or affidavits detailing Globe Holdings' operational structure, COMI justification, the purpose of the Cayman Islands proceeding, and the necessity for US recognition.
 - Copies of the Scheme Meeting approval, the RSA, and the Sanction Order from the Cayman Islands court to demonstrate creditor support and legal authority.
3. **Relief Requests on Day One:** On the first day of filing, Globe Holdings should request several forms of interim relief under §1519 of the US Bankruptcy Code to protect its assets and operational integrity during the recognition process. These may include:
 - A stay of actions against Globe Holdings' assets in the US.
 - Prohibition of contract terminations based on insolvency filing.
 - Authority to continue financial transactions and operations as necessary.
4. **Strategic Considerations for COMI and Non-Main Proceedings:** If the US court challenges the COMI determination, Globe Holdings could alternatively seek recognition of the Cayman Islands proceeding as a foreign non-main proceeding due to the existence of an establishment in the Cayman Islands, leveraging its recent banking activities and legal representation there. This approach would still afford certain protections and facilitate the restructuring process, albeit with potentially less automatic stay protection compared to a foreign main proceeding.
5. **Preparation for Potential Litigation:** Given the possibility of litigation, especially related to the anticipated class action in the US, Globe Holdings should prepare legal arguments and evidence to support the recognition of the Cayman Islands proceeding and to counter any objections by US creditors or other parties.

The strategy revolves around a careful and well-documented application process, anticipating potential challenges and objections, especially regarding the COMI determination. Globe Holdings must argue persuasively for the benefits of recognizing the Cayman Islands proceeding to ensure a coordinated and efficient restructuring process that maximizes value for all stakeholders, aligning with the principles of the UNCITRAL Model Law on Cross-Border Insolvency and Chapter 15 of the US 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. The answer should contain as a minimum: definitions (COMI, establishment, foreign main/non-main 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 courses of action; the necessary papers to be submitted to the US Court per Article 15 MLCBI; conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI...

*** End of Assessment ***

Marks awarded: 22 out of 50