INSOL INTERNATIONAL

FOUNDATION CERTIFICATE

IN INTERNATIONAL INSOLVENCY LAW

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] 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). Should this not be IV? II also not really relevant as selected above, de minimus could lead to cross border activates but should not be deemed a precursor.

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. If not D, however other agreements/principles may exist between these jurisdictions, more information needed.

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] 7marks

Question 2.1 [maximum 3 marks] 0 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.

The main distinction between Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) [??] and the European Union (EU) Regulation on insolvency proceeding is primarily driven by their scope and purpose.

MLI addresses international tax treaty matters relating to profit shifting by multinational corporations, thereby MLI aims to counter tax evasion and improve international tax rules. They key benefit of this is it prevents base erosion and profit shifting, making it harder for companies to exploit tax loopholes, however, it focuses on international tax treaty matters, so does not address the broader issues of cross-border insolvency etc.

The EU Regulation on Insolvency Proceedings specifically deals with cross-border insolvency in the EU establishing rules for the recognition and coordination of insolvency proceedings in EU member states, with the aim of facilitating the efficient handling of cross-border insolvencies. On this basis it provides a well defend set of principles for managing cross border insolvencies, simplifying and streamlining the process. However, this is only applicable to the EU, and thereby limited to only EU members staters.

Question concerns a comparison between the EU and the MLCBI (Model Law on Cross-Border Insolvency) not the "MLI".

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.

The primary considerations for the court should be:

- The necessity and justifiability of the application, and if this protects the debtor, creditors and or other stakeholders
- If application will protect the rights of local creditors, making sure to not favour foreign creditors
- The protection of local interests
- If this will be a fair treatment of the creditors
- It should evaluate whether granting the relief is consistent with the spirit of cooperation among jurisdictions and promotes the efficient resolution of cross-border insolvency cases.
- "According to paragraph 4 of Article 21 – the court should be satisfied that the relief relates to assets that under the law of the enacting state should be administered in the foreign non-main proceedings, or concerns information required in that proceeding."

Question 2.3 [2 marks] 2 marks

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

Article 13 gives foreign creditors the same rights as creditors domiciled in the enacting state, without effecting the ranking of claims, but this cannot then be used to give the foreign creditor lower priority than a general unsecured claim. This protects against discrimination of creditors, with them being granted non-discriminatory access to the courts in the foreign jurisdiction, thereby allowing them the right to participate in foreign proceedings with the same information being available to them. This access can then be further used to contents any unfair treatment.

All in all Article 13 aims to establish clear and predictable criteria for recognition and enforcement of an insolvency-regulated judgment.

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 definition of foreign main proceedings used the term centre of main interest (COMI) of the debtor, without defining what it means. The definition of foreign non main proceeding requires the debtor to have an establishment, which term is defined in the model law in the same way as that term is defined in the European Insolvency Regulations" [reference?]

Relief granted in a foreign main proceeding has a universal effect (applies worldwide), binding all creditors and assets of the debtor, regardless of location. These creditors generally have more extensive rights and are subject to the automatic stay of proceedings, prohibiting them from pursuing individual actions against the debtor. Relief s typically comprehensive and aimed at the full administration, liquidation, and distribution.

Relief granted in foreign non-main proceeding is limited in scope usually being jurisdiction specific, with this creditors may not enjoy the same automatic stay of proceedings and any relief granted will generally be focused on addressing specific issues locally, limiting its effects on the global assets of the corporation.

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

Question 3.1 [maximum 4 marks] **2 marks**

A debtor has its COMI in Germany and an establishment in Bermuda, and both foreign main and foreign non-main proceedings as well as the recognition proceedings in the US have been opened. In this scenario, explain where the foreign proceedings must have been filed, and the likely result.

As defined by the European Insolvency Regulations the two key factors of a Centre of Main Interests ("COMI") are the location where the central administration of the debtor take place and which is readily ascertainable as such by creditors.

Dependent upon the facts, the court will need to give greater/less weight to a given factor, in all circumstances the determination of a COMI is a hostile endeavour designed to determine the location of the foreign proceedings.

Not taking account of the missing information such as the location of finance, books and records, banking facilities and other operations etc. The foreign main proceeding should have been lodged in the location of the debtor's COMI, Germany as this is the debtors primary jurisdiction. Theses foreign main proceeding will likely have a universal effect binding all creditors and assets of the debtor, regardless of their location.

The foreign non-main proceeding will be filed in the jurisdiction where the debtor has an establishment, Bermuda. Non-main proceedings are typically conducted in jurisdictions where the debtor has assets but is not the primary (?) COMI, these will likely have limited territorial effect, addressing assets and claims within their jurisdiction being secondary without the same global reach.

Recognition in the US would be via an application to the US court, to recognize both the foreign main/non-main proceedings. This aims to grant legal effect in the US. The recognition in the US will determine whether to grant recognition and what relief should be afforded to the foreign proceedings, allowing the insolvency to be harmonized in the various jurisdictions.

Per Article 18, these foreign representatives will be required to promptly inform the court of the incanting state.

The answer requires definitions – also mentioning Art.2 MLCBI, as well as references to the procedural clauses eg. Art.15, 17, 6…

Question 3.2 [maximum 3 marks] **0 mark**

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

The recognition proceedings in the US will continue, as its primary purpose is to recognise the proceedings in the US court system, the main question then would be how the court responds, they

could allow the proceedings to be recognised concurrently to the proceedings, or they may be addressed separately, they could issue separately a stay/protective order to avoid interfering with the present recognition and alternatively the court could just dismiss the litigation.

Consideration should also be given to the ability for the joint liquidators to fulfil their duties effectively given the litigation, the court could seek to coordination of the vendors to ensure their roles are still fulfilled and or take actions to have them replaced.

Lastly, the joint provisional liquidators may also submit their own legal defence against the allegations of tortious interference.

Should be answered in light of Art.10 MLCBI

Question 3.3 [maximum 4 marks] 1 mark

A foreign representative who administers assets in a debtor-in-possession-like restructuring proceeding in the UK commences a recognition proceeding in the US, setting the recognition hearing 35 days after the petition date due to the availability of the court. There is no litigation pending or threatened against the foreign debtor, but US-governed leases and intellectual property licenses have *ipso facto* clauses (that is, bankruptcy-triggered terminations) that are not enforceable under the US Bankruptcy Code. Based on these facts, explain what steps, if any, should the foreign representative take to protect the assets and why?

In considering the actions of the foreign representative, Chapter 15 of the US Bankruptcy Code. Which deals with cross-border insolvency proceedings should be considered to assess the available actions under US / international insolvency where recognised.

Under chapter 15, the foreign representative should file a notice for recognition (as disclosed as actioned) ensuring the UK proceedings are recognised in the US, upon submission the interested parties should be notified allowing lines of communication to be opened.

These lines of communication may be vital given the ipso facto clauses in US-governed leases and intellectual property licenses not being enforceable under the US Bankruptcy Code, with this there may be the possibility of negotiating to maintain these contracts and preserve the value of the debtor's assets in the US.

Whilst there is no pending litigation, this should be monitored closely to ensure no proceedings are brought threating the debtors assets. The foreign representative should also be mindful that they will still be required to comply with US laws until such a time that the case is recognised.

There is also a question of whether immediate relief would be necessary in order to protect the debtors' assets in country, such as stay on the assets.

Lastly, the COMI of the company should also be assessed, as it will need to be proved that this is based in the UK and therefore the proceedings will be better managed from there.

Discussions should be based upon Art 19, 20, 21 MLCBI

Question 3.4 [maximum 4 marks] 0 marks

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

In terms of assessing what they must do next we must first establish the errors in their application that lead to the court in country B to not recognise the request for foreign main proceedings in the first place. Key items for this are:

- Their legal analysis / case was apparently not strong enough to persuade the court, further analysis should be undertaken, with key considerations to the legal framework in country, their respective insolvency laws, their requirements for recognition and what international insolvency regulations they are party to.
- Discussions should have likely been held with the court (also the creditors and stakeholders who could have helped make a case) to asses their initial thoughts/objections (with work undertaken to contest these during the hearing), this line of communication should now be opened and discussions held to allow for a more robust case to be put forward.
- The location of the main proceedings should have also have been considered in more depth from the outset, given only the main office is in country A maybe the main proceedings would have been better placed in country B with foreign recognition in country A.

In terms of next steps the key items would be:

- Asses the COMI of the company to understand where the main proceedings would be best placed, this should ideally align with the debtor's true COMI. If the debtor's COMI is country A, where the foreign insolvency proceeding is pending, this should have been well-documented and supported in the recognition petition. If denied on this basis this could also be challenged.
- Communication with local authorities in both jurisdictions should be opened.
- If disputes related to contracts or rights governed by foreign law, the foreign representative can consider the Hague Principles, which provide guidance on the choice of law in international contracts.
- If in the EU EC Regulation on Insolvency Proceedings may apply, consideration should be given the regulation provisions and procedures for recognition in EU countries.
- The UNCITRAL Model Law on Cross-Border Insolvency provides a framework for the recognition and cooperation of foreign insolvency proceedings, a review should be done to see if this model law has been adopted, as declining recognition may be in contrast to this.

The answer should address the rebuttable COMI presumption per Art.16 MLCBI, and further discuss the situation upon Art.17, 21 and address the procedural matters per Art.15, 6 etc.

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.

Dear Sirs,

Thank you for the opportunity to present our initial thoughts on the key filing strategy to ensure a successful restructuring for Globe Financial Holdings Inc (the “Company”).

When considering any international insolvency proceedings (which this will likely be given the company global presence), the may key item to consider for of all international insolvency proceedings is the Globe Holdings' Center of Main Interests (“COMI”) as this will have a knock on effect of the preliminary filings and also the running of the restructuring given whichever country is selected will be the main proceedings and may make binding decisions on all other proceedings.

In assessing the COMI, several key factors should be considered, such as main location of assets, creditors, where the functional management of the business is undertaken. Given the lack of independent business operations, the Company only re-incorporated in the Cayman Islands in 2010 (from Canada), the bank account was only opened just a few days ago which only pays operating expenses, meetings are held virtually in Cayman / and or at their legal counsels address, subsidiaries are all incorporated under US laws and all employees are in the US alongside their headquarters are also in the US. It would be fare and likely agreed by the courts that Company’s COMI is located in the US.

However, the re-domiciliation to the Cayman Islands with its counsel also being located their will present some challenges to the assertion, noting the fact that board meetings are held virtually from here.

If determined to be the US, an application should be made to the US court under Chapter 15 (this can also facilitate recognition in the Cayman Islands due to its adoption of the 1997 UNCITRAL Model Law, offering US bankruptcy protections in country) recognition as the main proceeding which provides more control and protection to the debtor and stakeholders during the restructuring. This is also the location of the companies’ assets and should therefore also assist on the effective distribution of

assets to creditors in country with their own courts being responsible alongside the creditors and insolvency practitioners as they can dictate this in their own jurisdiction.

Given that Globe Holdings commenced a scheme under the Cayman Islands, and that 91.83% in number and 99.34% in value voting in favor of the Scheme, recognition in the Cayman Islands should be a key focus.

The papers required should a filing be made in the US will be:

1. The chapter 15 petition
2. Certification of good standing for the debtor
3. Declaration providing the key information of the case
4. Notice of the petition to creditors
5. Order of the foreign proceedings, being a copy of the order from the main proceedings where lodged as applicable (however, based on the above this shouldn't be required, and instead will be needed as the lodge for recognition in the Cayman islands)
6. Subject to their being a foreign representative they will need an order as part of the application
7. Documents identifying the debtors assets and their creditors
8. A statement of the relief required (such as the recognition of the foreign proceeding, the imposition of an automatic stay on actions against the debtor's assets, or other related relief)
9. A cheque paying the filing fees

This will also be the same process in Cayman noting the fact that they are applying for recognition, and with this need to present the initial recognition, this is where a foreign representative in Cayman could also be appointed (although maybe excessive here given limited operation), all relief sought must also be disclosed.

On day one of the filing in the US in order to protect the assets of the debtor the debtor should also apply for relief under imposition of automatic stay on the proposed litigation, this will give the debtor breathing space as they try and protect the assets of the company.

The answer needs be substantiated with appropriate references to MLCBI provisions, inter alia, definitions per Art.2, presumption of COMI per Art.16, procedural matters per Art.15, and should offer a conclusion with references to Art.19, 20, 21 as a minimum. Also needs be substantiated with the descriptions of appropriate relief to be sought.

*** End of Assessment ***

Marks awarded: 18 out of 50