



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).

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 MLCBI is a model law/soft law that is meant to be adopted by states that lack a cross-border insolvency framework and considers many factors (such as the taking into account the local laws and/or effect on the sovereignty of the state). The MLCBI is also not meant to unify the insolvency laws of all adopting states and is not a treaty, it only aims to provide a procedural framework for states to cooperate an efficient cross-border insolvency proceeding. An advantage of the MLCBI is that it is meant to be incorporated into the existing insolvency laws of the adopting state and takes into consideration local laws, allowing for a flexibility. However, the objective of the model law, would be futile should it fail to garner support and wide adoption by states as it is merely a recommendation. High degrees of amendments to the model law by states would also pose as a deterrent towards the cooperative and effective goal/aspect of the MLCBI.

Whereas in contrast, the European Insolvency Regulation (EIR) is an EU regulation. Upon adoption, directly becomes part of the domestic law of the member states of the EU. A disadvantage of this approach is the lengthy and difficult agreement between all member states. The EIR took nearly forty-years of efforts to be established. An obvious advantage of this approach would be a consistent and predictable insolvency framework that is adopted by all member states.

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 court has to consider and be satisfied that the interest of local creditors in the enacting state are taken into consideration and are protected. Granting of post-recognition relief should also not affect with the administration of another proceeding

Question 2.3 [2 marks] 2 marks

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

Under Article 13, foreign creditors have the same rights as a local creditor to commence and participate in a local proceeding of a debtor in the state. It is also stated that a foreign claim should not be given lower priority than a general unsecured claim solely because the claim is foreign.

Question 2.4 [maximum 3 marks] 2 marks

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

A foreign main proceeding benefits from an automatic relief; firstly, a stay on the commencement of individual proceedings on the debtor's assets. Secondly, a stay on execution against the debtor's assets and lastly, a suspension of the right to transfer, encumber or dispose of any assets of the debtor.

The automatic relief are meant to allow the foreign representative the time to organise and coordinate the identification of assets and ultimately towards securing the same.

In a foreign non-main proceeding, relief could also be sought but at the discretion of the court.

Reference to Art.20 and 21 MLCBI

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.

Foreign main proceeding would likely be filed in Germany as the debtor has its COMI there. A foreign non-main proceeding will then follow to be filed in Bermuda. Recognition proceedings filed in the US would indicate that there is efforts to cooperate with the foreign proceedings and to result in a more effective insolvency of the debtors estate between the jurisdictions.

Given the above, it is likely that the German proceeding be recognised as the main proceeding as it has its COMI there. The Bermuda proceeding would then be recognised as the foreign non-main proceeding given its establishment there, allowing for the rights of local creditors to be protected. Finally, the recognition in the US of the foreign proceedings will result in

improved cooperation and efficiency between jurisdictions in dealing with the debtors' estate and insolvency.

Definitions of Art.2 MLCBI, and reference to procedures per Art. 15, 17, 6... etc missing

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.

The joint provisional liquidators are likely seeking for recognition of a foreign insolvency proceeding (either main or non-main). While the alleged tortious interference filed by the US-based vendors is a separate proceeding with its own legal merits and facts, the recognition proceedings filed by the Liquidators are vital in determining the outcome of the lawsuit. Under the Model Law, recognition of a foreign insolvency proceeding will trigger an automatic stay or similar protective measures on the debtor's assets and may also extend to the foreign liquidators. The foreign liquidators may also apply to court for some degree of immunity from legal actions based on their role as administrators of the debtor's estate. Should recognition be granted, the lawsuit would likely be stayed or dropped

Notwithstanding the above, the US court handling the proceedings and lawsuits should consider the effects of granting orders on the overall insolvency process and the impact it would have on the local vendors (US-based vendors).

Needs reference to 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?

The foreign representative should be proactive and take precaution steps to protect the assets. Firstly, the foreign representative should appoint a qualified and experienced legal counsel in the US to review the US-governed leases and intellectual property licenses and whether the *ipso facto clauses* are enforceable.

In addition, the foreign representative may apply to the US court for interim reliefs to safeguard the assets of the debtor by staying all potential/future executions and proceedings against the debtor's assets in the interim.

The foreign representative may also inform the US Court about the *ipso facto clauses* and seek for a declaration on whether they are enforceable or unenforceable. The US Court should consider the impact of such declaration on the debtor's UK restructuring and on the local domestic legal framework. The foreign representative should also consider notifying the relevant parties in the US about the on-going restructuring of the debtor in the UK and iron out potential issues that may arise.

Requires discussions around Art. 19, and conclusion per Art 20 and/or 21 MLCBI

Question 3.4 [maximum 4 marks] 2 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?

From the outset, the foreign representative should have determined the criteria required for recognition pursuant to the articles in the model law and ensure compliance to the requirements required for recognition. The foreign representative should've engaged in an experienced legal counsel to advise on the complexities of cross-border insolvency matters.

COMI of the debtor prior to filing for a foreign main proceeding. Pursuant to Article 16(3) of the Model Law, the court can presume that the registered office of the debtor to be the COMI. For the Court to consider whether the foreign proceeding can be recognised as a foreign main proceeding, the court must be satisfied that the COMI of the debtor is in the foreign state. Notwithstanding the facts and merits of the proceeding, the foreign representative should consider appealing the decision.

What the foreign representative can do next is to determine whether there is an establishment in Country B. An establishment is defined in the Model Law as *“any place of operations where the debtor carries out a non-transitory economic activity with human means and goods and services.”* The existence of certain assets solely on its own is unlikely to convince the local court that there is an establishment. By determining the same, the foreign representative will be able to file for foreign insolvency proceedings in Country B as foreign non-main proceeding. While the effects are not as extensive, it may still facilitate cooperation with local authorities.

Also requires references to Art. 17, 15, 21 and 6 MLCBI, and associated discussions

QUESTION 4 (fact-based application-type question) [15 marks in total] 8 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.

With reference to the above facts, Globe Holdings is pursuing a restructuring exercise involving a scheme under Cayman Island Law. The goal is to extend the maturity of the Notes and obtain concurrence to repay the quarterly interest "in kind". Following that, to file for Chapter 15 recognition proceeding in the United States. Highlighted below are key considerations that are vital to the restructuring:-

1) Determination of the Centre of Main Interest (COMI)

It is critical that we establish the COMI of Globe Holdings as it will determine whether the proceeding is a main or non-main proceeding. The same will affect the type of relief provided by the court.

Based on the information given, it appears that the COMI of Globe Holdings is likely to be in the Cayman Islands. Firstly, Globe Holdings underwent a re-domiciliation process to re-domesticate as a Cayman Islands company following its initial formation as a Canadian Company. This indicates a deliberate shift in the company's position in the Cayman Islands. Globe Holdings also provided various notices of its re-incorporation, including filings with the Securities and Exchange Commission to disclose that the Company is re-incorporated in the Cayman Islands to reinforce the company's position in the Cayman Islands. The Company also retained its long serving legal counsel, suggesting that their presence in Cayman Islands is consistent with its filings. Globe Holdings also maintains its books and records in the Cayman Islands. Despite having no business operations on its own in Cayman Islands and conducting its business through subsidiaries in the US, the legal position, filings and documents of Globe Holdings seems to indicate their consistent position that Cayman Islands is the COMI (including the decision making of restructuring). Thus it may support filing for recognition as a foreign main proceeding.

It's important to note that the determination of COMI is a fact-specific analysis and experienced legal counsels are required to consider and assess various factors, including the location of the debtor's decision-making, administration, and overall business operations, to reach a conclusion about the debtor's COMI. The decision on whether to file for recognition as a foreign main or non-main proceeding will depend on the analysis of COMI. If COMI is determined to be in the U.S., filing for recognition as a foreign main proceeding may not be appropriate, and recognition as a foreign non-main proceeding might be considered. This analysis and strategy should be tailored to the specific circumstances and legal advice sought from professionals well-versed in cross-border insolvency law and the UNCITRAL Model Law.

2) Recognition as a Foreign Main Proceeding

Should the determination and analysis of COMI is indeed in Cayman Islands, any proceedings initiated in Cayman Islands would be considered as foreign main proceeding. Globe Holdings should then file for recognition of this proceeding in the US. In order to file for the same, we should refer to Article 15 of the Model Law which provides for the requirement for the application and relevant documentation to be provided for the Court to consider. These includes a certified copy of the order for the foreign proceeding and appointment of the foreign representative or a certificate from the foreign court affirming the existence of the foreign proceeding and appointment of the foreign representative or in the absence of both the above, any evidence acceptable to the court of the existence of the foreign proceeding and the foreign representative. The application for recognition should also be enclosed with a statement identifying all foreign proceedings in respect of the debtor. In arriving to the decision for recognition, the court is allowed certain presumptions as mentioned in Article 16.

Recognition of the proceeding will ensure an efficient and coordinated restructuring for Globe Holding between the courts of the two jurisdictions and eliminate any unnecessary applications to be filed by Globe Holding.

3) Relief Provisions

Should recognition of the foreign main proceeding be allowed, it will trigger a broad range of automatic reliefs such as the ability to administer and realize on the debtor's assets, investigate the debtor's affairs, and propose or implement a reorganization plan. An integral automatic relief provided for a foreign main proceeding is an automatic stay on all legal proceedings including enforcement or asset sale against the debtor and its assets. The automatic relief will provide the foreign representative with breathing room to ascertain and take control of assets of the debtor and also allow the foreign representative to ascertain the legal position of the debtor in any on-going suits.

Upon sanction by court of the recognition, Globe Holdings should file for recognition of the Sanction Order pertaining the Scheme Meeting, approving the restructuring of Globe Holdings. Globe Holding should also seek to impose the automatic stay on all legal proceedings to prevent any creditor to take action against Globe Holding or its assets in the US. The automatic stay on proceedings will provide time for the foreign representative to strategise and coordinate considering the potential class action in the US. On a practical level, it may be wise for the foreign representatives to communicate with the stakeholders in US (such as Noteholders and potential plaintiffs in the class action suits etc) to address their concerns and to inform them of the recognition proceedings and restructuring plan.

Definitions need be substantiated with references eg. Art.2 MLCBI, "What if" situations are partially addressed, with conclusions without references to Art.19, 20, 21 MLCBI. Public policy and other procedural issues not mentioned (eg Art.6, 17, 22.. etc.. MLCBI)

*** End of Assessment ***

Marks awarded: 29 out of 50

