



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] 9 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] 10 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 Model Law on Cross-Border Insolvency (MLCBI) and the European Union (EU) Regulation on Insolvency Proceedings handle cross-border insolvency cases in very different ways. They also have different enforcement levels and scopes.

The MLCBI is a framework that countries can use to make their own laws, but it is not required to do so. This organization was made by the UN Commission on International Trade Law (UNCITRAL). This means that it can be used by everyone, and it could be used to solve cross-border bankruptcy problems regardless of whether a country is a member of a certain regional organization. The EU Regulation, on the other hand, is mandatory by law and applies directly in all EU member states. This sets up a standard framework for the EU, but it only applies to these member states. It doesn't cover issues involving countries that aren't in the EU.

Benefits:

- The MLCBI
 - o Flexibility, so each country can change the rules to fit their own legal systems and needs.
 - o Encourages cooperation and coordination: This makes it easier for different areas to work together on issues of cross-border bankruptcy.
- EU Regulation:
 - o Uniformity and Certainty makes it easier for people to file for bankruptcy in more than one EU country by setting up a standard, predictable bankruptcy process across all EU member states.

Disadvantages:

- The MLCBI

- Lack of Uniformity: Different places may have different ideas about how to interpret and apply the MLCBI.
- It's not mandatory for countries to follow it, so the way different countries handle cross-border bankruptcy cases may be different.
- EU Regulation:
 - Less Flexibility: It's harder for member states to change the rules to fit their own needs.
 - Limited Use: It doesn't cover cross-border bankruptcy issues for countries that aren't in the EU.

When it comes to cross-border bankruptcy, the EU Regulation and the MLCBI have different approaches. The MLCBI gives a framework that can be changed and used by many people. It encourages people to work together and coordinate, but it doesn't include any legally binding parts. While the EU Regulation only covers a small area, it is more focused on making things clear and consistent across the EU.

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 main things should be thought about:

- Fairness: Finding the balance between different groups' interests means figuring out the pros and cons of giving relief to different groups, such as both domestic and international creditors. Protecting all creditors in the bankruptcy proceedings and making sure that everyone gets a fair outcome.
- Broader consequences: Doing research on how the relief might affect the debtor's ability to keep running its business.
- Protection: Giving relief shouldn't go against basic legal principles or hurt the interests of other people involved. How this would affect other parties, for example, the employees of the debtor.

Furthermore, the court should decide if the relief being asked for is effective and efficient based on two factors:

- Necessity: Ascertaining whether the relief is necessary and if it is essential for safeguarding assets or making the foreign main proceedings run more smoothly.
- Urgency / Time sensitivity: Because of how quickly the request needs to be met and the possible outcomes of waiting if it is urgently needed.

Moreover, the court should take into consideration the public policy - does it contravene it in the recognizing state, how this would impact the fundamental principles of the legal system there.

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 protects foreign creditors from being treated less favourably than domestic creditors. The non-discrimination principle states that foreign creditors do not have any disadvantages over local creditors when submitting claims or asking to start an insolvency

procedure. Article 13 states that, unless a similar domestic claim would be rated lower than general unsecured claims under the law of the enacting state, the minimum ranking for foreign creditor claims shall be the rank of general unsecured claims. Furthermore, it stipulates that claims made by foreign creditors will only be given a lower priority than local claims in cases where local laws specify a different priority for a particular kind of claim, including claims involving fines or postponed payments.

Question 2.4 [maximum 3 marks] 3 mark

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

Foreign Main Proceedings: The relief given in a foreign main case applies to everyone. This means that the debtor's assets, no matter where they are located, are subject to the orders and decisions made by the foreign court in the main case. The main process is meant to include the main bankruptcy case where the debtor's center of main interests (COMI) is situated. The universal effect of relief in foreign main proceeding makes sure that the actions taken by the foreign court affect all the debtor's assets around the world. Some of the things that can be done are stopping legal moves, selling assets, making reorganization plans, and other steps that affect every part of the debtor's insolvency process.

These reliefs are automatically given, protecting the debtor right away and making it easier to run the foreign main proceeding smoothly.

In foreign non-main proceedings, on the other hand, the types of relief that can be given are more restricted. When a foreign court rules on a non-main proceeding, its orders and decisions only affect the debtor's assets that are in the state where the non-main proceeding is taking place. Most of the time, non-main proceedings are used in insolvency cases where the debtor has an entity but not its COMI. Foreign non-main proceedings only allow relief in a small area. This means that the actions taken by the foreign court mostly affect assets located in the country where the non-main proceeding is being held. This can mean that insolvency steps are used in a smaller area than they would be in the main proceedings.

This lets the approach be more tailored, but it can cause delays and uncertainty when compared to the automatic relief in main proceedings.

QUESTION 3 (essay-type questions) [15 marks in total] 11 marks

Question 3.1 [maximum 4 marks] 3 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.

The MLCBI states that the main proceeding should start in the country where the debtor has its COMI. In this case, that would be Germany so the foreign main proceeding must be filed there.

Foreign Non-Main Proceeding: should be filed in Bermuda, since that's where the debtor has an establishment, but not COMI.

Most likely outcome:

Foreign main proceeding in Germany would apply to all the debtor's assets around the world and have control over them. The German court in charge of the main proceeding would be able to make orders and decisions that apply to all the debtor's assets worldwide.

Foreign Non-Main Proceeding in Bermuda would only look at the debtor's assets that are based in Bermuda, which is where the establishment is located. The relief given in the non-main case would mostly affect the debtor's assets in Bermuda and might not apply to all of their assets around the world.

Proceedings for Recognition in the US - the US court would recognize and carry out the main and non-main proceedings that were started in Germany and Bermuda, respectively. The US court would determine the appropriate level of recognition and assistance to provide, based on the nature of the foreign proceedings and their impact on the debtor's assets and operations in the US.

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

Question 3.2 [maximum 3 marks] 2 marks

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 action may prevent the US court from recognizing the German main and Bermudan non-main proceedings under Chapter 15. It may delay or interrupt main and non-main processes designation.

The court will look for evidence that liquidators are obstructing or preventing US vendors from fulfilling their contracts with the foreign debtor, while also protecting foreign insolvency proceedings, which could harm domestic and foreign creditors.

I think liquidators will argue that they acted in good faith and in the best interests of the debtor and all creditors and that they worked within their authority, as MLCBI provides foreign representatives with partial, limited immunity from legal action to facilitate cross-border insolvency proceedings. Local US legal counsel is recommended.

I see three possible outcomes:

- The court may reject the complaint due to immunity, recognizing the significance of safeguarding the foreign insolvency process or,
- The court may award limited immunity to liquidators for activities within their obligations, while allowing the lawsuit to proceed for actions outside that scope or,
- The court may postpone a decision on the lawsuit until the foreign main proceedings progress.

Requires reference to Art.10 MLCBI

Question 3.3 [maximum 4 marks] 4 marks

A foreign representative who administers assets in a debtor-in-possession-like restructuring proceeding in the UK commences a recognition proceeding in the US, setting the recognition

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

The principal aim is safeguarding the debtor's US assets against possible loss resulting from "ipso facto" clauses. As a result, I would strongly support a prompt recognition procedure during the hearing. I would recommend highlighting the urgency of the situation and outlining the substantial risk of instant asset loss associated with ipso facto clauses during the hearing. In order to expedite the recognition process, I would advise negotiating with the judge (?) and stressing the potential consequences of delaying.

I would take into consideration filing an emergency motion for an accelerated hearing if the circumstances are really severe and the debtor's assets are in immediate danger. This would serve to highlight the extraordinary circumstances and make the case for the court's prompt response. Once recognized, I would ask the US court to issue a declarative judgment or an injunction to stop counterparties from ending contracts because of ipso facto clauses. This would prohibit counterparties from taking specific actions, such as terminating contracts or leases.

In order to provide long-term protection, a declaratory judgment would ask the court to rule that the ipso facto terms are unenforceable under US Bankruptcy Code Section 365(e)(1). While going to court to pursue legal remedies is important,

I would also aggressively(?) negotiate with counterparties. This might entail proposing amendment agreements as these would align with US bankruptcy law by changing or getting rid of ipso facto terms. I would be transparent about the restructuring plan and my commitment to fulfill contractual obligations also. It's critical to remain aware of any prospective counterparty activities, such as attempts to revoke licenses or leases, that can endanger the debtor's US assets.

The rationale for each stage:

- Accelerated recognition reduces the amount of time that ipso facto provisions could be utilized to break contracts and take assets away.
- Filing a request for relief from the court provides a solid legal basis to protect assets and prevent contract terminations.
- By requesting relief from the court, you can stop contract terminations and protect assets with a solid legal base.
- A solid legal basis for protecting assets and preventing contract terminations is provided by requesting court relief.

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?

He should start by carefully analyzing the court's decision to reject recognition using the MLCBI's framework. It is crucial to comprehend the precise legal foundation for this decision, and he should consult with legal professionals who are knowledgeable in the MLCBI's rules as well as the insolvency laws of the relevant nations. This study, conducted in accordance with MLCBI principles, might entail a thorough examination of the judgment and possibly a request for clarification from the court.

In light of the MLCBI's focus on offering efficient procedures for handling situations involving cross-border insolvency, he would investigate all reasonable means of responding to the denial. This would comprise:

- Using the MLCBI's legal remedy mechanisms to appeal the decision if it appears that there was an oversight in procedure or legal misinterpretation.
- If technical or informational deficiencies are the reason for the denial, resubmitting the petition with the necessary alterations and supporting documentation.
- Pursuing alternate methods of recognition, such as requesting that the proceeding be recognized as a foreign non-main proceeding in the event that the debtor has an establishment in the relevant jurisdiction, as recommended by MLCBI Article 2(c), which provides definitions for such proceedings.

Parallel to this, he should have direct talks with Country B's creditors, looking into potential asset sales or restructuring plans that might not need official recognition. This approach would be in line with MLCBI's mission to promote collaboration and protect the value of the debtor's assets.

Performing extensive due diligence would have been essential right from the start. This involves determining the possibility of successful recognition considering the MLCBI and the unique legal frameworks of the two jurisdictions. Assessing whether the foreign proceeding meets the criteria to be considered a "foreign main proceeding" in accordance with the MLCBI's definitions would be a crucial component of this due diligence, with an emphasis on the COMI. This preliminary assessment would also include formulating counterarguments and anticipating probable objections based on the MLCBI criteria.

He should ensure the initial recognition petition is thorough and well-written, specifically meeting the MLCBI criteria. To meet the MLCBI's standards for recognition as a foreign main proceeding, this would entail supplying comprehensive information about the foreign insolvency proceedings and proof that Country A represents the debtor's COMI.

Considering alternative strategies from the beginning, in line with the MLCBI's flexibility, would also be a component of his strategy. This could entail investigating various sale options that might be permitted by Country B's legal framework or collaborating with creditors in that country to effectuate asset sales without formal recognition.

Improving communication with all parties concerned would be crucial, making use of the MLCBI's provisions for collaboration and direct court-to-court communication (Article 25). In cross-border insolvency proceedings, this guarantees transparency and promotes a cooperative climate that is advantageous to reaching a satisfactory conclusion.

Art.16 MLCBI is the main reference for "rebuttable COMI presumption" which should be discussed to highlight the weak COMI and substantiate your answer for opening FNMP recognition proceedings.

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

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

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

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

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

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

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

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

Globe Holdings retained Cedar and Woods, its long-standing Cayman Islands counsel, to advise on restructuring alternatives. Upon consultations with Cayman counsel and its other professionals, Globe Holdings ultimately determined that the most value accretive path for

the Noteholders was to commence a scheme under Cayman Islands law, followed by a chapter 15 recognition proceeding in the United States, most notably to extend the maturity of the Notes and obtain the flexibility to pay the quarterly interest “in kind”.

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

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

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

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

The strategy is twofold: it focuses on recognizing both main and non-main proceedings while also exploiting the company's operational and legal relationships to the Cayman Islands and the United States.

1. COMI and Establishment Analysis.

Given Globe Holdings' incorporation in the Cayman Islands, the maintenance of its books and records, and the location of its board meetings and legal counsel operations, the COMI is presumed to be in the Cayman Islands. However, the fact that all of Globe Holdings' business activities and staff are based in the United States complicates this analysis, potentially shifting the COMI there.

2. Filing Strategy

The best method would be to file for recognition of the Cayman Islands scheme as a foreign main proceeding in the United States, assuming that the COMI is located in the Cayman Islands. This application would benefit from an automatic stay and aid the restructuring process, giving Globe Holdings the legal foundation it needs for a successful restructuring.

If the COMI is determined to be in the United States, an application to have the proceedings in the Cayman Islands recognized as foreign non-main proceedings may still provide Globe Holdings with certain discretionary reliefs, which are critical for managing its assets and obligations across countries.

3. Papers To Be Submitted

- A petition for Chapter 15 recognition of the Cayman Islands scheme as the main proceeding, with certified copies of the Cayman Islands court orders (Convening Order and Sanction Order).
- Detailed evidence supporting the COMI analysis, emphasizing Globe Holdings' administrative and operational ties to the Cayman Islands.
- The scheme document and accompanying materials, evidence of creditors' support (including the Restructuring Support Agreement), financial statements, and other pertinent facts about Globe Holdings' financial status.
- Relief will be requested on day one.

On the first day of filing, it is necessary to request:

- An automatic stay - prevents individual creditor actions against Globe Holdings' assets in the United States, ensuring that the restructuring process runs smoothly.
- Recognizing the Cayman Islands plan allows it to be enforced in the United States, extending the maturity of the Notes and facilitating the payment of interest "in kind."

Additional Considerations:

- The possibility for class action litigation in the United States needs a deliberate approach to mitigate its impact on the restructuring process. Initial filings should include full disclosure and a request for a stay of litigation.
- It is critical to hire skilled legal counsel in both jurisdictions to help understand the difficulties of cross-border restructuring and Chapter 15 processes.
- Proactive contact with US noteholders and addressing their concerns is critical to gaining broad support for the restructuring process.

Well-structured essay, however lacking definitions and references to MLCBI provisions and/or appropriate sources; discussions on the rebuttable presumption of the COMI per Article 16(3) MLCBI and alternative courses of action; procedures per Article 15 MLCBI; conclusive remarks with reference to Articles 19 through 22 MLCBI as well as Art. 6 MLCBI.

*** End of Assessment ***

Marks awarded: 36 out of 50