



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] 7 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 key distinction between the application of the MLCBI and European Union (EU) Regulation on Insolvency Proceedings (EIR), the MLCBI attempts to provide uniform approach to cross-border insolvency matters by recommending the framework to be implemented with domestic insolvency laws while the EIR are regulations which like treaties which become a part of a State's domestic law once it has been adopted. The advantage of the EIR is the automatic recognition of insolvency proceedings with the European Union, however this is also its disadvantage. The benefits of the EIR are only available to EU member states, any non-EU State who is seeking the recognition of its proceedings in an EU State would have to submit to the domestic insolvency law of the country in question which affect legal certainty, transparency and ultimately efficiency.

On the other hand, the advantage of the MLCBI is that it allows any enacting State the freedom to determine which recommendations it will implement considering its domestic law and facilitates direct communication and co-operation between Courts in different States which allow for a more efficient process, however, the MLCBI unlike the EIR does not allow for automatic recognition of insolvency proceedings rather, it provides the foreign representative with standing in the relevant court to make an application for recognition and relief.

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.

Pursuant to paragraph 2 of Article 21 of the MLCBI, the Court in using its discretionary power to grant post-recognition relief must consider and satisfy itself that the interests of the local creditors are protected. This is due to the serious consequences or prejudice that may

manifest for the local creditors as a result of the Court turning over all or part of the debtor's assets located in its State, to the foreign representative for distribution.

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 of the MLCBI grants creditors in a foreign proceeding protection from discrimination. It particularly grants foreign creditors the same rights as local creditors /creditors in the enacting State with respect to the commencement of a proceeding and participation in a proceeding. That is to say, they should not be treated any worse than local creditors. Furthermore, paragraph 2 of Article 13 makes it clear that these rights do not affect the ranking of claims except that the ranking of foreign creditor's claims shall not be lower than that of a general unsecured claim.

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 key distinction with respect to the relief available in foreign main proceedings and foreign non-main proceedings is that pursuant to Article 20 the MLCBI, the available relief is automatic/mandatory where the foreign main proceeding has been recognised. This relief includes the following: the staying of the commencement or continuation of individual actions/proceedings which touch and concern the debtor's assets, rights, obligations or liabilities, the staying of the execution against the debtor's assets, and the suspension of the right to transfer, encumber or otherwise dispose of any assets. Whilst relief is available upon the recognition of both foreign main and non-main proceedings under Article 19 and 21 of the MLCBI, same is discretionary and the Court can refuse to grant said relief be if it is not satisfied that the relief relates to assets that should be dealt with using the law of its State or if the relief would affect the foreign main proceedings.

QUESTION 3 (essay-type questions) [15 marks in total] 10 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 foreign main proceedings must have been filed in Germany where the debtor has its COMI and foreign non-main proceedings in Bermuda where the debtor has an establishment pursuant to Article 3 (1) of the EIR Recast which states that the centre of the debtor's main interests (COMI) shall have the jurisdiction to open main insolvency proceedings. It is likely that the US Court would recognise the proceedings in Germany as the foreign main proceedings and the proceedings in Bermuda as the foreign non-main proceeding pursuant to Article 17 (2) of the MLCBI. The article provides for the recognition of a foreign proceeding as the foreign main proceeding if the proceeding occurs in the State where the debtor has its centre of main interests or COMI. It also provides for the recognition of a foreign proceeding as the foreign non-main proceeding if the proceeding occurs in the State where the debtor has an establishment. It should also be noted that recognition may be modified or terminated

under the MLCBI where the grounds either partially or wholly for granting same, have ceased to exist.

Requires references to definitional and procedural provisions of MLCBI eg. Art. 2, 15, 17(noted the mention!), 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 USA has adopted the MLCBI as Chapter 15 of its Bankruptcy Code. Accordingly, it is likely that the joint provisional liquidators will request that the US Court grant provisional relief in the form of a stay of the now pending litigation against them pursuant to Article 19 of the MLCBI until a decision is made on their application for recognition. Article 19 provides for interim relief that is urgently needed to protect the assets or interests being those of the relevant debtor and creditors respectively. However, it is likely that the Court will deny this application for interim relief on the basis that recognition is required for a stay of litigation to be granted as a form of relief. This was the basis on which a stay of litigation was refused in the USA cases of *Halo Creative & Design Limited v Comptoir des Indes Inc., case No. 14C 8196 (N.D. Ill Oct. 2, 2018)* and *United States v J.A. Jones Constr. Group, LLC, 333 B.R. 637 (E.D.N.Y. 2005)*.

Requires discussion based on 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 foreign representative should still take steps to protect the assets even though the relevant *ipso facto* clauses are not enforceable under the US Bankruptcy Code. This is because the length of time being 35 days until the recognition application is heard could facilitate creditor/3rd party interference with the said assets in the form of termination of the said leases and licenses which could jeopardize unfairly deprive the creditors and render the pending proceedings useless if the leases and licenses are so terminated.

Accordingly, should apply for interim relief in accordance with the section of Bankruptcy Code which corresponds with Article 19 of the MLCBI. Article 19 provides for interim relief that is urgently needed to protect the assets or interests being those of the relevant debtor and creditors respectively. Relief should be sought in the form of an order for recognition relief available under Article 21 of the MLBI i.e. suspending *inter alia* the right of transfer and disposition of any of the assets of the debtor.

Question 3.4 [maximum 4 marks] 3 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?

At the outset, the foreign representative should have analysed the affairs of the debtor to identify whether the affairs/assets of the debtor in Country A would cause it to be considered the COMI or whether same would amount to an establishment pursuant to the MLCBI. Pursuant to Article 17 of the MLCBI, if foreign proceedings are commenced in a country where the Debtor has its COMI, all things being equal the said proceedings will be recognised in the enacting country as foreign main proceedings, however if the debtor only has an establishment (as defined by Article 2 (f) of the MLCBI) in that country, the proceedings shall be recognised in the enacting country as foreign non-main proceedings. An establishment is defined in the MLCBI as “any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services. The foreign representative should assess the debtor’s affairs in Country A to see whether it meets these requirements for an establishment under the MLCBI. Provided that it does, the foreign representative should now commence proceedings in Country B to recognise the proceedings in Country A as the foreign non-main proceeding. If it does not meet these requirements, the foreign representative may pursuant to Article 11 of the MLCBI, initiate insolvency proceedings in Country B provided that the necessary requirements are met.

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

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.

Response:

To decide whether an application should be made for the recognition of main or non-main proceedings, a determination must be made as to whether the client's COMI is located in the Cayman Islands (CI) being the State in which the foreign proceedings originated. Generally, it is accepted that the COMI of a debtor is the State/location where the debtor's administration of his interests regularly takes place and as such, the location is considered to be same by third parties particularly, the creditors of the debtor.

Pursuant to Article 16 of the MLCBI, there is a presumption that a debtor's registered office is the debtor's COMI where there is no evidence to the contrary. Furthermore, in the USA, consideration will also be given to the debtor's activities at or around the filing date of the Chapter 15 petition based on the application of the case of *In re Fairfield Sentry Ltd., et al. Litigation*, 458 B.R. 665 in the case of *In re Modern Land (China) Co., 41 B.R. 768, 782 Bankr. S.D.N.Y. 2022*. Notwithstanding same, the Court may also review the period between the start of foreign proceedings and the Chapter 15 petition to ensure that the debtor has not attempted to manipulate the determination of its COMI to its advantage. The court will also, in determining the debtor's COMI, give consideration to other factors, such as: the locations of the debtor's assets, employees, creditors, headquarters, bank as well as the law governing the contracts of the debtor and most of its disputes.

In the present matter, the client's presumptive COMI is the Cayman Islands (CI). In support of this presumption, the administration of the client's interest regularly takes place in the CI in the form of *inter alia* the client retaining CI counsel, holding virtual general and special board meetings in CI which are organised by the CI counsel, maintaining its books and records in the State. Furthermore, the client's creditors have always considered and understood the client to be a Cayman Islands company in that the subject Notes issued to the creditors disclosed the client as a CI company and explained the consequences in relation to CI law. The Restructuring Support Agreement also indicated that the said restructuring would take place in the CI which coincidentally was expected by the largest Noteholders and no other Noteholders have raised any objections in relation to this issue. Further thereto, the restructuring process has begun in the CI and the Scheme has been sanctioned by the Court in CI and the order sanctioning same has been filed with the Registrar of Companies in the CI.

In considering the period between the start of foreign proceedings and the Chapter 15 petition of note is that an independent third party is currently marketing the sale of the client's corporate headquarters in New York and the client has opened a bank account in the CI a few days ago to pay certain operating expenses. The opening of the bank account a few days ago gives the appearance that the client may not be acting in good faith in relation to the debtor's COMI, however without additional evidence to support this, I do envision same being considered a sound argument by the Court. While, an argument could be made for the USA to be the debtor's COMI, the facts provide overwhelming evidence in support of the contention that the

Cayman Islands is the client's COMI. Accordingly, an application for recognition of foreign main proceedings should be made in the USA.

In order to make such application, pursuant to Article 15 of the MLCBI, the application for recognition should be submitted with a certified copy of the Sanction Order along with the foreign representative's statement identifying all foreign proceedings concerning the debtor, which are known to the foreign representative.

Upon filing the application, interim relief should be sought under Article 19 of the MLCBI in the form of an order entrusting the realisation of the debtor's assets located in the USA to the foreign representative to protect/preserve the assets of the client particularly the corporate headquarters which include the land, building, building improvements and contents including furniture and fixtures.

As this question is a fact-based application-type question, it requires the MLCBI provisions to be applied to the facts of the case and substantiated with references and a discussion. The answer should contain as a minimum: definitions of terms used, with respective references to MLCBI provisions and/or appropriate sources; alternative courses of action upon discussion on the rebuttable presumption of the COMI; conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI (noted the mention of Art.19).

*** End of Assessment ***

Marks awarded:35 out of 50