



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 Model Law on Cross-Border Insolvency (MLCBI) and the European Union (EU) Regulation on Insolvency Proceedings (the “EU Regulation”) lies in their foundational approaches and objectives.

Regarding the MLCBI, the MLCBI is designed as a framework for cooperation between jurisdictions in cross-border insolvency cases. It does not seek to harmonize insolvency laws but rather aims to facilitate recognition and cooperation across borders.

One key benefit of the MLCBI is that it enhances legal predictability for cross-border insolvency cases, promoting cooperation and coordination between jurisdictions.

A key disadvantage of the MLCBI is that it does not mandate uniform substantive insolvency laws, which means disparities in insolvency outcomes may persist due to differing national laws.

The EU Regulation, in contrast, applies directly to member states within the EU and is intended to harmonize the handling of cross-border insolvency proceedings across the EU. It contains detailed provisions on jurisdiction, recognition, and applicable law, aiming for a more integrated approach within the EU.

One key benefit of the EU Regulation is that it provides a more unified and integrated system for handling insolvency cases within the EU, reducing legal uncertainty and disparities in outcomes.

One key disadvantage is that the EU Regulation's direct applicability is limited to EU member states, which can limit its reach and effectiveness in global cross-border insolvencies involving non-EU jurisdictions.

Question 2.2 [maximum 2 marks] 2 marks

Explain what the court should primarily consider using its discretionary power to grant post-recognition relief under Article 21 of the MLCBI.

Under Article 21 of the Model Law on Cross-Border Insolvency (MLCBI), when the court is exercising its discretionary power to grant post-recognition relief, it should primarily consider what is just, right and fair in the circumstances (*Cosco Bulk Carrier Co Ltd v Armada Shipping SA and another* [2011] EWHC 216 (Ch)). In assessing this, it will consider status of proceedings taken elsewhere, whether further steps could have been taken and whether the interests of all creditors and interested parties are adequately protected.

Question 2.3 [2 marks] 2 marks

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

Under Article 13 of the Model Law on Cross-Border Insolvency (MLCBI), foreign creditors are granted protections that ensure their access to proceedings under the laws of the enacting state is on an equal footing with domestic creditors. Specifically, Article 13(1) establishes that foreign creditors have the same rights as creditors in the enacting state with respect to the commencement of and participation in local proceedings concerning the debtor under the insolvency law of the enacting state.

Furthermore, Article 13(2) clarifies that this equal access does not affect the ranking of claims in the enacting state, except insofar as it stipulates that the claim of a foreign creditor shall not be given a lower priority than that of general unsecured claims solely because the creditor is foreign. This prevents discrimination against foreign creditors based on their non-domestic status, ensuring that their claims are treated equitably alongside those of domestic creditors.

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 primary distinction is that the relief in main proceedings is automatic upon recognition, reflecting the principal place of the debtor's business activities, whereas, in non-main proceedings, relief is granted at the court's discretion, recognizing the need for protection of assets located in jurisdictions where the debtor has a tangible operational presence but not its primary business center.

When a foreign main proceeding is recognized (where the debtor's center of main interests - COMI - is located), Article 20 of the MLCBI stipulates three automatic effects: (a) a stay of the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities; (b) a stay of execution against the debtor's assets; and (c) the suspension of the right to transfer, encumber, or otherwise dispose of any assets of the debtor.

In contrast, for foreign non-main proceedings (where the debtor has an establishment but not its COMI), the relief is not automatic but subject to the court's discretion. Article 21 of the MLCBI allows the court, upon recognition of a foreign non-main proceeding and at the request of the foreign representative, to grant appropriate relief aimed at protecting the assets of the debtor or the interest of creditors. The specific relief under Article 21 is discretionary and can include measures similar to those automatically applied in main

proceedings but requires an active decision by the court based on the circumstances of the case.

QUESTION 3 (essay-type questions) [15 marks in total] 7 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: This proceeding would be filed in Germany, where the debtor has its COMI. Under the Model Law on Cross-Border Insolvency (MLCBI), a foreign main proceeding is one that takes place in the state where the debtor's COMI is located. The recognition of this proceeding in the US would grant it certain automatic relief measures aimed at protecting the debtor's assets and allowing for the orderly administration of its insolvency.

Foreign Non-Main Proceeding: This proceeding would be filed in Bermuda, where the debtor has an establishment but not its COMI. A foreign non-main proceeding under the MLCBI is one that occurs in a state where the debtor has an establishment—a place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services. The recognition of a foreign non-main proceeding in the US does not automatically result in the same level of relief as a main proceeding. Instead, the court may grant relief at its discretion to protect the assets of the debtor or the interests of creditors.

The likely result of the recognition proceedings in the US would involve:

- **For the German Foreign Main Proceeding:** Automatic relief measures under Article 20 of the MLCBI would likely be granted upon recognition. These measures include a stay of execution against the debtor's assets, a stay on the commencement or continuation of individual actions or individual proceedings against the debtor, and a suspension of the right to transfer, encumber, or otherwise dispose of any assets of the debtor.
- **For the Bermuda Foreign Non-Main Proceeding:** The relief would be at the discretion of the US court under Article 21 of the MLCBI. The court might grant relief measures similar to those for a main proceeding, but such relief would specifically aim to protect the assets located in Bermuda or to address the interests of creditors affected by the debtor's operations in Bermuda.

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

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.

Upon recognition of a foreign proceeding, whether main or non-main, certain relief measures come into effect automatically or can be granted on a discretionary basis. This may include a stay on the commencement or continuation of legal proceedings against the debtor's assets. However, the scope of this stay depends on whether the proceeding is recognized as a main or non-main proceeding and the specific relief granted by the court. Under Article 21 of the MLCBI, upon recognition, the foreign representative may seek various forms of relief from the recognizing court to protect the assets of the debtor or the interests of creditors. This could potentially include seeking protection from litigation initiated in the recognizing state that could interfere with the administration of the foreign insolvency proceedings.

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 take proactive steps to protect the assets, particularly considering the existence of US-governed leases and intellectual property licenses with *ipso facto* clauses. These steps are essential because, although such clauses are not enforceable under the US Bankruptcy Code, the delay until the recognition hearing could expose these assets to potential adverse actions based on the *ipso facto* clauses.

The steps that the foreign representative can take include:

1. **Seek Interim Relief Under Article 19 of the MLCBI:** Before the recognition hearing, the foreign representative can apply for interim relief to protect the debtor's assets in the US. This relief could include a stay of actions against the debtor's assets and the prohibition of executing *ipso facto* clauses in the leases and licenses. Interim relief would serve as a temporary measure to preserve the debtor's assets until the court can decide on the recognition of the foreign proceeding.
2. **Inform the Court of the Existence of Ipso Facto Clauses:** The foreign representative should inform the US court about the existence of *ipso facto* clauses in contracts governed by US law and that they are non-enforceable under the US Bankruptcy Code. This is crucial for the court to understand the immediate need to protect the debtor's assets from actions that could undermine the restructuring efforts in the UK and persuade the court to grant relief that aligns with the protections offered under US bankruptcy law.
3. **Request Recognition of the Foreign Proceeding as a Main or Non-Main Proceeding:** Upon successful recognition, automatic relief under Article 20 (for a foreign main proceeding) or discretionary relief under Article 21 (for a foreign non-main proceeding) can be granted, further protecting the debtor's assets. Specifically, the recognition as a main proceeding would provide broader automatic relief, which could encompass protections against the enforcement of *ipso facto* clauses.

Question 3.4 [maximum 4 marks] 1 mark

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

If a court in Country B denies the recognition of a foreign proceeding as the foreign main proceeding, the foreign representative has several options moving forward:

1. **Seek Recognition as a Foreign Non-Main Proceeding:** If the foreign main proceeding recognition is denied due to the court's determination that the debtor's Center of Main Interests (COMI) is not in Country A, the foreign representative could seek to have the proceeding recognized as a foreign non-main proceeding instead, provided the debtor has an establishment in Country A. This would still afford some level of recognition and relief under the Model Law, albeit with potentially less automatic relief than a main proceeding would provide.
2. **Appeal the Decision:** The foreign representative might consider appealing the decision if there are grounds to believe that the court's determination was incorrect or that the court did not appropriately consider the evidence presented regarding the debtor's COMI.
3. **Initiate Separate Proceedings in Country B:** Depending on the assets located in Country B and the strategic interests of the debtor's insolvency process, initiating separate insolvency proceedings in Country B might be a viable route. This could be more complex and costly but may be necessary to deal with assets located within that jurisdiction effectively.
4. **Negotiate with Creditors:** Independent of court proceedings, the foreign representative could seek to negotiate directly with creditors in Country B, especially if the denial of recognition affects the administration of specific assets or contracts governed by Country B's law.

At the outset, the foreign representative should have conducted a thorough analysis of the debtor's COMI. This includes gathering evidence that clearly demonstrates that the debtor's COMI is indeed in Country A, to support the initial petition for recognition. They could have also ensured that all necessary documentation were accurately prepared and translated, as required by the Model Law and the specific requirements of Country B's court.

Art.16 MLCBI is the main reference for "rebuttable COMI presumption" which needs to be discussed for full marks. References to Art.17, 21, 6 are also required.

QUESTION 4 (fact-based application-type question) [15 marks in total] 5 marks

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

The client is a Cayman Islands incorporated and registered entity. It is a financial service holding company for a number of direct and indirect subsidiaries that operate in the commercial automobile insurance sector in the United States. Globe Holdings was initially

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

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

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

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

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

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

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

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

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

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

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

Given the facts, the COMI likely remains in the Cayman Islands. This is given that Globe Holdings is incorporated and registered in the Cayman Islands. It also maintains its books and records in the Cayman Islands. Furthermore, public filings and notices identify it as a Cayman Islands company. However, significant operational aspects are in the United States, including the fact that all subsidiaries operating in the commercial automobile insurance sector are in the U.S, all employees and the headquarters are in the U.S.

Given the above, while the formal COMI might be in the Cayman Islands, substantial operational presence and activities are in the U.S., potentially leading to an argument for the U.S. being the true COMI.

In this regard, Globe Holdings will have to apply to recognize the Cayman island scheme as either a foreign main or non-main proceeding depending on whether the COMI is determined to be in the Cayman Islands or the US, respectively.

As a matter of filing strategy, it would be prudent to apply for the recognition of the Cayman Islands proceedings as both main and non-main proceedings. On one hand, given the substantial operational activities in the U.S., it would be strategic to apply for recognition of the Cayman Islands proceeding as the foreign main proceeding. On the other hand, the application for recognition as non-main proceeding is also prudent due to the operational presence in the U.S. This dual approach can provide broader relief and flexibility in managing U.S. assets and operations.

In terms of the documents to be submitted, this would include the documents specified under Article 15(2) of the MLCBI:

1. the petition for recognition of the foreign proceeding;
2. evidence of the existence of the Cayman Islands proceeding, including the court order/decision from the Cayman Court (Art 15(2)(a) MLCBI) and documentation related to the Scheme Meeting; and
3. a declaration or affidavit by Globe Holdings or its counsel detailing the company's COMI, its operations in the U.S., and the necessity for recognition in the U.S (MLCBI Art 15(2)(c)).

As for the relief to be requested on day one, this would include an automatic stay on actions against Globe Holdings' assets in the U.S., including any litigation or enforcement actions related to the U.S.-governed leases and IP licenses. This assumes that the Cayman scheme is recognized as a foreign main proceeding.

Furthermore, prayers could be made for provisional relief to prohibit the enforcement of *ipso facto* clauses in U.S.-governed contracts.

Prayers could also be made for permission to operate in the ordinary course of business, including the use of cash collateral and also the court's authorization to proceed with the sale of the corporate headquarters in New York as planned, if it aligns with the restructuring efforts.

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. For full marks, further application to the facts of the case would be needed. Furthermore, the answer should contain as a minimum: Definitions eg (COMI, establishment, foreign main/non-mail proceedings etc) with respective references to (if any) MLCBI provisions, A discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI, Conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI.

*** End of Assessment ***

Marks awarded: 29 out of 50