



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] 9 marks

Question 2.1 [maximum 3 marks] 3 marks

What is the key distinction between the application of the MLCBI and the European Union (EU) Regulation on insolvency proceedings? Also describe one key benefit and disadvantage of each approach.

The MLCBI is model legislation for individual sovereign States to adopt, with or without modification, in connection with their existing domestic insolvency law to address insolvency proceedings of a cross-border nature. Key benefits of the MLCBI include the relative ease of adoption because only the adopting State's interests are at stake. No complicated negotiations among many foreign States with their own domestic concerns are needed. Another key benefit is the relative uniformity of cooperation and communication directives among other States around the world that adopt the MLCBI. A disadvantage of the MLCBI may be that it is a soft law recommendation without any means of enforcing adoption by sovereign States.

In contrast, the European Insolvency Regulation (EIR) is a regulation of the European Union that, when adopted by the EU, directly became part of each EU member State's domestic insolvency law. Because each EU member State's domestic laws would be impacted by potential adoption of the EIR, establishment of the EIR framework took almost 40 years to negotiate and pass. A benefit of the EIR is the development of concepts such as COMI, centre of debtor's main interests, and Establishment, which concepts are adopted in the MLCBI. The EIR provides uniformity of insolvency laws among the EU member States, but such regulation does not extend beyond the EU borders.

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.

In considering use of its discretionary power under Article 21 of the MLCBI, the court should determine whether relief is necessary to protect the debtor's assets or the interests of creditors. In particular, the court should determine whether relief is necessary to protect the debtor's assets by staying actions or proceedings, staying execution against the assets, and/or suspending rights to transfer, encumber, or dispose of assets. Where necessary, the court may also allow the taking of evidence and examination of witnesses, and allowing the foreign representative to administer or realize the debtor's assets in the enacting State.

The court should also consider whether the interests of local creditors are adequately protected.

Finally, in the case of a foreign non-main proceeding, the court should consider whether the relief requested relates to assets that, under the enacting State's laws, should be administered in the foreign non-main proceeding. For example, the relief requested should not conflict or interfere with administration in a domestic insolvency proceeding or a foreign main proceeding.

Question 2.3 [2 marks] 2 marks

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

Creditors in a foreign proceeding have the same rights to commence and participate in a domestic insolvency proceeding in the enacting State as creditors in the enacting State. In addition, in an insolvency proceeding in the enacting State, foreign creditors' claims cannot be ranked lower than general non-preference claims, unless the enacting State modifies the MLCBI to create a lower ranked tier of claims for foreign tax and social security claims.

Question 2.4 [maximum 3 marks] 2 marks

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

A foreign main proceeding is an insolvency proceeding taking place in the jurisdiction of the debtor's centre of main interests. Recognition of a foreign main proceeding provides automatic mandatory relief in the form of an automatic stay of commencement or continuation of actions concerning the debtor's assets, rights, obligations, or liabilities; stay of execution against the debtor's assets; and suspension of rights to transfer, encumber, or dispose of the debtor's assets. Additional discretionary relief is available upon recognition of a foreign main proceeding. The automatic stay does not affect creditors' rights to preserve a claim by commencing an individual action or proceeding or filing a claim against the debtor. The automatic stay also does not prohibit commencement of a domestic insolvency proceeding in the enacting State.

A foreign non-main proceeding is an insolvency proceeding taking place in the jurisdiction in which the debtor has an "establishment," a place of operation in which the debtor carries out a non-transitory economic activity with human means and goods or services." MLCBI Article 2(f). Recognition of a foreign non-main proceeding accords no mandatory automatic relief and instead allows the court in the enacting State to grant discretionary relief where necessary to protect the debtor's asset and protect the interests of creditors.

For full marks, reference to respective articles MLCBI is needed. Discretionary relief concerns FNMP.

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.

An insolvency proceeding was commenced in Germany, and another insolvency proceeding for the same debtor was commenced in Bermuda. A court in the US has been asked to recognize these two proceedings. Provided that the recognition requirements are met, the US court must recognize the proceeding in Germany, where the debtor has its COMI, as a foreign main proceeding and the automatic relief under MLCBI Article 20 will be granted.

Again, provided that the recognition requirements are met, the US court will recognize the proceeding in Bermuda, where the debtor has an establishment, as a foreign non-main proceeding, and will consider discretionary relief where necessary to protect assets and creditor interests so long as such relief does not interfere with the foreign main proceeding in Germany.

The US court will also communicate directly with the courts and foreign representatives with respect to the proceedings in Germany and Bermuda regarding coordination of efforts and administration of assets and claims.

Full answer necessitates reference to definitional and procedural articles (eg. Art.2, 17, 15, 6 MLCBI)

Question 3.2 [maximum 3 marks] 0 mark

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

The recognition proceeding would end with denial of the application for recognition. Under the limited facts provided, the joint provisional liquidators lack the required evidence of the existence of a "foreign proceeding," as defined in MLCBI Article 2(a), or their appointment as and the "foreign representative, as defined in MLCBI Article 2(d), in such foreign proceeding. In addition, while the foreign joint provisional liquidators may be attempting to liquidate debtor's asset, the lawsuit and discovery sought by the US-based vendors of the foreign debtor is a tort action, not an insolvency proceeding. Recognition is unwarranted under these circumstances.

The answer should have been 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, immediately after applying for recognition in the US court, apply to the US court for interim relief under MLCBI Article 19 to stay any action by counterparties to the US-governed leases and intellectual property licenses and to prevent such parties from exercising the *ipso facto* contract provisions that are unenforceable under the US Bankruptcy Code. Because such relief would be available to a debtor-in-possession under US insolvency laws, under MLCBI Article 21(1)(g), such relief is available to the foreign representative. This action is necessary to protect the debtor's assets and prevent devaluation of the debtor's rights under these US-based contracts. Under these facts, it does not appear that such interim relief would interfere with administration of a foreign main proceeding.

The US court should grant interim relief, which will then be effective until the US court rules on the application for recognition, at which time a further stay may be entered.

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?

The likely basis for Country B court's denial of recognition of the insolvency proceeding in Country A as a foreign main proceeding is that there is insufficient evidence that Country A is the debtor's center of main interests (COMI). In addition to the insufficiency of evidence, it is apparent that debtor's assets are located in Country B, which has an interest in ensuring that such assets are administered in the appropriate jurisdiction.

To establish the debtor's COMI, which is essential to designation of the foreign proceeding as a "main" proceeding, the foreign representative must provide evidence acceptable to the Country B court that Country A is where the central administration of the debtor takes place and that this location of central administration is readily ascertainable by the debtor's creditors. Under the given facts, the debtor has a registered office and not much more in Country A. Without additional evidence of central administration that is obvious to creditors, Country B is correct to deny recognition as a foreign main proceeding.

The foreign representative may request reconsideration of the application for recognition by submitting additional information/evidence that should have been presented at the outset. If applicable, the foreign representative could show that Country A is (a) the location of the debtor's books, records, principal assets, operations, primary bank, and/or employees; (b) where the debtor's financing was organized or authorized, its cash management system was run, and/or accounting and computer systems were managed; and (c) the jurisdiction whose laws and regulations apply to the debtor. This is not an exhaustive list, and none of these factors are conclusive to proving the debtor's COMI. But such factors are relevant to a court's analysis and determination of the debtor's COMI for purposes of recognition of a foreign main proceeding.

Answer should include a discussion on the rebuttable presumption of COMI (Art.16 MLCBI), procedural articles (eg. Art. 15, 6), and substantiation with Art. 17, 21.

QUESTION 4 (fact-based application-type question) [15 marks in total] 11 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.

Globe Financial Holdings, Inc. (“Globe Holdings”) is a debtor in an existing insolvency proceeding in the Cayman Islands to restructure its debtor-creditor relations with primarily the single class of Noteholder creditors. Globe Holdings and the Noteholders agreed in their Restructuring Support Agreement that the primary insolvency proceeding would be held in the Cayman Islands.

Globe Holdings’ assets include its direct and indirect ownership interests in various subsidiaries that operate in the United States. Globe Holdings desires to protect those assets and the interests of its creditors during the restructuring process. Therefore, Globe Holdings, through its debtor-in-possession-like representative, should apply to the US Bankruptcy Court for recognition of the existing insolvency proceeding being conducted in the Cayman Islands as a foreign main proceeding. Because the US has adopted the MLCBI, recognition of the Cayman Islands insolvency proceeding as a foreign main proceeding will ensure that US courts cooperate and coordinate with the Cayman Islands insolvency court in protecting debtor’s assets and creditors’ rights. In addition, recognition as a foreign main proceeding ensures the automatic stay of commencement or continuation of individual actions or proceedings concerning Globe Holdings’ assets, rights or liabilities, the automatic stay of execution against Globe Holdings’ assets, and automatic suspension of rights to transfer, encumber, or dispose of Globe Holdings’ assets. This automatic stay will also benefit Globe Holdings by staying any attempt to commence the brewing class action litigation in the US.

It should be noted that the existing Cayman Island insolvency proceeding would not qualify as a foreign non-main proceeding because Globe Holdings does not have an “establishment” in the Cayman Islands. In other words, Globe Holdings does not operate by carrying out economic activity with human means and goods or services within the Cayman Islands.

The Globe Holdings representative should submit to the US Bankruptcy Court the application for recognition of the Cayman Islands insolvency proceeding together with the following information and documents to establish the CI proceeding as a foreign main proceeding:

1. A certified copy of the Cayman Islands court’s decision commencing the proceeding and appointing the (foreign) representative; or a certificate from the Cayman Islands court affirming the existence of the insolvency proceeding and appointing the (foreign) representative; or such other information and documents acceptable to the US court regarding the existence of the CI proceeding and appointment of the representative;
2. A statement identifying all foreign proceedings in respect of Globe Holdings that are known to the representative; and
3. An English translation of any documents that are not already in English.

In addition, the application for recognition should include information and documents to assist the US court in determining that the Cayman Islands is the jurisdiction in which Globe Holdings’ center of main interest (COMI) is located. Such information and documents will include:

- a. The Certificate of Registration by Way of Continuation in the Cayman Islands by which the company re-domesticated as a Cayman Islands company;
- b. Notices of its re-incorporation, including in the public filings with the Securities and Exchange Commission;
- c. Evidence of Globe Holdings’ bank account in the Cayman Islands;
- d. Evidence of operating expenses paid from the Cayman Islands bank account;
- e. Evidence of its corporate counsel Cedar and Woods located in the Cayman Islands and the Board Meetings organized and held virtually by that corporate counsel;
- f. Evidence that Globe Holdings’ books and records are maintained in the Cayman Islands; and
- g. SEC filings and prospectus informing creditors, especially prospective Noteholders, that the company is a Cayman Islands company.

It is important to note that the primary creditors in the CI insolvency proceeding are the Noteholders. The company’s SEC filings and the prospectus available to Noteholders clearly identify Globe Holdings as a Cayman Islands-registered entity, which information was readily available to the applicable creditors.

The above-described documents and evidence is necessary to address any concerns the US court may have that Globe Holdings’ COMI may be New York, US, where the corporate headquarters (including land and building) and employees are located. Although MLCBI Article 16(3) allows the US court to presume that Globe Holdings’ COMI is the location of its registered office (the Cayman Islands), that presumption is rebuttable by evidence to the contrary. In this case, the company’s representative should emphasize that the employees located in New York are employees of the company’s nondebtor subsidiaries and the corporate headquarters may also be the headquarters of those subsidiaries.

The limited facts do not explain the circumstances surrounding a third party actively marketing the sale of the corporate headquarters, including land, building, building improvements and contents. To the extent that such assets are directly owned by Globe Holdings and that the marketing and potential sale of such assets are involuntary, Globe Holdings’ representative may, immediately upon filing the application for recognition in the US insolvency court, also apply for interim relief under MLCBI Article 19 to stay execution against such assets. Such a stay would only be in effect until the recognition

decision is made. If recognition is granted as a foreign main proceeding, the stay would automatically continue until the Cayman Islands proceeding concluded or as otherwise ordered by the US court.

Interim relief to stay the commencement of class action litigation is not necessary. The perhaps imminent filing of litigation is not an urgent threat to the company's assets. Moreover, upon recognition of the foreign main proceeding, the automatic stay under MLCBI Article 20(1)(a) will prohibit commencement or continuation of any individual actions or proceedings against Globe Holdings.

Good essay. Would have been more comprehensive with discussions and references to definitions and procedural provisions within the MLCBI for the purposes of applying to the case eg Art.2 MLCBI, also Art.17, procedural guidance (eg. Art.15, Art.22 and 6).

*** End of Assessment ***

Marks awarded: 34 out of 50