



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.**
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- 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 the European Union (EU) Regulation on insolvency proceedings is that the MLCBI is a “soft law” that can be taken as a recommendation and adopted in whole or in part into the domestic legislation of a State. In contrast, the European (EU) Regulation on insolvency proceedings, the European Insolvency Regulation, directly became part of the domestic law of each EU Member State upon adoption. A key benefit of the MLCBI “soft law” format is that it is much less intrusive than other formats and allows each State to determine which aspects to adopt. A disadvantage of the MLCBI “soft law” format is that it does not contain a requirement of reciprocity. A key benefit of the EIR approach is that it creates complete uniformity among its adopters. A disadvantage to the EIR approach is that it is very difficult and time consuming to get different states to agree on such a complete insolvency framework.

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 using its discretionary power to grant post-recognition relief under Article 21 of the MLCBI, the court should primarily consider the following: (i) whether the interests of the local creditors in the enacting state are adequately protected; (ii) whether the requested relief relates to assets that, under the law of the enacting state, should be administered in the foreign non-main proceeding; (iii) whether the requested relief concerns information required in the foreign proceeding; and (iv) whether the relief will improperly interfere with the administration of another insolvency proceeding.

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 provides a number of protections to creditors in foreign proceedings. In particular, Article 13 of the MLCBI provides foreign creditors with the same rights as creditors from the enacting state regarding the commencement of and participation in the local insolvency proceedings regarding the debtor under the insolvency law of the enacting state. In addition, Article 13 of the MLCBI provides that the claim of a foreign creditor shall not be given a lower priority than that of a general unsecured creditor solely due to the fact that the claim holder is a foreign creditor.

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?

A key distinction with respect to the relief available in foreign main versus foreign non-main proceedings is that foreign main insolvency proceedings are entitled to the following automatic mandatory relief in the enacting state: a stay of commencement or continuation of actions or proceedings in the enacting state concerning the debtor's assets, rights, obligations or liabilities; a stay of execution against the debtor's assets; and a suspension of the right to transfer, encumber, or dispose of assets of the debtor. In contrast, foreign non-main insolvency proceedings do not have automatic relief but only discretionary post-recognition relief in the enacting state.

QUESTION 3 (essay-type questions) [15 marks in total] 10 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.

Since the debtor's COMI is located in Germany, the appropriate jurisdiction for the foreign main proceeding is Germany under the Model Law. Accordingly, the foreign main proceeding must have been opened in Germany. If the foreign main proceeding was not opened in Germany, the location of the debtor's COMI, then the foreign main proceeding cannot be recognized as a foreign proceeding for the purposes of the Model Code. Since the debtor has an establishment in Bermuda, Bermuda is an appropriate jurisdiction for the foreign non-main proceeding under the Model Law and was presumably opened in Bermuda.

The question is not clear but, assuming that the debtor does not have at least an establishment in the United States, the foreign proceedings cannot be recognized as foreign proceedings under the Model Law in the United States and the debtor would have to open a separate insolvency proceeding in the United States, if possible.

Requires references to definitional and procedural provisions of MLCBI eg. Art. 2, 15, 17, 6 to substantiate answer on likely outcome.

Question 3.2 [maximum 3 marks] 3 marks

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

The joint provisional liquidators will likely be recognized as a foreign representative for the purposes of the recognitions proceeding. Therefore, the joint provisional liquidators can argue that the United States court does not have jurisdiction over them pursuant to Article 10 of the Model Law which provides that submitting an application for recognition alone is not sufficient to establish jurisdiction over the foreign representative with regard to matter unrelated to the insolvency.

Question 3.3 [maximum 4 marks] 3 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 can seek interim relief prior to the recognition decision by filing an application with the U.S. court where the recognition hearing is set to be held, as set forth in Article 19 of the Model Law. The foreign representative will have to establish that the relief is necessary to protect the assets of the debtor and that the interests of the debtor's creditors and other interested parties will be adequately protected. Accordingly, the foreign representative should seek the imposition of an interim stay, pending the entry of the recognition decision, in order to stay any attempts by the non-debtor parties to the leases and the intellectual property licenses from declaring default on any of the leases and licenses and trying to thus terminate any of the leases or licenses.

Also requires references to the provisions of Art 20 and/or 21 MLCBI as applicable.

Question 3.4 [maximum 4 marks] 2 marks

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

In the event that the foreign representative's petition for recognition of a foreign proceeding as the foreign main proceeding is denied by the insolvency court considering the petition, the foreign representative could request that recognition decision be reviewed pursuant to Article 23 of the Model Law. However, given the fact that the factors determining the debtor's COMI would not seem to establish that the proceeding in Country A is the foreign main proceeding and that no facts have changed since the denial of the recognition petition, it is unlikely that a review would result in a different outcome.

Accordingly, the foreign representative should determine where the debtor's COMI is located by determining the location where the central administration of the debtor takes place which can be readily ascertainable as such by the debtor's creditors. In doing so, the foreign representative should consider the following factors: (i) the location of the debtor's books and records; (ii) the location where the debtor's financing was organized and authorized; (iii) the location where the debtor's principal assets and operations are located; (iv) the location where the debtor's primary bank is located; (v) the location where the debtor's employees are located; (vi) the jurisdiction governing the debtor's main contracts; (vii) the location from which the debtor's policies and systems are managed; (viii) the location where the debtor's supply contracts were organized; (ix) the jurisdiction whose laws would apply in most disputes; (x) the location where the debtor is subject to supervision or regulation; and (xi) the location whose law governs the preparation and audit of the debtor's accounts.

Once COMI is determined, the foreign representative should arrange for an insolvency proceeding to be initiated in that jurisdiction. Once initiated, the foreign representative should then submit another petition for recognition for the recognition of this foreign proceeding as the foreign main proceeding.

Likewise, the foreign representative should have taken the same steps at the outset: determining where the debtor's COMI is located, arranging for an insolvency proceeding to be initiated in that jurisdiction, and then submitting a petition in Country B for the recognition of this foreign proceeding as the foreign main proceeding.

Art.16 MLCBI is the main reference for "rebuttable COMI presumption". References to Art.17, 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.

Dear client,

Please find below an analysis of key filing strategies to ensure a successful restructuring of Globe Financial Holdings Inc. (“Globe”), in light of the recent order from the Cayman court sanctioning Globe’s scheme of arrangement (the “Scheme”).

The first step that should be taken is the initiation of a proceeding in the United States under Chapter 15 of the United States Bankruptcy Code, recognizing the Cayman Islands Scheme as the foreign main proceeding of Globe. Given the fact that Globe’s headquarters are located in New York, the United States Bankruptcy Court in New York would be the proper jurisdiction to file the Chapter 15 proceeding.

Upon analysis, it appears likely that the United State Bankruptcy Court will recognize the Cayman Scheme as the foreign main proceeding of Globe because a strong case can be made that Globe has the center of its main interests (“COMI”) in the Cayman Islands. The two main factors used to determine an entity’s COMI are: (i) the location where the entity’s central administration takes place and (ii) whether such location is readily ascertainable as the entity’s COMI by the entity’s creditors.

In order to determine whether the two above factors are met, courts may look to sub-factors, including but not limited to the following: (i) the location of the entity’s books and records; (ii) the location where the entity’s financing was organized or authorized; (iii) the location from where the entity’s cash management system was run; (iv) the location where the entity’s principal assets or operations are found; (v) the location of the entity’s primary bank; (vi) the location of the entity’s employees; (vii) the location in which the entity’s commercial policy was determined; (viii) the jurisdiction of the controlling law for the entity’s main contracts; (ix) the location from which the entity’s business policies, staff, accounts payable, and computer systems are managed; (x) the location from which the entity’s supply contracts were organized; (xi) the location form which the entity’s reorganization is being conducted; (xii) the jurisdiction whose laws would apply to most disputes; (xiii) the location in which the entity was subject to supervision o regulation; and (xiv) the location whose law governs the preparation and audit of the entity’s accounts and where they were prepared and audited.

Based on the information that I have, it appears likely that the United State Bankruptcy Court will recognize the Cayman Islands as Globe’s COMI and, therefore, the Cayman Islands Scheme as the foreign main proceeding of Globe. Factors supporting this view include:

- Globe is incorporated and registered in the Cayman Islands;
- Globe filed a certificate of registration by way of continuation in the Cayman Islands to re-domesticate there in 2010;
- Globe provided various notices of its incorporation in the Cayman Islands, including public filings with the United States Securities and Exchange Commission (the “SEC”);
- Globe has retained Cayman Islands counsel and has used them for over 10 years;
- Globe has a Cayman Island bank account from which it pays certain operating expenses;

- All Globe regular and special board meetings are held virtually in the Cayman Islands and are organized by Cayman counsel;
- Globe maintains its books and records in the Cayman Islands;
- Globe’s public filings with the SEC and prospectus provided in connection with its issuance of notes provided that it is a Cayman company and explained the related indemnification and tax consequences;
- Globe secured the support of a majority of its noteholders to restructure the notes through a Restructuring Support Agreement (“RSA”), which provides for a restructuring proceeding in the Cayman Islands;
- Globe commenced the Scheme in the Cayman Islands in accordance with the terms of the RSA;
- The Cayman Islands court entered a convening order authorizing Globe to convene a Scheme meeting to consider the Scheme, which was held in the Cayman Islands and at which, the Scheme was supported by a majority of Globe’s noteholders; and
- The Sanction Hearing was held and an order sanctioning the Scheme was entered and filed with the Cayman Islands Registrar of Companies.

Further, Globe itself has no employees and no business of its own. The only other possible location of Globe’s COMI, based on available information, would be the United States, since Globe’s headquarters are located there and its issued notes are governed by New York law. Obviously, the factors indicating the Cayman Islands as the COMI greatly outweigh the factors indicating that the COMI is in the United States.

Additional information that would be helpful for a COMI argument is the location of Globe’s primary bank account. Still, from the above factors, it appears that both (i) that Globe’s central administration takes place in the Cayman Islands and (ii) that Globe’s creditors, and in particular its noteholders, know or can readily ascertain from notices and SEC filings that the Cayman Islands is Globe’s COMI.

However, given the fact that Globe is now insolvent and unable to pay its creditors and is looking at a potential class action suit being brought against it in the United States, Globe should immediately take the following steps. Globe should have the Cayman Islands court authorize someone to administer Globe’s reorganization and/or act a foreign representative of the Cayman Scheme. Then, Globe should immediately initiate a Chapter 15 proceeding in the New York bankruptcy court, as set forth above. Once initiated, Globe should immediately file an application to have the Cayman Islands Scheme as the foreign main proceeding of Globe. In addition, Globe should file an application for the United States bankruptcy court recognize the foreign representative as such. Further, Globe should immediately certain interim relief, pending the United States bankruptcy court’s decision on recognition of the Cayman Scheme as Globe’s foreign main proceeding, namely imposition of the automatic stay, so that no lawsuits can be initiated against Globe, no creditors can take step to go after Globe’s assets and, to the extent Globe does not want to sell its headquarters, stop the third party from marketing the sale of the headquarters, pending the Chapter 15 proceeding.

Finally, Globe should determine if there are any additional jurisdictions in which it has assets or interests where it should initiate insolvency proceedings and have the Cayman Scheme recognized as Globe’s foreign main proceeding and perhaps the United States Chapter 15 proceeding as foreign non-main proceeding, since Globe has carried out “non-transitory economic activity” there, namely trading its shares on the NASDAQ stock exchange and issuing notes. Please let me know if you have any questions.

Regards,

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: the definitions of terms used, with respective references to MLCBI provisions and/or appropriate sources; reference to Article 16(3) MLCBI for the discussion on the rebuttable presumption of the COMI and indications for alternative courses of action in case of rebuttal; necessary papers to be submitted to the US Court per Article 15 MLCBI; conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI

*** End of Assessment ***

Marks awarded: 35 out of 50