



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] 6 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 EU Regulation on Insolvency Proceedings is an EU Regulation which directly becomes part of the domestic law of each EU Member State upon the European Council's adoption of it (barring Denmark). In contrast, the MLCBI is a recommendation which states are free to adopt, in whole or in part, into their domestic legislation.

One key benefit of the approach of the EU Regulation is compulsory adoption across the EU Member States once the European Council adopted the Regulation. However, the disadvantage is that it took a long time for the EU Member States to agree to adopt the EU Regulation, given its binding nature upon all of them.

One key benefit of the approach of the MLCBI is that states are free to adopt it in full or in part, and/or with amendments which individual states may view as necessary. This flexibility may encourage states to adopt the MLCBI. However, the disadvantage is that there is no compulsory adoption of the MLCBI.

Question 2.2 [maximum 2 marks] 2 marks

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

The court will consider what is just, right and fair in the circumstances (see *Cosco Bulk Carrier Co Ltd v Armada Shipping SA and another* [2011] EWHC 216 (Ch)). The court should primarily consider that the interests of the debtor's creditors and other interested parties are adequately protected. Other considerations include the status of proceedings elsewhere.

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 MLCBI, foreign creditors possess the same rights as creditors domiciled in the enacting State regarding the commencement of, and participation in, local proceedings regarding the debtor under the insolvency law of the enacting State. In other words, foreign creditors should not be treated worse than local creditors when they apply to commence an insolvency proceeding in the enacting State or file claims in such a proceeding.

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?

Article 20 of the Model Law provides for automatic mandatory relief where the recognised foreign proceeding qualifies as a foreign main proceeding. The following three automatic effects apply - (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) a suspension of the right to transfer, encumber or otherwise dispose of any assets of the debtor.

Such automatic mandatory relief is not available for foreign non-main proceedings, for which discretionary relief under Article 21 may be granted (which is also available for foreign main proceedings).

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.

The foreign main proceeding must have been filed in Germany, since under Article 17 of the MLCBI a foreign proceeding is a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests. The foreign non-main proceeding must have been filed in Bermuda, as under Article 17 a foreign non-main proceeding is if the debtor has an establishment in the foreign State.

The likely result is that the foreign proceedings will be recognised in the US, with automatic relief coming into effect for the German proceedings (pursuant to Article 20 of the MLCBI), and discretionary relief available under Article 21 for both foreign proceedings.

Answer needs to be substantiated with references to definitional and procedural provisions of MLCBI eg. Art. 2, 17, 15, 6..

Question 3.2 [maximum 3 marks] 0 mark

Joint provisional liquidators commenced a recognition proceeding in the US and immediately were sued and served with discovery in connection with their alleged tortious interference

with contract rights of the US-based vendors of the foreign debtor. Explain the likely outcome.

Under Article 19 of the MLCBI, certain forms of interim relief are available at the request of the foreign representative from the time of filing the recognition application until the application is decided upon. However, the available interim relief does not include the staying of individual actions concerning the debtor's assets, rights, obligations or liabilities.

Thus, the action against the liquidators may continue until the recognition of the foreign proceeding. If recognised as a foreign main proceeding, then pursuant to Art 20(1)(a) the action may be stayed. If recognised as a foreign non-main proceeding, then the foreign representative may apply under Art 21(1)(a) for the staying of the action.

Requires discussion based on Art.10 MLCBI

Question 3.3 [maximum 4 marks] 2 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 may apply under Article 19(1) for the staying of execution against the debtor's assets as well as for the entrusting of the administration of the debtor's US assets to the foreign representative in order to protect the assets which are in potential jeopardy. Article 19 is the appropriate article under which to seek relief since the recognition hearing is pending, and hence interim relief prior to the hearing is necessary. Further, service of notices to terminate leases or licences do not constitute the commencement or continuation of actions or proceedings (see *Fibria Celulose S/A v Pan Ocean Co Ltd*) - thus, a stay of the commencement of proceedings is not necessary and instead staying of execution against assets is the appropriate relief to be sought.

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

Question 3.4 [maximum 4 marks] 3 marks

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

The foreign representative could have, from the start, relied on Article 16(3) to show that in the absence of proof to the contrary, the debtor's registered office is presumed to be the

centre of main interests. This would have helped the proceedings be recognised as foreign main proceedings.

In the current situation, the foreign representative may seek recognition of the foreign proceeding as a foreign non-main proceeding. This requires showing that there is an “establishment” in Country A, which is defined as “any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services”. It is likely that the registered office in Country A would satisfy this definition.

References to Art.17, 21, 6 are also required.

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 Holdings should be advised to apply for recognition of the Cayman proceedings as foreign non-main proceedings in the US.

First, the requirements under Article 17(1) for a “foreign proceeding” to be recognised are met. The reorganization Scheme constitutes a collective judicial proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or

liquidation. This is demonstrated by the involvement of all of the Noteholders in the Scheme process and the involvement of the Cayman Court in overseeing the process.

In terms of filing requirements for recognition, Article 15 provides that a foreign representative may apply to the court for recognition of the foreign proceeding to which the foreign representative has been appointed - Globe Holdings should be advised that such application shall be accompanied by (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or (c) in the absence of such evidence, any other evidence acceptable to the court of the existence of the foreign proceeding and the appointment of the foreign representative. This requirement could be satisfied by producing the application to the Cayman Court for permission to convene the Scheme meeting. Notably, the application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of Globe Holdings that are known to the foreign representative.

Next, I explain my recommendation that Globe Holdings should apply for recognition of the Cayman proceedings as foreign non-main proceedings rather than foreign main proceedings. Under Article 17(2)(a), a foreign proceeding shall be recognised as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests (the "COMI"). Although there is no definition of the COMI in the Model Law, guidance may be sought from the UNCITRAL Guide to Enactment. It provides that two key factors for determining the COMI under the Model Law are (a) the location where the central administration of the debtor takes place; and (b) which is readily ascertainable as such by creditors of the debtor. Of course, the determination of the COMI is ultimately a holistic determination that depends on many factors, such as the location of various operations or assets of the company, among others.

Admittedly, there are certain factors which may at first glance indicate that the COMI of Globe Holdings is the Cayman Islands - for example, it is incorporated and registered in the Cayman Islands, with public notices of such incorporation having been issued (ie, the filings with the SEC as well as the prospectus); it has a bank account in the Cayman Islands for certain operating expenses; and its books and records are located in the Cayman Islands.

However, a closer look indicates that the COMI of Globe Holdings is in fact the US, not the Cayman Islands. All the employees (under its subsidiaries) are located in the US, with the company's headquarters also being in the US. Further, regulation of Globe Holdings appears to primarily rest with the SEC, a US organization. Its primary bank account also does not appear to be the one in the Cayman Islands, which was only opened a few days ago and services some (not specified) part of its operating expenses. The board meetings are also not held in the Cayman Islands.

The requirement that Globe Holdings has an establishment in the Cayman Islands (for recognition of a foreign non-main proceeding) is met. The term is defined under Article 2(f) as "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services". Notably, the presence of bank accounts alone does not in principle satisfy this requirement (see *The Judicial Perspective* at p 47 para 140). However, given the keeping of books and records in the Cayman Islands, as well as the fact that the company is incorporated and registered in the Cayman Islands, it is likely that Globe Holdings will be found to have an establishment in the Cayman Islands.

Notably, there will be no automatic mandatory relief available to Globe Holdings upon recognition of the Cayman proceedings as foreign non-main proceedings. Thus, upon recognition, Globe Holdings should be advised to apply under Article 21(1)(a) for the staying

of the commencement of individual actions or proceedings concerning the debtor's assets, rights, obligations or liabilities. This is of particular importance in relation to the class action litigation in the US which is brewing but has not been filed.

On day one of the filing of the recognition application, Globe Holdings should also be advised to apply, pursuant to Article 19(1), for interim relief involving the staying of execution against Globe Holdings' assets, as well as the entrusting of the administration of Globe Holdings' assets in the US to the foreign representative, as well as the relief available under Article 21(1)(c) of suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor. This is especially important given that Globe Holdings is insolvent and its assets may be under threat from creditors.

Globe Holdings' counsel should also note that pursuant to Article 18, from the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and (b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Good essay!

However, for full marks, the answer should also contain definitions eg (COMI, establishment, foreign main/non-main proceedings etc) with respective references to any MLCBI provisions (noted that some definitions/references are mentioned) and a discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI

*** End of Assessment ***

Marks awarded: 34 out of 50