



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] 8 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] 7 marks

Question 2.1 [maximum 3 marks] 2 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 MLCBI and the European Union Regulation on insolvency proceedings (“EIR”) is that MLCBI is a form of “soft law” that serves as a recommendation for adoption into the domestic law of a State, whereas the EIR is a European Union (“EU”) Regulation that is binding on EU Member States.

The key benefit of the MLCBI is that it gives a State the discretion to choose whether to adopt the MLCBI, in full or in part. The disadvantage is that different States may adopt the MLCBI in a different manner and this leads to deviation from its provisions.

As for the EIR, the key benefit is that, as a result of the binding nature on all its Member States, the legal provisions on cross-border insolvency are consistent throughout the Member States of the EU, and this provides legal certainty. The disadvantage is that it limits the sovereignty of the EU Member States.

Full response requires mention of procedural issues. While the EIR is the result of discussions between EU Member States and ensures that national concerns are addressed, it causes longer development/approval times as opposed to a “soft” guidance document.

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 should primarily consider the following:

First, pursuant to Art 21(2) of MLCBI, whether the interests of the local creditors in the enacting State are adequately protected.

Second, pursuant to Art 21(3) of MLCBI, that such reliefs should not interfere with the administration of another insolvency proceedings.

Question 2.3 [2 marks] 2 marks

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

The protections granted to such creditors are two-folds, namely,

First, that all foreign creditors shall have same rights as domestic creditors regarding the commencement and participation in domestic insolvency proceedings; and

Second, the ranking of claims shall not be affected with the exception that the claim of a foreign creditor shall not be prioritised lower than that of general unsecured claims.

Question 2.4 [maximum 3 marks] 1 mark

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

The key distinction between the 2 proceedings is that foreign main proceedings is superior to foreign non-main proceedings in the hierarchy of proceedings. This is because any reliefs granted under a foreign non-main proceeding must be consistent with the foreign main proceedings. Where a foreign non-main proceeding is recognised first, any relief granted must be reviewed by court and modified or terminated once the foreign main proceedings are recognised and the reliefs under the non-main proceedings are inconsistent with that of the foreign main proceedings.

Response should contain reference to Art.20 and 21 MLCBI, and the mandatory and discretionary nature of the relief respectively.

QUESTION 3 (essay-type questions) [15 marks in total] 5 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 proceedings in Germany would be the “Foreign Main Proceedings”. This is because the proceedings took place in Germany where the debtor has its COMI.

The foreign proceedings in Bermuda would then be categorised as a “Foreign Non-Main Proceedings. This is because the proceedings took place in Bermuda where the debtor only has an establishment.

Where the Foreign Main Proceedings have been opened and recognised in the US, any domestic insolvency proceedings may only be commenced in the US if the debtor has assets in the US. In such case where a domestic insolvency proceeding is commenced, any relief granted under the Foreign Main proceedings must be consistent with such domestic insolvency proceeding.

Where there is no domestic insolvency proceeding commenced in the US, then any reliefs that may be made under the Foreign Non-Main Proceedings must be consistent with that of the Foreign Main Proceedings.

Response requires discussions over, and references to, MLCBI definitions and processes, eg. Art. 2, 17, 6 as well as 15 to substantiate answer.

Question 3.2 [maximum 3 marks] 0 mark

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

As the foreign proceedings in the US have not been recognised yet, whether as a main or non-main proceeding, the legal action and discovery application served on the Joint provisional liquidators would not be automatically stayed. Neither can the Joint provisional liquidators apply for any interim relief to stay those legal action pending disposal of the recognition application. This is because:

- A. The interim reliefs which the Joint provisional liquidators may apply only relate to a stay of execution of the debtor’s assets, entrusting the administration or realisation of all/part of the debtor’s assets located in the state to the foreign representative, or any relief in paragraph 1(c), (d) and (g) of Article 21 of the MLCBI.
- B. Any individual legal actions concerning the debtor’s assets, rights, obligations or liabilities would only be stayed upon recognition of a foreign proceeding.

The question concerns Art.10 MLCBI

Question 3.3 [maximum 4 marks] 1 mark

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 consider applying for interim relief in the nature of entrusting the administration or realisation of all or part of the debtor's assets located in the US to the foreign representative.

By doing so, the foreign representative can have control over the debtor's assets and to take steps to ensure that the relevant *ipso facto* clauses are not exercised.

While such clauses may not be enforceable in the US, there is a risk that such clause may be exercised nevertheless which may jeopardize the restructuring proceeding in the UK, particularly when such *ipso facto* clauses are valid and enforceable in the UK.

The answer should be substantiated with relevant references to the MLCBI provisions. Moreover, a discussion regarding post-recognition relief is required. Missing definitional provisions.

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?

The foreign representative should consider appealing against the denial to recognise the foreign proceeding as a foreign main proceeding.

In the alternative, the foreign representative should reapply to the insolvency court of Country B but this time to recognise the foreign proceeding that is pending in Country A as a "Foreign Non-Main Proceeding". This is because the foreign debtor does not have much in Country A and it may be considered to only have an establishment in Country A.

The foreign representative should also consider applying for interim relief to protect the assets of the foreign debtor pending disposal of the recognition application.

In so far as what the foreign representative should have done at the outset, the foreign representative should have highlighted to the court of Country B of the "Presumption concerning recognition", whereby the foreign debtor's registered address is presumed to be the foreign debtor's centre of main interest unless there are any proof to the contrary. In such case where there are no proof to the contrary, the foreign representative could have argued that Country A is the centre of main interest of the foreign debtor, and the foreign proceedings in Country A should be regarded and recognised as the foreign main proceeding.

Response should be built around Art.16 MLCBI, as well as Art.15, 6, 17, 21...

QUESTION 4 (fact-based application-type question) [15 marks in total] 13 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.

This question will be answered in 3 parts.

Part A – Determination of COMI

It must be first determined whether the Cayman Islands is Globe Holdings' centre of main interest ("**COMI**") or is it merely an establishment.

The starting point is the presumption concerning recognition pursuant to Article 16 of the MLCBI, where Globe Holdings's registered office is presumed to be the COMI unless there are any proof to the contrary. To that end, Cayman Islands is presumed to be the COMI of Globe Holdings.

The next step is to determine if there is any evidence that may displace the presumption of Cayman Islands being the COMI of Globe Holdings. In this respect, reference should be made to UNCITRAL Guide to Enactment, para 144 – 149, where the factors to determine the COMI are set out thereunder. The principal factors are namely:

- 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.

At this juncture, it is important to bear in mind the UK Court of Appeal's decision in ***East-West Logistics LLP v Melars Group Ltd [2023] 1 BCLC 307 ("Melars Group Ltd")*** where the Court of Appeal upheld the High Court's decision that the company's COMI was in Malta and not in the UK due to the presumption concerning recognition which has not been rebutted. As such the

court had no jurisdiction to make any winding-up order. In determining whether the presumption has been rebutted, the Court of Appeal held the following:

- a. that the “*proof to the contrary*” comprises of “*evidence of factors which were both objective and ascertainable by 3rd parties showing that the debtor actually conducted the administration of its interests on a regular basis in a different location from the location of its registered office.*”
- b. “*The presumption could not be ignored or disregarded simply because there was a lack of evidence that the debtor actually carried out any activities at the place of its registered office or because evidence of actual administration of its interests were sparse*”
- c. In order to determine factors “*ascertainable by third parties*”, the court would “*look at the operations of the company from the external (ie objective) perspective of third parties, rather than the internal (ie subjective) perspective of the debtor company itself.*”

Having regard to the facts of the case, there are 4 factors that may amount to “*proof to the contrary*” to displace the presumption of the Cayman Islands being the COMI of Globe Holdings. These are as follows:

- a. First, Globe Holdings has no business operations of its own as its business is carried out through its subsidiaries incorporated and operated in the US. Its headquarters are also in the US.
- b. Second, all its employees are NOT based in the Cayman Islands but in the US.
- c. Third, the Notes issued by Globe Holdings are governed by New York law.
- d. Fourth, the Restructuring Support Agreement which Globe Holdings entered into with its Noteholders is also governed by New York law.

However, it is arguable that these 4 factors are insufficient to displace the presumption of the Cayman Islands being the COMI of Globe Holdings. This is because:

- a. Globe Holdings holds itself as a Cayman Islands company and this can be seen from public filings with the SEC, and this is ascertainable by 3rd parties.
- b. Globe Holdings conducted its scheme proceedings in the Cayman Islands and this is also ascertainable by 3rd parties.
- c. The lack of evidence that Globe Holdings actually carried out any business activity in the Cayman Islands is insufficient to displace the presumption (***Melars Group Ltd***).
- d. The fact that the Notes issued and the Restructuring Support Agreement entered into are governed by New York law does not sufficiently establish that Globe Holding actually conducted the administration of its interests on a regular basis in New York/ US so as to displace the presumption in favour of the Cayman Islands.

To that end, the presumption concerning recognition is not displaced and the Cayman Islands is presumed to be the COMI of Globe Holdings.

Part B – Next steps for Recognition of Foreign Proceedings in the US

Having established that the Cayman Islands is the COMI of Globe Holdings, Globe Holdings should file a court application in the US for recognition of the Cayman Scheme as a Foreign Main Proceeding.

As part of its application for recognition, Globe Holdings should include the following pursuant to Article 15 of MLCBI:

- a. A certified copy of the Sanction Order; or
- b. A certificate from the Cayman Islands' court affirming the existence of the scheme proceedings and of the appointment of the foreign representative, and
- c. A statement identifying all foreign proceedings in respect of Globe Holdings that are known.

Part C – Relief to be requested upon filing of application for recognition

Upon filing of the recognition application, Globe Holding should consider applying for the following interim reliefs to protect its assets:

- a. An order to entrust the administration or realization of all or part of Globe Holdings' assets located in the US to the foreign representative of Globe Holdings (**Article 19(1)(b) of MLCBI**);
- b. An order to suspend the right to transfer, encumber or otherwise dispose of any assets of Globe Holdings (**Article 21(1)(c) of MLCBI**); and
- c. An order for the examination of witnesses, the taking of evidence or the delivery of information concerning Globe Holdings' assets, affairs, rights, obligations and liabilities (**Article 21(1)(d) of MLCBI**).

The reasons for the above are so that Globe Holdings' assets can be preserved pending the anticipated class action litigation and that no assets of Globe Holdings may be disposed of to avoid any payment obligation. The examination of witnesses and taking of evidence are to enable the foreign representative of Globe Holdings to take or preserve evidence from the relevant people so that the class action litigation may be answered or responded accordingly.

Very good reasoning and a well-structured answer. Reference to definitions of establishment, FMP, FNMP etc, could have substantiated the background (eg. Art.2 MLCBI).

*** End of Assessment ***

Marks awarded: 33 out of 50