



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] 10 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 Model Law on Cross-Border Insolvency (**MLCBI**) and the European Union (EU) Regulation on Insolvency Proceedings (**EIR**)¹ relate to their respective jurisdictional reach and scope in cross-border insolvency proceedings.

The EIR is **implemented by (?)** a European Union (EU) Regulation and has been adopted as part of domestic law of each Member State of the EU.² Conversely, the MLCBI is a result of work and pressure from key stakeholders, including INSOL International and the International Bar Association and does not attempt to substantively unify and the insolvency laws of States, outside of the EU.³

Unfortunately, this legislative approach can be costly and time consuming to all parties involved to. For example, the final adoption by Member States of the EIR is the result of over 40 years of work and progress to establish an insolvency framework and is limited to insolvency cases within the EU. However, a benefit to this is the harmonisation among Member States establishing applicable law and recognition in insolvency proceedings providing certainty among the business community within a geographic and economic area which can in turn promote commercial growth and access.

On the other hand, the MLCBI does not contain any requirement for reciprocity, it is a "*legislative text that is recommended to States for incorporation into their national law.*"⁴ As an example of "soft law", States have the ability to adopt the MLCBI in whole or in part into its domestic legislation.⁵ This benefit of flexibility allows cooperation and coordination between diverse legal systems. However, as the MLCBI is not a comprehensive "treaty" there will be inevitable and unavoidable differences and inconsistencies between jurisdictions on its application to cross-border insolvency proceedings.

¹ Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings, as recast in Regulation (EU) 2015/848 of the European Parliament and the Council of 20 May, 2015.

² P J M Declerq, "Module 2A Guidance Text, UNCITRAL Model Laws Relating to Insolvency", p 6.

³ Ibid, pp 6 - 7.

⁴ UNCITRAL Guide to Enactment, p 24 at para 19.

⁵ Declerq, *supra* note 2, p 7.

EIR itself *is* a regulation

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.

Article 21 of the Model Law (*Relief that may be granted upon recognition of a foreign proceeding*) provides that the Court has discretionary power to grant post-recognition relief with consideration to a number of factors.

Upon recognition of a foreign proceeding, (whether main or non-main), the Court must be satisfied (on the request of the foreign representative), that the interests of creditors in the enacting State are adequately protected pursuant to Article 21(1) of the Model Law.⁶

And in granting relief to representative "of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of [the enacting] State, should be administered in the foreign non-main proceedings or concerns information required in that proceeding."⁷ In other words, the relief should not interfere with the administration of another insolvency proceeding (most importantly the main proceeding).⁸

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 Model Law "embodies the principle that foreign creditors, when they apply to commence an insolvency proceeding in the enacting State or file claims in such a proceedings, should not be treated worse than local creditors."⁹

Foreign creditors have the same rights as creditors in the enacting State in relation to the commencement of, and participation in, a proceeding under the domestic insolvency law proceedings.¹⁰ These rights conferred on the foreign creditor do not affect its ranking of claims in a proceeding under the laws of the enacting State, except that claims of foreign creditors shall not be ranked lower than that of general unsecured claims.¹¹

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?

In an effort to analyse the key distinction of the relief available in "foreign main" versus "foreign non-main" proceedings, we must first differentiate their meaning and scope which determines the available relief.

A "foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the centre of its main interests (COMI),¹² whereas "foreign non-main proceeding"

⁶ Model Law, Art 21(2).

⁷ Model Law, Art 21(3).

⁸ Declercq, *supra* note 2, p 32.

⁹ Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency (2021), p 33.

¹⁰ Model Law, Art 13(1).

¹¹ Model Law, Art 13(2).

¹² Model Law, Art 2(b).

means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment.¹³ An "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.¹⁴

Chapter III of the Model Law, articles 19 to 24, deals with relief available. The COMI of the debtor is important in this analysis as it determines recognition, and as such if the COMI is in the jurisdiction where the foreign proceedings have been opened, the proceedings are the main insolvency proceedings with automatic mandatory relief.¹⁵ In comparison, if the debtor only has an establishment in the jurisdiction where the foreign proceedings are commenced, the proceedings are considered non-main proceedings without automatic relief, only discretionary post-recognition relief granted by the court.¹⁶

QUESTION 3 (essay-type questions) [15 marks in total] 6 marks

Question 3.1 [maximum 4 marks] 3 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.

It is established and defined in the Model Law that the foreign main proceeding would be commenced in the jurisdiction where a debtor has its COMI.¹⁷ In this scenario, Germany would be the foreign main proceeding. The foreign main proceedings would have universal effect with respect to recognition and relief with regards to the US. However, Bermuda has not enacted Model Law in its legislation and as such would require a further step towards any recognition and relief required.

Conversely, Bermuda would be considered the foreign non-main proceeding as on the facts above, the debtor has an establishment in the jurisdiction and satisfies the definition.¹⁸ As stated in the aforementioned paragraph, orders issued in Bermuda would not have automatic reciprocity between the US and Germany. The terms for cooperation between jurisdictions may be set out in a special agreement and accepted by the Court.

Also requires references to definitional and procedural provisions of MLCBI eg. 15, 17, 6.. (Noted the Art.2 references as footnotes)

Question 3.2 [maximum 3 marks] 0 mark

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

Upon the joint provisional liquidators (JPLs) commencing recognition proceedings in the US, the automatic stay will not come into effect as presumably the JPLs are not US-based and

¹³ Model Law, Art 2(c).

¹⁴ Model Law, Art 2(f).

¹⁵ Declercq, *supra* note 2, p 23.

¹⁶ *Ibid*, p 24.

¹⁷ Model Law, Art 2(b).

¹⁸ Model Law, Art 2(c).

neither is the debtor.¹⁹ If there is only an establishment and the recognition proceeding is deemed a foreign non-main proceedings, then the JPLs may seek recognition relief granted by the court.

Interim relief may also be sought in circumstances where the JPLs are sued immediately and without discrimination. Relief may have the effect of protecting the assets of the debtor. Article 19 of the Model Law applies to both foreign main and foreign non-main proceedings and includes:

1. Stay of execution against debtor's assets;
2. Entrusting the administration or realisation of all or part of the debtor's assets located in the enacting State to the JPLs (foreign representative), or order to protect and preserve the value of the assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
3. Any post-recognition relief under Article 21 of the Model Law such as:
 - a. Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor;
 - b. Providing for the examination of witnesses, the taking of evidence or delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities; and
 - c. Granting any additional relief that may be available to a domestic liquidator / office holder under the laws of the enacting State.

In the circumstances, where the JPLs have been sued and served with discovery, the JPLs may seek a stay of the action for breach of contract and/or suspension of the request for documents.

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 should consider taking steps to protect assets during the recognition process which may consist of the following:

As there are only 35 days until the commencement of the proceedings, it would be recommended that the foreign representative move as quickly as possible with the timely filing of the recognition petition. This would trigger the automatic stay and protect the debtor in case of further action from creditors.

In a situation where there are US-governed leases and intellectual property licences with *ipso facto* clauses, the foreign representative should consider cases such as *Pan Ocean*²⁰ which considered these clauses in respect on COVID-19. In the event the foreign representative wished to terminate the leases and licences, it would be minded of what is considered

¹⁹ Model Law, Art 19.

²⁰ *Fibria Celulose S/A v Pan Ocean Co Ltd* [2014] EWHC 2124 (Ch).

"appropriate relief" under Article 21(1)(g) of the Model Law. The English Court did not consider it to allow relief beyond the domestic insolvency and in *Belmond Park v BNY Corporate Trustee Services*²¹ the *ipso facto* clauses are in principle valid and enforceable in a UK insolvency.²²

Requires substantive discussion based upon Art.19 MLCBI and its definitions

Question 3.4 [maximum 4 marks] 1 mark

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

Firstly, the foreign representative should seek to appeal the decision within the Courts of Country B. Alternatively, the foreign representative may consider applying for recognition in country B for foreign non-main proceedings.

Article 10 of the Model Law provides that a judgment may be reviewed.

Art.16 MLCBI is the main reference for “rebuttable COMI presumption” to explain weak COMI and substantiate answer as to why representative should apply for FNMP. References to Art.17, 21, 6 are also required

QUESTION 4 (fact-based application-type question) [15 marks in total] 2 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

²¹ [2011] UKSC 38.

²² Declerq, *supra* note 2, p 236.

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.

We have reviewed the materials of this matter and have formed a preliminary view of next steps in this matter to ensure a successful restructuring of Globe Financial Holdings Inc. (Globe). There are a number of key factors at play and we will break down the different moving parts in our analysis below.

Firstly, there should be consideration whether to apply for recognition of "foreign main proceedings" or "foreign non-main proceedings". This involves analyzing the COMI of Globe pursuant to chapter 15 of the Model Law.

Additionally, there may be relief sought under Article 20 following recognition of a foreign main proceeding (assuming this), being:

1. A stay of the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities;
2. A stay of execution against the debtor's assets; and
3. A suspension of the right to transfer, encumber or otherwise dispose of any assets of the debtor.

The above heads of relief would allow for further steps to be taken to organize a cross-border insolvency proceeding.

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: definitions (COMI, establishment, foreign main/non-main proceedings etc.) with respective references to MLCBI provisions and/or other sources; a discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI and alternative courses of action; the 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 (noted reference to Art.20)...

*** End of Assessment ***

Marks awarded 28 out of 50