



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2A

THE UNCITRAL MODEL LAWS RELATING TO INSOLVENCY

This is the **summative (formal) assessment** for **Module 2A** of this course and is compulsory for all candidates who selected this module as one of their compulsory modules from **Module 2**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 2A. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters - **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[student ID.assessment2A]**. An example would be something along the following lines: 202223-336.assessment2A. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
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- 6.1 If you selected Module 2A as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 2A as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).

ANSWER ALL THE QUESTIONS

Please note that all references to the “MLCBI” or “Model Law” in this assessment are references to the Model Law on Cross-Border Insolvency.

QUESTION 1 (multiple-choice questions) [10 marks in total] 7 marks

Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Which one of the following international organisations' mandate is to further the progressive harmonization of the law of international trade?

- (a) World Trade Organization.
- (b) The United Nations Commission on International Trade Law.**
- (c) The United Nations Conference on Trade and Development.

Question 1.2

Which trend(s) and process(es) served as a proximate cause for the development MLCBI?

- (i) Rise of corporations.
- (ii) Internationalisation.
- (iii) Globalization.
- (iv) Universalism.
- (v) Territorialism.
- (vi) Technological advances.

Choose the correct answer:

- (a) Options (i), (ii), (iii), (iv) and (vi).
- (b) Options (i), (ii), (iii) and (iv).**
- (c) Options (ii), (iii), (iv) and (vi).
- (d) All of the above.

Question 1.3

Which of the following statements incorrectly describe the MLCBI?

- (i) It is legislation that imposes a mandatory reciprocity on the participating members.
- (ii) It is a legislative text that serves as a recommendation for incorporation in national laws.
- (iii) It is intended to substantively unify the insolvency laws of the foreign nations.
- (iv) It is a treaty that is binding on the participating members.

Choose the correct answer:

- (a) Options (ii), (iii) and (iv).
- (b) Options (i), (ii) and (iv).
- (c) Options (i), (iii) and (iv).**
- (d) All of the above are incorrect.

Question 1.4

Which of the below options reflect the objectives of the MLCBI?

- (i) To provide greater legal certainty for trade and investment.
- (ii) To provide protection and maximization of value of the debtor's assets.
- (iii) To provide a fair and efficient administration of cross-border insolvencies that protects all creditors and the debtors.
- (iv) To facilitate the rescue of financial troubled businesses.
- (v) To ensure substantive unification of insolvency laws of member-states.

Choose the correct answer:

- (a) Options (i), (ii), (iii) and (iv).**
- (b) Options (ii), (iii) and (v).
- (c) Options (ii), (iv) and (v).
- (d) None of the above.

Question 1.5

Which two of the below hypotheticals demonstrate a more likely precursor to a "cross-border insolvency"?

- (i) An insolvency proceeding is commenced in jurisdiction A, but a significant asset is located outside of jurisdiction A.
- (ii) An insolvency proceeding is commenced in jurisdiction A and immediately transferred to a foreign jurisdiction B.
- (iii) An insolvency proceeding is commenced in jurisdiction A, in which a group of affiliated debtors has its COMI as well as all assets and liabilities.
- (iv) An insolvency proceeding is commenced in jurisdiction A, but certain liabilities are governed by laws of a foreign jurisdiction B.
- (v) An insolvency proceeding is commenced in jurisdiction A, but all *de minimis* assets are located in foreign jurisdictions.

Choose the correct answer:

- (a) Options (i) and (ii).
- (b) Options (ii) and (iii).
- (c) Options (iii) and (v).
- (d) Options (i) and (v). I BELIEVE THERE IS AN ERROR AND THE CORRECT OPTION IS (I) AND (IV).**

Question 1.6

A restructuring proceeding is commenced in jurisdiction A by a corporation with COMI in jurisdiction A and an overleveraged balance sheet. The court in jurisdiction A, overseeing the restructuring, entered a final and non-appealable order, approving the compromise and restructuring of the debt. The entered order, by its express terms, has a universal effect. Based on these facts alone, what is the **effect** of such order's terms in jurisdiction B if jurisdictions A and B do **not** have a bilateral agreement?

- (a) Binding within jurisdiction B.
- (b) Binding within jurisdiction B, but certain actions need to be taken.
- (c) No effect within jurisdiction B.**
- (d) Likely no effect within jurisdiction B.**
- (e) Not enough facts provided to arrive at a conclusion.

Question 1.7

Which of the following statements set out the reasons for the development of the Model Law?

- (i) The increased risk of fraud by concealing assets in foreign jurisdictions.
- (ii) The difficulty of agreeing multilateral treaties dealing with insolvency law.

- (iii) To eradicate the use of comity.
- (iv) The practical problems caused by the disharmony among national laws governing cross-border insolvencies, despite the success of protocols in practice.

Choose the correct answer:

- (a) Options (i), (ii) and (iii).
- (b) Options (i), (ii) and (iv).**
- (c) Options (ii), (iii) and (iv).
- (d) All of the above.

Question 1.8

Which of the statements below are incorrect regarding COMI under the MLCBI?

- (i) COMI is a well-defined term in the MLCBI.
- (ii) COMI stands for comity.
- (iii) The debtor's registered office is irrelevant for purposes of determining COMI.
- (iv) COMI is being tested as of the date of the petition for recognition.

Choose the correct answer:

- (a) Options (i), (ii) and (iii).**
- (b) Options (ii), (iii) and (iv).
- (c) All of the above.**
- (d) None of the above.

Question 1.9

In the event of the following concurrent proceedings, indicate the order of the proceedings in terms of their hierarchy / primacy:

- (i) Foreign main proceeding.
- (ii) Foreign non-main proceeding.
- (iii) Plenary domestic insolvency proceeding.

Choose the correct answer:

- (a) Options (ii), (i) and then (iii).

(b) Options (i), (ii) and then (iii).

(c) Options (iii), (i) and then (ii).

(d) Options (iii), (ii) and then (i).

Question 1.10

Which of the statements below are correct under the MLCBI?

(a) The foreign representative always has the powers to bring avoidance actions.

(b) The hotchpot rule prioritises local creditors.

(c) The recognition of a foreign main proceeding is an absolute proof that the debtor is insolvent.

(d) None of the above are correct.

QUESTION 2 (direct questions) [10 marks in total] 10 marks

Question 2.1 [maximum 3 marks] 3 marks

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

The key distinction between the application of the Model Law on Cross-Border Insolvency (MLCBI) and the European Union (EU) Regulation on Insolvency Proceedings lies in their respective legal frameworks and approaches to cross-border insolvency. In the case of the MLCBI, it is a model law recommended by UNCITRAL for adoption by states to facilitate the resolution of cross-border insolvencies. It focuses on providing a cooperative framework for the recognition of foreign insolvency proceedings, while allowing states flexibility in how they incorporate its provisions into their domestic law. The MLCBI does not automatically become part of domestic law upon adoption but requires legislative action by individual states to incorporate its principles and may be considered soft law. In the case of the EU Insolvency Regulation, it is directly applicable in all EU Member States without the need for national legislation to implement it. It creates a single legal framework within the EU for handling cross-border insolvencies and ensures automatic recognition of insolvency proceedings in all Member States.

The key benefits and disadvantages of each approach are, the MLCBI offers flexibility in adoption, allowing states to tailor the provisions of the model law to their legal systems and policy preferences, thereby promoting international cooperation in cross-border insolvency cases. A disadvantage, however, is that the effectiveness of the MLCBI depends on the extent to which states adopt and implement its provisions, leading to potential inconsistencies and gaps in cross-border insolvency law coverage worldwide.

The advantage of the EU Regulation is that it ensures a high degree of harmonisation and predictability across EU Member States, facilitating the smooth handling of cross-border insolvencies within the EU. A disadvantage is that the automatic applicability and rigidity of the EU Regulation mean that individual Member States have less flexibility to adapt the provisions to their own legal traditions and needs, potentially leading to situations where the Regulation's one-size-fits-all approach may not be ideal in all cases.

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.

When using its discretionary power under Article 21 of the Model Law on Cross-Border Insolvency (MLCBI) to grant post-recognition relief, the court should primarily consider the necessity to protect the assets of the debtor or the interests of creditors. This discretion is to be exercised at the request of the foreign representative. The types of relief that may be granted include staying the commencement or continuation of individual actions or proceedings relating to the debtor's assets, rights, obligations, or liabilities, and staying execution against the debtor's assets.

This approach ensures that immediately upon recognition of a foreign proceeding, whether main or non-main, the court of the issuing state has the flexibility to address urgent needs to protect assets and creditors' interests. This may include measures such as temporary stays of litigation or enforcement measures against the debtor's assets within the jurisdiction of the recognizing court, with the aim of preserving the debtor's estate and preventing prejudicial actions that could undermine the orderly resolution of cross-border insolvency proceedings.

Key considerations for the court in exercising this discretion include the overall objective of facilitating the effective and efficient administration of cross-border insolvency proceedings, ensuring fairness to all parties involved and preserving the integrity of the legal process in the face of the complexities presented by the involvement of multiple jurisdictions.

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 Model Law on Cross-Border Insolvency (MLCBI), the protections afforded to creditors in a foreign proceeding are clearly outlined to ensure equitable treatment of both domestic and foreign creditors. The main protections include:

1. Equal access to proceedings: Foreign creditors have the same rights as domestic creditors to commence and participate in an insolvency proceeding under the laws of the jurisdiction in which the proceeding is opened. This ensures that foreign creditors are not disadvantaged in their ability to assert their rights or participate in proceedings merely because of their foreign status.
2. Non-discrimination in the ranking of claims: The claims of foreign creditors may not be ranked lower than the class of general non-preferential claims in the enacting state. This provision is intended to prevent discrimination against foreign claims solely on the basis of their origin. However, it also allows for an adjustment of the ranking if an equivalent local claim (e.g. a claim for a penalty or a claim for deferred payment) is normally ranked lower than general non-preference claims. This ensures that the ranking of claims is fair and based on the nature of the claim rather than the nationality or location of the creditor.
3. Alternative wording for the exclusion of certain claims: The enacting State may consider alternative wording that does not affect the ranking of claims

or the exclusion of foreign tax and social security claims from the proceedings. However, the claims of foreign creditors other than those relating to tax and social security obligations may not be ranked lower than the class of general non-preferential claims. This alternative provision seeks to strike a balance between the equitable treatment of foreign creditors and the need to comply with the domestic legal framework regarding the priority of certain types of claims, such as tax and social security obligations.

These safeguards are designed to facilitate the fair and efficient administration of cross-border insolvency proceedings and to promote cooperation and confidence among nations in the handling of multi-jurisdictional insolvency cases. By ensuring that foreign creditors have access to insolvency proceedings and are treated equitably with respect to the priority of their claims, Article 13 of the MLCBI supports the overall objectives of the Model Law in harmonising and improving the legal framework for cross-border insolvency.

Question 2.4 [maximum 3 marks] 3 marks

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

A key distinction between the relief available in foreign main proceedings and foreign non-main proceedings under the Model Law on Cross-Border Insolvency (MLCBI) is based on the priority and consistency of the relief granted in relation to the type of proceedings recognised:

1. Foreign main proceedings: Where a foreign main proceeding is first recognised in the enacting State, any subsequent relief granted to the representative of a foreign non-main proceeding under either Article 19 or Article 21 must be consistent with the foreign main proceeding already recognised (Article 30(a)).
2. Foreign non-main proceedings: Conversely, where the recognition or application for recognition of a foreign non-main proceeding precedes the recognition of the foreign main proceeding, any relief previously in effect (granted under Article 19 or Article 21) in respect of the non-main proceeding must be reviewed and possibly modified or terminated by the court to ensure consistency with the subsequently recognised foreign main proceeding (Article 30(b)).

This distinction underscores the primacy of the foreign main proceeding over non-main proceedings and ensures that any relief measures are consistent with the objectives and requirements of the main proceeding to achieve an orderly and coordinated approach to cross-border insolvency administration.

QUESTION 3 (essay-type questions) [15 marks in total] 8 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.

In the scenario involving a debtor with its Centre of Main Interests (COMI) in Germany and an establishment in Bermuda, where both foreign main and non-main proceedings, as well as recognition proceedings in the US, have been initiated, a nuanced understanding of the Model Law on Cross-Border Insolvency (MLCBI) is required to navigate the legal implications.

The MLCBI provides a framework for handling cross-border insolvency cases, distinguishing between main and non-main foreign proceedings based on the debtor's COMI and the presence of an establishment. This distinction affects where proceedings are filed and their recognition and effect in other jurisdictions.

As the debtor's COMI is in Germany, the foreign main proceeding is opened there, reflecting the primary jurisdiction for insolvency matters due to the debtor's significant operational presence. The existence of an establishment in Bermuda justifies the opening of a foreign non-main proceeding in Bermuda, recognising the debtor's non-primary but significant economic activities there.

The involvement of the US through recognition proceedings indicates an effort to recognise and enforce insolvency proceedings commenced in Germany and Bermuda within the US jurisdiction. This is critical to the administration of the debtor's assets or liabilities under US jurisdiction and to ensuring a coordinated and orderly cross-border insolvency process.

The key distinction between the relief available in foreign main proceedings and foreign non-main proceedings under the MLCBI, as highlighted above, plays a critical role. Foreign main proceedings, by virtue of their connection with the debtor's COMI, trigger automatic stays and suspensions of actions against the debtor's assets (Article 20 of the MLCBI). This automatic relief is intended to protect the debtor's assets worldwide while facilitating the primary insolvency proceedings in Germany.

In this case, the proceedings in Germany and Bermuda must have been filed with respect to the debtor's COMI and place of establishment, respectively. The likely result in the US, upon recognition of these proceedings, is the enforcement of automatic stays and moratoria on the debtor's US-based assets in accordance with the provisions of the MLCBI for a foreign main proceeding. This ensures a harmonised approach to the debtor's insolvency, minimises conflicts and maximises the value of assets for creditors in all jurisdictions. The distinction between the relief mechanisms underscores the flexibility of the MLCBI to accommodate different insolvency scenarios while promoting legal certainty and fairness in cross-border insolvency cases.

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

Question 3.2 [maximum 3 marks] 1 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 successful recognition of a foreign proceeding under the Model Law on Cross-Border Insolvency (MLCBI) in the United States, joint provisional liquidators are typically granted certain protections and powers that parallel those they would exercise in the foreign main proceeding, albeit subject to the discretion of the U.S. court. These protections include, but are not limited to, the ability to stay existing litigation against the debtor and to challenge actions that may be prejudicial to the collective interests of creditors.

In the scenario where the joint provisional liquidators are sued for alleged tortious interference with the contractual rights of US-based vendors, the US court would likely consider the scope of the protections conferred by recognition of the MLCBI. This review would include an assessment of the scope of any stay of proceedings against the debtor and its assets, considering the specific facts of the case, the timing of the action in relation to the recognition of the foreign proceedings and the nature of the alleged interference with the liquidators' duties and actions in their official capacity.

The court's decision in this matter depends on an understanding of the protections and limitations inherent in the MLCBI framework, highlighting the importance for joint provisional liquidators and related parties to be familiar with these nuances. The outcome would depend on several factors, including, but not limited to, the protections afforded by the MLCBI upon recognition, the nature and timing of the process, and how these factors intersect with the responsibilities and actions of the liquidators in their official capacities. It underscores the need for those involved in cross-border insolvency proceedings to have a nuanced understanding of the provisions of the MLCBI, as well as the imperative of seeking specialised legal advice tailored to the jurisdictions involved.

Requires reference to Art.10 MLCBI

Question 3.3 [maximum 4 marks] 4 marks

A foreign representative who administers assets in a debtor-in-possession-like restructuring proceeding in the UK commences a recognition proceeding in the US, setting the recognition hearing 35 days after the petition date due to the availability of the court. There is no litigation pending or threatened against the foreign debtor, but US-governed leases and intellectual property licenses have *ipso facto* clauses (that is, bankruptcy-triggered terminations) that are not enforceable under the US Bankruptcy Code. Based on these facts, explain what steps, if any, should the foreign representative take to protect the assets and why?

In addressing the scenario where a foreign representative administers assets in a UK debtor-in-possession-like restructuring proceeding and commences recognition proceedings in the US, with the recognition hearing scheduled 35 days after the petition date, we must consider the nuances of the Model Law on Cross-Border Insolvency (MLCBI) and its application within the US legal framework. This analysis includes a focus on the protections and strategic steps available to preserve assets, particularly in light of US governed leases and intellectual property licences containing *ipso facto* clauses that are unenforceable under the US Bankruptcy Code.

The recognition of foreign insolvency proceedings in the US under the MLCBI is a critical step for foreign representatives seeking to administer cross-border assets. This scenario explores the implications of a UK-based debtor-in-possession-like restructuring proceeding seeking recognition in the US and the strategic considerations for protecting assets subject to US jurisdiction.

In seeking recognition in the US, the foreign representative enters a legal landscape where the MLCBI provides a framework for cross-border insolvency assistance. Article 19 of the MLCBI allows the court of the issuing state to grant urgently needed interim relief upon a request for recognition of a foreign proceeding. This interim relief can be critical in preventing the immediate enforcement of *ipso facto* clauses in U.S. governed leases and

intellectual property licences that would otherwise permit the termination of those contracts solely because of the commencement of insolvency proceedings.

The distinction between the automatic mandatory relief provided by Article 20 for recognised foreign main proceedings and the discretionary relief provided by Article 21 highlights the role of the court in tailoring protection to the specifics of the case. The foreign representative should proactively seek such interim relief, emphasising the need to preserve the debtor's assets and maintain the integrity of the restructuring process. This approach is consistent with the principle that the interests of the debtor's creditors and other interested parties must be adequately protected, as set out in Article 22.

In addition, Articles 23 and 24 provide the foreign representative, upon recognition, withstanding to bring actions under the law of the enacting state to avoid prejudicial acts and to intervene in local proceedings. This standing is essential to address potential challenges and to ensure that the objectives of the foreign proceeding are not undermined by local legal actions.

In this complex cross-border insolvency scenario, the foreign representative's strategic use of the provisions of the MLCBI is critical to navigating the US legal system and protecting assets from the effects of ipso facto clauses. By seeking pre-recognition injunctive relief and utilising the post-recognition powers granted by the Model Law, the foreign representative can effectively manage the debtor's assets in accordance with the restructuring objectives. This approach highlights the importance of cross-border insolvency laws in facilitating the fair and efficient administration of international insolvency proceedings.

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?

If a foreign representative commences proceedings in country B to recognise a foreign proceeding as the foreign main proceeding for the sale of certain assets within the jurisdiction of country B, but the application is rejected, the representative faces a key moment in its strategy. This denial may be for a variety of reasons, including the court's assessment that the debtor's centre of main interests (COMI) does not coincide with the jurisdiction where the proceedings were commenced.

When faced with a refusal of recognition as a foreign main proceeding, the foreign representative has several options:

1. Appeal the decision: If the foreign representative believes that the decision is based on an incorrect interpretation of the facts or the law, it may consider appealing the decision within the legal framework and time limits of Country B.
2. Seek recognition as a foreign non-main proceeding: If the debtor has an establishment in Country B, the representative could seek recognition of the proceedings as a foreign non-main proceeding. This would still provide a degree of relief and cooperation from Country B, but with less automatic effect than a foreign main proceeding.

3. Negotiate directly with creditors: Irrespective of any court proceedings, the representative may deal directly with creditors in country B to negotiate the sale or treatment of assets located there.
4. Use local insolvency proceedings: Where feasible, an alternative route may be to commence local insolvency proceedings in Country B for the assets located there, provided this is consistent with the overall strategy for the debtor's estate.

At the outset, the foreign representative should have conducted a thorough assessment to determine the most appropriate jurisdiction for filing based on the debtor's COMI and any establishments. This includes analysing the legal frameworks and precedents in potential jurisdictions to anticipate challenges to recognition. In addition, preparing comprehensive documentation to substantiate the COMI and the existence of branches would strengthen the application for recognition. Engaging with local legal experts in country B could provide insight into the nuances of local insolvency law and increase the chances of successful recognition.

In conclusion, the refusal of recognition as a foreign main proceeding requires the foreign representative to reassess its strategy. It underscores the importance of careful preparation and a deep understanding of the UNCITRAL Model Law on Cross-Border Insolvency and the specific insolvency framework of the jurisdiction in which recognition is sought. The representative must then navigate the available legal and strategic options to effectively protect the debtor's assets and creditors' interests.

Art.16 MLCBI is the main reference for "rebuttable COMI presumption". References to Art.17, 21, 6 are also required

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

Given the complexity and international scope of Globe Holdings' operations and legal structure, a strategic approach to its restructuring is essential. The primary objective is to secure a restructuring framework that is recognised and enforceable across jurisdictions, particularly between the Cayman Islands, where Globe Holdings is incorporated, and the United States, where its operating subsidiaries are located. This analysis outlines a filing strategy focused on recognition of proceedings under the Model Law on Cross-Border Insolvency (MLCBI), discussing the main versus non-main filing, necessary documentation and initial relief requests.

Globe Holdings, a financial service holding company with roots in Canada and domiciled in the Cayman Islands, operates primarily through its subsidiaries in the United States. Faced with insolvency, Globe Holdings sought a restructuring solution that took account of its international presence and complex legal structure. The UNCITRAL Model Law on Cross-Border Insolvency provides a procedural framework to address such cross-border insolvency scenarios, providing mechanisms for recognition of foreign proceedings, cooperation between courts and remedies to protect the assets of the debtor and the rights of creditors across borders.

The Centre of Main Interests (COMI) is critical in determining whether to seek recognition of a main or non-main proceeding. Globe Holdings' COMI is arguably in the Cayman Islands, as evidenced by its incorporation, corporate decision-making and maintenance of bank accounts. However, the operational nucleus and employee base in the United States complicates this assessment, potentially suggesting an "establishment" in the U.S. This dual presence necessitates a request for recognition of both main proceedings in the Cayman Islands and non-main proceedings in the U.S. to encompass the entirety of Globe Holdings' operational and legal landscape.

The filing strategy should include:

1. Applications for recognition of foreign proceedings (Cayman main, US non-main)
2. Evidence to support the Cayman Islands as a COMI, including corporate records, bank statements and details of the scheme's meetings.
3. Evidence of an "establishment" in the US, including subsidiary operations, employee records and physical headquarters.
4. The Restructuring Support Agreement (RSA) to illustrate creditor consensus and the intended restructuring framework.

Requests for immediate relief should seek to protect assets and business continuity, including:

1. A stay of proceedings against Globe Holdings in the US to prevent dissipation of assets and ensure centralized administration of the restructuring process.
2. Temporary injunctions prohibiting the enforcement of ipso facto clauses in US governed leases and intellectual property licenses, consistent with protections under the US Bankruptcy Code.

The complexity of the Globe Holdings case illustrates the challenges faced by multinational companies in distress. By using the MLCBI framework, Globe Holdings can navigate these complexities and ensure a coordinated and efficient restructuring process that respects the rights of all stakeholders. The dual approach of seeking recognition for both main and non-

main proceedings enable Globe Holdings to address its global liabilities while maximising the value of its assets, ultimately facilitating a successful restructuring.

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. For full marks, further application to the facts of the case would be needed.

Moreover, the answer should contain to the minimum:

1. Definitions eg (COMI, establishment, foreign main proceedings etc) with respective articles
2. A discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI
3. The necessary papers to be submitted to the US Court per Article 15 MLCBI
4. Conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI.

*** End of Assessment ***

Marks awarded: 29 out of 50