



**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).
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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] 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] 8 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 Model Law on Cross-border Insolvency (MLCBI) and the European Union Regulation on insolvency proceedings (EIR) are both legal frameworks designed to address cross-border insolvency cases, but they have key distinctions in their application and scope.

a) Key Distinction:

MLCBI is a framework developed by the United Nations Commission on International Trade Law (UNCITRAL) to provide a standardized legal framework for the recognition and enforcement of insolvency proceedings in multiple jurisdictions. It operates as a model law that can be adopted by individual countries, allowing for a streamlined process for the recognition and coordination of insolvency proceedings across borders. It is non-binding and can be adopted by any country.

EIR is a specific legal framework enacted by the European Union to govern cross-border insolvency cases within the EU member states. It provides rules for determining jurisdiction, applicable law, and the recognition and enforcement of insolvency judgments within the EU. It is binding to the members of the EU.

b) Key Benefits and Disadvantages:

MLCBI:

Benefit: Flexibility and Universality, it can be adopted by any country, despite its regional affiliation, allowing for a consistent approach to cross-border insolvency regardless of the jurisdictions involved.

Disadvantage: the Model Law is not binding on any country until it is adopted into domestic law. This means that there may be variations in the implementation and interpretation of the Model Law across different jurisdictions, potentially leading to inconsistencies and complexities in cross-border insolvency cases.

EIR:

Benefit: it provides a high level of legal certainty and harmonization within the EU. By establishing clear rules for determining jurisdiction and recognizing insolvency proceedings across EU member states, it reduces the potential for conflicting judgments and enhances the efficiency of cross-border insolvency proceedings within the EU.

Disadvantage: the EIR has limited scope. It only applies to insolvency cases involving EU member states. It does not provide a framework for addressing cross-border insolvency cases involving non-EU countries, potentially leaving gaps in the legal framework for companies with operations outside the EU.]

**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 exercising the discretion in granting relief post-recognition, the court should consider the following factors:

a) the court should be mindful of the interests of foreign courts and stakeholders involved in the insolvency proceedings and aim to facilitate cooperation and coordination between different jurisdictions.

b) The court should assess whether granting post-recognition relief would contribute to the efficiency and effectiveness of the insolvency proceedings. Relief may be granted if it helps to streamline the administration of the debtor's assets, facilitate the distribution of assets to creditors, or promote the resolution of the insolvency case in a timely manner.

c) The court should consider the interests of all stakeholders involved in the insolvency proceedings, including creditors, shareholders, and the debtor. Relief should not unduly prejudice the rights or interests of any party and should aim to achieve a fair and equitable outcome for all stakeholders.

d) The court should ensure that any relief granted is consistent with public policy considerations, including principles of fairness, justice, and the protection of the public interest. Relief that contravenes fundamental principles of law or morality may not be granted.

e) The court should have the flexibility to tailor relief according to the specific circumstances of the case. This may involve considering the nature and extent of the debtor's assets, the complexity of the insolvency proceedings, and the preferences of the stakeholders involved.]

**Question 2.3 [2 marks] 2 marks**

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

Article 13 of the MLCBI outlines the protections granted to creditors in a foreign insolvency proceeding. These protections are crucial for ensuring that creditors' rights are respected and that they have adequate opportunities to participate in the insolvency process. Here's an explanation of the key protections provided under Article 13:

a) Recognition of Rights: Article 13 ensures that creditors' rights in a foreign insolvency proceeding are recognized and respected by the domestic courts. This means that creditors are entitled to the same treatment and opportunities in the foreign proceeding as they would have in domestic insolvency proceedings.

b) Right to Participate: Creditors have the right to participate in the foreign insolvency proceeding to the extent provided for under the law of the jurisdiction where the proceeding is taking place. This

includes the right to file claims, attend meetings of creditors, and exercise any other rights granted to them under the foreign insolvency law.

- c) **Protection of Assets:** Article 13 also ensures that creditors' interests in the debtor's assets are protected during the foreign insolvency proceeding. This may include measures to prevent the dissipation or improper disposal of assets, as well as mechanisms for the orderly distribution of assets to creditors in accordance with their respective rights.
- d) **Equality of Treatment:** Creditors are entitled to equal treatment in the foreign insolvency proceeding, regardless of their nationality or the jurisdiction where they are located. This principle of equality ensures that all creditors have a fair opportunity to participate in the proceeding and receive a proportionate share of the debtor's assets.
- e) **Notification and Communication:** Creditors are entitled to receive timely and accurate information about the foreign insolvency proceeding, including notices of key events, deadlines for filing claims, and decisions affecting their rights. Effective communication ensures that creditors are able to assert their rights and interests in the proceeding.
- f) **Enforcement of Judgments:** Article 13 may also provide mechanisms for the enforcement of judgments or orders issued in the foreign insolvency proceeding. This ensures that creditors can seek enforcement of their rights and remedies in the jurisdiction where the assets are located, even if the insolvency proceeding is taking place in a different jurisdiction.]

#### **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?

Foreign Main Proceeding:

- Relief granted in a foreign main proceeding can be (?) automatic, might have extraterritorial effect and is generally recognized and enforceable in other jurisdictions where the debtor has assets or conducts business. Creditors are subject to the automatic stay or moratorium imposed by the foreign main proceeding, which prevents them from taking individual actions to enforce their claims against the debtor's assets outside of the insolvency proceeding.

Foreign Non-Main Proceeding:

- Relief granted in a foreign non-main proceeding usually has limited extraterritorial effect and is generally subject to recognition and enforcement by the courts in other jurisdictions. The court should understand that the assets object to the relief are subject to the administration within the foreign non main proceeding.

**In FMP the relief is automatic - FNMP relief is discretionary**

**Requires reference to Art. 20 and 21 MLCBI**

#### **QUESTION 3 (essay-type questions) [15 marks in total] 5 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.

A) **Foreign Main Proceeding:** it must have been filed in Germany, as this is where the debtor's COMI is located. According to the MLCBI and many national insolvency laws, the main proceeding should be commenced in the jurisdiction where the debtor has its COMI.



Possible results: In this case, the German insolvency proceeding would be considered the primary or main proceeding, and it would have extraterritorial effect. The relief granted in the German main proceeding would generally be recognized and enforced in other jurisdictions where the debtor has assets or conducts business.

B) Foreign Non-Main Proceeding: it must have been filed in Bermuda, as this is where the debtor has an establishment but is not its COMI. When a debtor has an establishment in a jurisdiction other than its COMI, ancillary or non-main proceedings may be initiated in that jurisdiction to protect the interests of local creditors and facilitate the administration of assets located there.

Possible results: The Bermuda non-main proceeding would likely focus on addressing the interests of local creditors and coordinating with the primary insolvency proceeding in Germany. Relief granted in the Bermuda non-main proceeding may have limited extraterritorial effect and would generally be subject to recognition and enforcement by other jurisdictions.

C) Recognition Proceedings in the US: it would involve seeking recognition of the German main proceeding and potentially the Bermuda non-main proceeding in US courts. This recognition is typically sought to ensure that the relief granted in the foreign proceedings is respected and enforced in the US jurisdiction.

Possible results: The likely result of the recognition proceedings in the US would be the acknowledgment of the German main proceeding as the primary insolvency proceeding and the Bermuda non-main proceeding as ancillary to it. US courts would then cooperate with the foreign proceedings and provide appropriate relief within their jurisdiction.]

**Requires 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.

The possible outcomes include:

- Defense by the Joint Provisional Liquidators which may respond to the lawsuit by asserting defenses against the allegations of tortious interference. They might argue that their actions were taken in good faith and in furtherance of their duties as liquidators to protect and preserve the assets of the debtor's estate.
- The joint provisional liquidators may also seek to stay or dismiss the lawsuit on grounds related to the ongoing insolvency proceedings, arguing that the US court should defer to the jurisdiction of the foreign court overseeing the insolvency process.
- If the lawsuit proceeds in the US court, the joint provisional liquidators would likely be required to participate in the discovery process and defend against the claims made by the plaintiffs.
- The US court would assess the merits of the claims and any defenses raised by the joint provisional liquidators, considering factors such as the applicable law, the evidence presented, and the relevant legal principles, like the violation of the hotchpot rule which prevents privileged treatment among debtors.
- The outcome of the lawsuit could potentially impact the recognition of the foreign insolvency proceeding in the US. If the US court finds merit in the claims against the joint provisional liquidators and determines that their actions constitute wrongdoing, it may affect the court's decision regarding recognition of the foreign proceeding.
- Conversely, if the US court finds in favor of the joint provisional liquidators and dismisses the lawsuit or rules in their favor, it may strengthen their position in the recognition proceeding and support the argument for granting recognition of the foreign insolvency proceeding.]

**Requires discussion based on Art.10 MLCBI**

### **Question 3.3 [maximum 4 marks] 0 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?

Given the circumstances described, where a foreign representative is administering assets in a debtor-in-possession-like restructuring proceeding in the UK and has commenced a recognition proceeding in the US, several steps should be considered to protect the assets of the foreign debtor in light of the *ipso facto* clauses in US-governed leases and intellectual property licenses. Here's what the foreign representative should consider:

1. Notification and Communication with US Counterparties: promptly notify and communicate with the US counterparties to the leases and intellectual property licenses affected by the *ipso facto* clauses. They should inform them of the pending recognition proceeding in the US and explain the implications for the enforceability of the *ipso facto* clauses under US law.
2. Request for Stay or Injunction: consider seeking a stay or injunction from the US court overseeing the recognition proceeding to temporarily suspend the enforcement of the *ipso facto* clauses in the US-governed leases and intellectual property licenses. This would help to preserve the assets and prevent any adverse actions by the counterparties.
3. Negotiation and Renegotiation of Contracts: engage in negotiations with the US counterparties to the leases and intellectual property licenses to seek waivers or modifications of the *ipso facto* clauses. This could involve offering assurances or concessions in exchange for the counterparties' agreement not to enforce the clauses.
4. Consideration of UK Law: consider the implications of UK law on the restructuring proceeding and the treatment of contracts with *ipso facto* clauses. UK law may provide protections or mechanisms for dealing with such clauses that differ from US law, and leveraging these provisions could be beneficial.
5. Preparation for Recognition Hearing: prepare for the recognition hearing in the US, providing evidence and arguments to support the case for recognition of the UK restructuring proceeding. This includes demonstrating the legitimacy of the foreign proceeding and its compatibility with US bankruptcy law principles.
6. Monitoring and Contingency Planning: Throughout the process, the foreign representative should closely monitor developments, including any actions taken by the US counterparties or changes in the legal landscape. Contingency plans should be in place to respond to different scenarios and protect the assets of the foreign debtor accordingly.

By taking these steps, the foreign representative can proactively address the challenges posed by the *ipso facto* clauses in US-governed leases and intellectual property licenses, safeguard the assets of the foreign debtor, and facilitate the successful recognition of the UK restructuring proceeding in the US.]

Requires discussion based upon Art.19 MLCBI and its definitions, as well as references to the provisions of Art 20 and/or 21 MLCBI as applicable.

### 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?

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Here are some considerations of next steps or what could have been done:

- a) The foreign representative could consider appealing or seeking a review of the decision denying recognition of the foreign proceeding as the foreign main proceeding in Country B. This could involve presenting additional evidence or legal arguments to support the case for recognition. The grounds should be related to the concept, or lack of it, of COMI.
- b) If recognition as the foreign main proceeding is not possible, the foreign representative could pursue recognition of the foreign insolvency proceeding as a foreign non-main proceeding in Country B. This may still provide certain benefits and facilitate the administration of assets located within the territorial jurisdiction of Country B.
- c) Before commencing the recognition proceeding in Country B, the foreign representative should have conducted a thorough assessment of the jurisdiction's laws and requirements for recognition of foreign insolvency proceedings. This includes determining whether the foreign proceeding qualifies as a foreign main proceeding under the applicable legal framework.
- d) The foreign representative should have developed a strategic plan and prepared comprehensive documentation to support the recognition petition, demonstrating the legitimacy and necessity of the foreign insolvency proceeding and its compatibility with the laws of Country B. Demonstrating the fulfilment of the concept of COMI.

Probably the whole focus of the matter lies on the foreign representative demonstrating in a very well manner that the COMI is indeed located in country A and therefore, making that jurisdiction the one the main foreign proceeding. But also checking the laws of the country B, to verify if they are in accordance with the MLCBI.]

**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.

Based on the provided facts, the key filing strategy to ensure a successful restructuring for Globe Holdings involves a multi-step approach, including pursuing recognition of both a foreign main proceeding in the Cayman Islands and a chapter 15 recognition proceeding in the United States. Here's an analysis of the steps to be taken:

- Determination of Main or Non-Main Proceeding:

- Globe Holdings' Center of Main Interests (COMI) is a crucial factor in determining whether to apply for recognition as a foreign main proceeding or a foreign non-main proceeding under the UNCITRAL Model Law on Cross-Border Insolvency. Although Globe Holdings is incorporated in the Cayman Islands, its operational activities, management decisions, and administrative functions predominantly occur in the United States, where it has its headquarters, employees, and subsidiaries conducting business operations. However, it's

important to note that Globe Holdings has maintained certain ties to the Cayman Islands, such as retaining Cayman Islands counsel, holding board meetings virtually with the assistance of Cayman counsel, and maintaining its books and records there. These factors indicate a degree of connection to the Cayman Islands, suggesting a potential argument for COMI in that jurisdiction. However, given the substantial operational presence and decision-making in the United States, it may be challenging to establish the Cayman Islands as the COMI. Therefore, pursuing recognition as a foreign non-main proceeding in the Cayman Islands and a chapter 15 recognition proceeding in the United States may be a prudent strategy to ensure comprehensive protection of Globe Holdings' interests.

- Submission of Recognition Petitions and Supporting Documents:

- Globe Holdings should file recognition petitions in both the Cayman Islands and the United States, seeking recognition of its restructuring proceeding. The filings should include comprehensive documentation supporting the restructuring process, including evidence of Globe Holdings' financial distress, the approval of the restructuring plan by the majority of Noteholders, the convening order issued by the Cayman Court, the results of the Scheme Meeting, and the Sanction Order approving the Scheme. Additionally, Globe Holdings should provide evidence of its connections to both jurisdictions to support the argument for recognition.

- Relief Requested on Day One of Filing:

- On the day of filing for recognition, Globe Holdings should request immediate provisional relief to protect its assets and preserve the restructuring process. This relief may include an automatic stay of all litigation and enforcement actions against Globe Holdings and its assets, an injunction preventing the commencement or continuation of any legal proceedings, and the appointment of provisional administrators or representatives to oversee the restructuring process and ensure compliance with the restructuring plan. These measures are essential to maintaining the integrity and effectiveness of the restructuring process while recognition proceedings are pending.

By pursuing recognition of a foreign non-main proceeding in the Cayman Islands and a chapter 15 recognition proceeding in the United States, Globe Holdings can maximize the protection of its interests and assets, facilitate the successful implementation of its restructuring plan, and mitigate the risks associated with pending litigation in the United States. Additionally, Globe Holdings should continue to monitor developments in the class action litigation in the United States and take appropriate actions to address any potential challenges or implications for the restructuring process.]

The essay should contain definitions (COMI, establishment, foreign main/non-main proceedings etc.) with respective references to (if any) MLCBI provisions and/or other relevant references; 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....

**\* End of Assessment \***

**Marks awarded: 25 out of 50**