



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] 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).

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 European Union Regulation on insolvency proceedings directly became a part of the domestic law of each European Union state once it was adopted. The MLCBI instead does not amend domestic law as it is only a recommendation which could be adopted by each signatory.

The key benefit to the regulation approach is that once agreed it became a part of the domestic legislation of each state in the same form - this would allow the greatest level of harmonisation amongst states. On the other hand, given that it would need to be agreed by all states prior to its inclusion in domestic law, getting regulation agreed via this method will take a much longer time than a drafted recommendation (e.g. for the EU this took forty years).

The benefit of the approach taken with the MLCBI is that given that it is only a recommendation, it will make it easier to get to a point of agreement among states given that it is not binding. Given that the outcome of the approach is only soft-law this limits the potential that it may have for international insolvency as there is no reciprocity.

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 courts are considering their discretionary power under Article 21 of the MLCBI, they should consider article 22.1 of MLCBI which notes that the court must be satisfied that the interests of the creditors (and secured creditors / parties under hire-purchase agreements) and other interested persons such as the debtor are

adequately protected. In *Armada Shipping* [2011] EWHC 216 (Ch), Justice Briggs concluded that the same test / principles are to be applied from the stay of a winding-up order under s.130(2) of the Insolvency Act 1986. Under English law, this would give the court “a free hand to do what is right and fair according to the circumstance of each case”.

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 expresses that foreign creditors have the same rights as creditors in the same state as the proceedings. While the order of priorities of payment are not amended by the access right, it cannot be the case that foreign creditors are given a lower priority claim than unsecured creditors in other jurisdictions just because they are a foreign creditor. Local creditors are also protected under this as any exclusion of foreign tax and social security claims are not affected by Article 13.

Question 2.4 [maximum 3 marks] 2 marks

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

Under foreign main proceedings, unlike non-main proceedings when it is recognised there is an automatic stay on the commencement of individual actions / proceedings concerning the debtor, an automatic stay of execution against the debtor’s assets and a suspension of rights to transfer or dispose of debtor assets under Article 20.

Under Article 21, the granting of the same relief in respect of foreign non-main proceedings is up to the discretion of the court. For foreign non-main proceedings, the court must be satisfied that under the domestic law, that the assets should be administered in the foreign non-main proceeding.

Under Article 19, if interim relief being granted would disrupt a foreign main proceeding, a court may deny the interim relief.

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.

Country	Proceedings
Germany - COMI	Foreign main proceeding
Bermuda - Establishment	Foreign non-main proceeding
US	Recognition proceedings

Under the Model Law, it defines foreign main proceedings as taking place in the State where the debtor has the centre of its main interests (COMI). Therefore, Germany would be the location of the foreign main proceedings.

The definition of foreign non-main proceedings means a foreign proceeding (other than the foreign main proceeding where the debtor has an establishment. Given there is an establishment in Bermuda (and not the COMI), the foreign non-main proceedings would have been opened in Bermuda.

While the United States has adopted the Model Law, Germany and Bermuda have not adopted the Model Law so the likelihood of co-operation under the Model Law is unlikely in respect of the foreign proceedings. Despite this, recognition of the proceedings in the US may be possible under Chapter 15.

Answer requires reference to definitional and procedural provisions of MLCBI (eg. Art. 2, 15, 17, 6..)

Question 3.2 [maximum 3 marks] 0 mark

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

Article 7 of the Model Law outlines that it does not limit the power of a court to provide additional assistance to foreign representatives.

Chapter 15 of the US Bankruptcy Code provides that when considering when to give additional assistance they will assure that (in-line with comity):

1. There will be just treatment of claims against the debtor;
2. There is protection of US-based vendors against prejudice;
3. Prevention of misuse of debtor assets; and
4. That assets will be distributed as required by law.

Given the protections given under Chapter 15, it is unlikely that a court would see this suit as necessary.

While the Model Law is silent on abuse of process, if a foreign representative breached their obligation to give full disclosure in the US (i.e. in this case, maliciously intended to interfere with their contract rights), then this would impact their recognition application.

If the US saw this as a possible public policy concern, Article 6 of the Model Law does provide for sovereignty of that State to be upheld. However, this is only to be referred to in exceptional circumstances so it is unlikely that this would be relevant.

Answer should be based upon 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?

As demonstrated in the *Pan Ocean* case, the foreign representative should (as they have done) file for recognition of the UK proceedings as foreign main proceedings and request that the US court grant relief. The relief should try and prevent potential litigants in the US, such as the counterparties to the leases and IP licences, from relying on the *ipso facto* clauses. They could seek to rely on Article 21(1)(a) and 21(1)(g) of the Model Law if they took the same approach in *Pan Ocean*.

Article 21(1)(a), if the US court took the same view as the judgement in the *Pan Ocean*, would not apply as they would not see Article 21(1)(a) as giving the court power to prevent a counterparty from serving a termination notice. While in *Pan Ocean*, the court viewed Article 21(1)(g) as not appropriate given *ipso facto* clauses were valid and enforceable in England and Wales. In this case, given that *ipso facto* clauses are not enforceable in the US Bankruptcy Code, the court may decide to grant relief as:

- i) it would be appropriate to provide relief it could grant in a domestic insolvency;
- ii) unlike *Pan Ocean*, the request is only for the US Court to apply US law to US contracts.

Given the above, and because there is a current delay to the recognition hearing in the US, the representative should consider if there is a way to expedite the hearing to request the relief prior to any termination notices are served. The court should be able to grant the relief / recognition at an earlier date provided that interested parties such as the counterparties to the leases and the IP licences are protected.

Art.19 MLCBI reference is required

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?

In order for recognition to be provided under the Model Law, the foreign representative should have referred to Article 15 which sets out the requirements.

Article 15 sets out that an application must include:

- i) a copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
- ii) a certificate which affirms the foreign proceedings and the appointment of the representative; or
- iii) if the above cannot be satisfied, then any other evidence acceptable to the court of the existence of the proceedings and the appointment.

As the insolvency proceeding is only pending, the foreign representative should wait until the proceeding has commenced / they have been appointed by the court before commencing in the first place before re-submitting a recognition application.

In order to recognise the proceedings as foreign main proceedings in Country B, courts will look to where the centre of main interests are which are predominantly determined by the location where the administration of the debtor takes place which can be determined by the creditors. As mentioned, the debtor only has its registered office in Country A, therefore, court in Country B may have looked to other additional factors to determine where the COMI of the debtor is. The foreign representative should look at other factors to which courts may use to determine its COMI to determine if Country A should actually be the place of foreign main proceedings.

Art.16 MLCBI is the main reference for “rebuttable COMI presumption”. References to Art.17, 21, 6 are also required. Besides, instead of resubmitting the same application - the representative should consider submitting a recognition application as FNMP.

QUESTION 4 (fact-based application-type question) [15 marks in total] 5 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.

It will be important for the business that breathing space is given to the company so that it can complete the scheme in order to bring the company back to a solvent position / sell its assets in an ordinary manner without the spectre of the potential lawsuit.

Relevant jurisdictions in this example are the United States and Cayman.

The COMI of the Group can be determined initially under the Model Law by determining where the administration of the debtor takes place which is ascertainable by the creditors of the debtor. In this case, factors which would favour Cayman as the COMI would be:

- Globe Holdings provided various notices of its re-incorporation, including in the public filings with the Securities and Exchange Commission (SEC) when it moved to Cayman.
- 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 although it does not help that it was only opened a few days ago.
- All its regular and special board meetings have been organized by its local Cayman counsel but this is not helped by the fact that all meetings take place 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 which assists with the argument that creditors would be able to determine that the Group's COMI was in Cayman.
- The lawyers of the business have been the same in the Cayman for a long period of time.
- The expectation of the company's largest shareholders was that the restructuring would take place in the Cayman Islands.

Despite these factors, there are also reasons to believe that the COMI is actually in the United States:

- Globe Holdings has no business operations of its own in the Cayman.
- The business is carried out through entities 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 (the place of where commercial policy was determined).
- Financing of the business took place in the US with the 6.625% senior unsecured notes due in 2023 under US law (which is where disputes would be heard) and the shares of the business are listed in the US.
- Most regulation of the company would take place in the US.
- It is likely that the law governing the preparation and audit of accounts of the main business entities would take place in the US.
- Cayman is often referred to as a 'letter-box jurisdiction' because companies often lack substance.
- The RSA was governed by New York law.

Based on the above, while there are factors which would suggest that the company's COMI is in the US, given the disclosure to creditors of where the company was based

in SEC / other public filings strongly suggests that the COMI of the business is in the Cayman Islands. However, it is important to consider the implications if the COMI was to be determined to be in the US but based on the above, it is likely the case that there is only an establishment in the US.

Potential issues with the filing may include:

- Ensuring the assets (such as the headquarters) of the US are properly covered throughout the restructuring process given that the scheme is taking place in the Cayman Islands.
- Ensuring the assets which are planned to be sold can be sold.
- There is a class action lawsuit in the US which has not yet been filed.

In order to ensure that the Cayman scheme is recognised in the US, recognition of the foreign main proceedings in the Cayman Islands should be applied for in the US. This is to ensure that the assets of the business (which are predominantly in the US) are protected from any class action lawsuit.

As Article 20 of the Model Law provides for automatic relief where the foreign proceeding is determined to be a foreign main proceeding. This will grant a stay on the commencement of individual actions or proceedings, a stay of execution against the debtor's assets and a suspension of the right to dispose of any assets. Because of the planned proposal to dispose of certain assets of the business such as the headquarters, filings should be made to ensure that the property can be disposed of (if the exception of open-market financial transactions does not apply).

Additional relief should be applied for in order to ensure that the Notes issued by the business which are subject to US

It may be the case that the class action lawsuit may still be able to be brought in the US as the automatic stay does not affect the right to commence the proceeding so that the claim can be preserved but would ensure that the claim cannot be commenced. It may be possible that there is a limit to the relief applied for in the US (i.e. the automatic moratorium may not be indefinite).

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: 28 out of 50