



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] 7 marks

Question 2.1 [maximum 3 marks] 0 mark

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 MLCBI is a “soft law” - it is only a recommendation, not a convention and can be adopted in whole or in part into domestic law.
- The EIR is an EU regulation (a binding legislative act) that must be implemented in each EU Member State (in full) and upon implementation, becomes directly part of domestic law.
- Soft laws such as the MLCBI are easier to agree as they are only a recommendation. The disadvantage is that this approach doesn't typically contain a reciprocity requirement.
- Treaties/conventions such as the MLCBI [do you mean EIR? But EIR is also not a treaty..] are difficult to agree - the EIR took over 40 years to establish but once established typically provide for reciprocity as between those that have implemented.

This answer is contradictory.

Careful, neither the MLCBI nor the EIR are a treaty or convention... EIR is EU secondary law.

Question 2.2 [maximum 2 marks] 2 marks

Explain what the court should primarily consider using its discretionary power to grant post-recognition relief under Article 21 of the MLCBI.

The Court should primarily consider whether the relief is necessary to:

- protect the assets of the debtor; or
- protect the interest of creditors

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 ensures that foreign creditors have the same rights as creditors domiciled in the enacting State regarding commencement of and participation in local proceedings.
- It also ensures that the claim of a foreign creditor cannot be given a lower priority than that of a general unsecured claim.

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?

- The determination that a foreign proceeding is a “main” proceeding may affect the nature of the relief accorded to a foreign representative under Arts. 20 and 21 of the MLCBI.
- Under Art. 20, automatic mandatory relief (post-recognition) is available in respect of recognised foreign proceedings that qualify as foreign main proceedings.
- On the other hand, under Art. 21, foreign proceedings that qualify as foreign non-main proceedings are only entitled to discretionary relief (post-recognition), as determined by the Court. In this regard, the Court is granted the power to subject the relevant relief to the conditions it considers appropriate (Art. 22(2)) and at the request of the foreign representative or an affected person, may further modify or terminate such relief (Art. 22(3)). When considering whether to grant such discretionary relief, the Court in the enacting state must be satisfied that the interests of the debtor’s creditors and other interested parties are adequately protected.

QUESTION 3 (essay-type questions) [15 marks in total] 10 marks

Question 3.1 [maximum 4 marks] 4 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.

- Foreign proceedings must have been filed in Germany (characterised as foreign main proceedings given COMI is in Germany) and Bermuda (characterised as foreign non-main proceeds given the debtor only has an establishment in Bermuda).

- The US recognition proceedings may seek to recognise each of the German and Bermudan foreign proceedings (which will be treated differently once recognised given the nature of foreign main and foreign non-main proceedings).
- Assuming the US Courts determine that the relevant foreign proceedings in each/either of Germany or Bermuda comply with the rules relating to recognition of foreign proceedings set out in the MLCBI (including that they qualify as a “foreign proceeding” within the meaning of Art. 2(a) of the MLCBI and do not fall foul of the public policy exception in Art. 7 of the MLCBI or grounds for refusal in Art. 14 of the MLCBI) they are likely to be recognised within the US as foreign main / foreign non-main proceedings, respectively.
- The fact that both Germany and Bermuda have not adopted the MLCBI into domestic law is not relevant for the purposes of the US recognition proceedings in the US. There is generally no reciprocity requirement in the MLCBI in respect of recognition, though certain States such as Mexico and the BVI have adapted the MLCBI and included such a requirement upon domestic enactment.

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.

- One could argue that the joint provisional liquidators are seeking to obtain recognition proceedings in the US for an inappropriate alternative motive, which has not been disclosed to the Court. That motive being the intentional tortious interference of existing contract rights. Were this argument to have merit, the recognition application could be deemed a deliberate abuse of process by the US Courts (and could therefore be rejected).
- The MLCBI does not contain a provision on abuse of process, but leaves it to domestic law and the procedural rules of the enacting State to determine what constitutes an abuse of process.
- Whether there had been an intentional abuse of process would therefore be based on US domestic law and procedural rules within the US and would be fact dependant.
- Alternatively, the US Courts may determine that the recognition proceedings in such circumstances should be rejected on the grounds of public policy. Art. 6 of the MLCBI provides an enacting State with a “public policy exception”, which provides comfort as the ultimate safeguard as to domestic sovereignty. This would be applicable were the US Courts to determine that the protection of the US-based vendors in this instance should be considered an exceptional circumstance concerning matters of fundamental importance in the US. Again, this would depend on the facts at hand and the Court’s approach.

Answer should be based upon Art.10 MLCBI (immunity)

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?

- The foreign representative will want to ensure that the counterparties to the US-governed leases and IP licences are not able to terminate the relevant contracts or otherwise repossess the assets on the basis of the debtor's DIP proceedings in the UK.
- As referenced in the question, *ipso facto* clauses are not enforceable under the US Bankruptcy Code.
- As a result, assuming the US law governed contracts have not otherwise been breached, the relevant counterparties are not entitled to terminate the contract(s) or repossess the assets as a result of the UK insolvency proceedings. The assets in question are protected under local US law and an application for interim relief under Art. 21 (to e.g. prevent the counterparties from exercising the *ipso facto* clauses is not required). There is no suggestion in the existing fact pattern as to pending or threatened litigation against the debtor that would require a stay.
- This example is different to other relevant case law relating to *ipso facto* clauses, such as the *Pan Ocean* case. In that example:
 - the governing law of the relevant contract (the UK) did not (at the time) restrict the use of *ipso facto* clauses (in contrast to the US in this scenario)
 - as a result, the (Korean) foreign representative requested interim release under Art. 21(1)(a) and (g) to try and prevent the Brazilian counterparty from exercising the *ipso facto* clauses
 - the English Court determined that, amongst others:
 - Article 21(1)(g) should not result in the recognising court going beyond the relief it would grant in a domestic insolvency; and
 - Accepting or rejecting *ipso facto* clauses in an insolvency is a policy decision and there is no good reason for the Court to prefer the policy decision made in the jurisdiction of proceedings versus the policy decision made in the UK.

Question 3.4 [maximum 4 marks] 2 marks

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

- Insolvency practitioners/foreign representatives are often involved in broader contingency planning of a debt prior to insolvency proceedings (in any jurisdiction) being entered into. It is not clear why the debtor would not have filed for insolvency proceedings where it holds assets (and presumably other operations) (e.g. Country B), as opposed to Country A, where it *“has its registered office and not much more”*. The foreign representative should have queried this decision at the outset, assuming they were involved in the contingency planning process. It would have made more sense to enter into Country B insolvency proceedings (to obtain local law relief relating to assets in question) and then submit a recognition application in Country A, if it were considered required (it is unclear why such proceedings would be necessary in Country A).
- Separately, it appears likely (though is not specified) that the recognition application was rejected on the basis that the Country A proceedings are in fact foreign non-main proceedings. The foreign representative should therefore have sought recognition of the Country A proceedings as foreign non-main proceedings. On the facts, it is apparent that the debtor has its registered office in Country A *“and not much more”*. Although there is a rebuttal presumption that the debtor’s registered office is presumed to be the debtor’s COMI, the Court will conduct a holistic endeavour designed to determine that the location of the foreign main proceeding in fact corresponds to it. It appears that this assessment has taken place here, to the detriment of the recognition application as presented.
- Post-denial of the application, the foreign representative may:
 - Resubmit the recognition application, now requesting that the Country A proceedings are recognised as foreign non-main proceedings. A successful application on this basis would still likely result in the foreign representative being able to sell assets in Country B (by virtue of seeking relief from the Courts of Country B under Art. 21).
 - Submit domestic insolvency proceedings in Country B - a more costly approach but not restricted under the MCLI. Upon entry into the relevant proceedings, the foreign representative will then be entitled to exercise all rights of an insolvency practitioner under Country B’s domestic law (which would usually include an ability to deal in / sell a debtor’s assets on behalf of the debtor).

Response needs to be substantiated with references and discussion on Art.16 MLCBI, as well as procedural/definitional provisions eg. Art. 17, 6, 15..

QUESTION 4 (fact-based application-type question) [15 marks in total] 9 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.

- To ensure a successful restructuring, Globe Holdings will need to apply to the US Courts to obtain recognition of the Sanction Order (via chapter 15 recognition proceedings in the US). Absent such a recognition order, the Sanction Order will have no effect on the terms of the US law governed notes and the proposed amendments (most notably relating to maturity extension / PIK interest) will not be enforceable.
- Globe Holdings will be the entity seeking recognition in the US. It is the issuer of the notes and relevant entity subject to the Sanction Order. The US subsidiaries of Globe Holdings are not relevant in this regard and do not need to participate in the recognition proceedings.
- The client will need to consider whether the application is for recognition of foreign non-main or foreign main proceedings. This will depend on whether the Cayman scheme took place in the State where Globe Holdings has (i) its COMI, in which case they will be recognized as foreign main proceedings or (ii) an establishment, in which case the foreign proceedings will be recognised as foreign non-main proceedings.
- Although there is no definition of COMI in the MLCI, the UNCITRAL Guide to Enactment confirms that the following are key factors:
 - The location where the central administration of the debtor takes place; and
 - The location which is readily ascertainable by creditors of the debtor.
- The Court will consider the determination of COMI on a case by case basis, which is approached as a holistic endeavor. Additional factors may include the location of the debtor's books and records, the location of the debtor's primary bank and the jurisdiction whose law would apply to most disputes.
- Considering the facts at hand, the following would suggest that Globe Holding's COMI is in the Cayman, and therefore the proceedings should be recognised as foreign main proceedings:

- It was re-incorporated in 2010 as Cayman Islands entity
- It provided various notices of its incorporation (in Cayman), including to regulators such as the SEC
- It has historically been advised by long-standing Cayman law professional advisors
- It has a bank account in Cayman, which it uses to pay certain operating expenses
- It maintains its books and record in Cayman
- It has noted in SEC filings that it's a Cayman company
- Its reorganization was conducted in Cayman (via a Cayman scheme)
- Globe Holding's largest Noteholders were of the view that the proposed restructuring would take place in Cayman
- On the other hand, the following would suggest that Globe Holdings COMI is in the US, and therefore the proceedings should be recognised as foreign non main proceedings:
 - It is regulated by and makes public filings to the SEC (a US regulator)
 - Its USD 25m notes are governed by NY Law
 - Its shares were listed on the NASDAQ
 - Its principal assets are its US subsidiaries, which have employees and property in the US
 - The RSA is governed by NY Law
 - A class action litigation has been "*brewing*" in the US (suggesting US law would apply to certain of its disputes)
- On balance, on the basis of the above, the client should apply for recognition of foreign main proceedings.
- In terms of papers, the client will need to accompany its application for recognition under Ch. 15 with the items/evidence set out in Art. 15 MLCI (which will include the Sanction Order). The client will then be obliged to update court on developments relating to the foreign proceeding (per Art. 18 MLCI).
- Assuming the foreign main proceedings application is approved, the client will benefit from three automatic effects/reliefs, including a stay on proceedings concerning the debtor's assets. This will ensure the client benefits from a stay on e.g. the class action litigation in the US that has been brewing.

Good arguments. However full answer requires discussion and application of Art.16 MLCBI; definitions (Art.2, for FMP, FNMP, establishment etc.); the required procedures per Art.15 (mentioned in text); and a conclusion per Art, 19, 20, 21, 22, as well as 6 MLCBI

*** End of Assessment ***

Marks awarded 33 out of 50