



**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 main distinction between the application of the UNCITRAL Model Law on Cross-Border Insolvency and the European Union Regulation on insolvency proceedings concerns the legal authority within member states and their scope.

In fact, MLCBI provides a framework for cooperation between courts and stakeholders in different countries, and is not a binding law until adopted into national legislation by the country's legislative body. The MLCBI applies to cross-border insolvency proceedings but does not require recognition of foreign insolvency proceedings.

The EU Insolvency Regulation, in turn, is applicable to EU countries and establishes uniform rules for the conduction of insolvency proceedings across the EU. It focuses on the jurisdiction (competence) to opening insolvency proceedings, the recognition of these proceedings between member states, and establishes rules for the coordination between main and secondary proceedings.

Both systems, as shown, aim to manage cross-border insolvencies, but operate within different legal and organization frameworks. MLCBI is more of a guideline, while EU Regulation is a binding set of rules that apply to all EU member states.

MLCBI:

Benefit: the MLCBI is more flexible in adoption and in the ability to adapt the model to fit the existing legal framework in the adopting country.

Disadvantage: MLCBI does not lead to uniform application in all adopting countries, which can generate uncertainty in cross-border insolvency cases.

EU Insolvency Regulation:

Benefit: provides a uniform and predictable set of rules for insolvency proceedings in the EU, reducing costs and complexity.

Disadvantage: the regulation may not consider specific aspects of each member state's legal system, which could lead to doubts or problems on how insolvency proceedings will be handled at national level.]

**Question 2.2 [maximum 2 marks] 2 marks**

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

[Article 21 of the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) gives the court the discretionary power to grant appropriate relief to a foreign representative upon the recognition of a foreign proceeding. The objective of this measure is to protect the debtor's assets and the interests of creditors<sup>1</sup>.

When using its discretion to grant post-recognition relief under Article 21, the court should primarily consider:

- i. the protection of assets, considering if the imagined relief will protect the assets of the debtor from dissipation/degradation. This includes considering any urgent need to maintaining or preserving the value of assets that are under threat;
- ii. the balance of interests, since the court must weigh the interests of the various stakeholders, including creditors, other interested parties, and the debtor himself;
- iii. the existence of a foreign main proceeding, considering whether the foreign proceeding for which recognition is sought is a foreign main proceeding, as different types of relief may be available depending on the nature of the foreign proceeding; the relief's necessity for the reorganization or liquidation.

In summary, the court's main objective when considering discretionary relief under Article 21 is to ensure that its actions support effective and efficient administration of the cross-border insolvency process, protect the value of the debtor's assets and respect the rights and interests of all related parties.]

**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 UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) addresses the protections granted to creditors and other interested persons, including the debtor, in the context of granting or denying relief in a foreign proceeding<sup>2</sup>.

In fact, Article 13 states the principle of non-discrimination, which may assure the right to be heard, adequate protection and equitable treatment off all creditors, regardless of their nationality, domicile, or the location where their claims arose. Article 13 serves to protect these rights by ensuring they can participate in the foreign proceeding.]

**Question 2.4 [maximum 3 marks] 3 marks**

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<sup>1</sup> "Article 21 has been described by some courts as providing a very broad reservoir of power that enables courts to grant any appropriate relief to effectuate the purpose of the MLCBI and to protect assets of the debtor or the interests of creditors.", p. 66 of the Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency, Case Law on Article 21.

<sup>2</sup> "The GEI [paras. 118–120]1 explains that article 13 embodies the principle that foreign creditors, when they apply to commence an insolvency proceeding in the enacting State or file claims in such a proceeding, should not be treated worse than local creditors.", p. 33 of the Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency, Article 13.



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

[In light of the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), a key distinction between the relief available in foreign main and foreign non-main proceedings concerns the automatic relief that accompanies the recognition of these proceedings.

When a foreign proceeding is recognized as a "foreign main proceeding," it takes place in the state where the debtor has its COMI. The recognition of a foreign main proceeding triggers certain automatic relief measures, such as the stay of execution against the debtor's assets and the suspension of the right to transfer, encumber, or dispose of the debtor's assets. This automatic stay is similar to the automatic stay in U.S. bankruptcy proceedings under Section 362 of the U.S. Bankruptcy Code<sup>3</sup>.

In contrast, when a foreign proceeding is recognized as a "foreign non-main proceeding," which means the proceeding is taking place in a state where the debtor has an establishment (but not its centre of main interests), the automatic relief mentioned above does not necessarily apply. In such cases, the relief is discretionary, and the foreign representative must apply to the court for any relief, which the court may grant upon consideration of the circumstances of the case.]

**QUESTION 3 (essay-type questions) [15 marks in total] 7 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.

[In the scenario described, there are cross-border insolvency proceedings involving a debtor with a COMI in Germany and an establishment in Bermuda. Under the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), which has been adopted by many jurisdictions including the United States, the following would apply:

**Foreign Main Proceeding in Germany:** the foreign main proceeding must have been filed in Germany because that is where the debtor's COMI is located. Under the MLCBI, the COMI is presumed to be the place of the debtor's registered office unless proven otherwise.

**Foreign Non-Main Proceeding in Bermuda:** the foreign non-main proceeding must have been filed in Bermuda, where the debtor has an establishment (defined as any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services).

**Likely Result:** The U.S. court would recognize the foreign main proceeding in Germany and the foreign non-main proceeding in Bermuda, assuming that all relevant criteria under the MLCBI are met. Following recognition, the automatic stay associated with the foreign main proceeding would apply to the debtor's assets in the U.S., and any additional relief with respect to the foreign non-main proceeding would be at the

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<https://www.law.cornell.edu/uscode/text/11/362#:~:text=It%20gives%20the%20debtor%20a,that%20drove%20him%20into%20bankruptcy.>

discretion of the U.S. court. The U.S. court would likely facilitate cooperation and coordination between the German and Bermudian proceedings, and any relief granted would aim to protect the assets and balance the interests of the creditors and the debtor.]

References to definitions and applicable provisions MLCBI are required (eg. Art.2, 15, 17, 6...)

**Question 3.2 [maximum 3 marks] 1 mark**

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

[Upon the recognition of the foreign main proceeding, the joint provisional liquidators (as foreign representatives) would generally be entitled to certain protections under the MLCBI, which might include a stay of pending litigation against them in the U.S. related to their role in the foreign insolvency proceedings.

The joint provisional liquidators could request the U.S. court to extend the automatic stay to the lawsuit filed against them, arguing that the action might interfere with the foreign main insolvency proceeding. The U.S. court would consider whether the lawsuit might affect the administration of the foreign insolvency proceeding and whether the relief is necessary to protect the assets or affairs of the debtor. If the court determines that the lawsuit against the joint provisional liquidators would have an adverse impact on the foreign insolvency proceedings, the lawsuit might result stayed under the provisions of the MLCBI.

I'm not sure if I could understand properly, but the outcome would depend on the specifics of the case and the court's evaluation of the circumstances, such as the nature of the claims against the liquidators and how these might intersect with the foreign insolvency proceedings.]

Answer requires discussions over 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?

[In this scenario, where a foreign representative administers assets in a debtor-in-possession-like restructuring proceeding in the UK and commences a recognition proceeding in the US, there shall be taken actions to ensure that the assets of the debtor, particularly those that are in the US, are protected during the period until the recognition hearing.

The foreign representative should consider:

- i. seek interim relief: the foreign representative should file a motion for interim relief upon filing the petition for recognition. Under Article 19 of the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), the court may grant provisional relief at any time after the commencement of a foreign proceeding and before its recognition in the US. This relief could include staying the execution against the debtor's assets or any action to terminate the leases and intellectual property licenses;
- ii. address Ipso Facto clauses: since US-governed leases and intellectual property licenses have ipso facto clauses, which are clauses that trigger termination upon the debtor's insolvency or restructuring, the foreign representative should aim to ensure these clauses are not activated. Under the US Bankruptcy Code, such clauses are generally unenforceable as they are seen to impede the restructuring process. The foreign representative should seek a court order confirming that these clauses are not enforceable against the debtor's estate during the pendency of the recognition proceeding;
- iii. notify Counterparties: the foreign representative should notify all counterparties to the leases and licenses about the commencement of the foreign main proceeding and the filing of the recognition proceeding in the US, indicating the intention to seek interim relief to prohibit the enforcement of ipso facto clauses;
- iv. monitor assets: In the period leading up to the recognition hearing, the foreign representative should closely monitor the debtor's assets to ensure they are not diminishing in value or being subject to enforcement actions.

By taking these steps, the foreign representative shall protect the debtor's assets, uphold the integrity of the restructuring process, and maintain the *status quo* until the US court can hear the recognition proceeding and decide on the appropriate relief.]

**Answer requires a discussion over Art.19 (note: the subsequent discussions in the response are outside the scope of MLCBI), as well as reference to Art 20 and/or 21 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?

[If a foreign representative's petition for recognition of a foreign main proceeding in Country B is denied, the representative can take some actions to address the situation, such as:

- i. appeal the decision (if Country B's legal system allows for it and if there is a basis to believe that the court's decision was incorrect or that important evidence was overlooked);
- ii. petition for recognition as a foreign non-main proceeding: if the debtor has an establishment in Country B, the foreign representative might petition for recognition of the proceeding as a foreign non-main proceeding under the Model Law on Cross-Border Insolvency. This recognition doesn't carry the automatic stay

- or some of the other effects of a foreign main proceeding recognition, but it still can provide a legal basis for the foreign representative to act in Country B;
- iii. negotiate with local creditors.

The foreign representative should have sought for legal advice and should have determined priorly where the debtor's centre of main interests (COMI) was located.

**Answer requires discussion over Art.16 MLCBI (rebuttable COMI presumption), procedures per Art. 15, 17, 6, as well as 21 MLCBI**

**QUESTION 4 (fact-based application-type question) [15 marks in total] 3 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 information provided, Globe Holdings seems to be a financial holding company incorporated in the Cayman Islands, with its operational activity conducted through subsidiaries in the United States.

The company is preparing to restructure its debt through a scheme of arrangement under Cayman Islands law and a subsequent Chapter 15 recognition proceeding in the United States.

The foreign representative should adopt:

Filing Strategy:

1- Recognition of the Cayman Islands Scheme as a Foreign Main Proceeding: the foreign representative should file for recognition of the Cayman Islands scheme as a foreign main proceeding under Chapter 15 of the U.S. Bankruptcy Code, given that Globe Holdings is incorporated in the Cayman Islands and retains its statutory seat there. The Centre of Main Interests (COMI) is likely to be considered the Cayman Islands due to the company's incorporation, counsel representation, and location where board decisions are made, despite the virtual nature of the meetings;

2- Establishment Analysis: the foreign representative may also argue for recognition of the scheme as a foreign non-main proceeding, considering the significant operational presence in the United States, including the headquarters and all employees.

Papers to be Submitted:

1- Petition for Recognition of the foreign proceeding, including evidence of the existence of the foreign proceeding and the authority of the foreign representative;

2- Affidavits or supporting declarations detailing the company's COMI, the structure of the corporate group, the location of its operations, and the conduct of its restructuring efforts;

3- Proof of Notice: proof that appropriate notice has been given to all interested parties.

Relief to be Requested on Day One:

1- Automatic Stay: an automatic stay of any action against the company's assets within the U.S. jurisdiction, pursuant to Section 1520(a) of the U.S. Bankruptcy Code, upon recognition of the Cayman scheme as a foreign main proceeding;

2- Provisional Relief: if necessary, the foreign representative should seek provisional relief under Section 1519 of the U.S. Bankruptcy Code to prevent any immediate threat to the company's assets or to address the ipso facto clauses.

Actions the Foreign Representative Should Have Taken Initially:

1- Early Engagement with U.S. Counsel: the foreign representative should have engaged U.S. legal counsel experienced in cross-border insolvency to advise on the Chapter 15 process;

2- Pre-Filing Communications: communicated with key U.S. stakeholders, including major creditors and Noteholders, to garner support for the restructuring plan and the strategy for U.S. recognition;

3- Due Diligence to ascertain all U.S. assets and liabilities, including any potential litigation risks, to inform the strategy for recognition and relief.

By following this strategy, the foreign representative shall ensure that Globe Holdings' assets are protected while pursuing a restructuring that is recognized in both the Cayman Islands and the United States.]

**As this question is a fact-based application-type question, it requires the MLCBI provisions to be applied to the facts of the case and substantiated with references and a discussion. For full marks, further application to the facts of the case would be needed. The answer should contain to the minimum:**

- Definitions eg (COMI, establishment, foreign main proceedings etc) with respective articles
- A discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI
- The necessary papers to be submitted to the US Court per Article 15 MLCBI
- Conclusive remarks with reference to Articles 19, 20, 21, 22 MLCBI as well as 6 MLCBI.

**\* End of Assessment \***

**Marks awarded: 27 out of 50**