



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 MLCBI is “soft law”, which means that it is not a treaty or convention and nor does it contain any requirement for reciprocity. It is only a recommendation of what is suitable to adopt into domestic legislation by individual national states.

The European Union (EU) Regulation is private international law and is directly applicable in all EU member states, save for Denmark. It therefore does not require adoption by any of the EU member states in order to be relied on in the courts of that member state.

The approach of the European Union (EU) Regulation of implementing binding rules across multiples states is considered to improve the certainty of cross-border transactions and stops individual states picking and choosing which parts they like or dislike or having adoption in some but not all states. Implementing the same binding rules also aides reciprocity.

Conversely, it is extremely difficult to achieve given the different legal systems involved and priorities and interests of all different states. The European Union (EU) Regulation took over 30 years to implement.

While a soft law approach by be easier and quicker to agree, it is only a recommendation and therefore the end result is not guaranteed and universal reciprocity is often more challenging to achieve.

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 granting relief under Article 21, paragraph 1 of Article 22 of the MLCBI requires the court to be satisfied that the interests of the debtor's creditors and other interested parties are being adequately protected.

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 sets out the anti-discrimination principle, which says that foreign creditors will have the same rights as domestic creditors to commence and participate in insolvency proceedings. This is known as the access right. The access right itself does not impact the priority of debt claims of foreign creditors but does provide that a foreign creditor's claim should not be of a lower priority than general unsecured claims because of the creditor being foreign.

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?

Whether or not a proceeding is a foreign main or non-proceeding may have an impact on the relief granted under Articles 20 and/or 21.

Under Article 20, a main proceeding benefits from certain automatic reliefs, a non-main proceeding cannot benefit from those automatic reliefs upon recognition. A non-main proceeding but rely on the Article 21 discretionary reliefs available post-recognition. The Article 21 reliefs are available to main and non-main proceedings, when being granted the court must be satisfied that the interests of the debtor's creditors and other interested parties are being adequately protected, in order to achieve this the Article 21 reliefs may be subjected to conditions or modified (or terminated) at a later date.

Paragraph 2 of Article 21 grants discretionary power to hand over assets in that state to a foreign representative. There is an extra hurdle to pass in respect of doing so in a non-main proceeding which is that the court must be satisfied that the relief being granted relates to assets that should be administered in the foreign non-main proceeding i.e. it should not interfere with the main proceeding.

QUESTION 3 (essay-type questions) [15 marks in total] 11 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.

The debtor can only have filed foreign proceedings in either Germany and Bermuda (assuming we have been told of all foreign establishments) as a proceeding opened in a country in which the debtor does not have at least an establishment cannot be recognised as a foreign proceeding under the MLCBI.

The debtor will have filed the foreign main proceedings in Germany, as this should be filed in the country in which the debtor has its COMI. The foreign non-main proceedings will have been filed in Bermuda given the debtor has an establishment there (but it is not its COMI).

Recognition proceedings have been opened in the US (we are not told in which State). There is no requirement of reciprocity in the MLCBI, so it does not matter whether or not Germany or Bermuda would recognise US proceeding. There are some exceptions, but the US has not amended the MLCBI to incorporate a reciprocity requirement.

Presuming the application made in respect of the recognition proceedings has been made correctly and the foreign proceeding and foreign representative qualify under Article 2(a) and (b) respectively, then the recognition proceeding should be granted as a matter of course.

Requires references to definitional and procedural provisions of MLCBI eg. Art. 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.

It sounds like creditors of the debtor have sued the joint provisional liquidators directly, rather than debtor itself. The likely outcome of those claims cannot be assessed without more information.

The application of the liquidators for recognition proceedings should be granted as a matter of course if the conditions of Article 15(2) are met and the foreign proceeding and foreign representative qualify under Article 2(a) and (b).

If creditors are able to make the courts question the motive behind the recognition proceedings then the courts may consider options for refusing to grant recognition. One ground for refusal would be public policy reasons, though the alleged claims would not suggest public policy grounds to me. The court may look at whether the claims are an abuse of process, the MLCBI does not prevent a court from reacting to an abuse of process (for fraud, improper purpose etc.) which could impact the recognition application. If the court pursued such investigation/proceedings then the foreign representative (the provision joint liquidators) would need to comply with full and frank disclosure to the court. The question and outcome would then depend on US law.

Requires discussion based on Art.10 MLCBI

Question 3.3 [maximum 4 marks] 4 marks

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

explain what steps, if any, should the foreign representative take to protect the assets and why?

During the 35 days after the petition up to the commencement of the proceedings, there is no relief applied in the US. It is not confirmed whether the DIP like proceedings in the UK are the main or non-main foreign proceedings. This would impact whether or not automatic relief (such as a stay on enforcement against the debtor) is applied. Once recognition is granted, Article 23 states that the foreign representative has standing initiate action in the relevant state to avoid or render ineffective legal acts detrimental to the creditors of the debtor as well as intervene in local proceedings in the state.

Despite this, the foreign representative may need to consider earlier relief. A court is able to grant urgent relief prior to the recognition application hearing under Article 19.

The facts presented do not suggest an urgent risk, and therefore there is likely grounds or a need to petition for a urgent interim relief. If recognition is granted and the UK proceedings are non-main then the foreign representative should apply for relief under Article 21 to ensure a stable base for the restructuring in the UK, given they are at risk of defaulting on the US governed agreements.

Question 3.4 [maximum 4 marks] 3 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?

First it is important to understand why the court denied the recognition application. On the presented facts, it sounds like there may have not been enough evidence to support the distinction of it being a main proceeding rather than a non-main proceeding.

To be recognised as a main proceeding its necessary to demonstrate that the COMI of the debtor is located in the jurisdiction for which the recognition application is being made. Article 16 provides for an assumption of a debtor's COMI to be where its registered office is located. However, this is only a presumption which may be rebutted. There is no definition of COMI in the MLCBI, but guidance provides a large number of factors that may be considered. It sounds like the debtor while having its registered office in Country A otherwise has no substance there.

As for next steps, COMI is assessed on the date on which the foreign proceedings were commenced. There is therefore very limited scope for the company to effect a COMI shift and re apply for main proceedings recognition. The next step would therefore appear to be to make another application for foreign non-main proceedings recognition.

References to Art.17, 21, 6 are also required to discuss

QUESTION 4 (fact-based application-type question) [15 marks in total] 6 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.

The client has commenced a scheme under Cayman Islands law, followed by a chapter 15 recognition proceeding in the United States.

In making the Chapter 15 application (which incorporated the MCLBI into the law of the United States), the client will need to decide whether to apply for recognition as main or non-main foreign proceedings. The distinction depends on whether the client's COMI is in the Cayman Islands or elsewhere.

The definition of COMI is not set out in the MCLBI, but the UNCITRAL Guide to Enactment does give guidance on the factors to consider which can be applied to the client's facts:

- The client is a Cayman Islands incorporated and registered entity. There is there for a presumption that the Cayman Islands will be the client's COMI, save for evidence to the contrary.
- It is a financial service holding company, which suggests that further investigation should be taken place to understand where the substance of its business is taking place.
- The client was initially formed as a Canadian company in 2009, under the laws of Ontario, Canada. This no longer relevant given the recognition application will consider the facts at the time the proceedings in the Cayman Islands was commenced
- The client has a bank account (opened just a few days ago) in the Cayman Islands from which it pays certain of its operating expenses. It sounds like this account was opened after the proceedings in the Cayman Islands were commenced and is therefore not necessarily going to be a fact considered in assessing COMI as the

evidence will be harder to establish given the proximity to the commencement date. It is also doubtful whether this is the client's primary bank account.

- 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. This is evidence contrary to the COMI being in the Cayman Islands given it appears its employees are not based there, nor are its directors and nor, therefore, the central administration of the business.
- The client also maintains its books and records in the Cayman Islands. This is evidence in favor of the COMI being the Cayman Islands.
- Globe Holdings has no business operations of its own. This is not necessarily evidence to the contrary but suggests that the more investigation is required to find the substance of the company's operations and business.
- The business of the client 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. This is all evidence suggesting that the client's COMI may in fact be in the US rather than the Cayman Islands.
- 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. The fact that the client's financing is organized under New York law is evidence again suggesting the COMI is in the US.
- Finally, the fact that reorganisation proceedings have been started in the Cayman Islands is evidence in favour of COMI being located there.

There are multiple factors in favour of and against the COMI being in the Cayman Islands, however given the substantive portion of business activity, financing, employees and I assume other business relationships are in the US it would appear prudent to apply for non main recognition. Appropriate relief can still be applied for.

A factor in arriving at this conclusion is that there is no ongoing litigation where automatic relief may be required as the known class action is "brewing" but not yet filed. If this develops and there is an imminent need to stay proceedings then urgent interim relief could be applied for.

In addition to the class action litigation it is important to protect the sale process of its New York assets. Therefore, once recognition is granted relief will need to be sought as no automatic reliefs will be triggered.

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. The answer should contain as a minimum: definitions (COMI, establishment, foreign main/non-main proceedings etc.) with respective references to (if any) MLCBI provisions (noted the discussion over COMI); reference to 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; vonclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI....

*** End of Assessment ***

Marks awarded: 34 out of 50