



**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] 6 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 key distinction between the application of the MLCBI and the European Union (EU) Regulation on insolvency proceedings is as follows :

The EIR, which is not a treaty, but and European Union Regulation which from the date of adoption, directly becomes part of the domestic law of each EU member state, whereas the MLCBI does not attempt to substantively unify the insolvency laws of states. MLCBI does not contain any requirement of reciprocity. The Model Law is only a recommendation whereas EU Regulation becomes part of domestic law of member states.

Key benefits of MLCBI : A significant advantage of the MLCBI approach is its flexibility, allowing courts to adapt and modify decisions based on the unique circumstances of each cross-border insolvency case. This flexibility fosters a pragmatic and context-specific resolution, encouraging cooperation among jurisdictions.

Key disadvantage of MLCBI : A potential drawback of the MLCBI is the absence of automatic recognition, which may lead to delays and increased cost in cross-border insolvency proceedings .

Key benefit of EU Regulation : A significant advantage of the EU Regulation is the automatic recognition of insolvency proceedings across member states. This eliminates the need for separate recognition process in each jurisdiction, promoting efficiency and reducing administrative burden on parties involved in cross-border insolvency cases.

Key disadvantage of EU regulation : The main drawback of the EU Regulation is its limited application to EU member states. The regulation may not be as universally applicable as the MLCBI approach, which is not confined to a specific regional grouping.

**Question 2.2 [maximum 2 marks] 0 marks**

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

As per Article 21 of the MLCBI, upon recognition of a foreign proceeding, courts in enacting state should primarily consider using its discretionary powers to grant appropriate relief, including the following :

1. Stay on the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, right, obligations or liabilities, to the extent they have not been stayed automatically under Article 20(a)(a)
2. Stay on execution against the debtor's assets to the extent it has not been stayed automatically under Article 20(a)(b)
3. Suspension of the right to transfer, encumber or otherwise alienate any of the assets of the debtor to the extent these rights have not been automatically suspended under article 20(1)(c)
4. Providing for the examination of witnesses, taking evidences or delivery of information concerning the debtor's assets, rights, obligation or liabilities
5. Entrusting the administration or realisation of all or part of the debtor's assets in the enacting state to the foreign representative or another person designated by the court
6. Extending any interim relief granted pursuant to article 19(1) and
7. Grant any additional relief that may be available to the domestic liquidator.

The court should primarily consider the interests of the creditors (the list you mention are the types of relief).

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

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

[Article 13 of the MLCBI gives foreign creditor the same rights as creditors domiciled in the enacting state regarding the commencement of, and participation in local proceedings regarding the debtor, without affecting the ranking of claims in the enacting state. However, a claim of a foreign creditor cannot be given a lower priority than that of general unsecured claims solely because the holder of such claim is a foreign creditor.

**Question 2.4 [maximum 3 marks] 1 marks**

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

The key distinction with respect to the relief available in foreign main versus foreign non-main proceedings is the availability of automatic relief under Article 20 of Model Law.

The recognition of a foreign main proceeding has the following three automatic effects:

1. A stay of the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities
2. A stay of the execution against the debtor's assets and



3. A suspension of the right to transfer, encumber or other dispose of any assets of the debtor.

These automatic consequences are intended to allow time for steps to be taken to organise an orderly and fair cross-border insolvency proceedings.

However, such automatic reliefs are not available in case of foreign non-main proceedings.

To receive full marks, you should also discuss Article 21 MLCBI on discretionary relief.

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

#### **Question 3.1 [maximum 4 marks] 2 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 this scenario where a debtor has its Centre of Main Interest (COMI) in Germany and an establishment in Bermuda, and both foreign main and foreign non-main proceedings have been opened along with recognition proceedings in the US, the MLCBI provides guidance on the appropriate jurisdiction for each type of proceeding:

1. Foreign main proceeding: Foreign main proceedings should be filed in the jurisdiction where the debtor's COMI is located. In this case, since the debtor has COMI in Germany, the foreign main proceedings should be initiated in Germany.  
The Germany main proceedings would be recognised as the foreign main proceedings under the MLCBI. They would trigger automatic stay of legal proceedings and enforcement actions against the debtors assets. The benefit of of automatic relief will be available under Article 20 also.
2. Foreign non-main proceedings: It could be filed in any jurisdiction where the debtor has an establishment. In the scenario, Bermuda would be suitable jurisdiction for filing foreign non-main proceedings.  
The Bermuda proceedings would be recognised as foreign non-main proceedings and the appropriate relief would be granted based on relevant article which are available to foreign non-main proceedings like relief available under article 19 and 21 of the MLCBI.
3. Recognition proceedings: Recognition proceedings can be filed in any jurisdiction where the debtor's assets or interest are located. In this case, recognition proceedings also have been filed in the US. The US courts would likely recognise German proceedings as the foreign main proceedings and Bermuda proceedings might also be recognised as foreign non-main proceedings subject to discretion of the US courts.

For full marks, you should make reference to Articles 2(b), 2(c), 15, 17 MLCBI, as well as mention public policy of USA (Article 6 MLCBI)

#### **Question 3.2 [maximum 3 marks] 0 marks**

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.

In the given case joint provisional liquidators commenced a recognition proceeding in the US. According to Article 13 of the MLCBI recognition should be granted if the conditions as set out in this

article are fulfilled. One of these conditions is that recognition is not contrary to public policy (Article 7) and another one is that the judgement is not subject to any grounds of refusal (Article 14).

But, in the given case immediately after commencement of recognition proceedings, joint provisional liquidators 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.

Therefore, either on the basis of such act being against the public policy in the US or even if it is not so specifically written in the US law, based on Article 14(b) of the MLCBI relevant to fraud and on the basis of Article 14 (e) relevant to interference with insolvency proceedings, the US courts may stay such recognition proceedings. This is to protect the interest of the creditors based out in the US in specific and all creditors in general.

This situation relates to Article 10 MLCBI.

**Question 3.3 [maximum 4 marks] 1 mark**

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

[ In the given scenario, where a foreign representative is administering assets in a debtor-in-possession-like restructuring proceedings in the UK and is seeking recognition in the US, there are certain steps which foreign representative may consider for protecting the assets during the recognition process.

1. Petition for provisional relief: Since the recognition hearing is set 35 days after the petition date, he may consider petitioning the US court for grant of provisional relief or emergency orders to protect the assets during the interim period. This could include the order to maintain status quo, prevent termination of lease or licences and protect the assets from potential harm.
2. Notification of US creditors: the foreign representative should promptly notify known US creditors including lessors and licensors with *ipso facto* clauses, about the recognition proceeding.
3. Negotiation with US creditors: Engage in negotiation with US creditors, specially those with *ipso facto* clauses. It may prevent the need for court intervention.
4. Coordination with UK proceedings: he should closely coordinate with the UK restructuring proceedings to ensure alignment in strategies and to provide the US courts with a complete understanding of the overall restructuring plan.
5. Request for expedited hearing or interim relief before the scheduled hearing date in case of the urgent issues.
6. Explain to US courts during recognition hearing that *ipso facto* clause in lease and licences are generally not enforceable under the US bankruptcy code. [?]
7. Take additional protecting measures: depending on the circumstances he may explore additional measures also like assuring creditors to mitigate their concerns about potential harm during the recognition process.

Answer should be based on MLCBI. You should discuss Article 19 MLCBI as well as mention possible scenarios under Articles 17(2)(a), 17(2)(b), 20-21 MLCBI.

**Question 3.4 [maximum 4 marks] 0 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?

[In the given scenario, where a foreign representative encounters a situation where the recognition of the foreign proceeding have been denied in a particular jurisdiction, the foreign representative may consider following strategies and procedural considerations to address.

What may or should the foreign representative do next:

1. File an Appeal against the decision : if the denial is based on legal or procedural ground, the foreign representative may consider to file an appeal to a higher court on consulting a local legal counsel.
2. File recognition application in another jurisdiction : if permitted by local laws, the foreign representative may explore the option to refiling the application in another jurisdiction where debtor's assets are situated. A different court might have different interpretation of recognition criteria
3. Renegotiate with creditors: Engage in negotiations with creditors in country B to explore alternative solutions. It may help facilitate the sale of assets without formal recognition.
4. Modify recognition application : assess the reasons for the denial and modify the recognition application accordingly.
5. Consider a modified proceeding: Depending upon local laws, the foreign representative may explore whether it is possible to modify the nature of the proceeding in Country B. For example seeking recognition as foreign non-main proceeding which may probably facilitate desired outcome
6. Explore cross-border cooperation: Consider engaging with the insolvency authorities in both country A and Country B to explore possibilities for cooperation between two proceedings. It may enhance achieving the intended results

What the foreign representatives should have done at the outset;

1. Thoroughly assess the recognition criteria and understand legal requirements and potential challenges that may arise in seeking recognition in Country B
2. Engage local counsel early: He should have engaged an experienced local counsel in Country B from the outset
3. Open communication channels : proactive communication helps in addressing concerns and gaining support for the recognition process
4. Consider pre-filing negotiations with key creditors or interested parties in Country B
5. Draft a comprehensive recognition petition addressing all relevant legal requirements and potential challenges. Anticipate questions that court may have and proactively address them in the filing itself
6. Evaluate alternative jurisdiction: Could have considered the possibility of filing recognition in multiple jurisdictions, especially if the debtor's assets are spread across different countries. Assess the advantages and disadvantages of seeking recognition in each relevant jurisdiction.

**Answer should have been provided a discussion on FMP and FNMP, based on MLCBI, particularly Articles 16, 17 and 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.

[Considering the facts provided, the key elements to consider for a successful restructuring including determining the center of main interest (COMI) for Globe Holdings, the potential need for filing recognition application for main or nonmain proceeding or both, the submission of necessary papers, and the requested relief on the day of filing.

1. Center of Main Interest (COMI) analysis:

It is essential to assess whether Globe Holdings’ COMI is in the Cayman Islands or the United States. Given that the business operations, employees, headquarters and the sale of corporate assets are all located in the United States, there is a strong argument that the COMI is in the US. However, the fact that Globe Holdings is a Cayman Islands incorporated entity may have but very argument in favor of considering COMI in Cayman Islands. Therefore, I would suggest let COMI be considered in the US.

2. Recognition of Main or Non main proceeding:

Since the US is a significant jurisdiction for Globe Holdings considering the business operations, employees, headquarters and the sale of corporate assets are all located in the United States, and its will be appropriate of say that COMI is in the US, therefore the advise given to Globe Holding is appropriate and we should commence a scheme in Cayman Islands followed by recognition application under Chapter 15 in The US for recognition as foreign main proceeding. This allows for the recognition of the Cayman scheme in the US.

3. Papers to be submitted:

For the Cayman Island main proceedings, Globe Holdings would need to submit the relevant documents as per Cayman Island law, including the scheme proposal for evidence of Noteholders' support

For the Chapter 15 recognition in the US, the necessary papers would include a petition, a certified copy of the Cayman Sanction Order, and a declaration outlining the debtor's assets and liabilities.

4. Relief requested on day one:

In the Cayman Islands, client should request the court to consider the submitted scheme of restructuring and recognize the foreign main proceedings taking place in the US, grant of interim relief to protect the assets and taking control of the bank account in the Cayman Islands, stay order for disposition of any assets and control on the Board of Directors.

In the US, on the day of filing for Chapter 15 recognition, the relief sought would include requesting the recognition of Cayman Island scheme and interim relief under chapter 19 of the Model Law. While Article 21 of the Model Law sets out the court's discretionary powers to provide post recognition relief, Article 20 of the Model Law provides for automatic relief in the case the recognized foreign proceedings qualify as foreign main proceedings. Therefore, in the US relief sought should include:

- a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities
- b) Stay of execution against the debtor's assets
- c) A suspension of the right to transfer, encumber or otherwise dispose of any of the assets of the debtor.
- d) Any other appropriate relief as may be granted by the Court to protect the assets of the debtor and maximize the realization and
- e) Appropriate orders by the court in order to administer the assets of the debtor.

5. Consideration for class Action Litigation:

Globe Holdings should be prepared for potential class action litigation in the US. The restructuring plan should be designed to address and mitigate potential challenges from such litigation.

Provision in the restructuring plan and associated court orders should consider how to handle any future litigation and its potential impact on the restructuring process.

In summary, the strategy should involve filing of main scheme in the Cayman Islands and seeking Chapter 15 recognition as foreign main proceeding in the US, considering the business operations and support of the Noteholders. The papers submitted and the relief requested should align with the requirements of both jurisdictions. Additionally, provisions in the restructuring plan should address potential class action litigation in the US.

To receive full marks, 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 19-22 MLCBI and 6 MLCBI.

**\* End of Assessment \***

**Marks awarded: 19 out of 50.**