



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] 4 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] 1 mark

What is the key distinction between the application of the MLCBI and the European Union (EU) Regulation on insolvency proceedings? Also describe one key benefit and disadvantage of each approach.

Answer 2.1

The key distinction between the application of the MLCBI and the European Union (EU) Regulation on insolvency proceedings is that EIR Regulations are those provisions that can be seen to offer even greater clarity and certainty than the MLCBI, particularly about the disapplication of the presumption that the debtor's COMI is the place of its registered office where that registered office has been moved to another jurisdiction in the three months before a request to open insolvency proceedings. It plays an important role in preventing 'bad' forum shopping undertaken by a debtor to benefit from a 'debtor-friendly' insolvency process and it defeats the legitimate expectations of creditors.

Key Benefit of the MLCBI approach:

This leads to greater efficiency and cost-savings that can increase the return for creditors through greater coordination in the collection and distribution of assets, the concentration of proceedings and the avoidance of duplicate insolvency proceedings and multiple court applications, as well as potentially inconsistent court orders.

Disadvantage of MLCBI

MLCBI may lead to discrepancies in the interpretation and application. For example, it includes an optional provision that permits recognition of an insolvency-related judgment to be refused when the judgment originates from a state whose insolvency proceedings are not susceptible to recognition under the MLCBI, e.g. because the originating state is neither the location of COMI nor of the debtor's establishment (current US approach, see *In re Creative Finance Ltd.*). Thus, the same judgment may be capable of recognition in some states, but not in others.

Key Benefit of EU Regulations on Insolvency Proceedings:

EU Laws are more streamlined and are based on more technical approach. It is streamlined in its interpretation and application. In terms of its applicability in EU countries, it is good.

Disadvantage of EU Regulations

Lack of harmonisation and the outcome of cross-border investment is unpredictable regards insolvency proceedings [contradictory with above statement].

Contradictory statements. A key difference is that EIR is EU secondary/substantive law, implemented within the EU, whereas MLCBI is a recommendation, i.e. "soft law" - but aiming for a global implementation. Also requires mention of differences in the development and adoption processes and timelines.

Question 2.2 [maximum 2 marks] 0 mark

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

Answer 2.2

Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20; (b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 (b) of article 20; (c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20; (d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities; (e) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court; (f) Extending relief granted under paragraph 1 of article 19; (g) Granting any additional relief that

may be available to [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] under the laws of this State.

That the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

The court primarily considers the creditors' interests

Question 2.3 [2 marks] 2 marks

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

Answer 2.3

It should be able to protect creditors against discrimination (i.e. the unfavourable treatment of local creditors, whose claims would otherwise be similarly ranked under foreign and local law, in the foreign proceeding) and against breaches of due process. Ordinary private international law rules, such as consent, residency, presence in, or submission to, the foreign forum, which apply to commercial judgments generally, would not be determinative to the recognition and enforcement process when insolvency-related judgments/orders emanate from a main proceeding.

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?

Answer 2.4

The relief available on recognition of a foreign proceeding may be of two kinds:

- (i) mandatory relief on recognition as a foreign main proceeding,
- and
- (ii) discretionary relief on recognition as either foreign main proceeding or foreign non-main proceeding. The former applies automatically when a foreign main proceeding is recognised while the latter may be provided by the court on recognition of either foreign main or foreign non-main proceeding.

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.

Answer 3.1

Given that the debtor's COMI is in Germany and it has an establishment in Bermuda, the likely result is that the debtor's main insolvency proceedings would be opened in Germany. Under the UNCITRAL Model Law on Cross-Border Insolvency, which is recognized in the United Kingdom, the United States, Germany (? *Germany has not adopted MLCBI*), and many other countries, a foreign main proceeding is one that takes place in the jurisdiction where the debtor has its COMI.

Meanwhile, the foreign non-main proceedings would likely be opened in Bermuda. According to the Model Law, a foreign non-main proceeding is one that takes place in a jurisdiction where the debtor has an establishment, but not its COMI.

In terms of recognition proceedings in the United States, the US Bankruptcy Code provides for the recognition of foreign insolvency proceedings. If the debtor's COMI is in Germany, the German insolvency proceedings would be recognized as the main proceeding, and the Bermuda insolvency proceedings would be recognized as a non-main proceeding.

Requires references to definitional and procedural provisions of MLCBI eg. Art. 2, 15, 17, 6..

Question 3.2 [maximum 3 marks] 0 mark

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

Answer 3.2

According to UK laws, if joint provisional liquidators start a recognition process in the US and then get sued for allegedly interfering with the contract rights of US-based vendors of a foreign debtor, the likely outcome could be:

Recognition Proceedings in the US: The joint provisional liquidators are trying to get the US courts to recognize the foreign insolvency proceedings. This could provide protection and relief to the foreign debtor in the US.

Being Sued and Served with Discovery: The liquidators are accused of interfering with US vendors' contract rights and are now facing a lawsuit and discovery requests. This could lead to claims for damages or other remedies against them.

Impact on Recognition Proceedings: The lawsuit could affect the recognition process. If the accusations are proven and relevant, they might change how the US courts view the foreign insolvency proceedings.

Need to Defend: The liquidators will likely have to defend themselves in court. They may have to provide evidence and go through the discovery process to exchange information with the plaintiffs.

Lawsuit Outcome: The lawsuit's outcome will depend on evidence, arguments, and laws. If found liable, the liquidators may have to pay damages or take other action.

Potential Settlement: There could be a settlement before trial, where the liquidators agree to pay damages or take actions in exchange for ending the lawsuit.

In summary, the outcome will depend on details like evidence and laws. The recognition process may be affected by the lawsuit, and the lawsuit's outcome will depend on various factors.

Requires discussion based on Art. 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?

Answer 3.3

The debtor's 'foreign representative' must file a petition in bankruptcy court, asking the court to recognize the debtor's foreign insolvency proceeding. While the petition for recognition is pending, the court may grant provisional relief including staying execution against the debtor's US assets and entrusting the administration of those assets to the foreign representative.

The bankruptcy court *must* recognise the foreign bankruptcy proceeding if the debtor is the subject of a foreign proceeding and has assets in the US. A foreign company need not have substantial US assets to be recognized under Chapter 15.

Requires discussion based upon Art. 19 MLCBI and its definitions, as well as references to the provisions of Art 20 and/or 21 MLCBI as applicable.

Question 3.4 [maximum 4 marks] 0 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?

Answer 3.5

Ideally the foreign representative shall have started the insolvency proceedings in Country B. The strategy of initiating Insolvency in Country A was wrong. The assets could have been easily liquidated in Country B and it would have given him amount to satisfy its creditors. Country B has the main proceedings. Though COMI was in Country A as A has the registered office but COMI could have been shifted to B. At the outset they should have filed the proceedings in Country B not Country A.

Art.16 MLCBI is the main reference for “rebuttable COMI presumption”. References to Art.17, 21, 6 are also required

QUESTION 4 (fact-based application-type question) [15 marks in total] 0 mark

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.

Answer 4

It has elements of various cases such as Adam Neumann's bankruptcy case and Credit Suisse Bankruptcy case. The problem revolves around class action suits in the United States and the otheris sanction of scheme. The strategy for successful scheme is that My argument is that note holdersare single class of creditors with overwhelming 91 percent. The scheme should be passed in the hearing. If class action suit is filed by creditors or bond holders whose rights have been affected under the scheme plan THEY SHALL BE HEARD. The scheme shall be implemented. If class action suit has been started then scheme shall not be sanctioned and even if order is passed in equity andfairness.

The scheme of arrangement

The scheme of arrangement as proposed by the company sought to, in summary

1. release the noteholders' claims arising out of the notes and the scheme in exchange for new notes and certain cash consideration (scheme consideration)
2. discharge the notes and release the subsidiary guarantors.
3. pay an incentive fee of 1% of the aggregate principal amount of that noteholder's notes that entered into a restructuring support agreement beforethe effective date of the scheme.

Sanctions

The company had to navigate three separate sanctions regimes.

1. US sanctions regime due to the governing law of the notes (New York law)
2. UK sanctions regime because the company is a Cayman Islands company, and the Cayman Islands is subject to the UK's sanctions regime as a British Overseas Territory
3. European Union sanctions regime because one of the clearing systems through which the notes were held are subject to certain sanctions

The company's approach to the blocked noteholders

In order to resolve the sanction issues, the company proposed to not allow the blocked noteholders to vote on the scheme and to issue the new notes in global form. In addition, if the scheme was approved by those creditors who were allowed to vote, any scheme consideration (and any incentive fee for those who had acceded to the restructuring support agreement which had been communicated outside of the NSD) due to the blocked noteholders would then be held on their behalf by a trustee.

The Court's decision

Schemes of arrangements in the Cayman Islands require two hearings, the first is a convening hearing to approve the manner of the scheme meeting at which creditors vote on the scheme of arrangement and communication to the creditors in relation to voting and the second a sanction hearing to assess the results of the voting at the scheme meeting and to consider whether the outcome of the vote should be sanctioned by the Court and become binding on all creditors, including those who voted against or didn't (or couldn't) vote.

In order to ensure that the scheme of arrangement was binding and given effect as a matter of New York law (the governing jurisdiction of the notes), the company confirmed to the Court that, if the scheme was sanctioned, it would seek such relief under Chapter 15 and that the scheme would be conditional upon such relief being granted by a US Court.

Please carefully read the question “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”.

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: The essay should contain definitions (COMI, establishment, foreign main/non-main proceedings etc.) with respective references to MLCBI provisions and/or other sources; a discussion on the rebuttable presumption of the COMI per Article 16(3) MLCBI and alternative courses of action; the necessary papers to be submitted to the US Court per Article 15 MLCBI; conclusive remarks with reference to Articles 19 through 22 MLCBI and 6 MLCBI...

*** End of Assessment ***

Marks awarded: 13 out of 50