Questions for Clarification, 2027

1. Under paragraph no. 21, the reference to Environment Protection Act, 2010 article 15, does it correspond to an actual statute, if so, would that be applicable?

   This does not correspond to an actual statute. The information provided is sufficient for the purposes of the exercise.

2. Whether the footnote citation should include articles under MLCBI or articles under NI Act.

   The problem drafters are not familiar with the abbreviation "NI Act", which is not used in the moot problem. Please refer to the general competition rules for footnote citations.

3. W.r.t paragraph 18, which year was the investigation concluded and initiated?

   The moot problem does not specify either the date on which the investigation commenced or the date on which it concluded. No further clarification is necessary for the determination of the issues before the Court.

4. W.r.t paragraph 32 (a), which proceedings are being referred to? Whether for the purpose the current proceedings before the court are referred to, or shall it be presumed that a prior case was filed against GEM plc. by the Nuzilian Syndicate?

   The proceedings referred to are the proceedings commenced before the courts of Bhutanor by affected residents and a public-interest environmental NGO, as described in paragraph 20 of the moot problem. No separate proceedings brought by the Nuzilian Banking Syndicate against GEM plc should be assumed unless expressly stated in the facts.

5. Was the regional management office of GEM plc in Nuzilia registered in any way?

   The moot problem does not provide any information on this query and no additional facts will be provided.

6. Are there any relevant domestic laws or public policies in Nuzilia regarding restructuring/insolvency that should be raised on the facts?

   No. Please only use the information provided in the moot problem.

7. Were the environmental claimants, the Bhutanor Environmental Authority, or the State of Bhutanor formally served with legal notice of either the Part 26A convening hearing or the sanction hearing in London, and were they afforded a procedural opportunity to challenge their exclusion from the voting classes before the English High Court?

   The moot problem contains all facts that are relevant to this issue and no further information will be provided.

8. Did the Nuzilian Banking Syndicate formally appear, file evidence, or submit objections during the Part 26A proceedings in England, and if so, did they issue an express reservation of rights regarding Nuzilian court jurisdiction and governing law?

   This does not appear on the factual record and no additional facts will be provided on this issue.

9. What were the exact dates of: (i) the filing of the Part 26A petition in London, (ii) the sanction order, and (iii) the filing of the recognition application in Nuzilia; and had the transition of operational and treasury functions to Nuzilia already occurred prior to the English filing date?

   The relevant chronology is provided in the factual record. No more specific dates are necessary for the determination of the issues before the Court.

10. Does Nuzilia's domestic statutory or constitutional law contain environmental protections similar to Bhutanor's, or does Nuzilian insolvency law expressly prohibit non-consensual third-party releases and director-and-officer indemnities?

    The moot problem does not provide any such information. No further clarification will be provided.

11. Regarding the group executive committee "based in London" (Para 7), do the majority of its members physically reside and conduct their daily executive duties in England, or do they primarily operate out of the regional management office in Nuzilia?

    The moot problem states that the group executive committee is based in London. No further clarification will be provided.

12. Is Nuzilia to be treated as pari materia with the United States or any other country?

    No. Nuzilia is a fictional jurisdiction. Teams may draw comparative arguments from real-world jurisdictions where appropriate, but no jurisdiction should be presumed to be identical to Nuzilia.

13. Were any proceedings commenced against GEM plc or its assets in Nuzilia prior to the application for recognition? If so, what was the nature of those proceedings for which a stay is sought in para 32(a)?

    The moot problem does not specify any such proceedings. No further clarification will be provided.

14. Did the Nuzilian Syndicate participate in the English restructuring (vote or consent) or did it abstain entirely?

    The moot problem does not provide specifics on this issue. No further clarification will be provided.

15. Is any GEM company (parent or subsidiary) insolvent?

    The moot problem states that GEM plc initiated a restructuring plan under Part 26A of the Companies Act 2006. No further information regarding the solvency or insolvency of individual group entities will be provided.

16. Does the Nuzilian Insolvency Act consist solely of the Model Law provisions, or does it also incorporate other domestic insolvency law (eg: provisions analogous to the US Bankruptcy Code) that will affect the public policy analysis under Article 6?

    The moot problem states that the Nuzilia Insolvency Act incorporates the UNCITRAL Model Law on Cross-Border Insolvency and that, unless otherwise stated, the Model Law was adopted without material modification. No additional provisions of Nuzilian insolvency law are relevant to the issues before the Court.

17. The problem states that the avoidance of environmental liabilities and the provision of indemnity are contrary to the public policy of Nuzilia. However, the underlying acts giving rise to these environmental liabilities appear to have occurred in Bhutanor and allegedly violated Bhutanor's constitutional rights. In this context, does Nuzilia's public policy extend to conduct occurring in another State, such that acts committed in Bhutanor could nevertheless be regarded as contrary to the public policy of Nuzilia?

    The moot problem does not specify the territorial scope of Nuzilian public policy. The Court is required to determine whether recognition or relief should be refused or limited on grounds of Nuzilian public policy, including in relation to the treatment of environmental claims and director-and-officer indemnities.

18. The restructuring plan contains a provision permitting a cross-class cramdown in respect of the loans. However, the problem does not expressly identify which class or classes of creditors dissented from the restructuring plan. Which class of creditors was subject to the cross-class cramdown provision?

    The relevant information is provided in the factual record. No additional information will be provided on this issue.

19. Paragraph 27 of the problem states that the English Court observed that the interests of the environmental claimants would be addressed through the stay, release, and indemnity provisions of the restructuring plan. What was the basis on which the English Court reached this conclusion?

    The position of the English Court is outlined in the factual record. No further reasoning or findings of the English Court will be provided.

20. Para 21 of the problem provides that the foreign judgments or proceedings incompatible with the protection of environmental integrity shall not be recognised or enforced within Bhutanor as per National law (Environmental Protection Act 2010, article 15). It can be said to form part of the public policy of Bhutanor, so we want to seek clarification if the same can be extended to be part of the Nuzilian public policy as well?

    No. The moot problem does not state that Bhutanorian public policy forms part of Nuzilian public policy.

21. Where did GEM plc's board and the group's executive committee meet and take board level or group level decisions after 2023?

    The location of GEM plc's executive committee is present in the factual record. No further information regarding the location or format of board meetings or executive committee meetings will be provided.

22. Did the Nuzilian Syndicate lodge any claim or accept any distribution or entitlement under the English Plan, or otherwise receive notice of, vote on, appear at, or object to the convening or sanction hearings of the English Plan?

    The relevant information is included in the factual record. No additional facts will be provided.

23. Were the Bhutanor claimants, the NGO, and the Environmental Authority of Bhutanor given notice of the Part 26A proceedings, or appear or object at the convening and/or sanction hearings of the English Plan?

    The relevant information is included in the factual record. No further information regarding notice, attendance, submissions, or objections will be provided.

24. Did the English court's sanction judgment specifically address: (a) the non-consensual third-party releases and D&O indemnity, including any evidence that they were necessary to the English Plan, (b) the Bhutanor Constitution and Art 15 of Bhutanor's Environmental Protection Act 2010, or (c) the declaratory judgment at [30]?

    The moot problem does not provide the text or detailed reasoning of the sanction judgment. Teams should rely exclusively on the factual findings expressly stated in the problem. No further information regarding the contents of the judgment will be provided.

25. What is the duration and end-point of the English Plan and the moratorium in [24(b)]?

    The relevant information is included in the factual record. No additional information will be provided, as those matters are not necessary for the determination of the issues before the Court.

26. Could the proposition clarify which countries Nuzilia and Bhutanor are in pari materia to?

    This question has already been answered.

27. Could the proposition clarify the specific reason why the Nuzilian Syndicate has refused to accept or comply with the terms of the English Restructuring Plan?

    The relevant information is included in the factual record. No further clarification regarding the Syndicate's motivations or internal decision-making will be provided.

28. What was the net worth or relevant financial position of GEM plc at the time the restructuring proceedings were commenced?

    The moot problem does not provide financial statements, balance-sheet information, valuations, solvency analyses, or enterprise values. No additional financial information will be provided.

29. What were the principal financial or operational circumstances that led GEM plc to commence restructuring proceedings in England?

    The moot problem provides sufficient information concerning the financial and operational context. No further information regarding the causes of financial distress will be provided.

30. Could the proposition clarify whether the stay contemplated under paragraph 24(b) was intended to prevent creditors from pursuing claims directly against GEM Bhutanor Ltd and GEM Aggregatia GmbH, or only claims against GEM plc in respect of liabilities arising from those subsidiaries?

    The stay is described in the moot problem and should be interpreted according to its wording.

31. Under 24.b., what are the environmental claims against GEM plc?

    This information is provided in the factual record. No further particulars of those claims will be provided.

32. Under 24.c., will GEM Bhutanor Ltd. and GEM Aggregatia GmbH be considered selected commercial counterparties?

    No. The reference to "selected commercial counterparties" in paragraph 24(c) should not be understood as including subsidiaries of the GEM Group. GEM Bhutanor Ltd and GEM Aggregatia GmbH are subsidiaries within the group and are not among the commercial counterparties referred to in paragraph 24(c).

33. Is Nuzilia a Common Law or a Civil Law Country, or is the NIA pari materia to a statute of any other jurisdiction?

    Nuzilia should be treated as a common-law jurisdiction. Save as expressly stated in the moot problem, no assumptions should be made regarding the content of Nuzilian domestic law. Teams should rely primarily on the statutory framework provided in the problem, including the Nuzilia Insolvency Act, Nuzilia's adoption of the UNCITRAL Model Law on Cross-Border Insolvency, and Nuzilia's adherence to the rule in Gibbs.

34. Were the ‘Remediation Order’ and the ‘Ecological Integrity Levy’ admitted as debts under the English Plan and did the Bhutanor Authorities participate as the creditors in the English Proceedings?

    Relevant information of the English Plan can be found in the factual record. No further information will be provided.

35. Is there any liability or claim against the directors/management of the Group that has arisen in any jurisdiction in connection with the environmental breach?

    The moot problem does not state whether any claims had actually been commenced against directors, officers, or employees. However, the English Plan included: "an indemnity undertaking by GEM plc in favour of its directors, officers, and employees for liabilities 'arising in any jurisdiction' in connection with acts or omissions relating to the Bhutanor operations" [24(d)]. No further information will be provided outside of the factual record.

36. In the English restructuring plan, how were the Bhutanor environmental claimants treated? Specifically, were they included in a creditor class and subsequently outvoted, excluded from voting by the English Court, or regarded as outside the class of creditors whose claims could be compromised under the Plan?

The moot problem already answers this question. No further information will be provided.

37. For the purposes of the Nuzilian Syndicate's objection based on the rule in Gibbs, is it intended that the English Plan purports to discharge, compromise or otherwise alter the substantive rights and obligations arising under the Nuzilian-law governed syndicated loan agreements, notwithstanding their Nuzilian governing-law and exclusive-jurisdiction clauses? Further, is the Nuzilian Syndicate seeking refusal of recognition of the English proceeding itself, or only refusal/limitation of relief insofar as it would give effect to the Plan against the Nuzilian-law governed loans?

Yes. For the purposes of the moot problem, teams should proceed on the basis that the English Plan purports to compromise or otherwise alter rights and obligations arising under the Nuzilian-law governed syndicated loans. As to the second part of the question, this is covered in the factual record. Teams should rely on the pleadings and arguments set out in the problem.

38. In English Plan, do the non-consensual third-party releases and the indemnity in favour of GEM plc's directors, officers and employees extinguish, discharge or otherwise bar any existing, contingent or potential claims of the Bhutanorian environmental claimants or authorities against those persons, or do they merely regulate or shift the financial burden of liabilities that remain legally enforceable?

This information is contained within the factual record. No further information will be provided.

39. Do any of GEM plc's directors, officers or employees who are beneficiaries of the releases or indemnity have any existing, contingent or potential personal liability arising from the Bhutanor environmental incident, including liability that could otherwise be asserted by the Bhutanorian environmental claimants or authorities?

The relevant information is contained in the factual record. Teams should make their arguments based on the facts stated in the problem.