****

**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5C**

**CAYMAN ISLANDS**

This is the **summative (formal) assessment** for **Module 5C** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 5C**. 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 **Microsoft Word format**, using a standard A4 size page and an 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: **[studentnumber.assessment5C]**. An example would be something along the following lines: 202021IFU-314.assessment5C. **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 “studentnumber” 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.The final submission date for this assessment is **31 July 2021**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

7. Prior to being populated with your answers, this assessment consists of **7 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

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**

Select the **correct answer**.

The Grand Court of the Cayman Islands has jurisdiction to make winding up orders in respect of:

1. a company incorporated in the Cayman Islands.
2. a company with property located in the Cayman Islands.
3. a company carrying on business in the Cayman Islands.
4. any of the above.

**Question 1.2**

Which of the following is **not** available in the Cayman Islands?

1. Appointment of a receiver.
2. Court-supervised liquidation.
3. Official liquidation.
4. Deed of Company Arrangement.

**Question 1.3**

In a voluntary liquidation:

1. the company may cease trading where it is necessary and beneficial to the liquidation.
2. the company must cease trading except where it is necessary and beneficial to the liquidation.
3. the company must cease trading if it is necessary and beneficial to the liquidation.
4. the company may cease trading unless it is necessary and beneficial to the liquidation.

**Question 1.4**

Select the **correct answer**.

When a winding up order has been made, a secured creditor:

1. may enforce their security with leave of the court.
2. may enforce their security with leave of the court provided the liquidator is on notice of the application.
3. may enforce their security without leave of the court.
4. may not enforce their security until the liquidator has adjudicated on the proofs of debt.

**Question 1.5**

Select the **correct answer**.

In a provisional liquidation, the existing management:

1. continues to be in control of the company.
2. continues to be in control of the company subject to supervision by the court and the provisional liquidator.
3. may continue to be in control of the company subject to supervision by the provisional liquidator and the court.
4. is not permitted to remain in control of the company.

**Question 1.6**

Select the **correct answer**.

Once a provisional liquidator is appointed:

1. no action may be commenced against the company without leave of the court.
2. no existing action may be continued against the company without permission of the provisional liquidator.
3. legal proceedings may be commenced or continued against the company without leave of the court.
4. no action may be commenced against the company.

**Question 1.7**

Which of the following **is not** a preferential debt ranking equally with the other four?

1. Sums due to company employees.
2. Taxes due to the Cayman Islands government.
3. Amounts due to preferred shareholders.
4. Sums due to depositors (if the company is a bank).
5. Unsecured debts which are not subject to subordination agreements.

**Question 1.8**

Select the **correct answer**.

Any payment or disposal of property to a creditor constitutes a voidable preference if it:

1. occurs in the six months before the deemed commencement of the company’s liquidation, or at a time when it is unable to pay its debts and the dominant intention of the company’s directors was to give the applicable creditor a preference over other creditors.
2. occurs in the six months before the deemed commencement of the company’s liquidation and at a time when it is unable to pay its debts and the dominant intention of the company’s directors was to give the applicable creditor a preference over other creditors.
3. occurs in the six months before the deemed commencement of the company’s liquidation and at a time when it is unable to pay its debts, or the dominant intention of the company’s directors was to give the applicable creditor a preference over other creditors.
4. occurs in the six months before the deemed commencement of the company’s liquidation, or at a time when it is unable to pay its debts, or the dominant intention of the company’s directors was to give the applicable creditor a preference over other creditors.

**Question 1.9**

Select the **correct answer**.

In order for a proposed scheme of arrangement to be approved:

1. 50% or more representing 75% or more in value of the creditors must agree.
2. 50% or more representing more than 75% of the creditors must agree.
3. more than 50% representing more than 75% of the creditors must agree.
4. more than 50% representing 75% or more in value of the creditors must agree.

**Question 1.10**

Select the **incorrect statement**.

A company may be wound up by the Grand Court if the:

1. company passes a special resolution requiring it to be wound up.
2. company does not commence business within a year of incorporation.
3. company is unable to pay its debts.
4. board of directors decides it is “just and equitable” for the company to be wound up.
5. company is carrying on regulated business in the Cayman Islands without a license.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [maximum 3 marks]**

Explain the extent to which it is possible to register security over an asset in the Cayman Islands.

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Explain the legal basis for the Cayman Islands Grand Court’s power to assist foreign bankruptcy proceedings and the circumstances in which such powers may be exercised.

[Type your answer here]

**Question 2.3 [maximum 3 marks]**

Outline the legal framework for the recognition of foreign judgements in the Cayman Islands.

[Type your answer here]

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

**Question 3.1 [maximum 9 marks]**

In the absence of a statutory prohibition on insolvent trading, the Cayman Islands is ill-equipped to deal with directors who wilfully disregard the interests of creditors.

Critically discuss this statement and indicate whether you agree or disagree with it, providing reasons for your answer.

[Type your answer here]

**Question 3.2 [maximum 6 marks]**

Receivers have a limited role to play in a Cayman Islands insolvency scenario. Discuss.

[Type your answer here]

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

Black Pearl Ltd is a company registered in the Cayman Islands. It operates a fleet of pirate-themed cruise ships across the Caribbean. It was founded by the wealthy Sparrow family over 75 years ago. The family continues to own and manage the business.

In recent years, Black Pearl has been rapidly expanding its cruise ship operations. However, the unexpected slump in worldwide tourism at the start of 2020 due to Covid-19 has badly affected Black Pearl’s revenues.

Within weeks Black Pearl is going to default on its loan repayments to Monster Mortgage (Monster). Monster has lent Black Pearl USD 100 million (USD 40 million of which is secured by a mortgage over four of Black Pearl’s cruise ships).

Black Pearl has already failed to pay various service providers for several months (tender vessels, food and beverage suppliers, utilities, engineers and mechanics). The payment of utilities is particularly important to the ongoing repair and maintenance of the fleet of vessels at Black Pearl’s dry dock facility in Little Cayman.

To make matters worse, Black Pearl has recently lost arbitration proceedings in London in relation to the construction of a new fleet of ships and been ordered to pay damages of USD 50 million to Jolly Roger Inc. It will not be able to satisfy that award.

You are a Cayman Islands-based insolvency professional and have been approached to provide advice on the following:

1. What action can Monster take to protect itself?
2. What action can Jolly Roger Inc take against Black Pearl?
3. What action can the unsecured trade creditors take against Black Pearl?
4. Does the Cayman Islands Court have jurisdiction over Black Pearl?
5. Is there a legal route via which Black Pearl can protect itself and seek to restructure?
6. Following on from (e) above and assuming there is a legal route via which Black Pearly can protect itself and seek to restructure, can the Sparrow family continue to run Black Pearl during this process?
7. Assuming that the Cayman Islands Court has jurisdiction, what factors will the court take into consideration before approving any proposed restructuring?

[Type your answer here]

**\* End of Assessment \***