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**INTRODUCTORY CERTIFICATE IN INSOLVENCY LAW AND PRACTICE IN THE CAYMAN ISLANDS 2023**

**Formative Assessment (Practice Examination) Date: 9 – 10 November 2023**

**Time limit: 24 hours (from 13:00 on 9 November to 13:00 on 10 November 2023)**

**EXAMINERS**

**Mr John Royle Mr Mark Russell Mr Nicholas Fox Ms Corinne Celliers**

**Ms Cassandra Ronaldson Mr Adam Crane Ms Gemma Lardner Ms Jennifer Fox**

**Ms Jennifer Colegate Mr Tony Heaver-Wren Mr Paul Smith Mr Spencer Vickers**

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**MODERATORS**

**Mr John Royle Mr Nicholas Fox Ms Cassandra Ronaldson**

**Mr Spencer Vickers Dr David Burdette**

**It is imperative that all candidates read and take cognisance of the examination instructions on the next page.**

**All candidates are expected to comply with ALL the instructions.**

**INSTRUCTIONS**

1. This assessment paper will be made available at **13:00 (1 pm) Cayman time on Thursday 9 November 2023** and must be returned / submitted by **13:00 (1 pm) Cayman time on Friday 10 November 2023**. Please note that assessments returned late will not be accepted.

2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Avenir Next font (if the Avenir Next font is not available on your PC, please select the 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.

3. No limit has been set for the length of your answers to the questions. 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). Candidates who include very long answers in the hope it will cover the answer the examiners are looking for, will be appropriately penalised.

4. You must save this document using the following format: **studentID.FormativeAssessment**. An example would be something along the following lines: 202223-336.FormativeAssessment. **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.

5. The assessment can be downloaded from your student portal on the INSOL International website. The assessment must likewise be returned via your student portal as per the instructions in the Course Handbook for this course. **If for any reason candidates are unable to access their student portal, the answer script must be returned by e-mail to** [**david.burdette@insol.org**](mailto:david.burdette@insol.org) **prior to the deadline for the submission of the assessment**.

6. Enquiries during the time that the assessment is written must be directed to David Burdette at [**david.burdette@insol.org**](mailto:david.burdette@insol.org) or by WhatsApp on +44 7545 773890 or to Brenda Bennett at [**brenda.bennett@insol.org**](mailto:brenda.bennett@insol.org) or by WhatsApp on +27 66 228 2010. Please note that enquiries will only be responded to during UK office hours (which are 9 am to 5 pm GMT, or 11 am to 7 pm SAST).

7. While the assessments are open-book assessments, it is important to note that candidates **may not receive any assistance from any person** during the 24 hours that the assessment is written. **Answers must be written in the candidate’s own words; answers that are copied and pasted from the text of the course notes (or any other source) will be treated as plagiarism and persons who make themselves guilty of this will forfeit the assessment and disciplinary charges will follow**. When submitting their answers, candidates will be asked to confirm that the work is their own, that they have worked independently and that all external sources used have been properly cited. **If you submit your assessment by e-mail, a statement to this effect should be included in the e-mail**.

8. Once a candidate’s assessment has been uploaded to their student portal (in line with the instructions in the Course Handbook), a confirmatory e-mail will be auto-generated confirming that the assessment has been uploaded. If the confirmatory e-mail is not received within five minutes after uploading the assessment, candidates are requested to first check their junk / spam folders before e-mailing the Course Leader to inform him that the auto-generated e-mail was not received.

9. If for any reason the submission / upload portal for your assessment is not available (ie it shows the deadline for the assessment has already passed), please e-mail your assessment to **david.burdette@insol.org**.

10. **The model answer to this practice assessment will be uploaded to the course web pages once the closing date for submission has passed at 1 pm Cayman time on Friday 10 November 2023**.

11. You are required to answer this paper by typing the answers directly into the spaces provided (indicated by text that states [Type your answer here]). For multiple-choice questions, please highlight your answer in yellow, as per the instructions included under the first question.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1**

Questions 1.1 – 1.20 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. Each of the 20 questions count 1 mark.

**Question 1.1**

Choose the **correct** statement:

Which of the following IS NOT a relevant country for an individual to be qualified to act as official liquidator in the Cayman Islands?

1. Canada
2. Australia
3. Northern Ireland
4. South Africa

**Question 1.2**

Choose the **correct** statement:

What is the lookback period for an Insolvency Practitioner’s independence in accordance with the Insolvency Practitioner Regulations?

1. 3 years from commencement of the liquidation
2. 3 years from the date of the winding up order
3. 3 years from the date of a special resolution
4. None of the above

**Question 1.3**

Select the **correct** statement:

To whom does a privately-appointed receiver owe their primary duties?

* 1. The debtor.
  2. The appointing creditor.
  3. Other creditors.
  4. All of the above.

**Question 1.4**

Choose the **correct** statement:

Which of the following is a ground for making a statutory receivership order in respect of a segregated portfolio?

1. It is just and equitable that an order be made.
2. The assets are or are likely to be insufficient to discharge the claims of the segregated portfolio’s creditors.
3. The shareholders in respect of the segregated portfolio have passed a resolution to appoint a receiver.
4. All of the above.

**Question 1.5**

Choose the **correct** statement:

When an official liquidator is appointed over a company, what is the lookback period for challenging a secured parties security as a voidable preference?

1. Within the six (6) months immediately preceding the commencement of the winding up.
2. Within the six (6) months immediately preceding the granting of a winding up order.
3. Within the two (2) years immediately preceding the commencement of the winding up.
4. Within the two (2) years immediately preceding the granting of a winding up order.

**Question 1.6**

Choose the **correct** statement:

Which sections of the Companies Act governs the voluntary winding up of a company?

1. Sections 111-115.
2. Sections 116-130.
3. Sections 123-130.
4. Sections 123-133.

**Question 1.7**

Choose the **correct** statement:

Which of the following IS NOT considered a ground for the voluntary winding up of a company:

1. If the company resolves by special resolution that it be wound up voluntarily.
2. If the company resolves by ordinary resolution that it be wound up voluntarily because it is unable to pay its debts as they fall due.
3. If the company resolves by ordinary resolution that it is just and equitable that the company should be wound up.
4. When any duration or period of the company fixed by its memorandum or articles of association expires.
5. If any event of winding up, as set by the memorandum or articles of association, occurs.

**Question 1.8**

Choose the **correct** statement:

In accordance with her orders of appointment, an official liquidator engages a Cayman attorney to provide legal advice concerning a potential claim against the company’s former auditor. The legal advice is received, along with the attorney’s invoice for their fees incurred. Upon the liquidators’ review of the attorney’s invoice, she considers that the fees charged are excessive. Whilst there is an engagement letter in place, there was no budget set or amounts otherwise agreed in respect of the liquidator’s fee expectations. What option is available to the liquidator to contest the fees charged?

1. There is no recourse. The official liquidator should have agreed the fees when instructing the attorneys.
2. The terms relating to legal fees are a matter for the liquidation committee to set (if one is constituted) and for the ultimate approval of the court.
3. The official liquidator can apply to have the fees taxed.

**Question 1.9**

Choose the **correct** statement:

Which of the below statements is true in relation to an insolvent liquidation estate?

1. Ordinary creditor claims are always paid *pari passu*, regardless of any contractual terms validly entered into by the creditor and company regarding the priority of payment, prior to the company’s liquidation.
2. The official liquidator must convene meetings of both creditors and contributories during the liquidation.
3. Official liquidators are not required to provide their reports to the contributories, even when a contributory request a copy of the official liquidators’ reports.
4. The official liquidators do not need to settle the list of contributories.

**Question 1.10**

Choose the **correct** statement:

Which of the following statements most accurately describes the circumstances in which Cayman Islands Monetary Authority (CIMA) may appoint a controller of a licensed entity?

1. Where CIMA identifies evidence indicating that the entity's management have been engaged in negligent activities.
2. Where CIMA identifies serious concerns regarding the solvency or lawfulness of a licensee or registrant's business.
3. Where CIMA considers that the entity is insolvent.
4. Where CIMA concludes that the entity has failed to pay requisite fees to the relevant regulatory authorities.

**Question 1.11**

Choose the **correct** statement:

If a creditor seeks to appeal a decision of the official liquidator in relation to its proof of debt, when must any application to the court appealing that decision be made?

1. Within 30 days of becoming aware of the official liquidator's decision.
2. Within three (3) months of becoming aware of the official liquidator's decision.
3. Within 14 days of the date on which the creditor received the official liquidator's notification under O.16, r.6 of the Companies Winding Up Rules.
4. Within 21 days of the date on which the creditor received the official liquidator's notification under O.16, r.6 of the Companies Winding Up Rules.

**Question 1.12**

Choose the **correct** statement:

Which of the following WILL NOTconstitute the commencement of the winding up of an exempted limited partnership (ELP)?

1. Order of the Court upon presentation of a winding up petition.
2. The proposal of a resolution for the winding up of the ELP.
3. Expiry of the period fixed for the duration of the partnership.
4. The automatic wind up date.

**Question 1.13**

Choose the **correct** statement:

Which of the following activities, if undertaken by a limited partner, may constitute participation in the conduct of the business of the exempted limited partnership (ELP), jeopardising its limited liability?

1. Calling a meeting of the partners.
2. Presenting a winding up petition.
3. Acting as guarantor for the ELP.
4. None of the above.

**Question 1.14**

Choose the **correct** statement:

The Court may make an order for the appointment of provisional liquidators at any time:

* 1. Before a winding up order is made.
  2. Before a winding up petition is filed.
  3. After a winding up petition has been filed but before a winding up order is made.
  4. After a company has been struck off.

**Question 1.15**

Choose the **correct** statement:

Who may apply for the appointment of provisional liquidators to a corporate debtor?:

* 1. The company and its creditors.
  2. The Cayman Islands Monetary Authority (CIMA) and the company.
  3. The company and its contributories.
  4. All of the above.

**Question 1.16**

Choose the **correct** statement:

To be sanctioned, a creditor’s scheme:

1. Must apply to all of the company’s creditors.
2. Must also take account of shareholder interests.
3. Must have extraterritorial affect.
4. Must provide a better outcome than liquidation.

**Question 1.17**

Choose the **correct** statement:

From which country can judgments of certain courts be registered and enforced within the Cayman Islands under the Foreign Judgments Reciprocal Enforcement Act (1996 Revision)?

1. Canada
2. Australia
3. England
4. All countries within the Commonwealth

**Question 1.18**

Choose the **correct** statement:

In general, a foreign money judgment will not be recognised and enforced in the Cayman Islands as a debt against the judgment debtor if:

1. The judgment is subject to an appeal.
2. The judgment was obtained in a court of law which had jurisdiction over the judgment debtor, but the judgment debtor elected not to participate.
3. The judgment was in respect of taxes, fines or penalties.
4. All of the above.

**Question 1.19**

Choose the **correct** statement:

In a personal bankruptcy, which of the following actions does not amount to an “act of bankruptcy”?

(a)  That the debtor has, in the Islands or elsewhere, made any conveyance or transfer of his property or any part thereof, or created any charge thereon, which would under any law relating to bankruptcy, be void as a fraudulent preference if he were adjudged bankrupt.

(b)  That the debtor has presented a bankruptcy petition against himself.

(c)  That the debtor has, in the Islands or elsewhere, made a fraudulent conveyance, gift, delivery or transfer of his property or any part thereof.

(d) That execution issued outside the Islands against the debtor on any legal process for the obtaining payment of any sum of money has been levied by seizure and sale of his goods or enforced by delivery of his goods.

**Question 1.20**

Choose the **correct** statement:

In a personal bankruptcy, which of the following debts is not a preferential debt, payable in priority to other debts, and ranking equally between themselves?

(a)  Wages of any workman in respect of services rendered to the debtor during four months next preceding the date of the provisional order.

(b) Rental payments due to the debtor’s landlord at the date of the provisional order.

(c)  Salary of any servant in respect of services rendered to the debtor during four months next preceding the date of the provisional order, not exceeding one hundred dollars.

(d)  Public taxes imposed by law due from the debtor at the date of the provisional order not exceeding in the whole one year’s taxes.

**\*\* END OF QUESTION 1 \*\***

**QUESTION 2 FOLLOWS ON THE NEXT PAGE / . . .**

**QUESTION 2 – LIQUIDATION**

**Where appropriate, refer to the fact pattern below when answering the questions that follow. Please note that not all questions relate to the fact pattern.**

Seven Mile Master Fund (the Master Fund) is a Cayman Islands incorporated hedge fund. Its capital was raised through investments by two feeder funds, Seven Mile Feeder Fund (also incorporated in the Cayman Islands) (the Cayman Feeder) and Seven Mile (US) Feeder Fund (incorporated in Delaware, USA) (the US Feeder).

On 1 October 2023, the US Feeder received several redemption requests from its investors. As 100% of the US Feeder’s assets were invested into the Master Fund, a corresponding redemption request was made by the US Feeder to the Master Fund to allow the US Feeder to pay its own investor redemptions. It can be assumed that all redemption requests were properly made and effected in accordance with the companies’ governing documents.

Contrary to the Master Fund’s investment objectives, it had invested most of its capital into a real estate project in Panama, which is not expected to generate any returns until at least 1 January 2025. Unable to satisfy the redemption claim in full as it fell due, the Master Fund’s directors (two based in Panama and a non-executive Cayman Islands resident director) recommended that the Master Fund be placed into voluntary liquidation. A resolution to this effect was passed by the Master Fund’s shareholder on 22 October 2023 and a voluntary liquidator was appointed on the same day. Despite requests from the voluntary liquidator, none of the Master Fund’s directors are willing to provide a Declaration of Solvency.

During the liquidator’s enquiries, it has been established that the Master Fund transferred US$ 900,000 into a bank account held in the name of one of the Panama based directors on 5 October 2023. This account is held with Trusted Bank Corp in the USA. The Master Fund’s directors based in Panama are no longer responding to the voluntary liquidator’s requests for information and the Cayman Islands resident director claims he has access to very few of the Master Fund’s records.

The liquidator has been in office for 18 days and is considering next steps as regards the liquidation strategy.

**Question 2.1**

The investors in the US Feeder wish to consider appointing a US-based practitioner as either a Joint Voluntary Liquidator or Joint Official Liquidator of the Master Fund and the Cayman Feeder.

Draft a memo to the investors of the US Feeder, outlining:

* who can act as a Voluntary Liquidator of the Master Fund / the Cayman Feeder; and
* who can act as a Joint Official Liquidator of the Master Fund / the Cayman Feeder. **(4)**

To: The Investors

From: The Liquidator

To facilitate the voluntary liquidation of the Master Fund and the Cayman Feeder, a voluntary liquidator may be appointed. The voluntary liquidator appointed may be an individual designated in the Company’s memorandum or an individual appointed by the passing of a resolutions of the shareholders.

There is no qualification required to be appointed as a voluntary liquidator, which means that a US-based practitioner may be appointed.

A Company may also be wound up voluntarily by order of the Court or under the supervision of the Court.

In the case of an official liquidator, the practitioner must be a qualified insolvency practitioner (IP)which, in the Cayman Islands, means that the practitioner meets the requirements set by the Insolvency Rules Committee. This means that they are licensed to act as an IP in England and Wales, Scotland, Northen Ireland, The Republic of Ireland, Australia, New Zealand, or Canada; or the IP may also be a qualified as a professional accountant, is in good standing with their institute; has a minimum of 5 year’s relevant experience and have incurred not less than 2,500 hours of relevant chargeable work. To be appointed by the Court, the IP must also be resident in the Cayman Islands; be independent and hold professional indemnity insurance of atleast USD $10m in respect of each and every claim and atleast USD$20m in aggregate with a deductible of not more than USD $1m in respect of negligence or non-performance of duties.

For the US based IP to be appointed in this instance, he or she must be appointed jointly with a local Cayman Islands IP.

**Question 2.2**

The Master Fund proceeds into official liquidation, following a successful Court Supervision application. Given the Panamanian real estate project isn’t expected to generate any liquidity for at least 12 months, the respective estates of the Master Fund, Cayman Feeder and US Feeder are currently impecunious and devoid of liquid assets. At the first meeting of stakeholders of the Master Fund convened pursuant to Order 8 of the Company Winding Up Rules, a liquidation committee (LC) was formed comprising of five (5) members. The LC have heard that litigation funding, conditional fee arrangements and contingency fee agreements are all now permissible in the Cayman Islands. The LC are keen for the Liquidators to consider claims against, *inter alia*,the investment manager, Panamanian directors and Trusted Bank Corp, but are aware external funding will likely be required in order to instigate any investigations / claims.

Draft a memo to the liquidation committee outlining the following:

* The types of litigation funding arrangements permitted in Cayman;
* What a conditional fee arrangement is as opposed to a contingency fee agreement;
* What the maximum success fees are permitted under a conditional fee arrangement;
* What the maximum percentage of recoveries are permitted under a contingency fee agreement; and
* What practical information you think a potential litigation funder will need in order to consider whether or not they will provide funding to the estate. **(5)**

There are a number of avenues for obtaining litigation funding in Cayman. These include third-party funding agreements whereby a third party agrees to fund all or some of legal costs in exchange for payments under contractual terms. The agreement must be in writing.

The types of funding agreement include conditional fee agreement and contingency fee agreement.

A conditional fee agreement is whereby lawyers are paid an hourly rate plus a success fee if the claim succeeds. Under this agreement, the maximum success fee is 100% of the normal hourly rates.

A contingency fee agreement on the other hand is whereby lawyers are paid a percentage of recoveries if the claim succeeds and nothing if the claim fails. The maximum recovery under this agreement is 33.3% of the total amount awarded. However, an application to the Cayman Islands courts can be made to increase this to 40%.

It should be noted that Court sanction is needed for a Liquidator to enter into a funding agreement.

Some practical information that a litigation funder may want to know is their priority of repayments, expected date of realization and the likelihood of success.

**Question 2.3**

The voluntary liquidator of the Master Fund is considering whether to take legal action against the Panama-based director who received US$900,000 into their bank account, including to obtain a freezing injunction. Assuming that the action is brought in the Cayman Islands (and that appropriate jurisdiction is established), provide advice to the voluntary liquidator on whether a receiver in aid of the freezing injunction should be sought at the same time, including reference to any additional evidence that may be necessary. **(5)**

[Type your answer here]

**Question 2.4**

The Master Fund has proceeded into Official Liquidation, following a supervision application by its joint voluntary liquidators (JVLs).

Gamboa Leverage LLC (“Gamboa”) has written to you in your capacity as one of the JOLs, providing details of its alleged fixed charge security over the Panamanian real estate project. Gamboa are claiming they are owed US$ 5m in respect of leverage provided to the Master Fund to assist with completion of the real estate project, in return the Master Fund granted a fixed charge. The monies and security were provided by Gamboa on 1 July 2023. You have recovered as part of your investigations to date a valuation report which provides the “as is” value in the region of US$ 3m and a “completed project” value of US$ 20m. The governing law of the security contract is the Cayman Islands. For the purposes of this question, assume that the fixed charge is valid.

Draft an internal file note outlining the options available to Gamboa, where it will rank in order of priorities within the liquidation in respect of their secured creditor claim, what would happen to any shortfall or surplus upon a sale of the real estate project and whether Gamboa can appoint a Receiver if they so wished. **(5)**

There are a few options available to Gamboa in relation to their fixed charge security.

A creditor with a fixed charge can enforce its security and will not be affected by the liquidation process. That Is, their rights as a secured creditor remains valid. If the debt is more than its security, they may submit a proof of debt in the liquidation for the excess debt. In this instance, as the ‘as-is’ value is $3m, $2m unsecured claim may be submitted.

The order of payment priority under a liquidation is firstly to the satisfaction of a fixed charge creditor; then to preferential creditors; followed by the claims of holders of debentures secured by floating charge; then expenses in the liquidation; and thereafter the unsecured creditors.

To enforce their security, Gamboa may appoint a receiver under the security document to take possession of and deal with the assets of the Company. The primary duties of the receiver are owed to Gamboa, however the receiver still owes secondary duties to other stakeholders.

Gamboa may also seek a Court appointed receivership.

If the receiver is able to realize the asset and there is a shortfall on the debt, as noted above, Gamboa is able to file an unsecured claim in the liquidation. However, if there is a surplus, Gamboa will be repaid their debt in full and the surplus will be remitted to the liquidation estate for the benefit of the other creditors.

**Question 2.5**

Gamboa has elected to enforce its security rights by way of the appointment of a fixed charge receiver over the real estate project. However, before Gamboa completes the process, a number of the investors of the Cayman Feeder provide you with credible evidence that the ultimate beneficial owners of Gamboa are the same two Panamanian directors of the Master Fund. The investors believe the purported security was a front and a mechanism to transfer ownership of the potentially valuable real estate project to the Panamanian directors for no consideration and away from the legitimate interests of investors. Upon a detailed review of the Master Funds bank statements obtained from Trusted Bank Corp you cannot locate the receipt of the purported US$5m supposedly loaned to the Master Fund by Gamboa.

What remedies / actions / investigations would you propose to take given this new evidence? **(max 6)**

Continued investigations into the books and records of the company should be conducted to determine if the loan actually occurred. A request should be sent to Gamboa to provide supporting documentation of their payment whether by confirmation from the bank on the transfer, deposit splits and other supporting records.

KYC/AML should be conducted on Gamboa which will need to be conducted in any event if Gamboa was due to receive a distribution from the company. This will include corporate records of Gamboa up to and including the UBO.

Following on from the investigations found the claim may be rejected and legal action may be taken against Gamboa and the directors with the information received to date, including the fact that $900k may have been misappropriated.

**Question 2.6**

As soon as the company’s affairs are fully wound up, the liquidator is required to make a report and an account of the winding up. Summarise the form and content of the report. **(5)**

As soon as the Company’s affairs are fully wound up, a final report and accounts must be prepared by the liquidator in accordance with the CWR. The final report and accounts will need to contain the following:

1. Notice of the date of the application for an order for dissolution will be heard by the court;
2. A statement of fact that a creditor of an insolvent company; or a member of a solvent company; may appear and be heard on the application;

A notice of hearing must be published in one or more newspaper in a country where the company will most likely have creditors and must be published 14 days prior to the date of hearing.

Due to this, the liquidator will need to file its application for dissolution and obtain a hearing date before finalizing the report to creditors to ensure that all required information is included.

The report will cover the assets of the company and how they were realized, disposed or disclaimed.

**Question 2.7**

Set out the form and content of an application for a supervision order. **(8)**

An application for a supervision order may be filed by the voluntary liquidator within 35 days of the commencement of the liquidation, unless the directors have signed a declaration of solvency within 28 days of the commencement of the liquidation. As the directors do not wish to issue a declaration of solvency, an application for a supervision order may be issued.

The declaration of solvency is an affidavit to the effect that full enquiry to the Company’s affairs have been made and that the Company will be able to pay its debts in full not exceeding 12 months from the commencement of the winding up.

An application for a supervision order must be made by petition and include:

1. The particulars of the Company’s incorporation; and
2. The particulars of how the Company was put into voluntary liquidation; and
3. The particulars of the directors of the company as at the date the voluntary liquidation commenced; and
4. A statement that within 28 days of the commencement of the voluntary liquidation, the voluntary liquidator did not receive a declaration of solvency signed by the directors of the Company; and
5. Whether the voluntary liquidator is a qualified insolvency practitioner and a statement that they consent to being appointed as the official liquidator; or
6. If the voluntary liquidator is not a qualified IP or is ineligible to be appointed due to the independence requirement, or is unwilling to be appointed, the name and address of a qualified IP nominated for the appointment.

If the voluntary liquidator is not a qualified IP who is willing and able to accept the official liquidator appointment, the voluntary liquidator must give notice of the petition to the company’s members.

The petition must be verified by an affidavit and sworn by the voluntary liquidator.

If the voluntary liquidator is unable or unwilling to be appointed as the official liquidator; a petition must be supported by an affidavit of the nominated IP.

If the voluntary liquidator is a qualified IP and is able to take the appointment, a supervision order may be made without the need for a hearing as long as the judge is satisfied that notice of the petition was given to the company’s creditors or its shareholders (if solvent); and that there is no reason to believe that a creditor or shareholder objects to the appointment.

In any other cases, the voluntary liquidator will need to apply to fix the hearing date for the petition in open court and give notice to the creditors and shareholders (if solvent) in whatever means necessary to bring it to their attention; and advertise the hearing once in a newspaper in the Cayman islands and in a foreign jurisdiction if it is likely to have creditors in that jurisdiction.

**Question 2.8**

Following the commencement of the voluntary liquidation, the Cayman Feeder submits a redemption request to the Master Fund for the entirety of its investment in the Cayman Feeder. Assuming that the redemption was made in accordance with the Master Fund’s governing documents, how will the Cayman Feeder’s redemption request be treated in terms of the priority? It should be assumed that the voluntary liquidators applied to the court for the liquidation to continue under the supervision of the court pursuant to section 124(1) of the Companies Act. **(5)**

The redemption request to the master fund will not be satisfied in light of the insolvency proceedings. Similarly, the request would rank below unsecured creditors in the order of priority and depending on the number of claims submitted and the assets available for distribution, it is unlikely that the request will be satisfied under the liquidation.

**Question 2.9**

Following the introduction of the restructuring regime by the Companies (Amendment) Act 2022, on what basis (if any) can a company still seek the appointment of provisional liquidators? **(2)**

With the introduction of the restructuring regime by the Companies (Amendment) Act 2022, a company can still seek the appointment of a provisional liquidator (PL) as a means of protecting the assets and affairs of the company from abuse, dissipation or misappropriation by the management of the company7 or by majority members; or as a mechanism to enable to company to develop and propose a restructuring of its obligations to stakeholders.

The Grand Court may grant this application if it considers it appropriate to do so.

**\*\* END OF QUESTION 2 \*\***

**QUESTION 3 FOLLOWS ON THE NEXT PAGE / . . .**

**QUESTION 3 – CORPORATE RESCUE**

**Where appropriate, refer to the fact pattern below when answering the questions that follow.**

Maritime Sea Ventures Ltd (the Company), incorporated in the Cayman Islands, is the parent entity of a group which is engaged in international maritime transportation. Through its subsidiaries, it owns and operates a fleet of cargo ships in Singapore. With government support during the COVID-19 pandemic, it was able to remain financially stable, however a general decline in global shipping demand, soaring inflation and higher operating costs has caused the Company to default on several of its secured and unsecured loans.

The Company is on the verge of insolvency and its directors are considering the corporate rescue options available to it. One of the Company’s creditors, BlueWave Financial, has threatened to issue a statutory demand, adding to the mounting pressure the directors are experiencing, including the potential liability they may face if they continue to conduct business whilst the Company is unable to meet its liabilities.

The Company’s management has initiated discussions with potential investors interested in injecting new capital into the Company, however the negotiations are ongoing and have not yet reached any conclusion. BlueWave Financial, a steadfast unsecured creditor, has indicated it will not be satisfied unless it receives full repayment of its debt, together with contractual interest.

**Question 3.1**

Considering the fact that Maritime Sea Ventures (MSV) is on the verge on insolvency, broadly evaluate the restructuring options that are presently available to the company. **(3)**

The restructuring options that are presently available to Maritime Sea Ventures Ltd. include the appointment of a restructuring officer under the supervision of the Grand Court; and considering a Corporate Rescue Plan (Scheme of Arrangement).

By appointing a restructuring officer, who is required to be an independent, qualified IP, the restructuring officer’s role can be light-touch by providing advisory and oversight to the company’s management and can be more direct by taking additional control. This appointment allows for worldwide automatic stay of proceedings upon the presentation of the petition which will prevent BlueWave from taking suits or actions against the company.

A scheme of arrangement is a court-approved compromise or arrangement between the company and its creditors or members. The directors remain in control while negotiating terms with the stakeholders which may allow the company breathing room before insolvency proceedings are sought. It can be utilized with or without a provisional liquidator appointed and requires an approval a double majority threshold as 75% in number of creditors present and entitled to vote and in each class of those creditors must be a simple majority.

**Question 3.2**

When does the statutory moratorium accompanying a restructuring petition come into effect and what is its effect? **(3)**

The statutory moratorium comes into effect upon the filing of that petition for the appointment of a restructuring officer.

**Question 3.3**

Once appointed, when must the restructuring officers (ROs) file their first report to the Court, and what should this report contain? **(4)**

Once appointed the reporting officer must file their first report within 28 days of their appointment. The report must include details of the steps taken in the restructuring and further steps intended to be taken generally; the financial position of the company at the most recent practicable date; and the work done by the restructuring officers and the remuneration being claimed by them.

**Question 3.4**

What is the “appropriate comparator” for creditor schemes (the fundamental test for the scheme being viable), and how is it applied? **(4)**

The appropriate comparator for creditor schemes refers to class composition of creditors which requires that a class must be confined to those persons whose rights are not so dissimilar in order for them to consult together and view their interests as common, while having regard to what is surrendered and obtained pursuant to the scheme, when measured against liquidation.

It is applied by the company seeking to enter into lock-up agreements with each class of stakeholders, allowing the company to amass dependable support for the scheme and brings some commercial certainty to whether the scheme will come into effect.

**Question 3.5**

What information must be provided to shareholders / creditors in advance of the vote on a scheme? What is the minimum period between the dispatch of scheme documents and the extraordinary general meeting (EGM) and why? **(max 6)**

The information that must be provided in advance of the vote of the scheme includes the scheme documentation with all of the information reasonably required for them to make an informed decision on whether to support o oppose the scheme.

The minimum period between the dispatch of the scheme documents and the EGM is

**\*\* END OF QUESTION 3 \*\***

**QUESTION 4 FOLLOWS ON THE NEXT PAGE / . . .**

**QUESTION 4 – GENERAL QUESTIONS**

**The questions below deal with secured parties and receivership, exempted limited partnerships (ELP’s) and consumer insolvency**

**Question 4.1**

The receivership regime for segregated portfolios lacks key protections for stakeholders that would otherwise exist in a company liquidation. Indicate whether you agree or disagree with this statement, and explain why. **(5)**

I disagree with this statement on the basis that it is treated similarly to a company in liquidation, with the exception that it is confined to the creditors of the specific portfolio.

**Question 4.2**

What laws govern the liquidation and dissolution of exempted limited partnerships (ELPs) and what prevails in the event of a conflict? **(3)**

The laws which govern exempted limited partnerships are the Partnership Act (2013) Revision) and the Exempted Limited Partnership Act (2021 Revision). In terms of the liquidation and dissolution of an ELP, Part V of the Companies Act and the CWR will apply. However, where there are inconsistencies, the Exempted Limited Partnership Act (2021 Revision) prevails

**Question 4.3**

In the event that an automatic wind up date is triggered by the death or removal of the general partner (GP), the exempted limited partnership (ELP) will be wound up 90 days after notice is given to limited partners. What, if anything, can limited partners do to prevent the winding up? **(3)**

The limited partners can, before the winding up date, elect a new eligible general partner. The majority specified in the partnership agreement is entitled to vote for the election of a new general partner, or with the absence of specific majority, a simple majority.

**Question 4.4**

When may a consumer debtor be discharged, and what is the effect of a discharge? **(4)**

A consumer debtor is discharged after obtaining an order for discharge and releases the debtor from their debts (subject to any conditions set by the Court).

**TOTAL MARKS: [100]**

**\*\*\* END OF ASSESSMENT \*\*\***