

**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**

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**MODERATORS**

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**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** **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** or by WhatsApp on +44 7545 773890 or to Brenda Bennett at **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)**

Voluntary Liquidator

In the first instance, the memorandum and articles of association should be reviewed to establish whether any persons have been designated as liquidator(s) in the event of a voluntary liquidation. If such a person has been designated, then they are automatically appointed from the date of the commencement of the winding up.

Where the liquidation is voluntary, there are no requirements as to the qualifications of the liquidator and so, the US based practitioner may act as the voluntary liquidator, pursuant to section 120 of the Companies Act (2023 Revision) (the “Companies Act”).

Joint Official Liquidator

Section 108(1) of the Companies Act allows a foreign based insolvency practitioner to may act as a Joint Official Liquidator, but only where they are jointly appointed with a qualified Cayman Islands insolvency practitioner.

The US Feeder must be satisfied that the US based insolvency practitioner is suitably qualified under US law and meets the independence and insurance requirements of the Cayman based practitioner.

 **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)**

Since the enactment of the Private Funding of Legal Services Act 2020 (“PFLSA”) in May 2021, the following types of arrangements are now permitted in the Cayman Islands:

1. Third party funding agreements
2. Conditional fee agreements
3. Contingency fee agreements

In a conditional fee agreement, the lawyers agree that they will be paid an hourly rate for their time worked on the case, but only in circumstances where the claim is successful. If that is the case, the lawyers will recover up to 100% of their hourly rate. If the claim is unsuccessful, then no legal fees are payable.

In contrast, under a contingency fee agreement, the legal fees recoverable are dependent on the amount recovered in a successful claim, up to a maximum of 33.3% of the total award. Again, if the claim is unsuccessful, the lawyers do not recover their costs, but subject to the overall value of the claim, this option could be more lucrative to lawyers and the LC should be cognizant that the apportionment could outweigh the legal costs incurred on an hourly rate basis.

In order to enter into either funding fee agreement, the LC will need to seek approval by the court so the LC will need to consider the commerciality of both arrangements, particularly in light of the merits of the case.

In respect of the information required by any potential funder, the LC will need to provide all documentation evidencing the claim, to include all accounts, letters of engagement, valuations and any expert reports, to establish the merits of the case. The merits will then have to be weighed against the cost of the litigation and the risks.

**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)**

Given the difficulties experienced with the Panama based director, it would be prudent to also apply for the appointment of a receiver, together with the freezing injunction. In circumstances where the director has ceased communications with the liquidator and proper books and records have not been provided, it would appear there is a genuine risk that the director will not cooperate with the freezing injunction. In that case, as per the criteria discussed in *JSC BTA Bank v Ablyazoz (no 3),* it is arguable that the injunction would be insufficient on its own given the risk of non-compliance and there is a measurable risk that the director will not cooperate with the court order or provide any further details as to the bank account in question.

As per Order 51, rule 1 of the Grand Court Rules (the “GCR”), the court should also be presented with evidence as to the amount claimed by creditors, the amount likely to be obtained by the receiver and the costs of the receivers appointment.

**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)**

[Type your answer here]

**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)**

[Type your answer here]

**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)**

Pursuant to section 127 of the Companies Act, the final report detailing how the winding up has been conducted and how the company’s property has been disposed of. The liquidator then calls a general meeting of the company for approval of the report and account. The report covers the period from the date of commencement of winding up to the date of supervision order.

**Question 2.7**

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

In the absence of a declaration of solvency by the directors within 28 days of the commencement of the liquidation, the voluntary liquidator much make an application for a supervision order.

The voluntary liquidator must file a petition containing the following details:

* 1. Details of incorporation of the company
	2. Method by which the company entered liquidation
	3. Details of the directors at the date liquidation commenced
	4. A statement confirming that the declaration of solvency was not received from the directors within 28 days of the commencement of the liquidation
	5. Subject to the voluntary liquidator being a qualified insolvency practitioner, a statement that they consent to being appointed as the official liquidator
	6. Or if they are not so qualified, or are unable to act, the details of another qualified insolvency practitioner nominated for appointment.

The petition will also be accompanied by an affidavit of verification that the statements in the petition are true, to the best of the voluntary liquidator’s knowledge, information and belief. If an alternative insolvency practitioner is being nominated, then they must also provided a sworn affidavit.

**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)**

As the redemption request was not submitted prior to the commencement of the winding up, the Cayman Feeder will not be classified as a redemption creditor, which would rank behind the claims of ordinary unsecured creditors (as per the Privy Council decision in Michael Pearson (as additional liquidator of Herald Fund SPC (in official liquidation)) v. Primeo Fund (in official liquidation)).

In this case, the Cayman Feeder’s redemption request will be dealt with as a shareholder claim, pursuant to section 37(7) of the Companies Act. While the case law on such claims is not definitive with regard to whether redemption claims rank in priority to shareholder claims, both are confirmed to rank behind ordinary unsecured creditors.

**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)**

Under section 104(1) a company can seek the appointment of provision liquidator, at any time after the presentation of a winding up petition but before the making of a winding up order, provided that there is a prima facia case for the winding up order, and the appointment is necessary for any of the following:

* Prevent the dissipation or misuse of company assets
* Prevent oppression of minority shareholders
* Prevent mismanagement or misconduct on the part of directors.

**\*\* 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)**

Provisional liquidation – made by way of summons, after winding up petition filed but before winding up order made – used to restructure. Court must be persuaded it would be appropriate but no court decisions yet as to what would be appropriate.

Restructuring officer – by petition to the court. Operates under court supervision. Automatic stay to prevent any proceedings against the company without leave of the court. Application heard within 21 days, so quick relief and protects creditors from debtor companies who may try to use court proceedings to delay matters, or without bona fide intention to restructure.

Corporate Rescue plan/schemes of arrangement – between company and creditors (or any of them). To be approved, must be concessions on both sides. Binding on all applicable creditors or shareholders. A lot of commercial uses and customizable to suit the particular needs of company. Two purposes – 1. Preserve life of company in time of distress, via debt restructuring. 2. Adjust the company structure to rationalize, redirect or revitalize company.

**Question 3.2**

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

Once the petition for appointment of restructuring officer is presented, the automatic stay comes into effect. As a result, the commencement or continuation of any proceedings against the company, without leave of the Grand Court is prohibited.

**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)**

The report must be submitting to the Court within 28 days of appointment. The report must include the steps taken in the restructuring to date and intended future steps; the financial position of the company; and work done by the restructuring officers and the amount sought in remuneration.

**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)**

Where a scheme of arrangement is intended for either the whole or a subset of a company’s creditors or shareholders, those creditors or shareholders can be divided into classes. In order to so divide the creditors or shareholders, and following the English case of *Re Hawk Insurance Company Limited*, the members of the class must not be so dissimilar to make it impossible to consider the scheme with a common view. This interest must consider what is to be surrendered and obtained under the scheme, in comparison to what would occur in a liquidation scenario.

Once in the class has been established, the company will seek to enter agreements with the class to ensure support for the scheme, to limit the risk of veto.

**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 shareholders/creditors must be provided with the Scheme documents in advance of the vote. These documents must provide sufficient information to allow the shareholders/creditors make an informed decision as to the scheme.

**\*\* 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)**

[Type your answer here]

**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)**

Part V of the Companies Act and the Companies Winding Up rules apply to the liquidation of exempted limited partnerships, along with the Exempted Limited Partnerships Act, 2023. However, where a conflict arises, the ELP Act will take priority.

**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)**

In the above circumstances, if the majority of partners, as specified in the partnership agreement as being entitled to vote to elect a new general partner, or in the absence of such a provision, a simple majority by reference to capital contributions, can resume the business of the ELP by electing anew general partner – as per section 36(12) of the ELP Act, 2021, and prevent the winding up.

**Question 4.4**

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

Following the report of the Trustee as to the debtors affairs, under section 67 of the Bankruptcy Act, 1997, in accordance with 68(1) of the Act, the debtor may then at any time, apply to the court for an order of discharge.

Provided no creditor of the Trustee successfully opposes the application, the court can either grant an unconditional or conditional discharge. The effect is to release the debtor from their debts, subject to any conditions, as set out under section 70 of the Act. It is noteworthy, that a debtor shall not be release from any debt or liability incurred by means of fraud or breach of trust.

 **TOTAL MARKS: [100]**

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