

**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**

**Mr Benjamin Tonner**

**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.**

**[First draft for the purposes of seeing how submission on the portal works as I understand this is not to be marked]**

**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)**

[In respect of the voluntary liquidation of the companies, any person can be appointed

In respect of the official liquidation of the companies, there is criteria set out of who can be appointed. Pursuant to section 108(1) of the Companies Act a foreign practitioner can be appointed jointly with a qualified insolvency practitioner. The term 'foreign practitioner' is defined in section 89 of the Companies Act:

'foreign practitioner' is any person who qualified under the law of a foreign country to the perform function equivalent to those performed by official liquidator in the Companies Act.

The foreign practitioner will also have to meet the independence and insurance requirements set out in the Insolvency Practitioner Regulations in order to be appointed.

'Qualified insolvency practitioner' means any person holding the relevant qualifications in the regulations set by the Insolvency Rules Committee under section 155 or such qualifications as the Court deems appropriate.

Qualified insolvency practitioners will also have to meet the qualification, residency, independence and insurance requirements set out in the Insolvency Practitioners' Regulations regs 4, 5, 6 and 7.]

 **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 three types of litigation funding arrangements allowed in the Cayman Islands:

1. Third-party funding agreements

2. Conditional fee agreements

3. Contingency fee agreements

Under a conditional fee agreement lawyers are paid an hourly rate and a success fee if the claim is successful but not paid anything if the claim falls. This is opposed to a contingency fee agreement where a lawyer is paid a percentage of recoveries if the claim is successful and again nothing if the claim fails.

The maximum fee payable under a conditional fee agreement cannot exceed 100% of normal hourly rates. Under a contingency fee agreement, the maximum percentage of recoveries is 33.3% of the total amount awarded. However, this can be increased to 40% by application to the Court.

Practically a litigation funder will want advice on the litigation it is proposing to fund and the chance 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)**

[The appointment of a receiver in aid of a freezing injunction is a common step to take. This will typically be done to further strengthen the powers of the freezing injunction and preventing the party subject to the freezing injunction from dealing with or dissipating his assets by appointing the receiver to take possession and control of the asset. The powers of the receiver is set out in the Court order so can be drafted widely to deal with a variety of scenarios. These powers can be used to take control of the bank account.

To appoint the receiver privately, the voluntary liquidator will have to show the powers set out in the security documents to deal with the asset. However, to appoint a receiver through the court, the voluntary liquidator will have to show that it is 'just and equitable to do so.']

**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)**

[A secured creditor will rank in priority to all other people. Gamboa has a fixed charge so will rank ahead of all unsecured creditors and ahead of secured creditors where they hold a floating charge. However, Gamboa's claim will fall behind the liquidator's expenses and remuneration.

In terms of options, Gamboa is always permitted to take enforcement actions against its collateral if there has been an event of default pursuant to the agreement as set out in s.49(g) of the Companies Act.

On a distribution to a secured creditor such as Gamboa, any realization in excess of the secured debt will revery to the estate in liquidation. However, if there is more than one security over the asset sold then it will go back to another party who has the security. However, in this case, Gamboa is under secured and so the more likely outcome is that after selling the project Gamboa will have an unsecured claim against the estate for the balance and will have to file a proof of debt for the shortfall. This claim will rank pari passu with all claims in the liquidation, subject to the priority of payments of the estate and the amount received from Gamboa will depend on the successful realization achieved by the liquidator.

Gamboa will be able to appoint a receiver if the security allows this. Alternatively, the can apply to the Court and the Court will grant it if it is deemed just and convenient to do so. ]

**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)**

[This transaction might be caught by the voidable preference provisions in the Companies Act section 145. The security will be invalid where the Court is satisfied it is made (1) at a time when the company was unable to pay debts (cash flow basis); (2) with a view to give creditor preference over other creditors; and (3) within six months immediately preceding commencement of winding up. Gamboa's security was given within 6 months of the commencement of the liquidation to related party as they have the ability to control the company through its directors. Cash flow test will need to be satisfied so will need to satisfy that liabilities are not greater than assets.]

**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)**

[The form and content of a voluntary liquidator report is set out in Order 13, Rule 8 of the Companies Winding Up Rules. The report must constitute a narrative description and analysis of the steps taken.

A report and accounts will need to be produced stating:

1. how the winding up has been conducted

2. how the company's property has been disposed of

3. required to call a general meeting of the company for the purpose of presenting an account and giving an explanation for the winding up.

The following additional details will also be required in the report:

1. nature of the company's assets

2. security over the company's assets

3. amount realized upon sale of the company's assets and estimated realizable value of any unsold assets

4. nature of the company's liabilities

5. nature and amount of company's income

6. expenses of the liquidation

7. amount of the liquidator's remuneration

8. amount distributed and amount available for distribution to members

The report will need to be in the company's functional currency.]

**Question 2.7**

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

[Application under section 124 of Companies Act must be made by petition and must state the following:

1. particulars of company's incorporation

2. method of when the company was put into voluntary liquidation

3. information on the people who are or were the directors of the company on the date the company went into voluntary liquidation

4. statement that voluntary liquidator did not receive a declaration of solvency in prescribed form within 28 days of the commencement of the liquidation.

5. if the voluntary liquidator is able to act as the official liquidator and is willing too, a statement that they consent to being appointed as the official liquidator

6. If the voluntary liquidator is unable to or not willing to act as the voluntary liquidator, the name and address of a qualified insolvency practitioner nominated for the appointment as official liquidator.

This will need to be supported by a verifying affidavit sworn by the person nominated for the appointment as official liquidator which contains the information required by order 3, rule 4 of the companies winding up rules. An affidavit will also be required to support the petition verifying the contents of the petition are true or true to the best of the deponent's knowledge, information and belief and sworn by voluntary liquidator personally.]

**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)**

[Unpaid redemption claims are provable claims according to section 139 of the Companies Act and clarified by *Pearson v Prmeo.* The claim will rank behind the claims of ordinary secured creditors pursuant to section 49(g). As described by *Pearson v Primeo* redemption creditor claim would be in priority to, or pari passu with, shareholder claims. However it appears clear that claims rank behind claims of 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)**

[Yes, so long as the requirements set out in section 104(3) of the Companies Act are satisfied which are:

1. the company is or is likely to become unable to pay its debts within the meaning of section 93 of the Companies Act

2. the company intends to present a compromise or arrangement to its creditors]

**\*\* 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)**

[There are a number of options. The company might use an informal creditor workout. Alternatively, a formal corporate rescue mechanism such as a provisional liquidation or restructuring officer appointment. It is likely that a formal corporate rescue mechanism might be more appropriate where it gives the benefit of a statutory moratorium against claims which would prevent BlueWave adding further pressure.]

**Question 3.2**

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

[The filing petition to appoint a restructuring officer immediately commences a stay on any proceedings according to section 91C of the Companies Act.]

**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 restructuring officer must file a report to the Court within 28 days of appointment. This report must include steps taken in restructuring and further steps intended to be taken in restructuring genereally; the Financial position of the company at the latest practicable date and work done by the restructuring officer and amount of remuneration claimed by them. These requirements are set out in the companies winding up rules O.1A, r.8 ]

**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)**

[Cayman Islands law requires that a class must be confined to those person whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest, having regard to what is surrendered and obtained pursuant to the scheme of arrangement, when measured against the liquidation (being the 'appropriate comparator') See Re Hawk Insurance Company Limited [2001 EWCA Civ 241];In re Euro Bank Corp [2003 CILR 205]]

**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)**

[Procedure for commencing a process seeking orders sanctioning a Scheme set out in O.102, r.20 of GCR and PD 2/2010.

The scheme will be commenced by a petition filed with a summons for directions and supporting affidavit. The supporting affidavit will describe the purpose and effect of the scheme, allowing the court to determine whether an EGM (scheme meeting) should be convened and appropriate class composition. The affidavit will need to exhibit a scheme document, explanatory statement and other prescribed documents. If the scheme pertains to listed shares or debt instruments, a further affidavit will need to be filed setting out the relevant listing rules and practice. The Court can make directions regarding satisfaction of statutory majorities at scheme meeting. An explanatory statement must contain timetable of principal events. Within seven days of scheme meeting, affidavit must be filed with chairman verify meeting was convened and held in accordance with directions of court and set out result of vote. Any person who voted at scheme meeting or gave instruction to custodian is entitled to appear at hearing of petition.]

**\*\* 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 agree with this statement for the most part. This is because the stakeholders can be siloed into its own individual cell. Therefore, should a claim be made or liquidation occur it is specific to the particular cell and not the whole segregated portfolio. Therefore, there is a risk that on liquidation that realizations can be far smaller. This is oppose to the a company liquidation where the whole estate is subject to the liquidation so assets are more readily available. The flip side to this is that where a cell of a segregated portfolio is in good condition then it cannot be claimed against by other creditors as they will not be in the same cell.]

**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)**

[Generally, in Exempted limited partnerships, the Partnership Act (2013 Revision) and Exempted Limited Partnership Act (2021 Revision) apply. In a liquidation Part V of the Companies Act and the Companies Winding Up Rules also apply. Where there are conflicts then the Exempted Limited Partnership Act (2021 Revision) has 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)**

[They may resume if the limited partners elect a new general partner pursuant to section 36(12) of the Exempted Limited Partnership Act.]

**Question 4.4**

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

[Debtor may be discharged at any time after filing of report and apply for order of discharge (section 68(1) Bankruptcy Act). The debtor will not be discharged where trustee or creditor oppose the discharge and show cause why it should be refused, postponed or subject to conditions (s.68(2) of Bankruptcy Act. Court may grant discharge unconditionally or conditionally or it may refuse a discharge. If a discharge is made, it releases the debtor from all debts (subject to any conditions set out by the Court and subject to caveat that it must not release a bankrupt from any liability incurred by means of fraud (s.71 bankruptcy Act). ]

 **TOTAL MARKS: [100]**

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