

**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**

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**MODERATORS**

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

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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)**

Memo

Subject: Seven Mile Master Fund and Seven Mile Feeder Fund

To: Investors of Seven Mile Feeder Fund

From: CPA

According to the Companies Act, s 120, any person may be appointed as a voluntary liquidator of a Cayman Islands company. As such, it is possible for a US-based practitioner to be appointed as Joint Voluntary Liquidator to the Master Fund and the Cayman Feeder.

In relation to an official liquidation, the US-based practitioner needs to be qualified under US laws to perform functions equivalent to those performed by an eligible official liquidator in the Cayman Islands. Should the practitioner meet this requirement, he/she can be appointed jointly with a qualified insolvency practitioner according to section 108(1) of the Companies Act.

Section 89 off the Companies Act defines a qualified insolvency practitioner as a person holding the qualifications specified in the Insolvency Practitioners Regulations.

These qualifications are set out in Regulations 4-7 and provide 4 different tests that are used to determine the eligibility of an official liquidator. These tests are summarized below:

1. Qualification

The person can be appointed by the court as an official liquidator if:

1. The person is licensed to act as an insolvency practitioner in a relevant country.
2. Is qualified as a professional accountant at a relevant institution and is in good standing, has 5 years of experience and over 2,500 hours of chargeable work.
3. He has been appointed by the Court as an Official Liquidator of a company within the last 5 years of the commencement date.
4. Residency

The person can be appointed by the court as an official liquidator if they are a resident in the islands and he/she or the firm in which he/she is employed holds the relevant trade and business license to carry out insolvency work.

1. Independence

The practitioner must be regarded as independent of the company.

1. Insurance

The practitioner must have sufficient indemnity insurance as set out in Regulation 7.

Also note, foreign practitioners must also meet the independence and insurance criteria summarized above.

To conclude, it is possible to appoint a US based practitioner as Joint Voluntary and Official Liquidator of both the Master and Cayman Feeder fund.

 **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)**

Memo

Subject: Seven Mile Master Fund and Seven Mile Feeder Fund

To: Investors of Seven Mile Feeder Fund

From: CPA

According to the Private Funding of Legal Services Act, the three types of funding arrangements that are permitted are:

1. Third Party Funding Agreements
2. Conditional Fee Agreements
3. Contingency Fee Agreements

Third-Party Funding Agreements occurs when a third-party funder agrees to pay all or a portion of the client’s legal and other costs in exchange for payment based on contractual terms. Under Conditional Fee Agreements, lawyers are paid at an hourly rate along with a success fee if the claim succeeds and nothing if the claim does not whereas under a Contingency Fee Agreement, lawyers are paid a percentage of recoveries if the claim succeeds and nothing if the claim fails.

The maximum success fee under the conditional fee agreement must not exceed 100% of the hourly rates and the percentage of recovery under the contingency fee agreement cannot exceed 33.3%

In terms of what litigation funders would want to know before providing funding to the estate, it is likely that they will consider:

* The Qualifications and reputation of the Joint Official Liquidators.
* The likelihood of a successful outcome.
* What are the amounts of the potential recoveries.

**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 support of a freezing injunction are sought for the purposes of prohibiting the defendant from dissipating his assets by appointing a third party to take possession or control of the assets. The receiver could potentially exercise the power to deal with the assets or take possession and control over the assets based on what the Court allows in the Court order.

The court is likely to consider the following factors in determining If the appointment of a receiver will be appropriate:

1. The injunction would be insufficient on its own.
2. There is a measurable risk that the defendant will act in breach of the injunction or seek to ensure that the assets are not available to satisfy any judgement which could possibly be made against him.

In this instance, it appears that the Panama-based director has intent to breach an injunction given the fact that he has stopped responding to the voluntary liquidator’s requests for information and the other director s also reluctant to provide information. This suggests that the directors are intentionally making it difficult to recover the $900k. Based on the above explanation, I would advise that a receiver in aid of the freezing injunction is sought.

**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)**

As a secured creditor, Gamboa would be ranked as higher priority over any preferred creditors, unsecured creditors and shareholders. They are also entitled to realize their security outside of the liquidation and or restructuring process.

In the event that the Master fund to repay the $5m loan payable to Gamboa, Gamboa will have the option to take enforcement actions against the Panamanian Real Estate Project. Given that the security held is a fixed charge, Gamboa does not have the rights of foreclosure. However, they will have the option to sell the property or appoint a receiver.

If the liquidators were to sell the project now, based on the current value of the property, there would be a shortfall of $2m. Sale proceeds net of costs would need to be returned to Gamboa. If the asset is sold at completion, the $20m realized would firstly be allocated to costs, then Gamboa is entitled to $5m. Any surplus can then be used for the benefit of the estate.

**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)**

The liquidators will have the option to challenge Gamboa’s security interest. Based on the facts given above, the most appropriate basis to challenge the security interest would be that the transaction was made at an undervalue.

The court is likely to view a transaction as a transaction at an undervalue if the following conditions are present:

1. The security was granted with an intent to defraud.
2. The security was made for little to no consideration.

The evidence suggests that the directors were not being transparent with the investors by not disclosing that they were the UBO’s of Gamboa, and that they intended to defeat their obligations to the investors. This demonstrates the intention to defraud.

We must also consider that we are unable to locate the $5m transfer from Gamboa to the Master fund. This suggests that the transfer of ownership was done for no consideration and the transaction was undervalued.

The liquidators could also argue that the transaction could be deemed as a voidable preference. The evidence suggests that the directors wanted to prefer the interests of the Gamboa over that of the shareholders.

**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)**

Now that the affairs of the company have been wound up and the liquidation is complete, the official liquidator’s final report and accounts must be published in accordance with the CWR. The reports and accounts must contain the following:

1. Notice of the date upon which application for an order for dissolution will be heard by court.
2. A statement of the fact that any creditor or member may appear and be heard on the application.

**Question 2.7**

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

Before the reports and accounts are finalized, the liquidators must apply to the Court for an order that the Master and Feeder fund be dissolved.

According to Order 22, rule 2 of the CWR, the order for dissolution must meet the following criteria:

* The order must be in the prescribed form, Form 36
* The order will be effective on the date it was made or such later date
* The order must be filed with the Registrar of Companies within 14 days from the date which the order is perfected and
* The order must include supplementary directions relating to retention of files, books and records, remuneration terms and other consequential matters in accordance with the relevant Order.

**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)**

Given that the redemption request was submitted to the master fund following the commencement of the liquidation, it is likely that the Cayman Feeder’s request would not be classified as a provable debt. As such, there claims will be considered as a Shareholder Claim. This means that their claims will rank below secured creditors, unsecured creditors and redemption 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)**

Following the introduction of the restructuring regime by the Companies (Amendment) Act 2022, an application for the appointment of provisional liquidators is only permitted after a winding up order has been presented and before the making of a winding up order.

According to section 104(3) of the Companies Act, a company may seek appointment of provisional liquidators on an ex parte basis.

The Court must be satisfied that the company:

* Is likely to become unable to pay debts.
* Intends to present a compromise 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)**

MSV can petition for the appointment of a restructuring officer. This allows for a scheme to be proposed to creditors and the need for winding up proceedings can be avoided.

MSV can also seek an informal creditor workout which is the option to refinance or restructure their financial obligations informally. This option could be considered to save costs and avoid adverse publicity.

The appointment of a provisional liquidator can also be sought. However, on such application, the court must be satisfied that this option is appropriate.

**Question 3.2**

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

The Moratorium takes effect immediately upon filing of the restructuring petition. This allows for a RO scheme to be presented to creditors

**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 Officers must file their reports within 28 days of the appointment. The reports must contain The report must include details of:

1. Steps taken in the restructuring and the further steps intended to be taken
2. Financial position of the company at the latest date
3. Work done by the restructuring officers and the amount of remuneration 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 is the class pf persons whose rights are not so dissimilar that it would be difficult to consult together with a view of their common interest, while considering what is surrendered and obtained pursuant to the Scheme, when measured against the liquidation.

**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)**

Shareholders/creditors need to be informed on the purpose and effect if the scheme, the proposed composition of classes of stakeholders and a timetable of events.

The minimum period is within 21 to 28 days. This is because the company must evidence that due care was performed to ensure that each of the relevant shareholders and creditors was sent copies of the documents within sufficient time so that they the stakeholders can properly review and consider them before the scheme meeting.

**\*\* 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 because there is no equivalent to the just and equitable ground for a winding up. Therefore, a shareholder can only rely on insolvency if he/she wants a receiver appointed.

**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 ELP Act, Part V of the Companies Act and the CWR applies. However, in the event of a conflict, the ELP Act 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 resume the business of the ELP if the requisite majority of the partners elect a new General Partner.

**Question 4.4**

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

A consumer debtor can apply for an order of discharge at any time after the filing of the report. The discharge releases the debtor from their outstanding debt obligations.

 **TOTAL MARKS: [100]**

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