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

**CAYMAN ISLANDS**

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

**The mark awarded for this assessment will determine your final mark for Module 5C**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment5C]**. An example would be something along the following lines: 202223-336.assessment5C. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**ANSWER ALL THE QUESTIONS**

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

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Select the **correct answer**.

Once an application for a restructuring officer is filed:

1. No action may be commenced against the company without permission of the court.
2. No action may be continued against the company without permission of the provisional liquidator.
3. No action may be continued against the company without permission of the restructuring officer.
4. No action may be commenced against the company.

**Question 1.2**

Which of the following is **not** available to a corporate debtor in the Cayman Islands?

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

**Question 1.3**

Select the **correct answer**.

In a voluntary liquidation:

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

**Question 1.4**

Select the **correct answer**.

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

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

**Question 1.5**

Select the **correct answer**.

In a provisional liquidation, the existing management:

1. Continues to be in control of the company.
2. Continues to be in control of the company subject to supervision by the court and the provisional liquidator.
3. May continue to be in control of the company subject to supervision by the provisional liquidator and the court.
4. Are prohibited from having any control of the company.

**Question 1.6**

Select the **correct answer**.

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

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

**Question 1.7**

Select the **correct answer**.

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

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

**Question 1.8**

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

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

**Question 1.9**

Select the **incorrect statement**.

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

1. The company passes a special resolution requiring it to be wound up.
2. The company is unable to pay its debts.
3. The company is carrying on regulated business in the Cayman Islands without a license.
4. The company does not commence business within six months of incorporation.

**Question 1.10**

Select the **correct answer**.

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

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

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

**Question 2.1 [maximum 4 marks]**

Does the Cayman Islands Grand Court have the power to assist foreign bankruptcy proceedings? If so, what is the source of that power and in what circumstances may it exercise it?

[The circumstances in which the Grand Court may exercise its power to assist foreign bankruptcy proceedings include:

1. Recognition of foreign insolvency proceedings: The Grand Court may recognize foreign bankruptcy proceedings initiated in jurisdictions outside the Cayman Islands.
2. Cooperation with foreign representatives: The Grand Court may provide assistance to foreign representatives appointed in foreign insolvency proceedings, such as granting access to the Cayman Islands' assets or facilitating the collection of information.
3. Stay of proceedings: The Grand Court may stay or restrain proceedings in the Cayman Islands to facilitate the orderly administration of foreign insolvency proceedings.
4. Cross-border cooperation: The Grand Court may cooperate with foreign courts and authorities to coordinate insolvency proceedings involving multinational entities or assets located in different jurisdictions.]

**Question 2.2 [maximum 3 marks]**

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

[1. Common Law Principles: The Cayman Islands recognize the principle of comity, which is the respect given by one jurisdiction to the laws and judicial decisions of another jurisdiction. Comity serves as the foundation for recognizing and enforcing foreign judgments in the Cayman Islands.

2. Statutory Provisions: The primary statute governing the recognition and enforcement of foreign judgments in the Cayman Islands is the Foreign Judgments Reciprocal Enforcement Law (Revised). This law provides a statutory framework for the recognition and enforcement of judgments from specified jurisdictions with reciprocal arrangements.

3. Requirements for Recognition:

* The foreign judgment must be final and conclusive.
* The foreign court must have had jurisdiction over the subject matter and the parties involved.
* The judgment must not have been obtained by fraud or contrary to the principles of natural justice.
* The foreign court's jurisdiction must be recognized by the Cayman Islands courts.
* Reciprocal Jurisdictions: The Foreign Judgments Reciprocal Enforcement Law specifies the jurisdictions with which the Cayman Islands has reciprocal arrangements for the recognition and enforcement of judgments. These jurisdictions include certain Commonwealth countries and territories.

1. Application for Recognition: The process for seeking recognition of a foreign judgment typically involves filing an application with the Grand Court of the Cayman Islands. The applicant must provide evidence supporting the requirements for recognition and may need to demonstrate the existence of reciprocal arrangements if applicable.
2. Judicial Discretion: While there are statutory criteria for recognition, the Cayman Islands courts have discretion in determining whether to recognize a foreign judgment. The court may consider factors such as public policy, fairness, and the interests of justice in exercising its discretion.
3. Enforcement: Once a foreign judgment is recognized by the Cayman Islands court, it can be enforced in a similar manner to a domestic judgment. Enforcement mechanisms may include garnishment, seizure of assets, or other appropriate remedies available under Cayman Islands law.]

**Question 2.3 [maximum 3 marks]**

Is it possible for a creditor to register its security over an asset in the Cayman Islands? If so, how, and what is the effect of it doing so, if any?

[Yes, it is possible for a creditor to register its security over an asset in the Cayman Islands. The process and effects of registering security depend on the type of asset and the applicable laws and regulations.

1. Types of Security: Creditors can register security over various types of assets, including real property, personal property, and certain intangible assets such as shares or intellectual property rights.
2. Registration Mechanisms:
3. Real Property: Security over real property (land and buildings) in the Cayman Islands is typically registered with the Cayman Islands Land Registry.
4. Personal Property: Security over movable property, such as vehicles, boats, or equipment, may be registered through various mechanisms, including the filing of security agreements or charges with relevant authorities.
5. Shares: Security over shares in Cayman Islands companies may be registered through the company's register of members or by filing appropriate documentation with the Cayman Islands Registrar of Companies.
6. Effect of Registration:
7. Priority: Registering security can establish the creditor's priority position in case of competing claims or insolvency proceedings. Priority is generally determined based on the order of registration, with earlier registrations taking precedence over later ones.
8. Notice: Registration provides public notice of the creditor's interest in the asset, which can alert third parties, potential purchasers, or subsequent creditors to the existence of the security interest.
9. Enforcement: Registered security grants the creditor certain rights in the event of default, including the ability to enforce the security interest through repossession, foreclosure, or other remedies available under Cayman Islands law.
10. Legal Framework: The legal framework governing the registration and enforcement of security interests in the Cayman Islands includes both statutory provisions and common law principles. Key statutes and regulations may include the Companies Law, the Land Registration Law, and specific regulations related to the registration of security interests.
11. Cross-Border Considerations: In cases involving assets or parties located outside the Cayman Islands, creditors should consider the applicable laws and regulations in those jurisdictions, as well as any requirements for registering or enforcing security interests abroad.]

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

**Question 3.1 [maximum 6 marks]**

Receivers have no role to play in a Cayman Islands insolvency scenario. Discuss.

[In the context of insolvency proceedings in the Cayman Islands, receivers do have a role to play, albeit a limited one compared to other jurisdictions. Receivership is a mechanism for the enforcement of security interests over specific assets, typically granted by a debenture or security agreement. While receivership may not be as commonly utilized in Cayman Islands insolvency scenarios compared to other jurisdictions, it remains a valid legal option for secured creditors.]

**Question 3.2 [maximum 9 marks]**

In the absence of a statutory prohibition on insolvent trading, is it possible for court appointed liquidators of an insolvent company, or creditors of such a company, to hold its former directors accountable by either seeking financial damages against those directors and / or by seeking to “claw back” any payments that those directors should not have made? If so, please explain the possible options.

[In the absence of a statutory prohibition on insolvent trading, directors of an insolvent company may indeed be held accountable by court-appointed liquidators or creditors for their actions. While the legal framework may vary depending on the jurisdiction, including the Cayman Islands, certain principles and mechanisms may be applicable.

1. Breach of Fiduciary Duty: Directors owe fiduciary duties to the company, including the duty to act in the best interests of the company and to exercise reasonable care, skill, and diligence. If directors breach these duties, they may be held personally liable for any resulting losses suffered by the company.
2. Actions for Misfeasance or Breach of Duty: Liquidators or creditors may bring legal actions against directors for misfeasance or breach of duty. This could involve seeking financial damages to compensate the company for losses caused by the directors' actions or omissions.
3. Avoidance Actions: Liquidators may have the power to bring avoidance actions to "claw back" certain transactions that are deemed to be detrimental to the interests of creditors. These actions aim to recover assets or payments that were improperly transferred out of the company, particularly in the period leading up to insolvency.
4. Preferences: Liquidators may seek to set aside transactions that unfairly prefer certain creditors over others. This could include payments made to creditors shortly before the company became insolvent.
5. Transactions at an Undervalue: Liquidators may challenge transactions where the company transferred assets for inadequate consideration, resulting in a loss to the company's creditors.
6. Unlawful Dividends: If directors authorize the payment of dividends when the company is insolvent or when such payments are otherwise unlawful, liquidators may seek to recover these amounts.
7. Defenses and Limitations: Directors may have defenses available to them, such as acting in good faith and in what they reasonably believed to be the best interests of the company. Additionally, certain limitations periods may apply to the bringing of claims, so the timing of the alleged misconduct is a crucial factor.
8. Court Proceedings: Legal actions against directors may be pursued through court proceedings, where evidence is presented and judgments are issued based on applicable laws and regulations.]

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

Punk Lizard is a company registered in the Cayman Islands. It operates liveaboard diving cruises across the Caribbean. Punk Lizard was founded by the Kraken family over 70 years ago. The family continues to own and manage the business.

Punk Lizard’s revenues are down in recent years, due to some well publicised safety issues. The business has only managed to stay afloat with the assistance of a very large loan from Turtle National Bank (TNB). TNB has lent Punk Lizard USD 900 million (USD 450 million of which is secured by a mortgage over half of Punk Lizard’s fleet).

The market for liveaboard diving remains strong, and financial forecast for Punk Lizard is relatively bright, however Punk Lizard has immediate solvency issues. It cannot afford to pay the ongoing costs associated with maintaining its fleet (electricity, maintenance, insurance, staff costs, rum etcetera) and it has fallen behind on the monthly repayments to TNB.

To make matters worse, Punk Lizard commissioned Harland & Wolff (H&W) to build five more dive boats shortly before the (lack of) safety issue hit the news. Punk Lizard has failed to pay for the H&W boats. H&W has secured an arbitration judgment from the ICC in London for USD 150 million. The award is payable within 28 days.

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

1. What action can TNB take to protect its interests? (2 marks)
2. What action can H&W take to protect its interests? (2 marks)
3. What action can the unpaid employees take against Punk Lizard? (3 marks)
4. Does the Cayman Islands Court have jurisdiction over Punk Lizard? (1.5 marks)
5. Is there a legal route via which Punk Lizard can protect itself and seek to restructure? (3 marks)
6. Following on from (e) above, can the Kraken family continue play a part in running Punk Lizard during any restructuring process? (1 mark)
7. What factors will the Cayman Islands court take into consideration before approving any proposed restructuring? (2.5 marks)

[(a) TNB can take the following actions to protect its interests:

* Enforce its security interest: TNB can enforce the mortgage over half of Punk Lizard's fleet to recover the outstanding loan amount.
* Initiate enforcement proceedings: TNB can initiate legal proceedings in the Cayman Islands to enforce its rights as a secured creditor and recover the outstanding debt owed by Punk Lizard.

(b) H&W can take the following actions to protect its interests:

* Enforce arbitration judgment: H&W can seek to enforce the arbitration judgment obtained from the ICC in London by applying to the Cayman Islands court for recognition and enforcement of the judgment.
* Initiate legal proceedings: H&W can initiate legal proceedings in the Cayman Islands to enforce the arbitration award and recover the outstanding payment owed by Punk Lizard.

(c) Unpaid employees can take the following actions against Punk Lizard:

* File a claim for unpaid wages: Unpaid employees can file a claim against Punk Lizard for unpaid wages or salaries. They may also have the option to file a claim for redundancy pay or other statutory entitlements under Cayman Islands labor laws.
* Participate in insolvency proceedings: If Punk Lizard becomes insolvent, unpaid employees may participate in insolvency proceedings and file claims as unsecured creditors for any unpaid wages or other entitlements.

(d) The Cayman Islands Court likely has jurisdiction over Punk Lizard as it is a company registered in the Cayman Islands. However, jurisdictional issues may arise if Punk Lizard has substantial assets or operations in other jurisdictions.

(e) Punk Lizard can seek to protect itself and seek to restructure through a voluntary arrangement or scheme of arrangement under the Companies Law of the Cayman Islands. This may involve negotiating with creditors, including TNB and H&W, to agree on a restructuring plan that allows Punk Lizard to continue operating while addressing its solvency issues.

(f) During any restructuring process, the Kraken family may continue to play a part in running Punk Lizard, subject to the approval of the restructuring plan by the Cayman Islands court and the terms of any arrangements with creditors. However, their involvement may be subject to scrutiny to ensure that their actions are in the best interests of the company and its creditors.

(g) Factors the Cayman Islands court may consider before approving any proposed restructuring include:

* The feasibility and viability of the restructuring plan.
* The interests of creditors, including TNB, H&W, and unpaid employees.
* The fairness and equity of the proposed treatment of creditors.
* Compliance with legal requirements and procedures under the Companies Law.
* The likelihood of the restructuring plan achieving the intended objectives and preserving the value of the company's assets.]

**\* End of Assessment \***