



**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: **[studentnumber.assessment5C]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

## **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**.

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

- (a) a company incorporated in the Cayman Islands.
- (b) a company with property located in the Cayman Islands.
- (c) a company carrying on business in the Cayman Islands.
- (d) any of the above.

**Commented [BT1]:** Incorrect. The answer was 'd'.

#### **Question 1.2**

Which of the following is **not** available in the Cayman Islands?

- (a) Appointment of a receiver.
- (b) Court-supervised liquidation.
- (c) Official liquidation.
- (d) Deed of Company Arrangement.

**Commented [BT2]:** Correct. 1 mark

#### **Question 1.3**

In a voluntary liquidation:

- (a) the company may cease trading where it is necessary and beneficial to the liquidation.
- (b) the company must cease trading except where it is necessary and beneficial to the liquidation.
- (c) the company must cease trading if it is necessary and beneficial to the liquidation.
- (d) the company may cease trading unless it is necessary and beneficial to the liquidation.

**Commented [BT3]:** Correct. 1 mark

#### Question 1.4

Select the **correct answer**.

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

- (a) may enforce their security with leave of the court.
- (b) may enforce their security with leave of the court provided the liquidator is on notice of the application.
- (c) may enforce their security without leave of the court.
- (d) may not enforce their security until the liquidator has adjudicated on the proofs of debt.

Commented [BT4]: Correct. 1 mark

#### Question 1.5

Select the **correct answer**.

In a provisional liquidation, the existing management:

- (a) continues to be in control of the company.
- (b) continues to be in control of the company subject to supervision by the court and the provisional liquidator.
- (c) may continue to be in control of the company subject to supervision by the provisional liquidator and the court.
- (d) is not permitted to remain in control of the company.

Commented [BT5]: Correct. 1 mark

#### Question 1.6

Select the **correct answer**.

Once a provisional liquidator is appointed:

- (a) no action may be commenced against the company without leave of the court.
- (b) no existing action may be continued against the company without permission of the provisional liquidator.
- (c) legal proceedings may be commenced or continued against the company without leave of the court.
- (d) no action may be commenced against the company.

Commented [BT6]: Incorrect. The answer was 'a'

#### Question 1.7

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

- (a) Sums due to company employees.
- (b) Taxes due to the Cayman Islands government.

(c) Amounts due to preferred shareholders.

Commented [BT7]: Correct. 1 mark

(d) Sums due to depositors (if the company is a bank).

(e) Unsecured debts which are not subject to subordination agreements.

#### Question 1.8

Select the **correct answer**.

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

(a) 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.

(b) 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.

Commented [BT8]: Correct. 1 mark

(c) 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.

(d) 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 1.9

Select the **correct answer**.

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

(a) 50% or more representing 75% or more in value of the creditors must agree.

(b) 50% or more representing more than 75% of the creditors must agree.

(c) more than 50% representing more than 75% of the creditors must agree.

(d) more than 50% representing 75% or more in value of the creditors must agree.

Commented [BT9]: Correct. 1 mark

#### Question 1.10

Select the **incorrect statement**.

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

(a) company passes a special resolution requiring it to be wound up.

(b) company does not commence business within a year of incorporation.

(c) company is unable to pay its debts.

(d) board of directors decides it is "just and equitable" for the company to be wound up,

Commented [BT10]: Correct. 1 mark

(e) company is carrying on regulated business in the Cayman Islands without a license.

Commented [BT11]: 8/10 for question 1.

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

### Question 2.1 [maximum 3 marks]

Explain the extent to which it is possible to register security over an asset in the Cayman Islands.

[In Cayman Island there is no central public security regime and no publicly searchable registers in relation to charges created by Cayman Island exempted companies. When a security interest is created by each exempted company, it is necessary under Section 54 of the Cayman Island's Companies Act to enter any security interest created by the company in the register of Mortgages and charges of the company, maintained by the company at its registered office. Even though a private document, the register of mortgages and charges is open to inspection by any creditor or member of the company at the company's registered office at all reasonable times. Although no statutory priority is afforded to the security by ensuring its security is registered, third parties of any of these assets will be deemed to have notice of the existence of such interest. A creditor therefore needs to review a company's register of mortgages and charges prior to giving out a loan. If a company fails to comply with the obligations to maintain a register of mortgages and charges, each director who knowingly and wilfully permits such failure is liable to some penalty, even though the validity of the security will not be affected. Cayman Island maintains ownerships registers some specific categories of assets. The assets over which ownership registers are maintained includes, real estate, provided for in the Registered Land Law, ships, provided for in the Maritime Authority Law, aircraft, provided for under the Civil Aviation Authority Law, motor vehicles and intellectual property. These registers are centrally maintained and a third party purchaser is deemed to have notice of such interests, and will therefore acquire the assets subject to the secured creditor's interest.]

Commented [BT12]: 3 marks

### Question 2.2 [maximum 4 marks]

Explain the legal basis for the Cayman Islands Grand Court's power to assist foreign bankruptcy proceedings and the circumstances in which such powers may be exercised.

[The Companies Law Part XVII regulate international Co-operation, the Companies winding up rules regulate International Protocols, Section 11A of the Grand Court Law provides for interim relief in the absence of substantive proceeding in the Cayman Island, the Grand court's Practice Direction 1 of 2018 also empowers court to assist foreign bankruptcy proceedings in Cayman Island. Cayman Island has not yet implemented the UNCITRAL Model Law on Cross-Border Insolvency, even though Cayman Island still follow most of its principles in the interest of comity. Cayman Island is not a member of EU, so the EU legislation does not apply in Cayman Island. Assistance by Cayman Island Grand Court's is not based on any threshold tests, there are no automatic rights conferred on the basis of the centre of main interest (COMI). Rather, the foreign representatives needs to satisfy the Cayman Island's court that it is appropriate for the court to exercise its discretion by granting the relief sought in the foreign representative's application. By Section 242 of the Cayman Island's Companies law in exercising its discretion, the court shall be guided by matters which will best assure an economic and expeditious administration of the debtor's estate. The court will consider the just treatment of all holders of claim against the debtor's estate, no matter where they are domiciled; the protection of claim holders in Cayman Island against prejudice and

inconvenience in the processing of claims in the foreign bankruptcy proceeding; the prevention of preferential or fraudulent disposition of property forming part of the debtor's estate; the distribution of the debtor's estate among various creditors must be according to the statutory order prescribed under Part V of the companies law; the recognition and enforcement of security interest created by the debtor; the non-enforcement of foreign taxes, fines and penalties, as well comity, which entails the mutual recognition and co-operation of legal decisions. The Grand Court in Cayman Island is empowered by Part XVII of the Companies law to make orders in support of foreign insolvency proceedings. Upon the application of a foreign bankruptcy proceeding, Section 241 of the Cayman Island's Companies Law empowers the court to make some ancillary orders to the foreign bankruptcy proceeding, ancillary orders that could be made includes: recognising the right of a foreign representative to act in Cayman Island on behalf of a debtor, enjoining the commencement or staying the continuation of legal proceedings against a debtor, staying the enforcement of any judgment against a debtor etc. The Cayman Island Insolvency law focuses on the rights of creditors, it ensures that all creditors are treated equally regardless of where the creditors are domiciled. Cayman Island's Law does not provide for protocols between the Grand Court and Foreign Courts, but makes provision for Cayman Islands official liquidators to enter into international protocols with foreign officeholders to promote orderly administration of the estate, avoidance of duplication of work and of conflict between official liquidator and the foreign officeholder. However, the international protocols agreed between a Cayman liquidator and a foreign officeholder must be approved by both the Grand court and appropriate foreign court or authority.]

Commented [BT13]: 4 marks

### Question 2.3 [maximum 3 marks]

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

[In relation to foreign proceedings and international treaties for co-operation and reciprocity, the Cayman Island has not adopted the UNCITRAL Model Law on Cross Border Insolvency 1997. The Cayman Islands is also not a member of the EU, therefore the EU legislation is not applicable in Cayman Island. The Cayman Island has not entered into any international treaty for the reciprocal recognition or enforcement of foreign judgments. UK has not extended its ratification of international treaties to Cayman Island as a British overseas territory, by order in council, except for the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Foreign Judgments Reciprocal Enforcement Law (1996 Revision) provides for a statutory scheme of recognition and enforcement of foreign judgments in a situation where the country from which the judgment originates assures substantial reciprocity of treatment regarding the enforcement of Cayman Island's judgments. This provision has however been applied only to judgements from superior courts of Australia till date. The procedure for its application is governed by Order 71 of the Grand Court Rules. In order for a foreign judgment to be enforceable, the foreign judgment must be final, must involve a money judgment and must be made after the 1996 law was extended to the relevant foreign country. In view of the limited application of the Foreign Judgments reciprocal Enforcement Law, enforcement of foreign judgements is usually achieved by commencing a new action in the Cayman Island based on the foreign judgment as an unsatisfied debt or other obligation. Under common law Money and non-money judgements are enforceable. The mandatory requirement for enforcement of a foreign judgment at Common law are that the judgement is final; the foreign court had jurisdiction over the debtor; the foreign judgment was not obtained by fraud; the foreign judgment is not contrary to public policy of Cayman Island, and the judgment was not obtained contrary to the rules of natural justice. In the case of *Bandone v. Sol Properties* 2008 CILR 301 points to the fact that in personam judgments may be recognised and enforced through equitable remedies or under the principle of comity. There is a six years limitation period for the enforcement of foreign judgments, under both common law and the Foreign Judgments reciprocal Enforcement Law (1996 Revision).]

Commented [BT14]: 3 marks

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

**Question 3.1 [maximum 9 marks]**

In the absence of a statutory prohibition on insolvent trading, the Cayman Islands is ill-equipped to deal with directors who wilfully disregard the interests of creditors.

Critically discuss this statement and indicate whether you agree or disagree with it, providing reasons for your answer.

[I disagree with that position. I am of that view because although the Cayman Island's Companies Law did not specifically prohibit insolvent or wrongful trading, there are provisions in the Cayman Island's law that could also achieve the aim of the law on wrongful trading, as it is found under Section 214 of UK insolvency law. The principle of Insolvent trading refers to a situation where a business continues to trade, despite being insolvent. Insolvent trading holds a director responsible for allowing the company to incur further or new debt whilst the company is insolvent, the director can be held personally liable for the new debts incurred. The directors may also face civil and criminal charges, fines, imprisonment or even disqualification as a company director if they are found liable. However, by the fiduciary duty imposed on a director, a director has a duty to act bonafide, in what they believe to be in the best interest of the company. The directors must not fetter their discretion to act in the best interest of the company. Where an officer or director acts in breach of the fiduciary duty or duty of care that he owes to his company, he may be held liable to compensate the company for any loss suffered. In the case of Prospect Properties v McNeil, the Grand court held that where a company is insolvent, the director's duty to act in the best interest of the company requires the director to have regard to the interest of its creditor. In was the position of the court that it is in the interest of the company for creditors to be paid, it is also in the interest of the company to be protected from a situation where it is unable to pay. By taking action against directors of company for breach of their fiduciary duty, a director can be made personally liable for any losses caused to the company if they incur additional liabilities when they knew or should have known that there was no reasonable prospect of the company avoiding insolvent liquidation. Directors owe their duties to the company, however, where a company is at risk of becoming insolvent, the duties of the company's directors will extend or shift to the interest of creditors, as stakeholders in insolvency. The directors must have regard to creditors' interest, as a whole, when discharging their duties. The creditors are the ones that the company's assets are required to satisfy their claims. Directors needs to act in the interest of the creditors, creditors interest should be given priority above the interest of shareholders, at least until when the company becomes solvent again. The directors must consider the financial position of the company and take a decision based on the most effective way of maximising returns for creditors. The official liquidator can also institute an action against the directors on behalf of the company in a case of official liquidation for breach of their fiduciary duty.]

**Commented [BT15]:** 6 marks. Answer could have been further improved by reference to specific statutory provisions such as sections 99, 135, 145, 146, 147.

**Question 3.2 [maximum 6 marks]**

Receivers have a limited role to play in a Cayman Islands insolvency scenario. Discuss.

**Commented [BT16]:** 5 marks.

[Receivers are a named person who may take possession of a property for its protection or realisation. Receivers can be said to have a limited role under Cayman Island Insolvency law because the statutes dealing with Insolvency in Cayman Island, that is, the Companies Law and Companies winding up Rules, did not explicitly deal with the matter of receivers or receivership. It is only the Grand Court Rules(GCR) that provided for receivers. Order 30 of the Grand Court Rules provides for the appointment and duties of a receiver generally. While Order 45 of the Grand Court Rules dealing with enforcement of judgements and orders,



specifically stated that receivers may be appointed to enforce court orders for the payment of money. Order 51 of that same Grand Court Rules provides for the appointment of receivers by way of equitable execution. Hence bringing the matter of receivers within the contemplation of the of the Grand Court Rules, meaning that receivers may be appointed by the court for the purposes of collecting money like rents or some other functions like execution of a contract. However, the mention of receivers under the Cayman islands Companies Act was with respect to Segregated Portfolio Company provided for under 216 of the Companies Act. Section 224(1) provides that where the Grand Court is satisfied that the Segregated Polio's assets are likely to be insufficient to discharge the claims of creditors in respect of that portfolio, it may make a receivership order in respect of that portfolio. A receivership order empowers the receiver appointed in Section 224(3) of the Cayman Island's Companies Act to manage the Segregated portfolio's assets for the purposes of orderly closing down the business of the segregated Portfolio and distributing the segregated portfolio's assets to those entitled to it. This is a limited provision on the role of receivers under the Cayman Island's Companies Act, by narrowing receivership down to only Segregated Portfolio. Considering the significant role receivers play in insolvency one would have expected a robust provision on receivership under the statutes dealing with insolvency in Cayman Island rather made relying of the provisions of the Grand Court Rules which is majorly a procedural or anxillary rules. I say so because the matter of receivership is very critical and important that the Cayman Island's Companies Act should have provided extensively for it, instead of barely mentioning it only on the concept of segregated Portfolio.]

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

Black Pearl Ltd is a company registered in the Cayman Islands. It operates a fleet of pirate-themed cruise ships across the Caribbean. It was founded by the wealthy Sparrow family over 75 years ago. The family continues to own and manage the business.

In recent years, Black Pearl has been rapidly expanding its cruise ship operations. However, the unexpected slump in worldwide tourism at the start of 2020 due to Covid-19 has badly affected Black Pearl's revenues.

Within weeks Black Pearl is going to default on its loan repayments to Monster Mortgage (Monster). Monster has lent Black Pearl USD 100 million (USD 40 million of which is secured by a mortgage over four of Black Pearl's cruise ships).

Black Pearl has already failed to pay various service providers for several months (tender vessels, food and beverage suppliers, utilities, engineers and mechanics). The payment of utilities is particularly important to the ongoing repair and maintenance of the fleet of vessels at Black Pearl's dry dock facility in Little Cayman.

To make matters worse, Black Pearl has recently lost arbitration proceedings in London in relation to the construction of a new fleet of ships and been ordered to pay damages of USD 50 million to Jolly Roger Inc. It will not be able to satisfy that award.

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

- (a) What action can Monster take to protect itself?
- (b) What action can Jolly Roger Inc take against Black Pearl?
- (c) What action can the unsecured trade creditors take against Black Pearl?

- (d) Does the Cayman Islands Court have jurisdiction over Black Pearl?
- (e) Is there a legal route via which Black Pearl can protect itself and seek to restructure,
- (f) Following on from (e) above and assuming there is a legal route via which Black Pearl can protect itself and seek to restructure, can the Sparrow family continue to run Black Pearl during this process?
- (g) Assuming that the Cayman Islands Court has jurisdiction, what factors will the court take into consideration before approving any proposed restructuring?

[(a) On the action that Monster Mortgage can take, even though Monster Mortgage lent Black Pearl USD 100 million, it is only USD 40 million that was secured by a mortgage over four of Black Pearl's cruise ships. The implication is that Monster is partly a secured creditor and partly an unsecured creditor. For the USD 40 million loan having secured by a mortgage, Monster is entitled to enforce its security. Monster can take possession over the four cruise ships used as collateral and exercise its power of sale or appoint a receiver to realise the assets. The assets used to secure mortgage to the tune of USD 40 million cannot be applied in satisfaction of the USD 50 million judgment order in favour of Jolly Roger. As a secured creditor Monster Mortgage enjoys priority in payment, even if the company is eventually placed under official or provisional liquidation, it does not prevent monster from enforcing his security. However, since Monster's mortgage's debt is more than the value of his security, it has to prove its claim for the unsecured balance. In such circumstance, the proof of claims or debt submitted by the secured creditor must state the security and the value he places on the security. Should the court make a winding up order, automatic stay does not prohibit monster from enforcing its loan. For the unsecured USD 60 million balance, monster has to take its position in order of payment like every other unsecured creditors.]

Commented [BT17]: 2 marks.

(b) The Jolly Roger inc case raises the issue of recognition of foreign judgment, because the arbitration proceeding involving Jolly Roger inc and Black Pearl was heard in London, and was successfully concluded with an award. Since the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) application have only been extended to judgments from superior courts of Australia, Jolly Roger can only rely on common law to enforce the award. Jolly Roger needs to commence a new action in Cayman Islands based on the foreign award as an unsatisfied debt. Money judgement are enforceable under common. The mandatory requirements for enforcement of a foreign judgment at Common law are that the judgement is final; the foreign court had jurisdiction over the debtor; the foreign judgment was not obtained by fraud; the foreign judgment is not contrary to public policy of Cayman Island, and the judgment was not obtained contrary to the rules of natural justice. In the case of *Bandone v. Sol Properties* 2008 CILR 301 points to the fact that in personam judgments may be recognised and enforced through equitable remedies or under the principle of comity. I believe the judgment here meets the criteria for enforcement, it is a final award (judgment), it has jurisdiction against the debtor, Black pearl, it was not obtained by fraud, it not against Cayman Island Public policy. Therefore, Jolly can take an action for the enforcement of the USD 50 million damages against Black Pearl.]

Commented [BT18]: 2 marks

(c) The unsecured creditors can initiate winding up proceedings against Black pearl on the ground of its inability to pay its debt as the fall due. The winding up proceeding will ensure a collective realisation and distribution of the company asset to persons entitled to it, in order of priority. In view of the fact that there are various unsecured creditor, some of them being service providers like tender vessels, food and beverage supplies etc., individual enforcement is not the best. Inability to repay debt as defined under Section 93 of the Companies Law is a ground for initiating any of the three types of corporate liquidation.]

Commented [BT19]: 2 marks

(d) Yes, the Cayman Island's court has jurisdiction over Black Pearl. It is the Financial Services Division of the Grand Court that deals with insolvency proceedings. The Black Pearl being a company incorporated in Cayman Island falls under the category of entities over which

Commented [BT20]: 1 mark

Cayman Island Grand court can make a winding up order under Section 91 of the companies law . Therefore by Section 94 of the companies Law, the company, the creditors, shareholder or liquidator Cayman island has the right to present a winding up petition subject to any contractually binding non-petition clauses. The inability to pay its debts is one of the grounds for winding up an entity, Black Pearl may be wound up under Section 92 of the Companies Law.

(e)] Informal work-outs is used for restructuring in Cayman Island, but it is majorly due to ingenuity of local practitioners, Cayman does not have rescue legislation like US chapter 11 proceeding. The available legal route Black Pearl can use to protect itself is through scheme of arrangement under Section 86 of the Cayman Island's companies Law. A scheme of arrangement is a court approved compromise or arrangement entered into between a company and its creditors or members or any classes of them. Black pearl can secure some breathing space by the moratorium on actions it will enjoy as a result of putting itself into provisional liquidation under Section 104(3) of the Companies Law. It is usually common to see provisional liquidation used in conjunction with a scheme of arrangement. This is because provisional liquidation affords the applicant the opportunity to explain to the court the purpose of the application, which is the appointment of JPLs in order to allow for the negotiation of a compromise or arrangement with its creditors or members. The moratorium helps the company to restructure its liabilities in a manner that will help it to recover from its financial difficulty.

(f) Yes, sparrow family can continue to run Black Pearl, which is the whole essence of the rescue regime. Black Pearl scenario is a clear case of an insolvency that could be resolved through corporate rescue. Note that the Sparrow family has been running black Pearl for over 75 years and the Black Pearl has a very good business and was rapidly expanding its cruise ship operation. Black Pearl insolvency was only occasioned by the Covid -19 pandemics. Black Pearl by first applying for liquidation enable it to enjoy a court ordered stay and makes it possible for Black Pearl to propose a scheme to save itself. Creditors may not be too difficult to convince, the creditors having seen how Black Pearl had done well in its business for over 75 years, and the reason for the insolvency can be easily appreciated by all the stakeholder, that voting in support of the scheme will not be difficult. Through the scheme Black Pearl can restructures its liabilities, reorganise its share capital, alters shareholder and creditors' distribution rights, through stuffs like delay or reduced debt repayment, debt for equity swap, which will give Black Pearl access to capital to run its business. A liquidator can make an application to court for a continuous provision of essential supply for running Black pearl like electricity and telecommunication with a guarantee by the liquidator of payment for the supplies.

(g) The factors that the court take into consideration before approving any proposed restructuring includes that: the Grand court must approve the terms of the scheme before it becomes effective, and the court will not do so unless it is satisfied that its terms are fair, the court will consider if the majority fairly represents the class, the court will check whether the arrangement proposed is such that an intelligent, honest member of the class convened, acting in his own interest, might reasonably approve.]

Commented [BT21]: 3 marks

Commented [BT22]: 1 mark

Commented [BT23]: 2.5 marks

Commented [BT24]: 13.5 marks for question 4

Commented [BT25]: Total marks for this candidate = 42.5

\* End of Assessment \*