



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]: Correct. 1 mark

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]: Incorrect. Answer was 'd'.

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]: Correct. 1 mark

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]: 9/10 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.

It is pertinent to highlight that in the Cayman Islands there is no public security registration regimen. By virtue of the above, creditors must adopt special measures to fully control the assets and prevent others from purchasing them. Pursuant to article 54 of the Companies Law, it is necessary to register the security interests in the registry of mortgages and charges that the company has for this purpose (Tonner, 2020).

Commented [BT12]: 2.5 marks out of 3.

However, it is imperative to bear in mind that the registration of the security interest in the aforementioned registry does not grant priority, but makes the existence of the security known to third parties. In the event that a conflict arises in relation to the perfection and priority of the security interests, this will be resolved according to the location of the asset (Tonner, 2020).

It should be noted that for certain assets, such as boats, ships, aircraft, land, or a motor vehicle, it is necessary to file a notice of the security with the centrally maintained registers (Tonner, 2020).

Commented [BT13]: And this ensures priority.

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 following are the main aspects to bear in mind to determine the legal basis under which the Cayman Islands Grand Court's may assist bankruptcy proceedings : (i) the EU legislation does not apply to the Cayman Islands because it is not a member of the EU, (ii) the UNCITRAL Model Law on Cross- Border Insolvency has not been implemented, however most of the key principles are followed, and (iii) Part XVII of the Companies Law provides the Grand Court's powers to make orders in support of foreign insolvency proceedings (Tonner, 2020).

Regarding the circumstances in which the powers of the Cayman Islands Grand Court may be exercised, it is necessary to highlight that section 242 of the Companies Law establishes the criteria upon which the court may exercise its discretion, and section 241 of the Companies Law provides the scenarios under which the court may make orders ancillary (Tonner, 2020).

Finally, according to section 241 of the Companies Law, the court should determine the possible ways under which the ancillary order contributes to an expeditious and economic administration of the debtor's state (Companies Act Revision, 2021) |

Commented [BT14]: 4 marks

Question 2.3 [maximum 3 marks]

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

The analysis of the legal framework for the recognition of foreign judgments in the Cayman Islands implies to approach the subject from the following perspectives:

- **International Treaties:** In this regard, it is important to note that the Cayman Islands has not signed any treaty regarding to the reciprocal recognition or enforcement of foreign judgments. Additionally, the UK has extended its ratification to the Cayman Islands only with respect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Tonner, 2020).
- **Statute - The Foreign Judgments Reciprocal Enforcement Law (1996 Revision):** This statute provides a regimen by which foreign judgments are recognized and enforced in the case that the country where the judgment is issued assures substantial reciprocity for treatment with respect to the enforcement of Cayman Islands judgments. In summary, this legal framework is based on substantial reciprocity and it is governed by Order 71 of the Grand Court Rules. In addition to the reciprocity requirement, the foreign judgment must comply with the following requirements: (i) regarding its nature it must be a money judgment, (ii) must be final and, (iii) must be issued after the 1996 Law was extended to the relevant foreign country (Tonner, 2020).
- **Common-Law:** Refers to the procedure that seeks the enforcement of foreign judgments, conducted under the regular procedural regimen for litigation in the Cayman Islands. The foreign judgment must comply with the following requirements: (i) the decision must be final, (ii) there was no fraud implicated to obtain the foreign judgment, (iv) the foreign court indeed has jurisdiction over the debtor, (v) the foreign judgment does not contrary any public policy of the Cayman Islands, and (vi) the foreign judgment was obtained observing the rules of natural justice (Tonner, 2020).

Commented [BT15]: 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 consider that the statement is partially true considering that the legal framework of the Cayman Islands does not provide a statutory prohibition on insolvent trading. However, the company's directors may become liable for the company's losses in those cases that they did not act in the best interest of the company and therefore breached their fiduciary duty. In this regard, the Grand Court has held that acting in the best interests of the company implies acting in the best interests of the creditors (Tonner, 2020).

Commented [BT16]: 3 marks. More detail is required to earn greater marks. Specific reference might have been made to Propsect Properties v McNeill and sections 99, 135, 145, 146, 147 Companies Act.

Question 3.2 [maximum 6 marks]

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

The receivers do not have a limited role in an insolvency context considering that they may constitute an attractive alternative for the creditors.

The abovementioned bearing in mind that thanks to the rights derived from a security instrument (such as a floating charge) the receiver may reimburse the creditor of the instrument the amount of the unpaid debt by means of the realization of the charge asset's value (Tonner, 2020).

By virtue of the foregoing, it is possible to state that the role of the receivers is quite broad, considering that, their actions do not require judicial intervention. It is important to bear in mind that the receiver's freedom is given in the scenarios foreseen for the effect, for example, when the charge document includes a right of sale.

Commented [BT17]: 3.5 marks. More detail required for more marks. And what about SPCs?

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?

Considering that Monster has lent Black Pearl USD 100 million it is pertinent to highlight that the course of action will depend on whether the resources are secured or not:

- Secured USD 40 million: The alternative is foreclosure.
- Unsecured USD 60 million: Pursuant section 99 of the Companies Law if Monster wants to initiate an executive proceeding it has to do so before the commencement of the liquidation proceeding (Companies Act Revision, 2021).

Commented [BT18]: 1 mark. Upon default, Monster can enforce its security in respect of the 40m. It can do so irrespective of whether Pearl has been put into insolvency. It will have to prove for the unsecured balance of 60m in the liquidation by submitting a proof of debt.

(b) What action can Jolly Roger Inc take against Black Pearl?

Pursuant section 99 of the Companies Law if Jolly Roger Inc want to initiate an executive proceeding the company have to do so before the commencement of the liquidation proceeding (Companies Act Revision, 2021).

Commented [BT19]: 0 marks. This question is calling for an answer about the New York Convention and the Arbitration Law.

(c) What action can the unsecured trade creditors take against Black Pearl?

Pursuant section 99 of the Companies Law if the unsecured trade creditors want to initiate an executive proceeding they have to do so before the commencement of the liquidation proceeding (Companies Act Revision, 2021).

Commented [BT20]: 0 marks. The unsecured creditor has standing to submit a winding up petition (section 92-94) or apply for the appointment of a PL (section 104).

(d) Does the Cayman Islands Court have jurisdiction over Black Pearl?

In accordance with the conditions set forth in the Companies Law, the Cayman Islands Court has jurisdiction because Black Pearl Ltd is a company registered in the Cayman Islands.

Commented [BT21]: 1 mark

(e) Is there a legal route via which Black Pearl can protect itself and seek to restructure?

Yes, I would recommend Black Pearl to approach its creditors and seek consensual restructuring alternatives before filing the proceeding.

Commented [BT22]: 0 marks. Pearl can apply to couple a section 86 scheme with a section 104 PL which will result in a moratorium under section 97.

(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?

Yes, the Sparrow family could continue to run Black Pearl during this process, because it is not a provisional liquidation scenario.

Commented [BT23]: ½ mark. It may be allowed.

(g) Assuming that the Cayman Islands Court has jurisdiction, what factors will the court take into consideration before approving any proposed restructuring?

Two moments precede the approval of the scheme:

- At the **convening hearing**, the court will review issues that are related to: (i) the composition of the creditor classes, (ii) plan documentation requirements, and (iii) jurisdictional issues and plan notice. At this stage, the court ensures that creditors have access to all the information necessary to make an informed decision (Tonner, 2020).
- **Scheme meetings**: Scheme meetings: The scheme must be approved by a majority in number that represents over 75% in value of the creditors (Tonner, 2020).

Commented [BT24]: 2 marks

Commented [BT25]: 4.5 marks for question 4

References

Companies Act Revision. (2021).

Tonner, M. B. (September de 2020). Cayman Islands. Cayman Islands, Grand Cayman.

* End of Assessment *

Commented [BT26]: Total marks for this candidate = 29.5