



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: 202122-336.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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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 **8 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**.

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 [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]: Correct. 1 mark.

Question 1.3

Select the **correct answer**.

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**.

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 [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**.

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 [BT6]: Correct. 1 mark.

Question 1.7

Select the **correct answer**.

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

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

Commented [BT7]: Correct. 1 mark.

Question 1.8

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.
- (d) Sums due to depositors (if the company is a bank).
- (e) Unsecured debts which are not subject to subordination agreements.

Commented [BT8]: Correct. 1 mark.

Question 1.9

Select the **incorrect statement**.

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

- (a) The company passes a special resolution requiring it to be wound up.
- (b) The company does not commence business within a year of incorporation.
- (c) The company is unable to pay its debts.
- (d) The board of directors decides it is "just and equitable" for the company to be wound up.
- (e) The company is carrying on regulated business in the Cayman Islands without a license.

Commented [BT9]: Incorrect. Correct answer is D.

Question 1.10

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 [BT10]: Correct. 1 mark.

Commented [BT11]: 9/10 for this section

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [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, the Cayman Islands has ownership registers for real estate, ships, aircraft, motor vehicles and intellectual property. A creditor can register charges against the aforementioned assets, and any third party purchaser would buy the asset subject to the creditor's security interest. However, there is no public security registration in the Cayman Islands for other assets. A creditor would therefore need to ensure it has sufficient control over other assets to prevent those assets from being bought without consideration for the creditor's security interest. Section 54 of the Companies Act requires security interests to be entered in the register of mortgages and charges of the company. That register must be kept updated at the company's registered office, although failure by a company to keep the register updated does not in and of itself, invalidate any security interests. The effect of registration is putting third parties on notice of the security interest. It does not create priority.¹

Commented [BT12]: 3 marks

Question 2.2 [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 Cayman Islands Grand Court **has** statutory power to assist foreign bankruptcy proceedings in the form of Part XVII of the Companies Law (2018 Revision) and the Foreign Bankruptcy Proceedings (International Cooperation) Rules 2018 (the "FBPR 2018")². Together, this legislation sets out the statutory mechanisms and procedures by which a foreign representative can be recognised in the Cayman Islands and seek the assistance of the Grand Court, pursuant to section 103 of the Companies Law. Part XVII gives the Grand Court a discretionary power to provide assistance for the purposes of³:

Commented [BT13]: 4 marks

- (a) recognising the right of a foreign representative to act in the Cayman Islands on behalf of or in the name of the foreign company;
- (b) enjoining the commencement or staying the continuation of legal proceedings against the foreign company;

¹ INSOL Guidance Text Module 5C Cayman Islands Chapters 5.3

² INSOL Guidance Text Module 5C Cayman Islands Chapters 6; 7.5; 9.3

³ https://www.walkersglobal.com/images/Publications/Articles/2018/09.10.2018_Two_Islands_ICR.pdf

- (c) staying the enforcement of any judgment against the foreign company;
- (d) requiring a person in possession of information relating to the business or affairs of the foreign company to be examined by and produce documents to its foreign representative; and
- (e) ordering the turnover to the foreign representative of any property belonging to the foreign company.

In determining whether to provide assistance, the Grand Court is guided by 'matters which will best assure an economic and expeditious administration...' of the foreign company's estate, consistent with the following Cayman Islands policy objectives⁴:

- (a) the just treatment of all holders of claims or interests in the foreign company's estate wherever they may be domiciled;
- (b) the protection of claim holders in the Cayman Islands against prejudice and inconvenience in the processing of claims in the foreign bankruptcy proceeding;
- (c) the prevention of preferential or fraudulent dispositions of property comprised in the foreign company's estate;
- (d) the distribution of the foreign company's estate amongst creditors substantially in accordance with the order prescribed by Part V of the Companies Law (i.e. the order of distribution applicable to a liquidation commenced in the Cayman Islands);
- (e) the recognition and enforcement of security interests created by the foreign company;
- (f) the non-enforcement of foreign taxes, fines and penalties; and
- (g) comity⁵

Question 2.3 [maximum 3 marks]

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

The Foreign Judgments Reciprocal Enforcement Act (1996 Revision) provides the statutory framework for recognition of foreign judgments, where the jurisdiction that issued the judgment assures substantial reciprocity of treatment regarding the enforcement of Cayman Islands judgments⁶. The Act has only been extended to judgments of the Superior Courts of Australia. That procedure is governed by Order 71 of the Grand Court Rules⁷. In order to be enforced by the Act, the foreign judgment must be final, a money judgment and made after the 1996 Act was extended to the relevant foreign country. The UK has extended its ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to the Cayman Islands⁸. Given the very limited application of the Act, foreign judgments are usually enforced under common law by commencing a new claim in the Cayman Islands, based on the unsatisfied debt or other obligation that was determined by the foreign judgment.⁹ Both money and non-money judgments are enforceable under common law¹⁰. The common law action is conducted under the normal procedural rules applicable to litigation in the Cayman Islands, the Grand Court Rules. The mandatory requirements for enforcement of a foreign judgment at common law are:

- (a) the judgment is final;
- (b) the foreign court had jurisdiction over the debtor;
- (c) the foreign judgment was not obtained by fraud;
- (d) the foreign judgment is not contrary to public policy of the Cayman Islands; and
- (e) the foreign judgment was not obtained contrary to the rules of natural justice.

⁴ Section 242 of the Companies Law

⁵ https://www.walkersglobal.com/images/Publications/Articles/2018/09.10.2018_Two_Islands_ICR.pdf

⁶ INSOL Guidance Text Module 5C Cayman Islands Chapter 8; Foreign Judgments Reciprocal Enforcement Law (1996 Revision), s 3(1)

⁷ INSOL Guidance Text Module 5C Cayman Islands Chapter 8

⁸ [ibid]

⁹ [ibid]

¹⁰ *Bandone v Sol Properties* 2008 CILR 301

Once a judgment is obtained from the Grand Court, domestic enforcement remedies are available¹¹.

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, 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.

Directors can be made personally liable to a company for any losses they cause the company by acting in breach of their fiduciary duty to act in the best interest of the company¹². Where a company is insolvent, a director's duty to act in the best interest of the company requires them to have regard to the interests of the creditors of the company. Once appointed, the official liquidator can pursue claims against the former directors of a company for such breaches of fiduciary duty^{13 14}.

A problem faced by liquidators issuing claims against former directors for damages is the issue of costs. Former directors would often apply for security for their costs of defending those proceedings, which acted as a deterrent to such claims. However, a recent decision of the Cayman Islands Court of Appeal in *Trade Life Policies Fund (In Official Liquidation) & Anor v Jeremy Leach et al* held that a party can be denied security for costs if the undisputed facts about the directors' management of the company disclose that the directors are responsible for the company's impecuniosity¹⁵.

There are a range of claw-back mechanisms available to liquidators and creditors, in relation to transactions made by a company's former directors as described below. Where the directors were themselves a party to those transactions, eg on a disposal of a company asset to a director, this may result in financial obligations on them personally.

Voidable preference. Section 145 of the Companies Act provides that any payment or disposal of property to a creditor constitutes a voidable preference if: 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^{16 17}.

Avoidance of dispositions made at undervalue. Section 146 of the Companies Act provides that a transaction in which property is disposed of at undervalue and with the intention of wilfully defeating an obligation owed to a creditor, is voidable on application of the liquidator¹⁸.

¹¹ INSOL Guidance Text Module 5C Cayman Islands Chapter 8

¹² INSOL Guidance Text Module 5C Cayman Islands Chapter 6

¹³ [ibid]

¹⁴ *Prospect Properties v McNeill* [1990-91 CILR 171]

¹⁵ https://www.applebyglobal.com/news/important-implications-for-claims-on-behalf-of-insolvent-companies-against-former-directors/#_ftn1

¹⁶ INSOL Guidance Text Module 5C Cayman Islands Chapter 6

¹⁷ *Re Weaving Macro Fixed Income Fund Ltd (in Liquidation)* [2016] (2) CILR 245; *Weaving* [2019] (2) CILR 245; *Weaving* [2019] UKPC 36

¹⁸ INSOL Guidance Text Module 5C Cayman Islands Chapter 6

Fraudulent trading. Section 147 of the Companies Act provides that if a company's business is carried on with the intent to defraud creditors or for any fraudulent purpose, a liquidator may apply for an order requiring any persons who were knowingly parties to such conduct to make such contributions to the company's assets as the Court sees fit¹⁹. This could make a director liable even where they did not directly benefit from the transaction.]

Commented [BT15]: Good. 7 marks. A little more discussion and perhaps reference to sections 99 and 135 and Prospect Properties would have secured the extra 2 marks.

Question 3.2 [maximum 6 marks]

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

Whilst it is true that receivers are not explicitly referred to in the Cayman Islands insolvency legislation, they are mentioned in the Grand Court Rules and there is scope for their involvement in an insolvency situation.

The GCR make provision for the appointment and duties of receivers and receivers' ability to be appointed to enforce court orders for the payment of money. Receivers may also be appointed to carry out other acts, including, for example, to execute a contract²⁰. Receivers may also be appointed pursuant to a contractual right to appoint a receiver, for example by secured creditors pursuant to a security document. This may well arise in an insolvency or near insolvency situation, not least as companies which are insolvent are likely to trip events of default in their financing documents (while companies which are solvent are likely to pay their debts without the deed for security enforcement).

Where a receiver has been appointed over certain assets of a company by secured creditors, and other creditors seek to appoint a liquidator, complex issues may arise.

Receivers and receivership orders are also specifically addressed and provided for in legislation created for segregated portfolio companies. Where the Grand Court is satisfied that an SPC's assets in respect of a particular portfolio are insufficient to discharge creditors' claims in relation to that portfolio, the court may make a receivership order in relation to that portfolio. The role is analogous to that of a liquidator^{21 22}.]

Commented [BT16]: Good. 5 marks.

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

Skull & Crossbones Inc (S & C) is a company registered in the Cayman Islands. It operates a fleet of pirate-themed party ships across central America and the Caribbean. It was founded by the wealthy Rackham family over 50 years ago. The family continues to own and manage the business.

Between 2015 and 2019, S & C had been rapidly expanding its operations. However, the unexpected slump in worldwide tourism at the start of 2020 due to COVID-19 adversely affected S & C's revenues.

S & C has only managed to stay afloat for the past 2 years with the assistance of a very large loan from Sparrow's Treasure Bank (Sparrow). Sparrow has lent S & C USD 200 million (USD 80 million of which is secured by a mortgage over four of S & C's largest party boats). The

¹⁹ [ibid]

²⁰ INSOL Guidance Text Module 5C Cayman Islands Chapter 6

²¹ [ibid]

²² Section 216 of the Companies Act

loan facility has now been exhausted. S & C has also fallen behind on the monthly repayments to Sparrow.

There are early signs that the tourism market is starting to pick up again; however, S & C cannot afford to pay the ongoing costs associated with maintaining its fleet of ships (which include electricity and water costs for its huge dry dock facility, ongoing engineering and mechanical costs and also wages, pension and health insurance for its reduced team of employees) let alone find enough money to buy the vast quantities of top-shelf rum it will need for its forthcoming booze cruises.

To make matters worse, S & C commissioned Roger Jolly to build 10 more oversized party boats only a few months before the pandemic struck. S & C attempted to wriggle out of the contract but, by virtue of an arbitration clause, the dispute was referred to the ICC sitting in London. Earlier this month, the ICC ruled that S & C must pay damages of USD 50 million to Roger Jolly by mid-February 2022. S & C has no prospect of being 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 Sparrow take to protect its interests?
- (b) What action can Roger Jolly take to protect its interests?
- (c) What action can the unpaid employees take against S & C?
- (d) Does the Cayman Islands Court have jurisdiction over S & C?
- (e) Is there a legal route via which S & C can protect itself and seek to restructure?
- (f) Following on from (e) above, can the Rackham family continue play a part in running S & C during any restructuring process?
- (g) What factors will the Cayman Islands court take into consideration before approving any proposed restructuring?

(a) Potential actions open to Sparrow to protect its interests. We are told that S&C has a mortgage with Sparrow, secured using four of S&C's largest party boats. Generally, the mortgagee, Sparrow, does not have a right to simply take possession of the collateral (i.e. the four boats). However, the mortgage agreement may contain a power of attorney in favour of Sparrow, permitting Sparrow to execute a transfer document to transfer the boats into Sparrow's name upon default of the loan, or to appoint a receiver over the boats. Therefore, the first thing Sparrow should do is to take a look at the options available to it in the mortgage agreement²³.

Another option open to Sparrow is to apply to have S&C wound up, and then try to enforce its security for the US\$80m. As the overall debt owed to Sparrow (US\$200m) is very likely to be more than the value of the security in the four boats (as a US\$80m mortgage was granted), Sparrow may prove in the liquidation for the unsecured balance of the loan²⁴.

²³ INSOL Guidance Text Module 5C Cayman Islands Chapter 6

²⁴ [ibid]

Commented [BT17]: Pretty good answer overall. 2 marks. Examiner was looking for candidate to reference ability of secured creditor to enforce its security (which should be centrally registered given it concerns vessels) outside of liquidation proceedings and without leave of the court (s.142). Also, that S&C cannot pay its debts (s.92 and 93) such that Sparrow has standing as an unsecured creditor to petition to wind up S&C. Sparrow may therefore choose to help S&C restructure via a work out or alternatively as part of a court supervised process depending on its view of the likely recovery in each scenario.

- (b) Potential actions open to Roger Jolly. We are told that Roger Jolly has the benefit of an ICC arbitration award. It is owed damages of US\$50m. It can therefore apply to domesticate the judgment under common law, if it cannot be domesticated pursuant to the New York Convention on the recognition and Enforcement of Foreign Arbitral Awards. Once the ICC award is domesticated, Roger Jolly can apply to appoint a receiver to enforce that judgment, pursuant to Order 45 of the GCR. Roger Jolly may alternatively apply to wind up S&C on the basis of the domesticated judgment. Additionally, we are told that Roger Jolly were commissioned to build the ten boats. If the boats are completed and still within Roger Jolly's possession (we are not told that they were completed or delivered to S&C), then it can consider its options under the contract to retain the boats or to seek the appointment of a receiver to sell the boats²⁵.
- (c) The unpaid employees can apply to have S&C wound up. The order of priorities in an official liquidation mean that the employees will be first in line when it comes to the distribution of sums owed in relation to preferential debts, after the liquidation expenses have been paid²⁶.
- (d) The Cayman Islands Court has jurisdiction over S&C, as it is a company incorporated in the Cayman islands, has property (boats) located in the Islands and is carrying on business in the Islands²⁷.
- (e) S&C can attempt informal restructuring by engaging in consensual restructuring negotiations with its creditors. If this does not work, S&C can apply to the Cayman court for permission to commence a formal restructuring such as a scheme of arrangement, which can be coupled with an order for provisional liquidation. It is helpful to show the court that an attempt was made to restructure prior to the court application. The provisional liquidation will trigger a stay or moratorium on creditor enforcement or further actions by creditors, even in foreign courts²⁸. Alternatively, S&C may petition the court for the appointment of a restructuring officer which should address stakeholder concerns arising from any provisional liquidation.
- (f) The Rackham family would be able to continue participating in the running of S&C whilst the company is being informally restructured. They may also be able to participate in the running of the company during a formal restructuring.
- (g) The factors the Cayman Islands court will take into consideration before approving a proposed restructuring are: that the company is or is likely to become unable to pay its debts, the company intends to present a compromise or arrangement to its creditors, the rights of creditors are adequately protected by the proposed arrangement and the proposed arrangement is viable²⁹.

*** End of Assessment ***

41.5/50

²⁵ INSOL Guidance Text Module 5C Cayman Islands Chapter 6

²⁶ [ibid]

²⁷ Section 91 of the Companies Act

²⁸ INSOL Guidance Text Module 5C Cayman Islands Chapter 4

²⁹ <https://www.ogier.com/publications/cayman-islands-publishes-reforms-to-restructuring-regime>

Commented [BT18]: Good. 2 marks. RJ can apply for recognition and enforcement of the arbitral award since the New York Convention has been extended to the Cayman Islands. The key point is that RJ has to apply to have the judgment recognised in the Cayman Islands. Once it does so, a range of enforcement remedies become available to it, including a charging order, writ of execution, examination of judgment debtor, attachment of earnings, garnishee proceedings and the ability to petition to wind up S&C (since RJ will be an unsecured creditor). If winding up petition has already been filed, there may be a moratorium preventing JR from taking any of the enforcement actions mentioned above in which case it will be left to file a proof of debt for its US\$50m as part of the official liquidation.

Commented [BT19]: 1.5 marks. The unpaid employees can sue S&C for the unpaid debts (provided a winding up petition has not yet been filed). Alternatively, they can apply to wind up under section 92 - 94 Companies Act or apply to apply to appoint provisional liquidators under 104 (if they are concerned about mismanagement or wish to support a court-supervised restructuring). If an order is made that S&C be liquidated, the sums due to the employees rank as preferential debts (section 141) ahead of certain other creditors.

Commented [BT20]: 1 mark.

Commented [BT21]: 3 marks. The Court may, at any time after the presentation of a winding up petition but before making a winding up order, appoint provisional liquidators (PLs). An application may be made *ex parte* by the company (S&C) on the grounds that it is, or is likely to become, unable to pay its debts and intends to present a compromise or arrangement to its creditors in accordance with section 104(3) of the CICA. In the event that a winding up petition is presented by a creditor, S&C could respond by seeking to appoint provisional liquidators. The appointment of PLs would ensure that no action or proceedings may be commenced or continued against the S&C without the leave of the Court as per Section 97 of the CICA (statutory moratorium). Under the supervision of the Court and the JPLs, S&C could then explore a restructuring.

Commented [BT22]: 1/2 mark. It depends on the terms of the PL order. As per provisions of section 104(1)(4) of the Companies Act, once appointed by the court a provisional liquidator will carry out only such functions as the Court may confer on him/her and will exercise such powers as may be conferred by the order of appointment.

Commented [BT23]: 1/2 mark. Factors include:

1. The meeting was properly convened (in accordance with the court's initial order)
2. Proposal approved by over 50% in number representing 75% or more in value of the creditors (or class of creditors) present and voting
3. whether the majority of Stakeholders voting acted in good faith, were a fair representation of the relevant Class
4. that the Scheme is better than the result would be if the company were wound up, and
5. that an intelligent and honest member of the Class would agree that the Scheme should be approved.