



**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]: Incorrect. Answer is D.

#### **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]: Correct. 1 mark.

### 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?

- A creditor can register its security interest over an asset in the Cayman Islands.
- Cayman Islands maintains ownership registers centrally for assets relating to real estate, ships, aircraft, motor vehicles and intellectual property.
- The effect of it is that a third-party purchaser of the asset would be deemed to have notice of the creditor's interest and will acquire such an asset subject to the registered interest of the creditor.
- There is no public security register. However, s 54 of the Companies Act requires that security interest must be entered into the register (for mortgages and charges) maintained by the company at its registered office.
- While the registration of the security interest does not confer a priority, it does put a third party to notice on the security created, as the register (for mortgages and charges) are available for inspection by a member or creditor of the company.

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?

- Under FBPR 2018, Cayman Islands Grand Court has the power to assist a foreign representative relating to a foreign bankruptcy proceeding.
- The Grand Court is provided with the power under Part XVII of the Companies Act (s 240 – 243), which provides for International Co-operation. S 241 provides that, "upon the application of a foreign representative the Court may make orders ancillary to a foreign bankruptcy proceeding". This includes, "recognising the right of a foreign representative to act in the Islands on behalf of or in the name of a debtor", "staying the enforcement of any judgement against a debtor", and "requiring a person in possession of information

relating to the business or affairs of a debtor to be examined by and produce documents to its foreign representatives".

Commented [BT13]: 4 marks

- Circumstances the Grand Court may exercise it – the foreign representative must satisfy the court that it is appropriate for the court to exercise its discretion. There is no need for the foreign representative to satisfy the “COMI” test or “establishment test” under Model Law on Cross-Border Insolvency.
- The Grand Court, in exercising its discretion, is guided by various factors. They include, just treatment of all claims (creditors), prevention of preferential or fraudulent transactions, and recognition of security interests of creditors (lenders).
- An example of assistance is, a Scheme of Arrangement has been approved in the UK. The foreign representative may apply to the Grand Court for recognition of the scheme; foreign bankruptcy proceeding includes reorganising or rehabilitation (restructuring) of an insolvent debtor.
- Another aspect that the Court may assist is – while legislation does not provide for protocols between Grand Court and foreign courts, the Grand Court may recognise the agreements (protocols) signed between a Cayman Islands liquidator and a foreign representative if those agreements (protocols) have been agreed (approved) by the foreign court or authority.

### Question 2.3 [maximum 3 marks]

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

- The Cayman Islands has not entered into any international treaties to recognise foreign judgments.
- However, Foreign Judgements Reciprocal Enforcement Law (1996) provides for recognition and enforcement of foreign judgments under certain circumstances. Section 3 provides that “The Governor, if he is satisfied that ... substantial reciprocity of treatment will be assured as respects the enforcement in such country of judgments given in the grand Court ...” may recognise the recognition and enforcement of foreign judgements. However, this recognition, to date, has only been extended judgements from Australia Superior Courts (Grand Court Rules, Order 71).
- Notwithstanding the lack of treaties or legislation recognising the foreign judgements, Cayman Islands is Commonwealth law based and recognises the principle of “comity” (mutual recognition and co-operation). The court will have regard to the principles of fairness, mutuality, and public policy: *Bandone v Sol Properties* [2008]. In recognising a foreign judgement under common law, various elements must be met, and they include – the judgment is final, the foreign judgment is not obtained by fraud, the recognition of foreign judgement is not contrary to public policy in Cayman Islands. For the foreign judgment to be recognised, a claimant (creditor) may commence a new proceeding in Cayman Islands based upon the foreign judgement. A judgement (unless contested successfully) from the court is subsequently obtained and enforced in Cayman Islands.
- Further, principles consistent with Model Law on Cross-Border Insolvency (MLCBI) are often followed. Grand Court adopts a co-operative approach and may (likely) give effect to the principles under MLCBI.

- PART XVII of the Companies Act (s 240 – 243) provides for International Cooperation. Under s 241, the Court is empowered to issue ancillary orders upon the application of a foreign representative. The criteria upon which the Court's discretion shall be exercised are set out in s 242 of the Companies Act.
- There is a time limitation period to recognition of foreign judgment – a six-year limitation period from the date of final decision of the court (judgment) applies.

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.

- While there is no statutory provision on insolvent trading (wrongful trading), a director may be held to be personally liable, if he had acted in a way that is in breach of fiduciary duty and not the best interest of the company.
- It is in the not interest of the company to place itself in a position where it is unable to pay its debt. If he does, he would be in breach of his fiduciary duty and the director can be held to be personally liable for the damages suffered: *Prospect Properties v Mc Neil* [1990 – 1991].
- Grand Court in *Prospect Properties v Mc Neil* held that there is a duty to have regard to creditors interest when nearing or in the "zone of insolvency". Therefore, when a debtor is nearing or in the "zone of insolvency", the company (directors) must have regard to the creditors interest.
- A court appointed liquidator may initiate a legal proceeding against the director who has failed his fiduciary duty.
- In the alternative, a creditor who has suffered financial losses arising from the director action to trade while insolvent, may be able to initiate a legal proceeding against the director personally and "claw back" the losses suffered.
- Besides insolvent trading (wrongful trading), a director may also be held liable for fraudulent trading under s 147 of the Companies Act. S 147 provides that "*If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors ... the liquidator may apply to the Court ... the Court may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are liable to make such contributions, if any, to the company's assets as the Court thinks proper*".
- Apply s 147 of the Companies Act to a business transaction - if a director knows that the company is not able to pay its debts (when nearing or in the zone of insolvency), but yet proceed to persuade or enter into a transaction with a creditor (supplier) which the company later cannot pay the creditor due to lack of cash flow, the director may be held to have committed a fraudulent trading, and be made to "*make such contributions, if any, to the company's assets as the Court thinks proper*".



- A director can also be held liable for disposing the asset of the company at an undervalue with an intent to defraud the creditors under section 146 of the Companies Act as he would be acting in breach of his fiduciary duty.

**Commented [BT15]:** 6 marks. Don't forget sections 99, 135 and 145.

**Question 3.2 [maximum 6 marks]**

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

- There is no statutory provision for the appointment of receiver or receiver and manager under a debenture. Unlike in the UK (Insolvency Act 1986), a receiver and manager (known as administrative receiver) may be appointed to take charge of assets subject to fixed and floating charge belonging to the debenture holder.
- However, while there is no statutory provision under the Companies Act for the appointment of a receiver over the company to take charge of its assets, a receiver may still be appointed if a security document provides for it. This is a (private) contractual right between the parties (usually the borrower and the lender) and the court has no role in it. The powers of the receiver usually include powers to take charge of the assets, sell the assets under the charge, and the proceeds of the sale be used to pay the creditor (usually a lender) as provided under the security document.
- While there is no statutory provision on receivership (except for SPC companies described below), Grand Court Rules (GCR) provides the Court with the power to appoint receivers. For example – (a) Order 30 of GCR allows the court to appoint receivers generally (b) Order 45 provides the court with the power to appoint receivers to enforce judgements and (c) Order 51 provides the court with the power to appoint receivers by way of equitable execution.
- While there is no statutory concept of receiver or receiver and manager appointment by way of debenture over the company (over the whole or substantially whole of the company's assets), the Companies Act provides for appointment of receivers for Cayman Islands Segregated Portfolio Company ("SPC").
- SPC are those companies where a single legal entity (company) may "house" the assets and liabilities under separate portfolios, each portfolio is legally separate from the other portfolios. In effect, the assets and liabilities are "ring-fenced" by the provision of the statute.
- If the Grand Court is satisfied that a particular portfolio is insolvent (inability to pay debts as they fall due), it may make a receivership order in relation to the insolvent portfolio: see s 224 and 225 of Companies Act.
- The role of the receiver is similar to that of a liquidator. However, a receivership order cannot be made if the company is in the process of being wound-up.
- During the period of receivership, "the functions and powers of the directors shall cease in respect of the business of ... the segregated portfolio ...": s 226(6)(b) of the Companies Act.
- Further, the "... receiver of a segregated portfolio ... shall have all the functions and powers of the directors in respect of ... segregated portfolio ...".

**Commented [BT16]:** 6 marks

- In short, on appointment of receiver, the power to manage the company (in relation to the segregated portfolio) rests with the receiver.
- The receivers can (may) play an effective role in insolvency in Cayman Islands.

**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 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:

- What action can Sparrow take to protect its interests?
- What action can Roger Jolly take to protect its interests?
- What action can the unpaid employees take against S & C?
- Does the Cayman Islands Court have jurisdiction over S & C?
- Is there a legal route via which S & C can protect itself and seek to restructure?
- Following on from (e) above, can the Rackham family continue play a part in running S & C during any restructuring process?
- What factors will the Cayman Islands court take into consideration before approving any proposed restructuring?

[a] What action can Sparrow take to protect its interests? |

- Sparrow may appoint a receiver to take charge of the four largest boats if the mortgage instrument provides for the receiver appointment and taking control of assets under mortgage.
- From the financial standpoint, Sparrow should determine the value of the four largest boats. If Sparrow is over secured and is able to sell the four largest boats, it may want to consider selling the boats to repay the loan outstanding.
- However, the loan was for USD 200 million and the mortgage over the four largest boats was for a sum of USD 80 million. On the basis that the balance was for working capital or other uses (not secured), the financial question to ask is whether Sparrow should force-sell the largest four boats, and consequently causing the entire business to be liquidated (possibly). Sparrow may not be better off financially if the company is liquidated.
- In many situations, it might be better to keep the business alive by giving S & C some "breathing space" and investigate the possibility of doing a reorganisation (restructuring) scheme. If reorganisation (restructuring) is pursued, Sparrow should work closely with S & C and exploring ways on how the debts could be restructured.
- S & C does not have working capital to continue with its business and there are signs that tourism market is starting to pick up again. If Sparrow is of the view that it will be financially better off by providing working capital to S&C with the view of rescuing the company from liquidation (cessation of the business), it can provide funding (working capital) to S & C so that the business may continue. The funding amount (under provisional liquidation) is likely to be treated as rescue financing (and be treated as costs and expenses of provisional liquidation and therefore ranks in priority). In the alternative, Sparrow may look into whether mortgages or charges could be created before providing the rescue financing.

Commented [BT17]: 2.5 marks

[b] What action can Roger Jolly take to protect its interests?

- 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. S & C is therefore insolvent (inability to pay debts as and when they fall due).
- If the 10 oversized party boats have not been delivered and Roger Jolly has not delivered them to S & C, Roger Jolly should insist on payment of the sums due under the contract before delivering them (assuming that Roger Jolly is entitled to withhold delivery under the agreement).
- Another option available to Roger Jolly is to petition to wind-up S & C on the ground that it is not able to pay its debts and seek the appointment of a provisional liquidator to preserve and protect the company's assets: s 104 of the Companies Act. Roger Jolly is entitled to make the application where there is a *prima facie* case for a making of winding order. On the facts, S & C inability to pay the awards seem clear and this should constitute meeting the *prima facie* test.
- From the financial standpoint, the question to ask is whether Roger Jolly will be better off by placing (petitioning) for S & C to be wound up, or whether it should work with S & C to work out a reorganisation (restructuring) scheme.

Commented [BT18]: 1 mark. 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.

- If the oversized party boats have not been completed, Roger Jolly would be faced with the predicament on whether to complete them. From the commercial standpoint, it would better for Roger Jolly to investigate the financial positions of S & C and work out whether reorganisation (restructuring) scheme is a better option. Incomplete oversized party boats may not be worth anything (or there may be no interests to purchase these boats by a third party).

[c] What action can the unpaid employees take against S & C?

- Amount owing to employees ranking in priority: see section 141 and Schedule 2 of the Companies Act.
- The employees can commence a legal proceeding against S & C for the debts owed, in the hope that they will be paid.
- However, if there a no money to pay preferential or unsecured debts (all monies available will be to pay only secured creditors), the employees may not want to take this option.
- Instead, the employees should consider giving S & C “breathing space” for reorganisation (restructuring) in the hope that the business can be kept alive, their debts paid, and their future employment secured.

Commented [BT19]: 2 marks

[d] Does the Cayman Islands Court have jurisdiction over S & C?

- S & C is a company registered in the Cayman Islands. Cayman Islands courts will have jurisdiction over S & C.
- On winding up matter, the Grand Court has jurisdiction to make winding order against a company incorporated in Cayman Islands: section 91 of the Companies Act.

Commented [BT20]: 1 mark.

[e] Is there a legal route via which S & C can protect itself and seek to restructure?

- S & C may restructure itself via a Scheme of Arrangement under s 86 of the Companies Act.
- If S & C needs “protection from legal proceedings” (to give it a breathing space while S & C) works out a scheme, S & C can consider making an application to place itself (the company) in provisional liquidation.
- If the application is on the basis that it needs protection (“breathing space”), the directors must explain to the Court why they believe that the company’s affairs can be turned around.
- When the company is placed in the provisional liquidation, there is a stay on all legal proceedings: s 97 Companies Act. Any person who wishes to commence or continue with the legal proceeding must obtain leave of court. This gives S & C breathing space to work out a restructuring scheme and sort out its financial affairs.

Commented [BT21]: 3 marks

[f] Following on from (e) above, can the Rackham family continue play a part in running S & C during any restructuring process?

Commented [BT22]: 1 mark

- Upon the appointment of provisional liquidators, the powers of the directors (Rackham family) ceases, generally.
- It is for the court to determine which powers should remain with the directors. It is possible that Grand Court may allow the management powers to largely remain with the directors, referred to as "light touch".
- The provisional liquidator will have an oversight of the management of the company.
- From the commercial and operational standpoint, "light touch" is useful if the management could still be trusted and the cause of financial distress is not the result of bad management, but a consequence of external factors beyond the control of the directors. On the facts, the financial distress appears to be caused by Covid-19; it is a pandemic that is beyond the control or expectation of the management.

[g] What factors will the Cayman Islands court take into consideration before approving any proposed restructuring?

- Under the Scheme of Arrangement, the court may sanction the scheme of arrangement (restructuring) if the necessary majorities are obtained.
- A majority in number (over 50%) and 75% in value of the creditors (or class of creditors, members or class of members), present and voting, in person or by proxy, at the creditors meeting vote in favour of the scheme.
- All classes must vote in favour of the scheme with the requisite majority. There is no concept of cross class clam down in Cayman Islands.
- A dissenting creditor (shareholder) has the right to oppose the scheme at the sanction stage. Therefore, it is not automatic that the court will sanction a scheme merely because the company demonstrate that it has achieved the requisite majority.
- In considering whether to sanction the scheme, the court will consider whether "an intelligent, honest person acting in is own interest" might reasonably approve it. It is likely that the court will inquire whether the company will be able to operate as a "going concern" after the restructuring and that the cause of insolvency has been addressed.

Commented [BT23]: 3 marks

**\* End of Assessment \***

**44.5 / 50**