



Commented [BT1]: 4 marks

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 [BT2]: 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 [BT3]: 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 [BT4]: 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 [BT5]: 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 [BT6]: 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 [BT7]: 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 [BT8]: 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 [BT9]: 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 [BT10]: 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 [BT11]: Correct. 1 mark.

Commented [BT12]: 10/10 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?

In the Cayman Islands, there are centrally maintained and publicly accessible registers for ownership and security interests over (i) real estates, (ii) ships, (iii) aircrafts, (iv) motor vehicles, and (v) intellectual properties. Creditors may therefore register their security interests over the five asset classes / categories, in the relevant register, and any 3rd party purchaser of such assets would be deemed to have knowledge of the registered security interests.

Commented [BT13]: 3 marks

There is no corresponding public register for other asset classes / categories, outside the five mentioned above. However, Section 54(1) of the Companies Act stipulates that every limited company in the Cayman Islands shall maintain "a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created and the names of the mortgagees or persons entitled to such charge." However, failure to register the mortgages or charges would not invalidate the security interests created.

Furthermore, Section 54(3) of the Companies Act stipulates that the register of mortgages and charges would be open for inspection by any creditor or member of the company. As such, for mortgages and charges over a debtor company's assets (including those assets without specific public register), a creditor may inspect and update the debtor company's register of mortgages and charges, to ensure that such creditor's security interests is properly registered, such that 3rd parties would be put on notice of the existence of such security interests.

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?

Yes, the Cayman Islands Grand Court does have power to assist and support foreign bankruptcy proceedings, and such power and authority is set forth in Part XVII of the Companies Act. The foreign bankruptcy proceedings that can be assisted or supported

Commented [BT14]: 4

includes "proceedings for the purpose of reorganising or rehabilitating an insolvent debtor" (Section 240 of the Companies Act).

Section 242 of the Companies Act stipulates that, in deciding whether it shall exercise its power to assist foreign bankruptcy proceedings, the Grand Court shall be guided "by matters which will best assure an economic and expeditious administration of the debtor's estate, consistent with;

- (a) the just treatment of all holders of claims against or interests in a debtor's estate wherever they may be domiciled;
- (b) the protection of claim holders in the 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 debtor's estate;
- (d) the distribution of the debtor's estate amongst creditors substantially in accordance with the order prescribed by Part V;
- (e) the recognition and enforcement of security interests created by the debtor;
- (f) the non-enforcement of foreign taxes, fines and penalties; and
- (g) comity".

The Cayman Islands however has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, although most of the Model Law's principles are honoured in the interests of comity.

Question 2.3 [maximum 3 marks]

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

The Foreign Judgement Reciprocal Enforcement Act (1996 Revision) (the "1996 Act") provides the statutory framework for the recognition and enforcement in the Cayman Islands, of foreign judgements originating from jurisdiction that assures substantial reciprocity of treatment for the recognition and enforcement of judgments from Cayman Islands courts. However, this 1996 Act is currently only applicable to judgments from the Superior Courts in Australia, and in order to be enforcement, such foreign judgments must be;

- (a) final;
- (b) a money judgment; and
- (c) issued after the 1996 Act was extended to the relevant foreign jurisdiction.

Additionally (and also more frequently), a foreign judgment can be enforced at common law, by way of launching a new action locally under the prevailing litigation regime in the Cayman Islands (the Grand Court Rules), predicated on the foreign judgment as an unsatisfied debt or other obligation. Once the local judgment is issued, it would benefit from the full range of domestic enforcement remedies available for local judgment in the Cayman Island. The requirement for such enforcement of foreign judgments would be that;

- (i) the foreign judgement is final;
- (ii) the foreign court had jurisdiction over the debtor;
- (iii) the foreign judgement was not obtained by fraud;
- (iv) the foreign judgment is not contrary to public policy of the Cayman Islands; and
- (v) the foreign judgment was not obtained contrary to the rules of natural justice.

For both enforcement under the 1996 Act and under the common law, there is a 6-year limitation period, from the date the foreign judgment is issued (or where there was an appeal, from the date of the last judgment).

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, 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.

There is no statutory provisions regarding insolvent trading in the Cayman Islands, however liquidators and creditors still have the options to pursue or claw-back past transactions or to hold former directors accountable, based on the following causes of action;

- (a) Property dispositions that were done after the deemed commencement of winding up.
Section 99 of the Companies Act stipulates that any disposition of the company's property, any transfer of shares, or alteration in the status of the company's members, that was made after the deemed commencement of the winding up, would be void if the winding up order is subsequently issued (unless the Court otherwise validates, which is likely to be the case for disposition made by company that was solvent and where the Court is satisfied that any "intelligent and honest" director acting reasonably would have carried out such disposal or transaction). In such event, the liquidator would be able to apply to request the return or repayment of the properties disposed.
- (b) Voidable preference.
Section 145 of the Companies Act stipulates that any conveyance or transfer of property, or charge thereon, and any payment made, in favour of any creditor at a time when the company is unable to pay its debts, with the dominant intention of giving such creditor a preference over the other creditors, shall be invalid if made within six months immediately preceding the commencement of a liquidation. Furthermore, where the beneficiary of such transaction was a related party, then it would be deemed to have been made with the intention of providing preference. Such disposals and payments can be set aside and the liquidator would be able to apply to the Grand Court to instruct the implicated creditor to return the payments or assets.
- (c) Dispositions made at undervalue.
Section 146 of the Companies Act stipulates that any disposition that was made at an undervalue, and was done with intention to defraud (to wilfully defeat an obligation owed to a creditor), would be voidable on application by the liquidator (provided that such application shall be made within 6 years of the disposal). The qualification of being an undervalue transaction is satisfied when the debtor did not receive any consideration, or received a consideration that in money amount or money's worth was significantly less than the value of the property disposed.
- (d) Fraudulent trading.
Section 147 of the Companies Act stipulates that a liquidator may apply to the Court to declare any transaction or business carried out by the debtor company as fraudulent, if it appears that such business has been carried on with intent to defraud creditors of the company or for any fraudulent purpose. The Court may then declare that any persons who were knowingly parties to such fraudulent trade to be liable to make such contributions to the company's assets as the Court thinks proper.
- (e) Common law breach of fiduciary duty.
Under the common law, directors can be held personally liable to the company for any losses they created in breach of their fiduciary duty to act in the best interests of the

company. Furthermore, the Grand Court held (in *Prospect Properties v McNeill*) that when a company is insolvent, the fiduciary duty of the directors shall include considerations for the interests of the creditors. As such, liquidators may (on behalf of the company) pursue former directors under common law for breach of their fiduciary duty. |

Commented [BT16]: 8 marks

Question 3.2 [maximum 6 marks]

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

Commented [BT17]: 6 marks

The roles of receivers for insolvency in general are not statutorily mentioned or provided for in the legislations, however the Grand Court Rules (the "GCR") elaborates the appointment of receivers by the Grand Court and the general duties of the receivers (Order 30 of the GCR). GCR also provides for the appointment of receivers for the purpose of enforcement of judgment or payment of monies (Order 45 of the GCR), the receivers appointment by way of equitable execution (Order 51 of the GCR), as well as the appointment of receivers for certain prescribed purpose of the administration of patient's properties (Order 80 of the GCR).

On the other hand, for specific type of legal entity that is established to operate portfolios of assets and liabilities where each portfolio is ring-fenced and separate from other portfolios (this type of legal entity is called the Segregated Portfolio Company, the "SPC"), there are statutory provisions that provide for the roles of receivers that are comparable to the roles of liquidators. For these SPCs, where the Court is satisfied that the assets of a particular portfolio is insufficient to cover or discharge the corresponding liabilities of the relevant portfolio, the Court may issue a receivership order in respect of such portfolio, and the appointed receiver shall then manage such portfolio for the purpose of;

- orderly winding down the business of the relevant portfolio; and
- distribution of the assets from the relevant portfolio to those that are entitled to such distributions.

Nonetheless, Cayman Islands receivers have had roles to play in insolvency scenarios (regardless of whether the debtor is an SPC entity), given that receivers can be appointed pursuant to contractual rights accorded to creditors in their security documentation. For instance, creditors holding fixed or floating charge may have the rights accorded to them in the security documents, to appoint receivers to administer and sell the charged assets in the event of the debtors' default. In such event, the receivers would be appointed without the involvement of the court, and such receivers are not supervised by the court and would owe their duties to the creditors. Receivership therefore provides an alternative, out-of-court, course of action for secured creditors.

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:

(a) What action can Sparrow take to protect its interests?

Sparrow has both secured and unsecured claims (of the USD 200 million loan extended by Sparrow to S & C, only USD 80 million is secured by mortgages over S & C's boats, thus leaving the remaining USD 120 million as unsecured exposure).

Sparrow has the right to enforce the mortgages it has, over S & C's boats, irrespective of whether there is any winding up proceeding against S & C. As S & C has defaulted on its payment obligation, Sparrow shall be able to exercise any right it has under the mortgage document, such as taking possession and exercising its power to sell the boats, or, as necessary and permissible under the mortgage document, appoint a receiver to realise the value of the boats. Any unsatisfied balance of Sparrow's secured loan would be treated as an unsecured balance.

For its unsecured loan (including the unsecured balance of its secured exposure not satisfied by the realised value of the mortgages), Sparrow shall be able to initiate liquidation proceedings against S & C, under the Companies Act. Sparrow has the option of submitting application to the Court for the appointment of a provisional liquidator, to preserve and protect the assets of S & C until official liquidators are appointed, in case there is a possibility to have a compromise or restructuring arrangement with S & C. Alternatively, Sparrow may directly apply for the winding up or liquidation of S & C.

The prescribed requirements under Section 93 of Companies Act for the winding up of S & C, that are relevant for Sparrow's case, would be that for Sparrow to have either;

- (i) served a demand notice at S & C's registered office, for the unpaid sum, and such demand had remained unpaid after 3-weeks;
- (ii) attempted execution of other process issued on a judgment, decree or order obtained in the Court in favour of Sparrow against S & C, and such execution had been returned unsatisfied in whole or in part; or
- (iii) proved to the satisfaction of the Court that the S & C is unable to pay its debts.

Alternatively, S & C can also be wound up if in the Court's opinion it is just and equitable for S & C to be wound up (as set forth in Section 92(e) of the Companies Act).

Commented [BT18]: Good. 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) What action can Roger Jolly take to protect its interests?

Roger Jolly's arbitral award from the ICC would benefit from the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), that was extended by the United Kingdom to be applicable in the Cayman Islands. Under the New York Convention, the ICC arbitral award would be recognised and enforceable in the Cayman Islands, subject only to limited and prescribed defences.

Commented [BT19]: 2 marks

However, given that S & C has no prospect to satisfy its obligation to Roger Jolly under the ICC arbitral award, Roger Jolly shall be able to initiate liquidation proceedings against S & C under the Companies Act. Similar to S & C's other unsecured creditors, Roger Jolly has the option of applying for the appointment of a provisional liquidator, where there is a possibility to have a compromise or restructuring arrangement with S & C, or alternatively, directly apply for the winding up or liquidation of S & C.

Similar to other unsecured creditors, the prescribed requirements under Section 93 of Companies Act for the winding up of S & C, that are relevant for Roger Jolly's claim, would be that for Roger Jolly to have either;

- (iv) served a demand notice at S & C's registered office, for the unpaid claim under the ICC arbitral award, and such demand had remained unpaid after 3-weeks;
- (v) attempted execution of other process issued on a judgment, decree or order obtained in the Court in favour of Roger Jolly against S & C, and such execution had been returned unsatisfied in whole or in part; or
- (vi) proved to the satisfaction of the Court that the S & C is unable to pay its debts.

Alternatively, S & C can also be wound up if in the Court's opinion it is just and equitable for S & C to be wound up (as set forth in Section 92(e) of the Companies Act).

(c) What action can the unpaid employees take against S & C?

By virtue of Section 141 of the Companies Act, in a liquidation, all unpaid salaries, wages, gratuities, that were accrued and due during the 4 months immediately preceding the commencement of the liquidation of a company, are preferential debts that shall be paid in priority to non-preferential debts (while all preferential debts would rank equally among themselves, and would abate proportionately if the assets under liquidation are not sufficient to cover the full amount of all preferential debts).

Commented [BT20]: 2 marks

As such, S & C's employees may initiate winding up or liquidation proceeding against S & C, given that their unpaid rights would give them the status of creditors. Following application from its employees, S & C can be wound up as S & C is unable to pay its debts (under Section 92(d) and 93(c) of the Companies Act) or for the reason that in the Court's opinion it is just and equitable for S & C to be wound up (under Section 92(e) of the Companies Act).

Following the appointment of the official liquidator, the available assets of S & C would be realised and distributed to its creditors pursuant to the prescribed order of priorities.

(d) Does the Cayman Islands Court have jurisdiction over S & C?

Yes, the Cayman Islands Court have jurisdiction over S & C, given that S & C is registered in the Cayman Islands.

Section 91 of the Companies Act stipulates that the Cayman Islands Court has jurisdiction to make winding up order in respect of companies incorporated in the Cayman Islands,

companies incorporated elsewhere but registered in the Cayman Island, as well as foreign companies which;

- (i) has property located in the Cayman Islands;
- (ii) is carrying on business in the Cayman Islands;
- (iii) is the general partner of a limited partnership; or
- (iv) is registered under Part IX of the Companies Act.

Commented [BT21]: 1 mark.

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

Yes, S & C may first seek moratorium protection by filing petition for a provisional liquidation. S & C would file application under Section 104(3) of the Companies Act, for a provisional liquidation, on the grounds that S & C is or is likely to become unable to pay its debts as they fall due, and that S & C intends to present a compromise or arrangement to its creditors. Once the provisional liquidator is appointed, S & C would benefit from a statutory moratorium provided in Section 97 of the Companies Act, whereby no suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against S & C, except with the leave of the Court and subject to such terms as the Court may impose.

Commented [BT22]: 3 marks

S & C would then follow up its provisional liquidation proceeding with a scheme of arrangement, to restructure its debts, as provided under Section 86 of the Companies Act. The procedure for securing approval under the scheme of arrangement is stipulated under Order 102 of the Grand Court Rules and Practice Direction 2/2010. There will be three stages of hearings and meetings involve in obtaining and securing the scheme of arrangement;

- (i) S & C would make application to the Court for an order to convene a meeting of creditors/members to discuss and approve the proposed scheme (the Convening Hearing);
- (ii) The creditor meetings are then convened and held as per the Court's order (the Scheme Meetings), and for the proposed scheme to be approved, it requires the support and favourable votes from a majority in number (which means more than 50%) representing at least 75% in value of creditors (or class of creditors, as the case may be); and
- (iii) Once approved, S & C would then make another application to the Court to sanction the scheme (the Sanctioning Hearing).

There is no cross-class cram down in the Cayman Islands, and as such for the scheme to be binding on all creditors, S & C would need supports and favourable votes from all class of creditors affected. However, any dissenting creditor in each class would be crammed down in the scheme, if the required approval threshold for such class is satisfied.

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

There is a possibility for the Rackham family (through S & C's existing management) to continue playing part in running S & C during the restructuring process. This is achieved by petitioning and requesting the Court to order and assert a 'light-touch' provisional liquidation process, whereby the Court would order that some or most of the managerial powers in running S & C would remain with its existing directors, subject to supervision and oversight of the provisional liquidator and the Grand Court. The Court would have the discretion in deciding which powers will remain with directors, and which powers will instead be vested in the provisional liquidator.

Commented [BT23]: 1 mark

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

Before sanctioning a proposed (and approved) scheme, the Court will consider whether Court's orders for convening the creditors meeting were adhered with, whether the majority fairly represents the class, and whether the scheme is such that an intelligent and honest member of the class convened would reasonably approve it.

*** End of Assessment ***

47.5 / 50

Commented [BT24]: 2.5 marks. 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.