



**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. Correct 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 may take security over immovable and movable assets in the Cayman Islands and pursuant to section 54 of the Companies Act, security interests are required to be entered in the register of mortgages and charges of the debtor company. Although the registration of a security interest in the company's register of mortgages and charges does not create priority, the register is open for inspection by any member or creditor of the company and as such registration puts third parties on notice of the existence of a creditor's security.

Additionally, there are public ownership registers for real estate, ships, aircraft, motor vehicles and intellectual property and a creditor can register his security interest in these registers. A third party purchaser of these assets will be deemed to have notice of any such security interest and will therefore acquire the asset subject to the secured creditor's interest.

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 the power to make orders in support of foreign insolvency proceedings pursuant to Part XVII of the Companies Act. Under section 240 of the Companies Act, foreign bankruptcy proceedings include proceedings for the purpose of reorganising or rehabilitating an insolvent debtor.

The Grand Court can provide a wide range of ancillary relief including:

- (a) Recognition of a foreign representative's right to act in the Cayman Islands on behalf of, or in the name of, a debtor;
- (b) Enjoining the commencement or staying the continuation of legal proceedings against the debtor;
- (c) Staying the enforcement of any judgment against a debtor;

- (d) Permitting the examination of a person in possession of information relating to the business or affairs of a debtor company or the production of documents to its foreign representative; and
- (e) Ordering a person to deliver up to a foreign representative, any property belonging to a debtor.

Before granting ancillary relief, pursuant to section 242 of the Companies Act, the Grand Court will consider which matters will best guarantee an economic and expeditious administration of the debtor's estate in accordance with:

- (a) The just treatment of all holders of claims in accordance with established principles of natural justice, irrespective of where they are domiciled;
- (b) The protection of claim holders in the Cayman Islands against prejudice and inconvenience in the processing of claims in foreign proceedings;
- (c) The prevention of preferential or fraudulent dispositions of property in the debtor's estate;
- (d) The distribution of the estate among creditors substantially in accordance with the order of priority prescribed by statute;
- (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.

Commented [BT13]: 4 marks

### Question 2.3 [maximum 3 marks]

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

A foreign judgment may be enforced in the Cayman Islands either through statute or at common law. However, a judgment will only be enforceable within six years from the date of the judgment or, when there have been appeals, the date of the last judgment.

The Foreign Judgments Reciprocal Enforcement Act (1996 Revision) enables the recognition and enforcement of foreign judgments in circumstances where the country from which the judgment originates guarantees substantial mutuality of treatment regarding the enforcement of Cayman Islands judgments. This Act is however limited and has only been extended to judgments from the Superior Courts of Australia. In order for a judgment to be recognised and enforced under this Act, the foreign judgment must be final, a money judgment and made after the Act was extended to the relevant foreign country.

However, most foreign judgments are usually enforced in the Cayman Islands at common law by commencing a new action in the Cayman Islands based upon the foreign judgment as an unsatisfied debt or other obligation. In order for a foreign judgment to be enforced at common law (i) the judgment must be final, (ii) the foreign court must have had jurisdiction over the debtor, (iii) the foreign judgment must not have been obtained by fraud, (iv) the foreign judgment must not be contrary to public policy of the Cayman Islands, and (v) the foreign judgment was not obtained contrary to the rules of natural justice.

Once a judgment is recognised in the Cayman Islands, the judgment debtor is able to utilise the full range of domestic enforcement remedies available under the Grand Court Rules.

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.

Although there is no statutory prohibition on insolvent trading in the Cayman Islands, under common law former directors of a company can be held personally liable to the company for any losses which they cause to the company if they fail to discharge their fiduciary duty to act in the best interests of the company. The directors’ duty to act in the best interests of the company requires them to have regard to the interests of its creditors. If a director fails to act in the best interests of the company and the company goes into official liquidation, the official liquidator can pursue claims against the directors on behalf of the company for breach of their fiduciary duty and seek to recover financial damages against the directors.

Additionally, although there is no statutory prohibition on insolvent trading, a liquidator of an insolvent company may seek financial damages against the former directors of the company and/or seek to “claw back” any payments that those directors should not have made. The options available to the liquidators are claims against the former directors in relation to: (i) avoidance of property dispositions, (ii) voidable preferences; (iii) dispositions at an undervalue and/or (iv) fraudulent trading.

Pursuant to section 99 of the Companies Act, any disposition of a company’s property after the deemed commencement of the winding-up will be void in the event that a winding-up order is subsequently made unless validated by the Grand Court. In such circumstances, a liquidator can apply to the Grand Court for relief to require the repayment of the funds or the return of the asset.

Under section 145 of the Companies Act, any payment or disposal of property to a creditor constitutes a voidable preference if it occurs in the 6 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 subject creditor a preference over other creditors. These requirements were considered by the Court of Appeal in *re Weaving Macro Fixed Income Fund Ltd (in Liquidation)*. A liquidator may apply to set aside such a payment or disposition and order the creditor to return the asset and prove in the liquidation for the amount of its claim.

Where a transaction in which property is disposed of at an undervalue and with the intention of wilfully defeating an obligation owed to a creditor, a liquidator can make an application under section 146 of the Companies Act to void the transaction. The relevant period for bringing such an application is within 6 years of the disposal and the creditor or liquidator must prove that there was an intent to defraud.

A liquidator may also apply for an order requiring any persons who were knowingly parties to the carrying on of the company’s business with intent to defraud creditors or for any fraudulent purposes, to make financial contributions to the company’s assets as the court deems fit. An application is made to the Court pursuant to section 147 of the Companies Act and this is a useful tool in the liquidator’s toolkit in order to hold directors personally liable for losses occasioned to companies.

In conclusion, although the Companies Act does not specifically provide a statutory prohibition on insolvent trading, there are a number of other methods and remedies available to creditors and/or liquidators to hold the former directors of an insolvent company financially liable and to “claw back” any payments or dispositions that those directors should not have made.

Commented [BT15]: 8 marks



**Question 3.2 [maximum 6 marks]**

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

Although secured creditors usually do not participate in insolvency proceedings, receivers may be appointed pursuant to the Grand Court Rules for the purposes of collecting money or to carry out some other act such as the execution of a contract or a document of title. Receivers therefore do have a role to play in the insolvency scenario.

Receivers are mainly used in insolvency proceedings as they offer an alternative course of action for secured creditors without having to go through the court. The security instruments usually provide for the appointment of a receiver in the event of default by the debtor and the rights and powers of the receiver are usually stipulated in the security instrument.

The receiver will act under the powers stipulated in the security instrument and these powers will usually include a power of sale. In the event of default by the debtor the receiver will generally realise the value of the security and repay the creditor the amount of its unpaid debt. Unlike a liquidator in winding up proceedings, the receiver is not supervised by the court and his primary duties are owed to the creditor rather than the debtor company.

Additionally, in relation to segregated portfolio companies, the Companies Act makes specific provision for the appointment of receivers and the granting of receivership orders. A segregated portfolio company is a company which is permitted to create separate portfolios for different assets and liabilities and each portfolio is protected and separated from the assets and liabilities contained in other portfolios. The Grand Court may make a receivership order in respect of a portfolio of a segregated portfolio company if it is satisfied that the segregated portfolio's assets in that particular portfolio are likely to be insufficient to satisfy the claims of creditors in respect of that portfolio. A receivership order will direct that the business and segregated portfolio assets of, or attributable to, a segregated portfolio must be managed by a receiver specified in the order for the purposes of (i) the orderly closing down of the business of, or attributable to, the segregated portfolio and (ii) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse to them. Once an application has been made for a receivership order, no claims may be commenced against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made without leave of the court; therefore the application for a receivership order sort of operates as a stay on claims. Additionally, similarly, to a liquidator in a winding up, during the period of the receivership order, the receiver relieves the directors of their functions and powers in relation to the business of that particular segregated portfolio.

In light of the above, although receivers appointed by the secured creditors do not generally play a main role in the insolvency process, there are scenarios in which a receiver may prove beneficial and aid in the insolvency process.

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 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 is a secured creditor for \$80 million of the \$200 million debt owed to it by S & C pursuant to the loan agreement. As a result, Sparrow may consider appointing a receiver over the secured assets which are 4 of S & C's party boats. The receiver would be appointed pursuant to the terms of the mortgage and assuming that the mortgage is in standard terms, will likely have a power of sale enabling he or she to sell the 4 party boats and pay over the proceeds to Sparrow.

Additionally, as only \$80 million of the \$200 million loan is secured, Sparrow may also consider bringing a winding up petition to seek to recover the excess outstanding debt from Sparrow on the basis that S & C is unable to pay its debts within the meaning of section 93 of the Companies Act. Further, there is also a possibility that an application for winding up may be brought by another creditor in which case, Sparrow can also submit a proof of debt in the liquidation for the outstanding balance under the loan that was not recovered by the receiver.

(b) What action can Roger Jolly take to protect its interests?

Roger Jolly may consider the following two options: (i) applying to recognise and enforce the ICC award in the Cayman Islands or (ii) bringing an application to wind up S & C on the basis that the company is unable to pay its debts within the meaning of section 93 of the Companies Act.

In terms of recognising and enforcing the ICC award in the Cayman Islands, Roger Jolly would need to bring a common law action in the Cayman Islands based upon the ICC award being an unsatisfied debt. In order for the ICC award to be recognised and enforced at common law (i) the judgment must be final, (ii) the foreign court must have had jurisdiction over the debtor, (iii) the foreign judgment must not have been obtained by fraud, (iv) the foreign judgment must not be contrary to public policy of the Cayman Islands, and (v) the foreign judgment was not obtained contrary to the rules of natural justice. Once the award is recognised in the Cayman Islands, Roger Jolly may utilise the full range of domestic enforcement remedies available under the Grand Court Rules.

**Commented [BT17]:** 1.5 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. It 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.

With regards to an application to wind up S & C, Roger Jolly can make an application to the Court in the Cayman Islands to wind up the company on the basis that it is unable to pay its debts within the meaning of section 93 of the Companies Act. Similar to Sparrow, if an application for winding up of S & C is brought by another creditor, Roger Jolly can submit the ICC award as a proof of debt in the liquidation proceedings.

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

The unpaid employees may consider bringing an application to wind up S & C on the basis that they are creditors and the company is unable to pay its debts (ie, their salaries) within the meaning of section 93 of the Companies Act. Alternatively, as the company has other creditors, in order to save on costs, as sums due to employees are treated as a preferential debt pursuant to section 141 of the Companies Act, the employees may simply wait for another creditor to bring an application to wind up the company and claim in the liquidation. Preferential debts such as sums due to employees will be paid in priority to all other debts save for liquidation expenses and will be paid equally with other preferential debts.

**Commented [BT18]:** 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\$0m as part of the official liquidation.

**Commented [BT19]:** 2 marks

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

The Grand Court of the Cayman Islands has jurisdiction to make (winding up) orders in respect of companies which are, amongst other things, incorporated in the Cayman Islands. S & C is incorporated in the Cayman Islands and therefore the Grand Court has jurisdiction over S & C.

**Commented [BT20]:** 1 mark.

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

In order to secure protection from its creditors seeking to enforce while S & C restructures, S & C may consider making an application to the Grand Court under section 104 of the Companies Act for the appointment of "light touch" provisional liquidators on the basis that the company intends to present a compromise or arrangement to its creditors and to take advantage of the stay provided by the Companies Act upon the appointment of a liquidator. In order for the Grand Court to appoint a provisional liquidator on this basis, the directors of S & C will need to explain to the Court why they believe the company's affairs can be turned around by a scheme of arrangement. S & C may then enter into a scheme of arrangement with its creditors pursuant to section 86 of the Companies Act in order to protect itself and seek to restructure with the "light touch" provisional liquidators and stay in place.

**Commented [BT21]:** 2.5 marks.

Section 97(1) provides an automatic moratorium on proceedings against S&C and enforcement of judgments etc. against S&C upon the appointment of the provisional liquidator. It is this moratorium which could give S&C the protection it needs while it seeks to restructure.

S & C will then need to ensure that it follows the requisite procedure for approval of the scheme of arrangement by its creditors. This includes the filing of an application to the Grand Court for the calling of a meeting of the creditors for the purpose of approving the scheme. At the meeting of the creditors, S & C will need to secure a majority in number (ie over 50%) representing at least 75% in value of the creditors (or class of creditors) present and voting either in person or by proxy at the meeting who must agree to the arrangement. Assuming that S & C is able to secure the necessary creditor support, S & C will then need to apply to the court for sanction of the scheme to ensure that it is binding on all the creditors, the company, its members and contributories.

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

Assuming that S & C enters into provisional liquidation for the purpose of entering into a scheme of arrangement, the Grand Court will determine which powers will remain with the directors and which will be vested in the provisional liquidators. In cases such as these where a company enters into provisional liquidation for the purpose of restructuring or entering into a scheme of arrangement, generally, the directors and management will remain in place and continue to manage the company. Therefore, it is likely that the Rackham family would continue playing a part in running S & C during the restructuring process.

Commented [BT22]: 1 mark.

However, in the event S & C proposes to try to enter into a scheme of arrangement without going into provisional liquidation, existing management will continue to manage the company, therefore, the Rackham family will continue to be in control.

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

The Grand Court will consider whether the scheme of arrangement has received the necessary creditor support before sanctioning the proposed restructuring. As stated above, S & C will need to secure a majority in number (ie over 50%) representing at least 75% in value of the creditors (or class of creditors) present and voting either in person or by proxy at the meeting who must agree to the arrangement. Additionally, the Court will also consider whether the majority of the creditors fairly represent the class, whether the arrangement (having regard to the alternatives) is such that an intelligent, honest member of the class convened, acting in his own interest, might reasonably approve it. The Court will not approve the scheme unless it is satisfied that it is fair.

Commented [BT23]: 2.5

**\* End of Assessment \***

**44.5 / 50**