



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: 202223-336.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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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 9 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 an application for a restructuring officer is filed:

- (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

Question 1.2

Which of the following is not available to a debtor company in the Cayman Islands?

- (a) Appointment of a receiver.**
- (b) Court-supervised liquidation.**
- (c) Official liquidation.**
- (d) Deed of Company Arrangement.**

Commented [BT2]: Correct

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.**

Commented [BT3]: Correct

**(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.**

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

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.**

Commented [BT5]: Correct

**(d) Is not permitted to remain in control of the company.**

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

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

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.**

Commented [BT8]: Correct

**(d) Sums due to depositors (if the company is a bank).**

**(e) Unsecured debts which are not subject to subordination agreements.**

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.**

Commented [BT9]: Correct

**(e) The company is carrying on regulated business in the Cayman Islands without a license.**

Question 1.10

Select the correct answer.

**In order for a proposed creditor 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

Commented [BT11]: 10/10

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?**

**Creditors of Cayman Islands debtors can take security over assets of a debtor, giving it a direct claim to the assets in order to meet its debts in priority to ordinary unsecured creditors. Typical forms of security include:**

- Fixed charge: **Typically taken over property such as land and buildings, plant and equipment and vehicles often referred to as “immovable property” that is not bought and sold in the usual course of business. In fact, the debtor cannot sell the property without the creditor’s consent. The secured creditor’s fixed charge enables them to enforce against the property by taking possession or appointing a receiver to secure and realise the property and apply the proceeds to its debt in the event of default.**
- Floating charge: **Typically taken over “movable property” such as accounts receivable and inventory which will change on a regular basis in the normal course of business. In the event of default, the charge crystallises over the floating charge assets over which the secured creditor can enforce its charge, realise the property and apply the proceeds to its secured debt.**
- Mortgage: **Typically taken over real estate property (but also other specialised assets such as ships and aircraft), entered into by Deed and registered on the Register of Lands (or other relevant register). There are typical two types (i) legal mortgage where the lender holds legal title to the property whilst the borrower retains possession of the property until the secured debt is discharged and (ii) equitable mortgage where the borrower transfers the beneficial or equitable interest in the property to the lender whilst the borrower retains possession until the debt is discharged. A mortgage will confer rights upon the lender to enforce the mortgage by taking possession or appointing an agent to take possession of the property and apply the proceeds to the secured debt in the event of default.**
- Pledge/bailment/lien: **Typically involve a creditor holding an asset or assets (whether actual or constructive) as security for repayment of an obligation. These types of security arrangements typically arise out of contract but can also arise out of statute or common law (for example, warehouseman’s lien, solicitor’s lien etc).**

**Commented [BT12]:** Unfortunately, candidate has not properly read the question. This was about 5.3 of the Guidance Text. 1/2 mark only.

**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?**

**In general, the Grand Court tends to adopt a co-operative approach to support comity however it is not a party to the UNCITRAL Model Law.**



**Part XVII (Sections 240 to 243) of the *Companies Act (2023 Revision)* (“the Act”) provides the legislative grounds for the Grand Court of the Cayman Islands (“the Court”) to make orders in support of foreign bankruptcy proceedings.**

**Section 241(1) of the Act provides the relief available to a foreign representative from the Court:**

- **Recognising the right of a foreign representative to act on behalf of or in the name of a debtor;**
- **Enjoining the commencement or staying the continuation of legal proceedings against a debtor;**
- **Staying the enforcement of any judgment against a debtor;**
- **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 representative; and**
- **Ordering the turnover to a foreign representative of any property belonging to a debtor.**

**Section 242 of the Act provides that the Court may exercise its discretion to make an ancillary order which will best support the economic and expeditious administration of the debtor’s estate, consistent with:**

- **Just treatment of creditors no matter where they are domiciled;**
- **The protection of creditors against prejudice and inconvenience of filing claims in a foreign bankruptcy;**
- **To support the prevention of preferential and/or fraudulent dispositions from the debtor’s estate;**
- **The distribution of assets amongst creditors in accordance with the order of priorities set out in Part V of the Act;**
- **The recognition and enforcement of security interests created by the debtor;**
- **The non-enforcement of foreign taxes, fines and penalties; and**
- **Comity to support the Cayman Islands as being a jurisdiction supportive of foreign business.**

**The *Foreign Bankruptcy Proceedings (International Co-operation) Rules 2018* provides further details around the matters to be dealt with in foreign recognition applications under Part XVII of the Act.**

**Cayman Islands legislation and Court procedures do not provide for protocols as between the Court and foreign courts. However, it does support Official Liquidators in the Cayman Islands entering into international protocols and allocating responsibilities between the Official Liquidator and foreign officeholder to (1) support the orderly administration of an official liquidation, (2) avoid duplication of work and (3) avoid conflicts of interests between the Official Liquidator and foreign representative.**

Commented [BT13]: 4 marks

Question 2.3 [maximum 3 marks]

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

*The recognition of foreign judgements is most commonly dealt with under common law. This can be undertaken in the Court by commencing a new proceeding under The Grand Court Rules which, under common law, require the following:*

- *The judgement is final;*
- *The foreign court had jurisdiction over the debtor;*
- *The foreign judgement was not obtained by fraud;*
- *The foreign judgement is not contrary with Cayman Islands public policy;*
- *The foreign judgement was not obtained contrary to the rules of natural justice.*

*Whilst the Cayman Islands has enacted the **Foreign Judgements Reciprocal Enforcement Act (1996 Revision)** to support recognition of foreign judgements it has been applied in limited circumstances. Other than the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Cayman Islands is not party to any treaties or similar agreements which support the recognition of foreign judgements.*

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.***

*A court appointed liquidator of an insolvent company has the following provisions available to them in order to seek damages or claw back payments from directors:*

- *Voidable preferences under Section 145 of the Act which allows a Liquidator to set aside transactions which:*
  - *Took place when the company was unable to pay its debts*
  - *Took place in the 6 month period before the commencement of the liquidation; and*
  - *The dominant intention of the company's directors was to give the applicable creditor a preference (putting it in a better position than it otherwise would have been) over other creditors. This aspect is deemed to have been met when the payment is made to a related party, such as a director but also other party who can exercise significant influence.*

*Voidable preferences often occur where creditors exercise some influence over the debt, either as a related party or a creditor who is, or is seen to be, critical to ongoing operations. The creditor may be come more "in the know" than other creditors and use this knowledge to demand payment despite the debtor's vulnerability.*

- *Undervalued transactions under Section 146 of the Act which allows a Liquidator to set aside transactions which:
  - *Are dispositions of the company's property made undervalue (i.e. the consideration received was significantly less than the value of the property*
  - *There is an intent to defeat creditors (referred to as an intent to defraud).**Undervalue transactions may occur where a debtor considers the business is no longer viable and takes steps to transfer its assets to another or new entity and leave behind its debts with no or limited assets.**
  
- *Fraudulent trading under Section 147 of the Act which allows a Liquidator to set aside transactions where the company was carried on with the intent to defraud creditors of the company or for any fraudulent purpose. Knowledge that the company is unable to pay its debts but the director incurring new debts which they know cannot be paid is likely able to be argued under this provision.*
  
- *As the Cayman Islands law is often derived from English common law (unless modified by Cayman Islands statute), it is likely that other claims in equity would also be available to a court appointed liquidator such "dishonest assistance" and "knowing receipt" where directors (but also other stakeholder that owe a fiduciary duty to the company) can be held liable for the misappropriation of assets.*

*By "voiding" or "setting aside" the transactions which were subject of the circumstances described above, the intention is to return the company to the position it would have been had the transaction or actions not been taken and provide a return to all creditors in a fair and equitable manner.*

**Question 3.2 [maximum 6 marks]**

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

*Whilst receiverships in the Cayman Islands are less frequently observed than Cayman Islands liquidations or than Receiverships in many other jurisdictions, they still form an important part of the credit and legal environment. For secured creditors it remains an important form of relief without which availability of credit in the Cayman Islands would be much more restricted and or at a much higher price. Secured creditors require ongoing access to relief where, upon default, they can take steps (without the*

**Commented [BT15]:** 8/9. Reference to case law would have secured full marks.

*time and cost of going to the Court) to recover their collateral to be applied against their debt secured by fixed/floating charge, mortgage or other security arrangement.*

*Receiverships are also commonly used in order to take control of segregated portfolio companies ("SPCs"), or their individual segregated portfolios, which provides the majority of coverage around Receiverships in the Act (Sections 224-228). The nature of an SPC, as an entity with multiple individual "cells" segregated from the other cells and the SPC itself, make it important to be able to use an insolvency procedure that can be applied to certain cells and not over the entire SPC (Section 224(1) of the Act). An inability to deal with the insolvency of one cell as opposed to another would significantly impact the purpose and objectives of SPCs.*

*The Court has also ordered the appoint of receivers and may do so in circumstances where an intervention is required however a liquidation or provisional liquidation may not be appropriate or there are other impediments to a liquidation or provisional liquidation being ordered.*

**Commented [BT16]:** Good. A little more detail would have secured full marks. 5/6

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

***Vegan Patty Inc (VP) is a company registered in the Cayman Islands. It operates a fleet of party boats cross central America and the Caribbean. It was founded by the wealthy Rackham family over 40 years ago. The family continues to own and manage the business.***

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

***VP has only managed to stay afloat for the past three years with the assistance of a very large loan from Blue Iguana Treasure Bank (BITB). BITB has lent VP USD 300 million (USD 180 million of which is secured by a mortgage over four of VP's largest party boats). The loan facility has now been exhausted. VP has also fallen behind on the monthly repayments to BITB.***

***This year, the tourism market picked up again; however, VP 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 rum it needs to keep the tourist customers suitably refreshed.***

***To make matters worse, VP commissioned Johnson & Boris Ltd (JoBo) to build seven more oversized party boats only a few months before the pandemic struck. VP 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***

**VP must pay damages of USD 50 million to JoBo within 45 days. VP 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 BITB take to protect its interests?**

*BITB has security over four of the largest party boats to the extent of USD 180 million however its total debt is USD 300 million (USD 120 million exposure). Whilst BITB may be able to enforce its security given the default that course of action may not be in BITB's best interests as:*

- *This would effectively end VP's business and BITB would face a significant shortfall on its security (at least USD 120 million) with limited or no prospect of the balance being repaid by VP*
- *BITB's best interests may be better served by VP taking advantage of the uptick in the tourism sector, returning to financial viability and resuming repayment of its loans.*

*However, BITB faces the risk that JoBo may eventually seek to wind up VP for the USD 50 million arbitral award. It is likely that the Cayman Islands Court would support the enforcement of the foreign judgement (see below at b).*

*BITB should be using its position as secured creditor, and ultimately the threat of receivership (where everyone receives no return), to:*

- *Procure detailed current and forecast financial information,*
- *Obtain details of its negotiations with JoBo and any other creditors; and*
- *Assess management's skill and desire to work through a restructure.*

**Using this information BITB should be seeking to model scenarios where:**

- (a) BITB is able to support the restructure of the VP business; or**
- (b) BITB appoint a receiver and seek to recover whatever it can.**

(a) Restructure

**The restructure scenario will require:**

- 1. Creditors being willing to support the business by receiving less than the face value of their debts;**
- 2. Assets and/or funding likely being accessed to make payments to keep the business operating and reduce some of the pre-existing debts**
- 3. Management being sufficiently skilled and resilient to go through a restructure process.**

*BITB may seek for VP's management to propose a restructure of VP through the appointment of a restructuring officer and/or scheme of arrangement which involves:*

- 1. The receipt of funding and/or asset realisations*
- 2. A potential downsizing of the fleet and/or operations to support future viability and release cash to creditors*
- 3. Priority unsecured creditors being paid to support continuation of operations*
- 4. Other unsecured creditors and JoBo receiving a return (likely to be relatively small in comparison to face value but better than they would have received in a receivership and liquidation scenario)*
- 5. BITB continuing to hold security over the assets of VP. If any "new monies" are lent as part of the restructure, ensuring those funds are secured.*

*With BITB continuing to hold its security and potentially increase the proportion of its security over VP's assets, BITB should continue to ensure that if the restructure starts to unravel that it maintains its ability to step in and appoint receivers.*

Potential receivership

*If creditors are unwilling to support, sources of funding or asset realisations are unavailable or existing management does not have the skill or resilience to see out a restructure, BITB may simply enforce its security and then seeking to recover its short fall as against the guarantors. As noted above, this may result in a shortfall of USD 120 million or more and likely no return to other creditors.*

Commented [BT17]: 3

***(b) What action can JoBo take to protect its interests?***

*As noted above, JoBo will need to apply to the Court to have its foreign judgement enforced in the Cayman Islands. It would appear that the Court would grant the Order given:*

- Whilst the 45 day timeframe to pay the arbitral award may indicate further finality, it would appear that the order was final on the date it was made;*
- It would appear that the International Chamber of Commerce International Court of Arbitration would have jurisdiction over the debtor*
- There is no indication that the foreign judgement was obtained by fraud*
- There is no indication that the foreign judgement is contrary to public policy of the Cayman Islands*
- There is no indication that the foreign judgment was obtained contrary to the rules of natural justice.*

*Upon obtaining recognition of the foreign judgement, JoBo would likely be the largest unsecured creditor of VP. Whilst it would be unable to improve its position ahead of BITB, it would have negotiation power in any restructure as its vote would likely carry the value required (75% or more). Accordingly, it could seek to negotiate*

*better outcomes for itself under a scheme of arrangement seeking to obtain a higher rate of return otherwise it would vote against.*

*JoBo will be able to further strengthen its leverage and/or ultimately bring VP to its end by serving a demand on VP and if it is not paid within 21 days, JoBo has grounds for making a winding up petition as a creditor on the grounds that VP is unable to pay its debts. As a petitioning creditor, JoBo may be able to recover its debts incurred in making the winding up petition but other than influencing the choice of Liquidator would likely have limited other benefit to taking this action given VP's financial position.*

*If JoBo will need to consider that if it uses its leverage in this way and procures payments from VP but VP ultimately ends up going into liquidation, a Liquidator may have claims against JoBo for voidable preferences under Section 145 of the Act which allows a Liquidator to set aside transactions (i.e. JoBo would have to pay the money back) if:*

- *The payment(s) took place when VP was unable to pay its debts which appears to be the current case*
- *The payment(s) took place in the 6 month period before the commencement of the liquidation; and*
- *The dominant intention of the company's directors was to give the applicable creditor a preference (putting it in a better position than it otherwise would have been) over other creditors.*

*Voidable preferences would appear to be a high risk in the current scenario however JoBo may form the view that it is better off receiving whatever it can and deal with the potential voidable preferences claim in the future if it ever arises.*

Commented [BT18]: 3

**(c) What action can the unpaid employees take against VP?**

*Unpaid employees may be able to exert leverage to have their unpaid debts paid up by VP given VP would be unable to continue without its workforce. Any significant interruption to its business would quickly dissipate any remaining viability of VP's business and cause Receivers and Liquidators to be appointed. The employees' debts are preferential under Section 141 and Schedule 2 of the Act however the likelihood of insufficient assets being available and delay would likely make this outcome unattractive to the employees.*

Commented [BT19]: 1.5

*Employees could also petition the Court to wind up VP however, again, this is likely to be an unattractive course of action due to the potential for the petitioning costs and unpaid debts to remain unpaid.*

*In any restructure, the employees should seek to exert pressure on BITB and management to accelerate and elevate the repayment of their debts as BITB and*

management have significant exposure and interests in seeing VP return to viability which is likely to be more difficult if VP lost its current workforce.

**(d) Does the Cayman Islands Court have jurisdiction over VP?**

Pursuant to Section 91 of the Act, the Court has jurisdiction over VP as it is a company incorporated in the Cayman Islands.

Commented [BT20]: 1.5

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

VP could seek to protect itself and seek to restructure its business by petitioning the Court to appoint a Restructuring Officer under Part V of the Act. A petition can be presenting where VP is or is likely to become unable to pay its debts and where it intends to present a compromise or arrangement to its creditors either pursuant to the Act, the law of a foreign country or by way of consensual restructuring (Section 91(1) of the Act).

The protection is provided upon filing the petition to appoint a restructuring office where a stay of proceedings is commenced (other than against criminal proceedings) and continues after the appointment of a restructuring officers is made until discharged (Section 91G(1) of the Act).

In this regarding, the filing of a Restructuring Officer petition would protect VP against JoBo and other unsecured creditors (worldwide) from commencing proceedings and seeking a winding up of VP. It would not however prevent BITB from enforcing its security and appointing a receiver (Section 91H of the Act).

Previously a provisional liquidation under Section 104(2) of the Act was used as a platform to restructure but it likely that this is no longer relevant since the introductions of the Restructuring Officer regime in 2022.

Commented [BT21]: 3

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

Pursuant to Section 91B(5)(b) and (c) of the Act, the Court shall set out in its order the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.

Accordingly, there is no impediment to the petition being submitted seeking the Rackham family to continue to play its part in running VP and ultimately it will be up to the Court as to whether it is appropriate in the circumstances.

Commented [BT22]: 1



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

*The Court will continue to take into consideration the same factors in approving a proposed restructuring as it did prior to the introduction of the Restructuring Officer regime such as whether creditors have had the information and opportunity to consider the proposal, it has the necessary creditor support and the classes of creditors are fairly represented and whether it is a proposal that an intelligent honest member, acting in their own interests might reasonably approve.*

Commented [BT23]: 2

Commented [BT24]: 15

\* End of Assessment \*

Commented [BT25]: TOTAL 45.5 OUT OF 50