



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).**
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- 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**

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- 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]: Incorrect. Answer was (a)

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]: Incorrect. Answer was (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.

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.

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.

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.*

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.*

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.

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.

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 [BT3]: 8/10

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?

All references to Companies Act below are to the Companies Act (2022 Revision) (as amended)

Yes, it's possible for a creditor to register its security over an asset (such as real estate, ships, aircrafts motor vehicles and intellectual property) in the Cayman Islands. This can be done by entering the creditor's name into the ownership registers of mortgages and charges as a holder of any of the above assets and one may deposit the certificate showing such charge over the assets although not mandatory.

The effect of registration is a third-party purchaser of any charged assets has given notice of such security interest and will only acquire such asset subject to the secured creditor's interest.¹ The secured creditor also obtains priority status in comparison to other non-registered creditors for repayment should the company find itself in financial difficulties.

Although a centrally maintained register is kept for the aforementioned assets it should be noted that no public security registration regime and no publicly searchable registers exists for other types of assets. So, a creditor would have to conduct its own investigation in relation to any encumbrances over an asset and ensure it has sufficient control over the asset to prevent third parties from purchasing the assets.

Under section 54 of the Companies Act security interests is enter in the debtor company's register of mortgages and charges although this doesn't in itself create priority, but it is open for inspection by any creditor and puts third-parties on notice of existing securities.²

Commented [BT4]: 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?

Yes, the Cayman Islands Grand Court does have the power to assist or make orders in support of foreign bankruptcy proceedings under Part XVII of the Companies Act. Various forms of foreign bankruptcy proceeding assistance that can be granted include assistance in gathering and preserving assets as well as recognition of foreign bankruptcy orders. Changes made to the Foreign Bankruptcy Proceedings (International Cooperation Rules) 2018 in February 2018 made it possible for a foreign representative to be distinguished and pursue assistance from the Grand Court in the Cayman Islands.

Despite not implementing the UNCITRAL Model Law on Cross-Border Insolvency, the Grand Court follows most principles from the Model law when assisting with proceedings in other jurisdictions in the interests of comity. Also, under section 242 of the Companies Act, the court has the discretion on whether to assist foreign proceedings or make such order which will best assure an economic and expeditious administration of the debtor's estate so long as the criteria is satisfied (ie. Just treatment of all holders of claims against debtor, protection of local claim holders against prejudice of processing claims in foreign proceedings, recognition and enforcement of security interests and prevention of preferential claims, etc.). There are no threshold tests to satisfy from the Grand Court to grant assistance but the onus is on the foreign representative to show the Grand Court "it's appropriate for the court to exercise its

Commented [BT5]: This is the relevant point. 3 marks.

¹ Pg 11

² Ibid.

discretion by granting the relief³ sought by the representative which usually justifies its use in certain circumstances. These circumstances⁴ for relief may include situations such as:

- Recognition of foreign proceedings/foreign representative acting on behalf of the debtor company;
- Assistance with foreign officeholders;
- cooperation with foreign courts;
- Modification of automatic stay – staying any enforcement proceedings against the debtor;
- Ordering the production of documents or examination of affairs in relation to the company;
- Cross-border insolvency proceedings

To seek assistance from the Grand Court an application must be submitted along with relevant supporting documents and evidence. After consideration, the Grand Court will then determine whether to grant the requested assistance/recognition or relevant order based on factors such as the relevant legislation and the principles of international cooperation to ensure an effective winding-up and maximise on protection of creditors' interests (ie. Staying/coordinating proceedings, recognising foreign representative's rights, ordering examinations, etc.). It will also take into consideration treating all creditors fairly. Other protocols that'll allow Cayman courts to enter into international protocols with foreign office holders to assist foreign proceedings are laid out in The Companies Winding-up rules O21.

Question 2.3 [maximum 3 marks]

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

Grand Court appears to be quite co-operative while ensuring an effective winding-up and protection of the creditors' interests. Under the Foreign Judgments Reciprocal Enforcement Act 1996, there is provision for recognising or enforcing foreign judgments but this is based on reciprocity (giving treatment of Cayman Island judgments in the requesting jurisdiction) of states whereby an action would have to be commenced in Cayman Islands based off that foreign judgment as an unsatisfied debt or obligation.⁵ However, this only extends to Australian judgments of the Superior Courts and its external territories under Order 71 of the Grand Court Rules and the Reciprocal Enforcement Act. In order to enforce a foreign judgment it must be final, a monetary one and made after the 199 Act extended to this particular country.⁶ The Cayman Islands has not committed to bilateral treaties for the reciprocal enforcement of foreign judgments. However, the Foreign Judgments Reciprocal Enforcement Act (1996 Revision) (the "Reciprocal Enforcement Act") but main the common law principles govern the recognition and enforcement of judgments granted by the courts of certain foreign jurisdictions as ordered by the Governor.

³ Benjamin Toner QC, Module 5B Guidance Text, Cayman Islands 2022/2023, p 50

⁴ Ibid. p51

⁵ Ibid. p54

⁶ Ibid.

Any other foreign judgment, irrespective of jurisdiction, is recognised by following the well-trodden path of the common law principles; whether that be monetary or non-monetary judgments.⁷ This assistance from the court is based off the principle of comity but it should be noted that the court will have regards for factors like: public policy, fairness and mutuality before deciding it could be of assistance to foreign jurisdictions.⁸ The mandatory common law requirements⁹ for assistance are as following:

- **The Judgment granted is final;**
- **Foreign court had jurisdiction over the debtor;**
- **Foreign judgement was not illegally obtained - e.g. by fraud;**
- **Foreign judgment is not in conflict with the public policy of the Cayman islands;**
and
- **Foreign judgment was not obtained in conflict with the rules of natural justice.**

The process for seeking the enforcement of a foreign court judgment or award at common law is fairly straightforward, simply involving the issuing of a writ of summons before the Financial Services Division in the Grand Court of the Cayman Islands (the "Grand Court") seeking an order in terms identical to the judgment granted by the foreign court. Once this and the requirements listed above have been satisfied, any order granted by the Cayman Court offers the full range of domestic enforcement remedies available to the applicant.¹⁰ However, one has to be mindful of the six year limitation period that applies to application judgments for both the 1996 Act and common law enforcement.

To enforce a foreign judgment, the judgement creditor must apply for its registration in the Grand Court by submitting a certified copy of the judgment and an affidavit verifying the judgement as well as any other supporting documents required by the Grand Court.

In the Cayman Islands, most foreign judgments are enforced by using the common law principles, ie. Starting a claim based on foreign judgment and then seeking summary judgment on that claim. GCR Order 45 sets out the practices and procedures for enforcement of judgments generally.

Once a foreign judgment meets the aforementioned conditions an application for recognition and enforcement may be made to the Grand Court – with the statute of limitation being ~~grand court~~ within 6 years of the date the judgment was granted.

Commented [BT6]: 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

⁷ Bandone v Sol Properties 2008 CILR 301

⁸ Ibid.; Benjamin Toner QC, Module 5B Guidance Text, Cayman Islands 2022/2023, p54

⁹ Ibid.

¹⁰ O. 45 of the Grand Court Rules

directors and / or by seeking to “claw back” any payments that those directors should not have made? If so, please explain the possible options.

Under sections 99 (disposition of property post-commencement), dispositions of the company’s property made after winding-up proceedings have commenced (date petition filed) will be void if a subsequent winding-up order is made against the company unless the court validates such disposition.¹¹ Although a liquidator is entitled to apply for appropriate relief which can require the repayment of funds or return any assets, courts may be unlikely to rule in the favour of the liquidator where the company is undoubtedly solvent and the directors acted in a way any director reasonably would. However, may not validate such act unless it can be proven that such grant added benefit to the company and enhanced value to creditors as a whole.¹² If no petition for liquidation has been filed, this transaction will fall outside of actions that can be taken under this section but the option of clawing back will still be available by virtue of other relevant sections listed below.

For example, section 145 of the Companies Act (“voidable preference”),- any payment or disposal of company’s property, at that time the company was unable to pay its debt, within 6 months or 2 years before the commencement of liquidation can constitute voidable preferences, especially where the dominant intention of the director was to give a preference to a creditor over others. A test for voidable preference was laid out in re Weaving Macro Fixed Income Fund Ltd (in Liquidation) whereby the Cayman Court of Appeal and the Privy Council stated that preferring someone over others is putting that creditor in a better position than other creditors which may not have happen if that transaction didn’t occur.¹³ However, if the company’s dominant intention in giving such preference was done for a difference purpose like making it in good faith to pay bills then the court may see it as a voidable transaction even if it appears to be preferring that specific creditor. A liquidation can make applications in relation to voidable preferences for the assets to be returned and make the creditor claim in the liquidation as opposed to gaining the advantage outside of the liquidation.

Under section 146 (“dispositions at an undervalue”), these voidable dispositions occur when the company’s property is disposed of for little or no consideration in money’s worth (way less than the value of the property) with the “intention of wilfully defeating an obligation owed to a creditor”.¹⁴ Also, under section 147 (“fraudulent trading”) a liquidator may apply for an order that those who were knowingly involved in fraudulent trading (usually directors/ officers of the company) to make contributions to the company’s assets as the court deems proper. ¹⁵ The burden is on the liquidator or a creditor seeking to set aside this disposition to establish the intent to defraud others and must be brought within 6 years of the transaction occurring or it’ll be barred for time falling outside the limitation period.

Outside of this, the option under common law – breach of fiduciary duty is also available for seeking remedies in relation to misconduct of directors in positions of trust and confidence. Directors can be held person personally liable for any losses sustained by the company (e.g. allowing the company to continue to trade when it has been deemed insolvent). In the case of Prospect Properties v McNeill [1990-91 CILR 171] the Grand Court established that when the directors are to act in the best interests of the company, it’s for them to have regard to creditors’ interests and to avoid putting the company in a position where it becomes unable to pay its creditors. Provided the company is in official liquidation, the liquidator can bring an action on

¹¹ Benjamin Toner QC, Module 5B Guidance Text, Cayman Islands 2022/2023, p38

¹² Tianrui (International) Holding Company Limited [2020 (1) CILR 417; In the Matter of Torchlight Fund LP [2018 (1) CILR 290].

¹³ Benjamin Toner QC, Module 5B Guidance Text, Cayman Islands 2022/2023, p 39

¹⁴ Ibid.

¹⁵ Ibid. p40

behalf of the company against the directors or former directors for breach of fiduciary duties. If a former director has breached his duty, the liquidator on behalf of the company has the option to take legal action seeking damages. The company may also seek to claw back any payments made to the director which shouldn't have been made.¹⁶

Commented [BT7]: 9/9

Question 3.2 [maximum 6 marks]

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

This statement is not entirely accurate. Although the role of receivers is not specifically recognised or dealt with under the Companies Winding Up Rules and Companies Act, there is indeed a role for receivers in the Cayman Islands. This comes mainly as receiverships offer a valuable alternative to the standard methods of recovery under the islands' formal insolvency regimes. Some may also regard receiverships as the more appropriate choice of enforcement for secured creditors in some instances.

The duties and appointment of receiver are governed by Order 30 of the Grand Court Rules.¹⁷ However, specific statutory provisions to govern receiverships pursuant to security documentation under Cayman Islands Law may not exist and there is no statutory requirement to register the appointment of a receiver. Once appointed, receivers assume responsibility of secured assets for the benefit of the security provider with a primary duty owed to appointing secured creditors and a secondary duty to the security provider or other parties with interests in the equity in the equity redemption.

The Grand Court may appoint receivers under Order 45 of the Grand Court Rules ("GCR") to enforce court orders for the purpose of collecting money (e.g. rents) or carrying out other legislative acts (e.g. the execution of contracts or a document of title). Under Order 51 of the GCR receivers can be appointed by way of equitable execution (i.e. enforcing a judgment debt) where the court believes that it's just and convenient to do so. Consequently, this allows receivers to identify, investigate and recover specified property which the applicant proves to have an equitable interest in to the satisfaction of the Grand Court.

However, state recognizes receivers and receivership orders in respect of Segregated Portfolio Companies ("SPC").¹⁸ These are, companies that remain separate entities (creating various portfolios) for various assets and liabilities whereby the statute has each portfolio protected (ring-fenced) from other assets and liabilities from other portfolios.¹⁹ Receivers are appointed by the Grand Court or orders are made if it the condition is satisfied that assets under the SPC portfolio are "insufficient to discharge"²⁰ creditors' claims regarding that portfolio. The receivership order provides a platform for receivers to manage the assets or business under the portfolio – ultimately associating the receivership role to one equivalent to that of a liquidator.²¹ This also means that directors of these entities are relieved of their functions and powers in respect of the SPC's business.²²

¹⁶ Ibid.p40

¹⁷ Ibid.p41

¹⁸ Ibid. p42

¹⁹ Ibid.

²⁰ Section 224(1) of the Companies Act (2022 Revision) (as amended)

²¹ Benjamin Toner QC, Module 5B Guidance Text, Cayman Islands 2022/2023, p 42

²² Section 226(5) of the Companies Act (2022 Revision) (as amended)

Although one may believe that receivers have no real role to play in the Cayman Islands, creditors are most advantageous in their use, as the appointment of receivers provides them with an alternative course of action in the insolvency context and can be done by virtue of the security instrument without involving the court.²³ If the debtor company happened to default on its obligations, receivers could be appointed by a fixed or floating charge holders over charged assets under a security instrument without the need of court approval if stated in the charge document.²⁴ The receiver's roles & responsibilities will usually be disclosed in the charge document and a receiver will owe its duties to the creditors instead of the company, as it is not under the supervision of the court. Another advantage of using this form of remediation is that this option can be the most cost effective as opposed to engaging in insolvency proceedings in court and incurring significant legal costs.

While receiverships may not be classified as a formal insolvency procedure under the Companies Act it can be a useful tool for creditors seeking debts owed to them from a company. A Court may appoint a receiver to manage a company that is in financial difficulties which may be on the verge of insolvency to prevent the company from doing so. This may enable the company to continue trading under the receiver's supervision. Therefore, while receiverships may not have a specific role in formal insolvency procedures, it is still an important legal concept that can be utilized in certain circumstances to recover any debts owed by a company or to manage the company's activities.

Commented [BT8]: 6/6

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

²³ Benjamin Toner QC, Module 5B Guidance Text, Cayman Islands 2022/2023, p 43

²⁴ Ibid.

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 is a secured creditor by virtue of the mortgage so it can file a notice of security with the centrally maintained respective vessel registers to protect its interests. Since VP has defaulted in its payments, as a secured creditor BITB can take possession of the 4 party boats and exercise a power of sale or appoint receivers to realise the property and recover funds owed. Most likely the mortgage is a legal one but if it was an equitable mortgage, BITB would not be able to take possession of the ships (and no priority given over third parties acquiring in good faith) but it could have a power of attorney clause as part of the agreement in favor of BITB as a secured creditor which would allow it to transfer the ships into its name since VP defaulted. If not, BITB can apply to court for specific performance. Secured creditors are not prohibited from enforcing their security under section 142 of the Companies Act even when courts get involved.

Commented [BT9]: 2

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

Under common law JoBo can seek to enforce foreign judgment in the Cayman Islands as an unsatisfied debt or other obligation since VP has not paid the money for the new boats and ICC has ruled that damages must be paid by VP. This judgment appears to be a final judgment and the ICC had jurisdiction to make such award in respect of the company. Hence, Cayman remedies are available to JoBo once the judgment is recognised and then JoBo will potentially be able to appoint receivers under Order 45 of the Grand Court Rules. Best option is probably to seek enforcement of the ICC ruling. This may involve seeking court orders from Cayman Islands Court to freeze any assets VP owns or initiating legal proceedings to enforce the award and recovery money owed.

Commented [BT10]: 2

An easier option may be for JoBo to engage with VP to negotiate an agreeable settlement but this may involve restructuring payment terms which are beneficial to both parties and this could take time. Also, the court can see what other assets VP owns and perhaps appoint a liquidator to realise them so that JoBo and other creditors can recover funds owed.

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

File a petition to wind up VP under section 94 of the Companies Act as VP is unable to pay its debts. This is a preferential debt that has priority over other debts.²⁵ If petition has been filed already, then file a claim and submit proof of debts for the amounts owed with the liquidator in respect of unpaid salary, benefits, etc. There's a prima facie case for making a winding-up order pursuant to section 104(2) of the Companies Act and preferential treatment will be given to sums due to employees as they fall higher up the priority list in a liquidation.²⁶

Commented [BT11]: 1.5

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

²⁵ Section 141 of the Companies Act(2022 Revision) (as amended)

²⁶ Ibid.

Yes, as it is a company registered in the Cayman Islands despite probably being incorporated elsewhere. Hence under section 91 of the Companies Act, this would give the Cayman Court jurisdiction to exercise discretion over or make orders in relation to VP.

Commented [BT12]: 1.5

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

Prior to 2021, if VP required a moratorium to protect itself from creditor actions and/or enforcements, VP would have been placed into court supervised liquidation. An application should have been submitted by the company to place in provisional while it negotiated with creditors to come to a compromise via a scheme of arrangement. Post 2021, VP can apply to court to appoint a company restructuring officer as this circumstance is available where the company is unable to pay its debts and triggers an automatic stay. An automatic stay of proceedings gives company breathing space for the purpose of restructuring its debts once put in liquidation under section 104(3) of the Companies Act. A scheme for example may help to restructure liabilities of the company.

Commented [BT13]: 2.5

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

The Rackham family may be able to continue some managerial role which the Grand Court will determine which powers should remain with the directors (this approval will be needed) and then which should be solely vested in the ROs. However, if the company is in liquidation for these purposes then management may not stay in control.

Commented [BT14]: 1

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

The factors taken into consideration must ensure that any proposed restructuring is fair, reasonable, and in the best interest of the associated parties.

Factors the Cayman Islands court will take into consideration before approving any proposed restructuring are:

Jurisdiction – whether the Court has jurisdiction to hear the restructuring proceeding as well as whether the company seeking restructuring falls within the jurisdictional realm.

Company's financial and operational viability – e.g. whether the proposed plans has a likelihood of success and the potential impact on the company's survival and financial position.

Consent provided from necessary stakeholders – including consideration of the interests of creditors, shareholders and minority stakeholders to ensure that they are not unfairly prejudiced.

Compliance with convening orders and statutory requirements – e.g. compliance with relevant company and insolvency law

Opinion from independent expert – e.g. financial advisors to advise on the feasibility of the proposed plan.

Whether the majority fairly represent each of the classes and not prejudicing the minority. Has the percentage for approval been obtained (75% in value of members present and voting) then it could be approved by the court and binding on all creditors and the company Public interest and the potential impact of the proposed restructuring plan on the Company

Whether the arrangement is one that an intelligent honest member of the class convened might have reasonably approved it.

Likelihood of success

Commented [BT15]: 2

Commented [BT16]: 12.5

* End of Assessment *

Commented [BT17]: TOTAL MARKS 44.5 OUT OF 50