



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 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.**

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.**

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 [BT1]: 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?

It is possible for secured creditor to register security over assets (including mortgages and charges) in the Cayman Islands in relation to certain assets for which there are centrally-maintained ownership registers (being real estate, ships, aircraft, motor vehicles, and IP). The effects of doing so are that (i) any third party that purchase the secured asset will be deemed to have received notice of the security interest and, as a result, will complete the acquisition of that asset subject to the secured interest of the secured creditor and (ii) the secured creditor will benefit from priority, in relation to the secured asset(s), over unregistered creditors.

It is also a requirement of Cayman Islands law (specifically, section 54(1) of the Companies Act (2022 Revision)) that each Cayman Islands company maintain, at its registered office in the Cayman Islands, a register of mortgages and charges that exist against it. A failure, committed knowingly by any director, manager, or other officer, to enter any such security interests on that register incurs a fine of one hundred dollars (per section 54(2) of the Companies Act (2022 Revision)). Any member of the public may inspect a company's register of mortgages and charges, and therefore the practical effect of maintaining the register is to put third parties on notice as to the existence of the recorded security interests (albeit failure to do so does not invalidate the un-recorded security interests).

Commented [BT2]: 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 Grand Court does have the power to assist foreign bankruptcy proceedings (which, per section 240 of the Companies Act (2022 Revision), includes proceedings for the purpose of reorganising or rehabilitating an insolvent debtor), as provided for in Part XVII (International Co-operation) of the Companies Act (2022 Revision). The approach of the Cayman Islands is universalist, meaning that it takes the view that the rules of a foreign insolvency proceeding may apply to assets of the relevant debtor that are located in the Cayman Islands.

The power afforded to the Grand Court includes being able to make orders for ancillary relief, such as: (i) recognising the authority of representatives of foreign insolvency

proceedings to act in the Cayman Islands for a debtor (or in its name); (ii) authorising the commencement or staying of legal actions against a debtor; (iii) staying the enforcement of a judgment against a debtor; (iv) requiring that persons with knowledge of a debtor's business or affairs be examined by, and provide information to, a foreign representative; and (v) ordering that any property belonging to a debtor be given to a foreign representative.

The exercise of the power is discretionary - the Grand Court must be satisfied that it is appropriate for it to exercise that discretion by granting applicable relief sought by a foreign representative. There are no tests for assistance or automatic rights arising from a debtor's COMI.

In considering whether to exercise its discretion, the Grand Court should be mindful of the factors set out in section 242(1) of the Companies Act (2022 Revision) and "shall be guided by matters which will best assure an economic and expeditious administration of the debtor's estate". Those factors are listed in section 242(1) and include: the just treatment of all holders of claims against or interests in a debtor's estate; the protection of claim holders against prejudice and inconvenience in the processing of their claims; the prevention of preferential or fraudulent dispositions of a debtor's property; the distribution of a debtor's estate in the order of priority provided for in Part V of the Companies Act (2022 Revision); the recognition and enforcement of security interests; non-enforcement of foreign taxes, fines, and penalties; and comity.

Commented [BT3]: 4 marks

Question 2.3 [maximum 3 marks]

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

In the absence of any international treaties for mutual recognition or enforcement of foreign judgments (the Cayman Islands has not entered into any and although the UK may extend treaties to which it is a signatory such that they have applicability in the Cayman Islands, it has only done so in the case of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards), the Cayman Islands has only two avenues to recognise foreign judgments in the Cayman Islands: (1) pursuant to the Foreign Judgments Reciprocal Enforcement Act (1996 Revision); and (2) pursuant to common law. In either case, there is a six-year limitation period that commences from the date of the relevant foreign judgment (or last judgment, in cases where there have been appeals to earlier judgments).

The Foreign Judgments Reciprocal Enforcement Act (1996 Revision) provides for recognition and enforcement of foreign judgments where the originating country of the judgment has assured the substantial reciprocity of enforcement of judgments handed down in the Cayman Islands - for now, the only country to have done so is Australia. In order to be enforceable in the Cayman Islands, the relevant foreign judgment must be final, a money judgment, and made after the extension of the

Foreign Judgments Reciprocal Enforcement Act (1996 Revision) to the relevant country.

Common law is the more usual route for the enforcement of foreign judgments in the Cayman Islands. This requires that a new action be started in the Cayman Islands, based upon the relevant foreign judgment constituting an unfulfilled debt or other obligation. The Grand Court Rules provide for the procedure in relation to such an action. The mandatory requirements for the enforcement of a foreign judgment pursuant to the common law approach are that the relevant foreign judgment is final, the relevant foreign court has jurisdiction in relation to the debtor, the relevant foreign judgement was not obtained by fraud, the relevant foreign judgment does not contravene Cayman Islands public policy, and the relevant foreign judgment was not obtained in contravention of rules of natural justice. Supposing that a judgment in the Cayman Islands is obtained by the relevant foreign representative, they will be able to avail themselves of the relevant and applicable domestic Cayman Islands enforcement remedies.

Commented [BT4]: 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.

As noted above, the Cayman Islands does not have a statutory prohibition on insolvent trading (i.e., a company continuing to trade whilst already insolvent). However, it is possible for court-appointed liquidators of an insolvent company to seek to “claw back” payments that directors should not have made and/or seek damages from former directors - pursuant to (respectively) various categories of voidable transactions and/or breaches of directors’ fiduciary duties.

Where the insolvent company is in official liquidation, it will be for the official liquidators to challenge the relevant transaction(s) and seek to hold the relevant creditors and/or directors financially accountable. However, it is to be expected that, in practice, creditors affected by any voidable transactions and/or breaches of directors’ fiduciary duties would exhort the official liquidators to pursue any claims it might be able to make.

With regard to the former, various categories of voidable transactions exist, being: (1) avoidance of property dispositions; (2) voidable preferences; (3) avoidance of

dispositions made at an undervalue; and (4) fraudulent trading. Transactions in category (1), above, are void as a matter of law; transactions in categories (2)-(4) (inclusive), above, are voidable on application by the liquidator. The statutory regimes are as follows:

- (1) the avoidance of property dispositions is regulated by section 99 of the Companies Act, which provides for any disposition of a company's property that occurs after the deemed commencement of the company's winding up (being the date on which the petition was filed with the Grand Court) to be void as a matter of law, if a winding-up order was subsequently made (unless the disposition is or was validated by the Grand Court). In such a case, the liquidator may apply to the court for relief appropriate to secure the repayment of the disposed funds or the return of the disposed asset(s) (as applicable).*
- (2) voidable preferences are governed by section 145 of the Companies Act. A voidable preference is a payment or disposal of property to a creditor of the debtor that occurs within six months immediately prior to the liquidation commencing and at a time when the debtor was unable to pay its debts and where the dominant intention of the director(s), when effecting the transaction, was to give the relevant creditor a preference over other creditors. A preference is given to a creditor if it puts that creditor in a better position than it otherwise would have been. The question of the dominant intention is fact-specific and may be inferred by the court from all the evidence made available to it; but it need not be the only intention, merely a dominant one. If it is not the dominant intention, the fact that a preference was given is insufficient for the transaction to be deemed a voidable preference. If the transaction is made to a related party (which is defined in section 145(3) as a party that has the ability to control the debtor or exercise significant influence over it) then the disposition will be deemed to have been made by the debtor with a view to giving the relevant creditor a preference. The liquidator may ask the court to order the return of the asset (in which case the creditor may prove in the debtor's liquidation for the amount of the claim).*
- (3) the avoidance of dispositions made at an undervalue is governed by section 146 of the Companies Act. A disposal of a debtor's property that is at an undervalue and conducted with the intention to defraud is voidable. The disposal is at an undervalue if no consideration is given or the consideration that is given is worth significantly less than the value of the property. It is for the liquidator to establish an intent to defraud, pursuant to section 146(3). The liquidator must bring any such action within six years of the disposal.*
- (4) fraudulent trading is regulated by section 147 of the Companies Act. It is applicable where a debtor continues its business with the intent to defraud*

creditors. The court may, pursuant to section 147(2), declare that persons knowingly party to such conduct make contributions to the company's assets as the court thinks proper.

Directors may be held personally liable to a debtor for any losses that they cause to the debtor, if in so causing them the directors acted in breach of their fiduciary duty to act in the best interests of the company. In scenarios of insolvency, that duty requires the directors to have regard to the company's creditors' interests (as held in *Prospect Properties v McNeill* [1990-91 CILR 171], which broadly follows the English law position). It is, naturally, in the company's creditors' interests to be paid and, therefore, this principle protects them against the debtor putting itself in a position where it is unable to pay creditors. The liquidator is entitled to seek damages against the directors, on behalf of the debtor, for breaches of their fiduciary duty.

Commented [BT5]: 9/9

Question 3.2 [maximum 6 marks]

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

It is possible to appoint receivers in the Cayman Islands pursuant to Order 30 of the Grand Court Rules, which regulates the appointment and duties of receivers on a general basis. The court may appoint receivers, upon application by a secured creditor, in order to collect money (e.g., rent) or take other action (e.g., enter into a disposition of property). Pursuant to Order 45 of the Grand Court Rules, receivers may also be appointed with a view to enforcing court orders for money payments.

In an insolvency context, a creditor of a debtor in financial distress may seek the appointment of receivers as an alternative to other formal insolvency proceedings. If a contract between a debtor and creditor that confers a security interest provides for it, a receiver may be appointed by a creditor without any court involvement. For instance, the holder of a charge may be entitled to appoint a receiver over certain of the debtor's charged assets if the debtor defaults on the obligations it has to the creditor.

The relevant security document will set out the powers afforded to the receiver. Usually, these will include a right to sell the charged asset(s), and once appointed the receiver may accordingly seek to realise the value of such charged asset(s) and repay the secured creditor the amount of unpaid debt owed to it by the debtor.

In this manner, the receiver is not court-supervised and will owe its duties to the creditor, rather than to the debtor (and, in an insolvency scenario, by extension will not owe its duties to the other creditors of the debtor).

As a result of this framework, receivership can be a significantly helpful route for secured creditors in the Cayman Islands, where a debtor is in an insolvency scenario. The process is significantly less involved than full insolvency proceedings, allowing

*the creditor flexibility to move quickly and protect its own interests with its own appointee who will protect its interests, rather than other stakeholders' interests. The ability to make an appointment at short notice might help to protect a creditor's position where insolvency proceedings are anticipated in respect of a debtor and to ensure that realisations are made for the benefit of a secured creditor. Creditors will need to be sure that the relevant contractual provisions allow for the recourse that would be most helpful to them (e.g., in the case of a real estate property financing scenario, it would be helpful to provide for the receiver to be able to collect rent from tenants and/or sell the **property**).*

Commented [BT6]: Good but what about SPCs? 4/6.

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

From the fact pattern given above, it is worth noting in the first instance that VP is unable to pay its debts and is insolvent.

BITB is owed USD 300 million (USD 120 million is secured and USD 180 million is unsecured). If it has not done so already, BITB should ensure that its security interests are registered in the relevant vessel register as against the secured assets (which are four boats). BITB should also ensure that its security interests, a mortgage, has been entered in VP's register of mortgages and charges. The former registration will ensure that third party purchasers of any of the four boats are deemed to have notice of BITB's security interests. The latter registration will ensure that diligent third party purchasers of any of the four boats will become aware of BITB's security interests.

If the security documentation allows for it, BITB may also be entitled to appoint receivers to sell the secured assets (i.e., the four secured boats) and provide BITB with the proceeds. In doing so, the receiver would be acting in BITB's interests.

Commented [BT7]: 2

JoBo may protect its interests by seeking the recognition, in the Cayman Islands, of the foreign law judgment that it has obtained. To do so, it would rely on the common law route for recognition of foreign judgments, which would involve commencing a new action in the Cayman Islands based upon the ICC judgment being an unsatisfied debt (once the 45 day payment term has expired). JoBo should consider preparing to do so now, in order to act swiftly once that 45 day payment term expires. This assumes that the judgment is final, the ICC had jurisdiction in relation to VP, the judgment was not obtained by fraud or contrary to the rules of natural justice, and the judgment is not contrary to Cayman Islands public policy - all of which should be analysed and/or confirmed, in preparation. If a Cayman Islands judgment is obtained, JoBo could avail itself of all domestic enforcement remedies - albeit in the absence of any security, those remedies may be somewhat limited.

Commented [BT8]: Nearly. The arbitration acts provide the mechanism. 1.5

VP's unpaid employees are preferential creditors in relation to VP, per section 141 of the Companies Act. Assuming that the debt owed to JoBo and the unsecured portion of the debt owed to BITB are not subject to any contractual subordination arrangements, those parties will also be preferential creditors in relation to VP, again per section 141 of the Companies Act. Together, these debts will rank in priority to all non-preferential debts and equally amongst each other. Per section 142 of the Companies Act, the secured portion of the debt owed to BITB has priority over all other claims.

Commented [BT9]: 1.5

As creditors of VP, each of VP's unpaid employees, JoBo, and BITB are entitled to seek an order for the winding-up of VP (if they are not prevented from doing so by their contractual arrangements with VP) or a provisional liquidation in respect of VP, per section 94 of the Companies Act, on the grounds that it cannot pay its debts. Achieving either (or a provisional liquidation followed by an official liquidation) could help to preserve and protect VP's assets and prevent the mismanagement of VP's business by its current directors; the creditors mentioned above should consider if that would be worthwhile. A liquidator would be appointed, who would act in the interests of the creditors and aim to realise VP's assets for their benefits. However, these creditors should be aware of the priority positions mentioned above and that liquidations can be value-destructive; they would likely not have their claims met in full and would have to submit proofs of debt (so they should prepare evidence of their debts in advance, in readiness). The unsecured creditors should also be mindful that, whilst an automatic stay would come into effect (helping to protect VP's business and assets), this would not prevent BITB from enforcing its security. The creditors could also seek positions on the liquidation committee of VP in order to represent their interests directly and be kept abreast of any developments.

In this regard, the Grand Court of the Cayman Islands does have jurisdiction in relation to VP, pursuant to section 91 of the Companies Act, as it is an entity that is registered in the Cayman Islands (whether it was incorporated in the Cayman Islands, incorporated elsewhere and subsequently registered in the Cayman Islands, or registered in the Cayman Islands under Part IX of the Companies Act as an overseas company).

Commented [BT10]: 1.5

VP could protect itself and seek to restructure its business by appointing a restructuring officer ("RO"), on the grounds that it is (or is likely to become) unable to pay its debts and it intends to present a compromise or arrangement to its creditors. A moratorium (with extraterritorial effect) would follow immediately and automatically upon the filing of a petition to appoint an RO. As with a liquidation, this would not prevent BITB from enforcing its security interests. Once appointed, a variety of restructuring options could be pursued by VP - including a Cayman Islands scheme of arrangement, a restructuring proceeding in a foreign jurisdiction (e.g., an English scheme of arrangement if, for instance, the loan documentation was governed by English law), or an informal workout between the relevant parties.

If VP were to pursue a Cayman Islands scheme of arrangement (pursuant to section 86 of the Companies Act), it could propose a compromise or arrangement between it and its creditors (or any class thereof). A scheme could, for example, be used to restructure VP's liabilities (e.g., the BITB loan) and/or provide for a debt-for-equity swap. Critical to the viability of any proposal will be buy-in of major creditors - because of the voting thresholds (each class of creditors must approve the proposed scheme, by a majority in number representing at least 75% in value of the class voting in favour of it) and there will typically be a commercial desire on the part of all creditors for the debtor and other creditors to "share the pain" of a restructuring.

Commented [BT11]: 2.5

If a liquidation is avoided, the current management of VP (presumably the Rackham family) might be able to continue running VP even after the appointment of the RO - albeit each case is fact-specific and subject to the court's scrutiny and subsequent determination.

Commented [BT12]: 1

A filing of a petition for a scheme will be followed by: (i) a convening hearing, ordering meetings of creditors be convened; (ii) scheme meetings, discussing the terms of the proposed scheme and voting in relation to the proposal; and (iii) if approved at the scheme meetings, and upon application, a sanction hearing to obtain the sanction of the court to the scheme.

Commented [BT13]: 2

At the convening hearing, the court will consider the formulation of the classes of creditors, any issues as to jurisdiction, and the sufficiency of the scheme proposal and notice documentation. In relation to the latter, the court must be satisfied that all information reasonably necessary to enable the creditors of the proposed scheme to make an informed decision about the proposal.

At the sanction hearing, if the requisite voting thresholds have been achieved, the court may sanction the scheme such that it is binding on VP and its creditors. The court must consider whether any dissenting creditor opposes the proposed scheme at the sanction stage. It will also consider whether VP complied with the convening orders of the court, whether the majority/ies voting in favour of the proposed scheme fairly represented the relevant class(es) of creditors, and whether the proposed scheme might reasonably be approved by an intelligent and honest member of the convened class(es), acting in their own interests.

It may also be of significance to VP that, following the appointment of the RO, rescue financing could be obtained to provide liquidity to seek to agree the scheme of arrangement. If so, this financing would likely be an expense of the RO and would, accordingly, be granted priority over most other claims (but not BITB's secured claim).

Commented [BT14]: 12

* End of Assessment *

Commented [BT15]: TOTAL MARKS 45 OUT OF 50