



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.**

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.

Commented [BT1]: Incorrect. Answer was (d)

**(d) More than 50% representing 75% or more in value of the creditors must agree.**

Commented [BT2]: 9/10

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 a creditor to register its security over certain assets in the Cayman Islands. The Cayman Islands have ownership registers for real estate, ships, aircraft, motor vehicles and intellectual property, which are centrally maintained. A creditor can register its security over assets of this nature by recording its charge or mortgage at the centrally maintained register for that asset. Registration means that any third-party purchasers of a charged asset will be deemed to have notice of any such registered interest and will, therefore, acquire the asset subject to the secured creditor's interest. It also gives the registered, secured creditor priority over non-registered creditors.*

Commented [BT3]: Good but information needed on ROM&C - 2 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 has the power to assist foreign bankruptcy proceedings. That power is founded in, and provided for by, Part XVII of the Companies Act. As the Cayman Islands has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, there are no threshold tests for the grant of assistance or any automatic rights based on the centre of main interests of the debtor. Instead, a foreign representative must satisfy the Cayman court that it is appropriate for the court to exercise its discretion by granting the relief sought in the foreign representatives application. In determining whether to make ancillary orders assisting foreign proceedings, the Grand Court is guided by matters that will best assure economic and expeditious administration of the debtor's estate, consistent with the just treatment of all holders of claims wherever domiciled, the protection of claimants in the Cayman Islands against prejudice and inconvenience, the prevention of preferential or fraudulent dispositions, the distribution of the estate amongst creditors substantially in accordance with the statutory order of priority, the recognition and enforcement of security interests, the non-enforcement of foreign taxes, fines and penalties and, of course, comity.*

Commented [BT4]: Yes, section 242 - 3 marks

Question 2.3 [maximum 3 marks]



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

*The Cayman Islands Grand Court adopts a co-operative approach regarding the recognition of foreign judgments, so as to ensure an effective winding-up and the protection of the interests of creditors, wherever situated. Regarding the legal framework for recognition, the Cayman Islands is not party to any international treaties or conventions relating to the reciprocal recognition or enforcement of foreign judgments, including the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. The United Kingdom has not extended its ratification of any such treaties to the Cayman Islands by Order in Council (except for the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). The Cayman Islands does have the Foreign Judgments Reciprocal Enforcement Act (1996 Revision) (the FJRE Act), which provides a statutory scheme for recognition. However, the FJRE Act only applies where the country from which the judgment originates assures substantial reciprocity of judgment regarding Cayman Islands judgments and, to date, that is limited to judgments from the Superior Courts of Australia. To be enforceable under the FJRE Act, the foreign judgment must be final, monetary and made after the 1996 Act was extended to the relevant territory. As a result of the limited scope of the FJRE Act, foreign judgments are generally enforced using the historic common law procedure that involves commencing a new action in the Cayman Islands based upon the foreign judgment, which is treated as an unsatisfied debt or other obligation. These actions are conducted under the regular procedural regime for litigation in the Cayman Islands (the Grand Court Rules) and apply equally to money and non-money judgment. To be enforceable under the common law, the foreign judgment must be final, from a foreign court that had jurisdiction over the debtor, not obtained by fraud, not contrary to public policy of Caymans, and not obtained contrary to natural justice. Once a local judgment is obtained, the full range of domestic enforcement remedies are available.*

Commented [BT5]: 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.***

*While there is no express statutory prohibition on insolvent trading, there are other mechanisms under Cayman Islands law by which a court-appointed liquidator of an insolvent company or creditors of such a company may hold its former directors accountable in the context of a winding-up.*

**Notably, directors can be made personally liable for any losses that they cause to the company as a result of their acting in breach of their fiduciary duty to act in the best interests of the company. Where a company is insolvent, that duty (to act in the best interests of the company) requires directors to have regard to the interests of its creditors: *Prospect Properties v McNeill*. Indeed, it is in the interest of the creditors of a company to be paid, and in the interest of the company to be safeguarded against being put in a position where it was unable to pay. On that basis, insolvent trading can be said to be a breach of the directors' fiduciary duty to act in the company's best interests. In that regard, when a company is in official liquidation, the liquidator can commence action against the directors on behalf of the company and in the company's name, pursuing them director for financial damages for breach of their fiduciary duty. By that route, the liquidator can hold former directors accountable for their actions.**

**Additionally, there are various other "claw-back" mechanisms provided for in the Companies Act, which, once certain grounds are satisfied, can be utilised by a liquidator to recover assets that were disposed of or transferred by the company as a result of insolvent trading. More particularly:**

- (1) Post-petition property dispositions under section 99 of the Companies Act. **This option only relates to transactions made after the commencement of the winding-up (that is, the date on which the petition for winding-up was filed). However, if a disposition is made of a company's property after the commencement of the winding-up, it will be void if a winding-up is subsequently made (unless validated by the Grand Court). In such circumstances, the court appointed liquidator is entitled to apply for appropriate relief, whether to require the repayment of the funds or the return of the asset (allowing for the "claw back" of the company's funds/assets). While the court can validate dispositions made during the subject period, validation usually occurs where the company is clearly solvent and an "intelligent and honest" director acting reasonably would have come to that decision (*In the matter of Fortuna Development Corporation*); the court is unlikely to validate a disposition where the company is insolvent.**
- (2) Voidable preferences under section 145 of the Companies Act. **Under section 145 of the Companies Act, any payment or disposal of property to a creditor will constitute a voidable preference if (a) it occurs in the 6 months preceding the deemed commencement of the company's liquidation and at a time when it was unable to pay its debts; and (b) the dominant intention of the company's directors was to give the applicable creditor a preference over other creditors. To give the creditor a preference over other creditors, that creditor must have been put in a better position than it otherwise would have been (*re Weaving Macro Fixed Income Fund Ltd. (in Liquidation)*). This preference in fact must, however, have been the company's dominant intention when effecting the transaction. If it can be shown that the company's dominant intention was some other purpose, then it may not be voidable. If the disposition was made to a "related party", the disposition will be presumed to have been made with a view to giving a preference (s. 145(2) and (3) of the Companies Act). In these**

*circumstances, a liquidator can hold the company accountable by seeking to claw back the funds or assets that were transferred on application to the Grand Court for the transaction to be deemed void and orders for the creditor to return the asset.*

- (3) Dispositions made at an undervalue under section 146. **Under section 146 of the Companies Act, a transaction in which property is disposed at an undervalue with the intention of wilfully defeating an obligation owed to a creditor is voidable on the application of the liquidator. This means that if the company disposed of property for no consideration or consideration in money or money's worth that is significantly less than the value of the property, then the liquidator may apply to the Grand Court for it to be voided. The burden of proof will rest with the liquidator, who must bring the application within 6 years of the disposal. If successful, assets can, once again, be "clawed back".**
- (4) Fraudulent trading under section 147 of the Companies Act. **By section 147, if a business was carried on with the intent to defraud creditors, or for any fraudulent purpose, a liquidator may apply for an order requiring persons who were knowing parties to such conduct, including the company's directors, to make such contributions to the company's assets as the Court thinks proper.**

Commented [BT6]: 9/9

### Question 3.2 [maximum 6 marks]

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

*Receivers are not explicitly provided for, or even mentioned, in the Cayman Islands' legislation that deals with insolvency (that is, the Companies Act or Companies Winding Up Rules). On that basis, one with little insight into the practical workings of the Cayman Islands insolvency regime could, on its review of the statutory provisions, easily conclude that receivers have no role to play in a Cayman Islands insolvency scenario. However, in practice, this is not quite accurate.*

*Particularly, receivers play a vital role in the insolvency of individual portfolios within a Cayman Islands segregated portfolio company (SPC). A SPC is a legal entity that is comprised of multiple portfolios, and in which the assets and liabilities of each portfolio is ring-fenced, by statute, from those of the other portfolios. If the Cayman Islands Grand Court is satisfied that a SPC's assets attributable to a particular portfolio are insufficient to discharge the liabilities associated with that portfolio, then it may make a receivership order in respect of that portfolio, appointing a receiver whose role is akin to that of a liquidator. By the receivership order, the business and assets of a segregated cell portfolio are managed by the receiver for the orderly closing down of the business and the distribution of its assets to its creditors. During the receivership, the receiver relieves the directors of their functions and powers (s. 226 of the Companies Act). There is, therefore, no denying that receivers have a role to play in the insolvency of a SPC, to which they are central.*

*Further, privately appointed receivers offer an out of court solution for secured creditors of insolvent debtors and, as a result, play a notable role in the Cayman Islands insolvency regime. Where a security document provides for the appointment of a receiver in the event of default, then receivers can be appointed by creditors without any involvement by the court pursuant to the rights and provisions of that document. In such a context, the receiver acts under the powers set out in the charge document and will be appointed over the assets charged by the same. His powers will generally include a power of sale, as he will generally be tasked with realizing the value of the charged asset to repay the creditor the amount owed to him. Privately appointed receivers are not supervised by the court, and owe their duties to primarily to the creditor who appointed them, rather than to the debtor company.*

*In addition to those two starring roles played by receivers in the Cayman Islands insolvency scene, receivers can also be appointed in a number of contexts under the Grand Court Rules (GCR), including to collect money or to carry out an act. In that regard, Order 30 GCR deals with the appointment and duties of receivers, generally, Order 45 GCR states that receivers may be appointed to enforce court orders for the payment of money and Order 51 GCR provides for the appointment of receivers by way of equitable execution.*

*As such, in light of the above, it is clearly untrue to say that receivers, who appear throughout the insolvency regime in a number of contexts and forms, have no role to play in a Cayman Islands insolvency scenario.*

Commented [BT7]: 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 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?*

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

*To protect its interests, BITB, whose loan to VP is partially secured by a mortgage over four of VP's boats, should register its mortgage in the relevant central register. The Cayman Islands has an ownership register for ships, which is centrally maintained and in which mortgages and charges can be registered. By registering its mortgage in respect of the 4 ships over which BITB has a mortgage, any third-party purchasers of those ships will be deemed to have notice of BITB's interest and, should they proceed to purchase them, will acquire them subject to BITB's secured interest in the ships. BITB will also be given priority over any non-registered creditors. Notably, in the Cayman Islands, a creditor that has security over assets of a company can enforce its security at any time, without leave of the Court and without reference to any insolvency professional who may be appointed in connection with insolvency proceedings. This*

means that BITB can also protect its interest by enforcing its mortgage in whatever manner that it is consistent with the terms of BITB's mortgage, in light of VP having fallen behind on monthly repayments.

Commented [BT8]: 2.5

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

JoBo, having obtained a judgment against VP in the United Kingdom, will want to protect its interests by taking steps towards enforcing that judgment in the Cayman Islands, where VP's assets and operations appear to be based. Before being able to enforce its judgment in the Cayman Islands, JoBo must ensure that the judgment is recognised locally. As the Cayman Islands is not party to any relevant treaties or conventions on the enforcement of foreign judgments, and as the Foreign Judgment Reciprocal Enforcement Act (the FJRE Act) only extends to judgments obtained in Australia, JoBo will be required to follow the common law process for recognition, which will involve commencing a new action in the Cayman Islands based on the outstanding ICC judgment, with the USD 50 million award as an unsatisfied debt owed to JoBo by VP. Once the judgment satisfies the requirements for enforcement of a foreign judgment at common law (namely, that it is final, from a court with jurisdiction over the debtor, not obtained by fraud, not contrary to public policy, and not contrary to the rules of natural justice), which the judgment is presumed to so satisfy, then a local judgment should be obtained against VP for the outstanding debt. It may then be enforced using the full range of domestic enforcement remedies available under Cayman Islands law.

Commented [BT9]: Don't forget the NY Convention etc. 1 mark.

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

VP has failed to pay wages, pension and health insurance for its reduced team of employees. As a result, VP's employees are unsecured creditors of VP for the amounts owed to them in respect of their unpaid contributions and salaries. In the Cayman Islands, an unsecured creditor has the right to file a winding-up petition in respect of a debtor company; this action is, therefore, available to the unpaid employees in respect of VP under section 94 of the Companies Act. Included in the grounds on which a creditor may apply for a company to be wound up is the company's inability to pay its debts. The employees may rely on their unpaid wages and other outstanding debts of the company to prove to the satisfaction of the Court that the company is unable to pay its debts, and that the company is insolvent. Once a winding-up order is made, a liquidator will be appointed, which will displace the company's directors and control its affairs, subject to the supervision of the Grand Court. Ultimately, the assets of VP will be liquidated, and its creditors repaid on a *pari passu* basis. However, notably, sums due to employees are treated as preferential debts in an official liquidation, which means that sums due to the employees will be paid in priority to all other debts, ranking equally with other preferential debts.

Commented [BT10]: 1.5

Alternatively, with the company's consent, the employees, as creditors, may commence proceedings for a scheme of arrangement; a court approved compromise between a company and its creditors.

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

***In accordance with s. 91 of the Companies Act, the Cayman Islands Grand Court has jurisdiction to make orders in respect of companies that are, *inter alia*, incorporated in the Cayman Islands. As such, as VP is, indeed, a company registered in the Cayman Islands, the Grand Court has jurisdiction over VP.***

Commented [BT11]: 1.5

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

***Yes, by virtue of the recent enactment of the Companies (Amendment) Act 2021, there is now a statutorily prescribed route via which an entity can protect itself and seek to restructure, through the appointment of a company "restructuring officer" (RO). VP can, therefore, take advantage of the new scheme as provided for by Part V, section 91-A-J of the Companies Act. A petition for the appointment of an RO can be presented to the Grand Court on the grounds that it is, or is likely to become, unable to pay its debts and intends to present a compromise or arrangement to its creditors (or a class thereof). Upon the filing of that petition, a moratorium will be automatically triggered, which means that no suit, action or other proceedings (domestic or foreign) may be commenced or proceeded with against VP, without leave of the court. This will allow VP the requisite breathing space to prepare and present its restructuring proposal, without fear of creditor enforcement (although VP should be conscious that the moratorium will not prevent secured creditors, like BITB, from enforcing their security). Once the RO is appointed, the restructuring can take several forms, including a consensual deal or informal work-out with creditors or the utilisation of a scheme of arrangement, as provided for by statute.***

Commented [BT12]: 2.5

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

***If an RO is appointed, then it is possible that VP's management (the Rackham family) may remain in control, subject to oversight by the RO. However, as the Companies (Amendment) Act 2021 and the office of the RO have only recently been introduced, it remains to be seen whether, and if so to what extent, existing management (here, the Rackham family) will play a role in the managing of the company and the restructuring following the appointment of an RO. On the appointment of an RO, the RO's functions and powers will be set out in the terms of the court's order appointing it. It is expected that, as was the case when provisional liquidation was used as a means to effect a restructuring, the Grand Court will determine what powers will remain with the directors (if any) and which will be vested in the Ros when making the appointment.***

Commented [BT13]: 1

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

*Should the RO choose to restructure VP via a scheme of arrangement, it will take the form of a court approved compromise or arrangement entered into between a company and its creditors or members or any class of them. The procedure for obtaining approval for a scheme of arrangement is governed by Order 102, rule 20 of the Grand Court Rules and Practice Direction 2/2010, and is comprised of a three-stage process, the final of which is an application to the Grand Court to obtain approval/sanction of the scheme. The scheme must have first obtained the requisite creditor approval, and will then be presented to the court for approval before it can be binding on creditors. In assessing whether to approve the proposed scheme, the Cayman Islands court will consider whether the convening orders have been complied with, whether the majority creditor approval obtained in respect of the scheme fairly represents the class and whether the arrangement (having regard to any alternatives) is such that an intelligent, honest member of the class convened, acting in their own interest, might reasonably approve it.*

**\* End of Assessment \***

Commented [BT14]: 3

Commented [BT15]: 13/15

Commented [BT16]: 45 OUT OF 50