



INSOL
INTERNATIONAL



**INTRODUCTORY CERTIFICATE IN INSOLVENCY LAW AND
PRACTICE IN THE CAYMAN ISLANDS 2023**

Summative Assessment (Final Examination)

Date: 23 - 24 November 2023

Time limit: 24 hours (from 13:00 Cayman time on 23 November to 13:00 Cayman time on 24 November 2023)

EXAMINERS

Mr John Royle Mr Mark Russell Mr Nicholas Fox Ms Corinne Celliers
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MODERATORS

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It is imperative that all candidates read and take cognisance of the examination instructions on the next page.

All candidates are expected to comply with ALL the instructions.

Commented [BB1]: TOTAL = 94.5/100
Excellent results, well done!

Commented [BB2R1]: Mark adjusted to
95/100

INSTRUCTIONS

1. This assessment paper will be made available at **13:00 (1 pm) Cayman time on Thursday 23 November 2023** and must be returned / submitted by **13:00 (1 pm) Cayman time on Friday 24 November 2023**. Please note that assessments returned late will not be accepted.
2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Avenir Next font (if the Avenir Next font is not available on your PC, please select the 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. 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). Candidates who include very long answers in the hope it will cover the answer the examiners are looking for, will be appropriately penalised.
4. You must save this document using the following format: **studentID.SummativeAssessment**. An example would be something along the following lines: 202223-336.SummativeAssessment. **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. The assessment can be downloaded from your student portal on the INSOL International website. The assessment must likewise be returned via your student portal as per the instructions in the Course Handbook for this course. **If for any reason candidates are unable to access their student portal, the answer script must be returned by e-mail to david.burdette@insol.org.**
6. Enquiries during the time that the assessment is written must be directed to David Burdette at **david.burdette@insol.org** or by WhatsApp on +44 7545 773890 or to Brenda Bennett at **brenda.bennett@insol.org** or by WhatsApp on +27 66 228 2010. Please note that enquiries will only be responded to during UK office hours (which are 9 am to 5 pm GMT, or 11 am to 7 pm SAST).
7. While the assessments are open-book assessments, it is important to note that candidates **may not receive any assistance from any person** during the 24 hours that the assessment is written. **Answers must be written in the candidate’s own words; answers that are copied and pasted from the text of the course notes (or any other source) will be treated as plagiarism and persons who make themselves guilty of**

this will forfeit the assessment and disciplinary charges will follow. When submitting their answers, candidates will be asked to confirm that the work is their own, that they have worked independently and that all external sources used have been properly cited. If you submit your assessment by e-mail, a statement to this effect should be included in the e-mail.

8. Once a candidate's assessment has been uploaded to their student portal (in line with the instructions in the Course Handbook), a confirmatory e-mail will be auto-generated confirming that the assessment has been uploaded. If the confirmatory e-mail is not received within five minutes after uploading the assessment, candidates are requested to first check their junk / spam folders before e-mailing the Course Leader to inform him that the auto-generated e-mail was not received.
9. You are required to answer this paper by typing the answers directly into the spaces provided (indicated by text that states [Type your answer here]). For multiple-choice questions, please highlight your answer in yellow, as per the instructions included under the first question.
10. If a candidate is unable to complete this summative assessment (examination), please note that a re-sit assessment will only be given if there are exceptional circumstances that prevent the candidate from completing or submitting it (such as illness). Feedback on this final assessment will be provided within four weeks of the paper having been written - please do not enquire about your marks before four weeks have elapsed. **However, please note that it is our intention to send out the results on this course by Friday 22 December 2023 at the latest.**
11. Please note that this document will probably reformat in line with the default settings of your printer or PC. Please do not be concerned if the formatting of this document changes in line with your printer or PC settings.

ANSWER ALL THE QUESTIONS

QUESTION 1 - MULTIPLE CHOICE QUESTIONS (20 MARKS)

Questions 1.1 - 1.20 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. Each of the 20 questions count 1 mark.

Question 1.1

What is the date for Financial Institutions to submit its common reporting standard (CRS) Return in respect of reportable accounts?

- (a) 1 January (annually)
- (b) 1 April (annually)
- (c) 1 July (annually)
- (d) 1 October (annually)

Question 1.2

What is the maximum success fee permitted pursuant to Conditional fee agreements?

- (a) 50%
- (b) 33.33%
- (c) 66.66%
- (d) 100%

Question 1.3

Choose the **correct** statement:

How many forms of security interests are recognised in the Cayman Islands?

- (a) 3

Commented [BB3]: Question 1 - Sub-total = 20/20

(b) 5

(c) 6

(d) None of the above

Question 1.4

Who may **not** petition for the winding up of a Company?

(a) The company.

(b) Any creditor.

(c) Any prospective creditor.

(d) Any contributory.

(e) Any prospective contributory.

Question 1.5

Choose the **correct** statement:

What is the minimum sum required to be owed, to enable a statutory demand to be used?

(a) KYD 50

(b) KYD 100

(c) KYD 1,000

(d) KYD 10,000

Question 1.6

Choose the **correct** statement:

A Restructuring Officer is required to report to the Court following their appointment:

(a) Within 21 days of the appointment.

(b) Within 28 days of the appointment.

(c) At such intervals as the Restructuring Officer considers appropriate.

- (d) Within 7 days of the appointment.

Question 1.7

Which of the following is **not** required to be included in an affidavit filed in support of a restructuring petition:

- (a) A statement that, having made due enquiry and taken appropriate advice, the board believes that the company is or is likely to become unable to pay its debts.
- (b) An explanation of how the company will be funded during the restructuring period.
- (c) A statement as to why the directors believe that the appointment of a restructuring officer will be in the bests interest of the company.
- (d) A detailed outline of the proposed restructuring plan.

Question 1.8

Choose the **correct** statement:

A petition for the appointment of a Restructuring Officer can be brought by:

- (a) the company.
- (b) any creditor;
- (c) any contributory; or
- (d) all of the above

Question 1.9

Choose the **correct** statement:

Unless the Court otherwise directs, when must the petition for the appointment of a Restructuring Officer be heard?

- (a) within 14 days of the petition being filed.
- (b) within 21 days of the petition being filed.
- (c) within 28 days of the petition being filed.
- (d) within 56 days of the petition being filed.

Question 1.10

Choose the **correct** statement:

A scheme of arrangement:

- (a) can be sanctioned by the Court with the consent of all affected parties.
- (b) requires a special resolution in accordance with the company's Articles.
- (c) can only proceed if there are shareholders / creditors who may not agree with it
- (d) Only needs to be approved by a majority in value.

Question 1.11

Select the **incorrect** statement:

- (a) The Cayman Islands adopts the principle of universalism and the principle of assistance in respect of cross-border insolvency.
- (b) Foreign representatives can apply for assistance under Part XVII of the Companies Act.
- (c) The Cayman Islands has implemented the UNCITRAL Model Law on Cross-Border Insolvency.
- (d) There are no automatic rights in the Cayman Islands based on the centre of main interests of the debtor.

Question 1.12

Choose the **correct** statement:

If winding up proceedings are filed against a Cayman Islands company in the Cayman Islands and in a foreign country, which of the following statements is true?

- (a) The Cayman Islands Court will wish to ensure comity between courts in other jurisdictions so it will be deferential to whatever decision is reached by the foreign court.
- (b) The Cayman Islands Court will wish to ensure that Cayman Islands creditors have priority over foreign creditors.
- (c) The Cayman Islands Court will wish to ensure that secured creditors cannot prejudice unsecured creditors.

- (d) The Cayman Islands Court takes into account a number of factors, but the starting point is that the main insolvency proceedings for a Cayman Islands company should take place in the Cayman Islands.

Question 1.13

Select the **correct** statement:

- (a) A voluntary liquidator will automatically cease to hold office if a conflict of interest arises during the liquidation.
- (b) A voluntary liquidator will automatically cease to hold office as such upon the appointment of an official liquidator following a supervision order.
- (c) A sole voluntary liquidator can resign at any time without reference to the shareholders or the court.
- (d) A voluntary liquidator can be removed by the company's creditors.

Question 1.14

Select the **correct** statement relating to the adjudication, quantification and distribution of claims during an official liquidation:

- (a) An official liquidator acts in *quasi*-judicial capacity in respect of the adjudication of claims, meaning that the liquidator's determination will be final and is not capable of dispute.
- (b) A proof of debt is always required in order for an official liquidator to adjudicate on a creditor's claim.
- (c) Only creditors with a contractual right to interest have an entitlement to interest.
- (d) A valid contract (agreed between the company and the creditor) can have the effect of changing the otherwise statutory ranking of that creditors' claim, such that the claim is subordinated.

Question 1.15

Select the **correct** statement relating to the appointment of inspectors:

- (a) The report of an inspector can be used in any legal proceeding as evidence of the opinion of the inspectors.

- (b) Upon the appointment of an inspector the directors' powers will automatically cease.
- (c) Upon the appointment of an inspector there is a stay of proceedings such that a winding up application cannot be brought.
- (d) Only CIMA has the power to appoint an inspector.

Question 1.16

Select the **correct** statement relating to exempted limited partnerships (ELPs):

- (a) Limited Partners have an unfettered statutory right to petition the court to wind up the relevant ELP / General Partner.
- (b) Where there are inconsistencies in relation to the dissolution of ELPs, the ELP Act will take priority over the Companies Act.
- (c) An ELP is required to have more than one limited partner.
- (d) An ELP formed under the Exempted Limited Partnership has a separate legal personality.

Question 1.17

Select the **correct** statement:

Which of the following statements in relation to informal workouts pursuant to the Cayman Islands law is correct:

- (a) The restructuring officer regime is an example of an Informal workout process under Cayman Islands law.
- (b) A stay of proceedings is not available in the Cayman Islands for informal creditor workouts.
- (c) A qualified insolvency practitioner is required to oversee an informal workout under the Insolvency Practitioners Regulations.
- (d) Under Cayman Islands law, any new financing advanced during an informal creditor workout will be provided with priority status in the event the company is later liquidated.

Question 1.18

Choose the **correct** statement:

Which of the following statements is true regarding a provisional liquidation application?

- (a) The company has the statutory power to commence the proceedings.
- (b) There is a worldwide moratorium (stay) upon the presentation of the provisional liquidation application.
- (c) A winding up petition must be presented as a precursor to the application for the provisional liquidation.
- (d) Following the implementation of restructuring officer regime, a company can no longer seek the appointment of a provisional liquidator if it intends on presenting a restructuring proposal.

Question 1.19

Select the **correct** statement:

An official liquidator can set aside dispositions that seek to prefer one creditor over other creditors within how many months / years before the deemed commencement of the company's liquidation.

- (a) Three months
- (b) Six months
- (c) Six years
- (d) There is no time limit

Question 1.20

Select the **correct** statement:

Which of the following is **not a** fundamental principle of ethics for Insolvency Practitioners per the Cayman Islands Institute of Professional Accountants:

- (a) Conflicts of interest
- (b) Integrity
- (c) Confidentiality
- (d) Professional behaviour

**** END OF QUESTION 1 ****

QUESTION 2 FOLLOWS ON NEXT PAGE / ...

QUESTION 2 - LIQUIDATION (45 MARKS)

Where appropriate, refer to the fact pattern below when answering the questions that follow. Please note that not all questions relate to the fact pattern.

FACT PATTERN

BLUESEA DIGITAL CAPITAL LIMITED

Bluesea Digital Capital Limited (Bluesea) was established in 2018 in the Cayman Islands as a digital asset management platform. Bluesea operated multiple online cryptocurrency trading platforms across the Caribbean and Latin America, known as OTPs. Investments made into these OTPs were held in secure brokerage accounts under Bluesea's own name. Bluesea's clientele comprised a diverse mix of institutional investors, high-net-worth individuals, and consumers.

On 24 June 2022, one of Bluesea's prominent OTPs, eTrade Wave (eTrade), abruptly disabled its buy / sell functionality without prior notice. At the time of suspension, eTrade had amassed over 2,500 users who had collectively invested approximately \$125 million. This sudden suspension of the trading platform created widespread apprehension among investors, resulting in an overwhelming surge of withdrawal requests. Notably, Whitesand Capital (Whitesand) sought to withdraw its entire deposit of \$32 million but faced insurmountable challenges in recovering the funds.

Unable to retrieve its deposit, Whitesand initiated winding up proceedings against Bluesea in May 2023. The petition faced vehement opposition from Bluesea, which asserted that deposits had been transferred to its joint venture partner. Bluesea claimed it needed additional time to resolve a "cordial disagreement" to facilitate the return of deposits. Amid allegations that investor deposits had not been segregated as promised and due to Bluewave's inability to meet its financial obligations, the Grand Court of the Cayman Islands saw fit to make a winding up order on 22 August 2023.

Following the appointment of the official liquidator, Bluesea's joint venture partner, based in Singapore, became the subject of several press reports. These reports alleged that its director had previously been involved in a fraudulent investment scheme in the early 2000s. Furthermore, the official liquidator had discovered that only one audit had ever been conducted in respect of Bluesea's financial statements, with Bluesea's auditors resigning shortly thereafter.

The official liquidators have called for creditor claims, and among the submissions received, a claim amounting to \$0.5 million has surfaced, relating to leasing obligations tied to office space that was utilised by the joint venture partner. Bluesea's documented records fail to substantiate any historical evidence of rental payments being disbursed by the company, nor do they reveal any corresponding liabilities recorded within its financial statements.

Question 2.1

As part of Whitesand's petition to wind up Bluesea, Whitesand obtained sworn consent(s) to act from the proposed official liquidators. Set out the required content of the consent to act signed by the proposed official liquidator(s). (5)

Answer:

Order 3, rule 4(1) of the CWR requires that every winding up petition is to be supported by an affidavit sworn by the person or persons nominated for appointment as official liquidator ("consent to act") stating: (1)

- a. that person is a qualified insolvency practitioner and meets the residency requirement in Regulation 5 of the Insolvency Practitioners' Regulations (IPRs). In summary, the person must be a resident of the Cayman Islands and the person or their firm is authorised to carry on business as professional insolvency practitioners); (1)
- b. having made due enquiry, that person believes that that person and that person's firm meet the independence requirement in Regulation 6 of the IPRs. The person will not be regarded as independent if, within 3 years immediately preceding the commencement of the liquidation, the person or their firm has acted in relation to the company as its auditor (Regulation 6(2)); (1)
- c. that person and/or that person's firm are in compliance with the insurance requirement in Regulation 7 of the IPRs. In summary, the person and their firm must have professional indemnity insurance (up to US\$10 million in respect of each and every claim and at least US\$20 million in aggregate, with a deductible of not more than US\$1 million) applicable to the negligent performance or non-performance of that person's duties as an official liquidator generally; and (1)
- d. that person is willing to act as an official liquidator if so appointed by the Court. (1)

5 marks

To the extent that the petition seeks the appointment of a qualified insolvency practitioner jointly with a foreign practitioner, Order 3, rule 4(2) of the CWR requires that the petition be supported by an affidavit sworn by the foreign practitioner stating:

- a. that person's professional qualifications;
- b. the country in which that person is qualified to perform functions equivalent to those performed by official liquidators under the Companies Act or by trustees under the Bankruptcy Act;
- c. that person's professional experience;

- d. that person will have the benefit of professional indemnity insurance in respect of that person's acts and omissions done in that person's capacity as an official liquidator meeting the requirements of Regulation 7 of the IPRs;
- e. if that person has been appointed by a foreign court or authority as a liquidator, trustee, receiver or administrator of the company or a related company, full particulars of such appointment; and
- f. that, having made due enquiry, that person and that person's firm meet the independence requirement in Regulation 6 of the IPRs.

Question 2.2

Commented [BB5]: Question 2.2 - Sub-total = 5/5

The proposed liquidators are employees of the accountancy practice Bodden & Ebanks Limited. Shortly prior to the hearing of the winding up petition of Bluesea, it transpires that Bodden & Ebanks Limited previously acted as auditors of Bluesea in 2021. Are the proposed liquidators still able to act in relation to Bluesea? Please provide an explanation for your answer. This information came to light after the proposed liquidators had already provided their consents to act; what should the proposed liquidators do in respect of the same? (5)

Answer:

The Insolvency Practitioners' Regulations (IPRs) set out a number of tests that must be met in order for a person to be eligible to act as an official liquidator. Regulation 6 of the IPRs (1) incorporates the "Independence Requirement", which provides that a qualified insolvency practitioner is not to be appointed as an official liquidator unless he can be properly regarded as independent as regards that company. Regulation 6(2) specifically precludes a qualified insolvency practitioner from being regarded as independent if, within a period of 3 years immediately preceding the commencement of the liquidation, he, or the firm of which he is a partner or employee, or the company of which he is a director or employee, has acted in relation to the company as its auditor. (1)

The commencement of the liquidation is in 2023. Bodden & Ebanks Limited acted as auditors of Bluesea in 2021 (and were presumably the auditors who resigned after conducting the "only audit of Bluesea's financial statements"). Notwithstanding the resignation, the proposed liquidators fall squarely within the scenario contemplated in Regulation 6(2) (i.e. employees of a company/firm which has acted as Bluesea's auditor within 3 (1) years immediately preceding commencement of the liquidation). As such, the proposed liquidators are not able to act in relation to Bluesea. (1)

This information came to light after the proposed liquidators had already provided their consents to act. A consent to act is a sworn affidavit of each proposed liquidator (see Order 3, rule 4(1) of the CWR) which, relevantly, includes a statement that, having made due enquiry, that person believes that that person and that person's firm meet the

Independence Requirement in Regulation 6. As such, the proposed liquidators should promptly: (i) inform the Court that they have given incorrect or misleading evidence preferably by way of further affidavits from each; and (2) withdraw their consents to act. (1)

5 Marks

Question 2.3

Commented [BB6]: Question 2.3 - Sub-total = 5/5

Tom and Jerry have been appointed as joint voluntary liquidators of Cheese Limited, a Cayman Islands exempted company, upon the passing of a special resolution of the shareholders of Cheese Limited, dated 1 March 2023.

On 1 April, Tom decides to retire from his career as voluntary liquidator and leave his firm, leaving Jerry to act as sole voluntary liquidator.

On 1 June, one of the shareholders reads that Jerry has been named in an Offshore Alert article suggesting that he has been defrauding companies in liquidation. They wish to remove him as liquidator immediately, but do not have the support of the other shareholders to take that action.

Using the facts above, answer the questions that follow:

Question 2.3.1 (1/1 mark)

List the qualifications Tom and Jerry need to act as voluntary liquidators. (1)

Answer:

Section 120 of the Companies Act provides that any person, including a director or officer of the company, may be appointed as its voluntary liquidator. As such, there are no qualification requirements for Tom and Jerry to be appointed as voluntary liquidators. (1)

Nevertheless, if it can be shown that a voluntary liquidator is not a "fit and proper person" to hold office (noting the suggestion that Jerry may be defrauding companies in liquidation), then any contributory may apply to the Court to remove that person from office: section 121(3) of the Companies Act.

Question 2.3.2 (2/2 marks)

List the statutory steps Tom and Jerry must take within 28 days of their appointment, as set out in the Companies Act. (2)

Answer:

Pursuant to section 123(1) of the Companies Act, within 28 days of the commencement of the voluntary winding up (and appointment of Tom and Jerry as joint voluntary

liquidators), Tom and Jerry must:

1. file notice of the winding up with the Registrar of Companies (**Registrar**) (using CWR Form No. 19);
2. file their consent to act with the Registrar (using CWR Form No. 20);
3. file the director's declaration of solvency with the Registrar (if supervision of the court is not sought) (using CWR Form No. 21, to be signed by all directors);
4. if Cheese Limited is carrying on a regulated business, serve notice of the winding up upon CIMA (providing stamped copies of CWR Form No. 19 and 20); and
5. publish notice of the winding up in the Gazette (using CWR Form No. 19).

Failure to comply with any of the above steps is an offence with a penalty of up to KYD 10,000: section 123(2) of the Companies Act. (2)

Question 2.3.3 (2/2 marks)

Describe the basis upon which the company may resolve to remunerate Tom and Jerry in their capacity as the voluntary liquidators. (2)

Answer:

Section 130(2) of the Companies Act provides that the rate and amount of the voluntary liquidators' remuneration shall be fixed by resolution of the company. Order 13, rule 9(2) of the CWR provides that Cheese Limited may resolve to remunerate Tom and Jerry, in their capacity as voluntary liquidators, on the basis of:

1. an hourly rate (or scale of rates) for the time reasonably and properly devoted to the liquidation;
2. a fixed sum;
3. a commission or percentage of the assets distributed or realised; or
4. a combination of these methods. (2)

Order 13, rule 9(3) of the CWR permits Tom and Jerry to receive remuneration out of the company's assets without approval of a resolution passed at a general meeting of Cheese Limited only in limited circumstances (i.e. where the amount of remuneration is specified in their final report and accounts, but no member attends and votes at the final general meeting, or with the Court's approval).

Question 2.4 (0.5/2 marks)

Commented [BB7]: Question 2.4 - Sub-total = 0.5/2

Commented [ni8]: the question asks what the court's powers are 'upon the hearing of a WUP' not 'upon the hearing of a PL application'

You have therefore not answered the question. (which related to s.95(1)).

But I am awarding 0.5 marks for a good answer to the PL question.

Assuming that the contributories petition the Grand Court of the Cayman Islands for an appointment of a provisional liquidator, what are the Court's powers upon the hearing of a winding-up petition? (2)

Answer:

Section 104(1) of the Companies Act provides that the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a provisional liquidator. Pursuant to section 104(2) of the Companies Act, the Court may grant an application for appointment of a provisional liquidator made by a contributory (or creditor or CIMA) if it is satisfied that:

- a. there is a prima-facie case for making a winding up order; and
- b. the appointment of a provisional liquidator is necessary in order to: (i) prevent the dissipation or misuse of the company's assets; (ii) prevent the oppression of minority shareholders; or (iii) prevent mismanagement or misconduct on the part of the company's directors.

An application for appointment of a provisional liquidator may also be made under section 104(3) of the Companies Act.

If the Court is satisfied that a provisional liquidator should be appointed, then the provisional liquidator may only carry out such functions as the Court may confer on that person and that person's powers may be limited by the order appointing him or her: section 104(4) of the Companies Act. The Court maintains a general discretion to "grant the provisional liquidators such powers as the Court considers necessary and appropriate to prevent the dissipation, misuse, mismanagement and misconduct and to ensure the Company's assets are property protected pending the hearing of the winding up petition": *Natural Dairy (NZ) Holdings* (Unreported, 7 June 2017) (**Natural Dairy**) at [5]. As such, the powers granted to a provisional liquidator will be tailored to the specific needs to the company. The Court may adjust or extend the powers granted to the provisional liquidator "so as to respond to particular problems and needs identified by the [provisional liquidators] and changing circumstances": *Natural Dairy* at [5].

Question 2.5

Question 2.5.1 (4/4 marks)

In a brief essay, explain who can apply to the Court to remove official liquidators, and in what circumstances. Who must such an application be served on? (4)

Answer:

Section 107 of the Companies Act provides that a creditor or contributory of the company

Commented [BB9]: Question 2.5 - Sub-total = 9/9

Commented [ni10]: great answer!

may apply to the Grand Court for an official liquidator to be removed from office. On its face, that section does not distinguish between the circumstances in which a creditor or contributory may make such an application. However, only the parties with the ultimate interest in the distribution of the company's assets may apply to remove an official liquidator - that is: (a) contributories, in the case of a solvent liquidation; or (b) creditors, in the case of an insolvent liquidation: see *Johnson and Deloitte & Touche AG* [1997 CILR 120] and *BTU Power Company 2019* (1) CILR Note 7 (**BTU**).

There is a broad discretion to remove official liquidators; however, the Court must be satisfied that there is/are good reason(s) for doing so: see *BTU* and *AMP Enterprises Ltd (t/a Total Home Entertainment) v Hoffinan* [2002] BCC 996. Generally, a creditor's preference for an alternative liquidator, or being disgruntled, are not sufficient: *BTU*. In the absence of impropriety on the part of the official liquidator, it is sufficient if it can be demonstrated that removal of the liquidator would be for the general advantage of the majority of the persons interested in the liquidation; however, where impropriety is shown, the Court might override their interests: *BTU*. Order 5, rule 6(3) requires that the removal summons be supported by an affidavit containing all the facts and matters relied upon.

Order 5, rule 6(2) of the CWR requires an application for the removal of an official liquidator to be served upon:

- a. the official liquidator;
- b. each member of the liquidation committee; or
- c. counsel for the liquidation committee, if an attorney has been appointed by the liquidation committee with authority to act generally; and
- d. such other creditors or contributories as the Court may direct.

Question 2.5.2 (5/5 marks)

Briefly explain why it makes sense that the class of potential applicant varies in accordance with the solvency of the company. (5)

Answer:

Section 107 of the Companies Act provides that a creditor or contributory of the company may apply to the Grand Court for an official liquidator to be removed from office. On its face, that section does not distinguish between the circumstances in which a creditor or contributory may make such an application. However, only the parties with the ultimate interest in the distribution of the company's assets may apply to remove an official liquidator - that is: (a) contributories, in the case of a solvent liquidation; or (b) creditors, in the case of an insolvent liquidation: see *Johnson and Deloitte & Touche AG* [1997 CILR 120] and *BTU Power Company 2019* (1) CILR Note 7 (**BTU**).

Commented [ni11]: also a great answer!

The general principle behind this makes sense: in order to have standing to seek statutory relief from a court (i.e. to be a proper person to make an application) one must have a legitimate interest in that relief. In *Deloitte* [1999] CILR 297 (cited in *BTU* at [38]), the Privy Council observed: “Where the court is asked to exercise a statutory power or its inherent jurisdiction, it will act only on the application of a party with a sufficient interest to make it... This is not a matter of jurisdiction; it is a matter of judicial restraint. Orders made by the court are coercive... It is therefore incumbent on the court to consider not only whether it has jurisdiction to make the order but whether the applicant is a proper person to invoke the jurisdiction.” In the case of an insolvent liquidation, the contributories do not have a legitimate interest as no money will be distributed to them. In the case of a solvent liquidation, creditors do not have a legitimate interest as they will be fully paid and it is the contributories that have the interest.

Question 2.6

During a liquidation there is an expected recovery into the liquidation estate. The amount is such that the liquidation estate is no longer deemed to be insolvent and the official liquidator can settle all of the outstanding creditor claims (including interest) in full. The official liquidator has subsequently filed a revised certificate of solvency (CWR Form No 14) with the court. What impact will the change in solvency have on the liquidation committee, assuming one has been constituted? (4)

Commented [ca12]: Question 2.6 subtotal 4/4

Answer:

Order 8, rule 1(2) of the CWR permits an official liquidator to re-consider the initial determination of a company's solvency and to change that determination if the official liquidator considers that it is appropriate to do so. If the official liquidator considers it appropriate to change the determination of solvency, the official liquidator's changed determination is also final and binding on the company's creditors and contributories for the purposes of Order 8 and 9 of the CWR (regarding meetings of creditors and contributories and liquidation committees, respectively).

Assuming a liquidation committee has been constituted, then the change of determination of solvency from insolvent to solvent will require the reconstitution of the liquidation committee pursuant to Order 9, rule 3 of the CWR. Specifically, as the company is now certified to be solvent, any creditor members of its liquidation committee shall automatically cease to be members and the official liquidator must convene a meeting of contributories for the purpose of electing new members from amongst the company's contributories: Order 9, rule 3(2) of the CWR. The liquidation committee is to consist of not less than three and no more than five contributories where the liquidator has determined that the company should be regarded as solvent: Order 9, rule 1(3) of the CWR.

Question 2.7

Discuss the steps that a liquidator will need to take following the making of an order for dissolution. (5)

Answer:

Following the making of an order for dissolution, a liquidator must:

1. File the order for dissolution with the Registrar of Companies within 14 days from the date upon which the order is perfected: Order 22, rule 2(3) of the CWR.
2. Comply with any supplementary directions within the order for dissolution relating to:
 - a. the retention of the whole or part of the liquidation files for longer than the minimum period of 3 years specified in Order 25, rule 1 of the CWR (see Order 22, rule 2(4)(a) of the CWR); and
 - b. the retention, storage and destruction of the company's books and records pursuant to Order 25, rule 2 of the CWR (see Order 22, rule 2(4)(b) of the CWR).
3. Where there are any unclaimed dividends or undistributed assets:
 - a. establish an interest bearing bank account in the liquidator's own name as "trustee of the creditors or members of [company], dissolved", transfer any funds representing unclaimed dividends or uncleared dividend cheques into that account and administer the funds in the account as trustee for the benefit of the creditors / contributories to whom the funds are owed (see Order 23, rule 2 of the CWR);
 - b. transfer title to any assets of the company which ought to have been distributed in specie into the liquidator's own name as "trustee of the creditors or members of [company], dissolved" and hold and administer such assets as trustee for the benefit of the creditors / contributories who are entitled to receive such assets (see Order 23, rule 3 of the CWR); and
 - c. advertise for claims and take such other steps as appear reasonable to locate and identify claimants (see Order 23, rule 4 of the CWR).

Pursuant to Order 23, rule 6 of the CWR, any money or assets remaining in the hands of the former liquidator as trustee at the end of one year from the date upon which the company was dissolved shall be transferred to the Financial Secretary.

Question 2.8

Describe the general investigative powers and duties of a liquidator. (5)

Commented [ca13]: Question 2.7 subtotal 4/5 for full marks need to note that other than matters contained within the order that the liquidators' powers cease

Commented [BB14]: Question 2.8 - Sub-total = 5/5

Answer:

Section 102(1) of the Companies Act (½) provides that where a winding up order is made by the Court, the liquidator is empowered to investigate: **cite case law to substantiate your answer (A liquidator is an officer of the court with certain general duties which were summarised in the Cayman Islands case *In the Matter of Citrico International Limited* [2004-05 CILR 435] (citing *Gooch's Case* 1872, 7 Ch App 207),)**

- a. if the company has failed, the causes of the failure; and
- b. generally, the promotion, business, dealings and affairs of the company,

and to make such report, if any, to the Court as the liquidator thinks fit. (1)

Pursuant to section 102(2) of the Companies Act, subject to obtaining directions of the Court, a liquidator is empowered to: (a) assist CIMA and the Royal Cayman Islands Police Service to investigate the conduct of persons referred to in section 101(3); (1) and (b) institute and conduct a criminal prosecution of persons referred to in section 101(3). The costs of such investigation and prosecution may be paid out of the assets of the company, subject to prior approval of the company's creditors (if the company is insolvent) or contributories (if the company is solvent): section 102(3) of the Companies Act.

Section 101(1) of the Companies Act also empowers a liquidator to require specified persons to prepare and submit to the liquidator a statement in the prescribed form as to the affairs of the company. (1) Section 101(3) of the Companies Act sets out the categories of persons who can be so compelled (including persons who are or have been directors or officers of the company). The statement of affairs is to be verified by an affidavit and must include: (a) particulars of the company's assets and liabilities; (b) names and addresses of any persons having possession of the company's assets (and assets held by those persons); and (c) names and addresses of the company's creditors (and securities held by those creditors). A liquidator is required to give notice of such a request and the recipient of such notice is required to comply with it within 21 days of being served: section 101(4) of the Companies Act. A person who, without reasonable cause, fails to comply with such a request commits an offence and is liable on conviction to a fine of KYD 10,000: section 101(7).

Further, section 103(3) of the Companies Act empowers an official liquidator to apply to the Court for an order: (a) for the examination of any relevant person; or (b) that a relevant person transfer or deliver up to the liquidator property or documents belonging to the company. A "relevant person" is defined in section 103(1) of the Companies Act and includes any person who, whether resident in the Cayman Islands or elsewhere: (a) is or has been a director or officer of the company; and (b) is or was a professional service provider to the company. Each relevant person is required to co-operate with the official liquidator: section 103(2) of the Companies Act. (1)

Finally, Order 26, rule 3(1) of the CWR provides that it is the duty of the official liquidator to take possession or control of all the company's books and records, including those maintained in electronic form. Where any person has possession of any property or documents to which the company appears entitled, the Court may require that person to pay, transfer or deliver such property or documents to the official liquidator: section 138(1) of the Companies Act. (1)

Question 2.9

Explain what is meant by the "relevant date" for the purposes of a section 101 of the Companies Act (2023 Revision) notice served by a liquidator in order to procure a statement of affairs from persons listed in section 101(3). (5)

Answer:

Section 101(1) of the Companies Act empowers a liquidator to procure a statement of affairs from certain persons specified in section 101(3), including "*persons who are or have been employees of the company, during the period of one year immediately preceding the **relevant date***" (section 101(3)(c)).

Section 101(6) of the Companies Act defines "relevant date" to mean:

- a. in a case where a provisional liquidator is appointed, the date of that person's appointment; and
- b. in any other case, the commencement of the winding up. (1)

The "commencement of the winding up" varies depending on the circumstances.

Section 100(1) of the Companies Act provides that if, before the presentation of a petition for the winding up of a company by the Court: (a) a resolution has been passed by the company for voluntary winding up; (1) (b) the period, if any, fixed for the duration of the company by its articles of association has expired; (1) (c) the event upon the occurrence of which it is provided by the articles of association of the company is to be wound up has occurred; or (d) a restructuring officer has been appointed (1) pursuant to section 91B or 91C of the Companies Act and the order appointing the restructuring officer has not been discharged, the winding up of the company is deemed to have commenced at the time of passing of the relevant resolution, or expiry of the relevant period or occurrence of the relevant event or date of the relevant petition to appoint a restructuring officer.

In any other circumstance, the winding up is deemed to commence at the time of presentation of the petition for winding up: section 100(2) of the Companies Act. (1)

A good answer.

**** END OF QUESTION 2 ****

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QUESTION 3 FOLLOWS ON NEXT PAGE / ...

QUESTION 3 - CORPORATE RESCUE (20 MARKS)

Where appropriate, refer to the fact pattern below when answering the questions that follow.

FACT PATTERN

SMB TECH CORPORATION

SMB Tech Corporation (SMB Tech), a Cayman Islands-based company operating in the technology sector, boasts a global presence with subsidiaries spanning various jurisdictions, including the United States, the United Kingdom, and Hong Kong. However, SMB has recently encountered significant financial challenges stemming from an economic downturn and heightened competition within its industry. Considering these difficulties, SMB sought the advice of a reputable advisory firm, which cautioned that SMB Tech teetered on the brink of insolvency and urgently required a financial restructuring.

While exploring its strategic alternatives, SMB Tech found itself confronting mounting pressure from its creditors. One particularly assertive creditor, Tech Credit Systems (TCS), threatened to initiate winding-up proceedings against SMB Tech. In a bid to secure some respite, SMB Tech entered into a three-month standstill agreement with TCS. However, as the three-month period lapsed without concrete restructuring proposals in place, TCS exhibited signs of growing impatience.

The delay and indecision on the part of SMB Tech's management have further exacerbated tensions among certain contributories of the company. These contributories, expressing their dissatisfaction, have indicated an intent to petition the Grand Court of the Cayman Islands for the appointment of a provisional liquidator. Their chosen provisional liquidator is based in Hong Kong, and their motivation is grounded in a perceived loss of trust and confidence in SMB's directors.

SMB Tech's financial obligations include unsecured debt governed by English law, amounting to GBP 6 million, owed to three creditors situated in the United Kingdom. The company hopes to negotiate a compromise on these liabilities as part of its restructuring efforts. Additionally, SMB Tech has undertaken guarantees for certain financial obligations of several subsidiaries. Notably, the creditors holding these guarantee liabilities have indicated a reluctance to endorse any proposed restructuring scheme.

Question 3.1

The chosen provisional liquidator by the contributories of SMB has professional indemnity insurance up to a limit of US\$5 million in respect of each and every claim. The chosen provisional liquidator is unwilling to increase his professional indemnity liability insurance limit due to the increasing cost of insurance products in the market. Along with your

Commented [BB16]: Question 3.1 - Sub-total = 4/5

reasons, provide an explanation as to whether the chosen provisional liquidator could be appointed by the Grand Court of the Cayman Islands. (5)

Answer:

The contributories face several hurdles in having their chosen provisional liquidator (PL) appointed by the Grand Court.

First, section 104(1) of the Companies Act provides that the Court may only appoint a PL after presentation of a winding up petition but before the making of a winding up order. While it appears that TCS has “*threatened to initiate winding-up proceedings against SMB Tech*”, TCS does not appear to have presented a winding up petition at this stage. A winding up petition may be presented by the company, any creditor/s, any contributory/ies or CIMA: section 94(1) of the Companies Act. A winding up petition may be founded on the “just and equitable ground”, which appears to be the most applicable from the contributories’ perspective given the reference to them having “*a perceived loss of trust and confidence in SMB’s directors*”. However, the contributories here may not have standing to present a petition on this basis if it is shown that SMB Tech is insolvent (noting reference to it “*teeter[ing] on the brink of insolvency*” several months ago).

Having noted those potential issues, once a winding up petition has been presented, either a creditor (e.g. TCS) or the contributories may apply for the appointment of a PL on the grounds that (section 104(2) of the Companies Act):

- a. there is a prima-facie case for making a winding-up order; and
- b. the appointment of a PL is necessary in order to: (i) prevent the dissipation or misuse of the company’s assets; (ii) prevent the oppression of minority shareholders; or (iii) prevent mismanagement or misconduct on the part of the company’s directors.

Second, the chosen PL is “*based in Hong Kong*”. Two potential related sub-issues arise from this. A foreign practitioner cannot act as a sole PL of a Cayman Islands company. Section 108 of the Companies Act provides that a foreign practitioner may be appointed to act jointly with a “qualified insolvency practitioner”. (1) Pursuant to section 89 of the Companies Act, “qualified insolvency practitioner” is defined within the Insolvency Practitioners’ Regulations (IPRs) (see Regulations 3(2) and 4 of the IPRs) and is a person who:

- a. is licensed to act as an insolvency practitioner in a relevant country (of which the PRC / Hong Kong is not one); or
- b. is qualified as a professional accountant by an approved institute, is in good standing with such institute, has a minimum of 5 years’ relevant experience and is credited with not less than 2,500 chargeable hours of work.

As such, if the chosen PL does not satisfy the requirements to be a “qualified insolvency practitioner”, then the contributories can only seek the appointment of the chosen PL jointly with such a “qualified insolvency practitioner”.

Further, as the chosen PL is “based in Hong Kong”, even if they overcome the “qualified insolvency practitioner” hurdle, it does not appear that they will satisfy the residency requirement in Regulation 5 of the IPRs (namely that a qualified insolvency practitioner cannot be appointed as PL unless he is resident in the Cayman Islands). Nevertheless, Regulation 8 of the IPRs provides that a foreign practitioner (1) (who does not meet the residency requirement of Regulation 5) who meets the independence and insurance requirements of Regulations 6 and 7 may be appointed as a PL with a qualified insolvency practitioner.

Finally, the chosen PL “has professional indemnity insurance up to a limit of US\$5 million in respect of each and every claim” and is unwilling to increase that limit due to the cost of premiums. Regulation 7(1) of the IPRs requires the practitioner (and the firm at which he is a partner or employee) to have professional indemnity insurance (up to a limit of at least US\$10 million in respect of each and every claim and at least US\$20 million in the aggregate, with a deductible of not more than US\$1 million) applicable to the negligent performance or non-performance of his duties as a PL generally (1). As such, the chosen PL does not presently meet the insurance requirement within Regulation 7(1). However, pursuant to Regulation 7(2) the Court may nevertheless make an order that the chosen PL shall procure the necessary professional indemnity insurance coverage and provide that the premium for such coverage be paid out of the assets of the company as an expense of the liquidation. (1)

In summary, there are significant hurdles to the appointment of the chosen PL by the Grand Court, but it remains possible that the chosen PL could be appointed if the contributories adjust their approach (including to appoint joint PLs and make the necessary application to the Court in respect of insurance).

4 marks

Question 3.2

What must the company demonstrate to the Court before the Court will appoint a restructuring officer? (2)

Answer:

Section 91B(1) of the Companies Act provides a two-limb test for the appointment of a restructuring officer by the Court, namely that the company is required to satisfy the Court that:

- a. the company is or is likely to become unable to pay its debts within the meaning of section 93 of the Companies Act; and (1)

Commented [BB17]: Question 3.2 - Sub-total = 2/2

- b. the company intends to present a compromise or arrangement to its creditors (or classes thereof) either pursuant to the Companies Act, the law of a foreign country or by way of a consensual restructuring. (1)

These requirements are the same as those previously provided for under the former section 104(3) of the Companies Act in relation to the appointment of provisional liquidators (i.e. prior to the introduction of the restructuring officer regime). The authorities applicable to interpretation of this test under the former section 104(3) apply equally to the test under section 91B: per *Re Oriente Group Limited* (Unreported, Kawaley J, 8 December 2022).

It is unclear whether the first limb of the test in a. above will be met. There is reference to SMB Tech "*teeter[ing] on the brink of insolvency*" - but there is uncertainty as to whether this equates to it being or likely to become unable to pay its debts. It appears that the second limb of the test in b. above may be met given the reference to SMB Tech's "*hopes to negotiate a compromise*" in relation to certain creditors.

2 Marks

Question 3.3

What are the advertising requirements for a restructuring petition? (2)

Answer:

Order 1A, rule 1(3) of the CWR provides that, unless the Grand Court otherwise directs, every petition for the appointment of a restructuring officer shall be advertised once in a newspaper having a circulation in the Cayman Islands and is to be in CWR Form No. 3A. (½)

In addition, given the reference to SMB Tech carrying on business in several jurisdictions (including the US, UK and Hong Kong), Order 1A, rule 1(4) of the CWR provides that, unless the Grand Court otherwise directs, if the company is carrying on business outside the Cayman Islands, a restructuring petition shall also be advertised once in a newspaper having circulation in a country (or countries) in which it is most likely to come to the attention of the company's creditors (including any contingent or prospective creditors) and contributories (in which case the advertisement must be published in the official language of such country or countries). (½)

Order 1A, rule 1(5) of the CWR requires such advertisements to appear not more than 7 business days after the restructuring petition (½) is filed and not less than 7 business days before the hearing date. (½)

Question 3.4

Commented [BB18]: Question 3.3 - Sub-total = 2/2

Commented [BB19]: Question 3.4 - Sub-total = 4/6

Describe at least six (6) elements of the new restructuring officer regime that assist in safeguarding the interests of creditors. (6)

Answer:

The new restructuring officer regime assists in safeguarding the interests of creditors by:

1. Providing that the creditors (including any contingent or prospective creditors) of a company are to be notified of the appointment of a restructuring officer or interim restructuring officer to that company: sections 91B(5)(a)(i) and 91C(5)(a)(i) of the Companies Act. (1)
2. Providing that a creditor (including a contingent or prospective creditor) is among the categories of persons who may apply to the Court for a variation or discharge of the order appointing the restructuring officer: section 91E(1)(c) of the Companies Act. Such an application is to be by way of summons in CWR Form No. 16B. (1)
3. Providing that a creditor (including a contingent or prospective creditor) is among the categories of persons who may apply to the Court for a restructuring officer to be removed from office and replaced by an alternate restructuring officer: section 91F(1)(b) of the Companies Act. Such an application is to be by way of summons in CWR Form No. 16C. (1)
4. Generally, providing that a creditor (including a contingent or prospective creditor) is among the categories of persons who may apply to the Court to determine any question arising in the course of carrying out the restructuring officer's functions: section 91D(7) of the companies Act.
5. Providing that, notwithstanding the presentation of a petition for the appointment of a restructuring officer or the appointment of a restructuring officer, a creditor who has security over the whole or part of the assets of the company remains entitled to enforce their security without leave of the court and without reference to the restructuring officer: section 91H of the Companies Act. (1)
6. Preserving, with leave of the Court and subject to such terms as the Court may impose, the ability for creditors to commence proceedings against the company (including presenting a winding up petition) after presentation of a restructuring petition or appointment of a restructuring officer: section 91G(1) of the Companies Act.

4 Marks - other considerations included below

- The default position is that a Restructuring Petition will be heard on notice to stakeholders while the prior statutory framework provided that applications for appointment of provisional liquidators were to be made ex parte by default. (1 mark)

- The same advertising requirements are imposed as applicable to a winding up petition (the prior regime did not require advertisement of an application to appoint JPLs) – no more than seven business days after the filing of a Restructuring Petition and not less than seven Business days before the hearing date (1 mark)
- Heightened evidential requirements for the affidavit in support including the need to explain how the company will be funded during the restructuring period and why it is in the best interests of creditors (1 mark)
- The hearing must be heard within 21 days of presentation (1 mark)
- A requirement for the RDs to report – open and transparent process (1 mark)
- The petitions shall be heard in open court unless the Court otherwise directs (1 mark)

Question 3.5

Outline the relief **that is and is not** available to the Court upon a restructuring petition. (5)

Answer:

Section 91B(3) of the Companies Act provides that upon hearing a petition for the appointment of a restructuring officer, the Court may:

- make an order appointing a restructuring officer; (1)
- adjourn the hearing conditionally or unconditionally; (1)
- dismiss the petition; or (1)
- make any other order as the Court thinks fit (1), except an order placing the company into official liquidation (1), which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

In relation to a. above, the Court may appoint a restructuring officer if satisfied of the grounds in section 91B(1) (i.e. the company is or is likely to become unable to pay its debts and it intends to present a compromise or arrangement to creditors).

In relation to d. above, the Court has no power to wind up a company on the basis of a restructuring petition, only where a winding up petition is also sought to be proceeded with or commenced against the company with leave of the Court and subject to such terms as the Court may impose pursuant to section 91G(1) of the Companies Act.

5 Marks

**** END OF QUESTION 3 ****

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QUESTION 4 FOLLOWS ON NEXT PAGE / ...

QUESTION 4 - GENERAL QUESTIONS (15 MARKS)

The questions below deal with exempted limited partnerships (ELP's), cross-border insolvency, the recognition of foreign judgments and consumer insolvency.

Question 4.1

In addition to the Limited Partnership Agreement, what governs the operation of ELPs? (3)

Answer:

In addition to the Limited Partnership Agreement, the formation and operation of ELPs formed in the Cayman Islands is governed by the provisions of the Partnership Act (2013 Revision) (1) and the Exempted Limited Partnership Act (2021 Revision) (1) (ELP Act). Section 3 of the ELP Act provides that the rules of equity and common law applicable to partnerships (as modified by the Partnership Act) (1) shall apply to ELPs, except where they are inconsistent with the express provisions of the ELP Act.

In relation to court-ordered winding up and dissolution of ELPs (and, to a limited extent, voluntary winding up), the provisions of Part V of the Companies Act and the CWR apply with modifications. Where there are inconsistencies, the ELP Act takes priority over the Companies Act.

Question 4.2

When does the Cayman Islands court have jurisdiction to wind up a foreign company? (5)

Section 91(d) of the Companies Act provides that the Grand Court has jurisdiction to make winding up orders in respect of a "foreign company" (i.e. any body corporate incorporated outside the Cayman Islands: see section 89 of the Companies Act) which:

1. has property located in the Cayman Islands;
2. is carrying on business in the Cayman Islands;
3. is the general partner of a "limited partnership" (defined to mean an ordinary limited partnership registered under section 49 of the Partnership Act (2013 Revision) or an ELP registered under section 9 of the ELP Act); or
4. is registered under Part IX of the Companies Act (which requires a foreign company to register in the Cayman Islands where it establishes a place of business or commences carrying on business within the Cayman Islands: see section 183 of the Companies Act).

Question 4.3

Commented [BB21]: Question 4.1 - Sub-total = 3/3

Commented [sp22]: Question 4.2 - Sub-total = 5/5

Commented [sp23]: Question 4.3 - Sub-total = 3/3

Does a judgment of a foreign court need to be registered and / or enforced within the Cayman Islands before it is relied upon as the basis for seeking a winding up order? Provide reasons. (3)

Answer:

Typically, a judgment of a foreign court is not enforceable in the Cayman Islands without first taking steps for it to be recognised under (usually) either the Foreign Judgments Reciprocal Enforcement Act (1996 Revision) or the common law. However, that is not the case in the context of relying upon a foreign judgment as the basis for seeking a winding up order. In *In the matter of Guoan International Limited* (unreported, Kawaley J, 29 October 2021), Justice Kawaley held that a creditor may rely upon a foreign judgment as the basis for seeking a winding up order without first obtaining recognition or enforcement orders in respect of the foreign judgment in a Cayman Islands court. In that decision, Justice Kawaley was satisfied that the general principles according to which a final foreign judgment on the merits cannot be challenged by a party bound by it applied in the winding-up context: at [21].

Question 4.4

State the main statutory powers and duties of the trustee in bankruptcy, and provide at least one example with reference to a section of the Bankruptcy Act. (4)

Answer:

The main statutory powers and duties of the trustee in bankruptcy (**Trustee**) are provided for in the Bankruptcy Act. Broadly speaking, when an absolute order for bankruptcy has been made, the Trustee must administer the debtor's estate for the benefit of creditors: section 65 of the Bankruptcy Act. (1) More specifically:

1. Until the provisional order is made absolute, it is the duty of the Trustee, as far as the nature of the property seized permits, to preserve all such property in such state as to permit it to be returned to the debtor in the condition in which it was seized: section 38 of the Bankruptcy Act. (1)
2. In respect of the general meeting of creditors, the Trustee is required to attend the meeting and receive and decide upon proof of debts (including as necessary for determining the right of voting at the meeting): section 43 of the Bankruptcy Act. (1)
3. The Trustee is required to, as soon as possible after the public examination of the debtor, make a report as to the state of the debtor's affairs and as to the conduct of the debtor both before and during the bankruptcy: section 67(1) of the Bankruptcy Act.
4. The Trustee has the power to sell all or any part of the property of the debtor by

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public auction or tender or private contract and accept consideration on such terms as the Trustee thinks fit: section 78 of the Bankruptcy Act.

5. The Trustee may carry on the trade of the debtor so far as may be necessary or expedient for the beneficial winding up or sale of same (including employing the debtor): section 79 of the Bankruptcy Act. (1)
6. The Trustee may bring, institute or defend any action or other legal proceedings relating to the property of the debtor: section 80 of the Bankruptcy Act.
7. The Trustee is empowered to compromise various claims of or against the debtor or as to the debtor's property: see sections 82 - 84 of the Bankruptcy Act.
8. The Trustee must receive and decide on proof of debts (section 87 of the Bankruptcy Act) in the manner prescribed in the Grand Court (Bankruptcy) Rules (2021 Revision) (see, in particular, Rules 31 and 32).

TOTAL MARKS: [100]

**** END OF ASSESSMENT ****