



INSOL
INTERNATIONAL



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

Commented [BB1]: TOTAL = 90/100 - EXCELLENT results, well done.

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
Ms Cassandra Ronaldson Mr Adam Crane Ms Gemma Lardner Ms Jennifer Fox
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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.

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)

Commented [BB2]: Question 1 - Sub-total = 20/20

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

(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:

The required content for a nominated official liquidator's consent to act are set out in Companies Winding Up Rules (CWR) O.3, r.4. The consent is in the form of a sworn affidavit which supports the petition application. In the affidavit, the person nominated for appointment must state as follows (CWR, O.3, r.4(1)): (1)

- i) they are a qualified insolvency practitioner and meets the residency requirement set out in regulation 5 of the Insolvency Practitioners' Regulations (as amended) (IPR) - namely, that they are a Cayman Islands resident and that they, or the firm/company at which they are employed, holds a trade and business licence authorizing them to carry on business as professional insolvency practitioners; (1)
- ii) having made due enquiry, they believe that they and their firm/company meet the independence requirement contained in regulation 6 of the IPR (namely, that they can be properly regarded as independent of Bluesea); (1)
- iii) they and their firm have complied with the insurance requirement in regulation 7 of the IPR (namely, professional indemnity insurance applicable to the negligent performance or non-performance of duties as an official liquidator generally up to a limit of at least 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; and (1)
- iv) they are willing to act as an official liquidator if appointed by the Court. (1)

5 marks

If Whitesand also sought a joint appointment with a foreign practitioner, the application would need to include an affidavit from the latter stating (CWR, O.3, r.4(2)):

- i) their professional qualifications and experience;
- ii) the country in which they are qualified to perform functions equivalent to those performed by official liquidators under the *Companies Act (as amended)* (the **Act**);
- iii) they have the requisite professional indemnity insurance in respect of acts and omissions done in their capacity as official liquidator, in accordance with regulation 7 as described above;
- iv) having made due enquiry, they believe that they and their firm/company meet the independence requirement contained in regulation 6 as described above; and
- v) if they have been appointed by a foreign court or authority as a liquidator, trustee, receiver or administrator of Bluesea or a related party of Bluesea, full particulars of such appointment.

Question 2.2

Commented [BB4]: 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 proposed liquidators will not be able to act in relation to Bluesea. (1)

The Court will not appoint any person as official liquidator unless and until they have sworn a consent to act (CWR, O.5, r.5(1)). In the consent to act, the proposed liquidators must state that, having made due inquiry, that they and their firm meet the independence requirement - that is, they will not be appointed unless they can be properly regarded as independent of Bluesea (IPR, reg, 6(1)). (1) The IPR also deems that a practitioner is not to be regarded as independent if, within a period of 3 years immediately preceding the commencement of the liquidation, that person, or their firm has acted in relation to the company as its auditor.

As Bodden & Ebanks Limited acted as auditor in 2021, the proposed liquidators cannot be regarded as independent of Bluesea because the winding up would commence within three years of that engagement (in May 2023). Therefore, the proposed liquidators cannot satisfy the independence requirements and should not proceed with their appointment. (1)

It is assumed that the petition, along with the relevant supporting documentation, including the consent to act, has already been filed and served in May 2023; and that the proposed liquidators discovered their firm's conflict shortly prior to the hearing in August 2023. As above, the proposed liquidators should not proceed with their appointment. They should also consider the following steps:

- i) The petition application will have to be amended. Assuming it has already been served, Whitesand will require the leave of the Court (CWR O.3, r.2(3)). In the leave application:
 - a. Whitesand would seek to amend its prior nominated liquidators and substitute with newly proposed liquidators (CWR O.3, r.2(2)(e)) - assuming they can be found in time, and in which case, they would need to provide separate consents to act;
 - b. an affidavit from the petitioner should be included explaining the reason for the amendments (by reference to a further affidavit from the proposed liquidators, as explained below);

- c. an affidavit from the proposed liquidators should also be included. This should be very carefully drafted and should explain that there was an inadvertent error in the previously sworn consent to act, that the information only came to light shortly before the hearing of the petition, and most importantly, the reason why the error was made. Naturally, the affidavit would also confirm that they no longer pursue appointment.
- ii) If leave is granted, it is most likely that the petition will have to be re-served and the petition hearing be adjourned until stakeholders have been given proper notice of the newly proposed liquidators. (2)

Assuming there is some sensible reason for the proposed liquidators' error, it is not likely that they will face any penalty or sanction from the court, particularly given that they have not yet been appointed and are thus not yet treated as an officer of the court (CWR O.5, r.1(1)). However, they may be the subject of adverse judicial comment in any written reasons, which could impact their reputation, and the reputation of Bodden & Ebanks Limited.

5 marks

Question 2.3

Commented [BB5]: 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 Act provides that any person, including a director or officer of the company, may be appointed as a voluntary liquidator. Accordingly, Tom and Jerry do not need any qualifications to be appointed as joint voluntary liquidators of Cheese Limited. (1)

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:

Tom and Jerry are required to (section 123 of the Act; CWR, O.13, r.2):

- i) file notice of the winding up with the Registrar of Companies (**Registrar**) (CWR Form 19);
- ii) file the liquidator's consent to act with the Registrar (CWR Form 20);
- iii) in Cheese Limited was a business required to be licensed under the applicable Cayman regulatory laws, serve notice of the above documents to the Cayman Islands Monetary Authority (**CIMA**) winding up upon the Authority;
- iv) file the director's declaration of solvency with the Registrar (if court supervision is not sought); and
- v) publish notice of the winding up in the Gazette (in CWR Form 19). (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:

The basis of Tom and Jerry's remuneration must be authorised by resolution of Cheese Limited (CWR O.13, r.9(1)), on the basis of (i) an hourly rate (or scale of rates) for the time reasonably and properly devoted to the liquidation; (ii) a fixed sum; (iii) a commission or percentage of the assets distributed or realised; or (iv) a combination of these methods (CWR O.13, r.9(2)). The rate and amount of remuneration shall also be fixed, and payment authorised, by resolution (s.130(2) of the Act). Tom and Jerry will not be entitled to receive their remuneration out of the company's assets without the prior approval by way of resolution at a general meeting except that (i) any remuneration may be paid with Court approval and (ii) they may be paid the amount specified in their final report if the general meeting is duly convened but no member attends and votes (CWR, O.13, r.9(3)). (2)

Question 2.4 (0.5/2 marks)

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:

Commented [BB6]: Question 2.4 - Sub-total = 0.5/2

Commented [ni7]: this question asks what the Court's powers are 'upon the hearing of a **winding up petition**' not upon the hearing of a PL application. Therefore you have not answered the question correctly I'm afraid. I am giving you 0.5 marks for what would have been a correct, full and impressive answer to the question "what would have been the court's powers upon the hearing of a PL application?"

Once a winding up petition has been presented, a contributory can apply for the appointment of a provisional liquidator before the making of the winding up order (s. 104 of the Act). Broadly, the contributory must establish that there is a prima facie case for the making of a winding up order, and that the appointment is necessary (per the grounds set out under s.104(2)(b) of the Act).

It should be noted that the Court's regard the appointment of provisional liquidator as a "serious step" (*Najah*) and it is not an order to be made lightly (*ICG I*). If the petitioner can overcome these hurdles, the Court has a discretion to grant application and give the provisional liquidators such powers as the Court considers necessary and appropriate to prevent such dissipation, misuse, mismanagement and misconduct, and to ensure the Company's assets are properly protected pending the hearing of the winding up petition. The terms of the appointment order (in the prescribed CWR Form 7) will specify the functions of the PL, and the PL's powers will be limited by the order (s.104(4) of the Act).

As the Companies Act does not prescribe the scope of authority and powers which will be granted to provisional liquidators, the contributory petitioner has the ability to draft the terms and scope of the order - which makes the process inherently flexible and, when used appropriately, can be significant in preserving value. The Court will need to be persuaded that the terms of the order are appropriate. Importantly, PLs can be conferred the power to conduct investigations and commence proceedings (although the need to conduct an investigation is not necessarily a ground for the making of an order); however, the powers to bring actions in respect of antecedent transactions are exclusively reserved for official liquidators (ss. 146-147 of the Act).

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 Act provides that for the removal of an official liquidator by Court order made on the application of a creditor or contributory.

The Court has a broad discretion to remove official liquidators, however good reasons must be demonstrated (*BTU Power Company 2019* (1) CILR Note 7 citing *AMP Enterprises Ltd (t/a Total Home Entertainment) v Hoffinan* [2002] BCC 996). The Courts have held that care needs to be exercised when removing generally effective and honest liquidators, and removal applications by creditors who had not had their preferred liquidators appointed should be discouraged.

Commented [BB8]: Question 2.5 - Sub-total = 8.5/9

Commented [ni9]: great answer

In the absence of impropriety, the Court should be satisfied that removal is to the general advantage of the majority of stakeholders and is consistent with their wishes. Where there is impropriety, the court might override the stakeholders' interests and consider the nature and extent of the impropriety.

The removal summons application must be served upon the official liquidator, each member of the liquidation committee or their appointed counsel, and such other creditors and contributories as the Court may direct (CWR O.5, r.6(2)). The official liquidator is entitled to at least 14 days' notice of the removal summons (CWR O.5, r.6(5)).

Question 2.5.2 (4.5/5 marks)

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

Answer:

The only parties who may apply for removal are creditors, in the context of an insolvent liquidation, and contributories, in the context of an solvent liquidation. This is on the basis that those parties, in those respective contexts, are the stakeholders with an ultimate interest in the distribution of the company's assets (*Johnson and Deloitte & Touche AG* [1997 CILR 120]; *BTU Power Company* 2019 (1) CILR Note 7).

The reasoning is as follows:

- i) An insolvent company is a company that is unable to pay its debts (within the meaning of section 93 of the Act) and therefore has a shortfall in its assets (although a cash flow test is applied at law for the purpose of determining insolvency).
- ii) The *pari passu* principle applies under the Act. Under this principle, all unsecured creditors of an insolvent company will share equally and rateably in the distribution of the company's assets (not subject to a secured interest), once any preferential claims and the liquidation expenses are satisfied (s.140 of the Act).
- iii) The assets will be distributed in a particular order with, relevantly, creditors paid ahead of contributories (s.140(1) of the Act). This is important because if there is a shortfall of assets, the contributories will not receive a distribution in the winding up of a company (subject to certain specific exceptions, such as if they have completed a redemption process such that they have a claim for unpaid redemption proceeds).
- iv) Therefore, given that the contributories will not receive a distribution, it would be unfair to have their actions, including applications for the removal of an OL, prejudice the rights and amount of recovery available to the creditors on distribution. For example, applications for removal, even if successfully defended, will incur costs to the liquidation estate and will disrupt the liquidation, as the OLs will be distracted from their main purpose in defending the application. This would serve to delay the distribution receivable to any creditor.

Question 2.6

Commented [ni10]: A very impressive answer with only one small slip.

Commented [ni11]: Actually, this isn't quite right.

the relevant text in this context is one of balance sheet solvency, which is the test to be applied by the liquidator when determining solvency of a company the liquidator has been appointed over - see *Herald Fund SPC - unreported 28 Jan 2014 (para 6)*

The Principal Liquidators have to ask themselves whether Herald is, or is likely to become solvent or insolvent, applying a balance sheet test, and making reasonable assumptions about assets and liabilities which are contingent or contingent in amount

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 marks 4/4

Answer:

The relevant provisions regarding reconstitution of the liquidation committee (**LC**) are set out under CWR O.9, r.3. The OL should be aware of the following:

- i) Following the filing of the revised certificate, any creditor members of the LC will automatically cease to be members and the OL shall convene a meeting of contributories for the purpose of electing new members from amongst the company's contributories (the OL also has the power to convene a meeting in anticipation of the change of solvency status under rule 3(4)).
- ii) The new LC will consist of not less than three but no more than five contributories (rule 1(3)).
- iii) The voting process will be in accordance with CWR O.8, r.2 (rule 1(5)). This provides that the meeting should be convened within 28 days of the winding up order (while this is not applicable, the OL should seek to convene within 28 days of the filing of the certificate), and the election should be conducted.
- iv) Thereafter, the meeting can be convened whenever the OL considers it appropriate to do so; by order of the Court, by receipt of a requisition, and in any event, not less than once a year.

Question 2.7

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

Commented [ca13]: Question 2.7 Subtotal marks 5/5

Answer:

The content of the dissolution order is set out under CWR O.22, r.2 (Form 36).

- i) Following the dissolution of a company, the liquidator must retain the liquidation files in safe custody for at least three years (CWR O.26, r.2(3)). Those files must include: (a) a duplicate of the Court file; (b) minutes of the meetings of creditors and/or contributories; (c) minutes of the meetings of the liquidation committee; (d) liquidator's reports; (e) liquidator's accounts; (f) proofs of debt and records relating to their adjudication; (g) records relating to the collection and realisation of the assets; (h) records relating to the liquidation bank accounts; (i) liquidator's

correspondence; and (j) notices sent or published by the liquidator (CWR O.26, r.2(2)).

- II) Upon the making of an order dissolving a company, the official liquidator's duties as officeholder cease save for any residual duties preserved by the order for dissolution, including for the preservation, storage and destruction of the company's remaining books and records (CWR O.25, r.2), and dealings with unclaimed dividends.
- III) As to unclaimed dividends and undistributed assets, these are to be dealt with in accordance with section 153 of the Act and CWR O. 23. These provide as follows:
- establishment of a trust account for the receipt of any unclaimed dividends or uncleared dividend cheques;
 - transfer of title to the liquidator of any undistributed assets which ought to have been distributed *in specie* but remain in the possession or control of the liquidator, to be held on trust and administered by the official liquidator for the benefit of the creditors / contributories who are entitled to receive such assets;
 - payment out of the trust account and transfer of any undistributed assets once beneficiaries are located and believed to be entitled to the funds / assets;
 - former liquidator's trustee fees and expenses; and
 - transfer to the Financial Secretary 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.
- I) If not included in the dissolution order, the OL should separately apply for a discharge of their appointment.

Question 2.8

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

Answer:

Under section 102(1) of the Act, an OL has powers to investigate if the company failed and if so, the causes of the failure; and generally, to investigate 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)

There are also specific powers under the Act which an OL can use to gather information and facilitate investigations. These include:

- i) Examination (s.103(3)): the OL may apply to court for an order for the examination of a "relevant person", or that a relevant person transfer or deliver up to the liquidator any company property or documents. This provision is broad because a "relevant person" includes any person who, whether resident or elsewhere: (a) has made or concurred with the statement of affairs; (b) is or has been a company director / officer; (c) is or was a professional service provider to the company; (d) has acted as a controller, advisor or liquidator of the company or receiver or manager of its property; (e) not being a person

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falling within paragraphs (a) to (c), is or has been concerned or has taken part in the promotion or management of the company. (1)

- ii) Transfer of property (s.138); the court may require any person, who has in their possession any property or documents to which the company appears entitled, to pay, transfer or deliver same to the OL (the OL's right to take possession of, collect and get in company property is in Schedule 3 Part II at paragraph 1).
- iii) Statement of affairs (s.101): where a winding up order has been made, an OL can serve notice requiring that certain persons (s.101(3) – eg directors and professional service providers but excluding auditors) prepare and submit a statement as to the company's affairs. The content of a statement of affairs should include: (a) particulars of the company's assets and liabilities, including contingent and prospective liabilities; (b) the names and addresses of persons having possession of the company's assets; (c) the assets of the company held by those persons; (d) the names and addresses of the company's creditors; (e) the securities held by those creditors; (f) the dates when the securities were respectively given; and (g) such further or other information that the liquidator may require. (1)

See model answer below:

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), (1 mark) as requiring the liquidator "to make himself thoroughly acquainted with the affairs of the company; and to suppress nothing, and to conceal nothing, which has come to his knowledge in the courts of his investigation, which is material to ascertain the exact truth in every case before the Court". (1 mark) In addition to this general duty, section 102(1) of the Companies Act expressly empowers the liquidator to investigate (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 mark). Additionally, the liquidator is also empowered (subject to obtaining directions from the court) to assist the CIMA and the RCIPS to investigate the conduct of persons, and institute and conduct a criminal prosecution of person referred to in section 101(3) of the Act. Those persons include existing or former directors or officers of the company; (b) professional service providers to the company; and (c) employees of the company, during the period of one year immediately preceding the relevant date. (2 marks)

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:

The relevant date means (a) in a case where a provisional liquidator is appointed, the date of that

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person's appointment; and (b) in any other case, the commencement of the winding up. (1)

In many cases, the latter will be upon the presentation of the winding up petition (s.100(2)). (1) However, this may be earlier if, before the presentation of a petition, (i) a resolution was passed by the company for voluntary winding up, (ii) any period fixed for the duration of the company by the articles of association has expired, (iii) an event giving rise to a requirement to wind up the company in the articles of association has occurred, or (iv) a restructuring officer has been appointed. (2) In any of the latter instances, the winding up is deemed to have commenced at the time of the relevant aforementioned event. (1)

This "relevant date" also can have significance where an OL seeks an employee of the company to produce a statement of affairs, because an employee can only be required to do so where they were employed during the period of one year immediately preceding the relevant date (s.101(3)(c)).

Great answer!

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

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

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

Answer:

To be appointed, the PL must file a sworn consent to act, which complies with Order 3, rule 4, This provides relevant that the consent must comply with the insurance requirements (as set out in above answer 2.1, which are repeated here).

The court will not have jurisdiction to appoint the PL if he does not comply with the insurance requirement (1). The requirement relevantly is that professional indemnity insurance must be up to a limit of at least US\$10 million in respect of each and every claim (Reg 7 IPR). Therefore the proposed PL would not be compliant with this requirement (as they only have a limit of up to 5 mill) and will not be able to swear a consent to act. (1)

The PL accordingly could not be appointed by the Court until the insurance requirement is met.

2 marks - candidate should have picked up that the proposed chosen liquidator was based in Hong Kong and made reference to foreign liquidators being bound by IPR Reg 8 - which pulls in the requirement for insurance to apply equally to foreign practitioners.

Question 3.2

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

Answer:

Under section 91B(1) of the Companies Act, a company must demonstrate that (i) it is or is likely to become unable to pay its debts within the meaning of section 93 (that is, to pay its debts as and when they fall due); (1) and (ii) the company intends to present a compromise or arrangement to its creditors (or classes of creditors) either in accordance with the Companies Act, a foreign law, or through a consensual restructuring. (1)

Although the case law is limited as the new regime only came into force on 1 August 2022, the recent decision of *Aubit International* (4 October 2023) very helpfully summarises the relevant law and procedure at [126]. In particular, it confirms that the previous authorities in respect of restructuring or "light touch" provisional liquidators are relevant and persuasive under the new regime (see also *Oriente* at [8]), that the intention to present a restructuring plan must be a realistic and genuine intention, and that there needs to be a real prospect of a plan being effected for the benefit of the general body of creditors.

2 marks

Question 3.3

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

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

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

Answer:

Every petition for the appointment of a restructuring officer must be advertised once in a newspaper in circulation in the Cayman Islands (published in accordance with CWR Form 3A) unless the Court directs otherwise (CWR O.1A, r.1(3)). (½)

If the company carries on business outside the Islands, every petition must 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), unless the Court directs otherwise ((CWR O.1A, r.1(4))).

The advertisements above must be made to appear not more than 7 business days after the filing of the petition (½) and not less than 7 business days before the hearing date (½) (CWR O.1A, r.1(5)).

Separately, a company may, where it is in the interest of the company to do so, make an *ex parte* application for the appointment of an interim restructuring officer pending the hearing of the petition (section 91C of the Act). The advertising requirements do not apply for this application - rather the application is made by summons supported by affidavit (CWR O.1A, r.4).

Question 3.4

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

(6)

Answer:

1. Section 91G of the Act provides that a statutory moratorium will come into effect upon the filing of the petition. This is valuable tool for stakeholders and the company as it will give each some breathing space from inward claims from **aggreieved** parties. The breathing space will give the relevant stakeholders time and space to work on the restructuring plan for the company for the duration of the **restructirng** petition life. (1)
2. The orders that **cam** be made by the Court under the new regime are very **fliexible** (**provbided** that the court has **jurisdiciton** in the first place: see *Aubit*). This gives the parties a high degree of **flexibility** to confer on the restructuring officer the various powers that are required in the circumstances of the case to have the appropriate **powers**.
3. Much of the work in relation to the filing of the restructuring petition should be done before (*Aubit*). Having a unified focal point for the parties, with an agreed timeline, may encourage the parties to engage swiftly (rather than delay) in understanding the issues with the

Commented [BB19]: Question 3.4 - Sub-total = 3/3

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company, discussing possible restructuring proposals and agree on the terms of the proposed petition and order. In an informal workout, the parties may not be inclined to engage as meaningfully because they will not necessarily be bound by an order of the court.

4. The company can use the restructuring officer as a means to survive, and in fact, increase company value if the restructuring proposal is successfully implemented. In the former regime, a winding up petition would have to be filed prior to the appointment of any liquidator, and that could have significantly damaging reputational consequences for the company. While the new regime also has relatively strict notice requirements (e.g. a local newspaper and any relevant foreign newspapers), it is arguable that the impact of an RO is less severe than a winding up petition, which can indicate significant company distress and turmoil. (1)
5. The fact that the appointment order can be tailored means that the directors power can subsist during the appointment, or in fact, if appropriate, be usurped to an extent. This is a useful tool for creditors, who may have lost faith in certain aspects of the management. (1)
6. The restructuring officer can also be used as a useful prior tool to have a scheme organised and implemented. The restructuring officer, with the relevant experience of a qualified insolvency practitioner, may be highly persuasive in proposing a credible scheme for the stakeholders.

3 marks - other options 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 liquidator 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 a RPL) - 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 ROs to report - open and transparent process (1 mark)
- The petitions shall be heard in open court unless the Court otherwise directs (1 mark)
- The ROs must report within 20 days of appointment (1 mark)
- A creditor or contributory may apply for an order discharging the appointment (1 mark)
- Secured creditors remain entitled to enforce their security. (1 mark)

Question 3.5

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

Commented [BB21]: Question 3.5 - Sub-total = 5/5

Answer:

Upon hearing a petition, the Court may (a) make an order appointing a restructuring officer; (1) (b) adjourn the hearing conditionally or unconditionally; (1) (c) dismiss the petition; (1) or (d) make any other order as the Court thinks fit (1), subject to the below (s.91B(3) of the Act).

The main exception is that the Court cannot make an order placing the company into official liquidation (1), which the Court may only make in accordance with sections 92 and 95 (i.e. per the powers of the court on a winding up petition) if a winding up petition has been presented in accordance with sections 91G (stay of proceedings) and 94 (application for winding up).

Under section 91B(5), where an order is made, the Court shall set out in the order: (a) the manner and time within which the restructuring officer shall give notice of appointment to creditors, contributories and CIMA (in respect of any company which is carrying on regulated business); (b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and (c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.

In the case of *Aubit*, Doyle J also held that if the relief sought is primarily, as a first step, investigatory powers, followed by the presentation of a restructuring proposal, this would not be sufficient to grant the order. Therefore, it can be deduced from the decision that if the only relief sought is investigatory powers, that will not be available upon a restricting petition under the new regime.

5 marks

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

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:

ELPs are also governed by the Partnership Act (2013 Revision) (1) and the Exempted Limited Partnership Act (2021 Revision) (1) (ELP Act). With respect to the ELP Act, there are certain nuances to note:

- i) Section 3 provides that the rules of equity and common law applicable to partnerships, as modified by the Partnership Act (1) (but excluding certain sections), shall apply to ELPs, except where they are inconsistent with the express provisions of the ELP Act.
- ii) The ELP Act also provides that certain of its provisions are subject to any express or implied term of the partnership agreement.
- iii) Section 36(3) provides that Part V of the Companies Act and the Companies Winding Up Rules apply to the winding up of ELPs (subject to any express provision to the contrary), except that ELP Act will prevail in the event of any inconsistency.

Question 4.2

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

Answer:

Under section 91(d) of the Companies Act, the Court has jurisdiction to make a winding up order in respect of a foreign company which (i) has property located in the Cayman Islands; (ii) is carrying on business in the Cayman Islands; (iii) is the general partner of a limited partnership registered in accordance with section 49 of the Partnership Act (2013 Revision) or an ELP registered in accordance with section 9 of the ELP Act; or (iv) is an "overseas company" registered under Part IX of the Companies Act (namely, a company incorporated outside the Cayman Islands, which establishes a place of business or commences carrying on a business within the Islands; the Companies Act sets out a non-exhaustive list of these under section 183).

Question 4.3

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

Commented [BB22]: Question 4.1 - Sub-total = 3/3

Commented [sp23]: Question 4.2 - Sub-total = 5/5

Commented [sp24]: Question 4.3 - Sub-total = 3/3

reasons.

(3)

Answer:

While a foreign judgment does not have direct legal effect in the Cayman Islands, until steps are taken for it to become legally enforceable in the Islands, in the decision of Guoan, Justice Kawaley said that a creditor may rely upon a foreign judgment as the basis for seeking a winding up order without first obtaining recognition and / or enforcement orders in respect of such foreign judgment from the Cayman Islands Court. This is a significant development in the case law, because ordinarily a judgment would either need to be recognised under Foreign Judgments Reciprocal Enforcement Act (1996 Revision) (if from certain states in Australia) or otherwise pursuant to the common law, in which various hurdles must be satisfied, including that (a) such judgment is final and conclusive in the foreign court; (b) the judgment was obtained in a court of law which had jurisdiction over the judgment debtor; (c) the judgment was not obtained by fraud; (d) the judgment was not in respect of taxes, fines or penalties; (e) the enforcement of the judgment would not contravene the public policy of the Cayman Islands; and (f) the rules of natural justice were observed in the foreign proceedings.

Question 4.4

Commented [BB25]: Question 4.4 - Sub-total = 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:

- i) When a provisional order is made against a debtor, their property immediately passes to and vests in the Trustee (s.37). As soon as possible after the making of the order and subject to any Court directions, the Trustee shall take possession of all the debtor's property, books and documents (s.75). (1)
- ii) Until the provisional order is made absolute, the Trustee's duty is to preserve the property such that it can be returned to the debtor should the order be revoked (s.38). However, if an absolute order is made, the Trustee must proceed to administer the debtor's estate for the benefit of the creditors (s.65; s.74). The Trustee shall discover and recover all debts due to the debtor's estate (s.76), and examine and verify the debtor's books (s.77) (1)
- iii) The Trustee may disclaim any onerous or unprofitable property in certain prescribed circumstances (s.105). This is a significant power available to the Trustee, as it enables them to disclaim a contractual obligation, the effect of which renders the counter-party a creditor of the bankrupt estate with a provable debt (s.103(3)).
- iv) 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 the business, including by employing the debtor, or any other person, for that purpose (s.79). (1)
- v) The Trustee may bring or defend any legal proceedings relating to the property

of the debtor (s.80). The Trustee must also receive and adjudicate the proof of debts (s.87). (1)

- vi) The Trustee, as soon as possible after the public examination of the debtor, must make a report as to the state of the debtor's affairs and as to the debtor's conduct before and during the bankruptcy (s.67).

Although it may not seem important at first blush, in practice, an important power of the Trustee in Bankruptcy is their power under section 13(1) of the Bankruptcy Act to appoint a proper person as their agent in respect of any bankrupt estate. Under section 12 of the Act, the Clerk of the Court has been appointed by the Governor, *ex officio*, as the Trustee in Bankruptcy. However, those appointed to the office of Clerk are not required to be qualified insolvency practitioners and the Court Office does not have the resources necessary to perform the functions of a Trustee in Bankruptcy. For those reasons, in almost all bankruptcy cases (see, eg, cases of *Otu; Kruger; Foster*), the Clerk will appoint a suitably qualified person, more often than not, an insolvency practitioner to administer the estate. This furthers the pursuit of the Overriding Objective in that it saves costs, time and resources in the administration of the estate.

TOTAL MARKS: [100]

**** END OF ASSESSMENT ****