



**INSOL**  
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**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)

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**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  
Ms Jennifer Colegate Mr Tony Heaver-Wren Mr Paul Smith Mr Spencer Vickers  
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**MODERATORS**

Mr John Royle Mr Nicholas Fox Ms Cassandra Ronaldson  
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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.

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## 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 = 19/20

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

Commented [BB3]: The correct answer is (a)

**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)

If the proposed official liquidator(s) is or are resident in the Cayman Islands, the following matters must be addressed in their consent(s) to act, pursuant to Companies Winding Up Rules (CWR) O3 r.4(1): (1)

- That they are a qualified insolvency practitioner within the meaning of Regulation 4 of the insolvency Practitioners' Regulations (IPR); (1)
- That they meet the residency requirements set out in IPR Regulation 5; (1)
- That, following due enquiry having been made, they are of the belief that they and their firm meet the independence requirements contained in IPR Regulation 6; (1)
- That they meet the insurance requirements contained in Regulation 7 of the IPR; and (1)
- That they are willing to act as the official liquidator of Bluesea if so appointed by the Court. (1)

If Whitesand proposes to appoint a foreign practitioner as a joint official liquidator (perhaps a practitioner from Singapore, given that that is where the joint venture partner is located), the foreign practitioner's consent to act must contain the following pursuant to CWR O3 r.4(2):

- An explanation of the foreign practitioner's qualifications;
- The jurisdiction(s) in which the foreign practitioner is qualified to perform functions equivalent to those of official liquidators under the Companies Act;
- Details of their professional experience;
- Confirmation that they have the benefit of professional indemnity insurance meeting the requirements of IPR Regulation 7;
- Particulars of their appointment by any foreign court or authority as a liquidator, receiver, administrator or trustee of Bluesea or a related party (although this does not appear to be relevant on the facts); and
- That, following due enquiry having been made, they and their firm meet the independence requirements contained in IPR Regulation 6.

5 marks

### Question 2.2

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)

Commented [BB4]: Question 2.2 - Sub-total = 3.5/5

The proposed liquidators will no longer be able to act in relation to Bluesea. This is because, pursuant to IPR Regulation 6(1), (1) an insolvency practitioner is not eligible to be appointed as an official liquidator of a company unless he or she can “properly be regarded as independent as regards that company”. In turn, IPR Regulation 6(2) provides that a person shall not be regarded as independent where they, the firm of which they are a partner or employee, or the company of which they are a director or employee has acted as auditor of the company in the three years preceding the commencement of the liquidation. (1)

The commencement of the liquidation is deemed to be the date on which the petition was filed (in May 2023), so the three year look-back period for the purposes of IPR Regulation 6(2) will start in May 2020. Since Bodden & Ebanks Limited as a company acted as auditor of Bluesea within that window in 2021, and the proposed liquidator are employees of the company, the proposed liquidators will fall foul of the requirements of IPR Regulation 6(2). (1)

Given that the proposed liquidators now know that they have sworn evidence which is in fact false (in the form of their confirmation in their consents to act that they comply with the independence requirements of IPR Regulation 6), they should immediately swear supplemental affidavits correcting the mistake in the consents to act and making clear that they do not in fact comply with the requirements of IPR Regulation 6. (½)

**3 ½ marks**

### Question 2.3

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)

Pursuant to s120 of the Companies Act, Tom and Jerry do not need any special qualifications as any person may be appointed as voluntary liquidator. (1)

**Commented [jo5]:** just needed to go that one small step further and mention withdrawing the consents

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

**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)

Pursuant to s123 of the Companies Act, within 28 days of their appointment Tom and Jerry must:

- File the notice of winding up with the Registrar of Companies;
- File their consents to act with the Registrar of Companies;
- File the directors' statement of solvent with the Registrar of Companies (or alternatively make a supervision application to the Grand Court if one is not forthcoming);
- Publish notice of the winding up in the Cayman Islands Government Gazette; and
- (Only if Cheese Ltd carries on a regulated business) serve notice of the winding up on CIMA. (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)

Pursuant to CWR O13 r.9(2), Tom and Jerry can be remunerated on the basis of:

- Hourly rates for time "reasonably and properly devoted to" the voluntary liquidation of Cheese Ltd;
- A commission or percentage of the assets that Tom and Jerry distribute or realise during the liquidation;
- A fixed sum; or
- A combination of the above three methods. (2)

**Question 2.4 (2/2 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)

Pursuant to section 95(1) of the Companies Act, the Court can:

- Dismiss the petition;
- Adjourn the hearing conditionally or unconditionally;
- Make an order for the appointment of provisional liquidators; or
- Make any other order it considers fit.

**Question 2.5**

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

Commented [BB8]: Question 2.5 - Sub-total = 7/9

**Question 2.5.1 (3/4 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)

The person with standing to remove an official liquidator will change depending on the solvency of the company concerned. In the case of a solvent official liquidation, it is the contributories who have standing to present a summons seeking the removal of the official liquidator. In the case of an insolvent winding up, it is the creditors who have that standing.

An application seeking the removal of an official liquidator (which is made by summons supported by affidavit evidence) must be served pursuant to CWR O5 r.6(2) on the official liquidator (with at least 14 days' notice), each member of the liquidation committee, counsel for the liquidation committee (assuming such counsel has been appointed), and any other creditor or contributory that the Court directs.

**Question 2.5.2 (4/5 marks)**

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

It makes sense that the parties with standing to seek the removal of the official liquidator change depending on the solvency of the company, because the aim of the legislation is to provide the parties with the true economic interest in the liquidation with the option to remove the liquidator. In the case of a solvent liquidation, all of the company's debts will be settled and the surplus will be distributed to the shareholders or contributories. Accordingly, they are the ones with the real economic interest as the greater the overall recovery in the liquidation, the more they stand to benefit. Equally, for insolvent companies, the creditors have the true economic interest as they are the parties who stand to benefit from the maximisation of recoveries by the official liquidator (since an increase in recoveries will mean that there are more funds available to be distributed to creditors in accordance with the statutory waterfall).

**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)

**Commented [ni9]:** Good answer, but to get the 4th mark we were looking for a reference to s.107 of the Companies Act

**Commented [ni10]:** Good answer. The 5th mark was reserved for those answers that mentioned *BTU Power Company* (which is cited in the course notes under section 4.2.6.2 removal).



with the court. What impact will the change in solvency have on the liquidation committee, assuming one has been constituted? (4)

Commented [ca11]: Question 2.6 Subtotal =4/4 marks

Assuming that a committee (LC) had been constituted on the basis of the prior insolvent status of the Company, it would have consisted of between 3 and 5 creditors, selected by majority creditor vote (by value) at the first meeting. However, now that the Company is solvent, the composition of the LC must change so that it consists of between 3 and 5 contributories selected by majority contributory vote (by value) at the first meeting following the new certificate of solvency. This is necessary to ensure that the persons with the true economic interest in the Company are represented on the LC.

### Question 2.7

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

Commented [ca12]: Question 2.7 - Subtotal 5/5 marks

Once an order for dissolution has been made, the liquidator will need to arrange for the order to be filed with the Companies Registrar within 14 days of the date on which the order is perfected.

In addition, the liquidator will need to arrange to maintain the liquidation files in safekeeping for at least 3 years or such longer period as provided in the dissolution order. The dissolution order may also deal with the storage, preservation and destruction of the Company's own books and records, in which case the liquidator must comply with those requirements.

Finally, in the even that there are any unclaimed dividends or undistributed assets, the liquidator must establish a trust account to hold any funds or take title in any undistributed assets, both of which must be held on trust by the liquidator to the order of the creditors or contributories (for insolvent and solvent liquidations, respectively) of the company.

If, one year after the dissolution order, there remain unclaimed dividends or undistributed assets, the liquidator must make arrangements to transfer those to the Financial Secretary in accordance with CWR O23 r.6.

### Question 2.8

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

Commented [BB13]: Question 2.8 - Sub-total = 4/5

An official liquidator has broad investigative powers, by which she can investigate the causes of failure of the company (if indeed it failed) as well as the promotion, business, dealings and affairs of the company pursuant to s102(1) of the Companies Act. (1)

In addition, pursuant to s102(2) of the Companies Act, an official liquidator may (with the

Court's consent) seek assist CIMA or the RCIPS with investigations into the conduct of any persons listed in s101(3), and/or the institution of criminal prosecution in relation to such persons. (1) For a further mark, you must mention those persons which you refer to, which 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.

The liquidator has a discretion regarding whether to disclose the results of her investigations to the Court, but must ensure that he is "thoroughly acquainted" with the affairs of the company so that he can ensure that he is in a position "to suppress nothing, and to conceal nothing, which has come to his knowledge in the course of his investigation, (1) which is material to ascertain the exact truth in every case before the Court" in accordance with the dictum of *Re Gooch's case* 1872, as applied in the Cayman Islands in *In the Matter of Citrico International Limited*. (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)

The relevant date in s101(3) is the date with reference to which those employees of the company who are subject to the liquidator's powers of investigation under s101 are determined. The section provides that only those employees who were employees within one year immediately preceding the relevant date are capable of being required to take steps pursuant to s101.

In accordance with s101(6), "relevant date" typically means the date on which the winding up commenced. (1) In the case of an official liquidation, this is usually the date on which the petition was presented, (1) however, this date may be shifted earlier if a restructuring officer was appointed (½) or a resolution was passed placing the company into voluntary liquidation. (½) Further, the date may be earlier than the petition presentation date where the fixed duration for the company pursuant to its Articles had expired before that, (½) or an event requiring that the company be wound up pursuant to the Articles had occurred. (½) In all those instances, the winding up is deemed to have commenced on that earlier date, and that earlier date is therefore the relevant date for the purposes of s101(3). (1)

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

**QUESTION 3 FOLLOWS ON NEXT PAGE / ...**

**Commented [BB14]:** Question 2.9 - Sub-total = 5/5

### 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 [BB15]: 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)

The chosen provisional liquidator cannot be appointed by the Grand Court. (1) In respect of provisional liquidations, CWR O4 r.2(2) requires that the contributory applicant file an affidavit in compliance with CWR O3 r.4. In respect of foreign practitioners (which a Hong Kong provisional liquidator would be, since he does not meet the residency requirements of IPR Regulation 5), CWR O3 r.4 requires that the practitioner swear that he has the benefit of indemnity insurance meeting the requirements of IPR Regulation 7. (1)

In turn, IPR Regulation 7 requires that the practitioner have coverage up to "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". We do not have details as to the aggregate level of cover or the deductible payable by the chosen provisional liquidator, but his coverage limit of US\$5million for each and every claim falls well below the minimum required threshold of US\$10million. (1)

As such, given his refusal to increase his coverage limits, the chosen provisional liquidator will not be in a position to swear an affidavit in compliance with CWR O3 r.4 and cannot therefore be appointed as provisional liquidator. (1)

4 marks - for that extra final mark, it would have just needed a quick reference to Regulation 8 of the IPRs, which ties in Regulation & as applying to foreign practitioners.

#### Question 3.2

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

The company must demonstrate that it is or is likely to become unable to pay its debts within the meaning of s93 of the Companies Act, (1) and that it intends to present some compromise or arrangement to its creditors or certain classes of creditors (whether that compromise or arrangement is pursuant to the Companies Act, foreign law or a consensual restructuring). (1)

2 marks

#### Question 3.3

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

Subject to the power of the Court to order otherwise, a restructuring petition must be advertised in CWR Form 3A, once in a newspaper having circulation in the Cayman Islands (½) and once in a newspaper having circulation in the country/ies in which it is most likely to come to the attention of the company's creditors and contributories. (½) In terms of timeframe, the advertisement must appear no more than 7 business days after the

Commented [BB16]: Question 3.2 - Sub-total = 2/2

Commented [BB17]: Question 3.3 - Sub-total = 2/2

presentation (filing) of the petition, (½) and no less than 7 business days before the hearing of the petition. (½)

#### Question 3.4

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

Creditors are safeguarded in the following ways through the new restructuring officer regime:

- Creditors are entitled to attend at the hearing and make the Court aware of their views, or nominate alternative ROs; (1)
- They are entitled to be made aware of the pending RO petition by way of the advertisement requirements for RO petition; (1)
- They can apply for the variation or discharge of the order appointing the ROs; (1)
- They can apply for the removal or replacement of the ROs; (1)
- Secured creditors can continue to enforce their security without reference to the ROs; and (1)
- The creditors can (with leave) still present a winding up petition in respect of the company.

#### 5 marks - plus any of the below

- 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 ROs 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)

Upon the hearing of a restructuring petition, the Court is empowered to make the following orders pursuant to s91B(3) of the Companies Act:

- Appointing the restructuring officers; (1)
- Adjourning the hearing conditionally or unconditionally; (1)
- Dismissing the petition; or (1)
- Any other order it considers fit (1)

Save that the Court is expressly **not** permitted to make an order placing the company into

Commented [BB18]: Question 3.4 - Sub-total = 5/6

Commented [BB19]: Question 3.5 - Sub-total = 5/5

official liquidation. (1)

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)

The operation of ELPs is also governed by the Partnerships Act (2013 Revision) (½) and the Exempted Limited Partnerships Act, (2021 Revision) (½) as well as principles of common law and equity. as modified by the Partnership Act (2013 Revision) (½)

Commented [BB20]: Question 4.1 - Sub-total = 1.5/3

##### Question 4.2

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

Pursuant to s91(d) of the Companies Act, the Court is empowered to wind up a foreign company where it:

- has property located in Cayman;
- carries on business in Cayman;
- is registered as an 'overseas company' under Part IX of the Companies Act; or
- is the general partner of an ordinary limited partnership or ELP.

Commented [sp21]: Question 4.2 - Sub total = 4/5

##### 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 reasons. (3)

While a foreign judgment does not have effect or force in the Cayman Islands until it is registered, Justice Kawaley indicated in the matter of *Guoan International Limited* (unreported, 29 Oct 2021) that a creditor may rely on a foreign judgment as the basis for seeking a winding up order without first taking steps to have it registered or enforced here. As such, foreign judgments can be the basis for a winding up order even where they are not registered.

Commented [sp22]: Question 4.3 - Sub total = 3/3

##### 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)

The trustee in bankruptcy's main powers and duties include the following:

Commented [BB23]: Question 4.4 - Sub-total = 4/4

- receiving and adjudicating proofs of debt in accordance with the Grand Court (Bankruptcy) Rules; (1)
- bringing or defending legal proceedings relating to the property of the debtor (e.g. by suing to recover possession of assets belonging to the debtor but held by third parties, pursuant to s80 of the Bankruptcy Act); (1)
- carrying on the trade of the debtor so far as is necessary or expedient for the beneficial winding up or sale of the business; and (1)
- administering the debtor's estate for the benefit of the creditors, once the provisional order has been made absolute. (1)

**TOTAL MARKS: [100]**

**\*\* END OF ASSESSMENT \*\***