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INTERNATIONAL



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

Commented [BB1]: TOTAL = 33.5/100

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  
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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)

Questions 1.1 - 1.20 are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph in yellow. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question. Each of the 20 questions count 1 mark.

#### Question 1.1

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

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

#### Question 1.2

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

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

#### Question 1.3

Choose the **correct** statement:

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

- (a) 3

Commented [BB2]: Question 1 - Sub-total = 12/20

(b) 5

(c) 6

(d) None of the above

**Question 1.4**

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

(a) The company.

(b) Any creditor.

(c) Any prospective creditor.

(d) Any contributory.

(e) Any prospective contributory.

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

**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

Commented [BB4]: The correct answer is (e)

**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.

Commented [BB5]: The correct answer is (b)

(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 [BB6]: 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.

Commented [BB7]: The correct answer is (c)

**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.

Commented [BB8]: The correct answer is (b)

**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.

Commented [BB9]: The correct answer is (b)

**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

Commented [BB10]: Question 2.1 - Sub-total = 2/5

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)

1.Full name and contact details: The consent should include the full name, address, telephone number, and email address of the proposed official liquidator(s).

2.Designation and qualifications: The consent should disclose the professional designation and qualifications of the proposed official liquidator(s), such as being a member of a relevant professional accounting or insolvency body.

3.Acceptance of the appointment: The consent should clearly state that the proposed official liquidator(s) accept the appointment as official liquidator (1) of Bluesea Digital Capital Limited and are willing to perform the duties and responsibilities associated with the role.

4 Confirmation of eligibility: The proposed official liquidator(s) must confirm in the consent that they are eligible to act as an official liquidator under the Companies Law of the Cayman Islands.-

5.Declaration of independence and absence of conflicts of interest: The proposed official liquidator(s) must declare that they are independent of Bluesea Digital Capital Limited and any associated parties, and that there are no conflicts of interest that would prevent them from carrying out their duties impartially. (1)

6.Consent to comply with laws and regulations: The consent should express the proposed official liquidator(s)' commitment to complying with the relevant laws, regulations, and professional ethical standards governing official liquidators in the Cayman Islands.

7.Consent to exercise powers and discharge duties: The consent should stipulate that the proposed official liquidator(s) will exercise the powers and perform the duties conferred upon them by the Companies Law of the Cayman Islands, including investigating the affairs of the company, realizing assets, settling claims, and distributing proceeds to creditors in accordance with the law.

**2 marks - answer below (the answer is basically an extract from the relevant CWR)**

Every winding up petition shall be supported by an affidavit sworn by the person or persons nominated for appointment as official liquidator (1 mark) stating that:

- he is a qualified insolvency practitioner and meets the residency requirement contained in Regulation 5 of the Insolvency Practitioners Regulations (IPRs). (1 mark)

• having made due enquiry, he believes that he and his firm meet the independence requirement contained in Regulation 6 of the IPRs. (1 mark)

• he and / or his firm are in compliance with the insurance requirement contained in Regulation 7 of the IPRs. (1 mark) and

he is willing to act as official liquidator if so appointed by the Court. (1 mark)

### Question 2.2

Commented [BB11]: Question 2.2 - Sub-total = 1/5

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)

According to the Cayman Islands law, if the proposed liquidators are employees of Bodden & Ebanks Limited, which previously acted as auditors for Bluesea in 2021, there may be a potential conflict of interest (1). The Cayman Islands recognizes the importance of independence and the absence of conflicts of interest in the role of liquidators in order to ensure impartiality and fair administration of the liquidation process.

In this situation, the proposed liquidators should promptly disclose the previous relationship between Bodden & Ebanks Limited and Bluesea as auditors to the court and all relevant parties involved in the winding up proceedings of Bluesea. The disclosure would help determine whether there is a conflict of interest that might prevent the proposed liquidators from acting in the best interests of the company and its stakeholders.

1 Mark - this question is all about IPR Regulation 6 and what appears to be a clear accidental breach of that legislation after the proposed Liquidators have sworn consent to acts. Below is the model answer which is the type of answer the examiners were looking for re this question.

Unfortunately based upon this new information coming to light, the proposed liquidators put forward by Whitesand would not be able to act as official liquidators. (1 mark)

Regulation 6 of the Insolvency Practitioners Regulations set out the independency requirements (1 mark) and state

"A qualified insolvency practitioner shall not be appointed by the Court as official liquidator of a company unless he can be properly regarded as independent as regards that company.

"A qualified insolvency practitioner shall not be regarded as independent if, within a period of 3 years immediately preceding the commencement of the liquidation, he, or the firm of which he is a partner or employee, has acted in relation to the company as its auditor." (1 mark)

In this scenario the winding up petition date is in May 2023, the proposed liquidators or their firm have acted as auditors within the 3 years immediately preceding the commencement of the liquidation, given Bodden & Ebanks Limited acted as auditors as recently as 2021 the proposed liquidators would not be regarded as independent. (1 mark)

In respect of the already provided consents to act, they should be withdrawn and rescinded as a matter of urgency. (1 mark)

### Question 2.3

Commented [BB12]: Question 2.3 - Sub-total = 2/5

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 (0/1 marks)

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

-Professional Qualification: Being a qualified accountant, such as a Certified Public Accountant (CPA), Chartered Accountant (CA), or Chartered Certified Accountant (ACCA), with relevant experience in insolvency matters.

-Legal Qualification: Holding a valid attorney-at-law qualification and being admitted to practice law in the relevant jurisdiction.

-Membership in a Recognized Professional Body: Being a member of a recognized professional body for insolvency practitioners, such as the Restructuring and Insolvency Specialists Association (RISA) or a similar organization. (0)

The correct answer: There are none. (1 mark)

#### 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)**

Filing a Notice of Appointment: The voluntary liquidators must file a Notice of Appointment with the Cayman Islands Registrar of Companies within 28 days of their appointment. This notice informs the Registrar and the public about their appointment as voluntary liquidators. It should include details such as the company name, the names of the voluntary liquidators, the date of appointment, and any changes in the liquidators' details during the liquidation process.-Section 130 Companies Act

Publishing a Notice in Gazette: Within 28 days of their appointment, the voluntary liquidators must publish a notice in the Cayman Islands Gazette, which is the official publication for legal notices in the Cayman Islands. This notice provides notice to creditors and other interested parties about the appointment of the voluntary liquidators and includes relevant information about the liquidation process.-Section 131 Companies Act **(2)**

**Question 2.3.3 (0/2 marks)**

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

Shareholders' Resolution: The company may pass a resolution at a general meeting of shareholders to determine the remuneration of the voluntary liquidators. This resolution should outline the basis, method, and amount of remuneration that will be paid to Tom and Jerry for their services as liquidators. The shareholders have the authority to determine the remuneration and can take into account factors such as the complexity of the liquidation, the skill and experience of the liquidators, and the time and effort dedicated to the liquidation process.

Court Approval: In certain circumstances, the remuneration of the voluntary liquidators may need to be approved by the court. This can happen if there is a dispute or disagreement among the stakeholders regarding the proposed remuneration or if the remuneration exceeds a certain threshold set by the Companies Act or other regulations. The court will review the proposed remuneration and make a determination based on the reasonableness and fairness of the amount.- Section 131

The correct answer is:

Answer: (0.5 marks per point, maximum 2 marks)

- an hourly rate (or scale of rates) for the time reasonably and properly devoted to the liquidation; **(0.5 marks)**
- a fixed sum; **(0.5 marks)**
- a commission or percentage of the assets distributed or realised; or **(0.5 marks)**
- a combination of these methods. **(0.5 marks)**



**Question 2.4 (0/2 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)

Appointment of Provisional Liquidator: The Court has the power to appoint a provisional liquidator to oversee the affairs of the company during the winding-up process. The provisional liquidator's role is to protect and preserve the company's assets pending the determination of the winding-up petition.

Stay of Proceedings: The Court may order a stay of any legal proceedings against the company once a winding-up petition has been filed. This stay prevents creditors from pursuing separate actions against the company and ensures that the winding-up process can proceed efficiently.

Orders for Preservation of Assets: Upon hearing a winding-up petition, the Court may also make orders for the preservation and safeguarding of the company's assets. This includes taking measures to prevent dissipation or disposal of assets by the company or its directors.

Examination of Company's Affairs: The Court has the power to order an examination of the company's affairs, including the conduct of its directors and officers. This may involve investigating potential instances of fraud, mismanagement, or other misconduct.

Conversion to Official Liquidation: If the Court deems it appropriate, it may convert a provisional liquidation into an official liquidation.

**Question 2.5**

**Question 2.5.1 (0.5/4 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)

Who can apply: Any person who has a sufficient interest in the winding-up proceedings, such as a creditor, shareholder, or director, can apply to the Court for the removal of official liquidators.

Grounds for removal listed below:

a. Misconduct or impropriety: If the official liquidators engage in misconduct, fraud, or breach of duty during their appointment, an application for removal can be made. Examples could include misappropriation of assets, failure to perform duties, or conflicts of interest.

**Commented [BB13]:** Question 2.4 - Sub-total = 0/2

**Commented [ni14]:** 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

**Commented [BB15]:** Question 2.5 - Sub-total = 0.5/9

**Commented [ni16]:** good attempt, but some inaccuracies and no references to s.107 of the Companies Act and CWR O.5, r.6

**Commented [ni17]:** not correct - s.107 & CWR O.5, r.6 specify that the application can only be made by a creditor or contributory

b. Inability or failure to carry out duties: If the official liquidators are unable, unwilling, or fail to properly carry out their duties or perform their functions, an application for removal may be warranted<sup>3</sup>. This could be due to factors such as negligence, incompetence, or lack of resources.

c. Loss of confidence: If the stakeholders, such as creditors or shareholders, lose confidence in the official liquidators' ability to effectively manage the winding-up process, they may apply for their removal. Loss of confidence can arise due to factors such as delays in progress, communication issues, or perceived bias.

Service of the application: The application to remove official liquidators must be served on various parties, including the official liquidators themselves, the company being wound up, and any other interested parties. Notice of the application should be given to all relevant stakeholders to ensure they have an opportunity to respond or make representations to the Court.

#### Question 2.5.2 (0/5 marks)

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

[Type your answer here]

#### Question 2.6

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

During a liquidation process if there is a significant recovery into the liquidation estate, to the extent that the liquidation estate is no longer considered insolvent and the official liquidator can settle all outstanding creditor claims in full, it can have an impact on the liquidation committee, assuming one has been constituted.

The change from insolvency to solvency in the liquidation estate can result in the liquidation committee reassessing its role and responsibilities. In cases where the liquidation estate was previously deemed insolvent, the primary focus of the committee may have been to

**Commented [ni18]:** You haven't included the correct people here, as specified at CWR O.5, r.6(2).

**Commented [ca19]:** Question 2.6 Subtotal 3.5 / 4 marks

protect the rights and interests of creditors and maximize their recovery. However, with a change to solvency, the committee's role may shift to ensuring a fair distribution of assets and overseeing the final winding-up process.

The committee may need to review and approve the revised certificate of solvency filed by the official liquidator to confirm the change in the financial position of the liquidation estate. They may also need to consider whether any further steps are required to distribute the remaining assets to the creditors or shareholders, and ensure compliance with the Companies Winding Up Rules and any relevant court orders.

For full marks needed to reference that the newly reconstituted LC will be comprised of not less than three, no more than five, contributories (Order 9, r.1 (3)).

### Question 2.7

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

1. Notification and publication: Informing the Registrar of Companies and publishing a notice of dissolution in the Cayman Islands Gazette.
2. Collect and realize assets: Gathering and selling company assets in accordance with applicable laws.
3. Settle outstanding debts and claims: Addressing and resolving creditor claims against the company.
4. Resolve legal proceedings: Handling legal actions involving the company.
5. Prepare financial statements: Creating accurate financial statements for the company.
6. Distribution of remaining assets: Distributing any remaining assets to shareholders according to their rights and priorities.
7. Final report and accounts: Preparing a report detailing the winding-up process.
8. Final discharge and dissolution: Seeking a final discharge from the court and obtaining a certificate of dissolution from the Registrar of Companies.

Most of the above mentioned points relate to matters that should be attended to prior to the filing of a dissolution application. Essentially needed to focus on points such as "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, and dealings with unclaimed dividends" etc

Commented [ca20]: Question 2.7 Subtotal 0/5 marks

Commented [ca21]: Note you file the order of dissolution with the registrar in an OL.

### Question 2.8

Describe the general investigative powers and duties of a liquidator.

(5)

#### Investigative powers:

- 1.The power to examine the company's books and records.
- 2.The power to investigate the conduct of the company's officers and directors including the power to examine directors or officers under oath. **(1)**
- 3.The power to obtain information and assistance from third parties.
- 4.The power to apply to the court for orders to compel certain individuals to provide documents or information if necessary.
- 5.The power to apply to the court for an order preventing a person from disposing or transferring property belonging to the company.

#### Duties:

- 1.The duty to identify and collect all company assets.
- 2.The duty to review creditor claims and determine their validity and priority.
- 3.The duty to investigate the company's affairs and report any material misconduct or wrongdoing to the court. **(1)**
- 4.The duty to distribute assets to creditors in accordance with the statutory priorities set out in the Companies Law.
- 5.The duty to prepare comprehensive and accurate financial statements and submit them to the Registrar of Companies.
- 6.The duty to act in the best interest of the company's stakeholders while carrying out the liquidation process.

Please 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 course 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)**

Commented [BB22]: Question 2.8 - Sub-total = 2/5

### 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)

According to the Companies Act (2023 Revision) in the Cayman Islands, the "relevant date" for the purposes of a section 101 notice served by a liquidator refers to the date specified in the notice as the date by which the person receiving the notice must deliver a statement of affairs.

Section 101(3) of the Companies Act states that the liquidator may require any person who is known or suspected to have possession of information or property belonging to the company to submit a statement of affairs regarding the company's assets, debts, and liabilities. The liquidator serves a notice under section 101 of the Act to procure this statement from the relevant individuals.

By specifying a "relevant date" in the notice, the liquidator sets a deadline for the recipients of the notice to provide their statement of affairs. The "relevant date" ensures that the liquidation process proceeds smoothly by establishing a timeframe.

**You have failed to answer the question. Please see the model answer below:**

In the context of an official liquidation (noting that this section also applies to provisional liquidators), the relevant date for the purposes of section 101 means the commencement of the winding up. (1 mark) In many cases, this is the presentation of the winding up petition (pursuant to section 100(2)). (1 mark) However, this is subject to section 100(1), which provides that the commencement of the winding up may be an earlier date if, before the presentation of a petition for the winding up of a company by the court, a resolution was passed by the company for voluntary winding up; any period fixed for the duration of the company by the articles of association has expired; an event giving rise to a requirement to wind up the company in the articles of association has occurred; or a restructuring officer has been appointed. (2 marks) If any of these events occur then the winding up is deemed to have commenced at the time of the relevant aforementioned event. (1 mark)

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

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

Commented [BB23]: Question 2.9 - Sub-total = 0/5

### 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 [BB24]: Question 3.1 - Sub-total = 1/5

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

Provisional liquidator, who is based in Hong Kong, could potentially be appointed by the Grand Court of the Cayman Islands (1). The court can appoint a foreign provisional liquidator if they are qualified and it would be beneficial to the winding-up proceedings. However, concerns may arise due to the unwillingness of the chosen provisional liquidator to increase their professional indemnity insurance limit. Ultimately, the decision to appoint the provisional liquidator will be at the discretion of the court.

1 Mark - you haven't talked about Regulation 8 of the IPRs, Regulation 7 which applies to foreign practitioners and sets out the insurance limits required. Model answer below.

The chosen provisional liquidator of SMB by contributories is based in Hong Kong and would therefore be deemed a foreign practitioner. (1 mark)

Foreign practitioners are permitted to be appointed as official liquidators, but they must be appointed jointly with a qualified insolvency practitioner per section 108 (1) of the Companies Act (2023 as revised). (1 mark)

In addition, the Insolvency Practitioners Regulations (IPRs). In particular regulation 8 states that

A foreign practitioner who meets the independence and insurance requirements of Regulations 6 and 7 of the IPRs may be appointed by the Court as an official liquidator of a company jointly with a qualified insolvency practitioner (but not as sole official liquidator). A foreign practitioner need not meet the residency requirement of Regulation 5. (1 mark)

The insurance requirements contained within regulation 7 of the IPRs states (amongst other things)

A qualified insolvency practitioner shall not be appointed by the Court as official liquidator of any company unless he and the firm of which he is a partner or employee or the company of which he is an employee, has professional indemnity insurance (up to a limit of at least US\$10 million in respect of each and every claim and at least US\$20 million in the aggregate, with a deductible of not more than US\$100,000) applicable to the negligent performance or non-performance of his duties as an official liquidator generally. (emphasis added). (1 mark)

Therefore, if the chosen liquidator by the contributories of SMB isn't prepared to or cannot increase his professional indemnity insurance from US\$5 million per each and every claim to US\$10 million per each and every claim - then he would be unable to act as an official liquidator. (1 mark)

### Question 3.2

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

Commented [BB25]: Question 3.2 - Sub-total = 2/2

In order to appoint a restructuring officer in the Cayman Islands, SMB Tech would need to demonstrate to the Court that it satisfies the requirements outlined in section 91B of the Companies Law. These requirements include:

Inability to pay debts **(1)**: SMB Tech must show that it is or is likely to become unable to pay its debts. This can be demonstrated by providing evidence of the company's financial challenges, such as insolvency or difficulty in meeting its financial obligations.

Intent to propose a compromise or arrangement with creditors **(2)**: SMB Tech must also demonstrate its intention to propose a compromise or arrangement with its creditors or classes of creditors. This can involve presenting a concrete restructuring plan or proposal aimed at addressing the company's financial difficulties and ensuring the interests of creditors are considered.

Additionally, the directors of SMB Tech would need to present the application to the Court for the appointment of a restructuring officer. The Court will evaluate the application based on the specific circumstances of the case, taking into account the overall interests of the company and its stakeholders.

**2 marks**

### Question 3.3

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

The advertising requirements for a restructuring petition in the Cayman Islands are:

1. Notice in the Cayman Islands Gazette: The petitioner must publish a notice of the petition in the Cayman Islands Gazette. This notice must include the details of the petition and the date on which it was filed. **(½)**
2. Notice in a newspaper: The petitioner must also publish a notice of the petition in at least one newspaper circulating in the Cayman Islands. This notice should provide information about the petition and the date of filing. **(½)**

**In your answer you should provide the time frame for advertising ie no more than seven business days after the filing of a Restructuring Petition (1/2 mark) and not less than seven business days before the hearing date (1/2 mark).**

### Question 3.4

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

**Commented [BB26]:** Question 3.3 - Sub-total = 2/2

**Commented [BB27]:** Question 3.4 - Sub-total = 1/6



1. Automatic moratorium ½
2. Protection of assets
3. Court supervision
4. Voting rights
5. Restrictions on directors ½
6. Facilitation of negotiations

1 mark, see answers below

Any 6 of the following

- There are a number of provisions which prescribe specific notice and reporting requirements for the benefit of creditors. (1 mark)
- The default position is that a Restructuring Petition will be heard on notice to stakeholders (while the prior statutory framework provided that applications for appointment of provisional liquidators were to be made ex parte by default). (1 mark)
- The same advertising requirements are imposed as applicable to a winding up petition (the prior regime did not require advertisement of an application to appoint IP(s) - 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 RCOs to report - open and transparent process (1 mark)
- The petitions shall be heard in open court unless the Court otherwise directs (1 mark)
- The RCOs must report within 28 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)

Relief available to the court:

1. Appointment of a restructuring officer (1)
2. Automatic stay of proceedings:
3. Approval of a restructuring plan
4. Extension of the moratorium
5. Directions and orders (½)

Relief not available to the court:

Commented [BB28]: Question 3.5 - Sub-total = 1.5/5

1. Financial restructuring outside the regime
2. Cramdown provisions

1 ½ mark - answer is looking for what the Court's options are at the RO petition hearing

Upon the hearing of a Restructuring Petition the Grand Court may: (i) make an order appointing a restructuring officer **(1 mark)**; (ii) adjourn the hearing conditionally or unconditionally **(1 mark)**; (iii) dismiss the petition **(1 mark)**; or (iv) make any other order as the Grand Court thinks fit **(1 mark)** except an order placing the company into official liquidation **(1 mark)**.

**\*\* 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 exempted limited partnerships (ELPs) is primarily governed by the Exempted Limited Partnership Law (1/2) of the Cayman Islands. This law sets out the legal framework for the establishment, operation, and dissolution of ELPs in the Cayman Islands.

In addition to the Exempted Limited Partnership Law, ELPs are also subject to other relevant legislation and regulations in the Cayman Islands including Companies Law: ELPs must comply with certain provisions of the Companies Law, particularly with respect to registration requirements and annual filings.

When referring to legislation refer to the year of Act - see model answer:  
The Exempted Limited Partnership Act (2021 Revision) (1 mark) and the principles of common law and equity applicable to partnerships (1 mark) as modified by the Partnership Act (2013 Revision). (1 mark)

##### Question 4.2

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

The Cayman Islands court has jurisdiction to wind up a foreign company in certain circumstances. According to Section 92(e) of the Cayman Islands Companies Act, the court has the power to wind up a foreign company if it can be shown that:

- The foreign company has property located in the Cayman Islands,
- The foreign company is carrying on business in the Cayman Islands, or
- The foreign company is the general partner of a limited partnership in the Cayman Islands.

##### 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)

[Type your answer here]

Commented [BB29]: Question 4.1 - Sub-total = 0.5/3

Commented [sp30]: Question 4.2 - Sub total = 2/5 (1mark each for each bullet point and 1 mark deduction for incorrect reference to section 92(d) of Companies Act)

Commented [sp31]: Question 4.3 - Sub total = 0/3

#### 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)

Under Cayman Islands law, the key powers and duties of a trustee in corporate insolvency are outlined in the Bankruptcy Law (2020 Revision) and Companies Winding Up Rules (2020 Revision). Here are the main powers and duties:

**Collection (1/2) and realization of assets:** The trustee is responsible for identifying, preserving, and realizing the assets of the insolvent company. This includes selling assets, recovering outstanding debts, and managing the company's affairs to maximize the return for creditors.

**Investigation of affairs and conduct:** The trustee has the duty to investigate the affairs and conduct of the company and its directors. This includes reviewing financial records, transactions, and business activities to identify any improper or fraudulent conduct, including preferences or undervalued transactions.

**Reporting and disclosure:** The trustee is required to prepare reports on the company's affairs and submit them to the creditors, the court, and relevant authorities. These reports may include information on the company's financial position, the cause of insolvency, the conduct of the directors, and recommendations for further action.

**Distribution of assets:** Once the assets are collected and realized, the trustee must distribute the available funds in accordance with the statutory priority provisions. Creditors are categorized into different classes, and the distribution is made in a specified order of priority.

**Communication with stakeholders:** The trustee is responsible for communicating with creditors, shareholders, employees, and other stakeholders involved in the insolvency process. This includes providing updates on the progress of the administration, convening creditor meetings, and addressing any concerns or queries.

One example of the statutory power of a trustee in bankruptcy under the Bankruptcy Act is the power to disclaim onerous property or contracts, as granted in section 38 of the Bankruptcy Act. This provision gives the trustee the authority to renounce any property of the debtor that is subject to onerous leases, contracts or other obligations. This helps to minimize the loss to the estate by relieving it of unprofitable obligations.

**Please see model answer below:**

**Commented [BB32]:** Question 4.4 - Sub-total = 0.5/4

Answer is at 7.7 of the course notes. Preserve / collect property. **(1 mark)** Adjudicate proofs of debt. **(1 mark)** Administer the estate. **(1 mark)** For example ... **(1 mark for examples)**

Until the provisional order is made absolute, it is the duty of the Trustee to preserve the property such that it may be returned to the debtor in the event the provisional order is revoked (section 38 of the Act).

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 (section 79).

The Trustee may bring or defend any legal proceedings relating to the property of the debtor (section 80).

The Trustee must receive and adjudicate the proof of debts (section 87).

Once an absolute order has been made, the Trustee must proceed to administer the debtor's estate for the benefit of the creditors (section 65).

**TOTAL MARKS: [100]**

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