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

Summative Assessment (Final Examination)

Date: 23 - 24 November 2023

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

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**EXAMINERS**

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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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Commented [BB1]: TOTAL = 71.5/100 - Well done!

Commented [BB2R1]: Mark adjusted to 72/100

## INSTRUCTIONS

1. This assessment paper will be made available at **13:00 (1 pm) Cayman time on Thursday 23 November 2023** and must be returned / submitted by **13:00 (1 pm) Cayman time on Friday 24 November 2023**. Please note that assessments returned late will not be accepted.
2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Avenir Next font (if the Avenir Next font is not available on your PC, please select the Arial font). This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. Please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case). Candidates who include very long answers in the hope it will cover the answer the examiners are looking for, will be appropriately penalised.
4. You must save this document using the following format: **studentID.SummativeAssessment**. An example would be something along the following lines: 202223-336.SummativeAssessment. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. The assessment can be downloaded from your student portal on the INSOL International website. The assessment must likewise be returned via your student portal as per the instructions in the Course Handbook for this course. **If for any reason candidates are unable to access their student portal, the answer script must be returned by e-mail to david.burdette@insol.org.**
6. Enquiries during the time that the assessment is written must be directed to David Burdette at **david.burdette@insol.org** or by WhatsApp on +44 7545 773890 or to Brenda Bennett at **brenda.bennett@insol.org** or by WhatsApp on +27 66 228 2010. Please note that enquiries will only be responded to during UK office hours (which are 9 am to 5 pm GMT, or 11 am to 7 pm SAST).
7. While the assessments are open-book assessments, it is important to note that candidates **may not receive any assistance from any person** during the 24 hours that the assessment is written. **Answers must be written in the candidate’s own words; answers that are copied and pasted from the text of the course notes (or any other source) will be treated as plagiarism and persons who make themselves guilty of**

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

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

## ANSWER ALL THE QUESTIONS

### QUESTION 1 - MULTIPLE CHOICE QUESTIONS (20 MARKS)

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

#### Question 1.1

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

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

#### Question 1.2

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

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

#### Question 1.3

Choose the **correct** statement:

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

- (a) 3

Commented [BB3]: Question 1 - Sub-total = 18/20

(b) 5

(c) 6

(d) None of the above

**Question 1.4**

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

(a) The company.

(b) Any creditor.

(c) Any prospective creditor.

(d) Any contributory.

(e) Any prospective contributory.

**Question 1.5**

Choose the **correct** statement:

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

(a) KYD 50

(b) KYD 100

(c) KYD 1,000

(d) KYD 10,000

**Question 1.6**

Choose the **correct** statement:

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

(a) Within 21 days of the appointment.

(b) Within 28 days of the appointment.

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

- (d) Within 7 days of the appointment.

**Question 1.7**

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

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

**Question 1.8**

Choose the **correct** statement:

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

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

**Question 1.9**

Choose the **correct** statement:

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

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

**Question 1.10**

Choose the **correct** statement:

A scheme of arrangement:

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

**Question 1.11**

Select the **incorrect** statement:

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

**Question 1.12**

Choose the **correct** statement:

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

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

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

**Question 1.13**

Select the **correct** statement:

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

**Question 1.14**

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

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

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

**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.

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

#### 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)

The consent to act signed by the proposed official liquidator should include the following information:

- The name and address of the proposed official liquidator
- A statement that the proposed official liquidator is a qualified insolvency practitioner and meets the residency requirements as set out in Regulation 5 of the Insolvency Practitioners' Regulations (1)
- **A statement that the proposed official liquidator, following due enquiry with the Company and individuals associated with the Company, believes that they met the independence requirements as contained in Regulation 6 of the Insolvency Practitioners Regulations. (1)**
- **A statement that the proposed official liquidator is in compliance with the insurance requirements as contained in Regulation 7 of the Insolvency Practitioners' Regulations (1)**
- **A statement that the proposed official liquidator is willing to accept the appointment is appointed by the Court. (1)**

4 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)

Assuming that the proposed liquidators are those mentioned in question 2.1, it is key to note that the proposal in question 2.1 is for an official liquidation and not a voluntary liquidation. If this was a voluntary liquidation no issues with the **appointment** other than the insolvency practitioner having to assess if there were any other additional threats to the fundamental principles.

However, under Section 6(2) (1) of the Insolvency Practitioners' Regulations independence is deemed to be impaired if the qualified insolvency practitioners' firm have completed any audit work within a period of 3 years (1) immediately preceding the commencement of the liquidation for official liquidations. As the firm audited the year end 2021 (assuming Dec year-end) and the liquidation date is August 23, 2023, the 3-year

Commented [BB6]: Question 2.1 - Sub-total = 4/5

Commented [BB7]: Question 2.2 - Sub-total = 3.5/5

period has not elapsed and therefore there is a threat to the compliance of the fundamental principles. (½)

As the consent to act has already been presented, the liquidator should bring to the attention of all creditors and the Grand Court as part of the Grand Court application the fact that they were previously auditors and the facts and circumstances as to how this was not noted on the original consent to act. (1) The proposed liquidator should then propose that they are removed for any proposal to be appointed at the time and remove their consent to act.

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)

There are no qualification requirements to be appointed as a voluntary liquidator. Any persons can be appointed as a voluntary liquidator including directors and officers of the company. (1)

#### Question 2.3.2 (2/2 marks)

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

Within 28 days of appointment, under section 123 of the Companies Act, Tom and Jerry must:

- File notice of the winding up with the Registrar
- File the liquidator's consent to act with the Registrar

**Commented [jo8]:** Should have referred to the May 2023 date as that is the commencement date

**Commented [BB9]:** Question 2.3 -Sub-total = 5/5

- **File the Director's declaration of solvency with the Registrar (if the supervision of the court is not sought);**
- **In the cases of a company carrying on a regulated business, serve notice of the winding up upon the Cayman Island's Monetary authority; and**
- **Publish notice of the winding up in the Gazette (2)**

**Note that the Registrar referred to above relates to the Registrar of Companies appointed in the Cayman Islands**

**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)

The basis for remuneration is authorized by a resolution of the Company any may be agreed using the following methods:

- An hourly rate (or scale of rates) for time reasonably and properly associated with the voluntary liquidation.
- An agreed amount fixed fee
- A commission based or percentage based formula directly related to the assets realized and subsequently available for distribution
- A mixture of the 3 methods above. (2)

**Question 2.4 (0.5/2 marks)**

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

The court has the power to approve the winding up petition upon the hearing.

**Question 2.5**

**Question 2.5.1 (2/4 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 key to understanding who can remove an official liquidator(s) relies heavily on the solvency of the Company and ultimate who will benefit from any remaining assets.

In the case of a solvent liquidation, the contributories (in most cases the shareholders) maintain the power to remove the liquidator on the basis that their proportion of the Company's excess asset is that under review.

**Commented [BB10]:** Question 2.4 - Sub-total = 0.5/2

**Commented [ni11]:** not a complete answer, which wanted the options set out at s.95(1) of the Companies Act.

**Commented [BB12]:** Question 2.5 - Sub-total = 5/9

**Commented [ni13]:** mostly good answer, but to score the other two marks we needed explicit references to s.107 of the Companies Act and CWR O.5, r.6.

**Commented [ni14]:** contributories means shareholders

In the case of an insolvent liquidation, the creditors maintain the power to remove the liquidator as they are seeking to maximize the realized assets to returned as much as possible to cover what is owed by the company. As there are no excess assets after the distributions are made to the creditors, the contributories input is not deemed relevant on the basis that they would not get any distribution in an insolvent liquidation.

Commented [ni15]: correct

In both cases, an application to the Court for a Removal Summons must be made, with an accompanying affidavit seeking to remove the incumbent liquidator detailing the facts and matters relied upon for the removal. This must also list out nominated replaced liquidators.

The Court will review the application and is approved, issue the removal summons which must be served on the following groups within 14 days:

- The official liquidator
- Each member of the liquidation committee
- Counsel for the liquidation committee (if appointed)
- Any other creditors and contributories as directed by the Court.

The Court has a wide discretion in the granting of a removal summons with good reason being required for such an action. Good reasons would include evidence that the official liquidator has a conflict of interest with parties involved in the liquidation, the liquidators actions are against those of a creditor (with the creditor believing and supporting that the actions are not in their best interests), misconduct (breaches of fundamental principals and/or legal requirements) and failing to properly investigate the actions of those associated with the Company prior to the liquidation sufficiently. On the other hand, a creditors preference to another liquidation firm or liquidator based solely on subjective information or that fact that a party involved in the liquidation is disgruntled by the actions of the liquidator, will be considered good reasons.

In summary, if the Court believes that that the current liquidator is performing their role to the best of their ability without prejudicing any individual party in favor of others, the Court is unlikely to remove the incumbent liquidator.

**Question 2.5.2 (3/5 marks)**

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

The class of potential applicant in accordance with the solvency of the company makes sense for a variety of reason. The main reason for this is based on who is likely to affected by the impact of the liquidation.

For a voluntary liquidation, this process is started by the company itself. This would be the case for the when the Company has reached the end of its life as stated in its

Commented [ni16]: A full answer that shows essential understanding of the core issues at play here, but makes some errors (so 3/4 marks) and 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).

Commented [ni17]: a company can go into VL whether or not it is solvent. Solvency just determines whether it can then remain in VL.



memorandum or articles (either due to a time limit set in the company or in a set event occurring). In this case, the investors would be aware of the time limit or circumstance and would have agreed at the point they invested into the company. If the Company would not have the option of a voluntary liquidation started itself it would put expense on creditors or contributories to end a company and/or unnecessary strain on the Court system with procedural matters.

In the case of a solvent liquidation, the assessment is that the creditors will be paid off in full and therefore creditors effectively should have no concerns over the recoverability of amounts owed. However, the contributories have the vested interest in the business and would like to maximize their potential return if excess assets recovered. Therefore, it makes sense to exclude the creditors from any liquidation decisions as they will already be made whole based on the solvency determination and as a result it is only right that the contributories being the one bringing the action.

In addition, if the Company is deemed to be solvent, the Courts could be appointing a liquidator over a disgruntled creditor and end up dealing with a creditor dispute over a set balance rather than a company as a whole. This also protects the company from reputation impact of "going into liquidation" which in itself can cause successful companies to collapse.

The vice-versa of this is the insolvent liquidation, where the contributories are not expected to receive any distributions whilst the creditors are in a position that they may not be made whole. As a result, their point of view is to maximize the realized assets for their benefit to try to recuperate as much of their owed balances as possible. As a result, it is right that the creditors are the party bringing proceedings as they are the party likely to lose out based on the liquidation preference.

In summary, based on the different view points of the stakeholders of the business and the conflicting wants, it makes sense that the class of potential applicant varies in accordance with the solvency of the company.

#### 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)

By moving from a solvent liquidation to an insolvent liquidation greatly impacts the composition of the liquidation committee.

Originally the liquidation would be made up of between 3 - 5 members of the contributory pool with no creditors being appointed on the basis that they will receive

Commented [ni18]: correct

Commented [ni19]: No, this is incorrect analysis. By this point the company will already be in liquidation.

Commented [ca20]: Question 2.6 Subtotal 0/4 marks - unfortunately the candidate misinterpreted the question. The company is now solvent and the shift is to the interest of the contributories

their full amounts owed, therefore they have no interest in the excess recoverable assets of the company that will be recovered.

With the change in solvency, it is noted that the contributories are expected to receive nothing now and therefore they have no vested interest in the company. Therefore, the opinions of the contributories on the liquidations and irrelevant and as a result are not a useful sounding board for the liquidator. As a result, the liquidation committee will now be comprised of creditors.

### Question 2.7

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

In order to make a dissolution order, the liquidator must have completed the following steps:

- The affairs of the company must be completely wound up.
- The official liquidator must publish their final reports and accounts in line with the Company Winding-Up Rules
- The official liquidator must apply to the Court under section 152 of the Companies Act for the company to be dissolved.
- At least 14 days prior to the dissolution hearing, the liquidator must advertise the hearing in countries where the liquidator believes it is most likely that creditors are (i.e. countries where the company previously traded or had operations).

### Question 2.8

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

The liquidator has the investigative powers to investigate why the Company has failed (if insolvent) or what business decisions and actions of the directors/ employees have resulted in the Company's affairs having to be reviewed by a liquidator. (1) The liquidator has an expansive reach of powers when it comes to investigating these items. **Cite relevant legislation and case law - see model answer below**

The liquidator may seek assistance from law enforcement or regulatory authorities when investigating the conduct of individuals and their impact on the affairs of the business. If their actions are criminal in nature, the liquidator may also prosecute the individual(s) if beneficial for the company. (1) **Be more specific in your answer - see model answer below**

Any investigations and prosecution costs can be recovered from the company subject to approval from the relevant party (creditors if insolvent, contributories if solvent), in accordance with section 102(2) of the Companies Act.

**Commented [ca21]:** Question 2.7 Subtotal = 0/5 marks misinterpreted the question as should have set out steps the OL would take after / in accordance with the dissolution order

**Commented [BB22]:** Question 2.8 - Sub-total = 2.5/5

As part of the investigation, the liquidator can:

- Ask those persons described in section 101(3) of the Companies Act to provide them with a statement of the company's affairs (½)
- Order an examination of persons associated with the company and to ask they provide any relevant requested documents associated with the company.

The liquidator has a duty to take control over the company's books and records (including any electronic copies). The liquidator can also investigate the company's books and records to aid in their understanding as to what has occurred which has resulted in their appointment.

**Model answer:**

A liquidator is an officer of the court with certain general duties which were summarised in the Cayman Islands case *In the Matter of Citrico International Limited* [2004-05 CILR 435] (citing *Gooch's Case* 1872, 7 Ch App 207), **(1 mark)** as requiring the liquidator "to make himself thoroughly acquainted with the affairs of the company; and to suppress nothing, and to conceal nothing, which has come to his knowledge in the courts of his investigation,

which is material to ascertain the exact truth in every case before the Court". (1 mark) In addition to this general duty, section 102(1) of the Companies Act expressly empowers the liquidator to investigate (a) if the company has failed, the causes of the failure; and (b) generally the promotion, business, dealings and affairs of the company, and to make such report if any to the court as the liquidator thinks fit (1 mark). Additionally, the liquidator is also empowered (subject to obtaining directions from the court) to assist the CIMA and the RCIPS to investigate the conduct of persons, and institute and conduct a criminal prosecution of person referred to in section 101(3) of the Act. Those persons include existing or former directors or officers of the company; (b) professional service providers to the company; and (c) employees of the company, during the period of one year immediately preceding the relevant date. (2 marks)

#### Question 2.9

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

Under section 101(1) of the Companies Act, where a winding up order has been made, the liquidator can require the following to produce a statement of affairs:

- Directors or officers of the company
- Professional service providers to the company (including auditors)
- Employees of the company who were employees within 1 year prior of the relevant date.

The relevant date in most scenarios is the date at which the winding up commenced. (1) However, there are a number of cases where the relevant date may differ from this, as follows with reference to section 100(1) of the Companies Act: (1)

- A resolution has been passed by the company for voluntary winding up (½)
- The period, if any fixed, for the duration of the company by the articles of association has expired (½)
- The event upon the occurrence of which it is provided by the articles of association that the company is to be wound up has occurred . (½)

In the above case, the date when the event occurred is deemed to be the "relevant date". (1) In addition to the above, if a restructuring officer has been appointed and then a winding up commences, the relevant date when the restricting officer was appointed. (½)

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

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

QUESTION 3 FOLLOWS ON NEXT PAGE / ...

### QUESTION 3 - CORPORATE RESCUE (20 MARKS)

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

#### FACT PATTERN

##### SMB TECH CORPORATION

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

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

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

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

#### Question 3.1

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

**Commented [BB24]:** 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)

Under the Insurance Practitioners Regulations 7 (1), a qualified insolvency practitioner is required to hold professional indemnity insurance with the following features with regards to negligent or on-performance of their duties:

- Up to a limit of at least US\$10 million in respect to each and every loss
- At least US\$20 million in the aggregate (1)
- A deductible of no less than \$100,000

The provisional liquidator does not hold this insurance requirement and per the question, is unwilling to increase to the limits. Therefore, the initial position is that the provisional shouldn't be appointed as they don't meet the insurance requirement. (1)

However, noting that this is a provisional liquidation, the powers of the liquidator are not the full suite of powers that are granted to an official liquidator (which I'm assuming the current insurance has been taken out to cover). As the powers will be restricted by the court to a specific need, the proposed liquidator may want to take out a separate insurance policy unique to the case, which is likely to have a lower premium on the basis that risk is restricted. With the procurement of this policy the provisional liquidator would then be in a position to accept an appointment.

An alternative would be for the provisional liquidator to procure the issue of a security bond to cover the acts of the provisional liquidator. This would be beneficial for the provisional liquidator as the payment of premium would be from assets of the company rather than from their own assets. (1)

If either of the 2 options above were to occur the provisional liquidator could be appointed.

4 marks

### Question 3.2

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

The Company must demonstrate the following to the Court before the Court will appoint a restructuring officer:

- The company is or is likely to become unable to pay its debts as they fall due (1)
- The company intends to present a compromise or an arrangement to its creditors (1)

2 marks

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

### Question 3.3

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

The advertising requirements for a restructuring petition are as follows (unless the Court requires any other advertising methods):

- An advert run once in a Cayman Islands newspaper (½)
- An advert to be run in a newspaper where the creditors and contributories are most likely to be. (½)

The adverts are required to be run within 7 days of the filing of the restructuring petition (½) but no less than 7 days prior to the hearing date. (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)

Six elements of the new restructuring officer regime that assist in safeguarding the interests of creditors are:

- Addition stay on the assets - the stay is in place on the application/petition of the appointment of a restructuring officer rather than when the winding up petition is granted in other liquidation scenarios. This reduction of time should help safeguard assets.
- There's no requirement for a resolution i.e. no need to organize a board meeting to resolve the application this reducing the time taken and safeguarding assets.
- Creditors can give 3 days notice that they intend to appear at the restructuring hearing and can either support or oppose the appointment. The regime gives them a voice in the proceedings. (1)
- Creditors also have the option of write to the court to have a variation or discharge the order appointing the restructuring officer if they are unhappy with the way that the restructuring process is going. The variation may result in a expanding/narrowing of powers if the court agrees with the creditor. (1)
- Creditors have the option to write to the court for the removal or replacement of a restructuring officer. However, the Court is likely to review these removals in line with current official liquidation proceedings. (1)
- Secured creditors are still able to enforce their rights on the secured assets without reference to the restructuring officer. (1)
- Creditors do not lose the right to petition for a winding up after seeking leave from the Court.

4 marks, additional pointers below

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

Commented [BB27]: Question 3.4- Sub-total = 4/6



- 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 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)**
- The ROs must report within 28 days of appointment **(1 mark)**

### Question 3.5

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

- May make an order to appoint the restructuring officer; **(1)**
- May adjourn the hearing conditionally or unconditionally; **(1)**
- May dismiss the petition particularly if the 2 limb test is not stratified (likely to not pay it's debt and intention to present a restructuring plan to creditors) **(1)**
- May make any order that it sees fit (except for that mentioned below). **(1)**

It may not make an order placing the company into official liquidation **(1)** i.e. no basis to wind up a company on the basis of a restructuring application.

5 marks

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

**QUESTION 4 FOLLOWS ON NEXT PAGE / ...**

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

#### 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)

In addition to the LPA, exempted limited partnerships' operations are governed by:

- The Partnership Act (2013 Revision) (1)
- Exempted Limited Partnerships Act (2021 Revision) (1) and the principles of common law and equity applicable to partnerships (1 mark) as modified by the Partnership Act (2013 Revision). (1 mark)
- 
- The Companies Act (2023 revision)

##### Question 4.2

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

A Cayman Islands court have jurisdiction to wind up a foreign company when:

- The company was incorporated somewhere else but subsequently registered in the Cayman Islands
- The foreign company has property located in the Cayman Islands
- The foreign company was carrying on a business with the Cayman Islands
- The foreign company is a general partner of a limited partnership, and;
- The foreign company is registered under Part IX of the Companies Act (2023 Revision) - commonly referred to as an overseas company.

##### 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)

It is not necessary to obtain enforcement or recognition before petitioning to wind up a company as the judgement by the foreign court may result in a red flag to the insolvency of related (or ultimate holding) company based in the Cayman Islands. At this point, whilst the judgement isn't recognized or enforced in the Cayman Islands, it may give a fact pattern that requires the appointment of a Cayman Islands' insolvency practitioner to look at the related Cayman Islands' company and may result in the local company being placed into liquidation under the Cayman Island's regime.

Commented [BB29]: Question 4.1 - Sub-total = 2/3

Commented [sp30]: Question 4.2 - Sub-total = 4/5

Commented [sp31]: Question 4.3 - Sub-total = 2/3

**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 main statutory power of the trustee in bankruptcy is to preserve the property of the debtor in the event that the property is returned to the debtor however the debtor's estate will be managed by the trustee for the benefit of the creditors (not for the benefit of the debtor). **(1)**

Under section 79 of the Bankruptcy Act, the trustee may carry on the trade of the debtor to ensure the trade survives under an order is made. This may include the beneficial wind up of the business in order to allow the debtor pay their creditor. **(1)**

Under section 80, the trustee may also bring or defend any legal proceedings in relation to the debtor. **(1)**

**Other examples are:**

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 \*\***

**Commented [BB32]:** Question 4.4 - Sub-total = 3/4