



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

Commented [BB1]: TOTAL = 44.5/100

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)

EXAMINERS

Mr John Royle Mr Mark Russell Mr Nicholas Fox Ms Corinne Celliers
Ms Cassandra Ronaldson Mr Adam Crane Ms Gemma Lardner Ms Jennifer Fox
Ms Jennifer Colegate Mr Tony Heaver-Wren Mr Paul Smith Mr Spencer Vickers
Mr Benjamin Tonner

MODERATORS

Mr John Royle Mr Nicholas Fox Ms Cassandra Ronaldson
Mr Spencer Vickers Dr David Burdette

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

All candidates are expected to comply with ALL the instructions.

INSTRUCTIONS

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

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answers that are copied and pasted from the text of the course notes (or any other source) will be treated as plagiarism and persons who make themselves guilty of this will forfeit the assessment and disciplinary charges will follow. When submitting their answers, candidates will be asked to confirm that the work is their own, that they have worked independently and that all external sources used have been properly cited. If you submit your assessment by e-mail, a statement to this effect should be included in the e-mail.

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

ANSWER ALL THE QUESTIONS

QUESTION 1 - MULTIPLE CHOICE QUESTIONS (20 MARKS)

Commented [BB2]: Question 1 - Sub-total = 15/20

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

Question 1.1

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

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

Question 1.2

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

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

Question 1.3

Choose the **correct** statement:

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

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- (a) 3
- (b) 5
- (c) 6
- (d) None of the above

Question 1.4

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

- (a) The company.
- (b) Any creditor.
- (c) Any prospective creditor.
- (d) Any contributory.

(e) Any prospective contributory.

Question 1.5

Choose the **correct** statement:

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

- (a) KYD 50
- (b) KYD 100
- (c) KYD 1,000
- (d) KYD 10,000

Question 1.6

Choose the **correct** statement:

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

- (a) Within 21 days of the appointment.

(b) Within 28 days of the appointment.

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

(d) Within 7 days of the appointment.

Question 1.7

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

(a) A statement that, having made due enquiry and taken appropriate advice, the board believes that the company is or is likely to become unable to pay its debts.

(b) An explanation of how the company will be funded during the restructuring period.

(c) A statement as to why the directors believe that the appointment of a restructuring officer will be in the bests interest of the company.

(d) A detailed outline of the proposed restructuring plan.

Question 1.8

Choose the **correct** statement:

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

(a) the company.

(b) any creditor;

(c) any contributory; or

(d) all of the above

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

Question 1.9

Choose the **correct** statement:

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

(a) within 14 days of the petition being filed.

(b) within 21 days of the petition being filed.

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- (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.

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

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 [BB5]: 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.

Commented [BB6]: The correct answer is (b)

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- (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 [BB7]: 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:

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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

Blueseas Digital Capital Limited (Blueseas) 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 [BB8]: Question 2.1 - sub-total = 5/5

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)

[Type your answer here]

The Consent to Act for Bluesea Digital Capital Limited must be signed by both proposed Official Liquidators and they both must be authorized to act jointly and severally.

The Consent to Act must be supported by an affidavit which is to be sworn by the Nominated Official Liquidators and confirm that: (1)

- a) they are a qualified Insolvency Practitioner of good standing; and are able to act in respect of BlueSea;
- b) They must meet the residency requirements (1) in which they must be a resident on Island and they or the firm in which they are an employee of, must retain a business license authorizing that their firm is able to carry out the work required for Insolvency practitioners acting on behalf of BlueSea;
- c) The Nominated Official Liquidators and their firm of business are to meet the Independence requirement (1) in which they must not have been involved within BlueSea within 3 years prior to the commencement of the liquidation of BlueSea and they must be noted as being Independent from BlueSea (The Insolvency Practitioners must be completely independent in that they must not have acted or had any involvement with the Company 3 year prior to the liquidation;
- d) Following a review, the Nominated Insolvency Practitioner and their place of business is to meet the Insurance requirements (1) in respect of professional indemnity insurance applicable to any negligent performance or non-performance as duties of a qualified Insolvency Practitioner in their capacity to act as an Insolvency Practitioner; and
- e) The nominated Official Liquidators must declare that they are willing to act as an Official Liquidator of BlueSea, if the Court wishes to appoint them. (1)

This can be referred to in (O.3, r. 4) in the Companies Winding Up Rules (2023

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Consolidation) (As Amended) and the supporting Regulations 5, 6 and 7 of the Insolvency Practitioners Regulations (As Amended).

5 marks

Question 2.2

Commented [BB9]: Question 2.2 - sub-total = 3/5

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)

[Type your answer here]

As Bodden & Ebanks Limited previously acted as auditors of the Company in the (1) 3 years prior to the commencement of the liquidation, the proposed liquidators who are employees of Bodden & Ebanks Limited, would not be regarded as being independent. It is required that a proposed insolvency practitioner should be properly independent to the Company if they are to be appointed. (1)

As the Consents to Act have already been provided, the proposed Liquidators should make it clear to the Court of their previous conflict they have with Bluesea, and that at the time of the filing of the Consents to Act, they were unaware of their previous involvement with the Court. (1) It would be up to the Courts discretion to decide if they may continue to act, given the order has not yet been made.

3 marks - see model answer below

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 5 of the Insolvency Practitioners Regulations set out the independence 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

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the firm of which his 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 [BB10]: Question 2.3 - Sub-total = 3.5/5

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

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

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

Using the facts above, answer the questions that follow:

Question 2.3.1 (1/1 mark)

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

[Type your answer here]

Any person may be appointed as a Voluntary Liquidator over a Cayman Islands Company, including a director or an officer of the Company, therefore Tom and Jerry would be authorized to act as Voluntary Liquidators of Cheese Limited. (1)

Question 2.3.2 (2/2 marks)

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

[Type your answer here]

As Voluntary Liquidators, Tom and Jerry would be required to complete the following for

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Cheese Limited within 28 Days of their appointment:

- i) file a notice of the winding up of Cheese Limited with the Registrar;
- ii) File Tom and Jerry's Consent to Act as Liquidators with the Registrar;
- iii) File the Director's Declaration of Solvency with the Registrar, on the basis if no supervision order is order. The Declaration of Solvency must state the true position of Cheese Limited as at the preparation of the Declaration of Solvency and note that Cheese Limited is able to pay its debts in full within 12 months from the commencement of the liquidation (as per section 124 (1)(2) (3) of the Companies Act (2023 Revision) ;
- iv) Tom and Jerry would be required to serve notice of the winding up of the Company upon the regulated Authority, which in the Cayman Islands, may be listed as Cayman Islands Monetary Authority ("CIMA");
- v) Publish notice of the Winding up of the Company in the Cayman Islands Gazette (noted in which Tom & Jerry would be required to review the publication dates of the notice with the Gazette, in order to ensure the notice is advertised within 28 Days.). They may wish to review of an advertisement is also to be published within a circulating newspaper. (2)

(Section O.13, r.2 of the Companies Winding Up Rules (As Amended)

Question 2.3.3 (½ / 1 mark)

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

[Type your answer here]

In respect of Tom and Jerry' remuneration fees for the work carried during the liquidation, these may be authorized by the passing a resolution by the members of Cheese Limited at a General Meeting of Members (be that a first meeting of members or a final meeting) of which Tom and Jerry are required to call, and which detail the fees to be fixed, (0.5) and the Liquidators are to provide a breakdown of the fees and costs incurred during the liquidation of Cheese Limited for the members review and consideration.

If the members have approved their fees, the remuneration is to become payable out of the asset realizations within the liquidation. If the resolution has been rejected by the members of Cheese Limited on the basis that they are dissatisfied with the liquidation and conduct of the Liquidators, Tom and Jerry could apply to the Court for the approval of their fees and the total amount to be made payable to them for their work incurred during the liquidation.

This can be referred back to section O. 13, r. 9 of the Companies Winding Up Rules (As

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Amended).

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)

[Type your answer here]

The Court has the power to any petition on whatever grounds they feel are just and reasonable and in this case, they may seek to adjourn the hearing to a later date as they see fit. This would allow them to review the order and supporting evidence filed, to ensure that the request is just and reasonable for the application made. If they feel that Provisional Liquidators are required, they may make a provisional Order to this effect.

Alternatively, if the Court feels that the petition and the case is not suitable for a provisional order or the appointment of provisional Liquidators, the Court may look to make another order, they feel is more suitable, such as the appointment of Restructuring officers or the appointment of Official Liquidators, if they feel a Provisional Liquidation would not be necessary. An example of this would be if the Provisional Liquidation Date is to close the Winding Up petition hearing date which would not allow the Provisional Liquidators to complete their initial duties, and the appointment of Official Liquidator would be more suitable.

Question 2.5

Question 2.5.1 (2.5/4 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)

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Commented [BB11]: Question 2.4 - sub-total = 0/2

Commented [ni12]: 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.

Commented [ni13]: if you are talking about the court's powers on hearing a PL application, then this answer is incorrect

Commented [BB14]: Question 2.5 - sub-total = 2.5/9

Commented [ni15]: some small inaccuracies below and to get the 4th mark we needed a reference to s.107 of the Companies Act.

[Type your answer here]

As referred to on Section(O.5,r.6) of the Companies Winding Up Rules (As Amended), a removal summons is to be made by a creditor or a contributory of the Company. This is to be served on the Official Liquidator and every member of the Liquidation Committee (which consists of 3-5 members and is established following the liquidation appointment at the first meeting of creditors, and which the Liquidator is to report on the liquidation process and investigations (section O.8,r.1) of the Companies Act (As Amended)) and the counsel acting for the liquidation committee for their attention within 14 days of the summons. The Court may request that other creditors or contributories of the Company may also be provided with a copy of the summons for their own benefit.

Commented [ni16]: or

Commented [ni17]: direct

An Affidavit is also to be provided in reference to the summons which is to detail the liquidation and the reasonings behind the requested removal of the Official Liquidator. This Affidavit must include details of the nominated replacement Official Liquidator, being a licensed insolvency practitioner, who must be able to reach the requirements to act as an Official Liquidator of the Company, as per the Consent to Act regulations (In which they must be a qualified Insolvency practitioner, meet the residency requirements and provide confirmation of their independence). The Nominated Liquidator is to then be appointed following the removal of the Official Liquidator.

Following the approval by the Court, the Official Liquidator who has just been removed, is required to provide all Company books and records held in their possession as well as all relevant liquidation documents including Board Minutes, any reports and accounts retained, details of any liquidation bank accounts held and any payments made, details and copies of any notices that have been issued to any creditors, service providers, banks etc. This request would also include any electronic records previously held by the removed Liquidator.

The Removed Official Liquidator upon his removal, is to prepare a report and set of accounts for the Court, within 28 Days of their removal, which is to allow access to the Company's books and records with unrestricted access.

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]

Commented [ni18]: I'm afraid this isn't really correct.

The question sought an answer that identified the true economic stakeholders, which are:

- in the case of a solvent liquidation, only the contributories (as creditors would all be paid in full and therefore have no interest in who is the OL); and
- in the case of an insolvent liquidation, only the creditors (as no contributories will be paid anything).

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).

Your answer confuses the types of liquidations with the determination of solvency within a liquidation. Your answer is also not correct in its own terms, I'm afraid.

If the Company is Solvent, then the application for liquidation would be for a Voluntary Liquidation whereby a Certificate of Solvency would be filed and in which the Liquidator would liaise with the contributories of the Company. The Liquidator is to identify the different class of the contributories as during the liquidation, it may become clear that there may be potential distributions to the contributories, of which they liquidator will need to determine those contributories and their share class/amount and those with potential unpaid capital. The applicants for the potential application may be the contributories of the Company, and the Company itself, due the Solvency of the Company.

Commented [ni19]: not correct. a solvent company can be the subject of a J&E winding up petition and go straight into official liquidation.

If the Company is Insolvent then the application would be for an Insolvent Winding Up and may consist of an application for a Provisional Winding Up, or the change with the submission of a supervision order from Voluntary Liquidation to Official Liquidation. In this respect, it would be for the Liquidators to determine the grounds on the likely insolvency of the Company as well as any secured creditors, who may make this application.

Question 2.6

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

Commented [ca20]: Question 2.6 Subtotal 4/4 marks

[Type your answer here]

Following the filing of the Certificate of Solvency with the Court, the Official Liquidator is to convene a meeting with the Liquidation Committee, which consists of 3-5 members appointed at the first meeting of creditors, to relay the findings of the realizations of the assets within the Liquidation (O.9,r.3) of the Companies Winding Up Rules (As amended). The Liquidator is to then proceed with the process of removing the current members of the liquidation committee (who are noted to be creditors as the Company was initially listed as insolvent) and replaced with new members, who are contributories of the Company. As the Company is no longer insolvent, the Liquidators are required to conduct their business with the approval of the members.

Question 2.7

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

Commented [ca21]: Question 2.7 Subtotal 1/5 marks

[Type your answer here]

Upon realization of the assets and the completion of all statutory duties within the liquidation, the Liquidator will seek to proceed to closure of the liquidation. This includes ensuring that all assets have been realized, any dividends have been made payable to Creditors, and no remaining matters are outstanding.

The Liquidator will complete a Final Report and accounts which are to be presented to the members and creditors of the Company, detailing the liquidation process and investigations during the life of the liquidation, and their proposal to conclude the liquidation. This is to also be presented to the Court alongside an order requesting for the Court to approve the dissolution request. This is to then be published upon the confirmed hearing date of the dissolution application 14 days prior to the hearing date (O.22,r.1) Companies Winding Up Rules (As amended) within a local newspaper.

The question asks for a response which considers post dissolution matters. A model answer would include references to the following:

- 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. An order for discharge of the liquidators is often included in the order for dissolution.
- Following the dissolution of a company, the liquidator shall retain the liquidation files in safe custody for at least 3 years pursuant to O.26, r.2(3) of the CWR.
- Upon making an order for dissolution, the court shall give directions in respect of the preservation, storage and destruction of the company's remaining books and records pursuant CWR O.26, r.3(4) and in accordance with r.3(6), the cost of post-dissolution storage and destruction of a company's books and records shall be an expense of the liquidation for which provision must be made in the official liquidator's final accounts.

Question 2.8

Commented [BB22]: Question 2.8 - Sub-total = 1/5

Describe the general investigative powers and duties of a liquidator.

(5)

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[Type your answer here]

As part of the Liquidation process, it is the liquidator's duty to review and investigate the Company, as well as its officers and any relevant parties, on the conduct of the Company and its failures, and produce the findings on such investigations which may be presented to the Court for their attention. (1) The liquidator's main priority is to realize as much of the assets of the Company for the benefit of the creditors, should there be sufficient findings for a dividend to creditors.

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 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

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

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)

[Type your answer here]

The Relevant Date is in relation to when the Winding Up proceedings began to take place and the Liquidator's appointed over the Company (the appointment date). In relation to the completion of the Statement of Affairs, this details the Companies Assets and Liabilities as at the date of the completion of the Statement, as well as details of any creditors and class of creditors within the liquidation. The Statement of Affairs is to be prepared by the Liquidator and sworn any person who is a Director or has acted previously

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as a Director , anyone who may have provided any kind of professional services to the Company including financial or any employees of the company one year 1 year prior to the commencement of the liquidation proceedings.

Please read the question carefully in preparing your answer. You have not addressed what is meant by the "relevant date", please see 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 / . . .

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

Commented [BB24]: Question 3.1 - sub-total = 2/5

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

[Type your answer here]

It is noted that the Provisional Liquidator has in place professional Indemnity Insurance (this is to ensure that he and his firm of which he is an employee or partner are compliant and are required to hold professional Indemnity Insurance) for every claim in place within the liquidation. However, the minimal limit the Court requires to be in place is listed as USD10million, Section 7 (1) of the Insolvency Practitioners Regulations (As amended). (1)
In this regard the Court may not appoint the nominated liquidator due to him not having sufficient insurance in place. (1)

However as per section 7(2)(a)(b) of the Regulations, there is nothing to stop the Court from procuring insurance covering the liquidator in respect of negligent performance or non-performance of their duties with a coverage in excess of USD10 million.

2 marks - see 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 6 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)

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Therefore, if the chosen liquidator by the contributors 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

Commented [BB25]: Question 3.2 - sub-total = 1/2

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

[Type your answer here]

SMB Tech Corporation must provide true and factual accounts of the Company to the Court to indicate that they are insolvent or are veering towards insolvency and would therefore require the assistance of a Restructuring Officer. (1)

Furthermore, they must provide a restructuring plan outlining the proposed plan for SMB Tech Corporation.

1 mark

The company must demonstrate that (i) the company is or is likely to become unable to pay its debts as they fall due (1 mark) and (ii) the company intends to present a compromise or arrangement to its creditors (1 mark)

Question 3.3

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

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

[Type your answer here]

Upon the appointment of the Restructuring Officer, the Restructuring officer has a duty to advertise their appointment within a local newspaper in within the Cayman Islands (½) and in a newspaper that is in circulation in a country or other countries in which there may be any other potential creditors or members of the Company, (½) as referenced in O.1A, r.1 (3) and O.1A,r.1 (4) of the Companies Winding Up Rules (As amended). The Advertisement of the appointment is to be completed within 7 business days after the filing of the petition (½) and 7 days before the scheduled hearing. (½)

Question 3.4

Commented [BB27]: Question 3.4 - sub-total = 2/6

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

[Type your answer here]

Upon appointment of the Restructuring Officer, if there is the position whereby there may be a compromise or a proposed arrangement with the Company and the Creditors, or the Company and its members, it may be proposed that a meeting is held to discuss these matters, as referenced within section 91I of the Companies (Amendment) Act 2021.

It must be agreed by 75% of the Creditors or 75% of the members (if a members meeting) of the proposed arrangement, and those not in attendance are required to submit a proxy nominating a representative on their behalf (who may vote on their behalf). The Court is to then approve the proposed arrangement. This is to then be presented to the Registrar of Companies for updating on the Register and appended to a copy of the Company's memorandum and Articles of Association. With this, this will benefit the creditors and members of the Company, which may allow for a more substantial return to them.

The Purpose of the Restructuring Officer is to review the position of the Company and key benefits of this are that a winding up petition is not required, it allows continuity of service of the Company. This gives the Company more time to review their position and more breathing space. Provisions and protection are put in place in order to protect the Creditors and members of the Company. (1)

In respect of safeguarding, if a creditor or member is dissatisfied with the conduct of the Restructuring Officer, then they may request for a discharge of the Order which appointed the Restructuring Officers in place or may request for the removal of the Restructuring Officer, in which a summons is to be issued to the officer and all creditors/members, as per O.1A,R. 13 of the Companies Act 9As Amended). (1)

2 marks - plus any of the 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 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)

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- 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)
- 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

Commented [BB28]: Question 3.5 - sub-total = 0/5

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

[Type your answer here]

Relief may vary depending on the jurisdiction in which the Restructuring petition may be sought.

In relation to the previous question, the Court may sanction and agree the proposed arrangement as approved by the requisite creditors of any class and members of any class of the Company being 75% (voted for either in person or via proxy form nominating an individual to vote on their behalf). This would allow a greater benefit to the creditors and members in respect of any dividends or distributions to them. In this regard, this would need to be reviewed on the basis that SMB Tech has a global presence across numerous jurisdictions and ensure this is applicable to each jurisdiction.

0 marks - the question is asking what options is available to the Court upon hearing a RO petition. See below

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 / ...

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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

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

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

[Type your answer here]

An Exempted Limited Partnership ("ELP") is a registered Limited partnership with a General Partner in place, or more than one, and must provide detail on the purpose and business of the ELP and the General Partner(s) within the Cayman Islands. In addition to the Limited Partnership Agreement, the ELP must also be governed by the Partnership Act. (½) insufficient detail provided in your answer, see model answer below:

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

Commented [sp30]: Question 4.2 - Sub-total = 1/5

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

[Type your answer here]

A foreign Company made be wound up by the Cayman Courts on the grounds on if the Company operated or maintained a presence within the Cayman Islands and conducted business within the Cayman Islands, and of which may be an existing live Company upon the Registrar of Companies. This would also be applicable to ELPs in which General partners may be located or retain control over a Company registered within the Cayman Islands.

Question 4.3

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

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)

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[Type your answer here]

The Cayman Court will take into consideration the judgement from the foreign court for the benefit of the Creditors and any other potential interested party/creditors. The Court has the discretion to hold off on the Winding Up until such time that they have reviewed and been provided with the foreign judgement, as it may have an effect on the outcome of the winding up and the proposed proceedings, in which may be detrimental to creditors.

Refer to Kawaley J's first-instance judgment in *In the matter of Guoan International Limited* (unreported, 29 October 2021) which confirms that a creditor may rely upon a foreign judgment as the basis for seeking a winding up order without first obtaining recognition and / or enforcement orders in respect of such foreign judgment from the Cayman Islands Court

Question 4.4

Commented [BB32]: Question 4.4 - Sub-total = 1/4

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)**

[Type your answer here]

The main duty of the Trustee is to realize and preserve the estate of the Debtor within the Bankruptcy for the benefit of the creditors, should there be a dividend made payable to any class of creditors during the course of the Bankruptcy, as referenced in section 38 of the Bankruptcy Law (1997 Revision). **(1)**

The Trustee may apply to the Court in order to allow them to take control and possession of the Debtors Estate and Property for the benefit of the creditors and section 13(1) of the Bankruptcy Act allows the Court for the appointment of an individual by the Trustee who may assist in the realizations of the Estate, which in turn would be beneficial to creditors.

The Trustee's duties are to investigate the conduct of the Debtor and his estate and provide a detailed report on any transactions made, which may have assisted in the Debtor becoming bankrupt, and to see if there are any further realizations which may be used for satisfying any creditor claims.

Please see model answer below:

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 ****