



**INSOL**  
INTERNATIONAL



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

Commented [BB1]: TOTAL = 87/100 -  
Excellent results, well done!

Summative Assessment (Final Examination)

Date: 23 - 24 November 2023

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

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**EXAMINERS**

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

Mr John Royle Mr Nicholas Fox Ms Cassandra Ronaldson  
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It is imperative that all candidates read and take cognisance of the examination  
instructions on the next page.

All candidates are expected to comply with ALL the instructions.

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## INSTRUCTIONS

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

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

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

## ANSWER ALL THE QUESTIONS

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

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

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

#### Question 1.1

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

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

#### Question 1.2

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

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

#### Question 1.3

Choose the **correct** statement:

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

- (a) 3

(b) 5

(c) 6

(d) None of the above

**Question 1.4**

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

(a) The company.

(b) Any creditor.

(c) Any prospective creditor.

(d) Any contributory.

(e) Any prospective contributory.

**Question 1.5**

Choose the **correct** statement:

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

(a) KYD 50

(b) KYD 100

(c) KYD 1,000

(d) KYD 10,000

**Question 1.6**

Choose the **correct** statement:

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

(a) Within 21 days of the appointment.

(b) Within 28 days of the appointment.

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

- (d) Within 7 days of the appointment.

**Question 1.7**

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

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

**Question 1.8**

Choose the **correct** statement:

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

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

**Question 1.9**

Choose the **correct** statement:

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

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

**Question 1.10**

Choose the **correct** statement:

A scheme of arrangement:

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

**Question 1.11**

Select the **incorrect** statement:

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

**Question 1.12**

Choose the **correct** statement:

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

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

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

**Question 1.13**

Select the **correct** statement:

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

**Question 1.14**

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

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

**Question 1.15**

Select the **correct** statement relating to the appointment of inspectors:

- (a) The report of an inspector can be used in any legal proceeding as evidence of the opinion of the inspectors.



- (b) Upon the appointment of an inspector the directors' powers will automatically cease.
- (c) Upon the appointment of an inspector there is a stay of proceedings such that a winding up application cannot be brought.
- (d) Only CIMA has the power to appoint an inspector.

**Question 1.16**

Select the **correct** statement relating to exempted limited partnerships (ELPs):

- (a) Limited Partners have an unfettered statutory right to petition the court to wind up the relevant ELP / General Partner.
- (b) Where there are inconsistencies in relation to the dissolution of ELPs, the ELP Act will take priority over the Companies Act.
- (c) An ELP is required to have more than one limited partner.
- (d) An ELP formed under the Exempted Limited Partnership has a separate legal personality.

**Question 1.17**

Select the **correct** statement:

Which of the following statements in relation to informal workouts pursuant to the Cayman Islands law is correct:

- (a) The restructuring officer regime is an example of an Informal workout process under Cayman Islands law.
- (b) A stay of proceedings is not available in the Cayman Islands for informal creditor workouts.
- (c) A qualified insolvency practitioner is required to oversee an informal workout under the Insolvency Practitioners Regulations.
- (d) Under Cayman Islands law, any new financing advanced during an informal creditor workout will be provided with priority status in the event the company is later liquidated.

**Question 1.18**

Choose the **correct** statement:

Which of the following statements is true regarding a provisional liquidation application?

- (a) The company has the statutory power to commence the proceedings.
- (b) There is a worldwide moratorium (stay) upon the presentation of the provisional liquidation application.
- (c) A winding up petition must be presented as a precursor to the application for the provisional liquidation.
- (d) Following the implementation of restructuring officer regime, a company can no longer seek the appointment of a provisional liquidator if it intends on presenting a restructuring proposal.

**Question 1.19**

Select the **correct** statement:

An official liquidator can set aside dispositions that seek to prefer one creditor over other creditors within how many months / years before the deemed commencement of the company's liquidation.

- (a) Three months
- (b) Six months
- (c) Six years
- (d) There is no time limit

**Question 1.20**

Select the **correct** statement:

Which of the following is **not a** fundamental principle of ethics for Insolvency Practitioners per the Cayman Islands Institute of Professional Accountants:

- (a) Conflicts of interest
- (b) Integrity
- (c) Confidentiality
- (d) Professional behaviour

**\*\* END OF QUESTION 1 \*\***

**QUESTION 2 FOLLOWS ON NEXT PAGE / ...**

## QUESTION 2 - LIQUIDATION (45 MARKS)

Where appropriate, refer to the fact pattern below when answering the questions that follow. Please note that not all questions relate to the fact pattern.

### FACT PATTERN

#### BLUESEA DIGITAL CAPITAL LIMITED

Bluesea Digital Capital Limited (Bluesea) was established in 2018 in the Cayman Islands as a digital asset management platform. Bluesea operated multiple online cryptocurrency trading platforms across the Caribbean and Latin America, known as OTPs. Investments made into these OTPs were held in secure brokerage accounts under Bluesea's own name. Bluesea's clientele comprised a diverse mix of institutional investors, high-net-worth individuals, and consumers.

On 24 June 2022, one of Bluesea's prominent OTPs, eTrade Wave (eTrade), abruptly disabled its buy / sell functionality without prior notice. At the time of suspension, eTrade had amassed over 2,500 users who had collectively invested approximately \$125 million. This sudden suspension of the trading platform created widespread apprehension among investors, resulting in an overwhelming surge of withdrawal requests. Notably, Whitesand Capital (Whitesand) sought to withdraw its entire deposit of \$32 million but faced insurmountable challenges in recovering the funds.

Unable to retrieve its deposit, Whitesand initiated winding up proceedings against Bluesea in May 2023. The petition faced vehement opposition from Bluesea, which asserted that deposits had been transferred to its joint venture partner. Bluesea claimed it needed additional time to resolve a "cordial disagreement" to facilitate the return of deposits. Amid allegations that investor deposits had not been segregated as promised and due to Bluewave's inability to meet its financial obligations, the Grand Court of the Cayman Islands saw fit to make a winding up order on 22 August 2023.

Following the appointment of the official liquidator, Bluesea's joint venture partner, based in Singapore, became the subject of several press reports. These reports alleged that its director had previously been involved in a fraudulent investment scheme in the early 2000s. Furthermore, the official liquidator had discovered that only one audit had ever been conducted in respect of Bluesea's financial statements, with Bluesea's auditors resigning shortly thereafter.

The official liquidators have called for creditor claims, and among the submissions received, a claim amounting to \$0.5 million has surfaced, relating to leasing obligations tied to office space that was utilised by the joint venture partner. Bluesea's documented records fail to substantiate any historical evidence of rental payments being disbursed by the company, nor do they reveal any corresponding liabilities recorded within its financial statements.

### Question 2.1

Commented [BB3]: 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)

Order 3, r. 4 of the Companies Winding Up Rules ("CWR") states that the petition for winding up must be supported by an Affidavit from the proposed official liquidators consenting to act ("Nominated Official Liquidator's Consent to Act") (1). In accordance with Order 3, r.4 (1), the consent to act must confirm that the proposed liquidators are willing to act if appointed by the court (1) and are qualified insolvency practitioners (i.e. according to section 89 of the Companies Act, persons having the qualifications stated in the Insolvency Practitioners' Regulations (the "IPR")) who meet:

- a. the residency requirement in regulation 5 of the IPR; (1)
- b. (after making enquires he or she believes that he or she and his firm meets) the independence requirement in regulation 6 of the IPR; and (1)
- c. The person and/or his firm meets the insurance requirement in regulation 7 of the IPR. (1)

The residency requirement in regulation 5 of the IPR provides that the court cannot appoint a qualified insolvency practitioner ("QIP") to act as an official liquidator unless such person resides in the Cayman Islands; and the person or his firm that he is an employee or partner of has a trade and business licence to conduct insolvency business.

Regulation 6 of the IPR provides that the QIP must be independent "as regards that company". An Insolvency practitioner will not pass the independence requirement if within 3 years immediately before the commencement of the winding up he or his firm acted as the auditor of the company being wound up.

Regulation 7 of the IPR requires the QIP and/or his firm must have:

"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\$1 million) applicable to the negligent performance or non-performance of his duties as an official liquidator generally."

If one of the official liquidators is a foreign practitioner who will act jointly with a local QIP (which is permitted by section 108 of the Companies Act (2023 revision)), CWR order 3, r. 4(2) provides that the foreign practitioner's consent to act must be in the form of an affidavit stating:

- (a) that person's professional qualifications;
- (b) the country in which that person is qualified to perform functions equivalent to those performed by official liquidators under the Law or by trustees under the Bankruptcy Act (as amended and revised);
- (c) that person's professional experience;

- (d) that person will have the benefit of professional indemnity insurance in respect of that person's acts and omissions done in that person's capacity as an official liquidator of the company meeting the requirements of Regulation 7;
- (e) if that person has been appointed by a foreign court or authority as a liquidator, trustee, receiver or administrator of the company or a related party of the company, full particulars of such appointment; and
- (f) that, having made due enquiry, that person and that person's firm meet independence requirement contained in Regulation 6."

A foreign practitioner is defined in section 89 of the Companies Act (2023 revision) as "a person who is qualified under the law of a foreign country to perform functions equivalent to those performed by official liquidators." The fact pattern is silent on whether the proposed official liquidators will be local or foreign practitioners, however, it should be noted that a foreign practitioner cannot be appointed as sole official liquidator (section 108 Companies Act (2023 revision)) and foreign practitioners are exempted from the residency requirement (regulation 8, IPR) but they must meet the insurance and independence requirements of the IPR (regulation 8, IPR).

5 marks

#### Question 2.2

The proposed liquidators are employees of the accountancy practice Bodden & Ebanks Limited. Shortly prior to the hearing of the winding up petition of Bluesea, it transpires that Bodden & Ebanks Limited previously acted as auditors of Bluesea in 2021. Are the proposed liquidators still able to act in relation to Bluesea? Please provide an explanation for your answer. This information came to light after the proposed liquidators had already provided their consents to act; what should the proposed liquidators do in respect of the same? (5)

The proposed liquidators would not be able to act as official liquidators of Bluesea as they do not meet the independence requirement in regulation 6 of the Insolvency Practitioners' Regulation ("IPR"). (1) Regulation 6 (1) of the IPR provides that a qualified insolvency practitioner must be independent in order to be appointed as an official liquidator. Additionally, regulation 6(2) of the IPR states that a qualified insolvency practitioner will not meet the independence requirement "if within a period of 3 years immediately preceding the commencement of the liquidation, he, **or the firm of which his is a partner or employee**, or the company of which he is a director or employee, has acted in relation to the company as its auditor." (Emphasis added) (1)

Based on section 100(2) of the Companies Act (2023 revision), the liquidation is deemed

Commented [BB4]: Question 2.2 - sub-total = 4/5

to have commenced "at the time of the presentation of the petition for winding up" not the date the order was made. Therefore, the winding up is deemed to have commenced in May 2023 when the winding up petition was filed and not on 22 August 2023 when the winding up order was made. Consequently, the relevant look-back period is 3 years from May 2023 which is May 2020. That is, a person or the firm in which he is employed, which acted for Bluesea after May 2020 will not satisfy the independence requirement. (1)

As the fact pattern states that Bodden & Ebanks Limited, the accountancy firm of which the proposed liquidators are employees, acted as auditors for Bluesea in 2021, they are caught within the prohibited 3 years period and are therefore ineligible to act.

Since the proposed liquidators (who did not know that the firm had acted for Bluesea within the prohibited period) already provided their consent to act in accordance with CWR Order 3, rule 4(b) and have therefore falsely represented that they meet the independence requirement, it would be most appropriate for them to inform the Court of the new discovery (perhaps by a further affidavit and/or through Counsel at the winding up hearing) that they cannot act as the official liquidators. (1) Whitesand would need to find other qualified insolvency practitioners who meet the IPR requirements and then go through the usual process to seek their appointment as official liquidators of the company.

**4 marks**

#### Question 2.3

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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 set qualifications for Voluntary Liquidators under the Companies Act or the IPR. Section 120 of the Cayman Islands Companies Act (2023 revision) states that "any person, including a director or officer of the company, may be appointed as a voluntary liquidator". (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)

In accordance with section 123 of the Cayman Islands Companies Act (2023 revision), within 28 days of the commencement of the voluntary liquidation i.e. by 28 March 2023 (the voluntary liquidation is deemed to have commenced on 1 March 2023 when the special resolution was passed (section 117(1) (a) of the Companies Act (2023 revision)), Tom and Jerry, as voluntary liquidators must ensure the following documents are filed:

- (1) With the Cayman Islands Registrar of Companies:
  - a. Notice of Winding Up (the Companies Winding Up Rules ("CWR") at Order 13, r.2 provides that this should be in CWR Form 19 and it must be signed by all current directors)
  - b. Liquidator's consent to act (if the court's supervision is not sought). This should be in the form of CWR Form 20 according to the CWR.
- (2) Cayman Islands Monetary Authority ("CIMA")
  - a. Notice of the winding up should be served on CIMA if Cheese Limited is conducting a "regulated business."

Additionally, notice of the winding up must be published in the Cayman Islands Gazette within the 28 days of their appointment.

Section 123(2) of the Companies Act provides that it is an offence to not comply with section 123 of the Companies Act and failure to do so may result in a fine of CI\$10,000.

It is noted that Tom retired on 1 April 2023 (a month after the voluntary liquidation commenced), leaving Jerry to act as sole voluntary liquidator. This is permissible but Tom must comply with section 122 of the Companies Act (2023 revision) and file a Notice of Resignation with the Registrar of Companies. (2)

If the directors of Cheese Limited fail to sign the Declaration of Solvency within 28 days of the commencement of the voluntary liquidation, an application must be made to the Cayman Islands Grand Court for the liquidation to continue under the court's supervision (section 124(1) of the Companies Act (2023 revision)).

**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)

Based on Order 13, rule 9 of the Companies Winding Up rules ("CWR"), the special resolution appointing Tom and Jerry as Voluntary liquidators should outline the basis for their remuneration and the amount. In accordance with CWR Order 13, rule 9(2), Cheese Limited may remunerate Tom and Jerry using " (a) an hourly rate (or scale of rates) for the time reasonably and properly devoted to the liquidation; (b) a fixed sum; (c) a commission or percentage of the assets distributed or realised; or (d) a combination of these methods". (2)

The said remuneration, if authorised by the special resolution, would be paid out of Cheese Limited's assets. Even if the special resolution, appointing Tom and Jerry as Voluntary liquidators, did not state the basis for their remuneration, they can still be compensated if the exceptions in CWR order 13, rule 9(3) applies (i.e. with the court's approval and the remuneration is specified in the liquidators' final report at a general meeting where no one attends and votes).

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

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

Section 95(1) of the Companies Act (2023 revision) provides that upon the hearing of a winding up petition, the court has four options. It has power to:

- (1) dismiss the petition,
- (2) adjourn the hearing with or without conditions,
- (3) make a provisional order; or
- (4) make any order it thinks fit except that it cannot refuse to wind up the company only because it believes the company has no assets or the company's assets have been charged above or equal to its assets.

It should be noted that pursuant to section 95(2) of the Companies Act (2023 revision), the court will refuse to make a winding up order and will either dismiss the petition or adjourn the hearing of the petition for winding up if there is a contractual agreement restricting the petitioner from filing a winding up petition against the company.

**Question 2.5**

**Question 2.5.1 (2/2 marks)**

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

Commented [BB7]: Question 2.5 - sub-total = 6/9

Commented [ni8]: superb answer

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 removal of an official liquidator is not a step to take lightly. Below, is an explanation of law, rules and/or procedures found in the Companies Act (2023 revision) and the Companies Winding Up Rules ("CWR") that govern an application for the official liquidator's removal, circumstances for removal and service of the application.

#### Who can apply?

Pursuant to section 107 of the Companies Act (2023 revision) a creditor or contributory can apply to the court to remove an official liquidator from office and the court can make the order. However, in an insolvent liquidation, only creditors may apply to remove the official liquidator while in solvent liquidations only contributories can apply since in each case they are the only persons with an interest in the company's assets and its distribution. In BTU Power Company, which involved a solvent liquidation, the court held because only the shareholders had an interest in the liquidation, the directors could not apply to remove the official liquidators.

#### Circumstances for removal

The court has a wide discretion to remove official liquidators, but will only exercise its jurisdiction to do so when it has good reason(s) (BTU Power Company). The circumstances warranting removal may include (but are not limited to) a conflict of interest, misconduct or impropriety or the failure of the official liquidator to carry out his or her duties, and so on. Johnson and Deloitte & Touche AG shows that the court may also consider the official liquidator's removal if it will be advantageous to the majority of persons interested in the liquidation.

#### The application

Order 5, r.6 of the Companies Winding Up Rules provides that the application for removal must be in the form of a summons supported by affidavit outlining the facts relied on. The summons must be served on the official liquidator and all members of the liquidation committee or counsel for the liquidation committee (if one has been appointed) and any creditors or contributories as the Court directs (Order 5, r.6 (2) of the Companies Winding Up Rules). The summons must propose for nomination a qualified insolvency practitioner and the nominee must swear an affidavit in accordance with Order 3, rule 4.

It should be noted that the official liquidator must be given at least 14 days' notice (Order 5, r.6 (5) of the Companies Winding Up Rules). If the application for removal is successful, the official liquidator who has been removed must immediately provide the new official liquidator with the company documents e.g. books, records, a copy of the liquidation files and he or she must prepare a report and accounts within 28 days and will be allowed unrestricted access to the company's books and records to do so (Order 5, r.6 (6) of the Companies Winding Up Rules).

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

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

It is appropriate for the class of potential applicants to vary depending on the solvency status of the company because:

- (1) An applicant must have a sufficient interest in the liquidation to have standing to bring an application in the court.
- (2) The persons likely to be most affected by the liquidation depends on the solvency status of the company and it is their interest that must be safeguarded.
- (3) The composition of the liquidation committee will vary according to the solvency status of the company.
- (4) The distribution and order of payment will vary depending on the solvency status of the company.

In the case of a company that is solvent i.e. a company that is able to pay its debts as they fall due, the interest to be protected is that of the shareholders and the distributions will accordingly be made to the shareholders after the other expenses and liabilities are paid. Consequently, the shareholders would have standing in the liquidation to apply to the court and the Court has to bear in mind and protect their interests. In [BTU Power Company](#), which involved a solvent liquidation, the court held that since only the shareholders had an interest in the liquidation, the directors could not apply to remove the official liquidators

In the case of an insolvent company, that is a company that is unable to pay its debt as they fall due (cash flow insolvency test), it is the interest of the creditors that is paramount. Consequently they are the only ones that have standing to petition the court to remove the official liquidator.

Further, the composition of the liquidation committee (which assists the official liquidator to make decisions) will differ depending on the solvency of the company i.e. insolvent (creditors will comprise the liquidation committee) and solvent (contributories will comprise the liquidation committee). Once the liquidator determines the status of the company he will know how to and who to distribute the assets to.

**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

**Commented [ni9]:** 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).

I think you understood the answer here, but you didn't quite hit the nail on the head by explaining *why* the economic interest varies (as set out above).

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 [ca10]: Question 2.6 Subtotal  
4/4 marks

The change of solvency will impact the class of persons the liquidation committee is comprised of as the members of the liquidation committee must have an interest in the liquidation estate.

The liquidation committee is the class of persons (whether creditor or contributories or both (see explanation below)) who generally speaking assists the official liquidator in his decisions and approves the remuneration of the official liquidator. Pursuant to CWR Order 9, r.1 (3), the liquidation committee must have at least 3 stakeholders (creditors if the company is insolvent or contributories if solvent) of the company or a maximum of 5 (6 if the company is of doubtful solvency). These stakeholders will have knowledge of sensitive company information which the general class of stakeholders would not have. Consequently, the liquidation committee is often required to sign non-disclosure agreements and members of the liquidation committee hold their position in a fiduciary nature.

Order 8, r.1 (1) of the Companies Winding Up Rules ("CWR") provides that in order to convene meetings and establish a liquidation committee, the liquidator must determine if the company is solvent, insolvent or of doubtful solvency. The official liquidator has the power to re-consider the status of the company (order 8, r.1(2) of the CWR) such as in the present case where it was previously determined that the company was insolvent but subsequently determined that it is in fact solvent and the form required by CWR Order 8, r.1(3) was filed.

While the liquidator was of the opinion that the company is insolvent, he or she was required to only convene meetings of the creditors (CWR order 8, r.1 (4)). However, now that the official liquidator has determined that the company is solvent, he or she is now required to convene meetings of the contributories only (CWR Order 8, r.1 (5)). If the liquidator thought the company was of doubtful solvency, he or she would have to convene meetings with both creditors and contributories on the same day running consecutively or concurrently (CWR Order 8, r.1(6)).

The fact that the company is now solvent, the liquidation committee must be reconstituted in accordance with CWR Order 9, r.3. CWR Order 9, r.3 (2) states:

" If the company is certified to be solvent, any creditor members of its liquidation committee shall automatically cease to be members and the official liquidator shall convene a meeting of contributories for the purpose of electing new members from amongst the company's contributories."

Based on the foregoing, the creditors will no longer be members of the liquidation committee and the official liquidator must convene a meeting of contributories to elect the new liquidation committee consisting of contributories only.

### Question 2.7

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

Following a dissolution order the official liquidator's duties will cease except for certain duties stated in the order of dissolution.

Some residual duties that will remain are:

- (1) The liquidator must file the order for dissolution with the Registrar and failure to do so, within 14 days from the date the order is perfected, will result in a fine (section 152(3) and (4) of the companies act); and
- (2) the official liquidator must keep the liquidation files for at least 3 years after the dissolution (CWR Order 26, r.2(3)).

Based on CWR Order 26, r.2(2) the liquidation files include the liquidator's reports, minutes of the various meetings (creditors/contributories and liquidation committee), liquidator's correspondences, proof of debts documents and so on. CWR Order 26 rule 3 provides that directions for the storage, preservation and destruction of the company documents must be in the dissolution order and the costs for same is an expense of the official liquidation which the official liquidator's final accounts should include.

### Question 2.8

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

The liquidator has investigative powers pursuant to section 101-103 of the Companies Act (2023 revision).

Section 102 of the Companies Act provides (1) that once the court makes the winding up order, the liquidator can investigate the failure of the company (if it failed) and why; as well as the "promotion, business, dealings and affairs of the company" (section 102(1) of the Companies Act) (1) cite relevant case law - 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).

Further section 102 of the Companies Act provides that with the court's directions, the liquidator may also help the Cayman Islands Monetary Authority or the Police (1) to investigate the conduct of current or former directors or officers of the company, current or former professional service providers to the company and current or former employees of the company who served as such within one year immediately before (1) (a) the commencement of the winding up or (b) a provisional liquidator's appointment. If the

Commented [ca11]: Question 2.7 Subtotal  
5/5 marks

Commented [BB12]: Question 2.8 - Sub-total  
= 4/5

creditors (if company is insolvent) or the contributories (if the company is solvent) give their prior approval, the costs for assisting in the CIMA or Police investigation may be paid from the assets of the company.

In addition to the general power to investigate in section 102 of the Act:

- (1) Section 101 (1) of the Companies Act provides that where a winding up order has been made or a provisional liquidator has been appointed, the liquidator can require certain persons listed in section 101(3) e.g. current or former directors or officers of the company to prepare and submit a statement of the company's affairs. The statement must be provided within 21 days of notice being given to the said person by the liquidator and failure to do so will result in a fine of Cl\$10,000 on conviction (section 101(4) and 101(7) of the Companies Act respectively). The statement of affairs must be verified by an affidavit and must contain the things listed in section 101(2) of the Companies Act which includes (among other things) the details on the assets of the company, securities, the company's creditors, the names and addresses of persons who have assets of the companies and so on.
- (2) Section 103(3) of the Companies Act provides that the liquidator may, before the company is dissolved, apply to the court for an order to either examine a relevant person (relevant person includes a former or current director, controller, receiver, manager etc. and is defined in section 103(1) of the Companies Act) or for the relevant person to transfer or give to the liquidator any document or property of the company. Persons falling within the category of "relevant person" are duty bound to cooperate with the official liquidator (section 103(2) of the Companies Act).

In the present case, the liquidator could use his investigative powers to obtain a statement of affairs from for e.g. the directors or seek an examination order. This could assist with the liquidator's understanding of the company affairs including why the company was only audited once, and an explanation (if any) of the alleged leasing obligations.

The general duties of a liquidator is described in section 110 of the Companies Act (2023 revision) which is to collect, realise and distribute the company's assets to creditors (and other parties if there is a surplus) and to report to the creditors and contributories on the company's affairs and how it was wound up. To give effect to the liquidator's duties, section 110(2) gives the liquidator certain powers which may be exercised only with the sanction of the court (e.g. commencing or defending legal proceedings for the company and in the company's name) and those which are only exercisable with or without the court's sanction e.g. collecting and taking possession of company property. The former powers are listed in Part I of Schedule 3 of the Companies Act and the latter in Part II of Schedule 3 of the Companies Act.

#### Question 2.9

Commented [BB13]: Question 2.9 - Sub-total = 1/5

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)**

Section 101(6) of the Companies Act defines the term “relevant date” as the date of the provisional liquidator’s appointment (if one is appointed) and in other circumstances, the date of the commencement of the winding up. **(1)**

The term “relevant date” is in respect of persons which section 101(3) of the Companies Act (2023 revision) identifies may be required to provide a statement of affairs. These persons may include former or current: (a) company directors or officers; (b) professional service providers ; and (c) employees who held such position within a year from the date the provisional liquidator was appointed or the winding up commenced.

The statement of affairs must be verified by an affidavit and must contain the things listed in section 101(2) of the Companies Act which includes (among other things) the details on the assets of the company, securities, the company’s creditors, the names and addresses of persons who have assets of the companies and so on.

Your answer has not addressed the question relating to the “relevant date” but has focused on the “persons”, 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

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 [BB14]: Question 3.1 - sub-total = 3/5



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

In summary, the chosen provisional liquidator cannot (and will not) be appointed by the Grand Court if he or she does not obtain professional indemnity insurance of at least US\$10 million. (1)

Section 89 of the Companies Act (2023 revision) includes a provisional liquidator in the definition of "official liquidator". This is relevant because regulation 7 of the Insolvency Practitioners' Regulations ("IPR") outlines the insurance requirement for a person to be appointed as an official liquidator.

Regulation 7 of the IPR (1) states that " 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 a director or 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\$1 million**) applicable to the negligent performance or non-performance of his duties as an official liquidator generally." (Emphasis added)

Based on the foregoing, the minimum professional indemnity insurance is US\$10 million for each and every claim and this may be increased for a particular company (regulation 7(2) of the IPR). There are no exceptions. The person chosen in the present case has professional indemnity insurance which is US\$5 million lower than the IPR requirement. Unless the chosen person decides to increase the insurance he or she cannot act as the provisional liquidator and another qualified insolvency practitioner who meets the requirements of the IPR must be chosen. (1) The fact that obtaining the necessary insurance will be costly is not a valid reason or an exception to the insurance requirement.

3 marks - mention of the chosen liquidator being a foreign practitioner and how that then links into the IPRs would have got the missing 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 106 (1) of the Companies Act (2023 as revised). (1 mark)

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

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

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

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

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

### Question 3.2

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

The statutory test for the appointment of a restructuring officer is two-fold. Section 91B (1) Companies Act (2023 revision (which includes all amendments)) provides that a company may seek the appointment of a restructuring officer on the grounds that the company:

"(a) is or is likely to become unable to pay its debts within the meaning of section 93 (1); and

(b) intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to this Law, the law of a foreign country or by way of a consensual restructuring." (2)

In relation to the first limb of the test, the court confirmed in Re Oriente Group Limited, where the first restructuring officer was appointed in the Cayman Islands following the Companies (Amendment) Act of August 2022, that the cases pertaining to the former provisional liquidation regime apply to the restructuring officer regime. Also, according to Re Oriente Group Limited, the solvency test for the restructuring officer regime is the same as for winding up proceedings i.e., section 93 which uses the cash flow test for insolvency (i.e. company cannot pay its debts (current or in the near future) as they fall due) and not the balance sheet test (i.e. the company assets are less than its liabilities (both prospective or contingent)).

In relation to the second limb of the test, there must be an intention to present some form of arrangement or compromise to the creditors.

2 marks

### Question 3.3

Commented [BB15]: Question 3.2 - sub-total = 2/2

Commented [BB16]: Question 3.3 - Sub-total = 2/2

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

Based on CWR Order 1A, r.1, the restructuring petition once presented (i.e. filed with the court) must be advertised in the prescribed form which is CWR Form 3.A, unless the Court directs otherwise.

CWR Order 1A, r. 1(3) and (4) provides that the advertisement, unless the court directs otherwise, must be done once in a newspaper circulating the Cayman Islands (½) and if the Company is conducting business outside of the Cayman Islands, the petition must be advertised once in a newspaper circulating in the country (countries) where it will most likely come to the attention of the creditors (contingent or prospective) and contributories (½) and must be published in that country's official language.

The petition must be advertised no later than 7 days after it is filed in the Court (½) and no less than 7 days before the petition will be heard (½) (CWR Order 1A,r.1(5)). It should be noted that, pending the hearing of the petition filed pursuant to section 91B (1) of the Companies Act (2023 revision), section 91C of the Companies Act (2023 revision) permits the filing of an ex parte application to the court for the appointment of an interim restructuring officer.

#### 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 things of the restructuring officer regime that help to assist in safeguarding creditors' interest are:

- (1) The petition for the appointment of a restructuring officer must be heard within 21 days of the petition being filed at the Court, unless the Court directs otherwise (CWR Order 1A, r.1 (6)). This prevents undue delay by the company which having filed the restructuring petition will have a statutory moratorium and reduces the risk of the restructuring officer regime being abused. (1)
- (2) The restructuring petitions must be advertised and notice given to the creditors (CWR Order 1A, r.1 (4) and (5)). Since it is the company that must elect to appoint a restructuring officer and the restructuring cannot be forced on the company, the notice and advertisement requirements ensure that creditors are sufficient aware of the application. (1)
- (3) The restructuring officer must, unless the court directs otherwise, prepare and send a report to certain persons including all creditors (both prospective and contingent) outlining steps taken and to be taken in the restructuring, financial status of the company and work to be done by the restructuring officer etc. (CWR Order 1A, r.8) This ensures the creditors are aware of the restructuring plans. (1)
- (4) Creditors (or contributories) can apply to the court to discharge or vary the order which appointed the restructuring officer (CWR Order 1A, r.9). This can be done by

Commented [BB17]: Question 3.4 - sub-total = 6/6

filing a summons in CWR form 16B with an affidavit in support outlining the evidence. (1)

- (5) Likewise a creditor (or contributory) may also apply to the court to remove and replace the restructuring officer (CWR Order 1A, r.13). This application must be filed by summons in CWR Form 16C, supported by an affidavit and the summons must be served on the persons listed in CWR Order 1A, r.13(2)). (1)
- (6) A creditor, in certain circumstances, may still be able to enforce its security notwithstanding the appointment of a restructuring officer. Section 91H of the Companies Act (2023 revision) provides that "a creditor who has security over the whole or part of the assets of the company is entitled to enforce the creditor's security without the leave of the Court and without reference to the restructuring officer appointed under section 91B or 91C." (1)

6 marks - excellent answer, well done.

#### Question 3.5

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

In accordance with section 91B (3) of the Companies Act (2023 revision), on hearing the petition for the appointment of a restructuring officer, the court has four (4) options. It can: (1) order the appointment of the restructuring officer; (1) (2) adjourn the hearing with or without conditions; (1) (3) dismiss the petition; (1) (4) or make any order it thinks fit (1) excluding an order putting the company in official liquidation (1). The court can only place the company in official liquidation if a winding up petition has been filed in accordance with sections 91G and 94.

It is likely that the creditors will oppose the appointment of the restructuring officer as the fact pattern reveals that they are reluctant to endorse the restructuring. Should they wish to do so, they must give at least 3 days' notice in CWR Form 4A and nominate an alternative Qualified Insolvency Practitioner (CWR Order 3, r.4). The Court, after hearing, the parties will make an order in accordance with section 91B (3) of the Companies Act (2023 revision).

**5 marks**

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

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

**Commented [BB18]:** 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 Limited Partnership Agreement, ELPs are governed by:

1. The Partnership Act (2013 revision); (1)
2. the Exempted Limited Partnership Act (2021 revision); and (1)
3. The common law and equitable principles applicable to partnerships shall apply unless they are inconsistent with the ELP Act (section 3 of the ELP Act). (1)

##### Question 4.2

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

Section 89 of the Companies Act (2023 revision) defines a "foreign company" as "any body corporate incorporated outside the islands."

In accordance with section 91(d) of the Companies Act (2023 revision), the Cayman court has jurisdiction to wind up a foreign company that:

- a. has property in the Cayman islands;
- b. is conducting business in the Cayman islands,
- c. is the general partner of a limited partnership; or
- d. is registered under part IX .

However, the Cayman court in dealing with cross-border insolvency matters adopts the UK common law principles of universalism and assistance. The principle of universalism means that insolvency proceedings commenced elsewhere will have a universal effect. In Singularis Holdings Ltd v PriceWaterhousecoopers, the court stated that companies that have assets in various jurisdictions should be wound up in the country of incorporation with the winding up being recognised and effective in other countries.

The principle of assistance means that courts should assist in insolvency proceedings commenced elsewhere. The two principles are subject to public policy and the Cayman Islands laws.

Although a Cayman court has jurisdiction to wind up a foreign company, it will consider a number of factors in deciding whether to exercise its jurisdiction to do so. Creditors local and abroad will be treated equally.

Commented [BB19]: Question 4.1 - Sub-total = 3/3

Commented [sp20]: Question 4.2 - Sub-total = 4/5

#### Question 4.3

Does a judgment of a foreign court need to be registered and / or enforced within the Cayman Islands before it is relied upon as the basis for seeking a winding up order? Provide reasons. **(3)**

No, a foreign judgment can be recognized at common law and used to support evidence in winding up proceedings but it need not be enforced or registered for such purposes. Strictly speaking, foreign judgments are not binding on the Cayman Court, however, they can be used as evidence to support a winding up petition e.g. that it is just and equitable to wind up the company or that the company is unable to pay its debts.

The Cayman Islands is not a party or signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial matters and it is not a party to any of the relevant international treaties.

It should be noted that although the Foreign Judgments Reciprocal Enforcement Act (1996 revision) allows foreign judgments to be registered and enforced in the Cayman Islands in the same way as local Cayman judgments, this only applies to judgments from certain Australian courts. Even in the case of those Australian judgments, enforcement actions must be commenced under Order 72 of the Grand Court Rules and the Act provides that registration must be within 6 years of judgment (or appeal judgment).

In the Cayman context, for the foreign judgments to be enforced at common law, a new action must be commenced in the Cayman Islands using the foreign judgment as the evidence that an obligation is owed e.g. a debt.

Commented [sp21]: 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)**

Section 12 of the Bankruptcy Act (1997 revision) provides that a trustee in bankruptcy is a person attached to the Court and has general power to "administer the estates of debtors in bankruptcy". In order to fulfil its main duty, the trustee has various powers under the Bankruptcy Act (1997 revision) to:

1. Bring or defend actions relating to the property of the debtor (section 80). **(1)**
2. Carry on the debtor's trade if it is necessary or expedient to do so and is beneficial to the winding up or sale (section 79). **(1)**
3. Recover dividends (section 81)
4. Arbitrate or compromise the debtor's claims (section 82)
5. Compromise (if it is necessary to do so) claims against the debtors and relating to the property of the debtor (section s 83 and 84 respectively).

Commented [BB22]: Question 4.4 - Sub-total = 4/4

6. Exercise its discretionary and can execute documents including deeds (section 85)
7. Receive and proof debts (section 87);and (1)
8. Deal with the debtor's property like a tenant in tail (section 86)

The duty of the trustee is stated in section 38 of the Bankruptcy Act which provides that until the provisional order is made absolute, the trustee must preserve the property in the same condition in which it was seized in case the provisional order is revoked and the property has to be returned to the debtor. (1) The said section provides that " the Trustee may, before any such order is made absolute, make sales of any part of the debtor's stock-in-trade or other property, and take such other action in the interests of the debtor's estate, as in the ordinary course of the debtor's business may seem expedient."

**TOTAL MARKS: [100]**

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