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

**Summative Assessment (Final Examination)**

**Date: 23 - 24 November 2023**

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

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**EXAMINERS**

**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  
Mr Spencer Vickers Dr David Burdette**

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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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EXCELLENT results, well done.

## INSTRUCTIONS

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

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

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

## ANSWER ALL THE QUESTIONS

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

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

#### Question 1.1

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

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

#### Question 1.2

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

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

#### Question 1.3

Choose the **correct** statement:

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

- (a) 3

Commented [BB2]: Question 1 - Sub-total = 19/20

(b) 5

(c) 6

(d) None of the above

**Question 1.4**

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

(a) The company.

(b) Any creditor.

(c) Any prospective creditor.

(d) Any contributory.

(e) Any prospective contributory.

**Question 1.5**

Choose the **correct** statement:

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

(a) KYD 50

(b) KYD 100

(c) KYD 1,000

(d) KYD 10,000

**Question 1.6**

Choose the **correct** statement:

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

(a) Within 21 days of the appointment.

(b) Within 28 days of the appointment.

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

- (d) Within 7 days of the appointment.

**Question 1.7**

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

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

**Question 1.8**

Choose the **correct** statement:

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

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

**Question 1.9**

Choose the **correct** statement:

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

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

**Question 1.10**

Choose the **correct** statement:

A scheme of arrangement:

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

**Question 1.11**

Select the **incorrect** statement:

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

**Question 1.12**

Choose the **correct** statement:

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

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

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

**Question 1.13**

Select the **correct** statement:

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

**Question 1.14**

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

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

**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.

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

**Question 1.18**

Choose the **correct** statement:

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

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

**Question 1.19**

Select the **correct** statement:

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

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

**Question 1.20**

Select the **correct** statement:

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

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

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

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

## QUESTION 2 - LIQUIDATION (45 MARKS)

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

### FACT PATTERN

#### BLUESEA DIGITAL CAPITAL LIMITED

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

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

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

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

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

### Question 2.1

As part of Whitesand's petition to wind up Bluesea, Whitesand obtained sworn consent(s) to act from the proposed official liquidators. Set out the required content of the consent to act signed by the proposed official liquidator(s). **(5)**

Pursuant to the Companies Winding Up Rules (2023 Consolidation) ("CWR") O. 3, r. 4, the winding up petition presented by Whitesand was required to be supported by an affidavit sworn by the each of the proposed official liquidators stating that: **(1)**

1. The proposed official liquidator is a qualified insolvency practitioner and meets the residency requirement contained in Regulation 5 of the Insolvency Practitioners Regulations (2023 Consolidation) ("IPR"). **(1)** The residency requirement imposed by Regulation 5 IPR is that (a) the proposed official liquidator is resident in the Cayman Islands; and (b) the proposed official liquidator, or the firm of which that person is partner or employee, or company of which they are director or employee, holds and trade and business licence which authorizes them or their firm to carry on business as professional insolvency practitioners;
2. Having made due enquiry, that they believe that they and their firm meet the independence requirement contained in Regulation 6 IPR **(1)**, namely, that they can properly regarded as independent as regards the company (they will not be if they have acted as auditor to the company in the 3 years preceding the commencement of the liquidation);
3. That they are in compliance with the insurance requirement contained in Regulation 7 IPR **(1)**, namely, that professional indemnity insurance is in place up to a limit of at least US\$10m in respect of each and every claim and at least US\$20m in the aggregate, with a deductible of not more than US\$1m; and
4. That they are willing to act as official liquidator if so appointed by the Court. **(1)**

If the appointment of a qualified insolvency practitioner as a joint appointment with a foreign insolvency practitioner was sought, an affidavit sworn by the proposed foreign insolvency practitioner must be filed confirming:

1. The foreign insolvency practitioner's qualifications;
2. The country in which they are qualified to perform functions equivalent to those performed by official liquidators in Cayman;
3. Their professional experience;
4. That they have the benefit of PI insurance meeting the insurance requirements of Reg 7 IPR;
5. Full particulars of any appointment by a foreign court in respect of the company; and
6. That their firm meet the independence requirements of Reg 6 IPR.

**5 marks**

### Question 2.2

Commented [BB4]: Question 2.1 - sub-total = 5/5

Commented [BB5]: Question 2.2 - sub-total = 4/5

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)**

Pursuant to Regulation 6 IPR **(1)**, a qualified insolvency practitioner shall not be appointed by the Court as official liquidator of a company unless that person can be properly regarded as independent as regards that company. Reg 6 (2) provides that an insolvency practitioner shall not be regarded as independent if, within the 3 years immediately preceding the commencement of the liquidation that person, or the firm of which that person is a partner or employee, or the company of which that person is a director or employee, has acted in relation to the company as its auditor. **(1)**

As the Company was wound up on 22 August 2023, and Bodden & Ebanks acted as auditors of Bluesea in 2021, this appointment was within the 3 years preceding the commencement of the winding up of Bluesea, therefore the Court shall not appoint them as official liquidators of Bluesea as they are not regarded as independent in accordance with IPR 6. **(1)** The official liquidators discovered that only one audit had ever been carried out in respect of Bluesea with the auditors resigning shortly thereafter. If this was the audit carried out by Bodden & Ebanks in 2021, this would appear to indicate that they definitely do not meet the independence requirement. Dealing with the creditor claim received in respect of purported lease obligations in circumstances where there are no corresponding liabilities recorded within its financial statements would appear to raise a potential conflict of interest for Bodden & Ebanks which shows the need for the independence of any official liquidators appointed.

In terms of their own professional conduct obligations, the proposed liquidators must comply with the fundamental principles laid down by the ICoE, one of which is objectivity, independence and impartiality. Objectivity means that the proposed liquidators must not compromise professional or business judgments because of bias, conflict of interest or undue influence of others. The IP should identify any threats to compliance with the fundamental principles, evaluate the threats identified and address the threats by eliminating or reducing them to an acceptable level. They must avoid any conduct that they know or should know might discredit the profession. They must not knowingly engage in any business, occupation or activity which might impair the integrity, objectivity or good reputation of the insolvency profession and is incompatible with the fundamental principles. Accepting this appointment is a clear threat to the independence and impartiality principle laid down by the ICoE as it represents a significant professional relationship due to the audit work previously carried out and it should be eliminated by the proposed liquidators withdrawing their consents to act and not proceeding to attempt to accept the appointment. The threat to compliance with the fundamental principles is not able to be reduced to an acceptable level by the use of safeguards.

As the proposed liquidators have already filed consents to act which presumably confirm that Bodden and Ebanks meet the independence requirement pursuant to O.3, r3 4 (b) CWR, they should immediately seek to rectify the misleading evidence which has been filed with the Grand Court and This can either be done by way of amendment to the original consents to act affidavit evidence or by filing new affidavits with the Court. (1) The amendment or new affidavit should provide an explanation to the Court as to why the original conflicts check carried out by the proposed liquidators (if any) did not reveal their previous appointment as auditors of Bluesea or why checkes were not carried out. They should profusely apologise to the Court for the mistake which is very serious in circumstances where sworn evidence is placed before the Court which is untruthful, this amounts to perjury.

Whilst in the case of *Global Fidelity Bank Ltd* Doyle J clarified that a prior professional relationship does not automatically lead to a lack of independence, this was in respect of an independent financial review carried out by the proposed JOLs over a period of a week and was expressly not an audit therefore the Court is unlikely to find that the proposed liquidators of Bluesea meet the independence requirements.

4 marks

### Question 2.3

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

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

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

Using the facts above, answer the questions that follow:

#### Question 2.3.1 (1/1 mark)

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

Pursuant to section 120 of the Companies Act (2023 Revision) (CA), any person can act as a voluntary liquidator, including a director or officer of the company. There are no specific qualifications required. (1)

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

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

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

Pursuant to Section 123 CA, within 28 days of the commencement of the voluntary winding up of Cheese Ltd, Tom and Jerry as joint voluntary liquidators must:

- a) File notice of the winding up with the Registrar;
- b) File the liquidators' consents to act with the Registrar;
- c) File the director's declaration of solvency with the Registrar (if the supervision of the Court is not sought);
- d) If Cheese Ltd was carrying on a regulated business, serve notice of the winding up on CIMA; and
- e) Publish notice of the winding up in the Gazette. **(2)**

Should they fail to comply with section 123 CA this constitutes an offence liable to a fine of \$10,000.

Pursuant to s122 CA as Tom has retired, he should file a notice of resignation with the Registrar.

### **Question 2.3.3**

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

Pursuant to CWR O. 13, r. 9(2), Cheese Ltd may resolve to remunerate Tom and Jerry in their capacity as voluntary liquidators on the basis of:

- 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 realized; or
- d) A combination of these methods. **(2)**

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

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

**(2)**

Pursuant to s95 (1) CA, upon the hearing of a winding up petition the court may:

- a) Dismiss the petition;
- b) Adjourn the hearing conditionally or unconditionally;
- c) Make a provisional order; or
- d) Any other order that it thinks fit,

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



but the Court shall not refuse to make a winding up order on the ground only that the company's assets have been mortgaged or charged to an amount equal to or in excess of those assets or that the company has no assets.

Pursuant to section 104 (3) of the CA a company may make an application for the appointment of provisional liquidators under section 104(1) of the CA, and on such application the Grand Court may appoint a provisional liquidator if it considers it appropriate to do so. The scope of an application for appointment of provisional liquidators post the introduction of the restructuring regime by the Companies (Amendment) Act 2022 has not yet been judicially considered.

### Question 2.5

#### Question 2.5.1 (4/4 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)**

Pursuant to section 107 CA, an official liquidator may be removed from office by order of the Court made on the application of either a creditor or contributory of the company. In the case of an insolvent liquidation, only creditors may apply to remove an official liquidator and in the case of a solvent liquidation, only contributories may apply to remove an official liquidator. See *Johnson and Deloitte & Touche AG [1997 CILR 120]* and *In BTU Power Company 2019 (1) CILR Note 7*.

Pursuant to CWR O. 5, r. 6 (1), an application to remove a liquidator and appoint a new liquidator must be made by way of a summons, supported by an affidavit setting out the facts and matters relied upon in support of the application for removal (CWR O.5, r. 6(3)). The summons must nominate alternative qualified insolvency practitioners capable of appointment by the court if the existing liquidators are removed (O.5, r.6 (4)). Each nominated liquidator must swear an affidavit in support of the application for removal which complies with the requirements of CWR O.3, r.4 (as set out above at question 2.1.)

Pursuant to CWR O. 5, r. 6(2), the application for removal must be served on:

- a) The official liquidator; and
- b) Each member of the liquidation committee; or
- c) Counsel for the liquidation committee, if an attorney has been appointed by the liquidation committee with authority to act generally; and
- d) Such other creditors or contributories as the Court may direct.

Whilst the Court has a broad discretion to remove official liquidators, the applicant must demonstrate that there are good reasons for the liquidator(s) removal (see *AMP Enterprises Ltd. (t/a Total Home Entertainment v. Hoffman, [2002] BCC 996*). Such good

Commented [BB8]: Question 25- sub-total = 9/9

Commented [ni9]: great answer

reasons could involve a failure to investigate matters such as misfeasance of former directors or impropriety or misconduct. In *BTU Power Company 2019 (1) CILR Note 7* the Court held that care needed to be exercised when removing generally effective and honest liquidators. It would be sufficient to satisfy the Court that the removal of the liquidator would be for the general advantage of the majority of the persons interested in the liquidation; in the absence of impropriety, the court would have regard to the wishes of the majority of those interested but, where impropriety was shown, the Court might override their interests (*Johnson and Deloitte & Touche AG [1997 CILR 120]*).

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

Commented [ni10]: very full answer

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

In the case of an insolvent liquidation, only creditors may apply to remove an official liquidator and in the case of a solvent liquidation, only contributories may apply to remove an official liquidator.

The order of priority of payments from a liquidation estate which must be observed by official liquidators includes different classes of creditors (along with expenses) in advance of contributories, who are at the bottom of the priority waterfall.

In an insolvent liquidation only creditors have an interest in the distribution of the company's assets because contributories will not be repaid as the company is unable to pay its debts. This means there will be nothing left "in the pot" for contributories. In contrast, in a solvent liquidation only contributories have an interest in the distribution of the company's assets because the directors are required to file a declaration of solvency which declares that the company will be able to pay its debts in full (together with interest) within 12 months of the commencement of the winding up (CA s 124 (2)). Therefore, there will be funds left in the pot for contributories and all creditors will be paid in full, meaning they have no interest in the distribution of the company's assets.

This is in line with the longstanding principles of directors' duties whereby when a company is solvent, a director's principal duties are to act in the company's best interests and the interest of shareholders are the primary consideration for directors in discharging their duties. However, where a company is insolvent, or insolvent liquidation is inevitable the directors owe a duty, to the company, to act in the best interests of the creditors and the creditors' interests become paramount and the shareholders' interests would cease to bear any weight at all (see English Supreme Court decision of *BTI 2014 LLC v Sequana S.A.* [2022] UKSC 25).

In the case of *Johnson and Deloitte & Touche AG [1997 CILR 120]*, an application was made by a potential debtor of the company in liquidation for the removal of the liquidators pursuant to s106(1) of the Companies Law (1995 Revision) which was silent as to who could apply for the removal of a liquidator. The Court therefore had to decide who was entitled to bring an application for removal. It decided that only someone with

sufficient interest in the removal could do so. In the case of an insolvent liquidation, that being the creditors who were entitled to a share of the company's assets and in a solvent liquidation, the contributories who were entitled to a share of the assets. It was held that a potential debtor did not have standing to bring such an application.

*In BTU Power Company 2019 (1) CILR Note 7* the Court found that a former director of the company (and director of a management company with sole responsibility for management of the company) did not have standing to bring an application for removal of JOLs. In this case the liquidation was a solvent liquidation in which the Court found that only the preference shareholders had a legitimate interest as contributories, capable of bringing a removal 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)

Pursuant to CWR O.8, r 1 (2) the liquidator's determination of solvency shall be final and binding upon the company's creditors and contributories.

Pursuant to CWR O.9, r.3 (2) any creditor members of the liquidation committee automatically cease to be members and the liquidators must convene a meeting of contributories for the purpose of electing new members from amongst the company's contributories.

Pursuant to O.8, r.1 (6) now that the liquidator has determined that the company is solvent, it shall convene meetings of contributories only. The liquidation committee must be established unless the Court orders otherwise. Pursuant to O.7, r.1(3) the liquidation shall comprise not less than 3 or more than 5 contributories and will only be established if there are a minimum of 3 contributories (O.9, r2(1) CWR.)

The liquidation committee will now be constituted of contributories who will consult with the liquidator and the Court will have regard to the wishes of the contributories rather than the creditors. The contributories will now be the members of the liquidation committee who will review the liquidators remuneration. The attorney to the liquidation committee may change (if one was in place) if the contributories decide to appoint an attorney in respect of general or specific matters relating to the liquidation.

### **Question 2.7**

**Commented [ca11]:** Question 2.6 Subtotal 4/4 marks detailed and insightful answer

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

Commented [ca12]: Question 2.7 Subtotal = 5/5 marks well written

Upon making an order for dissolution, the liquidator's duties cease, save for any residual duties preserved by the order for dissolution as set out below. An order for discharge of the liquidator will likely be included within the order for dissolution.

Pursuant to CWR O.22, r.2(3) the liquidator shall file the order for dissolution with the Registrar of Companies within 14 days of the date upon which the order is perfected. An order for dissolution shall include supplementary directions which the liquidator should comply with, relating to:

- (a) the retention of the whole or part of the liquidation files for longer than the minimum period of 3 years specified in O.25, r.1 CWR;
- (b) the retention, storage and destruction of the company's books and records pursuant to O.25, r.2 CWR;
- (c) the terms upon which the official liquidator will be remunerated for acting as trustee of any unclaimed dividends or undistributed assets under section 153 CA; and
- (d) such other consequential matters as the Court thinks fit.

The liquidator should finalise the final report to creditors with all relevant information in accordance with the order of dissolution. Any unclaimed dividends and undistributed assets should be dealt with in accordance with section 153 CA and O.23 CWR which provides for:

- (a) establishing a trust account for the receipt of any unclaimed dividends or uncleared dividend cheques;
- (b) transfer of title to the liquidator of any undistributed assets to be held on trust for the benefit of creditors or contributories as appropriate;
- (c) payment out of the trust account and transfer of any undistributed assets once beneficiaries are located and believed to be entitled to the funds/assets;
- (d) former liquidator's trustee fees and expenses; and
- (e) transfer to the Financial Secretary of any money or assets remaining in the hands of the former liquidator as trustee at the end of one year from the date upon which the company was dissolved.

Pursuant to O.26, r.2(3) CWR, the liquidator must retain the files in respect of the liquidation in safe custody for at least 3 years. Pursuant to O.26, r.2(2) CWR the files must consist of:

- (a) a duplicate of the Court file;
- (b) minutes of the meetings of creditors and/or contributories;
- (c) minutes of the meetings of the liquidation committee;
- (d) liquidator's reports;
- (e) liquidator's accounts;
- (f) proofs of debt and records relating to their adjudication;
- (g) records relating to the collection and realisation of the assets;

- (h) records relating to the liquidation bank accounts;
- (i) liquidator's correspondence; and
- (j) notices sent or published by the liquidator.

Pursuant to O.26, r.3 CWR the cost of post dissolution storage and destruction of the company's books and records shall be an expense of the liquidation and the liquidator must provide for this in the final accounts.

### Question 2.8

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

A liquidator has a duty to wind up the affairs of a company by gathering in its assets and distributing the proceeds to unsecured creditors in the case of an insolvent liquidation and contributories in a solvent liquidation. Part of this process is carrying out investigations pursuant to the powers set out in the CA to ascertain whether there are any claims against the company's officers or any third parties which may result in recoveries for the liquidation estate for the benefit of its creditors or contributories.

Pursuant to section 101 of the CA, a liquidator may serve notice on directors or officers, professional service providers or employees in the one year preceding commencement of the winding up to provide a statement of affairs in respect of the company, within 21 days of receipt of the notice. This is generally done as soon as possible after the liquidator's appointment. The notice should be served personally in accordance with the CA, however, the Court has ordered substituted service of such a notice in appropriate circumstances (e.g. in *SAAD v AHAB [2010 (2) CILR 422]*).

Pursuant to section 102 CA the liquidator has power 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 **(1)**

and to make such report, if any, to the Court as the liquidator thinks fit. A liquidator can also assist the RCIPS in investigating the conduct of directors or officers, professional service providers or employees in the one year preceding commencement of the winding up **(1)** and institute and conduct a criminal prosecution of such persons, subject to obtaining directions of the Court (S 102(2)). Section 102 (3) provides for payment of the whole or part of investigation and prosecution from the assets of the company, subject to approval of the creditors or contributories as appropriate. **(1)**

Pursuant to section 103 of the CA, a liquidator may also apply to the Court for an order for delivery up of documents or for oral examination of any "Relevant Persons", being any person resident in the Cayman Islands or elsewhere who:

- (a) has made or concurred with the statement of affairs;
- (b) is or has been a director or officer of the company;
- (c) is or was a professional service provider to the company; **(1)**

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

- (d) has acted as a controller, advisor or liquidator of the company or receiver or manager of its property; or
- (e) not being a person falling within (a) - (c) above, is or has been concerned or has taken part in the promotion or management of the company.

This does not include auditors and these powers must only be used for the purposes of the liquidation and fulfilment of the liquidator's statutory duties (*In the matter of Primeo Fund (in liquidation)* [2016 (2) CILR 386]). (1) The creditors or contributories may also request the liquidator apply for examination of a Relevant Person and the liquidator must do so if the request comes from one half in value of the creditors or contributories, unless the Court orders otherwise.

The Liquidators also have the powers conferred by CA Schedule III Part I (exercisable with the sanction of the Court) and Part II (exercisable without sanction of the Court).

### Question 2.9

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

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)

Pursuant to s 101 (3)(c) CA, the third category of persons from whom a liquidator may request a statement of affairs is "persons who are or have been employees of the company, during the period of one year immediately preceding the relevant date"

The "relevant date" is defined at s 101(6) CA as meaning:

- (a) in a case where a provisional liquidator is appointed, the date of that person's appointment; and
- (b) in any other case, the commencement of the winding up. (1)

In the case of a provisional liquidation this is the date of the provision liquidator's appointment. However, in any other case, it is the date of the commencement of the winding up which may be an earlier date. (1) this is the presentation of the winding up petition (pursuant to section 100(2).

Pursuant to section 100 (1) and (2) CA, the winding up of the company is deemed to commence either:

- (a) on the date of presentation of the winding up petition;
- (b) the passing of a resolution for the voluntary winding up of the company where it later goes into official liquidation; (½)
- (c) the date of expiry of any period fixed for the duration of the company by the articles of association; (½)
- (d) the occurrence of an event giving rise to a requirement to wind up the company in the articles of association; or (½)
- (e) the appointment of a restructuring officer prior to winding up the company. (½)

**\*\* 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 [BB15]:** Question 3.1 - Sub-total = 5/5



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

As the chosen provisional liquidator is based in Hong Kong, the provisions relating to foreign practitioners deal with whether or not they may be appointed. Pursuant to s 108(1) CA, a foreign practitioner may be appointed to act jointly with a qualified insolvency practitioner. Definitions of "Foreign practitioner" and "qualified insolvency practitioner" are found at section 89 CA and are defined as follows: **(1)**

"foreign practitioner" means a person who is qualified under the law of a foreign country to perform functions equivalent to those performed by official liquidators under the CA and "qualified insolvency practitioner" means a person holding the qualifications specified in the regulations made by the Insolvency Rules Committee under section 155 CA or such other qualifications as the Court considers appropriate for the conduct of the winding up of a company.

The IPR govern the qualifications required. Regulation 8 of the IPR states as follows: **(1)**

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

If the Hong Kong based proposed liquidator meets the independence and insurance requirements of regulations 6 and 7 IPR, he could be appointed by the Grand Court of the Cayman Islands as provisional liquidator of SMB Tech along with a "qualified insolvency practitioner" who meets the residency requirement of Regulation 5 IPR. He could not accept a sole appointment.

The Insurance requirement is prescribed by Regulation 7 IPR, namely, that professional indemnity insurance is in place up to a limit of at least US\$10m in respect of each and every claim and at least US\$20m in the aggregate, with a deductible of not more than US\$1m. **(1)** Whilst the Court does have the power to prescribe in the order appointing the liquidator that an increased level of professional indemnity insurance is put in place, in circumstances where the chosen provisional liquidator is not willing to increase his professional indemnity liability insurance limit, he cannot be appointed as a liquidator of SMB Tech by the Grand Court of the Cayman Islands. **(1)**

**5 marks - excellent answer, well done!**

**Question 3.2**

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

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

Pursuant to 91B(1) CA the company must demonstrate to the Court (1) that it is likely to become unable to pay its debts within the meaning of s 93 CA; (1) and (2) that it intends to present a compromise or arrangement with its creditors (or classes thereof) either, pursuant to the CA or the law of a foreign country or by way of a consensual restructuring. (1)

In the case of see *Oriente Group Limited [FSD 231 of 2022]* it was found that the Court's jurisdiction to appoint Restructuring Officers is a "broad discretionary jurisdiction" to be exercised where the court is satisfied:

- a) The statutory pre condition of insolvency that the company is or is likely to become insolvent is met by credible evidence from the company or some other independent source;
- b) The statutory pre condition of an intention to present a restructuring proposal to creditors or any class thereof is met by credible evidence of a rational proposal with reasonable prospects of success; and
- c) The proposal has or will potentially attract the support of a majority of creditors as a more favorable commercial alternative to a winding up of the company.

*Aubit International (FSD 240 of 2023) (DDJ)* similarly found that the company must have credible evidence of a restructuring proposal with reasonable prospects of success.

2 marks

### Question 3.3

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

The restructuring petition must be advertised once in a newspaper circulating in Cayman Islands (½) and once in a publication circulating in the jurisdiction where it is most likely to come to the attention of the company's creditors or contributories (½) (CWR O.1A, r.1(3) and (4). The advertisements are required to appear no more than 7 business days after the filing of the restructuring petition (½) and not less than 7 business days before the hearing date (CRW O1A, r1(6)). (½)

### Question 3.4

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

The following elements of the new restructuring officer regime assist in safeguarding the interests of creditors:

- a) Pursuant to s 91D (7) CA a creditor, including a contingent or prospective creditor, may apply to the Court to determine any question arising in the course of carrying out the restructuring officer's functions. (1)

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

Commented [BB18]: Question 3.4 - sub-total = 4/6

- b) Pursuant to 91E CA a creditor, including a contingent or prospective creditor, may apply to Court for the variation or discharge of the order appointing the restructuring officer. Such application should be made by way of summons in Form 16B CWR. (1)
- c) Pursuant to s 91F CA a creditor, including a contingent or prospective creditor, may apply to Court for removal and replacement of restricting officers. (1) The application should be made by way of summons in Form 16C CWR. It is anticipated that the Court will continue to follow the existing authorities on removal and replacement which were recently set out in the case of *In the matter of Global Fidelity Bank, Ltd (FSD 168 of 2021, Unreported Doyle J, 20 August 2021)* by Doyle J. A summons issued for removal of a Restructuring Officer must be served on the company, the restructuring officer and any other creditors or contributories as the Court may direct pursuant to CWR O.1A, r13(2). Pursuant to s 91F(3) a restructuring officer who has been removed and replaced shall prepare a report and accounts for the new restructuring officer within 21 days of removal and shall hand over all files relating to the restructuring.
- d) Pursuant to s 91G(1)(b) CA, during the moratorium imposed by s 91G(1) CA, a creditor may still present a winding up petition against a company when a prior petition has been presented for the appointment of restructuring officers, with the leave of the Court. Such a petition will be assigned to the same Judge who has been assigned the restructuring petition if leave is granted and both petitions may be heard at the same time.
- e) Pursuant to s 91G CA, during the moratorium imposed by s 91G(1) CA, where there are criminal proceedings pending against the company, a creditor, including a contingent or prospective creditor, may apply to the Court in which the proceedings are pending for a stay of the proceedings and the Court to which the application is made may stay the proceedings on such terms as it thinks fit.
- f) Pursuant to s 91H CA, a creditor who has security over all or part of the company's assets may proceed to enforce its security without leave of the Grand Court and without reference to any restructuring officer. (1)

4 marks, below model answer

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 iPLs) - no more than seven business days after the filing of a Restructuring Petition and not less than seven business days before the hearing date (1 mark)

- Heightened evidential requirements for the affidavit in support including the need to explain how the company will be funded during the restructuring period and why it is in the best interests of creditors (1 mark)
- The hearing must be heard within 21 days of presentation (1 mark)
- A requirement for the ROs to report – open and transparent process (1 mark)
- The petitions shall be heard in open court unless the Court otherwise directs (1 mark)
- The ROs must report within 28 days of appointment (1 mark)
- A creditor or contributory may apply for an order discharging the appointment (1 mark)
- Secured creditors remain entitled to enforce their security. (1 mark)

### Question 3.5

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

Pursuant to s 91B (3) CA The Court may, on hearing a petition for appointment of restructuring officers issued pursuant to 91B (1) CA:

- make an order appointing a restructuring officer; (1)
- adjourn the hearing conditionally or unconditionally; (1)
- dismiss the petition; or (1)
- make any other order as the Court thinks fit. (1)

The Court cannot make an order placing the company into official liquidation (1), which the Court may only make in accordance with sections 92 and 95 CA if a winding up petition has been presented in accordance with sections 91G and 94 CA.

**5 marks**

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

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

Commented [BB19]: 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)

The formation and operation of ELPs are governed by the Partnership Act (2013 Revision) (1) and the Exempted Limited Partnership Act (2021 Revision) (1) (ELP Act). The ELP Act expressly provides that the principles of common law and equity applicable to partnerships will apply to an ELP. (1)

Part V of the Companies Act and the CWR apply, with modifications, to the court ordered winding up and dissolution of ELPs, and to a limited extent to a voluntary winding up. Where there is a conflict, the ELP Act will take priority over the CA (ELP Act s 36(3)).

##### Question 4.2

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

Pursuant to s 91(d) CA, the Grand Court of the Cayman Islands has jurisdiction to wind up a foreign company that:

- a) has property located in the Cayman Islands;
- b) is carrying on business in the Cayman Islands;
- c) is the general partner of an ordinary limited partnership or an ELP; or
- d) is registered under Part IX CA (which requires a foreign company to register in the Cayman Islands where it establishes a place of business, or commences carrying on business within the Cayman Islands).

Pursuant to Part XI CA, a foreign company must register in the Cayman Islands where it establishes a place of business or commences carrying on business within the Cayman Islands.

##### Question 4.3

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

Whilst a judgment of a foreign court has no direct legal effect in the Cayman Islands, Kawaley J found *In the matter of Guoan International Limited* (unreported, 29 October 2021) 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 the

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

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

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

judgment from the Cayman Islands Court.

A foreign judgment is not enforceable in the Cayman Islands in and of itself and steps are required to be taken to have a foreign judgment legally enforced in the Cayman Islands. The Reciprocal Enforcement Act (1996 Revision) only provides for registration (and enforcement in the same manner as a domestic Cayman Islands judgments) of Australian judgments. Otherwise, foreign judgments from other jurisdictions generally need to be enforced by commencing new proceedings.

#### 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)**

When a provisional or absolute bankruptcy order is granted, the debtor's property immediately vests in the Trustee in Bankruptcy pursuant to s 37 Bankruptcy Act (Cap 7) (1997 Revision) (BA).

Pursuant to s 38 BA, when a provisional order is made, the trustee must preserve the property of the debtor until an absolute order is made in order that the debtor's property may be returned in the event that the provisional order is revoked. **(1)**

Pursuant to s 79 BA, so far as is necessary or expedient, the Trustee may carry on the trade of the debtor for the beneficial winding up or sale of the business. **(1)**

Pursuant to s 80 BA, the Trustee has the power to bring or defend any legal proceedings relating to the property of the debtor.

Pursuant to s 87 BA, the Trustee has a duty to receive and adjudicate proof of debts of the bankruptcy in accordance with the Grand Court (Bankruptcy) Rules 2021. **(1)**

Pursuant to s 65 BA, once an absolute order of bankruptcy is made, the Trustee has a duty to proceed to administer the debtor's estate for the benefit of creditors. **(1)**

Pursuant to s 67 BA, as soon as possible after the close of the public examination held pursuant to s 62 BA, the Trustee has a duty to report as to the state of the debtor's affairs and as to the conduct of the debtor before and during bankruptcy. In particular, the Trustee has a duty to note in their report, any matters which might constitute offences under the BA and/or which would justify the Court refusing, suspending or qualifying an order for the debtor's discharge from bankruptcy.

**TOTAL MARKS: [100]**

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

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