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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5B**

**BRITISH VIRGIN ISLANDS (BVI)**

This is the **summative (formal) assessment** for **Module 5B** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 5B**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point 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. However, 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).

4. You must save this document using the following format: **[studentID.assessment5B]**. An example would be something along the following lines: 202122-336.assessment5B. **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. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

7. Prior to being populated with your answers, this assessment consists of **7 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. 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.

**Question 1.1**

**When** is the appointment of a liquidator **deemed to commence**, when there has been a qualifying resolution passed to appoint a liquidator?

1. On the date of the order appointing the liquidator.
2. On the date the qualifying resolution is passed.
3. On the filing of the application to appoint a liquidator.
4. On the advertisement of the application to appoint a liquidator.

**Question 1.2**

In order to comply with section 156 of the Insolvency Act,  **what timeframe** for payment of the debt (or to secure or compound for the debt), must a statutory demand require?

1. Within 14 days of the service of the statutory demand.
2. Within 21 days of the date of the statutory demand.
3. Within 21 days of the service of the statutory demand.

1. Within 14 days of the date of the statutory demand.

**Question 1.3**

Which of the following **is not able** to make an application for the removal of a liquidator?

1. A member of the company.
2. A creditor.
3. The creditors’ committee.
4. A receiver.

**Question 1.4**

Where a receiver exercises a power of sale, the receiver owes a duty to obtain the best price reasonably obtainable at the time of sale. **To which one of the following is the duty owed to**?

1. The creditors, the shareholders, persons claiming an interest in the assets and the company.
2. The creditors, sureties, the shareholders and the company.
3. The creditors, sureties, persons claiming an interest in the assets of the company and the company.
4. The creditors, shareholders, sureties and persons claiming an interest in the assets of the company.

**Question 1.5**

A person is an “eligible insolvency practitioner”, able to be appointed over an insolvent BVI company, foreign company or an individual’s estate as a trustee in bankruptcy if:

1. He or she is a licenced insolvency practitioner; has given written consent to act; is not disqualified from holding a licence; is not disqualified from acting; and there is in force security for the proper performance of his or her functions.
2. He or she is a licenced insolvency practitioner; has advertised for his or her role; is not disqualified from holding a licence; is not disqualified from acting; and there is in force security for the proper performance of his or her functions.
3. He or she is a licenced insolvency practitioner; has given written consent to act; is not disqualified from holding an appointment; is not disqualified from acting; and there is in force security for the proper performance of his or her functions.
4. He or she is a licenced insolvency practitioner; has given written consent to act; is not disqualified from holding a licence; is not disqualified from acting; and there is in force an undertaking for the proper performance of his or her functions.

**Question 1.6**

Under the Reciprocal Enforcement of Judgments Act 1922, what is the **time period** during which a foreign judgment is registrable in the BVI?

1. Within 12 months of the date of judgment.
2. Within 3 months of the date of trial.
3. Within 6 months of the date of judgment.
4. Within 6 months of the date of trial.

**Question 1.7**

Which one of the below **is not** an effect of the appointment of a liquidator over a company?

1. The liquidator has custody and control of the assets of the company.
2. The assets automatically vest in the liquidator.
3. The directors remain in office, but cease to have any powers.
4. Shares in the company cannot be transferred.

**Question 1.8**

In a liquidation, what is the  **vulnerability period** for an undervalue transaction in the case of a transaction entered into with a connected person?

1. Two (2) years prior to the onset of insolvency and ending on the appointment of the liquidator.
2. Two (2) years prior to the appointment of the liquidator.
3. Six (6) months prior to the onset of insolvency and ending on the appointment of the liquidator.
4. Five (5) years prior to the appointment of the liquidator.

**Question 1.9**

Which of the following **is not** a resolution that the directors of a company must pass in order to put in place a company creditors’ arrangement?

1. Stating that the company is insolvent or is likely to become insolvent.
2. Approving a written proposal setting out how the creditors’ rights will be varied or cancelled.
3. Approving a liquidation plan and a declaration of solvency.
4. Nominating an eligible insolvency practitioner to be appointed interim supervisor.

**Question 1.10**

**When** does a voluntary liquidation commence?

1. When the directors of the company sign a declaration of solvency.
2. When the directors of the company sign a liquidation plan.
3. When the directors of the company pass the resolution appointing the voluntary liquidator.
4. On the date the voluntary liquidator files a notice of appointment with the Registrar.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [maximum 2 marks]**

Set out the circumstances in which a voluntary liquidator can be appointed over a company, pursuant to Part XII of the Business Companies Act 2004.

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

A liquidator is appointed to a BVI incorporated company by the Court. In what circumstances would an officer of that company be deemed to have committed an offence pursuant to the fraudulent conduct provisions? You are required to make reference to the relevant legislation.

[Type your answer here]

**Question 2.3 [maximum 2 marks]**

With reference to the Insolvency Act, what powers are provided to the BVI Court in relation to the orders the Court can make in support of foreign insolvency proceedings?

[Type your answer here]

**Question 2.4 [maximum 4 marks]**

With reference to the relevant legislation, set out the circumstances in which a company will be considered insolvent in the BVI.

[Type your answer here]

**QUESTION 3 (essay-type questions) [15 marks in total]**

**Question 3.1** **[maximum 5 marks**]

With reference to the relevant legislation, explain the steps a liquidator must take when preparing to terminate a liquidation.

[Type your answer here]

**Question 3.2 [maximum 5 marks]**

Is it possible to make an application to the BVI Court for the appointment of an overseas insolvency practitioner in relation to a BVI company and, if so: (i) in what circumstances might a creditor consider the appointment of an overseas insolvency practitioner; and (ii) what is the process for such proposed appointment?

[Type your answer here]

**Question 3.3 [maximum 5 marks]**

Discuss the protections and options provided to secured creditors under the BVI insolvency framework.

[Type your answer here]

**QUESTION 4 (fact-based application-type question) [15 marks in total]**

**Question 4.1 [maximum 6 marks]**

In September 2020 Pinforth Holdings Limited, a company incorporated in England, brought a claim against Expat Properties Limited, a company incorporated in the BVI, in the English High Court. Expat Properties did not attend the hearing and Pinforth Holdings was awarded judgment in the sum of USD 4,500,000.

Expat Properties has significant assets in the BVI. Giving reasons, with particular reference to the Reciprocal Enforcement of Judgments Act 1922, what options should Pinforth Holdings be advised to consider in order to enforce its foreign judgment debt?

[Type your answer here]

**Question 4.2 [maximum 9 marks]**

Abbeydale Limited, a company incorporated in England, and Dendoncker Limited, a company incorporated in the BVI, entered into a loan agreement for the purchase of a property on Necker Island in the BVI. Under the terms of the loan agreement, Abbeydale transferred USD 12,000,000 to Dendoncker and Dendoncker successfully purchased the property. Subsequently, Dendoncker failed to make any of the loan repayments pursuant to the repayment clauses. As a result of this failure, Abbeydale made a demand for immediate repayment in full, as it was entitled to do under the agreement. Dendoncker failed to make any repayments in full or in part.

Providing reasons, with particular reference to the Insolvency Act, what options should Abbeydale Limited be advised to consider in order to enforce the debt owed to it by Dendoncker Limited?

[Type your answer here]

**\* End of Assessment \***