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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 or Avenir Next 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: 202223-336.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 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**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**

For the purposes of a **qualifying resolution** for an insolvent liquidation to **appoint a liquidator** under section 159 the Insolvency Act 2003 by the company’s members, what is the required majority of those who are present and entitled to vote?

1. 50%.
2. 75%.
3. 100%.
4. 90%.

**Question 1.2**

In order to comply with section 156 of the Insolvency Act 2003, **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**

Who cannot apply for a provisional liquidator to be appointed in a company?

1. The Attorney General.
2. The company.
3. A creditor.
4. A secured creditor.

**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 three (3) months of the date of trial.
3. Within six (6) months of the date of judgment.
4. Within six (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 assets automatically vest in the liquidator.
2. No amendment allowed to the memorandum or articles of association of the company.
3. Shares in the company can be transferred.
4. No action can commence or proceed against the company unless ordered by the Court.

**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**

What is required to place a company into voluntary liquidation?

1. Directors’ resolution to appoint a voluntary liquidator.
2. A liquidation plan approved by the directors and a resolution passed by shareholders approving the liquidation plan.
3. Declaration of Solvency.
4. All of the above.

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

**Question 2.1 [maximum 2 marks]**

When is an eligible licensed insolvency practitioner required to be appointed under the Insolvency Act 2003, and what is meant by “eligible”?

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

In what circumstances can a statutory demand be issued under the Insolvency Act 2003, and by whom?

[Type your answer here]

**Question 2.3 [maximum 2 marks]**

Under the BVI Business Companies Act 2004, when is a company required to have a registered agent and when is one not required?

[Type your answer here]

**Question 2.4 [maximum 4 marks]**

When can the Court appoint a liquidator under the Insolvency Act 2003? And who can make an application for such an appointment?

[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, what are the requirements to be appointed as a voluntary liquidator in the BVI after 1 January 2023?

[Type your answer here]

**Question 3.2 [maximum 5 marks]**

What can be included in an order granted by the Court following a request by a foreign representative to aid in a foreign proceeding under section 467 of the Insolvency Act 2003?

[Type your answer here]

**Question 3.3 [maximum 5 marks]**

What is a scheme of arrangement under the Insolvency Act 2003? When can such an application be made to the Court, by whom and what are the requisites for it to be approved?

[Type your answer here]

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

**Question 4.1 [maximum 6 marks]**

In 2019 Yellow Limited, a company incorporated in the BVI entered into a 10-year mortgage with Orange Mortgages Limited, a company registered in the UK, for a property situated in the BVI, which mortgage was due to be paid monthly. Under the terms of the mortgage, if Yellow Limited defaulted on one payment, then the mortgage was repayable immediately. Yellow Limited is now four months in arrears on the mortgage.

Providing reasons, with particular reference to the Insolvency Act 2003, answer the following question:

1. What are the options open to Orange Mortgages Limited in respect of any redress against Yellow Limited?
2. What would be the options available to Orange Mortgages if the loan was unsecured?

[Type your answer here]

**Question 4.2 [maximum 9 marks]**

In 2023 Owed Limited, a company registered in England, was awarded a judgment for an unsecured debt in the English High Court against Indebted Limited, also incorporated in England, of GBP 10 million. In an attempt to enforce its judgment, Owed Limited has discovered that Indebted Limited’s only asset is a 100% owned subsidiary, Subco Limited, a company incorporated in the BVI, which itself owns a number of unencumbered properties in the BVI but has been struck off of the Register and is now dissolved. The sole shareholder and sole director of Indebted Limited has recently passed away.

You have been tasked by your principal to prepare a memorandum to advise Owed Limited to assist it in recovering the judgement debt by detailing:

1. the number of obstacles Owed Limited has to overcome first before any recovery is possible; and
2. its options to recover the judgment debt owed by Indebted Limited.

[Type your answer here]

**\* End of Assessment \***