



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: **[studentnumber.assessment5B]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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]

Commented [CW1]: 10 marks

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?

- (a) On the date of the order appointing the liquidator.
- (b) On the date the qualifying resolution is passed.**
- (c) On the filing of the application to appoint a liquidator.
- (d) On the advertisement of the application to appoint a liquidator.

Commented [CW2]: Correct 1 mark

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?

- (a) Within 14 days of the service of the statutory demand.
- (b) Within 21 days of the date of the statutory demand.
- (c) Within 21 days of the service of the statutory demand.**
- (d) Within 14 days of the date of the statutory demand.

Commented [CW3]: Correct 1 mark

Question 1.3

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

- (a) A member of the company.
- (b) A creditor.
- (c) The creditors' committee.
- (d) A receiver.**

Commented [CW4]: Correct 1 mark

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?**

- (a) The creditors, the shareholders, persons claiming an interest in the assets and the company.
- (b) The creditors, sureties, the shareholders and the company.
- (c) The creditors, sureties, persons claiming an interest in the assets of the company and the company.
- (d) The creditors, shareholders, sureties and persons claiming an interest in the assets of the company.

Commented [CW5]: Correct 1 mark

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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

Commented [CW6]: Correct 1 mark

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?

- (a) Within 12 months of the date of judgment.
- (b) Within 3 months of the date of trial.
- (c) Within 6 months of the date of judgment.
- (d) Within 6 months of the date of trial.

Commented [CW7]: Correct 1 mark

Question 1.7

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

- (a) The liquidator has custody and control of the assets of the company.
- (b) The assets automatically vest in the liquidator.
- (c) The directors remain in office, but cease to have any powers.
- (d) Shares in the company cannot be transferred.

Commented [CW8]: Correct 1 mark

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?

- (a) Two (2) years prior to the onset of insolvency and ending on the appointment of the liquidator.
- (b) Two (2) years prior to the appointment of the liquidator.
- (c) Six (6) months prior to the onset of insolvency and ending on the appointment of the liquidator.
- (d) Five (5) years prior to the appointment of the liquidator.

Commented [CW9]: Correct 1 mark

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?

- (a) Stating that the company is insolvent or is likely to become insolvent.
- (b) Approving a written proposal setting out how the creditors' rights will be varied or cancelled.
- (c) Approving a liquidation plan and a declaration of solvency.
- (d) Nominating an eligible insolvency practitioner to be appointed interim supervisor.

Commented [CW10]: Correct 1 mark

Question 1.10

When does a voluntary liquidation commence?

- (a) When the directors of the company sign a declaration of solvency.
- (b) When the directors of the company sign a liquidation plan.
- (c) When the directors of the company pass the resolution appointing the voluntary liquidator.

(d) On the date the voluntary liquidator files a notice of appointment with the Registrar.

Commented [CW11]: Correct 1 mark

QUESTION 2 (direct questions) [10 marks]

Commented [CW12]: 8 marks

Question 2.1 [maximum 2 marks]

Commented [CW13]: 2 marks

With reference to the relevant legislation, in what circumstances can a liquidator be removed from office?

According to section 187 of the Insolvency Act, a liquidator can be removed from office if he is not eligible to act or breaches a duty or obligation, or fails to comply with a direction of the court. Alternatively, he can be removed if the court is satisfied that his conduct of the liquidation is below the standard expected from a reasonably competent liquidator or there is a conflict of interests.

Question 2.2 [maximum 2 marks]

Commented [CW14]: Well done, 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.

According to section 289(1) of the Insolvency Act, the officer will be deemed to have committed an offence if, while being an officer or during the 12 months preceding the liquidation, he has done either of the following:

First, if he has made or caused to make a gift or transfer of, or charge on, or has caused, permitted or acquiesced in the levying of an execution against the company's assets.
Secondly, if he has concealed or removed any of the company's assets since, or within, sixty days of the date of any unsatisfied judgment or order for the payment of money against the company.

Question 2.3 [maximum 2 marks]

Commented [CW15]: 1 mark

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?

This is not a comprehensive answer and it does not refer to the legislation.

The BVI court can make, amongst others, the following orders:

It can restrain the commencement or continuation of any proceedings against a debtor or property.
It can restrain the creation, exercise or enforcement of any right or remedy against the debtor's property.
It can require any person to deliver any property of the debtor or the proceeds of the property.
It can appoint an interim receiver of any property of the debtor.

Question 2.4 [maximum 4 marks]

Commented [CW16]: 3 marks

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

This answer could be ore comprehensive. There is also no reference to the legislation.

First, a company will be considered insolvent if it is proved that the company is unable to pay its debts as they fall due.

Second, a company is considered insolvent if the value of its liabilities exceeds the value of its assets.

Thirdly, if a company fails to satisfy, in whole or in part, the execution or other process issued on a judgment, decree or order, then the company will be considered insolvent.

Fourthly, a company is considered insolvent if it fails to comply with a statutory demand that is not successfully set aside.

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

Commented [CW17]: 10 marks

Question 3.1 [maximum 5 marks]

Commented [CW18]: 4 marks

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

When preparing to terminate the liquidation, the liquidator must take the following steps: According to section 234(2) of the Insolvency Act, the liquidator must prepare his final report as soon as practicably possible after completing his duties. The report must be sent to every admitted creditor and every member of the company. He must also file a copy of the report with the Registrar. The liquidator may also apply to court for an order exempting him from compliance with the requirement to send the final report to the creditors or to modify the entire provision regarding the final report.

Commented [CW19]: The candidate should have provided more detail here.

According to section 235 of the Insolvency Act, the liquidator can also apply to be released when their appointment ends.

Question 3.2 [maximum 5 marks]

Commented [CW20]: 3 marks

In relation to a voluntary (solvent) liquidation, please set out: (i) the red flags that would lead a voluntary liquidator to identify the company as insolvent; and (ii) the steps that are required of the voluntary liquidator in the event insolvency is identified. Please ensure that you refer to the relevant legislation.

(i) According to section 209, Division 2 of the BCA, the red flags are, first, that the value of the company's liabilities exceeds the value of its assets and, secondly, that the company is unable to pay its debts as they become due.

(ii) Regarding the steps, the first thing to do is to immediately send a written notice to the Official Receiver. Then, within 21 days of the date of the notice, the voluntary liquidator must call a meeting of creditors. This meeting will be treated as the first meeting of creditors in terms of section 179 of the Insolvency Act.

Commented [CW21]: Or the Commission if the Company is regulated.

Commented [CW22]: Candidate could have also discussed with the voluntary liquidator is an insolvency practitioner.

Commented [CW23]: Candidate should have referred to the legislation here.

Question 3.3 [maximum 5 marks]

Commented [CW24]: 3 marks

Referring to legislation (where relevant), explain where a receiver, appointed over the assets of a BVI company, would find his or her powers.

Firstly, in terms of section 127(1)(a) of the Insolvency Act, the receiver will find his powers in the terms of the charge or instrument in terms of which he was appointed. The powers can be set out expressly or impliedly.

Secondly, if the receiver was appointed by the court, his powers are contained in the order in terms of which he is appointed.
Thirdly, if the charge or other instrument does not expressly provide for certain powers, such powers are provided for in section 127(2) of the Insolvency Act.

Commented [CW25]: Section 127(1)(b) of the IA

Commented [CW26]: More details should have been provided here.

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

Commented [CW27]: 6 marks

Question 4.1 [maximum 6 marks]

Commented [CW28]: 4 marks, well done

In September 2020 Harrison Holdings Limited, a company incorporated in England, brought a claim against Maximilian Properties Limited, a company incorporated in the BVI, in the English High Court. Maximilian Properties did not attend the hearing and Harrison Holdings was awarded judgment in the sum of USD 5,000,000.

Candidate has failed to identify other options which could be considered.

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

Since Maximilian Properties has significant assets in the BVI, a good option for Harrison Holdings would be to try and enforce its judgment (granted by the English court) in the BVI. In terms of section 3(1) of the 1922 Act, judgments given by the High Court of England qualify under the Act for enforcement in the BVI. However, to enforce the judgment, Harrison Holdings must register the judgment with the BVI court within 12 months of the date of judgment (s 3(1)), which means it should be done before September 2021. If this is done, the judgment will have the same force and effect as if the judgment had been granted by a BVI court (s 3(3)(a)).

Commented [CW29]: More detail could be set out here.

However, the fact that Maximilian did not appear at court might be a problem because, under section 3(2) of the 1922 Act, the court will not allow registration of the judgment under such circumstances.

Commented [CW30]: Correct

Question 4.2 [maximum 9 marks]

Commented [CW31]: 2 marks

Peralta Limited, a company incorporated in England, and Santiago Limited, a company incorporated in the BVI, entered into a loan agreement for the purchase of a property on Moskito Island in the BVI. Under the terms of the loan agreement, Peralta transferred USD 10,000,000 to Santiago and Santiago successfully purchased the property. Subsequently, Santiago failed to make any of the loan repayments pursuant to the repayment clauses. As a result of this failure, Peralta made a demand for immediate repayment in full, as it was entitled to do under the agreement. Santiago failed to make any repayments in full or in part.

Candidate has failed to provide any detail or set out the options that could be considered under the IA, including:

Service of a statutory demand

Application for the appointment of a liquidator.

Whilst appointment of a receiver is considered, there is a lack of any detail provided.

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

Peralta's first option is to follow a normal debt enforcement process by seeking a judgment against Santiago in a BVI court and executing the judgment against the relevant property.

However, if the reason for non-payment is the insolvency of Santiago, Peralta's next option is to apply in terms of section 196 of the Insolvency Act for the BVI court to appoint the Official Receiver or a liquidator to administer the liquidation of Santiago.

Alternatively, Peralta can have a receiver appointed – either by applying to court or in terms of a debenture. A benefit of this option is that the receiver will have a duty to sell the property for the best price possible

*** End of Assessment ***

Commented [CW32]: Total marks: 34