



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.

Commented [CW7]: Correct 1 mark

- (c) Within 6 months of the date of judgment.
- (d) 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?

- (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?

Pursuant to section 187 of the Insolvency Act, the liquidator can be removed from office if he:

1. Is not eligible to act
2. Fails to comply with a direction of the Court or the Court is satisfied that the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator or the liquidator has interests in conflict with his role.

Question 2.2 [maximum 2 marks]

Commented [CW14]: 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.

Pursuant to section 289 of the Insolvency Act if any time whilst being an officer of the Company for during the period of 12 months preceding the commencement of the liquidation the officer has:

- made or caused to be made any gift or transfer of, or charge on, or has caused, permitted or acquiesced in the levying of any execution against the company's assets; or
- the officer 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 obtained against the company.

Question 2.3 [maximum 2 marks]

Commented [CW15]: 0 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]

Commented [CW16]: 4 marks

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

In accordance with section 8 of the insolvency Act, a company is considered insolvent in the BVI, when :

1. the company is unable to pay its debts as they fall due;
2. the value of the company's liabilities exceeds the value of its assets;
3. A company fails to satisfy (wholly or partly) execution or other process issued on a judgment, decree or order of the BVI Court in favour of a creditor of the company; and
4. the company fails to comply with the terms of a statutory demand and it is not successfully set aside under sections 156 and 157 of the insolvency Act.

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.

Pursuant to section 234(2) of the Insolvency Act, the following steps will be taken by the liquidator when he is preparing to terminate a liquidation:

- The liquidator must prepare his final report as soon as practicable after completing his duties
- The report must be sent to every admitted creditor and every member of the Company
- A copy of the final report must also be filed with the Registrar
- Also pursuant to section 235 of the Insolvency Act, the liquidator can apply for release when their appointment ends

Question 3.2 [maximum 5 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.

Pursuant to section 209, division 2 of the BCA, outlines the red flags that would lead a voluntary liquidator to identify the company as insolvent are:

- When the value of the company's liabilities exceeds or will exceed those of its assets; or
- the company is or will be unable to pay its debts as they fall due.

The voluntary liquidator is required to immediately send a written notice to the Official Receiver upon discovery of the red flags. The Voluntary liquidator must then call a meeting of the creditors with 21 days of the date of the notice. IF the voluntary liquidator is not a licensed practitioner, the Official Receiver may apply to the Court for the appointment of himself or another licenced insolvency practitioner as the liquidator.

Question 3.3 [maximum 5 marks]

Commented [CW17]: 7 marks

Commented [CW18]: 3 marks,

The answer lacks detail.

Commented [CW19]: 3 marks

Answer again lacks detail.

Commented [CW20]: Candidate should refer to the legislation as per the question.

Commented [CW21]: Candidate could have included more detail about the application of the Insolvency Act.

Commented [CW22]: 1 mark

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

When a receiver is appointed by the Court, the receiver's powers are those which are granted under the order appointing the receiver. Pursuant to section 127 (2) of the Insolvency Act, which sets out the statutory powers granted to a receiver in the event that the charge of other instrument does not expressly provide for these.

Commented [CW23]: Please refer to the Guidance Text and sections 127(1)(a) and (b) of the IA. This answer is confused as between a Court Order and appointment under a charge, debenture of other document.

Commented [CW24]: There is a lack of detail here.

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

Commented [CW25]: 4 marks

Question 4.1 [maximum 6 marks]

Commented [CW26]: 4 marks

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.

The answer is lacking in detail, but contains most of the central elements.

The candidate fails to consider any other options for enforcement that might be available, for example under the IA.

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?

The enforcement of a foreign judgment in the BVI is only effective to the extent that the judgement debtor (Maximilian Properties) has assets in the BVI against which to enforce. With that being said the judgement can be registered. Given that it was mentioned that Maximilian Properties has significant assets in the BVI that section is satisfied, however pursuant to section 3(2) of the 1922 Act, the Court will not order a judgement to be registered to in the event that:

Commented [CW27]: Which section? Does this need to be satisfied under the 1922 Act? This is confused.

- The judgement debtor was not duly served with the process of the original court and did not appear, notwithstanding that the is ordinarily resident or carrying on a business with the jurisdiction of the court of agreed to submit to the jurisdiction of the court;

Given that Maximilian Properties did not attend the hearing, the foreign judgement will not be registered.

Under common law, Harrison Holding should apply for a summary judgement.

At common law, the courts treat any final and conclusive monetary judgement as a cause of action in itself under the doctrine of obligation by action, irrespective of the jurisdiction where the judgement was obtained. Being that Harrison Holding judgment is a final and conclusive monetary judgement USD \$5,000,000 which fits the criteria under common law. Harrison Holding should consider taking this route, all they will have to do is prove the judgement and show that it is a final and conclusive monetary judgement for a specified sum of \$5,000,000.. A retrial of the issues in the action is not necessary.

Question 4.2 [maximum 9 marks]

Commented [CW28]: 0 marks,

Candidate has not answered the question.

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 Mosquito 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.

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?

A judgement for a debt owed to a creditor under a loan agreement is likely to be a money judgement, which can be registered . In addition , the judgement was handed down in England & Wales, a jurisdiction to which the 1922 Act extends.

*** End of Assessment ***

Commented [CW29]: Total marks: 29