



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]

Commented [JW1]: 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.

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.

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.**

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.

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.

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.

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.

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.

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.

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.**

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

Commented [JW2]: 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.

A voluntary liquidator can be appointed in respect of a company either by a resolution of directors, or by a resolution of members. The requirements for such resolutions are set out in section 199(2)-(4) of the BCA.

The directors of a company may, by resolution, appoint an eligible individual as the voluntary liquidator of the company

- upon the expiry of time which may be specified in its memorandum or articles for the company's existence;
- upon any event as may be specified in its memorandum or articles as an event that shall terminate the existence of the company;
- in the case of a company limited by shares, if it has never issued any shares; or
- in any other case:
 - o if the memorandum or articles permit them to pass a resolution for the appointment of a voluntary liquidator; and
 - o the members have, by resolution, approved the liquidation plan

The members of a company may, by resolution:

- (a) approve the liquidation plan; and
- (b) appoint an eligible individual as the voluntary liquidator of the company.

If the liquidator is already appointed under the Insolvency Act, then voluntary liquidator cannot be appointed.

Question 2.2 [maximum 2 marks]

Commented [JW3]: 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.

If the liquidator is appointed to a BVI incorporated company by the Court and a person who is currently or has been an officer of that company is committed an offence at any time during which an officer was occupying the office or during the period of 13 months preceding the commencement of the liquidation he has:

- made or caused to be made any gift or transferred or charged on or has caused, permitted or consented in levying of any execution against the company's assets or
- has concealed or removed any of the company's assets since or within 60 days from the date of any unsatisfied judgement or order for the payment of money obtained against the company.

Under section 289 of insolvency act, if any officer as conducted any fraud then that person can be penalised with \$10,000 or imprisonment for 3 years or both.

However, the officer is not guilty of an offence under this section if

- an offence has been conducted or as occurred more than 5 years before the commencement of the liquidation or
- if that person proves that at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

Question 2.3 [maximum 2 marks]

Commented [JW4]: 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?

The part XIX of the Insolvency Act provides the primary framework for the powers provided to the BVI court to make orders on aid of foreign proceedings. The BVI court can recognise certain foreign proceedings and provide its assistance. The powers to make such orders are extended to designated countries which include Australia, Canada, Hong Kong, Japan, Jersey, New Zealand, the United Kingdom and the USA and when making the order in aid of foreign proceeding the BVI court is able to apply the applicable BVI laws or the law of the applicable country.

The BVI court is provided with certain powers on relation to the orders that can be made, which include:

- restraining the commencement or continuation of any proceedings against a debtor or debtors' property
- restraining creation, enforcement or exercising any right or remedy over or against any of the debtor's property
- requiring any person to deliver any property of the debtor or the proceeds of such property
- ordering or granting relief to facilitate, approve or implement arrangements that will result in a coordination of BVI insolvency proceedings with the foreign proceedings
- authorising the examination by the foreign representative of the debtor or of any person who could be examined in the BVI insolvency proceedings
- appointing the interim receiver of any property of the debtor for such term and subject to such conditions as it considers appropriate
- staying or terminating or making any other order it considers appropriate in relation to a BVI insolvency proceedings.

Section 468 of the Insolvency Act also has set out certain matters which Court is required to consider when making the order mainly that court must be guided by what will best ensure economic and expeditious administration of the foreign proceedings.

Question 2.4 [maximum 4 marks]

Commented [JW5]: 4 marks

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

The corporate insolvency is governed by Part VIII of the Insolvency Act, with procedural requirements provided for under the IR.

In BVI, the company will be considered to be insolvent if:

- a) the company is or will be, unable to pay its debt as they fall due; or
- b) the value of its liabilities exceeds, or will exceed, its assets which is also called as balance sheet insolvency. Section 10 (1) of the Insolvency Act has provided a wide definition of liability under an enactment, in contract, offence or bailment, a breach of trust and arising out of an obligation to make restitution. The liabilities for these purposes include debt. Section 10(2) of the Insolvency Act states that a liability may be present of future, certain or contingent, fixed or liquidated; or
- c) if company fails to content execution or other process issued on a judgment decree or order of the BVI court in favour of a creditor of the company; or
- d) if 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. A statutory demand is a written demand for payment of a debt that is due and payable made by a creditor in the format required under section 156 of the Insolvency Act.

The statutory demand mentioned above must be in writing, dated and signed by the creditor. It must require the company to pay debt or to secure or compound for the debt to the

reasonable satisfaction of the creditor within 21 days of the service of the statutory demand. The common reason that the company would apply to set aside the statutory demand is that a debt is disputed. However, if the company wishes to set aside a statutory demand, it must make an application to the court within 14 days.

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

Question 3.1 [maximum 5 marks]

Commented [JW6]: 3 marks - no mention of section 207A -208
BCA 2004 for voluntary liquidation

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

The liquidation of a company is terminated on the date of any one of the following:

- the date on which Court makes an order of terminating the liquidation under section 233 of the Insolvency Act, or such later date as may be specified in the order;
- the filing by the liquidator of a certificate of compliance with the provisions of section 234(2) of the Insolvency Act, as modified by the Court under section 234(4), if appropriate; or
- the Court makes an order under section 234(4) exempting the liquidator from compliance with 234(2), or such later date as may be specified in the order.

The Court may, at any time after the appointment of the liquidator, make an order terminating the liquidation if it is satisfied that it is just and equitable to do so. An application under section 233 may be made by the liquidator, a creditor, a director or a member of the company or the Official Receiver. Before making an order, the Court may require the liquidator to file a report with respect to any matters relevant to the application. An order may be made subject to such terms and conditions as the Court considers appropriate and on making the order or at any time thereafter, the Court may give supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation. If the Court makes an order, then the company ceases to be in liquidation and the liquidator ceases to hold office with effect from the date of the order or later date as may be specified in the order. Also, the person who applied for the order shall, within 10 days of the date of the order, file a sealed copy of the order with the Registrar.

The liquidator is required to prepare his final report on completion of liquidation after completion of its duties as mentioned in Section 234(2) of the Insolvency Act. The report must be sent to every admitted creditor and director of the company. A copy of the final report is also required to be filled with the Register. Section 234(3) has set out the requirements for certain statements to be included in the final report. Section 235 of the Insolvency Act mentions that the liquidator or provisional liquidator can apply for their release when their appointment ends, which means liquidator is discharged from all liability in respect of any act or default in relation to his administration of the company. However, court can still make an order under section 254 against the liquidator, notwithstanding his release under section 235. The termination of a liquidation does not mean that company should be dissolved, for example, there may be a situation where the company liquidation is terminated because the debt has been paid to the creditor and then application is made to the court that the liquidation be terminated so that it can continue the business as is.

Question 3.2 [maximum 5 marks]

Commented [JW7]: 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?

Under section 483 of the Insolvency Act, an individual resident outside the BVI may be appointed to act as an insolvency practitioner jointly with a licensee or the Official Receiver.

Given, in BVI companies most of their assets are situated outside of the BVI, it is often helpful to appoint an insolvency practitioner from that jurisdiction in which such assets are located, as it can reduce costs of travel and further costs relating to local expertise. This is important in long running liquidations which involve multiple disputes in different jurisdictions. However, as mentioned above the overseas insolvency practitioner must be appointed jointly with a BVI licensed insolvency practitioner or the Official Receiver.

If the overseas insolvency is appointed by the Court, or if any person is appointing him or her, needs to satisfy that:

- he or she has sufficient qualifications and experience to act in the insolvency proceeding in respect of which the appointment is made;
- he or she has given his or her written consent to act in the prescribed form;
- he or she is not disqualified from holding a licence under section 477;
- he or she is not disqualified from acting in the case of a company or a foreign company, under subsection 482(2) or in the case of an individual, under subsection 482(3);
- there is in force such security for the proper performance of his or her functions as may be specified in the Regulations; and
- prior written notice of his or her appointment has been given to the Commission.

If an application is made to the Court for the appointment of an overseas insolvency practitioner to act as insolvency practitioner, the Commission may appear and be heard at the hearing of the application for the purpose of objecting to the appointment. However, where the Commission receives notice under section 483(b) that an overseas insolvency practitioner is to be appointed by a person to act as an insolvency practitioner, it may give the appointer notice that it intends to apply to the Court for an order that the overseas insolvency practitioner concerned should not be appointed.

If a person receives a notice from the Commission, it shall not appoint the overseas insolvency practitioner concerned to act as insolvency practitioner unless the Court approves the appointment at the hearing of the Commission's application, or the Commission approves the appointment. A person who contravenes any of the above it commits an offence.

Question 3.3 [maximum 5 marks]

Commented [JW8]: 2.5 marks - protection for secured in creditors arrangement (section 15)/bankruptcy (section 311/liquidation (175). Options to relinquish security interest in all insolvency procedures and can appoint receiver/admin receiver/out of court receiver under s.115

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

A creditor is a secured creditor of a debtor if he or she has an enforceable security interest over an asset of the debtor in respect of his or her claim. In BVI, secured creditors are not actually classed as the creditors or considered as participating in the insolvency process. Their claims are directly against the assets of the company which are subject to the security, so they fall outside the liquidation. Also, there are no timelines for enforcing a secured claim. It is upto the secured creditor to determine when to take control of the security interest and when to sell the assets for the best return. The common forms of security interest in BVI granted over the immovable and movable property are as follows:

- Legal mortgages- it is created by a contract which provides the lender with a legal interest in the asset. In order to perfect a legal mortgage, the title to the relevant assets must be conveyed to the security taker. The holder of the mortgage has three options in the event of default under the mortgage or charge (i) foreclose on the shares; (ii) sell the shares; (iii) appoint a receiver over the shares.
- Equitable charge- it provides the lender with the power to obtain and sell assets subject to the charge. It prevents the charger from disposing in whole or in part subject to the charge without the charge releasing the charge
- Floating charge- is often granted by a company over all its assets; provided the floating charge has not crystallised, the company is usually still permitted to dispose of assets that are subject to floating charge.
- Mortgages and charges over shares in a BVI Company- under section 66 of the BCA, there is no prescribed form for a mortgage or charge of shares of a BVI company. However, it must be in writing and signed by the holder of the shares to which the mortgage or charge relates and clearly indicate the intension to create the mortgage or charge and also clearly indicate the amount secured by the mortgage.
- Pledge- in this form of security lender takes possession of an asset. A pledge provides the lender with a common law power of sale over physical assets, in the event of default.

Commented [JW9]: Not a part of insolvency framework

A secured creditor must state in his application the full amount of the liability and also state if in the event of bankruptcy order being made, if he is willing to give up his security interest for benefit of other creditors or give the estimate of the value of his security interest and make the application in respect of the full amount of the liability of the debtor to him less the estimated value of the security interest.

The amount which is less the estimated value of the security interest will be treated as unsecured claim. If secured creditor fails to disclose his security interest and a bankruptcy order is made, then that secured creditor is deemed to have given up his security for the benefit of other creditors. However, under section 299 (2), secured creditor can make application to the court mentioning the failure to disclose the asset.

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.

Commented [JW10]: 4.5 marks - claim was 12 months but question does not state when judgment awarded and Expat did not attend hearing so not registrable but in common law remedy under doctrine of obligation action as specified sum or summary judgment then liquidation under section 162 IA2003

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?

BVI is not a party to any conventions or treaties in relation to the enforcement of local or foreign judgments. However, it is party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Further the recognition of foreign judgement in the BVI is governed by the reciprocal enforcement of judgement (cap 65) 1922 (1922 act). However, the enforcement of a foreign judgment in the BVI is only effective to the extend the judgment debtor. Defendant has assets in BVI, which in case of Expat Properties Limited it has. Also, for the judgment to be enforced in BVI it must be final and conclusive monetary which is also there in this case. The judgments which are declaratory, injunctive, or otherwise cannot be enforced. Further, in 1922 Act extends only to judgments given in the High court of England Wales and Northern Ireland and the Courts of session in Scotland. It is also extended to judgments given in the courts of the Bahamas, Barbados, Belize, Trinidad & Tobago, Guyana, St. Lucia,

Grenada, Jamaica and New South Wales (Australia). The judgments from countries that are not included under the Reciprocal Enforcement of Judgments Act 1922 cannot be registered. In this case, given these conditions are met the foreign judgment can be enforced.

However, once the foreign judgment is duly registered under the 1922 Act by the BVI court, it is treated from the date of registration as being of the same force and effect as if that judgment had been made in BVI i.e., all remedies are available under the CPR. Pursuant to CPR 45.2, these include, a charging order, a garnishee order, a judgment summons, an order for seizure and sale of good and appointment of receiver. However, to register the judgment Pinforth Holdings Limited will have to apply to the court under CPR Part 72. The application must contain certain prescribed information and must exhibit a duly authenticated copy of the judgment and details of any interest that has become due under the law of the country in which the judgment has been entered. The application can be made without the notice to the debtor.

Section 3(2) of the 1922 Act as mentioned that Court will not order judgment to be registered in the event if:

- The original court acted without the judgment
- The judgment debtor did not carry on the business or is resident within the jurisdiction of the original court
- The judgement debtor was not duly served with the process of the original court and did not appear, at the same time he was usually resident or carrying on a business within the jurisdiction of that court to submit to the jurisdiction of the court.
- The judgment was obtained by fraud
- The judgment debtor satisfies the court that an appeal is pending or that he is entitled to or intends to appeal
- The judgment related to a cause of action which for reasons of public policy could not have been entertained by the court.

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?

The section 446 of the insolvency Act provides foreign creditors with a right of direct access and these creditors have same rights regarding the commencement of and participating in the insolvency proceedings as the creditors within the jurisdiction. In BVI, if the company is unable to pay debt, the creditor has an option of either restructuring, reorganisation or commence insolvency against the company. Of the various option

- Abbeydale Limited can use the receivership model. The receiver can be appointed by application to the court or under a debenture. Under section 116(1) of the Insolvency Act there is an extensive list of persons who are not eligible to be appointed as receivers. Once a receiver is appointed there are number of administrative steps that must be taken which are set out in section 118 and section 119 mentions the steps to be taken by the company. If the receiver is to be appointed out of court than section

Commented [JW11]: 3 marks - Is A secured or unsecured creditor? If secured? registered charge/ debenture/ legal charge/equitable charge - have to see the loan document. Options under IA2003: Receiver /Administrative Receiver / Out of Court Receiver.
If unsecured creditor Breach of contract – damages and obtain judgment from English Court in its favour – may be delay and costly; or obtain judgment in English court – recognised in BVI Court under IA 2003; or serve statutory demand under s155 IA2003 and then if unpaid application to the Court for liquidation under Section 162 for appointment of liquidator by the Court - winding up will only be made if insolvent - provisional Liquidation under 170 if assets at risk of dissipation.

Commented [JW12]: Section 446 is not in force

Commented [JW13]: Administrative receiver under a debenture or other instrument will allows it- can be out of court appointment as well

139 sets out the provisions in relation to appointment of receiver. The receiver should act in the best interest of the creditors of the company, sureties who may be called upon to fulfil obligations of the company, a person claiming through an interest in assets in respect of which he was appointed and the company.

- Second option, Abbeydale Limited has is to restructure or reorganise via a plan of arrangement and a scheme of arrangement (both under the BCA) and a creditors arrangement (governed by the Insolvency Act, given that is a debt related procedure). The arrangements are largely focused on restructuring equity while the creditors arrangement is available for restructuring the debt.
 - o The plan of arrangement is governed by the BCA and is initiated by the directors of a company or if the company is in voluntary liquidation then by the voluntary liquidator. In this case, there is no requirement for a company to be insolvent before a plan of arrangement is considered. The arrangement is defined in section 177(1) of the BCA and includes a reorganisation or restructuring of a company. The plan of arrangement permits a company to amend its memorandum and articles of association; reorganise, merge or consolidate or separate its business; dispose of any assets, business, shares, debt or other securities; approve the dissolution of the company or put in place any combination of the above. Once the plan is approved the company must apply to the BVI court to approve the proposed arrangement. The court has powers to approve, reject or amend the plan. Once the plan is approved by the court, the directors will have to execute the same.
 - o The scheme of arrangement is also governed by the BCA and is a statutory mechanism that permits a company to enter into a compromise or arrangement between the company and creditors. Scheme of arrangement can be initiated by company, creditors, a shareholder or liquidator by applying to the court for a meeting of creditors or shareholders. Here also there is no requirement for company to be insolvent. If the scheme is approved by 75% in value of the creditors or class of creditors or shareholders or class of shareholders present and voting at the meeting, then the scheme is approved and will be binding on all creditors and shareholders once it is approved by court and scheme is filed with registrar.
- The other option Abbeydale Limited has is company creditors arrangement (CCA), this is also governed by the Insolvency Act and the Rules. This is nothing but the compromise between the company and creditors that allows the parties to vary the rights of the creditors and cancel the liability of a debtor in whole or part. The framework is mentioned in Part II of the Insolvency Act. In the case, the process is initiated by the directors of the company by proposing the arrangement and nominating the interim supervisor to act. The board of directors can take this step if they believe that the company is insolvent or is likely to be insolvent. CCA does not affect the rights of secured creditors to enforce its security. In this case also proposal must be approved by 75% of the creditors. Once the plan is approved the supervisor will be appointed and CCA will be binding on the company, creditor and shareholder.
- The last option with Abbeydale Limited is the liquidation under the provision of BCA, which can be voluntary liquidation or corporate liquidation. However, the voluntary liquidation is not available for the insolvent companies.

Commented [JW14]: Not in the Insolvency Act 2003

Commented [JW15]: A creditor cannot propose a CCA

Commented [JW16]: BCA 2004 is not Insolvency Act - so insolvent liquidation under section 162 after an unpaid statutory demand?

*** End of Assessment ***