



TOTAL: 39/50 = 78%
Very good attempt!

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7D

SOUTH AFRICA

This is the summative (formal) assessment for Module 7D ***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 7D. ***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.assessment7D]. An example would be something along the following lines: 202223-336.assessment7D. 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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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 9 pages.**

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total] [9/10 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

Choose the correct statement in relation to the insolvent debtor and rehabilitation (discharge):

- (a) If no claims have been received against the estate within six months of the date of sequestration, the debtor is automatically rehabilitated.**
- (b) Once a period of 10 years has lapsed after the sequestration of his estate, the debtor may apply to court for an order of rehabilitation.**
- (c) If the Master has approved a plan of distribution to repay all of the claims against the estate as well as all costs in full, the debtor may apply to the court for rehabilitation.**

(d) None of the above are correct.

Question 1.2

Choose the incorrect statement/s in relation to the recognition of a foreign officeholder:

- (i) The foreign officeholder must apply to the Magistrate's Court for recognition.**
- (ii) In the court order the court will include provisions to protect local creditors.**
- (iii) The court order must be published in the Government Gazette.**
- (iv) The foreign officeholder will only be required to provide appropriate security, and nothing more.**

Choose the correct answer:

- (a) Option (ii).**

- (b) Options (ii) and (iv).**
- (c) Option (iii).**

(d) Options (i) and (iv).

Question 1.3

Choose the correct statement:

- (a) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds immovable property as security for his claim is required to give written notice of this fact before the first meeting of creditors to the Master and to the trustee.**
- (b) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds movable property as security for his claim is required to give written notice of this fact before the first meeting of creditors to the Master and to the trustee.**
- (c) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds immovable property as security for his claim is required to give written notice of this fact before the second meeting of creditors to the Master and to the trustee.**
- (d) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds movable property as security for his claim is required to give written notice of this fact before the second meeting of creditors to the Master and to the trustee.**

Question 1.4

Which of the following factors may persuade the court in exercising its discretion whether to recognise foreign proceedings:

- (i) That it is equitable and convenient if the insolvent is resident outside of South Africa.**
- (ii) Assets in South Africa are not a prerequisite for recognition.**
- (iii) Preference for single proceeding directed by court of domicile.**
- (iv) If the order was granted by the court of domicile and the insolvent has movables only it is a mere formality, but for immovable property the court will apply its discretion.**

Choose the correct answer:

- (a) Option (i).
- (b) Options (ii) and (iii).
- (c) Options (i), (ii) and (iii).
- (d) All of the above.**

Question 1.5

In March 2022 Company XYZ was placed in liquidation. The liquidator of Company XYZ became aware of the fact that Company XYZ disposed of property worth ZAR 22,000 to Company ABC for an amount of ZAR 15,000 during October 2021. Directly after the disposition, Company XYZ's liabilities exceeded its assets by ZAR 5,000. If the disposition is set aside -

- (a) **Company ABC will be required to return ZAR 22,000 to the liquidator of Company XYZ.**
- (b) **Company ABC will be required to return ZAR 15,000 to the liquidator of Company XYZ.**
- (c) Company ABC will be required to return ZAR 5,000 to the liquidator of Company XYZ.**
- (d) **Company ABC will be required to return ZAR 7,000 to the liquidator of Company XYZ.**

Question 1.6

Choose the correct statement:

- (a) **In respect of a general notarial bond over the movable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.**
- (b) **In respect of a general notarial bond over the immovable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.**
- (c) In respect of a special notarial bond over the movable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in**

terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.

(d) In respect of a special notarial bond over the immovable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.

Question 1.7

A cause of action established by a foreign judgment can be enforced if certain common law requirements are met. Which of the following is not such a common law requirement:

(a) The foreign court must have had international competence as determined by South African law.

(b) The enforcement of the judgment must not be contrary to South African public policy or the concept of natural justice, but the judgment need not be final and conclusive.

(c) The enforcement of the judgment must not be contrary to South African public policy or the concept of natural justice.

(d) The judgment must not have been obtained fraudulently.

Question 1.8

Cluck Company Limited (the company) wishes to obtain funding in order to expand its poultry and egg enterprises. As part of the security package negotiated with the lender, the lender requires that the company provide its tractors and incubators to it as security. The company makes use of the tractors and incubators on a daily basis. This form of security required is a:

(a) Pledge.

(b) Hypothec.

(c) Cession in security of a debt (*in securitatem debiti*).

(d) Special notarial bond.

Question 1.9

Which of the following is / are incorrect in relation to the recognition of foreign judgments:

(a) All foreign judgments are enforced in terms of the Enforcement of Foreign Civil Judgments Act 32 of 1988.

(b) All foreign judgments are enforced in terms of the common law.

(c) Foreign judgments are directly enforceable in South Africa.

(d) All of the above.

Question 1.10

In accordance with the South African common law dealing with cross-border insolvency, the assets of an insolvent are governed as follows:

(a) Movable property is governed by the law of the natural person's domicile (*lex domicilii*).

(b) Movable property is governed by the law of the natural person's domicile (*lex situs*).

(c) Immovable property is governed by the law of the place where the immovable property is situated (*lex domicilii*).

(d) Immovable property is governed by the law of law of the natural person's domicile (*lex situs*).

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks] [3]

List any three proceedings that are excluded from the moratorium under business rescue proceedings imposed by section 133 of the Companies Act 71 of 2008.

[Under Section 133 of the Companies Act 71 of 2008, which governs business rescue proceedings in South Africa, the following proceedings are excluded from the moratorium under business rescue proceedings;

- 1. Criminal proceedings against the debtor's company or any of the directors or its officers*
- 2. Proceedings against the company by a regulatory authority in the execution of its duties*
- 3. Proceedings concerning any property or rights over which the company exercises the powers of a trustee*

Question 2.2 [maximum 5 marks] [5]

Rearrange the following costs/claims in the free residue account in order of preference:

- (a) Costs of sequestration;**
- (b) Funeral expenses;**
- (c) Income tax;**
- (d) Claim secured by a general bond;**
- (e) Employee's claims.**

[Free residue is defined as the portion of the estate which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention"

- 1. (b) Funeral expenses;**
- 2. (a) Costs of sequestration**
- 3. (e) Employee's claims.**
- 4. (c) Income tax;**
- 5. (d) Claim secured by a general bond;]**

Question 2.3 [maximum 2 marks] [1]

Below is an extract from the business rescue plan of Mapochs Mine Proprietary Limited (Mapochs), a South African mining company that was placed under business rescue on 20 April 2015.

EVENT	DATE
Board Resolution to commence Business Rescue filed at the CIPC	20 April 2015
BRPs appointed	21 April 2015
First Employees' Meeting	28 April 2015
First Creditors' Meeting	6 May 2015
First Creditors' Committee Meeting	26 May 2015
First Employees' Committee Meeting	7 October 2015
Second Creditors' Committee Meeting	15 October 2015
Third Creditors' Committee Meeting	10 November 2015
Business Rescue Plan published	20 November 2015
Meeting to consider the Business Rescue Plan (in terms of section 151 of the Companies Act)	30 November 2015

With reference to the above extract, how and by whom would the joint business rescue practitioners (referred to in the extract above as "BRPs") have been appointed?

[From the extract above, the Board of Mapochs Mine Proprietary Limited (Mapochs) by a special resolution commenced a voluntary business rescue on 20 April 2015 and appointed the qualified practitioners on 21st April 2015. The special resolution in placing the company in ? (sentence incomplete)

In accordance with the Companies Act, 2008, within 5 days after filing the resolution to commence voluntary business rescue with the CIPC, the company [1] must appoint qualified the business rescue practitioner(s) and must consent in writing to such appointment. From the extract, the joint practitioner were appointed on 21 April 2015 by the Board.]

- *In the board resolution placing the company under business rescue.*

QUESTION 3 (essay-type question) [15 marks] [8]

Chances are that when an insolvent company is placed under liquidation proceedings it is party to an executory contract. Write an essay on the treatment of executory contracts under liquidation proceedings, including any exceptions to the general rule. Your essay should include a brief discussion of any exceptions that may apply.

[Firstly, when an insolvent company undergoes liquidation proceedings, it is often the case that the company is party to executory contracts. An executory contract is a legally binding agreement where both parties have ongoing obligations yet to be fulfilled. Executory contracts are agreements in which both parties have yet to fulfil their obligations, and they hold significant value and implications for the company and its stakeholders. The treatment of executory contracts in such situations can be complex, as it involves balancing the interests of the insolvent company, its creditors, and the overall efficiency of the liquidation process. "In the common law principles and statutory exceptions in terms of the Insolvency Act applicable to executory contracts also apply to the winding-up of a company unable to pay its debts"¹. The following are the general rule for the treatment of executory contracts in liquidation proceedings and highlights of these important exceptions to this rule.

General Treatment of Executory Contracts:

In general, when a company is placed under liquidation proceedings, executory contracts are subject to scrutiny and potential termination. The primary objective of liquidation is to distribute the company's assets among its creditors and stakeholders fairly and equitably. Consequently, the treatment of executory contracts seeks to strike a balance between the interests of the liquidation process and those of the contracting parties.

Termination and Discharge:

In most cases, insolvent companies are authorized to terminate executory contracts during liquidation. [1]The liquidator, acting in the best interest of the creditors, seeks to minimize ongoing financial obligations and free up as many resources for distribution. Termination typically occurs when the liquidator determines that the contract is overly burdensome, unprofitable, or otherwise unfavourable to the estate. However, it is worth noting that, the termination of an executory contract does not automatically discharge the debtor's obligations. In some jurisdictions, the termination merely results in a pre-liquidation claim against the debtor's estate. The claim is subject to priority rules and will be addressed in the liquidation process, often with reduced payment due to the company's insolvency.

Assumption:

¹ Foundation Certificate in South African Insolvency Law, "Executory Contract", INSOL pp 38

While termination is a common outcome, certain executory contracts may be assumed or assigned to a third party during liquidation. The decision to assume or assign a contract is typically driven by the potential benefits it may provide to the estate or its creditors. Assumption^[1] occurs when the liquidator decides to continue the performance of an executory contract. ^[1]By assuming the contract, the liquidator steps into the fiduciary duty of the insolvent company, ^[1]fulfilling its obligations and preserving the benefits for the estate. In such cases, the counterparty is typically entitled to receive ongoing payments as originally agreed.

- *This general rule is set out in common-law*
- *The liquidator may generally elect whether to abide by, or reject the contract*
- *The liquidator may only exercise this election right after obtaining the instructions of the general body of creditors (as he must act in the best interest of the concursus creditorum)*
- *If the liquidator elects to abide by the contract, he 'steps into the shoes of the insolvent' and is entitled to receive any performance owed to the insolvent and is bound to render any reciprocal performance due to the other party*
- *Should the liquidator elect to reject the contract, the other party may not claim specific performance and may only rely on remedies for breach of contract (being damages and cancellation).*
- *Once the liquidator has exercised this election right he cannot change his mind*

Assignment **[this does not take place]**, on the other hand, involves transferring the rights and obligations of an executory contract to a third party. This option is often pursued when an interested buyer or investor is willing to assume the contract, ensuring its continuity and potentially benefiting both the third party and the estate.

Exceptions to the General Rule:

While the general rule revolves around termination, several exceptions exist that can impact the treatment of executory contracts under liquidation proceedings. Some notable exceptions include:

Critical or essential Contracts: Contracts that are essential for the continuation of operation of the debtor's company, such as lease agreements for crucial premises or agreements for the supply of key goods or services, may be preserved. These contracts may be assumed or assigned to maintain the viability of the business or to enhance its value during the liquidation process.

Employment Contract or Collective Bargaining Agreements:

Executory contracts related to collective bargaining agreements, such as labor contracts, are treated with exception from the general pool of contracts. Technically, all employment contracts are suspended when the debtor's company is put in liquidation. However, in treating such contracts, the liquidator may elect to save the contract of service and when a new owner takes over after the sales, such can be transferred to the new owner. According to Insolvency law, all employment contracts are terminated 45 days from the appointment of the liquidator or trustee. In some jurisdictions, rejecting these contracts may require compliance with specific labor

laws, including procedures for negotiation, mediation, or arbitration. Also, if the Liquidator chooses to use some of the staff during the Liquidation process, these employees contracts are treated as part of executory contracts. [1]

Sale of movable property: Here if the liquidator notices the estate of the purchaser of movable property prior to the liquidation purchase an movable property before he pays the purchase price [1], but after, he takes custody of the property, the seller may reclaim the property if written notice to the Liquidator or trustee or the Master is done 10days of delivery, then the claim is affected.

Sale of immovable property: If the estate of the seller is sequestrated or liquidated before transfer of the immovable property, the Alienation of Law Act 68 of 1981 grants some protection to the buyer or purchaser. Here when certain proceedings are met, the Liquidator or trustee must authorize transfer of ownership to the purchaser and as such the trustee or liquidator does not have a common law election rights. The requirement to be met are that the purchase price is to be paid in two or more installments, [1]property must be duly registered at the Deeds Office and payment of transfer cost and certain cost must be made accordingly. The remedy for a party to exercise its right it to seek direction from courts to either cancel the contract or apply for restitution.

Lease agreements : [1]These are not automatically cancelled or terminated. When the estate of leases of movable or immovable property are in the process of liquidation, the liquidator may immediately cancel the lease by means of sending a written notice to the other party. The lessor has the concurrent claim against the estate for damages sustained as a result of the cancellation, but also obtains a hypothec over immovable property brought onto the premises for any rent in arrers due before process commences.

Statutory Exceptions: Some jurisdictions have specific laws that provide protections or limitations concerning the termination or assumption of certain types of executory contracts. These laws may be designed to safeguard particular industries, public services, or contracts involving government entities. For instance the treatment of sale of immovable property, the Alienation of Law Act 68 of 1981 grants some protection to the buyer or purchaser. It must be noted that when the Liquidator meets some of these requirements, authorization of transfer for ownership must be effected since under common law provisions, the Liquidator or trustee may not have election rights.

In conclusion, the treatment of executory contracts during liquidation proceedings is a complex matter that requires careful analysis and balancing of interests. While the general rule tends to favor termination, exceptions exist to safeguard critical contracts, intellectual property licenses, and contracts governed by specific statutory provisions. The treatment of executory contracts in liquidation proceedings is crucial for all stakeholders involved, ensuring fairness and maximizing the value derived from the insolvent company's assets.]

Parts of this answer are completely incorrect and does not pertain to South African insolvency law at all.

QUESTION 4 (fact-based application-type question) [15 marks] [13] Excellent

The directors of ABC (Pty) Ltd (the company) foresee the reasonable likelihood that the company will, within the next six months, be unable to pay its debts as they become due in the ordinary course of business, and will most likely reach a situation where its liabilities exceed its assets. The directors therefore elect to initiate business rescue proceedings and adopt the relevant board resolution, which is subsequently filed with the Companies and Intellectual Property Commission (CIPC). Donovan Jones is appointed as the company's business rescue practitioner. Various parties are affected by the company's decision. The following parties approach you as a collective seeking legal advice:

- (a) Charlie White, a successful businessman, lent the company ZAR 500 000 which the company failed to repay. He initiated proceedings against the company in the High Court to reclaim his money, and at the time that the company was placed under business rescue proceedings, the court proceedings were almost finalised. Charlie is unsure what the effect of business rescue will be on the money owed to him.**
- (b) Rowena Gonzales has worked for the company for the last five years and she is concerned about the effect that business rescue will have on her employment contract.**
- (c) Mario Miles leases office space to the company and he is concerned about the effect of the business rescue proceedings on the lease agreement with the company.**
- (d) Trudy Pather is a shareholder of the company and is unsure whether she will lose her shareholding now that the company has been placed under business rescue.**
- (e) Henry Jean is a director of the company and is unsure as to his position and role now that business rescue proceedings have commenced.**

Write a single legal memorandum to all the above-mentioned persons wherein you explain their legal rights, and / or the potential outcome of their respective situations, taking into consideration that the company has been placed under business rescue. The memorandum should further make mention of any potential remedies at their disposal; any practical implications of their respective situations; and also include any considerations in respect of the business rescue plan that the business rescue practitioner needs to take cognisance of.

[DATE: 30 MAY 2023

TO: Charlie White, Rowena Gonzales, Mario Miles, Trudy Pather, Henry Jean

MEMORANDUM

This response is to provide you with clarity and explain your legal rights, and / or the potential outcome in respect of your peculiar situation around the business rescue proceedings initiated by ABC (Pty) Ltd (the "Company"). Do acknowledge thereof that by acting expressly on this memorandum is to guide you and provide you with a general understanding of the potential outcomes and legal rights. It is advisable to seek independent legal counsel to assess your specific circumstances.

(a) Charlie White - As a creditor, your ZAR 500,000 loan remains valid and will be subject to the business rescue proceedings. Once the Company is placed under business rescue, a moratorium on legal proceedings is automatically instituted. This implies that your pending court proceedings will be suspended until the business rescue process is concluded. You can follow up with the business rescue practitioner, Donovan Jones, to file the necessary proof of claim and take part in the various creditor meeting to exercise your rights in voting among others.

Now, the purpose of business rescue is to rehabilitate the financially distressed company and preserve its assets while ensuring it has consolidated all its liabilities for a smooth process. The business rescue practitioner, Donovan Jones, will assume control over the Company's affairs. He will review the Company's financial position and develop a business rescue plan aimed at rescuing the Company or achieving a better return for creditors compared to liquidation.

*During the business rescue proceedings, you will have the opportunity to submit your claim to the business rescue practitioner. **Claim to be proved at first meeting of creditors** Your claim will be included in the list of creditors and considered during the development of the business rescue plan. The plan may propose various alternatives, including debt restructuring, asset sales, or even partial repayment to creditors. The plan requires approval by the affected other creditors to ensure fair and equitable distribution.*

It is important to note that the outcome of the business rescue process may impact your claim and timing of repayment. However, it offers a better chance of recovering your debt compared to liquidation. You should actively engage with the, Donovan Jones, business rescue practitioner, and ensure you monitor proceedings which also requires your voting rights as well as passing of resolutions.

(b) Rowena Gonzales - Your employment contract remains in force during the business rescue proceedings. This will be treated by Donovan Jones as executory contracts. You should know that executory contract is a legally binding agreement where both parties have ongoing obligations yet to be fulfilled. Executory contracts are agreements in which both parties have yet to fulfil their obligations, and they hold significant value and implications for the company and its stakeholders.

The business rescue process is primarily aimed at rescuing the Company as a going concern, which involves preserving jobs wherever possible. Here, Donovan Jones will conduct assessment of the Company's financial position, operations, and employment structure. He may provide some measures to stabilize the Company's finances, such as cost-cutting measures, renegotiation of contracts, or redundancies. However, any

proposed changes to your employment contract must in accordance with the labour laws in South Africa.

In most cases, the business rescue practitioner will aim to retain employees and continue the Company's operations. However, if retrenchments or other employment-related changes are necessary, the Donovan will follow the procedures prescribed by labour laws, including consulting with employee representatives or the labour union, review the labour agreements (if any) and offering severance packages where applicable. You should closely communicate with the business rescue practitioner, Donovan and any of the labour leaders or union leaders if any, or representatives to ensure that your rights and interests are well protected throughout the process. If you believe that your employment rights are being violated, you may seek advice from a labour law experts or the relevant labour authorities.

*(c) Mario Miles - This is basically a lease Agreement issue. As a lessor of office space to the Company, your lease agreement will be affected by the business rescue proceedings. The business rescue practitioner has the power to decide whether to continue or terminate the lease agreement. However, ones Donovan recognises your office space is very import to the running of the proceedings, he will treat this as part of executory contract. That is, if he considers the leased space is essential, then he may take a decision whether or not to continue the lease agreement and negotiate revised terms, including rental payment schedules. However, if the premises are no longer required or if the financial circumstances do not allow for its continuation, the Donovan may terminate the lease agreement. You may also take the steps and write to Donovan and assist where necessary to ensure your interest are protected in the process. Note that even though the legislators have recently published some amendments to the Companies Act 2008, to deal with landlord's claim as post-commencement, you should note that the current situation allow Donovan to use his discretion to decide to treat your lease as executory contract. Ensure you keep yourself updated with all the proceedings and communication channels with the Dovovan. Case law **(Cloete Murray, Kythera, BP Southern Africa)***

(d) Trudy Pather - You are a shareholder of the Company, your shareholding remains intact despite the business rescue proceedings has been initiated. You should be mindful that where Donovan observes there is no reasonable prospect for the business to be a going concern, he must elect to put the company in liquidation. Note that, in the case of business rescue, your shares are not varied unless otherwise in assessing the financials of the business, he identifies some unpaid shares or some transfer of shares without evidence of funds in the books of the business, he has must take steps and the shareholders. However, the value of your shares may be significantly affected by the outcome of the business rescue process if it appears there is a need to constitute the share structure with additional capital.

Donovan in preparing the restructuring plan may propose some measures to restructure the Company's capital, including debt-to-equity conversions, share issuances, or the sale of assets. These measures aim to reduce the Company's liabilities

and improve its financial position. As a shareholder, you will have the right to vote on the proposed business rescue plan.

If the business rescue plan is approved by the creditors, it will be implemented. The plan's implementation may result in dilution or loss of value in your shareholding which will affect the shareholding structure. However, it is important to note that the business rescue process offers a higher chance of preserving the Company for better returns for some value for shareholders compared to immediate liquidation.

You should actively take part, if approved by creditors, in the business rescue proceedings, attend meetings where necessary, and consider seeking independent financial and legal advice to protect your rights and make informed decisions regarding your shareholding. In some cases, your directors will need to assist the business rescue practitioner with some important information and it's your duty to also ensure that so that they are not hostile to the process. Note also that Donovan now holds the fiduciary duty and should he find any of the directors complicit in the discharge of their duties, he will bring an action against them in the interest of all stakeholders.

(e) Henry Jean - As a director of the Company, your position and role will undergo changes during the business rescue proceedings. The Donovan now holds fiduciary duty of the company. That means, as a business practitioner, he assumes control over the affairs of the company and takes on the primary responsibility for managing and implementing the business rescue process.

During the business rescue proceedings, you will need to cooperate with the business rescue practitioner and provide any information and assistance where necessary. He may involve you in decision-making processes if it is deemed fit and beneficial to the Company's successful rescue. However, your authority as a director may be limited or subject to the practitioner's approval.

It is crucial to familiarize yourself with your obligations and duties as a director under the Companies Act and cooperate fully with the business rescue practitioner. Failure to do so may lead to potential personal liability or other legal consequences. Do ensure that a much as possible. If Donovan in the process is of the opinion that there are reasonable grounds to believe the company is no longer insolvent, he is required by law to inform the courts, creditors, and other stakeholders to file a notice to terminate the business rescue if indeed it was a voluntary rescue or file an order to the court if it's a compulsory rescue. In all, as a director, you must ensure you monitor the proceedings accordingly.

In conclusion, the business rescue process introduces various uncertainties and potential outcomes for all parties involved. It is recommended that you closely monitor the progress of the business rescue proceedings, actively engage with the business rescue practitioner, and seek independent legal advice tailored to your specific circumstances.

Should you require further assistance or clarification, please do not hesitate to contact our law firm. We are here to guide and support you through this challenging period. Thank you.

*Emmanuel Hanson
Signed]*

*** End of Assessment ***