



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5B

BRITISH VIRGIN ISLANDS (BVI)

This is the **summative (formal) assessment** for **Module 5B** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 5B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment5B]**. An example would be something along the following lines: 202223-336.assessment5B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 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 **8 pages**.

ANSWER ALL THE QUESTIONS

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

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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 three (3) months of the date of trial.
- (c) Within six (6) months of the date of judgment.
- (d) Within six (6) months of the date of trial.

Question 1.7

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

- (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]

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

Secured creditors can value the asset(s) over which they hold security and appoint a receiver over the secured asset. They can then claim in the liquidation as an unsecured creditor for any shortfall. Alternatively they can participate in the insolvency process for the full value of their claim but are then deemed to have surrendered their security for the benefit of all creditors and they become an unsecured creditor.

Commented [JW2]: .5 mark

Generally not affected by insolvency law in BVI. See section 15 company creditors arrangements, section 175 liquidations, section 338 bankruptcy, also section 211 and receiverships.

Question 2.2 [maximum 2 marks]

What are the functions and powers of a Creditors' Committee under the Insolvency Act 2003?

The function of a Creditors' Committee include:

1. Consulting with the liquidator about the liquidation;
2. Considering liquidators' reports; and
3. Generally assisting the liquidator to discharge his or her functions.

The powers of a Creditors' Committee include:

1. Approving liquidators' remuneration;
2. Compelling a liquidator to provide the committee with such reports and information as it may reasonably require;
3. Compelling the liquidator to appear before it to provide the committee with such information and explanations as it may reasonably require relating to the insolvency of the company; and
4. Calling a meeting of creditors.

Commented [JW3]: 2 marks

Question 2.3 [maximum 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?

In accordance with Part XIX of the Insolvency Act (the "Act") the BVI Court has the power to recognise foreign insolvency proceedings occurring in certain designated countries and to make orders providing assistance to them. When making such orders the Court has the power to apply either BVI law or the law of the foreign insolvency proceeding.

Such orders that can be made by the BVI Court include, by way of example, requiring any person to deliver up property of the debtor, or the proceeds from sale of such property, and restraining the commencement or continuation of any proceedings against either the debtor or the debtor's property.

Commented [JW4]: .5 mark - 8 orders possible under section 467(3) IA2003.

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.

In accordance with section 8(1)(c)(ii) of the Insolvency Act (the "Act") a company will be considered insolvent if it meets the balance sheet insolvency test. This means that the Court is satisfied that the liabilities of the company exceed the value of its assets. Section 10 of the Act addresses the meaning of liability for these purposes, which is construed broadly. Section 10(1) of the Act defines liability as being a liability under statute, in contract, tort or bailment or a breach of trust arising out of an obligation to make restitution. In accordance with section 10(2) a liability can be a future liability, it can be contingent or it can be certain. It can also be either a fixed or liquidated liability.

A company will also be considered to be insolvent if it fails to comply with a statutory demand within 21 days of service, unless the statutory demand is set aside. This procedure is in accordance with sections 156 and 157 of the Act.

A company which fails to satisfy a judgment, decree or order of the BVI Court, in whole or in part, which has been made in favour of a creditor of the company will also be considered insolvent.

Outside of the Act the Court also has a wide discretion to find a company is insolvent if it is unable to pay its debts as it falls due.

As can be seen from all of the above, the BVI Court can apply both the balance sheet and cash flow tests for insolvency.

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

Question 3.1 [maximum 5 marks]

Commented [JW6]: 4.5 marks

With reference to the relevant legislation, who can be appointed as a voluntary liquidator in the BVI after 1 January 2023?

Regulation 19 - also states is not disqualified and imposes residency requirement.

The BVI Business Companies (Amendment) Act 2022 and the BVI Business Companies (Amendment) Regulations 2022 (the "Regulations") make changes to who can be appointed as a voluntary liquidator ("VL") from 1 January 2023.

Regulation 6(a)1A of the Regulations states that in order for an individual to be considered qualified for appointment as a voluntary liquidator of a company he or she:

1. Must have liquidation experience of not less than two years;
2. Must have professional competence to liquidate the company in question;
3. Must demonstrate that he/she holds an insolvency practitioner's licence, has an appropriate professional qualification (e.g. law/accountancy) and has experience of providing legal and/or financial advice to companies in the financial service sector; and
4. Is fully up to date with all relevant financial serviced legislation connected to the business of the company to be liquidated.

Question 3.2 [maximum 5 marks]

Commented [JW7]: 5 marks

It is possible for the appointment of an overseas insolvency practitioner in relation to a BVI company.

Answer the two questions below.

(a) in what circumstances might a creditor consider the appointment of an overseas insolvency practitioner; and

(b) what is the process for such proposed appointment?

A creditor is most likely to consider the appointment of an overseas insolvency practitioner ("OIP") when a company is incorporated in the BVI but there are significant assets in another jurisdiction. Creditors will likely consider this route worthwhile where local expertise is required in that foreign jurisdiction and/or there would be significant cost savings arising from such an appointment.

In accordance with section 483(a) of the Insolvency Act 2003 (as Amended) ("the Act"), where it is intended that an OIP be appointed by the Court, or any other person, the Court or that person must be satisfied that:

- (i) he or she has sufficient qualifications and experience to act in the insolvency proceeding in respect of which the appointment is made;
- (ii) he or she has given his or her written consent to act in the prescribed form;
- (iii) he or she is not disqualified from holding a licence under section 477 of the Act;
- (iv) 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) of the Act;
- (v) there is in force such security for the proper performance of his or her functions as may be specified in the Regulations.

In accordance with section 483(b) of the Act, written notice of the appointment must also be given to the Financial Services Commission ("FSC"). In practice this usually takes place by writing a letter to the FSC setting out the OIP's relevant qualifications and experience and seeking FSC approval for their appointment. For appointments in accordance with section 159(1) and 162 and 163 of the Act, an application must also be made to the Court for appointment of the OIP. The application for appointment of the liquidator must be determined within six months of the filing of the application (section 168(1) of the Act), unless an extension (of up to three months) is granted by the Court (see section 168(2) of the Act).

For appointments of an OIP in accordance with section 159(3) of the Act, the members of the Company to be wound up can appoint an OIP by way of a qualifying resolution (subject to being satisfied of the conditions set out above). A resolution is a "qualifying resolution" if it is passed at a properly constituted meeting of the company by a majority of 75%, or if a higher majority is required by the memorandum or articles, by that higher majority, of the votes of those members who are present at the meeting and entitled to vote on the resolution (section 159(3) of the Act). However, members of a foreign company may not appoint an OIP under section 159 (see section 159(4) of the Act, nor can a regulated company unless it gives notice in writing to the FSC.

Question 3.3 [maximum 5 marks]

Commented [JW8]: 5 marks

With reference to the relevant legislation, detail the different types of liquidation in the BVI, along with the procedures required for the commencement of each type.

Voluntary Liquidation (Solvent)

A solvent voluntary liquidation is governed by Part XII of the Business Companies Act 2004 (the "BCA"), not the Insolvency Act 2003 (as Amended) (the "Act") (other than a cross reference for the purpose of some definitions). This type of liquidation is most commonly used to dissolve companies which are no longer required as the business of the company is not continuing. A company can only be dissolved voluntarily in this manner if it has no liabilities or if its able to pay all debts as they fall due and the liabilities are equal to, or less than, the assets of the company.

Section 198(1)(a) of the BCA provides that the directors of the company must make a declaration of solvency in the approved form stating that, in their opinion, the company is and will continue to be able to discharge, pay or provide for its debts as they fall due and the value of the company's assets equals or exceeds its liabilities.

They must also approve a liquidation plan specifying (section 198(1)(b) of the Act):

- (i) the reasons for the liquidation of the company;
- (ii) their estimate of the time required to liquidate the company;
- (iii) whether the liquidator is authorised to carry on the business of the company if he or she determines that to do so would be necessary or in the best interests of the creditors or members of the company;
- (iv) the name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator; and
- (v) whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his or her actions or transactions.

A voluntary liquidator may then be appointed either by a resolution of the directors or of the members (section 199(1) of the BCA), although for a regulated company, such a resolution shall not be passed unless the FSC has given its prior written consent to the company being put into voluntary liquidation and approved the appointment of the individual proposed as voluntary liquidator (section 200(3) of the BCA).

The liquidation commences on the date that a notice of appointment is filed with the Registrar (section 202 of the BCA).

Insolvent Liquidation (Voluntary)

This type of liquidation can be commenced by the members of a BVI company by passing a qualifying resolution to appoint a liquidator in accordance with section 159(3) of the Act.

A resolution is a "qualifying resolution" if it is passed at a properly constituted meeting of the company by a majority of 75%, or if a higher majority is required by the memorandum or articles, by that higher majority, of the votes of those members who are present at the meeting and entitled to vote on the resolution (section 159(3) of the Act).

In accordance with section 160 of the Act, an insolvent liquidation commenced voluntarily commences as at the date that the liquidator is appointed in accordance with section 159. For this type of liquidation, therefore, the liquidation commences the date that the qualifying resolution is passed.

Insolvent Liquidation (Court appointed)

The third type of liquidation is when the Court appoints a liquidator (or the Official Receiver) to liquidate a BVI company (Section 162 of the Act) or a foreign company (section 163 of the Act). An application can be made by:

- (i) the company;
- (ii) a creditor;
- (iii) a member;
- (iv) the supervisor of a creditors' arrangement in respect of the company;
- (v) the Commission;
- (vi) the International Tax Authority; or
- (vii) the Attorney General.

The Court, upon the application of any of the above, may only appoint an eligible insolvency practitioner or the Official Receiver if (see section 162(1) of the Act):

- (i) if the company is insolvent;
- (ii) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or
- (iii) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

In accordance with section 168(1) an application must be determined within six months of it being filed (section 168(1) of the Act), unless, in its discretion, the Court grants an extension of up to three months (section 168(2) of the Act).

In accordance with section 160 of the Act, this type of liquidation commences on the date which the Court appoints a liquidator.

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

Question 4.1 [maximum 6 marks]

Edale Limited, a company incorporated in England, and Swift Limited, a company incorporated in the BVI, entered into a two year loan agreement for the purchase of a property on Mosquito Island in the BVI. Under the terms of the loan agreement, Edale Limited transferred USD 10,000,000 to Swift Limited who then purchased the property. Swift Limited only repaid four months' instalments under the agreement and, as per the terms of the agreement, Edale Limited demanded immediate repayment in full.

Providing reasons, with particular reference to the Insolvency Act, what are the options open to Edale Limited against Swift Limited?

Edale Limited ("Edale") first and foremost would want to try to ascertain whether or not Swift Limited ("Swift") is solvent. It is known that Swift has assets to the value of the debt, in the form of the property, but there may be liabilities which exceed the value of this and it appears that Edale did not

Commented [JW9]: 3 marks

First issues to resolve 1. Is it a secured or unsecured loan and 2. was the 'demand' already made a statutory demand? And if so the consequences of that which you have covered? Then options from there. If secured and E wants appoints a receiver or administrative receiver (if debenture) needs to check if registered charge on the Register of Charges and/or registered at the BVI Land Registry. If unsecured and liquidation option then it's a class action & concept of pari passu would mean % recovery of debt c.f. if secured creditor then E's rights outside of any liquidation and has priority.

take any security over the property. If Swift is solvent then Edale would be best served by seeking judgment against Swift utilising the law governing the loan agreement. If this is not the BVI then Edale can seek recognition of such a judgment in the BVI utilising the Reciprocal Enforcement of Judgments Act, 1922, or, if the judgment is not governed by the law of a country designated within that act, under the common law.

If Swift is insolvent then Edale can issue a statutory demand in accordance with section 155 of the Insolvency Act 2003 (as Amended) (the "Act"). A statutory demand requires that Swift must pay, secure or compound the debt within 21 days, failing which it is presumed insolvent and an application can be made to the Court to wind it up.

Once a liquidation is commenced, there are no options open to Edale. Edale must submit a claim in the liquidation setting out the debt claimed and if there are sufficient assets to make distributions to the unsecured creditors Edale will be paid out pari passu.

If Edale had obtained a security over the property, which it appears they failed to do, they could have appointed a receiver to sell the asset and pay the debt.

Question 4.2 [maximum 9 marks]

In April 2022 ABC Limited, a company incorporated in England, was awarded a judgment in the English High Court against DEF Limited, also incorporated in England, for GBP 2 million. In an attempt to enforce its judgment, ABC Limited has discovered that DEF Limited has no realisable assets but is the 100% owner of XYZ Limited (a company incorporated in the BVI) which owns a number of unencumbered properties in BVI but is struck off of the Register, although not yet dissolved. The sole shareholder and sole director of DEF Limited has recently died.

Your principal has been asked to advise ABC Limited of its options to recover the judgment debt owed by DEF Limited. Prepare a memorandum for your principal, stating what options ABC Limited should be advised to consider in order to enforce its judgment debt?

Memorandum of Advice

This is intended to be a short memorandum of advice for ABC Limited (the "Creditor") in relation to a GBP 2 million debt owed by DEF Limited (the "Debtor"). This is only intended to be an overview of possible action which the Creditor may take as at this time limited facts have been provided.

We have been advised that the Creditor was awarded a judgment in the English High Court against the Debtor (the "Judgment") and that the Creditor now wishes to enforce against assets held by the Debtor in the BVI, specifically to recover properties owned by XYZ Limited of which the Debtor is the sole shareholder. XYZ Limited is struck off but not yet dissolved. Assuming that both the Debtor and XYZ Limited are solvent, the best option would be to seek recognition of the Judgment in the BVI with a view to taking enforcement action against the shares in XYZ Limited and/or directly against the properties held by XYZ Limited.

The Judgment can be recognised and enforced in the BVI but the enforcement options could not be utilised against XYZ Limited whilst it is struck off. As such the Creditor will need to apply to reinstate the XYZ Limited and will have to pay the XYZ Limited's filings up to date, any outstanding licence fees

Commented [JW10]: 4.5 marks

Discussion was required on the possible options to be considered by ABC:

1. Enforcement of a judgment under Reciprocal Enforcement of Foreign Judgments Act 1922 - the 8 conditions under the Act and issue with the 12 months and would an extension be required.
2. Appointment of a liquidator in DEF in UK and recognition in BVI or the appointment of a receiver over shares of DEF who could then appoint a new director to deal with restoration of XYZ and assets; and
3. Restoration to the register of XYZ - was it just struck off or was it to be dissolved under the new law from 1/1/23 - any previously company struck off as at 30 June 2023 will be automatically dissolved on 1 July 2023. An application to the court would be required to restore XYZ.
Could ABC maybe apply as an interested party to restore XYZ and then once restored appoint a receiver over its shares.

and any penalties imposed by the registry. This could be done in tandem with the application to recognise the Judgment or before. The Creditor may be best served by doing this first in order to demonstrate to the BVI court, upon the application for recognition, that there are assets in the BVI, however this would then put the Debtor on notice and they may seek to dissipate the assets unless the Court restrains such action. In relation to action by the Debtor, although it is noted that the sole shareholder and director is deceased, it is assumed that the executor of the deceased's estate will appoint a new director and take control of the Debtor company pending the conclusion of probate.

Primarily the claim for recognition BVI would be governed by the Reciprocal Enforcement of Judgments Act 1922 (the "1922 Act") as this act extends to Judgments of the High Court of England and Wales (see section 3(1)). The date of the Judgment is unknown but assuming it was recently obtained, it is advisable to move to registration in the BVI swiftly. A foreign judgment is only registrable within 12 months of the date of issue, thereafter the Creditor would have to rely on the Court's discretion to permit a longer period of time for registration and must demonstrate that it is just and convenient to grant such an extension of time (section 3(1) of the 1922 Act). If it was known that there were assets in the BVI within 12 months of the date of Judgment and the Judgment was not registered, the Court will likely want to understand why steps for registration did not take place within the 12 month period.

Assuming the Judgment is registered in the BVI, from the date that it is it shall be treated as having the same force and effect as a Judgment handed down in the BVI, with all of the same enforcement options (as addressed below).

An application to have the Judgment registered may be made without notice to the Debtor but must be supported by affidavit evidence exhibiting the Judgment, or a verified, certified or otherwise duly authenticated copy of it, it must specify the amount of interest (if any) which under the law of England and Wales has become due under the Judgment up to the time of the application, it must state the name, trade or business and the usual or last known place of business of the Creditor and the Debtor and it must state that, to the best of the information or belief of the deponent, that the Creditor is entitled to enforce the Judgment which is presently outstanding (CPR 72.2).

The Creditor should be aware that the BVI Court may order the Creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration (CPR 72.3).

There are certain circumstances in which the Court will not register a judgment from England and Wales (section 3(2) of the 1922 Act which include:

1. The High Court of England and Wales acted without jurisdiction;
2. The Debtor was neither carrying on business nor ordinarily resident in England and Wales and did not submit to the jurisdiction of the High Court;
3. The Judgment was obtained by fraud;
4. There is an appeal pending in England and Wales or a genuine intention by the Debtor to appeal; or
5. There are public policy reasons such that the underlying cause of action could not have been entertained by the BVI Court.

Assuming none of the above reasons exist, obtaining registration of the Judgment should be fairly straight forward.

Once registered the Creditor will have a wide range of enforcement options, the most relevant of which in this instance would be a charging order. This could be obtained against the shares in XYZ Limited or, as the Debtor is the sole shareholder, the Court may entertain a charge directly against the properties owned by XYZ Limited. This will of course depend if there are any pre-existing charges in place or any claims by any other person(s) as to an equitable interest in the properties or shares.

All of the above assumes solvency of the Debtor and XYZ Limited. If either are insolvent, any recoveries, even if the Judgment is registered, will be *pari passu* with all other unsecured creditor. As such the Creditor would want to try to obtain as much information as possible on the liabilities of the Debtor and XYZ Limited before embarking on any action. It may ultimately be that a statutory demand should be issued as against the Debtor with a view to winding it up. However, this should be avoided if possible.

*** End of Assessment ***

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