



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]

Commented [JW1]: 8 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

To comply with section 156 of the Insolvency Act, **what timeframe** for payment of the debt (or to secure or compound for the debt), must a statutory demand require?

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

Commented [JW2]: Correct answer

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.

Commented [JW3]: Correct answer

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.

Under the Section 338 in the Insolvency Act, secured creditors have the option, but not the requirement, to file a claim in the event of bankruptcy. To do this, the creditor has to ascertain the value of the assets protected by the security and then file a claim for any outstanding debt balance as an unsecured creditor. Alternatively, they can forfeit their secured interest to the trustee for it to be shared among all creditors, and then file a claim as an unsecured creditor for the total outstanding debt.

Commented [JW4]: 1/2 mark. See section 15, company creditors arrangements, section 175 liquidations, also section 211 and receivership

Question 2.2 [maximum 2 marks]

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

According to Section 421 of the Insolvency Act, a creditors' committee can be constituted at any point following the appointment of a liquidator, if a resolution is passed at a creditors' meeting. As per Section 422, the committee's responsibilities encompass liaising with the liquidator on matters pertinent to the liquidation, reviewing the liquidator's reports, and aiding the liquidator in fulfilling his duties. The committee is empowered to: (a) convene a creditors' meeting; (b) ask the liquidator for reports and information concerning the liquidation as reasonably needed; and (c) request the liquidator's presence at the committee to provide any reasonably necessary information and explanations about the insolvency proceedings. In addition, the committee is authorized to sanction the liquidator's fees. Owing to the powers granted to the creditors' committee, it serves as a beneficial instrument for any creditor aiming to participate more actively in the liquidation process.

Commented [JW5]: 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?

Part XIX of the Insolvency Act outlines the primary jurisdiction of the BVI Court to issue orders in support of "foreign proceedings." The court can acknowledge specific foreign insolvency proceedings and offer aid to "foreign representatives." This authority is applicable to designated countries such as Australia, Canada, Hong Kong, Japan, Jersey, New Zealand, the UK, and the US. According to s467(5), the BVI Court can apply either BVI laws or the laws of the relevant country when issuing an order in aid of foreign proceedings. As per s.467(3), the court is given broad authority over the type of orders it can issue. These can range from restraining the initiation or continuation of any proceedings against a debtor or their assets, requiring the surrender of the debtor's property or its proceeds, approving or implementing arrangements coordinating BVI insolvency proceeding with a foreign proceeding, appointing an interim receiver of the debtor's property under appropriate terms and conditions, allowing the foreign representative to scrutinize the debtor or any person who could be scrutinized in a BVI insolvency proceeding, or stopping, terminating, or issuing any other order it deems fit concerning a BVI insolvency proceeding.

Commented [JW6]: 2 marks

Question 2.4 [maximum 4 marks]

Commented [JW7]: 4 marks

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

Corporate insolvency is principally regulated by Part VIII of the Insolvency Act, along with additional procedural guidelines outlined in the Insolvency Rules (IR). Key definitions are also provided in Section 8 of the Insolvency Act.

The court retains final discretion in determining a company's insolvency and in appointing a liquidator, however a company may be deemed insolvent under the following conditions:

- Under Section 8(1)(c)(ii) of the Insolvency Act, if it is unable to meet its debts as they become due. This is fact-specific. English case law, notably *Cornhill Insurance Plc v Improvement Services Limited* [1986] 1 WLR 114, established that the inability to pay a non-disputed due debt suffices as evidence of insolvency.
- Pursuant to Section 8 (1)(c)(i) if the company's liabilities exceed its assets, often referred to as "balance sheet insolvency". Section 10(1) provides a broad definition of liability, while Section 10(2) illustrates the diverse nature of potential liabilities. The BVI Court of Appeal in *Trade and Commerce Bank v Island Point Properties SA* BVICA 2009/0012 clarified that a temporary imbalance between a company's liabilities and assets does not necessarily render it insolvent.
- A company's failure to fulfil (completely or partially) a judgment, decree, or order issued by the BVI Court in favour of a creditor can also indicate insolvency. Moreover, if a company does not adhere to the terms of a statutory demand and fails to have it set aside under sections 156 and 157 of the Insolvency Act, it may be deemed insolvent.

If a company wishes to challenge a statutory demand, it must apply to the court within a strictly observed 14 days. Even if the demand is not met or set aside however, the court may still consider objections to the appointment of a liquidator. In case of a disputed debt in relation to an application to appoint a liquidator, the test is set out in *Sparkasse Bregenz Bank v Associated Capital Corporation* Civil Appeal No 10 of 2002.

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

Question 3.1 [maximum 5 marks]

Commented [JW8]: 3.5marks

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 not disqualified and imposes residency requirement.

This is governed by s.199 of the BVI Business Companies (Amendment) Act 2022 and Regulation 6 the BVI Business Companies (Amendment) Regulations 2022. Per Regulation 6(a)1A, a voluntary liquidator of a company must have:

- At least 2 years' liquidation experience;
- Professional competence to liquidate the specific company;
- An insolvency practitioner's licence.
- An appropriate professional qualification (e.g. law or accountancy) and experience of providing legal and financial advice or support to financial services sector companies.

Commented [JW9]: Not 'and' - it should be 'or'

- Knowledge of the relevant financial services legislation relevant to the business of the company to be liquidated, including the Financial Services Commission Act and BVI Business Companies Act.

Question 3.2 [maximum 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

It's typical for assets of BVI companies, or a significant portion thereof, to be located outside the BVI. As a result, it can be beneficial to select an insolvency practitioner (IP) from a region where these assets are housed. While the appointment of an additional IP does incur additional costs, it significantly cuts down on expenses related to travel and local expertise. This cost efficiency becomes especially crucial in protracted liquidations involving numerous disputes across various jurisdictions. Further, in complex cases such as enterprise insolvencies or disputes involving funds in multiple jurisdictions, it is often essential for IPs to be able to effectively operate in the relevant jurisdictions so (i) they can understand the panoply of issues in each jurisdiction; and (ii) can effectively direct litigation on behalf of the company or fund to pursue the responsible parties.

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

An insolvency practitioner from overseas must be co-appointed with a BVI-licensed insolvency practitioner or the Official Receiver, with prior written notice given to the Financial Services Commission (FSC). This appointment is subject to several conditions outlined in Section 483 (a)(i)-(v) of the Insolvency Act, particularly for court appointments. If an overseas practitioner is proposed, Section 484 allows the FSC to voice objections at the court appointment hearing. Usually, the foreign practitioner submits a letter to the FSC detailing their qualifications and expertise, and then awaits confirmation that the FSC approves their appointment, subject to court approval if applicable.

Question 3.3 [maximum 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.

There are three types of liquidation:

Voluntary liquidation (solvent) under the Business Companies Act 2004

Voluntary liquidation under the Business Companies Act 2004 (BCA) is exclusively available for solvent companies, as per Part XII of the BCA. Companies resort to this if they need to dissolve after having discharged their obligations. The process primarily involves handling any remaining assets, satisfying any residual liabilities, and subsequently dissolving the company.

Under BCA section 196A, "creditor" and "liability" definitions align with those in the Insolvency Act. Section 197(1) restricts voluntary liquidation to companies with no liabilities or those capable of meeting debts as they come due, with their assets' value being at par or exceeding liabilities. Notably, voluntary liquidation can proceed even if a company has a registered security interest with the BVI Registrar of Companies, provided the liquidator respects the priority rights of secured creditors.

As per section 199(1) BCA, voluntary liquidation requires the directors to create a declaration of solvency and a liquidation plan. Voluntary liquidators, either individually or jointly, may be appointed

Commented [JW10]: 3.5 marks

Commented [JW11]: Should be listed in the answer. Not disqualified from holding a licence under s. 477, not disqualified from acting due to being a director or auditor and must have proper security in force and consent.

Commented [JW12]: 4.5 marks

Commented [JW13]: prepare

via a resolution by either the directors or the members, as defined by section 199(2)-(4) BCA. The appointment of a voluntary liquidator isn't permitted in some cases, such as when a liquidator has already been appointed under the Insolvency Act. Requirements for the appointment are noted in my answer to Q3.1 above.

The BCA section 198(4) warns of legal consequences if a director falsely declares solvency, with a fine of USD 10,000. Moreover, as per s.198(3), a liquidation plan must be approved by the directors no more than six weeks before the resolution to appoint a liquidator, otherwise it won't take effect.

Under BCA s.204, once a liquidator is appointed, they must file the directors' declaration of solvency, their appointment notice, and the liquidation plan with the Registrar within 14 days. Voluntary liquidation starts when the liquidator's appointment notice is filed with the Registrar. Additionally, the liquidator must publicly announce their appointment within 30 days from the start of the voluntary liquidation.

Insolvent liquidation. The definition of insolvency is noted in my answer to Q2.4 above. There are two procedures for the appointment of a liquidator set out in Part VI of the Insolvency Act. In both cases, (i) liquidation commences on appointment of the liquidator e.g. the date of the qualifying resolution or the Court order appointing the liquidator (Insolvency Act, s.160); and (ii) ends when terminated pursuant to s.232 of the Insolvency Act. The company is referred to as being "in liquidation" once a liquidator is appointed. The two processes are:

Voluntarily by members resolution

An "eligible insolvency practitioner" can be appointed by the members of a BVI company through a qualifying resolution, as per s.159(2) of the Insolvency Act. This qualifying resolution, defined under s.159(3) of the Act, necessitates approval by a 75 percent majority at a duly organized company meeting. A greater majority may be required if specified by the company's memorandum and articles. However, there are additional procedural necessities and constraints if the company falls under the regulatory scope of the FSC, in accordance with s.159(5) of the Insolvency Act.

Following the liquidator's appointment, the company must promptly notify the liquidator, as mandated by s.161(2). S.182 of the Insolvency Act imposes limitations on the liquidator's powers. During the interim period leading up to the first creditors' meeting, convened as per s.179, the liquidator is restricted to securing and managing all the assets that the company is or appears to own. Additionally, they can dispose of perishable goods or assets likely to depreciate in value if not immediately sold and take necessary actions to protect the company's assets. The court may also grant the liquidator the power to utilize other authorities defined in s.186 on their application.

Insolvent liquidation by court application

Section 162 of the Insolvency Act outlines the primary regulations regarding the appointment of a liquidator by the Court, with the Insolvency Rules detailing the procedural aspects. A request for the court appointment of a liquidator can be made by one or more entities such as the company itself, a creditor, a member, the supervisor of a creditor's arrangement, the FSC, or the Attorney General.

As per section 168(1) of the Insolvency Act, a decision on the application for a liquidator's appointment must be made within six months of filing, unless the Court decides to extend this period. Such an extension can only be granted if the Court is convinced that special circumstances exist that justify the extension, and the order for extension is made before the

Commented [JW14]: Directors have to make a Declaration of Solvency not more than 4 weeks old as well as be accompanied by Statement of Affairs.

Commented [JW15]: If company is the applicant then the application for the appointment of liquidator has to be advertised

expiry of the initial period as specified in sections 168(2)(a)-(c) of the Act. The court has the authority to extend this period for up to three months.

Section 159(1) of the Act states that the Court can appoint a liquidator if the company is insolvent, if it deems the appointment just and equitable, or if it is in the public interest. The term "just and equitable" has a statutory basis and has been widely interpreted under case law. Instances that could be deemed just and equitable include: situations where the company's existence can't be justified, management deadlock resulting in the company's operational halt, loss of faith in the company's management, evidence of company fraud, or if a quasi-partnership is observed and there's a breakdown of trust.

A member can only file an application with the Court's leave, and this will only be granted if the member can demonstrate a prima facie case for the company's insolvency, as per section 162(3) of the Insolvency Act. *Chu v Lau* [2020] UKPC 24, a case heard by the Privy Council on October 12, 2020, provides a comprehensive analysis of circumstances that may constitute a management deadlock and a quasi-partnership, relevant to a liquidator appointment application on the grounds of it being just and equitable.

As for public interest, only the Attorney General and the FSC are permitted to apply for a liquidator appointment on this basis. The term 'public interest' is widely interpreted and could include circumstances that require the protection of a significant number of members or investors.

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?

Initial options for Edale Limited (**Edale**) would include alternative dispute resolution to attempt to avoid incurring costs in their dispute with Swift Limited (**Swift**).

Outwith insolvency options, Edale could explore alternative dispute resolution options, or ordinary commercial litigation, i.e. a pre-action letter followed by issuing a claim. However, I will infer that Swift is insolvent, since this is an insolvency exam. Therefore, Edale's most obvious option is to issue a statutory demand. The statutory demand must be in writing, dated and signed by an empowered officer of Edale. It must require the company to pay the debt or to secure or compound for the debt to Edale's reasonable satisfaction within 21 days of the service.

If Swift does not adhere to the terms of a statutory demand and fails to have it set aside under ss.156 & 157 of the Insolvency Act, once Edale brings a winding-up petition. This would be principally regulated by Part VIII of the Insolvency Act, along with additional procedural guidelines outlined in the Insolvency Rules (IR). Key definitions are also provided in Section 8 of the Insolvency Act. The court retains final discretion in determining a company's insolvency and in appointing a liquidator, however Swift would be deemed insolvent under the following conditions:

Commented [JW16]: 2.5 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.

Commented [JW17]: The questions states "Providing reasons, with particular reference to the Insolvency Act, what are the options open to Edale Limited against Swift Limited? So you do not need to infer.

- Under Section 8(1)(c)(ii) of the Insolvency Act, if it is unable to meet its debts as they become due. This is fact-specific. English case law, notably *Cornhill Insurance Plc v Improvement Services Limited* [1986] 1 WLR 114, established that the inability to pay a non-disputed due debt suffices as evidence of insolvency.
- Pursuant to Section 8 (1)(c)(i) if the Swift's liabilities exceed its assets, often referred to as "balance sheet insolvency". Section 10(1) provides a broad definition of liability, while Section 10(2) illustrates the diverse nature of potential liabilities. The BVI Court of Appeal in *Trade and Commerce Bank v Island Point Properties SA* BVICA 2009/0012 clarified that a temporary imbalance between a company's liabilities and assets does not necessarily render it insolvent.
- Swift's failure to fulfil (completely or partially) a judgment, decree, or order issued by the BVI Court in favour of Edale would also likely indicate insolvency.

If Swift wished to challenge Edale's statutory demand, it must apply to the court within a strictly observed 14 days. Even if the demand is not met or set aside however, the court may still consider objections to the appointment of a liquidator. In case of a disputed debt in relation to an application to appoint a liquidator, the test is set out in *Sparkasse Bregenz Bank v Associated Capital Corporation* Civil Appeal No 10 of 2002.

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?

Subject: Options for ABC Limited to Enforce Judgement Debt against DEF Limited through XYZ Limited

Dear Principal,

In light of the information provided, ABC Limited has various options under BVI law that it might consider to enforce its English High Court judgment against DEF Limited by reaching the assets of XYZ Limited in the BVI.

1. Recognition of English judgment in BVI. The first step ABC Limited should consider is to secure recognition of the English judgment in the BVI. Under the Reciprocal Enforcement of Judgments Act, (Cap 65) 1922 (the **1922 Act**), English judgments may be registered and enforced in the BVI. Under s.2(1) of the 1922 Act, 'judgment' is defined as any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of the Act, whereby any sum of money is made payable. Accordingly, only judgments for final and conclusive monetary sums can be enforced and any other judgment, whether declaratory, injunctive or otherwise, cannot be enforced. On the facts, the judgment ABC has secured will be recognised in BVI. Once registered therefore, the judgment has the same force and effect as a judgment of the BVI Court and may be enforced accordingly.

Commented [JW18]: 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.
4. Could ABC maybe apply as an interested party to restore XYZ and then once restored appoint a receiver over its shares

Commented [JW19]: Needed to give the 8 conditions under the Act and issue with the 12 months and would an extension be required.

2. Restoration and Liquidation of XYZ Limited. ABC Limited could seek the restoration of XYZ Limited to the register of companies in BVI under the provisions of section 218 of the BVI Business Companies Act, 2004. This action can be initiated by a creditor of the company, which ABC could potentially qualify as once the English judgment is recognised. Upon successful restoration, ABC could then seek the appointment of a liquidator to XYZ Limited under the provisions of the Insolvency Act 2003. The liquidator would have the authority to gather XYZ's assets (including its unencumbered properties) and distribute them to its creditors, which could potentially include DEF Limited, and indirectly, ABC Limited.

Commented [JW20]: ABC would be classed as an interested party so can apply to the court for restoration of XYZ

3. Statutory demand and winding up of DEF Limited. In parallel with (2), it would also make sense to issue a statutory demand in England against DEF Limited, followed by winding-up proceedings. This would be used to appoint liquidators who, as officers of the court, could be trusted not to dissipate assets such as any realisations from the liquidation of XYZ Limited. Otherwise, there is a risk that ABC Limited's efforts in the BVI could simply secure a windfall for DEF Limited, which could dissipate the assets without ABC Limited benefiting.

4. Claim against the estate of DEF Limited's shareholder/director. Since the sole shareholder and director of DEF Limited has passed away, ABC Limited could consider making a claim against the individual's estate, if the individual had a personal guarantee or similar obligations. However, the feasibility of this option would depend upon the laws of the jurisdiction where the deceased's estate is being administered, and the existence of any personal guarantee or similar obligations.

5. Piercing the corporate veil. In exceptional cases, courts may be willing to 'pierce the corporate veil' and hold a parent company (DEF Limited) liable for the debts of its subsidiary (XYZ Limited). However, this is a complex area of law and success would depend on proving that DEF Limited exercised complete control over XYZ Limited and that it used this control to perpetrate a fraud or injustice.

6. Statutory Demand. As a longer shot, ABC might consider serving a statutory demand on XYZ Limited in the BVI, demanding that it pays the amount of the judgment on behalf of DEF Limited or face winding-up proceedings. However, this approach is likely to face strong legal challenges given that XYZ Limited is not a party to the original judgement.

Please let me know if you require further information on any of these points or would like me to contact our BVI office to evaluate any of the above in more detail.

Kind regards,

Candidate 202223-766

*** End of Assessment ***

Commented [JW21]: 35 marks