



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]: 7 marks see below for correct answers

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.

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.

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.

Commented [JW3]: correct answer

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.**

Commented [JW4]: correct answer

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 in the BVI are treated differently to unsecured creditors. The main difference is that secured creditors are usually able to enforce the obligations of the debtor against the assets which have been secured. For this reason, secured creditors are outside of the insolvency framework in the BVI. This means that these assets do not form part of the general pool of assets to be distributed to the group of creditors.

Usually, secured creditors have either a mortgage (equitable or legal), share pledge charge or pledge over the assets of the person involved and the enforcement of the security will be based on the terms set out in the security documents. The main power granted in those instruments would either be the exercise of a power of sale or the appointment of a receiver. The proceeds of the sale of charged or secured assets are sold and distributed to the secured creditors first which is a significant advantage.

Question 2.2 [maximum 2 marks]

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

The creditors' committee mechanism in the BVI comes into effect following the passage of a resolution at a creditors' meeting. The main functions of the creditors committee as set out in section 422 of the Insolvency Act include consulting with the liquidator regarding the liquidation, considering his reports and assisting him in the orderly and timely progression of the liquidation.

The Creditors' Committee is empowered to approve the remuneration of the liquidator, call meetings of creditors, require the liquidator to provide the committee with reports and information on the liquidation as may be reasonable required and to require the attendance of the liquidator to attend creditors committee and answer questions concerning the liquidation as may be necessary.

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 empowers the BVI Court to make orders which are in aid of foreign insolvency proceedings. Pursuant to section 467(3), the Court is empowered to make orders which:

- i. Restrain the commencement, continuation and enforcement of legal processes against the debtor's property
- ii. Restrain the creation, exercise or enforcement of any remedy or right over the debtor's property
- iii. Require the delivery up to the foreign representative of any of the debtor's assets
- iv. Appoint an interim receiver
- v. Make the necessary orders to facilitate coordination of the BVI insolvency proceedings with foreign insolvency proceedings
- vi. Authorise the examination of the debtor or other person where possible under BVI law

Commented [JW5]: 1/2 mark. section 15, company creditors arrangements, section 175 liquidations, section 338 bankruptcy, also section 211 and receiverships.

Commented [JW6]: 2 marks

Commented [JW7]: 2 marks

- vii. Stay, terminate or make any appropriate order in relation to the conduct of a BVI insolvency proceedings

In exercising these powers, the BVI court must have regard to section 468 which obliges the court to consider what orders will be facilitate the orderly, economical and timely administration of the foreign proceedings. Any order made must be consistent with the just treatment of all stakeholders in the foreign proceeding, the protection of BVI domiciled person from the expenses and inconvenience of claiming in the foreign proceeding, the need to prevent preferential or fraudulent transfers, comity and the need for distribution if assets in the foreign proceedings to be substantially the same as a BVI insolvency,

Question 2.4 [maximum 4 marks]

Commented [JW8]: 4 marks

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

The test for insolvency in the BVI is set out in section 8 of the Insolvency Act. Under this section, a company will be considered insolvent if any one of several things occur:

- a. The company has failed to comply with the terms and requirements of a statutory demand that has not been set aside or compounded for. A statutory demand is issued in accordance with section 157 of the Insolvency Act and may only be set aside if there is a genuine and substantial dispute to the underlying debt. The statutory demand must be founded on a debt of at least USD\$2000.00
- b. The execution or other process issued by a BVI court in favour of a creditor of the company remains partially or wholly unsatisfied
- c. The company either cannot be its debts as they fall due in which case evidence of the unpaid debt and the liability of the company to settle it is necessary. This is a question of fact which must be proved on the evidence before the court.
- d. The value of the company's liabilities exceed its assets, otherwise known as balance sheet insolvency. Liability under this head includes a wide spectrum as seen in section 10(2) of the Insolvency Act. However, this is required to subsist for an extended period as balance sheet insolvency for a short period is not likely to be a successful ground for liquidation.

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

Question 3.1 [maximum 5 marks]

Commented [JW9]: 5 marks

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

Post January 2023, part XII o the BVI companies Act has implemented changes to who may be appointed to act as a voluntary liquidator.

That appointment is made upon the passing of a resolution of either the members or directors of the company accordance with sections 199(2) or (3) of the BVI Companies Act. A person appointed as voluntary liquidator must in accordance with regulation 19:

- a. Be qualified to act as a voluntary liquidator and not disqualified from so acting
- b. Be resident in the BVI for at least 180 days, either in aggregate or continuously days prior to his appointment. If there are joint liquidators then only one liquidator must satisfy this condition
- c. The proposed liquidator must have at least two years' liquidation experience;
- d. He must have the professional competence to liquidate the company concerned
- e. He must hold either insolvency practitioner's licence or the appropriate professional qualification together with being fully conversant with the financial services legislation connected to the company to be liquidated

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

A creditor might consider the appointment of an overseas insolvency practitioner in circumstances he has knowledge and skill in the overseas jurisdiction where the BVI company operates and has assets. That level of familiarity with the insolvency process as well as the operation of the debtor's business would likely be to the advantage of the creditor in ensuring an expeditious and orderly liquidation. Appointing an overseas insolvency practitioner is particularly helpful in the liquidation of multinational companies which are incorporated in the BVI. Where this is the case, appointing an overseas insolvency practitioner would also reduce the costs of the liquidation by reducing the need for travel between jurisdictions as well as the overall convenience of the liquidation.

The overseas insolvency practitioner would be eligible for appointment in accordance with section 483 of the Insolvency Act. In that section, an overseas insolvency practitioner may be either appointed by the court or any other party. He would only be so appointed to act jointly with a BVI licensed insolvency practitioner or the Official Receiver. The appointer (either the Court or the party otherwise appointing) must be satisfied that:

- A. he is sufficiently qualified having regard to the nature of the insolvency proceedings in respect of which the appointment is made
- B. he has consent in the written form
- C. he is not disqualified from acting as an insolvency practitioner or holding the appropriate licence
- D. his is not otherwise disqualified
- E. he has offered the required security for the proper performance of his functions

This appointment is usually made on application to the Court for the appropriate order and notice is required to be given to the Financial Services Commission. The Commission may appear at the hearing of the application and is entitled to be heard as to whether or not it objects to the appointment. In those circumstances, the Commission is required to give notice to the party applying that it intends to object to the appointment.

Commented [JW10]: 5 marks - This was 2 questions but given the quality of the answer I have not marked you down for that.

The party seeking the appointment of the overseas insolvency practitioner may not do so unless the Court appoints the overseas insolvency practitioner notwithstanding the Commission's objection or the Commission approves the appointment otherwise. To deal with this, the party seeking the appointment would usually write to the Commission and obtain its proposal prior to making the court application,

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.

The corporate liquidation regime in the BVI provides three main ways in which companies may be liquidated. These are voluntary or solvent liquidations under the BVI Companies Act and voluntary and involuntary liquidation under the Insolvency Act.

Voluntary liquidation refers to the process by which members in solvent company decide to liquidate that company. It is noted that given main aim of the solvent liquidation regime is to discharge the liabilities of the company and otherwise to deal with its assets for the benefit of its members. Pursuant to section 197, a company may only access these procedures if it can show that is either has no liabilities or it is able to pay its debts as they fall due and the value of its assets equals or exceeds those liabilities.

In order to commence voluntary liquidation, the directors of the company must (1) make a declaration of solvency stating that the company is able to settle its debts as they fall due and its assets equal or exceed its liabilities; and (2) approving a liquidation plan which specifies the reasons for the liquidation, the time period for the liquidation, the name and remuneration of the proposed liquidator and the scope of his power, and whether the liquidator is required to send a statement of account regarding his conduct of the liquidation.

Involuntary insolvent liquidation occurs when a person, usually a creditor, makes an application to the court for the winding up of the company on the basis that it is insolvent. In making this application, the creditor will have to satisfy the court that the company is indeed insolvent having regard to section 8 of the Insolvency Act and the various tests set out therein.

In availing itself of this process, the creditor may either issue a statutory demand. That statutory demand must amount to at least USD\$2000.00 and must be made in respect of a debt to which there is no genuine or substantial dispute to liability or quantum.

If that statutory demand is not settled or set aside then the company will be deemed unable to pay its debts as the fall due or otherwise insolvent and the appropriate winding up order can be made. The creditor would be able to apply pursuant to section 162 of the Insolvency Act for the appropriate orders appointing the liquidator by relying on the outstanding debt(s).

Voluntary solvent liquidation is provided for in section 159 of the Insolvency Act. Voluntary insolvent liquidation has the same aim as involuntary insolvent liquidation: the realisation of the assets of the company for distribution to its creditors. It is commenced where the members of a company pass a qualifying resolution appoint a liquidator. This resolution must usually attain the support of at least 75% of the members present and voting at the meeting unless the company documents impose a higher threshold.

Pursuant to section 160 of the Insolvency Act, the liquidation commences at the time that the resolution is appointed and continues until it is terminated.

Commented [JW11]: 3.5 marks see comments below

Commented [JW12]: Solvent liquidation

Commented [JW13]: Resolution required by directors/members. Declaration of Solvency not more than 4 weeks old and be accompanied by Statement of Affairs. Appointment cannot be more than 6 weeks after approval of Liquidation plan. a Notice of appointment, Declaration of Solvency and Liquidation plan to be filed within 14 days, appointment advertised in 30 days.

Commented [JW14]: Not just a 'person'- see section 162 for the possible applicants

Commented [JW15]: If company is the applicant then the application for the appointment of liquidator has to be advertised. Court has discretion to appoint liquidator: insolvent; just and equitable, public interest/ Application must be determined within 6 months after filing - possible to extend 3 months.

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?

Swift Limited has committed a breach of the terms of the loan agreement and the options open to Edale will be highly dependent on whether the loan agreement was secured or unsecured.

Assuming that the loan agreement is secured and includes a power of sale, Edale can proceed to exercise that power of sale over the property given as security. In doing so, Edale does not need to resort to the court as it can simply (1) issue a demand letter requesting payment of the full sum outstanding, (2) wait for the cure period (if any) and/or the period set out in the demand letter to pass (3) exercise its power of sale to sell the charged property and apply the proceeds to the liquidation of the loan amount due from Swift. In taking this route, Edale does not need to access the insolvency regime in the BVI since its loan obligations are secured.

If the loan agreement is unsecured then Edale is in a less advantageous position. In those circumstances it has two options at its disposal:

Statutory demand

- (a) it can issue a statutory demand in accordance with section 155 of the Insolvency Act. This statutory demand will set out the debt owed by Swift together with the method of calculating interest including the daily rate. The amount owing would exceed the statutory minimum of USD\$2000.00.
- (b) This statutory demand will require the payment of the sum due and owing under the loan agreement within 21 days unless Swift compounds for or settles the statutory demand.
- (c) In the event that the statutory demand expired without being set aside or compounded for, then Edale would then be in a position to apply for a winding up order in accordance with sections 8, 159 and 162 of the Insolvency Act. The Court should be invited to make the order based on the non-payment of the statutory demand.
- (d) This non-payment by itself creates an inference that Swift is unable to pay its debts as they fall due and is therefore insolvent.
- (e) Given that the debt arises from a loan agreement, it is unlikely that Swift will be able to resist the application on the basis that there is a genuine and substantial dispute of the debt.

Direction application

Commented [JW16]: 4.5 marks. First issues to resolve 1. is it a secured or unsecured loan and 2. was the demand already made a statutory demand? Then options from there. If secure then the words receiver or administrative receiver. If liquidation option then class action & concept of pari passu would mean % recovery of debt c.f. if secured creditor.

- (a) Edale can bypass the statutory demand mechanism and apply directly to the Court seeking an order winding up Swift. The only disadvantage with this procedure is that the non-payment of a statutory demand creates a presumption of insolvency which would put Edale on step ahead.
- (b) However, Edale would still be able to obtain an order of Swift's winding up by demonstrating that sums owed under the loan agreement constitute a debt which Swift has failed to settle. On that basis Edale would be able to advance the argument that Swift is therefore unable to pay its debts as they fall due and for that reason is to be considered insolvent in accordance with section 8 of the Insolvency Act.

In both the statutory demand and the direction application pursuant to section 162, Edale would be classified as an unsecured creditor in respect of which it ranks further down on the classes of creditors and as such would be likely to recoup less than the full amount due on the loan unless there are sufficient proceeds remaining after the initial rounds of distribution.

Further, Edale would be required to appoint an approved liquidator over Swift; his duty will be to get in and realise Swift's assets for distribution to the creditors. Once that process is underway then Edale would be free to make a claim and have that adjudicated on by the liquidator.

Nonetheless these are two good options for Edale since if Swift is solvent then it will more than likely make the payment or enter into arrangements to do so; if it is insolvent then that process will be engaged to determine how much recoupment is possible.

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?

ABC ordinarily would be advised to apply to the Court for a winding up order over DEF. This application would be made pursuant to section 162 of the Insolvency Act. This application would be premised on the ground that the judgment of the English Court constituted a debt which DEF was liable to pay. Having not paid it, they would be deemed to be insolvent in terms of section 8 of the Insolvency Act. In this case, DEF has been struck off from the Register of Companies and would need to be restored before this step is taken.

ABC would be entitled to bring the restoration application as it would constitute an interested person for the purposes of the BVI Companies Act. Provided that that restoration application is successful, ABC would then be able to appoint a liquidator over DEF in accordance with section 483 of the Insolvency Act. That liquidator would be empowered to deal with DEF's assets including the shares in XYZ for the benefit of DEF's creditors which would obviously include ABC;

Commented [JW17]: 5 marks - this answer required a memorandum to your principal with the options for ABC. You were on the right track but was a bit confused as to which company was struck off.

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/XYZ who could then appoint a new director to deal with restoration of XYZ and assets; and
3. Restoration to the register of XYZ - was just it struck off or was it to be dissolved under the new law - an application to the court would be required to restore it.

Commented [JW18]: DEF is a UK company so why liquidation in BVI?

Commented [JW19R18]: DEF as not been struck off XYZ has been struck off in BVI.

Commented [JW20]: Which company? Assuming you mean XYZ? ABC could apply as an interested party to restore and then once restored appoint a receiver over its shares. Or could ABC appoint receiver over DEF shares, the receiver could appoint a new director who could then apply to restore XYZ in BVI.

Commented [JW21]: UK liquidation for DEF then UK liquidator could take steps to restore XYZ as most likely now dissolved - see 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.

Commented [JW22]: DEF UK liquidator could then apply for recognition in the BVI.

For this point, ABC would not need to register the judgment since it has been held by District Judge Musgrave in the case of Sun Legend Investments v Ho [2013] BPIR 5333 that insolvency proceedings are different in aim and scope from bankruptcy proceedings and an applicant for a winding up order is entitled to rely on a judgment that has not been registered since he is not seeking to enforce it.

On this basis as well, it is also likely that if the application for the appointment of a liquidator is successful then the judgment can be submitted as evidence of an outstanding claim due from DEF. This gets around the need to have the judgment registered since such an application will have to be served on DEF which would need to be restored before service could be deemed effective.

Alternatively, ABC could make an application to have the April 2022 judgment registered in BVI. This is necessary if ABC wishes to enforce the terms of the judgment by taking direct actions against the shares held by DEF in XYZ.

It is noted that the time period for the registration of judgment is within 12 months of its hand down. The time under the Reciprocal Enforcement of Foreign Judgments Act has been exceeded. However, ABC can avail itself of the power of the BVI Court pursuant to section 3(1) of the Act to obtain an extension of the time period.

Commented [JW23]: There are 8 conditions under this Act for it to be successful.

The relevant threshold for this test is that the ABC must demonstrate that it is just and convenient for the BVI court to grant the extension sought. It should be able to do this by referencing the availability of assets in BVI against which the judgment can be enforced and therefore liquidated. ABC would be required to make this application pursuant to Part 72 of the CPR and must exhibit a duly authenticated order of the English Court. Evidence in support of the application must also be adduced in the form of an affidavit from an officer of ABC.

Provided that the extension for registration is granted, ABC would then have to show that the judgment is one which complies with the legislative requirements that it not be obtained by fraud, be a final judgment of a court with proper jurisdictional foundation, that all procedural requirements as to service were complied with.

Once the restoration is completed, ABC would be able to apply for a charging order over the shares beneficially owned by DEF. Those shares can either be sold or used as bargaining tool to secure payment of the debt.

*** End of Assessment ***

Commented [JW1]: 38.5 marks