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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 4A**

**ARGENTINA**

This is the **summative (formal) assessment for Module 4A** 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 4A**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

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

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment4A]**. An example would be something along the following lines: 202223-336.assessment4A. **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 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**ANSWER ALL THE QUESTIONS**

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

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**

Indicate the **correct** answer regarding Argentinian insolvency proceedings gateways:

1. Both creditor and debtor can trigger reorganisation and liquidation proceedings.
2. Both creditor and debtor can trigger liquidation proceedings.
3. Both creditor and debtor can trigger reorganisation proceedings.
4. Creditor, debtor or a bankruptcy trustee can trigger liquidation proceedings.

**Question 1.2**

Which of the following scenarios would justify **immediate continuation** of the debtor’s activities since the bankruptcy adjudication has occurred?

1. In cases of bankruptcy of public utility companies, or when the company is economically viable, or to conclude a production cycle, or to preserve the workers’ employment at the request of at least two-thirds of the debtor’s employees organised in a workers’ co-operative.
2. In cases of bankruptcy of public utility companies, to conclude a production cycle if an interruption would lead to damages to the creditors or to the value of state assets, when the company is economically viable, or to preserve the workers’ employment at the request of at least two-thirds of the debtor’s employees organised in a workers’ co-operative.
3. In cases of bankruptcy of public utility companies, to conclude a production cycle if an interruption would lead to damages to the creditors or to the value of state assets, or to preserve the workers’ employment at the request of at least two-thirds of the debtor’s employees organised in a workers’ co-operative.
4. In cases of bankruptcy of public utility companies, to conclude a production cycle or to preserve the workers’ employment at the request of at least two-thirds of the debtor’s employees organised in a workers’ co-operative, as long as the company is economically viable.

**Question 1.3**

Select the **false statement** concerning restructuring proceedings:

1. Trusts and insurance companies cannot file for reorganisation proceedings.
2. Interest accrual on pre-petition claims is suspended, except if secured by mortgage or pledge.
3. Debts in foreign currency are converted into legal tender for all purposes of the proceedings.
4. Salvage proceedings do not apply to small reorganisations.

**Question 1.4**

Which of the following scenarios does **not allow** for the Judiciary to decree the indirect bankruptcy of a debtor?

1. Failure to file the categorisation proposal within a 10-day term following the date on which the court issued the decision concerning the proof of claims.
2. Failure to propose a plan 20 business days before the expiration of the exclusivity period.
3. Failure to pay legal fees within 90 business days since the reorganisation plan was endorsed.
4. Failure to obtain majorities before the expiration of the exclusivity period when salvage proceedings are not available.

**Question 1.5**

Concerning a bankruptcy procedure in Argentina of a debtor domiciled in Germany, indicate the **incorrect** statement below:

1. Argentine courts limit their jurisdiction to the debtor’s assets located in Argentina.
2. Creditors payable abroad and belonging to foreign bankruptcy proceedings rank likewise creditors payable in Argentina.
3. Creditors payable outside of Argentina that do not participate in a foreign insolvency process are subject to evidence fulfillment of the principle of reciprocity in order to be accepted by the court.
4. Bankruptcy should not be adjudged in cases where there are no credits payable in Argentina.

**Question 1.6**

Indicate the **one claim** from the options below **that has priority** over all of the remaining claims under a bankruptcy procedure:

1. Claims arising from the maintenance, management and liquidation of the assets of the bankrupt and from the formalities to process the insolvency proceedings.
2. Creditors secured with a mortgage, pledge or guarantee on certain assets.
3. Expenses entailed by the preservation, custody, management and realisation of the assets subject to special preferences during the insolvency proceedings.
4. The principal amount of taxes.

**Question 1.7**

A debtor under reorganisation proceedings has classified his creditors as follows:

* 10 creditors in Class I (unsecured labour creditors)
* 10 creditors in Class II (unsecured financial creditors)
* 500 creditors in Class III (unsecured commercial creditors)

The total amount of debt owing in each class is the following: ‘

* ARS 10 million in Class I
* ARS 50 million in Class II
* ARS 100 million in Class III

**Indicate the only true statement** below regarding the approval of the plan:

1. The approval of the plan depends on obtaining votes by the absolute majority of creditors (headcount) within each and every category that represents more than ARS 80 million.
2. The approval of the plan depends on obtaining favourable votes by more than 260 individual creditors (headcount) from any of the classes that represent at least ARS 106.656 million.
3. The approval of the plan depends on obtaining the votes by at least two-thirds of creditors (headcount) representing at least the absolute majority of the computable capital.
4. The approval of the plan depends on obtaining the votes by the absolute majority of creditors (headcount) within each and every category representing at least two-thirds of the computable capital within each and every category.

**Question 1.8**

Under reorganisation or liquidation proceedings a trustee is appointed. Select the **correct statement** from the options below:

1. Under the Argentinian Bankruptcy Law (Law No 24.522 as amended) trustees can be either lawyers or accountants.
2. In reorganisation proceedings the trustee oversees the execution of the plan approved.
3. In reorganisation proceedings the trustee supervises the debtor’s administration and authorises activities that exceed the ordinary course of business.
4. In liquidation proceedings preservation, administration and realisation of the debtor´s assets are undertaken by the trustee.

**Question 1.9**

Indicate the **only false statement** below relating to out-of-court restructurings:

1. If the court does not confirm the plan, the debtor will be declared bankrupt.
2. An out-of-court arrangement does not require the debtor to be in cessation of payments.
3. An out-of-court arrangement does not require the appointment of a trustee.
4. There is no limitation on the content of the agreement and the contract is not subject to any limitation as long as it is not contrary to the law.

**Question 1.10**

Select the **correct statement** from the options below regarding Argentina’s regimes that rule enforcement of foreign judgments:

1. In order to be recognised, foreign court judgments must comply with the requirements set forth by article 517 of the CPCC.
2. Argentina will not enforce judgments in conflict with a prior or simultaneous judgment of an Argentine court.
3. The enforcement of a foreign court judgment must be requested to the Supreme Court of Justice by means of *exequatur* proceedings.
4. The enforcement of the foreign judgment can be brought for recognition and enforcement without limitation of time.

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

**Question 2.1 [maximum 2 marks]**

Cite two legal effects that apply to both restructuring and liquidating proceedings, and also cite two legal effects of each that differ.

[Type answer here]

Question 2.2 [maximum 3 marks]

Name the three different ways in which labour claims can be collected during restructuring proceedings.

[Type answer here]

Question 2.3 [maximum 2 marks]

State the rights of creditors secured with mortgages or pledges, both in restructuring and in liquidating proceedings.

[Type answer here]

Question 2.4 [maximum 3 marks]

Identify and name the insolvency proceedings in which cessation of payments does not constitute a compulsory prior substantive test for their commencement, and explain why the position is so.

[Type answer here]

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

Question 3.1 [maximum 5 marks]

The Argentinian Bankruptcy Law (Law No 24.522 as amended) provides for two different legal actions that can be initiated against third parties in order to hold them liable for the debtors’ insolvency status, namely the extension of bankruptcy and liability actions.

Elaborate on the pros and cons in respect of each one of them.

[Type answer here]

Question 3.2 [maximum 10 marks]

Explain the three different scenarios that can take place in reorganisation proceedings concerning agreements between the debtor and third parties:

1. in cases where the debtor has already fully complied with his obligations emerging from the agreement; (2.5 marks)
2. in cases where the counterparty has fully complied with his obligations emerging from the agreement; and (2.5 marks)
3. in cases where there are mutual obligations are still pending. (5 marks)

[Type answer here]

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

Industria Textil SA is an Argentinian corporation that manufactures and sells luxury clothing. Despite a long history of success, the last recession plus the Covid-19 pandemic have triggered serious financial difficulties, resulting in the closing down of several of its stores and a decrease in the acquisitions of its products by Argentinian consumers. The company’s chief executive officer (CEO) has convened a meeting with the board of directors in order to deliberate on the potential filing of restructuring proceedings. Since the potential reorganisation has brought up a number of different issues and questions, the corporation has hired your law firm to advise on the matter. After a meeting in which the general overview and benefits of restructuring proceedings have been presented to management, the CEO along with the corporation’s officers require further assessment on the following issues:

**Using the facts above, answer the questions that follow.**

Question 4.1 [maximum 5 marks]

Some of the members of the board of directors of Industria Textil SA are about to resign from their positions and are doubtful whether this will make a difference to their potential liability. Advise the company as to whether they would be relieved from liability after leaving office.

[Type answer here]

Question 4.2 [maximum 5 marks]

The company is expected to require additional finance in order to adapt its business to the new online market. Due to the tough financial situation of the company, Industria Textil SA is doubtful whether it will be possible to obtain this additional finance once the restructuring proceedings have been opened. Advise the company on the legal restrictions that will apply to the management of its estate and to the priority recognised by the ABL to post-petition financing.

[Type answer here]

Question 4.3 [maximum 5 marks]

The board of directors estimates that it will take about 40 days to prepare all documents required by article 11 of the ABL, and doubts have arisen as to how to stay an unsecured monetary claim against the company where one of its main assets is on the verge of being sold via public auction. Advise the company on whether the ABL provides any alternative to suspend litigation proceedings prior to the resolution that institutes the reorganisation proceedings.

[Type answer here]

**\* End of Assessment \***