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

**BRAZIL**

This is the **summative (formal) assessment for Module 4B** 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 4B**. 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.assessment4B]**. An example would be something along the following lines: 202223-336.assessment4B. **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]**

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 bankruptcy legislation in Brazil:

1. The Bankruptcy Law regulates the liquidation – but not the reorganisation – of any individual or legal entity with activities in Brazil.
2. The former Civil Procedure Code regulates the reorganisation of non-business individuals and legal entities.
3. The Bankruptcy Law has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.
4. The Bankruptcy Law allows companies belonging to the same economic group to jointly file for restructuring.

**Question 1.2**

Which one of the following statements is **correct** with regard to the Brazilian judiciary?

1. Brazil has a single apex court: the Superior Court of Justice, which is in charge of constitutional issues.
2. Tax disputes take place at a specialised segment of the judiciary; composed of tax courts, tax courts of appeal and a superior court.
3. Insolvency proceedings take place at the state-level judiciary (as opposed to the federal-level judiciary).
4. The nomination of an individual as a judge of a bankruptcy court is the result of an election by popular vote from residents within that particular judicial district.

**Question 1.3**

Select the **false statement** concerning security rights within the Brazilian legal system:

1. A pledge is a lien over movable assets.
2. Despite being a lien over immovable property, mortgages may also be used to offer aircraft and vessels as security.
3. The *antichresis* is a widely used type of security, the purpose of which is to assign the income from an immovable property to the guaranteed party.
4. Fiduciary titles are increasingly used as a security due to the fact that this guarantee allows for the guaranteed party to take possession of the collateral and sell it outside a bankruptcy proceeding, as long as certain conditions are met.

**Question 1.4**

Which one of these parties **is allowed** to file for a judicial recovery case under the terms of the Bankruptcy Law?

1. A *sociedade de economia mista* (a company whose majority equity interest belongs to the Federal, State or local government).
2. A big law firm.
3. An individual who carries on a business activity without the use of a legal entity.
4. An investment bank.

**Question 1.5**

Concerning judicial recovery, indicate the **incorrect** statement below:

1. Failure to present the judicial reorganisation plan within the stipulated period is a case for conversion into bankruptcy.
2. The judicial recovery plan must be presented within 60 days from the decision granting the processing of the procedure.
3. The special regime of judicial recovery for small or micro enterprises is optional, and the company may opt for the common regime.
4. With no objections to the judicial reorganisation plan, the judge will appoint a general meeting of creditors so that the creditors can deliberate on the judicial reorganisation plan.

**Question 1.6**

Which of the following claims has the **highest priority** under a bankruptcy proceeding?

1. Fees payable to the judicial administrator and its auxiliaries.
2. Tax claims, including principal, interest, and fines.
3. Administrative expenses of the estate.
4. Unsecured claims.

**Question 1.7**

Assume that a debtor under judicial recovery has the following creditors:

* 700 creditors in class I (workers and labour-related claims);
* three creditors in class II (creditors secured by *in rem* guarantees);
* 150 creditors in class III (unsecured creditors); and
* 47 creditors in class IV (claims held by micro and small enterprises).

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

* BRL 1 million in class I;
* BRL 20 million in class II;
* BRL 10 million in class III; and
* BRL 200 thousand in class IV.

Assuming all creditors are present at the debtor’s general meeting of creditors, **indicate the only correct statement** regarding the approval of the plan:

1. The approval of the plan in class I is solely dependent on its approval by creditors whose claims amount to an amount in excess of BRL 0.5 million.
2. The approval of the plan in class II is solely dependent on a majority by head count.
3. The approval of the plan in class III depends on a double majority: by head count and by the total amount of claims.
4. The approval of the plan in class IV is solely dependent on favourable votes by creditors whose claims exceed BRL 100,000.

**Question 1.8**

Select the **correct statement** from the options below regarding the judicial recovery of small or micro enterprises:

1. As it is a simplified regime, there is no stay period.
2. There is no discount in the judicial reorganisation plan, but instalments are allowed.
3. The remuneration of the judicial administrator is limited to 2% of the amount payable to the creditors.
4. There is no limit in the Bankruptcy Law as to the number of instalments for the payment of the debts.

**Question 1.9**

Indicate the **correct statement** relating to the cramdown of a judicial recovery plan:

1. Cramdown is a doctrine that allows for creditors to present their own alternative reorganisation plan.
2. There are no statutory provisions on cramdown under the current Bankruptcy Law as it is a judicially-created doctrine.
3. Among the criteria that must be met for a cramdown to be imposed, the plan needs to receive favourable votes from over half the total amount of claims held by the creditors that were present at the general meeting.
4. A cramdown cannot be imposed if the creditors have presented an alternative recovery plan after rejecting the recovery plan presented by the debtor.

**Question 1.10**

Select the **correct statement** from the options below regarding extrajudicial recoveries:

1. Extrajudicial recoveries allow for a larger set of debtors to seek their reorganisation in comparison to the set of debtors that are allowed to file for judicial recovery.
2. Extrajudicial recoveries do not allow the debtor to restructure tax claims.
3. Extrajudicial recoveries represent a consensual solution to a financial crisis, as extrajudicial plans may not be imposed on dissenting creditors.
4. Extrajudicial recoveries do not allow the debtor to dispose of its assets free of any encumbrances, unlike judicial recoveries.

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

**Question 2.1 [maximum 2 marks]**

Cite two faulty actions that could lead to the debtor’s administration being removed during a judicial recovery case.

[Type your answer here]

Question 2.2 [maximum 3 marks]

State the three manners or ways by which the assets of the bankrupt estate may be sold by the judicial administrator during a liquidation procedure.

[Type your answer here]

Question 2.3 [maximum 2 marks]

State two acts that may be rendered ineffective towards the bankrupt estate if carried out whilst the “suspect period” of a bankruptcy proceeding was in effect.

[Type your answer here]

Question 2.4 [maximum 3 marks]

State the requirements that a Brazilian corporation needs to meet to file for judicial recovery.

[Type your answer here]

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

Question 3.1 [maximum 5 marks]

How is a judicial recovery different from an extrajudicial recovery?

[Type your answer here]

Question 3.2 [maximum 5 marks]

What is a “claim for restitution” under a bankruptcy procedure, and how does it work?

[Type your answer here]

Question 3.3 [maximum 5 marks]

Describe the circumstances in which the creditors may file a recovery plan in a judicial recovery.

[Type your answer here]

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

The business company Braz Veículos Ltda (the company) is a subsidiary of a holding company with head offices in Germany. Braz Veículos Ltda produces electrical cars and was incorporated in the city of São Paulo where its board sits, but its operations are conducted from a single plant located in the city of Porto Alegre, where the officers and most of the back office also work. Despite its long history of success, the past few years have been particularly rough for the company, especially as a result of the Covid-19 pandemic. The company has already asked for judicial recovery in the past, and the case was terminated 10 years ago. The company’s chief executive officer (CEO) has gathered the board of directors in order to deliberate on a potential filing of a judicial recovery. Several issues have come up during this meeting and your law firm has been has hired to advise on the matter.

Using the facts above, answer the questions that follow.

1. Advise why the company should be allowed to file for a second judicial recovery and where the judicial recovery should be filed. **(5 marks)**

[Type your answer here]

1. The company has entered into some preliminary negotiations with key creditors in order to assess whether said creditors would support the recovery of the company. The company currently has five creditors that fall into class II of a judicial recovery: creditors secured by *in rem* guarantees. Through the preliminary negotiations, two secured creditors have signalled that they would vote in favour of a judicial recovery plan, whereas three secured creditors have shown that they are likely to seek the liquidation of the company in the event that it initiates a judicial recovery proceeding. The board of directors is aware that the current standing of the class II creditors would not allow for a reorganisation plan to be approved in such class, but doubts have arisen regarding the possibility of a Bankruptcy Court applying a cramdown in order to confirm the plan. Advise the company on whether the current standing of the class II creditors (favourable votes by 40% of the creditors) would, in the future, allow for a judicial recovery plan to be confirmed by a Bankruptcy Court applying the cramdown provisions of the Brazilian Bankruptcy Law (Law Number 11.101/2005). Is further information required in order to offer a more precise legal opinion? **(5 marks)**

[Type your answer here]

1. The company has recently acquired new auto-components manufacturing machines which are deemed essential to the carrying on of the business, given the need of the company to adapt to a new market. The financing for the acquisition of the machinery was granted by Banco XPTO, a Brazilian financial institution. The financing is secured by a fiduciary title over the machines. Due to the rough financial situation of the company, the company has recently defaulted on the financing and were not able to pay some of the instalments that had fallen due. The board of directors is worried that the bank might take possession of the machinery, given its fiduciary security. Advise the company whether the stay period might keep it (the company) in possession of the machinery. **(5 marks)**

[Type your answer here]

**\* End of Assessment \***