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

**JAMAICA**

This is the **summative (formal) assessment** for **Module 4D** 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 4D**. 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.assessment4D]**. An example would be something along the following lines: 202122-336.assessment4D. **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.

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**

The Jamaican Insolvency Act is modelled on the insolvency laws of which jurisdiction, and what specific law in that jurisdiction?

1. The United States of America and the Bankruptcy Code.
2. Canada and the Companies’ Creditors Arrangement Act.
3. England and Wales and the Insolvency Act.
4. Canada and the Bankruptcy and Insolvency Act.

**Question 1.2**

Which of the following **is not** one of the duties of a trustee appointed pursuant to a Notice of Intention to File a Proposal or a Proposal?

1. Taking possession of all property, books and records.
2. Giving notice to all creditors within five days of their appointment.
3. Providing an opinion whether the cash flow statement is reasonable.
4. Acting honestly and in good faith.

**Question 1.3**

Which of the following **best describes** the rights granted by a debtor company in favour of a creditor when the debtor company grants the creditor a debenture?

1. The debtor company has given the creditor a security interest over specific assets.
2. The debtor company has given the creditor a security interest over all its assets (tangible and intangible) and undertakings.
3. The debtor company has given the creditor a security interest over all its fixed assets only.
4. The debtor company has given the creditor a mortgage over its real property.

**Question 1.4**

Which of the following persons **may not** make a proposal on behalf of an insolvent person that has entered the JIA’s rescue modality?

1. The insolvent person
2. The Trustee
3. A creditor of the insolvent person.
4. A receiver.

**Question 1.5**

When a Notice of Intention to File a Proposal has been filed, how many days does the debtor have to file a Cash Flow Statement?

1. 5 days.
2. 14 days.
3. 30 days.
4. 60 days.

**Question 1.6**

Which of the following is the correct threshold for acceptance of a Proposal?

1. More than 50% in number and no less than 66 2/3% in value of each class of unsecured creditors.
2. More than 25% in number and no less than 50% in value of each class of unsecured creditors.
3. More than 75% in number and no less than 75% in value of each class of unsecured creditors.
4. More than 50% in number and no less than 50% in value of each class of unsecured creditors.

**Question 1.7**

Indicate whether the statement below is **True or False**:

A debtor facing financial difficulties must access either the Proposal Provisions or the Bankruptcy Process under the Jamaican Insolvency Act.

1. True.
2. False.

**Question 1.8**

Indicate whether the statement below is **True or False**:

A Proposal may provide for the payment of equity claims, but only if other claims are first paid in full.

1. True.
2. False.

**Question 1.9**

Indicate whether the statement below is **True or False**:

A counter-party to an agreement with an Insolvent Person may legally terminate the agreement with that Insolvent Person due solely to the reason that the Insolvent Person has filed a Notice of Intention to File a Proposal.

1. True.
2. False.

**Question 1.10**

Indicate whether the statement below is **True or False**:

A Proposal that has been approved by the requisite majorities of unsecured creditors must obtain approval by the Court before it is implemented.

1. True.
2. False.

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

**Question 2.1 [maximum 3 marks]**

Briefly set out the methods by which a debtor may access the Jamaican Insolvency Act for purposes of the bankruptcy process.

[Type answer here]

**Question 2.2 [maximum 3 marks]**

Briefly set out the requirements for a person to be within the definition of an Insolvent Person.

[Type answer here]

**Question 2.3 [maximum 4 marks]**

Describe the process by which a Judge in the Insolvency Division will determine whether to give recognition to foreign insolvency proceedings in Jamaica under the Jamaican Insolvency Regulations 2015.

[Type answer here]

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

**Question 3.1 [maximum 7 marks]**

Set out the complete process for approval of a Proposal.

[Type answer here]

**Question 3.2 [maximum 8 marks]**

Briefly set out the duties of a receiver as required by the Jamaican Insolvency Act.

[Type your answer here]

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

Big Bank Limited (Big Bank) has made an unsecured term loan of a principal amount of JMD 500,000,000 to Haulage Co Limited (Haulage Co) for working capital support. The term loan is interest-only payable quarterly with a “bullet repayment” on June 30, 2028, which is the maturity date. Haulage Co has missed the last two quarterly interest payments that were due on March 31, 2023 and June 30, 2023. Big Bank’s loan to Haulage Co is now in default. Big Bank has reviewed its loan agreement and has determined that the default by Haulage Co provides Big Bank with the power to accelerate the loan and claim for the entire principal by serving a Notice of Acceleration on Haulage Co.

**Question 4.1 [maximum 4 marks]**

Prior to serving a Notice of Acceleration, Big Bank has been served with a Notice of Intention to File a Proposal from Haulage Co. What is the effect of the Notice of Intention to File a Proposal, and what is the purpose thereof? Who has control of Haulage Co?

[Type answer here]

**Question 4.2 [maximum 4 marks]**

Haulage Co has formulated a proposal which it has sent to Big Bank and all other creditors. Big Bank wishes to understand whether the Proposal satisfies any requirements required by the Jamaican Insolvency Act for Proposals. Set out in brief any requirements as to form or content which a valid Proposal is required to satisfy.

[Type answer here]

**Question 4.3 [maximum 5 marks]**

As part of the Proposal, Big Bank is expected to provide additional credit to finance Haulage Co through the Proposal implementation process as well as to provide additional working capital support. Big Bank wishes to understand whether it can obtain a priority security interest for this new financing, and if possible, any applicable principles in this regard. Advise Big Bank.

[Type answer here]

**Question 4.4 [maximum 2 marks]**

Who will oversee the implementation of the Proposal? And through whom must any distributions to credits be made?

[Type answer here]

**\* End of Assessment \***