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

**COLOMBIA**

This is the **summative (formal) assessment for Module 4F** 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 4F**. 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.assessment4F]**. An example would be something along the following lines: 202223-336.assessment4F. **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**

Is **case law** binding in Colombia? Choose the correct statement in this regard:

1. Yes, lower courts must abide by the high court rulings completely.
2. Yes, but the dictum of the ruling is not compulsory for lower courts.
3. No, a court must only take into account written law, such as codes and decrees.
4. No, case law shall only be used as a secondary source in difficult cases.

**Question 1.2**

Which entity exerts jurisdiction over **business insolvency proceedings**?

1. The Supreme Court of Justice.
2. The Superintendence of Companies.
3. The Circuit Civil Courts.
4. Options (a), (b) and (c).
5. Only options (a) and (b).
6. Only options (b) and (c).

**Question 1.3**

What is the **legal effect** of **not** recording a security interest in the relevant registry?

1. It affects the enforceability of the security interest against third parties.
2. The inexistence of the security interest.
3. The nullity of the security interest.
4. It does not have any effect, since the recording is only for publicity.

**Question 1.4**

Choose the **correct** answer:

In a reorganisation proceeding, can secured creditors **exclude** the encumbered assets from the insolvency estate?

1. Yes, the secured creditor can request the exclusion of the encumbered asset after the hearing to rule on the objections.
2. Yes, but only when the asset is not necessary for the debtor’s business and after the Insolvency Court confirms the reorganisation agreement.
3. Yes, encumbered assets are not included in debtor’s estate, and thus secured creditors can enforce the collateral outside the reorganisation proceeding.
4. Both options (a) and (b).

**Question 1.5**

Which one of following entities does **not** fall under the scope of the Law 1116?

1. A trust set up to guarantee a loan granted by a commercial bank to a debtor.
2. A startup set up as a simplified stock corporation.
3. An individual that professionally buys and resells real state.
4. A company that provides electricity to consumers’ homes.

**Question 1.6**

In respect of which of the following is the Insolvency Court **not** competent to rule?

1. The existence of a *force majeure* that excludes debtor’s liability.
2. The existence and amount of claims against the debtor.
3. Clawback actions.
4. Rejection of contracts.

**Question 1.7**

Which one of the following statements regarding the role of stakeholders in insolvency proceedings is **false**?

1. The debtor’s management keeps its functions in a reorganisation proceeding.
2. The liquidator and the promoter have standing to commence clawback actions.
3. Shareholders have the right to vote on the reorganisation agreement.
4. The Insolvency Court co-manages the company with the directors.

**Question 1.8**

A **straight discharge** in a Colombian consumer bankruptcy entails the –

1. reduction of 50% of a debtor’s liabilities in debt negotiation proceedings.
2. use of debtor’s future income to pay the liabilities recognised in the liquidation proceeding.
3. exclusion of a debtor’s future assets and income to pay the liabilities recognised in a liquidation proceeding.
4. exclusion of debtor’s future assets and income to pay the liabilities recognised in a debt negotiation proceeding.

**Question 1.9**

Indicate whether the following statement is **true or false**: Colombian insolvency law incorporated the UNCITRAL Model Law on Cross-Border Insolvency Proceedings.

1. True.
2. False.

**Question 1.10**

The requirements for a **claw-back action** are that:

1. The transaction must have harmed any of the creditors or affected the priority of claims.
2. A third party involved has not demonstrated good faith in the execution of the transaction.
3. The transaction took place in a specific period before the commencement of the reorganisation proceeding.
4. All of the above.

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

**Question 2.1 [maximum 4 marks]**

Explain what is the consolidation and what are the grounds that can trigger it? Is it applicable to cross-border insolvency proceedings?

*[Please answer]*

Question 2.2 [maximum 6 marks]

Describe the post-petition financing in Colombia and its limitations.

*[Please answer]*

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

Question 3.1 [maximum 7 marks]

Write an essay on the public policy exception. In your essay you should refer to at least the following: (a) the distinction between international public policy and local public policy, and (b) in which proceedings the public policy exception may be raised.

*[Please answer]*

Question 3.2 [maximum 5 marks]

Write an essay on important Colombian case law relating to cross-border insolvency.

*[Please answer]*

Question 3.3 [maximum 5 marks]

Write an essay on the tensions that arise when a majority shareholder finances a subsidiary, and the latter grants a security interest to the former.

*[Please answer]*

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

Question 4.1 [maximum 8 marks]

The Colombian company Falcao Airlines S.A.S. has been affected by the Covid-19 pandemic which caused the closure of airports. Please draft a memorandum explaining what alternatives are available to Falcao Airlines S.A.S. in order to enter into a corporate rescue. Focus on explaining the benefits and risks of each alternative.

*[Please answer]*

Question 4.2 [maximum 7 marks]

Eco Fruits United (EFU) is a company in a reorganisation proceeding. Its principal line of business is growing pineapples to sell these in marketplaces of the main cities in Colombia. The reason why EFU is insolvent is that low temperatures during the rainy season damaged an important part of its crops, and thus its sales income was reduced by 40%. Because of this reduction, EFU could not pay certain suppliers and repay loan instalments. The composition of EFU’s estate is the following:

* 57% of EFU’s assets are represented by an inventory of pineapples that are in risk if the rainy season does not end in the next four months. So far, the estimated date when the rainy season will end is uncertain. The value of the crops is USD 570 million.
* 37% of EFU’s assets are represented by shares of a local subsidiary. The value of the shares is USD 370 million.
* 6% of EFU’s assets are represented by cash.
* EFU’s liabilities total USD 2.4 billion.
* EFU does not have real estate or movable assets subject to registration.

EFU files a petition requesting authorisation to sell the shares for USD 740. The proceeds would be used as working capital to reduce the pineapples’ costs of production and improve the margin of profit for EFU. EFU’s request does not clarify who is the buyer nor its relationship with EFU, and the promise of sale agreement submitted as evidence does not include a security or guarantee in favour of EFU.

You are the judge that must take the decision in respect of EFU’s request. Please justify your decision, taking into account the article 17 of Law 1116.

*[Please answer]*

**\* End of Assessment \***