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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5D**

**GUERNSEY**

This is the **summative (formal) assessment** for **Module 5D** 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 5D**. 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.assessment5D]**. An example would be something along the following lines: 202122-336.assessment5D. **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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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**

Which one of the following statements **correctly describes** the Guernsey legal system?

1. Guernsey is bound by decisions of the English Court of Appeal.
2. UK legislation is directly applicable in Guernsey.
3. Guernsey law is often influenced by the common law of other Commonwealth jurisdictions.
4. Customary law in Guernsey cannot be altered by legislation.

**Question 1.2**

Which one of the following **is not** a fiduciary duty of a director?

1. Exercise independent judgment.
2. Avoid conflicts of interest.
3. Act *bona fide* in the best interests of the company.
4. Act with skill and care.
5. Act for proper purposes.

**Question 1.3**

Which one of the following statements **is correct** in respect of the order of priorities in a liquidation in Guernsey?

1. The *pari passu* principle affects the rights of secured creditors.
2. Preferential debts come first in the order of priority.
3. There is no preferential treatment given to employees.
4. Debts in a certain class are given priority in relation to the time of their creation.
5. Rent due to a landlord has priority among preferential debts.

**Question 1.4**

Which one of the following **is not** a standalone ground for the making of a compulsory winding up order as set out in the Companies Law?

1. The company has is unable to pay a dividend to members.
2. The company has failed to send its members a copy of its accounts or reports under specified provisions of the Companies Law.
3. The company has, by special resolution, resolved to be wound up.
4. The company suspends business for a year.
5. The company is unable to pay its debts as they fall due

**Question 1.5**

Which one of the following statements about Schemes of Arrangement is **incorrect**?

1. The process is broadly the same as that in the UK.
2. At the Court-convened meeting of creditors / members, a majority in number representing not less than 50 per cent in value of the members present and voting must approve the scheme before it is sanctioned by the court.
3. Notice of the meeting of the members of the company must be sent to each creditor or member.
4. A scheme may be used in conjunction with an administration.
5. A scheme could be used for restructuring.

**Question 1.6**

Which of the following types of security can be effectively taken over Guernsey **immovable property**?

1. A fixed charge / mortgage.
2. A lien.
3. A *hypothèque* by way of bond.
4. A security interest agreement.
5. A floating charge.

**Question 1.7**

Which of the following **two statements are correct** in respect of compulsory liquidations?

1. There is no statutory moratorium on creditors' claims.
2. Once the winding-up procedure has commenced, any transfer of shares is valid for a period of 30 days without the need to seek approval from the liquidator.
3. The company must not carry on any business upon the making of a compulsory winding-up order.
4. The courts usually impose time frames for the length of liquidation.
5. A company is dissolved at the start of the liquidation.

**Question 1.8**

Which one of the following parties **does not** have automatic statutory standing to make an application for an administration order in respect of a Guernsey company?

1. A member.
2. An incorporated cell company.
3. A prospective creditor.
4. A director.
5. The Guernsey Registry.

**Question 1.9**

Which one of the following **is not** a ground for setting aside a judgment registered under the Reciprocal Enforcement Law?

1. The enforcement of the judgment would be contrary to public policy in the home jurisdiction.
2. The courts of the originating country did not have jurisdiction.
3. The judgment debtor did not receive notice of the proceedings in sufficient time to enable him / her to defend the proceedings and he / she did not appear.
4. The judgment was obtained by fraud.
5. The enforcement of the judgment would be contrary to public policy in Guernsey.

**Question 1.10**

Which of the following statements is **incorrect** in respect of misfeasance / breach of fiduciary duty?

1. The test for a breach of fiduciary duty is a subjective one.
2. Any claim must be brought within three (3) years from the date of breach.
3. The court may order the director to contribute towards the company's assets.
4. It may arise where a director has breached their fiduciary duty towards the company.
5. Any creditor of the company may apply to the court for an order against the director.

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

**Question 2.1 [maximum 5 marks]**

What are the most common forms of security granted over intangible movable assets in Guernsey? Explain what is required to ensure the security documents are valid and the consequences of failure to comply with any formalities.

[Type your answer here]

**Question 2.2 [maximum 5 marks]**

Guernsey's insolvency regime is often described as being "creditor-friendly". Identify key features of the various insolvency procedures available to companies that support this description.

[Type your answer here]

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

**Question 3.1** **[maximum 7 marks**]

A creditor wishes to register or enforce an English judgment in Guernsey. Explain whether this is possible and what the creditor would need to do. How would your answer differ if the officeholder sought to register or enforce a judgment from the USA?

[Type your answer here]

**Question 3.2 [maximum 8 marks]**

Write a short essay on the benefits of using Schemes of Arrangement over other forms of corporate rescue or winding up procedures?

[Type your answer here]

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

Pam and Jim have been asked to consider taking an appointment as insolvency officeholders over Munder & Difflin Limited (M & D), a Guernsey incorporated company specialising in selling office supplies. Michael and Dwight were the company's only members and directors.

For the last 18 months, the company has been experiencing financial difficulties as a result of the implementation of an expensive online sales platform which failed to deliver the promised increase in sales and profitability.

The platform was designed and built by Scranton Software Limited (Scranton), a company registered in England. Scranton invoiced M & D in the sum of £250,000 three (3) months ago. Scranton is owned by Ryan (Michael's son).

Following the failed launch of the website, it was obvious that M & D had cash flow issues in that it could not meet its day to day liabilites and that insolvency was inevitable. Michael and Dwight thought it would be a good idea to get cash quickly injected back into the company and took out a short term loan from a friend, Toby. The loan was primarily used to discharge the debt to Scranton.

The company now has no cash or liquid assets and cannot pay its major supplier that is owed £500,000. It also cannot meet this month's salaries, rent and other trade debts.

It is, however, understood that a small tweak to the sales platform could very easily return D & M to profitability if it can be protected from action by its creditors.

Jim and Pam have been approached by Michael to help navigate the crisis. Dwight has absconded to his farm in Scotland, taking with him various items of company property and valuable information.

Help Jim and Pam to advise on the following issues:

1. The formal insolvency proceedings available to M & D under Guernsey law and the most appropriate course to follow in the circumstances. Your answer should draw support for your conclusion from the facts set out above.
2. What, if any, potential claims the insolvency officeholders may wish to investigate following their appointment. For these purposes, you may assume that M & D will ultimately be placed into compulsory liquidation.
3. How Jim and Pam could seek assistance overseas in dealing with Dwight.

[Type your answer here]

**\* End of Assessment \***