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

**THE BAHAMAS**

This is the **summative (formal) assessment** for **Module 5G** of this course and is compulsory for 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 5G**. 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.assessment5G]**. An example would be something along the following lines: 202122-336.assessment5G. **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**

Select the **correct answer**:

How many modes of winding up a Bahamian company, exist?

1. Two.
2. Three.
3. Four.
4. Five.

**Question 1.2**

Select the **correct answer**:

When is a Bahamian company deemed to be unable to pay its debts under section 188 of the Companies Act, Ch 308?

1. Only when it is balance sheet insolvent.
2. Only when it is cash flow insolvent.
3. When it is balance sheet insolvent and cash flow insolvent.
4. When it is either balance sheet insolvent or cash flow insolvent, or a valid statutory demand has not been satisfied within a period of three weeks after service on the company’s registered office, or if a judgment in favour of a creditor remains unsatisfied.

**Question 1.3**

Select the **correct answer**:

In what order are the following paid in a compulsory liquidation under Bahamian law?

(i) Employees’ salaries, wages and gratuities; (ii) all taxes, assessments or impositions imposed or made under any Bahamian Act; (iii) sums due for employees medical insurance; (iv) wages for any workman or labourer regarding services rendered to the company two months before the commencement of the company’s liquidation.

1. (i), (ii), (iii), (iv).
2. (ii), (i), (iv), (iii).
3. (iii), (i), (iv), (ii).
4. (i), (iii), (iv), (ii).

**Question 1.4**

Select the **correct answer**:

What is the minimum percentage of the members required to resolve for a Company’s voluntary winding up?

1. 45%.
2. 50%.
3. 75%.
4. 95%.

**Question 1.5**

Select the **correct answer**:

What is the clawback period for voidable preferences under section 241 of the Companies Act, Ch 308?

1. One (1) month.
2. Six (6) months.
3. Twelve (12) months.
4. Two (2) years.

**Question 1.6**

Select the **correct answer**:

What types of preferential transactions are voidable in an insolvent liquidation?

1. Every fraudulent conveyance or transfer of property.
2. Every charge made three years before the commencement of the liquidation.
3. Every payment obligation made after the commencement of the liquidation.
4. All of the above.

**Question 1.7**

Select the **correct answer**:

Who may apply for the winding up of a Bahamian company?

1. A regulator, if the company is a regulated entity.
2. The company’s receiver.
3. Any officer of the company.
4. The Supreme Court of The Bahamas.

**Question 1.8**

Select the **correct answer**:

Where do secured creditors rank in a liquidation?

1. Behind the costs and expenses of liquidation.
2. Behind preferential creditors.
3. Behind unsecured creditors.
4. In priority to all other creditors, since they can enforce their security outside of the liquidation.

**Question 1.9**

Select the **correct answer**:

Under which circumstance may a company be wound up by the Court?

1. The Court is of the opinion that it is just and equitable that the company should be wound up.
2. The company is insolvent.
3. The company did not commence its business within a year from its incorporation, or suspends its business for a whole year.
4. All of the above.

**Question 1.10**

Select the **correct answer**:

What is the effect of a winding-up?

1. The liquidator acquires custody and control of the company’s assets.
2. Unless the court orders, no share in the company may be transferred.
3. Both (a) and (b).
4. Neither (a) nor (b).

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

**Question 2.1 [maximum 4 marks]**

What is the difference between a provisional liquidator and an official liquidator?

[Type your answer here]

**Question 2.2 [maximum 2 marks]**

In what circumstances may a regulator present a winding-up petition for the winding-up of a company?

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

Describe the circumstances in which a transaction may be set aside by the liquidator.

[Type your answer here]

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

**Question 3.1 [maximum 8 marks]**

Write a brief essay on the circumstances in which the Supreme Court would make ancillary orders under section 254 of the Companies Act.

[Type your answer here]

**Question 3.2 [maximum 7 marks]**

Write a brief essay distinguishing between the enforcement of a judgment of a court in Bermuda and the enforcement of a judgment of a court in India.

[Type your answer here]

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

Supreme Company Limited (the Company) was incorporated in 2000 in the British Virgin Islands as an investment company. It held offices in Nassau, The Bahamas and carried on business in The Bahamas, Bermuda, Jamaica, Aruba, Brazil, Uruguay and Colombia. Since its incorporation, the Company conducted business in the Caribbean and South American markets. The Securities Commission of The Bahamas regulated the Company.

In 2020, due to the pandemic, the Company experienced significant losses. To prevent insolvency, the Company’s directors in April 2021 borrowed BSD 2,000,000 from two of its nine directors, namely John Smith and Robert Lewis. The loan was memorialised in a loan agreement dated 30 April 2021. The terms of the loan agreement provided that the loan would be repaid in full by 31 December 2022 and would be used to meet the Company’s recurring liabilities and responsibilities. In May 2022, the directors discovered that the Company’s finance manager, Giovanni Wilson, misappropriated BSD 500,000 and used the funds to acquire real estate. The directors did not inform the Commission of Mr Wilson’s wrongdoing. As a result of Mr Wilson’s actions, the Company has been insolvent since June 2022. Notwithstanding the Company’s insolvency, the Company has continued to trade, Mr Wilson continues to serve as its financial manager, and the directors have not resigned.

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

**Question 4.1 [maximum 7 marks]**

Can a winding-up petition be filed in The Bahamas for the Company’s winding up? Explain your answer by discussing the Bahamian Supreme Court’s jurisdiction to make winding up orders, and state on which ground any winding up petition could be filed and by whom.

[Type your answer here]

**Question 4.2 [maximum 8 marks]**

To what extent could the Company’s Board be liable for the Company’s insolvency and failure to act, given their knowledge of Mr Wilson’s wrongful actions and misappropriation of BSD 500,000?

[Type your answer here]

**\* End of Assessment \***