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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 6D**

**ITALY**

This is the **summative (formal) assessment for Module 6D** 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 6D**. 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.assessment6D]**. An example would be something along the following lines: 202223-336.assessment6D. **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**

Under the law applicable to personal / bankruptcy procedures opened before 15 July 2022, a **consumer** cannot be admitted to a consumer’s agreement or plan if –

1. the consumer assumed obligations without a reasonable prospect of meeting them and relied on credit in a manner that was not proportionate to their income.
2. the consumer is responsible for causing the over-indebtedness with a reckless conduct.
3. both options (a) and (b).
4. only option (b).

**Question 1.2**

When an **insolvency petition** is filed –

1. all connected actions are dealt with by the insolvency court where the proceedings were commenced, irrespective of their value.
2. there is no *vis attractiva* for connected actions.
3. the *vis attractiva* is limited to those actions that deal with the status of the creditors, but not those that deal with the legal position of the debtor and its legal representatives.
4. all connected actions are dealt with by the insolvency court where the proceedings were commenced, unless they exceed the threshold of EUR 1,000,000, in which case the local Court of Appeal will deal with the action.

**Question 1.3**

Which of the following procedures introduced by the new *Codice della Crisi dell’Impresa e dell’Insolvenza* **is not binding** on dissenting creditors?

1. *Concordato preventivo* (pre-insolvency composition).
2. *Accordi di ristrutturazione dei debiti* (debt restructuring agreements).
3. *Piani attestati di risanamento* (turnaround plans).
4. *Composizione negoziata della crisi* (negotiated agreements).

**Question 1.4**

The **director’s duty** to manage the company in a prudent and reasonable manner is owed to –

1. the company’s shareholders.
2. the company’s creditors.
3. the company’s shareholders and to its creditors on the eve of insolvency.
4. the company, irrespective of whether their actions can affect either shareholders or creditors.

**Question 1.5**

In order to be eligible for **pre-insolvency compositions** regulated by the *Codice della Crisi dell’Impresa e dell’Insolvenza*, companies need to be –

1. in a state of crisis rather than in a state of insolvency upon admission to the procedure.
2. cash-flow or balance-sheet insolvent.
3. in a state of crisis or insolvency upon submission of the petition, and at the moment when the court is asked to approve the agreement.
4. in a state of over-indebtedness.

**Question 1.6**

A **“situation of crisis”** is –

1. the same as insolvency.
2. the same as over-indebtedness.
3. uncertain, as the concept is not defined by the law.
4. a situation of economic and financial distress that can lead to cash-flow insolvency in the ensuing 12 months.

**Question 1.7**

In the **personal bankruptcy procedures** regulated by the *Codice della Crisi dell’Impresa e dell’Insolvenza* –

1. liquidation is not an option.
2. innovative start-ups can file for a consumer’s debt restructuring agreement.
3. the *organismo di composizione della crisi* does not play any role in minor compositions.
4. debtors are allowed to keep their own homes if they successfully complete a consumer’s debt restructuring agreement.

**Question 1.8**

Rules on **netting and set-off** –

1. apply only to liquidation procedures.
2. restrict the validity of contractually negotiated clauses.
3. require claims to be quantified, certain and preferably due.
4. are not codified in the *legge fallimentare*.

**Question 1.9**

Following the United Kingdom’s (UK) **withdrawal** from the European Union –

1. Italian restructuring procedures are no longer enforceable in the UK.
2. it may be possible to rely on a simplified recognition procedure under the Cross-Border Insolvency Regulations 2006 if the Italian restructuring procedure is a pre-insolvency composition that is collective in nature, and if notification has been provided to all potential creditors.
3. recognition of Italian restructuring proceedings would even have consequences for contracts subject to English law (rule in *Gibbs*).
4. it is now possible to rely on the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments, while in the past it was possible to rely on the Brussels Recast Regulation.

**Question 1.10**

**Recent reforms** based on the preparatory work of the Rordorf Commission and enacted by the *Codice della Crisi dell’Impresa e dell’Insolvenza* –

1. benchmark international best practices and European recommendations.
2. do not introduce significant changes to the current law.
3. discourage the strategic use of statutory provisions by both creditors and debtors.
4. have not yet been enacted by Parliament.

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

The principle of equality amongst creditors (*par condicio creditorum*) applies only with reference to classes of creditors. However, the current system of securities, privileges and guarantees under Italian law recognises a wide array of exceptions to the *par condictio creditorum* rule. As a result, the system is rather Byzantine and cumbersome to the extent that many creditors are unlikely to be aware of their privileged status until, or unless, their debtor files for insolvency.

Discuss this statement with reference to relevant case law and statutes, as well as international recommendations and approaches adopted in other jurisdictions such as the UK or the United States.

[Type your answer here]

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

Personal restructuring and personal liquidation procedures have been significantly overhauled by the *Codice della Crisi dell’Impresa e dell’Insolvenza* (the Code). The new system represents a significant improvement over the previous law, particularly with reference to the more widespread and facilitated use of discharge for honest but unfortunate consumers. Discuss this statement with reference to the new provisions and procedures under the Code.

[Type your answer here]

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

Buonapizza Srl (the debtor) is a company registered in Milan, Italy. Its main factory is in Modena, Italy, which is also the place to where the board of directors transferred the registered office on 15 April 2020. The company has assets in other jurisdictions, including the UK. The debtor’s main line of business consists of producing locally-sourced pizzas and selling them to large foreign grocery shops, such as Tesco in the UK. The contract with Tesco is subject to English law, but there is no choice of forum for any dispute arising from it.

In December 2020, Buonapizza Srl ceased its operations due to industrial action and later that month filed for corporate liquidation (*fallimento*). In a judgment dated 12 January 2021, the local court in Modena opened a corporate liquidation proceeding against Buonapizza Srl.

During the liquidation proceeding it emerged that one of the three executive directors withheld relevant information about the company’s state of affairs since January 2019. This director devised a complex scheme along with Buonapizza Srl’s accountant to divert funds to offshore accounts and to alter the company’s balance sheet. It was also established that since June 2020 the local court of Modena was aware of the potential insolvency of the company, when this emerged during an executory action by one of the company’s creditors.

Finally, as part of the liquidation procedure the receiver organised an auction for the sale of the Buonapizza Srl’s assets, including a plot of land crossed by a river that was given as collateral to Tesco.

The legal representative from Tesco, one of Buonapizza Srl’s creditors, comes to your offices and raises the issues below with you.

Using the facts above, answer the questions that follow. (When answering the questions, please refer to the relevant provisions under national law as well as to relevant case law.)

Question 4.1 [maximum 6 marks]

1. Was the local court in Modena entitled to open a corporate liquidation proceeding against Buonapizza Srl, considering that the company’s registered office only moved to Modena shortly before the filing?

[Type your answer here]

1. Would the situation be different under the new framework introduced by law no 155/2017?

[Type your answer here]

1. Can the judgment (and the insolvency-related judgments arising therefrom) be effected in the UK?

[Type your answer here]

Question 4.2 [maximum 4 marks]

Was the debtor, its directors or the local court under any obligation to file for insolvency at an earlier stage? Are there any compensatory or punitive remedies for the parties’ failure to act promptly?

[Type your answer here]

Question 4.3 [maximum 5 marks]

Could Buonapizza Srl grant collateral over the plot of land described in the example? Are there any assets that, under Italian law, cannot be obtained as collateral?

[Type your answer here]

**\* End of Assessment \***