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

**BELGIUM**

This is the **summative (formal) assessment** for **Module 6F** 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 6F**. 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, although some lecturers may indicate the maximum length they are looking for. 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.assessment6F]**. An example would be something along the following lines: 202122-336.assessment6F. **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**

In Belgium, the court system is divided into several layers. How many layers are there in this regard?

Choose the **correct answer**:

1. The Belgian court structure is a two-tier system.
2. The Belgian court structure is a three-tier system.
3. The Belgian court structure is a four-tier system.
4. The Belgian court structure is a five tier-system.

**Question 1.2**

Which option below describes the treatment of insolvency proceedings in the United Kingdom under Belgian law?

Choose the **correct answer**:

1. These proceedings are eligible for recognition under the European Insolvency Regulation.
2. These proceedings are automatically recognised under the European Insolvency Regulation.
3. These proceedings can be recognised under the European Insolvency Regulation or the UNCITRAL Model Law.
4. These proceedings may be recognised in compliance with the Belgian Code of Private International law.

**Question 1.3**

Which insolvency regimes are applicable to individuals in Belgium?

Choose the **correct answer**:

1. Bankruptcy, liquidation and judicial reorganisation.
2. Bankruptcy and judicial reorganisation.
3. Liquidation and collective debts settlement.
4. Bankruptcy, judicial reorganisation and collective debts settlement.

**Question 1.4**

Which payments made by a Belgian company to its shareholders are likely to be set aside by a trustee, assuming that these payments were made seven months prior to the bankruptcy of the company?

Choose the **correct answer**:

1. None, as the look-back period (“suspect period”) for payments is only six months.
2. Payment of dividends and repayment of shareholder loans.
3. All payments that were not made for arm’s-length consideration.
4. Payment of dividends and repayment of shareholder loans.

**Question 1.5**

Which one of the following options is considered as a rescue regime in Belgium?

Choose the **correct answer**:

1. Bankruptcy.
2. Judicial reorganisation.
3. Collective debts settlement.
4. Judicial reorganisation and collective debts settlement.

**Question 1.6**

Is there a Belgian insolvency regime that is a DIP (debtor-in-possession) regime?

Choose the **correct answer**:

1. Yes, namely collective debts settlement.
2. Yes, namely bankruptcy.
3. Yes, namely judicial reorganisation.
4. No, as all of the insolvency regimes are considered to be PIP (practitioner-in-possession) regimes.

**Question 1.7**

Which one of the following statements is **incorrect**?

1. Termination clauses in contracts are valid in the case of bankruptcy.
2. Termination clauses in contracts are valid in the case of judicial reorganisation.
3. Termination clauses in contracts are valid in the case of liquidation.
4. Existing agreements are not automatically terminated by virtue of a bankruptcy.

**Question 1.8**

Which one of the following statements is **incorrect**?

1. Bankruptcy entails a *concursus* under Belgian law.
2. Corporate liquidation entails a *concursus* under Belgian law.
3. As a general rule, judicial reorganisation entails a *concursus*.
4. The (supervised) transfer of all or part of the business in the framework of a judicial reorganisation entails a *concursus*.

**Question 1.9**

Choose the **correct statement**:

1. Under Belgian law, cross border insolvencies are dealt with under the UNCITRAL Model Law on Cross-Border Insolvency.
2. Under Belgian law, cross border insolvencies are dealt with under the European recast regulation.
3. Under Belgian law, cross border insolvencies are dealt with under with the European recast regulation, the Belgian Code of Private International law, and any international (bilateral) convention as the case may be.
4. Under Belgian law, cross border insolvencies are dealt with under the Belgian Economic Code.

**Question 1.10**

Choose the **correct statement**:

1. A company that is in a state of cessation of payments can only benefit from the bankruptcy regime.
2. A company that is in a state of cessation of payments can only benefit from corporate liquidation.
3. A company that is in a state of cessation of payments can benefit from the collective debts settlement.
4. A company that is in a state of cessation of payment can benefit from the bankruptcy regime, the judicial reorganisation regime and the corporate liquidation regime.

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

**Question 2.1 [maximum 2 marks]**

Compare the treatment of existing contracts under judicial reorganisation to the treatment thereof under bankruptcy. (Students should restrict their answers to no more than 100 words.)

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

What is the status and the rights of a mortgagee in the event of the judicial reorganisation of its debtor (the mortgagor)? (Students should restrict their answers to no more than 100 words).

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

Name and briefly summarise the ways in which judicial reorganisation may commence under Belgian law. (Students should restrict their answers to no more than 150 words.)

[Type your answer here]

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

**Question 3.1** **[maximum 8 marks]**

Is Belgian insolvency law creditor- or debtor-friendly? Motive your answer by providing a few concrete examples (Students should restrict their answers to no more than 400 words.)

[Type your answer here]

**Question 3.2 [maximum 7 marks]**

Under Belgian insolvency law, would it be advisable to obtain a personal guarantee in order to be protected against the insolvency of a debtor? Provide reasons for your answer. (Students should restrict their answer to no more than 300 words.)

[Type your answer here]

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

You represent a group of companies, the parent company of which is located in France. The group is engaged in the business of worldwide car manufacturing.

The parent company has issued corporate debt instruments (bonds) through a special purpose Belgian subsidiary, the proceeds of which were used by the Belgian subsidiary to make loans to the operational companies in the group. The Belgian subsidiary has a board consisting of Belgian nationals and has a small office in Brussels. In fact, the board of each company in the group consists of the same Belgian nationals. The bonds are guaranteed by an intermediate holding company, which is also located in France. The parent company and its subsidiaries also benefit from significant credit facilities, mainly granted by the Belgian entity of the bank BNP Paribas (that is BNP Paribas Fortis). Over the last few years these credit facilities have been intensively used and have been increasingly difficult to repay.

The parent company is exploring options to safeguard the group’s activities as the overall indebtedness of the group has dramatically increased over the years. The contemplated restructuring should take place sometime in the second half of 2022. The parent company’s general counsel in Paris has asked you to advise whether they can use French proceedings, which they are used to, in relation to the bonds issued by the Belgian entity. In any event, general counsel has made it very clear that he will be very disappointed in his legal advisors if he is held to open, and pay for, full legal proceedings in more than one jurisdiction.

**Using the facts above, answer the question that follows**.

Explain what would be the most suitable insolvency proceedings to utilise in Belgium, should this restructuring be dealt with in Belgium (regardless of any private international law / conflict of laws issue). Further, based on the Belgian rules that are applicable, also discuss where the envisaged restructuring can be commenced with. Students should elaborate on any issues that may be encountered. Students are required to answer the question from a Belgian law perspective only.

(Students should restrict their answers to no more than two (2) A4 pages.)

[Type your answer here]

**\* End of Assessment \***