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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7B**

**KENYA**

This is the **summative (formal) assessment for Module 7B** 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 7B**. 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 or Avenir Next 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.assessment7B]**. An example would be something along the following lines: 202223-336.assessment7B. **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 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**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 parties **may not** make an application for the bankruptcy of an individual?

1. A creditor.
2. A combination of creditors.
3. A supervisor of an individual voluntary arrangement.
4. The debtor.
5. The Official Receiver.

**Question 1.2**

Choose the **incorrect** statement:

In the event of bankruptcy, a secured creditor may –

1. Sell the charged asset and use the proceeds of such sale to settle the debt owed by the bankrupt.
2. Have the charged asset valued and prove in the bankruptcy as an unsecured creditor for the balance due after deducting the amount of the valuation.
3. Make an application to the court for the disposal of the charged property so as to provide a better overall outcome for all the creditors.
4. Surrender the charged assets to the bankruptcy trustee for the benefit of all creditors.

**Question 1.3**

**How long** after his appointment should the liquidator of a company convene a creditors’ meeting?

1. Within 30 days.
2. Within 28 days.
3. Within 21 days.
4. Within 14 days.

**Question 1.4**

Which one of the following is not one of circumstances in which a company may be liquidated voluntarily:

1. Where the period fixed for the duration of the company by the articles expires.
2. Where the number of members is reduced by two.
3. An event occurs, on the occurrence of which the articles provide that the company is to be dissolved.
4. If the company resolves by special resolution that it be liquidated voluntarily.

**Question 1.5**

Which one of the following is **not** an objective of administration:

1. To achieve a better outcome for the company’s creditors as whole than would likely to be if the company were liquidated.
2. To take possession of and sell the assets secured under a security agreement in order to pay the outstanding debt.
3. Maintain the company as a going concern.
4. To realise the property of the company in order to make a distribution to one or more secured or preferential creditors.

**Question 1.6**

Which **one** of the following is **not true** once an administrator has been appointed:

1. The administrator assumes control of all the property to which the administrator believes the company is entitled.
2. A creditor may take steps to enforce a security over the company’s property without the consent of the administrator or the approval of the court.
3. The administrator of a company may dispose of, or take action relating to, property that is subject to a floating charge as if it were not subject to the charge.
4. An automatic moratorium becomes effective prohibiting any legal action being brought against the company.

**Question 1.7**

**Within how many days** of the company entering into administration must the administrator hold an initial meeting of the company’s creditors?

1. Within 14 days.
2. Within 30 days.
3. Within 60 days.
4. Within 70 days.

**Question 1.8**

Which **one** of the following acts may **not be undertaken** while a pre-insolvency moratorium is in place?

1. Steps may be taken to enforce any security over the company's property with the approval of the court.
2. An application for an administrator to be appointed in respect of the company may be made with approval of the court.
3. Other proceedings (including execution or other legal process) may be commenced or continued against the company with approval of the court.
4. A landlord to whom rent is payable may exercise a right of forfeiture in relation to premises let to the company in respect of a failure by the company to comply with any term of its tenancy of the premises with approval of the court.

**Question 1.9**

Which of the following **may not** make a proposal for a company voluntary arrangement (CVA):

1. Creditors.
2. Directors.
3. Liquidator (where the company is in liquidation).
4. Administrator (where the company is in administration).

**Question 1.10**

Which one of the following companies is eligible for a moratorium:

1. A company that has debts due under an agreement that exceed KES 1 million.
2. A company that is in liquidation or under administration.
3. A company that underwent a company voluntary arrangement within 12 months prior to the application for a moratorium.
4. A company where a receiver has been appointed over its assets.

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

**Question 2.1 [maximum 2 marks]**

What are the powers of a bankruptcy trustee over charges in respect of a bankrupt’s property?

[Type answer here]

Question 2.2 [maximum 4 marks]

What are the circumstances in which the Attorney General can make an application to the court for the liquidation of a company?

[Type answer here]

Question 2.3 [maximum 4 marks]

What are the instances in which a debtor may be disqualified from entering into a no-asset procedure?

[Type answer here]

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

**Please select only one of the following questions below. Please delete the questions you choose not to answer.**

Question 3.1 [maximum 15 marks]

Discuss the process of voluntary and involuntary liquidation in a winding-up.

[Type answer here]

**OR**

Question 3.2 [maximum 15 marks]

Discuss the process of the appointment of an administrator under section 541 of the Insolvency by the company or its directors, and the process to be followed post-appointment.

[Type answer here]

**OR**

Question 3.3 [maximum 15 marks]

You have been approached by Just Bank Limited (JBL) who are secured creditors of Number One Limited (Number 1) having granted certain loan facilities to Number 1. In addition, JBL provided additional facilities to Number Two Limited (Number 2) a sister company of Number 1. Number 1 and Number 2 created certain securities in favour of JBL (all asset debentures by both Number 1 and Number 2). However, the Number 2 all asset debenture is not a qualifying floating charge. Number 2 is a land holding company and owns no other assets. It has created a first ranking charge over that land and has leased the land to Number 1 which operates a manufacturing factory on the said land. JBL informs you that both Number 1 and Number 2 have not been repaying their debts and have been in default for over a year. Furthermore, you are informed as follows:

1. Sometime in the past three years, the shareholders of Number 1 and Number 2 incorporated a special purpose vehicle (SPV) and transferred all the business of Number 1 to the SPV. The consideration for the transaction was a cost that is below market standard and as a result Number 1 has been incurring losses.
2. Furthermore, Number 1 has not been paying any rent to Number 2 over the years.
3. The SPV also occupies part of the land that Number 1 operates its business and there has been commingling of space of employees. In addition, the SPV has not been paying any rent.
4. The directors of Number 1 and SPV and their shareholders also claim to have lent money to Number 1. As a result, there has been a purported assignment of debt where the directors of Number 1 assigned their debt due from Number 1 to the SPV, the net effect being that Number 1 owes a debt to the SPV. JBL informs you that there is no proof of such debt actually raising and that these are fictious debts.
5. JBL has requested you to provide advice on the remedies it can take against Number 1 Number 2, the SPV, their respective directors and shareholders and any assets and transactions entered into between all the three companies.

[Type answer here]

**OR**

Question 3.4 [maximum 15 marks]

1. Fully discuss the priority of creditors under the Insolvency Act.

[Type answer here]

1. Explain the procedure for commencing a company voluntary arrangement.

[Type answer here]

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

**Please select only one of the following questions below. Please delete the questions you choose not to answer.**

Question 4.1 [maximum 15 marks]

You have been approached by the directors of Take Out Kenya (the company) to advise on their options in light of the company’s recent financial problems. The directors disclose the following to you:

* the company has not been doing well for the past three years and the directors know the company is, and has been, insolvent;
* the company has outstanding loans owed to certain creditors, and 20% of these loans are secured while 80% are unsecured;
* the directors incorporated a separate entity and transferred the business of the company to this entity;
* one of the directors acquired property owned by the company;
* one of the company’s assets was sold to the spouse of one of the main shareholders at a value lower than market price;
* during the last nine months the company sold some assets to pay certain unsecured creditors who had threatened to sue the company;
* as a result of its insolvency, the company was in the process of transferring (but this has not yet been completed) one of its most valuable assets to a newly incorporated company (a special purpose vehicle (SPV)) owned by its parent company; and
* the directors have provided you with an independent business review report by a top audit firm that shows that the company is viable and can return to profitability if certain structural changes are adopted. The directors inform you that they have shared this report with the company’s main creditors who are owed 80% of its total debts and who have shown their willingness to discuss any proposals from the company. The remaining creditors were unwilling to engage the directors.

The directors have asked you to advise them on the best course of action for the company and the various options available to them.

[Type answer here]

**OR**

Question 4.2 [maximum 15 marks]

Defjam Limited (the company) is engaged in the manufacturing of spoons. The company has a total of 20 secured creditors with an outstanding debt of KES 5 billion in aggregate. The company also has outstanding unsecured debts of KES 100 million, including employees who are owed KES 10 million in unpaid wages. As a result of prevailing bad market conditions, the company’s fortunes took a turn for the worst and the company is unable to pay its debts. One of the secured creditors, 1M Bank, approaches you to advise on the steps to be taken and, in addition, you are informed of the following:

* the company had appointed a provisional monitor to oversee an arrangement proposed by the directors of the company to pay its outstanding debts;
* the provisional monitor had called a creditors’ meeting to decide whether to approve the proposal for the arrangement;
* the proposal was approved by a majority of the creditors present at the creditors’ meeting; and
* that 1M Bank did not consent to the approval of the proposed arrangement.

[Type answer here]

**OR**

Question 4.3 [maximum 15 marks]

You have been approached by Mr Jackson who claims to be a representative of MJ Limited, a foreign company registered in Kenya. Mr Jackson claims that MJ Limited is being liquidated in its home jurisdiction and that an order directing that the company be wound-up has been issued in its home jurisdiction. Mr Jackson claims that MJ Limited has sufficient assets to pay its creditors in Kenya. Mr Jackson requests that you advise him on how to proceed with the realisation of MJ Limited’s assets in Kenya.

[Type answer here]

**\* End of Assessment \***