**Text, logo, company name

Description automatically generated**

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

**UGANDA**

This is the **summative (formal) assessment for Module 7F** 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 7F**. 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.assessment7F]**. An example would be something along the following lines: 202223-336.assessment7F. **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 **does not** constitute inability to pay debt within the meaning of section 3 of the Insolvency Act of 2011?

1. The debtor has more liabilities than assets.
2. The debtor has failed to comply with the statutory demand.
3. The execution against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part.
4. All or substantially all the property of a debtor is in the possession or control of a receiver or some other person enforcing a charge over the property.

**Question 1.2**

The 2022 judgment in the case of *Bank of India (U) Ltd v NC Beverages Limited and Uganda Revenue Authority* is important to insolvency jurisprudence in Uganda because –

1. The court highlights the relationship between the Uganda Revenue Authority warrants and disposal of distressed assets.
2. The court emphasises the priority rights of secured creditors in insolvency proceedings.
3. The court explains when a floating charge crystalises.
4. The court ordered that taxes are not a priority debt.

**Question 1.3**

Choose the **correct statement**:

1. The repeal of subsection 2 of section 12 of the Insolvency Act of 2011 by the Insolvency Amendment Act of 2022 implies that preferential debts shall so far as the assets are insufficient to meet them, have priority over the claims of secured creditors.
2. The repeal of subsection 2 of section 12 of the Insolvency Act of 2011 by the Insolvency Amendment Act of 2022 implies that preferential debts do not have priority over claims of floating charge holders.
3. The repeal of subsection 2 of section 12 of the Insolvency Act of 2011 by the Insolvency Amendment Act of 2022 implies that secured creditors will submit their claims to preferential creditors.
4. The repeal of subsection 2 of section 12 of the Insolvency Act of 2011 by the Insolvency Amendment Act of 2022 implies that preferential debts do not apply to secured assets.

**Question 1.4**

Which of the following processes **cannot co-exist** in respect of the same company under the Insolvency Act of 2011:

1. Liquidation and receivership.
2. Receivership and provisional administration.
3. Provisional administration and administration.
4. Liquidation and administration.

**Question 1.5**

Under the Insolvency Amendment Act of 2022, what is the **maximum value** of financing the administrator can borrow with the consent of creditors?

1. A value equal to the value of the company’s assets.
2. Double the value of the company’s assets.
3. A value not exceeding the value of unencumbered assets at the time of executing the administration deed.
4. A value as determined by the court.

**Question 1.6**

Which **procedure** allows a company to enter into a formal agreement with its creditors to secure a moratorium, continue operations, and ultimately rescue the business?

1. Compromise and arrangement under the Companies Act of 2012.
2. Administration under the Insolvency Act of 2011.
3. Provisional administration under the Insolvency Act of 2011.
4. Liquidation under the Companies Act of 2012.

**Question 1.7**

Within how many days of the company entering provisional administration must the administrator call a meeting of the company’s creditors?

1. Two working days.
2. Seven working days.
3. Five working days.
4. 14 working days.

**Question 1.8**

Which action does not terminate provisional administration according to the Insolvency Act of 2011?

1. Execution of an administration deed.
2. Resolution by creditors to end provisional administration.
3. Non-execution of an administration deed within 21 days.
4. Passing of a resolution for liquidation by shareholders.

**Question 1.9**

What **legal framework** did Uganda adopt for cross-border insolvency by incorporating the UNCITRAL Model Law on Cross-Border Insolvency?

1. The Insolvency Act of 2011 with modifications.
2. The Insolvency Amendment Act of 2022 with modifications.
3. The UNCITRAL Model Law on Cross-Border Insolvency without any changes.
4. The Insolvency Act of 2011 without any changes.

**Question 1.10**

Under which circumstance does the High Court of Uganda have the authority to **set aside** the registration of a foreign judgment?

1. If the judgment debtor had submitted to the jurisdiction of the foreign court.
2. If the foreign judgment is in compliance with the Foreign Judgments (Reciprocal Enforcement) Act.
3. If the judgment debtor had not received notice of the proceedings in sufficient time to defend.
4. If the enforcement of the foreign judgment would not be contrary to public policy in Uganda.

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

**Question 2.1 [maximum 2 marks]**

Who are the key stakeholders in an administration?

[Type answer here]

Question 2.2 [maximum 4 marks]

Describe five insolvency processes that must be initiated through court under the Insolvency Act of 2011.

[Type answer here]

Question 2.3 [maximum 4 marks]

List four disqualifications for practising insolvency in Uganda.

[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]**

Explain the importance of each of the key contents / requirements of an administration deed.

[Type answer here]

**OR**

**Question 3.2 [maximum 15 marks]**

Explain the key steps and documents required before a court can issue a liquidation order.

[Type answer here]

**OR**

Question 3.3 [maximum 15 marks]

Describe the key roles and duties of a receiver.

[Type answer here]

**OR**

Question 3.4 [maximum 15 marks]

What are the key milestones in the process of a voluntary liquidation?

[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 are an insolvency practitioner and have been contacted by Bank A for advice. The facts presented to you are as follows:

1. One of Bank A’s big customers, a family-owned company (Firm B Ltd), is defaulting on its loan repayment, and it is unlikely that Firm B Ltd will pay its next instalment. Current arrears are USD 300,000 and total debt is USD 1,200,000.
2. Bank A’s only security is a floating charge over all the assets and undertakings of Firm B Ltd.
3. A month ago, Firm B Ltd mortgaged its land worth USD 800,000 to Money Lending (SMC) Ltd whose sole member, Mr SMC, is the major shareholder in Firm B Ltd. The mortgage was created to cover Mr SMC’s USD 1,000,000 loan which he advanced to Firm B Ltd.
4. Firm B Ltd has not paid taxes for over three years, and its exposure is estimated at USD 250,000.
5. Firm B Ltd has not been paying salaries for over six months.
6. Several other suppliers are claiming over USD 1,500,000 and some have taken Firm B Ltd to court and obtained judgments against it.
7. External audit reports indicate that the business of Firm B Ltd is viable but the shareholder fights are affecting operations and investment.
8. Bank A is concerned that the assets of Firm B Ltd have been stripped by the shareholders, and others may be attached by creditors leaving nothing to recover the debt owed to Bank A.

Advise Bank A on its present risks, priority claims, the issues in the facts and the remedies available to A Bank.

[Type answer here]

**OR**

Question 4.2 [maximum 15 marks]

The directors of XYZ Ltd (the company) have approached you for advice. They run a logistics business and trouble started two years ago when one of their warehouses caught fire from the neighbouring plot. The structure worth about USD 2,000,000 was damaged together with customer goods worth over USD 10,000,000. The insurance company that the company had contracted has recently been placed under statutory management by the regulator on account of capital adequacy issues. It is not clear when the insurance claim will be settled but it is unlikely that it will come soon. The customers do not want to hear stories about the insurer’s troubles; they want their compensation from the company. Some of them have obtained warrants to attach the other assets of the company such as trucks and land, but the most worrying is that a petition has been filed to liquidate the company. The directors believe that the insurance compensation will come eventually but, in the meantime, they have devised a plan to pay the customers in instalments from their cashflows. Some of the customers want their entire pay at once.

Advise the directors on the best option and process to take to ensure the survival of the company’s business while the creditors get paid.

[Type answer here]

**OR**

Question 4.3 [maximum 15 marks]

Jay runs a clothing store business. In 2018, she borrowed UGX 250,000,000 from a money lender, Mr G, to enable her to expand her business. The loan was secured by a third-party legal mortgage on land belonging to her brother Joe, and the land was worth about USD 400,000,000 at that time. In 2020 by a deed of accession, X Bank assumed 50% of the lending rights and obligations under the previous loan obligations of Jay to the value of UGX 120,000,000. Subsequently, after a bitter fight with Joe, Joe’s wife (who was his girlfriend at the time of the mortgage) sued both creditors challenging the mortgage process because she did not give consent for granting the mortgage on their matrimonial property. In turn, the creditors recalled their loans, and while Jay’s business is doing well, pulling out UGX 230,000,000 at once will collapse it. The creditors have threatened to file bankruptcy cases against Jay and Joe if they do not receive payments within the next seven days.

Joe and Jay have come to you for advice.

1. Explain to them under what circumstances bankruptcy cases are filed and whether they (Jay and Joe) fall within the ambit of the law.

[Type answer here]

1. Advise them on the legal mechanism that they can use to bring the banks back to the discussion table.

[Type answer here]

**\* End of Assessment \***