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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8A**

**AUSTRALIA**

This is the **summative (formal) assessment** for **Module 8A** 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 8A**. 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: **[studentnumber.assessment8A]**. An example would be something along the following lines: 202021IFU-314.assessment8A. **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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. 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 **7 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**:

If a creditor is dissatisfied with the bankruptcy trustee or liquidator’s decision in respect of its proof of debt, the creditor may:

1. apply to AFSA or ASIC for the decision to be reversed or varied.
2. apply to the bankruptcy trustee or liquidator for the decision to be reversed or varied.
3. bring court proceedings for a money judgment in respect of the debt.
4. apply to the court for the decision to be reversed or varied.

**Question 1.2**

Which of the following **is not** a collective insolvency process:

1. Receivership.
2. Liquidation.
3. Deed of company arrangement.
4. Voluntary administration.

**Question 1.3**

**Select the correct answer**:

The purpose of the Assetless Administration Fund is to:

1. finance preliminary investigations and reports by AFSA to trustees into the bankruptcies of individuals with few or no assets, to assist trustees in deciding whether to commence enforcement action.
2. finance preliminary investigations and reports by ASIC to liquidators into the failure of companies with few or no assets, to assist liquidators in deciding whether to commence enforcement action.
3. finance preliminary investigations and reports to AFSA by trustees into the bankruptcies of individuals with few or no assets, to assist AFSA in deciding whether to commence enforcement action.
4. finance preliminary investigations and reports to ASIC by liquidators into the failure of companies with few or no assets, to assist ASIC in deciding whether to commence enforcement action.

**Question 1.4**

**Select the correct answer**:

Newco Pty Ltd has 3 employees and an annual turnover of AUD 950,000. It currently owes AUD 300,000 to its trade creditors, and it has a AUD 800,000 secured loan from its bank. Which of these restructuring processes is Newco **ineligible**for?

1. A voluntary administration followed by a deed of company arrangement.
2. An informal restructuring with the agreement of creditors.
3. A small business restructuring plan.
4. A deed of company arrangement.

**Question 1.5**

**Select the correct answer**:

Which of the following is **not** “divisible property” in a bankruptcy?

1. Wages earned by the bankrupt.
2. Fine art.
3. Choses in action relating to the debtors’ assets.
4. The bankrupt’s family home.
5. Superannuation funds.

**Question 1.6**

Which of the following **is not** a relevant period for the entry into a transaction which constitutes an unfair preference in a liquidation?

1. The six-month period ending on the “relation back day”.
2. The one-year period ending on the relation back day where the creditor had reasonable grounds for suspecting that the company was insolvent.
3. The four-year period ending on the relation back day where the creditor is a related entity of the company.
4. The 10-year period ending on the relation back day where the transaction was entered into for a purpose that included defeating, delaying or interfering with the rights of creditors in the event of insolvency.
5. After the relation back day but on or before the liquidator was appointed.

**Question 1.7**

**Select the correct answer**:

A receiver:

1. is an agent of the secured creditor that appointed the receiver.
2. owes a duty of care to unsecured creditors.
3. is an agent of the company and not of the secured creditor that appointed the receiver.
4. is an agent of the company until the appointment of a liquidator to the company.
5. is required to meet the priority claims of employees out of assets subject to a non-circulating security interest.

**Question 1.8**

**Select the correct answer**:

A voluntary administrator must convene and hold a first meeting of creditors within how many business days of his appointment?

1. 3 business days.
2. 8 business days.
3. 12 business days.
4. 24 business days.
5. 45 business days.

**Question 1.9**

**Select the correct answer**:

Australia has excluded from the definition of “laws relating to insolvency” for the purposes of Article 1 of the Model Law the following parts of the Corporations Act:

1. The part dealing with schemes of arrangement.
2. The part dealing with windings up of companies by the court on grounds of insolvency.
3. The part dealing with taxes and penalties payable to foreign revenue creditors.
4. The part dealing with the supervision of voluntary administrators.
5. The part dealing with receivers, and other controllers, of property of the corporation.

**Question 1.10**

**Select the correct answer**:

Laws regarding the following came into effect on 1 January 2021:

1. an *ipso facto* moratorium in voluntary administrations and liquidations.
2. simplified restructuring and liquidation regimes for small companies.
3. reducing the default bankruptcy period from three years to one year.
4. a safe harbour from insolvent trading liability*.*

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

**Question 2.1 [maximum 3 marks]**

Name the three types of voidable transactions that can be reversed by a bankruptcy trustee and describe the circumstances in which such a transaction will not be reversible.

[Type your answer here]

**Question 2.2 [maximum 3 marks]**

How does a court determine the scope of the stay in relation to a corporate debtor under Australia’s implementation of Article 20 of the Model Law?

[Type your answer here]

**Question 2.3 [maximum 4 marks]**

What is an *ipso facto* clause and what is the relevance of *ipso facto* clauses in liquidations?

[Type your answer here]

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

“Creditors’ schemes of arrangement are costly and time-consuming and are an ineffective corporate rescue mechanism in Australia.”

Critically discuss this statement and indicate whether you agree or disagree with it, providing reasons for your answer.

[Type your answer here]

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

**Question 4.1 [maximum 9 marks]**

Aussiebee Pty Ltd (Aussiebee), a company incorporated in the fictional country of Lyonesse, sells chocolates flavoured with Australian native plants. The chocolates are manufactured in Australia by NewYums Pty Ltd (NewYums), an Australian-incorporated wholly-owned subsidiary of Aussiebee.

Aussiebee has offices and warehouses in both Sydney and in Lyonesse. Aussiebee regularly sells its chocolates all over the world, from both its Lyonesse and its Sydney offices and warehouses. AussieBee and NewYums share a board of directors, made up of six Australians and one Lyonessian. Aussiebee employed 40 staff: 20 in Sydney and 20 in Lyonesse. Aussiebee’s CEO is an Australian, but resident in Lyonesse. Aussiebee’s CFO is an Australian, resident in Australia.

Aussiebee is insolvent. NewYums, however, remains solvent.

A liquidator has been appointed to Aussiebee in Lyonesse. She applies to the Federal Court of Australia for recognition of the Lyonessian liquidation as a foreign main proceeding, and for orders entrusting Aussiebee’s assets (including Aussiebee’s shares in NewYums which are worth AUD 20 million) to her, so that she can realise them for the benefit of creditors in the Lyonessian liquidation.

Aussiebee owes AUD 12 million in taxes in Australia, payable to the Australian Taxation Office (ATO). Assume that revenue creditors such as the ATO are not entitled to prove in the Lyonessian liquidation.

You are advising the ATO. What should the ATO do to protect or improve its position?

[Type your answer here]

**Question 4.2 [maximum 6 marks]**

Shipmin Pty Ltd (Shipmin) is a company incorporated in Australia.Shipmin owned two cargo ships, one valued at AUD 20 million, the other at AUD 15 million. About 3 months ago, Shipmin sold the AUD 20 million cargo ship and paid the full proceeds of AUD 20 million to its parent company Shipmax Ltd (Shipmax) to reduce Shipmin’s intercompany debt to Shipmax. Shipmax is also incorporated in Australia and owns 100% of the shares in Shipmin.

Shipmin now owns only the one cargo ship with a value of AUD 15 million. Shipmin owes AUD 20 million to the Commonwealth Bank of Australia (CBA), which is secured by a mortgage over the remaining ship. The mortgage is not registered on the Personal Property Securities Register.

Shipmin’s debt to CBA has been guaranteed by Shipmax. Shipmin owes Shipmax AUD 180 million in inter-company debt. Shipmin has no other creditors.

Shipmax has been placed into liquidation. Advise Shipmax’s liquidator on the best way to bring the operations of Shipmin to an end and maximise the return to Shipmax from the assets of Shipmin.

[Type your answer here]