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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 (where this must be done is indicated under each question).

2. All assessments must be **submitted electronically in MS Word format**, using a standard A4 size page and a 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 each question. More often than not, one fact / statement will earn one mark, but it is also possible that half marks are awarded (this should be clear from the context of the question, or in the context of the answer).

4. You must save this document using the following format: **[studentID.assessment8A]**. An example would be as follows 202223-336.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 “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 paragraph 7 of the Course Handbook, specifically the information dealing with plagiarism and dishonesty in the submission of assessments. **Please note that plagiarism includes copying text from the guidance text and pasting it into your assessment as your answer**.

6.The final time and date for the submission of this assessment is **23:00 (11 pm) BST (GMT +1) on 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.

7. Prior to being populated with your answers, this assessment consists of **10 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:**

Which of the following processes require the company to be solvent?

1. Members’ voluntary liquidation.
2. Creditors’ voluntary liquidation.
3. Court-ordered liquidation.
4. Simplified liquidation process.

**Question 1.2**

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

1. Court-ordered liquidation.
2. Bankruptcy.
3. Private receivership.
4. Creditors’ voluntary liquidation.

**Question 1.3**

**Select the correct answer:**

Which of the following insolvency procedures **requires** court involvement?

1. Creditors’ scheme of arrangement.
2. Deed of company arrangement.
3. Creditors’ voluntary liquidation.
4. Voluntary administration.
5. Small company restructuring.

**Question 1.4**

**Select the correct answer:**

John Smith has an annual after-tax salary of AUD 120,000. He currently owes AUD 20,000 to Jack’s Tyres Pty Ltd and has an AUD 800,000 secured loan from his bank. Which of these restructuring processes is John **eligible** for?

1. A debt agreement under Part IX.
2. A voluntary administration.
3. A personal insolvency agreement under Part X.
4. A deed of company arrangement.

**Question 1.5**

**Select the correct answer:**

Stacey Lee runs a lawn-mowing business. Due to financial difficulties, she is unable to pay her trade creditors and has been declared bankrupt. Which of the following **is not** “divisible property” in her bankruptcy?

1. Wages earned by Stacey.
2. Stacey’s lawn mower (valued at AUD 2,000).
3. Choses in action relating to the Stacey’s assets.
4. Stacey’s family home.
5. Stacey’s collection of fine art (valued at AUD 50,000).

**Question 1.6**

Which of the following claims **are not provable** in a liquidation?

1. Future debts.
2. Contingent claims.
3. Penalties or fines imposed by a court in respect of an offence against a law.
4. Claims for damages for personal injury.

**Question 1.7**

**Select the correct answer:**

A deregistered company can be reinstated by ASIC where –

1. the directors unanimously vote in favour of reinstatement.
2. the liquidator becomes aware of assets in the company’s possession which were not distributed during the liquidation.
3. a court orders its reinstatement to enable legal proceedings to be pursued against it.
4. the Australian Taxation Office requests that it be reinstated due to outstanding tax liabilities.

**Question 1.8**

**Select the correct answer:**

A receiver –

1. is an agent of the secured creditors of the company.
2. owes a duty of care to unsecured creditors.
3. is an agent of the secured creditor, but prioritises the interests of the company.
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 1.9**

**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 the part dealing with –

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

**Question 1.10**

**Select the correct answer:**

The small company restructuring process is available for companies which –

1. have total liabilities not exceeding AUD 500,000.
2. have undergone restructuring proceedings in the last seven years.
3. have fewer than five directors.
4. have total liabilities not exceeding AUD 1 million.
5. all of the above*.*

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

**Question 2.1 [maximum 3 marks]**

Name the five types of voidable transactions that can be avoided by a liquidator on application to the court, and explain whether it is a complete defence to each of these types of voidable transactions if the defendant proves that they were not aware that the company was insolvent at the time they entered into the transactions.

[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 are the differences between a voluntary administration followed by a Deed of Company Arrangement and a small company restructuring?

[Type your answer here]

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

“Australia’s insolvency and restructuring options have in the past been very creditor-friendly. However, recent reforms have turned Australia into a debtor-friendly jurisdiction.”

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 8 marks]**

OzBling Pty Ltd (OzBling), a company incorporated in the fictional country of Florin, sells jewellery containing Australian native gems and crystals. The jewellery is manufactured in Australia by NewGems Pty Ltd (NewGems), an Australian-incorporated wholly-owned subsidiary of OzBling.

OzBling has offices in both Sydney and in Florin. Its factories are only in Sydney. OzBling regularly sells its jewellery all over the world, with orders received in Florin and shipped from the Sydney factories. OzBling and NewGems share a board of directors, made up of five Australians and one Florinean. OzBling employs 50 staff: 25 in Sydney and 25 in Florin. OzBling’s CEO is an Australian, but she is resident in Florin. OzBling’s CFO is an Australian, resident in Australia.

OzBling is insolvent. NewGems, however, remains solvent.

A liquidator has been appointed to OzBling in Florin. He applies to the Federal Court of Australia for recognition of the Florinean liquidation as a foreign main proceeding under the Cross-Border Insolvency Act 2008, and for orders entrusting OzBling’s assets (including OzBling’s shares in NewGem which are worth AUD 20 million) to him, so that he can realise them for the benefit of creditors in the Florinean liquidation.

OzBling 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 Florinean 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 7 marks]**

CopperTech Australia Pty Ltd (CT) is a company incorporated in Australia. It is in the business of recycling copper waste in Australia and selling the recycled copper. All of the shares in CT are owned by its parent company, CopperTech Group Ltd (CTG), also incorporated in Australia. The same board of directors controls both CT and CTG.

CT operated a copper recycling plant near Sydney, Australia as a joint venture with Aussie Metals Refinery Pty Ltd (AMR). The joint venture proved to be unprofitable, and the plant ceased operations in mid-2022.

CT’s major remaining asset is a second recycling plant that it operates near Perth, Western Australia. This plant has only been in operation for one year. The funding for the Perth plant has been provided by a major shareholder of CTG as an unsecured loan for AUD 50 million. The loan agreement provides that the loan is repayable by monthly instalments over a term of 10 years with the first payment due at the end of 2023. The loan agreement also provides that the loan becomes automatically due and payable in full if CT enters into any formal insolvency or restructuring process in Australia.

CT also owns three large trucks that transport waste copper to the Perth recycling plant and transport recycled copper to CT’s customers. Those trucks were purchased using a AUD 5 million loan from the Commonwealth Bank of Australia (CBA). That loan is secured by mortgages over the three trucks. The mortgages are not registered on the Personal Property Securities Register.

In July 2021, AMR commenced proceedings against CT in the Supreme Court of New South Wales for damages in respect of the failed joint venture. On 1 October 2021, the Supreme Court found in favour of AMR, ordering that CT pay AUD 4.1 million in damages to AMR.

Between October 2021 and October 2022, CT continued to trade, incurring debts to trade creditors as well as borrowing AUD 6 million from its parent company CTG. It made only a small profit from its Perth recycling plant.

A competitor has recently approached CT with an attractive offer to purchase the Perth recycling plant.

In October 2023, you are called in to advise the board of directors of CTG and CT about the financial predicament of CT. The board tells you that CT has never earned enough from its second recycling plant to meet the judgment debt and to start repaying CBA at the end of 2023. The board also tells you that there is no more funding available for CT’s operations, and that they have exhausted all possibilities for refinancing CT’s debts.

What do you advise the board to do about CT? What are the main issues that the board of CTG and CT should be aware of in light of the facts set out above?

[Type your answer here]

**\* End of Assessment \***