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

**INDIA**

This is the **summative (formal) assessment** for **Module 8D** 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 8D**. 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.assessment8D]**. An example would be something along the following lines: 202021IFU-314.assessment8D. **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**

The Insolvency and Bankruptcy Code 2016 currently **does not** apply to:

1. Small companies.
2. Limited Liability Partnerships.
3. Individuals and Partnership Firms not being guarantors to corporate debtors.
4. All of the above.

**Question 1.2**

Which of the following jurisdictions are currently exercised by the Debt Recovery Tribunals?

1. Recovery proceedings by Indian banks.
2. Disputes under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
3. Insolvency and bankruptcy of personal guarantors to corporate debtors under the Insolvency and Bankruptcy Code 2016.
4. All of the above.

**Question 1.3**

Which of these is **not** a function of the Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code 2016:

1. Registration of insolvency professionals.
2. Registration of insolvency professional agencies.
3. Carrying out inspections and investigations of insolvency professionals.
4. Appointing an insolvency professional as a resolution professional for a company.

**Question 1.4**

Which of these **can** be liquidated under the Insolvency and Bankruptcy Code 2016:

1. A banking company.
2. An insurance company.
3. National Housing Bank.
4. A non-banking financial company with asset size of INR 5 billion.

**Question 1.5**

Which one of the following **is not** a ground for a court to refuse to grant a discharge order under the Presidency- Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920?

1. The debtor has failed to maintain proper books and records of its financial position.
2. The debtor has borrowed provable debt when he had a reasonable expectation that he will not be able to repay such a debt.
3. the debtor has travelled outside India without court’s approval.
4. the debtor has brought about the insolvency due to rash and hazardous speculations.

**Question 1.6**

Indicate which one of the following avoidance powers is **not** available under the Provincial Insolvency Act 1920:

1. Avoidance of undue preferences.
2. Avoidance of transfers in consideration of marriage.
3. Disclaimer of onerous contracts.
4. Avoidance of transfer other than to a *bond fide* purchaser for value.

**Question 1.7**

Which of these has the highest priority in bankruptcy of an individual under the Insolvency and Bankruptcy Code 2016:

1. Workmen’s dues for 24 months preceding the bankruptcy order.
2. Amounts due to the Government.
3. Debt owed to the Government banks.
4. Dues of the employees for a period of 12 months preceding the bankruptcy order.

**Question 1.8**

Pursuant to Section 10A of the Insolvency and Bankruptcy Code 2016, which of the following **can** be a basis for an application to commence a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

1. A payment default on January 31, 2020.
2. A payment default on March 31, 2020.
3. A covenant default on March 25, 2020.
4. A covenant default on January 31, 2020.

**Question 1.9**

Which of the following is **not** an action required to be undertaken by the resolution professional in respect of a corporate debtor during a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

1. Maintaining an updated list of creditors.
2. Preparation of the information memorandum.
3. Drafting and finalization of the resolution plan.
4. Filing applications for avoidance transactions.

**Question 1.10**

Which of the following **is not** a requirement for withdrawing a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016:

1. Approval of the National Company Law Tribunal.
2. Approval of creditors by 90% majority by value.
3. Application to be made by the person on whose application the corporate insolvency resolution process was commenced.
4. Approval of a resolution plan.

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

**Question 2.1 [maximum 2 marks]**

In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, who prepares the repayment plan and who submits a report on such plan?

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Please describe how the Official Assignees under the Presidency- Towns Insolvency Act 1909 and the Official Receivers under the Provincial Insolvency Act 1920 are appointed.

[Type your answer here]

**Question 2.3 [maximum 3 marks]**

Please describe the moratorium that becomes effective during the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016?

[Type your answer here]

**Question 2.4 [maximum 1 mark]**

Please indicate the guidelines applicable to out of court restructuring by banks in India and the regulator who has issued these guidelines?

[Type your answer here]

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

Write a short essay on the constitution and role of the committee of creditors in the corporate insolvency resolution process of a company under the Insolvency and Bankruptcy Code 2016.

Your answer should make reference to at least the following:

* Who constitutes the committee and what is the basis of constitution;
* Who is eligible to be a member of the committee and who is not; and
* various actions that require the committee’s approval and the applicable percentages for the same.

[Type your answer here]

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

Milky Limited (Milky) is a dairy and milk products company in India. Milky underwent a corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code 2016; however due to the COVID-19 pandemic, no resolution plans were approved and Milky was sent into liquidation by the National Company Law Tribunal. The resolution professional appointed during the CIRP has not provided her consent to act as the liquidator. Milky currently has a large stock of perishable dairy products.

Basis a request from the National Company Law Tribunal, the Insolvency and Bankruptcy Board of India nominated Mr. Salman Khan, an insolvency professional, to act as the liquidator for Milky and the National Company Law Tribunal has confirmed his appointment as the liquidator

Mr. Khan has contacted you to advise him on the liquidation process under the Insolvency and Bankruptcy Code 2016. In this context, answer the questions below.

**Using the facts above, answer the questions that follow**.

**Question 4.1 [maximum 7 marks]**

Prepare a note for Mr Khan on reporting requirements as a liquidator of Milky and the timelines for the same. Please also advise him on how to deal with a situation where the timeline for completion of liquidation has not been met.

[Type your answer here]

**Question 4.2 [maximum 8 marks]**

Please prepare a note for Mr Khan on the process of realization of assets of Milky during liquidation and the eligible buyers.

[Type your answer here]

**\* End of Assessment \***