**Text, logo, company name

Description automatically generated**

**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: **[studentID.assessment8D]**. An example would be something along the following lines: 202122-336.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 “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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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 remedies **is** available to a non-Indian creditor?

1. Recovery proceedings before the Debt Recovery Tribunal.
2. Enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
3. Initiation of insolvency proceeding against corporate debtors under the Insolvency and Bankruptcy Code 2016.
4. Mandatory out-of-court restructuring under the inter-creditor agreement.

**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**

Who among the following **can be appointed** as a liquidator under the Companies Act 2013:

1. An Insolvency professional agency.
2. An insolvency professional.
3. A creditor.
4. A judge of the National Company Law Tribunal.

**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 travelled outside India without court’s approval.
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 failed to maintain proper books and records of its financial position.
4. the debtor has brought about the insolvency due to rash and hazardous speculations.

**Question 1.6**

Indicate which one of the following **is not** a disqualification for an insolvent under the Provincial Insolvency Act 1920:

1. Appointment as a magistrate.
2. Election to a local authority.
3. Voting as a member of a local authority.
4. Entry into a partnership for a new business.

**Question 1.7**

Which of the following **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**

In which of the following processes is section 29A of the Insolvency and Bankruptcy Code 2016 **not applicable**?

1. Corporate insolvency resolution process of an MSME.
2. Pre-pack insolvency process of an MSME.
3. Sale of assets of a company in liquidation.
4. Sale of assets under voluntary liquidation.

**Question 1.9**

Which of the following avoidance actions is only available during a liquidation process under the Insolvency and Bankruptcy Code 2016?

1. Avoidance of preferential transactions.
2. Avoidance of undervalued transactions.
3. Disclaimer of onerous property.
4. Avoidance of transactions defrauding creditors.

**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, briefly describe the difference between the moratorium upon filing of the petition and upon admission of the petition?

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Briefly describe the priority of debts in bankruptcy under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920.

[Type your answer here]

**Question 2.3 [maximum 3 marks]**

Indicate the situations in which an adjudication as a bankrupt may be sought under the Insolvency and Bankruptcy Code 2016?

[Type your answer here]

**Question 2.4 [maximum 1 mark]**

What kind of foreign judgements are eligible for enforcement in India?

[Type your answer here]

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

Write a short essay on the liquidation process of a company under the Insolvency and Bankruptcy Code 2016, focusing on the process of the disposal of assets and distribution of the proceeds.

Your answer should make reference to at least the following:

* the various means of sale of assets available to the liquidator including the eligibility requirements to purchase assets in liquidation;
* the priority of debts in liquidation; and
* a timeline for completion of the liquidation process.

[Type your answer here]

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

Fours and Sixes Limited (the Company) owns a cricket stadium in India. Due to the COVID-19 pandemic, there were no games played in the stadium and the revenue was negligible. In the latest meeting of the Board of Directors of the Company, it was noticed that the financial performance of the Company has not improved materially and that the Company is likely to default on an upcoming payment instalment to its creditors in June 2022. The lenders of the Company are primarily Indian banks.

The Board of the Directors of the Company has contacted you to advise them on the options available to them and key considerations. 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 the Board on the legal regime for an out-of-court debt restructuring for the Company.

[Type your answer here]

**Question 4.2 [maximum 8 marks]**

Prepare a note for the Board describing their powers and duties during a corporate insolvency resolution process of the Company.

[Type your answer here]

**\* End of Assessment \***