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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: **[studentID.assessment8D]**. An example would be something along the following lines: 202223-336.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 2023**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2023**. 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**

In terms of which of the following legislation can a company be wound up:

1. The Insolvency and Bankruptcy Code 2016.
2. The Insolvency and Bankruptcy Code 2016 and the Companies Act 2013.
3. The Insolvency and Bankruptcy Code 2016 and the Presidency-towns Insolvency Act 1909.
4. The Companies Act 2013 and the Presidency-towns Insolvency Act 1909.

**Question 1.2**

Which one of the following remedies **is not** available to a non-Indian creditor:

1. Recovery proceedings before the Civil Court.
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. Becoming part of an out-of-court restructuring under the inter-creditor agreement.

**Question 1.3**

Which of the following 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 the following forms of security **requires actual possession** of the secured property:

1. A mortgage in English form.
2. A pledge.
3. A charge.
4. A hypothecation.

**Question 1.5**

Which one of the following is **not a requirement** for a creditor’s petition for adjudication as a bankrupt under the Presidency-towns Insolvency Act 1909 and the Provincial Insolvency Act 1920:

1. The debt owing exceeds INR 500.
2. The debt is a liquidated sum payable immediately or in some certain future time.
3. The relevant act of insolvency occurred within three months prior to the presentation of the petition.
4. The debtor defrauded its creditors.

**Question 1.6**

Indicate which one of the following is **not a disqualification** for a bankrupt under the Insolvency and Bankruptcy Code 2016:

1. Appointment as a trustee or a public servant.
2. Election to a local authority.
3. Borrowing money after informing the other party of his bankruptcy.
4. Acting as a director to any company.

**Question 1.7**

Which of the following is **not a requirement** for initiating voluntary liquidation under the Insolvency and Bankruptcy Code 2016:

1. Special resolution of the shareholders of the corporate debtor.
2. Declaration of the directors of the company on the ability of the company to repay its debts from available assets.
3. Approval of two-thirds of the creditors.
4. Approval of the National Company Law Tribunal.

**Question 1.8**

In which one 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**

In which of the following situations can an **application for initiation** of corporate insolvency resolution process be filed under the Insolvency and Bankruptcy Code 2016:

1. The corporate debtor is a bank.
2. The corporate debtor is an MSME.
3. The creditor is an operational creditor and the debt is disputed.
4. The corporate debtor is in financial difficulties but there is no payment default.

**Question 1.10**

**Approval of the committee of creditors** is not a requirement for the following transactions undertaken by the resolution professional under the Insolvency and Bankruptcy Code 2016:

1. Raising interim finance.
2. Undertaking any related party transactions.
3. Payment of the approved insolvency resolution process costs.
4. Amending the constitutional documents of the corporate debtor.

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

**Question 2.1 [maximum 2 marks]**

Briefly describe the jurisdiction of the National Company Law Tribunal in relation to insolvency of personal guarantors of corporate debtors.

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Briefly describe the scope of the moratorium during the corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016, with a focus on the moratorium on termination of contracts.

[Type your answer here]

**Question 2.3 [maximum 3 marks]**

Indicate the acts of insolvency under the Presidency-towns Insolvency Act 1909.

[Type your answer here]

**Question 2.4 [maximum 1 mark]**

What is the relevance of reciprocating territories in respect of the enforcement of foreign judgements in India?

[Type your answer here]

**QUESTION 3 (essay-type question) [15 marks]**

Write a short essay on the process of invitation and approval of a resolution plan for a company under the Insolvency and Bankruptcy Code 2016.

Your answer should make reference to at least the following:

* the eligibility criteria that the resolution applicants will need to comply with;
* process and threshold for approval by the committee of creditors; and
* approval by the National Company Law Tribunal.

[Type your answer here]

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

Haphazard Limited, an Indian company, (the Company) provides marketing services in India. Most Premium League Limited (MPL), an Indian company that runs a cricket league, is a customer of the Company. MPL has failed to pay the last few invoices from the Company which now aggregate to INR 20 Crores. MPL appears to be in severe financial difficulties as it has defaulted in payments to many of its creditors, including secured creditors. However, it has offered to pay the Company in part if the Company continues providing the services and does not participate in a corporate insolvency resolution process that may be initiated by the secured creditors of MPL.

The Board of the Directors of the Company has contacted you to advise them on the options available and key considerations. In this context, answer the questions below.

**Question 4.1 [maximum 7 marks]**

Prepare a note for the Board on the ability to initiate insolvency proceedings in relation to MPL and the steps to be taken in this regard.

[Type your answer here]

**Question 4.2 [maximum 8 marks]**

Prepare a note for the Board explaining the risk of accepting the part payment as well as not participating in the corporate insolvency resolution process.

[Type your answer here]

**\* End of Assessment \***