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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 or Avenir Next 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 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.

**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**

Which of the following legislation provides for the rescue of a company:

1. The Insolvency and Bankruptcy Code 2016.
2. The Companies Act 2013.
3. The Presidency-towns Insolvency Act 1909.
4. The Provincial Insolvency Act 1920.

**Question 1.2**

Which one of the following remedies is 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. Recovery proceedings before the Debts Recovery Tribunal.
4. Mandatory participation in 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 cannot be enforced under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002?

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

**Question 1.5**

Which one of the following will make a creditor’s petition for adjudication as a bankrupt under the Presidency-towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 non-compliant with the requirements:

1. The debt owing exceeds INR 5,000.
2. The debt is a liquidated sum payable immediately or in some certain future time.
3. The relevant act of insolvency occurred five months prior to the presentation of the petition.
4. The debtor did not defraud its creditors.

**Question 1.6**

Indicate which one of the following enjoys **the highest priority** in distribution of proceeds from a bankrupt’s assets under the Insolvency and Bankruptcy Code 2016:

1. Fees of the bankruptcy trustee.
2. Dues owed to the State and Central Government.
3. Workmen’s dues for 24 months.
4. Employees’ dues for 12 months.

**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 the entire 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 **not 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 who has issued a demand notice for the debt.
4. The corporate debtor is in financial difficulties but has defaulted to only one creditor to the extent of INR 20 million.

**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 remedies against an order of the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016.

[Type answer here]

**Question 2.2 [maximum 4 marks]**

Briefly describe the exceptions to the moratorium during the corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016.

[Type answer here]

**Question 2.3 [maximum 3 marks]**

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

[Type answer here]

**Question 2.4 [maximum 1 mark]**

Explain the cross-border insolvency arrangements in the Indian regime.

[Type answer here]

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

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

Your answer should make reference to at least the following:

* available methods to sell the assets;
* requirement for valuation and consultation with the creditors; and
* priority of different types of claims in distribution.

[Type answer here]

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

Big Air Limited, an Indian company, (the Company) is a commercial airline company in India. It has leased aircrafts from various lessors. The Company has failed to pay the lease rentals in the last few months which now aggregate to INR 2 billion. The lessors seek to terminate the leases and take away the aircraft from the Company’s control. However, the Company has not defaulted to its other creditors.

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 and the steps to be taken in this regard.

[Type answer here]

**Question 4.2 [maximum 8 marks]**

Prepare a note for the Board explaining the effect of insolvency proceedings on the rights of the lessors and whether the aircraft can be retained by the Company.

[Type answer here]

**\* End of Assessment \***