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

**NEW ZEALAND**

This is the **summative (formal) assessment** for **Module 8F** of this course and is compulsory for 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 8F**. 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.assessment8F]**. An example would be something along the following lines: 202122-336.assessment8F. **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 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**

**Select the correct answer**:

If a creditor is dissatisfied with the Official Assignee or Liquidator's decision in respect of its proof of debt, the creditor may:

1. challenge the decision through an application to the ITS or MBIE.
2. apply to the Official Assignee or Liquidator for the decision to be reversed or modified.
3. bring court proceedings for a money judgment in respect of the debt.
4. apply to the court for the decision to be reversed or varied.

**Question 1.2**

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

1. Receivership.
2. Liquidation.
3. Voluntary bankruptcy.
4. Voluntary administration.

**Question 1.3**

**Select the correct answer**:

Which one of the following **does not** justify the use of voluntary administration:

1. Maximisation of the company's prospects of trading through and/or continuing in existence.
2. To enable a Deed of Company Arrangement to be entered into for the benefit of creditors.
3. To minimise tax liability by giving the Inland Revenue Department preferential status.
4. Enable the company to be administered in such a way to provide a better return to creditors than they would otherwise receive by way of an immediate liquidation.

**Question 1.4**

**Select the correct answer**:

A receiver:

1. is an agent of the secured creditor that appointed the receiver.
2. owes a duty of care to unsecured creditors.
3. is an agent of the company and not of the secured creditor that appointed the receiver.
4. is an agent of the company until the appointment of a liquidator to the company.

**Question 1.5**

**Select the correct answer**:

Company A goes into liquidation. It has a secured creditor who has security over all present and after-acquired property, including accounts receivables and inventory. There are insufficient amounts to meet all creditor claims. Which of these claims would be last in priority?

1. PAYE owed to the Inland Revenue.
2. Employee claims.
3. The Liquidator's costs and expenses.
4. Costs of the creditor who applied to put the company into liquidation.
5. The secured creditor.

**Question 1.6**

**Select the correct answer**:

Assuming attachment has occurred, timing of registration of a financing statement:

1. creates a security interest which gives a creditor priority over other creditors.
2. perfects a security interest.
3. is the only way perfection of a security interest can effected.
4. determines the order of priority between competing security interests.

**Question 1.7**

**Select the correct answer**:

Liquidators in New Zealand:

1. can only be appointed by the Court as they are officers of the Court.
2. act in the interests of unsecured creditors.
3. act as agents for the appointing creditor.
4. protect the interests of all creditors of the company.

**Question 1.8**

**Select the correct answer**:

A voluntary administrator must convene and hold a watershed meeting **within how many business days** of his appointment?

1. 3 business days.
2. 8 business days.
3. 12 business days.
4. 24 business days.
5. 45 business days.

**Question 1.9**

**Select the correct answer**:

Secured creditors in New Zealand:

1. have absolute rights ahead of other unsecured creditors.
2. stand outside the liquidation or administration of a company.
3. have exclusive rights to appoint a receiver.
4. have 10 working days within which they must elect to enforce their rights under the voluntary administration regime.

**Question 1.10**

**Select the correct answer**:

A monetary debt judgment obtained from an Australia High Court may be enforced in New Zealand under the:

1. Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.
2. Reciprocal Enforcement of Judgments Act 1934.
3. Trans-Tasman Proceedings Act 2010.
4. common law.

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

**Question 2.1 [maximum 5 marks]**

Name three types of transactions that can be avoided by a liquidator and indicate whether the company needs to have been insolvent at the time of the transaction, or become insolvent upon entering into the transaction.

[Type your answer here]

**Question 2.2 [maximum 3 marks]**

In what way can receivership come about in New Zealand? In whose interests does the receiver act? What is the name of the Act that governs receiverships in New Zealand?

[Type your answer here]

**Question 2.3 [maximum 2 marks]**

What options are available to a creditor who wishes to enforce a judgment obtained outside of New Zealand? What role does the New Zealand court play in this process, if any?

[Type your answer here]

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

Voluntary administrations have not received significant traction in New Zealand. Discuss the potential reasons for this, having regard to the process and New Zealand's commercial context. In what circumstances would you advise a company to consider voluntary administration? Name 2 considerations that would influence this advice and explain why.

[Type your answer here]

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

Mr Strong was born in New Zealand but has travelled between the United Kingdom and New Zealand for most of his adult life as he has family and business interests there. He rented while he lived in the United Kingdom. He has bank accounts in both the United Kingdom and New Zealand.

He worked in the United Kingdom for a number of years, but decided he wanted to return to New Zealand. He sold some of his business interests in the United Kingdom and moved back to New Zealand. About two years later, proceedings were issued in the United Kingdom pursuant to a guarantee against Mr Strong. The creditor obtained judgment for GBP 500,000 and subsequently petitioned for Mr Strong's bankruptcy in the United Kingdom. Ms Finder was appointed trustee of the bankrupt estate.

Mr Strong had GBP 5,000 in his bank account in the United Kingdom. Other than that, Ms Finder was unable to uncover any other assets in the United Kingdom that could be realised for the benefit of creditors. She did discover, however, that Mr Strong owned some property in New Zealand.

Mr Strong:

* has three adult children, two of whom are located in New Zealand and one in the UK;
* continues to receive income from his business interests in the United Kingdom, but does not work in New Zealand. He has no active role in the business in the United Kingdom;
* has retired. Outside of the income he receives from the remaining business interests in the United Kingdom, he remains dependent on his wife's income for day to day living.

**Question 4.1 [maximum 8 marks]**

What options are available to Ms Finder to recover property belonging to Mr Strong located in New Zealand?

What factors point towards the bankruptcy being foreign main proceeding, compared to a foreign non-main proceeding?

[Type your answer here]

**Question 4.2 [maximum 7 marks]**

**Question 4.2.1 [maximum 4 marks]**

What options are available to Ms Finder to:

1. find out further information about Mr Strong's affairs in New Zealand, if she believes she has insufficient information; and
2. assuming she has reliable information about concealed assets in New Zealand, what steps could she take to protect those assets?

[Type your answer here]

**Question 4.2.2 [maximum 3 marks]**

If Ms Finder sought to have her appointment recognised under the Insolvency (Cross-border) Act 2006 in New Zealand, do you think she would be successful? Provide reasons for your answer.

[Type your answer here]

**\* End of Assessment \***