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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: 202223-336.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 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.

7. Prior to being populated with your answers, this assessment consists of **8 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 incorrect answer:**

A voluntary administer may be appointed by:

1. A secured creditor.
2. A liquidator.
3. The Board of Directors.
4. A receiver.

**Question 1.2**

**Select the correct answer:**

A liquidator in New Zealand is supervised by:

1. The directors.
2. The Court.
3. The Ministry of Business, Innovation and Employment.
4. The shareholders of the company.

**Question 1.3**

**Select the correct answer:**

Receivers in New Zealand:

1. Are the agent of the secured creditor.
2. Act in the interests of unsecured creditors.
3. Have powers granted by the secured creditor.
4. Are governed by the Receiverships Act 1993.

**Question 1.4**

**Select the correct answer:**

A secured creditor in New Zealand:

1. is not subject to the voluntary administration regime.
2. is granted rights under the Personal Property Securities Act 1999.
3. must perfect its interest under the Personal Property Securities Act to maintain priority in relation to its security interest.
4. has priority over all other creditors of the company.

**Question 1.5**

**Select the correct answer:**

Company A goes into liquidation. Which of these claims has first 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.

**Question 1.6**

**Select the correct answer:**

1. A security interest is created by a financing statement under the Personal Property Securities Act 1999.
2. Failure to perfect a security interest renders a security interest invalid.
3. An unperfected security interest is not enforceable against the Official Assignee or liquidator.
4. Priority between competing perfected interests is governed by time of registration.

**Question 1.7**

**Select the incorrect answer:**

1. A debt repayment order is available to debtors with total debts of under NZD$50,000.
2. Bankruptcy in New Zealand can be voluntary or forcible.
3. A bankruptcy remains in place for three years from the date a person is adjudicated bankrupt.
4. A bankruptcy is searchable for seven years after the conclusion of a bankruptcy

**Question 1.8**

**Select the incorrect answer:**

The liquidation regime in New Zealand:

1. is governed by the Companies Act 1993.
2. is a collective process.
3. can be voluntary or involuntary.
4. allows a secured creditor to be paid in priority to unsecured creditors.

**Question 1.9**

**Select the incorrect answer:**

Secured creditors in New Zealand:

1. have powers conferred by the security agreement granted by the debtor company.
2. stand outside the liquidation of a company.
3. may be required to make an election to enforce their rights under the liquidation regime.
4. have no rights in the administration of a company.

**Question 1.10**

**Select the correct answer:**

A monetary debt judgment obtained from the High Court in Singapore 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]**

1. Name three types of actions an Official Assignee (OA) or liquidator may take to recover assets for the benefit of unsecured creditors.
2. Give two policy reasons for these powers being conferred on the OA and / or liquidators.

[Type your answer here]

**Question 2.2 [maximum 3 marks]**

Efficiency in administration of a liquidation is important to maximise recovery for creditors in a liquidation. Name three ways this policy is given effect to, under the recovery process in New Zealand.

[Type your answer here]

**Question 2.3 [maximum 2 marks]**

Name the relevant legislation which might be utilised when assessing enforcement of an overseas Court order in New Zealand. What factor would you first consider, when deciding which option will most likely apply?

[Type your answer here]

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

What are the different insolvency processes available in New Zealand to corporate entities? Which of these are not collective processes?

Of these processes, why are some more popular than others? Discuss potential reasons for this, having regard to New Zealand's commercial context and the procedural requirements of each of the processes. What factors might influence what advice you might provide to a board of directors about options going forward, if a company approached you showing signs of potential distress?

[Type your answer here]

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

Mr Strong is a director and shareholder of two New Zealand based companies. He returned to New Zealand from the UK, after spending a significant amount of his working career (some 35 years) travelling between the UK and New Zealand. His children remained in the UK when he returned to New Zealand. He has some accounts in the UK, but rented while he lived in the UK. He has bank accounts in both the United Kingdom and New Zealand.

He worked in the UK for a number of years, but ceased to do so about a year after he returned to New Zealand. He sold his business in the UK 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 £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's entities, Weak Limited and Muscles Limited, were put into liquidation by a creditor after the issuing of a statutory demand. On investigation, the liquidators discovered:

* In relation to Weak Limited, Mr Strong had paid himself a significant amount of money in satisfaction of his current account debt, in the two-year period prior to the liquidation.
* He transferred a property owned by Muscles Limited, to an entity of which he was also sole shareholder and director. The sale and purchase agreement shows a purchase price of $500,000. The current valuation for the property is $750,000. The transfer occurred in the year before liquidation.
* The balance sheet of both Weak Limited and Muscles Limited, show that both entities had negative equity for about a year prior to liquidation. The management accounts show the companies had significant creditors, most of which were outstanding for more than 90 days.
* Weak Limited and Muscles Limited owe $1,000,000 to the NZ Bank ($500,000 each). NZ Bank has security in its favour over all the assets of the companies, including accounts receivable and inventory. The security agreement includes provision for the NZ Bank to appoint a receiver. Mr Strong also provided a personal guarantee to NZ Bank in respect of the bank debt.
* There is approximately $250,00 cash in bank across the two entities ($125,000 in each company). There are debtors of about $100,000 in each of the entities. There are some assets, but it is unclear how much they are worth. There are creditor claims of approximately $1.5 million in each of the companies. The liquidators anticipate there will be a shortfall.
* NZ Bank has indicated it will pursue Mr Strong for any shortfall. Assume the bank will be successful in obtaining judgment against Mr Strong.

**Question 4.1 [maximum 8 marks]**

You have been asked to advise the liquidators on steps it should take, to recover assets for the unsecured creditors.

Provide an opinion which addresses the following:

* Potential avenues of recovering assets, having regard to the elements that need to be established.
* What factors a liquidator should have regard to before taking action, including whether the NZ Bank's position should be factored in.

[Type your answer here]

**Question 4.2 [maximum 7 marks]**

**Question 4.2.1 [maximum 4 marks]**

Outside of recovering assets, are there other potential actions a liquidator could explore? What are they? What other information might you need to form a view as to whether or not there would be a viable claim?

[Type your answer here]

**Question 4.2.2 [maximum 3 marks]**

You have been asked to advise Ms Finder as to potential avenues she could take, to recognise the UK bankruptcy in New Zealand.

What aspects of the Insolvency (Cross border) Act would be relevant to the advice?

Do you think the bankruptcy would be recognised in New Zealand? Why or why not?

How would the bankruptcy of Mr Strong in New Zealand affect the UK bankruptcy?

[Type your answer here]

**\* End of Assessment \***