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

**JAPAN**

This is the **summative (formal) assessment** for **Module 8G** on 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 8G**. 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.assessment8G]**. An example would be something along the following lines: 202223-336.assessment8G. **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.

**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**

How can immovable property be perfected?

1. By delivery of the property.
2. By notification to the administrative agency.
3. By registration in the relevant property registry.
4. By court decision.

**Question 1.2**

Choose the **correct** statement with regard to bankruptcy proceedings for corporations:

1. The directors of the insolvent corporations have an obligation to file for bankruptcy proceedings of the corporation.
2. The debtor can sell its assets to increase the bankruptcy estate during the bankruptcy proceeding.
3. The bankruptcy creditors cannot exercise their individual rights after the commencement of bankruptcy proceedings.
4. After the completion of the bankruptcy proceeding, the debtor can restart its business.

**Question 1.3**

In which of the following circumstances can the court **not** initiate a bankruptcy proceeding of a corporation?

1. When the debtor’s current assets, income and earnings are not sufficient to repay its debts and the debtor does not have sufficient credit to obtain a new loan or defer repayment.
2. When the debtor is unable to make payments due to a temporary cash flow impasse.
3. When the debtor’s liabilities exceed its assets.
4. When a debtor is generally and continuously unable to pay its debts as they become due.

**Question 1.4**

Choose the **correct** statement with regard to civil rehabilitation proceedings for corporations in order to complete the statement below:

The rehabilitation plan can be approved by a –

1. majority of the voting rights present.
2. two-third of the total voting rights.
3. majority of the voting right holders present.
4. majority of the voting right holders present and half or more of the total voting rights.

**Question 1.5**

Choose the **correct** statement in order to complete the statement below:

DIP financing after filing for civil rehabilitation proceedings –

1. enjoy super-priority even ahead of secured creditors.
2. qualify as common benefit claims.
3. rank as claims of ordinary rehabilitation creditors.
4. cannot be recognised in insolvency proceedings at all.

**Question 1.6**

Choose the **incorrect** statement with regard to corporate reorganisation proceedings:

1. Secured creditors can exercise their secured interests outside the corporate reorganisation proceeding.
2. A trustee is appointed in every case..
3. Shareholders who hold one-tenth or more of the voting rights of all shareholders can file for corporate reorganisation proceedings.
4. Corporate reorganisation proceedings are basically available only for stock corporations.

**Question 1.7**

Choose the **incorrect** statement with regard to rule-based out-of-court workouts in Japan:

1. Neutral experts would review the proceedings and the restructuring plan.
2. Creditors can obtain benefits from a tax perspective.
3. Turnaround ADR mainly targets medium-sized to large companies.
4. The restructuring plan can be approved by a majority voting of creditors.

**Question 1.8**

Which of the following **is not** a ground for non-exemption forthe discharge in consumer bankruptcy?

1. Concealment, destruction or adverse disposition of property.
2. Borrowing through fraudulent means that deceive creditors.
3. Gambling.
4. Obtaining a new job with a stable income after the commencement of the proceeding.

**Question 1.9**

Which one of the following **is not** a proceeding that can be used for consumer insolvency?

1. Special liquidation.
2. Special conciliation.
3. Bankruptcy.
4. Civil rehabilitation.

**Question 1.10**

Choose the **incorrect** statement with regard to recognition of the foreign insolvency proceedings:

1. The Tokyo District Court has exclusive jurisdiction over recognition cases.
2. The recognition is denied if foreign proceedings are manifestly subject to territoriality.
3. When an order of recognition is issued, the court must notify creditors of the recognition.
4. The right to petition for recognition belongs exclusively to the foreign trustee, or the debtor if there is no foreign trustee.

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

**Question 2.1 [maximum 4 marks]**

Name two in-court liquidation-type insolvency proceedings and two in-court restructuring-type insolvency proceedings.

[Type answer here]

**Question 2.2 [maximum 3 marks]**

Name any three possible real security (security interests) that can be created over tangible movables.

[Type answer here]

**Question 2.3 [maximum 3 marks]**

What is the role of the trustee in bankruptcy proceedings?

[Type answer here]

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

Explain the differences between civil rehabilitation proceedings and corporate reorganisation proceedings.

[Type answer here]

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

Debtor (D) had been financially distressed for the past several years. Additionally, due to a client’s bankruptcy filing in late August 2023, D was unable to receive orders from this client, and D’s cash flow quickly deteriorated. Although Representative Director (R) sold his own real estate and repaid the banks as a joint and several guarantee, D could not obtain sufficient cash to pay the debts against clients. Based on its possibility of rehabilitation, D filed for the civil rehabilitation proceedings on 30 September 2023.

Please indicate specific legal issues on the questions below and state possible arguments and your thoughts:

1. Indicate whether the proposed rehabilitation plan is allowed to provide as follows:
2. In principle, 70% of rehabilitation claims shall be discharged and the remaining amount shall be paid in instalments over three years;
3. Claims of 300,000 yen or less shall be paid in full on the first payment date one year after the confirmation order is finalised; and
4. Exemption of all interest and damages after the commencement of the proceedings.
5. The proposed plan stipulates to modify R’s right of indemnification arising from the performance of the joint and several guarantee obligations in the same manner as other rehabilitation claims. A creditor who questioned R’s management responsibility objected that R's right to indemnification should be treated in a subordinate manner, such as a complete waiver.
   1. If R does not agree to a waiver, is the proposed plan allowed to provide that R's right of indemnification should be treated in a subordinate manner?; and
   2. On the other hand, what about the case in which R agrees to such treatment?

[Type answer here]

**\* End of Assessment \***