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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 5F**

**MAURITIUS**

This is the **summative (formal) assessment** for **Module 5F** 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 5F**. 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.assessment5F]**. An example would be something along the following lines: 202223-336.assessment5F. **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**

Upon which of the following grounds will the Court **not** make an order for bankruptcy?

1. Upon an admission to the creditors that the debtor is insolvent.
2. Upon failure to comply with a bankruptcy notice.
3. Upon the debtor incurring more liabilities.
4. Upon departure from Mauritius with intent to defeat or delay a creditor.

**Question 1.2**

Under section 8 of the Insolvency Act 2009, **within which timeframe** must a debtor comply with the exigencies of a bankruptcy notice?

1. Within 42 days of the service of the bankruptcy notice.
2. Within 42 days of the date of the bankruptcy notice.
3. Within 14 days of the service of the bankruptcy notice.

1. Within 14 days of the date of the bankruptcy notice.

**Question 1.3**

Who **are not bound** by a deed of company arrangement?

1. The members of the company.
2. The future creditors of the company.
3. The secured creditors of the company.
4. The directors of the company.

**Question 1.4**

Where a receiver exercises a power of sale, the receiver owes a duty to obtain the best price reasonably obtainable at the time of sale. **To which one of the following is the duty owed to**?

1. The charger.
2. The unsecured creditors.
3. The shareholders.
4. The directors.

**Question 1.5**

Under the Insolvency Act 2009, the winding up of a company may **not** be effected by way of:

1. creditors’ voluntary winding up.
2. Court winding up.
3. shareholders’ voluntary winding up.
4. directors’ voluntary winding up.

**Question 1.6**

Within **what timeframe** is a liquidator required to give written notice of his appointment to the Director of Insolvency Service?

1. Within seven days of appointment.
2. Within 14 days of appointment.
3. Within 21 days of appointment.
4. Within three days of appointment.

**Question 1.7**

Which one of the below **is not** an effect of the appointment of a liquidator over a company?

1. The liquidator has custody and control of the assets of the company.
2. The assets automatically vest in the liquidator.
3. The directors remain in office but cease to have any powers except those provided under the Insolvency Act 2009.
4. Shares in the company cannot be transferred.

**Question 1.8**

Which one of the following persons is **not** qualified to act as Insolvency Practitioner?

1. A member of the Chartered Institute of Management Accountants of United Kingdom.
2. A law practitioner.
3. A director of the company.
4. A qualified auditor.

**Question 1.9**

**In which of the following circumstances** can a liquidator apply to the Court for an order that he be released as liquidator?

1. Where he found that a director of the company has siphoned money belonging to the company;
2. Where is unable to access the books and records of the company;
3. Where is appointed to act as the liquidator of another company;
4. Where he is removed from office.

**Question 1.10**

**After how long** can a creditor enforce a foreign judgment which has been rendered executory in Mauritius?

1. 10 days after the judgment.
2. Immediately after the judgment is delivered.
3. 14 days after the judgment.
4. 21 days after the judgment.

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

**Question 2.1 [maximum 2 marks]**

Identify and describe the different securities available to a creditor to secure banking facilities and the protection afforded thereby.

Answer:

Banking facilities can be secured by creditors using a variety of securities that provide default protection. Important securities consist of:

1. **Mortgage**: a contract in which property is pledged as loan collateral. In the event that the debtor defaults, the creditor may foreclose and sell the property.
2. **Charge**: A security interest over assets.
   * **Fixed Charge**: Attached to specific assets (e.g., machinery).
   * **Floating Charge**: Includes shifting resources (like inventory), crystallizing by default.
3. **Pledge**: The debtor gives the creditor ownership of movable property, such as goods. If the debtor defaults, the creditor keeps ownership and has the option to sell the item.
4. **Lien**: The right to retain possession of the debtor's property until the debt is paid.
   * **Possessory Lien**: Arises by law/agreement.
   * **Equitable Lien**: Arises from a contract/statute.
5. **Guarantee**: To provide additional security, a third party, known as a guarantor, promises to fulfill the debtor's obligation in the event of default.
6. **Assignment**: When a debtor defaults, they give the creditor the right to collect or seize certain assets (like receivables) and use them as collateral.
7. **Hypothecation**: Debtor offers movable property (such as inventory) as collateral but keeps possession of it. In the event of default, the creditor may seize the assets or sell them.

**Question 2.2 [maximum 2 marks]**

What are the duties of the Director of the Insolvency Service when dealing with Insolvency Practitioners?

Answer:

When interacting with insolvency practitioners, the Director of the Insolvency Service is responsible for a number of important tasks, such as:

1. **Regulation and Supervision**: Ensuring compliance with legal and regulatory requirements, and monitoring conduct and performance.
2. **Registration and Licensing**: Overseeing the registration and licensing process, ensuring practitioners meet the necessary qualifications.
3. **Inspection and Investigation**: Conducting inspections and audits, and investigating complaints or allegations of misconduct.
4. **Guidance and Support**: Guiding best practices and compliance, and issuing directives and guidelines.
5. **Disciplinary Actions**: Imposing sanctions, and suspending or revoking licenses for breaches of regulations.
6. **Public Interest Protection**: Ensuring actions serve the public interest and protect the rights of creditors and debtors.
7. **Reporting and Accountability**: Maintaining records and reporting to relevant authorities on practitioner conduct and insolvency administration.

These duties ensure accountability, professionalism, and adherence to legal standards in insolvency processes.

**Question 2.3 [maximum 2 marks]**

With reference to the Insolvency Act 2009, briefly describe the various meetings that an administrator must call upon his appointment and the aim of such meetings.

Answer:

Upon appointment, an administrator is required by the Insolvency Act 2009 to convene multiple meetings. These sessions are essential to guaranteeing openness, involvement from creditors, and appropriate handling of the business's operations during administration. Among the important meetings are:

1. **First Creditors' Meeting**:
   * **Timing**: Within 10 working days of the administrator's appointment.
   * **Aim**: To give creditors a summary of the company's circumstances, present the administrator's suggestions for handling its assets, and decide whether to form a committee of creditors.
2. **Second Creditors' Meeting (Meeting to Decide the Company’s Future)**:
   * **Timing**: Within 25 working days of the administrator's appointment.
   * **Aim**: To give creditors the power to decide the company's fate. Choosing to place the business into liquidation, modifying the administrator's recommendations, or accepting them are the available options.
3. **Meeting of Directors and Shareholders**:
   * **Timing**: Typically held before the first creditors' meeting.
   * **Aim**: To address the company's financial status, explain the administrator's planned actions, and update directors and shareholders on the administration process.
4. **Creditors' Committee Meetings** (if a committee is formed):
   * **Timing**: As needed, typically set by the committee.
   * **Aim**: To discuss important choices, get committee feedback on the administrator's actions, and give regular updates on the administration process.

These meetings ensure that all stakeholders are informed, involved, and have a say in the administration process, thereby promoting transparency and facilitating effective decision-making.

**Question 2.4 [maximum 4 marks]**

With reference to the relevant legislation, set out the circumstances in which a company will be considered unable to pay its debts in the ordinary course of business under the Insolvency Act 2009.

Answer:

Under the Insolvency Act 2009, a company will be considered unable to pay its debts in the ordinary course of business if it meets any of the following circumstances:

1. **Statutory Demand Not Complied With**:
   * A statutory demand to pay a debt exceeding a predetermined amount (currently set at Rs 500,000 in Mauritius) is sent to the company.
   * Within 21 days of the demand being served, the company does not secure or compound the debt, pay it off, or agree.
2. **Execution or Other Process Not Satisfied**:
   * When a creditor obtains a judgment or order against the company for payment of money, the creditor tries to enforce the judgment or order through other legal processes or by having assets seized.
   * The creditor’s attempts to enforce the judgment are unsuccessful.
3. **Insolvency Under Balance Sheet Test**:
   * The company is insolvent as determined under the balance sheet test, where the value of the company’s liabilities exceeds its assets.
4. **Cash Flow Insolvency**:
   * When a company cannot pay its debts when they become due, it is said to be cash flow insolvent.
   * The company's inability to pay debts on time or when they become due and payable serves as evidence of this.
5. **Admission of Inability to Pay Debts**:
   * The company admits in writing to a creditor that it is unable to pay its debts as they fall due.

These circumstances provide clear indicators that a company is facing financial distress and is unable to meet its obligations, triggering potential insolvency proceedings under the Insolvency Act 2009 in Mauritius.

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

**Question 3.1 [maximum 5 marks]**

With reference to the relevant legislation, describe the different steps to be undertaken by a creditor to adjudge an individual bankrupt. The said debtor owes the creditor the sum of MUR 570,000.

Answer:

In order to guarantee procedural fairness and compliance with legal requirements, the Insolvency Act 2009 in Mauritius necessitates a number of formal steps in the process of declaring an individual bankrupt. This is a thorough breakdown of these procedures:

1. **Statutory Demand**:
   * The creditor initiates the process by issuing a statutory demand to the debtor, specifying the amount owed (in this case, MUR 570,000), the nature of the debt, and demanding payment within a minimum of 21 days from the date of service.
2. **Service of Statutory Demand**:

* The debtor must receive personal service of the statutory demand. The Rules of Court prescribe alternative methods of service that may be used in the event that personal service is not feasible.

1. **Non-Compliance and Bankruptcy Petition**:
   * The creditor may file for bankruptcy with the Supreme Court of Mauritius if the debtor disregards the statutory demand and does not comply within the allotted time.
   * The petition for bankruptcy needs to include information about the statutory demand that was served, the debtor's noncompliance, and proof of the amount owed.
2. **Court Hearing and Adjudication**:
   * As soon as the court receives the bankruptcy petition, a hearing will be scheduled. The hearing date must be properly communicated to the debtor.
   * The court will evaluate the statutory demand's legality, the debtor's noncompliance, and whether the debtor is considered incapable of repaying the debt during the hearing.
   * When the court is satisfied with the creditor's proof and legal justification, it may declare the debtor bankrupt.
3. **Appointment of Official Receiver or Trustee**:
   * An Official Receiver or Trustee is designated to oversee the debtor's estate following the bankruptcy order.
   * With the responsibility of realizing assets and allocating proceeds to creditors in line with the statutory hierarchy of creditor claims, the Official Receiver or Trustee takes control of the debtor's assets.
4. **Bankruptcy Proceedings and Discharge**:
   * The Insolvency Division or the court are in charge of overseeing the ongoing bankruptcy procedures.
   * After learning of the bankruptcy, creditors have a chance to support their claims against the estate.
   * In the end, if certain requirements are met, the bankrupt person may be released from bankruptcy, giving them a fresh start and guaranteeing that creditors are treated fairly.

The legal framework in Mauritius for declaring an individual bankrupt is based on these procedural steps, which prioritize due process, creditor protection, and the effective management of insolvent estates. Under the protection of the Insolvency Act 2009, they offer a methodical approach to financial insolvency that protects the interests of all parties concerned.

**Question 3.2 [maximum 5 marks]**

It is possible for the appointment of an overseas insolvency practitioner in relation to a Mauritian company. **Answer the two questions below**.

1. In what circumstances might a creditor consider the appointment of an overseas insolvency practitioner?
2. What is the process for such proposed appointment and the required documents required to be submitted in support of such application?

Answer:

Let us offer an answer that conforms to the legal framework of Mauritius, particularly the Insolvency Act 2009, concerning the designation of an international insolvency practitioner concerning a Mauritian business:

**(a) Circumstances for Consideration of an Overseas Insolvency Practitioner:**

Under the Insolvency Act 2009 of Mauritius, creditors may consider proposing the appointment of an overseas insolvency practitioner in the following circumstances:

1. **Cross-Border Assets and Operations**: The Mauritian company needs experience with managing cross-border procedures and international insolvency laws because it has a sizable asset base and engages in major operations in foreign jurisdictions.
2. **Specialized Expertise**: An overseas practitioner can provide the specialized knowledge or experience needed for the company's business or financial structure, ensuring efficient administration and asset realization across multiple legal jurisdictions.
3. **Conflict of Interest or Lack of Local Capacity**: Creditors may look to an overseas practitioner to ensure impartiality and competence in the administration of the company's insolvency affairs if they have concerns about conflicts of interest or whether local insolvency practitioners are sufficiently skilled to handle complex or multinational insolvency cases.
4. **Efficiency and Cost-Effectiveness**: By utilizing global networks, resources, and technological advancements, a foreign professional can provide cost-effective solutions and efficiency gains while hastening the resolution of the company's financial difficulties in a way that benefits creditors.

**(b) Process and Required Documents for Appointment:**

The following steps are usually involved in proposing the appointment of an overseas insolvency practitioner in Mauritius:

1. **Application to the Supreme Court**: To appoint an overseas insolvency practitioner, a creditor or other interested party must submit an application to the Supreme Court of Mauritius.
2. **Grounds and Justifications**: The application must provide strong justifications for selecting the foreign practitioner, backed up by factual data and legal arguments that highlight the practitioner's credentials, familiarity with handling international bankruptcy cases, and applicability to the particular needs of the business.
3. **Supporting Documentation**: Essential documents to be submitted include:
   * **Affidavit**
   * **Curriculum Vitae**
   * **Engagement Proposal**
   * **Consent and Undertakings**
4. **Notice and Hearing**: Creditors and other interested parties must be notified of the application so they can object or offer input on the proposed appointment. In order to review the application, assess the submissions, and decide whether or not to appoint the foreign practitioner, the Supreme Court will set a hearing.
5. **Court Order**: The Supreme Court may issue an order designating the foreign insolvency practitioner to oversee the Mauritian company's affairs during insolvency proceedings if it is satisfied with the application and supporting materials. The practitioner's obligations, rights, and jurisdiction to act in conformity with international best practices and Mauritius insolvency laws will be clearly outlined in the court order.

Creditors can propose and secure the appointment of an overseas insolvency practitioner, ensuring competent and impartial administration of the company's insolvency proceedings across international jurisdictions, by following this structured process and adhering to the requirements set forth in the Insolvency Act 2009 and associated regulations of Mauritius.

**Question 3.3 [maximum 5 marks]**

With reference to the relevant legislation, detail the different types of liquidation in Mauritius, along with the procedures required for the commencement of each type.

Answer:

The Insolvency Act of 2009 primarily provides for three different forms of liquidation proceedings in Mauritius: compulsory (court) liquidation, members' voluntary liquidation, and creditors' voluntary liquidation. An outline of each kind and the steps needed to start them is provided below:

1. **Creditors' Voluntary Liquidation**:

**Procedure for Commencement**:

* + **Directors' Declaration**: In order for the company to be wound up voluntarily, the directors must call a board meeting and present a resolution.
  + **Notice to Creditors**: After the directors' meeting, a meeting of creditors must be called within 14 days. All creditors must receive notice of the meeting and a financial statement of the business.
  + **Creditors' Meeting**: At their meeting, the creditors select the liquidator. In the event that no appointment is made, the Official Receiver automatically assumes the role of liquidator.
  + **Filing of Resolution and Notices**: The resolution for voluntary winding up and any other required notices must be submitted to the Registrar of Companies within 14 days of the creditors' meeting.

**Members' Voluntary Liquidation**:

**Procedure for Commencement**:

* + **Declaration of Solvency**: A declaration of solvency, certifying that the business can settle its debts in full within a maximum of 12 months from the start of the winding up process, must be made by the company's directors.
  + **Special Resolution**: At a general meeting, the shareholders approve a special resolution committing them to winding up the business voluntarily.
  + **Appointment of Liquidator**: A director of the company or another suitable individual may be chosen by the shareholders to serve as the liquidator.
  + **Filing of Resolution and Declaration**: Within 14 days of the resolution being passed, the special resolution and declaration of solvency must be submitted to the Registrar of Companies.

1. **Compulsory (Court) Liquidation**:

**Procedure for Commencement**:

* + **Petition to Court**: The Supreme Court of Mauritius may receive a winding-up petition from creditors, shareholders, or the business itself.
  + **Grounds for Petition**: Just and equitable grounds, insolvency, or the inability to pay debts are possible justifications for the petition.
  + **Court Hearing**: The petition and any objections from creditors or other parties will be discussed at a hearing that the court schedules.
  + **Appointment of Liquidator**: The Official Receiver or another suitable individual may be appointed as the liquidator if the court approves the winding-up order.
  + **Filing of Order**: The liquidator seizes control of the business's assets and assigns them to creditors in order of priority after the court files a winding-up order with the Registrar of Companies.

These procedures provide a structured process for winding up companies in various financial situations or based on the needs and decisions of stakeholders involved. They guarantee that each type of liquidation in Mauritius is initiated in accordance with specific legal requirements and safeguards.

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

**Question 4.1 [maximum 6 marks]**

XYZ Trading Ltd is a company engaged in importing and distributing electronic goods in Mauritius. The company has been facing financial difficulties for several months, struggling to meet its obligations to creditors. Among its creditors is ABC Suppliers Ltd, a supplier of electronic components.

In April 2023, in an attempt to address its financial woes, XYZ Trading Ltd makes a significant payment of MUR 300,000 to ABC Suppliers Ltd, an unsecured creditor. At the time of the payment, XYZ Trading Ltd owed ABC Suppliers Ltd a total of MUR 500,000. The company's financial condition continues to deteriorate and three months later XYZ Trading Ltd is eventually placed in liquidation. The liquidator of XYZ Trading Ltd has appointed you to advise on the transaction made between the company and ABC Suppliers Ltd.

Providing reasons, with particular reference to the Insolvency Act 2009, describe the option available to the liquidator and the procedure to recover the sum of MUR 300,000 paid to ABC Suppliers Ltd.

Answer:

The liquidator of XYZ Trading Ltd. is entitled, under the Mauritius Insolvency Act 2009, to recoup the amount of MUR 300,000 that was paid to ABC Suppliers Ltd. before the company's liquidation. The "avoidance of preferences" concept, as defined in Sections 259 to 263 of the Insolvency Act, is the basis for this option. Its goal is to prevent some creditors from being given preferential treatment over others prior to the start of liquidation.

**Option Available to the Liquidator:**

Under Section 259 of the Insolvency Act 2009, the liquidator may attempt to void the payment of MUR 300,000 to ABC Suppliers Ltd. When a business that is struggling financially or is insolvent pays a creditor that gives them an advantage over other creditors, that payment creates a voidable preference. To guarantee a just and equitable distribution of the company's assets among all creditors, the liquidator is authorized to set aside such preferences.

**Procedure to Recover the Payment:**

1. **Identify the Transaction**: Prior to the start of liquidation, the liquidator first verifies that ABC Suppliers Ltd. received the MUR 300,000 payment within the allotted time frame. The payment was made in this instance three months before liquidation.
2. **Review Conditions for Voidable Preference**: The liquidator assesses whether the payment meets the criteria for a voidable preference:
   * The payment was made to ABC Suppliers Ltd while XYZ Trading Ltd was insolvent or became insolvent as a result of the payment.
   * The payment allowed ABC Suppliers Ltd to receive more than it would have received in the liquidation process if the payment had not been made and the funds were distributed among all creditors.
3. **Initiate Proceedings**: The liquidator may file a lawsuit to recoup the MUR 300,000 payment from ABC Suppliers Ltd. Usually, to do this, one must file a claim with the court or the Insolvency Division, requesting that the payment be stopped and the money be given back to the liquidation estate.
4. **Court Decision**: The evidence regarding the payment that ABC Suppliers Ltd. and the liquidator submitted will be examined by the court. The court will order ABC Suppliers Ltd to return the MUR 300,000 to the liquidator if it finds that the payment is a voidable preference under the Insolvency Act.
5. **Distribution to Creditors**: Following its recovery, the MUR 300,000 will be added to the assets that can be divided among XYZ Trading Ltd's creditors in accordance with their individual rights and priorities as established by the liquidation procedure.

**Reasons for Recovery**:

* **Equitable Distribution**: Recovering a voidable preference is primarily done to make sure that XYZ Trading Ltd's creditors are handled equally and fairly. The equitable allocation of assets may be distorted if payments are made soon before liquidation to the detriment of some creditors and not others.
* **Prevention of Unfair Advantage**: The Insolvency Act forbids certain creditors from unfairly benefiting from the timing of payments made by an insolvent company by setting aside preferential payments.
* **Preservation of Assets**: Recovering voidable preferences maximizes the total return to creditors from the liquidation process by protecting the insolvent company's assets for the benefit of all creditors.

In conclusion, the process made possible by the Insolvency Act 2009 for the liquidator permits the recuperation of disbursements made as voidable preferences, guaranteeing fairness to creditors and effective management of the company's liquidation.

**Question 4.2 [maximum 9 marks]**

NewsTyle Textiles Ltd is a long-established textile manufacturing company in Mauritius. However, due to increased competition from overseas manufacturers and a decline in domestic demand for their products, the company has been facing financial difficulties for the past few years. The situation has worsened following the Covid-19 pandemic to the point where NewsTyle Textiles Ltd is unable to meet its financial obligations to creditors, including suppliers, banks and employees.

The board of directors of NewsTyle Textiles Ltd is concerned about the company’s financial health and is considering various options to address the situation. They are aware of Mauritius’ insolvency laws and have approached you for guidance.

Your task is to analyse, with particular reference to the Insolvency Act 2009, the statutory obligation of the board of directors in light of the insolvent situation of NewsTyle Textiles Ltd under Mauritius’ insolvency laws and to describe the different steps that the directors must take to place the company in liquidation.

The board of directors have managed to find an investor who is willing to inject money in NewsTyle Textiles Ltd, however the investor will need some more time to secure the financing. Your task is to recommend to the board of directors, with particular reference to the Insolvency Act 2009, on the possibilities available to salvage the company.

Answer:

The board of directors must follow their legal responsibilities under the Insolvency Act 2009 of Mauritius in light of NewsTyle Textiles Ltd's financial struggles and probable insolvency. Below is a breakdown of their responsibilities and suggestions for potential actions:

**Statutory Obligation of the Board of Directors:**

1. **Duty to Act in the Best Interest of Creditors**: The directors of a company in financial distress or insolvency are required by Section 101 of the Insolvency Act 2009 to act in the best interests of all creditors. They have an obligation to take into account how their actions may affect the rights of creditors and the amount of money that creditors can recover.
2. **Avoidance of Wrongful Trading**: Section 104 of the Act, which forbids directors from permitting the company to continue trading if there is no reasonable chance of avoiding insolvent liquidation, also requires them to refrain from wrongful trading. If directors continue to trade in such a situation, they may be held personally liable for the debts of the company.
3. **Consideration of All Options**: The board should take into account every option available to address the company's financial issues, such as restructuring, refinancing, or, in the event that it becomes necessary, starting the liquidation process.

**Steps to Place the Company in Liquidation:**

The following actions will be taken to put NewsTyle Textiles Ltd. into liquidation if the board decides that the company cannot be saved and that there is no realistic chance of recovery through restructuring or refinancing:

1. **Board Meeting**: Call a board meeting to deliberate and decide whether to put the business into liquidation. A thorough evaluation of the company's financial situation and future prospects should serve as the foundation for this decision.
2. **Shareholders' Resolution**: Call a shareholders' meeting to approve a special resolution authorizing the company's voluntary winding up if the board decides to move forward with liquidation. The directors must additionally declare the company's solvency, attesting to the fact that it can settle its debts in full within a given time frame not to exceed 12 months, in order for there to be a members' voluntary liquidation.
3. **Appointment of Liquidator**: Select a liquidator after the winding up has been approved by the shareholders. The Official Receiver or a certified insolvency practitioner may serve as the liquidator. A resolution passed by the shareholders is required to confirm the appointment.
4. **Filing with Registrar**: Within 14 days of the resolution's passing, file the special resolution for voluntary winding up and the liquidator's appointment with the Registrar of Companies.
5. **Notice to Creditors**: Notify every creditor of the liquidation, letting them know the liquidator has been appointed and extending an invitation for them to file a claim against the business.

**Recommendations on Salvaging the Company:**

The board may investigate the following options under the Insolvency Act 2009 in light of the possible investor interested in providing funding to NewsTyle Textiles Ltd in an attempt to possibly save the company:

1. **Company Voluntary Arrangement (CVA)**: A CVA, which outlines a plan for reorganizing the company's debts and operations, may be proposed by the board to creditors. A CVA enables a company to continue operating under supervision by allowing a negotiated agreement with creditors to settle debts over a period of time.
2. **Administration**: Take into consideration putting the business into administration, overseen by an administrator. In order to provide creditors with a more favorable result than liquidation, administration attempts to reorganize the business's finances and operations.
3. **Moratorium**: In order to give the company time to negotiate with creditors or look for new financing, you can request a moratorium under Section 102 of the Insolvency Act 2009, which provides a temporary suspension of creditor enforcement actions.
4. **Negotiation with Creditors**: Negotiate with creditors to restructure debts, postpone payments, or secure further funding from the prospective investor while adhering to the directors' obligations under the Act.

The board of directors can decide whether to save the company or start a smooth liquidation process in the best interests of all parties involved by carefully weighing these options and consulting with insolvency practitioners and legal advisors knowledgeable about Mauritius' insolvency laws.

**\* End of Assessment \***