

**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 6B**

**GERMANY**

This is the **summative (formal) assessment** for **Module 6B** 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 6B**. 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.assessment6B]**. An example would be something along the following lines: 202122-336.assessment6B. **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 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 **6 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**

Who decides which person should be appointed as Insolvency Practitioner in ordinary liquidation proceedings?

1. The debtor.
2. The creditors’ committee.
3. The court.
4. The court, but subject to a diverging decision of the first creditors’ meeting.

**Question 1.2**

Which of the following securities **does not** have an accessory nature?

1. Suretyship.
2. Mortgage (*Grundschuld*)
3. Mortgage (*Hypothek*).
4. Pledge.

**Question 1.3**

Which of the following **cannot** be decided by the first creditor’ meeting (*Berichtstermin*)?

1. Verification of creditors’ claims filed with the insolvency administrator.
2. Shut down of the business.
3. Commissioning the insolvency administrator to develop an insolvency plan.
4. Election of the final creditors’ committee.

**Question 1.4**

After the occurrence of balance-sheet insolvency (overindebtedness), **how long is the time period** before the directors or obliged to file for insolvency proceedings?

1. Three weeks.
2. One month.
3. Six weeks.
4. Two months.

**Question 1.5**

Tax claims stemming from the period prior to the opening of insolvency proceedings:

1. enjoy super-priority even ahead of secured creditors.
2. qualify as expenses of the proceedings (liabilities of the estate).
3. rank as claims of ordinary creditors.
4. cannot be recognized in insolvency proceedings at all.

**Question 1.6**

What is the **majority required** for the adoption of a pre-insolvency restructuring plan under the StaRUG?

1. 75% in sum regarding the claims of creditors present and voting.
2. 75% in sum regarding the claims of all affected creditors.
3. Simple majority in sum regarding the claims of creditors present and voting and simple majority of creditors (head count).
4. 75% of all affected creditors (head count).

**Question 1.7**

**Which court** has jurisdiction to open insolvency proceedings?

1. *Amtsgericht*.
2. *Landgericht*.
3. *Oberlandesgericht*.
4. *Bundesgerichtshof*.

**Question 1.8**

Which of the following has a **right to separation**?

1. Banks.
2. Pledgees.
3. Tax authorities with statutory liens on the debtor’s assets.
4. Landlords after termination of the tenancy agreement.

**Question 1.9**

**How long** is the compliance period (timeframe) for the discharge of residual debt?

1. Seven years.
2. Six years.
3. Three years.
4. One year.

**Question 1.10**

Which of the following is a general prerequisite for transactions avoidance?

1. Substantive insolvency of the debtor.
2. Disadvantage for the general body of creditors.
3. Opponent’s knowledge of the disadvantage of the general body of creditors.
4. Opponent is a creditor.

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

**Question 2.1 [maximum 3 marks]**

How is “insolvency” defined in the *Insolvenzordnung*?

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

Explain the relationship between pre-insolvency restructuring under the StaRUG and insolvency proceedings under the InsO.

[Type your answer here]

**Question 2.3 [maximum 3 marks]**

Explain the special rules on tenancy agreements for real estate compared to the general rules on executory contracts?

[Type your answer here]

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

Explain the rules in German insolvency law relating to transactions avoidance.

[Type your answer here]

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

In January 2020, Bank (B) has granted debtor (D) a loan of EUR 50,000. Since B asked for security, D has assigned all her current and future receivables against her customers by way of security. Sixteen (16) months later, in May 2021, D is unable to pay her debts when they fall due. On 3 July 2021, insolvency proceedings are opened against D and IA is appointed as insolvency administrator. IA collects two receivables, both amounting to EUR 11,900 (including 19% VAT). The first claim is rooted in a service contract between D and X concluded in June 2020. D has rendered the services on 7 July 2020. The second claim stems from a contract which IA, who decided to maintain D’s business, concluded with Z on 20 July 2021 and which IA performed on 16 August 2021. X and Z pay the consideration for the services rendered to them by IA. B demands surrender of these payments (together EUR 23,800) from IA.

Does B have a claim against IA? Test this based on the norms.

[Type your answer here]

**\* End of Assessment \***