

**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: 202223-336.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 “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**

How are the **competences** of a preliminary insolvency practitioner defined?

1. By the debtor.
2. By the creditors’ committee.
3. By statute.
4. By court decision.

**Question 1.2**

Which of the following securities has an **accessory** nature?

1. Suretyship.
2. Assignment by way of security.
3. Mortgage (*Grundschuld*).
4. Retention of tile.

**Question 1.3**

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

Creditors who wish to **participate** in the insolvency proceedings must file their claims with the –

1. creditors’ committee.
2. creditors’ meeting.
3. insolvency practitioner.
4. court.

**Question 1.4**

Who has the **duty** to file for insolvency proceedings?

1. The directors of a Limited Liability Company (*GmbH*).
2. All debtors.
3. Legal persons only.
4. Entrepreneurs only.

**Question 1.5**

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

Wage claims of employees 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 recognised in insolvency proceedings at all.

**Question 1.6**

Who of the following is entitled to submit an **insolvency (restructuring) plan**?

1. Every creditor.
2. The insolvency practitioner.
3. The court.
4. The creditors’ committee.

**Question 1.7**

Which of the following circumstances is **not relevant** when establishing whether the local insolvency court (*Amtsgericht*) has jurisdiction?

1. Registered office.
2. Location of assets.
3. Place of residence.
4. Centre of economic activities.

**Question 1.8**

Choose the **correct** answer in order to complete the sentence below:

The rights of \_\_\_\_\_\_\_\_\_\_\_\_ cannot be affected by an insolvency plan.

1. employees.
2. shareholders.
3. banks.
4. creditors with a right to separation.

**Question 1.9**

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

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

**Question 1.10**

How are **foreign insolvency proceedings** recognised in Germany?

1. By decision of the court.
2. By the insolvency practitioner.
3. By statute (by force of law).
4. By a decision of the creditors’ meeting.

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

**Question 2.1 [maximum 3 marks]**

How is “insolvency” defined in the *Insolvenzordnung* (InsO)?

[Type your answer here]

**Question 2.2 [maximum 4 marks]**

What is the line of demarcation between restructuring under the StaRUG and restructuring 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 a restructuring plan *(Insolvenzplan*).

[Type your answer here]

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

In January 2020, Bank (B) granted debtor (D) a loan of EUR 50,000. Since B asked for securities, D transferred legal title on a lorry by way of security and had assigned all current and future receivables against its customers by way of security. Sixteen months later, in May 2021, D was unable to pay its debts when they fell due. On 3 July 2021, B, being aware of D’s substantive insolvency, terminated the loan contract and sold the lorry for EUR 20,000 to W. On 5 July 2021, B revealed the assignment to all customers of B and received EUR 15,000 from X, who bought goods from D on 1 July 2021 and who paid B the money he owed to D. On 1 August 2021, D applied for insolvency proceedings. B received another payment of EUR 10,000 from Y who bought goods from D on 10 September 2021. Five days later, the court opened insolvency proceedings and appointed I as insolvency administrator. I claims EUR 50,000 from B, arguing that the sale of the lorry and the payments of X and Y are subject to transactions avoidance (§§129 *et seq* InsO).

What are the various legal positions? Test this based on the norms.

[Type your answer here]

**\* End of Assessment \***