



**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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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 7 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

**Which statement about the insolvency administrator is correct?**

**(a) The insolvency administrator is appointed by the creditors' committee.**

**(b) The creditor's committee supervises the insolvency administrator.**

**(c) The insolvency administrator holds a public office.**

**(d) The insolvency administrator can decide on an insolvency / restructuring plan.**

correct

Question 1.2

**Which of the following securities is entitled to separation?**

**(a) Suretyship.**

**(b) Mortgage (*Grundschild*).**

**(c) Retention of title.**

**(d) Pledge.**

Correct is (c); a pledge gives a right to separate satisfaction.

Question 1.3

**Which of the following institutions does not have a positive impact in the insolvency estate?**

**(a) Contestation of transactions made before the opening of insolvency proceedings.**

**(b) Discharge of residual debt.**

**(c) Option to assume an executory contract according to § 103 InsO.**

**(d) Insolvency plan.**

correct is (b); a plan is combined with a waiver of claims and therefore positive for the estate.

Question 1.4

**After the occurrence of inability to pay debts (illiquidity, cash-flow insolvency), how long is the time period before the directors are obliged to file for insolvency proceedings?**

**(a) Three weeks.**

**(b) One month.**

**(c) Six weeks.**

**(d) Two months.**

correct

Question 1.5

**How are wage claims of employees stemming from the period prior to the opening of insolvency proceedings ranked?**

**(a) They enjoy super-priority even ahead of secured creditors.**

**(b) They qualify as expenses of the proceedings (liabilities of the estate).**

**(c) They rank as claims of ordinary creditors.**

**(d) They cannot be recognised in insolvency proceedings at all.**

correct

Question 1.6

**What is the main idea of the StaRUG?**

- (a) To enable creditors to force the debtor to restructure.**
- (b) To make restructuring possible where the debtor is neither unable to pay its mature debts nor imminently illiquid.**
- (c) To prepare the debtor company for successful restructuring within insolvency proceedings.**
- (d) To provide the debtor with a toolbox to pick from according to the needs in the case at hand.**

correct

#### Question 1.7

**Which court has jurisdiction to decide on appeals against the decision to open insolvency proceedings?**

- (a) Amtsgericht.**
- (b) Landgericht.**
- (c) Oberlandesgericht.**
- (d) Bundesgerichtshof.**

correct is (b); the Oberlandesgericht deals with appeals against decisions of the Landgericht and the opening decision is made by an Amtsgericht.

#### Question 1.8

**Which one of the following written instruments does not function as an enforcement order?**

- (a) Court judgment.**
- (b) Written sales contract.**
- (c) Insolvency schedule.**
- (d) Submission to execution proceedings.**

correct is (b); as for (c), cf. § 201(2) InsO.

#### Question 1.9

**Which of the following is not a reason for opening insolvency proceedings?**

**(a) Overindebtedness.**

**(b) Imminent overindebtedness.**

**(c) Illiquidity.**

**(d) Imminent illiquidity.**

correct

Question 1.10

**Which of the following is not an autonomous transactions avoidance ground?**

**(a) Congruent coverage.**

**(b) Transaction at an undervalue.**

**(c) Payment on a shareholder loan.**

**(d) Payment to tax authorities.**

correct

in total: 6 marks

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

**Which German norms regulate cross-border insolvency issues in relationships between Germany and the United Kingdom? You need merely name the norms.**

*Before Brexit, the issues were regulated by the EU Regulation 2015/848 (articles 19 and 32 et seq). After BREXIT, they are regulated by §§ 343 and 352 InsO.*

correct (3 marks)

Question 2.2 [maximum 4 marks]

**Who is entitled to dispose of collateral after the opening of insolvency proceedings?**

*According to §§ 165 et seq, the responsible are the creditor and/or the insolvency administrator.*

You were expected to elaborate on these rules. (1 mark)

Question 2.3 [maximum 3 marks]

**What are the legal consequences if the insolvency practitioner assumes an executory contract?**

*As detailed in the Guide Text (?), after the opening on the respective insolvency proceeding, the insolvency administrator must choose whether the executory contract will be fulfilled or not. If the administrator decides to fulfill it, then the creditor's claim must be satisfied in full from the insolvency estate. It should be noted that even when the administrator decides to fulfill the contract, the prior debts of the debtor need only to be fulfilled on a pro-rata basis. As indicated in the guide text (?), the obligation need only be fulfilled in full as far as assets were added to the estate by the counterparty after the opening of the insolvency proceeding.*

How about the debtor's claim against the counterparty? (2 marks)

in total: 6 marks

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

**Explain the rules in German insolvency law relating to a restructuring plan (*Insolvenzplan*).**

*According to the Guide text (?), the main rules concerning the insolvency plan are:*

- 1) *The debtor or the insolvency administrator are allowed to submit an insolvency plan. Important to not that the creditors meeting can also charge the insolvency administrator with the establishment of an insolvency plan.*
- 2) *The plan must be submitted to the insolvency court.*
- 3) *It must have 2 parts: (i) the first summarizes necessary information for the parties entitled to vote; and (ii) second part establishes the legal provisions concerning the legal positions of parties involved.*
- 4) ***The plan must group creditors according to the plan's impact on their rights.***
- 5) *The plan must treat creditors of the same group equally.*
- 6) *Creditors whose claims are impacted by the insolvency plan are entitled to vote it. Same is true for shareholders of the debtor.*
- 7) *The plan must be approved by all groups of creditors, respecting the applicable quorums (**what are these quorums?**) provided by the law.*
- 8) *The debtor must consent to the plan.*



9) *The plan must be approved by the insolvency court (prerequisites?). After the decision becomes final, the effects of the plan become binding on all participants.*

10) *The plan might provide the transfer of claims into equity in the company.*

13 marks

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

***Since 10 June 2022, D GmbH (D) is unable to pay its mature debts. However, R, the only director of D, hopes for a turnaround and continues trading. Represented by R, D buys a car from S on 5 July 2022. S transfers the title for the car to D and agrees on the purchase price of EUR 16,000 being due on 5 August 2022. Further, R pays bank B EUR 10,000 on long overdue loan claims. On 1 September 2022, insolvency proceedings are opened for D. As a consequence, S demands EUR 16,000 from R. The insolvency administrator, I, alleges to have a claim against R in the amount of EUR 10,000.***

***Do S and I have claims against R? Test this based on the norms.***

***Potential claim of S against R: assuming that the purchase of the car is considered valid within the insolvency proceeding and that the payment to S was duly promoted, S will not have a claim against R. Notwithstanding, if the transaction is contested under the terms of §§130 et seq InsO, S might have a claim against R.***

That's beside the point. Claims from transactions avoidance can only be enforced by the Insolvency Practitioner. However, S can demand 16,000 according to § 823(2) BGB in connection with § 15a InsO.

***Potential claim of I against R: since the loans were long overdue, as a rule, I should not have a claim against R, especially because this payment seems not to disadvantage the general body of creditors. Notwithstanding, if the transaction is contested under the terms of §§130 et seq InsO, I might have a claim against R.***

That's also beside the point. Claims stemming from transactions avoidance are directed against the recipient of the payment (B), not against the director (R). However, I can demand 10,000 from R under § 15b InsO.

0 marks.

in all: 25 marks

\* End of Assessment \*