



**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 4E**

**MEXICO**

***This is the summative (formal) assessment for Module 4E of this course and is compulsory for 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 4E. 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.assessment4E]. An example would be something along the following lines: 202122-336.assessment4E. 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 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 9 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

Select the incorrect statement:

- (a) **A debtor will be declared insolvent if it files for bankruptcy and the visit shows that the debtor has failed to pay its matured debts to five different creditors (which represent 50% of all its payment obligations) and its liquid assets are not enough to meet at least 80% of its matured obligations on the date that the insolvency request was filed.**
- (b) **A debtor will be declared insolvent if it files for bankruptcy and the visit shows that the debtor has failed to pay its matured debts to five different creditors (which represent 50% of all its payment obligations), whilst its liquid assets are sufficient to meet at least 80% of its matured obligations on the date that the insolvency request was filed.**
- (c) **A debtor will be declared insolvent if one of its creditors files a bankruptcy complaint and the visit shows that the debtor has failed to pay its matured debts to five different creditors (which represent 50% of all its payment obligations), whilst its liquid assets are sufficient to meet at least 80% of its matured obligations on the date that the insolvency complaint was filed.**
- (d) **A debtor will be declared insolvent if one of its creditors files a bankruptcy complaint and the visit shows that the debtor has failed to pay its matured debts to five different creditors (which represent 50% of all its payment obligations) and its liquid assets are not sufficient to meet at least 80% of its matured obligations on the date that the insolvency request was filed.**

Question 1.2

Select the correct answer:

**Which of the following cannot be challenged through an appeal?**

**(a) The ruling that denies the admission of the bankruptcy proceeding.**

**(b) The judgment that declared the insolvency of the debtor.**

**(c) The resolution judgment that approves the reorganisation agreement.**

**(d) The judgment that declares the bankruptcy of the debtor.**

Question 1.3

Select the correct answer:

**(a) All enforcements against the debtor's assets must be suspended from the date that it is declared insolvent.**

**(b) Secured creditors can enforce their collaterals against any of the debtor's assets at any time during the liquidation stage.**

**(c) Secured creditors can enforce their collaterals at any time if the assets are not indispensable to the debtor's business.**

**(d) Secured creditors that subscribe to the reorganisation agreement must resign the right in order to enforce their collaterals.**

Question 1.4

With which of the following creditors can a debtor not enter into an agreement to reorganise its debt:

**(a) Subordinated creditors.**

**(b) Tax creditors.**

**(c) Labour creditors.**

**(d) Secured creditors that have enforced their collateral.**

Question 1.5

Which of the following transactions will be declared void without further consideration as it is considered as a fraudulent act?:

**(a) The donation of the debtor's property to one of the company's administrators.**

**(b) The purchase of a motor vehicle from the debtor's main shareholder, where the purchase price paid by the debtor is twice the commercial value of the motor vehicle.**

**(c) Both options (a) and (b).**

**(d) None of the above.**

Question 1.6

**Which judges are competent to resolve insolvency proceedings in Mexico?**

**(a) Local courts located in the state where the debtor company is domiciled.**

**(b) Unitary Circuit Courts.**

**(c) District Courts Specialised in Commercial Insolvency with jurisdiction throughout the Mexican Republic.**

**(d) The Supreme Court of Justice of the Nation.**

Question 1.7

**Which of the following is not a consequence of the civil bankruptcy of a natural person?**

**(a) The maturity of the term of all debts.**

**(b) The appointment of a conciliator by IFECOM to supervise and, if necessary, administer the estate.**

**(c) Interest ceases to accrue on the debtor's obligations, except for secured claims, which will continue to accrue interest up to the value of the guarantee.**

**(d) The seizure and securing of the debtor's assets, books, correspondence and documents. Both of these proceedings shall be carried out on the same day, and include the sealing the doors of the debtor's warehouses and offices, and furniture subject to seizure which may be found in the debtor's domicile.**

Question 1.8

**Which of the following shows the correct order of payment of claims according to their class?**

**(a) Secured creditor, singularly privileged creditor, a creditor with special privilege and unsecured creditor.**

**(b) Ordinary expense for the estate's security, singularly privileged creditor, a creditor with special privilege and subordinated creditor.**

(c) *Creditor with special privilege, a secured creditor, singularly privileged creditor and subordinated creditor.*

**(d) Singularly privileged creditor, ordinary expenses for the estate's security, secured creditor and creditor with special privilege.**

Question 1.9

**Which of the following documents must not accompany the petition for recognition of a foreign proceeding?**

(a) *A foreign court certified copy of the resolution declaring the foreign proceeding open and appointing the foreign representative.*

(b) *A certificate issued by the foreign court attesting to the existence of the foreign proceeding and the appointment of the foreign representative.*

(c) *A certified copy of the file of the foreign proceeding containing the appointment of the foreign representative.*

**(d) A report on the foreign representative's qualifications and data that accredits the foreign representative to perform his duties.**

Question 1.10

**Which of the following is considered as security under the Commercial Insolvency Law:**

(a) *A seizure over debtor's assets.*

(b) *A promissory note signed by a joint obligors and several obligors of the debtor.*

**(c) A mortgage over the debtor's headquarters.**

(d) *None of the above.*

**Marks awarded 8 out of 10**

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 3 marks]

***In which cases can a debtor be declared insolvent under the Mexican Commercial Insolvency Law without the pre-stage visit taking place?***

*[In cases where the debtor does not reply to the creditors' bankruptcy complaint within 9 days after being notified thereof.<sup>1</sup> ]*<sup>[ZG1]</sup>

Marks awarded: 1 out of 3

Question 2.2 [maximum 2 marks]

***In which cases will a Bankruptcy Court in Mexico not recognise a foreign insolvency proceeding?***

*[In cases where the debtor does not have an establishment in Mexico (for main insolvency proceedings),<sup>2</sup> formal requirements to the application for recognition have not been met (the application is not accompanied by the required documents, translated into Spanish).<sup>3</sup>]*<sup>[ZG2]</sup>

Marks awarded: 1 out of 2

Question 2.3 [maximum 2 marks]

***Who can appeal against the judgment of recognition, graduation, and priority of claims, and how should the appeal be done and filed?***

*[An appeal can be filed by the debtor, any creditor (irrespective of whether they requested their claim recognition or made objections against the provisional list), the intervenors, the conciliator (the receiver), the Public Prosecutor's Office.*

*The appeal should be filed to the competent Collegiate Court of Appeal before the judge within 9 days since the decision takes effect. The appellant must indicate the evidence which will be included in the file of the appeal.]*

Marks awarded: 2 out of 2

Question 2.4 [maximum 2 marks]

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<sup>1</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 6.3.2.4, page 31.

<sup>2</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 7, page 78.

<sup>3</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 8.2, page 81.



**During which stages can an insolvency proceeding be initiated in Mexico?**

**[Prior restructuring plan; conciliation and liquidation]** [ZG3]

Marks awarded: 1.5 out of 2

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

Question 3.1 [maximum 5 marks]

**Explain which of the creditors must vote in favour of the reorganisation agreement in order for it to be valid, and how much of the recognised debt they must represent. Also specify in which cases the vote of all creditors or some classification of creditors is not needed.**

*[Ordinary and subordinated creditors or secured and specially privileged creditors obtaining in sum more than 50% of the recognised debt must vote for the reorganisation agreement for it to be valid.*

*In case the subordinated creditors represent 25% or more of the recognised debt, their votes are not needed and the reorganisation agreement must be entered into by the other groups of the recognised creditors whose claims represent at least 50% of the recognised debt.*

*The labour and tax creditors are not needed in any case. The debtor can enter into individual agreements with those creditors provided that such agreements do not aggravate the debtor's situation.*

*The secured creditors' vote is not needed if they choose not to enter into the reorganisation agreement and execute their collateral unless the reorganisation agreement provides for the payment of their debt. In such case, the reorganisation agreement will be valid if at least 50% of the other secured or specially privileged creditors have been cast [PC4].]*

**4.0**

**This answer displays a satisfactory understanding of the issues. To improve your response, you could have attended the specific requisites regarding the agreement per se.**

Question 3.2 [maximum 5 marks]

**Explain how a creditor should request the recognition of its secured claim before the conciliator, or, if applicable, before the receiver, if the security is a mortgage with a value of USD 500 000.00. Indicate the period within which the creditor may submit its application for recognition and the degree and amount to be claimed.**

*[The secured creditor may apply for the recognition of their claim within 20 calendar days following the publication of the insolvency decision in the Official Gazette of the Federation, the term to formulate objections to the provisional list of the conciliator and the term for the filing of the appeal to the judgement of recognition, graduation and priority of claims. The request shall be submitted in the forms issued by the IFECOM. The creditor shall attach the original documents in support of the claim.*

*The claim will remain in the original currency, i.e. USD. The amount of a secured claim will be converted into the UDIs for the purposes of determining the participation of secured claims in the decisions made in the course of the insolvency proceedings e.g. to approve the reorganisation agreement. The secured creditor can also refuse from the part of their claim as a secured one and request that the court recognised the claim as secured only in part,<sup>4</sup> e.g. USD 400,000 whereas USD 100,000 will remain unsecured.*

*Alternatively, the secured creditor can choose to continue enforcement against the collateral if the assets are not indispensable for the debtor's business. Such enforcement is conducted upon the approval of the conciliator or upon notification and informing the receiver.<sup>5</sup>[PC5]*

**4.5**

**This answer displays a satisfactory understanding of the issues. To improve your response, you could have attended the specific requisites regarding the IFECOM's forms.**

Question 3.3 [maximum 5 marks]

**Describe how the procedure for the disposal of assets should be carried out and mention in which cases the auction procedure provided for in the Commercial Insolvency Law may be omitted.**

*[The disposal of assets is conducted by the receiver according to the principles of maximising the proceeds and in consideration of keeping the company in operation.*

*The insolvency estate is sold through the public auction procedure. The bidding process should take between 10 and 90 calendar days.*

*The public auction procedure consists of the following stages:*

- 1. The receiver publishes a call for the auction which contains description of the items, the minimum price and the date and time of the auction;*

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<sup>4</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 5.2, page 16; Section 6.3.4.4, page 44.

<sup>5</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 5.3, page 17.

2. *Interested persons submit bids to the judge informing the judge of any ties with the debtor;*
3. *The judge presides at the auction session to guarantee that it is fair and public;*
4. *If in six months the assets have not been disposed of an interested person can submit to the judge an offer to buy the assets;*

*The receiver is entitled to dispose of assets without the public auction in cases where the assets have to be disposed of immediately, where they are subject to a severe decrease in price or it costs a lot to preserve them.*<sup>6</sup>[PC6]

3.5

This answer displays a satisfactory understanding of the issues. Nevertheless, to improve the answer you could have describe in a much-detailed way the stages.

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

Question 4.1 [maximum 7 marks]

***A company called Congelados y Más, S.A. de C.V., which social purpose is the distribution of frozen food, has been declared insolvent by a Mexican Bankruptcy Court. The company has failed to meet its payment obligations with your client, Bodegas Mexicanas, S.A. de C.V., which leases the company the warehouse in which it receives the frozen food and keeps it until the company distributes it to supermarkets, other businesses and shops.***

***Your client has asked you for advice since Congelados y Más, S.A. de C.V. keeps using its warehouse to store and distribute its merchandise and your client does not know if the declaration of insolvency means that the leasing agreement has ended or if Congelados y Más, S.A. de C.V. should pay what it owes to your client as well as future rents. Advise your client in this regard.***

***[The leasing agreement has not terminated and Congelados y Más, S.A. de C.V. should pay to Bodegas Mexicanas, S.A. de C.V. the regular rent. However, the conciliator (receiver) can at their discretion terminate the leasing agreement. In such case Congelados y Más, S.A. de C.V. will be obliged to pay the penalty for termination of the leasing agreement (if any) or the amount equal to the three months' rent.<sup>7</sup> Therefore, Bodegas Mexicanas, S.A. de C.V. shall keep in touch with the conciliator and inquire if the latter is planning to terminate the leasing agreement.]***[ZG7]

Marks awarded: 6 out of 7

<sup>6</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 6.6.1, pages 67 - 71.

<sup>7</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 6.3.3.3, page 41.

Question 4.2 [maximum 8 marks]

**The conciliator appointed by the IFECOM in the insolvency of Congelados y Más, S.A. de C.V. has noticed some strange transactions made by the company since its declaration of insolvency - some which might be considered fraudulent acts. Furthermore, the conciliator has noted the because of these abnormal transactions the creditors are refusing to subscribe to a reorganisation agreement.**

**What can the conciliator do in this scenario?**

**[The conciliator can first assess:**

- 1. whether the transactions are fraudulent;**
- 2. If they are fraudulent whether the estate can benefit from them and**
- 3. If they are fraudulent whether the Congelados y Más, S.A. de C.V. management can be held liable for damages caused to the company for if the fraudulent transaction is conducted upon their approval.**

**In order to determine whether transaction is fraudulent, the conciliator shall assess whether the transaction falls under the presumptions of fraud provided by the Commercial Insolvency Law or assess whether they can prove that the transaction is generally fraudulent and executed against creditors and the insolvency estate.<sup>8</sup>[ZG8]**

Marks awarded: 5 out of 8

\* End of Assessment \*

Total marks awarded: 37.5 out of 50

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<sup>8</sup> Foundation Certificate in International Insolvency Law, Module 4E Guidance Text. Introduction to International Insolvency Law, Section 6.7.2, pages 73 – 77;“In general, all fraudulent transactions executed against creditors and the insolvency estate may be set aside” The Insolvency Review: Mexico ([The Insolvency Review - The Law Reviews](#)).