



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3B
THE INSOLVENCY SYSTEM OF THE UNITED KINGDOM
(ENGLAND AND WALES)

This is the **summative (formal) assessment** for **Module 3B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 3B. 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 MS Word format, using a standard A4 size page and a 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.assessment3B]**. An example would be something along the following lines: 20222-514.assessment3B. **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.**
- 6.1 If you selected Module 3B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 3B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

Commented [WPA1]: 39/50 = 78% a very good effort

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [WPA2]: 8/10

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

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs:

- (a) within 10 weeks of the commencement of the administration.
- (b) within 8 weeks of the commencement of the administration.**
- (c) within 4 weeks of the commencement of the administration.
- (d) on the day the company enters administration.

Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) One year.**

Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.

(c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

(d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

(a) The administrator.

(b) Any secured creditor with the benefit of a qualifying floating charge.

(c) The purchaser.

(d) The company's auditor.

Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

(a) Administration.

(b) Restructuring Plan.

(c) Scheme of Arrangement.

(d) Company Voluntary Arrangement.

Question 1.6

A liquidator may pay dividends to small value creditors based upon the information contained within the company's statement of affairs or accounting records. In such circumstances, a creditor is deemed to have proved for the purposes of determination and payment of a dividend where the debt is **no greater than how much?**

(a) £500

(b) £750

(c) £1,000

(d) £2,000

Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

(a) Wrongful trading.

(b) Breach of fiduciary duty.

Commented [WPA3]: B is correct

- (c) Being found guilty of an indictable offence in Great Britain.
- (d) Being found guilty of an indictable offence overseas.

Question 1.8

The administrator is under a general duty to provide a statement for creditors' consideration setting out proposals for achieving the purpose of administration. He or she must obtain a creditors' decision on whether or not to approve the proposals **within how many weeks** of the date the company entered administration?

- (a) 6
- (b) 8
- (c) 10**
- (d) 12

Question 1.9

Which of the following statements is **incorrect**?

- (a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.**
- (b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.
- (c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.
- (d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

Question 1.10

Under section 216 of the Insolvency Act 1986, a director of a company which has been wound up insolvent may not, unless an exception applies, be a director of a company that is known by a prohibited name **for what period of time**?

- (a) 6 months.
- (b) 12 months.**
- (c) 2 years.
- (d) 5 years.

Commented [WPA4]: D is correct

QUESTION 2 (direct questions) [10 marks]

Commented [WPA5]: 10/10

Question 2.1 [maximum 5 marks]

Commented [WPA6]: 5/5

Who may bring an action under: (i) section 423 of the Insolvency Act 1986; (ii) section 6 of the Company Directors Disqualification Act 1986; and (iii) section 246ZB of the Insolvency Act 1986?

Answer:

- i. The following person may bring an action against the transaction under section 423 of the Insolvency Act 1986:
for the company being wound up or in administration, the official receiver, the liquidator, the administrator and the victim of the transaction with the leave of the court;
for a company voluntary arrangement ("CVA") case, the victim of the transaction whether he/she is bound by the CVA or not and the supervisor of the CVA;
for other case, a victim of the transaction can bring an action.
- ii. The Secretary of State, and official receiver as directed by the Secretary of State may take action to disqualify the directors of the company under section 6 of the Company Directors Disqualification Act 1986.
- iii. The administrator may bring an action under section 246ZB of the Insolvency Act 1986.

Question 2.2 [maximum 5 marks]

Commented [WPA7]: 5/5

List the **five (5)** qualifying decision procedures by which creditors may make decisions in the context of an insolvent company.

Answer:

The five qualifying decision procedures are 1. correspondence; 2. electronic voting; 3. virtual meeting; 4. physical meeting; and 5. any other decision making procedure enabling all entitled creditors to participate in the decision making procedure equally.

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

Commented [WPA8]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 4/6 a good answer but there is more to say about ss 233 and 233A and the distinction between those sections and s 233B needed to be explained.

Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?

Answer:

Under administration, trading is allowed to be done by an administrator.
Under section 233 of the Insolvency Act 1986, the supplier of gas, electricity, water and communications service shall give the supply at the request of the administrator. Section 233A further rules that the supplier of the essential goods and services under the section 233(3) is unable to rely upon "insolvency-related term" in the contract of supply to terminate the supply of essential goods and services, alter the terms of the supply or compel higher payments for continued supply.

Section 233B of the Insolvency Act 1986 makes the provisions in a contract which allow the supplier to terminate the supply of goods and services or do any other thing ceased to have effect when the company entered administration. This prevents suppliers from not only

terminating the supply, but also making a condition of continued supply such as pre-insolvency in arrears get paid or increasing prices.

With the above 3 provisions, the supplier will only be able to cease to continue supply goods and services to the administrator with the consent from the administrator or the court.

Question 3.2 [maximum 9 marks]

Explain the order of priority of payments in a liquidation and explain the nature of the rights enjoyed by each class of creditor or expense.

Answer:

Under section 115 of the Insolvency Act 1986 and rules 6.42 and 7.108 of the Insolvency Rules 2016, the order of priority of payments in a liquidation is summarised as follow:

1. expenses that are properly incurred by the liquidator in preserving, realising or getting in any of the assets of the company including the conduct of any legal proceedings;
2. the cost of any security provided by the liquidator;
3. any amount payable to a person to assist in the preparation of a statement of affairs or accounts;
4. any necessary disbursements by the liquidator in the course of liquidation;
5. the remuneration of any person employed by the liquidator to perform any services for the company;
6. the remuneration of the liquidator;
7. the amount of any corporation tax on chargeable gains accruing on the realization of any asset of the company;
8. any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in liquidation.

After settling the above expenses, the assets of the company are payable in the following order:

1. ordinary preferential creditors which largely comprise limited claims of employees
2. secondary preferential creditors, such as taxation
3. floating charges holders:
in case there are more than one floating charge holders, the priority of payments usually based on which floating charge was created first. If there is any outstanding unsecured balance owing to him/her, that unsecured part will be treated as unsecured debts
4. unsecured creditors
5. preference shareholders
6. ordinary shareholders

Every creditors in their respective classes, rank equally and so abate in equal proportion if the company's assets are insufficient to pay them all.

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

Prior to going into compulsory liquidation on 23rd December 2021, under pressure from its bank, Stercus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Corfee Zero Limited ("the Company"), granted a debenture in favour of Stercus Bank plc in February 2021. The debenture contained a floating charge over the whole of the Company's undertaking.

Commented [WPA10]: 6/9 good as far as it goes but needed more detail on preferential creditors, consideration of s 176A and the priority of fixed charges.

Commented [WPA11]: 11/15

The winding up order followed a creditor's winding up petition issued on 14th October 2021.

In July 2021, as the Company continued to suffer cash flow problems, the directors approved the sale of 5 coffee roasting machines to Ann Young (a director) for £10,000 in cash. The machines had been bought for £25,000 a year before.

A month before the winding up order was made, Ann Young received an email from Beans and Leaves Ltd, one of the Company's key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of coffee beans was seen as essential by the Company, the board authorised a payment of £8,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of £3,000 up to the date of the winding up order.

The liquidator has asked for advice whether any action may be taken in respect of the floating charge in favour of Stercus Bank plc and the two subsequent transactions.

Using the facts above, answer the questions that follow.

Identify the relevant issues and statutory provisions and consider whether the liquidator may take any action in relation to:

Question 4.1 [maximum 5 marks]

The floating charge in favour of Stercus Bank plc;

Answer:

The floating charge in favour of Stercus Bank plc was created in February 2021, which is at a time in the period of 12 months ending with the onset of insolvency (i.e. the date of commencement of liquidation - 14 October 2021 as defined under section 129).

Under section 245, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the value of so much of the consideration for the creation of the charge as consists of money paid/discharged, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,

As there is no "new" consideration provided by the Stercus Bank plc to the Company in exchange of creating the floating charge. The floating charge so created will be rendered invalid under section 245 of the Insolvency Act 1986.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Answer:

The sale of the coffee roasting machines was made in July 2021 to a director of the Company at £10,000 and the machines cost £25,000 a year before. There is a potential transaction at

Commented [WPA12]: 4/5 good but more detailed explanation and application needed for full marks

Commented [WPA13]: 4/6 again a good answer which needed a little more detailed explanation and application

undervalue because the consideration in this transaction is significantly less than the value as ruled by section 238 of the Insolvency Act 1986

Under section 238, where the company has at a relevant time entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order for remedy as described under section 241.

Under section 249, a director is classified as a connected person to the company. Under section 240, for a connected person, the relevant time is at a time in the period of 2 years ending with the onset of insolvency (i.e. the date of commencement of liquidation - 14 October 2021 as defined under section 129) and the Company is presumed to be insolvent unless the contrary is proved.

The transaction is likely to be caught by section 238 in this regards.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

Answer:

A month before the winding up order was made (i.e. November 2021), Beans and Leaves Ltd demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. The board authorised a payment of £8,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, in exchange of a continuous supply by Beans and Leaves Limited.

Under section 127 of the Insolvency Act 1986, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

As defined under section 129, the commencement date of the winding up is the date of presentation of the petition to wind up, i.e. 14 October 2021.

Therefore, the payment of £8,000 to Beans and Leaves Ltd will be voided.

However, the further payment of £3,000 for the supplies up to the date of the winding up order is likely not to be voided as the payments were made in exchange of continued supplies.

*** End of Assessment ***

Commented [WPA14]: 3/4 a good attempt which distinguishes well the two types of payment but does really explain how s 127 works or how validation would occur.