



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

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

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.

Commented [WPA1]: 42/50 = 84% a very good effort showing detailed knowledge and understanding

Commented [WPA2]: 8/10

Commented [WPA3]: D is correct

(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 [WPA4]: 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.**

QUESTION 2 (direct questions) [10 marks]

Commented [WPA5]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA6]: 4/5 the official receiver may also bring actions under s 6 CDDA

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?

S. 423 of the Insolvency Act

S. 423 of the Act permits the following categories of persons to challenge transactions defrauding creditors:

1. in the case of a company wind up or administration,
 - a. the official receiver,
 - b. the liquidator,
 - c. the administrator, and
 - d. any victim of the transaction such as a creditor if victim obtains leave of the court.
2. In the case where a victim of a fraudulent transaction is bound by a CVA,
 - a. the supervisor of the CVA
 - b. any victim of the transaction (whether bound by the VCA or not).
3. In any other case,
 - a. the victim of the transaction.

Section 6 of the Company Directors Disqualification Act 1986

The CDDA enables the court to make an order to disqualify directors thereby preventing them from participating in the promotion, formation or management of any company for a period of up to 15 years. Any application to disqualify a director under S. 6 of the CDDA is made by the Secretary of State following notification by a liquidator or administrator who is under a positive duty to report in respect of any unfit directors.

The CDDA is used as a means of protecting the public and deterring wrongdoing by directors. The CDDA thereby raises the standards of directors' conduct. Under section 6, Secretary of State must satisfy the court that

- (i) *the person is or has been a director of a company which has at any time become insolvent (whether while the person was a director or subsequently), or*
- (ii) *... the person has been a director of a company which has at any time been dissolved without becoming insolvent (whether while the person was a director or subsequently), and*
- (iii) *the person's conduct as a director of that company (either taken alone or taken together with the person's conduct as a director of one or more other companies or overseas companies) makes the person unfit to be concerned in the management of a company.*

Provided that the requirements stipulated above have been met, the court must make a disqualification order as the provisions are expressed in mandatory terms.

Section 246ZB of the Insolvency Act 1986

Together with Section 214, S. 246ZB of the Act work to hold directors liable for wrongful trading. Under these sections, directors may also be held liable for some of the company's debts and liabilities in certain circumstances. That section specifies that the application is brought by the administrator.

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.

Although deemed consent can be used for all decisions (but for the basis of the office holder's remuneration), there are circumstances where deemed consent is not used. These include for example, where the creditors have objected to its use or where the office-holder takes a decision not to use the deemed consent procedure.

Rule 15.3 of the Insolvency Rules therefore provides five alternative decision procedures by which creditors may make decisions in the absence of deemed consent, which are as follows:

1. Correspondence;
2. Electronic Voting;
3. Virtual Meeting;
4. Physical meeting; or
5. Any other decision-making procedure where all creditors (who are entitled to participate in deciding) can participate equally.

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

Commented [WPA8]: 12/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 4/6 quite good but an incomplete sentence. The distinction between ss 233, 233A and 233B is not clear.

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?

An administrator may wish to continue operating the business of the company. To enable the administrator to do so, contracts for the supply of certain goods and services will need to be maintained. S. 233 of the Insolvency Act 1986 is therefore designed to provide administrators a mechanism to retain certain essential services such as gas, electricity, water and communications services. Communications services is broadly defined to encompass for example, advice and even technical assistance.

S. 233 of the Act is supplemented by 233A and 233B. Section 233A invalidates any insolvency-related termination clause and therefore prevents suppliers from terminating the contract or alter the terms of the contract for example, to charge higher rates. Further protection is provided by S.233B of the Act which prohibits suppliers from not only terminating a contract by relying on a termination clause but from doing "any other thing" for example, demanding payment of any arrears as a condition for providing continued services. S. 233B goes even further by preventing

In answer to the question, yes, an administrator can require suppliers of goods and services to continue to supply those goods and services during the administration as long as those suppliers fall within the categories of suppliers contemplated by S. 233 of the Act.

Question 3.2 [maximum 9 marks]

Commented [WPA10]: 8/9 generally very good but the contents of Sch 6 are not up to date.

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.

A. Winding Up Expenses

The starting point when it comes payments out of the liquidation is that a liquidator only has rights in relation to those assets which belong to the company. Unless, a holder of a floating charge consent to the appointment, a liquidator cannot realise the charged assets. The first category of expenses which must be paid out of the liquidation relates to the expenses of the liquidation itself. Section 115 of the Insolvency Act 1986 ("the Act") provides that,

"After the payment of any liabilities to which section 174A applies, all expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims."

Rule 7.108 gives guidance on what expenses are determined as expenses of the winding up stating that *"All fees, costs, charges and other expenses incurred in the course of the winding up are to be treated as expenses of the winding up"*.

Rule 6.42 (4) of the Insolvency Rules 2016 ("the Rules") further sets out the order of priority in which such expenses must be paid as follows:

- a. *expenses which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation, conduct or assignment of any legal proceedings, arbitration or other dispute resolution procedures, which the liquidator has power to bring in the liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;*
- b. *the cost of any security provided by the liquidator or special manager under the Act or these Rules;*
- c. *the remuneration of the special manager (if any);*
- d. *any amount payable to a person employed or authorised, under Chapter 2 of this Part, to assist in the preparation of a statement of affairs or of accounts;*
- e. *the costs of employing a shorthand writer on the application of the liquidator;*
- f. *any necessary disbursements by the liquidator in the course of the administration of the winding up (including any F1... expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (i));*
- g. *the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or these Rules;*
- h. *the remuneration of the liquidator, up to an amount not exceeding that which is payable under Schedule 11 (determination of insolvency office-holder's remuneration);*
- i. *the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected);*
- j. *the balance, after payment of any sums due under sub-paragraph (h) above, of any remuneration due to the liquidator; and*
- k. *any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.*

B. Preferential Creditors

Section 175 of the Act stipulates that preferential creditors rank second after payment of the expenses of the liquidation. Section 175 of the Act provides that,

*“(1) In a winding up the company’s preferential debts F1... shall be paid in priority to all other debts after the payment of—
(a) any liabilities to which section 174A applies, and
(b) expenses of the winding up.”*

Therefore, once the expenses have been paid from the assets of the company, liquidators must then move on to pay preferential creditors before they can make payments to floating charge holders or to unsecured creditors.

Section 175A of the Act distinguishes between ordinary preferential debts and secondary preferential debts (See 175(1A) and 175(1B) (each of which has the meaning given in section 386 in Part 12 of the Law.) Under S. 175(1A) of the Law, ordinary preferential debts rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions. Secondary preferential debts rank equally among themselves after the ordinary preferential debts and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions (See S. 175(1B)).

Schedule 6 of the Act lists the types of preferential debts in the order of priority in which those debts must be paid which are divided into 5 main categories:

- a. Debts due to Inland Revenue – i.e. pension payments deducted and owing in respect of employees;
- b. Debts due to Customs and Excise –
- c. Social security contributions
- d. Contributions to occupational pension schemes, etc.; and
- e. Remuneration, etc., of employees

C. Floating Charge Holders

Following payment of preferential creditors, floating charge holders are to be paid. Section 176A(9) of the Act stipulates that a “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2)(a) comes into force”. Section 2(a) came into force on 15 September 2003. Therefore, a liquidator must first determine whether Section 176(a) applies depending on the date that the floating charge was created.

Under Section 176A(2), liquidators have to “make a prescribed part of the company’s net property available for the satisfaction of unsecured debts,” and “shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.” In other words, the liquidator has to ring-fence an amount high enough to satisfy the floating charge holders from the amount remaining after having paid the expenses and preferential creditors.

Under 176A (9), “prescribed” means prescribed by order by the Secretary of State. Accordingly, if the company’s property is more than £10,000, the prescribed part is 50% of the initial £10,000 in value, an additional 20% over £10,000, up to maximum of £800,000. However, if the company’s assets are less than £10,000, the prescribed part is 50% of that amount and the liquidator must determine whether a distribution to unsecured creditors would outweigh the benefits and, if so, the obligation to make a payment would not apply (See S. 176(A)(3) and 176(A)(4).

D. Unsecured creditors

Unsecured creditors are paid after the liquidation expenses are paid and distributions made to the secured and preferential creditors.

E. Shareholders

Only if there is enough remaining following payments and distributions to pay all the creditors, would any surplus be paid. Payments to the shareholders will be made on a pro rata basis and in accordance with their respective shareholding.

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

Commented [WPA11]: 13/15

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.

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]

Commented [WPA12]: 5/5

The floating charge in favour of Stercus Bank plc;

Section 245

The liquidators can seek to employ the assistance of Section 245 of the Act which applies to floating charges. That section provides that where the floating charge is granted in favour of a connected person, the relevant time within which the charge must have been granted would

be two years prior to the commencement of the insolvency. If the bank is deemed not to be a connected person, the relevant period is 12 months.

Stercus Bank is a pre-existing unsecured creditor who has obtained the security of a floating charge within a year of the company going into compulsory liquidation. Therefore, the liquidators would be able to demonstrate that the transaction occurred during a relevant time.

The effect of satisfying the requirements would be to invalidate the floating charge granted in favour of the bank. The liquidators should be in a good position to do so if, in relation to the floating charge, no new consideration was made. It appears from the facts that no new consideration (according to the definition of new consideration) was made. The only benefit that appears to have been stopping the bank's demands for repayment of the company's loans.

Preference Payment

The liquidators may pursue an action under section 239 of the Act since the granting of the debenture could in limited circumstances be considered to be a preference payment.

The liquidators have the burden of proof to demonstrate that,

- a. The bank was a creditor of the company at the relevant time,
- b. The effect of the charge was that the bank was placed in a better position to other creditors (in the event that the company goes into insolvent liquidation);
- c. The company was, in giving the preference, influenced by a desire to produce the effect referred to at (b) above; and
- d. The preference was given at the time.

The liquidators would be advised that, even though the effect of the floating charge was that the bank was a preferred creditor, it may be difficult to prove that the floating charge was granted with that intent (See *Phillips v Brewin Dolphin Bell Lawrie Ltd* [2001] UK HL2). Further, fact that the bank was placing pressure on the company will only be relevant if the liquidator can demonstrate the requisite intent. The liquidator would have to show that at the time, the company was either unable to pay their debts as they fell due (per S. 123 of the Act) or became unable to pay its debts as a result. As set out above, the most difficult hurdle for the liquidator to overcome would be in proving the intent aspect. The fact that the directors granted the floating charge for commercial reasons and to ensure that the company could continue trading has been determined by the English court as meaning that there could be no intent to prefer.

In the circumstances, I would advise the liquidators not to pursue this particular course.

Failure of Invalidate Charge

The liquidators have to consider what would happen if they are unsuccessful in seeking to invalidate the floating charge. They would have to consider Section 176A as it applies to the floating charge and treat the bank (in terms of priority and in respect of the floating charge) as it would any preferential creditor i.e. as ranking second after the liquidation expenses.

The date that the floating charge was created is the next relevant consideration since section 176A of the Act only applies to floating charges created on or after 15 September 2003 for companies in liquidation or administration. Since Section 176A does apply (as far as the date of the charge is concerned), the liquidators would then need to determine whether the net property available (i.e. the amount after expenses and preferred creditor payments are deducted) exceeds the prescribed £10,000 minimum. As above, if the amount of net assets is

less than £10,000, the liquidator will have to consider whether the drawback of a distribution to unsecured creditors outweighs the benefits. If so, section 176 does not apply. If the net assets exceed the prescribed £10,000 minimum, then the liquidators will have to calculate the "prescribed part" available to satisfy all unsecured debts and ring fence the amounts in favour of the bank i.e, 50% of the first £10,000, plus 20% of the excess in value above the £10,000, up to a maximum of £800,000.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Section 238 – Transactions at undervalue

The sale of the coffee machines took place in July 2021, only three months prior to winding up petition being issued on 14th October 2021. Further, the machines were sold at a gross undervalue since they were purchased by the Company only a year earlier at a price which was more than double what Ann Young has paid.

Under section 238(4), the liquidators would have to demonstrate to the court that,

- “(a)the company made a gift to that person or otherwise entered into the transaction with that person on terms that provide for the company to receive no consideration, or
- (b)the company entered into a transaction with that person for a consideration the value of which, in money or money’s worth, was significantly less than the value, in money or money’s worth, of the consideration provided by the company.”

The significant disparity between the purchase and eventual sale price of the machines means that the liquidators would have minimal difficulty in satisfying the first condition.

The second consideration is whether the at the relevant time, the company was unable to pay its debts as they fell due or became unable to pay its debts because of the transaction. If Ann is determined to be a connected person, that that requirement will have been satisfied.

Even if all the above requirements are satisfied, the liquidator’s ability to obtain an order will depend on whether the directors can successfully demonstrate that the transaction was done on reasonable grounds that it would benefit the company and in good faith, the court will not grant the order. There is no evidence, based on the facts that the directors can properly defend an application on this basis. Also, Ann would not fall within the categories of protected persons pursuant to section 241 since it does not appear that she acquired the machines in good faith and for value.

The liquidators have reasonable prospects of successfully obtaining an order from the court under section 238 of the Act. The directors will likely be required to contribute to the company’s assets. Since that contribution would be the view of restoring the company back to the position it would have been if the preference had not been given or the transaction entered, that sum would be calculated by reference to the difference between the sale price of the coffee machines versus their value at the relevant time so *circa* £20000 (considering depreciation).

Section 212

Pursuing an action under Section 238 as above does not preclude the liquidators from also pursuing action against the directors under Section 212 of the Act since the transaction is likely to represent of a conflict of interest and a breach of duty on the part of the directors. The

Commented [WPA13]: 5/6 a good answer but there is a presumption of insolvency against a connected person – this is capable of being rebutted.

benefit of pursuing a Section 212 application is that it would allow the liquidators to examine and potentially claim in respect of conduct of other office holders (including other company officers).

Question 4.3 [maximum 4 marks]

Commented [WPA14]: 3/4 good but needed to distinguish between payment for new supply and pre-existing debt

The payments to Beans and Leaves Ltd.

The creditor's winding up petition was issued on 14th October 2021 and the compulsory liquidation commenced on 23rd December 2021. It was during the intervening period that 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 relevant statutory provision would be Section 127 of the Act which avoids dispositions of company property made between the commencement date (being the date the petition was presented) and the order. Under Section 127, "dispositions" include payments of money, this section applies to the £8,000 (and £3,000) payment.

Given that the payment was authorised on the basis that the continued supply of coffee beans was deemed essential by the Company, it is likely that any application to the court to validate such payment would succeed. The Court is likely to consider the following factors as highly relevant,

1. The fact that the payment was necessary to ensure continued supplies thus enabling the company to continue trading and therefore such payment was in the best interests of creditors;
2. That the goods have been paid for on terms of cash on delivery. (The court would likely deem that the payment will enable further supplies to be received and so enable the business to continue, thereby benefitting the company.); and
3. That the payment is in the ordinary course of business.

Given the above, I would advise the liquidators that the prospects of success in respect of any claim related to the payments are fairly low and should therefore not be pursued.

*** End of Assessment ***