



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]: 35/50 = 70% some good answers but a good effort could have been even better with some more detail in places.

Commented [WPA2]: 8/10

(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.

Commented [WPA3]: C is correct

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]

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Question 2.1 [maximum 5 marks]

Commented [WPA6]: 3/5 the answer to i) is incomplete – possible CVA supervisor – ii) OR may bring actions – iii) only administrator may bring an action under s 246ZB

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?

Who may bring an action under:

(i) section 423 of the Insolvency Act 1986:

the official receiver, the liquidator, the administrator and (with leave of the Court) any victim of the transaction such as a creditor;

(ii) section 6 of the Company Directors Disqualification Act 1986:
The Secretary of State

(iii) section 246ZB of the Insolvency Act 1986
Liquidators and administrators

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.

Pursuant to the Insolvency Rules 2016, r.15.3 the five qualifying decision procedures are:

- Correspondence;
- Electronic voting;
- Virtual meeting;
- Physical meeting;
- Any other decision making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally.

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

Commented [WPA8]: 11/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 5/6 a good answer which might have explained each provision in a little more detail.

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?

Yes. Section 233 of the Act, while allowing for the supplier to require the administrator to personally guarantee the payment of charges in respect of the supply, provides that the administrator can retain essential supplies such as gas, electricity, water and communication. Further, the supplies are not allowed to require the payment of outstanding debts in order to continue to supply the service.

In addition, section 233A provides that termination clauses that would ordinarily allow the supplier to terminate the supply or alter the terms of supply are not capable of being relied on.

Section 233B goes so far as to effectively prevent the termination of a supply by the supplier when a company enters insolvency or making the continued supply conditional upon the pre-insolvency amounts owed being paid (or from increasing prices).

However, the Court can terminate the contract if it considers that the continuation of the service would cause the supplier hardship.

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.

- a) Holders of fixed chargers will be paid first usually outside of any formal insolvency
- b) Expense of the procedure – including the remuneration and costs of the officeholder (including liquidators or administrators);
- c) Preferential Creditors (for instance claims from employees and taxation debts owed to Government) as defined in section 386, 387 and Schedule 6: section 175. There are two classes of preferential debts (being ordinary (paid first) and secondary (paid second))
- d) Floating charges – Where there is more than one floating charge, priority is usually provided on the basis of which floating charge was created first
- e) Unsecured creditors – These are paid out last in the statutory order. Generally there is little left by this time.
- f) Any surplus cash will be returned to the members according to their rights under the Company's constitution.

Commented [WPA10]: 6/9 – accurate but lacking detail eg. Around Preferential creditors / s 176A

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.

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.

Commented [WPA11]: 8/15

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;

Section 245 – Floating charge avoidance

This section renders invalid floating charges granted by a company in the relevant period. It is aimed at preventing existing unsecured creditors (such as Stercus Bank plc) from obtaining the security provided by a floating charge in the period of time shortly before a company enters into a formal insolvency proceeding. This doesn't apply where there is new consideration provided for the floating charge.

In the circumstances that Stercus Bank plc is not connected with the company, the relevant time is 12 months prior to the insolvency. Given the floating charge was provided in February 2021 and the company went into insolvency in December 2021, this would be open to attack.

Further, there is no additional consideration (under the categories set out in section 245) provided for the floating charge.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Section 238 – Transactions at Undervalue

This provides that certain transactions which were entered into shortly prior to the company entering into formal insolvency may be open to attack by the liquidator. The liquidator must be able to show, relevantly, that the company entered into a transaction with another person for a consideration which, in money or money's worth, was, at the date of the transaction, significantly less than the value, in money or moneys worth, of the consideration provided by the company.

In this case 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. This would likely be open to attack by the liquidator as a sale for undervalue.

Further, the relevant time is any transaction which occurred within a period of two years prior to the commencement of the liquidation, which this would fall into.

Ann Young and the Company would need to show that the transaction was entered into by the Company in good faith and for the purpose of carrying on its business, and that at the time there were reasonable grounds for believing the company would benefit as a result of the transaction,

Commented [WPA12]: 4/5 good but more detailed application would have been helpful

Commented [WPA13]: 4/6 good but needed to explain need for insolvency at the time and effect of connected party

In the circumstances that Ann Young is a director of the Company she will struggle to seek protection under section 241.

Accordingly, it is likely the court will order the restoring of the position had the transaction not occurred.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

Section 239 - Preferences

Pursuant to section 239 a company is prevented, shortly before entering formal insolvency, from placing one of its creditors in a preferential position relative to its other creditors. For instance, it prevents the payment to the creditor in full where, otherwise, the creditor could only have hoped to receive a dividend as an unsecured creditor.

Accordingly, the payment in full of the outstanding \$8,000 plus additional \$3,000 could be seen as a preferential payment given it was made within a month of the winding up order.

The liquidator must show:

- a) Beans and Leaves Ltd was a creditor at the time of the transaction – which they were;
- b) something was done that put Beans and Leaves Ltd in a better position (in the event the Company went insolvent) than if nothing had been done – in this case the payment of all outstanding bills;
- c) the Company was influenced by the need to produce the preference set out at (b) above – which in this case they were as they needed the beans to continue to be delivered as it was considered essential to the business; and
- d) the preference was in the relevant time (being within 6 months for a not connected person)

In this case, it should not be difficult, given the importance of the continued supply of coffee beans to the company, to show a desire to preference Beans and Leaves Ltd.

*** End of Assessment ***

Commented [WPA14]: 0/4 due to the timing, it cannot be s 239 only s 127