



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]: 31/50 = 62% some strong answers but there is a lack of necessary detail in places especially Q4.

Commented [WPA2]: 9/10

(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.

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.**

QUESTION 2 (direct questions) [10 marks]

Commented [WPA4]: 6/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 2/5 – the answer to i) is broadly correct but lacks specific detail – ii) is incorrect – Sec of State or OR and iii) is administrator not liquidator

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?

- (i) Section 423 of the Insolvency Act 1986 – There are two different categories of parties that can bring action. Firstly, a creditor, administrator, liquidator or official receiver may bring action where the Company is in administration or liquidation. Secondly, any creditor or supervisor of a creditors voluntary arrangements who may bring action against any transaction. And lastly, in any other instance, a victim (who is likely to be a creditor) may bring action against a case.
- (ii) Section 6 of the Company Directors Disqualification Act 1986 – Under this section, the Liquidator has a statutory duty to report any director of the Company that they deem unfit.
- (iii) Section 246ZB of the Insolvency Act 1986 - Under this section, a Liquidator has the power to bring action against the directors of the Company

Question 2.2 [maximum 5 marks]

Commented [WPA6]: 4/5 – point 5 needs to be explained.

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

1. Correspondence – More than likely in the case of letters and/or emails.
2. Electronic Voting – This is the electronic way of casting and counting votes.
3. Virtual Meeting – Meeting that are held by means of video conferencing, which are more likely to happen in the current pandemic times, and voting can be done in the same way as a physical meeting but through tele conferencing.
4. Physical Meeting – Meetings that are held in person and can be referred to as “round table meeting”, where voting can be done in person.
5. Any other decision-making procedure

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

Commented [WPA7]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 4/6 also needed to explain s 233B

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 is appointed over a Company temporarily to allow the Company the chance to benefit from an experienced external manager to allow the Company to improve on matters necessary for growth and for the creditors of the Company. Many companies who go into administration, do so with the view of remaining in operation, which may include selling the Company as well. However, on the appointment of an administrator, goods and services should remain as they were before the Company entered administration and it is not an automatic cancellation of the Company's executory contracts.

During an administration, companies still need their regular essential supplies, which include gas, electricity, water and communication services (including all things relating to computer hardware, software and even technical support). Section 233 of the Insolvency Act 1986

allows for supplies of essential items to continue to be provided during an administration. Those contracts cannot be terminated, nor can the Company be threatened to settle outstanding debts at that time; however, it is a requirement as per Section 233 (2) (a) that the administrator personally guarantees payment of the supplies that have been provided, however prices cannot be increased during this time.

However, should the supply of any goods and services be to a great detriment of the supplier, or cause the supplier hardship, the administrator may write to the Court to gain the approval to have the contract terminated by the supplier.

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.

- 1) Liquidation Expenses – The first class of creditor to be paid (and in full) are all the expenses incurred by professional service providers in the liquidation. The Act provides for a number of different expenses to take precedent over Preferential Creditors, Floating charge holders and unsecured creditors. Those expenses include the following:
 - Liquidators' fees and disbursements, which have been properly incurred in the winding up and realisation of assets and the costs of any security that was provided by the Liquidator.
 - Expenses relating to the preparation of the statement of affairs of the Company.
 - Fees and expenses incurred by professional service advisors engaged by the Liquidator.
 - Expenses relating to corporation tax or chargeable gains
- 2) Preferential Creditors – The second class of creditors to be paid (and in full) are the Preferential creditors. The term preferential in the term means exactly that; this group of creditors are deemed to be more important as per Section 6 of the Act. There are two classes of preferential creditors, which are listed below in terms of priority:
 - Ordinary - This group of creditors is usually limited to employees who were owed sums, including holiday pay and manufacturers of coal and steel (as this is deemed quite rare in the UK) and;
 - Secondary – This group includes monies due to the Government including student loans and PAYE and national insurance deductions.
- 3) Floating Charge Holders – This class of creditor is next in line to be paid. However, if there are more than one creditor in this category, a distribution will be made in priority of whose floating charge was created first. Also, before any payments can be made to floating charge holders, an application must be considered in respect to floating charges that were created on or after 15 September 2003 and the Company has gone into liquidation of administration as per Section 176A of the Act. As per Section 176A(2) the office holder has to make a prescribed part of the Company's net assets available for the satisfaction of unsecured creditors and "shall not distribute the prescribed parts to the owner of a floating charge except in so far it exceed the amount required for the satisfaction of unsecured debts".
- 4) Unsecured Creditors – Often times, there is rarely any funds available to distribute to this class of creditors which is usually consisted of trade creditors. These are creditors who have no security and are usually the last class of creditors to be paid out.
- 5) Shareholder – Often times, there is rarely any funds left to be distributed to the shareholders of the Company. However, if there is any surplus remaining it shall be distributed to the shareholders as per the Articles of Association once the Company is found to be Solvent.

Commented [WPA9]: 6/9 a reasonable answer but more detail needed on preferential debts, s 176A and the position of fixed charge holders.

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

Commented [WPA10]: 6/15

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 [WPA11]: 3/5 there are other requisites for s 245 which needed to be included

The floating charge in favour of Stercus Bank plc;

The major issue with the floating charge issued is in relation to the timing of the transaction. The floating charge was awarded with the sole purpose to prevent the repayment of the loans owed to Stercus Bank plc, as they were being pressured to repay them. The bank would have been classed as an unsecured creditor in the liquidation of the Company, but by obtaining the floating charge, they therefore bumped themselves up as floating charge holders who are paid before unsecured creditors.

Section 245 of the Act is aimed at preventing pre-existing unsecured creditors from obtaining the security of a floating charge shortly before the company going into liquidation, of which there is a prescribed relevant time. The floating charge in this instance was issued in February 2021, and the company went into liquidation on 23 December 2021, therefore the relevant time aspect is valid as the bank was connected to the Company already, so the relevant time period is two years prior to the onset of the insolvency as per the Act.

Action can therefore be taken against the issuance of this floating charge by the Liquidator as the floating charge can be deemed invalid.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The issues with the sale of the coffee roasting machines include the fact that the machines initially costed GBP25,000 a year before, and was sold at a GBP15,000 discount one year later. Another issue of this transaction is the fact that it was not only sold for a discount, but it was sold to a director of the Company, which could be considered a connected party transaction.

This could be deemed as misfeasance by the director to sell assets at such a loss to the Company without a proper sale process. Misfeasance is defined as an action where the wrongdoer has misapplied, retained or become accountable for money or property of the Company.

The Liquidator should look closely at this transaction to determine why this was sold at such a loss regardless of the cash flow issues that they were experiencing, and who authorised the sale of these machine. There should have been a proper sale process in place if the machines were to be sold and the amortisation calculation should be clear from the accountant, with precise assumptions on the rate used.

The timing of the transaction should also be investigated, as the Company went into liquidation 6 months later. At that point in July 2021, the Company would have known that they were experiencing financial difficulties, and regardless of this, the Company still authorised a sale of company assets (at a great loss) that could have been recovered by the Liquidators to settle amounts to creditors.

Section 238 of the Act allows for undervalue transaction entered into before the company entered into liquidation to be scrutinised. In this instance, the Liquidator should therefore be able to prove that the transaction was entered into at the date of the transaction at a significantly lower value in money's worth and had taken place 2 years before the Company was placed into liquidation, which it did.

Therefore, once the Liquidator can prove the above, the directors of the Company should be held accountable for the loss encountered by the Company, as it was not done in the best interest of the Company. A claim of breach of duty can therefore be brought against the director also for this transaction. However, if it can be confirmed that the transaction was made in good faith and there was reasonable ground to complete the same at the time, then no claim should be brought against the directors.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

The issues arriving in this transaction include the timing of the transaction, this transaction was completed a month before the winding up order was made by the petitioning creditor. However, the Company knowing that it had cash flow issues continued to trade, paying one of its deemed essential suppliers GBP8,000 and agreeing to pay GBP3,000 more. However, had the Company gone into voluntary liquidation, Section 233B of the Act would have prevented Beans and Leaves Ltd from demanding repayment of outstanding amounts, or terminating the provision of supplies.

Commented [WPA12]: 3/6 more detailed explanation and application of s 238 needed.

Commented [WPA13]: 0/4 - misses the point of the question unfortunately – s 127 applies to a situation such as this.

*** End of Assessment ***