



**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]: 29/50 = 58% some good answers but lacks detail and precision in Q4.

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]**

Commented [WPA5]: 7/10

**Question 2.1 [maximum 5 marks]**

Commented [WPA6]: 3/5 the answer to i) is incomplete and the answer to ii) is incorrect (Sec of State or OR).

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 432 of the Insolvency Act provides for transactions defrauding creditors such as transactions at undervalue or transactions intended to put assets beyond the reach of creditors. The section does not specify who may bring an action but a reading of sub-section 2(a),(b) and (5) implies that such an action may be brought by an administrator, a liquidator, or any person that is or is capable of being prejudiced by the transaction such as a creditor.

(ii) Section of the Company Directors Disqualification Act 1986 does not specify who may bring a director disqualification action A liquidator, administrator or administrative receiver may bring an action under section 6 may be brought by a liquidator, administrator, administrative receiver or official receiver.

(iii) Section 246ZB of the Insolvency Act of 1986 provides for wrongful trading in cases where the company is under administration. Therefore, an action under this section may be brought by an administrator. Subsection (i) provides that an application to court under this section is made by the administrator. Type your answer here]

**Question 2.2 [maximum 5 marks]**

Commented [WPA7]: 4/5 the final option requires further explanation

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

[Creditors are required to make decision in insolvency proceedings. In the past this was done at a duly convened creditor's meeting. In the United Kingdom, it is no longer necessary to convene a creditor's meeting. Section 246ZE(1) of the Insolvency Act provides that a decision of creditors may be considered using a decision procedure that the office holder deems appropriate. This may be by a deemed consent procedure (where creditors of are informed about an intended decision and if not objected to, it is deemed to have been made. Where it is not practical to use the deemed consent procedure or where creditor object to it, the office holder has an option to use any of the following qualifying decision procedures provided for in r. 15.3 of the Insolvency Rules of 2016:

- a) Correspondence;
- b) Electronic voting;
- c) Virtual meeting;
- d) Physical meeting; or
- e) any other procedure that enables creditors to make decisions.]

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

Commented [WPA8]: 10/15

**Question 3.1 [maximum 6 marks]**

Commented [WPA9]: 4/6 – along the right lines but there is a slight lack of accurate detail, especially regarding 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 may be appointed by court, creditor or the company. The objectives of administration as stated in paragraph 3 of schedule B1 of the Act are to rescue the company, achieving a better result for the company's creditors as a whole, or realising the property in order to make a distribution to secured or preferential creditors. Achieving The first and second objective may require the administrator to continue operating the business and this may include requiring supplies.

While administration places a moratorium on creditor enforcement action, it does not automatically terminate supplier contacts. The issue of supplier contracts will depend on whether the services are essential or not. Section 233 of the insolvency Act provides for essential supplies such as water, gas and electricity and telecommunication services and others such as IT services (as provided in section 233B). There is no requirement to pay outstanding debts, but there is a requirement for the administrator to personally guarantee payment for the supplies.

With regard to non- essential supplies, the historical position is that these could be terminated by ipso facto clauses. However, increasingly and more recently during the COVID-19 pandemic, there are statutory restrictions on ipso facto clauses in contracts. Section 233A and 233B of the Insolvency Act prohibit suppliers from terminating contracts or taking any other action as a result of insolvency of the contracting party except if continuation of the contract would cause 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.

[The order of priority of payments in a liquidation is as follows:

- 1) Expenses that are paid in priority of preferential creditors, floating charge holders, unsecured creditors. These are provided for in section 115 of the Insolvency Act and include expenses of the liquidator, costs of any security provided by the liquidator, costs of preparing the statement of affairs of the company, disbursements of the liquidator, remuneration of persons employed by the liquidator, remuneration of the liquidator, corporation tax and any other expenses of winding up the company.
- 2) Preferential creditors as defined in section 175, 386, 387 and schedule 6 of the Insolvency Act, 1such as employee contributions to occupational pensions schemes for up to 4 months prior to insolvency, employer contributions to occupations pensions schemes for up to 1 year prior to insolvency, remuneration owed to employees for up to 4 months prior to insolvency and capped at 800 pounds, holiday remuneration, levies on coal and steel, reserve forces payments, amounts owed by the company in respect of eligible deposits that does not exceed eligible compensation, PAYE income tax deductions, national insurance deductions, VAT payments, construction industry scheme deductions, student loan repayments. These are paid after paying the expenses in 1) above and in priority of floating charge holders, unsecured creditors and shareholders. Preferential creditor claims rank *pari passu*.
- 3) Floating charge holders. These are paid after making payments to creditors in categories 1) and 2) above. Floating charge holders are paid in the order of the rank of their charges. Payments to holders of floating charges are also subject to reservation of prescribed amounts for unsecured creditors as provided for in section 176A of the Insolvency Act.

**Commented [WPA10]:** 6/9 generally sound but more detail is needed about different classes of preferential creditors, s 176A and the position on fixed charge holders.

- 4) Unsecured creditors are paid after all the creditors in categories 1), 2), and 3) above have been paid.
- 5) Shareholders receive in surplus that remains after paying all creditor claims and it is paid in proportion to their shareholding. ]

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

Commented [WPA11]: 4/15

Prior to going into compulsory liquidation on 23<sup>rd</sup> 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 14<sup>th</sup> 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]: 2/5 fine as far as it goes but needs more detail on the operation of s 245.

The floating charge in favour of Stercus Bank plc;

[The debenture was granted to secure past indebtedness and there is no evidence from the facts that new money (consideration) was given by the Bank. The debenture containing a floating charge places Stercus Bank in a more favourable position than unsecured creditors. However, it cannot be attacked as a preference under section 239 of the Insolvency Act 1986, because, being unrelated parties, the relevant period for the transaction is 6 months (section 240(1)(b)). In this case, the debenture was granted 10 months prior to liquidation.



However, since the debenture had a floating charge, the liquidator can attack it under section 245 of the Insolvency Act and seek to avoid the floating charge on grounds that it is not within the exceptions permitted by section 245(2) and was granted within the 12 months window of the onset of insolvency (s.245 (3) and (5)(d))

**Question 4.2 [maximum 6 marks]**

The sale of the coffee roasting machines; and

[The sale of coffee roasting machines. Section 238 of the Insolvency Act 1986 permits an administrator or liquidator of a company to challenge such transactions. The sale of the roasting coffee machines took place in July 2021, which is within the 2-year period prescribed by section 240. They were sold at 10,000 pounds and yet they were purchased at 25,000 pounds the year before. It is highly unlikely that within a year the value would have significantly dropped to that level. Therefore, the consideration received by the company qualifies the transaction as an undervalue transaction within the meaning of section 238(4)(b) of the Insolvency Act 1986.]

**Commented [WPA13]:** 2/6 there is a lot more to s 238 than the answer suggests – the answer only partly addresses the requirements of s 238.

**Question 4.3 [maximum 4 marks]**

The payments to Beans and Leaves Ltd.

[The payment to Beans and Leaves Ltd of 8,000 pounds and 3,000 pounds can be challenged by the liquidator on two grounds. The first is the 8,000 pounds was a voidable preference under section 239 of the Insolvency Act. Although driven by the desire to ensure the continued supply of coffee beans, it had the effect of putting Beans and Leaves Ltd in a better position as creditor.

The payment of 3,000 post commencement of liquidation can also be challenged on grounds that the supply of coffee beans was not an essential service within the meaning of section 233 of the Insolvency Act.] The essential supplies protected by section 233 are provided in subsection (3) and are gas, electricity, water and telecommunication services.

**Commented [WPA14]:** 0/4 unfortunately misidentifies the issue which is s 127.

**\* End of Assessment \***