



**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]: 25/50 = 50% a borderline performance due mainly to a lack of detailed understanding

Commented [WPA2]: 6/10

(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.

Commented [WPA3]: D is correct

#### 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 [WPA4]: 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 [WPA5]: B is correct

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

(d) Being found guilty of an indictable offence overseas.

**Question 1.8**

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

(a) 6

(b) 8

(c) 10

(d) 12

**Question 1.9**

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

(a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.

(b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.

(c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.

(d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

**Question 1.10**

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

(a) 6 months.

(b) 12 months.

(c) 2 years.

(d) 5 years.

Commented [WPA6]: D is correct

**QUESTION 2 (direct questions) [10 marks]**

Commented [WPA7]: 8/10

**Question 2.1 [maximum 5 marks]**

Commented [WPA8]: 3/5 – although i) is broadly correct, it is poorly expressed; ii) is incorrect – only the Sec of State or OR can bring an action; iii) an administrator is the answer

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?

[Section 423 Insolvency Act 1986, an administrator, official receiver, the liquidator or a victim under the Company Voluntary Agreement (CVA) either bound by or not, the supervisor of the CVA or by having evidence of transactions involving in defrauding creditors can commence an action. In all material times, such actors or victims must seek leave of Court.<sup>1</sup>  
ii) an administrator, official receiver, Liquidator or supervisor having established with evidence that the directors of the company have persistent breaches of the law, or established evidence which makes them unfit as directors, wrongful trading which the directors reasonably should have revealed<sup>2</sup>, then the aforementioned can submit to Court or the Secretary of State to prosecute or secure a disqualification order.]

**Question 2.2 [maximum 5 marks]**

Commented [WPA9]: 5/5

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

[The following are the five qualifying decision procedures a Creditor may consider: (a) correspondence (b) electronic voting (c) virtual meeting (d) physical meeting (e) other means necessary to enable a Creditor to take part in decision making<sup>3</sup>]

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

Commented [WPA10]: 8/15

**Question 3.1 [maximum 6 marks]**

Commented [WPA11]: 3/6 the answer is broadly correct but seems to confuse s 233, 233A and 233B. There is a lack of specific and clear 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. From the commencement of an administration, the administrator requires crucial suppliers to ensure the business's running can enter into an executory contract with suppliers. Under Section 233B, suppliers are not required to require outstanding debt but with the ultimate guarantee of repayment by the Administrator.<sup>4</sup> It is worth noting that, these essential suppliers vary among companies however, suppliers such as electricity, water, among others are classified as essential suppliers. There has been the further expansion of the provision in the Corporate Insolvency and Governance Act 2020 that prevent suppliers from terminating supplier contract ones the company enters into insolvency proceedings.<sup>5</sup>]

<sup>1</sup> Insolvency Act 1986, s 423

<sup>2</sup> P. R. Wood, "Wrongful training: Principles of International Insolvency", (Sweet & Maxwell, 2<sup>nd</sup> ed, 2007) Pg 560

<sup>3</sup> Foundation Certificate in International Insolvency Law, "Insolvency System of United Kingdom (England and Wales)", INSOL pp 6

<sup>4</sup> Ibid ss 233B

<sup>5</sup> Corporate Insolvency and Governance Act 2020

**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.

[First of all, in liquidation, the company in question is winding up its affairs and realising value from the asset. In all practical purpose, Companies that receive some form of post-commencement finance, particularly in an attempt to realise maximum value from the sale of assets and the peruse of debtors of the company. Such payment are ranked superior. The following according are the order priority of payments and the respective rights the classes of creditors.

- a. Cost of Liquidation (remuneration of liquidators)
- b. Preferential creditors
- c. Floating charge holders / Secured Creditors
- d. Unsecured creditors
- e. Shareholders.

The initial distribution of dividend from the realisation of the assets of the company or the sale of the entire company expenses in maintaining the operation of the Liquidation proceedings which includes but is not limited to liquidation fees, legal expenses, cost of security, any financial advisor or accountant or experts employed by the Liquidator to assist with the proceedings must be paid. Under Section 155, remuneration which applied to administrators, Statutory payments such as tax accrued from the sale of the assets, and other executory contracts which were entered during administration.<sup>6</sup>

Also, preferential creditors are large to employees and stator payments to the Crown. The employees' benefits including their social securities and pensions are captured here. Evidently, these are taxation liabilities, pensions schemes and those contributions 12 months before the commencement of the insolvency proceedings among others.

Floating Charge holders or secured Creditors are those who have security over the whole or substantial part of the company. The liquidator from the proceeds will prescribe the percentages which are owed by the Creditors.

Unsecured Creditors do not have any security on the assets. They ranked after floating charge holders.<sup>7</sup>

Finally, where there arise enough funds after these payments have been made, the funds are allocated to the shareholders of the company, subject to their shareholding structure.]

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

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.

<sup>6</sup> Ibid s 155

<sup>7</sup> Jonathan Mounery "Order of payment priority for creditors during company liquidation"

<https://www.begbies-traynorgroup.com/articles/insolvency/who-gets-paid-first-when-a-company-goes-into-liquidation>> retrieved 16/02/2022

**Commented [WPA12]:** 5/9 again there is a lack of specific detail, specifically here re the detail of different classes of preferential debts, the s 176A deduction and the position of fixed charge holders.

**Commented [WPA13]:** 3/15

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]**

The floating charge in favour of Stercus Bank plc;

[Stercus Bank plc from these proceedings has not perfected its security or statutory declaration of the floating charge. However, there is no evidence of Stercus Bank plc linked to any of the Directors or company, hence the Liquidator must consider the time period of 12 months prior to the onset of the insolvency proceeding. Liquidator may consider taken an action under section 245]

Commented [WPA14]: 2/5 detail on s 245 missing

**Question 4.2 [maximum 6 marks]**

The sale of the coffee roasting machines; and

[This constitutes misfeasance, wrongful trading (section 213 and 214), transaction undervalued as the amount is less than the value (section 238) and the liquidator can consider reversing the transaction and allowing the Director to return the coffee machines or take action under sections 212 and 238. This clearly is a breach of the duty of the directors. The liquidator may proceed and report the director to the Secretary of State who may under Act 1986 or through the Courts can disqualify them in holding themselves as directors of any company. Under section 246ZD, the Liquidator can sue the directors for breach of their duty. ]

Commented [WPA15]: 1/6 there are some misconceived statements here – s 238 is the main point of the question. Other actions might be possible but again there is no detail.

**Question 4.3 [maximum 4 marks]**

The payments to Beans and Leaves Ltd.

Commented [WPA16]: 0/4 the issue here is s 127



[The Liquidator under Act 2020 have the power to terminate or reverse those transactions. Even though the suppliers are considered essential to the production of the company, Preferences under section 239, the liquidator can apply to the Court for an order and must demonstrate that at the time the payment of the suppliers to Beans and Leave Ltd. Were made, they were creditors of Corfee Zero Ltd, undue pressure with the desire of going into production urged them to pay their outstanding liabilities.]

**\* End of Assessment \***