



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 [JL1]: TOTAL 43 out of 50
Well done!

Commented [JL2]: 9 out of 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 [JL3]: c

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.

(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 [JL4]: 9 out of 10

Question 2.1 [maximum 5 marks]

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?

- (a) Under section 423 of the Insolvency Act 1986, the parties who may bring an action are:
 - (i) the official receiver, liquidator, administrator and any victim of the defrauding transactions such as creditors (with the leave of court), where the company is being wound up or is in administration.
 - (ii) the supervisor of the company voluntary arrangement (CVA), if the victim is bound by CVA or any victim of the transaction (whether bound by CVA or not).
 - (iii) The victim of transaction, in any other case.
- (b) Under section 6 of the Company Directors Disqualification Act 1986, the liquidator or administrator may bring an action on behalf of the company against director(s).
- (c) Under section 246Z of the Insolvency Act 1986, the liquidator may bring an action on behalf of the company against director(s) or others.

Commented [JL5]: administrator

Commented [JL6]: 4

Question 2.2 [maximum 5 marks]

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

The 5 qualifying decision procedures are set out in rule 15.3 of the Insolvency Rule 2016, which includes (a) correspondence; (b) electronic voting; (c) virtual meeting; (d) physical meeting; or (e) any other decision making procedure which enable all creditors who are entitled to participate in the making of the decision to participate equally.

Commented [JL7]: 5

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

Commented [JL8]: 14 out of 15

Question 3.1 [maximum 6 marks]

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, an administrator may require suppliers of goods and services to continue to supply certain goods and services during administration.

The administrator may rely on S233 of the Insolvency Act for supply of gas, electricity, water and communication services. The definition of communication services is wide enough to include sale terminals, computer hardware and software, information, advice and technical assistance, data storage and processing and website hosting. Supplier of such goods and services are not permitted to set a condition that all outstanding debts are to be paid in order to secure the continuance of supply of the relevant goods and services. Under S233, the supplier may make it a condition of the giving of the supply that the administrator personally guarantees the payment of any charges in respect of the supply.

The interest of the administration in securing continuous supply of goods and services is also safeguarded under S233A of the Insolvency Act as a supplier of services is generally unable to rely on an “insolvency-related term” in a contract of supply, which would otherwise entitle the supplier to terminate the supply, alter the terms of supply or compel higher payment for continuous supply of services.

The administrator can also rely on S233B of the Insolvency Act, which further safeguards the company in administration as it prohibits clauses in contracts which allow supplier of goods or services to terminate or “do any other thing” in relation to the contract if the company goes into administration. For example, if it is a condition in an existing contract for supply of goods and services that once the company goes into insolvency, the contract will be terminated – then such condition has no effect pursuant to S233B. The suppliers are also prohibited from increasing their price for supply of goods and services in order to recover pre-insolvency arrears. Under S233B, unless the administrator consents to it or an application is successfully made to the Court, the suppliers would not be able to terminate the contract.

Commented [JL9]: 5
S233B also extends the protections of 233 and 233A to ALL suppliers

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 priority of payment are in the order of the list below.

1. **Fixed charge holders** – for example, the company’s assets may be subject to hire purchase or retention of title contracts.
2. **Expenses of winding up, including the liquidator’s remuneration** – Where there is a former administrator, the items in paragraph 99 of Schedule B1 of the Insolvency Rules 2016 are payable in priority to the expenses set out below. Next, the list below are payable in the order listed:
 - (a) expenses properly incurred by the administrator in performing the administrator’s functions;
 - (b) the cost of any security provided by the administrator in accordance with the Act or these Rules;
 - (c) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application whose costs were allowed by the court;
 - (d) where the administrator was appointed otherwise than by order of the court—
 - (i) the costs and expenses of the appointer in connection with the making of the appointment, and
 - (ii) the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator;
 - (e) any amount payable to a person in respect of assistance in the preparation of a statement of affairs or statement of concurrence;
 - (f) any allowance made by order of the court in respect of the costs on an application for release from the obligation to submit a statement of affairs or deliver a statement of concurrence;
 - (g) any necessary disbursements by the administrator in the course of the administration (including any expenses incurred by members of the creditors’ committee or their representatives and allowed for by the administrator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in paragraph (j) below);

- (h) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company;
- (i) the administrator's remuneration the basis of which has been fixed under Part 18 and unpaid pre-administration costs approved under rule 3.52; and
- (j) 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).

3. **Preferential creditors** – this category of creditors comprises of limited claims of employees and some taxation which are regarded as statutory preferential debt regimes. Preferential creditors can be further split into 2 classes of creditors i.e. ordinary preferential debt (to be paid first) and secondary preferential debt (to be paid after ordinary preferential debt). In each of the individual preferential classes (ordinary and secondary), each creditors are ranked equally, thus, abate in equal portion if the company's assets are insufficient to pay all the preferential creditors. Schedule 6 of the Insolvency Act.

4. **Floating charge holders and the "prescribed part"** – Under the category of floating charge holders, if there are more than one, the priority is usually determined by the order of the charge is created. Before making payment to a floating charge holder, as required under S176 of the Insolvency Act, the liquidator is under a duty to identify a "prescribed part" of the company's net property available for the satisfaction of the unsecured debts. Such "prescribed part" must not be distributed to a floating charge holder except insofar as it is in excess of the amount required to satisfy all unsecured debts.

In relation to calculation of the "prescribed part":

- (a) For this purpose, "net property" is the amount of the company's property which otherwise would be available for the satisfaction of debts of floating charge holders and therefore, only calculated after liquidation expenses (item 2 above) and preferential debts (item 3 above) have been paid.
- (b) If the net property does not exceed GBP10,000, the "prescribed part" is 50% of the net property. If the property is less than the "prescribed minimum" of GBP10,000 and the liquidator thinks that making a distribution to the unsecured creditors would be disproportionate to the benefits, then the duty to make the distribution of the prescribed part does not apply.
- (c) If the net property exceed GBP10,000, the prescribed sum if 50% of the first GBP10,000 in value, plus 20% of the excess in value above GBP10,000, with a maximum amount of prescribed part of GBP800,000.

A floating charge holder, who may have an outstanding unsecured balance debt, is not allowed to participate in the distribution of the prescribed part.

5. **Unsecured creditors** – These are creditors with no security such as ordinary trade creditors.

6. **Shareholders** - If there any sufficient funds left after paying all the creditors of the different classes (following the order of items 1 until 5 above), any surplus is distributed amongst the shareholders in accordance with the company's constitution, which will normally permit a distribution pro rata the shareholder's respective shareholdings.

Commented [JL10]: 9

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

Commented [JL11]: 11 out of 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]

The floating charge in favour of Stercus Bank plc;

The floating charge contained in the debenture granted in favour of Stercus Bank can be challenged by the liquidator pursuant to S245 of the Insolvency Act. If the challenge is successful, the floating charge granted in favour of the Bank will be rendered invalid. However, note that even if the floating charge becomes invalid, the underlying debt owing by the Company to the Bank (loans) remains valid. The relevant matters to be considered are:

- (a) The timing of the granting of the floating charge in favour of the Bank is important as the objective of S245 is to prevent pre-existing unsecured creditors from obtaining the security of a floating charge shortly before a company enters into liquidation. The floating charge may be invalidated if it was granted during the "relevant time". For cases where the person who was granted the floating charge is connected with the company, the relevant time is 2 years before the commencement of liquidation. If the said person is not connected with the company, the relevant time is 12 months before the commencement of liquidation.

On the facts, it appears that the floating charge was granted in February 2021 while the liquidation was commenced on 14.10.2021 and was liquidated on 23.12.2021. Therefore, in order to invalidate the said floating charge, the liquidator would have to argue that when the floating charge was granted 10 months before liquidation of the company, such period amounts to “shortly before a company enters into liquidation” (within 2 years before commencement of liquidation) and the Bank is to be regarded as connected person being a creditor of the Company.

- (b) The pre-requisite to invalidate the floating charge under S245 is that during the time of the creation of the floating charge, the company was either unable to pay its debts (within the meaning under S123) or became unable to pay its debts in consequence of the transaction.

On the facts, it appears that the Company was unable to make its loan payments to the Bank thus, felt pressure which then lead to the granting of the floating charge (subject to documentary evidence to prove these claims). Therefore, it can argue that the pre-requisite has been satisfied in that the Company was unable to pay its debts (Bank loan) as it falls due.

- (c) The exception to S245 is that if there are “new” considerations provided for the floating charge. The floating charge will not be invalidated if the following could be proved:
- (i) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge.
 - (ii) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company.
- (d) On the facts, we do not know whether any consideration was made by the Bank to the Company when the floating charge was granted. The liquidator would have to obtain documentary evidence to show payment of any consideration and when the consideration was made. In *Re Shoe Lace*, the Court was of the view that where an agreement is made to execute a charge, followed by payments made to the company, followed by formal execution of charge, any delay in between the payments and execution of charge must be minimal, such as the time to take a coffee break.
- (e) On the facts, we do not know with certainty whether the floating charge was executed in consideration of the Bank reducing the loan of the Company. If such is the case, there is a likelihood that such situation will fall within the “new considerations”, thereby rendering the floating charge to remain **valid**.

Commented [JL12]: 5

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The sale of the 5 coffee roasting machines to one of the Company's director can be challenged by the liquidator as a transaction at undervalue, by filing an application in Court pursuant to S238 of the Insolvency Act. In essence, S238 enables a liquidator to make an application to court to challenge a transaction which was entered prior to the Company entering liquidation and the transaction was at an undervalue.

The relevant matters to be considered if the liquidator files an action in Court pursuant to S238 to challenge the transaction are:

- (a) Under S238, in order to challenge the said transaction of coffee roasting as undervalue transaction, the transaction must have been carried out at a "relevant time" (S238(2)). S240 defines "relevant" time as a period of 2 years prior to the commencement of the liquidation.

On the facts of this matter, the commencement of the liquidation is on 14.10.2021 (date of issuance of the winding up petition) and the coffee machine transaction occurred in July 2021, which is approximately 3 to 4 months prior to the commencement of the liquidation. Therefore, the transaction of the coffee machine will fall within satisfy the requirement of "relevant time" under S238.

- (b) The liquidator must also show 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 money's worth, of the consideration provided by the company (S238(3)(b)).

On the facts, the coffee machine was sold to the Company's direction at GBP10,000 in July 2021 and was previously bought sometime in July 2020 for GBP25,000. The question would be – is the discount of GBP15,000 given in this transaction regarded as "significantly less than the value in money, of the consideration provided by the company". In order to prove this in Court, the liquidator would need to show documentary evidence – for example, the market rate of second hand coffee roasting machine or similar specifications and quality.

- (c) On the facts of this case, there should not be any issue in proving that the sale of the Company's coffee roasting machine to the Company's Director is indeed a "transaction", as it is a direct sale of assets between 2 parties in consideration of cash payment.
- (d) It is a pre-requisite of liability under S238 that, at the time of the transaction was entered into, either the company was unable to pay its debts within the definition of S123 or became unable to pay its debts within the meaning of S123 in consequence of the transaction.

On the facts, it appears that the coffee roasting machines were sold due to "cash flow problem". In other words, it can be said that the assets of the Company were sold in order to obtain cash to elevate/attempt to solve cash flow problem. Such cash flow problem, subject to documentary evidence, could amount to inability to pay debt(s) as it falls due.

- (e) The Court would also consider the identity of the buyer of the transaction, being a director of the Company – whether the transaction is with a connected person. If the transaction is with a connected person, the company is presumed to have been insolvent, or to have become insolvent as a result of the transaction, unless the contrary is proven.

Therefore, on the facts, notwithstanding item (d) above, since the coffee roasting machines were sold to a director of the Company (i.e. a connected person) the Court would presume that the Company is insolvent.

- (f) If items (b) to (e) are successfully proven and the Court is satisfied of the abovementioned elements, then the Court may make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into

that transaction (S234(3)). On the facts, the Court may order that the machines be reverted back to the Company (i.e. the Company's assets) so that the liquidator could manage the same (which includes disposing off the machines at market rate in order to distribute payments to creditors).

- (g) However, the Court shall not make an order under S238 that the transaction was at an undervalue if the director is able to show that:
- (i) the transaction was entered into by the Company in good faith and for the purpose of carrying on its business; and
 - (iii) that at the time it did so, there were reasonable grounds to believe that the transaction would benefit the company.

On the facts, the director would likely, in resisting the liquidator's application under S238, argue that the Company had reasonable grounds to believe that the transaction (of GBP10,000) would be able to solve the cash flow problems that the Company was facing at that point in time (July 2021). Perhaps, in July 2021, the debt owing by the Company was in the sum of GBP10,000.

Commented [JL13]: 6
Very good answer!

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

The payment to Beans and Leaves Ltd ("BLL") may be challenged by the Liquidator under S214 and 246ZB of the Insolvency Act as a wrongful trading, by filing an application in Court. The Liquidator could argue that the directors of the Company have failed to take steps to minimise potential losses to the Company's creditors, when they become aware that an insolvency liquidation is in prospect. On the facts, when the board authorised the payments to BLL sometime in November 2021, the directors were aware of the prospect of the Company's insolvent liquidation as the petition was filed in October 2021.

In order to argue wrongful trading under S214, the burden of proof is on the Liquidator who must satisfy the Court of the following elements:

- (a) The Company has gone into insolvent liquidation – On the facts, it cannot be disputed that the Company has indeed gone into insolvent liquidation on 23.12.2021.
- (b) At some point before the commencement of the winding up of the company, the person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation.

On the facts, the Liquidator must be able to show with documentary evidence that the board of the Company was aware that as early as before October 2021, when the petition was filed, the Company was unable to pay debt(s) of the Company as they fall due. This can be shown via the Company's statement of account reflecting the financial position of the Company at the material time.

- (c) At the time the person reached the conclusion or ought to have reached that conclusion, the person was a director of the company.

On the facts, it was indeed the directors sitting on the board of the Company who decided to make payments to BLL when they know or ought to have known that there is prospect that the Company would go into insolvent liquidation.

The liquidator must bear in mind that the directors will try to defend against the wrongful trading claim by arguing that once the directors knew or ought to have known that insolvent winding up was inevitable, they have taken every steps with a view to minimising the potential loss to the Company's creditors as they ought to have taken. The directors would argue that the decision to make payments to BLL is because the coffee bean supply from BLL is considered essential to the business and it is more beneficial for the Company's creditors to continue with the supply to make some sale, before the Company becomes insolvent.

In considering the 3 elements of S214 and the defence, the facts which the directors of the Company ought to know or ascertain, the conclusion which he ought to reach and the steps which he ought to have taken are those which would be known or ascertained, or reached or taken by a reasonably diligent person having:

- (a) A general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the directors of the Company; and
- (b) The general knowledge, skill and experience that the directors have.

If the Court is satisfied that the directors are liable for wrongful trading under S214, the Court has the discretion to declare that the directors of the Company, which is in insolvent liquidation, should make a contribution to the Company's assets. The Court will usually make an award for the directors to compensate the Company in an amount broadly in line with the increase in liabilities during that time. On the facts, since the payment authorised by the directors amounted to GBP11,000 – the Court may order that the directors compensate the Company the sum of GBP11,000 with costs. |

Commented [JL14]: 0
Refer to p 64 in the Guidance Text.
This scenario deals with a disposition after the commencement of the company's insolvency proceeding.

*** End of Assessment ***