



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

Commented [JL1]: TOTAL 30 out of 50

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [JL2]: 9 out of 10

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.

(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 [JL3]: b

- (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]: 8 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?

[(i) section 423 of the Insolvency Act 1986 – the parties that may bring are the official receiver, the liquidator, the administrator, and any victim of the transaction, when the company is being wound up or is in administration, as for when the victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction. In any case, the victim of the transaction may also attack the transaction

(ii) section 6 of the Company Directors Disqualification Act 1986, the court can bring the action against the director; and

(iii) section 246ZB of the Insolvency Act 1986, only the liquidator of the company can file the application before the court.]

Commented [JL5]: Secretary of State or Official receiver – s6 of the CDDA

Commented [JL6]: 3 administrator

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.

[Five qualifying decisions procedures that can be used when making decisions regarding insolvent company are; (i) electronic voting; (ii) correspondence; (iii) virtual meeting; (iv) physical meeting; and (v) any other decision-making procedure which enables 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]: 9 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?

[According to Section 233, of the Insolvency Act the administrator who wishes to continue to operate the business of the company under administration can require suppliers of goods and services to continue to supply those goods and services during the administration, especially the contracts related to supplying gas, electricity, water, communication services, information and data support, and any other goods and services that the company might **essentially** need to keep operating its business.

Also, it is important to highlight that the provider of such goods and services cannot demand, from the administrator, that he pays the outstanding debts in order to continue to supply the Company. What the supplier can do, according to section 233, of the Act, is request that the administrator will personally guarantee payment of charge in respect of the supply and services.]

Commented [JL9]: 3
Effect of the new s 233B?
All suppliers
Consent provided?

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, the credits that have priority on receipt in the distribution of goods are those incurred in the liquidation process, which includes remuneration for the work performed by the liquidator, in accordance with section 115 of the Act (among the amounts included in this category are expenses incurred for the preservation and sale of the assets, for the payment of any third parties hired to work in the liquidation process, taxes on gains that may have arisen during the liquidation procedure, among others).

Subsequently, and after all the first class of creditors gets paid, we have the preferential creditors (divided between ordinary and secondary), defined in sections 386 and 387 of the Act, and Schedule 6, section 175. Belong to this class of creditors some employees claims (pensions and contributions, for example) and some taxation liabilities (such as PAYE income tax deductions).

After these two classes are paid, it's time for the floating charge holder - in case there is more than one creditor within this class, priority goes to whoever floating charge was created first. Afterwards, the unsecured creditors are paid (creditors who have no guarantee in their operation) and, finally, and lastly, the shareholders are **paid**.

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

Prior to going into compulsory liquidation on 23rd December 2021, under pressure from its bank, Stercus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Corfee Zero Limited ("the Company"), granted a debenture in favour of Stercus Bank plc in February 2021. The debenture contained a floating charge over the whole of the Company's undertaking.

The winding up order followed a creditor's winding up petition issued on 14th October 2021.

In July 2021, as the Company continued to suffer cash flow problems, the directors approved the sale of 5 coffee roasting machines to Ann Young (a director) for £10,000 in cash. The machines had been bought for £25,000 a year before.

A month before the winding up order was made, Ann Young received an email from Beans and Leaves Ltd, one of the Company's key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of coffee beans was seen as essential by the Company, the board authorised a payment of £8,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of £3,000 up to the date of the winding up order.

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.

Commented [JL10]: 6

Fixed charge holders?

More detail required on the position of the Floating Charge Holder and the prescribed part.

Commented [JL11]: 4 out of 15

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;

[On 14 October 2021, a creditor had already filed a petition seeking the winding up of the Company. Even though the compulsory liquidation only commenced on 23rd December 2021, it could be considered that the Company was already undergoing a liquidation proceeding.

That being said, Section 245 of the Act, which applies to floating charges only, aims to prevent pre-existing unsecured creditors from obtaining the security of a floating charge - and, therefore, obtain the preference of being paid prior to unsecured creditors.

In the Company's case, the floating charge was granted within the period of 12 months prior to the onset of the insolvency - another one of the reasons that Section 245 applies in this case.

Therefore and, considering the above explained, the guidance that could be given to the liquidator is that the operation engaged between the Company and Stercus Bank plc is invalid, and should be brought before the court, to be considered invalid, considering that the floating-charge was granted in a period that it could not be (especially because it granted the Bank the position of favoured creditor amongst the collectiveness of the Company's [creditors,])

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

[Under Section 238 of the Act, the liquidator can attack the selling of the coffee roasting machines to Ann Young, considering that the sale happened prior to the company entering its liquidation proceeding, as well as was made by a value way below the real price of the machinery (the machines were bought for £25,000 one year before and sold for £10,000 - even we consider the natural diminish of price, the difference in the price is still too big, and the machinery really w sold for an undervalue).

Even though the transaction took place in July 2021, it could be considered or proved by analysis, made by the liquidator of the balance sheets of the company, that at the time of the sale the Company was already insolvent, and selling the machinery for a price so low also cause harm to the finances of the Company.

Therefore, the liquidator could bring these arguments before the court, attacking the [operation.]

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

[Accordingly, to section 239 of the Act, which has the purpose of preventing the Company to pay its creditors and ended up placing the creditor that was paid to have a position of preference before the other creditors, the payment that was made to Beans and Leaves Ltd., one month prior to the winding up order was made could be attacked.

Commented [JL12]: 2

Some elements missing.
Connected party influence on relevant time
Exceptions to 245

The structure of the answer could also be improved.
With application questions it is best to follow the following structure:

Identify the issues
State the law
Apply the law

When these steps are done in one go, some elements are often left out.

Commented [JL13]: 2

Several elements missing from this answer
Connected party presumption?
Defences?
See comment above regarding structure.

The liquidator/officeholder would have to prove that Beans and Leaves Ltd. was a creditor at the time of the transaction - which is the true of facts, something was done by the Company to place Beans and Leaves Ltd. in a better position - which has happened, the preference was given at a relevant time, what is also the true, and that the Company intended to place Beans and Leaves Ltd. in a better position (which doesn't seem to be the case).

The payment made to Beans and Leaves Ltd. could also be considered as a preference under the definition of section 239 considering that happened in a moment that the Company was unable to pay its debts and happened within 06 month prior to the onset of insolvency.

However, and, even though many of the criteria were present in the case, as said above, it is not clear that The Company made the payment to place Beans and Leaves Ltd. in a better position, but rather to keep the supply of coffee beans (supplied by supply of coffee beans was seen as essential by the Company) seen as essential by the Company.

Taking that into account and the leading case *Re MC Bacon LTD*. it could be considered that the payment was made in order for the Company's activities to be keep going, and not to give preference to the specific creditor.]

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.
Therefore, s 127 and not s 239 applies.

*** End of Assessment ***