



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]: 39 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?

The following parties may bring action:

1. Section 423 of the Insolvency Act 1986 – Where companies that are in administration or being wound-up, the Official Receiver, the Liquidator, the Administrator and any victim of the transaction such as the creditor. If the victim is bound by a CVA, then the supervisor of the CVA may do so.
2. Section 6 of the CDDA 1986 – Disqualification order is made by the Court
3. Section 246ZB – Insolvency practitioner

Commented [JL5]: 3
CDDA – Secretary of State or Official Receiver
246ZB - 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.

The 5 qualifying decision procedures by which creditors may make decision in the context of an insolvent company are:

1. By way of correspondence
2. By way of electronic voting
3. By way of virtual meeting
4. By way of physical meeting
5. By way of any other procedures which will enable creditors who are entitled to make decisions to participate in a fair and equal manner

Commented [JL6]: 5

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

Commented [JL7]: 13 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 can continue to operate the business of the company even in Administration and thereby requires the continuity of supplies of goods and services.

The appointment of the Administrator does not automatically terminate a company's contracts related to supplies of goods and services. Certain contracts may have protection clauses in the form of automatic termination in the of an insolvency-related event or procedure occurring.

However, there are provisions in the in the Act (e.g. section 233, Section 233A) that ensures the Administrators are protected in that such clauses are void or suspended, including alteration of contractual terms (increasing prices) for continued supply. The recent 2020 Act included protection to insolvent companies through Section 233B which prohibits suppliers of goods and services from terminating such contracts in the event the company enters a formal insolvency procedure.

Commented [JL8]: 4
Some details missing from the answer.
S233B – all types of suppliers
Personal guarantee by Administrator

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.

In a liquidation, the order of priority of payments are set out in the Insolvency Act 1986. Under a liquidation, each class of creditors must be paid in full (the exception being 'prescribed part' secured creditors) before funds are allocated to the next.

Creditors or expenses are ranked in the following order:

1. Secured creditors with a fixed charge
2. Expenses of winding-up
3. Preferential creditors
4. Secondary preferential creditors
5. Secured creditors with a floating charge
6. Unsecured creditors
7. Shareholders

Secured creditors with a fixed charge

Fixed charge holders are often banks and other asset-based lenders who hold title over an asset. Depending on the original agreement, however, in liquidation, the asset can be sold by the secured creditor or liquidator to realise funds. Any shortfall suffered by the secured creditors will be included in the unsecured creditor pool.

Expenses of winding-up

Section 115 of the Act details out the main winding-up expenses which are payable and payable in order of a priority beginning with the expenses incurred by the liquidator in preserving and realising the assets of the company, including the conduct of any legal proceedings.

Preferential creditors

Ordinary preferential creditors are mainly related to employees related costs such as contribution to pension schemes, including employees entitled to arrears of wages up to a maximum of £800, and holiday pay.

Secondary preferential creditors, includes outstanding compensation under the Financial Services Compensation Scheme as certain specified HMRC debts are included such as Value Added Tax (VAT) and debts that relate to the following taxes Pay As You Earn (PAYE), Student loan repayments etc.

Secured creditors with a floating charge

Assets subject to a floating charge often include inventories, receivables – basically any other assets not subject to a fixed charge and that can be traded in the normal course of business. Floating charge creditors are entitled to receive a distribution from the net property of the company (the amount remaining after the application of costs) subject to the dilution of the prescribed part as set out in Section 176A of the Act.

Unsecured creditors

These include trade creditors, suppliers, customers, contractors, unsecured loans from banks and lenders, unsecured overdrafts, directors loan accounts that are in credit, and the shortfall on any fixed or floating charge.

Shareholders

Shareholders are the final group to be paid. They are not entitled to a distribution until all other creditor groups have been paid.

Commented [JL9]: 9

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

Commented [JL10]: 9 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 in favour of Stercus Bank plc may be caught under floating charge avoidance under Section 245 of the Insolvency Act. The provision seeks to prevent a pre-existing unsecured creditor from obtaining a security in the form of a floating charge shortly

before the company the placed under a formal insolvency procedure. The look back period is generally 2 years for a connected persons and 12 months for a non-connected person to the company. A further assessment is required as to whether at the time of creation of the security, whether the company was either unable to pay its debt or will be unable to do so as a consequence of the transaction.

Corfee Zee Limited ("Corfee Zee") entered into formal liquidation on 23 Dec 2021. Stercus Bank plc not a connected person to the Corfee Zee Limited. Therefore the floating charge in favour of Stercus Bank is caught under the 12 months look back since it the security was created in February 2021.

The liquidator would need to determine Corfee Zee was unable to pay its debt in February 2021 or whether it was unable to do so as a consequence of the transaction. Given that Corfee Zee provided such security since it was under pressure to pay raise the risk that the Corfee Zee may have unable to pay its debt in February itself.

The liquidator may, under section 245 of the Act, invalidate the security provided and thus SterCus Bank's debt remains to be unsecured.

Commented [JL11]: 4
Exceptions to 245?

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The liquidator may scrutinise all transactions that were undertaken by Corfee Zee prior to it being placed under compulsory liquidation. In particular, under Section 238 of the Act, the liquidator may scrutinise transactions that were deemed to be undervalue.

The liquidator must show that the 5 coffee machines that were sold a Director, which is a connected person, was worth much more than the consideration that it received. On face of it, the 5 coffee machines were bought for GBP 25,000 a year before, and therefore unless there has been a significant diminution in the value of the machines, the sale for GBP 10,000 is questionable. The liquidator may assess

Furthermore, at the time of the transaction, Corfee Zee was suffering cash flow difficulties. Given the transaction with a Director, a connected person, it is presumed that Corfee Zee was insolvent, at the time of the transaction, unless proven otherwise.

Unless this transaction was deemed to be have been done in good faith or for purposes of carrying on the business or with reasonable ground that the transaction will benefit the company, the Court may conclude that the transaction was at undervalue and therefore considered a preference, and thereby make an order to restore the transaction as if no preference was given.

Commented [JL12]: 5

The structure of the answer could 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.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

Given the proximity to the time Corfee Zee entered into liquidation, the payments to Beans and Leaves Ltd ("Beans and Leaves") may be deemed to be caught under Section 239 of the Act, relating to preference.

The liquidator must show the following:

1. Beans and Leaves was a creditor at the time of the transaction
2. The transaction had in effect put Beans and Leaves in a better position versus other unsecured creditors should Corfee Zee entered into liquidations
3. Corfee Zee gave preference to Beans and Leaves and influenced by the desire to put Beans and Leaves in a better position versus other unsecured creditors
4. The preference was given at a relevant time i.e. at least 6 months before Corfee Zee was placed under liquidation

*** End of Assessment ***

Commented [JL13]: 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.