



**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**.

**Commented [DB1]:** Please do me the courtesy of reading and complying with the instructions. In future if this happens your assessment will be considered to be incomplete and will be returned to you unmarked.

**ANSWER ALL THE QUESTIONS**

Commented [JL2]: 43 out of 50  
Well done!

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

Commented [JL3]: 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.

(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

Commented [JL4]: c

**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 [JL5]: 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?

- (i) Under Section 423 of the Insolvency Act the following parties have the right to bring action against a transaction which was designed to defraud creditors:
  - The official receiver
  - The Liquidator
  - The administrator
  - Any victim of the transaction, for example a creditor (with the leave of the court)
  - The supervisor of a CVA (where bound by a CVA), or, any victim of the transaction (whether bound by the CVA or not).
- (ii) The secretary of state and the official receiver (if directed by the secretary of state) can bring action under section 6 of the Company Directors Disqualification Act 1986.
- (iii) Action under section 246ZB of the Insolvency Act 1986 can only be brought by the liquidator of a company, not a creditor or contributory.

Commented [JL6]: 4  
iii) 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 five qualifying decision procedures by which creditors may make decision in the context of an insolvent liquidation in accordance with 246ZE of the insolvency rules are:

- Correspondence;
- Electronic voting;
- Virtual meeting;
- Physical meeting; or
- 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]: 12 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?

The appointment of an administrator does not automatically terminate a company's contracts with its suppliers. In addition, terms in contracts which provide for automatic termination have historically been generally effective but are increasingly becoming subject to statutory exceptions which if applicable largely make such termination clauses void.

For example, in relation to essential supplies, Section 233 of the Act applies to the supply of gas, electricity, water and communications services. Suppliers of these physical

goods/services are not permitted to require payment of outstanding debts in order to secure a new or continued supply to the company in administration. Section 233 does permit a supplier to stipulate that the administrator must personally guarantee payment of charges in respect of the supply.

In addition, under section 233A a supplier of such services is generally unable to rely upon an "insolvency related term" in the contract of supply which would otherwise entitle the supplier to terminate the supply, alter the terms of the supply or compel higher payments for the continued supply.

Therefore, based on the above an administrator can require suppliers of the specific goods/services detailed to supply the company but it may be dependent on the administrators willingness to provide a personal guarantee to the suppliers for the continued supply, which will likely be dependent on the individual circumstances of the company and the risk appetite of the administrator.

**Commented [JL9]: 4**  
No mention was made of the new 233B extending these provisions to all supplies.

### Question 3.2 [maximum 9 marks]

Explain the order of priority of payments in a liquidation and explain the nature of the rights enjoyed by each class of creditor or expense.

The order of priority of payments in a liquidation can be summarised as:

1. The expenses of the liquidation are paid first, these include (but are not limited to) expenses that are properly incurred by the liquidator in preserving or realising any of the assets of the company (including the conduct of any legal proceedings). The liquidators' remuneration and expenses. Any corporation tax on chargeable gains accruing on the realisation of any asset of the company.
2. Second are Preferential Creditors, which typically include claims from former employees (e.g. outstanding salaries, pension contributions) and examples of "ordinary" Preferential debts, paid in priority to "secondary" Preferential debts which include (but are not limited to) PAYE income tax deductions, national insurance deductions for example.
3. Third are floating charges, there may be more than one floating charge holder and if that is the case, priority between them is usually determined by which floating charge was created first. However, before making payment to any floating charge holder, the liquidator must consider the application of section 176A of the Act. The liquidator is under a duty to make a prescribed part of the company's net property available for satisfaction of unsecured debts and must not distribute any of this prescribed part to a floating charge holder except insofar as it is in excess of the amount required to satisfy all the unsecured debts.

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. It is calculated after the liquidation expenses and preferential debts have been paid. Where the company's net property does not exceed £10,000 the prescribed part is 50% of that property. Where the company's net property exceeds £10,000 the prescribed part is the sum of 50% of the first £10,000 in value plus 20% of the excess in value above £10,000 (subject to a maximum amount of the prescribed part of £800,000). A floating charge holder who may have an unsecured balance owing to it is not permitted to participate in the distribution of the prescribed part.

4. The next category are unsecured creditors, i.e. creditors with no security, for example ordinary trade creditors. Unsecured creditors are paid out last in the statutory order. As is often the case in a liquidation once the expenses of the liquidation have been paid and distributions made to secured and preferential creditors there are little to no proceeds with which to pay a dividend to unsecured creditors.
5. In the event there are sufficient funds to pay all of the creditors (and interest on their debts) any surplus is distributed amongst the shareholders in accordance with the company's constitution, which will normally permit a distribution pro rata based on the shareholders' respective shareholdings.

The insolvency regime gives primacy to secured creditors, but unsecured creditors have a number of significant rights in a liquidation. For example they will often get to vote on:

- Who is appointed liquidator; and
- How an office-holder is to be remunerated.

Commented [JL10]: 8  
Fixed charge holders?

Commented [JL11]: 13 out of 15

**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.

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;



The liquidator may consider whether section 245 of the Act applies with regards to the potential avoidance of the floating charge. Section 245 applies only to floating charges and no other type of security. It only applies where a company is in administration or liquidation and is aimed at preventing pre-existing unsecured obtaining the security of a floating charge shortly before a company enters a formal insolvency procedure.

With regards to the Company, as the floating charge (via the debenture) was granted less than twelve months before the Company went into compulsory liquidation (assuming Stercus are not connected with the Company) it could meet the standard under section 245. Further, per the information provided it does not appear Stercus Bank provided fresh funding in exchange for the floating charge.

Were it deemed that the floating charge is caught by section 245 it would be rendered invalid and although the floating charge would be invalidated the underlying debt owed by the Company to Stercus Bank would remain valid.

In addition, the liquidator could assess as to whether preference was given to Stercus Bank through the granting of the debenture and floating charge, as at the time of the transaction Stercus was a creditor of the company and the granting of the floating charge did put Stercus in a better position in the event the Company went into insolvent liquidation, then the position Stercus Bank would have been in had the debenture not been granted.

**Commented [JL12]: 4**  
Effect of any new consideration – exceptions to 245?

#### **Question 4.2 [maximum 6 marks]**

##### **The sale of the coffee roasting machines; and**

Given the value of the machines sold to Mrs Young compared to the value of the machines when purchased approximately twelve months before the liquidator may want to consider whether the transaction was at undervalue. Under section 238 of the Act a liquidator may attack a transaction which was entered into prior to the company entering liquidation where the transaction was at an undervalue.

In order to be attacked the transaction must have taken place at a “relevant time” being within a period of two years before the commencement of the liquidation. The sale of the coffee machines to Mrs Young was approximately 5-6 months before the commencement of the Company’s liquidation therefore meets the standard with regards to “relevant time”.

Under section 238 and in respect of the coffee machine transaction the liquidator would have to show that the Company entered into a transaction with Mrs Young 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.

The liquidator could potentially prove this if there is a market for used versions of the coffee machine in question and observable prices at the time of the sale for units that are of the same/similar age to the units sold by the Company. If the liquidator could demonstrate that at the time of the sale the value of the coffee machines was in excess of the price paid by Mrs Young a claim could be brought.

As Mrs. Young is a connected person to the Company (as a director) the Company is presumed to have been insolvent, or to have become insolvent as a result of the transaction.

If successful in proving the transaction was at an undervalue the court would make an order restoring the position to what it would have been had the transaction not been entered into.

**Commented [JL13]: 5**  
Defence to 238?

**Question 4.3 [maximum 4 marks]**

**The payments to Beans and Leaves Ltd.**

Section 127 of the Act avoids the disposition of property made after the commencement of winding up, the commencement date being the date of the presentation of the petition to wind up and so the avoidance provision acts in a backdated manner. The Company's winding up petition was made on 14 October 2021. As the payments made to Beans and Leaves Ltd appear to have been made in the month preceding the winding up order they therefore occurred on/around November 2021, subsequent to the presenting of the winding up petition.

Further the words "disposition of property" in section 127 are given a wide meaning and affect any payment of money, therefore the payments made to Beans and Leaves Ltd would be classed as a relevant transaction for the purposes of section 127.

However, as section 127 is not absolute, the court has discretionary power to declare that the dispositions shall not be void, which may be the case in this scenario. Assuming the coffee beans were an essential supply for the business and it continued trading in the period between the winding up petition being presented and the winding up order being made it may be that it could be argued the payments were appropriate and the court could provide a validation order.

The liquidator would need to perform further analysis to determine whether these payments were disposition of property, in particular were it the case that the payments are deemed necessary to have enabled the Company to continue trading where the continuance of trading increased the value of the Company's assets it is likely they will be validated by the court.

Under section 243 there is no time limit in which a transaction must have occurred prior to an insolvency for it to be attacked.

**Commented [JL14]:** 4  
Well done for identifying this was 127 and not 239!

**\* End of Assessment \***