



**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]: 48 out of 50  
Well done!

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

Commented [JL2]: 10 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

**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 [JL3]: 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 1986, an action may be brought by:
- if the company is in the process of being wound up or has entered administration:
    - the official receiver;
    - the liquidator;
    - the administrator; or
    - any victim of the alleged transaction defrauding creditors (provided leave of the court had been obtained);
  - where the alleged victim of the transaction is bound by the terms of a company voluntary arrangement:
    - the supervisor of the CVA; or
    - any victim of the alleged transaction defrauding creditors;
  - in all other circumstances, a victim of the alleged transaction defrauding creditors.

ii) under section 6 of the Company Directors Disqualification Act 1986, an action may be brought by the liquidator or administrator (as relevant) of an insolvent company pursuant to their duties under section 7 of the Company Directors Disqualification Act 1986.

Commented [JL4]: CDDA - secretary of state or official receiver

iii) under section 246ZB of the Insolvency Act 1986, an action may be brought by a liquidator or administrator of an insolvent company.

Commented [JL5]: 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 found in Rule 15.3 of the Insolvency Rules 2016 and include correspondence, electronic voting, virtual meetings, physical meetings and "any other decision-making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally".

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

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**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?

Apart from certain exceptions contained in Schedule 4ZZA to the Insolvency Act 1986, an administrator will generally be able to require suppliers of goods and services to continue supply during the administration in order to run the business of the company.

Where the services relate to essential supplies such as gas, electricity, water or communication services, section 233A of the Insolvency Act 1986 prevents suppliers from

insolvency-related termination provisions in a supply contract. In addition, even where the supplier is not seeking to terminate the contract, section 233 also prevents the supplier from requiring that any outstanding debt be paid before supplies can continue. As a result, the supplier would still have to keep providing the relevant goods/services notwithstanding the company's entry into administration.

Section 233A of the Insolvency Act 1986 (introduced by the Corporate Insolvency and Governance Act 2020) extends this protection to the provision of any goods and services, and further provides that the supplier may not "do any other thing" (in addition to terminating a contract) in the company enters an insolvency procedure. This means that it is very likely that an administrator will be able to require the provision of goods and services to continue while the company is in administration.

Commented [JL8]: 233B

Commented [JL9]: 5  
Personal guarantee from 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.

First, fixed charge holders are paid out of the proceeds of sale of the assets subject to such fixed charge(s). If there are several fixed charge holders, then they are repaid in accordance with the priority of their charges (which is to say, in the absence of any intercreditor arrangements, according to when their charges were registered). Any fees incurred by the liquidator as part of the sale of the assets subject to a fixed charge will also be paid out of these proceeds. It may be that the proceeds are not sufficient to repay the fixed charge holders in full, and if this is the case the fixed charge holders will be unsecured creditors in relation to the balance of the debt.

If a moratorium under Part A1 of the Insolvency Act 1986 was in force prior to the liquidation, then moratorium debts and priority pre-moratorium debts need to be paid. Moratorium debts represent liabilities falling due either during or after the Part A1 moratorium because of obligations incurred during such moratorium. Priority pre-moratorium debts represent certain liabilities (listed in sections A53 and 174(A), and paragraph 64A(1) to Schedule B1 of the Insolvency Act 1986) under obligations incurred before the moratorium.

Thirdly, the expenses of the liquidation need to be paid out of the assets of the insolvent estate. These expenses have a specific priority order as between themselves, with some expenses enjoying a "super-priority" status under paragraph 99(4) of Schedule B1 to the Insolvency Act 1986.

Fourthly, preferential creditors need to be paid. These liabilities are divided between ordinary preferential debts and secondary preferential debts, and claims within each category rank *pari passu*. Preferential debts, for the most part, relate to employees' claims to salary, holiday or pension contribution payments – although certain payments owed to HMRC also for preferential debts.

The remaining assets of the insolvent company are then (in principle) available for distribution to floating charge holders, however, where such floating charges were created on or after 15 September 2003, before this can be done a certain sum (amounting to no more than £800,000) must be ring-fenced for the benefit of unsecured creditors. The precise sum (known as the "prescribed part") is calculated in accordance with article 3 of the Insolvency Act 1986 (Prescribed Part) Order 2003.

Once the prescribed part has been carved out as per the above, floating charge holders are entitled to the proceeds of realisation of assets subject to floating charges. As was the case

for fixed charge holders, i) if there are several floating charge holders, they will be paid in accordance with the priority of their security and ii) if there are insufficient assets for all floating charge holders to be paid in full, the floating charge holders will join unsecured creditors for the balance of the debt. We must note, however, that, upon joining unsecured creditor for that purpose, neither fixed charge holders nor floating charge holders can benefit from the funds put aside for the prescribed part.

Unsecured creditors of the insolvent company are paid next, and their claims rank *pari passu*. Ranking below unsecured creditors are the company's shareholders, who will be entitled to a distribution based on the percentage of their shareholding in the company – although in practice it is likely that there will be nothing left to distribute after all creditors have been paid.

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

Commented [JL11]: 15 out of 15

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;

Under section 245 of the Insolvency Act 2003, if no further funds were advanced by Stercus Bank plc to the Company at the same time or after the debenture was provided in February



2021, and if the debenture was not provided in exchange for a write off of part of the outstanding debt, then the floating charge created by the debenture may be invalid. If some fresh funds were lent or some other form of new consideration provided by Stercus Bank plc, then the floating charge may be valid but only to the extent that it applies to the new consideration. Here it seems that Stercus Bank plc is not connected to the Company, therefore the relevant time period to consider for the purpose of section 245 is 12 months from the commencement of insolvency. The Company went into liquidation on 23 December 2021 and the floating charge was granted in February 2021, therefore falling within the relevant time period. If the Company was unable to pay its debts in February 2021, or became unable to do so as a consequence of granting the debenture, the liquidator may be able to make an application to court to set the floating charge aside. This would render the floating charge invalid but would not affect the underlying debt.

Although it is not clear whether Stercus Bank plc was already a secured creditor, it is unlikely that the liquidator will also be able to argue that granting the floating charge was a preference under section 239 of the Insolvency Act 1986, as it appears the transaction was entered into as a result of commercial pressure applied by Stercus Bank plc and the necessary element of "desire to prefer" is likely to be absent.

**Commented [JL12]:** 5  
239 also would not have been possible due to time limit.

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

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

Under section 238 of the Insolvency Act 1986, the sale of the two coffee roasting machines to Ann Young may have been a transaction at an undervalue because the purchase price was £10,000 despite the Company having paid £25,000 for the only a year before. Although the Company did receive consideration for the transaction, this was significantly less in value than the consideration that the Company itself provided. The relevant time period here is 2 years from the beginning of the liquidation, and since the transaction took place in July 2021 it did fall within the requisite time period. Because Ann Young was a director of the Company, it will be presumed that the Company was either unable to pay its debts in July 2021, or became unable to do so as a consequence of the sale – this will enable the liquidators to issue an application set the transaction aside and to restore the position to the one prior to the sale. In practice, it is likely that Ann Young may be required to pay the £10,000 back and to return the coffee roasting machines.

Two important caveats must however be mentioned:

- Ann Young may have defence if she can prove that the Company sold the machines in good faith, for the purpose of carrying on its business and whilst having reasonable grounds for believing that the sale would benefit the Company. It is not clear on the facts what the business of the Company is, however since it has contracts with coffee beans suppliers and uses coffee roasting machines, it is likely that at least part of its business involves roasting and grinding coffee beans – disposing of the roasting machines is therefore unlikely to be "for the purpose of carrying on" the Company's business. Although Ann Young may be able to demonstrate that the transaction was made in good faith and that the Company had reasonable grounds for believing that receipt of the £10,000 would benefit the Company (presumably by alleviating cashflow issues), the above may prove fatal to her defence.
- If Ann Young sold the coffee roasting machines on to an unconnected third party, who purchased them for value and in good faith, then under section 241 of the Insolvency Act the court is unlikely to demand the return of the machines – although it is likely that Ann Young will still have to reimburse the £10,000.

If the sale of the machines is indeed found to be a transaction at an undervalue, then the liquidator may also challenge it under section 423 of the Insolvency Act as a transaction defrauding creditors if they can prove that the purpose of the sale was to put the coffee roasting machines beyond the reach of the Company's creditors. On the facts, nothing suggests that this was the case however the liquidator would probably benefit from investigating this possibility as, by transferring ownership to Ann Young, assets worth £25,000 have effectively been taken away from the Company's estate.

Commented [JL13]: 6

#### Question 4.3 [maximum 4 marks]

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

Under section 127 of the Insolvency Act 1986, dispositions of the Company's property (which include payments) which take place after the commencement of winding up are void, unless the Court allows them. The payments to Beans and Leaves Ltd took place in November 2021 – before the winding up order but, crucially, after the winding up petition was issued on 14 October 2021. The liquidator may therefore apply for an order voiding these payments, but should be aware that although the Court has discretion to grant such an order, it may not do so where it considers that the payments were necessary to enable the Company to continue trading, and that continued trading benefited the Company's creditors. Here we know that the Company viewed the coffee beans as an essential supply so the Court may be inclined to validate the transaction rather than void it.

Although section 233B of the Insolvency Act 1986 states that a supplier "shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid", when Beans and Leaves Ltd demanded the payment of existing liabilities and insisted on a cash on delivery basis for all further orders the Company had not yet entered into liquidation therefore these payments are unlikely to be challenged on that basis.

Commented [JL14]: 4

Well done for identifying this as s 127 and not 239.

**\* End of Assessment \***