



**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 follow the instructions – if you do not I have to do this for you!

## ANSWER ALL THE QUESTIONS

Commented [JL2]: 35 out of 50

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

Commented [JL3]: 8 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.

Commented [JL4]: 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.

Commented [JL5]: 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 [JL6]: 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) There are a number of parties who may bring an action under Section 423 of the Insolvency Act 1986 (the "Act") (as defined in all other answers below) which relates to transactions that defraud creditors namely:
- The official receiver appointed over an entity in the case where the entity is in administration or is in the process of commencing insolvency proceedings
  - A victim of the transaction i.e. the party of who has been defrauded with permission of the Court
  - The supervisor of a Company Voluntary Arrangement ("CVA") in the case where a victim is bound by a CVA
  - In any other case where a party has fallen victim to a fraudulent transaction
- ii) A disqualification Order under Section 6 of the Company Directors Disqualification Act 1986 can only be launched by the Courts against individuals and, when granted, means that the individual cannot be a director, receiver, or be involved in the management of a company without permission from the Court, nor can they act as an insolvency practitioner
- iii) The administrator of an entity may apply to the Court under section 246ZB of the Insolvency Act 1986 to have a director, or an individual who previously acted as a director, contribute to the company's assets upon the company entering into liquidation or administration proceedings. This will only be granted if the Court sees that a director did not do everything in their power to minimise losses in the entity from the point at which it was clearly evident the entity was due to be unable to pay their debts in the future

Commented [JL7]: Secretary of state or official receiver

Commented [JL8]: 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.

Five qualifying decision procedures listed in rule 15.3 of the Insolvency Rules, 2016 are via:

- Correspondence
- Electronic voting
- Virtual meeting
- Physical meeting; or
- Any other method by which a creditor of an entity has the capacity to vote on a decision on an equal footing to any other creditor

The date of the decision is decided by the administrator however it shall not be less than 14 days from the notice of the decision is provided.

Commented [JL9]: 5

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

Commented [JL10]: 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?

- The administrator of an entity who chooses to continue the trade of an entity has the right to retain the supply of goods and services during an administration but only under certain circumstances as prescribed in Section 233 of the Insolvency Act, 1986.
- This Section of the Act is with particular reference to executory contracts meaning consideration for the good/service is usually paid in the future and not at the point of sale
- This Act predominantly applies to producers of gas, electricity, water and communication services.
- Communication services pertains to a number of industries which include computer hardware and software, information, technical assistance or data storage.
- They are services which are usually paramount to the continuance of the business of the company. Without the above, the company would no longer be able to trade, regardless of whether it was possible for an entity to become profitable in the future
- While suppliers are not permitted to demand payment under this section of the Act, they are permitted to request personal guarantees for payment in respect of the service provided.
- Under Section 233A of the Act, the supplier of these services are unable to rely on traditional insolvency related terms that would normally allow for the restriction or discontinuance of the service
- The 2020 Act has brought this one step further with the introduction of Section 233B of the Act which prohibits clauses in a contract for entities that supply goods and services of this nature to apply to entities that enter into liquidation proceedings
- Section 233B does allow for a contract to be terminated if the Court is satisfied that the continuance of this contract would cause the supplier disproportionate hardship.
- Section 233B also broadens its scope of qualifying suppliers that may be subject to this rule. There are more industries that may be subject to this rule and will be compelled to continue to supply certain services/goods should a situation of this type arise.

**Commented [JL11]:** 6  
Perhaps refrain from bullet answers in the essay section.

### 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 are clearly laid out per the terms of the Insolvency Act, 1986. Below is a waterfall of how the assets/proceeds of an entity in liquidation pays out its debts.

Before doing so, it must be noted there are a few circumstances whereby an entities' assets are not subject to the usual waterfall process.

- This is the case where a hire purchase contract exists over an asset of the Company. The asset will be returned to said company who entered into the agreement.
- Where a retention of title contract exists over an asset
- A debt that has previously been assigned to a receivables financier meaning an entity who has purchased the debt of a company in return for early settlement
- The holder of a floating charge may also prevent a liquidator being appointed to an entity, appointing an administrator in their stead who will deal with certain asset sales

to allow for the repayment of the floating charge. A floating is a charge of a company's general asset portfolio i.e. a charge not fixed to a particular asset.

- A charge holder may consent to the appointment of a liquidator if they have an agreement that the first asset sales of an entity will be used to settle the debt due on the floating charge held over a company

Apart from the above examples, costs paid out of a liquidation as a first priority are as follows:

- Expenses of the winding up of an entity including
  - Court filing fees,
  - petitioning creditors costs,
  - costs associated with the realisation of assets,
  - hard disbursements associated with the liquidation,
  - liquidators service provider's fees,
  - corporate tax payable accruing from the realisation of assets of the Company; and,
  - any other costs associated with the general course of a liquidation.
- Liquidators fees do also rank in priority to secured creditors and in most cases, entities who hold a floating charge over assets, however the expenses as laid out above do rank in preference to liquidator's professional fees.
- Following these costs, preferential creditors will be paid out of the assets of a company. A preferential creditor is defined in Sections 386, 387 and Schedule 6: section 175 of the Insolvency Act.
- Preferential creditors have a right to be paid out of a liquidation ranking above a number of other parties due to the preferential debts regime. These rules cannot be altered regardless of the insolvency proceeding in place. This is not a regime that exclusively deals with insolvency procedures but must be adopted in all circumstances of administration/insolvency proceedings regardless of the situation.
- There are two examples of preferential debts – ordinary and secondary. Ordinary preferential debts rank in priority to secondary. Once assigned to a class, all preferential debts within that class rank in equal measure i.e. all secondary debts recorded are paid parri passu.
- Examples of an ordinary preferential debt include, but are not limited to: contribution to an employee's pension, employee wages, balances owed to eligible deposits in financial institutions.
- Secondary preferential debts include employee taxes owed to the crown.
- Floating charge holders are next to be paid after preferential creditors. There must also be consideration paid to a liquidator's duty to calculate a prescribed part which is an amount set aside for distribution to unsecured creditors. This is laid out in Section 176A of the Insolvency Act, 1986. Holders of a floating charge are not permitted to be paid out of the prescribed part calculated from the assets of an entity in liquidation.
- Fixed charge holders rank in priority to floating charge holders.
- A liquidator must put aside, in circumstances where a company's assets are up to GBP10,000 50% of the balance for the prescribed part. If less than this balance, they are not required to aside any of the balance. For amounts over GBP liquidators must set aside 20% of the proceeds for everything above this balance up to GBP800,000 of the company's assets.

Commented [JL12]: But where?



- Following the repayment of expenses of a liquidation, secured and preferential creditors, unsecured creditors are permitted to be paid from the assets of a company. The unsecured creditor has no preferential rights over any of the above classes. They will only be paid after their proof of debt has been accepted and all other costs have been dealt.
- If all unsecured creditors payments have been settled, shareholders of the entity will receive the remainder of the proceeds left to be distributed held in the company. This is distributed on a pro rata basis, based on the value of the shareholding, unless in the case where there are ascribed rights to share classes and distributions laid out in the company memorandum and articles of [association](#).

Commented [JL13]: 8

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

Commented [JL14]: 4 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;

- The debenture which contained a floating charge in favour of Stercus Bank plc; detailed it was over the whole over the Company's undertaking meaning Stercus would qualify as holding a Qualifying Floating Charge.
- This means they would have the power to appointment their own administrator, as outlined in paragraph 14 of Schedule B1 of the Act, prior to a liquidator being appointed in order to sell off assets to repay the floating charge.
- This is something the liquidator should be mindful of as if Stercus filed an application to appoint an administrator, the Courts have the power to suspend liquidation proceedings.
- If the liquidation stands, the liquidator must pay attention, if proceeds are available for distribution in the estate to account for a prescribed part as laid out in section 176A of the Act.
- The liquidator will have to hold back a certain amount of cash for unsecured creditors before paying Stercus the amount due on the debenture. This is calculated by taking 50% of the first GBP10,000 available and 20% of the following balance up to GBP800,000.
- This may become of more importance should the liquidator be in a position to unwind the transaction relating to the sale of the coffee machines to Anne Young.

#### Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

- The liquidator should gather all information available to them relating to the sale of the coffee roasting machines to Anne Young Section 238 of the Act dictates that a liquidator may attack any transaction, with the intention of voiding and unwinding said transaction, that was entered into by a Company prior to going into liquidation proceedings if the transaction was at an undervalue. This applies to the consideration for a sale being significantly less than the value of the asset.
- Although coffee roasters would be subject to a considerable amount of depreciation upon initial purchase, it does not seem reasonable that GBP5,000 would be viewed as a fair market value for the sale of five coffee roasters purchased for GBP 25,000 12 months previously.
- This transaction was also carried within the relevant time which is within 2 years of the commencement of the liquidation. Anne Young would also be considered as a connected person and it was clear at the time of purchase the Company struggling financially, further leading to the conclusion that this was an unlawful transaction.
- The liquidator has the power to apply to the Court to grant an order to reverse the transaction and restore the position to what it would have been, had the transaction not been made. Presumably the liquidator, would repay the consideration and further the sell the roaster on the open market at a higher value. This would then have an effect on Stercus above, opening the possibility for part repayment of the debenture.

**Commented [JL15]:** 0

This answer does not address the question. May the liquidator take action on this? Yes, s 245 and the avoidance of a floating charge should have been discussed and applied.

**Commented [JL16]:** What is the effect of the connected party sale? – inability to pay debt requirement.

**Commented [JL17]:** 4  
Defences to s238?

#### Question 4.3 [maximum 4 marks]

### The payments to Beans and Leaves Ltd.

The coffee roasters could be seen to be unlawfully demanded payment up front for the machines under Section 233B of the Insolvency Act updated in 2020.

This would be viewed as an executory contract which prohibits a supplier of an essential service demand payment with a threat of ceasing to provide this service or good. This would have only applied prior to the company being placed into liquidation.

**Commented [JL18]: 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 applies.

**\* End of Assessment \***