



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]: 33 out of 50

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

Commented [JL2]: 4 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.

Commented [JL3]: d

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

Commented [JL6]: 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.

Commented [JL7]: a

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.

Commented [JL8]: d

QUESTION 2 (direct questions) [10 marks]

Commented [JL9]: 10 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 UK Insolvency Act of 1986**, the following parties have the right to seek redressal where transactions have been conducted to defraud creditors.

- (i) where the company is being wound up or is in administration, the **official receiver**, the **liquidator**, the **administrator** or **any victim of the transaction** such as a creditor (with due process and leave of the Court);
- (ii) Where an aggrieved party or creditor is bound by a Company Voluntary Arrangement (CVA), the Supervisor of the CVA or any other victim of the transaction (whether bound by the CVA or not); and
- (iii) in any other case, by a victim of the transaction.

(ii) Under Section 6 of the Company Directors Disqualification Act, the Official Receiver, and the Court have been empowered to institute an action against redressal. Further, in order to save time and costs, it is possible for the Secretary of State to also bring an action and accept a disqualification undertaking. This qualification also carries the same position as that of a disqualification order by the Court.

(iii) Under section 246ZB of the UK Insolvency Act, 1986; the Administrator can bring an action or file the application against the directors of the company seeking **disqualification**.

Commented [JL10]: 5

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 decision of the creditors to make decisions in the context of an insolvent company is generally made either through the Deemed Consent Procedure or a Qualifying Decision Procedure. Where deemed consent cannot be used, or where it is effectively objected to or where the Office Holder decides not to use it, a decision is instead made by the one of the Qualifying Decision Procedures as given under the UK Insolvency Rules, 2016. These are:

- a. *Correspondence;*
- b. *Electronic voting;*
- c. *Virtual Meeting;*
- d. *Physical Meeting;*

e. Any other decision making procedure which enables all the creditors who are entitled to participate in the making of the decision to participate equally.

Commented [JL11]: 5

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

Commented [JL12]: 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?

Under Paragraph 59 of Schedule B1 of the Act, the Administrator has the power to do anything necessary or expedient for the management of the affairs, business and property of the company.

Further, the appointment of an administrator and initiation of insolvency proceedings do not automatically terminate a company's executory contracts and the company is required to be run as a going concern which obligates the company itself to execute the contracts on behalf of the administrator also.

Essential supplies such as supply of gas, electricity, water and communication services are governed by section 233 of the UK Insolvency Act. For clarity, communication services include supply of goods and services such as point of sale terminals, computer hardware and software, information, advice and technical assistance, data storage and processing and website hosting. The suppliers of these goods and services are not required to ask for payment of outstanding debts during the administration in order to secure a new or continued supply to the company in administration. However, section 233 of the Act permits a supplier to stipulate that the Administrator must personally guarantee payment of charges in respect of the supply.

The Corporate Insolvency and Governance Act, 2020 has further introduced Section 233B which prohibits clauses which allow the supplier of goods or services to terminate or to do any other thing in relation to that contract if the company enters a formal insolvency procedure. It also prevents suppliers from making it a condition of continued supply that pre-insolvency arrears are paid and further prohibits the contractor from making other changes such as change of price.

Further, under Section 233B, a contract may still be terminated by a supplier where the company or insolvency office holder consents or, on application to the court, the court is satisfied that the continuation of the contract would cause the supplier more hardship and may therefore, grant the permission for termination during the administration.

Commented [JL13]: 5
233B- extends 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.

A liquidator may only realise assets which belong to the company. The manner of distribution from the sale of those assets is herein described below.

(A) Expenses of Winding Up, including the Liquidator's remuneration (Section 115):

In terms of Section 115 of the Act, a number of expenses are given priority over the company's preferential creditors, any holders of floating charges and the company's unsecured creditors. The following are the expenses which are payable in priority to those creditors and are payable in the following order of priority:

- (i) expenses that are properly incurred by the liquidator in preserving, realising or getting in any of the assets of the company (including the conduct of any legal proceedings);*
- (ii) the costs related to any security provided by the liquidator;*
- (iii) any amount payable to a person to assist in the preparation of the statement of affairs of the company and its accounts;*
- (iv) any necessary disbursements by the liquidator in the course of the winding up;*
- (v) the remuneration of any person who has been employed by the liquidator to perform any services for the company;*
- (vi) the remuneration of the liquidator;*
- (vii) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company;*
- (viii) any other expenses properly chargeable by the Liquidator in carrying out the Liquidator's functions during the Winding Up.*

(B) Preferential Creditors:

Once the liquidation expenses have been paid in full, the preferential creditors are paid. The preferential creditors mainly comprise of limited claims of employees and some taxation liabilities. There are two types of preferential debts, ordinary and secondary. Ordinary preferential debts are paid before the secondary preferential debts. Some of the ordinary preferential debts as enumerated under Schedule 6 of the Act are as follows:

1. any sum owed on account of an employees' contribution to an occupational pension scheme 4 months prior to the commencement of the winding up;
2. remuneration owed by the company to a person who is or has been an employee of the debtor up to a maximum total figure of 800 pounds;
3. claims for monies advanced to pay wages or holiday remuneration also rank as preferential debts.

Some of the secondary debts include:

1. any amount owed by the company to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme.
2. debts owed to the taxation authority.
3. 3. PAYE income tax deductions, national insurance deductions, VAT payments, student loan repayments etc.

C. Floating Charge Holder:

Before any payment can be made to any floating charge holder, the Liquidator must first 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 the satisfaction of unsecured debts and must not distribute any of this prescribed part to a floating charge holder except in so far 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.

D. Unsecured Creditors:

Creditors with no security are paid out last in the statutory order.

E. Shareholders:

If there are sufficient funds to pay all the creditors (and interest on their debts), any surplus is thereafter distributed amongst the shareholders according to the company's constitution which is a pro rata distribution according to the [shareholdings](#).

Commented [JL14]: 8
Fixed charge holders?

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

Commented [JL15]: 6 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;

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.

From the facts above, three relevant dates come out. Floating charge in favour of Stercus Bank Plc was created in February, 2021. The winding up petition was issued on 14.10.2021. the company went into Liquidation on 23.12.2021.

Section 245 of the Insolvency Act deals with a situation when a company is in administration or liquidation and a pre-existing unsecured creditor creates a floating charge shortly before the company enters formal insolvency proceedings, such a transaction can be covered under Floating charge avoidance.

Where the person in whose favour, the floating charge is created is not connected with the company, the relevant time to determine any avoidance is 12 months prior to the onset of insolvency.

Section 245 of the Act does not prevent lenders who provide fresh funding to the company from taking a floating charge for that new funding. There are two new categories of Floating Charge which, if satisfied, would mean the floating charge will not be invalid.

(a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company, at the same time as, or after the creation of the charge.

(b) *the value of so much of the consideration as consists of the discharge or reduction, at the same time as, or after the creation of the charge, of any debt of the company. Payments made directly to the bank, rather than to the company or its directors for the purpose of repaying the bank cannot be rendered invalid.*

Therefore, the Floating Charge created in favour of Stercus Bank Plc cannot be rendered invalid as it satisfies the "new" consideration criteria given under Section 245 of the Act.

Commented [JL16]: 245 applies only to floating charges
4

Commented [JL17]: not clear from the facts.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and
In terms of Section 423 of the Insolvency Act, 1986, it is necessary to show two things to establish transactions defrauding the creditors.

(1) that the company entered into a transaction with another person at an undervalue, that the company has received no consideration or significantly less consideration than it has provided; and

(2) it is necessary to show that the company entered to the transaction for the purpose of either putting assets beyond the reach of a person who is making, or may at some time make, a claim against the company, or of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make in future.

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.

The rapid deterioration in value could not be justified and the sale of the coffee roasting machines have been done 3 months prior to the winding up order and appointment of the administrator. The sale had been made to one of the directors of the company. Therefore, such a transaction is governed by section 423 of the Act. Ann Young is one of the directors/employees of the debtor who is liable to bring a claim against the company in future. Therefore, it satisfies all the conditions prescribed and the Administrator is therefore in every position to file an application seeking reversal of this transaction.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

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.

Section 239 of the Act deals with Preferential transactions. The purpose of the provision enshrined therein is to prevent a company, shortly before entering a formal insolvency procedure from placing one of its creditors in a better position than others. It prevents preferences that involve payment in full where the creditor could have expected only a dividend as an unsecured creditor.

Commented [JL18]: There is no evidence here that the transaction was entered into with the purpose of placing assets beyond creditors or defrauding them. The more appropriate action would therefore be s 238.

Commented [JL19]: This should have been elaborated on and applied to the facts. S 238.

Commented [JL20]: 2

The essential requirement of proving a preferential transaction is to show that something was done, or suffered to be done, by the company, which had the effect of putting that person in a better position, in the event of a company going into insolvent liquidation, than the position at which it could have been if that thing had not been done.

A supplier of goods is an unsecured creditor. The preference of payment in the garb of essential supply given to Beans and Leaves Limited falls under the head of "Preferential Transactions".

The Liquidator therefore can file an application seeking reversal of the transaction.

*** End of Assessment ***

Commented [JL21]: 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.