



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]: 42 out of 50

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] Section 423-Under administration or liquidation the official receiver, liquidator, administrator and (and with the leave of court) any victim of the transaction such as a creditor. In the case of Company Voluntary Arrangement, the supervisor of CVA or any victim of the CVA whether involved in the CVA process or not.

[II] Section 6 of the Company Directors Disqualification Act 1986: Secretary of State can bring an action

[III] Section 246ZB of the Insolvency Act 1986: the liquidator may bring an action under this Act.]

Commented [JL4]: administrator

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.

[Five qualifying decision procedures are as follows:

- i. Correspondence
- ii. Electronic Voting
- iii. Virtual meeting
- iv. Physical Meeting
- v. Any other decision-making procedure which makes it possible for all entitled creditors to participate equally]

Commented [JL6]: 5

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

Commented [JL7]: 11 out of 15

Question 3.1 [maximum 6 marks]

Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?

[Yes, the administrator can. Section 233 of the Insolvency Act 1986 empowers an administrator to subscribe to essential goods and services such as computer hardware and software, water, gas and electricity. As a pre-condition for providing such services the supplier may request that the administrator personally guarantees the payment of charges arising from the supply. Suppliers are however, precluded from requiring payment of outstanding debt to secure new or continued supply to the company in administration.]

Commented [JL8]: 3
S 233B?

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 priority of payments in liquidation is as follows:

- i. Expenses of winding up including liquidator's remuneration – Various expenses such as those relating to preservation or realisation of assets, costs of security provided by liquidator, fees for preparation of statement of affairs or accounts are paid before the liquidator's remuneration.
- ii. Preferential creditors – this category extends to employees owed money by the employer and some taxation debts owed to the government in situations where the company has acted as tax collector for the government. Preferential debts in their respective classes, rank equally among themselves, and therefore abate in equal portion where the assets of the company are insufficient.
- iii. Floating charge holder– Priority between floating charge holders is dependent on the charge that was created first. It is also important to note that since 15 September 2003, by virtue of Section 176A of the Act, the liquidator is required to make a “*prescribed part*” of the company's net property for the satisfaction of the debts of unsecured debts.
- iv. Unsecured creditors – this cover those without any security or title to assets for monies given to the company.
- v. Shareholders according to their respective rights under the Articles of Association – this group is the last to receive payment and only if there is surplus assets after distribution to the preceding **creditors**.

Commented [JL9]: 8
Fixed charge holders

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

Commented [JL10]: 12 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;

[Section 245 of the Insolvency Act provides for floating charge avoidance to prevent unsecured creditors from obtaining security for an existing loan, shortly before the commencement of a formal insolvency procedure. For floating charge avoidance to be actionable it must have occurred within two years prior to the onset of insolvency for connected persons such as directors, or twelve months in the case of third parties. Also, this additional security must have been taken out when the company was unable to pay its debts.

In this scenario, it would appear that the company was unable to pay its debts and could not meet its payment obligations to the Bank. It also appears that the Bank was an unsecured creditor and only requested for security in February 202, without providing additional funding to the company. Given these circumstances the liquidator may bring an application before the court for the avoidance of the floating charge in favour of the Bank,

- i. the transaction was entered into within twelve months of the onset of insolvency
- ii. the Bank did not provide any consideration for the company either by the injection of new funds or reduction of existing obligations.

Commented [JL11]: 4
Applies only to floating charges

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Section 238 of the Insolvency Act allows a liquidator to attack transactions that have been entered into the company two years prior to the commencement of liquidation, where such transactions are at an under value. In this scenario, the liquidation was commenced on 14 October 2021, and less than two years prior to that, the coffee machine was sold at a significantly less than value. Also, the coffee machine was sold to a director, a person connected to the company, there is a presumption that this sale contributed to the insolvency. Given that the coffee machine was sold at under value to a connected person during the relevant, the liquidation may bring an application for to court on the grounds that the transaction was at an undervalue and should be voided.

Commented [JL12]: 5
Defences?
The structure of the answer could also be improved.
With application questions it is best to follow the following structure:
Identify the issues
State the law
Apply the law
When these steps are done in one go, some elements are often left out.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

[Section 127 of the Insolvency Act provides disposition of property made after the commencement of winding up can be voided unless the court otherwise orders. "Disposition of property" also cover payment of money, under which category payment to Beans and Leaves Ltd would fall.

Given that Beans and Leaves Ltd is one of the key suppliers of the company and was necessary for the company to keep trading. The liquidator may therefore make an application to the court to exercise its discretion to validate the payments.

Commented [JL13]: 3
Backdated?

*** End of Assessment ***