



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]: 27.5 out of 50

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

Commented [JL2]: 9 out of 10

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs:

- (a) within 10 weeks of the commencement of the administration.
- (b) within 8 weeks of the commencement of the administration.**
- (c) within 4 weeks of the commencement of the administration.
- (d) on the day the company enters administration.

Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) One year.**

Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.

(c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

(d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

- (a) The administrator.
- (b) Any secured creditor with the benefit of a qualifying floating charge.
- (c) The purchaser.
- (d) The company's auditor.

Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

- (a) Administration.
- (b) Restructuring Plan.
- (c) Scheme of Arrangement.
- (d) Company Voluntary Arrangement.

Question 1.6

A liquidator may pay dividends to small value creditors based upon the information contained within the company's statement of affairs or accounting records. In such circumstances, a creditor is deemed to have proved for the purposes of determination and payment of a dividend where the debt is **no greater than how much**?

- (a) £500
- (b) £750
- (c) £1,000
- (d) £2,000

Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

- (a) Wrongful trading.
- (b) Breach of fiduciary duty.

Commented [JL3]: 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 [JL4]: 8.5 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?

- Section 423 of the Insolvency Act 1986: if the company is being wound up or is in administration, the official receiver, the liquidator, the administrator and (with the leave of the court) any victim of the transaction such as a creditor are entitled to bring an action. In cases where a victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction. In any other cases, the victim of the transaction can bring an action.
- Section 6 of the Company Directors Disqualification Act 1986: the Official Receiver can take actions to disqualify the directors from being involved in the management of the company if there is sufficient evidence that the director in question is unfit for this position.
- Section 246ZB of the Insolvency Act 1986: actions can only be taken by the liquidator.

Commented [JL5]: secretary of state may request the OR

Commented [JL6]: 3.5

Commented [JL7]: administrator

Question 2.2 [maximum 5 marks]

List the **five (5)** qualifying decision procedures by which creditors may make decisions in the context of an insolvent company.

- Decisions of creditors in connection with in corporate insolvency proceedings can be taken as follows:
 - (i) correspondence
 - (ii) electronic voting: Section 15.4 of the Insolvency Rules 2016 provides that (a) the notice delivered to creditors must give them any necessary information as to how to access the voting system including any password required; (b) except where electronic voting is being used at a meeting, the voting system must be a system capable of enabling a creditor to vote at any time between the notice being delivered and the decision date; and (c) in the course of a vote the voting system must not provide any creditor with information concerning the vote cast by any other creditor.
 - (iii) virtual meeting: Section 15.5 of the Insolvency Rules 2016 provides that the notice delivered to creditors must contain— (a) any necessary information as to how to access the virtual meeting including any telephone number, access code or password required; and (b) a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).
 - (iv) physical meeting: Section 15.16 of the Insolvency Rules 2016 provides that a creditors' meeting may only be held if it is requested by a minimum number of creditors. That minimum number is 10% in value of the creditors, 10% in number of the creditors or 10 creditors.

or

(v) any other decision making procedure which guarantees equal participation to the creditors.

- the creditors can generally use two decision-making procedures – the classical qualifying decision procedure, or the deemed consent procedure, in which a decision is deemed to have been made if the creditors are notified about the decision making and a certain majority of creditors (10% by value) does not object. The deemed consent procedure is somewhat more efficient than the classical decision making, but it cannot be used for certain decision matters, e.g. office- holder’s remuneration.

Commented [JL8]: 5

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

Commented [JL9]: 8 out of 15

Question 3.1 [maximum 6 marks]

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

- The appointment of an administrator does not permit the supplier to terminate the agreements entered into with the debtor. In fact, the supplier is still bound to the agreement and must therefore continue fulfilling his obligations under the agreement. However, the supplier may terminate the agreement if the administrator fails to guarantee the payments of any costs incurred by the supplier due to the continuation of business relation with the debtor.
- The termination of the agreement is always possible upon prior approval of the officeholder. The court may also grant the termination of an agreement if the court considers that the continuation of such agreement would cause hardship to the supplier.
- It shall be noted that Section 233B prohibits clauses which would permit the supplier to terminate the agreement or “do any other thing” after the counterparty has become formally insolvent.

Commented [JL10]: 4

How does it work and what else has s 233B brought about?

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.

According to the Insolvency Act, 1986, creditors are to be paid in the following order:

- Secured creditors with fixed charges (example: banks);
- Fees of the officeholder;
- Preferential creditors;
- Secured creditors with floating charges,
- Unsecured creditors;**
- In case of a surplus after payment of all creditors, that surplus will be returned the shareholders.

Commented [JL11]: 4

Perhaps you did not finish your answer? The question required a discussion of the nature of the rights as well.

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

Commented [JL12]: 2 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;

[Type your answer [here](#)]

Commented [JL13]: S 245 of the IA applied here.
0

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

- The sale of the coffee roasting machines could be considered to be a transaction at undervalue within the meaning of the Section 238. Under this regulation, the liquidator could attack the transaction based on Section 238 (3) because the consideration paid for the machines by Ann Young (GBP 10,000) was significantly less than the actual value of the machines (GBP 25,000 minus usual depreciation for one year).

- The liquidator could support this claim with the argument that such coffee machines usually do not depreciate that quickly and, therefore, the consideration paid should be in the amount of the purchase price one year ago minus depreciation amount for one year. The balance amount between the actual value and GBP 10,000 could then be claimed from Ann Young.

Commented [JL14]: 1
The requirements to be successful with a s 238 action should have been discussed and applied to the facts of the case.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

- This transaction could probably not be successfully attacked by the liquidator because raw coffee is an asset that the company needed in order to continue trade pursuant to the regulations of the Section 127.

Commented [JL15]: 1
This answer really needed to be expanded upon.

*** End of Assessment ***