



**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]: 31 out of 50

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

Commented [JL2]: 6 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 [JL3]: 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 [JL4]: 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 [JL5]: 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.

**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 [JL6]: d

**QUESTION 2 (direct questions) [10 marks]**

Commented [JL7]: 8 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 of the Insolvency Act 1986 deals with transactions that defraud the creditors. The official receiver, liquidator, administrator, and any victim of the transactions may bring an action if the company is being wound up. The supervisor of a company voluntary arrangement may also bring an action here.
- (ii) Section 6 of the Company Directors Disqualification is the most used ground to seek disqualification against directors under this Act. The court must bring the action under this Section. The court will make this disqualification if it is deemed that the person has been a director of the insolvent at any time and his/her conduct as a director makes them unfit to run the company.
- (iii) Section 246ZB of the Insolvency Act 1986 looks at director's liability with regards to wrongful trading. This was introduced to ensure losses to creditors were minimised as much as possible. The liquidator is the only party that can bring an action under this Act.

Commented [JL8]: Secretary of State or OR

Commented [JL9]: administrator

Commented [JL10]: 3

**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.

When a company becomes insolvent, it is common for unsecured creditors to receive no distribution due to their priority rank in payments. However, they are entitled to vote on a number of areas including the liquidator that gets appointed and to approve an administrator's proposal. These votes were previously passed at creditor meetings through resolutions but these are uncommon now.

Decisions of creditors are now made using deemed consent procedure or a qualifying decision procedure. The five qualifying decision procedures available for creditors are:

- Correspondence
- Electronic voting
- Virtual meeting
- Physical meeting
- Any other decision-making procedure which allows all 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]: 12 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?

Two objectives during the administration are to rescue the company if practicable and to achieve a better result for the company's creditors as a whole. Therefore, when it comes to a company's executory contracts, the appointment of an administrator does not automatically

terminate these. In order to continue the running of the company, the administrator may request essential supplies such as gas, electricity, water, and communication services. (Section 233 of the Insolvency Act 1986).

The supplier of goods and services cannot terminate the initially agreed contract upon the appointment of an administrator. Suppliers also cannot demand payments of outstanding debts from the company in return for continued supply of the goods and services.

Suppliers are usually unsecured creditors and so will only receive payment after secured and preferred creditors have been paid. Section 233 applies to administrations but also to a CVA, a Moratorium or a Restructuring Plan.

### 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.

Fixed charge holders are the first paid class of creditors in a liquidation. The debtor and administrator cannot deal with a fixed charge asset without the consent of the secured fixed charge holder. They are then usually paid outside any formal insolvency from the realization of the fixed charge. This is why it is seen as a safer security than a floating charge. A debenture will set out whether the charge is fixed or floating. Fixed charges are commonly used on substantial and physical assets. Fixed charge holders do not get to sit on RCI boards unless certain circumstances.

The expenses of the liquidation are paid next. These include liquidator fees and expenses. Administrator's remuneration is usually fixed and agreed by creditors through a decision procedure or creditor committee. The time cost basis is usually the basis for their remuneration. Other fees such as legal fees will also be paid in this priority. Expenses incurred by the administrator must be paid before their remuneration is paid.

Preferential creditors are paid next. These include amounts owed to employees of the insolvent company and taxation liabilities owed by the company. Preferential debts are split between ordinary and secondary preferential debts, with ordinarily debts paid first. An employee may also have super priority if they are kept on for 14 days after the administrator's appointment. In this case, their wages are paid out before the administrator's own fees and expenses.

Floating charge holders are next in the priority of payments. The company debtor may continue to use any asset which has a floating charge without the consent of the holder, until the charge crystallizes. Examples of floating charge assets include stock, inventory, and receivables. Floating charge holders are given the power to appoint an administrator to take charge of these assets. There is a prescribed part where a specific monetary amount is set aside for the benefit of the unsecured creditors out of the floating charge realizations; it ranks above, and is paid out before, the balance of the floating charge recoveries. This is put in so that floating charge holders cannot just take everything away from unsecured creditors.

Unsecured creditors are next in priority and relate to creditors who have no charge over assets. These are usually suppliers who are owed money from the Company. They are low in order of priority payments but have voting rights including the liquidator that gets appointed and to approve an administrator's proposal.

Lastly, shareholders of the Company are paid pro rata if there is any surplus left after the above payments.

**Commented [JL13]:** This answer needs more expansion generally.  
How does sections 233 and 233A work and how has 233B added to this?  
3

**Commented [JL14]:** 9

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

Commented [JL15]: 5 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;

Stercus Bank plc has a floating charge over the whole of the Company. Therefore, the liquidator may deal with the Company assets without consent from the bank. The liquidator should ensure all parties agreed on this charge and that it was registered within twenty-one days. The floating charge may be voidable if this was not registered. The floating charge was granted within one year of the compulsory liquidation. If the directors have given the charge to the bank knowing that their company was insolvent, it can be argued that it is an invalid charge. Given the short period of time, the liquidator should review to determine whether this could be an antecedent transaction.

As the bank owns a floating charge, the bank will rank before any unsecured creditors in terms of payments. In realizing assets, the liquidator will need to ensure that the assets of the company are all separately identifiable. If not, the bank may have a retention of claim in some



assets and be able to reclaim them. Under paragraph 72 of Schedule B1 of the Act, the administrator may still assets subject to retention of title if a court order is **obtained**.

**Commented [JL16]:** This question required a discussion of s 245 and the invalidation of floating charges.  
0

#### Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The coffee roasting machines have been sold at a loss and also to a director, a related party. Section 238 of the Act of the Insolvency Act applies here as a few months prior to the company entering liquidation, these machines were sold at an undervalue of £15,000. The liquidator will be required to show the court that the company entered into this transaction and received considerably less consideration for the assets. The relevant time for this transaction is two years so the liquidator can also show that this was within two years to the court. As this transaction was with a connected person, the company is deemed to have been insolvent at the time.

Based on the above facts, the court should grant an order under s238 to the liquidator. This will restore the position of the company to what it would have been if this transaction had not been entered into with the **director**.

**Commented [JL17]:** Defences to s 238?  
5

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.

The supply of coffee beans are essential to the running of the Company but the Company has now gone into a winding up so are no longer essential. Under Section 233 of the Insolvency Act, this supplier is not allowed to require payment of outstanding debts in order to continue the supply of the coffee beans. The supplier had threatened to cut off supplies if payments were not immediate, cash on delivery basis. S233 prevents suppliers from using their supply with the insolvent company in order to ensure that arrears will be paid. Before the 2020 Act, the supplier may have argued that an administrator must personally guarantee the £3,000 payment. However, based on the updated Act and the fact that the cash in delivery payment was not included per the original contract, this £3,000 can be contested and not paid to the unsecured creditor during priority payments. One consideration for the liquidator is if the supplier has any retention of title on any assets, due to the coffee beans forming part of any other asset. If so, this could affect the realizations of certain **assets**.

**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 \***