



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

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

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.

Commented [WPA1]: 29/50 = 58% - some reasonable understanding shown but generally there is a lack of detail both in terms of the law and also its application to the facts.

Commented [WPA2]: 9/10

(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.

Commented [WPA3]: A is correct

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 [WPA4]: 8/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 3/5 – re ii the Secretary of State usually brings the action and iii only an administrator has power under s 246ZB

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- action brought by the official receiver, trustee of bankrupt's estate, liquidator or administrator of the company and (with leave of the court) the victim of the transaction.
- (ii) section 6 of the Company Directors Disqualification Act 1986- action may be taken by an official receiver.
- (iii) section 246ZB of the Insolvency Act 1986- action may be brought by the company's liquidator or administrator

Question 2.2 [maximum 5 marks]

Commented [WPA6]: 5/5

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

- 1) Correspondence;
- 2) Electronic voting;
- 3) Virtual meeting;
- 4) Physical meeting;
- 5) Any other decision making procedure which enables all creditors who are entitled to participate in making the decision to participate equally.

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

Commented [WPA7]: 8/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 3/6 although generally correct the answer is limited and does not include important reference to ss 233 and 233A

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, Section 233B of the Insolvency Act, prevents suppliers from terminating an agreement for supply when the Company enters into a formal insolvency procedure. This is however subject to the caveat that the contract may be terminated where the insolvency officer either consents or on an application to the court in which the court is satisfied that the supplier would experience hardship if supplies continue. Suppliers are also not permitted to demand payment for past fees in order for the Company to secure new and/or continued supply.

Question 3.2 [maximum 9 marks]

Commented [WPA9]: 5/9 – although correct, there is a lack of detailed explanation e.g. expenses of the liquidation go beyond the liquidator's fees, there are different categories and classes of preferential creditors, s 176A is important when considering the priority of floating charges.

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.

Firstly, the holders of fixed charges will be paid first. In terms of rights, a fixed charge holder has the right to appoint a receiver over the fixed charge asset.

Secondly, the expenses of the liquidation will be paid, i.e. liquidator's fees.

Thirdly, Preferential Creditors, i.e. debts owed to employees and/or government bodies.

Holders of Floating Charges will be paid after preferential creditors. In terms of their rights, floating charge holders may appoint an administrator. The administrator is able to carry on the business of a company for a period of time which often led to return to financial health.

Unsecured creditors usually receive payment after floating charge holders. In terms of their rights, unsecured creditors have the right to vote on the approval of administrator's proposals, who is to be appointed liquidators and the remuneration of said officeholder.

Where there are funds remaining, these will be returned to the members of the company in accordance with the terms of the Mem & Arts of the Company.

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

Commented [WPA10]: 4/15

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 authorized 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]

Commented [WPA11]: 2/5 although s 245 is identified as the relevant law there is a lack of detailed explanation and application to the facts.

The floating charge in favour of Stercus Bank plc;

In relation to the grant of the floating charge in favour of Stercus Bank, the liquidators may seek to avoid the floating charge in accordance with Section 245 of the Insolvency Act. By operation of Section 245, the bank as a pre-existing creditor cannot validly obtain security of a floating charge shortly before the company enters formal liquidation procedures. This creates an unfair advantage over other creditors at a time when the company's ability to repay its debts is in doubt. Although the Company was not in formal liquidation in Feb 2021 when the charge was granted, this transaction still falls within two years of the onset of insolvency and is liable to be set aside by the liquidator.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Section 123 of the Act contains the test for insolvency (i) cash flow test and (ii) balance sheet test. It is evident from the grant of the floating charge in February 2021 that the Company suffered cash flow issues and on its face was cash flow insolvent. Section 214 and 246ZB of the Insolvency Act makes directors of insolvent companies liable for wrongful trading and thereby makes them liable for some debts and liabilities of the Company. The directors became aware of their status as cash flow insolvent prior to the sale of the coffee machines. At this point they were required to do everything possible to minimise the losses of the Company. The liquidator may petition the court in this instance for an order that the directors make a contribution to the assets of the Company.

Given that the machines has been bought for 25,000 and sold for just 10,000 a year later, the liquidator may also attack this sale as a transaction at an undervalue which is significantly less than the value or money's worth per Section 238 of the Insolvency Act. Here, the liquidator has the ability to apply to the court for an order that the transaction be undone in order to restore the company's asset position.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

As with the sale of the coffee machines, the liquidator can take action against the directors of the Company for wrongful trading. Further, the liquidator could investigate the 8000 payment as it could be deemed a preference. Section 239 of the Insolvency Act deals with voidable preferences. As the coffee beans were essential to the business of the Company, a court may deem the Company's payments to Beans and Leaves Ltd as something done to keep the Company in a position where it was still able to trade, notwithstanding the cash shortfall. In addition, the supply contract could be deemed an executory contract.

Furthermore, the appointment of an insolvency officer does not automatically terminate contracts for supply of goods. Per Section 233A, a supplier is also not allowed to require the satisfaction of arrears in order to resume supply.

*** End of Assessment ***

Commented [WPA12]: 2/6 – again there is a lack of detailed explanation and application of the law. S 238 is the stronger claim but a wrongful trading claim may be arguable but only with more detailed understanding of the provisions of s 214.

Commented [WPA13]: 0/4 due to the commencement of the winding up these arguments are untenable. Section 127 was the issue.