



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]: 34/50 = 68% - generally good understanding shown but lacking in detail in several places.

Commented [WPA2]: 10/10

- (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.

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 [WPA3]: 7/10

Question 2.1 [maximum 5 marks]

Commented [WPA4]: 2/5 – the answers to s 423 and s 6 CDDA are incomplete and the answer to s 246ZB is incorrect.

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) Re section 423 of the Insolvency Act 1986:
 - (a) An official receiver of the body corporate that is being wound-up
 - (b) The supervisor of the voluntary arrangement if the victim of the transaction is bound by a voluntary arrangement
 - (c) If there is a voluntary arrangement, the victim of the transaction (regardless of whether the victim was bound by the voluntary arrangement
 - (d) In all other cases, the victim of the transaction

- [(ii) Re section 6 of the Company Directors Disqualification Act 1986:
 - (a) The Secretary of State

- [(iii) Re section 246ZB of the Insolvency Act 1986:
 - (a) the liquidator of the company]

Question 2.2 [maximum 5 marks]

Commented [WPA5]: 5/5

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

[The qualifying procedures are listed in rule 15.3 of the Insolvency (England and Wales) Rules 2016. The 5 qualifying decisions procedures are as follows:

- (a) correspondence
- (b) electronic voting
- (c) virtual meeting
- (d) physical meeting
- (e) any other decision making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally.]

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

Commented [WPA6]: 8/15

Question 3.1 [maximum 6 marks]

Commented [WPA7]: 4/6 a good answer on ss 233 and 233A but the answer omits an explanation of s 233B

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?

- [(a) Yes, depending on the individual circumstances.

- (b) In the case of supply of gas, electricity, water and communication services an administrator who seeks to have these types of services supplied may be required by the supplier to provide a guarantee of payment from the administrator. This is provided in section 233 of the Insolvency Act. Under section 233 of the Insolvency Act, a supplier of services that fall within these categories are permitted to impose such a condition on the administrator.

- (c) In the case of contracts that contains terms that stipulate termination of the contract when the company is in administration or stipulates that suppliers can take any other types of action when the company is in administration, it is stated in section 233A of the Insolvency Act that such contract terms cease to have any effect when a company is in administration.
- (d) A supplier who seeks to terminate a contract when the company is in administration will have to apply to the court for permission to terminate the contract and satisfy the court that continuation of the contract would cause the supplier hardship.
- (e) A supplier who seeks to terminate the supply of goods or services may terminate the supply if upon issuance of a written request for payment guarantee from the administrator, the supplier does not receive such guarantee within 14 days of request.]

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.

- [(i) The order of priority of payments is as follows:
 - (a) expenses of winding-up, liquidator fees, expenses incurred during liquidation
 - (b) statutory debts such as salaries of employees, statutory contributions, all of which are within prescribed limits)
 - (c) debts owed to holders of a floating charge in the amount remaining after the prescribed portion of the property in the prescribed percentage, is set aside for payment to unsecured creditors
 - (d) unsecured creditors
 - (e) shareholders
- (ii) Items (a) – (c) are considered to be preferred debts which within itself there is a specific order of priority.
- (iii) Items (d) and (e) are not considered to be preferred debts.]

Commented [WPA8]: 4/9 although broadly along the right lines, the answer is very limited and requires more detail. There is no explanation of where fixed charges fall, correct identification of preferential debts, explanation of how the prescribed part is calculated.

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

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.

Commented [WPA9]: 9/15

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;

- [(a) The floating charge was created in February 2021 at the time the debenture was granted to Stercus Bank. There is no new funding provided by the bank in as consideration for the creation of the floating charge.
- [(b) At the time of its creation, the creditors petition had not been filed, however it is within a 12 month period immediately preceding the date the creditors petition was filed (the creditors petition was filed in October 2021). Accordingly, this transaction may be scrutinised by the liquidator under section 245 of the Insolvency Act.
- [(c) The validity of the floating charge may be challenged. Under Section 245 of the Insolvency Act, the floating charge would be rendered invalid but the debt remains valid.
- [(d) As the floating charge would be rendered invalid, the Bank would not have any claim over the assets of the company which are intended to be represented by the floating charge (as a preferred creditor) and these assets would be available for distribution in accordance with the priority of payment.]

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

- [(a) The sale of the coffee roasting machines occurred in July 2021.

Commented [WPA10]: 3/5 the issue of s 245 is identified but there is a lack of detail as to how s 245 operates and would operate on these facts.

Commented [WPA11]: 3/6 – s 238 is identified and some of its requisites are dealt with but there are other points which needed to be made in more detail for more marks.

- (b) The machines were purchased in the previous year for \$25,000 but sold to its director, Ann Young at a much lower rate of \$10,000.
- (c) As a director, Ann Young will be classified as a connected person.
- (d) During this time, the company is described as experiencing cash flow problems.
- (e) At the time of the sale, the creditors petition had not been filed, however it is within a 2 year period immediately preceding the date the creditors petition was filed (the creditors petition was filed in October 2021). Accordingly, this transaction may be challenged by the liquidator and the liquidator may make an application to the court under section 238 of the Insolvency Act for the transaction to be undone/reversed.
- (f) If the court is satisfied that the transaction was carried out by the company in good faith and on the basis that this transaction would benefit the company, then the court may refuse to grant an order to undo/reverse the transaction.
- (g) Since the company continued to operate and its subsequent actions appear to be intended to facilitate the continued operation of the company with less roasting machines or roasting machines that it ceased to own, an argument may be advanced that the court may not be minded to undo/reverse the transaction.]

Question 4.3 [maximum 4 marks]

Commented [WPA12]: 3/4 a much better answer – a little more specific application to the facts is needed for full marks

The payments to Beans and Leaves Ltd.

- [(a) The payment to Beans and Leaves Ltd occurred after the creditors petition was filed but a month before the winding-up order was issued. The creditors petition was filed in October 2021 and the winding-up order was made in December 2021.
- (b) The payment made to Beans and Leaves Ltd is a form of disposition and would be considered void under section 127 of the Insolvency Act and the liquidator would be entitled to issue a demand to Beans and Leaves Ltd to return the payment to the company, unless the court orders otherwise.
- (c) In response to a demand for return of the payment, the liquidator may expect Beans and Leaves to apply for a court order to validate the payment. This application is permitted under section 127 however validation is not as of right and the court has discretion to determine whether the payments should be validated.
- (d) As the applicant, Beans and Leaves Ltd would have to persuade the court that the payment was made for the benefit of the unsecured creditors of the company. The court will consider the application within certain parameters. Payments that are made in the ordinary course of business or payments intended to facilitate continued trading activities are likely to be validated. Payments intended to prefer one creditor over others are not likely to be validated]

*** End of Assessment ***