



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 [WPA1]: 34/50 = 68%

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

Commented [WPA2]: 8/10

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 [WPA3]: B is correct

- (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.

Commented [WPA4]: D is correct

QUESTION 2 (direct questions) [10 marks]

Commented [WPA5]: 10/10

Question 2.1 [maximum 5 marks]

Commented [WPA6]: 5/5

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) Under Section 423 of the Insolvency Act 1986

The parties below can bring an action against transactions defrauding creditors:

- (a) if the company is in the process of winding-up or administration, the official receiver, the liquidator, the administrator, and (subject to the court's permission) any victim of the transaction;
- (b) if any victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction; or
- (c) in any other cases, a victim of the transaction.

(ii) Under section 6 of the Company Directors Disqualification Act 1986

The parties below can apply to the court for disqualification of unfit directors from the management of a company for up to 15 years.

- (a) the Secretary of State, or
- (b) the official receiver, if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales

(iii) Under section 246ZB of the Insolvency Act 1986

The administrator can apply to the court for declaration that the director of a company (under the administration) who conducted wrongful trading is liable for making contribution to the company's assets.

Question 2.2 [maximum 5 marks]

Commented [WPA7]: 5/5

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

There are five qualifying decision procedures under the Insolvency Rules 2016, r 15.3, i.e., (i) correspondence; (b) electronic voting; (c) virtual meeting; (d) physical meeting; or (e) any other decision making procedure which enables all creditors to participate equally.

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

Commented [WPA8]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 3/6 a clear answer but needed to explain ss 233 and 233A also.

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 - unless the agreement with such suppliers is terminated based on terms that are not related to insolvency.

The appointment of an administrator does not automatically trigger the termination of the company's executory contracts including those with suppliers to obtain goods or services.

In addition, section 233B of the Insolvency Act 1986 (the "Act") prohibits clauses from allowing the suppliers of goods or services to terminate the contract on the condition that the company filed for a formal insolvency proceeding (*ipso facto* clause).

Therefore, if an administrator wishes, he/she can require suppliers of goods and services to continue to supply those goods and services during the administration.

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 general order of priority of payments in a liquidation is as follows:

- (i) Expenses of Winding-up
- (ii) Claims of Preferential Creditors
- (iii) Claims of Floating Charge Holders
- (iv) Claims of Unsecured Creditors

* If there are fixed charges on a certain asset, the fixed charge holders will be paid first from the proceeds of the asset.

The expenses categorized in (i), which are in general necessary for the liquidator to conduct the liquidation process, have priority over other creditors. Within the category (i), there is the priority order as follows:

- (a) expenses incurred in preserving, realising, or getting in any assets of the company;
- (b) cost of security provided by the liquidator;
- (c) any amount payable to a person who helps preparing financial statements;
- (d) necessary disbursements in the course of the winding up (such as expenses incurred by the liquidation committee);
- (e) the remuneration for service providers for the company employed by the liquidator;
- (f) the liquidator's remuneration;
- (g) corporation tax on the gains from the realisation of the company's assets; and
- (h) any other expenses properly incurred in carrying out the winding up.

The claims categorized in (ii) are listed under Schedule 6 of the Act and includes certain claims of employees and taxation liabilities as well as some other types of debts. The category (ii) has two sub-categories, i.e., (a) ordinary preferential debts and (b) secondary preferential debts. The former has priority over the latter.

Regarding the category (iii), if there are two or more floating charge holders, the floating charge created first has priority over others created later. However, the liquidator is generally obligated to keep a "prescribed part" out of the company's net priority for unsecured creditors (category (iv)). If the company's net property is not more than £10,000, the prescribed part is 50% of the net priority. If the company's net property is more than £10,000, the prescribed part is the aggregate amount of 50% of the first £10,000 plus 20% of the excess above the £10,000.

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.

Commented [WPA10]: 7/9 generally very good but a little more detail on preferential creditors and the total aggregate possible under s 176A needed for full marks.

Commented [WPA11]: 6/15

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 239 of the Act stipulates that if the company has at a relevant time given a preference to any person, the court shall, on the liquidator's application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

The "relevant time" here is defined under section 240 and in case of the person not connected to the company means the period of six months prior to the onset of insolvency (in case of litigation, the date of the commencement of the winding up) provided that the company is unable to pay its debt or becomes unable to pay its debt as a result of the transaction.

It also provides that a company gives a "preference" to a person if
(a) that person is one of the company's creditors and
(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done,
provided that the company was influenced in deciding to give it by a desire to produce the effect mentioned in (b) above.

In the case at hand, the Company granted a debenture containing floating charge over the whole of the Company's undertaking in favour of Stercus Bank plc in February 2021. It is probable that the provision of the debenture falls within preference as (a) Stercus Bank is one of the Company's creditors and (b) granting the debenture put Stercus Bank into a better position than the position without the provision of the debenture.

Commented [WPA12]: 1/5 the preference argument is reasonable but clearly cannot apply on the facts – you needed to consider and apply s 245

However, the provision of the debenture was conducted in February 2021 while the winding up order for the Company is issued in October, the requirement of “relevant time” is not satisfied.

Therefore, the liquidator may not apply to the court for the order to nullify the debenture granted to Stercus Bank.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Section 238 of the Act stipulates that if a company goes into liquidation and the company has at a relevant time entered into a transaction with any person at an undervalue, the court shall, on the liquidator’s application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

The “relevant time” here is defined under section 240 and means the period of two years prior to the commencement of the liquidation provided that the company is unable to pay its debt or becomes unable to pay its debt as a result of the transaction (In the case of a transaction with a connected person, the company is presumed to satisfy this requirement.).

Further, it also provides that a company enters into “a transaction with a person at an undervalue” if—

- (a) the company makes a gift to a person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
- (b) the company enters into a transaction with that person for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by the company.

However, the section sets out that the court shall not make the order mentioned above if

- (a) the company did so in good faith and for the purpose of carrying on its business, and
- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

In the case at hand, the Company sold 5 coffee roasting machines, which had been bought for £25,000 a year before, to Ann Young for £10,000 in cash. This transaction meets the requirement of “relevant time” as it is conducted in July 2021, which is within two years prior to the winding up order issued in October 2021.

However, it may be difficult to avoid this transaction. That is because the sold goods were coffee roasting machines and it is possible that their value could significantly decrease by using such machines.

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

The issue here is also whether the transaction here (the payments to Beans and Leaves Ltd.) fulfils the requirements of “preference” and the liquidator may bring an avoidance action. The requirements of such action are as set out in Question 4.1 above.

In the case at hand, It is probable that the provision of the debenture falls within preference as (a) Beans and Leaves Ltd. is one of the Company’s creditors and (b) the payments put

Commented [WPA13]: 5/6 a good attempt but needed to consider the relevance of the presumption against a connected party

Commented [WPA14]: 0/4 the preference claim cannot stand as the winding up has commenced. The question required consideration of s 127.

Beans and Leaves Ltd. into a better position than the position without the payments. In addition, the payments were made conducted within one month immediately prior to the winding up order for the Company, the requirement of "relevant time" is satisfied.

Therefore, it is worth considering for the liquidator to bring an avoidance action against Beans and Leaves Ltd. based on preference.

*** End of Assessment ***