



**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 [DJ1]: TOTAL: 34 OUT OF 50

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

Commented [DJ2]: 8 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 [DJ3]: 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 [DJ4]: 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.

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

Commented [DJ5]: 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 246ZB of the Insolvency Act now enables administrators to bring claims for wrongful trading against directors of insolvent companies.

Section 6 of the Company Directors Disqualification Act enables a liquidator or the official receiver to bring an action for the disqualification of directors or former directors of insolvent companies. Where such action is taken against an unfit director, the liquidator has a duty to report such persons to the Secretary of State, who then has a discretion whether to seek the disqualification of such person for a period of up to 15 years.

Section 423 of the Insolvency Act relates to transactions which are aimed at defrauding creditors. Where such a transaction exists, the following categories of persons have standing to challenge the transactions in insolvency proceedings:

- (a) the official receiver, the liquidator, the administrator and (with the leave of the court) any victim of the transaction, which could include a creditor – in circumstances where the company is being wound up or is in administration;
- (b) the supervisor of the CVA, if the victim of the fraud is governed by the CVA or any other victim of the fraud (whether that victim is bound by the CVI or not); and
- (c) a victim of a fraud that does not fit into any of the categories at (a) or (b) above.

Commented [DJ6]: 5

**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.

The five qualifying procedures by which creditors may make decisions in the context of an insolvent company are:

- (a) receivership;
- (b) administration;
- (c) moratorium;
- (d) CVA (Company Voluntary Arrangement); and
- (e) Scheme of Arrangement under Part 26 of the Companies Act 2006.

Where a creditor holds a fixed charge and the debtor defaults, that creditor can appoint a receiver over the assets of the debtor that are subject to the fixed charge. Although it may still be technically possible to appoint an administrative receiver over a floating charge, such appointments are only available where the charge was executed before 15 September 2003.

Administration has now effectively replaced administrative receivership and is aimed at securing a better result for creditors than a liquidation could. This may be the rescue of the company or the realisation of assets of the company which result in delaying/avoiding liquidation. Here, 50% in value of unsecured creditors must approve the plan of the Administrator.

A moratorium is a debtor-in-possession procedure whereby management (i.e. the directors) continue in control of the company subject to the supervision of a monitor. It is a standalone procedure and its main aim is to rescue the company as a going concern.

A CVA enables a company to put forward a proposal to its creditors which typically requires an extension on time to satisfy debts or a reduction on the debt amount. 75% in value of all unsecured creditors will be required to bind all unsecured creditors. Secured creditors will only be bound if they agree to the CVA proposal.

A Scheme of Arrangement, like a CVA, is a debtor-in-possession option. This procedure is governed by Part 26 of the Companies Act 2006. This procedure will only be successful where there is consent by each category of creditors participating in the scheme.

**Commented [DJ7]: 0**  
This question pertains to decision-making procedures, like Voting via correspondence or electronic voting etc.

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

**Commented [DJ8]: 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?

Yes, an administrator who wishes to continue to operate the business of the company in administration may require suppliers of goods and services to continue to supply those goods and services during administration.

The appointment of an administrator over a company does not mean that a supplier of goods and services can automatically terminate its contract to supply such goods and services to the company. Section 233 of the Corporate Insolvency and Governance Act 2020 offers some protection to companies over which an administrator has been appointed. Pursuant to that Act, suppliers are not able to require the payment of arrears in order that the company can secure a new contract for the supply of goods and services. The supplier however can require a personal guarantee for payment of charges by an administrator in respect of the supply of goods and services.

**Commented [JL9]: Which type of suppliers?**

Suppliers are also prohibited from including in their contracts for the supply of goods and services, clauses which provide for the termination by the supplier of a contract for the supply of goods and services to a company that enters into a formal insolvency procedure.

Where a supplier considers that to continue supplying goods and services to a company in administration will cause that supplier to suffer some hardship, that supplier may seek the consent of the administrator to be released from its contractual obligations or the approval of the court for such release. Otherwise, the administrator may insist on the continued provision of goods and services by a supplier.

**Commented [DJ10]: 4**  
Some elements missing. Specific reference should have been made to the differences between s 233 and 233A and 233B.

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

- (1) expenses of winding up, including the remuneration of the liquidator;

- (2) preferential creditors;
- (3) floating charge holders;
- (4) unsecured creditors; and
- (5) shareholders

In a liquidation, satisfaction of the expenses of the liquidation are the first payments out of the insolvent company's assets. These expenses include:

- all expenses properly incurred by the liquidator in preserving, realising or getting in any of the assets of the company (including legal proceedings);
- the cost of any security provided by the liquidator; and
- all expenses properly chargeable by the liquidator in carrying out the functions in the winding up.

Preferential debts may be either primary or secondary. Preferential debts in the primary category are paid in priority to the debts in the secondary category and they rank equally amongst themselves in each category.

Schedule 6 of the Insolvency Act provides for preferential debts which include the following:

*Primary*

- any sum owed on account on an employee's contribution to an occupational pension scheme – this is defined as contributions taken from an employee's salary in the 4 months preceding the commencement of the company's liquidation;
- any sum owed on account on an employee's contribution to an occupational pension scheme in the period of 12 months before the relevant date;
- remuneration owed to a current or past employee for the whole or part of the period 4 months prior to liquidation, up to a maximum of £800
- any sum owed to an employee as a result of accrued holiday pay

*Secondary*

- PAYE income tax deductions;
- National insurance deductions;
- VAT payments; and
- Student loan repayments.

Floating charge holders rank third in priority in a liquidation. If there is more than one floating charge holder, the holder of the security which is first in time will rank ahead of the creditor who's floating charge was later created. Furthermore, because floating charge holders rank lower in priority to preferential creditors and are paid after the expenses of the liquidation, the money available to satisfy a floating charge holder will be that money which remains after the payment out to preferential creditors and the expenses of the liquidation. Once that calculation is determined, the office holder is then required to confirm which portion of the company's net assets are available for the satisfaction of unsecured creditors – this is referred to as a "prescribed part". No portion of the "prescribed part" may be utilised to pay a floating charge holder, save in circumstances where the "prescribed part" exceeds what is required to pay unsecured creditors in full.

There is a "prescribed minimum" used to determine the "prescribed part". That minimum is £10,000. Where this minimum threshold is not met, the office holder has a discretion to determine whether the distribution of the prescribed part should apply. In this circumstance where the value of the company's net property does not exceed £10,000, then the prescribed part is 50%. Where the minimum threshold is met, the prescribed part is 50% of the first £10,000 plus 20% of the excess in value up to a maximum of £800,000.



Unsecured creditors are paid after the expenses of the liquidation, the payment of preferential creditors and floating charge holders. There is usually very little to satisfy the claims of this category of creditors and they are paid *pari passu* other unsecured creditors – meaning that of the money remaining to satisfy unsecured creditor claims, that money is distributed rateably between all creditors of that category, based on the value of each creditor's claim.

Shareholders in a liquidation will only be entitled to receive payment out of any surplus after all expenses of the liquidation have been paid and after all creditors' claims have been satisfied.

**Commented [DJ11]:** A complete answer would have referenced the payment of fixed charges as well.  
8

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

**Commented [DJ12]:** 9 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;

Yes, the liquidator may take action in relation to the floating charge in favour of Stercus Bank plc, pursuant to section 245 of the Insolvency Act. The section is aimed at preventing pre-existing unsecured creditors from obtaining security by way of floating charge shortly before the company enters a formal insolvency procedure. The section provides that the grant of a

floating charge at a relevant time (i.e. 2 years prior to insolvency where the person in whose favour the floating charge was created is connected to the company or 12 months prior to the onset of insolvency where the person in whose favour the floating charge was created is not connected to the company) is invalid if that floating charge is granted otherwise than in circumstances where new consideration is provided for the charge. Since no new consideration was provided for the charge, Stercus Bank plc is connected to the company and the floating charge was provided less than 12 months before the onset of insolvency, it could be avoided under section 245 **above**.

**Commented [DJ13]:** 5

#### **Question 4.2 [maximum 6 marks]**

The sale of the coffee roasting machines; and

The liquidator may attack this transaction under section 238 on the basis that the transaction was at an undervalue at the relevant time – i.e. within 2 years of the onset of insolvency.

The liquidator will simply need to satisfy the court that the company either:

- (1) made a gift to another person; or
- (2) entered into a transaction with another person on the basis that that person would provide no consideration for the transaction; or
- (3) entered into a transaction with another person for a consideration which in money or money's worth was less than the consideration provided by the company.

Since the sale was to Ann, a director of the company, that transaction will be deemed to have occurred at a time when the company was insolvent unless proven otherwise.

The court has the power to restore the company to the position it was in prior to the **transaction**.

**Commented [DJ14]:** Any defences against the action?  
More specific references in relation to the law e.g. s240(2) would have been preferable.  
Remedy not very specific?  
4

#### **Question 4.3 [maximum 4 marks]**

The payments to Beans and Leaves Ltd.

The payments to Beans and Leaves are vulnerable to attack pursuant to section 239 of the Insolvency Act. The overriding objective of section 239 is to prevent a company from placing one of its creditors in a better position to other creditors. The liquidator will only be able to challenge the payments under this section if:

- (1) the preferred person was at the time of the transaction a creditor of the company;
- (2) something was done by the company which had the effect of putting the creditor in a better position to other creditors if the company were to go into insolvent liquidation, than that creditor would have been in ordinarily;
- (3) the company was at the time of giving the preference, influenced by the creditor into giving the preference; and
- (4) the preference was given at a relevant time.

Each of the criteria above is satisfied in this case.

- (1) Beans and Leaves was a creditor of the company;
- (2) Beans and Leaves were paid all monies due to them shortly before the company went into insolvent liquidation and was paid cash on delivery of items delivered to the company just one month prior to the onset of insolvency;

- (3) The creditor being a key supplier of the company's was able to coerce the company into complying with its terms less it ceased trading with the company; and
- (4) The preference was given within a month of the commencement of liquidation of the company

**Commented [DJ15]: 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 and not s 239 applies.

**\* End of Assessment \***