



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: 37 OUT OF 50

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

Commented [DJ2]: 10 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.

- (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 [DJ3]: 9 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) In general, defrauding transactions can be attacked by the person who was defrauded. Should the company be under a Company Voluntary Arrangement, the supervisor of the Company Voluntary Arrangement may bring the action or the person who was defrauded may bring the action. Should the company be under administration or winding up, the administrator, liquidator, or official receiver may bring the action. In this case, the person who was defrauded requires leave of the court to bring the action.

ii) A liquidator or administrator must report directors who are not complying with their duties, but the secretary of state is the one who decides to bring an action.

iii) The liquidator may bring the action. If the liquidator does not have funds available to take action, section 246ZB allows the liquidator to find a third party who is willing to fund and conduct the action.

Commented [JL4]: This section refers to administration and as such administrator is the correct answer.

Commented [DJ5]: 4

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.

As per Rule 15.3 of the Insolvency Rules 2016, the five qualifying decision procedures are:

- i) correspondence
- ii) electronic voting
- iii) virtual meetings
- iv) physical meetings
- v) any other decision making procedure whereby all creditors who are entitled to participate in decision making are able to participate equally

-Rule 15.3 on the Insolvency Rules 2016

Commented [DJ6]: 5

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

Commented [DJ7]: 15 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, under sections 233 and 233B of the Act. Under 233, certain critical suppliers, such as utilities and communication providers, are obligated to maintain supply even in an insolvency proceeding. The supplier cannot terminate the contract or make it a condition of service that arrears are paid or altered payments are required under 233 and 233A. However, they can ask the administrator to personally guarantee the costs of the supplies going forward.

Under 233B, the type of suppliers who cannot terminate their contracts under insolvency proceedings was extended to most suppliers. The supplier cannot terminate or change the contract, cannot charge increased prices, and cannot require the payment of arrears for continued delivery.

The only remedy for a supplier is to have the contract terminated with consent of the administrator or via court order if the supplier is under undue hardship.

Hence, the administrator can require suppliers to continue supplying goods during the administration in almost all cases.

Commented [DJ8]: 6

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.

Secured creditors have the right to retain their secured assets and as such cannot be sold by the liquidator. However, a floating charge holder may choose to allow the liquidator to sell its security. In this case, the floating charge holder would have a priority to the funds realized from the sale of their secured assets subject to the liquidator's fees and expenses as under section 115 and preferential creditors as discussed below.

In general, the liquidator's fees and expenses as well as other expenses incurred in the winding up proceedings rank first in priority.

The next priority goes to ordinary preferential debts and then secondary preferential debts. Preferential debts include certain outstanding wages and vacation pay for employees, certain outstanding contributions to employee's pension plans, and certain outstanding levies and taxes. Each creditor in the class ranks equally and receives a pro rata share of the available distribution.

Then floating charge holders can be paid subject to a prescribed part being left for the unsecured creditors.

Next, the unsecured creditors are paid. Note that if a floating charge holder has an unsecured debt following distribution of the secured assets, they are not entitled to participate in a distribution to unsecured creditors unless more than the prescribed part is distributed.

Shareholders are paid last should funds be available following the payment of all debts with interest.

Commented [DJ9]: 9

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

Commented [DJ10]: 3 out of 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 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;

If the floating charge was advanced on previous funds and not for new funding, the floating charge can be attacked because it occurred within a year of the winding up order if the company was unable to pay its debts at the time of the charge. The charge appears to have been given only to prevent Stercus from demanding payment of its loan. Hence, no new funds were granted to the company.

Hence, the liquidator can attack the floating charge and invalidate it under section 245. If successful, Stercus would still have their debt, but it would no longer be secured by the floating charge. This would improve the position of other unsecured creditors.

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

This was a sale to director within 6 months of liquidation for apparent undervalue (purchased for £25,000 only a year prior and sold for £10,000).

The liquidator can attack the transaction as a transaction at undervalue if it can show that the transaction was at undervalue and that the company was attempting to put assets out of reach or prejudice the interests of creditors. Note there is no restriction on the time when the transaction occurred unlike in other jurisdictions.

The first point can probably be shown. The second point is more cumbersome as the company can argue it made the transaction simply to shore up its cash flow problems and not to hide assets or prejudice creditors. The liquidator would need to determine its chances of success prior to attacking the possible transfer at undervalue.

Question 4.3 [maximum 4 marks]

Commented [DJ11]: Various elements and specific references to requirements of 245 missing.
2

Commented [JL12]: ?

Commented [JL13]: Not correct.

Commented [DJ14]: Transaction at an undervalue and preference confused.
1

The payments to Beans and Leaves Ltd.

Once in the insolvency proceedings, Beans and Leaves Ltd. is not entitled to terminate their supply or change the terms of their contract or demand outstanding arrears under section 233B.

However, this demand was prior to the insolvency proceeding. Beans and Leaves Ltd. is a critical supplier and thus, the company had limited options in dealing with their demand.

Given that the payment of arrears occurred within 6 months of the insolvency proceedings, the liquidator can attack the payment of arrears as a preference under section 239. Beans and Leaves Ltd. was a creditor whose position improved due to the arrears being paid. If the arrears had not been paid, Beans would have an unsecured claim in the insolvency for the arrears and would only share in a pro rata basis of remaining funds and thus may be paid little to none of its arrears. The unsure aspect for the liquidator would be to show that the company intended to improve Beans' position. In this case, the company was simply trying to ensure a critical supplier continued providing necessary goods. And thus, the company could easily argue it had no intent to give Beans a preference by paying the arrears, but was meeting the conditions necessary to keep a critical supplier. Given the facts, it is unlikely the liquidator would be successful in arguing a preference in this case and voiding the [transaction](#).

*** End of Assessment ***

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.