



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**.

Commented [DB1]: Please read and follow the instructions – I had to populate the footer for you!

ANSWER ALL THE QUESTIONS

Commented [DJ2]: TOTAL: 33.5 OUT OF 50

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

Commented [DJ3]: 9 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

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]: 8 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) Official receiver, liquidator, administrator, victim of transaction (such as creditor), supervisor of the CVA
- (ii) The Secretary of State
- (iii) Administrator and liquidator

Commented [DJ6]: 3
i) Or the victim
iii) This section applies to administration – liquidator is therefore incorrect.

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.

- 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 to participate equally in making the decision

Commented [DJ7]: 5

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

Commented [DJ8]: 10 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?

The commencement of an administration procedure and the appointment of the administrator does not automatically terminate the contracts with the counterparties. Under Section 233 of the Act (as defined in the Guidance text for module 3B), the administrator can retain the supply of gas, electricity, water and communication services (goods and services such as sale terminals, computer software, technical assistance, etc). Under section 233A, a supplier of such services cannot invoke an insolvency-related provision in the contract to terminate it. Section 233B restricts termination to all suppliers (not just utility, communications and IT as section 233A), with a limited amount of exceptions to this provision, for example banks and insurers.

Commented [JL9]: Supplier may request a personal guarantee from the administrator

Commented [JL10]: Or do "any other thing"

Commented [DJ11]: 4

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.

1. **Fixed charge holders** - generally banks and other asset-based lenders that hold a fixed charge over the asset in question. On the insolvency of the company, the lender is entitled to recover possession of the asset, with the fixed charge being registered with Companies House.

2. **Liquidators' fees and expenses** - expenses that are properly chargeable or incurred by the liquidator in carrying out the functions conferred on the liquidator by the court.
3. **Preferred creditors** - include employees with holiday pay and outstanding wages. (non-preferential employee payments, which are not included in this category: notice pay and redundancy claims, those are unsecured claims).
4. **Floating charge holders** - floating charges are held over an asset class. Those could include stock, work in progress, and raw materials. Registered with Companies House by the lender - when a company enters insolvency the floating charge becomes a fixed charge.
5. **Unsecured creditors** – creditors who do not have a security interest in the debtor's assets, include suppliers, customers, contractors, and clients of the insolvent company. Must make a claim for repayment of their debt.
6. **Interest** - interest incurred on all unsecured debts post-liquidation.
7. **Shareholders** – surplus goes to the shareholders of the debtor and is divided in accordance with the rights attached to the shares. Shareholders rarely receive a return.

Commented [JL12]: More detail on ordinary and secondary preferred debts

Commented [JL13]: Subject to s 176A

Commented [DJ14]: 6

Commented [DJ15]: 6.5 out of 15

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.

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;

The floating charge in favour of Stercus Bank PLC can potentially be set aside.

Under section 245 of the Insolvency Act 1986, reviewable transactions - transactions that take place before a company goes into liquidation, can be set aside. A floating charge created in the year before a company's insolvency is valid only to the extent of new consideration. A floating charge granted by the company to secure a loan to the company that was previously unsecured can be set aside.

In the present case the floating charge was given in exchange only for prior consideration, to secure loans previously made. It was made at a relevant time, within one year before the onset of insolvency (section 245(2)).

However, it must be noted that section 245 in relation to floating charges does not apply in relation to assets that are financial collateral held under financial collateral arrangements (for example, company shares).

Thus, if the exception does not apply, the floating charge in favour of Stercus Bank PLC can be set aside.

Commented [JL16]: not any other type of security.

Commented [JL17]: Connected party presumption.

Commented [DJ18]: Some elements missing

3

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The sale of the coffee roasting machines can potentially be recognized as a transaction at an undervalue, and, thus, the court will restore the situation to the state as if the transaction has never taken place.

A liquidator may apply to the court for an order avoiding any transaction made at an undervalue in the two years before the liquidation if the company was then (or as a result of the transaction became) unable to pay its debts as they fell due (section 238, Insolvency Act 1986). Transactions at an undervalue are transactions in which a significantly reduced value is placed on the asset.

Inability to pay debts at the relevant time is rebuttably presumed if the transaction is with a connected person (section 240(2), Insolvency Act 1986).

In the present case the transaction was made approximately 4 months before a creditor's winding up petition was issued and approximately 6 months before the compulsory liquidation. The transaction was for the sale of the assets in an amount of 40% of its initial price. The assets were relatively new and sold to the connected person (the director).

Thus, it is possible that upon the application of the liquidator the court will find that the sale of coffee machines was at undervalue and will void this transaction, restoring the situation, which existed prior to sale.

Commented [JL19]: What is the relevant time? – 2 years ending with the onset of insolvency.

Commented [JL20]: How could this be done?

Commented [DJ21]: Are there any defences?

3.5

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

The liquidator will likely be not able to take an action regarding the payments to Beans and Leaves Ltd.

Under section 233B(7) of the Act, the supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.

Under section 233B(2)(e), a company becomes subject to a relevant insolvency procedure when the company goes into liquidation.

In the present case the Company went into liquidation in October 2021. However, a month prior to that Beans and Leaves Ltd. Demanded all the payments due to it (£8,000) and demanded cash payments in order to continue the supply. This was before the liquidation has started (we do not have any information to the contrary).

Thus, the liquidator will not be able to take an action regarding the payments to Beans and Leaves Ltd.

Commented [DJ22]: 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 applies.

*** End of Assessment ***