



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 [DJ1]: TOTAL: 20 OUT OF 50

Unfortunately, your answers are often too light touch. Where you had been on the right track more information could have gotten you to a pass. Read the questions more carefully in future and ensure that you deal with what is being asked of you.

Commented [DJ2]: 7 out of 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.

Commented [DJ3]: c

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 [DJ4]: 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 [DJ5]: 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 [DJ6]: 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) Under section 423 of the Act 1986, several parties have the right to bring an action designed to defraud creditors: (a) the official receiver, the liquidator, the administrator and any victim of the transaction such as a creditor, where the company is being wound up or is in administration; (b) the supervisor of the CVA or any victim of the transaction, where a victim is bound by a CVA; and (c) a victim of the transaction, in other cases.

(ii) under section 6 of the Company Directors Disqualification Act 1986, the court may bring an action. It also can be brought by the Secretary of State accepting a disqualification undertaking, which will have the same consequences.

Commented [DJ7]: 4
What about iii)?

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 approval of the administrator's proposals depends on the decision of the creditors, and it can be made using either the deemed consent procedure or a qualifying decision procedure.

In some cases, when deemed consent cannot be used or the office-holder decides not to use it, five qualifying decision procedures listed in the Rules can be made: (a) correspondence; (b) electronic voting; (c) virtual meeting; (d) physical meeting; or (e) any other decision that enables all creditors legally included to participate equally.

For most decisions, a majority in value of unsecured creditors in favour of any decision is sufficient for it to be passed.

Commented [DJ8]: 5

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

Commented [DJ9]: 4 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 a winding up does not affect the company's ownership of its property but its powers of dealing with that property are limited significantly. Section 127 of the Act avoids any disposition of property of the company made after the commencement of winding up, unless the court orders.

However, a liquidator has a power only to continue the business to the extent that it is needed for a beneficial winding up (for example, the liquidator may complete partly manufactured goods with a view to selling them) and the court has a discretionary power to declare that dispositions can happen in some cases.

Commented [DJ10]: This question required an explanation of the application of s 233,233A and 233B and ipso facto clauses in general.
0

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 payment is (i) holders of fixed charges will be the first ones to be paid, (ii) expenses of the procedure (including the remuneration of the administrator), (iii) preferential creditors (limited to modest claims from employees and some taxation debts owed to the Government), (iv) floating charges, (v) unsecured creditors (those without the benefit of any security or title to assets).

Commented [JL11]: This is a list and not an explanation of the priority or the rights of creditors.

If the company is found ultimately to be solvent, in that there is a surplus after payment of all its liabilities, that surplus will be returned the members according to their rights under the company's constitution.

There are other types of creditors like the ones who have funded a company's acquisition of equipment or vehicles in the form of a Hire Purchase or Retention of Title agreement, where the creditor retains legal ownership of the asset until it is fully paid for.

And it is also common for companies who have book debts payable in the future to assign (sell) those book debts to a Receivables Financier, sometimes referred to as a debt factor or invoice discounter, for an amount less than their value, ensuring that the company has available cash flow to keep its business going.

Both creditors will usually own the assets in cases of insolvency and will usually take possession of, and realise, those assets outside any formal insolvency procedure.

Commented [JL12]: Not relevant to the question

As it is usual in Laws regarding bankruptcy around the world, the insolvency regime gives primacy to secured creditors. However, unsecured creditors at least the right to vote in some situations like the administrator's proposal.

Commented [DJ13]: 4
Had you elaborated on the rights of the creditors you listed, you would have received full marks for the question.

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

Commented [DJ14]: 0 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;

There is no problem regarding this action, considering that the debenture/floating charge was granted in favour of Stercus Bank plc in February 2021, 8 months before the creditor's winding up petition (October 2021) and the deadline for a transaction be actionable is 2 years before the petition.

This kind of security floats above a class of assets until such time that it becomes fixed in nature. Until a floating charge crystallises, the assets subject to it may be dealt with by the company debtor in the normal course of business without the consent for each dealing from the holder of the floating charge.

Now in liquidation, it's only important to note that the administrator needs to describe this credit on the correct priority order of payment, which is the last **one**.

Commented [DJ15]: This answer shows very limited knowledge and understanding of s.245 and the avoidance of floating charges.
0

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

There is no problem regarding the sale of the coffee roasting machines because the sale occurred before the creditor's winding up petition, when the company was still trying to maintain its **activities**.

Commented [DJ16]: 0
Question pertains to transactions at an undervalue

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

There is no problem regarding these payments, considering that Beans and Leaves Ltd is a supplier and a directly connected part of the activities of the **Company**.

Commented [DJ17]: 0
Question pertains to section 127 IA and disposition of property

*** End of Assessment ***