



**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 do me the courtesy of reading and following the instructions- I had to do this because you did not!

**ANSWER ALL THE QUESTIONS**

Commented [DJ2]: TOTAL: 39 OUT OF 50

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

Commented [DJ3]: 6 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.

Commented [DJ4]: d

**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.

Commented [DJ5]: 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.

- (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 [DJ6]: 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.

Commented [DJ7]: d

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

Commented [DJ8]: 10 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?

[Type your answer here]

Section 423 of the Insolvency Act 1986

Section 423 of the Insolvency Act 1986 ("the Act") relates to transactions defrauding creditors. An action under section 423 of the Act can be brought by:

- (i) Where the company is being wound up or is in administration:
  - a. the official receiver;
  - b. the liquidator;
  - c. the administrator; or
  - d. with the leave of the court, any victim of the transaction such as a creditor.
- (ii) Where a victim is bound by a Company Voluntary Arrangement ("CVA"):
  - a. the supervisor of the CVA; or
  - b. any victim of the transaction (whether bound by the VA or not).
- (iii) In any other case, by a victim of the transaction.

Section 6 of the Company Directors Disqualification Act 1986

A liquidator and administrator has a statutory duty to report any directors who may be "unfit" to be directors under the Company Directors Disqualification Act 1986 ("CDDA"). Based on the liquidators or administrators report, the Secretary of State may decide to take action against the directors. Therefore, it is the Secretary of State who can bring an action under section 6 of the CDDA.

Section 246ZB of the Insolvency Act 1986

Section 246ZB of the Act relates to wrongful trading, specifically wrongful trading in the context of an administration. Therefore, an action under section 246ZB can be brought by an administrator.

Commented [DJ9]: 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.

[Type your answer here]

Pursuant to the Insolvency Rules 2016 ("the Rules"), r 15.3, the five (5) qualifying decision making procedures under section 246ZE and 379ZA of the Act are:

- (i) Correspondence;
- (ii) Electronic voting;
- (iii) Virtual meeting;
- (iv) Physical meeting; or
- (v) Any other decision making procedure which enables all creditors who are entitled to participate in the decision making of the decision to participate equally.

Commented [DJ10]: 5

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

Commented [DJ11]: 13 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?

[Type your answer here]

The appointment of an administrator does not automatically terminate a company's executory contracts.

Pursuant to section 233 of the Act, the administrator can obtain and retain certain essential supplies such as gas, water, electricity and communications. The specific services are outlined in section 233(3) of the Act. Additionally, section 233(2) of the Act: (i) permits a supplier to stipulate that the administrator must personally guarantee payment of charges for the period of the administration; however, pursuant to (ii) the supplier cannot make it a condition of giving the supply, or do anything which has the effect of making it a condition of giving the supply, that any outstanding charges in receipt of the supply given to the company before the administration date are paid.

With reference to section 233A of the Act a supplier is generally unable to rely upon a "insolvency related terms" in a contract of supply which would otherwise allow the supplier to: (i) terminate the supply; (ii) alter the supply terms: or (iii) compel higher payment terms for continued supply.

Section 233B of the Act prohibits clauses which allow the supplier to terminate or "do any other thing" in relation to the executory contract if the company enters administration. Therefore, section 233B prevents suppliers from terminating a supply on the company's insolvency but also prevents suppliers from making it a condition of a continued supply that pre-insolvency arrears paid and from making other changes to the contract such as increasing prices.

Under section 233B a contract may still be terminated by a supplier where (i) the administrator consents; or (ii) on application to the court, the court is satisfied that the continuation of the contract would cause the supplier hardship, and grants permission for termination.

Accordingly, so long as continuation of the contract does not cause the supplier hardship, the administrator can require a supplier to continue to provide goods and services throughout the administration. However, the supplier may require the administrator to provide a personal guarantee for any potential unpaid supplies for the administration period.

Commented [DJ12]: 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.

[Type your answer here]

The order of priority of payments in a liquidation are as follows:

1. Section 174A of the Act – Moratorium debts etc: priority.
  - a. In a scenario where proceedings for the winding up of a company begun after the end of the period of 12 weeks beginning with the day after the end of any

- moratorium of a company, the following are payable out of the company's assets (in the priority shown) in preference to all other claims:
- i. Any prescribed fees or expenses of the official receiver acting in any capacity in relation not the company; and
  - ii. Moratorium debts and priority pre-moratorium debts.
2. Section 115 of the Act - expenses of voluntary winding up:
- a. After the payment of any liabilities to which section 174A applies, the following expense properly incurred in the winding up are paid in priority of all other claims in the following order (rules 6.42 and 7.108 of the Rules):
    - i. Expenses that are properly incurred by the liquidator in preserving, realising or getting in any assets of the company (including the conduct of any legal proceedings);
    - ii. The cost of any security provided by the liquidator;
    - iii. An amount payable to a person to assist in the preparation of a statement of affairs or accounts;
    - iv. Any necessary disbursements by the liquidator in the course of the winding up (including any expenses incurred by members of the liquidation committee);
    - v. The remuneration of any person who has been employed by the liquidator to perform any services to the company;
    - vi. The remuneration of the liquidator;
    - vii. The amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company; and
    - viii. Any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.
3. Section 386, 387 and Schedule 6: section 175 of the Act – preferential creditors:
- a. Once the expenses of the liquidation have been paid in full, the assets of the company are then used to pay preferential creditors. Preferential creditors are paid in priority to holders of floating charges and unsecured creditors.
  - b. There are two classes of preferential debts, ordinary and secondary. Ordinary preferential debts are paid before secondary preferential debts.
  - c. Schedule 6 of the Act outlines debts which are considered to be preferential debts.
4. Section 176ZA of the Act - Floating charge holders:
- a. After preferential creditors have been paid, the next creditor to be paid are any floating charge holder. If there is more than one floating charge holder, priority between them is generally decided by which floating charge was created first.
  - b. Before the liquidator can make any payment for a floating charge they must consider the application of section 176A of the Act which applies to a company with a floating charge created on or after 15 September 2003 and the company has gone into liquidation:
    - i. If section 176A applies, the liquidators under a duty to make a "prescribed part" of the company's net property available for the satisfaction of unsecured creditors and must not distribute any of the "prescribed part" to a floating charge holder except insofar that it is in excess of the amount required to satisfy all the unsecured debts.
    - ii. Where the Company's net property does not exceed £10,000 (the "prescribed minimum"), the prescribed part is 50% of that property. Where the property is less than the prescribed minimum and the liquidator thinks that a distribution to unsecured creditors would be disproportionate to the benefits, then the duty to make a contribution of the prescribed part does not apply.
    - iii. Where the company's property exceeds £10,000, the prescribed part is the sum of 50% of the first £10,000 in value, plus 20% of the excess in



- value above the £10,000, subject to a maximum amount of the prescribed part of £800,000.
- iv. A floating charge holder, who has an outstanding unsecured balance owing to it, is not permitted to participate in the distribution of the prescribed part.
5. Section 176A of the Act - Unsecured creditors:
- a. Creditors with no security, often ordinary trade-creditors, are paid out last in the statutory order.
6. Shareholders
- a. If there are sufficient funds to pay all the creditors, and interest on their debts, any surplus is distributed amongst the shareholders according to the company's constitution.

Commented [DJ13]: 7  
Fixed charge holders?

Commented [DJ14]: 10 out of 15

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

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;

[Type your answer here]

The Company entered liquidation on 23 December 2021. The debenture, containing a floating charge over the whole of the Company's undertaking, was granted in February 2021.

As far as the facts of the question are aware, Stercus Bank plc ("Sterkus") is not connected to the Company. Therefore the time period in which the floating charge may be considered invalid is within the period 12 months prior to the onset of insolvency. The date the floating charge was granted is within the 12 month period pursuant to section 245 of the Act.

Pursuant to section 245 of the Act, the Liquidator then has to consider whether the Company was either: (i) able to pay its debts when the floating charge was granted (pursuant to section 123 of the Act); or (ii) became unable to do so in consequence of the transaction. Given that the floating charge was granted to avoid the bank demanding repayment of the Company's loans, that is a clear indicator that the Company could not repay its debts at that point in time.

Finally, the liquidator must confirm that the no 'new' consideration was provided for the charge. The facts of the question do not indicate that any new consideration was given in favour of the floating charge which was granted in February 2021.

Accordingly, as the Company is in liquidation, the liquidator may render the floating charge as invalid.

If the Sterkus' floating charge is deemed to be invalid, and they have no fixed charge over the five coffee machines, they will rank as an ordinary unsecured creditor in the liquidation of the Company.

Commented [DJ15]: 5

#### Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

[Type your answer here]

The sale of the five coffee machines to Ms Ann Young ("the Director") of the Company may be considered an undervalued transaction pursuant to section 238 of the Act.

The Director is considered a connected person pursuant to section 249 of the Act. Section 240 of the Act defines "relevant time" under section 238 of the Act, in the case of a transaction at an undervalue to a person who is connected with the Company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency. The onset of insolvency is also described under section 238 of the Act and in this scenario is the winding up order was filed on 14 October 2021. The transaction occurred in July 2021 and therefore is within the statutory period.

The requirements of section 238 of the Act are that the liquidator may attack the transaction if the Company:

- (i) Made a gift to another person; or
- (ii) Entered into a transaction with another person on terms that provided for the company to receive no consideration; or

- (iii) Entered into a transaction with another person for a consideration, in money or money's worth, was, at the date of the transaction, significantly less than the value, in money or money's worth, of the consideration provided by the Company.

In applying section 238 the liquidator must consider whether the transaction was actually made undervalue. The coffee machines were purchased for £25,000 one year before they were sold to the director for £10,000. The liquidator would need to confirm the value of the five coffee machines as at the transaction date, preferably via an independent valuer, to confirm the transaction is at an undervalue.

Additionally, the liquidator must prove that the Company was unable to pay its debts as they fell due (pursuant to section 123 of the Act), or, became unable to pay its debts when as a consequence of the transaction. The Company was unable to pay its debts to the bank in February 2021 and sold the coffee machines to assist with cash flow. Therefore it is likely the Company was unable to pay its debts at the time of the transaction in July 2021.

If the liquidator does lodge a successful claim pursuant to section 238 of the Act, the director is entitled to a good faith defence. If the director can prove that the coffee machines were sold to her in good faith and for the purpose of carrying on the business of the Company and at the time of the transaction there were reasonable grounds to believe the transaction would benefit the Company, the Court may choose not to make an Order.

Commented [DJ16]: Remedies?

5

#### Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

[Type your answer here]

The payments made to Beans and Leaves Ltd ("B&L") may be considered a preference pursuant to section 239 of the Act.

B&L is not connected to the Company under the definition of section 249 of the Act. Accordingly, the period in which the liquidator may make a preference claim under section 239 of the Act is six months. The first payment in the amount of £8,000 was made to B&L one month before the Company went into liquidation. The £3,000 cash on delivery transactions were also made within a period one month prior to the date the Company went into liquidation. Therefore, the transactions are all within the six month statutory time period.

In order for a transaction to be considered a preference under section 239 of the Act, the liquidator must show that:

- (i) B&L, at the time of the transaction, was a creditor of the Company;
- (ii) Something was done by the Company to put B&L in a better position, than other creditors of the Company in the same creditor class now that the Company is in liquidation, than the position B&L would have been had the payments not been received;
- (iii) The Company, in giving the preference, had a desire to provide a preference to B&L; and
- (iv) The preference was given at a relevant time.

In the case of the Company and B&L:

- (i) For the £8,000 paid by the Company to B&L as the amount related to outstanding invoices, B&L was a creditor at the time of the payment. The £8,000 was full

payment of the Company's liabilities to the Company. The remaining £3,000 was paid on a cash on delivery basis. Therefore, B&L would not be considered a creditor of the Company for these payments and they could not be pursued by the Liquidator pursuant to section 239 of the Act.

- (ii) By paying B&L the £8,000, the Company put B&L in a better position than they would be had they claimed as an ordinary unsecured creditor in the liquidation.
- (iii) Given the facts, it would be difficult to prove that the Company had the intention to give B&L preference. In the case of *Re MC Bacon Ltd*, the judge found that where a company is entirely dependent on the creditor (a bank in the subject case), for continued trading and to prevent going into liquidation; a company would be motivated not by a desire to prefer the creditor but a desire to continue trading. B&L was a key supplier of the Company and threatened to cease supply if their debt was not paid. Accordingly, the payment made by the Company was influenced by commercial considerations and an attempt to ensure that the Company continued trading. It could therefore be concluded that there is no desire to prefer.
- (iv) The time period for a preference is discussed above.

Given the facts of the case, it would be difficult for the liquidator to pursue a preference claim pursuant to section 239 of the Act.

**\* End of Assessment \***

**Commented [DJ17]: 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.