



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.**
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- 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: 41 OUT OF 50
Well Done!

Commented [DJ2]: 10 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.

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]: 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?

Section 423 of the Insolvency Act 1986

An action under Section 423 of the Insolvency Act can be brought by:

- The official receiver, liquidator, administrator and any victim of the transaction such as a creditor (with the leave of the court) in case the company is being wound-up or is in administration;
- In cases where the victim is bound by a company voluntary arrangement (CVA), the supervisor of the CVA or any victim of the transaction (even if they were not bound by CVA); or
- In any other case, by a victim of the transaction.

Section 6 of the Company Directors Disqualification Act 1986

An action under Section 6 of the Company Directors Disqualification Act 1986 can be brought by (i) the Secretary of State or (ii) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being or has been wound up, by the official receiver.

Section 246ZB of the Insolvency Act 1986

An action under Section 246ZB of the Insolvency Act 1986 can be brought by an administrator.

Commented [DJ4]: 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.

According to Rule 15.3 of the Insolvency Rules 2016, the five qualifying decision procedures by which creditors may make decisions in the context of an insolvent company are:

- 1) Correspondence;
- 2) Electronic voting;
- 3) Virtual meeting;
- 4) Physical meeting; and
- 5) Any other decision-making procedure which allows all creditors entitled to participate in the decision-making to participate equally.

Commented [DJ5]: 5

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

Commented [DJ6]: 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?

Yes, an administrator can require suppliers of goods and services to continue to supply those goods and services during the administration in accordance with Section 233, 233A and 233B of the Insolvency Act, 1986.

While Section 233 and 233A deal with protections in relation to essential supplies such as gas, water, electricity and communication services, Section 233B has a broader scope and provides protections in relation to all suppliers (barring exceptions for insurers, banks, clearing houses, among others).

Section 233 provides that suppliers of essential supplies cannot require payment of outstanding dues for continued or new supply to the company undergoing administration. However, such supplier may stipulate a condition that the administrator personally guarantee the payment of charges in relation to that supply. Additionally, according to Section 233A, suppliers of essential supplies cannot rely on 'insolvency-related terms' in their contract with the company undergoing administration, which term would have otherwise allowed the supplier to terminate the supply, change the terms of supply or require higher payments for continued supply.

Section 233B extends the protection against termination to all suppliers (barring certain exceptions such as insurers, banks, among others). According to Section 233B, a term of a contract that allows the supplier of goods and services to terminate or do any other thing if the company enters an insolvency procedure like administration is of no effect. Therefore, the supplier is barred from relying on contractual terms to terminate (i.e., make any other change to the terms of the contract like increasing prices) or making it a condition that pre-administration arrears be paid for continued supply to company undergoing administration.

Importantly, a contract may still be terminated by the supplier if:

- The administrator consents to such terminations;
- On application to the court, the court is convinced that continuation of the contract would cause the supplier hardship and therefore permits termination.

Commented [DJ7]: 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.

The order of priority of payments in a liquidation is:

1) Liquidation expenses (including the remuneration of the liquidator)

According to Section 115 of the Act, several winding-up related expenses are paid out in priority before the company's preferential, floating charge holder and unsecured creditors. The main expenses and the order of priority in which they are paid are as follows:

- a) Expenses properly incurred by the liquidator in preserving, realising or getting in any of the assets of the company (including for the conduct of legal proceedings);
- b) Cost of any security provided by the liquidator
- c) Amount payable to any person to assist in preparation of statement of affairs or accounts
- d) Necessary disbursements by the liquidator in the course of winding-up (including expenses incurred by members of the liquidation committee)
- e) Remuneration of any person employed by the liquidator to perform any services for the company
- f) Remuneration of the liquidator
- g) Any corporate tax amounts on chargeable gains accruing on the realisation of any asset of the company; and
- h) Any other expense properly chargeable by the liquidator in carrying out the liquidator's functions in winding-up.

- 2) **Preferential creditors** (defined in Section 386 and 387 and schedule 6: Section 175)
Preferential creditors are paid out before floating charge holders and unsecured creditors. The category of preferential creditors includes limited claims of employees, some taxation liabilities and some other type of liabilities. There are two classes of preferential debts, ordinary and secondary. Ordinary preferential debts are paid before secondary preferential debts. Preferential debts in their respective classes rank equally.

The following debts are classified as ordinary preferential debt:

- a) Any sum owed on account of employee's contribution to an occupational pension scheme, being contributions deducted from the employee's earnings paid in the period of 4 months prior to commencement of the winding-up;
- b) Any sum owed by the company on account of an employer's contribution to an occupational pension scheme in the period of 12 months before winding-up commencement;
- c) Remuneration owed by the company to a person who has or is employed by the company and is payable in respect of whole or part of the period of 4 months prior to winding-up commencement up to a maximum of 800 pounds;
- d) Amounts owed by the company by way of accrued holiday remuneration in respect of any period of employment before winding-up. Any remuneration payable by the company to a person in relation to a period of holiday or absence from work through sickness or other good cause, is deemed to be wages;
- e) Claims for money advanced to pay wages or holiday remuneration. This provision protects lenders who advanced monies to the debtor to pay its employees.
- f) Levies on production of coal and steel
- g) Claims for so much of any amount which is ordered to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985 and is ordered in respect of the company's default under that Act.

Secondary preferential debts, defined under Section 286 of the Insolvency Act relate to payments made to those with deposits, where the financial institution holding the deposit is insolvent and compensation payments have been made under the Financial Services Compensation Scheme (FSCS) to those depositors. The following debts are classified as secondary preferential debt which are paid after the ordinary preferential debt:

- a) Portion of any amount owed by the company in respect of any eligible deposit which does not exceed the compensation that would be payable under the FSCS to persons to whom the amount is owed.
- b) Portion of any amount owed by the company to one or more eligible persons in relation to an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under FSCS to that person.
- c) Amount owed by a company to one or more eligible persons in respect of a deposit that – (1) was made through a non-UK branch of a credit institution authorised by a competent authority of UK (2) would have been an eligible deposit if it had been made through a UK branch of that credit institution.

In addition to these, there is a crown preference for certain debts owed to the UK taxation authority.

- d) PAYE income tax deductions, national insurance deductions, VAT payments, construction industry schemes and student loan repayments.

- 3) **Floating charge holders** (subject to Section 176A)
After the preferential creditors, floating charge holders are paid. In case of more than one floating charge holder, priority is given to the floating charge which was created first.

Prior to any payment to a floating charge holder, the liquidator needs to check if Section 176A applies, which applies if a floating charge was created on or after 15 September 2003 and the company goes into liquidation.

The liquidator has to set aside a "prescribed part" of the company's net property (i.e., amount available for distribution after the liquidation expenses and preferential debts have been paid) available for satisfaction of unsecured debts and cannot distribute any of this prescribed part to a floating charge holder unless it is in excess of amount required to satisfy unsecured debt. If the net property is less than £10,000 then 50% is the prescribed part, but in such a case if the liquidator thinks that making the distribution of the prescribed part to the unsecured creditor is disproportionate to the benefits then the duty to distribute the prescribed part does not apply. If the company's net property is more than £10,000, then the prescribed part is a sum of 50% of the initial £10,000 plus 20% of the excess over £10,000, with an overall cap of £800,000. A floating charge holder or a secured creditor who also has some unsecured debt is not entitled to distributions from the prescribed part.

4) Unsecured creditors

Unsecured creditors who are usually trade creditors with no security fall below secured, preferential and floating charge holders in the order of priority. Often, there is nothing left to pay the unsecured creditors after those ahead of them in priority are paid out.

5) Shareholders

If all creditors have been paid (including interest on their debts), then the surplus amount can be distributed amongst the shareholders according to the company's constitution which generally permits pro rate distribution according their respective [shareholdings](#).

Commented [DJ8]: Fixed charge holders?
7

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

Commented [DJ9]: 8 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;

The potential actions that the liquidator can take in relation to the floating charge created in favour of Stercus Bank plc are:

- **Wrongful trading by directors of the Company under Section 214**

The liquidator may proceed against the persons who were directors of the Company at the time of creation of the floating charge under Section 214 of the Insolvency Act 1986. A director can be held liable for wrongful trading if it can be shown that he should have known or ought to have concluded that there was no reasonable prospect that the company would avoid insolvent liquidation.

From the facts, it can be shown that the directors of the Company, approved the issuance of the debentures and creation of the floating charge to avoid Stercus Bank plc from demanding repayment of its loan, indicating that they were aware that company would be unable to meet their payment obligation and that there was no reasonable prospect that insolvent liquidation could be avoided.

In their defence, the directors can argue that they took every action to minimize loss to the creditors by avoiding a scenario where the Company may have defaulted on a repayment demand. They may also argue that that the floating charge was created in February 2021 much before the creditor's winding up petition in October 2021.

In fact, situations where the company continues to trade and increase its net liabilities, once the directors knew or ought to have know that there was no reasonable prospect of avoiding insolvent liquidation, then the court may order the director to compensate the company for an amount which is in line with such increase in its liabilities.

- **Misfeasance proceedings against the directors of the Company under Section 212**

The liquidator may initiate a misfeasance action against the directors of the Company under Section 212 of the Insolvency Act 1986 for the creation of a floating charge in favour of Stercus Bank plc. The liquidator may argue that at the time of creation of such charge, the Company was aware that it was facing the prospect of insolvency and that it would have been unable to repay the creditor had it made a payment demand. Therefore, the liquidator can argue that the directors were guilty of misfeasance.

- **Floating charge avoidance**

Section 245 of the Insolvency Act, 1986 allows invalidation of floating charges created shortly before the company entered into a formal insolvency procedure, except to the extent that new consideration is provided for the charge. The relevant time for action under this

provision is two years prior to onset of insolvency in case the party in whose favour the floating charge is created is connected with the company and twelve months for unconnected parties.

Commented [JL10]: Application?

The liquidator may initiate action under this provision to attack the floating charge created in favour of Stercus Bank plc in February 2021 (which is within the 12 months look back period for such actions). If caught under Section 245, then save to the extent of any new consideration provided by Stercus Bank, the charge will be rendered invalid.

- **Preferences under Section 239**

In order to bring an application for preferences under Section 239 of the Insolvency Act, 1986, the following needs to be shown:

- The person who has allegedly been preferred is a creditor of the company;
- Something was done to put such person in a better position than it would have been if the company went into insolvency liquidation if such act had not been done
- The company while giving the preference was influenced by a desire to lead to the abovementioned effect
- The transaction took place in the period of two years prior to onset of insolvency if in favour of a connected person or in the period of six months prior to onset of insolvency if in favour of unconnected person.

At the time of creation of the floating charge, Stercus Bank plc, was already a creditor. However, it will be difficult for the liquidator to prove that there was a desire to prefer Stercus Bank plc over other creditors. Most importantly, if Stercus Bank is not connected to the Company, then given the fact that the security was created in February 2021, it may fall outside the relevant time of 6 months prior to onset of insolvency against the Company. Therefore, it will be difficult for the liquidator to pursue a preference action under Section 239 of the Insolvency Act, 1986.

- **Transaction to defraud creditors**

The liquidator may also be able to initiate an action under Section 423 which deals with transaction defrauding creditors. In order to take action under Section 423, the following requirements must be met:

- The company entered into a transaction at an undervalue
- The company entered into the transaction with the purpose of putting the asset beyond the reach of a person who is making or may make a claim against the company.
- There are no time limits within which the transaction should have taken place.

Commented [JL11]: Was this in the facts?

Given that the consideration received by the Company and the corresponding charge created was not proportionate, the first test of the transaction being undervalued may be satisfied. The second requirement is to show that the transaction put assets of the company beyond the reach of certain creditors or prejudices the rights of certain creditors. By creation of a floating charge over the entire undertaking of the Company, the effect would be that the rights of its other creditors would be subdued on account of Stercus Bank plc being entitled to this security of a floating charge over the whole of the Company's undertaking.

Commented [DJ12]: 4

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

- **Undervalue transaction proceedings under Section 238**

Section 238 of the Insolvency Act, 1986, allows the liquidator to attack an undervalue transaction if it can be shown that:

- The company made a gift to a person or entered into a transaction where it received no consideration; or
- It entered into a transaction for a consideration which was significantly less in value in comparison to the consideration provided by the company.
- The transaction must have occurred in a period of two years prior to commencement of the liquidation
- At the time of the transaction, the company was unable to pay its debts as they fell due or became unable to pay its debts as a result of the transaction. This is presumed in case of transactions with a connected person.

The sale of the coffee roasting machines had taken place only a few months before the Company was put into compulsory liquidation and is well within the two years look back period for an undervalued transaction. The directors at the time of this transaction were arguably already aware that the company will be unable to pay its debts to its creditors since at least February 2021, when the floating charge was created in favour of Stercus Bank plc. In any case, since this was a transaction with a connected person the presumption would be that the company was insolvent unless the contrary is proved. The value of the sale of the transfer being sold for less than half its purchase price in a year, shows that the transaction was at a significantly lesser value than the actual worth/ consideration realized by the Company as a result of the transaction. Therefore, the sale of coffee roasting machines can be attacked under Section 238 and the court may grant an order restoring the position as it would have been had the transaction not taken place.

Commented [JL13]: Defences and remedies?

- **Transaction to defraud creditors under Section 423**

The liquidator may also be able to initiate an action under Section 423 which deals with transaction defrauding creditors. In order to take action under Section 423, the following requirements must be met:

- The company entered into a transaction at an undervalue
- The company entered into the transaction with the purpose of putting the asset beyond the reach of a person who is making or may make a claim against the company.
- There are no time limits within which the transaction should have taken place.

Commented [JL14]: was this in the facts?

As explained earlier the liquidator has sufficient grounds to argue that the transaction was an undervalued transaction under Section 238. By selling the assets to its director, the Company has put these assets beyond the reach of the creditors under the liquidation process and the transaction was prejudicial to the interests of the creditors.

- **Misfeasance proceedings against the directors of the Company under Section 212**

The liquidator may initiate a misfeasance action against the directors of the Company for the sale of coffee roasting machines, as they can argue that the transaction was not one for benefit of the Company and not in the interest of the creditors.

Commented [DJ15]: 4

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

- **Preference action under Section 239**

In order to bring an application for preferences under Section 239 of the Insolvency Act, 1986, the following needs to be shown:

- The person who has allegedly been preferred is a creditor of the company;

- Something was done to put such person in a better position than it would have been if the company went into insolvency liquidation if such act had not been done;
- The company while giving the preference was influenced by a desire to lead to the abovementioned effect;
- The transaction took place in the period of two years prior to onset of insolvency if in favour of a connected person or in the period of six months prior to onset of insolvency if in favour of unconnected person.

The discharge of debt or dues of Bean and Leaves Ltd. just a month before the Company was put into compulsory liquidator can be a ground for initiation of a preference action by the liquidator. The liquidator can argue that Bean and Leaves Ltd, was a creditor at the time of the transaction as it had unpaid dues, and was put in a better position than it would be entitled under the liquidation process, where it may not have been able to recover its dues as an unsecured creditor. However, the liquidator would also have to prove that there was a desire by the Company to prefer the creditor which may be difficult to prove. The directors can argue that the transaction was done to ensure continuity of operations of the Company and not with the desire to prefer the creditor.

Commented [JL16]: Relevance?

- **Disposition void unless validated under Section 127**

Under Section 127 of the Insolvency Act, 1986 avoid any disposition of property done after commencement of winding (i.e., date of presentation of the winding-up petition), unless the court orders otherwise.

The liquidator may try to bring an action for invalidation of any payments made to Beans and Leaves under Section 127, as these payments were made post the commencement of the winding up. Importantly, the court can allow certain dispositions in cases where it can be shown that the payments were necessary to ensure continued supplies to allow the company to continue to trade where such continuation of trade was in the best interest of the creditors. Therefore, it may be possible to defend the payments made to Beans and Leaves as it can be argued that the continued supply of coffee beans was essential for running the Company.

Commented [JL17]: When is the commencement date?

Commented [DJ18]: 2

*** End of Assessment ***