



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3B
THE INSOLVENCY SYSTEM OF THE UNITED KINGDOM
(ENGLAND AND WALES)

This is the **summative (formal) assessment** for **Module 3B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 3B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment3B]**. An example would be something along the following lines: 20222-514.assessment3B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6.1 If you selected Module 3B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 3B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

Commented [DJ1]: TOTAL: 34 OUT OF 50

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

Commented [DJ2]: 10 out of 10

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs:

- (a) within 10 weeks of the commencement of the administration.
- (b) **within 8 weeks of the commencement of the administration.**
- (c) within 4 weeks of the commencement of the administration.
- (d) on the day the company enters administration.

Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) **One year.**

Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.

(c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

(d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

(a) The administrator.

(b) Any secured creditor with the benefit of a qualifying floating charge.

(c) The purchaser.

(d) The company's auditor.

Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

(a) Administration.

(b) Restructuring Plan.

(c) Scheme of Arrangement.

(d) Company Voluntary Arrangement.

Question 1.6

A liquidator may pay dividends to small value creditors based upon the information contained within the company's statement of affairs or accounting records. In such circumstances, a creditor is deemed to have proved for the purposes of determination and payment of a dividend where the debt is **no greater than how much?**

(a) £500

(b) £750

(c) £1,000

(d) £2,000

Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

(a) Wrongful trading.

(b) Breach of fiduciary duty.

- (c) Being found guilty of an indictable offence in Great Britain.
- (d) Being found guilty of an indictable offence overseas.

Question 1.8

The administrator is under a general duty to provide a statement for creditors' consideration setting out proposals for achieving the purpose of administration. He or she must obtain a creditors' decision on whether or not to approve the proposals **within how many weeks** of the date the company entered administration?

- (a) 6
- (b) 8
- (c) 10**
- (d) 12

Question 1.9

Which of the following statements is **incorrect**?

- (a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.**
- (b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.
- (c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.
- (d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

Question 1.10

Under section 216 of the Insolvency Act 1986, a director of a company which has been wound up insolvent may not, unless an exception applies, be a director of a company that is known by a prohibited name **for what period of time**?

- (a) 6 months.
- (b) 12 months.
- (c) 2 years.
- (d) 5 years.**

QUESTION 2 (direct questions) [10 marks]

Commented [DJ3]: 9 out of 10

Question 2.1 [maximum 5 marks]

Who may bring an action under: (i) section 423 of the Insolvency Act 1986; (ii) section 6 of the Company Directors Disqualification Act 1986; and (iii) section 246ZB of the Insolvency Act 1986?

(i) Parties that can bring action under section 423 of the Insolvency Act 1986 are as follow:

- by the company that is being wound up or is in administration, the official receiver, the liquidator, the administrator, and any victim of the transaction such as a creditor
- by a victim that is bound by a CVA, supervisor of the CVA or any victim of the transaction (whether bound by the CVA or not) or a victim of the transaction.

(ii) Parties that can bring action under section 6 of the Company Directors Disqualification Act 1986 is as follows:

- The Secretary of State
- The Official Receiver

(iii) Parties that can bring action under section 246ZB of the Insolvency Act 1986 are as follow:

- Liquidators
- Administrators
- Third party funders can also be assigned power to such causes of action by the liquidators.

Commented [JL4]: Since this section pertains to administrations liquidators are incorrect and as such I will not award the mark.

Commented [DJ5]: 4

Question 2.2 [maximum 5 marks]

List the **five (5)** qualifying decision procedures by which creditors may make decisions in the context of an insolvent company.

The five qualifying decision procedures by which creditors may make decisions in the context of an insolvent company are as follows:

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

Commented [DJ6]: 5

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

Commented [DJ7]: 11 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?

Although, an administrator is appointed in the liquidation that does not mean that the company's contracts with suppliers will be automatically terminated.

In cases of these clauses an administrator can require a supplier to supply those goods or services:

Section 233B of the 2020 Act prohibits clauses within a contract of supply that allows the supplier of goods and services to terminate or “do any other thing” in relation to that contract if the company enters a formal insolvency procedure.

In the Act it states that “An administrator will frequently need to obtain or retain certain essential supplies.” Section 233 of the Act applies to what they call essential services which are listed as: a supply of gas, electricity, water, and communication services. This section essentially prohibits a supplier to place stipulations that forces the administrator to personally guarantee payment of charges regarding the supplies.

Section 233B complements section 233 of the Act which, in similar terms, prohibit termination of utilities, communication and IT services by suppliers. 233B opens the restriction on termination to all suppliers, with a limited number of exceptions.

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 in which payments will take priority within a liquidation are as follows, the holder of fixed charges, expenses of the procedure, preferential creditors, floating charge, unsecured creditors and lastly and quite rarely shareholders.

Each of these are explained in further details below:

Firstly, the holder of fixed charges will be paid usually outside of any formal insolvency

Second, then the expenses of the procedure. This includes remuneration of the administrator or liquidator and any additional expenses incurred regarding the insolvency process.

Next, Preferential creditors are then paid. Preferential creditors are the class of creditors that are limited to reasonably modest claims (i.e owed employees’ wages; taxation debts owed to the government). Among Preferential creditors, there are two classes to distinguish: ordinary and secondary. Ordinary Preferential debts are paid before secondary preferential debts.

Floating Charge holder and the “prescribed part”; the liquidating company can have more than one floating charge holder and in this case the priority will be given to the one created first. The liquidator has to make a “prescribed part” of the company’s net property for the satisfaction of unsecured debts and must not distribute any of this prescribed part to a floating charge holder except if it is in excess of the amount to cover all the unsecured debt.

Then, Unsecured Creditors, in comparison to preferential creditors, are the class of creditors without the benefit of any security or title to assets. Unsecured creditors are usually ordinary trade suppliers and taxation liabilities.

Lastly, if the company is found to be solvent after the payment of all the above-mentioned liabilities, the surplus will be paid to the members. This will be dictated by the Articles of Association.

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

Commented [DJ8]: Some critical elements in law missing which could have been remedied by a better structure to your answer which addresses the difference in the provisions of s 233, 233A and 233B.

4

Commented [JL9]: A little more detail on s 176A was needed here.

Commented [DJ10]: 7

Commented [DJ11]: 4 out of 15

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;

Under Section 245, a floating charge that has been executed within the 12 months prior to the onset of insolvency can be avoided. The company also must be insolvent at the time or 2 years prior to the onset of insolvency. The company granted a debenture in favour of Stercus Bank PLC in February 2021 which contains the floating charge. This occurs within a year prior to the onset of insolvency in December 2021. As such, the floating charge can be avoided.

Commented [JL12]: The effect of a connected party to the transaction?

Commented [DJ13]: Some elements missing:
Inability to pay debts and new consideration
2

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Any property which is not a floating charge, like in this instance, paragraph 71 of schedule B1 of the Act provides that "the liquidator may apply to court for an order permitting him to dispose of that property which the court thinks such disposal would be likely to promote the purpose of administration."

Five months before the company was placed into compulsory liquidation, the coffee machines were sold at an enormous discount to a director of the company. Due to the large discount

giving it is evident and stated that the directors were aware that the company was in financial trouble. This sale should not have been facilitated by the directors in this instance.

The liquidator should review this purchase as it seems to be an act of malfeasance.

If Beans and Leaves Ltd. is the supplier of the coffee machines, then the proceedings will be paid towards their outstanding invoices. Since the machines were sold such far below market price, the sale of other assets will have to supplement the short **fall**.

Commented [DJ14]: This question relates to s 238 and transactions at an undervalue.
0

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

In a compulsory winding up, Section 127 of the Act avoids any disposition of property of the company made after the commencement of winding up. The commencement date is the date of the presentation of the petition (which is 14th October 2021 in our case). The company carried out its business and received a month before the winding up order (23rd December 2021) from Beans and Leaves for an immediate payment of the supply. As such, this payment has been requested in November 2021 after the presentation of the petition.

In section 127 of the Acts, the words 'disposition of property' is defined as any payment of money as well as assets being sold or transferred. As such, the company can avoid those payments which has happened in the interim **period**.

Commented [DJ15]: What will the court consider?
2

*** End of Assessment ***