



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: 32 OUT OF 50

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

Commented [DJ2]: 9 out of 10

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

Question 1.1

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

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

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

Question 1.2

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

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

Question 1.3

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

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

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

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

Question 1.4

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

- (a) The administrator.
- (b) Any secured creditor with the benefit of a qualifying floating charge.
- (c) The purchaser.
- (d) The company's auditor.

Question 1.5

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

- (a) Administration.
- (b) Restructuring Plan.
- (c) Scheme of Arrangement.
- (d) Company Voluntary Arrangement.

Question 1.6

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

- (a) £500
- (b) £750
- (c) £1,000
- (d) £2,000

Question 1.7

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

- (a) Wrongful trading.
- (b) Breach of fiduciary duty.

Commented [DJ3]: 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

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 [DJ4]: 7 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?

Firstly, the Insolvency Act stipulates under section 423 that any liquidator, administrator, Official Receiver or any victim may bring an action to attack an undervalued transaction made with the purpose of causing financial damage to a person who is making or at some time has made a claim against the **company**.

Commented [JL5]: CVA supervisor?

Secondly, the section 6 of the Company Directors Disqualification Act provides a compulsory disqualification that the **court** must do against a director who (i) was director of a company that has become insolvent; and (ii) his conduct as a director of that company makes him unfit to manage another company. In this case, once proved that this former director is unfit, the court has the obligation to disqualify him of the function and the time of this penalty will depend on the case **specifically**.

Commented [JL6]: Secretary of State

Finally, the action under section 246ZB of the Insolvency Act (wrongful trading) has the aim to ensure that former directors should know of the upcoming insolvency of the company and in consequence, should act to minimise any unnecessary loss for the company. That action can only be brought by the **liquidator**.

Commented [JL7]: This section pertains to administration and as such administrator and not liquidator is the correct answer.
2

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 qualifying decision procedure is the decision made by creditor's vote. This vote, according to rule 15.3 of the Insolvency Rules, can be made by correspondence, electronic vote, virtual or physical meeting or any other way that enables all creditors to participate and give your vote on the matter.

Pursuant section 246ZE of the Act, the qualifying decision procedure can be requested by the liquidator about any matter that he/she thinks fits and the creditors also may request that type of decision and for that, it's necessary at least 10% of the creditors in number, in value or at least 10 **creditors**.

Commented [DJ8]: 5

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

Commented [DJ9]: 9 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?

When a company enters into administration, the administrator carries on with all business matters, including its contracts.

The administrator must achieve the goal of (i) rescue the company from financial distress and give it back to its directors; (ii) realise the assets to achieve better results than it would have if the company were wound up; or (iii) realise the assets in order to pay one or more secured or preferential creditors.

The goal achieved will depend on the specific situation of the case, but the administrator may need to maintain the supply contracts to reach that objective and to facilitate

this, the Act provided in sections 233 and 233B that the supply contract isn't terminated just because of the beginning of the administration, so the administrator could require the continuation of the contract.

It's important to note that the administrator will be responsible for the payment of the cost of the supply during the administration period and the supplier could terminate the contract if the debts aren't paid within 28 days after it becomes due (233B (4) (c) of the Act) and when it's a supplier of water, electricity, gas and communication, the administrator can be forced to personally guarantee the payment (233 (2) (a) of the Act).

Commented [DJ10]: A very light touch discussion on the provisions of s 233, 233A and 233B.
2

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.

Generally, in liquidation the credits are divided in the following order of priority:

- (i) Costs incurred with the liquidation process, including the liquidator remuneration and any payment made to third parties who assist the procedure and the tax accruing on the realisation of the assets (section 115 of the Act);
- (ii) Preferential creditors, which include debts owed to employees, contribution to an occupational pension scheme, claims to refund payments done in favour of employees, credit related to the production of coal and steel, according to the European Coal and Steel Community Treaty and credit related to compensation of deposits made by the Financial Services Compensation Scheme;
- (iii) Credits secured by floating charges, which will be paid according to the time of the constitution and with the exception of the part not paid in result of the prescribed part;
- (iv) Unsecured creditors, which are the creditors that don't have any security and include the ordinary suppliers; and
- (v) Shareholders.

Commented [JL11]: A lot more detail on the working of the prescribed part under s 176A is needed here.

This order of distribution was made in order to protect firstly the costs of the liquidation proceeding itself, the creditors that have a preferentially, which are normally employees, the creditor that constitute a liability in it credits, the unsecured credits and, in the last priority, the shareholders, who accept the risk of the business and for that reason are the last to be paid.

Commented [DJ12]: Fixed charges?
7

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

Commented [DJ13]: 7 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 Insolvency Act provide some actions that can be taken by the liquidator to void acts performed prior to the company going into liquidation and protect the principles of the liquidation and preserve all creditors rights. One of these actions is the floating charge avoidance, presented in section 245 of the Act.

That action can be taken by the liquidator when, in the suspect period (2 years prior to the liquidation – section 240 (1) (a)), the company creates a floating charge in favour of an unsecured creditor without any equivalent consideration.

In that specific case, the Corfee Zero Limited, 8 months before the request of a liquidation by creditors (in the suspect period), granted a priority to Stercus Bank plc credit that already existed. Even though the debenture can be used to create a new loan, in this case its goal was just to grant the security to a prior credit.

In practice, this guarantee changed the nature of the Stercus Bank plc credit, which was an unsecured credit and because of that debenture turn into a secured credit, with priority of payment in a liquidation proceeding. In result, the others unsecured creditors now are in a prejudiced situation with breach the principle of *pari passu* distribution.

Considering the explanation above and assuming that the Insolvency Act applies to that case, the liquidator could take the action to void the floating charge granted in favour of Stercus Bank plc to release the security (section 241 (1) (c)).

Commented [JL14]: What about a connected party transaction?

Commented [DJ15]: 4

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The directors and managers in general have the obligation to conduct the administration of a company with the best practice and always with the purpose to do the best for the company and its creditors.

In result of this obligation, when the company is passing through a financial distress, the directors have the duty to act in the best interest of the company and try to minimise any financial damage to its creditors.

When the company goes into liquidation, the liquidator has the duty to act in the best interest of creditors and to do that he/she can take some actions to attack transactions at undervalue performed in the suspect period, when the company already was unable to pay its debts, according to section 238 and 241 of the Act.

It's important to note that the inability to pay its debts is presumed when the transaction is made with a person connected with the company (for example, its director), according to section 240 (2) of the Act.

The undervalue, on the other hand, occurs when the company gives a gift, enters into a transaction "that provide for the company no consideration" or the value received is "significantly less than the value (...) of the consideration provided by the company" (section 238, (4)).

In that case, the price of the sale of the coffee roasting machines were less than half the of price of the machines, so that could be interpretate as an undervalue transaction, so the liquidator could take an action to require the full payment of the machines (section 241 (d) of the [Act](#)).

Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

A payment of a credit one month before the commencement of a liquidation can be interpreted as an attempt to pay a creditor in preference, especially because the director knows (or should know) about the financial distress and upcoming insolvency proceeding. Besides that, one of the duties of the director is acting to preserve the assets of the company in order to pay the creditors in a future liquidation as much as it is possible (anti-deprivation rule).

However, in that case, if the payment was made to maintain the supplier and extend the business, it's possible to conclude that the payment was made in good faith and the continuation of the business is more beneficial to all creditors in the long term, as the entire company can be sold at once, allowing the extension of the activity developed by [it](#).

Commented [DJ16]: When is the relevant time? Presumption regarding inability to pay debts? Defences?
3

Commented [DJ17]: 0
This question relates to dispositions made after the commencement of winding up proceedings in terms of s 127.

*** End of Assessment ***