



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

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

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

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

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

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

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

ANSWER ALL THE QUESTIONS

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

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

Question 1.1

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

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

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

Question 1.2

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

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

Question 1.3

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

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

Commented [DJ1]: TOTAL: 45 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]

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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) The following parties can bring action under section 423 of the Insolvency Act 1986:
 - a. where the company is being wound up or is in administration, the official receiver, the liquidator, the administrator and (with the leave of the court) any victim of the transaction such as a creditor;
 - b. where a victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction (whether bound by the CVA or not); or
 - c. in any other case, by a victim of the transaction.

- (ii) Under section 6 of the Company Directors Disqualification Act 1986 the following parties can bring action:
 - a. The court
 - b. The Secretary of State
 - c. The official receiver

- (iii) Under section 246ZB of the Insolvency Act 1986 it is on the application of the administrator that the court may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

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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:

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.

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

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Question 3.1 [maximum 6 marks]

Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?

The Insolvency Act 1986 (the Act) recognises the need of an administrator to obtain or retain certain essential supplies.

If the suppliers of goods and services have pre-existing contracts with the company in administration then section 233B of the Act will prohibit clauses in the contract which allow the

supplier to terminate or “do any other thing” in relation to that contract once the company has entered into administration. However, if the supplier applies to the court under section 233B of the Act and the court is satisfied that the continuation of the contract would cause the supplier hardship then the court can grant permission for termination.

Under section 233B of the Act, suppliers are (a) prevented from terminating a supply upon the company’s insolvency; (b) prevented from making it a condition of continued supply that pre-insolvency arrears are paid; and (c) prevented from making other changes to the contract such as increasing prices. These benefits will assist the administrator to continue to operate the business of the company by continuing the supply of goods and services.

Section 233 of the Act applies to the supply of gas, electricity, water and communications services, however, permits the supplier to stipulate the administrator to personally guarantee payment of charges in respect of the supply.

Commented [DJ7]: More detailed reference to s 233 and 233A would have ensured full marks
4

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 holders of any fixed charges are usually paid outside of a formal insolvency proceeding.

In a liquidation under section 115 of the Insolvency Act 1986 (the “Act”) and rules 6.42 and 7.108 of the Insolvency Rules 2016 a number of expenses are given priority over the company’s preferential creditors, any holders of floating charges and the company’s unsecured creditors.

Subject to section 115 of the Act, after the payment of any liabilities to which section 174A applies, all expenses incurred in the winding up, including remuneration of the liquidator, are payable out of the company’s assets in priority to all other claims (the “main expenses”).

The order of priority in which these main expenses are payable are: (a) expenses that are properly incurred by the liquidator in preserving, realising or getting in any of the assets of the company including the conduct of any legal proceedings; (b) the cost of any security provided by the liquidator; (c) any amounts payable to a person to assist in the preparation of a statement of affairs or accounts; (d) any necessary disbursements by the liquidator in the course of the winding up including expenses incurred by members of the liquidation committee; (e) the remuneration of any person who has been employed by the liquidator to perform any services for the company; (f) the remuneration of the liquidator; (g) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company; and (h) any other expenses properly chargeable by the liquidator in carrying out the liquidator’s functions in the winding up.

Once the expenses of the liquidation have been paid in full, preferential creditors are paid from the assets of the company prior to payment of holders of floating charges or unsecured creditors. Preferential creditors as defined in sections 386, 387, and Schedule 6: section 175 of the Act and the two classes are ordinary and secondary. Ordinary preferential debts are paid before secondary preferential debts, however, within their classes the debts rank equally. Preferential creditors largely comprise of limited claims of employees including contributions to pension schemes and taxation liabilities.

Any floating charge holder will be paid after preferential creditors. Priority between floating charge holders usually relies upon which charge was created first. A liquidator must consider

the application of section 176A of the Act prior to payment to a floating charge holder and make a “prescribed part” of the company’s net property available for the satisfaction of unsecured debts and not distribute this part to the floating charge holder unless all unsecured debts **satisfied**.

Commented [JL8]: How is this calculated?

The last to be paid in the statutory order are creditors with no security, including trade creditors.

If all creditors are paid and there are funds remaining then the surplus will be distributed amongst the shareholders according to the company’s **constitution**.

Commented [DJ9]: 8

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

Commented [DJ10]: 13 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;

Subject to Section 245 of the Insolvency Act 1986, a floating charge on a company’s undertaking created at a relevant time is invalid except to the extent that “new” consideration is provided for the charge. Therefore, it does not prevent lenders who are providing fresh funding to the company from taking a floating charge for that new funding.

The section applies where a company is in liquidation and the provision is aimed at preventing pre-existing unsecured creditors obtaining the security of a floating charge shortly before a company enters a formal insolvency procedure.

Based on the information given, a debenture containing a floating charge was granted for Stercus Bank plc without "new" consideration being provided. Therefore, the charge may be invalid.

As Stercus Bank plc is not connected with the company, the relevant time for the creation of the charge is within the period of 12 months prior to the onset of insolvency. In addition, the charge is only within the relevant period if at the time of the creation of the charge the company was either unable to pay its debts or became unable to do so in consequence of the transaction. The creation of the charge for Stercus Bank plc was within the 12 month period, however, the liquidator would have to gather additional information to prove that the company was unable to pay its debts in February 2021 in order to render the charge **invalid**.

Commented [DJ11]: 5

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

Under section 238 of the Insolvency Act 1986 a liquidator may attack a transaction which was entered into prior to the company entering liquidation where the transaction was at an undervalue. The liquidator must show that the company either (a) made a gift to the person or entered into a transaction on terms that provided for the company to receive no consideration; or (b) entered into a transaction with a person for a consideration which was significantly less than the value of the consideration provided by the company.

In order to be attacked, the transaction must have taken place at a "relevant time" being the period of two years prior to the commencement of the liquidation. The coffee roasting machines were sold to the director 5 months prior to the Company going into compulsory liquidation and therefore took place at a relevant time. The liquidator must decide if the £10,000 consideration received per machine is significantly less than the value of the machines at the time of the transaction. As they were purchased a year prior for £25,000 it does appear to be a significant discount.

However, the court shall not make an order in respect of the transaction at an undervalue if it satisfied (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company. At the time of sale the Company was experiencing cash flow problems, thus the transaction could be seen to be entered into in good faith and for the purpose of carrying on its business if they believed the benefit of alleviating the cashflow problems benefited the **company**.

Commented [DJ12]: Presumption regarding inability to pay debts and remedies missing from the discussion.
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Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

As the payments to Beans and Leaves occurred within one month of the winding up order in December 2021, it would have been in November 2021 after the winding up petition was issued on 14th October 2021.

Section 127 of the Insolvency Act 1986 avoids any disposition of property, being payment of money or sale/transfer of assets, of the company made after the commencement of winding up, unless the court otherwise orders. The commencement date is the date of the presentation of winding up petition and therefore applies to the payment to Beans and Leaves Ltd.

The court has discretionary powers to declare that the disposition is not void under section 127 by issuing a validation order. A validation order will only be made where a general body of creditors has benefited from the disposition. Therefore, as Beans and Leaves Ltd were the only creditor to benefit, the validation order is unable to be made.

Commented [DJ13]: 4

*** End of Assessment ***