



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

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

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

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

## **INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

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

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

**Commented [DB1]:** Submitted late and then you fail to follow the instructions, so I have to do this for you?

## ANSWER ALL THE QUESTIONS

Commented [DJ2]: TOTAL: 30 OUT OF 50

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

Commented [DJ3]: 7 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.

Commented [DJ4]: c

#### Question 1.5

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

(a) Administration.

(b) Restructuring Plan.

(c) Scheme of Arrangement.

(d) Company Voluntary Arrangement.

#### Question 1.6

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

(a) £500

(b) £750

(c) £1,000

(d) £2,000

#### Question 1.7

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

(a) Wrongful trading.

(b) Breach of fiduciary duty.

Commented [DJ5]: 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

Commented [DJ6]: c

#### Question 1.9

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

(a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.

(b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.

(c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.

(d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

#### Question 1.10

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

(a) 6 months.

(b) 12 months.

(c) 2 years.

(d) 5 years.

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

Commented [DJ7]: 8 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 246 of the Insolvency Act 1986?

(i) The provisions of Section 423 of the Insolvency Act 1986 relate to transactions defrauding creditors, in particular undervalued transaction. It states who has the legal right to bring an action in such a situation. The power to bring an action is granted the official receiver or liquidation in corporate winding up procedure or an administration in an insolvency proceeding to apply for an order to avoid transactions at an undervalue or to protect creditors' interest. Additionally, any victim of the fraud to whom the relevant court has granted a leave may also apply for an order from the court. It is not a requirement for the company to be insolvent, it is however necessary to demonstrate that the purpose of the transaction was to keep the assets out of the reach of the victims or creditors who have legitimate interests.

Commented [JL8]: Supervisor of a CVA?

(ii) Under Section 6 of the Company Directors Disqualification Act 1986, The Insolvency Service may bring an action before the court for the disqualification of directors on behalf of the Secretary of the State if the alleged unfit conduct falls within its remit and its authority. The court may grant the disqualification request if it is satisfied that the conduct of the director acting independently or with a group, eliminates them from performing in a managerial role on the company's behalf. Secondly, if the director presently or previously served as a director of a company that some time became insolvent.

Commented [DJ9]: 3

(iii)

**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 following are procedures introduced by the Insolvency Act 2016 for which a body of creditors may engage in collective decision making:

1. Correspondence
2. Electronic Voting
3. Virtual Meeting
4. Physical Meeting
5. Any other procedure that allows for the equitable participation of the creditors

Commented [DJ10]: 5

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

Commented [DJ11]: 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?

According to Section 233 of the Insolvency Act 1986, an administrator, after the date on which the administration started, can require a supplier to continue doing business with the company

where are goods and services supplied fall into the categories of gas, water, electricity, and communications services. Communication services were clearly defined to include information, advice and technical assistance, computer hardware and software, point of sale terminals, web hosting and data storage and processing. The provision of supplies is not contingent on any settlement of outstanding debts. However, a supplier may stipulate that the administrator personally guarantee payment in exchange for the new supply of goods and services.

Commented [DJ12]: What about s 233A and 233B?  
3

### 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.

Participation of a creditor in a liquidation is only permissible where the creditor has shown that the debt was owed. Only where the creditor has submitted a provable claim to the liquidation can the creditor enjoy the rights afforded to members of that specific class to which the creditor belongs. Provable Claims are ranked by the order of priority and class. The rights differ based on class and priority.

Before any distribution can be paid to the creditors, the expenses incurred in realisation of the assets of the debtor and the administration of the insolvent estate must be paid from the proceeds of the insolvent estate Section 115 of the Insolvency Act provides a detailed listing of the allowable expenses.

At the expenses, the Remuneration of the administrator, where applicable and liquidator is paid. The liquidator is paid for services provided in the administration of the debtor's estate. The remuneration is subject to the approval of the creditors who must vote on the fees.

First, in the order of priority is the secured creditor with a fixed charge. Examples of fixed charge holder include banks of other lending agencies that hold a legal right or charge over assets such as land, property or motor vehicles used by the debtor. The fixed charge must have been registered with the Companies house for it to be enforced.

Commented [JL13]: Fixed charges usually paid before liquidator's costs and expenses.

Preferred creditors are next the in order or priority. Preferred creditors include employees with limited claims for outstanding pay and holiday wages, and outstanding pension contributions. Tax obligations due to government was restored to the preferential status by the Finance Act of 2020 and took effect on for insolvency proceedings after the 1<sup>st</sup> of December 2020.

Floating charge holders are paid after preferential creditors in liquidation. Floating charges must also be registered by the creditor. Stocks and furniture and fittings are examples of assets that usually carry a floating charge. Upon the commencement of an insolvency proceeding the floating charge is crystalized. However, holders of a qualifying floating charge may choose to appoint an administrator to enforce their rights, thus preventing the appointment of a liquidator. This would result in a distribution before all other categories.

A portion of the distribution entitlement of a floating charge holder may be retained to allow for some distribution to the unsecured creditor. Types of Unsecured creditors include suppliers of goods and services, contractors, some employee-related payments, and clients of the company with a provable claim. An unsecured creditor may receive a distribution for interest owed up to the date of liquidation in instances where the debtor was duly aware of the interest charge within the contractual agreement signed prior to the insolvency.

Commented [JL14]: How is this calculated?

Shareholders of the company is liquidation rank lowest in the order of priority. Distribution to shareholders only occurs where there are sufficient funds, and after all creditors and any interest owed to the creditors have been paid.

Commented [DJ15]: 6

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

Commented [DJ16]: 6 out of 15

Prior to going into compulsory liquidation on 23<sup>rd</sup> December 2021, under pressure from its bank, Stercus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Corfee Zero Limited ("the Company"), granted a debenture in favour of Stercus Bank plc in February 2021. The debenture contained a floating charge over the whole of the Company's undertaking.

The winding up order followed a creditor's winding up petition issued on 14<sup>th</sup> October 2021.

In July 2021, as the Company continued to suffer cash flow problems, the directors approved the sale of 5 coffee roasting machines to Ann Young (a director) for £10,000 in cash. The machines had been bought for £25,000 a year before.

A month before the winding up order was made, Ann Young received an email from Beans and Leaves Ltd, one of the Company's key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of coffee beans was seen as essential by the Company, the board authorised a payment of £8,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of £3,000 up to the date of the winding up order.

The liquidator has asked for advice whether any action may be taken in respect of the floating charge in favour of Stercus Bank plc and the two subsequent transactions.

**Using the facts above, answer the questions that follow.**

**Identify the relevant issues and statutory provisions and consider whether the liquidator may take any action in relation to:**

**Question 4.1 [maximum 5 marks]**

The floating charge in favour of Stercus Bank plc;

Section 245 Act provides that a floating charge which commences, within one year of two years for a connect party, of the commencement of a winding-up petition is automatically avoided unless there is new consideration such as new monies, goods or services, or a reduction of a debt. Carefree Company Ltd issued the debenture in favour of Stercus Bank plc in February 2021. Although the floating charge was created within one year of the commencement of the winding-up petition, it is still valid since it was used to reduce the debt owed to the bank. The liquidator would be bound by the order of priority in liquidation according to Section ... of the Insolvency Act 1986. As such, Stercus Bank would be entitled to a distribution only after the expenses, liquidator's remuneration, fixed charge holders and preferred creditors were paid. However, since the Stercus Bank plc is a holder of a qualifying floating charge by virtue of the charge being for the whole of the Company's undertaking, the bank may appoint an administrator outside of any formal court proceeding to realise the assets of the company subject to the floating charge.

Commented [JL17]: ?

**Question 4.2 [maximum 6 marks]**

The sale of the coffee roasting machines; and

Commented [DJ18]: There is some confusion in your application.  
4



Section 238 of the Act enables the liquidator to attack any transaction which occurred prior to the commencement of the liquidation where the transaction was at an undervalued amount. This is predicated on the liquidator's ability to clearly demonstrate that the company transacted with another party for consideration that was significantly below the value of the consideration received. By July 2021, it was known to the directors which included Ann Young that the company was facing cash flows problems, that is, it was unable to pay its debts as they were due. Still, the directors approved a sale of the five coffee roasting machines at Ms. Young for a price far below the value of the machines. Generally, a manufacturer allows one year warranty for machinery, it is likely that the machines sold to Ms. Young could have qualified for warranty and some compensation or replacement if they are malfunctioning. No such statement was suggested by the scenario, so it is reasonable to assume that the machines were in good working conditions. Even if an adjustment for depreciation had been made, the consideration received for machines which were purchased in 2020, was significantly undervalued.

An argument could also be made that the purpose of the sale of the coffee machines was intended to put the assets beyond the reach of the creditors. Section allows the liquidation to bring an action against any transaction that could prejudice the interest of the creditors. The liquidator should take the necessary steps to recover the assets or some monetary considerations for the assets that is closer to the fair market value of the assets.

Section 212 provides guidance on for the court to examine the conduct of certain persons such as company officers and or make an order for the restoration, repayment of accounting of money where there is evidence of misfeasance or breach of duty.

**Commented [JL19]:** Not in the facts

**Commented [DJ20]:** You do not really deal with the requirements which would have to be proven to be successful with this action (s238)?  
2

#### Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

The underlining principle of Section 239 of the Act is to mitigate against preferential treatments of a particular creditor, that may occur prior to the commencement of an insolvency proceeding. A debtor is prohibited from engaging in any action as defined by the section, that compromises the equitable treatment of all creditors within a class. Beans and Leaves Ltd., at the time of the transaction, was a creditor of the insolvent company. The payments made to Beans & Leaves Ltd for the outstanding debt as well as for the supply up the winding update, placed this creditor in a advantageous position in comparison to the other unsecured creditors who are guaranteed any distribution or full settlement of the debts owed.

**Commented [DJ21]:** This transaction took place after the commencement of winding up proceedings. S 127 and not 239 therefore applies!  
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**\* End of Assessment \***