



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: 28 OUT OF 50

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

Commented [DJ2]: 8 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.

Commented [DJ4]: a

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 [DJ5]: 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) As a general rule, any person who is a victim of a transaction carried out with the intention of defrauding creditors is entitled to make an application under section 423 of the Insolvency Act 1986. Whenever a company is under a winding up proceeding or in administration, however, such victim can only bring an action with leave of the court. In those scenarios, the official receiver, the liquidator and the administrator are also entitled to attack fraudulent transactions. Moreover, in case victims are binding by a Company Voluntary Arrangement, the supervisor of the CVA is also entitled to proceed with an action.
- (ii) Under section 6 of the CDDA 1986, a liquidator or administrator can make an application to disqualify unfit directors on behalf of the company.
- (iii) Considering that section 246ZB of the Insolvency Act 1986 applies to administration, the administrator is entitled to bring an action against wrongful trading.

Commented [JL6]: Secretary of state

Commented [DJ7]: 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.

Rule 15.3 of The Insolvency (England and Wales) Rules 2016 provides that the five qualifying decision procedures are (i) correspondence, (ii) electronic voting; (iii) virtual meeting; (iv) physical meeting, or (v) any other decision-making procedure that ensures equal treatment among the participating 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?

Yes, under section 233 of the Insolvency Act 1986, the administrator can request essential suppliers to continue to supply gas, electricity, water, communications, and goods or services for the purpose of enabling or facilitating anything to be done by electronic means as mentioned in subsection 3(A) of section 233 of the Act.

It is important to highlight that pursuant to subsection (2)(a) of section 233 of the Act, supplier may request that the administrator personally guarantees the payment of the supply.

Commented [DJ10]: What about section 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.

Priority is given to expenses of the liquidation under section 115 of the Insolvency Act 1986 and rules 6.42 and 7.108 of The Insolvency (England and Wales) Rules 2016, which comprises all fees, costs, charges and other expenses incurred in the course of the liquidation, for example, to preserve, realise or get any of the assets of the company, including the liquidator remuneration and those employed by the liquidator to perform services for the company.

After these expenses have been fully paid, preferential debts start to be paid pursuant to sections 386 and 387 of the Insolvency Act 1986. Preferential debts are divided into ordinary and secondary; the ordinary ones being paid with priority. Ordinary preferential debts are those listed in paragraphs 8 to 15B of Schedule 6 of the Insolvency Act 1986 and refer mostly to amounts due to a person who is or has been an employee of the debtor, contribution to occupational pension schemes, social security contributions, taxation liabilities, levies on coal and steel production and debts owed or deposits covered by Financial Services Compensation Scheme.

Secondary preferential debts are ranked in paragraph 15BA, 15BB and 15D of Schedule 6 of the Act and are amounts owed to Commissioners for Her Majesty's Revenue and Customs and other deposits.

After the preferential debts, floating charge holders who do not have outstanding unsecured credits must be paid with the "net property", after the administrator or liquidator made the "prescribed part" of the company's assets deemed necessary to pay unsecured creditors.

Lastly, unsecured creditors are paid with the remaining proceeds if there is any.

In the remote scenario that all creditors above are fully paid, the remaining assets or proceeds are distributed among the company's shareholders.

Commented [JL11]: How is the prescribed part calculated and which section applies?

Commented [DJ12]: Fixed charge holders usually paid first.
6

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

Commented [DJ13]: 2 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;

It is possible to void the floating charge in favour of Stercus Bank plc under section 245 of Insolvency Act 1986, because the floating charge was created within the period of 12 months before the Company entered liquidation and Stercus Bank plc was aware that the Company was at that time unable to pay its **debts**.

Commented [DJ14]: Very light touch with limited application.

2

Question 4.2 [maximum 6 marks]

The sale of the coffee roasting machines; and

The sale of the coffee roasting machines can be considered a transaction with purpose to **defraud creditors** and, therefore, the liquidator can attack such transaction pursuant to section 423 of the Insolvency Act 1986. It is clear that the transaction was carried out with the intention of emptying the Company's assets for much less than the assets were worth, since the Company was in debt and could be sued by several creditors at the time of the **transaction**.

Commented [JL15]: Where was this in the facts?

0

Commented [DJ16]: S 238 transaction at an undervalue.

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Question 4.3 [maximum 4 marks]

The payments to Beans and Leaves Ltd.

With respect to the transaction made with Beans and Leaves Ltd., the liquidator cannot take any measure pursuant to section 238(5) of the Insolvency Act 1986, because the Company did the payments for the purpose of carrying on its business and there were reasonable grounds that the transaction would benefit the Company as the supply of the coffee beans was essential to maintain **activities**.

Commented [DJ17]: This is a disposition after the commencement of winding up – s 127 applies.

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*** End of Assessment ***