



## Higher National Unit specification

### General information

**Unit title:** Corporate Insolvency

**Unit code:** H49N 35

**Superclass:** EC

**Publication date:** June 2013

**Source:** Scottish Qualifications Authority

**Version:** 01

### Unit purpose

This Unit is designed to provide learners with an understanding of the legal implications of the law of corporate insolvency. This includes an understanding of how this law might be applied in a creditor initiated debt recovery scenario together with a practical understanding and knowledge of the necessary checks, procedures and documentation drafting required to undertake a petition for winding up a corporate body, to include disposing of such a petition. The learner will also be provided with an understanding of the legal implications of the various types of corporate insolvency and how that impacts upon a creditor.

This Unit is also intended to be relevant to those already employed in the legal sector, such as paralegals, who may wish to qualify for registration as a Law Society of Scotland Registered Paralegal, to simply broaden their expertise or undertake Continuing Professional Development (CPD); it is also relevant for learners or others who aspire to work in a relevant role in the legal sector.

### Outcomes

On successful completion of the Unit the learner will be able to:

- 1 Apply the law relating to creditor initiated corporate insolvency.
- 2 Apply the law relating to the effect of corporate insolvency and the legal implications upon creditors.

### Credit points and level

1 Higher National Unit credit at SCQF level 8: (8 SCQF credit points at SCQF level 8)

## Higher National Unit specification: General information (cont)

**Unit title:** Corporate Insolvency

### Recommended entry to the Unit

Access to this Unit is at the discretion of the centre. However, learners would normally be expected to have competence in Communication at SCQF level 6 or similar qualifications and experience. It is also recommended that learners should also have knowledge of some of the following HN Units; F1A7 34 *Scottish Legal System*, F1A8 35 *Scottish Civil Procedures*, FN5N 34 *Property Law/Applying Scots Property Law*, H3YL 34 or F19V 35 *Bankruptcy*.

### Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes for this Unit specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

### Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

### Equality and inclusion

This Unit specification has been designed to ensure that there are no unnecessary barriers to learning or assessment. The individual needs of learners should be taken into account when planning learning experiences, selecting assessment methods or considering alternative evidence.

Further advice can be found on our website [www.sqa.org.uk/assessmentarrangements](http://www.sqa.org.uk/assessmentarrangements).

## Higher National Unit specification: Statement of standards

### Unit title: Corporate Insolvency

Acceptable performance in this Unit will be the satisfactory achievement of the standards set out in this part of the Unit specification. All sections of the statement of standards are mandatory and cannot be altered without reference to SQA.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Learners should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

### Outcome 1

Apply the law relating to creditor initiated corporate insolvency.

#### Knowledge and/or Skills

- 1 How the Insolvency Act 1986 (as amended) applies to a winding up Petition:
  - ◆ Circumstances where a company may be wound up by the court
  - ◆ Definition of inability to pay its debts
  - ◆ Constituting 'apparent insolvency'
  - ◆ Jurisdiction
  
- 2 Considerations and requirements when Drafting a Winding up Petition and Inventory of Productions:
  - ◆ Caveats
  - ◆ Grounds
  - ◆ Memorandum and Articles of Association, Certificate of Incorporation
  - ◆ Seeking the appointment of an Interim Liquidator
  - ◆ Seeking the appointment of a Provisional Liquidator
  - ◆ The court hearing seeking the appointment of a Provisional Liquidator
  - ◆ Service of the Petition
  - ◆ Public Notice and Advertisement
  - ◆ Granting of Petition where settlement is not made
  - ◆ Withdrawing a Petition when settlement has been made or the Petitioner is not to proceed
  - ◆ The judicial expenses of the Petition
  
- 3 The effect of dissolution of a corporate body:
  - ◆ Cease to trade
  - ◆ Strike off
  - ◆ Objections

## Higher National Unit specification: Statement of standards (cont)

**Unit title:** Corporate Insolvency

### Outcome 2

Apply the law relating to the effect of corporate insolvency and the legal implications upon creditors.

#### Knowledge and/or Skills

- ◆ Different types of corporate insolvency:
  - Liquidation:
    - Appointment of Liquidator
    - Powers and role of Liquidator
    - How it effects diligence
    - Submitting a claim, proxy voting and Creditors' meeting
    - Dividends
    - Discharge of Liquidator
  
- ◆ Administration:
  - Appointment of Administrator
  - Powers and role of Administrator
  - How it effects diligence
  - Submitting a claim, proxy voting and Creditors' meeting
  - Discharge of Administrator
  
- ◆ Receivership:
  - Appointment of Receiver
  - Powers and role of Receiver
  - How it effects diligence
  - Submitting a claim, proxy voting and Creditors' meeting
  - Discharge of Receiver
  
- ◆ Company Voluntary Agreement:
  - Appointment of Administrator
  - Powers and role of Administrator
  - How it effects diligence
  - Creditors' meeting and effect on claims
  - Discharge of Administrator
  
- ◆ Floating Charges:
  - Register of Floating Charges
  - Advance notice of floating charges
  - Ranking of floating charges
  - Effect of floating charges on winding up
  
- ◆ A comparison with England and Wales:
  - The Official Receiver

## Higher National Unit specification: Statement of standards (cont)

**Unit title:** Corporate Insolvency

### Evidence Requirements for this Unit

#### Outcome 1

Learners will provide written evidence to demonstrate their Knowledge and/or Skills of applying the theoretical legal position relating to creditor initiated corporate insolvency to a given case study scenario. The evidence will be in the form of an advice note to the creditor in a letter format.

The case study should include all necessary information to enable learners to draft the advice note on how 'apparent insolvency' might be achieved and if there are one or more options. The case study should be constructed to include details of:

- ◆ the debtor's Company House information including company number, registered office address.
- ◆ Articles of Memorandum and Association.
- ◆ accounts.
- ◆ the debtor's third party contracts and/or moveable property, that is, demonstrating there are sufficient assets owned or due to the debtor to ensure consent from an insolvency practitioner may be obtained.
- ◆ information on the debtor company's creditors and assets to allow the learner to advise on the appointment of a provisional liquidator and compare with the appointment of an interim liquidator.

Satisfactory achievement will be demonstrated by the learner's ability to ascertain the relevant information and incorporating that into the advice note, providing a comparison between interim and provisional appointments and the basis for each course of action.

Advice as to the procedure to be followed in a petition, including the following:

- ◆ Jurisdiction
- ◆ How 'apparent insolvency' can be constituted.
- ◆ What information is necessary before seeking to obtain consent to act from an insolvency accountant.
- ◆ Warrant for service (for an interim and provisional appointment of a liquidator).
- ◆ When a court hearing may be necessary.
- ◆ The service requirements of all necessary documentation.
- ◆ The effect of advertisement on the debtor company.
- ◆ How the petition might be dismissed.
- ◆ The implications to the petitioning creditor if the petition is granted and timescales.
- ◆ The differences in procedure, requirements and possible results between seeking the appointment of a provisional liquidator and an interim liquidator should be compared.

The learner should also correctly identify the area of law, citing any relevant precedents or statutory provisions, and explain the legal rulings in those precedents or statutory provisions.

## Higher National Unit specification: Statement of standards (cont)

### Unit title: Corporate Insolvency

The assessment should be carried out under open-book controlled conditions. Any knowledge which cannot be inferred from the case study should be sampled (either orally or in writing) using short answer questions.

#### Outcome 2

Learners will provide written evidence of their ability to apply the theoretical legal position relating to the effect of the various forms of corporate insolvency and the legal implications upon creditors when attempting to recover debt.

Learners will be given three case study scenarios each covering a different type of insolvency situation, along with a letter for each case study from an insolvency practitioner advising of the type of insolvency, along with a claim form. Learners should provide an advice note to the creditors for each scenario in a letter format.

The case studies should provide all necessary information to enable learners to draft the advice note. The case studies will each cover a different type of insolvency. Across the three case studies there should be a variety of situations whereby creditors have taken some or no action to recover debt and/or assets, and the action taken to recover the debt should be at a variety of stages when the creditors first learn of the insolvency of the debtor. At least one case study should include the situation where a creditor may continue to provide goods or services to the insolvent debtor company under administration.

Satisfactory achievement will be evidenced by the advice note including:

- (a) The relevant advice where the creditor continues to supply goods and/or services.
- (b) The relevant advice where the creditor has commenced action to recover the debt and whether the claim form should include details of any security or retention of title.
- (c) Relevant case law and legislation to support the advice. The learner should also correctly identify the area of law, citing any relevant precedents or statutory provisions, and explain the legal rulings in those precedents or statutory provisions.

Any knowledge which cannot be inferred from the case study scenarios should be sampled in controlled conditions using short answer questions. Learners will provide their answers in either written or oral form.



## Higher National Unit Support Notes

**Unit title:** Corporate Insolvency

Unit Support Notes are offered as guidance and are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

### Guidance on the content and context for this Unit

The purpose of this Unit is to provide learners with an understanding of the various forms of corporate insolvency and an awareness of the legal implications of corporate insolvency from a creditor perspective. This includes an understanding and knowledge of how a creditor might practically initiate and utilise insolvency measures in a debt recovery scenario. It also includes an understanding and knowledge of how insolvency will impact upon the recovery of debts of other creditors and any options a creditor might have with regard to that recovery. All of which will enable the learner to advise clients and apply the law relating to corporate insolvency.

The law in this area is governed by the Insolvency Act 1986 (as amended) and the Enterprise Act 2002. Further legislation to be taken into consideration should be the Companies Acts and the Bankruptcy and Diligence etc (Scotland) Act 2007.

**Outcome 1** relates to:

- (i) Methods used by creditors to establish the requirements of apparent insolvency, eg expired charges for payment; company unable to pay debts as they fall due (bounced cheques); statutory demands served at the company's registered head office where the debt is over £750 (or is over current statutory thresholds if a different figure applies).
- (ii) The form, content and processes pertaining to a creditor initiated, compulsory winding up petition. The purpose and effect of a caveat should be understood. Learners should have a general awareness of the personnel authorised to supervise insolvency proceedings, common grounds to justify the appointment of an interim liquidator, when and why it would be appropriate to seek the appointment of provisional liquidator and the protective benefits to creditors, the privative jurisdiction of the Court of Session, service of a petition, public notice and advertisement, etc and be familiar with the necessary enclosures (Memorandum and Articles of Association, Certificate of Incorporation, etc), the substitution of another creditor, ranking of the petitioners expenses and how a petition might be dismissed.

## Higher National Unit specification: support notes (cont)

### Unit title: Corporate Insolvency

#### Outcome 2

The focus of Outcome 2 is to understand the differences between and apply the law relating to the various forms of insolvency and its impact upon creditors and the recovery of monies owing and how it impacts on diligence at various stages. Outcome 2 relates to:

(i) Liquidation:

- recognition of the purpose of liquidation, ie appoint a responsible person who has a duty to collect the company's assets and distribute them to its creditors in accordance with the law.
- a knowledge of the powers and role of the liquidator/interim liquidator as they relate to creditors, eg crystallisation and ranking of claims (preferential, secured and unsecured creditors), the effect on diligence already commenced or under consideration, awareness that company's assets and affairs in the hands of the insolvency practitioner under no obligation to adopt contracts and can raise or defend legal proceedings in the name of the company, leases can be irritated.
- an awareness that liquidation can become administration if deemed appropriate by the liquidator.
- dissolution/early dissolution.

(ii) Administration:

- recognition of the purpose of administration — (1) rescuing the company as a going concern, or (2) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or (3) realising property in order to make a distribution to one or more secured or preferential creditors.
- aim to conclude administration in 12 months although can be extended with consent of creditors or with leave from the court.
- a knowledge of the powers and role of the administration as they relate to creditors, eg the effect on diligence already commenced or under consideration, awareness that company's assets and affairs in the hands of the insolvency practitioner under no obligation to adopt contracts and can raise or defend legal proceedings in the name of the company, leases cannot be irritated, no steps can be taken to enforce security over company's heritable or moveable property or to repossess goods
- If the result of the administration is survival of the company, the management of the business and assets can be returned to the directors on the conclusion of the administration.

An administrator is not personally liable for contracts entered into as Administrator, but normally the Administrator will pay for goods or services provided subsequent to his appointment, as an expense of the administration.

- where an administration fails it may become liquidation upon the Administrator's petition to the court.



## Higher National Unit specification: support notes (cont)

### Unit title: Corporate Insolvency

#### (iii) Receivership:

- can only be brought by creditor holding a floating charge registered prior to 15 September 2003 where the company is deemed to be in breach of its borrowing.

Receiver primarily acts in the interests of the floating charge holder and preferential creditors as opposed to the interests of all creditors.

- legal proceedings including diligence can be raised or continued against the company (although this will result in an unsecured claim) and leases can be irritated. Receiver can refuse to perform or disclaim contracts entered into before liquidation (claim for breach of contract against the company open to creditors but special provisions relating to employment contracts apply).
- company can be in Receivership and Liquidation at the same time.

#### (iv) Company Voluntary Arrangements:

Situations where a company might represent to a creditor that they have ceased trading, have entered into a Company Voluntary Arrangement (CVA), applied to be struck off the Register of Companies or have been dissolved. Learners should be aware of the implications of these terms as they relate to creditors and be able to advise clients in terms of objecting to striking off, and demonstrate knowledge of what action is appropriate at each stage.

#### (v) Floating Charges:

A floating charge holder's right to appoint a Receiver or Administrator (depending on whether the floating charge was registered prior to or after 15 September 2003).

#### (vi) England and Wales:

Any creditor petition to wind up a company registered in England and Wales will result in the appointment of the Official Receiver as liquidator. The Official Receiver may then convene a meeting of creditors, which may elect to appoint an insolvency practitioner in his stead. The Official Receiver cannot take appointments as Receiver, Administrative Receiver or Administrator but can authorise these appointments.

For the underpinning knowledge to remain valid and current it is essential that institutions review and update the content of the Unit on a regular basis. The learner should be encouraged to keep their knowledge up to date by reference to the appropriate sources of law.

## Higher National Unit specification: support notes (cont)

**Unit title:** Corporate Insolvency

### Guidance on approaches to delivery of this Unit

This is a mandatory Unit within the Professional Development Award (PDA) in Debt Recovery and an optional Unit within the HNC/HND Legal Services but could also be taught as a stand-alone Unit. When taught as part of the HNC/HND or PDA, it is recommended that it be taught after F1A7 34 *Scottish Legal System* and F1A5 34 *Property Law/H3YL 34 Applying Scots Property Law*.

The subject should be taught on a practical basis. Wherever possible links should be drawn which will enable the learners to understand the connection between knowledge and its application in the context of familiar situations. Real life scenarios can also be discussed, for example, a company whose business is thriving and due to circumstances outwith its control, debts cannot be paid and the company can find itself badly in debt.

Use of flow charts or time lines may be helpful in contextualising procedures that may otherwise seem confusing.

### Guidance on approaches to assessment of this Unit

Evidence can be generated using different types of assessment. The following are suggestions only. There may be other methods that would be more suitable to learners.

Centres are reminded that prior verification of centre-devised assessments would help to ensure that the national standard is being met. Where learners experience a range of assessment methods, this helps them to develop different skills that should be transferable to work or further and higher education.

Learners will be expected, as much as possible, to apply the theoretical legal position to the scenario within the case studies in order to resolve problems, so it is important that the case studies are sufficiently complex to allow this to happen. For learners who are already employed in this area, they should be encouraged to use evidence from their workplace whenever possible and this could be supplemented by witness testimony from their employer.

Should there be ambiguity regarding a learner's response, oral questioning may be used to eliminate any doubt as to the learner's understanding of the legal principle(s) and this should be recorded. It is highly recommended that learners be provided with computer templates or hard copies of styles of legal correspondence commonly used in creditor initiated insolvency actions. Learners should not be expected to attempt to draft styles of legal correspondence or official documentation by themselves.

## Higher National Unit specification: support notes (cont)

**Unit title:** Corporate Insolvency

### Opportunities for e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or social software. Centres which wish to use e-assessment must ensure that the national standard is applied to all learner evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. The most up-to-date guidance on the use of e-assessment to support SQA's qualifications is available at [www.sqa.org.uk/e-assessment](http://www.sqa.org.uk/e-assessment).

### Opportunities for developing Core and other essential skills

The Unit should provide learners with an opportunity to develop the following Core Skills/Core Skill components at SCQF level 6, although there is no automatic certification of Core Skills or Core Skills components:

- ◆ *Problem Solving*
- ◆ *Communication*
- ◆ *Working with Others*

All elements of the Core Skill of *Problem Solving* — Critical Thinking, Planning, Organising, Reviewing and Evaluating — will be naturally developed as learners analyse issues in a creditor initiated debt recovery scenario and identify and apply the theoretical legal position in order to resolve problems. Consideration must be given to all necessary checks, procedures as learners evaluate information before undertaking the documentation drafting required to undertake a petition for winding up a corporate body.

Practical evaluation of real life case studies during formative work will encourage learners to discuss solutions and available remedies to be justified with relevant references to law and/or practice. Discussions will also provide opportunities to develop talking and listening skills in a workplace context.

Learners need to research, analyse and critically evaluate complex legal information before presenting written and oral responses that are technically accurate and of a professional standard. The specific written and oral communication skills needed to build and maintain working relationships should be emphasised in formative work. Awareness of the need to establish the nature and scope of goals, roles and responsibilities while working with others will be essential; practical methods to overcome any potential barriers and assure positive Outcomes could be examined and discussed. In depth understanding will be further enhanced through directed personal study.

## History of changes to Unit

| Version | Description of change | Date |
|---------|-----------------------|------|
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## General information for learners

### Unit title: Corporate Insolvency

This section will help you decide whether this is the Unit for you by explaining what the Unit is about, what you should know or be able to do before you start, what you will need to do during the Unit and opportunities for further learning and employment.

This Unit is designed to provide learners with an understanding of the legal implications of the law of corporate insolvency. This includes an understanding of how this law might be applied in a creditor initiated debt recovery scenario together with a practical understanding and knowledge of the necessary checks, procedures and documentation drafting required to undertake a petition for winding up a corporate body, to include disposing of such a petition. The learner will also be provided with an understanding of the legal implications of the various types of corporate insolvency and how that impacts upon a creditor.

This Unit is also intended to be relevant to those already employed in the legal sector who may wish to broaden their expertise and learners or others who aspire to work in a relevant role in the legal sector.

On completion of the Unit the learner should be able to:

- 1 Apply the law relating to creditor initiated corporate insolvency.
- 2 Apply the law relating to the effect of corporate insolvency and the legal implications upon creditors.

**Outcome 1** relates to:

- (i) Methods used by creditors to establish the requirements of apparent insolvency, eg expired charges for payment; company unable to pay debts as they fall due (bounced cheques); statutory demands served at the company's registered head office where the debt is over £750 (or is over current statutory thresholds if a different figure applies).
- (ii) The form, content and processes pertaining to a creditor initiated, compulsory winding up petition. The purpose and effect of a caveat should be understood. Learners should have a general awareness of the personnel authorised to supervise insolvency proceedings, common grounds to justify the appointment of an interim liquidator, when and why it would be appropriate to seek the appointment of provisional liquidator and the protective benefits to creditors, the privative jurisdiction of the Court of Session, service of a petition, public notice and advertisement, etc and be familiar with the necessary enclosures (Memorandum and Articles of Association, Certificate of Incorporation etc), the substitution of another creditor, ranking of the petitioners expenses and how a petition might be dismissed.

### **Outcome 2**

The focus of Outcome 2 is to understand the differences between and apply the law relating to the various forms of insolvency and its impact upon creditors and the recovery of monies owing and how it impacts on diligence at various stages.