



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: 202223-336.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 2023. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2023. 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 2023 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2023. If you elect to submit by 1 March 2023, you may not**

submit the assessment again by 31 July 2023 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of 8 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.**

Commented [WPA1]: 33/50 = 66% generally a good effort but the identification of issues and level of detailed application in Q 4 are weak.

Commented [WPA2]: 10/10 excellent

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) GBP 500

(b) GBP 750

(c) GBP 1,000

(d) GBP 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]

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?

Commented [WPA3]: 8/10

Commented [WPA4]: 3/5 the first answer is incomplete as it does not deal with eg where the company is subject to a CVA, the final answer is incorrect as s 246ZB only applies to administrators.

(i) If the company is being wound up or in administration the following persons can bring action under Section 423, the official receiver, the liquidator of the company, the administrator of the company and with permission of the court any person who is victim of the transaction such as the creditor.

(ii) The Secretary of State of Business, Energy and Industrial Strategy can bring an action under section 6 of the Company Directors Disqualification Act 1986.

(iii) The Secretary of State of Business, Energy and Industrial Strategy, the official receiver, the liquidator of the company, the administrator of the company can bring an action under 246ZB of the Insolvency Act 1986.

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Question 2.2 [maximum 5 marks]

Commented [WPA5]: 5/5

List any five (5) of the debts which do not form part of the payment holiday under Part A1 of the Insolvency Act 1986 when a company is subject to a Moratorium.

[The five debts that do not form part of the payment holiday under Par A1 of the Insolvency Act 1986 when a company is subjected to Moratorium are:

- 1. The monitor's expenses or fees needs to be paid for their services.*
- 2. Goods or services must continue to be paid for services, such as electricity, gas, and water etc.*
- 3. Rent is still required to be paid for the premises occupied.*
- 4. Employee wages and salaries. Employers are still required to pay their employees during a moratorium.*
- 5. Redundancy Payments]*

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

Commented [WPA6]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA7]: 4/6 a reasonable answer but lacks some specific detail on the various statutory provisions considered.

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 is put into administration, it does not automatically terminate the executory contracts that the company under administration is bound to. Most of these contract's clauses are subject to statutory exceptions which makes the clauses in

contracts invalid. An executory contract is a contract that has not yet been fully performed or fully executed.

The purpose of administration is to rescue the company as a going concern or to achieve a better result for creditors than would be achieved if the company was immediately wound up. As part of this process, the administrator has the power to continue the company's business and to enter into new contracts that are necessary for the continuation of the business

The administrator will need to obtain essential supplies to meet ongoing demands from these contracts and to continue to operate the business. Section 233 of the Insolvency Act of 1986 (the "Act") provides for the supply of gas, electricity, water, and communication services (which includes the supply of goods and services. Outstanding debt should not deter the supply of these services mentioned above, however suppliers can ask the administrator to personally guarantee payment of the goods and services.

Under Section 233A of the act the supplier is unable to penalise the company under administration for goods and services provided due to ongoing administration or insolvency matter. Even if the contract with the supplier has an insolvency related clause that would allow it to end the contract or alter the terms of the contract, Section 233A prevents a supplier from generally relying on this clause.

Section 233B works with Section 233 and Section 233A, in the sense that they prohibit termination by the suppliers of utilities (Water, Electricity etc.), communications and IT suppliers. Sections 233B provides remedies in restricting termination to all types of suppliers too. However under Section 33B a contract can be terminated by the contracted supplier by either applying to court and the court agrees that continuing the contract would be a heavy burden to the supplier or obtaining consent from the insolvency office holder or company under the court order.

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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. How would this priority change if the company had been subject to a Moratorium under Part A1 of the Insolvency Act 1986 during the 12 week period prior to the commencement of the liquidation?

[In a liquidation, the order of priority of payments is a hierarchy that sets out the order in which different classes of creditors and expenses are paid. The priority of payments is determined by law, and it ensures that the most pressing and important debts are paid first.

When a company enters liquidation, each class of creditors must be paid in full (the exception being 'prescribed part' secured creditors) before funds are allocated to the

Commented [WPAB]: 6/9 along the right lines but there is a lack of specificity especially around the two types of preferential creditors in Sch 6. Certain moratorium debts will be paid in priority to the liquidator's expenses so the last part of the answer is incorrect.

next. Under section 115 of the Act several expenses are given precedence over the liquidating company's preferential creditor, floating charge holders and unsecured creditors. A preferential creditor is a creditor who is granted preferential rights during an insolvent liquidation by receiving the right to first payment. Creditors are ranked as follows:

1. Expenses that are incurred by the liquidator in preserving the assets of the company
2. Costs of any security by the liquidator
3. Amount paid to person who prepares the statement of affairs/accounts
4. Disbursements by the liquidator in the course of the liquidation or winding up
5. Remuneration of any person employed by the liquidator to perform services for the
6. company.
7. Remuneration of the liquidator
8. Amount of corporate taxes on realisation of any assets of the company
9. Any other expenses chargeable by the liquidator in carrying out the winding up or
10. liquidating duties.
11. Preferential debts are then paid in the following order (in their respective classes and in equal portion to the ranked class if the company's asset are insufficient to pay all debt):
 - a. Ordinary Preferential creditors are then paid before Secondary preferential creditors
12. Secured creditors with a floating charge
13. Unsecured creditors
14. Lastly, shareholders

Schedule 6 of the Insolvency Act 1986 lists the following debts as preferential debts:

- Employee pension contributions paid for up to four months prior to winding up procedures commencing.
- Employers' contribution to pension scheme up to 12 months before the winding up procedures commenced
- Salary and wages which include holiday bonuses and commission etc. earned by employee.
- Value Added Tax (VAT), amounts deducted by the employer from the employee's wages or salary for income tax, national insurance contributions, or student loan repayments, that remain unpaid by the insolvent company.

The liquidator needs to apply 176A first before payment to any creditors with floating charges. Under 176A the liquidator or administrator is required to make a "prescribed part" i.e. set aside net property for the settlement of unsecured debts. This portion set aside may not be distributed to the floating charge holders unless the unsecured debts are settled. Certain exceptions may apply.

If a company was subject to a Moratorium under Part 1A of the Insolvency Act 1986 during the 12 week period prior to the commencement of the liquidation, the order of

priority of payments would not change. However, the moratorium may have an impact on the company's ability to pay its creditors and expenses, and it may affect the amount that is available for distribution to unsecured creditors.

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

Commented [WPA9]: 5/15

Prior to going into compulsory liquidation on 23rd December 2022, under pressure from its bank, Fretus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Marbley Q Limited ("the Company"), granted a debenture in favour of Fretus Bank plc in February 2022. 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 2022.

In July 2022, as the Company continued to suffer cash flow problems, the directors approved the sale of two (2) marble cutting machines to Rita Perkins (a director) for GBP 10,000 in cash. The machines had been bought for GBP 25,000 a year before.

A month before the winding up order was made, Rita Perkins received an email from Hard and Fast 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 marble was seen as essential by the Company, the board authorised a payment of GBP 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 GBP 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 Fretus 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]

Commented [WPA10]: 1/5 Although many of the points made are true they do not really address the issue. The main issue is whether the floating charge may be avoided under s 245 - there is some confusion with s 128 here - or possibly s 239. The requisites for a s 245 needed to be explained and applied.

The floating charge in favour of Fretus Bank plc;

[For all references to the Act refers to the Insolvency Act 1986 ("the Act").

In a liquidation, the order of priority of payments is a hierarchy that sets out the order in which different classes of creditors and expenses are paid. The priority of payments is determined by law, and it ensures that the most pressing and important debts are paid first.

Under section 115 of the Act several expenses are given precedence over the liquidating company's preferential creditor, floating charge holders and unsecured creditors.

As the debenture contained a floating charge over the whole of the Company's undertaking it falls under the category of a secured creditor with a floating charge.

In the liquidation process the floating charge in favour of Fretus Bank PLC ("Fretus") would be one of the last debts settled before only the unsecured creditors and any distributions to shareholders.

Under S130 of the Insolvency Act, Fretus is not allowed to take any legal actions, or continue legal actions once the compulsory liquidation commences (23 December 2022) without getting permission from the court.

Fretus may who are the holders of the floating charge, could have appointed an administrator but it it would have prevented Marbley Q Limited ("the Company") from entering liquidation proceedings until the administration was completed.

Under section 128 of the Act the liquidators could challenge the floating charge if the Company was insolvent at the time the floating charge was created as the debenture was entered into within 12 months of the insolvency proceedings. (in February 2022). This action (the charge) could this be voided.

The liquidator needs to apply 176A first before payment to Fretus which is a creditor with debt that is subjected to floating charges. Under 176A the liquidator is required to make a "prescribed part" i.e. set aside net property for the settlement of unsecured debts. This portion set aside may not be distributed to the floating charge holders unless the unsecured debts are settled.

Net property is the proceeds after the settlement of liquidation expenses and any preferential debts.

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Question 4.2 [maximum 6 marks]

The sale of the marble cutting machines; and

[

The liquidator should look at the trading practices of the Company prior to going into liquidation. This includes the sale of the marble cutting machines that took place in July 2022.

Commented [WPA11]: 3/6 although generally along the right lines there is a general lack of specific detail and application to the facts. The most likely action under s 238 required consideration of all the s 238 requisites.

Section 238 allows an insolvency practitioner or liquidator to challenge any transactions that a company made before entering into formal insolvency proceedings that may have resulted in the company disposing of assets or money for less than their fair value. As the directors approved the sale of two (2) marble cutting machines to Rita Perkins (a director) for GBP 10,000 in cash. The liquidators will challenge this as the machines had been bought for GBP 25,000 only a year before. This transaction took place within the 2 year "relevant time" period before the liquidation commencement date that is covered in this section.

Section 212 of the Act allows the liquidator to take action against Rita Perkins, a director of the Company and the other directors who approved these sales transactions. As it appears that the Directors acted with gross negligence at possibly defrauding their creditors. The liquidator can apply to the courts for an order requiring the directors, including Rita Perkins to contribute to the company's assets/compensate the difference in value of GBP 15,000 (GBP 25,000 less GBP 10,000) so to recover the losses suffered by the Company due to wrongful trading or breach of duties.

Section 214 of the Act deals with the Company liable for wrongful trading, (fraudulent trading can also apply under Section 213) allows the liquidator to apply to the court to declare Rita Perkins, a director of the Company and the other directors of the Company to make a contribution to the company's assets as the following conditions have been met: (1) the company has gone into liquidation on 23 December 2022, (2) Rita Perkins and the directors ought to have known that there would be no reasonable prospect that liquidation proceedings could be avoided, as the Company was unable to pay its debts. (3) Rita Perkins is a director.

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Question 4.3 [maximum 4 marks]

The payments to Hard and Fast Ltd.

[
Section 233B allows the liquidator to challenge the transactions entered by the Company and Hard and Fast Ltd. As it took place during the two-year period prior to the liquidation proceedings, As these transactions were entered into with the intention of putting assets (cash) beyond the reach of the company's creditors and can be seen with a view to defrauding creditors.

The distribution of the Company's property in a liquidation proceeding should be according to the statutory order. Section 127 is a provision that applies to any transaction that is entered into with the intention of giving a creditor or other person an unfair advantage over other creditors. The liquidator has to apply to the court to void these transactions, the court has discretionary powers on this decision. For the GBP 3000 that was paid as cash on delivery the court will have to consider the benefit

Commented [WPA12]: 1/4 the answer seems to confuse s 423 with s 233B. The s 127 point is the issue here and there is a lack of detail as to its operation and how it would apply to the two different types of payment here. There is a hint of understanding that distinction but it is not fully considered.

to the Company and whether this is needed to ensure the business of the Company to continue to run.

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*** End of Assessment ***