



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]: 34/50 = 68% a good effort showing generally a good understanding. In places more detailed consideration would have been helpful.

Commented [WPA2]: 9/10

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

Commented [WPA3]: C is correct

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 [WPA4]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 4/5 s 246ZB is only available to administrators

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) *section 423 of the Insolvency Act 1986:*  
Where the company is being wound up or is in administration; the official receiver, liquidator, administrator, and (with leave of the court) the victim such as a creditor. Where a victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction. In any other case, by a victim of the transaction.
- (ii) *section 6 of the Company Directors Disqualification Act 1986:*  
Secretary of State or the official receiver.

(iii) *section 246ZB of the Insolvency Act 1986:  
The liquidator of the company.*

Question 2.2 [maximum 5 marks]

Commented [WPA6]: 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.**

1. *The monitor's remuneration or expenses;*
2. *Goods or services supplied during the Moratorium;*
3. *Rent in respect of a period during the Moratorium;*
4. *Wages or salary arising under a contract of employment;*
5. *Redundancy payments.*

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

Commented [WPA7]: 9/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 4/6 fine as far as it goes but a little more detail is needed especially on s 233 and s 233A.

**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; Sections 233 and 233A provides an administrator with rights pertaining to essential supplies (gas, electricity, water, communications and IT). Section 233 prevents a supplier from demanding outstanding debts as a condition of continued supply, but allows the supplier to require personal guarantees from the office holder.*

*Section 233B was introduced in 2020 to expand those rights to all goods and services (except financial services), in so far that contractual rights to terminate a contract based on insolvency are no longer enforceable. It also prevents suppliers of any such services to "do any other thing" in relation to a contract based on the company's insolvency (such as changing payment terms). Under 233B, the supply cannot insist on a personal guarantee from the administrator.*

*Sections 233, 233A and 233B apply in administration and CVAs. 233B also applies to Moratoriums and Restructuring Plans.*

Question 3.2 [maximum 9 marks]

Commented [WPA9]: 5/9 again, the answer is fine as far as it goes but there is no explanation of the prescribe part and the effect of a prior Moratorium is not addressed at all.

**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?**

*Pursuant to s 115 of the Act, and Rules 6.42 and 7.108, a number of expenses enjoy priority over preferential creditors, floating charge-holders and unsecured creditors. They include, in the following order:*

- *Expenses properly incurred by the liquidator in preserving, realizing or getting in assets (including legal costs);*
- *Costs of security provided by the liquidator;*
- *Amounts payable to a person assisting with a statement of affairs or accounts;*
- *Necessary disbursements by the liquidator in the course of the winding up;*
- *Remuneration of persons employed by the liquidator to perform services for the company;*
- *Remuneration of the liquidator;*
- *Corporation tax on chargeable gains;*
- *Any other expenses properly chargeable by the liquidator.*

*Once expenses have been paid, company assets are then used to pay preferential creditors (as defined by sections 386, 387 and Sch6 s175. Firstly, ordinary preferential debts, including the following (on an equal ranking):*

- *Sums owing on employee's contribution to occupational pension schemes;*
- *Sums owing by the company to the pension scheme in the 12 months before the relevant date;*
- *Remuneration owed to an employee for the period of four months prior to the winding up, up to £800;*
- *Accrued holiday pay;*
- *Monies advanced to pay wages or holiday pay;*
- *Coal and steel production levies;*
- *Amounts ordered to be paid pursuant to the Reserve Forces (Safeguard of Employment) Act 1985;*
- *Amounts owed in respect of eligible deposits (so far as it does not exceed the compensation payable pursuant to FSCS to the creditor).*

*Then, secondary preferential debts, including (on an equal ranking):*

- *Amounts owed to eligible persons in respect of eligible deposits, as exceeds said compensation.*
- *Amounts owing in respect of other deposits (subject to eligibility conditions).*
- *PAYE tax deductions, national insurance deductions, VAT, CIS deductions, and student loan deductions.*

*Then, to the floating charge holder(s), followed by unsecured creditors (including trade creditors), and then by shareholders.*

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

Commented [WPA10]: 7/15

***Prior to going into compulsory liquidation on 23<sup>rd</sup> 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 14<sup>th</sup> 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]

**The floating charge in favour of Fretus Bank plc;**

**Given that the transaction involved the granting of a floating charge, and does not appear to include new consideration to the company, the liquidator may seek to avoid the transaction pursuant to s 245 of the Act.**

**Fretus does not appear to be a connected person, and thus the relevant time is within 12 months of the time of insolvency, but only where at the time of granting, the company was unable to pay its debts (within the meaning of s 123). The liquidator will need to establish that the Fretus was unable to pay its debts as at February 2022.**

**Alternatively, the charge granted to Fretus Bank may also be voidable by the court on application as a potential preference, pursuant to section 239 of the Act. In this regard it is relevant to consider that:**

- **Fretus was a creditor at the time of the time of the transaction;**
- **The company's granting of a floating charge in favour of Fretus put Fretus in a better position in the liquidation (i.e. Fretus had been preferred);**

**Commented [WPA11]:** 3/5 although a reasonable answer there is a lack of requisite detail in terms of the law and its application eg on the facts a s 239 is not arguable as it falls outside the time frame.

- According to the facts, Fretus had pressured the company to enter into the transaction, and more pertinently may have been influenced by having the desire to entire into the transaction to prevent a repayment demand on the loans from Fretus.
- Fretus does not appear to be a connected person; the transaction occurred within the relevant time (being 6 months from insolvency).

Based on the facts, the liquidator appears to have a valid claim to avoid the transaction under s 239 on application to the court, but bears the burden of proof to establish the above. Key issues that will need to be established include that the company was insolvent within the meaning of s 123 of the Act at the time of the transaction, and that the company was influenced by a desire to prefer (instead solely by commercial considerations, such as to continue trading). Further information is required to form a conclusive view.

Question 4.2 [maximum 6 marks]

**The sale of the marble cutting machines; and**

*This transaction may be voidable pursuant to s238 of the Act as potentially undervalue transactions, being a transaction with the director to sell the assets for consideration that was potentially significantly less than the consideration provided by the company.*

*In this regard, it is relevant to consider that:*

- The transaction occurred within the requisite two year period prior to liquidation;
- The consideration provided to the company was significantly less than the consideration the company originally provided for the assets;
- The liquidator can avail himself of the rebuttable presumption of insolvency, given that the transaction was with a connected person, being the director.

*Notwithstanding the above, the director would have the opportunity to satisfy the court that the transaction was entered into in good faith, and had reasonably believed that the transaction would benefit the company (such as by providing much needed liquidity). It is also relevant to consider that the fair value of the assets may have declined significantly since purchase (such as by depreciation or physical damage). Additional information is required to form a conclusive view.*

Question 4.3 [maximum 4 marks]

**The payments to Hard and Fast Ltd.**

*The payment of £8,000 to Hard and Fast may be voidable by the court on application as a potential preference, pursuant to section 239 of the Act. In this regard it is relevant to consider that:*

**Commented [WPA12]:** 4/6 a reasonable answer but one which would benefit from more specific detail on the workings of s 238 and their application to the facts.

**Commented [WPA13]:** 0/4 - unfortunately the issue has been misidentified. The transaction took place after the commencement of the liquidation and so s 239 is not a possible cause of action. Only s 127 is applicable.

- *Hard and Fast was a creditor at the time of the time of the transaction;*
- *The transaction potentially put Hard and Fast in a better position in the liquidation (i.e. they had been preferred);*
- *According to the facts, Hard and Fast had pressured the company to enter into the transaction by withholding continued supply, and more pertinently may have been influenced by having the desire to enter into the transaction to secure addition marble, which was viewed as essential.*
- *Hard and Fast does not appear to be a connected person; the transaction occurred within the relevant time (being 6 months from insolvency).*

*Based on the facts, the liquidator appears to have a valid claim to avoid the transaction under s 239 on application to the court, but bears the burden of proof to establish the above. Key issues that will need to be established include that the company was insolvent within the meaning of s 123 of the Act at the time of the transaction, and that the company was influenced by a desire to prefer (instead solely by commercial considerations, such as to continue trading). Further information is required to form a conclusive view.*

*On the other hand, the subsequent payments totaling £3,000 are unlikely to be avoided by the liquidator, given that they were not repayments of debt (having been on a cash on delivery basis), and that they were entered into for new consideration.*

**\* End of Assessment \***