



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

Commented [WPA1]: 40/50 = 80% a very good effort

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

Commented [WPA2]: 10/10 excellent

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) 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]

Commented [WPA3]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA4]: 4/5 a good answer but supervisor of a CVA is omitted

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) *The official receiver, the trustee of a bankrupt estate or the liquidator or administrator of the body corporate of (with the Court's leave) the victim of the transaction;*
- (ii) *the Secretary of State, or if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being or has been wound up by the Court in England and Wales, by the official receiver;*
- (iii) *the administrator.*

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.

1. *The monitor's remuneration or expenses;*
2. *Goods or services supplied during the moratorium;*
3. *Rent in respect of the period of 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 [WPA6]: 11/15

Question 3.1 [maximum 6 marks]

Commented [WPA7]: 5/6 a good answer but a little more detail would have been useful in places eg the operation of s 233B and how it differs from 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. Section 233 of the Insolvency Act 1986 (the Act) enables an administrator to request that supplies of essential goods and services including gas, electricity, water as well as communication services continue after the company is put into administration. The suppliers can make their continued supply conditional upon the administrator providing a guarantee for payment of that continued supply, but they cannot make the supply conditional upon payment of any outstanding charges for supply to the company before the date of the administration. The suppliers will also be unable to rely on any clauses in their contracts which purport to terminate or "do any other thing" if the company enters into the administration, pursuant to section 233A of the Act. That section also enables the suppliers to terminate their contract if it contains such terms but only with the administrator's consent or court order, or if the charges for the supply of goods or services arising after the administration are not paid within 28 days of becoming due. Section 233B of the Act extends the protection afforded under sections 233 and 233A to all suppliers (subject to limited exceptions). Suppliers with contracts containing automatic termination clauses are also unable to insist on the administrator's guarantee to pay their charges for the continued supply of goods or services under section 233B.

Question 3.2 [maximum 9 marks]

Commented [WPA8]: 6/9 a good answer but more detail needed on certain points eg s 176A prescribed part

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?

Order of priority of payments in a liquidation

1. The expenses of the winding up, including the liquidator's remuneration, take first priority over creditor claims. These include the expenses properly incurred by the liquidator in preserving or realizing the assets including conducting legal proceedings, the cost of any security provided by the liquidator and any necessary disbursements incurred in conducting the winding up of the company's affairs. The liquidator's own remuneration is also included within this category but it comes behind properly incurred expenses and disbursements in the course of the liquidation (per section 115 of the Act and rules 6.42 and 7.108 of the Insolvency Rules);
2. The debts of preferential creditors, including employees' remuneration, pensions and taxation liabilities. Such debts may be ordinary or secondary, with ordinary debts being paid first. Debts within each class rank equally so will be paid in equal measure if there are insufficient assets in the estate to meet them all in full (per sections 386, 387 and Schedule 6: section 175 of the Act);
3. Holders of a floating charge, with the earliest in time taking priority over later creditors if there is more than one creditor. In accordance with section 176A of the Act, the liquidator must make a prescribed part of the company's net assets available to satisfy unsecured debts and cannot distribute this prescribed part of the assets to the floating charge holder unless there are sufficient assets to satisfy all the unsecured debts;
4. Unsecured creditors;
5. Shareholders.

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

The priority is altered by a Part A1 Moratorium. Section 174A of the Act provides that debts which do not form part of the payment holiday for debtors gain super priority status even before the liquidators' remuneration. Such debts include goods or services supplied during the moratorium, rent in respect of a period during the moratorium and wages or salary arising under a contract of employment.

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

Commented [WPA9]: 10/15

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]

The floating charge in favour of Fretus Bank plc;

Pursuant to section 239 of the Act, the liquidator may be able to apply for a remedy in relation to this transaction as a preference to a creditor. The liquidator will need to show that Fretus Bank plc was a creditor of the Company at the time of the transaction, that something was done which put FB plc in a better position than it would have been had the transaction not been carried out, and that the Company was influenced by a desire to put the creditor into a preferred position. FB plc was a creditor, having granted loans to the Company. The granting of the floating charge put FB plc in a better position than it would have been as an unsecured creditor, as holders of floating charges gain priority in a liquidator for payment ahead of unsecured creditors. It can be inferred that the Company was influenced by a desire to put the creditor into a preferred position in undertaking the transaction, as we are told that the Company granted the floating charge in order to prevent FB plc from demanding repayment of the Company's loans. The transaction also needs to have been undertaken at the 'relevant time' being within 2 years of the onset of insolvency (the Company going into liquidation). That is the case here, the floating charge having been granted in

Commented [WPA10]: 4/5 generally good but the s 239 provisions have not been applied correctly. The execution of the charge falls outside the 6 month time limit. A little more detailed application of s 245 would have been helpful.

February 2022 and the Company going into compulsory liquidation on 23rd December 2022. Section 245 also makes a floating charge invalid if it is made either with a connected person within 2 years of the Company going into liquidation, or 12 months prior if made with an unconnected person, and at the time the Company was unable to pay its debts or became unable to do so as a result of the transaction. Whether FB plc is unconnected or not the transaction took place within the relevant time, and it appears that the Company was unable to pay its debts at the time of the transaction as FB plc appeared to be making demands for repayment, which led to the transaction being entered into.

Question 4.2 [maximum 6 marks]

Commented [WPA11]: 5/6 a good answer but some consideration of the possible defence under s 238 was needed.

The sale of the marble cutting machines; and

The marble cutting machines were sold to Rita Perkins who is a director. Under s238 of the Act, a liquidator can have a transaction set aside if it was entered between the Company and another person for consideration which was significantly less than the value of the consideration paid by the Company. Here we know that the Company paid GBP 25,000 for the machines only a year before they were sold to RP for GBP 10,000. That on its face would indicate that the machines were sold for less than the value of the consideration provided by the Company. The transaction took place within two prior to the commencement of the liquidation, having been sold in July 2022. The Company needs to have either been unable to pay its debts as they fell due at the time of the transaction or become so as a result of the transaction for the liquidator to establish liability. We do not have enough information to determinate that definitely but it appears that the Company was having cash flow problems at the time, which would appear to accord with the definition of cash flow insolvency. In addition, RP is a connected person and as a result the Company is presumed to have been insolvent or become insolvent as a result of the transaction unless proven otherwise. Therefore the liquidator may take action in relation to this transaction as a transaction at an undervalue. The transaction is also possible a transaction defrauding creditors under section 423 of the Act since it concerns a transaction at an undervalue and could be considered to have put assets of the company out of reach of creditors.

Question 4.3 [maximum 4 marks]

Commented [WPA12]: 1/4 an interesting answer but not really on the point. The answer is simply that s 127 will make such payments void as they occurred after the commencement of the liquidation.

The payments to Hard and Fast Ltd.

As H&F Limited is a supplier of the Company and if it had demanded payment after the Company went into liquidation in December 2022, the liquidator could have relied on the provisions of section S233B whereby the supplier would be prohibited from making payment of their outstanding charges a condition of the supply of their goods. However as the demand was made just before the Company went into liquidation, this provision cannot be relied upon. Once the Company has gone into liquidation the supplier will no longer be able to demand payment of their outstanding charges as a condition of continuing their supply.

*** End of Assessment ***