



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]: 30/50 = 60% a strong start but a very limited attempt at Q4.

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**

Commented [WPA3]: B is correct

(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 [WPA4]: 8/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 3/5 - only the Secretary of State (or OR) can bring an action under s 6 and only an administrator has standing under s 246ZB.

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) In terms of section 423 of the Insolvency Act 1986, an official receiver or liquidator and / or the administrator can bring an action, however any victim of a fraudulent transaction may, upon application for leave of the court, once same is granted bring an action. However, this leave will only be given where the partitioner is creditor of the insolvent and is bound by a company voluntary arrangement, or was the supervisor of the company voluntary arrangement, or any victim not bound by such arrangement or any other victim of a fraudulent transaction.
- (ii) In terms of section 6 of the CDDA 1986, any aggrieved party who can prove to the satisfaction of the court, that they suffered a loss due to the fraudulent and/or reckless dealings of the director can bring an action, and can show that the requirements of section 6 have been met, i.e. that the respondent is or was a director of a company which has become insolvent. Whether such responded was a director at the time or subsequent to his or her departure from office and more importantly that the respondents conduct whilst in the position of director of the insolvent company shows the respondents inability to manage a company. Such applications are usually sued when there is evidence pointing to a company trading in insolvent circumstances and/or using Crown funds such as VAT or PAYE collected on behalf of the Crown and not paid over to the Crown but rather used as trading capital.
- (iii) Section 246ZB is traditionally only available to a liquidator of a company, and where such liquidator can prove wrongful or fraudulent trading by the directors.

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.**

The following are examples of debts that do not form part of the payment holiday under part A1 of the Insolvency Act 1986:

- 1) Employee's wages and/or salaries;
- 2) Payment for goods or services supplied for use of the business during the moratorium period;
- 3) Expenses and remuneration of the monitor of the company;
- 4) Any redundancy/retrenchment payments;
- 5) Any debt arising or as a result of any financial services which is defined, to some extent, as the finance of leased property, the provision of guarantees by financial institutions and lending from financial institutions.

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

Commented [WPA7]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 4/6 - correct but lacking in detail especially regarding s 233B

**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?**

An administrator can indeed require a supplier of goods and services to continue supplying such goods and services during administration. Section 233 of the Act empowers the administrator to keep essential services such as IT services, data storage, web hosting, utilities such as water, gas and electricity. There is however a caveat to this, in that the service

provider may require that the administrator gives a personal guarantee for the payment of such services whilst in administration.

The act goes further in section 233B, in that it forbids a supplier from relying on a clause in any contract that would *ipso facto* terminate the contract if an act of insolvency on the part of the company is committed.

**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, payments are made in the following order of priority. In terms of section 115 of the Act certain expenses are given preference over preferential creditors, holders of floating charges and unsecured creditors. Such expenses are the cost of administration or the costs of winding up, which includes the liquidators remuneration. Normally, administration expenses, as aforementioned, are paid first, followed by preferential creditors then holders of floating charges and thereafter unsecured creditors.

A preferential creditor normally comprises of the limited secured claims of employee and tax liabilities. Preferential claims are normally split into 2 classes, that of ordinary and secondary claims; the ordinary being paid before any secondary could be paid.

Floating charge holders are then paid. they are paid in order of when the floating charge came into existence.

It is important to bear in mind that any administrator or liquidator is bound to make a part, known as the prescribed part, of the net available property available for payment of unsecured claims, hence a liquidator or administrator can only use any amount that is excess to that required to settle unsecured debts for the purposes of floating charges.

Thereafter unsecured creditors, which are normally trade creditors that hold no security, are paid.

After that should any funds be left shareholders are paid a dividend pro rata to their shareholding.

The above debts and their priority will change if the company entered liquidation within 12 weeks of the end of the Moratorium period. In such instances certain pre moratorium debts not subject to any moratorium become payable in the liquidation before even the costs of administration or liquidators fees, thus giving these unsecured debts a form of super priority or security.

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

**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.**

**Commented [WPA9]:** 6/9 an accurate answer but there is a general lack of detail eg how is the prescribed part calculated?

**Commented [WPA10]:** 3/15



**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;**

The floating charge in favour of Fretus Bank plc is on the face of it open to attack in terms of section 245 of the Act, if the liquidator can prove that the floating charge did not give rise to value in return for the creation of the charge, that no money was paid to the company or goods or services supplied, nor reduction of any debt that the company may have had. I submit that the floating charge was merely an attempt by the bank to create an artificial security as the bank should have foreseen the imminent failure of the company.

Question 4.2 [maximum 6 marks]

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

It can be argued that the sale of the marble cutting tables was *bona fide* in that it did not attempt to deprive the company of an asset, but rather attempted to save the company from the dire circumstances of the loss of trade. The fact that the director personally alienated the property, in the title was transferred to the director, however could lead to the transaction being set aside as it preferred the director over the company, and therefore could be attacked under section 238.

Question 4.3 [maximum 4 marks]

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

The payments made to Hard and Fast Ltd fall under 2 categories: the payment of the arrears and the cash payments thereafter. With regards to the cash payments these can be seen as

Commented [WPA11]: 2/5 - a very general answer. The detail of s 245 needed to be explained and applied to the facts.

Commented [WPA12]: 1/6 - the requisites of s 238 needed to be explained and applied.

Commented [WPA13]: 0/4 no cause of action is identified in the answer. Section 127 required explanation and application.

payments necessary for the continual trading of the business and I submit are not subject to attack. With regards to the payments of the arrears same may be seen as payments that deprived other creditors of dividends and may be set aside by the liquidator, but only if the liquidator can prove that such payments deprived the company and other creditors unnecessarily and had the effect of benefiting one creditor over the other.

**\* End of Assessment \***