



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]: 25/50 = 50%

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

Commented [WPA2]: 7/10

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.*

Commented [WPA3]: C is the correct answer

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**

Commented [WPA4]: C is the correct answer

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.

Commented [WPA5]: D is the correct answer

QUESTION 2 (direct questions) [10 marks]

Commented [WPA6]: 5/10

Question 2.1 [maximum 5 marks]

Commented [WPA7]: 3/5 Under s 6 it is the SoS or the OR in certain cases who can bring the action. Only an administrator can bring an action 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.) **Under section 423 of the Insolvency Act 1986, if the company is being wound up or is in administration, then the official receiver, the liquidator, the administrator, or any victim of the transaction can bring action on the company. In any other case, a victim of the court can also bring action, and if the victim is bound by CVA then the supervisor of the CVA can also bring action.**
- ii.) **Under section 6 of the Company Directors Disqualification Act 1986, the court normally takes the action against a person, but it is also possible for the Secretary of State to accept the disqualification undertaking.**
- iii.) **Under section 246ZB of the Insolvency Act 1986, wrongful and fraudulent trading actions are available to both the liquidator and administrator of a company.**

Question 2.2 [maximum 5 marks]

**Commented [WPA8]:** 2/5 the answer lists a number of things which are really the same thing and would appear to fall within the general category of debts involving financial services.

**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.**

**Some of the debts which do not form part of the payment holiday are as follows:**

- 1.) **Debts owed to employees**
- 2.) **Certain unsecured debts which can also be known as 'super priority' debts**
- 3.) **Unsecured (or secured) pre-Moratorium bank debt**
- 4.) **Financial services debts**
- 5.) **Payment to financial creditors who are demanding payment**

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

**Commented [WPA9]:** 9/15

Question 3.1 [maximum 6 marks]

**Commented [WPA10]:** 4/6 the answer needed to refer specifically to s 233A in addition to s 233 and the separate provisions of s 233B needed to be 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?**

**Under Section 233 of the Act, administrators are allowed to ask suppliers to continue providing for good and supplies. These goods and supplies include point of sale terminals, computer hardware and software, information, advice, and technical assistance, website hosting, and data storage and processing.**

**However, the suppliers cannot require the payment of previous debts in order to provide for continued or new goods and services. They also cannot rely on an 'insolvency-related term' which would allow the supplier to terminate the supply or alter the terms and request for higher payments.**

**The administrator must, however, personally guarantee payment of the charges to the supplier in respect of the supply.**

Question 3.2 [maximum 9 marks]

**Commented [WPA11]:** 5/9 a reasonable answer but lacking in detail in relation eg to categories of preferential debts, provisions of s 176A prescribed debt, provisions of s 174A re moratorium debts

**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?**

Expenses of the winding-up process

**The first payments that will be made will be the expenses of the winding up process. These expenses are given priority over any other payment. They are the costs incurred by the liquidator in the process of the liquidation of the company. They also include the payment to the liquidator for their duties.**

Preferential creditors

**The preferential creditors are paid next. This category mainly comprises of salaries of employees (up to \$2,500 per employee) and outstanding tax payments to the Crown.**

Floating charge holder and the 'prescribed part'

**After the first two payments are made, the liquidator will then assess the 'net property' of the company and assign part of this to be paid to the unsecured creditors. The remaining would be distributed to the floating charge holders. However, if the liquidators thinks that distributing to the unsecured creditors would be disproportionate to the benefits of the floating charge holder, then the prescribed part does not apply.**

**There are also cases where there is more than one floating charge holder. When this is the case, priority is given to the floating charge that was created first.**

Unsecured Creditors

**Unsecured creditors are often paid last in the order. As such, once the payments have been made to the above, there is often little to nothing left to pay as a dividend to the unsecured creditors.**

Shareholders

**If there is any surplus from the funds once all the creditors have been paid, then the shareholders will be paid in a pro-rata basis, in respect to their shareholdings.**

Change due to Moratorium

**If a company enters liquidation within 12 weeks of the end of Moratorium, there might be a slight change in the priority order of the payments. This would be the debts owed to employees or financial services would then be categorized as 'super priority' and would be paid even before the liquidator's expenses and fees.**

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

Commented [WPA12]: 4/15



**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]

Commented [WPA13]: 3/5 along the correct lines but more detail on s 245 needed

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

**As the floating charge was created within 12 months of the company going into liquidation, the liquidator will have to identify whether the floating charge is valid or not. The floating charge will be valid only if:**

- 1.) The value of most of the consideration of the creation of the charge as consists of the money paid, or good or services supplied at the same time as or just after the creation of the charge.**
- 2.) The value of most of the consideration as consists of the discharge or reduction, at the same time as, or just after, the creation of the charge.**

**As the floating charge was created to reduce Marbley Q's debt with Fretus, it may be considered valid. However, the liquidator will have to ensure that this is the case.**

Question 4.2 [maximum 6 marks]

Commented [WPA14]: 0/6 there is no evidence of fraud. The question required consideration of s 238.

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

***The liquidator will have to identify the reason as to why the directors allowed for the sale of the marble cutting machines as well as what Rita will do with the machines. The liquidator will have to look out for fraudulent trading as well as ensure that Rita does not work in another company in which these could be used.***

Question 4.3 [maximum 4 marks]

**Commented [WPA15]:** 1/4 the question required consideration of s 127 which the answer hints at but does not address.

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

***As Hard and Fast is demanding payments one month before the winding-up order, and while Marbely has already petitioned to wind up, there may be a chance that there is a stay in in proceedings against the company. As such, Hard and Fast may not be able to demand payments from Marbely.***

\* End of Assessment \*