



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]: 32/50 = 64%

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

Commented [WPA2]: 8/10

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.*

Commented [WPA3]: D is correct

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.*

Commented [WPA4]: B is correct

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 [WPA5]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA6]: 4/5 the CDDA answer is not entirely clear and under s 246ZB only the administrator has standing to bring an action.

**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?**

*[For all these 3 sections, generally the parties that may bring an action are the official receiver, liquidator, administrator, supervisor of CVA or any victim, whichever applicable.]*

*Section 423 of the Insolvency Act 1986 deals with transactions which are designed to defraud creditors.*

*(a) Where a company that is being wound up or is in administration, the following parties can bring an action under Section 423:*

- the official receiver;*
- the liquidator;*
- the administrator and*
- any victim eg. creditor, of the transaction with the leave of court.*

*(b) Where a victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction, regardless whether bound by the CVA or not, can bring an action under Section 423.*

*(c) In any other case, the victim of the transaction can bring an action under this section.*

*Section 6 of the Company Directors Disqualification Act 1986 deals with findings of unfitness against directors of insolvent companies. The proceedings are usually brought by the Insolvency Service acting on behalf of the Secretary of State for Business, Energy and Industrial Strategy. The matter is heard, and decided by the court.*

*When a company has entered into formal insolvency proceedings, the official receiver, liquidator, receiver or administrator can lodge report to the Secretary of State. If no formal insolvency proceedings took place, any victim eg. shareholder or employee of the company, whom suffered loss due to the action of the directors, can complain to the Insolvency Service.*

*Section 246ZB of the Insolvency Act 1986 deals with making directors of insolvent companies liable for wrongful trading. Similarly, the parties that may bring an action under this section are the official receiver, liquidator, administrator or any victim.*

Question 2.2 [maximum 5 marks]

Commented [WPA7]: 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.**

*(a) the monitor's remuneration or expenses but does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;*

*(b) goods or services supplied during the Moratorium, this means debt incurred during Moratorium period will not be covered under the payment holiday;*

- (c) Rent in respect of a period during the Moratorium;
- (d) Wages or salary arising under a contract of employment which include redundancy payments and payment in lieu of notices are not in the payment holiday; and
- (e) Financial services debts eg. Bank or other secured creditors. The Moratorium and payment holiday although set certain restriction but it does not prevent the financial creditors from demanding payment during the Moratorium period.

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

Commented [WPA8]: 7/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 1/6 the answer is rather confused and appears to mix the administration moratorium with the standalone moratorium procedure. Although the provisions of ss 233, 233A and 233B are hinted at there is no real explanation of them.

**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?**

*[Administration is a temporary procedure with moratorium giving it some breathing space from creditors' action and allowing the administrator to prepare a proposal, to be voted by the creditors, with the intention of either rescuing the company or business perhaps to fetch a better disposal price or at least improve matters for creditors as compared to placing the company under liquidation immediately.]*

*Yes, if the administrator is of the view that continue operation of the company can help achieving the objective of the administration, he can request for the continuing supply of good and services to the company during the administration. Administrator will also frequently require retaining or obtaining certain essential supplies like water, gas, electricity and communication services. These debts arising out of a contract entered by the administrator for goods and services supplied during administration are moratorium debts. In the event, that an insolvency event occurs within 12 weeks of the expiry of a moratorium, moratorium debts have super-priority under paragraph 99 of Schedule B1 of the Act and will be paid in priority to the administrator' own fees and expenses.*

Question 3.2 [maximum 9 marks]

Commented [WPA10]: 6/9 a reasonable answer but there is a lack of detail on a number of issues eg ordinary and secondary preferential debts, s 176A, s 174A. The position of fixed charge holders is not explained clearly.

**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?**

*[The hierarchy of creditors or order of priority of payments in a liquidation are as following:*

- (1) Expenses of winding up, including the liquidator's remuneration under Section 115;*
- (2) Preferential creditors, as defined in sections 386, 387 and Schedule 6: section 175;*



- (3) Floating charge holder and "prescribed part"- subject to section 176A;*
- (4) Unsecured creditors; and lastly*
- (5) Shareholders.*

*Each of the above class / ranking are to be paid in pari passu i.e. same percentage in the same group of creditors if money is not sufficient to pay the entire group in full.*

*Each class / ranking of creditors must be paid in full before the surplus fund flow down to settle the next lower ranking of debts.*

*(1) The main winding up expenses include the following and must be paid in the order of priority as stated below:*

- (a) expenses that are properly incurred by the liquidator in preserving, realizing or getting in any of the assets of the company (including the conduct of any legal proceedings);*
- (b) the cost of any security provided by the liquidator;*
- (c) any amount payable to a person to assist in the preparation of a statement of affairs or accounts;*
- (d) any necessary disbursements by the liquidator in the course of the winding up (including, for example, any expenses incurred by members of the liquidation committee);*
- (e) the remuneration of any person who has been employed by the liquidator to perform any services for the company;*
- (f) the remuneration of the liquidator (which is subject to effectively the same rules as those which apply to administrators, specifically including the fees estimate regime where a time cost basis for the liquidator's fees is adopted);*
- (g) the amount of any corporation tax on chargeable gains accruing on the realization of any asset of the company; and*
- (h) any other expenses properly chargeable by the liquidator in carrying out the liquidator's function in the winding up.*

*Once the above winding up expenses had been paid in full, the assets of the company are then used to pay preferential creditors, followed by secured creditors with a fixed charge, preferential creditors, secured creditors with a floating charge, unsecured creditors, connected unsecured creditors and finally the shareholders.*

*Those with fixed security will usually enforce their security outside any formal insolvency.*

*Preferential creditor is a creditor who is granted preferential status by receiving the right to first payment. This mainly comprised of limited claims of employees and some taxation liabilities under Schedule 6 of the Act.*

*After preference creditors have been paid, the surplus assets will be used to settle debts owing to the floating charge holder. If there are more than 1 floating charge*

holder, then liquidators will have to settle the debt in accordance to the order of the floating charge's creation dates.

However, the liquidator must first consider the application of section 176A of the Act which applies where a company has granted a floating charge on or after 15 September 2003 and gone into liquidation. In such cases, the liquidator is obligated to make a prescribed part of the company's net property available for the satisfaction of unsecured creditors. This sum of money from the floating-charge pool is set aside for unsecured creditors in a Liquidation, Administration or Administrative receivership—found under Insolvency Act 1986, section 176A.

On 6 April 2020, the Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020 came into force. This order amends the Insolvency Act 1986 (Prescribed Part) Order 2003, and increases the maximum amount of the prescribed part from £600,000 to £800,000.

Last 2 group are the unsecured creditors and shareholders. Usually, there is nothing much left after payment to all the above higher priority of debts. Unsecured creditors are normally ordinary trade creditors which do not have security over the company's assets.

If the company had been subject to a Moratorium under Part A1 of the Insolvency Act 1986 during the 12 weeks period prior to the commencement of the liquidation, the liquidator had to consider moratorium and pre-moratorium debts. Section 174A provides that certain unpaid pre-moratorium or moratorium debts such as debts owed to employees or financial services debts, be granted super-priority status and therefore are to be paid in priority to the liquidator's fees and expenses.

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

Commented [WPA11]: 8/15

**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;**

*[Floating charge debt is ranked after the preferential creditors, which supposedly has a highly chance of obtaining repayment from the company.]*

*However, the company's floating charge was created in February 2022, which is after 15 September 2003, this means section 176A of the Insolvency Act 1986 applies. Hence, the liquidator has a duty to set aside a prescribed part of the company's net property for the benefits of the unsecured creditor.*

*In view that the prescribed part set out in the Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020 effective on 6 April 2020, is GBP800,000, the liquidators has to set aside up to a maximum amount of GBP800,000. Where the company's net property does not exceed GBP10,000, the prescribed part is 50% of that property. Where the company's net property exceeds GBP10,000, the prescribed part is 50% of the first GBP10,000 in value, plus 20% of the excess in value above the GBP10,000, subject to a maximum of GBP800,000.*

*Fretus Bank plc is entitled to the company's pool fund (after settlement of preferential debts) less the prescribed part, for its repayment. If Fretus Bank pls has any outstanding unsecured balance owing to it, it is not permitted to participate in the distribution of the prescribed part.*

Question 4.2 [maximum 6 marks]

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

**Commented [WPA12]:** 1/5 the answer fails to address the likely invalidity of the charge under s 245.

**Commented [WPA13]:** 3/6 the requisites of s 238 are not all fully explained and applied.

*[Issue flagged out here are (a) sale to a connected person and (b) transactions at undervalue - section 238*

*Pursuant to section 238, the liquidator can attack the sale of the marble cutting machines to the director as it is sold at undervalue.*

*In view that this transaction took place at the relevant time which is within the 2 years period prior to the commencement of the liquidation, it qualifies this requirement to be attacked.*

*However, on whether or not this transaction was with a connected person (the director), the liquidator has to show that the company is presumed to have been insolvent or have become insolvent as a result of the transaction. In this case, we understand that the company already has cash flow problems i.e. cash flow insolvency, prior to the sale of the two marble cutting machines to Rita Perkins, a director of the company.*

*Hence, I am of the view that the liquidators should extract the financial statements of the company prior to the sale to show evidence that the company was indeed having cash flow and/or balance sheet insolvency and apply to void the transaction and take back the 2 machines to be sold during liquidation at fair value. The director can submit his claim under proof of debt for the liquidator to distribute money in accordance to the priority of debt.*

*If the director can satisfy the court that the transaction was entered by the company in good faith and for the purpose of carrying on its business, and that at the time of transaction, there were reasonable grounds for believing that the transaction would benefit the company, then the court shall not make an order under section 238.*

*The liquidator may also attack the transaction under section 423 of the Act on whether the undervalue sale transaction was to defraud creditors. There is no time limits in respect of which the transaction must have been entered and there is no prerequisite to show that the company is insolvent or becoming insolvent as a result of the sale.*

**Question 4.3 [maximum 4 marks]**

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

*[Petition was issued on 14 October 2022. The company entered into liquidation on 23 December 2022. The supplies of marble although is essential to the operation of the company, the cash term transactions of GBP8,000 and GBP3,000 were made one month before the winding up order was made, i.e. in November 2022, which is after the petition had been issued.*

*The liquidator can attack these transactions under disposition void unless validated under section 127.*

**Commented [WPA14]:** 4/4 a good answer which explains and applies the relevant law.

*Where goods have been paid for on cash term basis upon delivery, the court will consider the benefit to the company including whether the payment will enable further supplies to be received and so enable the business to continue.*

*Where payments are made honestly, in the ordinary course of business and for the benefit of the company that appeared to be profitable, the payment is likely to be authorized. In view that the payment of GBP8,000 and GBP3,000 allowed the company to continue to trade, it will generally be validated. However, if these payment to Hard and Fast Ltd is shown to be benefiting only one creditor, i.e. Hard and Fast Ltd, to the detrimental of other unsecured creditors, then the court will refused to grant the validation order.*

**\* End of Assessment \***