



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]: 31/50 = 62%

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 correct

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.

Commented [WPA4]: A is correct

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 correct

QUESTION 2 (direct questions) [10 marks]

Commented [WPA6]: 7/10

Question 2.1 [maximum 5 marks]

Commented [WPA7]: 2/5 - there are other possible parties under 423; the Secretary of State may bring an action under s 6 CDDA or the OR at the SoS's direction; 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?

Section 423 of the Insolvency Act 1986

- Victim of the transaction or on the victim's behalf by the liquidator or administrator

Section 6 of the Company Directors Disqualification Act 1986

- *Official Receiver*

**246ZB of the Insolvency Act 1986**

- *Liquidator*

**Question 2.2** [maximum 5 marks]

Commented [WPA8]: 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.**

- *Monitor's remuneration or expense*
- *Goods or services supplied during the Moratorium*
- *Rent in respect of a period during the Moratorium*
- *Wages or salary arising under a contract of employment*
- *Redundancy payments*

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

Commented [WPA9]: 7/15

**Question 3.1** [maximum 6 marks]

Commented [WPA10]: 2/6 the answer is accurate but needed to include an explanation of ss 233 and 233A as well as 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?**

*Section 233B prevents the following*

1. *A supplier from terminating a contract for the supply of goods or services upon a company entering administration.*
2. *A supplier from stipulating that the administrator must provide a personal guarantee for payments of goods and services.*
3. *A supplier from stipulating that pre-insolvency debt must be paid in order for the continued supply of goods or services or raising prices.*

**Question 3.2** [maximum 9 marks]

Commented [WPA11]: 5/9 a reasonable answer but the reference to fixed charges should have been floating charges. More detail was needed especially re preferential creditors. There is no mention of the prescribed part under s 176A.

**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?**

*Once a liquidator realises the assets of a company in liquidation the below is the order of priority in which the assets are paid:*

1. *Under section 115 of the Act a number of expenses are given priority and this will include:*
  - *the liquidator's remuneration*
  - *liquidator's disbursements for realising and preserving assets*

- *Remuneration of persons employed by liquidator*
2. *Preferential creditors includes the following as provided by Schedule 6 section 175:*
    - *Employee's contribution to a pension scheme*
    - *Remuneration owed to employees*
    -
  3. *Holders of fixed charges*
    - *If there is more than one, priority will be given to the first one.*
  4. *Unsecured creditors*  
*Even though it is unlikely that assets will remain, any unsecured creditor will be paid.*
  5. *Shareholders*
    - *Shareholders are only paid if sufficient funds are left. Distribution will be pro -rated based on shareholding.*

*If the company is subject to a Moratorium under Part A1 of the Insolvency Act 1986 then the priority may change as certain unpaid pre- Moratorium or Moratorium debts such as debts owed to an employee are paid even before the liquidators remuneration.*

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

Commented [WPA12]: 10/15

***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;**

*The floating charge was granted in February 2022, 8 months before the petition was filed on the 14 October 2021 which is deemed as the commencement date as per section 129 of the Act. Section 245 allows for a floating charges which have been granted to an unconnected party within 12 months of the onset of insolvency to be invalidated. The aim of Section 245 is to prevent pre-existing unsecured creditors to obtain security. Unless the floating charge can be considered new consideration it will be invalidated. The consideration as per Section 245 will be considered new if the consideration was paid the same time or after the floating charge was created or the value of the consideration consists of reduction or discharge at the same time or creation of the floating charge.*

**Question 4.2 [maximum 6 marks]**

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

*The sale of the marble cutting machines was made to a Rita, a connected party in July 2022, while the company was in financial difficulty and 3 months before the petition was filed. The sale was for GBP 10,000 cash even though the machines had been bought for GBP 25,000 a year before. Section 423 of the Act allows for a liquidator to attack a transaction which intends to defraud creditors. The liquidator will have to prove that the transaction was at an undervalue and that the transaction either put assets beyond the reach of a party making or may make a claim against the company or that the transaction prejudice the interest of the party. There is no time restriction regarding when the transaction was done.*

*The sale of the marble cutting machines will also be caught by the anti- deprivation principle. It provides that creditors of an insolvent estate must not deprived of an asset which would have otherwise been available to creditors. It is crucial that the deprivation is triggered by the insolvency. In this instance the sale was triggered by cash flow problems.*

**Question 4.3 [maximum 4 marks]**

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

**Commented [WPA13]:** 4/5 a little more explanation/application needed but a sound answer

**Commented [WPA14]:** 3/6 - there is no evidence of any fraudulent intent. A far more straightforward cause of action would have been s 238.

**Commented [WPA15]:** 3/4 a good answer which needed to differentiate between the two types of payment for validation purposes.

*The payments to Hard and Fast Ltd was made in November, a month after the liquidation had commenced. Section 127 allows any disposition of property made after the commencement of the liquidation to be avoided. The court however has the discretion to validate a disposition made after the commencement date. It is necessary for a company to carry on trading while it is subject to a winding up petition as it will allow the company to defend the petition. As the payment was made to a supplier the liquidator can apply to the court for a validation order.*

**\* End of Assessment \***