



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]: 26/50 = 52%

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.

Commented [WPA3]: D is correct

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.

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

Commented [WPA5]: C is correct

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 [WPA6]: 7/10

Question 2.1 [maximum 5 marks]

Commented [WPA7]: 2/5 an incomplete answer

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?

Sec.423 : Where the company is being wound up or in liquidation- The official receiver, the liquidator the administrator, the victim of the transaction.

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.**

- (a) The Monitor's expenses
- (b) goods or services supplied during the moratorium
- (c) wages or salaries arising under a contract of employment
- (d) rents in respect of moratorium period
- (e) redundancy payment
- (f) liabilities for financial services

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

Commented [WPA9]: 8/15

Question 3.1 [maximum 6 marks]

Commented [WPA10]: 2/6 there is no real explanation of how s 233 operates and there is no mention of s 233A or 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?**

Whether an administrator is entitled to exercise these powers will depend on (among other things)

- (i) whether the supply falls within the scope of 'essential supplies' under section 233 IA; and
- (ii) the date the essential supply contract was entered into by the parties.

'Essential supplies' are listed in section 233(3) IA and broadly cover the supply of:

- Electricity
- Gas
- Water
- Communications services
- Information Technology

The changes implemented by the Order widened the scope of utilities undertakings that are subject to section 233 IA to cover, in particular, "on-sellers" of utilities who are an intermediary between the supplier of gas, electricity etc. and the insolvent business (which would include, for example, a landlord supplying utilities to a tenant), and supplies for the purpose of enabling or facilitating anything to be done by electronic means (i.e. "information technology supplies"). This includes suppliers of:

- point of sale terminals;
- computer hardware and software;
- information, advice and technical assistance in connection with the use of information technology;
- data storage and processing; and
- website hosting.

Although not expressly referred to in section 233 IA, services for internet access, broadband or email will likely be caught as IT-related supplies (and, in any event, would fall within the supply of 'communication services' under section 233.

**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?**

Preferential creditor is a creditor who is granted preferential status during an insolvent liquidation by receiving the right to first payment, a hierarchy established by the Insolvency Act 1986.

An official 'hierarchy' laid down by the Insolvency Act, 1986, determines which group of creditors is paid first during an insolvent liquidation. When a company enters liquidation, each class of creditors must be paid in full (the exception being 'prescribed part' secured creditors) before funds are allocated to the next.

Creditors are ranked as follows:

- Secured creditors with a fixed charge
- Administrator/Liquidator fees
- Preferential creditors
- Secondary preferential creditors (expanded to include HMRC for certain taxes)
- Secured creditors with a floating charge
- Unsecured creditors
- Shareholders

In the event that an insolvency event occurs within 12 weeks of the expiry of a moratorium, moratorium debts and priority pre-moratorium debts (being those debts for which the company doesn't have a payment holiday) have super-priority, save that debt which is accelerated during the moratorium does not enjoy such priority.

**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.**

**Commented [WPA11]:** 6/9 although accurate the answer lacks detail in addressing the nature of the rights enjoyed

**Commented [WPA12]:** 4/15



**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 liquidator may take action in relation to the floating charge in favour of Fretus Bank plc under sec 238 of the Insolvency Act, 1986. The liquidator may attack this transaction as under value transaction entered prior to the company entering into liquidation as section 238 (2) provides for attacking transaction entered with another person on terms that provided for the company to receive no consideration. Here the Bank had already given the loan or any facility earlier and the floating charge was created only to prevent the bank from demanding the earlier loans.

**Question 4.2 [maximum 6 marks]**

The sale of the marble cutting machines; and

The liquidator can attack the transaction of the sale of the marble cutting machines to Rita Perkins  
Rita Perkins being a director of the company is also a related party to the company. This transaction also falls under section 238(3) of the Insolvency Act, 1986. Here it is clear that The company entered into a transaction with another person for a consideration which in money or money's worth, was at the date of transaction, significantly less than the value, in money of money's worth, of the consideration provided by the company. Here the company has sold the machine to one of the directors at GBP 10000 against the value of the machine

**Commented [WPA13]:** 0/5 the suggestion that s 238 is of relevance here is untenable. The question required a consideration of s 245.

**Commented [WPA14]:** 3/6 generally a reasonable answer but more detail on the requisites of s 238 and their application to the facts was needed

which was GBP25000 minus only depreciation of one year. Hence the value consideration received was much less than the value of the machine.

**Question 4.3 [maximum 4 marks]**

The payments to Hard and Fast Ltd.

The payment to Hard and Fast Ltd was only made to them after they demanded immediate payment of all sums owing to it under the pretext that further supplies would only be made on a cash on delivery basis. Since the continued supply of marble was seen as essential by the Company, the board had properly authorised a payment of GBP 8,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis,. The further supplies amounted to further payment of GBP 3,000 up to the date of the winding up order.

Since this transaction was entered into by the company in good faith and for the purpose of carrying on its business, and at the time of carrying out the transaction it believed that this will benefit the company.

So if the company can satisfy these grounds then this payment to Hard and Fast Ltd can not be attacked by the liquidator.

**\* End of Assessment \***

**Commented [WPA15]:** 1/4 it is not clear whether s 127 has been identified as the issue here but part of the answer does contain relevant considerations when considering validation of such void dispositions.