



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]: 37/50 = 74%

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.***

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

Commented [WPA4]: 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 [WPA5]: 8/10

Question 2.1 [maximum 5 marks]

Commented [WPA6]: 3/5 under s 6 CDDA only the Secretary of State (or the OR at their instruction) can bring an action; under s 246ZB only an administrator can 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?**

*i) Under Section 423 the following parties have the right to attack transaction 1) where the company is being wound up, or is administration, the liquidator, the administrator and (with the leave of the court) any victim of the transaction such as a creditor 2) where a victim is bound by a CVA, the supervisor of the CVA or any victim of the transaction (whether bound by the CVA or not) or 3) in any other case by the victim of the transaction.*

*ii) Here either an administrator or liquidator can bring the action.*

*iii) Section 246ZB make directors of insolvent companies liable for wrongful trading. The Small Business, Enterprise and Employment Act 2015 introduced wrongful trading. Only a liquidator can bring an application to court.*

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.**

- 1. The monitor's remuneration expenses*
- 2. Goods or services supplied during the moratorium*
- 3. Rent during the moratorium period*
- 4. Wages or salaries arising from an employment contract*
- 5. Redundancy payments or debts or liabilities arising under a contract or other instrument involving financial services.*

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

Commented [WPA8]: 12/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 5/6 generally very good. Potential personal liability of the administration needed to be considered too.

**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?**

*The appointment of an administrator does not automatically terminate a company's executory contracts. Terms in contracts in contracts of supply which provide for automatic termination have historically been generally effective but now have become subject to increasing statutory exceptions which largely make such automatic termination (or ipso facto) clause void. Administrators frequently need to obtain or retain certain essential supplies. Section 233 of the Act applies to a supply of gas, electricity, water and communication services. The definition of communications services includes the supply of goods and services such as point of sale terminals, computer hardware and software, information, advice and technical assistance, data storage and processing and website hosting. Suppliers are not permitted to require payment of outstanding debts in order to secure a new or continued supply to the company in administration. The 2020 Act has now expanded these protections for an insolvent company by adding section 233B which prohibits clauses which allow the*

*supplier of goods or services to terminate or “do any other thing” in relation to that contract if the company enters a formal insolvency procedure.*

*Hence in certain circumstances an administrator can still require the supplier of goods and services to continue to supply those goods or services - depending of the nature of those services.*

**Question 3.2 [maximum 9 marks]**

**Commented [WPA10]:** 7/9 quite good but more needed on the priority of floating charges and the s 176A prescribed part deduction

***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?***

*A liquidator may only realise assets which belong to the company, which means that if debts have been assigned to a receivables financier or assets are subject to hire purchase or retention of title contracts, the liquidator has no rights to those assets. The holder of a floating charge may choose to enforce its charge by appointing an administrator which will usually prevent a liquidator being appointed until the administration is completed. It is possible for such a charge holder to consent to the appointment of a liquidator rather an administrator, in which case the liquidator may realise the charged asset as part of the liquidator and pay out the floating charge holder according to the charge holder’s priority.*

*Once the expenses of the liquidation have been paid in full, the assets of the company are then used to pay preferential creditors. (before any payment may be made to holders of floating charges or unsecured creditors). The category of preferential creditors largely consists of limited claims of employees and some taxation liabilities as well as some other types of liability.*

*Prior to 2002 the class of preferential creditors included a number of liabilities owed in respect of outstanding tax to the Crown. Although this Crown preference was abolished by the Enterprise Act 2002, it has largely been reintroduced by section 95 of the Finance Act 2020.*

*There are two classes of preferential debts, ordinary and secondary. Ordinary preferential debts are paid before secondary preferential debts. Preferential debts, in their respective classes, rank equally amongst themselves and so abate in equal proportion if the company’s asset are insufficient to pay them all.*

*After preferential creditors are creditors with no security, often trade creditors, known as unsecured creditors who are paid last in the statutory order. Frequently, once the expenses of the liquidation have been paid and distributions have been made to secured and preferential creditors, there is little or nothing left to pay a dividend to unsecured creditors.*



*If there are sufficient funds to pay all the creditors any surplus is distributed amongst the shareholders according to the company's constitution, which will normally permit a distribution pro rata the shareholders' respective shareholdings.*

*If a company enters administration or liquidation within 12 weeks or at the end of the Moratorium, the priority of debts in that subsequent administration or liquidation may be different to the priority of debts which existed prior to the Moratorium. Section 174A provides that certain unpaid pre-Moratorium or Moratorium debts (the debts which are not part of the payment holiday) such as debts owed to employees or "financial services" debts, are paid in the subsequent liquidation, in priority to even the liquidator's fees and expenses. Section 174A therefore affords certain unsecured debts a form of "super priority" in a subsequent liquidation.*

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

Commented [WPA11]: 9/15

*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 [WPA12]: 4/5 good on s 245 but the application to the facts might have been more detailed

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

Section 245 of the Act applies to floating charges with the floating charge being created with a person not connected to the company. Since the charge was created within 12 months prior to the company being unable to pay its debts or whether it led to the company becoming unable to pay its debts as a consequence of the floating charge - it would appear that the floating charge could be attacked - except in circumstance where "new" consideration is provided for the charge.

There are two main categories of "new" consideration, which if satisfied mean the floating charge would not be invalid;

1. The value of so much of the consideration for the creation of the charge as consist of money paid, or goods or services supplied , to the company at the same time as, or after, the creation of the charge. The consideration must be given at the same time as or after the creation of the charge. Where an agreement is made to execute a charge, followed by payments made to the company, followed in turn by the formal execution of the charge, any delay between the making of the payments and execution of the charge must be minimal, such as the time to take a coffee break.
2. The value of so much of that consideration consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company.

The liquidator would thus have to establish what the value of the outstanding loans were that were afforded the floating charge and establish whether there was sufficient "new" consideration provided for the floating charge. If there was less than such consideration - that floating charge could be invalid.

Question 4.2 [maximum 6 marks]

Commented [WPA13]: 4/6 although both actions are possible, s 238 seems a much more obvious option for the liquidator

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

The sale appears to have defrauded creditors. Under section 423 of the Act there are two requirement to satisfy;

1. It is necessary to show that the company entered into a transaction with another person at an undervalue (which is defined in the same way as under section 238 of the Act that is, that the company has received no consideration or significantly less consideration than it has provided) and
2. It is necessary to show that the company entered into the transaction for the purpose either of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the company, or of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

There are no time limits in respect of when the transaction was entered into. However it appears that as the machines were more than double (GBP25,000) the value they were sold for (GBP10,000) only a year ago.

*Further Section 212 of the Act contains a procedural provision which is intended to simply actions brought against former officers of the company. The court may consider the conduct of certain persons and, if there has been any misfeasance or breach of duty in relation to a company now in liquidation, it may order the restoration, repayment or accounting of money or property or the contribution of such sum to the company by way of compensation in respect of the misfeasance or breach of duty. "Misfeasance" includes an action where the wrongdoer is alleged to have "misapplied, retained or become accountable for money or property of the company, or is guilty of misfeasance or breach of any fiduciary or other duty".*

**Question 4.3** [maximum 4 marks]

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

*Sections 214 and 246ZB of the Act make directors of insolvent companies liable for wrongful trading and thereby making them in certain circumstances liable, for some debts and liabilities of the company. Fraudulent trading an older remedy remains a possible alternative cause of action to wrongful trading is found in sections 213 and 246ZA of the Act. Wrongful trading is aimed at ensuring that when directors become aware that an insolvent liquidation (or administration) is in prospect, they do everything possible to minimize the potential losses to the company's creditors.*

*It could be put forward that Rita Perkins should have not issued GBP8000 to cover the liabilities or possibly that the company could not have issued GBP8000 as it was insolvent. The transaction would be invalid if it caused the insolvency.*

*The transaction to Hard and Fast appears to be for essential services which would mean the provisions under disposition void (section 127) could not be used here.*

\* End of Assessment \*

**Commented [WPA14]:** 1/4 - WT and FT are not possible as they look to activity before the commencement of the winding up. Here the payments were made after the commencement of the winding up. Only s 127 is a realistic option. It is not clear why the answer dismisses s 127.