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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

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

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 [WPA1]: 25/50 = 50% a very borderline pass mainly due to poor identification of issues

Commented [WPA2]: 7/10

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

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 [WPA5]: 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.

QUESTION 2 (direct questions) [10 marks]

Commented [WPA6]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA7]: 4/5 - s 246ZB is only available to an administrator. Under s 6 CDDA the OR may also bring an action on the instructions of the Sec of State

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: (i) where the company is being wound up or is in administration, the official receiver, the liquidator, the administrator and (with the leave of the court) any victim of the transaction such as a creditor; (ii) where a victim is bound by a CVA (whether bound by the CVA or not), the supervisor of the CVA or any victim of the transaction; or (iii) in any other case, by a victim of the transaction .

Section 6 of the Company Directors Disqualification Act 1986: the Secretary of State.

Section 246ZB of the Insolvency Act 1986: the 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.

As indicated in the Guide text:

- 1. The monitor's remuneration or expenses;*
- 2. Goods or services supplied during the Moratorium;*
- 3. Rent in respect of a period during the Moratorium;*
- 4. Wages or salary arising under a contract of employment; and*
- 5. Redundancy payments.*

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

Commented [WPA9]: 6/15

Question 3.1 [maximum 6 marks]

Commented [WPA10]: 1/6 - the answer required an explanation of ss 233, 233A and 233B. The answer was too simplistic to justify more than one mark.

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?

Yes, he can, because as described in the Guide Text the appointment of an administrator does not automatically terminate the debtor's executory contracts.

Question 3.2 [maximum 9 marks]

Commented [WPA11]: 5/9 a good answer in terms of the issues dealt with. There is no explanation of the payment of the liquidation expenses, fixed charges, unsecured creditors or 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?

In liquidation proceedings, there are two classes of preferential debts: ordinary and secondary. As explained in the Guide text, ordinary preferential debts are paid before secondary debts. Preferential debts, in their respective classes rank equally amongst themselves and, therefore, abate in equal proportions if the company's assets are insufficient to pay the all.

According to Schedule 6 of the Act, and as detailed in the Guide text, the preferential debts are:

Examples of Ordinary Preferential Debts

- any sum owed on account on an employee's contribution to an occupational pension scheme, being contributions deducted from earnings of the company's employees paid in the period of four months prior to the commencement of the winding up;*

- *any sum owed by the company on account of an employer's contribution to an occupational pension scheme in the period of 12 months before the relevant date;*
- *remuneration owed by the company to a person who is or has been an employee of the debtor and is payable in respect of the whole or any part of the period of four months prior to the commencement of the winding up to a maximum total figure which is currently f800;*
- *any amounts owed by the company by way of accrued holiday remuneration in respect of any period of employment before the winding up;*
- *claims for monies advanced to pay wages or holiday remuneration will rank as preferential;*

Secondary Debts

Preferential

- *An amount owed by the company to one or more eligible persons in respect of a deposit that was made through a non-UK branch of a credit institution authorized by the competent authority of the UK; and would have been an eligible deposit if it had been made through a UK branch of that credit institution.*
- *So much of any amount owed by the company to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons.*
- *PAYE income tax deductions, national insurance deductions, VAT payments, Construction industry Scheme deductions and student loan repayments*

After the payment of preferential creditor, the next creditor to be paid are the ones holders of floating charges. If there is more than 1 (one) floating charge holder, the one who holds the first charge will be paid first.

As provided in the Guide Text, in the Moratorium, if the debtor is not rescued as a going concern but instead enters a liquidation within 12 weeks of the end of the Moratorium, the priority of debts in that liquidation may be different to the priority of debts which existed prior to the Moratorium. For example, Section 174A establishes a "super priority rule", in which 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.

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

Commented [WPA12]: 3/15

Prior to going into compulsory liquidation on 23rd 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 14th 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]: 1/5 a reasonable point but the issue was whether the charge is void under s 245.

The floating charge in favour of Fretus Bank plc;

As a rule, after the payment of preferential creditors, the next creditor to be paid are the ones holders of floating charges. Notwithstanding, before promoting any payment, the liquidator must consider the application of Section 176A of the Act, which will apply to floating charges created on or after September 15, 2003, as the created on behalf of the Fretus Bank. Due to this provision, the liquidator will have to analyze the net rules, to protect the unsecured creditors' payment and also the rights of the floating charge holder.

Question 4.2 [maximum 6 marks]

Commented [WPA14]: 1/6 there is a lot more that needs to be explained about s 238 than just the meaning of undervalue. Too much is omitted from the answer.

The sale of the marble cutting machines; and

According to section 238 of the Act, a liquidator may contest a transaction which was entered prior to the company entering liquidation where the transaction was at an undervalue. As detailed in the Guide Text, in order to contest this transaction, the liquidator must evidence that the company: (i) made a gift to another person; or (ii) entered into a transaction with another person on terms that provided for the company to receive no consideration; (iii) entered into a transaction with another person for a consideration which, in money or money's worth, was, at the date of the transaction, significantly less than the value, in money or money's worth, of the consideration provided by the company. Due to this provisions, it might be reasonable to state that the liquidator of the Company might attack the sale of two (2) marble cutting machines to Rita Perkins.

Question 4.3 [maximum 4 marks]

The payments to Hard and Fast Ltd.

As a rule, the appointment of an administrator does not automatically terminate a company's executory contracts and, regarding the supply contract, suppliers are not permitted to require payment of outstanding debts in order to secure a new or continued supply to the company in administration (section 233B of the Act). For that reason, the payments to Hard and Fast Ltd. Should be attacked by the liquidator of the Company, who can offer to this supplier its personal guarantee on behalf of the payment (section 233 of the Act).

* End of Assessment *

Commented [WPA15]: 1/4 the answer is misconceived as the payment was made prior to the appointment of a liquidator - not administrator as stated in the answer. The executory contract point is interesting but would not succeed on these facts due to the timing of the payment. The answer depended upon identifying s 127 as the issue.