



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]: 34/50 = 68% some very good answers

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

Commented [WPA2]: 6/10

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.**

Commented [WPA4]: 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

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.**

Commented [WPA6]: D is correct

QUESTION 2 (direct questions) [10 marks]

Commented [WPA7]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA8]: 4/5 a good answer but more specific detail was needed for i) and it is unclear in ii) whether or not the OR can bring an action under s 6.

**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) Any person who is the victim of a transaction defrauding creditors under Section 423 of the Insolvency Act 1986 ("the Act") can make an application to the Court to bring an action under this provision. Whilst this would often be the debtor company itself via its liquidator, this could also be creditors or other stakeholders who have suffered loss.
- (ii) The Secretary of State brings actions under Section 6 of the Company Directors Disqualification Act 1986. The Official Receiver will often become aware of unfit directors from liquidators and administrators statutory reports which will then be provided to the Secretary in order to commence action.
- (iii) Only administrators can bring actions for wrongful trading under Section 246ZB of the Act and for liquidators under Section 214 of the Act.

Question 2.2 [maximum 5 marks] 5

Commented [WPA9]: 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.**

*Under Part A1 of the Act, when a company is subject to a Moratorium, there is a stay on enforcement of pre-Moratorium debts except for:*

1. The monitor's remuneration or expenses
2. Goods or services supplied during the Moratorium
3. Rent during the moratorium
4. Wages and salary
5. Redundancy payments
6. Debts and liabilities arising under a contract or other instrument involving financial services.

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

Commented [WPA10]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA11]: 3/6 a reasonable answer but more detail needed about ss 233 and 233A and there also needs to be an explanation of 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?**

*An administrator's primary objective is to rescue the company, or if not reasonably practicable achieve a better result than a winding up, or if not reasonably practicable realise assets to make a distribution to secured or preferential creditors (Schedule B1 of the Act).*

*To achieve the primary objectives (business rescue or better result) it is often necessary to continue trading on a going concern basis to maximise its enterprise value. This involves retaining customers and fulfilling their orders, retaining employees and supplier relationships to enable the business to continue "business as usual".*

*Executory contracts are not automatically terminated upon the appointment of an administrator and legislation such as Section 233A of the Act has sought to underpin that insolvency termination clauses, which were previously commonplace, are now ineffectual. Section 233 of the Act covers essential service providers such as gas, electricity, water and communications service providers which cannot be cut off due to the administrator's appointment. The service provider may require the administrator to give a personal guarantee for charges incurred during the administration.*

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?**

*The order of priority payments in a liquidation is as follows:*

*1. Expenses of winding up including liquidator's remuneration (Section 115 of the Act)*

*These expenses include, in the following order:*

- a. Expenses incurred by the liquidator in preserving, realising or getting in the assets of the debtor*
- b. The costs of any security providers engaged by the liquidator*
- c. The amount payable to assist in the preparation of a statement of affairs of accounts*
- d. Disbursements of the liquidator*
- e. The remuneration of any service provided engaged by the liquidator*
- f. The remuneration of the liquidator (subject to relevant approvals)*
- g. Any tax on capital gains upon the realisation of assets*
- h. Any other expenses chargeable by the liquidator in carrying out the liquidation*

*2. Preferential creditors (Section 386, 287 and Schedule 6: Section 175)*

**Commented [WPA12]:** 7/9 a good answer but no mention of fixed charges and the preferential debts regime is not fully explained eg ordinary and secondary / ranking within class



*Preferential creditor claims include, in the following order:*

- a. Pension contributions in the four months prior to the winding up deducted from the employee's earnings*
- b. Pension contributions owed by the debtor in the 12 month period before the relevant date*
- c. Wages of an employee relating to the four month prior to the winding up to a maximum amount of GBP800*
- d. Accrued holiday leave*
- e. Amounts provided as advances to employees made in respect of wages or holiday leave*
- f. Levies on the production of coal and steel*
- g. Amounts payable in relation to Reserve Forces*
- h. Eligible deposits which do not exceed the compensation level provided by the Financial Services Compensation Scheme*
- i. Eligible deposits which exceed the compensation level provided by the Financial Services Compensation Scheme*
- j. Other deposits*
- k. Pay as you earn taxation deductions (including national insurance, VAT, student loans etc.)*

### *3. Floating charge holders*

*Priority as between floating charge holders will usually be determined by which charge was created first. In addition to the floating charge claim, the "prescribed part" will need to be calculated (<GBP 10,000 at a rate of 50%, then GBP10,000 to GBP800,000 at a rate of 20%) is and set aside for unsecured debts. Floating charge creditors that also have an unsecured claim cannot participate in the distribution of the "prescribed part" available to ordinary unsecured creditors.*

### *4. Unsecured creditors*

*Ordinary unsecured creditors with no security are paid the balance.*

### *5. Shareholders*

*If ordinary unsecured creditors are made whole (including interest), any surplus is payable to shareholders in accordance with the debtor's constitution.*

*The above priorities are changed where a Moratorium is entered into during the 12 week period prior to the commencement of a liquidation. Section 174A provides certain unsecured debts "super priority" such as prescribed fees or expenses of the Official Receiver, moratorium debts (incurred during the moratorium) and priority pre-Moratorium debts such as the Monitor's remuneration and expenses, goods and*

*services supplier during the moratorium, rent during the moratorium, wages during the moratorium, pre-moratorium redundancy and pre-moratorium financial services debts.*

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

Commented [WPA13]: 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 [WPA14]: 5/5 good

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

***Pursuant to Section 245 of the Act, a floating charge may be voidable where:***

- ***No new funding is provided in granting the charge; or***
- ***Where the floating charge is created within the 12 month period (2 years for a connected party) prior to the onset of the insolvency at a time when the company was either unable to pay its debts or became unable to pay its debts as a result of the transaction.***

*In relation to Marbley Q Limited (“Marbley”), it provided Fretus Bank plc (“Fretus”) with the floating charge in February 2022. This was eight months prior to the onset of the insolvency which was the filing of the creditor’s winding up petition on 14 October 2022. Being within 12 months of granting the floating charge, there may be grounds for voiding the charge if it can be proven that Marbley was insolvent in February 2022 at the time the floating charge was granted. In any case, because it appears that no new funding or value was provided by Fretus to Marbley at the time of granting the security in February 2022, it would appear that the floating charge is invalid pursuant to Section 245(2) of the Act.*

Question 4.2 [maximum 6 marks]

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

*Pursuant to Section 238 and 240 of the Act, a transaction at an undervalue may be voidable where:*

- *A company has entered into a transaction at an undervalue i.e. significantly less than the value consideration provided by the company*
- *The transaction occurred within a period of two years ending on the onset of insolvency*
- *At the time of the transaction, the company was unable to pay its debts as they fell due or became unable to pay its debts due to entering into the transaction.*

*In relation to Marbley and the sale of the two marble cutting machines to Rita Perkins, the Liquidator would need to assess:*

- *Whether the value paid by Ms Perkins of GBP10,000 in July 2022, one year after they were purchased for GBP25,000, is a true reflection of the market value. In this regard, the Liquidator would likely need to obtain independent valuation advice to support any claim.*
- *Consider whether Marbley was insolvent prior to entering into the transaction in July 2022 or was insolvent due to making the transaction in July 2022.*
- *Given the onset of the insolvency was October 2022, only three months prior to the transaction it is clearly within the relevant period.*

Question 4.3 [maximum 4 marks]

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

*Pursuant to Section 239 and 240 of the Act, a preference payment may be voided where:*

- *The recipient of the payment was a creditor*
- *The creditor was preferred or put into a better position than they otherwise would have been*

**Commented [WPA15]:** 4/6 quite good but needed to explain the consequence of the transaction being in favour of a connected person ie presumption of insolvency at the time and possible defences

**Commented [WPA16]:** 0/4 unfortunately the answer misses the issue which is s 127. Section 239 cannot apply as the payment occurred after the commencement of the liquidation.

- *The debtor was seeking to prefer the creditor*
- *The preference was made within six months of the onset of insolvency or within two years prior to the onset of insolvency for a connected person.*

*In relation to Marbley and Hard and Fast Ltd. ("Hard"), the GBP 8,000 payment to Hard:*

- *Related to existing debts paid to the creditor*
- *Likely resulted in Hard improving its return (to 100p in the pound) than it otherwise would have received in the liquidation*
- *Was given Boards approval to put Hard into a better position, and*
- *Was undertaken within the relevant period.*

*Accordingly, it would appear that the GBP8,000 would be voidable.*

*In relation to the GBP3,000, this amount appears to have been paid after Hard was no longer a creditor. A cash on delivery basis relationship does not create a debtor-creditor relationship. In these circumstances, where Hard was no longer a creditor there cannot be a preference and the GBP3,000 is not a voidable preference.*

**\* End of Assessment \***