



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]: 26/50 = 52% a strong start but poor identification of issues in q 4 weakens the overall grade.

Commented [WPA2]: 9/10

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

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]

Question 2.1 [maximum 5 marks]

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?

Commented [WPA4]: 7/10

Commented [WPA5]: 3/5 - if not subject to an IA 1986 process a victim of a s 423 transaction may still bring an action; the Sec of State (or the OR) can bring an action under s 6 and only an administrator may bring an action under s 246ZB - the liquidator's action is under s 214.

Under section 423 of the Insolvency Act 1986, the following parties may bring an action:

- 1. where the company is being wound up or is in administration, the official receiver, the liquidator, the administrator, and also any victim of the transaction with the leave of the court.*
- 2. Where a victim is bound by a company voluntary agreement (CVA), the supervisor of the CVA or any victim of the transaction.*

Under section 6 of the Company Directors Disqualification Act 1986, the court is required to make a disqualification order where two requirements are satisfied: that the person is or has been a director of a company which has at any time become insolvent, and that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of one or more other companies or overseas companies) makes him unfit to be concerned in the management of a company.

Under section 246ZB of the Insolvency Act 1986, the liquidator or the administrator may bring proceedings under this section (historically, wrongful trading was only available in a liquidation, but a 2015 reform opened the actions to administration)

Question 2.2 [maximum 5 marks]

Commented [WPA6]: 4/5 there is no mention of fraud in payment holiday provisions

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. Wages and salary owed to employees for services provided during the Moratorium period.*
- 2. Debts for goods or services supplied during the Moratorium (for example, energy supply)*
- 3. Debts or other liabilities arising under a contract or other instrument involving financial services.*
- 4. Any liability incurred by the company as a result of fraud or fraudulent breach of trust.*
- 5. Redundancy payments.*

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

Commented [WPA7]: 9/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 3/6 generally correct but rather generally expressed. Some distinction between the rules under ss 233 and 233A on the one hand and those under s 233B would have been helpful.

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, because executory contracts don't automatically terminate if a company enters into administration. The administrator can require suppliers to continue to supply goods and services during the administration period if they are essential to the continuation of the business. However, 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 administrator may also be required to personally guarantee payment of charges in respect of the supply.

Also, there are various provisions in sections 233A to 233C that prohibits the termination of a contract because of insolvency.

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 of payments in a liquidation is as follows:

- 1. Fixed charge holders: they have a first claim on the assets that are subject to their charge.*
- 2. Expenses of the liquidation: these include the costs of the officeholder (liquidator), legal fees, and other expenses incurred in realizing and distributing the assets.*
- 3. Preferential creditors: these include employees' wages and salaries, holiday pay, pension contributions, and certain other debts owed to employees.*
- 4. Floating charge holders: they have a claim on any remaining assets after fixed charge holders and expenses of the liquidation have been paid.*
- 5. Unsecured creditors: these include suppliers, customers, contractors, landlords, and other parties who are owed money by the company.*

If a 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 liquidation, then 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 would be paid in priority to even the liquidator's fees and expenses in subsequent liquidation as per Section 174A. This means that certain unsecured debts would enjoy a form of "super priority" in subsequent liquidation.

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

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.

Commented [WPA9]: 6/9 a good answer but more detail needed eg on preferential debt classes and s 176A prescribed part deduction.

Commented [WPA10]: 1/15

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]

The floating charge in favour of Fretus Bank plc;

The relevant issues in relation to the floating charge in favour of Fretus Bank are whether it was granted at a time when the company was insolvent or with the intention of putting assets beyond the reach of creditors. If this is the case, then the debenture may be set aside under Section 127 of the Insolvency Act 1986.

The liquidator may take action in relation to this issue by investigating whether there is evidence to suggest that the floating charge was granted at a time when the company was insolvent or with an intention to put assets beyond the reach of creditors. If such evidence exists, then the liquidator may apply to court for an order setting aside the debenture under Section 127 of the Insolvency Act 1986.

Question 4.2 [maximum 6 marks]

The sale of the marble cutting machines; and

The relevant issues in relation to the sale of the marble cutting machines are whether it was a transaction at an undervalue under Section 238 of the Insolvency Act 1986. The liquidator will need to investigate whether there was any intention on part of

Commented [WPA11]: 0/5 - s 127 applies to transactions entered after the commencement of winding up. Here the question required consideration of s 245.

Commented [WPA12]: 1/6 although s 238 is correctly identified as the issue, there is very little detail about how s 238 would apply here

directors when they approved this sale and if so, it may be set aside by liquidator and full value may be recovered for distribution among creditors.

The liquidator may take action in relation to this issue by investigating whether there is evidence to suggest that the sale of the marble cutting machines was a transaction at an undervalue. If such evidence exists, then the liquidator may apply to court for an order setting aside the transaction under Section 238 of the Insolvency Act 1986.

Question 4.3 [maximum 4 marks]

The payments to Hard and Fast Ltd.

The relevant issues in relation to the payments to Hard and Fast Ltd are whether they were a preference under Section 239 of the Insolvency Act 1986. The liquidator will need to investigate whether this payment was made with an intention to give Hard and Fast Ltd an unfair advantage over other creditors. If so, then it may be set aside by liquidator and recovered for distribution among all creditors.

The liquidator may take action in relation to this issue by investigating whether there is evidence to suggest that the payments to Hard and Fast Ltd were a preference. If such evidence exists, then the liquidator may apply to court for an order setting aside the payments under Section 239 of the Insolvency Act 1986.

* End of Assessment *

Commented [WPA13]: 0/4 unfortunately, the liquidation had already commenced by the time of the payment so only s 127 would apply. Section 239 cannot apply as the payment was not at a time prior to the commencement of the winding up.