



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.

Commented [WPA1]: 28/50 = 56% a good grasp of many of the legal principles but lacking in detailed knowledge in places

Commented [WPA2]: 7/10

**(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.**

Commented [WPA3]: 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 [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.

Commented [WPA5]: A is correct

(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]: 8/10

Question 2.1 [maximum 5 marks]

Commented [WPA7]: 3/5 - there is no answer to ii - it is the Sec of State, and iii refers to the wrong section - the answer is just an administrator can bring an action under s 246ZB

**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 of the Act, the following parties have the right to attack transactions which are designed to defraud creditors: (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, the supervisor of the CVA or any victim of the transaction (whether bound by the CVA or not); or (iii) in any other case, by a victim of the transaction.
- (ii) Section 6, which is the most commonly used ground under the CDDA by far to seek disqualification, deals with findings of unfitness against directors of insolvent companies. Under section 6 of the CDDA, the court is required to make a disqualification order against a person in any case where it is satisfied:
- (a) that the person is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently); and
  - (b) 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.

*It is usual for section 6 cases to be based upon evidence that directors permitted a company to trade whilst insolvent, often using money collected on behalf of the Crown by way of taxation and often paying themselves excessive remuneration. Allegations of fraud or engaging in preferential treatment of creditors who might be family members are also common.*

- (iii) Fraudulent trading may lead to both (or either) criminal liability (under section 993 of the Companies Act 2006) and civil liability (under section 213 of the Act). With the new section 246ZA of the Act, a civil application for fraudulent trading can be brought by a liquidator or administrator who brings it for the benefit of all creditors and not merely for the benefit of the actual victims themselves. Individual creditors cannot bring an action for fraudulent trading.

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.**

*Payment holiday is related to pre-Moratorium debts. There are restrictions on the company paying most of its pre-Moratorium debts those consist of amounts payable in respect of:*

- (a) the monitor's remuneration or expenses;
- (b) goods or services supplied during the Moratorium;
- (c) rent in respect of a period during the Moratorium;
- (d) wages or salary arising under a contract of employment;
- (e) redundancy payments; or
- (f) debts or other liabilities arising under a contract or other instrument involving "financial services" which term is somewhat inexactly defined as including a contract consisting of lending, financial leasing or providing guarantees.

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

Commented [WPA9]: 7/15

Question 3.1 [maximum 6 marks]

Commented [WPA10]: 2/6 although there is much accurate commentary here the real issue was how do ss 233, 233A and 233B assist the administrator in ensuring continued supply. The answer hints at these provisions but more specificity was needed.

**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, an administrator who wishes to continue operating the business of a company in administration can require suppliers of goods and services to continue supplying those goods and services during the administration. This is known as the "essential supplies" provision, which is covered under Schedule B1 of the Insolvency Act 1986 in the United Kingdom.*

*Under paragraph 59 of Schedule B1 of the Act, the administrator has the power to do anything necessary or expedient for the management of the affairs, business and property of the company. Without prejudice to the generality of this statement, the administrator also has the wide ranging powers specified in Schedule 1 of the Act which include the power to dispose of assets and to bring or defend legal proceedings. In exercising his functions under Schedule B1 of the Act, the administrator acts as the company's agent. A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator. For these purposes a "management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers.*

*Under this provision, if the administrator believes that the continued supply of goods or services is necessary for the company's survival or to achieve a better outcome for the creditors as a whole, they can require the suppliers to continue providing those*



*goods or services. However, the administrator must ensure that the suppliers are paid for the goods or services supplied during the administration period.*

*It's important to note that the administrator's request for essential supplies must be reasonable, and the suppliers have the right to apply to the court for a variation or termination of the requirement if they can demonstrate that it would cause them undue hardship.*

*An administrator is required to manage the company's affairs, business and property in accordance with:*

- (a) any proposals approved;*
- (b) any revision of those proposals made by the administrator which he or she does not consider substantial; and*
- (c) any revision of those proposals approved under paragraph 54 of Schedule B1 of the Act by the creditors.*

*An administrator will frequently wish to sell a company's business as a going concern and as part of the sale will wish to include assets which may be subject to security or which are owned by others under hire purchase or retention of title contracts.*

*The ability of an administrator to sell assets subject to a security depends on the type of security interest conferred. Under paragraph 70 of Schedule B1 of the Act an administrator may dispose of or take any action relating to property which is subject to a floating charge as if it were not subject to the charge. In relation to any property subject to a security which is not a floating charge, such as a fixed charge, paragraph 71 of Schedule B1 of the Act provides that the administrator may apply to court for an order permitting him to dispose of that property where the court thinks such disposal would be likely to promote the purpose of administration. In addition, under paragraph 72 of Schedule B1 of the Act, assets subject to hire purchase or retention of title contracts may be sold by the administrator providing the administrator obtains a court order permitting such a disposal. Where assets are disposed of under paragraph 70, the floating charge transfers to the proceeds of sale. Where a court orders the sale of assets under paragraphs 71 or 72, it will require that the proceeds of sale are used first to pay off the secured creditor or owner of the assets. If the sale proceeds are not equal to the market value, the administrator must use other assets of the company to make up the shortfall.*

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?***

**Commented [WPA11]:** 5/9 more detail on preferential creditors and s 176A prescribed part would have been helpful. The answer on the Moratorium is unclear but appears inaccurate as s 174A does provide a form of super priority to debts subject to a prior moratorium payment holiday.

*In a liquidation, the order of priority for payments to creditors is as follows:*

- 1. Fixed charge holders: Creditors who hold a fixed charge over specific assets of the company have the highest priority. They are entitled to be paid out of the proceeds from the sale of those specific assets before any other creditors.*
- 2. Expenses of the liquidation: The costs and expenses incurred in the liquidation process, including the fees of the liquidator, legal fees, and other administrative expenses, are paid next.*
- 3. Preferential creditors: Certain creditors are granted preferential status and have priority over other unsecured creditors. They include employees who are owed wages, salaries, holiday pay, and certain pension contributions, subject to statutory limits.*
- 4. Floating charge holders: Creditors with a floating charge have a claim on the company's assets, which are not covered by fixed charges. Once the fixed charge holders and liquidation expenses are paid, the floating charge holders have a claim on the remaining assets.*
- 5. Unsecured creditors: This class includes trade creditors, suppliers, lenders without security, and other unsecured creditors. They are entitled to a share of the remaining assets after the preceding classes of creditors have been paid. However, the distribution to unsecured creditors is often significantly lower, and they may not receive full repayment of their debts.*

*If a company has 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, it can affect the priority of payments. During the Moratorium, a payment holiday is granted, and no creditor can take action against the company without permission from the court. However, the Moratorium does not change the general order of priority for payments in the liquidation process.*

*The expenses of the Moratorium, including the costs of the Moratorium itself, would be treated as expenses of the liquidation and be paid in priority to other unsecured creditors. The Moratorium does not grant any specific priority to other creditors or change the nature of their rights. The distribution of assets in the liquidation would still follow the same priority order as outlined above, with fixed charge holders, liquidation expenses, preferential creditors, floating charge holders, and unsecured creditors.*

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

Commented [WPA12]: 6/15

***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]

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

*The pertinent matter concerning the floating charge in favour of Fretus Bank plc pertains to its validity and enforceability in relation to the liquidator. Under specific circumstances, the liquidator reserves the right to initiate legal proceedings to contest the legitimacy of the floating charge.*

*Pursuant to the Insolvency Act 1986 (UK), any floating charge established within a period of 12 months preceding the initiation of winding-up proceedings shall be considered null and void unless there exists substantiated evidence demonstrating the solvency of the company immediately after the creation of said charge. Pursuant to this matter, it is hereby stated that the debenture, which encompasses the floating charge, was granted in February of the year 2022. It is noteworthy that said grant occurred within the 12-month timeframe that precedes the winding-up order that was issued in December of the same year, 2022.*

*If the liquidator can provide evidence that the company was in a state of insolvency at the point in time when the floating charge was established, there exists the possibility of contesting its legitimacy and regarding the assets that are subject to the floating charge as part of the overall collection of assets that are accessible for allocation to creditors.*

Question 4.2 [maximum 6 marks]

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

*The pertinent matter concerning the sale of the marble cutting machines to Rita Perkins is whether it constitutes a transaction at a value lower than the market rate. In the event that the transaction is proven to be undervalued and specific conditions are satisfied, the liquidator reserves the right to take appropriate measures.*

*Pursuant to the provisions of the Insolvency Act 1986, it is within the powers of the liquidator to nullify any transaction that was executed at a value lower than its actual worth within a period of two years prior to the initiation of the winding-up process. This can be done provided that it can be established that the company was insolvent at the time of the transaction and that the transaction caused a significant financial detriment to the creditors of the company.*

*In the present matter, the sale of the marble cutting machines for a sum of GBP 10,000 in currency, despite their initial procurement for GBP 25,000 a year prior to the initiation of the winding-up procedures, may be perceived as a transaction executed at a value lower than the fair market price. In the event that the liquidator is able to demonstrate that the company was insolvent during the sale and that it caused a significant financial detriment to the creditors, the liquidator is entitled to pursue legal action to nullify the transaction, pursue restitution of the assets, or demand compensation.*

Question 4.3 [maximum 4 marks]

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

*The pertinent matter with respect to the payments made to Hard and Fast Ltd. pertains to whether they may be deemed preferential payments. In the event that the payments are deemed preferential and specific criteria are satisfied, the liquidator reserves the right to pursue legal recourse.*

*Pursuant to the provisions of the Insolvency Act 1986, it is possible for the liquidator to nullify certain payments made to creditors during a designated timeframe preceding the initiation of the winding-up process, as such payments may be deemed preferential. Payments that are preferential in nature refer to payments made to specific creditors that provide them with an advantage over other creditors in the allocation of assets.*

*As per the present case, the payments made to Hard and Fast Ltd. were duly sanctioned by the board of directors in order to settle the pre-existing obligations and procure subsequent provisions. Provided that the payments in question were made*

**Commented [WPA14]:** 3/6 again along the right lines but lacking specific detail about s 238 especially re the consequence of the transaction being in favour of a connected party.

**Commented [WPA15]:** 0/4 a preference action under s 239 is not possible as the payment was made after the commencement of the liquidation. Section 127 was the issue.

*within the designated time frame and that they provide an advantage to Hard and Fast Ltd. in comparison to other creditors, the liquidator is entitled to pursue legal recourse to nullify the payments and incorporate the sum into the overall collection of assets that are accessible to all creditors on an equitable basis.*

**\* End of Assessment \***