



**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]: 41/50 = 82% a very good effort

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

Commented [WPA2]: 9/10

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.

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

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 [WPA4]: 8/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 3/5 good on s 423 but no answer to the other questions

**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?**

*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; where the victim is bound by a CVA, the supervisor of the CVA or any victim of the CVA or any victim of the transaction (whether bound by the CVA or not); or in any other case, by a victim of the transaction.*

Question 2.2 [maximum 5 marks]

Commented [WPA6]: 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.**

*During the moratorium there is a stays of enforcement of debts that fall due before the moratorium and which fall due during the moratorium by reason of a pre-moratorium obligation except in so far as they are debts that arise from the following:*

- (i) The monitor's remuneration or expenses;*
- (ii) Goods or services supplied during the moratorium;*
- (iii) Rent in respect of a period during the moratorium;*
- (iv) Wages or salary arising under a contract of employment;*
- (v) Redundancy payments.*

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

Commented [WPA7]: 15/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 6/6 good

**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, the administrator may require suppliers of goods and services to continue to supply goods and services during administration. Under section 233 of the Insolvency Act 1986 which applies to supply of gas, electricity, water and communication services (which includes goods and services such as point of sale terminals, computer hardware and software, information, advice, and technical assistance, data storage and processing and web 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. However, suppliers are allowed to stipulate that the administrator must personally guarantee payment of charges in respect of the supply.*

*Under section 233A of the Insolvency Act 1986, a supplier of essential supplies is generally unable to rely on an "insolvency-related term" in the contract of supply which would otherwise allow the supplier to terminate the contract or "do any other thing" in relation to the contract in the event the company enters into a formal insolvency procedure which includes administration.*

*In addition, under section 233B of the Insolvency Act 1986, clauses which allow a supplier of goods or services to terminate or "do any other thing" in relation to the said contract in the event the company enters into a formal insolvency procedure is prohibited. In this regard, a provision of a contract for the supply of goods or services to the company is of no effect to the extent that such provision would terminate or entitles the supplier to terminate the contract or "to do any other thing" upon the company entering into an insolvency procedure. As such, suppliers are prevented from terminating a supply upon the company's insolvency and is also prevented from making it a condition of continued supply that pre-insolvency arrears are paid and*



*from making other charges to the contract such as increasing prices. Under section 233B, a supplier cannot insist on a personal guarantee from the administrator.*

Question 3.2 [maximum 9 marks]

Commented [WPA9]: 9/9 good

***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?***

*Creditors with fixed security would typically enforce their security outside the liquidation regime. The remaining assets of the company will then be paid in the following order/priority:*

*Firstly, certain expenses are given priority over the company's preferential creditors, any holders of floating charges and the company's unsecured creditors. Example of such expenses are as follows:*

- (i) Expenses that are properly incurred by the liquidator in preserving, realizing or getting in any of the assets of the company (including the conduct of any legal proceedings);*
- (ii) The cost of any security provided by the liquidator;*
- (iii) Any amount payable to a person to assist in the preparation of a statement of affairs or accounts;*
- (iv) Any necessary disbursements by the liquidator in the course of the winding up;*
- (v) Remuneration of any person employed by the liquidator to perform any services for the company;*
- (vi) Remuneration of the liquidator;*
- (vii) Corporation tax on chargeable gains accrued due to the realization of assets of the company.*

*Secondly, once the expenses of liquidation as set out above have been paid in full, the assets of the company are then utilized to pay the preferential debts. Preferential debts typically comprise debts due to employees as well liabilities arising from taxation.*

*Prior to 2002, preferential creditors included various liabilities owed in respect of outstanding tax owed to the Government. While this has since been abolished by the Enterprise Act 2002, it has, to a large extent, been reinstated through section 95 of the Finance Act 2020.*

*The classes of preferential debts are divided into two classes, namely ordinary and secondary. Ordinary preferential debts are paid ahead of secondary preferential debts. Each class of preferential debts rank equally amongst themselves and as a result, abate in equal proportion in the event the company's assets are insufficient.*

*Under Schedule 6 of the Insolvency Act 1986, preferential debts include among others, the following:*

- (i) 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;*
- (ii) 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;*
- (iii) 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 GBP800;*
- (iv) Any amounts owed by the company by way of accrued holiday remuneration in respect of any period of employment before the winding up;*
- (v) 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;*
- (vi) An amount owed by the company to one or more eligible persons in respect of a deposit that -*
  - (i) Was made through a non-UK branch of a credit institution authorized by the competent authority of the UK; and*
  - (ii) Would have been an eligible deposit if it had been made through a UK branch of the credit institution;*
- (vii) Income tax deductions, national insurance deductions, VAT payments, Construction Industry Scheme deductions and student loan repayments.*

*Save for the debts listed as (v), (vi) and (vii) above, all debts listed above are considered ordinary preferential debts pursuant to section 386 of the Insolvency Act 1986 and are therefore paid in priority over the secondary preferential debts listed in (v), (vi) and (vii) above.*

*Thirdly, once the preferential creditors have been paid, floating charge holders will then be paid. In the event that there are more than one floating charge holders, priority of payment is determined by the date in which the charge is created.*

*Before any payment can be made to any floating charge holder, the liquidator must first consider the application of section 176A of the Insolvency Act 1986. In this regard, section 176A of the Insolvency Act 1986 provides that the liquidator is under a duty to make a “prescribed part” of the company’s net property available for the satisfaction of unsecured debts. “Net property” is the amount of the company’s property which is otherwise would be available for the satisfaction of debts of floating charge holders. It is pertinent to note that section 176A of the Insolvency Act 1986 only applies to a company with a floating charge created on or after 15 September 2003 and the company has gone into liquidation or administration.*

*A floating charge holder who may have any outstanding unsecured balance owed to it, is not permitted to participate in the distribution of the prescribed part (see the case of *Thorniley v Harris* [2008] EWHC 124 (Ch)).*

*Unsecured creditors will be the last to be paid in the order of priority. If there are sufficient funds to pay all the creditors, any surplus will then be distributed amongst the shareholders in accordance with the constitution.*

*However, in the event that 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 priority of payment would be different. In this regard, section 174A of the Insolvency Act 1986 provides that certain unpaid pre-Moratorium or Moratorium debts (the 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. As such, section 174A of the Insolvency Act 1986 essentially provides unsecured debts with a form of super priority in a subsequent liquidation. Unsecured or secured pre-Moratorium bank debt falling within the definition of “financial services” will also be conferred such super priority, unless such debt is an accelerated debt, that is, any pre-Moratorium financial services debt which fell due by reason of the operation of, or exercise of rights under, an acceleration or early termination provision in the financial services contract.*

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

Commented [WPA10]: 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 [WPA11]: 5/5

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

*Firstly, under section 245 of the Insolvency Act 1986 the debenture created by the Company in favour of Fretus Bank plc, if created at a relevant time, will be deemed invalid, except to the extent, that in substance, "fresh" or "new" consideration is provided by Fretus Bank plc for the charge.*

*As for what amounts to a "relevant time", it depends on the identity of the person in whose favour the floating charge is created. Where the person in whose favour the floating charge is created is connected with the company, the relevant time is any time within the period of two years prior to the onset of insolvency. In cases where the person in whose favour the floating charge is created is not connected with the company, the relevant time is also anytime within the 12 months prior to the onset of insolvency, but only if at the time of the creation of the charge, the company was either unable to pay its debts (within the meaning in Section 123 of the Insolvency Act 1986 or become unable to do so in consequence of the transaction. In this case, there is no evidence that Fretus Bank plc is connected with the company. As such, the relevant time would be 12 months prior to the onset of insolvency, here the date of the winding up petition (14<sup>th</sup> October 2022), provided that at the time of the creation of the debenture, i.e., February 2022, the Company was unable pay its debts within the meaning of Section 123 of the Insolvency Act 1986. Here, we do know that the Company was suffering from cash flow problems, but that, without more, does not fulfil the requirement of "inability to pay debts". More is required to fulfil this requirement.*

*There is also no evidence that Fretus Bank plc had provided "fresh" or "new consideration" in respect of the debenture. In fact, the purpose of the debenture was to prevent Fretus Bank plc from demanding repayment of the Company's loans, suggesting that this debenture is given in respect of an older loan.*

*In the circumstances, provided that it can be proven that that the relevant time, the Company was unable to pay its debts, the liquidator could seek to challenge the debenture given in favour of Fretus Bank plc.*

Question 4.2 [maximum 6 marks]

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

*The sale of the marble cutting machines could potentially be challenged by the liquidator for being a transaction at undervalue. Under section 238 of the Insolvency Act 1986, a liquidator may challenge a transaction which was entered prior to the company entering into liquidation where the transaction was at an undervalue.*

*In order for the sale of the marble cutting machines to be caught under section 238 of the Insolvency Act 1986, the liquidator must show that the price of which the marble cutting machine was sold, being GBP10,000 was, at the date of the sale, significantly less than the value, in money or money's worth, of the marble cutting machines. In this case, the marble cutting machines were bought at GBP25,000 over a year ago. While it is reasonable to take into account wear and tear, it is unreasonable for the value of the marble cutting machines to depreciate by 60% in value.*

*For the sale of the marble cutting machines to be caught under section 238 of the Insolvency Act 1986, the sale must have also taken place at a "relevant time". In this case, the marble cutting machines were sold to Rita Perkins, a director of the Company. As a director of the Company, Rita Perkins could be considered as a person connected to the Company. In such a case, under section 240(1)(a) and the "relevant time" would be two years ending with the date of the commencement of the winding up of the Company (in this case, the winding up commences at the time of the presentation of the winding up petition by reason of section 129 of the Insolvency Act 1986). In this case, the sale of the marble cutting machines took place a month before the winding up order was made and where the exact date is not known. Assuming that the sale took place within 2 years before presentation of the winding up petition, the sale would have fallen within the "relevant time".*

*Next, the liquidator must also show that at the time when the sale took place, the Company was unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986. Again, we do know that the Company was suffering from cash flow problems, but that, without more, does not fulfil the requirement of "inability to pay debts". More is required to fulfil this requirement.*

Question 4.3 [maximum 4 marks]

**Commented [WPA12]:** 4/6 good as far as it goes but needs to consider effect of the transaction being in favour of a connected person and also possible defence

**Commented [WPA13]:** 0/4 the payment was made after the commencement of the liquidation and so s 239 cannot apply. Section 127 required consideration and application.

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

*The payments made to Hard and Fast Ltd may be challenged and avoided by the Court on an application of a liquidator under section 239 of the Insolvency Act 1986. In essence, section 239 of the Insolvency Act 1986 prevents a company, shortly before entering a formal insolvency procedure, from placing one of its creditors in a better position than others. In this case, the payments were made to Hard and Fast Ltd a month before the winding up order was made, hence, falling under the "relevant time". It is also arguable that the payments made had the effect of putting Hard and Fast Ltd in a better position. In this regard, had Hard and Fast Ltd not been paid, they would have just been an unsecured creditor and would have only been paid once the liquidation expenses, preferential debts, and floating charge holders have been paid. Hence, Hard and Fast Ltd has been placed in a better position than the other unsecured creditors of the Company.*

*Again, the liquidator must also show that at the time when the sale took place, the Company was unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986. Again, we do know that the Company was suffering from cash flow problems, but that, without more, does not fulfil the requirement of "inability to pay debts". More is required to fulfil this requirement.*

\* End of Assessment \*