



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]: 34/50 = 68% a generally good effort even with the omission of an answer to one of the main questions

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**
- (c) **10**
- (d) 12

Commented [WPA3]: 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.**

QUESTION 2 (direct questions) [10 marks]

Commented [WPA4]: 10/10

Question 2.1 [maximum 5 marks]

Commented [WPA5]: 5/5

**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?**

*The following parties may bring an action under section 423 of the Insolvency Act 1986: (i) in a case where the debtor has been made bankrupt or is a body corporate which is being wound up or is in administration, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the court) by a victim of the transaction, according to section 424(1)(a) of Part XVI of the Insolvency Act 1986; (ii) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part I (Company Voluntary Arrangements) or Part VIII (Individual Voluntary Arrangements) of the Insolvency Act*

1986, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim, according to section 424(1)(b) of Part XVI of the Insolvency Act 1986; or (iii) in any other case, by a victim of the transaction, according to section 424(1)(c) of Part XVI of the Insolvency Act 1986.<sup>1</sup>

Pursuant to section 7(1) of the Company Directors Disqualification Act 1986, the Secretary of State or the official receiver, if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being or has been wound up by the court in England and Wales, may bring action under section 6 of that act.<sup>2</sup>

Finally, only the administrator can bring the action under section 246ZB of the Insolvency Act 1986.<sup>3</sup>

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.**

There are six (6) debts that do not form part of the payment period under Part A1 of the Insolvency Act 1986 when a company is subject to a Moratorium: (i) the monitor's remuneration or expenses, under subsection (3)(a) of section A18 of Part A1 of the Insolvency Act 1986; (ii) goods or services supplied during the moratorium, under subsection (3)(b) of section A18 of Part A1 of the Insolvency Act 1986; (iii) rent in respect of a period during the moratorium, under subsection (3)(c) of section A18 of Part A1 of the Insolvency Act 1986; (iv) wages or salary arising under a contract of employment, under subsection (3)(d) of section A18 of Part A1 of the Insolvency Act 1986; (v) redundancy payments, under subsection (3)(e) of section A18 of Part A1 of the Insolvency Act 1986; or (vi) debts or other liabilities arising under a contract or other instrument involving financial services, under subsection (3)(f) of section A18 of Part A1 of the Insolvency Act 1986.<sup>4</sup>

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

Commented [WPA7]: 6/15

Question 3.1 [maximum 6 marks]

Commented [WPA8]: 6/6 very good

<sup>1</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 70.

<sup>2</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 61-64.

<sup>3</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 59.

<sup>4</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 37-38.

**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?**

*The administrator who intends to continue to explore the business of the company under administration may require that the suppliers of goods and services continue to provide these goods and services during the administration. Initially, it should be noted that executory contracts are not terminated with the appointment of an administrator. In addition, sections 233, 233A and 233B provide for the maintenance of essential supplies.<sup>5</sup>*

*Pursuant to section 233B(7) of the Insolvency Act 1986, a contract for the supply of essential goods or services is a supply contract referred to in section 233(3) of the Insolvency Act 1986. Such essential goods or services are: (i) supply of gas; (ii) supply of electricity; (iii) supply of water; (iv) supply of communication services; (v) point of sale terminals; (vi) computer hardware and software; (vii) information, advice and technical assistance in connection with the use of information technology; (viii) data storage and processing; and (ix) website hosting.<sup>6</sup>*

*In that context, section 233A of the Insolvency Act 1986 provides that a clause stating that the contract for the supply of essential goods or services will be terminated or any other thing to take place; or that the supplier may terminate the contract or do any other thing in case of opening of insolvency proceedings will not take effect if the company enters administration.<sup>7</sup>*

*Pursuant to section 233A of the Insolvency Act 1986, the contract may be terminated in three situations: (i) with the agreement of the administrator; (ii) with the authorization of the court, if it is verified that the continuation of the contract would cause the supplier hardship; or (iii) if any supply charges incurred after the company entered administration are not paid within the period of 28 days beginning with the day on which payment is due. Supply may also be terminated if the supplier notifies the administrator in writing that the supply will be terminated, unless the administrator personally guarantees the payment of any charges relating to the continuation of the supply after the company entered administration, and such guarantee is not given within 14 days from the date of receipt of the notice.*

*Similar to section 233A, under section 233B of the Insolvency Act 1986, a provision of a contract for the supply of goods or services to the enterprise ceases to have effect when the company entered administration if and to the extent that, pursuant to the provision, the contract or supply terminates, or any other thing would take place,*

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<sup>5</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 20.

<sup>6</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 20.

<sup>7</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 20.



*because the company entered administration, or the supplier would have the right to terminate the contract or supply, or any other thing, for the same reasons.*

*Under paragraph 7 of this section, the supplier must not make it a condition of any supply of goods and services after the time it enters administration, that any outstanding charges relating to a supply made to the company before that time be paid.<sup>8</sup>*

*The supplier may terminate the contract, under section 233B(5), in two situations: (i) with the consent of the administrator; or (ii) if the court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.<sup>9</sup>*

*In addition, section 233 of the Insolvency Act 1986 provides for the administrator require, after the effective date, any of the supplies mentioned above. In this context, section 233(2) provides that the supplier may make delivery of the supply conditional upon the personal guarantee of the administrator for the payment of any charges related to the supply. However, the supplier may not make it a condition of the delivery that any outstanding charges in respect of a supply provided to the company before the effective date are paid.<sup>10</sup>*

*Therefore, the administrator can either maintain contracts for the supply of goods and services or request additional supplies. In this way, the administrator can request that suppliers continue to provide goods and services during the administration.*

Question 3.2 [maximum 9 marks]

Commented [WPA9]: 0/9 no answer

***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?***

*[Type your answer here]*

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***

<sup>8</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 20-21.

<sup>9</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 21.

<sup>10</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 20.

**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;**

**Since the floating charge was provided without the provision of new money or any form of reduction or discharge of the loan, it is possible for the liquidator to take action to declare the floating charge invalid under section 245 of the Insolvency Act 1986.<sup>11</sup>**

**In the event, the guarantee was created within the 1-year period established by section 245(3)(b) of the Insolvency Act 1986, counted from the date of the commencement of the winding up.<sup>12</sup> In addition, the requirement of section 245(4) of the Insolvency Act 1986 was met, since the security was created because the debtor was unable to perform the obligations arising from the loan. That is, the company was unable to pay its debts within the meaning in section 123 of the Act.<sup>13</sup>**

<sup>11</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 69-70.

<sup>12</sup> Insolvency Act 1986, s 245(5)(d).

<sup>13</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 69-70.

**Commented [WPA11]:** 4/5 quite good on s 245 but a little clearer application to the facts would have been helpful. It is not clear how s 239 could apply on these facts.

*Therefore, the liquidator can take action under sections 238 and 245 of the Insolvency Act 1986 to invalidate the floating charge, even so, the debt arising from the loan remains valid.<sup>14</sup>*

**Question 4.2 [maximum 6 marks]**

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

*The sale of marble cutting machines to Rita Perkins constitutes an undervalue transaction under Section 238 of the Insolvency Act 1986. In this sense, it is up to the liquidator to take action.*

*Considering the price difference between the purchase price of the machines in the previous year and their sale price to the director, it is possible to conclude that they were sold below their real value. Thus, an undervalue transaction would be characterized, under the terms of section 238(4)(b) of the Act, according to which the company enters into an undervalue transaction if the company enters into a transaction with that person for consideration whose value, cash or monetary value, is significantly less than the cash or monetary value of the consideration provided by the Company.<sup>15</sup>*

*In this context, the sale was carried out within the two-year period ending on the date of the commencement of the winding up.<sup>16</sup> In addition, the company is at the time unable to pay its debts within the meaning of section 123 of the Act,<sup>17</sup> as previously mentioned. Furthermore, due to the fact that Rita is a party connected to the company, there is a presumption that the insolvency requirement has been met, unless proven otherwise.<sup>18</sup>*

*Therefore, the liquidator can apply to court for an order under section 238 of the Act to restore the position that would have existed had the Company not entered into the transaction. The order may be granted by the court under Section 241 of the Insolvency Act 1986. About the device, Peter A Walton points out that "to certain persons by section 242 which provides that an order shall not prejudice any interest in property which was acquired from a person other than the company, and which was acquired in good faith and for value".<sup>19</sup>*

**Question 4.3 [maximum 4 marks]**

<sup>14</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 70.

<sup>15</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 66.

<sup>16</sup> Insolvency Act 1986, s 240(1)(a) and 240(3)(e).

<sup>17</sup> Insolvency Act 1986, s 240(2)(d).

<sup>18</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 67.

<sup>19</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 67.

**Commented [WPA12]:** 5/6 good but perhaps could also consider the defence available under s 238

**Commented [WPA13]:** 0/4 s 239 cannot apply as the payment was made after the commencement of the winding up. Only s 127 could apply here.

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

*Payments to Hard and Fast Ltd. do not constitute a preference made by the debtor under section 239 of the Insolvency Act 1986, so that the liquidator should not take action in this case. In this sense, although several requirements of the device have been met, the debtor's intention to produce a preference for the creditor would not be configured.<sup>20</sup>*

*Pursuant to section 239(4) of the Insolvency Act 1986, the company gives preference to a creditor if the company does anything that has the effect of placing the person in a position in which, in the event of liquidation, he or she will be better than the position he or she would have if the company's act had not occurred. Thus, full payment, followed by cash payment, can give preference to the creditor, since he received his credit before creditors with preference in a liquidation scenario.<sup>21</sup>*

*Payments to Hard and Fast Ltd. were performed within the six-month period provided for in section 240(1)(b) of the Act. In addition, the company is at the time unable to pay its debts within the meaning of section 123 of the Act,<sup>22</sup> as previously mentioned.<sup>23</sup>*

*However, section 239(5) of the Act provides that the court shall not make an order if the act of the company giving rise to the preference was not influenced by the debtor's intention to grant the preference to the creditor. In this case, the Company was influenced only by the commercial issue, since in order to maintain its activity, it would be necessary to preserve the supply of marble. According to Peter A. Walton, a similar decision was made in *MC Bacon*.<sup>24</sup>*

*Therefore, in this case, preference would not be configured under section 239 of the Act, considering that the Company was influenced only by the continuity of trade and its activity. Thus, it is not up to the liquidator to take action against payments made to the creditor.*

**\* End of Assessment \***

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<sup>20</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 67-69.

<sup>21</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 67-68.

<sup>22</sup> Insolvency Act 1986, s 240(2)(d).

<sup>23</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 68.

<sup>24</sup> WALTON, Peter A, Module 3B Guidance Text: Insolvency System of the United Kingdom (England and Wales), INSOL International, London (2022), p 68-69.