



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]: 28/50 = 56%

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

Commented [WPA2]: 5/10

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.*

Commented [WPA3]: C is the correct answer

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 [WPA4]: B is correct

(c) 10

Commented [WPA5]: C is correct

(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.

Commented [WPA6]: 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.

Commented [WPA7]: D is correct

QUESTION 2 (direct questions) [10 marks]

Commented [WPA8]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA9]: 4/5 under s 6 CDDA the action may only be brought by the Sec of State (or OR on the SoS's instructions)

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?

If the company is being wound up or in administration: the official receiver, the liquidator, the administrator and any victim of the transaction such as a creditor. If the victim is bound by a CVA the supervisor of the CVA or any victim of the transaction and in any other case by a victim of the transaction.

Under section 6 of the Company Directors Disqualification Act 1986 the court is required to make a disqualification order.

Under section 246ZB of the Insolvency Act 1986 while a company is in administration, the court, on application of the administrator, may declare that that the person to be liable to make contribution to the company's assets as the court sees fit.

Question 2.2 [maximum 5 marks]

Commented [WPA10]: 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.

Five debts which do not form part of the payment held

The monitor's remuneration or expenses
Goods or services supplied during the Moratorium
Wages or salary arising under an employment contract
Redundancy payments
Rent in respect of a period during the Moratorium

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

Commented [WPA11]: 10/15

Question 3.1 [maximum 6 marks]

Commented [WPA12]: 5/6 a strong answer which might have provided a little more detail in places eg on the operation of s 233A

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?

Historically many contracts have had automatic termination clauses when a company was entered into administration. Recently there have been certain statutory exceptions which make these automatic termination clauses void.

An administrator usually needs to obtain or retain essential supplies. As per section 233 of the Act Insolvency Act 1986 applies to supplying gas, electricity, water and communications services. Suppliers are not permitted to require payment of outstanding debts to secure a new or continued supply to the company that is in administration. Section 233 also states that the administrator must personally guarantee payment of charges in respect of the supply.

As of 2020 the Act now prevents clauses that allow suppliers to terminate their contract if the company enters into a formal insolvency procedure. If the supplier has a provision to "do any other thing" once the company enters into an insolvency procedure, that provision would effectively be void. This prevents suppliers from making conditions to be made where the supplier is paid its pre-insolvency debts and to make any other changes i.e. increasing prices or making personal guarantees.

Services can still however be terminated if the company or insolvency practitioner consents. They can apply to the court and if the court believes that it would cause the supplier hardship that would be reason to terminate their services.

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 is set out below starting with the expenses of winding up and ending with shareholders who have lowest priority.

- Expenses of winding up, including liquidator's remuneration
 - These are any expenses that the liquidator occurs to administrate the liquidation proceedings. This can be any disbursements, remuneration of anyone employed by the liquidator to perform services for the company, remuneration of the liquidator, tax on chargeable gains when realizing assets and any other expenses.
- Preferential Creditors
 - These tend to be outstanding employees' remuneration and pension contributions for a period of time. They are also any outstanding taxes that are owed to the Government.
- Floating charge holder
 - Priority between floating charge usually comes between which one is created first. The liquidator must make a part of the company's net property available to satisfy the unsecured debts and must not distribute any of the prescribed part to a floating charge as long as there are enough assets to satisfy all the unsecured debts.
- Unsecured creditors
 - These creditors have no security and are paid out last. Once expenses of the liquidation have been paid out and distributions made to secured and preferential creditors.
- Shareholders
 - If there are funds to pay all creditors any surplus is distributed amongst shareholders pro rata.

There are several items that are not impacted by the Moratorium under Part A1. The Moratorium is enforced except if they consist of amounts payable in relation to:

- The monitor's remuneration or expenses;
- Goods or services supplied during the moratorium;
- Rent due during the moratorium
- Wages or salary arising under a contract of employment;
- Redundancy payments; or
- Debts or liabilities that arise under a contract or other instrument that is properly defined which include a contract that consist of lending, financial leasing or providing guarantees.

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

Commented [WPA13]: 5/9 a reasonable answer but lacks detail on s 176A and the various preferential debts. The Part A1 priority point is not dealt with - see s 174A. What is said about the moratorium is true but does not explain the priority of such liabilities in a subsequent winding up.

Commented [WPA14]: 4/15

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.

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 floating charge holder can appoint the liquidator to administer their charge. The floating charge must have been executed within 12 months prior to the company being rendered insolvent, the company must also be insolvent at the time or 2 years prior to the onset of insolvency where the floating charge holder is a connected person.

Since the Fretus Bank's debenture holds a floating charge over the company's assets they have.

The charge will be over the undertaking of the company, this includes all the company's property in the present and the future. Although fixed charges are usually paid out ahead of a floating charge, a floating charge allows the secured creditor to appoint an administrator to take control of the charged assets. They will seek to realize those assets and pay the secured creditor.

Question 4.2 [maximum 6 marks]

Commented [WPA15]: 1/5 the answer does not explain and apply the provisions of s 245 although there is some suggestion that s 245 has been identified as an issue

Commented [WPA16]: 2/6 although correctly identifying s 238 the answer does not explain all of the requisites for such an action nor how they would apply.

The sale of the marble cutting machines; and

The sale of the marble cutting machines can be viewed as a transaction at undervalue. According to section 238 (4)(b) of the Insolvency Act it states that a company enters into a transaction at undervalue if the value of the transaction is significantly less than the value in money or money's worth of the consideration provided by the company.

The marble cutting machines were sold for 15,000 less than they were worth the previous year. It is noted that the board believed that the supply of marble was essential to the business, but they sold two of their machines whilst still going on and buying more marble.

The liquidator should investigate if the Company sought to sell the machines to external parties who may have offered more for the machines. Also, they should investigate why they would sell the machines if the supply of marble was seen as an essential part of the business. It could be said that this sale wasn't beneficial to the company as it impacted one of their "core" services of the business.

The liquidator must also consider if the transaction caused the Company to be rendered insolvent. As marble cutting was core to their business it may have impacted revenue not allowing them to meet their debts as the fall due

The transaction can be investigated as it took place two years prior to the commencement of the winding up petition.

Question 4.3 [maximum 4 marks]

The payments to Hard and Fast Ltd.

Anti-deprivation, executory contracts suppliers are not permitted to require payment of outstanding debts to continue supplying the debtor. The supplier can stipulate that the administrator make a personal guarantee payment of charges.

Under the anti-deprivation principle, it prevents an insolvent estate from being deprived of an asset that is considered to be beneficial to creditors. The deprivation must be triggered by insolvency.

As it has been noted that the marble is essential to the business the liquidator can permit the continued supply of marble from Hard & Fast. Hard and Fast is also not required to permit payment of outstanding debts so they can keep supplying the company in administration. Section 233 of the Insolvency Act permits a supplier to require the administrator to make a guarantee payment of charges in respect to the goods supplied.

Hard and Fast may also apply to the court and argue that the continued supply of these goods will cause them hardship and that will be reason for them to stop supplying the Company.

*** End of Assessment ***

Commented [WPA17]: 1/4 the answer is effectively misconceived although there might be a remote possibility of arguing anti-deprivation. The issue is that the disposition would be void under s 127.