



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 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. 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 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 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 eight weeks of the commencement of the administration.**
- (c) within four 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

Section 426 of the Insolvency Act 1986 contains provisions for UK courts to provide assistance to overseas courts from certain listed jurisdictions. Which of the following is not a listed jurisdiction under section 426?

- (a) Malaysia.
- (b) Australia.
- (c) India.**
- (d) Hong Kong.

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 filing by a company's directors of a Notice of Intention to Appoint an administrator produces a short-term moratorium on actions against the company which lasts for how long?

- (a) Five business days.
- (b) Twenty business days.
- (c) Ten days.
- (d) Three months.

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 if the director has been a director of the company during which period prior to the insolvent liquidation?

- (a) Six months.
- (b) Five years.
- (c) Two years.
- (d) Twelve months.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 5 marks]

Who may bring an action under: (i) section 245 of the Insolvency Act 1986, (ii) section 6 of the Company Directors Disqualification Act 1986, (iii) section 246ZB of the Insolvency Act 1986, and (iv) section 127 of the Insolvency Act 1986?

[(i) The liquidator and administrator may bring an action under Section 245 of the Insolvency Act 1986.

(a) Section 245 of the Act applies only to floating charges, not any other type of security. It applies where a company is in administration or liquidation and the provision is aimed at preventing pre-existing unsecured creditors from obtaining the security of a floating charge shortly before a company enters a formal insolvency procedure. The liquidator and administrator in administration or liquidation may bring an action.

(b) It does not prevent lenders who are providing fresh funding to the company from taking a floating charge for that new funding. It renders invalid floating charges given by a company at a relevant time, except to the extent, in substance, that "new" consideration is provided for the charge.

See Module 3B Guidance Text, p70.

(ii) The Secretary of State may bring an action under section 6 of the Company Directors Disqualification Act 1986.

(a) The "Director Disqualification" is to protect the public and serve as a deterrent to directors engaged in wrongdoing. It aims at improving directors' behavior standards.

(b) A disqualification order application is made by the Secretary of State (or the Official Receiver on the Secretary of State's instructions, if the company in question is wound up by the court).

(iii) The liquidator may bring an action under section 246ZB of the Insolvency Act 1986.

(a) "Wrongful trading" ensures that directors do everything they can to minimize potential losses to a company's creditors once they realize insolvent liquidation or administration is likely.

(b) Section 214 empowers the court to declare that a director of a company in insolvent liquidation should contribute to the company's assets. Under this, only the liquidator can make an application to the court.

See Module 3B Guidance Text, p59-60.

(iv) The liquidator may bring an action under section 127 of the Insolvency Act 1986.

(a) "Disposition of property" in section 127 of the Act is interpreted broadly, encompassing any money payment or asset sale or transfer. This includes any transaction where the company no longer owns the property, such as sale, gift, assignment, mortgage, charge, lease, loan, or exchange.

(b) The start of a winding up doesn't change the company's property ownership, but it significantly limits its ability to deal with that property. In a compulsory winding up, section 127 of the Act voids any property disposition made by the company after the winding up begins, unless the court orders otherwise.

(c) Therefore, a liquidator often enforces section 127 to recover assets that the company disposed of between the petition and the winding up order.

See Module 3B Guidance Text, p65.]

Question 2.2 [maximum 5 marks]

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.

[Under Part A1 of the Insolvency Act 1986 when a company is subject to a Moratorium, the debts which do not form part of the payment holiday are as follows:

- (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.

See Module 3B Guidance Text, p38.]

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

Question 3.1 [maximum 6 marks]

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 can mandate the continued supply of goods and services during administration. Here's why:

(1) Administrators often need to secure or maintain essential supplies. Section 233 of the Act pertains to the supply of gas, electricity, water, and communications services. Communications services include goods and services like point-of-sale terminals, computer hardware and software, information, advice, technical assistance, data storage and processing, and website hosting.

(2) Suppliers are prohibited from demanding payment of outstanding debts as a condition for a new or continued supply to the company in administration.

(3) Section 233 of the Act allows a supplier to require that the administrator personally guarantee payment for the new supply.

(4) Moreover, under section 233A, a supplier of such services generally cannot rely on an "insolvency-related term" in a supply contract that would otherwise allow the supplier to terminate the supply, change the supply terms, or demand higher payments for continued supply.

See Module 3B Guidance Text, p20.]

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?

[(1) The order of priority of payments in liquidation is that:

(a) Holders of fixed charges will usually be paid first, often outside any formal insolvency, using the proceeds from the sale of assets subject to these charges.

(b) The expenses of the procedure, including the remuneration of the liquidator, are then covered.

(c) Preferential Creditors are paid next. This group typically includes employees owed money by insolvent employers and certain taxation debts owed to the government.

(d) Holders of floating charges are paid, accounting for any prescribed part deduction under section 176A of the Act, as discussed in paragraph 5.9.5.4.

(e) Unsecured Creditors, those without any security or title to assets, are paid. These are often ordinary trade suppliers and non-preferential taxation liabilities. If the company is ultimately found to be solvent, meaning there is a surplus after all liabilities are paid, this surplus is returned to the members according to their rights under the company's constitution (its articles of association).

See Module 3B Guidance Text, p5.

(2) The priority of debts may change in subsequent administration or liquidation compared to the priority that existed before the Moratorium. Section 174A stipulates that certain unpaid pre-Moratorium or Moratorium debts, such as those owed to employees or "financial services" debts, are paid in the subsequent liquidation before even the liquidator's fees and expenses. This gives certain unsecured debts a form of "super priority" in a subsequent liquidation.

For instance, if a director has outstanding payments from months prior to a Moratorium, and the company enters liquidation following an unsuccessful rescue attempt, the director's pre-Moratorium unsecured debt will gain "super priority" in the liquidation. Unsecured (or secured) pre-Moratorium bank debt, classified as "financial services", will also gain this "super priority". However, this doesn't apply to accelerated debts—any pre-Moratorium financial services debt triggered by the operation of, or exercise of rights under, an acceleration or early termination provision in the financial services contract.

See Module 3B Guidance Text, p39.]

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

Prior to going into compulsory liquidation on 28 February 2024, under pressure from its bank, Ambitus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Blazer Laser Limited (the Company), granted a debenture in favour of Ambitus Bank plc in June 2023. 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 13 January 2024.

Sometime in January 2023, as the Company continued to suffer cash flow problems, the directors approved the sale of two laser cutting machines to Angela Bannister (a director) for GBP 40,000 in cash. The machines had been bought for GBP 100,000 a year before.

A month before the winding up order was made, Angela Bannister received an email from Aluminium Alumi 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 metal was seen as essential by the Company, the board authorised a payment of GBP 20,000 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 8,000 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 Ambitus 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 Ambitus Bank plc;

[[The liquidator should take action with the floating charge in favour of Ambitus Bank plc for the following reasons:

(1) A liquidator will scrutinize a company in liquidation, particularly in its final trading stages. It's common to find issues or transactions that could be problematic. Many of the liquidator's actions often include allegations against the company's former officers (typically its directors) for potential breach of duty.

(2) Under Section 212, the court may define "Misfeasance" as an action where the alleged wrongdoer has "misapplied, retained or become accountable for money or property of the company, or [is] guilty of misfeasance or breach of any fiduciary or other duty". The action thus includes a case for breach of duty of care and skill (negligence), which is not a fiduciary action, but falls within the category of "other duty." This also encompasses fiduciary duties, such as the obligation to act in the company's best interest and the responsibility to avoid acting when the director has a conflict of interest and duty. This is particularly important in situations where the company is insolvent, or nearing insolvency.

(3) In order to prevent it from demanding repayment of the company's loans from Ambitus Bank plc, the Company granted a debenture in favour of Ambitus Bank plc in June 2023, and the debenture contained a floating charge over the whole of the Company's undertaking. At that time, the Company continued to suffer cash flow problems, so the debenture contained a floating charge over the whole of the Company's undertaking would make things worse. The director didn't act in the company's best interest. In conclusion, the liquidator should take action with the sale of the laser cutting machines for "Misfeasance".

See Module 3B Guidance Text, p58.]

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

[The liquidator should not take actions with the sale of the laser cutting machines for the following reasons:

(1) The "Director Disqualification" might be applied. This regime's primary purpose is to protect the public and serve as a deterrent to directors engaged in wrongdoing. It aims at improving directors' behavior standards. A disqualification order application is made by the Secretary of State (or the Official Receiver on the Secretary of State's instructions, if the company in question is wound up by the court), not the liquidator.

(2) An individual subject to a disqualification order should not:

(a) act as a company director, serve as a receiver of a company's property, or participate, directly or indirectly, in the promotion, formation, or management of a company, unless they have the court's leave.

(3) In January 2023, the directors approved the sale of two laser cutting machines to Angela Bannister (a director) for GBP 40,000 in cash. However, these machines were purchased for GBP 100,000 just a year prior. Thus, Director Angela Bannister acquired the machines at a significantly undervalued price, potentially harming the company's creditors.

In conclusion, the "Director Disqualification" might be applied by the Secretary of State, not the liquidator.

See Module 3B Guidance Text, p62-63.]

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumi Ltd.

[The liquidator should take any action in relation to the payments, the reasons are as follow:
(1) "Wrongful trading" ensures that directors do everything they can to minimize potential losses to a company's creditors once they realize insolvent liquidation or administration is likely.

(2) Here, a month before the winding up order was made, the board authorised a payment of GBP 20,000 to Aluminium Alumi Ltd to cover existing liabilities and made further payment of GBP 8,000 up to the date of the winding up order. The two payments were unreasonable and met the conditions of the liquidator's applications.

(3) Section 214 empowers the court to declare that a director of a company in insolvent liquidation should contribute to the company's assets. Under this, the liquidator can make an application to the court.

For the court to be satisfied, the following conditions must be met:

- 1) The company has gone into insolvent liquidation.
- 2) At some point before the commencement of the winding up of the company, the person knew or should have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation.
- 3) When the person reached that conclusion or should have reached that conclusion, they were a director of the company.

See Module 3B Guidance Text, p59-60.]

*** End of Assessment ***