



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 or administrator of the company.
- (ii) The Secretary of State.
- (iii) The liquidator or administrator of the company.
- (iv) The liquidator or administrator of the company.

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.

1. Any financial debts or liabilities that were incurred by the company before the moratorium, including those arising under a loan or credit agreement.
2. Rent or other payments under a lease or other agreement in respect of the company's use or occupation of property during the moratorium.
3. Liabilities arising from the provision of goods or services under a contract entered into before the moratorium.
4. Wages or salary of an employee of the company earned during the moratorium.
5. Debts or liabilities arising from a court order or judgment made or obtained before the moratorium.

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, the administrator can require as such. This is because of the "super-priority" status given to the administrator: Schedule B1 of the Insolvency Act 1986.

Accordingly, the administrator will possess the authority to compel suppliers to continue providing goods or services to the company under administration. This is to enable the administrator to sustain the company's activities and optimize the worth of its assets for the creditors' benefit. Nevertheless, suppliers are eligible to receive payment for any goods or services furnished during the administration phase. Accordingly, this gives them priority over other unsecured creditors when distributing assets.

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 of payments in a typical English liquidation is as follows:-

1. Secured Creditors

Those with a fixed charge over specific assets of the company. They have the first claim to the proceeds from the sale of the secured assets. They are entitled to be paid out of the proceeds of the sale of the secured assets before any other creditors.

2. Preferential Creditors
Preferential creditors are accorded with such status by law and are entitled to be paid before other unsecured creditors (eg employees' claims for unpaid wages).
3. Floating Charge Holders
Lenders with a floating charge over the company's assets.
4. Insolvency Practitioners
Administration expenses - the insolvency practitioners' fees and expenses.
5. Unsecured Creditors
Commercial parties including, but not limited to: trade creditors; suppliers; and lenders without security
6. Shareholders
Shareholders entitled to receive any remaining (usually nothing) assets of the company after all above creditors have been paid in full.

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

In that situation, certain debts will be excluded from the payment holiday. Those creditors providing goods or services during this period will have super-priority status and that entitles them to be paid before other unsecured creditors. In practice, this reduces the amount available to other unsecured creditors. Further to what I set out above in the Insolvency Practitioners point, any debts incurred during the moratorium period would be treated as administration expenses and given priority over other unsecured debts in the liquidation.

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 may take action if there are grounds to challenge the validity of the charge. If the charge was created at a time when the company was insolvent or just prior to insolvency, it may be susceptible to challenge under the law on preferences or transactions at an undervalue.

Section 245 of the Insolvency Act 1986 allows for the liquidator to challenge the floating charge if it was created within the relevant statutory period before the winding-up order was made, AND if it was created with the intention of giving Ambitus Bank plc a preference over other creditors.

The liquidator would need to demonstrate that the company was insolvent or became insolvent as a result of the creation of the charge, and that Ambitus Bank had knowledge of the company's insolvency or intended to prefer themselves over other creditors.

In the event the floating charge was created as security for existing loans or obligations, the liquidator may investigate whether those loans or obligations were properly documented and whether the terms of the debenture were fair and equitable to the company and its creditors.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

Preference/ Transaction at an undervalue

Section 239 of the Insolvency Act 1986 provides that a transaction entered into by a company within a certain period before the commencement of winding-up may be challenged if it is deemed to be a preference. A preference occurs when a company does anything that puts a creditor in a better position than they would have been in the event of the company's liquidation.

If the sale of the laser cutting machines to Angela Bannister was made for significantly less than their market value (i.e., sold for GBP 40,000 when they were originally purchased for GBP 100,000), and it can be demonstrated that the company was insolvent or became insolvent as a result of the transaction, the liquidator may be able to challenge the transaction as a preference under Section 239.

Section 238 of the Insolvency Act 1986 allows for the liquidator to challenge the sale as a transaction at an undervalue - if the sale was not made "at arm's length" - the director purchased the machines for significantly less than what an unrelated third party would pay.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

Preference/ Transaction at an undervalue

Similar to the previous answer, Section 239 of the Insolvency Act 1986 provides that a transaction entered into by a company within a certain period before the commencement of winding-up may be challenged if it is deemed to be a preference. On the facts, the payments made to Aluminium Alumini Ltd. may be challenged as preferences if they were made within the relevant statutory period before the winding-up order and if they were made with the intention of preferring Aluminium Alumini Ltd. over other creditors. The liquidator would need to assess whether the payments were made at a time when the company was insolvent or just prior to the company entering insolvency and whether Aluminium Alumini Ltd. had knowledge of the company's insolvency or intended to prefer themselves over other creditors.

Section 238 of the Insolvency Act 1986 allows for the liquidator to challenge the payments to Aluminium Alumini Ltd as a transaction at an undervalue. On the facts, if the payments were made for goods or services provided at an undervalue - the company paid less than the fair market value for the goods or services, the liquidator may challenge the payments as transactions at an undervalue.

*** End of Assessment ***