



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^[PW1]

QUESTION 1 (multiple-choice questions) [10 marks in total]^[PW2]

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]^[PW3]

Question 2.1 [maximum 5 marks]^[PW4]

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) Administrator or liquidator of a company**
- (ii) Secretary of State or the Official Receiver on the instructions of the Secretary of State where the relevant company is being wound up by the court**
- (iii) Administrator of a company**
- (iv) Liquidator of a company**

Question 2.2 [maximum 5 marks]^[PW5]

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.

- Monitor's remuneration or expenses**
- Goods or services supplied during the Moratorium**
- Rent in respect of a period during the Moratorium**
- Wages or salaries arising under a contract of employment**
- Redundancy payments**

QUESTION 3 (essay-type questions) [15 marks in total] [PW6]

Question 3.1 [maximum 6 marks] [PW7]

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?

Sections 233B(3) and (4) of the Insolvency Act, 1986 prohibit various types of provisions in agreements that have the effect of automatically terminate agreements or allowing suppliers to terminate agreements due to the debtor being subject to an insolvency procedure.

A supplier may only terminate a contract based on a company being in administration if the administrator consents to the termination [233B(5)(a)].

Therefore an administrator can require suppliers of goods and services to continue supplying the goods and services during administration.

Question 3.2 [maximum 9 marks] [PW8]

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?

Dealing first with the situation where a company had not been subject to a Moratorium in the 12 week period prior to liquidation:

1. *According to section 115 of the Act, the proceeds from the realisation of the company's assets must be distributed first to pay expenses properly incurred in the winding up, including the remuneration of the liquidator. 6.42 lists the order of priority that expenses must be paid as follows:*
 - (a) expenses incurred by the liquidator in preserving, realising or getting in any of the assets of the company (including costs of legal proceedings)*
 - (b) cost of security provided by the liquidator*
 - (c) amounts payable to persons who assist in the preparation of statement of affairs or accounts*
 - (d) necessary disbursements by the liquidator in the course of winding up*
 - (e) remuneration of person who has been employed by the liquidator to perform services for the company*
 - (f) remuneration of the liquidator*
 - (g) amount of corporation tax on chargeable gains accruing on the realisation of any asset of the company; and*

(h) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in winding up.

- 2. Once expenses are settled in full, section 175 provides that preferential debts, being those listed in Schedule 6 of the Act, shall be paid. "Ordinary" preferential debts as listed in schedule 6 include amounts owed to employees for remuneration and contributions to pension schemes while secondary preferential debts, as contemplated in section 386 of the Act, are paid after those debts in schedule 6 have been settled.*
- 3. Secondary preferential debts include amounts owed by the company to in respect of deposits as exceeds compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme, PAYE deductions, nation insurance deductions, VAT payments and others.*
- 4. After payment of preferential debts, the floating charge holder is paid, subject to the provisions of section 176A which places the liquidator of a company under a duty to make a "prescribed part" of the company's net property available to pay unsecured debts. Where the company's property is less than GBP 10 000, the prescribed part is 50% of the net property (after expenses and preferential debts), while if it exceeds GBP 10 000, the prescribed part is the sum of 50% of the first 10 000 pounds in value, plus 20% of the excess in value above 10 000. The prescribed part is limited to a maximum of 800 000 pounds. A floating charge holder or secured creditor who may have an outstanding unsecured balance owing to it, may not participate in the distribution of the prescribed part.*
- 5. Unsecured creditors' claims rank last amongst creditors*
- 6. Shareholders rank behind creditors and will receive the balance of the proceeds should creditors have been paid in full.*

Section 174A provides that where winding up proceedings began before the end of the 12 week period after the moratorium of the company, prescribed fees or expenses of the official receiver acting in any capacity in relation to the company are payable first and thereafter unpaid pre-Moratorium and Moratorium debts are paid before all other claims, including those listed above.

QUESTION 4 (fact-based application-type question) [15 marks in total]^[PW9]

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 Alumini 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]^[PW10]

The floating charge in favour of Ambitus Bank plc;

The floating charge in favour of Ambitus Bank provides the Ambitus Bank with a preferential claim, payable after the settlement of necessary expenses and other preferential claims as discussed in the previous question. However, the floating charge was granted at a "relevant time" as defined in section 240, being less than 6 months before the onset of insolvency in this case, and by granting the floating charge, the company potentially gave a preference to Ambitus Bank, because it caused Ambitus to be better off in the liquidation than had the floating charge not been granted. In order to be successful in an application to have the floating charge set aside, the liquidator would have to show that the company had the desire to benefit Ambitus Bank to the expense of other creditors.

From the facts, it does not appear that the debtor company desired to prefer Ambitus Bank in these circumstances, because by granting the floating charge it prevented the bank from demanding repayment of its loans. In court decisions it has been held that where the company was influenced solely by commercial considerations and to enable the company to continue trading, there could not be a desire to prefer.

Therefore it is doubtful whether the liquidator would be successful in setting aside this transaction in terms of section 239(3).

Question 4.2 [maximum 6 marks]^[PW11]

The sale of the laser cutting machines; and

The sale of the laser cutting machines was to Angela Bannister who, as a director, is a connected person to the company, and therefore occurred at a "relevant time" in terms of section 240(1)(a), being within two years before the onset of insolvency.

Section 238 provides that where, at a relevant time, the company has entered into a transaction at an undervalue, the court may set aside that transaction. A transaction with a person is undervalue, in terms of section 238(4), if the company receives no consideration for goods or services provided to the person or otherwise in a transaction receives consideration which is significantly less than the value in money or money's worth of the consideration provided by the company.

The laser cutting machines were bought by the company for 100 000 pounds a year before Angela Bannister bought them from the company for 40 000 pounds which appears to indicate that the consideration provided by Bannister was significantly less than value.

Because the company urgently required cashflow at the time, it could be argued that the company entered into the transaction in good faith for the purpose of carrying on its business and that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

If the company could have reasonably sold the laser cutter for more than 40 000 pounds in a forced sale to urgently generate cash, then it could not be said that the company had reasonable grounds for believing that the transaction would be to its benefit.

Assuming that this is indeed the case, that the asset was sold for significantly lower than its market value (even for a fire sale), the liquidator therefore ought to apply to court for an order to restore the position to what it would have been if the company had not entered into this transaction.

Question 4.3 [maximum 4 marks][PW12]

The payments to Aluminium Alumini Ltd.

The payments to Aluminium Alumini were made with the intention of buying essential goods necessary to allow the company to continue its operations. Although the repayments had the effect of preferring one creditor over another, they were influenced purely by commercial considerations and were seen as essential for the company to continue trading, therefore the company could not be said to have desired to prefer Aluminium Alumini over other creditors.

The payments were also for value (paying an existing liability and paying COD for materials) and therefore cannot be set aside on this basis either.

The liquidator therefore likely will not be able to successfully have this transaction set aside.

*** End of Assessment ***