



**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) Section 245 of the Insolvency Act 1986:

The liquidator or administrator of a company. If floating charge is caught by Section 245, it is rendered invalid in the event that the company goes into liquidation.

(ii) Section 6 of the Company Directors Disqualification Act 1986:

The Secretary of State. Liquidator and administrator has a statutory duty to report any directors who may be "unfit" to be directors under CDDA 1986. The Secretary of State then decide whether to take action against directors by disqualifying them from being directors of companies for up to 15 years and may ordered to compensate creditors who suffered loss.

(iii) Section 246ZB of the Insolvency Act 1986:

The liquidator or administrator of a company. The court, on the application of the administrator, may declare that a person is to be liable as the court thinks proper.

(iv) Section 127 of the Insolvency Act 1986:

The liquidator or administrator of a company. In a winding up by the court, any disposition of the company's assets, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void hence entitled to seek the recovery of payments made by the insolvent company to suppliers, and other third parties during the period between the date the winding up petition was issued and the date a winding order is made.

### 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.

Debts that do not form part of the payment holiday (i.e. pre-moratorium debts)

1. The Monitor(Practitioner)'s remuneration or expenses
2. Amounts owed in respect of taxes or levies payable to a government entity
3. Utility bills or rent during Moratorium period
4. Wages or salary arising under a contract of employment during Moratorium period
5. Financial services debts or monies owed under a guarantee to a bank

### 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 who wishes to continue operating the business of the company in administration may require suppliers of goods and services to continue supplying those goods and services during the administration.

Schedule B1 of the Insolvency Act 1986 grants the power to administrator to act as agent of the company and to do the necessary for the management of the affairs, business and property of the company.

The appointment of an administrator does not automatically terminate a company's executory contracts.

For instance, Section 233 of the Act applies to the supply of utilities (e.g. gas, electricity, water and communication services which including sale terminals, computer software & hardware). The Act also restricts suppliers from requiring the outstanding debts to be paid in order for continuing supply to the company in administration or alter the terms of supply or demand higher payment/charges. Instead, the Act permits a supplier to stipulate that administrator must personally guarantee payment of charges in respect of the new supply.

Termination of services initiate by supplier is possible either with the consent of the administrator or permission granted by the court upon application to the court.

Where there are terms in contracts of supply with provision for automatic termination (ipso facto) clauses may subject to statutory exceptions and made void as a result.

Similarly, the company entering into administration does not terminate any employment contracts automatically. The employees retain their contractual and statutory rights against the company in administration. If the employee is kept on for 14 days after the appointment of administrator, the employee contract is deemed to be adopted by the administrator and this results in the wages/salary of the affected employee be adopted as super priority which is prioritized even before the administrator's own fees and expenses.

### 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 priority of payments in liquidation is generally as follows:

#### 1. Secured creditors

These creditors have security/charge over specific assets of the company, such as debts assigned to receivable/factoring financier or vehicles/machinery subject to hire purchase or land title to banks. These creditors have the first claim to the proceeds from the disposal of the charged assets.

#### 2. Super priority creditors

When the company is not rescued as a going concern but enters into liquidation within 12 weeks of the Moratorium, Moratorium debts may entitle super priority. For example, employees whose contracts are kept on by the liquidator for at least 14 days which entitle super priority for the amount owed after adoption by the liquidator. The same applies to lender who contracted with the company in liquidation and provided funding. These expenses are paid out ahead of the liquidator's own remuneration.

#### 3. Liquidation expenses

This refers to expenses incurred by the liquidator during the liquidation process to preserve, realise or recovering assets of the company. These tend to involve cost associated with legal proceedings. Example are fees of the liquidator, legal expenses, and administrative costs incurred in winding up the company's affairs. These expenses are paid next after the fixed charge creditors.

#### 4. Preferential creditors

Due to the preferential debt regime, certain creditors are given preferential status under the Act and are entitled to payment after accounting for liquidation expenses but before unsecured creditors. This usually includes ordinary preferential creditors such as government tax and employee salaries and employee pension scheme contributions. In the case of financial service companies (i.e. banks or insurance) in liquidation, there would be secondary preferential debts such as depositors which its priority comes after ordinary preferential creditors..

5. **Floating Charge Creditors:** Creditors holding floating charges over the company's assets are next in line for payment. Unlike fixed charge creditors, floating charge creditors have security over assets that may change in value or composition over time. Calculation of prescribed part of net property to be conducted by liquidator to take into account of unsecured creditors in consideration before distribution.

6. **Unsecured Creditors:** Unsecured creditors, including trade creditors, suppliers, and lenders without security, are paid next. They rank behind fixed and floating charge creditors and preferential creditors.

7. **Shareholders:** Shareholders are the last in line to receive payment in a liquidation. Any remaining assets after satisfying the claims of creditors are distributed among shareholders according to their rights and preferences, typically in proportion to their shareholdings.

#### 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;

Section 245 of the Insolvency Act 1986 on floating charge. As the floating charge was created less than 12 months prior to the compulsory liquidation on 28<sup>th</sup> February 2024, the fact whether the charge holder is connected with the Company would not be material. Instead, the liquidator may proceed to determine whether, at the time of the creation of the charge, the Company was unable to pay its debts in accordance to Section 123 of the Act) or became unable to do so in consequence of the transaction. The floating charge is rendered invalid, not prior to but upon the liquidation that the Company entered into.

Section 423 of the Insolvency Act 1986 on the right to question the transactions designed to defraud creditors. To satisfy the requirements, the liquidator will need to investigate to show that the transaction entered by the Company (i.e. granting of the floating charge over the whole of the Company's undertaking) is undervalue (e.g. little to no consideration received in exchange) and that was entered for the purpose to prejudice the interest of other types of creditors (i.e. liquidation expenses, preferential creditors, unsecured creditors).

Section 214 and 247B of the Act on making directors of the Company liable for wrongful trading and thus liable for some of the debts and liabilities of the company. Liquidator may investigate whether at some point before the commencement of the winding up of the Company, that director knew or ought to have concluded that there was no reasonable prospect that the Company would avoid going into insolvent liquidation. For example, a going concern issue flagged by the finance director or the auditor or in January 2023 when Company was already facing cash flow problems.

Section 213 and 246ZA of the Act on making directors of the Company liable for fraudulent trading. Liquidator may investigate whether the granting of the floating charge was made with the intention to defraud its creditors or to benefit the director or the connected parties of the director (e.g. Ambitus Bank plc) for fraudulent purpose.

**Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

Section 238 of the Act on transaction entered prior to the liquidation of the Company was undervalue. Liquidator to show the disposal of the laser cutting machines to a director was significantly undervalued which happened within 2 years prior to the commencement of the liquidation. As the sale entered was to a connected party, the company is presumed to have been insolvent unless the contrary is proved which is unlikely as the Company was already continuing to suffer cash flow problems.

Section 212 of the Act on making directors of the Company liable for breach of fiduciary duty. Liquidator may pursue the director on the grounds that the sale of the machines was made allegedly for director's interest instead of the best interest of the Company hence breach of fiduciary duty.

Section 423 of the Insolvency Act 1986 on the right to question the transactions designed to defraud creditors. To satisfy the requirements, the liquidator will need to investigate to

show that the transaction entered by the Company (i.e. sale of the machines) is undervalue and that was entered for the purpose to prejudice the interest of creditors.

**Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

Liquidator may challenge that the payment to the supplier as preferences which ay be avoided by the court on application of a liquidator under section 239 of the Act.

**\* End of Assessment \***