



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. Under section 245 of the Insolvency Act 1986 a liquidator or administrator may bring an action.
- ii. Under section 6 of the Company Directors Disqualification Act 1986, the Secretary of State for Business, Energy & Industrial Strategy (for voluntary winding up) or by the Official Receiver (in compulsory winding up cases).
- iii. Under section 246ZB of the Insolvency Act 1986, an administrator can bring an action.
- iv. The court may bring an action under section 127 of the Insolvency Act 1986.

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.

The following are debts which do not form part of the payment holiday when a company is subject to a moratorium:

- i. the monitor's remuneration
- ii. good or services supplied during the Moratorium
- iii. rent in respect of a period during the Moratorium
- iv. wages or salary arising under a contract of employment
- v. redundancy payments

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 to operate the business of the company in administration can require suppliers of good and services to continue to supply those goods and services during administration. Moreover, there are essential supplies that an administrator will need to obtain or retain during the administration process.

Essential services include the supply of gas, electricity, water, and communication services (section 233 of the Act). The acquisition of new supply of services or the continued supply of services to the company is not contingent on the payment of outstanding debts. However, section 233 of the Insolvency Act permits a supplier to stipulate that the administrator must personally guarantee payment of charges in respect of the new supply.

As in this case, when Blazer Laser Limited (company) enters an insolvency process, the Insolvency Act 1986 , prevents suppliers of 'essential supplies' from demanding payment of pre-insolvency debts as a condition of continuing the supply (see Insolvency Act 1986, s 233). Where the company enters into administration or a voluntary arrangement, Insolvency Act 1986, s 233A also imposes certain restrictions on termination because the law recognises the importance to companies of ensuring the continuation of essential supplies to facilitate either a rescue of the company, or a better return to creditors. Moreover, section 233B, stipulates that suppliers of goods or services are unable to rely on contractual clauses allowing for the termination in the event of the company's insolvency or restructuring.

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 expenses incurred by the liquidator (an example is any expenses that are properly incurred by the liquidator in preserving, realising or getting in any of the assets of the company) will be paid ahead of the company's preferential creditors , any holder of floating charges and the company's unsecured creditors (Section 15 of the Insolvency Act 1986).

After the expenses of the liquidator are paid in its entirety, the next step would then be to use the company's assets to pay preferential creditors (limited claims of employees and some taxation liabilities). Once preferential creditors have been paid, the next creditor in the order of priority to be paid will be any floating charge holder [include referencing]. Unsecured creditors (i.e. creditors with no security) are paid out last.

Shareholder would be paid last.

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 debts in that subsequent liquidation may be different to the priority of debts which existed prior to the moratorium. During the moratorium if the company is not rescued as a going concern but instated enters into an administration or liquidation within 12 weeks of the end of the moratorium, the priority of debts in that subsequent administration or liquidation may be different to the priority of debts which existed prior to the moratorium.

According to Section 174A of the Insolvency Act 1986 certain unpaid pre-moratorium or moratorium debts (the debts which are not part of the payment holiday), such as debts owed to employees or financial services debts, debts are paid in the subsequent liquidation, in priority to even the liquidators fees and expenses.

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 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]

The floating charge in favour of Ambitus Bank plc;

The debenture is the document executed by Blazer Laser Limited which creates or acknowledges the debt owed to Ambitus Bank Plc. The security in the present case is the floating charge over the whole of the companies undertaking, which would crystallise upon Blazer Laser Limited inability to pay the debt owed to Ambitus Bank Plc. Blazer Laser Limited being the holder of the floating charge can then appoint an administrator of the company, Insolvency Act 1986, Sch B1, para 14.

The administrator upon appointment must take custody or control over all the property which they think Blazer Laser Limited is entitled to, Insolvency Act 1986, Sch B1, para 67. The administrator may dispose of or take any action relating to property which is subject to a floating charge as if it were not subject to a floating charge (eg. a fixed charge), Insolvency Act 1986, Sch B1, para 70.

It is worth noting that because administration is a collective procedure, it would be incompatible for it to co-exist alongside the liquidation. The consequence of the company going into administration as a result of an appointment by Ambitus Bank Plc (holder of the qualifying floating charge) any outstanding winding-up petition is suspended.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

It appears that the two laser cutting machine sold were sold at an undervalue to Angela. The machines had been bought for GBP 100,000 a year before. They were sold to Angela GBP 40,000, which is indicative of 60% reduction. The directors approved a transaction at undervalue. Under section 238 of the Insolvency Act 1986, a liquidator (or administrator) may attack a transaction which was entered prior to the company entering liquidation or administration where the transaction was at an undervalue.

As the company entered into a transaction for a consideration in of GBP 40,000 which was significantly less than the value, section 238 of the Insolvency Act 1986 should be considered. Under section 238(4)(b), the liquidator or administrator of the company must show that the company entered into a transaction with another person for consideration which, in money or money's worth, was, at the date of the transaction, significantly less than the value, in money or money's worth, of the consideration provided by the company.

To benefit from the provision, the transaction must have taken place at a "relevant time" which is in the period of two years prior to the commencement of the liquidation or administration (section 240(1)(a)). In the present case the transaction had not taken place

at a relevant time, as it occurred less than the period of two years prior to the commencement of the liquidation.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

The Corporate Insolvency and Governance Act 2022 introduced protections afforded to a company under section 233B of the Insolvency Act 1986.

The practical effect of section 233B is that where the company (Blazer Laser Limited) goes into a formal insolvency process, its supplier (Aluminium Alumini Ltd) is not entitled to stop supplying goods or services (in the present case the supply of metal) under their contract purely because of the insolvency process (that being the winding up order which followed a creditor's winding up petition issued on 13 January 2024).

Moreover, section 233B prevents Aluminium Alumini Ltd from terminating a supply upon Blazer Laser Limited insolvency but also prevents, Aluminium Alumini Ltd from making it a condition of continued supply that that pre-insolvency arrears are paid and from making other changes to the contract such as requiring that further supplies would only be made on a cash on delivery basis. Under section 233B, a supplier cannot insist on a personal guarantee from the administrator.

Further, Aluminium Alumini Ltd cannot exercise termination rights triggered before the termination process once its customer, Blazer Laser Limited is in an insolvency process. Should Aluminium Alumini Ltd wish to terminate the contract, they can only do so if:

- i. An insolvency office holder appointed over the insolvent company agrees.
- ii. Where the company is subject to a moratorium, CVA or Part 26A restructuring plan, the company agrees.
- iii. The court grants permission, being satisfied that the continuation of the contract would cause the supplier hardship.
- iv. Another contractual termination event occurs after the start of the insolvency proceedings.

*** End of Assessment ***