



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?

An action can be brought under section 245 of the Insolvency Act (which relates to floating charges), by the lenders who will be providing fresh funding to the company from taking a floating charge for the new funding. The act aims to prevent pre-existing unsecured creditors from obtaining the security of the floating charge shortly before a company enters into a formal insolvency procedure. Under section 6 of the Company Directors Disqualification Act 1986, the liquidators can bring an action to sue a director who has breached their duty, on behalf of the company. Similarly, section 246ZB of the Insolvency Act 1986 allows the liquidator to make an application to court to make the directors of insolvent companies liable for wrongful trading, thereby making them liable for some of the debts and liabilities of the company in certain circumstances. A liquidator may bring an action under section 127 of the Insolvency Act 1986 to retrieve company assets disposed of during the period between the petition and the winding up order.

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.

Five debts which are not part of the payment holiday can include the Moratorium monitors remuneration or expenses, the services or goods supplied during a Moratorium, rent in respect of a period during a Moratorium, wages or salary arising under a contract of employment and redundancy payments. Having a Moratorium doesn't prevent enforcement of creditor actions when it comes to debts incurred during a Moratorium, but it imposes restrictions on the enforcement/payment of debts which are pre-moratorium debts occurring during the Moratorium for a company which has payment holidays, like the examples above.

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?

The 2020 Act has protections in section 233B which prevents the suppliers from terminating a supply in relation to a contract if a company ends up entering a formal insolvency procedure, so therefore yes, the administrator can require the continuation of supply of those goods and services. Section 233B does also allow a contract to be terminated by the supplier if the company/insolvency office-holder consents, or if there is an application to the court, and they are satisfied that the contract continuation would hardships for the supplier and thereby will grant permission for termination. Other sections, such as ss 233 and 233A, similarly prohibit termination by communications, utility, and IT suppliers, however, 233B expands on the restrictions in place on termination to all other suppliers. It is also important to note that these sections (233, 233A and 233B) applies in administration and where a company enters a Company Voluntary Agreement (CVA). Additionally, Section 233B also applies where a company has entered a Restructuring Plan or a Moratorium or has entered into liquidation.

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 liquidation starts with the holders of fixed charges who will usually be paid first outside of any formal insolvency, and they will be paid out of the proceeds of sale of assets that were subject to the fixed charges. Secondly, the expenses of the insolvency procedure will be paid out and this includes the remuneration of the office-holder. Next on the list is the preferential creditors which includes the reasonably modest claims from employees with money owed from their insolvent employers, and there are also some taxation debts owed to the Government in circumstances where the company acted in effect as a tax collector for the Government. Floating charges are fourth on the priority list, and these are subject to any prescribed part deduction under section 176A of the Act. Next on the list, is unsecured creditors who don't have the benefit of any security or title to assets. If there is a surplus after all payments have been made, this will be returned to the members according to their articles of association.

In relation to how the priority of payments would change if the company was 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 consequent administration or liquidation may be different than the priority of debts which may have existed prior to the Moratorium.

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 occurred in June 2023, prior to the liquidation. This included a floating charge over all the assets of the company. If the debenture only included a floating charge, then they would be 4th in the priority of payments from the liquidation. Ambitus will need to file with the court an enforcement of their qualifying floating charge based on Paragraph 14 of schedule B1 of the Act. Ambitus Bank plc will have to file a notice of appointment at court which should include a statutory declaration confirming the floating charge has become enforceable. This will crystallize the floating charge into a fixed charge, moving them from the lower tier in priority of payments to a higher tier.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

Based on Section 233 of the Act, suppliers aren't permitted to require the payment of outstanding debts in order to secure continued or new supplies to the company in administration. The laser cutting machines would be included in this as they are classed as computer software within communications services. Any new supplies, the supplier is allowed to stipulate that the administrator must personally guarantee payment of these. Section 233B also prohibits the supplier from terminating or amending the contract if a company enters into a formal insolvency procedure, unless approved by the court.

The timing of the sale after the debenture with Ambitus removed material assets from the future liquidation, however the debenture was based on a floating charge which allows the company to trade or sell assets but since the laser cutting machines were also sold to the director, they are no longer owned by the company and therefore, there isn't much action that can be taken. The purchase cost of the equipment versus depreciation of the equipment isn't really an issue. However, the revenue generation and asset valuation in a prospective sell of the company and or liquidation of assets is material. Section 127 of the Act aims to avoid the disposition of property of the company made after the commencement of winding up, however, since the winding up commenced over a year after the machinery was sold, this will not cause any issues.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

As previously mentioned, the 2020 act section 233B prevents the demands that Aluminium Alumini LTD requested to have immediate payment of outstanding payments. They can, however, still demand full payment of any new supplies provided. Should Alumunium Alumni Ltd feel that the non-payment of those debts will cause them hardships, they can apply to the court to request the termination of the supply contract.

*** End of Assessment ***