



**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 relates to invalidating floating charges, this can be actioned by an administrator and or an insolvency practitioner
- (ii) Section 6 of the Company Directors Disqualification Act 1986 relates applying to The Secretary of State for disqualification and investigation orders for directors, this is actioned by the court.
- (iii) Section 246ZB of the Insolvency Act 1986, relates to requesting the statement of affairs of a company, this is requested by the administrator.
- (iv) Section 127 of the Insolvency Act 1986, relates to the void disposition of property after the commencement of winding up, this is brought by the insolvency practitioner or the court.

### 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.

Part A1 of the Insolvency Act 1986 pertains to the restricting of enforcement action by creditors during a moratorium, this creates a "payment holiday" over most of the company's debts, some of the debts excluded from this are:

Liabilities or obligations arising under a contract or instrument involving financial services. This includes financial contracts, securities contracts, and contracts for the provision of financial collateral.

New obligations that would come due during the moratorium period.

Wages or salary arising under a contract of employment

Redundancy payments for staff.

Rent in respect of a period during the moratorium

Obligation incurred under a contract entered into during the moratorium period.

Goods or services supplied to the company during the moratorium.

Whilst a holiday there is still some obligations under these debts and contracts, and they must still be paid on contractual terms.

### 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 UK Insolvency Act 1986, Schedule B1 an administrator is given the power to carry on the company's business, as part of this they need to take decisions to ensure the management and running of the company, as part of this whilst noting some limitations this will require suppliers to continue to supply goods and services during the administration.

This is dealt with and introduced as part of Section 233 of the Insolvency Act 1986, further guidance is also provided in the Corporate Insolvency and Governance Act 2020, where additional protection is provided in relation to contracts for the supply of goods and services to a company during administration, with focus on items such as sales terminals, computer hardware, gas and water etc, this in essence protects all key items essential for the business to continue with limited interference to trading in administration by limiting suppliers rights to cancel contracts and increase prices.

Under section 233B a supplier may not make it a condition of any supply after the relevant time that any outstanding charges in respect of a supply before that time are paid and can therefore not terminate, nor allow the contract to terminate or suspend during administration, however, they can stipulate during the administration supply that these costs are guaranteed by the liquidator. In addition Section 233A also protects against insolvency terms in the contract ensuring contracts aren't instantly terminated upon the administrator's appointment.

The 2020 act further expanded on these protections introducing a new moratorium, this was set with the intention of giving statutory breathing space for the administrators. Protecting them from creditor action for an initial period of 20 business days (extendable), during which they can explore restructuring options without creditor pressure. This also introduced some new and developed some older concepts being;

**Restructuring Plan:** A new procedure, this was put in place to try fix some of the issues with a Scheme of Arrangement, this allows struggling companies, creditors and members to propose a restructuring plan to stakeholders. The key aim of this was to introduce the ability to bind dissenting classes of creditors to a plan pre restructuring if certain conditions are met to avoid dissenting views causing issues and delays.

Another introduction which is now becoming less applicable was the reduction for suspension of wrongful trading for directors' and their potential liability for wrongful trading, this was temporarily suspended during the pandemic to allow businesses to continue to trade through the crisis without the directors fearing personal liability.

Temporary restrictions were also introduced on the use of statutory demands and winding-up petitions where the company's inability to pay is due to COVID-19.

And the protection of supplies was developed restricting suppliers from terminating supply contracts solely due to insolvency, noting this is limited to avoid supplier hardship.

However, this is not an absolute requirement, as such, the supplier may apply to the court for permission to terminate a supply if able to demonstrate that the continuation of the supply would cause "hardship" (233B 5). Furthermore, this obligation will cease to have effect if the administrator, within 14 days of appointment, does not give the supplier a written statement that the supply contract will continue (233B 4).

Importantly, although these provisions provide the administrator with powers to require ongoing supply, it does not relieve the company of its obligation to pay for supplies received during the administration. The payments for goods or services supplied after the commencement of the administration are considered an expense of the administration and receive priority in payment.

Legal advice should be sought to navigate these complexities as the individual circumstances of the company and its contracts can greatly affect how these provisions are carried out.

### 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?

Under the UK's Insolvency Act 1986, the order of priority of payments in a liquidation is as follows:

- **Insolvency Costs:** These include the costs incurred properly during the course of the liquidation. such as the liquidator's fees, legal costs, and court fees (there is a defined priority for these expenses also).
- **Fixed Charge Creditors:** Creditors with charges over specific asset(s) as security for debt (eg property loans), these creditors have a first claim of the proceeds of the liquidation (noting some specific charges can carry certain priorities).
- **Preferential Creditors:** These typically include employees of the company owed wages, salary, redundancy payments, and unpaid pension contributions (noting limitations on these charges subject to Section 6 of the act).
- **Floating Charge Creditors (and the prescribed part):** These are creditors who have a claim that "floats" over asset classes both present and acquired during the course of business, these payments typically follow the order the floating charges were granted (application of this is considered in Section 17A of the Act).
- **Unsecured Creditors:** These creditors have no security for the debt owed to them. They include trade creditors, HMRC, general business expenses, and outstanding contracts.
- **Interest:** If there are funds left over after settling all debts, interest is paid on all debts incurred since the insolvency declaration.
- **Shareholders:** Last in line are shareholders, who are entitled to any remaining funds after all other payments have been made.
- **Lastly,** it is worth considering Subordination whereby creditors can independently reach an agreement between themselves altering priority, this can often be seen with contesting creditors whereby a payment to removal their involvement is preferable, due to increased costs of fighting their debts etc.

Directors can apply for a Moratorium filing by submitting the relevant files to the court, stating the company is or is likely to become unable to pay its debts (as defined under s 123 of the Act), upon its approval (noting a hearing is not required, unless deemed fit by the court, certain companies are also unable to apply for this such as companies that owe over \$10m in the capital markets).



If subject to a Moratorium under Part A1 of the Insolvency Act 1986 12-weeks prior to liquidation, the order of priority changes. The new Corporate Insolvency and Governance Act 2020 introduced 'Super Priority' debts if the company enters insolvency procedures shortly after benefiting from a moratorium. With a new structure being

Liabilities under contracts or other instruments involving financial services

- Wages or salary arising under a contract of employment in the moratorium
- Rent in respect of a period during the moratorium
- Goods or services supplied during the moratorium for the purpose of carrying on the company's business
- Certain other specified debts.

This new 'super priority' rule **can** change the distribution of assets, so it is essential that companies, directors, and creditors take these into account during a 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 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 floating charge in favour of Ambitus Bank plc;

Based on the timeline the floating charge granted in favour of Ambitus Bank could be challenged under Section 245 of the Insolvency Act 1986.

The purpose of this is to stop the "avoidance of certain floating charges" protecting creditors of the registration of floating charges by unsecured creditors within 12 months of insolvency (the winding-up order here) is considered invalid if the person granting the charge was insolvent at that time (this is extended to 2y if the person is connected).

Considering S245 'new value' involves assessing if this is now valid taking into consideration whether the bank provided new financing, additional credit, or restructured the existing credit to provide an apparent benefit to the company.

In conclusion, if the bank merely refrained from enforcing the repayment of the company's loans but did not offer any new financing or credit, the floating charge may well be considered void in light of the Insolvency Act 1986. However, more information is needed, as if some form of new value was provided the charge may hold.

#### **Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

This sale could be considered as defrauding creditors given it does not appear on an arm's length basis, what appears to not be the case here given the value given of GBP40k compared to the GBP100k purchase price one year earlier. However, more information is needed on the depreciation principles of this assets.

According to Section 238 of the Insolvency Act 1986, transaction at undervalue can be set aside if they occurred 2y pre insolvency. This transaction may therefore be challenged, and if the liquidator can demonstrate this effected the company ability to pay debts s they fell due then the transaction could be pursued to return the machines.

In demonstrating this the liquidator will need to be able to display the transaction occurred at an undervalue (to show it was less than the amount the company could have obtained in arm's length basis), it occurred within the 2y timeline and the state of insolvency of the company at the time of the transaction and if it should have been known the company would enter proceedings (this will display the stripping of value from the company).

#### **Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

The payments to Aluminium Alumini Ltd may be deemed preferences under Section 239 of the Insolvency Act 1986.

Preferences occurs where a creditors are placed in favour of the other creditors of the group, this is to try and ensure the future operating success of the company. The fact that the payments were agreed and enacted to avoid the cessation of supply from a critical supplier, which would inevitably have further harmed the company's cash flow, suggests that it could be construed as a decision made in favour of the company and to aid in its recovery; not to prefer Aluminium Alumini Ltd over the other creditors.

It is the liquidator's job to determine the facts of this.

**\* End of Assessment \***