



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?

Ans: **Section 245 of the Insolvency Act, 1986** deals with avoidance of floating charges and only applies to floating charges, not any other type of security. It applies where a company is in administration or liquidation and the action under Section 245 can be brought by a **liquidator or administrator** to swell the assets available to the liquidator in attempting to make distribution to creditors of the debtor.

Section 6 of the Company Directors Disqualification Act 1986 - To protect the public and to act as deterrent to wrongdoing directors, under Section 6 of the CDDA Act, **an application to the court for disqualification order will be made by Secretary of State or Official Receiver on the instructions of Secretary of State** where the company in question has been wound up by the court.

Section 246ZB of the Insolvency Act 1986 – This section deals with wrongful trading and applies in relation to a person who is or has been a director of the company. The Application under this Section **can be filed by the administrator**, if during the administration of the company it appears that subsection (2) of Section 246ZB applies.

Section 127 of the Insolvency Act 1986 – Section 127 of the Act avoids any disposition of property of the company made after commencement of winding up, unless court otherwise orders. Further, to defend the winding up petition the company continues to trade. **If the winding up petition is accepted a liquidator under Section 127 of the Act can make an application** to the court in order to retrieve the assets of the company disposed of during the period between the petition and 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.

Ans: Under Part A1 of the Insolvency Act, 1986 certain debts are excluded from payment holiday. During the moratorium the debtor/ company is provided payment holiday for pre-Moratorium debts, however following are the exceptions:

- a) The remuneration or expenses of monitor;
- b) Goods and services supplied during the moratorium – Debts arising from contracts for the provision of goods or services are generally not covered by payment holiday. These debts must be paid during the Moratorium.
- c) Rent in respect of the period during moratorium – Debts related to the use of property such as rent, are not covered by payment holiday and the company is required to pay rent for the use of premises during the moratorium.
- d) Wages and salaries arising under a contract of employment – Any amounts owed to employees for wages and salary arrears are not subject to the payment holiday. These debts must still be paid during Moratorium
- e) 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?

Ans: Yes, an administrator who wishes to continue to operate the business of the company in administration can require suppliers of goods and services to continue to supply those goods and services during administration under Section 233, 233A and 233B of the Insolvency Act, 1986 (as applicable).

Section 233 of the Act applies to essential services such as supply of gas, electricity, water and communication services. Under Section 233 the suppliers are not permitted to seek payment of outstanding debts to continue the supply or secure a new supply to the company in administration. Under Section 233 the suppliers can seek assurance/ guarantee from the administrator to pay the charges in respect to the new services.

Under Section 233A a supplier of services is precluded from invoking any “insolvency related term” in a contract of supply which entitles the supplier to terminate the supply, alter the terms of the supply or compel for higher payments for continued supply.

Further, by the Act of 2020 the protections to the company has been expanded by Section 233B which prohibits clauses which allow the supplier of any goods or services to terminate or “do any other thing” in relation to that contract if the company enters into insolvency procedure.

Thus, the above sections ensures that the supply of goods and services which are critical for the purpose of operating the business of a company is continues without any disruption, suspension, or termination.

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?

Ans: In a liquidation, a liquidator may only realise assets which belongs to the company. The Assets on which the company may not have ownership or rights are usually kept out of the Liquidation Estate while distributing these assets amongst the creditors/ stakeholder. Under the Insolvency Act, 1986 the assets of a company are distributed in following order of priority:

- a) Expenses incurred during the winding up process, including remuneration of the liquidator (Section 115)

Under Section 115 of the Act read with Rule 6.42 and 7.108, the expenses associated with the liquidation process, including the remuneration of the liquidator, expenses incurred by the liquidator for preserving, realising the assets of the company, amounts payable to the professional appointed by the liquidator for assisting in the liquidation process of the company, corporation taxes etc are paid in priority to all other creditors.

- b) Preferential Creditors (Section 175, Schedule 6): After the winding up process cost and liquidator related expenses, assets are distributed amongst the preferential

creditors. These creditors, as defined in Section 386, 387, and Schedule 6, primarily consist of employee claims and specific taxation liabilities etc. Preferential debts are divided into ordinary and secondary categories, with ordinary preferential debts taking precedence. Examples of preferential debts listed under Schedule 6 include amounts owed on account of employee contributions to an occupational pension scheme, employer contributions to the same scheme, and remuneration owed to employees.

- c) Floating Charge Holder - Following the preferential creditors, assets are distributed towards satisfying obligations to floating charge holders. The distribution may involve a "prescribed part," which designates a portion of the company's net property for unsecured creditors.
- d) Unsecured Creditors: Unsecured creditors, often comprising trade creditors, are next in line for payment. However, their satisfaction depends on the availability of funds after addressing the claims of secured and preferential creditors.
- e) Shareholders: If adequate funds remain after settling all creditor claims and interest, any surplus is distributed among shareholders according to the company's constitution. Typically, this involves a pro-rata distribution based on the respective shareholdings of the shareholders.

It's important to note that the rights of the liquidator are confined to the assets belonging to the company, and certain debts, like those effectively assigned to financiers or subject to hire purchase or retention of title contracts, may not be under the liquidator's purview. The distribution of assets is contingent on the specific provisions of the Insolvency Act and the circumstances of the liquidation process.

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;

Ans: Relevant Issues: a) Avoidance of Floating Charge.

Statutory Provision: a) Section 245 of the Insolvency Act, 1986

Action: In the facts of the present case in June 2023 the company granted a debenture in favour of Ambitus Bank. The Debenture created a floating charge over the whole of the Company's undertaking. Pertinently, the debenture was created to prevent the bank from demanding repayment of the company's loans. Further, on 13 January 2024 the company winding up order of the company was passed.

Thus, as per Section 245 of the Insolvency Act, 1986 the debenture created by the company in favour of the bank may be rendered invalid this debenture has been created within the period of 12 months prior to the onset of insolvency, and at the time when the company was unable to pay its debts (within the meaning of Section 123 of the Act).

As per Section 245 is aimed at preventing pre-existing un-secured creditors from obtaining security of a floating charge shortly before a company enters a formal insolvency procedure. Since, in the present case it appears that the bank as obtain security shortly before the formal insolvency process and that too for an existing loan the floating charge may be rendered invalid by the Court.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

Relevant Issues: a) Transaction at undervalue and Transaction for defrauding the creditor.

Statutory Provision: a) Section 238 and 423 of the Insolvency Act, 1986

Action: In the facts of the present case in January 2023 i.e. a year before the winding up order the directors of the company sold two laser cutting machine to one of the directors Angela Bannister at substantially undervalued price of GBP 40,000. These machines were purchased by the Company for GBP 100,000 just a year before.

Under Section 238 of the Act, a liquidator (or administrator) can challenge a truncation which is entered prior to company entering into liquidation or administration where the transaction was at an undervalued price. The present case squarely falls within the scope of Section 238 as in the present case the company has entered into transaction with its director for a consideration which in money was, at the date of the transaction significantly less than the value, in money of the consideration provided by the company. In the present case these machines were sold when the company was having cash crunch and was unable to pay its debts. Further, since in the present case the machines are sold to one of the directors only the company is presumed to have been insolvent.

In light of the above the liquidator can seek restoration of the ownership of the machinery with that of the company.

Further, it appears that the present transaction will also fall within the scope of Section 423 of the Act as firstly this transaction was entered into an undervalue prose and since the assets were sold to one of the directors only it appears that the transaction was entered for the purpose of putting assets beyond the reach of other creditors. Thus, the liquidator can apply for invalidation of such transactions.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

Relevant Issues: Preference Transaction

Relevant Sections: Section 127 and 238 of the Insolvency Act.

Action: The liquidator may examine whether the payments made to Aluminium Alumini Ltd were preferential. If the payments were made during a vulnerable period and are found to be preferential, the liquidator may take action to set them aside and redistribute the funds according to the statutory order of priority.

*** End of Assessment ***