



**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) 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) Where the company is being wound up or is under administration, then, the Official Receiver, the liquidator, the administrator and (with the leave of court), a victim of the transaction such as creditor. If the victim is bound by a Creditors Voluntary Arrangement (CVA), then the supervisor or any victim of the transaction.
- (ii) The Secretary of State (or the Official Receiver on the instruction of the Secretary of State where the company in question has been wound up by the court)
- (iii) The liquidator or administrator
- (iv) The liquidator

### 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.

- i. Goods or services supplied during the Moratorium
- ii. Rent in respect of a period during the Moratorium
- iii. Wages or salaries arising under a contract of employment
- iv. Redundancy payment
- v. Debts or other liabilities under a contract or other instrument involving

### 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?

[Per the provisions of paragraph 3 of Schedule B1, the objectives of administration are:

- i. As much as possible, rescue the company. Under this objective, the administrator would consider the possibility of rehabilitating the entire enterprise in a matter that does not only ensure that all creditors get the best outcomes in terms of repayment but also, employment and; or
- ii. Where rescuing the company is not feasible, then the next immediate objective in terms of priority would be to rescue the business;
- iii. Where neither i nor ii as indicated above is possible, then inevitably, the administrator would have to resort to liquidation.

Because the cardinal objective of administration as a collective procedure is first and foremost to explore the possibility of rescuing the company, upon the appointment of an administrator, the law offers protection by way of moratorium which suspends creditors' right to enforce certain actions against the company (by way of attachment or execution without permission of the court). Moratorium provides a breathing space to the administrator to consider the possibility of rescuing the company without at the same time contending with actions that would potentially result in substantially dismembering and disposing of all the assets of company and thus defeating the objective of rescue in the first place.

For the reasons stated above, upon the appointment of an administrator, they may consider retaining contracts for the supply of essential goods and services (as defined under Section 233 of the Insolvency Act 1986, hereinafter referred to as “the Act”) that are required to keep the company running. These may include the supply of gas, electricity, water, and communication services. Such suppliers are not permitted to insist on the payment of outstanding debts before new supplies are given. However, they may require the administrator to personally guarantee payment for the new supplies. The desire to ensure continues supply of essential goods and services to a company placed under administration (i.e. an insolvency procedure) is even made stronger under Sections 233A and 233B of the Corporate Insolvency and Governance Act- 2020.]

### 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?

[Order of priority payments in a liquidation is about how through statutory provisions, the obligation of a debtor subject to liquidation procedure to various creditors are ranked in terms of primacy or importance.

The duty of the liquidator is to take custody and control of all the assets to which the insolvent company is entitled and realise them. Usually, assets subject to fixed or qualifying floating charges, receivables assigned to financiers, goods subject to higher purchase or retention of title will be excluded as they would not form part of the assets of the company.

Upon realisation of the assets which below to the company, legitimate expenses covered under section 115 of the Act and rules 6.42 and 7.108 of the Insolvency Rules 2016 SI 2016/1024 (hereinafter referred to as “the Rules”) are given priority over preferential creditors, holders of floating charges and unsecured creditors. Some of the expenses given priority over other creditors include legitimate expenses incurred to secure and preserve the assets, relevant administrative expenses remuneration of persons employed by the liquidator and the liquidator’s own remuneration.

The next in line in terms of priority are preferential creditors.

“Preferential creditors” is defined under sections 236, 387 and Schedule 6 to include debts owed to employees by way of remuneration or pensions contributions deductions within the relevant allowable time limits, outstanding tax to the Crown (i.e. where the company has collected taxes on behalf of the government but had not paid it).

The next in line in terms of priority is floating charge creditors.

After floating charge creditors, unsecured creditors are paid. These may include ordinary suppliers and tax liabilities arising from the operations of the company (as distinct from where the company serves as a tax collector).

If after all the payments outlined above in order of priority, there is still some amount left, then the liquidator will return those amounts to the members of the company for distribution according to the provisions of the constitution of the company.]

**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 issue here is whether the floating charge created in favour of the Ambitus Bank plc ("the bank") by the company violated the provisions of Section 245 of the Act. It would appear that the policy objective of that provision, similar to "preferences" under Section 239 of the Act, is intended to avoid transactions which give undue advantage to an otherwise unsecured creditor and thus, prejudice the interest of other unsecured creditors. If not attached and avoided, it would give unfair advantage to the party in whose interest the charge was created while at the same time, potentially depriving other creditors in the same class of payment.

Based on the facts of this case, the company was already indebted to the bank. To avert the possibility of the bank making a demand for repayment of the company's debts, it created a floating charge in favour of the bank. No new loans were advanced to the company. Per the provisions of section 245, the forbearance by the bank in not making immediate demand for repayment of its debt will not suffice as a new consideration. To constitute a new consideration and thus adequate to validate the floating charge created, the consideration provided must either be money paid at or after the creation of the floating charge, or a reduction or discharge at the time of the creation of the floating charge.

Additionally, for the charge created to be allowed to stand, the charge should have been created at least 12 months before the commencement of the insolvency proceedings. (i.e.



as an unrelated party). From the facts of the case, the charge was created within 8 months, which falls short of the stipulated time period.

Thus, on both the requirement of new consideration and minimum time required for the creation of the floating charge before the onset of the insolvency proceedings, the creation of the floating charge in favour of the bank fails to meet the validity requirements.

The liquidator must commence proceedings in court to set aside the floating charge created in favour of the bank.

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**Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

[The sale of the laser cutting machines to a director (a related party) of the company at less than half the value at which they were purchased just a year before seems to violate the principle in collective insolvency procedures (administration and liquidation) which seeks to treat all creditors fairly.

Under section 238 of the Act, a liquidator is entitled to set aside transactions which took place before the company entered into insolvency if they appear undervalued.

To succeed, the liquidator must prove, among others, that the value given by the purchaser was at the date of the transaction, less that the true value of the machines sold. The facts do not disclose that the company undertook an independent valuation of the machines before the same. Additionally, the sale took place within just about a year before the company went into insolvency, which is clearly less than the two years required by section 238.

Altogether, I will advise the liquidator to bring commence an action to set aside the transaction. Besides the ground of undervalue, the director owed a duty to act in the best interest of the company, which at the time of the alleged purchase, was a duty to creditors since the company was already experiencing signs of cash flow insolvency. The director in the absence of evidence to the contrary, could also be said to have been in conflict of interest. This comes under misfeasance.

For the above reasons, the liquidator must take steps to set aside the transaction.

**Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

[The payment to Aluminium Alumina Limited, although made in just one month before the company entered into insolvency, was for essential goods and thus I will not advise the liquidator to seek to avoid the transaction.]

**\* End of Assessment \***