



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:

- Liquidator of the company
- Any creditor of the company
- Any contributory of the company (e.g., a member who has not yet paid their full share of the company's capital)

(ii) Section 6 of the Company Directors Disqualification Act 1986:

- Secretary of State for Business, Energy and Industrial Strategy
- Liquidator or administrator of the company
- Any creditor of the company
- Any member of the company

(iii) Section 246ZB of the Insolvency Act 1986:

- Official receiver acting as liquidator or administrator
- Liquidator or administrator of the company (other than the official receiver)
- Any creditor of the company

(iv) Section 127 of the Insolvency Act 1986:

- Official receiver
- Liquidator or administrator of the company
- Any creditor of the company

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.

1. Pre-moratorium debts: Debts owed by the company before the moratorium began.
2. Secured debts: Debts backed by collateral, such as a mortgage or charge over assets.
3. Administrative expenses: Costs incurred by the company during the moratorium, including fees for the monitor.
4. Certain taxes and social security contributions: Depending on the type of tax or contribution and relevant legislation.
5. Debts arising from post-moratorium transactions: Debts incurred by the company after the moratorium commencement.

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?

In the United Kingdom, an administrator cannot compel suppliers of goods and services to continue supplying them during the administration. However, certain provisions of the Insolvency Act of 1986, especially sections 233, 233A, and 233B, establish methods for maintaining the continuity of critical supplies such as gas, electricity, water, and communication services during administration.

The administrator may negotiate with suppliers, seek alternative suppliers, or seek a court order to ensure continuing supply if necessary for the company's survival. The administrator may also be required to give personal guarantees for payment of charges for new supply.

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?

Priority / order of payments:

1. Secured Creditors:
 - a. Nature of Rights: Secured creditors have a proprietary right over specific assets of the company. This means they have a legal claim to the assets they hold as security in case of insolvency.
 - b. Example: A bank that has a mortgage over the company's property. If the company defaults, the bank can sell the property to recover the debt owed to them.
2. Expenses of the Liquidation:
 - a. Nature of Rights: These are costs incurred in the winding-up process, including fees for the liquidator, legal fees, and other administrative expenses necessary for the liquidation.
 - b. Example: Legal fees for advising on the liquidation process or fees for valuing and selling company assets.
3. Preferential Creditors:
 - a. Nature of Rights: Preferential creditors have statutory priority for certain claims, such as employees' wages, certain taxes, and contributions to employee pension schemes.
 - b. Example: Employees who are owed wages or redundancy payments by the insolvent company.
4. Floating Charge Creditors:
 - a. Nature of Rights: Floating charge creditors have a security interest over a fluctuating pool of assets of the company. The charge 'floats' until it crystallizes, usually upon the occurrence of a specified event.
 - b. Example: A debenture holder with a floating charge over the company's inventory. The charge will crystallize upon insolvency, giving the creditor a claim over the inventory at that point.
5. Unsecured Creditors:
 - a. Nature of Rights: Unsecured creditors do not have any specific security or title to the company's assets. They are general creditors who rely on the company's overall assets for repayment.
 - b. Example: Trade suppliers, service providers, or lenders who do not hold any security interest in the company's assets

If the firm was subject to a Moratorium under Part A1 of the Insolvency Act 1986 during the 12-week period preceding the start of the liquidation, the order of payments in the liquidation process may vary. Specifically, certain debts incurred during the Moratorium period may be given super-priority in the ensuing liquidation. These debts, which are not part of the payment holiday during the Moratorium, could be paid prior to even the liquidator's fees and expenses.

For example, if a corporation went through a Moratorium and incurred certain obligations during that time, such as unpaid pre-Moratorium or Moratorium bills owed to employees or financial services debts, these debts may be prioritized over other creditors in the liquidation process. This means that these specific debts must be settled before other creditors, such as secured creditors, liquidation expenses, preferential creditors, floating charge creditors, and unsecured creditors, can receive payments from the company's available assets.

As a result, the Moratorium period can affect the priority of payments in a liquidation by raising particular debts accumulated during that period to super-priority status, guaranteeing that they are settled before other claims in the allocation of assets to creditors during the insolvency 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;

In the case of Blazer Laser Limited, the firm issued a debenture to Ambitus Bank plc in June 2023, securing a floating charge on the entire undertaking. This step was performed under pressure from the bank to avoid the demand for loan repayment. In January 2024, a creditor petitioned for a winding-up order, which was then issued.

One important consideration is the validity and ramifications of Ambitus Bank plc's floating fee. The floating charge gives the bank a security interest in the company's assets, which may affect asset distribution throughout the liquidation process. Because the floating charge was established prior to the winding-up order, it has legal validity and gives Ambitus Bank plc priority in recovering the assets covered by the charge to repay the outstanding liabilities.

Statutory provisions such as Section 245 of the Insolvency Act of 1986, as well as relevant company law laws, are applicable in insolvency proceedings. These rules set forth the rights and priority of floating-charge secured creditors such as Ambitus Bank plc.

As a result, the liquidator of Blazer Laser Limited must recognize and respect the interests of Ambitus Bank plc, the holder of the floating charge. The bank's priority in asset realization to reclaim loans owing to them should be properly recognized. The liquidator must carefully study the debenture's provisions, assess the assets covered by the floating charge, and guarantee legal compliance.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

The sale of laser cutting devices by Blazer Laser Limited to director Angela Bannister raises substantial concerns about the transaction's fairness and legality. The sale, which began in January 2023 during the company's financial difficulties, resulted in a significant price decrease from the original acquisition price of GBP 100,000 to GBP 40,000. This rapid decline raises concerns about potential conflicts of interest, preferential treatment, and adherence to legal requirements.

Under company law and insolvency legislation, transactions with directors must be performed in a transparent manner, in the best interests of the firm, and without prejudice to creditors. The sale of assets to a director at a reduced price may imply an undervalued transaction that the liquidator may challenge. Such transactions may violate fiduciary duties, harm creditor interests, and raise concerns about the company's financial decision-making.

For the liquidator of Blazer Laser Limited, the sale of the laser cutting machines to Angela Bannister is a significant area of examination. The facts underlying the deal, particularly the pricing discrepancy, the timing amid financial troubles, and the repercussions for creditors, warrant a careful examination. The liquidator may have reasons to challenge the transaction, seeking remedies to remedy any potential irregularities or losses sustained by the company.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumi Ltd.

Faced with financial difficulties in January 2023, Blazer Laser Limited's directors approved the sale of laser cutting machines to director Angela Bannister at a dramatically reduced price, prompting worries about probable fraud. As cash flow issues remained, the board authorized payments to Aluminium

Alumini Ltd totaling GBP 28,000 to cover outstanding bills and obtain more supplies on a cash-on-delivery basis.

The liquidator now must evaluate the legality and significance of these payments in light of insolvency regulations and directorial obligations. The question is whether these payments constitute preferential treatment for a certain creditor, thereby disadvantaging others in the impending liquidation.

According to the Insolvency Act of 1986 and business law rules, the liquidator must determine the fairness, necessity, and impact of the payments to Aluminium Alumini Ltd. The major elements include the company's solvency at the time of payment, the board's decision-making process, and the overall impact on creditor interests.

In choosing the best course of action, the liquidator may need to look at the rationale for the payments, their timing in relation to the company's financial problems, and any potential breaches of directors' duties. If the payments are determined to be preferential and damaging to the collective interests of creditors, the liquidator may pursue remedies such as setting aside the transactions, collecting the amount that was paid, or holding the directors liable for any breaches of their duty.

*** End of Assessment ***