



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?

A liquidator or administrator may bring an action under section 245 of the Insolvency Act 1986 to invalidate certain floating charges when the company is in administration or liquidation.

The Secretary of State for Business, Energy and Industrial Strategy or an Official Receiver, upon the instruction of the Secretary of State for Business, Energy and Industrial Strategy, may bring an action under section 6 of the Company Directors Disqualification Act 1986.

An administrator may bring an action under section 246ZB of the Insolvency Act of 1986 to make directors of insolvent companies liable for wrongful trading liable for the some of the debts and liabilities of the company.

A liquidator in a compulsory winding up may bring an action under section 127 of the Insolvency Act of 1986 to avoid any disposition of assets of the company made subsequent to commencement of the winding up.

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.

The following debts do not form part of the payment holiday under Pat A1 of the Insolvency Act 1986:

- (1) the monitor's remuneration or expenses;
- (2) goods or services supplied during the Moratorium;
- (3) rent for a period within the Moratorium;
- (4) wages or salary arising under an employment contract; and
- (5) 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?

Pursuant to Section 233B of the Insolvency Act, an administrator who wishes to continue to operate the business of the company in administration can request that suppliers of goods or services provide such goods or services to the company and the supplier cannot make it a condition of giving supply that any outstanding amounts owed must be paid. Further, a supplier cannot enforce any ipso facto clauses in the supply contract, i.e. clauses that would entitle the supplier to terminate the supply or require higher payments upon the initiation of the company insolvency proceeding. The supplier, however, can seek a court order terminating the existing supply contract by proving to the court that the continuation of the contract would cause the supplier hardship.

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?

Generally, in a liquidation, each class of creditor or expense must be paid in full prior the next class is paid and, if there are not enough assets to pay a class in full, the creditors or expenses in that class are paid proportionately.

The creditors and expenses of a company in liquidation are paid in the following order. Pursuant to 115 of the Insolvency Act, the following creditors and expenses are paid first in a liquidation, prior to the company's preferential creditors, holders of floating charges, and general unsecured creditors, and in the following order:

- (1) expenses properly incurred by the liquidator in preserving, realizing, or obtaining the company's assets;
- (2) the cost of any security provided by the liquidator;
- (3) amounts payable to a person to assist in the preparation of a statement of affairs or accounts;
- (4) necessary disbursements by the liquidator in the course of winding up;
- (5) remuneration of any person that the liquidator has employed to perform services for the company;
- (6) the remuneration of the liquidator;
- (7) the amount of any corporation tax on chargeable gains accruing on the realization of any asset of the company; and
- (8) any other expenses properly incurred by the liquidator in winding up the company.

After these creditors and expenses are paid in full, the company's preferential creditors are paid. These are divided into two categories, ordinary and secondary preferential debts. Ordinary preferential debts are paid before secondary preferential debts. The following are ordinary preferential debts:

- (1) sums owed due to an employee's contribution to an occupation pension scheme, which were deducted from earnings of the company's employees paid in the four months prior to the commencement of the winding up;
- (2) sums owed by the company due to an employer's contribution to an occupational pension scheme in the 12 months prior to the commencement of the winding up;
- (3) remuneration owed by the company to an employee for amount earned and payable within the four months prior to the commencement of the winding up, subject to a maximum total cap of GBP 800;
- (4) amounts owed by the company for holiday remuneration that accrued prior to the commencement of the winding up;
- (5) claims for money advanced to pay wages or holiday remuneration;
- (6) levies on the production of coal and steel referred to in articles 49 and 50 of the European Coal and Steel Community Treaty;
- (7) claims for any amount ordered to be paid by the company under the Reserve Forces (Safeguard of Employment) Act 1985, and is so ordered with respect to a default by the company in the discharge of its obligations under the Act; and
- (8) amounts owed by the company with respect to an eligible deposit that does not exceed the compensation that would be payable with respect to the deposit under the Financial Services Compensation Scheme.

After the ordinary preferential debts are paid in full, the following secondary preferential debts are paid:

- (1) amounts owed by the company with respect to one or more eligible persons with respect to an eligible deposit that exceeds any compensation that would be payable with respect to the deposit under the Financial Services Compensation Scheme;
- (2) amounts owed by the company to one or more eligible persons with respect to a deposit that (a) was made through a non-UK branch of a credit institution authorized by the authority of the UK; and (b) would have been an eligible deposit if it had been made through a UK branch of that same credit institution; and
- (3) PAYE income tax deductions, national insurance deductions, VAT payments, Construction Industry Scheme deductions and student loan repayments.

After the secondary preferential debts are paid, any floating charge holder is paid. If there is more than one floating charge holder, they are paid in the order the floating charges were created. However, before payments to floating charge holders can be made, the liquidator must apply Section 176A of the Act to floating charges created on or after September 15, 2003, which requires that the liquidator make a “prescribed part” of the company’s net property (after payment of the above-referenced creditors and expenses) available to satisfy unsecured claims, which cannot be distributed to a floating charge holder unless all unsecured debts have been satisfied. If the company’s net property is less than GBP 10,000, the prescribed part set aside for unsecured creditors is 50% of that property, except that if the liquidator decided that the burden of making distributions to unsecured creditors outweighs the benefits to unsecured creditors, then the duty to distribute the applied part to the unsecured creditors does not apply.

If the net property is more than GBP 10,000, the prescribed part is the sum of 50% of the first GBP 10,000 and 20% of the value in excess of 10,000, subject to a maximum amount of 800,000 GBP.

Once the floating charge holders have been paid, the unsecured creditors are paid. If there is any surplus, it is distributed among the company’s shareholders according to the company’s constitution.

If the company had been subject to a Moratorium under Part A1 of the Insolvency Act 1986 within the 12-week period prior to the commencement of the liquidation, the above-referenced priority scheme may be altered. Section 174A provides that certain unpaid pre-Moratorium and Moratorium debts are given “super priority” and paid first in the subsequent liquidation, even before the liquidator’s fees and expenses. These “super priority” debts include pre-Moratorium claims of a director and pre-Moratorium bank debt, unless the debt is accelerated debt.

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 favor of Ambitus Bank plc;

The liquidator may seek to invalidate the floating charge in favor of Ambitus Bank plc pursuant to Section 245 of the Insolvency Act. Pursuant to Section 245, the liquidator or administrator of a company in administration or liquidation (but not prior to the administration or liquidation), may seek to invalidate a floating charge that was obtained within 12 months prior to the outset of insolvency (or two years if the person in whose favor the floating charge was issued is connected to the company) if (i) no new funding is provided or no existing debt is forgiven in exchange for the floating charge and (ii) if at the time of the creation of the charge the company was either unable to pay its debts or became unable to pay its debt as a result of the floating charge.

Here, the Company granted Ambitus Bank the floating charge within 12 months of the initiation of the Company's compulsory liquidation and without Ambitus Bank providing any additional funding or forgiving any prior debt. Further, although more information is needed, it appears that an argument can be made that the Company was unable to pay its debts at the time the floating charge was granted since the Company was having cash flow problems since at least January 2023. Accordingly, assuming that the liquidator can establish that the Company was unable to pay its debts at the time the floating charge was granted or became unable to do so due to the granting of the floating charge, the liquidator can seek to invalidate the floating charge in favor of Ambitus Bank and will likely be successful in doing so.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

The liquidator can seek to attack the sale of the laser cutting machines either pursuant to Section 423 of the Insolvency Act or Section 238 of the Insolvency Act.

Pursuant to Section 423 of the Act, the official receiver, liquidator, or administrator of a company being wound up or in administration can attack transactions that are designed to defraud creditors if two requirements are met: (1) the company entered into the transaction at an undervalue (i.e., the company received no or considerably less consideration than the value of what was given); and (2) the company entered into the transaction of the purpose of either putting assets beyond the reach of creditors or otherwise prejudices the interest

of a creditor. There is no time limit on when the transaction took place and the company does not need to have been insolvent or subject to insolvency proceedings at the time of the transaction.

Here, the Company sold the laser cutting machines to Ms. Bannister for 40,000 GBP, a substantial discount when they were worth 100,000 GBP only a year before. Accordingly, the liquidator can argue that the Company did not receive sufficient consideration for the laser cutting machines. Further, since the Company was suffering cash flow problems at the time of the transfer, the liquidator can argue that the Company entered into the transaction in order to put the laser cutting machines out of the reach of its creditors. The liquidator, however, will need to obtain more evidence of this intent.

Pursuant to Section 238 of the Act, a liquidator or administrator can attack a transaction at an undervalue that was entered into prior to a company entering into liquidation or administration if: (1) the company made a gift to another person; or (2) entered into a transaction with another person for no consideration; or (3) entered into a transaction with another person for consideration that was significantly less than the consideration provided by the company. The transaction must have taken place within two years of the commencement of the liquidation or administration. Also, the company must have either been unable to pay its debts as they fell due at the time of the transaction or become unable to pay its debts as a result of the transaction. If the transfer was to a connected person, the company is presumed to have been insolvent or to have been made insolvent by the transaction, unless the opposite is proved.

Here, the Company transferred the laser cutting machines to Ms. Bannister within two years of the commencement of the liquidation and at a substantial discount (40,000 GBP when they were worth 100,000 GBP only a year before). Accordingly, the liquidator can argue that the Company received significantly less consideration than the consideration that it provided. Further, since Ms. Bannister was a connected person, a director, of the Company, there is the rebuttable presumption that the Company was insolvent at the time of the transaction or was made insolvent by the transaction.

Ms. Bannister, however, could argue in defence that the transaction was made in good faith, for the purpose of allowing the Company to carry on its business, and that there was a reasonable basis for believing that the transaction would benefit the company.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumi Ltd.

The liquidator can seek to attack the payments to Aluminium Alumi pursuant to Section 233B of the Insolvency Act, which prevents suppliers of a company that has entered into an insolvency procedure from (i) terminating a supply, (ii) demanding that pre-insolvency amounts owed be paid in order for the supplier to continue making deliveries, or (iii) making other changes to the supply contract, such as raising prices.

Pursuant to Section 129 of the Insolvency Act, a liquidation is deemed to have commenced as of the date of the winding-up petition. Here, the winding-up petition was submitted on January 13, 2014, more than a month prior to the entry of the winding-up order on February 28, 2014. Accordingly, it appears that the Company was in liquidation at the time that Aluminium Alumi made its demands on the Company, a month prior to the entry of the winding-up order. Since we do not have the exact date that Aluminium Alumi made its demands, we will need to confirm that the demands were made after January 13, 2014.

Accordingly, the liquidator can attack the payments made pursuant to the demands made by Aluminium Alumini under Section 233B.

It is also possible that the liquidator can attack the payments to Aluminium Alumini pursuant to Section 127 of the Insolvency Act which avoids any disposition of property made after the commencement of a winding-up that was not allowed by court order. As set forth above, pursuant to Section 129 of the Insolvency Act, a liquidation is deemed to have commenced as of the date of the winding-up petition. Accordingly, the Company's winding-up began on January 13, 2024. Therefore, any payments made to Aluminium Alumini after January 13, 2024 are avoidable, assuming no court order allowing the payments was obtained. Aluminium Alumini, however, can seek allowance of the payments on the basis that the payments ensured continued supplies that allowed the Company to continue its business for the benefit of creditors.

*** End of Assessment ***