



**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?

[The following person may bring an action under:

(i) section 245 of the Insolvency Act 1986 (the “Act”) - the charge is automatically invalid save for certain exceptions so there is no requirement to apply to the courts or for anyone to bring an action under this section;

(ii) section 6 of the Company Directors Disqualification Act 1986 - the Secretary of State (or the Official Receiver under instructions from the Secretary of State where the company has been wound up);

(iii) section 246ZB of the Insolvency Act 1986 - the liquidator or administrator of a company;

(iv) section 127 of the Insolvency Act 1986 - the liquidator 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.

[Five 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 include amounts payable in respect of:

- (i) the monitor’s remuneration or expenses;
- (ii) goods or services supplied during the Moratorium;
- (iii) rent in respect of a period during the Moratorium;
- (iv) wages or salary arising under a contract of employment; and
- (v) 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?

[Yes, an administrator who wishes to continue to operate the business of the company in administration can require suppliers of goods and services (including gas, electricity, water, communications services, including point of sale terminals, computer hardware and software and website hosting, among others) to continue to supply those goods and services during the administration.

Pursuant to section 233, a supplier cannot require that payment of outstanding charges is made in order to provide the supplies, however, section 233(2)(a) permits a supplier to require the administrator to personally guarantee the payment of the charges in respect of the new supply.

Section 233A of the Act provides further protection by providing that an insolvency related term of a contract (which requires, for example, that the supply would terminate because the company enters administration or a voluntary arrangement) for the supply of essential

goods and services ceases to have effect if the company enters into administration or a voluntary arrangement.

Section 233B of the Act not only prevents suppliers from terminating a supply upon a company's insolvency, but also prevents suppliers from making conditions of continued supply that changes to the terms of the contracts are made, for example, by increasing prices or requiring that arrears are paid. Unlike section 233, a supplier is not able to insist on a personal guarantee from the administrator.

These sections therefore permits the administrator to require suppliers of essential goods and services to continue to supply these goods and services during the administration.]

### 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?

[The order of priority of payments in a liquidation are as set out below:

- (i) [those with fixed security will be able to enforce their security outside any formal insolvency process;]
- (ii) Expenses including, among others, those properly incurred by the liquidator, the cost of any security provided by the liquidator, the remuneration of the liquidator and other expenses of the liquidator in carrying out its function (section 115 of the Act);
- (iii) Preferential creditors including:
  - a. Certain employee related expenses; and
  - b. Taxation liabilities (section 95 of the Act);
- (iv) Prescribed part (section 176A of the Act) (i.e., 50% of the company's net property which does not exceed GBP 10,000 or 50% of the first GBP 10,000 in value plus 20% of the excess in value above GBP 10,000, subject to a maximum amount of GBP 800,000).
- (v) Floating charge holders;
- (vi) Unsecured creditors, e.g., trade creditors; and
- (vii) Any surplus is distributed between the shareholders according to the company's constitution.]

If the company had been subject to a Moratorium under Part A1 of the Act during the 12-week period prior to the commencement of the liquidation, the priority of debts in the subsequent period of liquidation may be different to the priority of the debts pre-Moratorium. Section 174A gives certain unsecured debt a form of super priority status if this were to happen, such as:

- (i) debts owed to employees;
- (ii) remuneration of directors; and
- (iii) unsecured (or secured) pre-Moratorium bank debt,  
all of which will acquire super priority status enabling them to be paid in priority, even to the liquidators' fees and expenses.

### 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 liquidator will need to investigate the affairs of the company including whether any activity of the company that occurs during the vulnerable period is voidable. Section 245 of the Act prevents pre-existing unsecured creditors obtaining the security of a floating charge before a company enters a formal insolvency procedure.]

On the facts of the case and assuming that Ambitus Bank is not connected with the company, Ambitus Bank did obtain a debenture containing a floating charge in June 2023, less than 12 months prior to the onset of insolvency which in a compulsory liquidation is the date of the petition on 13 January 2024 (i.e., during the vulnerable period under section 245(3)(b)). However, section 245 only applies if at the time of the creation of the charge, the company was unable to pay its debts within the meaning of section 123, or became unable to do so in consequence of the transaction. It is not clear if in June 2023 when the floating charge was created, the company was unable to pay its debt (that is it was cash flow insolvent). Given that the creditor's winding up petition was only filed in January, this would suggest that the company may have still been able to pay its debt when the debenture was created, which would suggest that consequently, section 245 does not apply and therefore the debenture/floating charge remains valid.]

**Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

[The sale of the laser cutting machines at an undervalue to Angela Bannister may constitute a transaction at an undervalue under section 238 of the Act if (i) the company entered into the transaction with another person for a consideration which was



significantly less than the value of the consideration provided by the company and (ii) at the time the transaction was entered into, either the company was unable to pay its debts within the meaning of section 123 or became unable to pay its debts in consequence of the transaction. In the case of a transaction with a connected person, the company is presumed to have been insolvent or to have become insolvent as a result of the transaction unless the contrary is proved.

The sale of the laser machines appears to be for a consideration significant less than the value of the consideration provided by the company (i.e., GBP 40,000 vs the GBP 100,000 paid a year before). The transaction was entered into with Angela Bannister, a director and therefore a connected person. The company would therefore be presumed to have been insolvent or have become insolvent as a result of the transaction unless proven to the contrary. It is unclear from the facts whether it could be proven that the company was not insolvent or did not become insolvent as a result of the transaction (the sale occurs sometime in January at the same time as the petition for winding up).

It is open to Angela to try to satisfy the court that the transaction was entered into in good faith and for the purpose of carrying on its business and that there were reasonable grounds for believing that the transaction would benefit the company.]

**Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

[The payments to Aluminium Alumini (AA) could amount to a preference which may be avoided by the court under section 239 of the Act. For an application under section 239 to succeed, it must be shown that:

- (i) the person preferred was a creditor of the company;
- (ii) the company's action had the effect of putting that person in a better position than they would have been if that thing had not been done;
- (iii) the company was influenced by a desire to prefer; and
- (iv) the preference was given at the relevant time.

On the facts of the case: (i) AA was a creditor of the company as it is stated that the supplier had sums owing to it; (ii) the payments made by the company put AA in a better position than it would have been if the payment were not made; and (iv) the preference was given a month before the winding up order was made which meant that it was given around the time of the petition for winding up and consequently, at the relevant time (being within two years before the onset of insolvency (in the case that AA was deemed a connected person) and within six months before the onset of insolvency (if AA was deemed not a connected person)).

Whether or not the company was influenced by a desire to prefer and fulfil the last criterion (section 239(5) of the Act) is more difficult to establish. In case law, it is now established that where the company was influenced solely by commercial considerations, specifically attempts to ensure that the company continued trading, there could be no desire to prefer. The facts of the case states that the supply of metal was seen as essential by the company, it would therefore appear that the payments made to AA could be seen to have been influenced by commercial considerations and consequently, would not amount to a preference.

**\* End of Assessment \***

