



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) the liquidator or administrator of the company; (ii) the Secretary of State, or the Official Receiver on the instructions of the Secretary of State if the company has been wound up, may apply for the disqualification order; (iii) the administrator of a company under administration; (iv) the liquidator of the company in the case of the avoidance provisions]

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) remuneration or expenses of the monitor; (2) goods and services supplied during the period of the moratorium; (3) wages and salary owed to employees under a contract of employment; (4) redundancy payments; (5) rents payable for a period taking place during the moratorium]

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?

[Generally, yes. A company in administration does not cease to exist and contracts with suppliers do not automatically terminate as a result of the appointment of an administrator. Suppliers of goods and services are therefore generally obliged to continue to supply those goods and services. Certain contractual terms are also rendered ineffective by statute. For example, under section 233 of the Insolvency Act 1986, suppliers of gas, electricity, water, and communication services cannot make payment of outstanding charges in respect of a supply a condition of the continued giving of the supply. Under section 233A of the Insolvency Act 1986, “insolvency-related terms” in contracts of supply of essential goods or services are ineffective upon the company entering administration, which would otherwise allow the supplier to terminate or require higher payments for continued supply. Under section 233B of the Insolvency Act 1986, clauses in a contract for the supply of goods and services to the company that purport to terminate or entitle the termination of the contract or cause “any other thing” to take place because the company enters an administration are rendered ineffective. As it is up to the administrator to consent to the termination (unless an application is made to the court), the administrator can require the suppliers of goods and services to continue to supply 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?

[Under section 115, the following claims enjoy super priority over all other creditors (in order of priority): (a) the liquidator's expenses; (b) cost of any security provided by the liquidator; (c) amounts payable for the preparation of a statement of affairs or accounts;

(d) disbursements by the liquidator in the course of the winding up; (e) remuneration of persons employed by the liquidator to perform services for the company; (f) the liquidator's remuneration; (g) corporation tax; (h) other expenses properly chargeable by the liquidator. Thereafter, preferential creditors are paid, with ordinary preferential debts paid in priority of secondary preferential debts. Within each class, creditors are paid in equal proportions as they rank equally amongst themselves. These are listed in schedule 6, and include (generally), certain claims by employees, levies under the European Coal and Steel Community Treaty, claims under the Reserve Forces (Safeguard of Employment) Act 1985, and special claims applicable in the case where it is a financial institution holding deposits that has become insolvent.

The next class of creditors will be the floating charge holder, which rank in priority depending on the date of creation of the floating charge. However, a "prescribed part" of the assets will not be available for distribution to floating charge holders.

Thereafter, unsecured creditors will be paid. Any remaining surplus will be distributed amongst shareholders.

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, certain unpaid debts not forming part of the payment holiday (such as directors' salaries and financial services debts) enjoy super priority over the liquidator's 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 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;

[The relevant provision is section 245, which applies to invalidate certain floating charges. If the person in whose favour the floating charge is created is not connected with the company, a floating charge created within the period of 12 months prior to the onset of insolvency will be invalid if the company was either unable to pay its debts or had become unable to do so as a consequence of the transaction. In this case, Ambitus Bank plc is not connected to Blazer Laser Limited, but the floating charge was created in June 2023, within a year prior to the onset of insolvency. It can be assumed that Blazer Laser Limited was already unable to pay its debts at that time, as it was concerned about the possibility of Ambitus Bank plc demanding the repayment of its loans, and because Blazer Laser Limited became insolvent shortly thereafter in 28 February 2024. However, the liquidator of Blazer Laser Limited must prove this. Finally, no “new” consideration was provided by Ambitus Bank plc as the debenture was granted solely to stave off prior debts already owed to Ambitus Bank plc. No new goods or services were provided by Ambitus Bank plc. The creation of the floating charge also did not discharge or reduce any debts of Blazer Laser Limited, and simply delayed the demand for pre-existing debts.]

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

[The relevant provision is section 238, which applies to invalidate transactions at an undervalue. An undervalue transaction is one where the company makes a gift, or “enters into a transaction with that person for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by the company”. It is the latter situation which is relevant, as the laser machines had been bought for GBP 100,000 a year prior, but were sold to Angela Bannister for GBP 40,000. Unless the machines are a type which would significantly devalue within the span of a year, or have low open market value (for example, customised machinery usable largely only for Blazer Laser Limited’s purposes), this appears to be a transaction for significantly less value than the machines that the company is selling to Angela Bannister. As the machines were sold to Angela Bannister in January 2023, the transaction took place during the “relevant time”, which is the period of two years prior to the commencement of the liquidation. Finally, the company must have been either unable to pay its debts as they fell due within the meaning of section 123, or had become unable to pay its debts as a consequence of this sale, at the time of the sale in January 2023. In this respect, Angela Bannister will be considered a person “connected with” Blazer Laser Limited under section 249 as she is a director of the company. As such, it is presumed that the company was insolvent at the time of this transaction, and the liquidator of Blazer Laser Limited does not bear the burden of proving this fact. However, there is a possibility that the transaction will not be invalidated if it can be shown that it was entered into in good faith and for the purpose of carrying on the business, and that there were reasonable grounds for believing that the sale would benefit the company at material time. This is possible if the company really needed the GBP 40,000 to survive, which it did for a further year after the sale.]

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

[The relevant provision is section 239, which allows preferences to be avoided. First, it must be shown that Aluminium Alumini Ltd was a creditor of the company at the time of the transaction. This is undoubtedly the case as Aluminium Alumini Ltd had demanded the repayment of sums owed to it. Aluminium Alumini Ltd, as a supplier, is not considered a person “connected with” Blazer Laser Limited. Accordingly, the “relevant time” is the

period of six months prior to the onset of insolvency. This is also satisfied in this case. However, the other requirements are unlikely to be satisfied. While the authorisation of the payment of GBP 20,000 to cover existing liabilities might not be something that Aluminium Alumini Ltd would have obtained had Blazer Laser Limited become insolvent prior to payment, this was not due to a desire to prefer but due only to commercial considerations. The company considered it a business necessity for metal to continue to be supplied. The fact that Aluminium Alumini Ltd demanded cash on delivery failing which no need goods would be provided does not show that it was a preference, and instead supports the finding that the transactions were motivated by commercial considerations. The liquidator of Blazer Laser Limited is therefore highly unlikely to be able to affirmatively prove that the transaction was motivated by a desire to prefer Aluminium Alumini Ltd. It will not be presumed as Aluminium Alumini Ltd is not a connected person.]

*** End of Assessment ***