



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: the administrator or the liquidator, as the case may be

(ii) section 6 of the Company Directors Disqualification Act 1986: the Secretary of State or the Office Receiver on the instructions of the Secretary of State where the company in question has been wound up by the court.

(iii) section 246ZB of the Insolvency Act 1986: the administrator

(iv) section 127 of the Insolvency Act 1986: 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.

The monitor's remuneration or expenses;
Goods or services supplied during the Moratorium;
Rent in respect of a period during the Moratorium;
Wages or salary arising under a contract of employment;
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. The appointment of an administrator does not automatically terminate the executory contracts. An administrator will frequently need to obtain or retain certain essential supplies. Section 233 of the Insolvency Act 1986 applies to a supply of gas, electricity, water, and communications services. Suppliers are not permitted to require payment of outstanding debts in order to secure a new or continued supply to the company in administration. However, section 233 of the Act permits a supplier to stipulate that the administrator must personally guarantee payment of charges in respect of the new supply. In addition, under section 233A a supplier of such services is generally unable to rely upon an insolvency-related term in a contract of supply which would otherwise entitle the supplier to terminate the supply, alter the terms of the supply, or compel higher payments for continued supply. Section 233B prohibits clauses which allow the supplier of any goods or services to terminate or do any other thing in relation to that contract if the company enters a formal insolvency procedure. However, according to this section, a contract may still be terminated by a supplier where the company or insolvency office-holder consents or, on application to the court, the court is satisfied that the continuation of the contract would cause the supplier hardship, and grants permission for termination.

Question 3.2 [maximum 9 marks]

Explain the order of priority of payments in 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 liquidation and the nature of the rights enjoyed by each class of creditor or expense.

Those with fixed security will usually enforce their security outside any formal insolvency. The statutory order will be expenses, preferential creditors, floating charge holders, and unsecured creditors.

1. Under section 115 of the Insolvency Act 1986 and rules 6.42 and 7.108 of the Rules, a number of expenses are given priority over the company's preferential creditors, any holders of floating charges and the company's unsecured creditors:

- (a) expenses that are properly incurred by the liquidator in preserving, realizing or getting in any of the assets of the company;
- (b) the cost of any security provided by the liquidator;

- (c) any amount payable to a person to assist in the preparation of a statement of affairs or accounts;
 - (d) any necessary disbursements by the liquidator in the course of the winding up (including, for example, any expenses incurred by members of the liquidation committee);
 - (e) the remuneration of any person who has been employed by the liquidator to perform any services for the company;
 - (f) the remuneration of the liquidator (which is subject to effectively the same rules as those which apply to administrators, specifically including the fees estimate regime where a time cost basis for the liquidator's fees is adopted);
 - (g) the amount of any corporation tax on chargeable gains accruing on the realisation of any assets of the company; and
 - (h) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.
2. Once the expense of the liquidation has been paid in full, the assets of the company are then used to pay preferential creditors. The category of preferential creditors largely comprises limited claims of employees and some taxation liabilities but there are some other types of liability. There are two classes of preferential debts, ordinary and secondary. Some debts are listed as preferential under Schedule 6 of the Insolvency Act 1986.
 3. After preferential creditors have been paid, the next creditor to be paid will be any floating charge holder. There may be more than one floating charge holder and if that is the case, priority between them usually turns upon which floating charge was created first.
 4. Creditors with no security, often ordinary trade creditors, are paid out last in the statutory order.
 5. If there are sufficient funds to pay all the creditors any surplus is distributed amongst the shareholders according to the company's constitution.

If a company is not rescued as a going concern but instead enters liquidation within 12 weeks of the end of the Moratorium, the priority of debts in that liquidation may be different to the priority of debts which existed prior to the Moratorium. Section 174A provides that certain unpaid pre-Moratorium or Moratorium debts are paid in the subsequent liquidation, in priority to even the liquidator's fees and expenses. Section 174A therefore affords certain unsecured debts from of super priority in a subsequent liquidation. Unsecured (or secured) pre-Moratorium bank debt, falling within the definition of financial services, will also acquire such a super priority where the debt is accelerated debt, that is, any pre-moratorium financial services debt which fell due by reason of the operation of, or exercise of rights under, an acceleration or early termination provision in the financial services contract.

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 favor of Ambitus Bank plc;

The liquidator may try to submit an application under section 245 of the Insolvency Act 1986. Section 245 applies to floating charges and it applies where a company is in administration or liquidation and the provision is aimed at preventing pre-existing unsecured creditors from obtaining the security of a floating charge shortly before the commencement of a formal insolvency procedure. Where the person in whose favor the floating charge is created is not connected with the company, the relevant time is any time within the period of 12 months prior to the onset of insolvency. In this case, Blazer Laser Limited (the Company), granted a debenture in favor of Ambitus Bank plc in June 2023, and the debenture contained a floating charge over the whole of the Company's undertaking, which is within the relevant time(12 months). At the same time, there is no new consideration for the creation of the floating charge.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

There are two possible options for the liquidator: section 423 and section 238 of the Insolvency Act 1986.

Under section 238, the liquidator must show that the company:

- (1) made a gift to another person; or
- (2) entered into a transaction with another person on terms that provided for the company to receive no consideration; or
- (3) entered into a transaction with another person for a consideration which, in money or money's worth, was, at the date of the transaction, significantly less than the value, in money or money's worth, of the consideration provided by the company.

The relevant time under this section is in the period of two years prior to the commencement of the liquidation. Whether or not the transaction was with a connected person, it is a prerequisite of liability under section 238 that, at the time the transaction was entered into, either the company was unable to pay its debts as they fell due or became unable to pay its debts. In the case of a transaction with a connected person, however, the company is presumed to have been insolvent or to have become insolvent as a result of the transaction, unless the contrary is proved.

In this case, two laser cutting machines were sold to Angela Bannister (a director) for GBP 40,000 in cash. The machines had been bought for GBP 100,000 a year before. The sale is within the relevant time. At the same time, the two machines were bought only one year ago when the parties entered into the transaction, but the price of the machines was 60%

off, which is significantly less than the actual value. Finally, the machines were sold to a connected party-director of the company. So the liquidator may try to attack this transaction with section 238.

The second option, based on the existence of an undervalued transaction, if the liquidator can prove that the company entered into the transaction for the purpose either of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the company, or of otherwise prejudicing the interests of such a person in relation to the claim which they are making or may make, then the liquidator is entitled to attack this transaction under section 423 of the Insolvency Act 1986.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumi Ltd.

According to section 214 and section 246ZB of the Insolvency Act 1986, directors of insolvent companies are liable for wrongful trading, and thereby making them, in certain circumstances, liable for some of the debts and liabilities of the company. The following conditions must be satisfied:

- (1) that the company has gone into insolvent liquidation;
- (2) that at some point before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and
- (3) that at the time the person reached that conclusion or ought to have reached that conclusion that person was a director of the company.

In this case, one month before the winding up order was made, the board of the company authorised a payment of GBP 20,000 to cover existing liabilities and agreed to further payments 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. At that moment, only one month before the order was made, the directors of the company ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation. Under section 214, once they knew or ought to have known that insolvency winding-up was inevitable, they should take every step to minimize the potential loss to the company's creditors. The acts of the directors should be in line with the standards of a reasonably diligent person. However, in this case, the board still agreed to make payment, which was detrimental to the interests of creditors. So the liquidator may try to trigger the application of section 214 and section 246ZB in this case.

*** End of Assessment ***