



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?

Under section 245 of the Insolvency Act 1986, the liquidator or the official receiver can bring action against the directors or officers of the company. This section is to place personal liability on the directors and officers of the company if they committed fraud of defrauded investors in the company.

Under section 6 of the Company Directors Disqualification Act 1986, an official receiver of the secretary of state can bring action against the directors of the company to disqualify them. This action can be brought upon directors of a company if they are deemed to be unfit to perform their duties as director of the company.

Under section 246ZB of the Insolvency Act 1986, action can be brought forth by the liquidator or official receiver if wrongful trading of a company has occurred. Under this section legal action should be brought forth if the liquidator or the official receiver believes that the director or directors of a company continued to trade a company past the point of which they knew that the company they are currently directors on, could not avoid liquidation.

Under section 127 of the Insolvency Act 1986, actions can be brought forth if the company gave preferential treatment towards certain creditors prior to liquidation of the company. These actions can be brought forth by the liquidator or an official receiver appointed to oversee the company and its estate.

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 that do not form part of the payment holiday under Part 1A of the Insolvency Act 1986 when a company is subject to a moratorium are:

1. Goods or services supplied during the moratorium;
2. Wages and salaries arising under a contract of employment;
3. Redundant payments;
4. Liabilities relating to Financial Services contracts; and
5. Rent in respect of a period 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?

An administrator who wishes to continue to operate the business of the company in administration is allowed to require suppliers to continue providing goods and services to the company during the administration process under certain conditions and provisions in the Insolvency Act 1986. The administrator is allowed to enter into contracts with suppliers on behalf of the company but must do so in good faith and not at the detriment of the

creditors of the company. Paragraph 64 of Schedule 1B of the Insolvency Act 1986 outlines that the administrator must ensure there is adequate protection provided to all creditors of the company and suppliers are paid for their goods and services in full, and are treated as an expense to the administration, which means that it would rank higher than any claim submitted by an unsecured creditor of the company. This provision allows for the administrator to continue operating the business to try and maximise the return for the creditors of the company, but the administrator must first ensure it will not be detrimental to the creditors prior to entering arrangements with the suppliers of good and services.

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 follows:

1. Creditors of fixed charges;
2. Expenses of the liquidation;
3. Preferential creditors;
4. Floating charge creditors; and
5. Unsecured creditors.

Fixed charge creditors have security interest over specific assets of the debtors estate which can either be some form of mortgage or charge against those specific assets. These assets typically cannot be dealt or sold without prior consent of the fixed charge creditor. If these assets are sold, the proceeds would be dealt to the fixed charge creditor, or as part of the arrangement made, the fixed charge creditor will take possession of the asset they have a charge over.

Service providers and the liquidator's fees that relate to the liquidation process are given priority after fixed charge creditors. This includes costs of the liquidation (insolvency practitioner and legal costs), the administration, and any insolvency proceedings related to the liquidation.

After expenses of the liquidation are paid, preferential creditors are next in line. Preferential creditors typically include employee expenses such as wages, salaries, holiday pay, and contributions the company was supposed to pay on behalf of the employee, such as retirement plans and health benefits.

Once preferential creditors are paid, floating charge creditors are paid next. Floating charge creditors "float or hover" above an asset or asset class until the security over the asset or asset class becomes a fixed charge, which in turn crystallises the security charge.

Unsecured creditors then are paid last. These include service providers of the company prior to liquidation, suppliers of the company, and any other creditor that does not have security over any assets of the company. Whatever is remaining the debtor's estate after prior payments are made, are distributed to the unsecured creditor on a *pari passu* basis.

If the company was 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 priority of payments may change during a liquidation process. Debts under the payment holiday would be excluded from the moratorium and therefore some debts would not be paid. Generally

speaking though, the priority of payments would remain the same, with the exclusion of debts under the payment holiday.

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;

Firstly, the liquidator should consider the floating charge in favour of Ambitus Bank plc as a debenture was granted by Blazer Laser Limited, which created a floating charge over the whole of the company's undertaking. This debenture was granted prior to the winding-up petition that was issued on 13 January 2024. This floating charge gives Ambitus Bank security over the company's assets, which also allows the company to deal with its assets until they crystallise. The liquidator should consider the Companies Act 2006 and the Insolvency Act 1986 as it contains provisions related to floating charges, debentures, and actions that the liquidator can take regarding the same. Section 245 of the Insolvency Act 1986 should be investigated as it deals strictly with floating charges being invalidly given by a company that gives unsecured creditors a floating charge shortly before a company enters a liquidation process. The liquidator should investigate whether Blazer Laser Limited is related to Ambitus Bank plc, as there is a 24-month period where a floating charge may not be given if funding was already in place and is not considered new funding. If they are not related, then a 12-month period is in place. As the above falls within both categories, the floating charge would be deemed to be invalid. Additionally, the liquidators should investigate whether the funding was pre-existing or if it relates to new funding. Based on the above

information, it seems like it is pre-existing funding, and therefore a floating charge would be invalid under Section 245 of the Insolvency Act 1986. Therefore, the floating charge would not be considered during the liquidation process. Section 245 is put into place in order to prevent creditors from receiving higher priority prior to the company entering an insolvency process as it would not be beneficial to all creditors, particularly unsecured creditors. Lastly, even with the floating charge becoming invalid, the debt of the company would remain valid for the creditor to put a claim in during the liquidation process.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

Additionally, under section 127 and 238 of the Insolvency Act 1986, it allows the liquidator to retrieve assets that may have been disposed of after the winding up petition had been presented or take legal action if proper consideration was not given. The liquidators should investigate as to when the two laser cutting machines were sold and if they were sold subsequent to 13 January 2024, the transaction would be considered void. Legal action can be taken in order to retrieve the two laser cutters that were sold to the director if the sale occurred after 13 January 2024.

Additionally, the liquidators should investigate whether proper consideration was given for the two laser cutting machines. If improper consideration was given, the liquidators can take action to retrieve the laser cutters. The liquidators must prove that improper consideration was given, and that the sale occurred within the relevant period, being 2 years from the commencement of the liquidation. As the transaction falls within the two-year period, the liquidators must be able to prove that improper consideration was given, and if so, Section 238 of the Insolvency Act 1986 would apply and an order can be handed down under Section 238 by the court.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

The liquidator should investigate whether the GBP20,000 payment made to Aluminium Alumini Ltd should have been made and if it was at the benefit of all creditors of the company in order to continue business operations. The relevant section related to this matter is Section 127 and 239 of the Insolvency Act 1986. There may be potential legal action that the liquidators can take in order to retrieve those payments or recover the assets by taking action against the directors for approving these payments as it was not in the benefit of all creditors and could be seen as preferential treatment.

Under section 239, The application must show that the alleged person or company was a creditor at the time, that the alleged person or company is in a better position than they were before, that the company was influenced to give preferential treatment to the person or company, and that it occurred within the relevant period. Given the facts above that the company was a creditor at the time, that they were paid in full and would no longer be a creditor of the company due to cash first payments before providing supplies, that the company also required the supplier in order to continue business operations (influenced), and that it occurred within the relevant 6-month time frame, an order under section 239 can be made. The relevant time frame must be considered as it differs between connected and non-connected persons or company. If the persons or company is connected, then a 2-year period prior to the onset of insolvency is considered to be relevant. If it is a non-connected person or company, then the relevant period is 6-month period prior to the onset

of insolvency. As the payment was made a month prior to the winding up order, it would fall into both categories and therefore would be within either relevant period.

*** End of Assessment ***