



**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?

- Section 245 of the Insolvency Act 1986: applies when a company is in administration or liquidation. It prevents pre-existing unsecured creditors from gaining security of a floating charge prior to the company entering formal insolvency procedures. It does not prevent new lenders providing new funding from taking a floating charge.
- Section 6 of the Company Directors Disqualification Act 1986: The Secretary of State, or the Official Receiver (on the instructions of the Secretary of States) where a company has been wound up by the court will make an application the court for the disqualification order in terms of Section 6. The court in turn will make the disqualification order.
- Section 246ZB of the Insolvency Act 1986: the court, on application of the administrator may enforce actions relating to wrongful trading.
- Section 127 of the Insolvency Act 1986: this section is enacted in a compulsory winding up and its commencement date would be the date of the presentation of the petition to wind up. The court has the discretionary power to approve any dispositions on application of a validation order by anyone. The liquidator will often seek action under s127 to retrieve any assets disposed of between the presentation of the petition to wind up and the winding up order.

### 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 expenses resulting in debts 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. The “monitors” remuneration or expenses;
2. Goods and services supplied during the Moratorium;
3. Rent in respect of a period during the Moratorium;
4. Wages or salary arising under a contract of employment; 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?

A company's executory contracts are not automatically terminated at the appointment of an administrator. If there are particular terms within any contract which provides for automatic termination, there are increasing statutory exceptions which are excluding these as void.

Per para 59 of Schedule B1 of the Act, the administrator has all the necessary powers in order to effectively manage the affairs, business and property of the company under administration. Schedule 1 of the Act provides for powers of administration which includes, but not limited to:

- "Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees;
- Power to carry on the business of the company;
- Power to bring or defend any action or other legal proceedings in the name and on behalf of the company;
- Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document."

As such the administrator would have the right to enforce contractual obligations of suppliers of goods and services. In addition to this, the administrator would have the power to enter into new contracts should that be in the best interest of all creditors.

For certain essential supplies such as gas, electricity, water and communication services (which may include but not limited to; essential computer hardware and software, point of sales terminals, information systems, data protection etc.), Suppliers would be permitted, per section 233 of the Insolvency Act 1986 (the "Act"), to continue providing such services under terms that the administrator must personally guaranteed payment of charges in respect to these new supplies. Suppliers would however not be permitted to require payment of any outstanding debts in order to continue/ offer new services or goods. In addition to this section 233A prohibits suppliers to rely upon any insolvency related contractual terms which could be used to terminate the supply or demand higher payments for any continued services.

The administrator may intend on selling the company's business as a going concern and as such the continuation of business dealings would be imperative to the sale. As such the administrator would exercise their power to carry on the business of the company.

### 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?

In terms of section 115 of the Act, as well as rules 6.42 and 7.108 of the Rules of the Act, there are expenses which have priority over the company's preferential creditors, any holders of floating charges and the company's unsecured creditors when considering the order of asset distribution in a liquidation. Included below is the order of priority of these expenses:

1. Expenses incurred in the preservation, realization or acquisition of any existing assets of the company. This could include costs relating to legal proceedings relating to forementioned;
2. Costs of any security provided by the liquidator;
3. Amounts which are payable to any individual who is involved in the preparation of accounts or statements of affairs;
4. Expenses which are deemed necessary in the course of winding up which may include expenses incurred by liquidation committees etc.;
5. Remuneration of any individual who has been appointed by the liquidator to perform any services for the company;
6. Remuneration of the liquidator which is subject to certain rules;
7. Corporate tax on chargeable gains accrued in the realization of any of the company's assets;
8. Any other assets which have been property chargeable by the liquidators in the winding up proceedings.

Once the above expenses of the liquidation have been paid in full, the remaining assets would then be distributed to preferential creditors before any payment is made to holders of floating charges, then to any other unsecured creditors before being distributed to shareholders.

Preferential debts can be classified as either “ordinary” or “secondary” and are equally ranked within their respective classifications and as such would be paid equal to their proportion of total debt if the company's assets are insufficient to satisfy the full debt. Ordinary would be paid in priority to secondary preferential debts. Debts which are classified as preferential are listed in Schedule 6 of the Act and have been categorised into the following categories:

- Category 1: Debts due to Inland Revenue
- Category 2: Debts due to Customs and Excise
- Category 3: Social security contributions
- Category 4: Contributions to occupational pension schemes, etc.
- Category 5: Remuneration, etc., of employees
- Category 6: Levies on coal and steel production
- Category 6A: Debts owed to the Financial Services Compensation Scheme
- Category 7: Deposits covered by Financial Services Compensation Scheme
- Category 8: Other deposits
- Category 9: Certain HMRC debts

Secondary preferential debts have been defined in terms of Section 386 of the Act. These preferential debts are to be paid after ordinary preferential debts.

After preferential debts have been paid, priority would be given to floating charge holders. In the case when there are more than one floating charge holders, priority would be given to the floating charge that was first created. It should however be noted that in terms of section 176A of the Act there is a “prescribed part” of the company's net property which is unavailable to floating charge holders and held for unsecured creditors. This can be calculated as 50% of net property up until GBP 10,000 plus 20% of the excess in value which is above GBP 10,000 (Maximum prescribed value amounting to GBP 800,000). This prescribed part is only applicable to floating charges on or after 15 September 2003 and the company goes into liquidation.

The remaining net property, if any, would be distributed to unsecured creditors before any surplus is distributed to the shareholders on a pro rata basis.



If the company enters liquidation within 12 weeks of the end of the Moratorium, the priority of debts incurred during the liquidation would be different to the priority of debts which existed before the Moratorium. Section 174A states that certain debts incurred before or during moratorium would take priority to liquidator's expense. These debts include prescribed fees or expenses of the official receiver acting in any capacity in relation to the company as well as moratorium debts and priority pre-moratorium debts.

**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;

In terms of section 115 of the Act the order of distribution of the assets in a liquidation, the expenses of the liquidation would be prioritized and would be paid in full. The remaining assets would then be distributed to preferential creditors before any payment is made to holders of floating charges, then to any other unsecured creditors before being distributed to shareholders.

It should however be noted that in terms of section 176A of the Act there is a "prescribed part" of the company's net property which is unavailable to floating charge holders and held for unsecured creditors. This can be calculated as 50% of net property up until GBP 10,000 plus 20% of the excess in value which is above GBP 10,000 (Maximum prescribed value

amounting to GBP 800,000). This prescribed part is only applicable to floating charges on or after 15 September 2003 and the company goes into liquidation, as such would apply to the debenture granted in June 2023.

As Blaser Laser had granted the debenture in order to prevent Ambitious Bank plc from demanding repayment of the company's loans (indicating an inability to pay its debts), section 245 of the Act would be applicable. Regardless as to whether Ambitious Bank plc is a connected person or not, the floating charge was created within 12 months prior to the onset of the insolvency. Therefore, this floating charge would be rendered invalid in terms of section 245 of the Act.

#### **Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

Section 127 of the Act provides avoidance mechanisms for any disposition of property of the company which is in compulsory winding up status, unless ordered by the court, after the commencement of the winding up. The commencement date would be the date at which the Petition is presented to the courts (13 January 2024 for Blazer Laser Limited). As such this would be applied retrospectively when the court order is received. Assuming the disposition of the laser cutting machines had taken place on or after 13 January 2024, it would therefore be the responsibility of the liquidator to take the necessary steps to recover the company's assets between 13 January 2024 and the date the company went into liquidation (28 February 2024).

It should however be noted that section 127 of the Act is not absolute as the court has the discretion to validate any disposition on application. As such Angela Bannister could apply to the court to validate this disposition, which would mean the liquidator does not have a right to collect these assets. As the sale of the two laser cutting machines was significantly below the cost price just one year earlier, it is unlikely that the court would grant such validation.

Further to this it should be noted that if the sale of the lasers were prior to 13 January 2024 (but still in January 2024), the liquidator would have the right to "attack" a transaction which was executed shortly before the company entered a formal insolvency and appears to be undervalued (section 238 of the Act). Given that the laser cutters had been purchased in the prior year, the likelihood that these machines would be valued at 40% of the cost after one year seems unlikely. Under section 238, the liquidator would have the onus to prove that the transaction consideration was significantly less than the value of the transaction. In terms of section 238 this right of recourse would need to be within two years prior to the commencement of the liquidation, therefore allowing the liquidators of Blaser Laser the right to "attack" the transaction.

#### **Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

Section 127 of the Act provides avoidance mechanisms for any disposition of property of the company which is in compulsory winding up status, unless ordered by the court, after the commencement of the winding up. The commencement date would be the date at which the Petition is presented to the courts (13 January 2024 for Blazer Laser Limited). As such this would be applied retrospectively when the court order is received. The disposition of assets (cash) to cover the liabilities with Aluminium Alumini had taken place a month before

the winding up order (28 January 2024) as such the liquidator may take the necessary steps to recover the company's assets.

It should however be noted that section 127 of the Act is not absolute as the court has the discretion to validate any disposition on application. The courts would take into consideration factors as to whether the payments were made honestly and in good faith. The payments to Aluminium Alumini Ltd were essential to the company and would have allowed the company to continue trading. Further to this it was agreed that a cash on delivery basis would be applied. Therefore, in terms of section 127 of the Act this transaction may very well be validated by the court.

**\* End of Assessment \***