



**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 normally allows an insolvency practitioner, such as a liquidator or administrator, to challenge and possibly set aside transactions that took place prior to the commencement of insolvency proceedings if those transactions involved assets or favoured one creditor over another.

Under section 6 of the Company Directors Disqualification Act 1986, the Secretary of State (or a designated agency) has the power to seek a disqualification order against a director. This can be based on misconduct or incompetence in the management of a company, supported by evidence gathered during an investigation into a company.

Section 246ZB of the Insolvency Act 1986 relates to the administration process. It can cover actions taken by the liquidator in relation to the repayment of debts or the distribution of assets. Typically, persons authorised to act under this section would include the appointed administrator.

Under section 127 of the Insolvency Act 1986, any disposal of a company's assets after the commencement of winding-up proceedings is void unless authorised by the court. Liquidators often use this section to recover assets that have been improperly disposed of after the winding-up order has been made.

### 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 debts which do not form part of the payment holiday under Part A1 of the Insolvency Act 1986 where a company is subject to a moratorium:

1. The monitor's remuneration or expenses.
2. Goods or services supplied during the moratorium.
3. Rent in respect of any period during the moratorium.
4. Wages or salary due under a contract of employment.
5. Severance payments.

These exceptions to the payment holiday are critical because they ensure that the company continues to meet essential ongoing expenses and obligations during the moratorium, allowing for the possibility of rescuing the business as a going concern.

### 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?

The question of whether an insolvency practitioner can require suppliers to continue to supply goods and services during the company's administration is an issue that involves a mix of law and practical considerations. The Corporate Insolvency and Governance Act 2020 and Sections 233, 233A and 233B of the Insolvency Act 1986 have made changes to how supply contracts operate in insolvency scenarios. This analysis looks at these frameworks to

understand how they affect an administrator's responsibilities and powers in maintaining business operations during administration.

Sections 233 and 233A of the Insolvency Act 1986 require that essential suppliers of utilities and IT support cannot cease to provide their services as a result of the company's insolvency. These provisions prevent suppliers from using insolvency as an excuse to stop providing their services, ensuring that vital utilities and communications services remain uninterrupted. This provision is essential for administrators seeking to maintain the business as a link in the chain of business continuity.

The introduction of Section 233B under the Corporate Insolvency and Governance Act 2020 further extends protection to all suppliers of goods and services, with some exceptions, such as services. This section invalidates clauses that will allow suppliers to terminate their services if the company becomes insolvent.

The rules also prevent suppliers from demanding payment as a condition of continuing to supply goods and services while a company is in administration. However, suppliers can seek a guarantee from the administrator for any services they provide.

These laws are designed to help companies in administration by maintaining supplies and giving administrators time to make plans to turn things around without the risk of losing necessary resources. Suppliers will still be able to terminate their contracts in situations such as with the consent of the company or administrator, or where continuation of the contract would be seriously prejudicial to the supplier, pending judicial confirmation.

In summary, with the changes introduced by the Corporate Insolvency and Governance Act 2020, administrators have the power to compel suppliers to continue to supply goods and services during administration. This power is vital to keep the business going. It allows administrators to effectively manage the company's affairs with a view to potential recovery or sale as an ongoing concern. While striking a balance between the distressed company and its suppliers, ensuring business continuity is key to achieving the administration's objectives.

### 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 distribution of assets in the liquidation of a company is governed by a legal framework that establishes a hierarchy of claims to ensure an orderly and fair settlement of debts. This hierarchy is critical to creditors as it determines the likelihood and extent of recovery. The introduction of a moratorium under Part A1 of the Insolvency Act 1986, designed to give companies breathing space to facilitate a rescue or restructuring, further nuances this order, particularly if it precedes liquidation.

#### Priority of Payments in Liquidation

The priority of payments in liquidation is set out in the Insolvency Act 1986 and subsequent amendments. At the top are the costs of the liquidation process itself, including the liquidator's remuneration, followed by secured creditors with a fixed charge. These are followed by preferential creditors, including certain employee claims and occupational pension contributions. Next are secured creditors with a floating charge, where the 'prescribed part' provision allocates a certain amount to unsecured creditors before the secured creditor's claim is satisfied. Unsecured creditors come next, followed by statutory

interest on all unpaid debts, and finally, if any assets remain, shareholders or members of the company according to their rights.

#### Effects of a moratorium

A moratorium under Part A1 of the Insolvency Act 1986 provides companies with protection from creditor action for an initial period of 20 business days, which can be extended for up to one year with the consent of the creditors or indefinitely with the approval of the court. This period allows companies to explore rescue or restructuring options without the immediate threat of liquidation. If a company enters liquidation after a moratorium, the priority of payments remains largely unchanged. However, the existence of the moratorium may affect the financial landscape of the company, potentially increasing the priority of debts incurred during the moratorium, such as new financing arranged to facilitate the rescue of the company.

#### Changes brought about by the Moratorium

The primary impact of the moratorium on the liquidation is indirect, affecting the company's ability to negotiate with creditors and potentially secure new financing on concessionary terms. This may alter the financial position of the company prior to liquidation, affecting the distribution to creditors. In particular, debts incurred during the moratorium, including wages and goods or services supplied, must be paid from the company's assets before distribution to other creditors. This reordering can potentially reduce the funds available for distribution to previously prioritised creditors.

The statutory order of priority in liquidation is designed to ensure that creditors' claims are dealt with in a fair and orderly manner. The introduction of a moratorium under Part A1 of the Insolvency Act 1986 adds a layer of complexity to this process, offering companies a chance of recovery but potentially changing the financial landscape prior to liquidation. While the basic priority structure remains intact, the specific circumstances surrounding a company's entry into liquidation following a moratorium can have a significant impact on the distribution of assets among creditors. Understanding these dynamics is critical for stakeholders navigating the UK insolvency framework.

#### **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;

Section 245 of the Insolvency Act 1986 is particularly relevant. It deals with the invalidity of floating charges created in favour of persons connected with the company within a specified period before the company enters into administration or liquidation. The statute is designed to prevent the unfair advantage of securing debts to connected persons at the expense of other creditors shortly before insolvency.

Given that the debenture containing the floating charge over the company's business was granted in June 2023 and the winding-up order followed a creditor winding-up petition dated 13 January 2024, the timing of the creation of the charge is critical. If Ambitus Bank plc is deemed to be a connected person, the floating charge could be invalid if it was granted within two years of the insolvency order, unless 'new' consideration was provided for the charge. The liquidator should consider whether the charge was granted for new consideration or merely to secure past debts.

In conclusion, the liquidator may have grounds to challenge the validity of the floating charge under section 245, depending on the nature of the consideration for the charge and the bank's status as a connected person.

**Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

Section 238 on transactions at an undervalue and section 239 on preferences may be applicable. These provisions empower the liquidator to challenge transactions that unfairly dispose of the company's assets or favour creditors or individuals.

The transfer of two laser cutting machines to Angela Bannister, a director, for GBP 40,000 - originally purchased for GBP 100,000 per year - could be challenged as a transaction at an undervalue. Given her role as a director, this transaction could be seen as favouring her, especially if the company was insolvent at the time or became insolvent as a result of this transaction.

In summary, the liquidator has grounds to challenge this sale under section 238 as a transaction at an undervalue and possibly under section 239 as a preference. This would depend on whether the company was insolvent at the time of the sale and the connection between Angela Bannister and the company.

**Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

Section 239 on preferences could be relevant if the payments to Aluminium Alumini Ltd were intended to favour that creditor over others. The nature of these payments,

particularly if they were made during the company's insolvency, could be examined under this section.

The payments made to Aluminium Alumini Ltd, particularly if they were intended to secure supplies at the expense of creditors, could be seen as creating a preference. This is all the more important if these payments were made while the company was insolvent.

In summary, the liquidator may wish to consider whether these payments qualify as a preference under section 239, particularly if they were made to secure access to goods to the detriment of other creditors.

**\* End of Assessment \***