



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3B

**THE INSOLVENCY SYSTEM OF THE UNITED KINGDOM
(ENGLAND AND WALES)**

This is the **summative (formal) assessment** for **Module 3B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 3B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment3B]**. An example would be something along the following lines: 202223-336.assessment3B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6.1 If you selected Module 3B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 3B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs . . . :

- (a) within 10 weeks of the commencement of the administration.
- (b) within eight weeks of the commencement of the administration.**
- (c) within four weeks of the commencement of the administration.
- (d) on the day the company enters administration.

Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) One year.**

Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.

(c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

(d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

- (a) The administrator.
- (b) Any secured creditor with the benefit of a qualifying floating charge.
- (c) The purchaser.
- (d) The company's auditor.

Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

- (a) Administration.
- (b) Restructuring Plan.
- (c) Scheme of Arrangement.
- (d) Company Voluntary Arrangement.

Question 1.6

Section 426 of the Insolvency Act 1986 contains provisions for UK courts to provide assistance to overseas courts from certain listed jurisdictions. Which of the following is not a listed jurisdiction under section 426?

- (a) Malaysia.
- (b) Australia.
- (c) India.
- (d) Hong Kong.

Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

- (a) Wrongful trading.
- (b) Breach of fiduciary duty.
- (c) Being found guilty of an indictable offence in Great Britain.
- (d) Being found guilty of an indictable offence overseas.

Question 1.8

The filing by a company's directors of a Notice of Intention to Appoint an administrator produces a short-term moratorium on actions against the company which lasts for how long?

- (a) Five business days.
- (b) Twenty business days.
- (c) Ten days.
- (d) Three months.

Question 1.9

Which of the following statements is **incorrect**?

- (a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.
- (b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.
- (c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.
- (d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

Question 1.10

Under section 216 of the Insolvency Act 1986, a director of a company which has been wound up insolvent may not, unless an exception applies, be a director of a company that is known by a prohibited name if the director has been a director of the company during which period prior to the insolvent liquidation?

- (a) Six months.
- (b) Five years.

(c) Two years.

(d) Twelve months.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 5 marks]

Who may bring an action under: (i) section 245 of the Insolvency Act 1986, (ii) section 6 of the Company Directors Disqualification Act 1986, (iii) section 246ZB of the Insolvency Act 1986, and (iv) section 127 of the Insolvency Act 1986?

- (i) The administrator or liquidator
- (ii) The Secretary of State or the Official Receiver if the company is being wound up
- (iii) The administrator
- (iv) 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.

5 debts that do not form part of the payment holiday:

- 1 Amounts that are due to the monitor appointed to oversee the Moratorium in respect of his/her remuneration and expenses incurred;
- 2 Any amounts that relate to the provision of goods or services to the company during the Moratorium
- 3 Amounts due to landlords in respect of rental during the Moratorium
- 4 Amounts due to employees as stipulated in their employment contracts
- 5 Amounts due to employees as a result of redundancy

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, an administrator may require to continue supply of goods and services during the administration. The terms of the continued supply may be governed by sections 233, 233A and 233B of the Act.

- In terms of section 233 of the Act, suppliers of certain crucial supplies such as communication services and the provision of utilities are not allowed to request for the settlement of amounts due to the supplier to keep providing the services. The relevant supplier may however request that the administrator provide a personal guarantee of payment as relates to the new supply.
- In terms of section 233A, a supplier is not able to terminate supply, change the nature and terms of the contract relating to the supply or increase prices for the supply. This is due to the supplier not being able to invoke any clauses of the contract which would result in the above.
- Section 233B now prohibits clauses in supply contract which would allow the supplier to amend or terminate their contract with the company under administration when that company enters administration. It also bars suppliers from making continued supplies subject

the receipt of receipt of pre-administration debt and the supplier is also not allowed to make other changes to the contract. Under this section, the supplier cannot request the administrator to provide a personal guarantee. The supplier may however, cancel the contract if the administrator consents or if the court consents based on an application by the supplier which purports that the continued provision of goods or services would harm the supplier/

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 during liquidation is:

- 1 Secured fixed charge creditors
 - a. These payments can be made from the proceeds on the sale of the assets which were subject to the fixed charge. The sale of the asset by the liquidator needs to be authorised by the holder of the fixed charge. If the proceeds do not cover all of the debt, the remainder will be classified as unsecured.
- 2 Liquidator fees and expenses
 - a. These costs include costs incurred by the liquidator that are directly attributable to the liquidation process and will include costs to preserve and sell assets, remuneration of the liquidator and their employees and other costs related to the administration of the liquidation
- 3 Preferential creditors
 - a. Preferential are paid once all costs listed in 2 above have been paid.
 - b. Preferential creditors can be "ordinary" or "secondary".
 - c. "Ordinary" preferential creditors comprise mainly of employees that are due amounts in respect of their employment prior to liquidation
 - d. "Secondary" preferential creditors are the HMRC and other eligible deposits
- 4 Secured floating charge creditors
 - a. The liquidator must calculate the net property remaining in the estate once amounts have been paid in terms of 1 -3. A "prescribed part" of this value must be set aside for distribution the unsecured creditors. The value of the prescribed part is calculated as:
 - i. 50% of the net property is the net property is £10,000 or less or
 - ii. If the net property is over £10,000, 50% of £10,000 plus 20% of the amount over £10,000. This is capped at £800,000.
 - b. Once the amount available to floating charge holders is calculated, it is paid in the priority of when the floating charge was created.
- 5 Unsecured creditors
 - a. Unsecured creditors are paid with the funds set aside from the "prescribed part" and any surplus funds available after the payments mentioned above. Payments are made in proportion to the proven claim as a % of total claims received.
- 6 Shareholders
 - a. In the unlikely event that any funds remain after payments are made to all creditors, the surplus would be paid in proportion to the shareholders.

Should the liquidation come after a Part 1A Moratorium, s174A of the Act will apply which creates "super priority" debts which will rank after number 1 above but before number 2. These amounts

could include unpaid debt that was incurred during the Moratorium and also some pre-Moratorium debts. These could be:

- 1 Amounts due to employees pre and during Moratorium
- 2 Amounts due to creditors for goods and services received during the Moratorium
- 3 Financial services debt (secured or unsecured) due pre or during the Moratorium

QUESTION 4 (fact-based application-type question) [15 marks in total]

Prior to going into compulsory liquidation on 28 February 2024, under pressure from its bank, Ambitus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Blazer Laser Limited (the Company), granted a debenture in favour of Ambitus Bank plc in June 2023. The debenture contained a floating charge over the whole of the Company's undertaking.

The winding up order followed a creditor's winding up petition issued on 13 January 2024.

Sometime in January 2023, as the Company continued to suffer cash flow problems, the directors approved the sale of two laser cutting machines to Angela Bannister (a director) for GBP 40,000 in cash. The machines had been bought for GBP 100,000 a year before.

A month before the winding up order was made, Angela Bannister received an email from Aluminium Alumini Ltd, one of the Company's key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of metal was seen as essential by the Company, the board authorised a payment of GBP 20,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of GBP 8,000 up to the date of the winding up order.

The liquidator has asked for advice whether any action may be taken in respect of the floating charge in favour of Ambitus Bank plc and the two subsequent transactions.

Using the facts above, answer the questions that follow.

Identify the relevant issues and statutory provisions and consider whether the liquidator may take any action in relation to:

Question 4.1 [maximum 5 marks]

The floating charge in favour of Ambitus Bank plc;

The issue as relates to the new floating charge is whether the new floating charge is voidable under section 245 of the Act.

Ambitus Bank plc was a creditor to Blazer Laser prior to liquidation as it had advanced loans to the Company. It is unclear whether these loans were secured by any other security provided by the Company but it is likely that Ambitus Bank held a fixed charge over certain of the Company's assets.

When considering whether transaction can be declared invalid, consideration must be given to:

- **The timing of the creation of the charge** – as the bank is not a connected person to the Company, this relevant time is 12 months prior to the commencement of winding up. In this case winding up commenced on the date of petition which was 13 January 2024. 12 months prior to this date would be 13 January 2023. The debenture containing the floating charge was issued in June 2023 and thus is within the relevant time

- **Was the Company unable to pay its debts or became unable to pay its debt at the time of the creation of the Floating Charge** – from the facts above, it appears that the Company was not able to pay its debts as the debenture was issued in order to prevent the bank from demanding repayments of the loans it had advanced.
- **Was new consideration given to the Company in exchange for the new floating charge** – in this case it does not appear that any further funds were advanced to the Company by the Bank but that the debenture was issued as a way of avoiding having the bank demand repayment of amounts due by the Company.

Based on the above 3 criteria, the floating charge can be rendered invalid and the liquidator can approach court to have it set aside. In this case, the floating charge was over the entire business of the Company and all other creditors would have been prejudiced by the issue of the new floating charge.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

The issue as relates to the sale of the laser cutting machine is whether the sale is deemed to be a Transaction under value under section 238 of the Act. In order to challenge the validity of the transaction, the liquidator must satisfy the court that:

- **The transaction was under value**
 - The sale of the machines for £40,000 which had been purchased a year earlier for £100,000 appears to under value as it is unlikely that the assets would have depreciated in value by 60% in a single year. If there is a dispute over the value being under value, a valuation by an independent may be sourced if required.
- **The transaction took place at a “relevant time”**
 - The relevant time in the 2 years prior to the start of liquidation proceedings i.e. between 13 January 2022 and 13 January 2024
 - The sale took place in January 2023 and thus took place at a relevant time
- **Was the company unable to pay its debts as they became due or became unable to pay them as a result of entering into the transaction**
 - When the transaction is between the Company and a connected person, there is a presumption that the Company was insolvent at the time of the transaction.
 - The Company may refute this by providing evidence that it was solvent at the time.

The Company may attempt to defend itself against having the transaction declared invalid by virtue of it being a Transaction Under Value. The Company would need to prove to the court that it sold the machines in good faith, that it was for the purpose of carrying on the business and that when the transaction was concluded, the Company believed it would benefit the business. While the sale may have temporarily relieved some cash flow pressures of the Company, it is unlikely that the Company would be able to defend itself on this point.

Based on the above facts, the Court is likely to declare that the transaction was undervalue. It should then make an order that the Company be placed in the same position it would have been, had the transaction not taken place. The machines should be returned to the Company and the amounts received should be returned to the director.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

The issue at hand is to determine whether the payments to Aluminium Alumini are classified as a preference in terms of section 239 of the Act and can this be challenged in court by the liquidator. The liquidator would need to assess whether the transaction meets the following criteria:

- Was the party which has allegedly been preferred a creditor to the Company when the transaction took place:
 - Aluminium Alumini was a key supplier when the payments took place
- Was Aluminium Alumini put into a better position when the Company went into liquidation than if the payments had not taken place:
 - Yes. Aluminium Alumini had all outstanding debts paid in full and was not owed any monies at the time of the winding up order
- Was the Company influenced by the desire to prefer the supplier
 - This is difficult to prove. The Company wanted to ensure continued supply of inventory from Aluminium Alumini to continue trading. Based on the facts as presented, the decision to make the payments was driven by commercial rationale and not a desire to prefer the supplier.
- Was the preference given at a relevant time
 - Relevant time as relates to a transaction which took place within 6 months of the start of the winding up. This transaction took place a month before the granting of the winding up order and meets this criteria.

As it appears that the Company made the decision to pay the amounts due to Aluminium Alumini to continue the supply of metal ie. as a commercially rational decision, the payments may not be considered as a preference. The liquidator would have to prove otherwise to the court in order to have the transaction avoided by the court.

*** End of Assessment ***