



**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?

The relevant persons are:

- (i) A liquidator or administrator, supervisor under voluntary arrangement and/or a person who is entitled to present a winding up petition;
- (ii) The Secretary of State;
- (iii) The HRMC, the Secretary of State and/or the liquidator, administrator or receiver (as the case may be)
- (iv) A liquidator or administrator, supervisor under voluntary arrangement and/or a person who is entitled to present a winding up petition

### 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.

1. Debts owed to employees such as wages, or salaries
2. Financial services debts or other liabilities
3. Payments for good or services supplied during the moratorium period (such as rent)
4. Redundancy payments
5. Monitor's remuneration or expenses

### 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 it can. The appointment of an administrator does not automatically terminate a company's contracts with its suppliers, where the contract does not provide for any automatic termination in the event of administration. Even if such clauses exist in the contract, such clauses may be deemed void for example under section 233B of the 2020 Act.

However, this is subject to the suppliers making an application to the court and/or the company making an application to the court for such contracts for the supply of goods and services to be terminated, and where the Court grants such termination on the basis that the continuation of the contract would cause the supplier hardship.

The administrator must also be prepared that the suppliers may require, and can require, that the administrator *personally guarantee* the payment of their fees for continued supply of goods 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?

Holders of fixed charges have priority of payment, followed by the expenses of the liquidation such as the office-holder's remuneration, followed by preferential creditors and unsecured creditors.

The shareholders will be paid last, only if there is any surplus left after paying the above creditors.

If the company had been subject to a moratorium, then the priority of payment would be:

- First, to the creditors who were owed debts falling outside of the payment holiday, such as employees who are owed remuneration, and financial service providers;
- Second, the office-holder's fees and expenses;
- Lastly the shareholders.

#### **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;

The liquidator can challenge the validity of the above floating charge pursuant to Section 245 of the Insolvency Act 1986 which provides that floating charges given by a company at a relevant time (being either 12 months (for unconnected persons) or 2 years (for connected persons) prior to insolvency is invalid.

The bank would be considered an unconnected person, which means that the 12-month period applies.

The floating charge falls within that 12-month period as the company was insolvent (within the meaning of s 123 of the Act) arguably from January 2023 as it already was facing cash flow problems. At the latest, it was insolvent by June 2023 as it faced demands from banks for repayment of its loans.

**Question 4.2 [maximum 6 marks]**

The sale of the laser cutting machines; and

The liquidator may seek to set aside the sale of the laser cutting machines as an undervalue transaction within s 238 of the Insolvency Act 1986.

First, there is a presumption that the company is insolvent where the transaction is to a connected person such as a director of a company.

Second, it can show that the transaction was at an undervalue as it was sold at less than 50% of its initial purchase price, when the machines had only been bought one year prior (which would unlikely cause a more than 50% depreciation), and that it was sold less than two years prior to the commencement of the liquidation.

However, if the director can show that the transaction was entered into in good faith and for the purposes of carrying on the company's businesses so as to benefit the company, then the Court may exercise its discretion not to set aside the transaction.

**Question 4.3 [maximum 4 marks]**

The payments to Aluminium Alumini Ltd.

The liquidator may clawback the payments to Aluminium Alumni ("AA") under section 239 of the Insolvency Act 1986 on the basis that they were preferential payments.

The reason is that the payments were made at a time when the company was facing clear cash flow problems, and was made within the 6 month period prior to liquidation.

In taking this approach, the liquidator must first show that the payments to AA had the effect of putting AA in a better position than it would have been had the payments not been made, in the event that the company went into liquidation. As AA was an unsecured creditor, in the event of a liquidation, it would have been paid only *after* secured creditors had been paid. There are therefore good grounds for the liquidator to prove this.

Second, the liquidator must show that the company, in making the payments was influenced by a desire to prefer AA, i.e. place AA in a better position than it would have been in the event of liquidation.

As AA is not a "connected" person, there is no presumption of a desire to prefer. The burden is therefore on the liquidator to prove this desire to prefer. The liquidator must show that it was the primary reason for the payment, which may be difficult as the company/its directors may show that its primary reason was that it was influenced by legitimate commercial reasons, i.e. that AA was a key supplier and it was necessary to pay AA to ensure



the company's continued viability and/or operations, such as the arguments made in the case of *Re MC Bacon Ltd.*

**\* End of Assessment \***