



**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?

### Answer 2.1

- (i) The section applies because of an administrator of a company being appointed by administration order, the date on which the administration application is made.
- (ii) It is the duty of the court to disqualify unfit directors of insolvent companies. The conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (iii) In relation to a person who is or has been a director of the company, the court, on the application of the administrator, may declare that that person is to be liable to make such contribution.
- (iv) In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void. The Court brings an action here.

### 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.

### Answer 2.2

Section 174A provides that certain pre-moratorium or moratorium debts (the debts which are not part of the payment holidays such as debts owed to employees or financial services debts are paid in the subsequent liquidation. Where debt is an accelerated debt, any pre-moratorium financial services debt which fell due by reason of operation of, or exercise of rights under, an acceleration or early termination provision are five debts do not form part of Payment Holiday.

## 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?

### Answer 3.1.

An Administrator needs to obtain or retain certain essential supplies.

Sections 233 and 233A together ensure suppliers continue to be paid for essential supplies that they must continue to provide when a customer enters into administration or a CVA takes effect, and they prevent the supplier from terminating the contract if that is the case. The supplier also has a right to require the administrator or CVA supervisor to personally guarantee that they will be paid in the future.

### **Section 223B**

Section 233B was brought into effect on 26 June 2020 and applies to insolvency

proceedings after that date. It goes further and precludes termination of the supply of *all* services (except financial services) and goods in the event of customer insolvency. Any contractual right of the supplier to terminate for a customer's insolvency or an automatic termination clause in the event of a customer's insolvency are no longer enforceable as well as any contractual consequences triggered by a customer becoming insolvent. It also prevents a supplier from terminating the contract for a pre-insolvency breach after insolvency proceedings have started. Section 233B applies to a broad range of insolvency procedures under the IA 1986 and Part 26A restructuring under the Companies Act 2006.

Section 233B further prevents a supplier from "doing any other thing or allowing any other thing to happen" based on the customer becoming insolvent. An example given by the Department of Business, Energy & Industrial Strategy in its explanatory notes of "doing any other thing" is changing payment terms. A supplier also cannot make it a condition of continuing its supply that the customer makes any outstanding payments. Therefore, the supply must continue even if the customer owes the supplier outstanding sums that date back to before the commencement of insolvency proceedings.

**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?

**Answer 3.2**

The Creditors as per the Order of Priority are ranked as follows:

1. Secured Creditors with a fixed charge: If a borrower defaults on a secured credit product, the secured creditor has a legal right to the secured asset used as collateral. The secured asset may be seized by the secured creditor and sold to pay off any remaining obligations.
2. Administrator/Liquidator Fees:
3. Preferential creditors
4. Secondary Preferential Creditors.
5. Secured Creditors with a floating charge.
6. Unsecured Creditors
7. Shareholders

Several factors influence the hierarchy of repayments in Company Liquidation. A general

outline of the criteria are listed below.

### **Secured or unsecured status**

A secured creditor is directly tied to an asset or investment that holds security, or lien, against a debtor's property. This lien is often agreed upon at the time of the debt being taken out and is most often held as collateral in the asset purchased.

Unsecured creditors have outstanding loans with the debtor. However, their agreements do not entitle them to a lien or a right to claim the assets of the debtor. Unsecured creditors include credit card companies, as well as some cash in advance companies.

You can learn more about the difference between secured and unsecured creditors in our dedicated blog post.

### **Timing of the secured status**

A lien is a legal right placed on an asset which is often used as collateral to secure debt. Problems may arise when a single asset is used as collateral to secure more than one line of credit. This means more than one lender could potentially own a secured claim against a single asset.

To avoid this, collateral pledged to secure financing is noted as either a first lien or a second lien. A first lien has high priority on the collateral. The general rule is that the first creditor to secure a lien, receives priority. Although this is not always the case, whichever creditor secured the initial lien is more likely to be granted the first lien.

### **Preferred status**

A preferred creditor is an individual associated with the debtor who is given some priority during the liquidation process. These creditors may not have held rights to claim assets, but they are given preferential treatment during liquidation proceedings.

Preferred creditors may be considered to be a special type of unsecured creditor, and examples include:

- Company employees
- Tax agencies
- Environmental claims
- Tort victims (civil court cases, such as payment of medical expenses and loss of income)



Due to the nature of the relationship with the insolvent party, and potential legal claims they may have over the assets, some parties are entitled to receive proceeds before others.

The most common types of priority creditors include alimony, tax obligations, child support or liabilities for injury or death.

Why are secured creditors paid first in Liquidation?

Secured creditors are paid first as they are usually those who have security over some or all of the company assets. The secured creditor will take back the property they've secured, or will be entitled to the proceeds from the liquidation of that specific property.

Examples of secured creditors include banks, leasing companies and other lenders.

Creditors can have a legal right over company property, which can include assets such as property, machinery, vehicles and intellectual property.

If within 12 weeks of the end of the moratorium, a company enters into administration or liquidation, unpaid moratorium debts and priority pre-moratorium debts are given a priority ranking in the insolvency distribution waterfall. Such debts fall to be paid out after fixed charges but ahead of insolvency practitioner expenses and remuneration, preferential creditors, the prescribed part and floating charge holders.

**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;

**Answer 4.1**

The main issue with the floating charge held by Ambitus Bank plc is whether it's valid and enforceable despite Blazer Laser Limited being wound up later. UK law carefully examines floating charges granted before liquidation, especially if there are signs of unfair treatment or attempts to cheat creditors.

In this case, giving the debenture to Ambitus Bank plc just before the company's liquidation raises concerns. If it seems like the company did this to favor the bank over other creditors, it might not hold up under the Insolvency Act 1986.

Moreover, if the debenture was made within a year before the winding-up petition, it might be seen as giving unfair preference under the Insolvency Act. The liquidator could investigate and, if they find proof of unfair favouritism, might try to cancel or dispute the floating charge.

**Question 4.2** [maximum 6 marks]

The sale of the laser cutting machines; and

**Answer 4.2**

Regarding the sale of the laser cutting machines to Angela Bannister, the key question is whether the transaction was fair and done at the proper value. According to the Companies Act 2006, directors must act in the company's best interests and avoid conflicts of interest.

Selling assets at a big discount to a director raises worries about breaking these duties and taking advantage of company assets. Selling machines worth GBP 100,000 for only GBP 40,000, especially during a tough financial time for the company, hints at undervaluing or improper motives.

The liquidator might look into the sale's circumstances, like why it was sold for that price, when it happened, and Angela Bannister's role. If they find evidence of wrongdoing or breaching fiduciary duties, they could try to cancel the sale or get back the difference in value for the creditors' benefit.

**Question 4.3** [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

**Answer 4.3**

Regarding the payments to Aluminium Alumini Ltd, the main issue is whether these payments show favoritism toward one creditor. According to insolvency law, if a company makes transactions that favor one creditor while insolvent, these actions can be challenged and cancelled.

In this situation, the decision by the board to pay Aluminium Alumini Ltd while the company was struggling financially and close to liquidation suggests favoritism. Also, the decision to pay for future supplies on a cash-on-delivery basis might indicate prioritizing one creditor's needs over others.

The liquidator will examine when and why these payments were made to see if they show favoritism or if the directors broke their duties. If they find proof of unfair favoritism or duty breaches, the liquidator may try to get back the payments to benefit the company's creditors.

**\* End of Assessment \***