



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 2023. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2023. 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 2023 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2023. If you elect to submit by 1 March 2023, you may not**

submit the assessment again by 31 July 2023 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of 8 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 8 weeks of the commencement of the administration.**
- (c) within 4 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.**

Commented [WPA1]: 37/50 = 74% a generally very good answer which would have been even better if the facts and issues in Q 4 had been more accurately identified.

Commented [WPA2]: 8/10

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

**A liquidator may pay dividends to small value creditors based upon the information contained within the company's statement of affairs or accounting records. In such circumstances, a creditor is deemed to have proved for the purposes of determination and payment of a dividend where the debt is no greater than how much?**

- (a) GBP 500
- (b) GBP 750
- (c) GBP 1,000**
- (d) GBP 2,000

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.

Commented [WPA3]: B is the correct answer

Question 1.8

**The administrator is under a general duty to provide a statement for creditors' consideration setting out proposals for achieving the purpose of administration. He or she must obtain a creditors' decision on whether or not to approve the proposals within how many weeks of the date the company entered administration?**

- (a) 6
- (b) 8**
- (c) 10
- (d) 12

Commented [WPA4]: C is the correct answer

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 for what period of time?**

**(a) 6 months.**

**(b) 12 months.**

**(c) 2 years.**

**(d) 5 years.**

QUESTION 2 (direct questions) [10 marks]

Commented [WPA5]: 9/10

Question 2.1 [maximum 5 marks]

Commented [WPA6]: 4/5 the answer to (i) might have been a little clearer but is generally accurate. The answer to (iii) is just administrators not liquidators.

**Who may bring an action under: (i) section 423 of the Insolvency Act 1986; (ii) section 6 of the Company Directors Disqualification Act 1986; and (iii) section 246ZB of the Insolvency Act 1986?**

- (i) *Standing is conferred on:*
- *any victim of the transaction (such as a creditor), subject to court approval;*
  - *trustee of the bankrupt estate;*
  - *the Official receiver, Administrator or Liquidator of the relevant company;*
  - *where a victim is bound by a Company Voluntary Arrangement (CVA), the supervisor of the CVA or the victim;*
- (ii) *The Secretary of State or official receiver (subject to s7(1)(b)).*
- (iii) *Liquidators and Administrators.*

Question 2.2 [maximum 5 marks]

Commented [WPA7]: 5/5

**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 pre-Moratorium debts do not form part of the payment holiday under Part A1 of the Insolvency Act 1986:*

- (a) *the monitor's remuneration or expenses;*  
(b) *goods or services supplied during the Moratorium;*  
(c) *rent in respect of a period during the Moratorium;*  
(d) *wages or salary arising under a contract of employment; and*  
(f) *payments for redundancy.*

QUESTION 3 (essay-type questions) [15 marks in total]

Commented [WPA8]: 13/15

Question 3.1 [maximum 6 marks]

Commented [WPA9]: 5/6 a good answer but some more detail in places would be helpful. There is a suggestion that s 233B covers the same type of supplies as s 233 which is not correct. Also, s 233B is the provision in the IA 1986 introduced by the 2020.

**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 can in appropriate circumstances require that suppliers of goods and services continued said supply.*

*Section 233 of the Insolvency Act 1986 (1986 Act) prohibits executory contracts (relating to, for example, utilities, point of sales terminals, computer*

hardware/software, data and website hosting) from automatically terminating supply/services, subject to the Administrator granting a personal guarantee (where requested by the supplier).

Section 233A of the 1986 Act prohibits *ipso facto* clauses that purport to terminate supply contracts simply because of the Administrator's appointment or the Company's insolvency.

Section 233B of the *Corporate Insolvency and Governance Act 2020* (2020 Act) prohibits *ipso facto* clauses (or do any other thing in relation to the supply contract) from any supplier (not just those listed in s233 of the 1986 Act) that purport to terminate supply contracts simply because of the Administrator's appointment or the Company's insolvency. The supplier can seek consent from the Administrator or apply to court claiming hardship.

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?**

Pursuant to section 115 of the Insolvency Act 1986 and rules 6.42 and 7.108, several expenses are given priority over the company's preferential creditors, holders of floating chargers and the company's unsecured creditors. Order of priority payments in a liquidation are:

Expenses:

- a. Expenses that are properly incurred by the liquidator in preserving, realising or getting any of the assets of the company (including the conduct of legal proceedings);
- b. The cost of any security provided by the liquidator;
- c. Any amount payable to a person to assist in the preparation of a statement of affairs or accounts;
- d. Any necessary disbursements by the liquidator in the course of the winding up (including for example, any expenses incurred by members of the liquidation committee);
- e. The remuneration of any person who has been employed by the liquidator to perform any services for the company;
- f. The remuneration of the liquidator (subject to creditor approval and the liquidator providing fee estimates). It is important to note that five other categories of expenses are paid in priority to the remuneration of the liquidator;
- g. The amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company; and

**Commented [WPA10]:** 8/9 a very strong answer. A perfect answer would have explained how fixed charges are dealt with but this was a minor omission.



*h. Any other expenses properly chargeable by the liquidator in carrying out the liquidators functions in the winding up;*

*Preferential payments (these are only paid once the expenses of the liquidation are paid in full, and assuming that there are any assets remaining):*

*i. Preferential creditors - in most insolvencies, employees are better protected under the Employment Rights Act 1996. The following preferential payments exist:*

- *Ordinary preferential debts - this class of creditor has their debts paid before secondary preferential debts, but after expenses properly incurred (per a to h above):*
  - *employee's contribution to an occupational pension scheme in the period of 4 months prior to the commencement of the winding up ;*
  - *employer's contribution to an occupational pension scheme in the period of 12 months before the relevant date;*
  - *Remuneration owed by the company to a person who is or has been an employee of the debtor and is payable in respect of the period of four months prior to the commencement of the winding, up to 800 pounds;*
  - *accrued holiday remuneration;*
  - *claims for monies advanced to pay wages or holiday remuneration;*
  - *levies on the production of coal and steel referred to in article 49 and 50 of the European Coal and Steel Community Treaty;*
  - *claims for so much of any amount which is ordered to be paid by the company under the Reserve Forces (Safeguard of Employment) Act 1985;*
  - *so much of any amount owed by the company in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.*
- *Secondary preferential debts - these creditors are paid after the ordinary preferential debts and expenses, but before all other creditors:*
  - *so much of any amount owed to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme;*
  - *an amount owed by the company to one or more eligible persons in respect of a deposit that was made through a non-UK branch of an authorised credit institution;*
  - *PAYE income tax deductions, national insurance deductions, VAT payments, Construction Industry Scheme Deductions and student loan repayments.*

- *Floating charge holders, however, section 176A of the Act requires a prescribed part of any floating charge realisation to be made available for unsecured creditors. The prescribed part is 50% of amounts that do not exceed 10,000 GBP or and/or an additional 20% of any amount that exceeds 10,000 GBP (up to an amount of 800,000 GBP).*
- *Unsecured creditors - in most circumstances, unsecured creditors are paid little to no dividend in a liquidation due to deficiencies in realisable assets.*
- *Shareholders are paid a pro-rata dividend (in accordance with the company's constitution), but only if all other creditors listed above have been paid in full.*

*If the Company had been subject to a Moratorium during the 12-week period prior to the commencement of the liquidation, the priority of payments in the liquidation would change. Pursuant to section 174A of the Insolvency Act, certain unpaid pre-moratorium or moratorium debts (such as employees or financial services debts), are paid in the subsequent liquidation, in priority of liquidators' fees and expenses. Consequently, unpaid debts within the definition of s174A of the Insolvency Act, pre-Moratorium and during the Moratorium, would be paid in priority to the Liquidators expenses (unless the debt is accelerated debt). The order of priority of payments in the liquidation would be as follows, in priority to all other claims (my emphasis added), per section 174A of the Insolvency Act:*

- a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company; and*
- b) moratorium debts and priority pre-moratorium debts.<sup>1</sup>*

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<sup>1</sup> s174A(3) and s174(2)(b) of the Insolvency Act.

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

Commented [WPA11]: 7/15

**Prior to going into compulsory liquidation on 23<sup>rd</sup> December 2022, under pressure from its bank, Fretus Bank plc, and in order to prevent it from demanding repayment of the company's loans, Marbley Q Limited ("the Company"), granted a debenture in favour of Fretus Bank plc in February 2022. 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 14<sup>th</sup> October 2022.**

**In July 2022, as the Company continued to suffer cash flow problems, the directors approved the sale of two (2) marble cutting machines to Rita Perkins (a director) for GBP 10,000 in cash. The machines had been bought for GBP 25,000 a year before.**

**A month before the winding up order was made, Rita Perkins received an email from Hard and Fast 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 marble was seen as essential by the Company, the board authorised a payment of GBP 8,000 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 3,000 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 Fretus 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]

Commented [WPA12]: 3/5 a reasonable attempt but one which appears to confuse who the debenture holder is and who the chargor is. It is the bank taking the debenture to secure indebtedness owed by Marbley Q Ltd. The explanation of s 245 is good but due to the misunderstanding of the facts, the application is not entirely convincing.

**The floating charge in favour of Fretus Bank plc;**

**Section 245 of the Act voids floating charges granted within the Relevant Period to pre-existing unsecured creditors. I have unpacked this section as follows:**

- **I have assumed that Marbley Q was a pre-existing unsecured creditor of Fretus Bank prior to February 2022, as this is not clear on the facts;**
- **The Relevant Period, which is defined by s245(5)(d) of the Act, is the period 12 months ending on the appointment of the liquidator.<sup>2</sup>**

<sup>2</sup> Section 245(3)(b) of the Act.

- *The Relevant Period is extended to 24 months if the person in whose favour the charge was created is connected<sup>3</sup> with the company.<sup>4</sup> I have assumed that Marbley Q is not related to Fretus Bank, given this is not advised on the facts; and*
- *Therefore, as the debenture was granted in February 2022 and the winding-up commenced on 23 December 2022, the transaction occurred during the Relevant Period;*
- *Sections 245(2) and 245(6) of the Act provides that the floating charge is not invalid to the extent of the aggregate of, the:*
  - *value of consideration given for the creation of the charge as consists of money paid, or goods or services supplied, at or after the creation of same;<sup>5</sup> or*
  - *value of consideration given for the creation of the charge as consists of the discharge or reduction of any<sup>6</sup> debt of the company, at or after the creation of same.*

*According, to the factual matrix, the consideration for entering into the debenture was to prevent Marbley Q from demanding payment of overdue debts from Fretus Bank. It appears that this is not sufficient consideration to meet the requirements of s245(2) of the Act.*

- *Section 245(4) of the Act provides that where s 245(3)(b) of the Act applies (ie Marbley Q is not 'connected' to Fretus Bank), then the liquidator needs to prove, at the time of entering into the debenture, that Fretus Bank was unable (or the debenture caused it to be unable) to pay its debts within the meaning of s123 of the Act. There is insufficient information<sup>7</sup> on the facts to determine whether s123 of the Act was triggered at the time of entering into the debenture.*

*Therefore, subject to the liquidator proving that Fretus Bank was unable to meet its debts at the time of entering into the debenture (within the meaning of s123 of the Act), it appears that Marbley Q's debenture is likely invalid by reason of being in breach of s245 of the Act.*

*In the alternative, if the liquidator can establish that the effect of the debenture was to elevate Marbley Q from an unsecured creditor to a secured creditor, then s 239 of the*

<sup>3</sup> Connected is defined by s249 of the Act, and includes directors, shadow directors or associates of same.

<sup>4</sup> Section 245(3)(a) of the Act.

<sup>5</sup> At, or after, was considered further in *Re Shoe Lace Ltd* [1193] BCC 609.

<sup>6</sup> But not necessarily debt that limits personal guarantee liabilities of the director(s): *In Re Fairway Magazines* [1992] BCC 924.

<sup>7</sup> Examples of possible further information that may assist include: did the debenture change the timing of the due and payable date of that debt; did Fretus Bank have any other creditor debts that were presently due and payable; what was Fretus Bank's financial performance and position at that time; did Fretus Bank have access to any other sources of funds to cover any cash shortfalls (like equity or debt injections from related or unrelated parties); etc.

Act may apply.<sup>8</sup> I have not repeated my analysis of s239 here, given (*inter alia*) I deal with this in greater detail at question 4.3 and because the entering into the debenture likely arose outside the Relevant Time (being outside 6 months from the appointment of the liquidator) (assuming Marbley Q is not connected to Fretus Bank).<sup>9</sup>

Whether the liquidator should seek to challenge this debenture would depend on the quantum of the debenture, commerciality and whether sufficient floating assets exist.

Question 4.2 [maximum 6 marks]

**The sale of the marble cutting machines; and**

I note that s127 of the Act does not apply to this matter, given the marble cutting machine sale occurred before the liquidation.

Section 238 of the Act provides that where:

- a company - ie Fretus Bank;
- has at the 'relevant time'; and

Relevant time is relevantly defined by s240(1)(a)<sup>10</sup> as being at a time during the period of 2 years from the onset of insolvency.<sup>11</sup> Given Rita Perkins is a director and the sale occurred within 2 years of the winding-up of Fretus Bank, the transaction occurred during the relevant time. Nonetheless, section 240(2) of the Act requires that the transaction have occurred at a time when Fretus Bank was unable (or the transaction caused it to be unable) to pay its debts within the meaning of s123 of the Act. This inability is presumed, by s240(2), by reason of the director's involvement, and is probable given the cash flow difficulties provided in the factual matrix.

- entered into an undervalued transaction with any person; then

Section 238(4) of the Act provides that an undervalued transaction occurs if it is a gift or no consideration or the value is significantly less than the values worth of the asset. The facts say that the director paid \$10k for marble cutting machines that a year prior had been purchased for \$25k. The facts do not provide whether the machines had depreciated in value during that year (which it likely has), whether the machines are in good repair and working order or whether director sought an independent valuation. It is unlikely that the value of the machines at the time of the sale were 'significantly less' than its values worth.

<sup>8</sup> Re *MC Bacon Ltd* [1990] BCC 78, which involved a similar situation in which a debenture was used to elevate the security position of a bank.

<sup>9</sup> Sections 240(1)(b), 240(3)(e) and 249 of the Act.

<sup>10</sup> Connected is defined by s249 of the Act, and includes directors, shadow directors or associates of same.

<sup>11</sup> I have assumed that section 240(3)(e) of the Act applies in this situation, given the facts says that Fretus Bank entered into liquidation and there is no mention of any other formal appointments.

**Commented [WPA13]:** 4/6 again a strong explanation of the law but the application to the facts is rather confused due to the misunderstanding as to whether it is the bank or the Company which has entered liquidation.

- *the Liquidator may make an application to court under s241 of the Act for orders (eg orders revesting the machines in the liquidator or orders that the director pay the difference in value between what the machines were worth and what the director paid). I note that s238(5) of the Act provides a potential defence to a defendant in that the court must be satisfied that the company entered into the transaction in good faith and for the purpose of carrying on its business and there were reasonable grounds to believe that the transaction would benefit the company. There are no indicators on the facts of this defence being enlivened.*

*Given the issues that I have highlighted above in relation to s238(4) of the Act, it is unlikely that a liquidator would be successful in bringing an application under s241 of the Act to void this alleged undervalue transaction. It also is unlikely commercial, given the costs (ie liquidator and legal costs) involved in running such a small claim in court.*

*In the alternative to the above, the anti-deprivation rule prohibits the deprivation of an insolvent party's assets, which otherwise would have been available in the liquidation. A key element of this rule is that the deprivation itself must be the trigger for the insolvency. On the facts, it could not be said that the deprivation (ie the transfer of the marble cutting machines to the director) triggered the liquidation, given the liquidation did not occur until approximately 5 months later.*

**Question 4.3 [maximum 4 marks]**

**The payments to Hard and Fast Ltd.**

*Section 239 of the Act provides that where Fretus Bank has:*

- *at the Relevant Time;*

*Relevant Time is defined as 6 months from the onset of insolvency (by s240(1)(b) of the Act), given, I assume, that Hard and Fast is not connected<sup>12</sup> to Fretus Bank. Onset of insolvency is the date of the liquidation, pursuant to s240(3)(e) of the Act.<sup>13</sup>*

*For s240(1) to be enlivened, section 240(2) of the Act requires that the transactions have occurred at a time when Fretus Bank was unable (or the transaction caused it to be unable) to pay its debts within the meaning of s123 of the Act. This element is presumed to be satisfied on the facts, due to the cash flow difficulties, special arrangements, demands for payment and implied inability to pay debts as and when due and payable.*

*The facts say that both the 8,000 GBP and 3,000 GBP transactions occurred within one month of the liquidation, thereby, occurring during the Relevant Time.*

- *given a preference to any person;*

*Section 239(4) of the Act provides that a preference is given if an only if a person is a company creditor, surety or guarantor and the effect of the transaction puts that person in a better position had they not received the transaction.*

*The effect of the 8,000 GBP payment had the effect of paying pre-existing debts, which presumably put Hard and Fast in a better position had they not received the 8,000 GBP.*

*The 3,000 GBP did not have a similar effect, given the monies were for cash on delivery and not for a liability.*

- *the company was influenced<sup>14</sup> into giving the desired effect of giving the person a better position had they not received the transaction (per section 239(5)); and*

*I assume that Hard and Fast is not connected to Fretus Bank, thereby, not enlivening the presumption in s239(6). As Hard and Fast was demanding*

<sup>12</sup> Connected is defined by s249 of the Act, and includes directors, shadow directors or associates of same.

<sup>13</sup> Given the facts says that Fretus Bank entered into liquidation and there is no mention of any other formal appointments.

<sup>14</sup> The meaning of the word influence was dealt with in *Re MC Bacon Ltd* [1990] BCC 78.

**Commented [WPA14]:** 0/4 unfortunately, the answer is misconceived as s 239 can only apply to transactions entered into prior the commencement of the winding up ie the date of the petition. As the transactions here occurred after that date, the only possible action available to the liquidator would be s 127. Section 239 cannot apply on the facts.

*payment and refusing to supply unless on cash on delivery terms, it is probable that this element is met.*

- *the liquidator of Fretus Bank may apply to court for an order under s 241(1) of the Act (eg order may be the refund of the monies paid to Hard and Fast).*

*Therefore, subject to the above assumptions, it is likely that Hard and Fast is liable to refund the 8,000 GBP transaction as a preference, but not the 3,000 GBP. However, given the small quantum of monies, it is unlikely commercial for a liquidator to commence proceedings.*

**\* End of Assessment \***