



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

Commented [WPA1]: 44/50 = 88% a generally excellent effort

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

Commented [WPA2]: 10/10

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.**

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.**

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

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 [WPA3]: 10/10

Question 2.1 [maximum 5 marks]

Commented [WPA4]: 5/5

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) The following parties have standing to bring an action under section 423 of the Insolvency Act 1986 to reverse transactions executed for the purpose of defrauding creditors: (a) the official receiver, the liquidator, the administrator and any victim of the fraudulent act (in this last case upon court authorization) whenever the company is being wound up or is in administration; (b) the supervisor of a company submitted to a Company Voluntary Arrangement (CVA) - if the victim of the fraud is bound to the CVA - or the victim of the transaction, regardless of whether he or she is subject to the approved CVA; (c) the victim of the legal transaction to defraud creditors in all other cases.*

*(ii) The main purpose of a disqualification order is to protect the public and to serve as a deterrent to frivolous transactions and as tool to raise the standard of behaviour of directors. Currently, under section 7(1) of the Company Directors Disqualification (CDDA) Act 1986, the following parties are allowed to apply for a disqualification order under section 6 of the CDDA: (i) Secretary of State, or (b) the official receiver, if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales. Further, under section 7 2(A) of the CDDA, the Secretary of State may waive an application to the Court if he considers that the conditions mentioned in section 6(1) are satisfied in relation to any person who has offered to give him an disqualification undertaking, and then he may accept the undertaking if he considers it is in the public interest for him to do so (instead of applying, or proceeding with an application, for a disqualification order).*

*(iii) Under section 246ZB of the Insolvency Act 1986 the administrator of a company in administration may bring an application against a person who is or has been a director of the company for wrongful trading. In addition, Insolvency Act 1986 section 246ZB 2(b) regulates who might be a target of the application brought by the administrator, as follows: This subsection applies in relation to a person if- (a)the company has entered insolvent administration, (b)at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and (c)the person was a director of the company at that time.]*

Question 2.2 [maximum 5 marks]

Commented [WPA5]: 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 Moratorium procedure establishes a stay period on actions based on debts incurred by the company prior to the Moratorium, so that with respect to pre-Moratorium debts there is a payment holiday (i.e., debts that become due prior to the Moratorium application are generally subject to the stay period). However, there are five categories of claims that can be cited that are not subject to Moratorium: (1) debts*

*incurred during the Moratorium period, (2) the monitor's remuneration or expenses, (3) goods or services supplied to the company during the Moratorium, (4) wages or salary arising under a contract of employment, (5) rent in respect of a period during the Moratorium, (6) pré-moratorium debts for which the Moratorium does not provide the company a payment holiday, such as financial services debts owed under a guarantee to a bank during a Moratorium (Corbin & King Holding Ltd (2022) EWHC 340 (Ch).]*

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

Commented [WPA6]: 15/15

Question 3.1 [maximum 6 marks]

Commented [WPA7]: 6/6 good well explained

**Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?**

*[The appointment of an administrator does not mean the immediate termination of the company's executor's contracts. Although it is common to find contractual clauses to this effect, more and more clauses containing such provisions are being declared null and void, because it may be that the administrator needs the supply of essentials goods or services to conclude the reorganization proceeding, in this case the administration. For this reason, section 233 of the Insolvency Act 1986 prescribes the supply to the company in administration of items that are essential to the administration, such as gas, electricity, water, and communications services. In particular the expression communications services cover the supply of goods and services, such as computer hardware and software or advice and technical assistance, data storage, processing and website hosting. In addition, suppliers may not condition the sale of such goods or services on the payment of outstanding debts as a condition of supplying the goods or services in question. What section 233 of the act does permit is for the supplier to require the administrator's personal guarantee on debts arising from the supply of goods and services to the company under administration.*

*Moreover, section 233A provides that a supplier of such services generally cannot rely on an insolvency-related term in a supply contract that would otherwise authorize the supplier to terminate the supply, change the terms of the supply, or force higher payments for continued supply.*

*In 2020, the company's guarantees under administration were increased with the inclusion of section 233B to the Insolvency Act 1986, which prohibits the supplier of goods or services from stipulating a contractual term that the supply would be interrupted if the company entered into insolvency proceedings, as well as prohibiting the supplier from placing any other term that would allow him to interrupt or restrict continued supply. For example, the supplier cannot require a debtor who has entered into an insolvency proceeding to pay pre-insolvency debts in order for the supply of goods or services to continue. Finally, by section 233B, the supplier cannot insist on a personal guarantee from the administrator, as allowed under section 233.*



*On the other hand, section 233B also offers guarantees to the supplier. An executory contract can be terminated if the company or insolvency office holder consents. If there is no consent, the supplier can make an application to the court for termination, which may be granted if the court finds that continuation of the contract would cause severe suffering or privation to the supplier.*

*Thus, section 233 deals with the continuity of Supplies of gas, water, electricity, etc., section 233A provides further protection of essential supplies and section 233B supplements the above with provisions on protection of supplies of goods and services. It is important to mention that sections 233, 233A and 233b apply to a company in administration or in a Company Voluntary Arrangement. Section 233B goes further and also applies to companies that have entered into a Moratorium or Restructuring Plan.]*

Question 3.2 [maximum 9 marks]

Commented [WPAB]: 9/9 very good

***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?***

*[Initially, it is important to note that the liquidator can realize assets that belong to the company. That is, if some of the debts are secured by assets of the company, as in situations of a hire purchase or receivables financier, such assets will not belong to the company and cannot be realized. That is, creditors with fixed security will usually enforce their security outside the formal insolvency proceedings.*

*In any case, the statutory order for payments to creditors of a debtor in liquidation would be (i) expenses (considering the liquidator's or office-holder's remuneration), (ii) preferential creditors (subdivided into ordinary and secondary), floating charge holders (regulated under section 176A of the Insolvency Act 1986); and (iv) unsecured creditors. Below, each class of creditor or expense is fully detailed, as well as the nature of each class's rights explained.*

- (i) *Under section 115 of the Insolvency Act 1986 and rules 6.42 and 7.108 of the Insolvency Rules 2016 there are determinate expenses that are comprehend with maximum priority in order to enable the winding up process be performed. Winding up expenses, including the receiver's fees, are given priority over all other claims and are paid preferentially in the following order: (i) expenses incurred by the liquidator to preserve, collect and realize company assets, (ii) security expenses provided by the liquidator to maintain assets, (iii) expenses for fees of technical assistants for preparing statements on the company's business or accounts, (iv) disbursements of the liquidator for carrying out the measures for winding up the company, (v) remuneration and salaries of persons employed by the liquidator to provide*

*services for the company, (vi) the liquidator's remuneration; (vii) capital gain taxes due to the realization of the company's assets; (viii) other expenses contracted by the liquidator for the exercise of his functions. Therefore, these credits are inherent to the very process of liquidation of the company's assets and have a preferential nature to all the others, because without the primary payment of these expenses, not even the liquidation process could be performed.*

- (ii) *Preferential claims are dealt with in sections 386, 387 and Schedule 6: Section 175 of the Insolvency Act 1986 and there are two classes: ordinary and secondary. Ordinary are paid before secondary preferential claims. However, within the same class (either ordinary or secondary), the claims are listed equally among them and are written off in equal proportions if the insolvent company's assets are insufficient to pay the entire class.*

*Under Schedule 6 of the Insolvency Act, the following debts of the company are the termed "ordinary preferential debts": (1) amounts due on employer's contribution to an occupational pension scheme, such contributions being discounted from what the company has already paid to the employee in the 4-month period prior to the commencement of insolvency proceedings; (2) amounts due on employer's contribution to an occupational pension scheme for the 12 months preceding the relevant date; (3) amounts due to employees for all or part of the 4-month period prior to the commencement of insolvency proceedings, up to a limit of £800; (4) amounts due in respect of vacations of pre-winding up employees (including amounts due for absence from work due to illness or "other good cause"); (5) claims by money lenders used to pay wages or holiday remuneration; (6) levies on the production of coal and steel under articles 49 and 50 of the European Coal and Steel Community Treaty (important to note that this is hardly applicable nowadays, as such claims in the UK have become rare); (7) claims that are due under the Reserve Forces (Safeguard of Employment) Act 1985.*

*Therefore, so far the nature of the ordinary preferential debts is essentially labor claims or claims that have some kind of connection with labor monies.*

*Recently, however, other claims have been included in the class of preferential debts, which are now classified as secondary preferential debts under section 386 of the Insolvency Act 1986. Among the debts that have been included in this class are those relating to deposits that were made by the Financial Services Compensation Scheme in favor of depositors who held money in financial institutions that became insolvent.*

*Currently, the secondary preferred debts are as follows: (8) amounts due from the company in respect of the holder of the deposit title - not exceeding what the Financial Services Compensation Scheme would pay to*

*the holder of that right; (9) amounts due from the company in respect of the holder of the deposit title - exceeding what the Financial Services Compensation Scheme would pay to the holder of that right; (10) amount due from the company in respect of the right to (a) a deposit made through a branch of a foreign credit institution authorised by the UK competent authority or (b) a deposit that would have been eligible if made by that credit institution through a UK Branch; (11) Crown preference for certain specified debts due to the taxation authority; (12) PAYE income tax deductions, national insurance deductions, VAT Payments, Construction Industry Scheme deductions and student loan repayments.*

*Therefore, the nature of the secondary preferential is more related to a political choice of the legislator, who regulated which credits would enjoy preference, with emphasis on those credits related to Financial Services Compensation Scheme and related with sums owed to the Crown and tax authorities.*

- (iii) *After the payment of preferential creditors, the next ones will be floating charge holders. If there is more than one, as a rule priority is granted to the floating charge that was created first. However, before proceeding to payment, the receiver should note section 176 of the Act, which applies to a floating charge created on or after September 15, 2003. In this case, the receiver has the duty to reserve the "prescribed part", which is nothing more than an amount of assets of the insolvent company that can satisfy a minimum percentage of the unsecured debts. The net property related to this prescribed part is calculated after payment of the expenses and preferential debts. And, if the net property calculated is 10,000 pounds, the prescribed part is half of that. However, if it is less than this minimum of 10,000 pounds, the receiver may understand that the distribution of this minimum to the unsecured creditors does not apply, because it would not benefit them. Third, if the net property exceeds 10,000 pounds, the prescribed part is 50% of the 10,000 plus 20% of that which is in surplus, up to the more than 800,000 pounds prescribed part. A secured creditor who holds a portion of credit together with the unsecured creditor class may not benefit from the prescribed part.*

*Finally, it may be stated that the nature of this class of claims are those secured by which the insolvent company provided additional security for the completion of the legal transaction at the pre-insolvency proceeding.*

- (iv) *Credits that come last are generally trade credits of the insolvent company, such as suppliers. Unsecured creditors hardly ever receive amounts from the liquidation of assets, and when they do receive amounts it is generally a partial amount that does not cover the totality of their claim.*

- (v) *Shareholders. In the event that there is a surplus after the payment of all classes of creditors above, the surplus may be distributed to the shareholders of the insolvent company, pro rata to the shares each one holds according to the company's bylaws.*

*Finally, if a company in Moratorium goes into liquidation within 12 weeks of the end of the Moratorium, the priority of debts set out in the moratorium may be different in liquidation. Basically, section 174A of the Insolvency Act provides that some unpaid pre-moratorium or moratorium debts are paid in liquidation, even before the receiver's fees and the expenses of the winding up proceeding. Thus, there would be a "super priority" class within the liquidation. For example, amounts owed to pre- and post-moratorium employees - such as that of a director that has not been paid since the period pre-Moratorium or "financial services" debts, since this financial debt is not an accelerated debt.]*

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

Commented [WPA9]: 9/15

*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 [WPA10]: 5/5

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

*[Section 245 of the Insolvency Act 1986 prevents pre-existing unsecured creditors from obtaining a security interest in a floating charge just before the company enters formal insolvency proceedings. If the entity receiving the security of a floating charge to a pre-existing unsecured debt is a related party of the company in financial distress, the relevant time at which the granting of the floating charge may be invalidated is 2 years prior to the onset of insolvency. If it is not a connected person, the period to declare the invalidity of this security is the 12-month period prior to the onset of insolvency, always taking into consideration that in this period the debtor would not be able to pay its debts, under the terms foreseen in section 123 of the Act, or that it has become impossible to pay the debts precisely in consequence of the transaction under which the charge is created.]*

*It must be considered that this provision does not invalid floating charges given upon "new consideration" for the charge in two situations: (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after the creation. The consideration must be given at the same time the charge is created or with a minimum delay, (b) the value of so much of the consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company. Therefore, it allows lenders or suppliers which provided fresh funding to the debtor company from taking a floating charge for the respective new funding.*

*Considering the above, the situation of Marbleys Q Ltd fits the provisions of Section 245 of the Act, since: (a) the floating charge in favor of Fretus Bank plc. was created in February 2022, that being within 12 months prior to the onset of insolvency which is in this particular case the date of the commencement of the winding up (section 240 3 (e) of the Act); (b) the Company was already struggling to pay its creditors when the charge was given, especially due to Fretus Bank plc's request of repayment of loans; (c) the debenture issued with the floating charge over the whole of the company's undertaking was given to prevent Fretus Bank to proceed with the request of repayment of the company's loans and there was no information about a new consideration or reduction of any debt of the company after the Company gave the Bank the security of floating charge.*

*Therefore, the liquidator may request the avoidance/invalidation of the floating charge issued by Marbley Q Ltd to guarantee the debentures issued in favor of Fretus Bank plc.*

Question 4.2 [maximum 6 marks]

Commented [WPA11]: 4/6 a good answer but the law might have been explained using the wording of the section a little more. Some consideration of the statutory defence might have helped also.

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

*[In this case, the liquidator can attack the transaction under section 238 of the Act, as it took place in a relevant period before the company went into liquidation (i.e. two years before the commencement of liquidation) and was made at undervalue. The liquidator must demonstrate to the court that: (a) the sale of the two Marbley Q Ltd cutting machines to Rita Perkins (a director) for GBP 10,000 in cash is significantly less than its proper value, considering that these machines were bought a year before for GBP 25,000; (b) the legal transaction was performed when the company was already struggling to pay its debts; (c) the sale was concluded with a connected person (a director), which means that the favored person is connected to the company because of it there is a presumption that the company was insolvent or have become insolvent because of the undervalue transaction, unless the contrary is proved.]*

*Therefore, the liquidator may attack the transaction made to defraud creditors and request the entry of an order to restore the prior position of the company if the undervalue transaction had not been performed.]*

**Question 4.3** [maximum 4 marks]

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

*[The rule in section 239 of the Act aims to prevent the company at a relevant time from giving preference to any creditor. If this happens, the liquidator can make an application to the court, for restoring the position to what it would have been if the company had not given that preference.]*

*To do so, the liquidator must demonstrate to the court that (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.*

*Furthermore, section 239 (7) clarifies that the fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.*

*In the concrete case, Hard and Fast Ltd received from Marbley Q Limited one month before the winding up order about GBP 8,000 for the outstanding debts and a further payment of GBP 3,000 for further supplies up to the date of the winding up order. This clearly put Hard and Fast Ltd - which was already an unsecured creditor of Marbley Q Ltd - in a much better position than it would have been had it not received this preference.*

**Commented [WPA12]:** 0/4 the payment was not made at a relevant time. It was made after the commencement of the liquidation so that s 239 could not apply. Section 127 applies here.

*For this reason, the receiver may attack under section 239 of the Act the legal transaction and request the entry of an order for restoring the position to what it would have been if the company had not given that preference.]*

**\* End of Assessment \***