



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER VII

GENERAL

Provisions applying to liquidations and administrations

101 Transactions at an undervalue and preferences (England and Wales)

- (1) Subject to the following provisions of this section and to section 102 below, where a company has at a relevant time entered into a transaction with any person at an undervalue or given a preference to any person—
 - (a) the office holder may apply to the court for an order under this section; and
 - (b) the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction or, as the case may be, had not given that preference.
- (2) For the purposes of this section and section 102 below a company enters into a transaction with a person at an undervalue if—
 - (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or
 - (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
- (3) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.
- (4) For the purposes of this section and section 102 below a company gives a preference to a person if—
- (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.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b) above.
- (6) A company which has given a preference to a person connected with the company at the time the preference was given shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5) above.
- (7) The fact that something has been done in pursuance of the order of a court shall not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.
- (8) Subject to subsection (9) below, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time for the purposes of this section if the transaction is entered into or the preference is given—
- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company, at a time in the period of two years ending with the commencement date; or
 - (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six months ending with that date; or
 - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (9) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (8)(a) or (b) above, that time shall not be a relevant time for the purposes of this section unless the company—
- (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference ;
- but the requirements of this subsection shall be presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.
- (10) For the purposes of subsection (8) above the commencement date is—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (a) in a case where this section applies by reason of the making of an administration order or of a company's going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made; and
 - (b) in a case where this section applies by reason of a company's going into liquidation at another time, the date of the commencement of the winding up.
- (11) For the purposes of this section a person who is connected with a company by reason only of being its employee shall be deemed not to be connected with the company.