



# Insolvency (No. 2) Act 1994

## 1994 CHAPTER 12

An Act to amend the law relating to company insolvency and winding up, and the insolvency and bankruptcy of individuals, so far as it concerns the adjustment of certain transactions; and for connected purposes. [26th May 1994]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Adjustment of certain transactions in case of liquidation etc: England and Wales**

(1) In subsection (2) of section 241 of the Insolvency Act 1986 (which relates to orders under section 238 or 239 and, in paragraphs (a) and (b), protects certain interests and certain persons who received benefits) in each of paragraphs (a) and (b), for the words “in good faith, for value and without notice of the relevant circumstances” there shall be substituted “in good faith and for value”.

(2) After that subsection there shall be inserted the following subsection—

“(2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.”

(3) For subsection (3) of that section there shall be substituted the following subsections—

- “(3) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—
- (a) the fact that the company in question entered into the transaction at an undervalue; or
  - (b) the circumstances which amounted to the giving of the preference by the company in question;
- and subsections (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.
- (3A) In a case where section 238 or 239 applies by reason of the making of an administration order, a person has notice of the relevant proceedings if he has notice—
- (a) of the fact that the petition on which the administration order is made has been presented; or
  - (b) of the fact that the administration order has been made.
- (3B) In a case where section 238 or 239 applies by reason of the company in question going into liquidation immediately upon the discharge of an administration order, a person has notice of the relevant proceedings if he has notice—
- (a) of the fact that the petition on which the administration order is made has been presented;
  - (b) of the fact that the administration order has been made; or
  - (c) of the fact that the company has gone into liquidation.
- (3C) In a case where section 238 or 239 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—
- (a) where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation;
  - (b) in any other case, of the fact that the company has gone into liquidation.”

## **2 Adjustment of certain transactions in case of bankruptcy: England and Wales**

- (1) In subsection (2) of section 342 of the Insolvency Act 1986 (which relates to orders under section 339 or 340 and, in paragraphs (a) and (b), protects certain interests and certain persons who received benefits) in each of paragraphs (a) and (b), for the words “in good faith, for value and without notice of the relevant circumstances” there shall be substituted “in good faith and for value”.
- (2) After that subsection there shall be inserted the following subsection—
- “(2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—
- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference, then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.”

(3) For subsection (4) of that section there shall be substituted the following subsections—

“(4) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the individual in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of subsection (2A)(a), a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or
- (b) of the fact that the individual in question has been adjudged bankrupt.

(6) Section 249 in Part VII of this Act shall apply for the purposes of subsection (2A)(b) as it applies for the purposes of the first Group of Parts.”

### **3 Adjustment of certain transactions in case of liquidation etc: Northern Ireland**

(1) In paragraph (2) of Article 205 of the Insolvency (Northern Ireland) Order 1989 (which relates to orders under Article 202 or 203 and, in sub-paragraphs (a) and (b), protects certain interests and certain persons who received benefits) in each of sub-paragraphs (a) and (b), for the words “in good faith, for value and without notice of the relevant circumstances” there shall be substituted “in good faith and for value”.

(2) After that paragraph there shall be inserted the following paragraph—

“(2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub-paragraph (a) or (as the case may be) sub-paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.”

(3) For paragraph (3) of that Article there shall be substituted the following paragraphs—

“(3) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the fact that the company in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the company in question;

and paragraphs (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

(3A) In a case where Article 202 or 203 applies by reason of the making of an administration order, a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the administration order is made has been presented; or
- (b) of the fact that the administration order has been made.

(3B) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation immediately upon the discharge of an administration order, a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the administration order is made has been presented;
- (b) of the fact that the administration order has been made; or
- (c) of the fact that the company has gone into liquidation.

(3C) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

- (a) where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation;
- (b) in any other case, of the fact that the company has gone into liquidation.”

#### **4 Adjustment of certain transactions in case of bankruptcy: Northern Ireland**

(1) In paragraph (2) of Article 315 of the Insolvency (Northern Ireland) Order 1989 (which relates to orders under Article 312 or 313 and, in sub-paragraphs (a) and (b), protects certain interests and certain persons who received benefits) in each of sub-paragraphs (a) and (b), for the words “in good faith, for value and without notice of the relevant circumstances” there shall be substituted “in good faith and for value”.

(2) After that paragraph there shall be inserted the following paragraph—

“(2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub-paragraph (a) or (as the case may be) sub-paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.”

(3) For paragraph (4) of that Article there shall be substituted the following paragraphs—

“(4) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the individual in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of paragraph (2A)(a), a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or
- (b) of the fact that the individual in question has been adjudged bankrupt.

(6) Article 7 shall apply for the purposes of paragraph (2A)(b) as it applies for the purposes of Parts II to VII.”

## **5 Application to the Crown**

- (1) The amendments of the Insolvency Act 1986 made by this Act bind the Crown.
- (2) The amendments of the Insolvency (Northern Ireland) Order 1989 made by this Act bind the Crown in accordance with Article 378 of that Order.

## **6 Short title, commencement and extent**

- (1) This Act may be cited as the Insolvency (No. 2) Act 1994.
- (2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act has effect in relation to interests acquired and benefits received after this Act comes into force.
- (4) Sections 1, 2 and 5(1) above extend to England and Wales only.
- (5) Sections 3, 4 and 5(2) above extend to Northern Ireland only.
- (6) This section extends to England and Wales and Northern Ireland only.