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COMMERCIAL DISPUTES **KNOW-HOW GUIDES**

ANTECEDENT TRANSACTION CLAIMS IN CORPORATE INSOLVENCIES

If a limited company enters liquidation or administration, its liquidator or administrator (also referred to as the office holder) can, in certain circumstances, seek to recover payments and other disposals of property previously made by the company. These claims are made under the Insolvency Act 1986 (“the Insolvency Act”) and are known as antecedent transaction claims. A trustee in bankruptcy has similar powers.

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This guide is concerned with antecedent transaction claims by liquidators and administrators. References below to 'a person' include companies and other legal entities.

TRANSACTIONS AT AN UNDERVALUE (S. 238 OF THE INSOLVENCY ACT)

A company enters into a transaction at an undervalue with a person if it makes a gift or receives consideration worth significantly less than the value of the property (including money) which has been transferred to that person. The transaction must also have occurred in what is defined as the relevant time. This is the period of two years ending with the commencement of the liquidation or administration (which, in the case of a compulsory liquidation is the date on which the winding-up petition was presented) provided the company was insolvent at the time of the transaction or became insolvent as a result. There is a rebuttable presumption of insolvency where the transaction is with a person connected to the company (as defined at s. 249 of the Insolvency Act).

Subject to the office holder satisfying the statutory test, the court can make an order restoring the position to what it would have been if the company had not entered into the transaction.

PREFERENCE CLAIMS (S. 239 OF THE INSOLVENCY ACT)

A company gives a preference if it does something or allows something to be done which has the effect of putting a creditor or guarantor of the company's debts in a better position than it would have otherwise have been in the event of the company going into insolvent liquidation. Further, in giving the preference, the company must have been influenced by a desire to produce that outcome and to have given the preference in what is defined as the relevant time.

For a preference, this is the period of six months ending with the commencement of the liquidation or administration, but the period increases to two years if the person preferred is connected with the company within the meaning of s. 249. In either case, the company must also have been insolvent at the time of giving the preference or have become insolvent as a result. There is a rebuttable presumption that the company had the requisite desire to prefer where the person preferred is connected with the company.

Subject to the office holder satisfying the statutory test, the court can make an order restoring the position to what it would have been if the preference had not been given.

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TRANSACTIONS DEFRAUDING CREDITORS (S. 423 OF THE INSOLVENCY ACT)

Where a company enters into a transaction at an undervalue for either of the purposes set out below (the statutory purpose), the court can later make an order restoring the position to what it would have been if the transaction had not taken place.

The purposes in question are either (i) to put assets beyond the reach of a person who is making, or may at some time make, a claim against the company, or (ii) to otherwise prejudice the interests of such a person in relation to the claim which they are making or may make.

Such claims are not subject to any time limit, but the statutory purpose generally becomes harder to prove with the elapse of time. A claim may be made under s. 423 by an office holder or a victim of the transaction. The latter, however, requires the prior leave of the court if the company is in liquidation or administration.

VOID TRANSACTIONS (S. 127 OF THE INSOLVENCY ACT)

While not, strictly speaking, an antecedent transaction claim, the effect of s. 127 should also be noted. If a company is wound up by the court, any disposition of the company's property including that made between the presentation of the winding-up petition and the making of the winding up order is rendered void unless approved by the court. If no approval (known as a validation order) is obtained from the court, the liquidator can recover the property which was transferred.

This is part of a series of practical know-how guides for those involved in commercial disputes whether the dispute has led to litigation or not. They provide basic information on a wide range of disputes topics but are not a substitute for specific legal advice. For further guidance on the topic please contact Gavin Kramer at gavin.kramer@collyerbristow.com or on +44 (0) 7956 381277 or contact any member of the commercial disputes team.



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