



Insolvency Act 1986

1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

PART VI

MISCELLANEOUS PROVISIONS APPLYING TO
COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

Adjustment of prior transactions (administration and liquidation)

245 Avoidance of certain floating charges

- (1) This section applies as does section 238, but applies to Scotland as well as to England and Wales.
- (2) Subject as follows, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—
 - (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 of the charge,
 - (b) the value of so much of that 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, and
 - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (3) Subject to the next subsection, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—
 - (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,

- (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency, 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.
- (4) Where a company creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company—
 - (a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (5) For the purposes of subsection (3), the onset of insolvency is—
 - (a) in a case where this section applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made, and
 - (b) in a case where this section applies by reason of a company going into liquidation, the date of the commencement of the winding up.
- (6) For the purposes of subsection (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.