



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART VI

#### MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

##### *Adjustment of prior transactions (administration and liquidation)*

#### **241 Orders under ss. 238, 239.**

- (1) Without prejudice to the generality of sections 238(3) and 239(3), an order under either of those sections with respect to a transaction or preference entered into or given by a company may (subject to the next subsection)—
- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,
  - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,
  - (c) release or discharge (in whole or in part) any security given by the company,
  - (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office-holder as the court may direct,
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate,
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and
  - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to

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be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

- (2) An order under section 238 or 239 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired [<sup>F1</sup>in good faith and for value], or prejudice any interest deriving from such an interest, and
  - (b) shall not require a person who received a benefit from the transaction or preference [<sup>F1</sup>in good faith and for value] to pay a sum to the office-holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

<sup>F2</sup>[(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.]

<sup>F3</sup>(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.

[ Where section 238 or 239 applies by reason of a company's entering administration, <sup>F4</sup>(3A) a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed, or
- (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule.]

[ Where section 238 or 239 applies by reason of a company's going into liquidation <sup>F5</sup>(3B) at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,

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- (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed,
  - (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule, or
  - (e) 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.]
- (4) The provisions of sections 238 to 241 apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

#### Textual Amendments

- F1** Words in s. 241(2)(a)(b) substituted (26.7.1994) by 1994 c. 12, **ss. 1(1), 5, 6(2)** (with **ss. 5, 6(3)**)
- F2** S. 241(2A) inserted (26.7.1994) by 1994 c. 12, **ss. 1(2), 5, 6(2)** (with **ss. 5, 6(3)**)
- F3** S. 241(3)(3A)(3B)(3C) substituted (26.7.1994) for s. 241(3) by 1994 c. 12, **ss. 1(3), 5, 6(2)** (with **ss. 5, 6(3)**)
- F4** S. 241(3A) substituted (15.9.2003) by 2002 c. 40, **ss. 248(3), 279, Sch. 17 para. 27(2)** (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1), Sch. 1** (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))
- F5** S. 241(3B) substituted (15.9.2003) by 2002 c. 40, **ss. 248(3), 279, Sch. 17 para. 27(3)** (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1), Sch. 1** (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

#### Modifications etc. (not altering text)

- C1** S. 241 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}
- C2** S. 241 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 2**
- C3** S. 241 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 3**
- C4** S. 241 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, **5 Table** (with reg. 24)
- C5** **Ss. 238-241** applied (with modifications) (31.1.2019) by Technical and Further Education Act 2017 (c. 19), s. 47(2), **Sch. 3**; S.I. 2018/1161, reg. 3(c)
- C6** **Ss. 238-241** applied (with modifications) (31.1.2019) by Technical and Further Education Act 2017 (c. 19), s. 47(2), **Sch. 4**; S.I. 2018/1161, reg. 3(d)

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