



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)

242 Gratuitous alienations (Scotland)

- (1) Where this subsection applies and—
- (a) the winding up of a company has commenced, an alienation by the company is challengeable by—
 - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement, or
 - (ii) the liquidator;
 - (b) an administration order is in force in relation to a company, an alienation by the company is challengeable by the administrator.
- (2) Subsection (1) applies where—
- (a) by the alienation, whether before or after 1st April 1986 (the coming into force of section 75 of the Bankruptcy (Scotland) Act 1985), any part of the company's property is transferred or any claim or right of the company is discharged or renounced, and
 - (b) the alienation takes place on a relevant day.
- (3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual; and in that subsection "relevant day" means, if the alienation has the effect of favouring—
- (a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act 1985) of the company, a day not earlier than 5 years before the date on which—

Status: This is the original version (as it was originally enacted).

- (i) the winding up of the company commences, or
 - (ii) as the case may be, the administration order is made; or
 - (b) any other person, a day not earlier than 2 years before that date.
 - (4) On a challenge being brought under subsection (1), the court shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate; but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—
 - (a) that immediately, or at any other time, after the alienation the company's assets were greater than its liabilities, or
 - (b) that the alienation was made for adequate consideration. or
 - (c) that the alienation—
 - (i) was a birthday, Christmas or other conventional gift, or
 - (ii) was a gift made, for a charitable purpose, to a person who is not an associate of the company,which, having regard to all the circumstances, it was reasonable for the company to make:
- Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the transferee in the alienation.
- (5) In subsection (4) above, "charitable purpose " means any charitable, benevolent or philanthropic purpose, whether or not it is charitable within the meaning of any rule of law.
- (6) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration or no adequate consideration to the extent that the prior obligation was undertaken for no consideration or no adequate consideration.
- (7) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge an alienation of a company made for no consideration or no adequate consideration.
- (8) This section applies to Scotland only.