

รายการอ้างอิง

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ภาคผนวก

The Bankruptcy Act 1938

Section 67d.

(1) For the purposes of, and exclusively applicable to, this subdivision d;

(a) "Property" of a debtor shall include only his nonexempt property;

(b) "Debt" is any legal liability whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent;

(c) "Creditor" is a person in whose favor a debt exists;

(d) a person is "insolvent" when the present fair salable value of his property is less than the amount required to pay his debts; and to determine whether a partnership, is insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts, and also the amount realizable on any unpaid subscription to the partnership, of each limited partner; and

(e) consideration given for the property or obligation of a debtor is "fair"

(1) when, in good faith, in exchange and as a fair equivalent therefor, property is transferred or an antecedent debt is satisfied, or

(2) when such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property of obligation obtained.

(2) Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition (in bankruptcy or of an original petition) initiating a proceeding under (Chapter X, XI, XII, or XIII of) this Act by or against him is fraudulent

(a) as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent, without regard to his actual intent;

(b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such

business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent; or

(c) as to then existing and future creditors, if made or or incurred without fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature; or

(d) as to then existing and future creditors, if made or or incurred with actual intent as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors.

(3) Every transfer made and every obligation incurred by a debtor who is or will thereby be rendered insolvent, within four months prior to the filing of a petition (in bankruptcy or of an original petition) initiating a proceeding under (Chapter X, XI, XII, or XIII of) this Act by or against him is fraudulent, as to then existing and future creditors (,)

(a) if made or incurred in contemplation of the filing of a petition initiating a proceeding under this Act by or against the debtor or in contemplation of liquidation of all or the greater portion of the debtor's property, with intent to use the consideration (,) obtained for (the) such transfer or obligation (,) to (effect a preference to a third person voidable under section 60 of this Act.) enable any creditor of such debtor to obtain a greater percentage of his debt than some other creditor of the same class, and

(b) if the transferee or obligee of such transfer or obligation, at the time of such transfer or obligation, knew or believed that the debtor intended to make such use of such consideration. The remedies of the trustee for the avoidance of such transfer or obligation and of (such) any ensuing preference shall be cumulative: Provided, however, that the trustee shall be entitled to only one satisfaction with respect thereto.

(4) Every transfer of partnership, property and every partnership obligation incurred within one year prior to the filing of a petition (in bankruptcy or of an original petition) initiating a proceeding under (Chapter XI or XII of) this Act by or against the partnership, when the partnership is insolvent or will be thereby rendered insolvent, is fraudulent as to partnership creditors existing at the time of such transfer or obligation without regard to actual intent if made or incurred

(a) to a partner, whether with or without a promise by him to pay partnership debts, or

(b) to a persons not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

(5) For the purposes of this subdivision d, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor (and no creditor) could thereafter have acquired any right in the property so transferred superior to the right of the transferee therein, but, if such transfer is not so perfected prior to the filing of the petition (in bankruptcy or of an original petition) initiating a proceeding under (Chapter XI or XII of) this Act, it shall be deemed to have been made immediately before the filing of such petition.

(6) A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this Act, which is fraudulent under this subdivision d against creditors of such debtor having claims provable under this Act, shall be null and void against the trustee, except as to a bona fide purchaser, lienor, or obligee for a present fair equivalent value: Provided, however, that the court may, on due notice, order such transfer or obligation to be preserved for the benefit of the estate and, in such event, the trustee shall succeed to and may enforce the rights of such transferee or obligee: And provided further, that such purchaser, lienor, or obligee, who without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision d, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

(7) Nothing contained in this subdivision d shall be construed to validate a transfer which is voidable under section 60 of this Act.

The Bankruptcy Code, Rules and Forms 1997

Section 548. Fraudulent transfers and obligations

(a)

(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily -

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)

(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which -

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)

(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section -

(A) "value" means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; and

(D) a swap participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer .

(3) In this section, the term "charitable contribution" means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution -

(A) is made by a natural person; and

(B) consists of -

(i) a financial instrument (as that term is defined in section 731(c)(2)(c) of the internal Revenue Code of 1986; or

(ii) cash.

(4) In this section, the term "qualified religious or charitable entity or organization" means -

(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

The Bankruptcy Act 1914Avoidance of certain settlementsSection 42(1)

Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.



The Insolvency Act 1986

Adjustment of prior transactions (administration and liquidation) (company)

Section 238. Transactions at an undervalue (England and Wales)

(1) This section applies in the case of a company where -

(a) an administration order is made in relation to the company , or

(b) the company goes into liquidation; and "the office-holder" means the administrator or liquidator, as the case may be.

(2) Where the company has at the relevant time (defined in section 240) entered into transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if -

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied -

(a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b) that at the time it did so there were reasonable grounds for believing that the transactions would benefit the company.

Section 240. "Relevant time" under Section 238 and 239

(1) Subject to the next subsection, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given -

(a) in the case of a transaction at an undervalue or of the preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in a period of 2 years ending with the onset of insolvency (which expression is defined below),

(b) in a case of a preference which is not such a transaction and is not given, at a time in a period of 6 months ending with the onset of insolvency, and

(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.

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 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 or preference; but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is concerned with the company.

(3) For the purposes of subsection (1), the onset of insolvency is -

(a) in a case where section 238 or 239 applies by reason of the making of an administration order or of a company going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made, and

(b) in a case where the section applies by reason of a company going into liquidation at any other time, the date of the commencement of winding up.

Section 241. Orders under Sections 238 and 239

(1) Without the 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 of 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 received 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 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 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 in good faith, for value and without notice of the relevant circumstances, 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 in good faith, for value and without notice of the relevant circumstances 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.

(3) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are -

(a) the circumstances by virtue of which an order under section 238 or (as the case may be) 239 could be made in respect of the transaction or preference if the company were to go into liquidation, or an administration order were made in relation to the company, within a particular period after the transaction is entered into or the preference given, and

(b) if that period has expired, the fact that the company has gone into liquidation or that such an order has been made.

(4) The provision of sections 238 to 241 apply without prejudice to that availability of any other remedy, even in relation to a transaction or preference which the company has no power to enter into or give.

Adjustment of prior transactions, etc (Individual)

Section 339. Transaction at an undervalue

(1) Subject as follows in this section and section 341 and 342, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and section 341 and 342, an individual enters into a transaction with a person at an undervalue if -

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration.

(b) he enters into a transaction with that person in consideration of marriage, or

(c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

Section 341. "Relevant time" under Sections 339 and 340

(1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given -

(a) in the case of a transaction at an undervalue, as a time in the period of 5 years ending with the day of presentation of the bankruptcy petition on which the individual is adjudged bankrupt.

(b) in a case of a preference which is not such a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time in the period of 2 years ending which that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time in a period of 6 months ending with the day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of section (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual -

(a) is insolvent at that time, or

(b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of subsection (2), an individual is insolvent if -

(a) he is unable to pay his debts as they fall due, or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

(4) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 264(1)(d) (criminal bankruptcy) is to be treated as having been entered into or given at a relevant time for the purposes of sections 339 and 340 if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.

(5) No order shall be made under section 339 or 340 by virtue of subsection (4) of this section where an appeal is pending (within the meaning of section 227) against

the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.

Section 342. Orders under Sections 339 and 340

(1) Without the prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by individual who is subsequently adjudged bankrupt may (subject as follows) -

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;

(b) require any property to be so vested if it represents in any person's hands the application either of the proceed 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 individual ;

(d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate 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 received obligations to that person as the court think 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 the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose

from, 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 339 or 340 may effect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual 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 individual and was acquired in good faith, for value and without notice of the relevant circumstances, 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 in good faith, for value and without notice of the relevant circumstances to pay a sum to the trustee of the bankrupt's estate, except where he 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 individual.

(3) Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.

(4) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are -

(a) the circumstances by virtue of which an order under section 339 or 340 could be made in respect of the transaction or preference if the individual in question was adjudged bankrupt within a particular period after the transaction is entered into or the preference given, and

(b) if that period has expired, the fact that the individual has been adjudged bankrupt within that period.



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