

Unfair preference: effect of winding up on antecedent and other transactions

604. (1) Subsection (2) applies to each of the following acts, namely, any:

(a) conveyance;

(b) mortgage; or

(c) delivery of goods, payment, execution or other act,

relating to property made or done by or against a company, which is unable to pay its debts as they become due, in favour of—

(i) any creditor of the company, or

(ii) any person on trust for any such creditor.

(2) An act to which this subsection applies, that is done with a view to giving the creditor referred to in subsection (1)(i), or any surety or guarantor for the debt due to such creditor, a preference over the other creditors of the company, shall be deemed an unfair preference of its creditors and be invalid accordingly if—

(a) a winding up of the company commences within 6 months after the date of the doing of the act, and

(b) the company is, at the time of the commencement of the winding up, unable to pay its debts (taking into account the contingent and prospective liabilities).

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

(4) An act to which subsection (2) applies in favour of a connected person which was done within 2 years before the commencement of the winding up of the company shall, unless the contrary is shown, be deemed in the event of the company being wound up—

(a) to have been done with a view to giving such person a preference over the other creditors, and

(b) to be an unfair preference, and be invalid accordingly.

(5) Subsections (2) and (4) shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the company.