



ELEMENTS OF PREFERENTIAL TRANSACTIONS

A preferential transaction (or unfair preference) is where a company pays a creditor in preference of other creditors, just before going into insolvency.

Below we have outlined the main points behind preferential transactions and your rights as both a creditor accused of preference, and a creditor who believes another creditor has been given preference.

➤ A preferential transaction can be defined in some of the following ways:

1. **Transaction:** A transaction must have occurred between the company and a creditor; usually this can be traced through bank account transfers. This can also be found in the transferring of an asset. This proves that the transaction physically took place to the creditor.
2. **Relationship:** The debtor has paid the creditor at the creditors demand and this payment satisfies the debt. You should be aware that payment for goods is not covered under this and would not be considered preferential, also payment in advance for future works or services is not considered preferential. There is also the question of if there was a continuing relationship, and if the debt increased or decreased over a period of time. If it is the case that the debt has decreased, it could be argued that this specific amount of decrease is considered a preference.
3. **Time Period:** The transaction should have occurred within a specific time period before the insolvency, this time period will depend on the creditors' relationship to the company and Directors. For creditors that are not related parties to the company this time limit is six months, if they are related, four years and if there is evidence that there has been interference and delays in the rights of other creditors then a transaction could be voided going back ten years.
4. **Debt:** If the debt is secured and a creditor has a security over various monies and assets then this is not considered preferential. If the creditor received more than they would have through the liquidation process this can also be considered a preference.

➤ If you have been accused of receiving preference then you may be able to use one of the following defences:

1. The creditor had no reason to believe that the company would be entering into the insolvency process. This can be particularly difficult to prove, but as a creditor if there is evidence that you have been pressing for payment, you knew other creditors were not being paid and entered into payment agreements, this could be enough of a suspicion that you were aware.
2. The creditor must be able to reflect that they gave valuable consideration for the payment. If you are a creditor that provides goods or services, you can argue that you have provided a valuable consideration for receiving the payment.
3. The creditor took the payment in good faith. As a creditor facing preference investigations, a defence could be that you received the payment in good faith; however any evidence of issuing statutory notices or stopping supply of good or service will reflect otherwise. As a creditor, you must prove that you have not forced the payment.

For more information on how we can assist please contact us at corporatelaw@taylor-rose.co.uk