

Preferential and unfair Payments

By Vince & Associates for Credit Matters
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If you are a supplier to a business, it is essential you understand what occurs if your client's business goes into liquidation or insolvency and how it can affect your business.

Liquidators have a statutory duty to, among other matters:

- Identify, protect and realise the Company's assets; and
- Investigate and report to creditors on the affairs of the Company, including any voidable transactions identified which are recoverable for the benefit of creditors.

In this regard, where a voidable transaction is identified, the Liquidators have an obligation to seek the recovery of such a transaction, where it is commercial to do so.

Section 588FA of the Corporations Act 2001 ("the Act") provides for the recovery of unfair preferences. To constitute an unfair preference, the transaction must have the effect of conferring an advantage to one creditor over other creditors of the company.

In addition, the Act allows the Liquidators to challenge certain transactions entered into by a company during the six month period preceding the relation back day.

Section 588FC of the Act defines an insolvent transaction as a transaction which is an unfair preference which occurs at a time in which the company is insolvent, or causes the company to become insolvent as a result of entering such a transaction.

Section 588FE of the Act deems that certain transactions entered into by the company, when it was insolvent, may be overturned by the Liquidators and the proceeds recovered for the benefit of creditors.

The example on the following page is a calendar representation of these rules, enabling you to see more clearly the time periods involved.

If you would like to find out more about these statutory matters, or seek assistance, contact Vince & Associates.

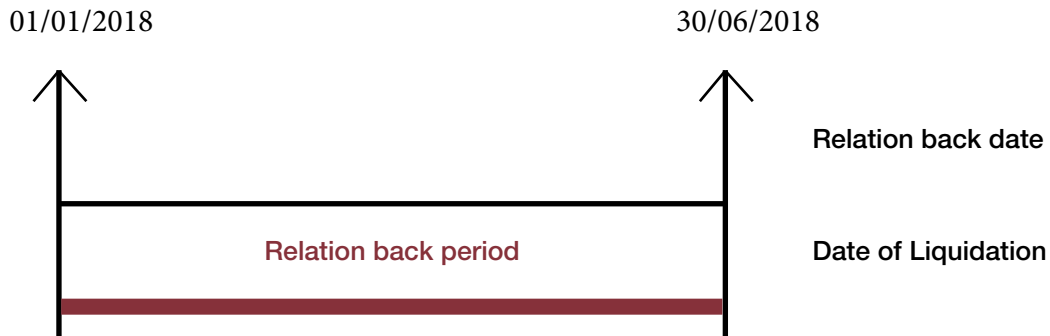
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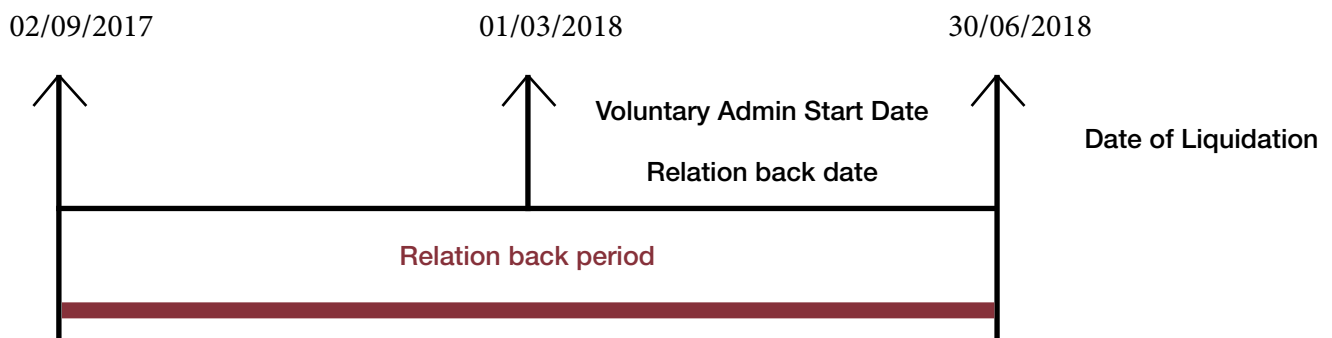
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Creditors' Voluntary Liquidation



Creditors' Voluntary Liquidation (following a Voluntary Administration)



Official Liquidation

