# Model Law on Transactions Avoidance Law

**Transactions Avoidance**

## § 1: General prerequisites

Legal acts – including forbearance – which have been perfected prior to the opening of the proceedings to the detriment of the general body of creditors are voidable provided the prerequisites of an avoidance ground ([§§ 2 – 5](https://www-stg.intersentiaonline.com/permalink/8ec2a9bb-e068-41c0-314d-06fe05af591f)) are met.

## § 2: Preferences

(1) 1Legal acts benefitting a creditor by satisfaction, collateralisation, or in any other way (preferences) are voidable if they were perfected

1. within three months prior to the filing for the proceedings and the debtor was unable to pay its mature debts at this point in time or

2. after the filing for the proceedings.

2Where several persons have filed for insolvency proceedings against the same debtor, the first admissible filing shall be relevant.

(2) 1If a due claim of the creditor was satisfied or secured in the owed manner (congruent coverages), the legal act is only voidable if the prerequisites of paragraph 1 are met and the creditor knew, or should have known, the debtor’s inability to pay debts or the filing for the proceedings. 2This knowledge shall be presumed if the creditor was a party closely related to the debtor ([§ 6](https://www-stg.intersentiaonline.com/permalink/a568958b-3940-745d-2d06-5301feb2c3b6)).

## § 3: Exceptions

Not voidable as congruent coverages under [§ 2](https://www-stg.intersentiaonline.com/permalink/8ec2a9bb-e068-41c0-314d-06fe05af591f) paragraph 2 are

1. legal acts performed directly against fair consideration to the benefit of the estate;

2. payments on bills of exchange or cheques if the law governing bills of exchange or cheques would have barred the recipient's claims arising from the bill or cheque against other bill or cheque debtors (endorsers, the drawer, or drawee) if he had refused the debtor's payment. However, the amount paid on the bill or cheque shall be restituted by the last endorser or, if he endorsed the bill on account of a third party, by such party if the last endorser or the third party knew or should have known the debtor's insolvency or the filing for the insolvency proceedings on endorsing the bill or having it endorsed. [§ 2](https://www-stg.intersentiaonline.com/permalink/8ec2a9bb-e068-41c0-314d-06fe05af591f) paragraph 2 sentence 2 shall apply *mutatis mutandis*;

3. legal acts protected against transactions avoidance through the [Directive 98/26/EC](https://eur-lex.europa.eu/eli/dir/1998/26/oj) of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement system (OJ L 166, 11. June 1998, p. 45–50) and the [Directive 2002/47/EC](http://data.europa.eu/eli/dir/2002/47/oj) of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27. June 2019, p. 43–50).

## § 4: Transactions at an undervalue

(1) 1Legal acts of the debtor against no or a manifestly inadequate consideration are voidable if they were perfected within one year prior to the filing for the proceedings or after the filing for the proceedings. 2[§ 2](https://www-stg.intersentiaonline.com/permalink/8ec2a9bb-e068-41c0-314d-06fe05af591f) paragraph 1 sentence 2 applies accordingly.

(2) Paragraph 1 does not apply to usual gifts and donations of minor value.

## § 5: Transactions intentionally disadvantaging creditors

(1) Legal acts by which the debtor intentionally disadvantaged the general body of creditors are voidable if

1. they were perfected within a time period of four years prior to the filing for the proceedings or after the filing for the proceedings and

2. the opponent knew, or should have known, the debtor’s intent; this knowledge shall be presumed if the opponent was a party closely related to the debtor ([§ 6](https://www-stg.intersentiaonline.com/permalink/a568958b-3940-745d-2d06-5301feb2c3b6)).

(2) § 2 paragraph 1 sentence 2 applies accordingly.

## § 6: Parties closely related to the debtor

(1) Parties closely related to the debtor ([§ 2](https://www-stg.intersentiaonline.com/permalink/8ec2a9bb-e068-41c0-314d-06fe05af591f) paragraph 2 sentence 2, [§ 5](https://www-stg.intersentiaonline.com/permalink/42a801db-b551-cf8a-672e-f4e3fd659243) paragraph 1 No. 2) are persons which had preferential access to information on the debtor’s financial affairs at the point in time when the legal act was perfected or within three months prior to the perfection of the legal act.

(2) Where the debtor is a natural person, closely related parties are in particular

1. the debtor’s spouse or partner,

2. ascendants, descendants, and siblings of the debtor, or of the spouse/partner, and the spouses/partners of these persons,

3. persons living in the debtor’s household,

4. persons having access to information on the debtor’s financial affairs on a contractual basis,

5. legal entities if the debtor or one of the persons mentioned before is a director, member of the board, or in a similar position which provides for access to information on the debtor’s financial affairs.

(3) Where the debtor is a legal entity, closely related parties are in particular

1. directors and members of the board,

2. shareholders with an interest of more than 50% of the share capital,

3. persons in similar positions which provide for access to information on the debtor’s financial affairs,

4. persons which are closely connected according to paragraph (2) to the persons listed in this paragraph.

## § 7: Legal consequences

(1) The legal position resulting from the voidable legal act may not be invoked against the estate.

(2) 1The opponent is obliged to compensate the estate for the detriment caused by the voidable legal act. 2If the return of the received is not possible, the opponent is obliged to pay an amount equivalent to the value of the received. 3Lapse of enrichment can only be invoked if the opponent neither was aware, nor should have been aware, of the circumstances on which the transactions avoidance is based.

(3) The limitation period for all claims against the opponent resulting from the voidable legal act is three years starting with the opening of the insolvency proceedings.

## § 8: Rights of the opponent

(1) If and to the extent that the opponent compensates the estate for the detriment caused by the voidable legal act any claim that was hitherto satisfied by this legal act revives.

(2) 1Any counterperformance of the opponent performed after or in instant exchange for the debtor’s legal act shall be refunded from the estate provided it is still available in the estate in distinct form or the estate is still enriched by its value. 2Other than that, the opponent may file claims for the return of the counterperformance as a pre-insolvency creditor only.

## § 9: Liability of third parties

(1) The legal consequences ([§ 7](https://www-stg.intersentiaonline.com/permalink/26113e21-37f5-b4f7-9290-3083bde0c79b)) can also be enforced against an heir or other comprehensive successors of the recipient of the voidable legal act.

(2) The legal consequences ([§ 7](https://www-stg.intersentiaonline.com/permalink/26113e21-37f5-b4f7-9290-3083bde0c79b)) can be enforced against individual successors of the recipient if the successor

1. acquired the asset against no or a manifestly inadequate consideration or

2. knew, or should have known, the circumstances on which the transactions’ avoidance is based.