

# Companies Act 2014

## Loans and other transactions and arrangements involving directors

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Part 5 of the Companies Act 2014 sets out a comprehensive statement of directors' duties, consolidating many common law duties of directors and consolidating statutory duties that have been scattered across the Companies Acts 1963 to 2013. This note considers the provisions concerning loans and other transactions and arrangements involving directors, which are set out in Chapters 3 and 4 of Part 5.

### *Loans, etc, to directors and from directors*

Restrictions on loans, etc, to directors and others from their company have existed since the Companies Act 1990 (the "1990 Act"). Section 236 of the Act introduces new evidential provisions which will apply in those cases where loans are permitted. So, in any civil proceedings where it is claimed that a loan was made to a director of a company or its holding company, or a person connected with such a director (a "relevant person"), there will be a rebuttable presumption that the loan or quasi-loan is repayable on demand and bears interest at a rate which will be set by the Minister for Jobs, Enterprise and Innovation by statutory instrument.

Moreover, loans or quasi-loans *by* directors to a company or its holding company should also be evidenced in writing. New evidential provisions apply where relevant persons enter into transactions or arrangements which it is claimed constitute such loans or quasi-loans. Section 237 of the Act provides that where it is claimed in civil proceedings that such a transaction or arrangement was so entered into, if the terms are not in writing or, if wholly or partly in writing, are ambiguous as to whether it was a loan or a quasi-loan, then it shall be presumed until the contrary is shown that the transaction or arrangement was not a loan.

The consequence of the transaction or arrangement not being a repayable loan is that the director or other relevant person would then need to prove that it was not a gift to the company.

Moreover, to the extent that it is proved that a director or other relevant person did make a loan or quasi-loan but the terms are ambiguous as to whether it bears interest, is secured or as to its priority in relation to other creditors, it will be presumed that it does not bear interest, is not secured and is subordinated to all other creditors.

In consequence, directors and other relevant persons would be well advised to ensure that transaction or arrangements entered into with their company are fully documented.

*Substantial property transactions*

Statutory restrictions on the acquisition of non-cash assets of a specified value by directors and other relevant persons from their companies (or holding companies) *and* by companies from their directors have been regulated since the 1990 Act. Section 238 largely restates the provisions of section 29 of the 1990 Act.

The principal changes proposed are:

- To be in scope, the requisite value of a non-cash asset must be not less than €5,000 (increased from €1,269.74 in the 1990 Act) but, subject to that exceed €65,000 (currently €63,486.90) or 10% of the company's relevant assets, as defined.
- Arrangements involving a receiver are excluded.

*Loans, quasi-loans, credit transactions, guarantees and security*

Again, there has been statutory restrictions imposed on companies making loans or quasi-loans, entering into credit transactions or guarantees in respect of loans, etc, or providing security in connection with loans, etc, in favour of directors and other relevant persons, since 1 February 1991 when Part III of the 1990 Act was commenced.

Section 239 of the Act restates the prohibition in section 31 of the 1990 Act and sections 240 to 246 broadly restate the exceptions to the prohibition.

The contravention of section 239 by any officer in default will be a category 2 offence (section 248).

The principal changes are:

- The “less than 10% exception” in section 240 and the “business transactions exception” in section 245 are to be broadened to include guarantees and security in connection with loans, quasi-loans and credit transactions.
- The summary approval procedure will be broadened to include loans, quasi-loans and credit transactions (sections 242 and 200) and will not require an independent person's report (section 208).

***For further information on transactions involving directors, contact:***

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*This document contains a general summary of developments and is neither a complete nor definitive statement of the law. Specific legal advice should be obtained before taking action.*