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PART 5

DUTIES OF DIRECTORS AND OTHER OFFICERS

CHAPTER 1

Preliminary and definitions

5 **220.**—(1) In this Part—

Interpretation and
application (*Part 5*).

“credit transaction” has the meaning given to it by *subsection (3)*;

“guarantee” includes an indemnity and a warranty;

“quasi-loan” has the meaning given to it by *subsection (2)*.

(2) For the purposes of this Part—

10 (a) a quasi-loan is a transaction under which one party (the
“creditor”) agrees to pay, or pays otherwise than in pur-
sue of an agreement, a sum for another (the
“borrower”) or agrees to reimburse or reimburses other-
15 wise than in pursuance of an agreement, expenditure
incurred by another party for another (the “borrower”)—

(i) on terms that the borrower (or a person on his behalf)
will reimburse the creditor; or

(ii) in circumstances giving rise to a liability on the bor-
rower to reimburse the creditor;

20 (b) any reference to the person to whom a quasi-loan is made
is a reference to the borrower; and

(c) the liabilities of a borrower under a quasi-loan include the
liabilities of any person who has agreed to reimburse the
creditor on behalf of the borrower.

25 (3) For the purposes of this Part a credit transaction is, subject to
subsection (4), a transaction under which one party (the
“creditor”)—

30 (a) supplies any goods or sells any land under, as the case may
be, a hire-purchase agreement or conditional sale
agreement;

(b) leases or licenses the use of land or hires goods in return
for periodical payments;

35 (c) otherwise disposes of land or supplies goods or services,
on the understanding that payment (whether in a lump-
sum or instalments or by way of periodical payments or
otherwise) is to be deferred.

40 (4) For the purposes of this Part a lease of land which reserves a
nominal annual rent of not more than €100 is not a credit transaction
where a company grants the lease in return for a premium or capital
payment which represents the open market value of the land thereby
disposed of by the company.

(5) For the purposes of this Part the value of a transaction or
arrangement is—

- (a) in the case of a loan, the principal of the loan;
 - (b) in the case of a quasi-loan, the amount or maximum amount which the person to whom the quasi-loan is made is liable to reimburse the creditor;
 - (c) in the case of a transaction or arrangement other than a loan or quasi-loan or a transaction or arrangement falling within *paragraph (d) or (e)*, the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question; 5 10
 - (d) in the case of a guarantee or security, the amount guaranteed or secured; 15
 - (e) in the case of an arrangement to which *section 240(2) or (3)* applies, the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced. 20
- (6) For the purposes of *subsection (5)*, the value of a transaction or arrangement (or, as the case may be, of a transaction to which an arrangement relates) which is not capable of being expressed as a specific sum of money, whether because the amount of any liability arising under the transaction or arrangement is unascertainable or for any other reason, shall be deemed to exceed €65,000, and this subsection applies irrespective of whether any liability under the transaction or arrangement has been reduced. 25
- (7) For the purposes of this Part, a transaction or arrangement is made for a person if— 30
- (a) in the case of a loan or quasi-loan, it is made to him or her;
 - (b) in the case of a credit transaction, he or she is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction; 35
 - (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or her or a credit transaction made for him or her;
 - (d) in the case of an arrangement to which *section 240(2) or (3)* applies, the transaction to which the arrangement relates was made for him or her; and 40
 - (e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he or she is the person to whom the goods, land or services (or the interest) are supplied or transferred. 45
- (8) This Part does not apply to arrangements or transactions entered into before 1 February 1991 but, for the purposes of determining whether an arrangement is one to which *section 240(2) or (3)* applies, the transaction to which the arrangement relates shall, 50

if it was entered into before 1 February 1991, be deemed to have been entered into after that date.

5 (9) This Part shall have effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

221.—(1) For the purposes of this Part (and without prejudice to *subsection (3)*), a person is connected with a director of a company if, but only if, the person (not being himself or herself a director of the company) is—

10 (a) that director’s spouse, civil partner, parent, brother, sister or child;

15 (b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are that director, the spouse (or civil partner) or any children of that director or any body corporate which that director controls; or

(c) in partnership with that director.

20 (2) In *subsection (1)(a)* and *(b)* “child”, in relation to a director, shall be deemed to include a child of the director’s civil partner who is ordinarily resident with the director and the civil partner.

(3) A body corporate shall also be, for the purposes of this Part, connected with a director of a company if it is controlled by that director or by another body corporate that is controlled by that director.

25 (4) For the avoidance of doubt, *subsection (3)* is without prejudice to the application of section 18(c) of the Interpretation Act 2005 (“person” to include body corporate, etc.) to *subsection (1)(b)*.

30 (5) For the purposes of this section, a director of a company controls a body corporate if, but only if, he or she is, alone or together with any other director or directors of the company or any person connected with the director or such other director or directors—

(a) interested in one-half or more of the equity share capital of that body; or

35 (b) entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.

(6) In *subsection (5)*—

(a) “equity share capital” has the same meaning as it has in *section 7*; and

40 (b) references to voting power exercised by a director shall be read as including references to voting power exercised by another body corporate which that director controls.

(7) For the purpose of *subsections(5)(b)* and *(6)(b)* “voting power” does not include any power to vote which arises only in specified circumstances.

(8) It shall be presumed, for the purposes of this Part, until the contrary is shown, that the sole member of a single-member company is a person connected with a director of that company.

Shadow directors.

222.—(1) Subject to *subsection (2)*, a person in accordance with whose directions or instructions the directors of a company are accustomed to act (in this Act referred to as a “shadow director”) shall be treated for the purposes of this Part as a director of the company unless the directors are accustomed so to act by reason only that they do so on advice given by him or her in a professional capacity.

(2) A body corporate is not to be regarded as a shadow director of any of its subsidiaries.

(3) *Section 232* shall apply in relation to a shadow director of a company as it applies in relation to a director of a company, except that the shadow director shall declare his or her interest, not at a meeting of the directors, but by a notice in writing to the directors which is either—

(a) a specific notice given before the date of the meeting at which, if he or she had been a director, the declaration would be required by *subsection (3)* of that section to be made; or

(b) a notice which under *subsection (4)* of that section falls to be treated as a sufficient declaration of that interest or would fall to be so treated apart from the qualification of that *subsection (4)* contained in *subsection (5)* of that section.

(4) As respects a declaration made by either of the means referred to in *subsection (3)*, *section 167* shall have effect as if the declaration had been made at the meeting in question and had accordingly formed part of the proceedings at that meeting.

De facto director.

223.—(1) Without limiting the manner in which the expression “director” is to be read by virtue of *section 2(1)*, a person who occupies the position of director of a company but who has not been formally appointed as such director shall, subject to *subsection (4)*, be treated, for the purposes of this Part, as a director of the company.

(2) In particular, *section 232* shall apply in relation to such a director as it applies in relation to directors generally.

(3) A person who is, by virtue of *subsection (1)*, treated, for the purposes of this Part, as a director of a company is in this Act referred to as a *de facto* director.

(4) A person shall not be a *de facto* director of a company by reason only of the fact that he or she gives advice in a professional capacity to the company or any of the directors of it.

General duties of directors and secretaries and liabilities of them and other officers

5 **224.**—(1) It is the duty of each director of a company to ensure that this Act is complied with by the company. Duty of each director.

(2) The breach by a director of the duty under *subsection (1)* shall not of itself affect—

(a) the validity of any contract or other transaction; or

10 (b) the enforceability, other than by the director in breach of that duty, of any contract or other transaction by any person,

but nothing in this subsection affects the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit therefrom.

15 (3) The consent in respect of a director to accompany—

(a) a statement under *section 21(1)(a)*; and

(b) a notification under *section 150(8)*,

shall include a statement by the director (immediately above his or her signature on the consent) in the following terms:

20 “*I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Act, other statutes and at common law.*”

25 **225.**—(1) The matters to which the directors of a company are to have regard in the performance of their functions shall include the interests of the company’s employees in general, as well as the interests of its members. Directors to have regard to interests of employees.

(2) Accordingly, the duty imposed by this section on the directors shall be owed by them to the company (and the company alone) and shall be enforceable in the same way as any other fiduciary duty owed to a company by its directors.

30 **226.**—(1) In this section— Directors’ compliance statement and related statement.

“amount of turnover” and “balance sheet total” have the same meanings as they have in *section 351*;

“relevant obligations”, in relation to a company, means the company’s obligations under—

35 (a) this Act, where a failure to comply with any such obligation would (were it to occur) be—

(i) a category 1 offence or a category 2 offence; or

(ii) a serious Market Abuse offence or a serious Prospectus offence;

and

(b) tax law;

“serious Market Abuse offence” means an offence referred to in *section 1359*;

“serious Prospectus offence” means an offence referred to in *section 1346*; 5

“tax law” means—

(a) the Customs Acts;

(b) the statutes relating to the duties of excise and to the management of those duties; 10

(c) the Tax Acts;

(d) the Capital Gains Tax Acts;

(e) the Value-Added Tax Acts;

(f) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act; 15

(g) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act; and

(h) any instruments made under an enactment referred to in any of *paragraphs (a) to (g)* or made under any other enactment and relating to tax. 20

(2) The directors of a company to which this section applies shall also include in their report under *section 326* a statement—

(a) acknowledging that they are responsible for securing the company’s compliance with its relevant obligations; and

(b) with respect to each of the things specified in *subsection (3)*, confirming that the thing has been done or, if it has not been done, specifying the reasons why it has not been done. 25

(3) The things mentioned in *subsection (2)(b)* are—

(a) the drawing up of a statement (to be known, and in this Act referred to as, a “compliance policy statement”) setting out the company’s policies (that, in the directors’ opinion, are appropriate to the company) respecting compliance by the company with its relevant obligations; 30

(b) the putting in place of appropriate arrangements or structures that are, in the directors’ opinion, designed to secure material compliance with the company’s relevant obligations; and 35

(c) the conducting of a review, during the financial year to which the report referred to in *subsection (2)* relates, of any arrangements or structures referred to in *paragraph (b)* that have been put in place. 40

5 (4) The arrangements or structures referred to in *subsection (3)(b)* may, if the directors of the company in their discretion so decide, include reliance on the advice of one or more than one person employed by the company or retained by it under a contract for services, being a person who appears to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations.

10 (5) For the purposes of this section, the arrangements or structures referred to in *subsection (3)(b)* shall be regarded as being designed to secure material compliance by the company concerned with its relevant obligations if they provide a reasonable assurance of compliance in all material respects with those obligations.

15 (6) If default is made in complying with *subsection (2)*, each director to whom the default is attributable shall be guilty of a category 3 offence.

(7) Subject to *subsection (8)*, this section shall apply to a company if, in respect of the financial year of the company to which the report referred to in *subsection (2)* relates —

(a) its balance sheet total for the year exceeds—

- 20 (i) subject to *subparagraph (ii)*, €12,500,000; or
- (ii) if an amount is prescribed under *section 945(1)(k)*, the prescribed amount;

and

(b) the amount of its turnover for the year exceeds —

- 25 (i) subject to *subparagraph (ii)*, €25,000,000; or
- (ii) if an amount is prescribed under *section 945(1)(k)*, the prescribed amount.

(8) This section does not apply to any company that is of a class exempted under *section 945(1)(i)* from this section.

30 **227.**—(1) The duties of the secretary of a company shall, without derogating from the secretary's statutory and other legal duties, be such duties as are delegated to the secretary, from time to time, by the board of directors of the company. Duties of secretary.

35 (2) Without prejudice to the generality of *section 130(4)*, the directors of a company shall, in their appointment of a secretary, have a duty to ensure that the person appointed has the skills necessary so as to enable him or her maintain (or procure the maintenance of) the records (other than accounting records) required to be kept under this Act in relation to the company.

40 (3) The cases to which *subsection (2)* applies includes the case of an appointment of one of the directors of the company as secretary.

(4) In *subsections (1) to (3)* references to a secretary include references to joint secretaries.

45 (5) The consent in respect of a secretary or joint secretaries to accompany—

(a) a statement under *section 21(1)(a)*; and

(b) a notification under *section 150(8)*,

shall include a statement by the secretary or secretaries (immediately above the signature or signatures of the secretary or secretaries on the consent) in the following terms:

5

“I/We acknowledge that, as a secretary, I/we have legal duties and obligations imposed by the Companies Act, other statutes and at common law.”

Fiduciary duties of directors — provisions introductory to *section 229*.

228.—(1) Without prejudice to the provisions of any enactment (including this Act), a director of a company shall owe the duties set out in *section 229* (the “relevant duties”) to the company (and the company alone). 10

(2) The breach by a director of the relevant duties shall not of itself affect—

(a) the validity of any contract or other transaction; or 15

(b) the enforceability, other than by the director in breach of that duty, of any contract or other transaction by any person,

but nothing in this subsection affects the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit therefrom. 20

(3) The relevant duties shall be enforced in the same way as any other fiduciary duty owed to a company by its directors.

(4) The relevant duties are based on certain common law rules and equitable principles as they apply in relation to the directors of companies and shall have effect in place of those rules and principles as regards the duties owed to a company by a director. 25

(5) The relevant duties shall be interpreted, and the provisions concerned of *section 229* shall be applied, in the same way as common law rules or equitable principles; regard shall be had to the corresponding common law rules and equitable principles in interpreting those duties and applying those provisions. 30

Statement of principal fiduciary duties of directors.

229.—(1) A director of a company shall—

(a) act in good faith in what the director considers to be the interests of the company; 35

(b) act honestly and responsibly in relation to the conduct of the affairs of the company;

(c) act in accordance with the company’s constitution and exercise his or her powers only for the purposes allowed by law; 40

(d) not use the company’s property, information or opportunities for his or her own or anyone else’s benefit unless—

- (i) this is expressly permitted by the company's constitution; or
 - (ii) the use has been approved by a resolution of the company in general meeting;
- 5 (e) not agree to restrict the director's power to exercise an independent judgment unless—
- (i) this is expressly permitted by the company's constitution; or
 - (ii) the case concerned falls within *subsection (2)*;
- 10 (f) avoid any conflict between the director's duties to the company and the director's other (including personal) interests unless the director is released from his or her duty to the company in relation to the matter concerned, whether in accordance with provisions of the company's constitution in that behalf or by a resolution of it in
- 15 general meeting;
- (g) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—
- 20 (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and
- (ii) the knowledge and experience which the director has;
- and
- 25 (h) in addition to the general duty owed to employees under *section 225*, have regard to the interests of its members.

(2) If a director of a company considers in good faith that it is in the interests of the company for a transaction or engagement to be entered into and carried into effect, a director may restrict the director's power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this.

30

(3) Without prejudice to the director's duty under *subsection (1)(a)* to act in good faith in what the director considers to be the interests of the company, a director of a company may have regard to the interests of a particular member of the company in the following circumstances.

35

(4) Those circumstances are where the director has been appointed or nominated for appointment by that member, being a member who has an entitlement to so appoint or nominate under the company's constitution or a shareholders' agreement.

40

230.—(1) Save to the extent that the company's constitution provides otherwise, a director of a company may be or become a director or other officer of, or otherwise interested in, any company promoted by the company or in which the company may be interested as shareholder or otherwise; but neither this subsection nor anything in the company's constitution governing the foregoing matter overrides *section 229*.

45

Other interests of directors.

(2) No such director shall be accountable to the company for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interest in, such other company unless the company otherwise directs.

Power of director to act in a professional capacity for company.

231.—Save to the extent that the company’s constitution provides otherwise— 5

(a) any director may act by himself or herself, or his or her firm, in a professional capacity for the company of which he or she is a director; and

(b) any director, in such a case, or his or her firm, shall be entitled to remuneration for professional services as if he or she were not a director, 10

but nothing in this section authorises a director, or his or her firm, to act as statutory auditor of a company of which he or she is director.

Duty of director to disclose his or her interest in contracts made by company.

232.—(1) It shall be the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his or her interest at a meeting of the directors of the company. 15

(2) *Subsection (1)* does not apply in relation to an interest that cannot reasonably be regarded as likely to give rise to a conflict of interest. 20

(3) The declaration required by this section to be made by a director shall—

(a) in the case of a proposed contract, be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she became so interested; and 25

(b) in the case of his or her becoming interested in a contract after it is made, be made at the first meeting of the directors held after the director becomes so interested. 30

(4) Subject to *subsection (5)*, for the purposes of this section a general notice given to the directors of a company by a director to the effect that— 35

(a) he or she is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm; or

(b) he or she is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him or her, 40

shall be deemed to be a sufficient declaration of interest in relation to any such contract.

(5) No such notice as is mentioned in *subsection (4)* shall be of effect unless it is given at the meeting of directors or the director 45

takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

5 (6) A copy of every declaration made and notice given in pursuance of this section shall, within 3 days after the date of making or giving of it, be entered into a book kept by the company for this purpose.

10 (7) That book shall be open for inspection, without any charge, by any director, secretary, statutory auditor or member of the company at the registered office of the company and shall be produced at—

(a) every general meeting of the company; and

(b) any meeting of its directors if any of its directors so requests in sufficient time to enable the book to be available at the meeting.

15 (8) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book kept by it in accordance with *subsection (6)* and shall give the Director such facilities for inspecting and taking copies of the contents of the book as the Director may require.

20 (9) Nothing in this section shall be taken to prejudice the operation of any enactment or rule of law restricting directors of a company from having interests in contracts with the company.

25 (10) Any reference in this section to a contract shall be read as including a reference to any transaction or arrangement, whether or not constituting a contract.

30 (11) For the purposes of this section, a transaction or arrangement of a kind described in *section 240* made by a company for a director of the company or a person connected with such a director shall, if it would not otherwise be so treated (and whether or not prohibited by that section), be treated as a transaction or arrangement in which that director is interested.

35 **233.**—(1) Subject to *section 234*, where a director of a company acts in breach of his or her duty under *section 229(1)(d)*, he or she shall be liable to do either or both (as the corresponding common law rule or equitable principle with respect to the matter would have required) of the following things, namely—

Breaches of certain duties: liability to account and indemnify.

(a) account to the company for any gain which he or she makes directly or indirectly from the breach of duty;

40 (b) indemnify the company for any loss or damage resulting from that breach.

(2) Subject to *subsection (6)*, where a company enters into a transaction or arrangement contrary to *section 239* or *240* with—

(a) a director of the company;

(b) a director of its holding company; or

45 (c) a person connected with a director of the company or its holding company,

that director and the person so connected and any other director of the company who authorised the transaction or arrangement (or, as the case may be, any transaction entered into in pursuance of the arrangement) shall be liable—

- (i) to account to the company for any gain which he or she makes directly or indirectly from the transaction or arrangement; 5
- (ii) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the transaction or arrangement; or 10
- (iii) to do both of those things as the circumstances may require.

(3) Subject to *section 234*, where a company makes a payment to a director contrary to *section 252* or *253* that director shall be liable—

- (a) to account to the company for any gain which he or she makes directly or indirectly from the payment; 15
- (b) to indemnify the company for any loss or damage resulting from the payment; or
- (c) to do both of those things as the circumstances may require, 20

and, in the case of *section 253*, this is without prejudice to *subsection (3)* of that section.

(4) *Subsection (2)* applies irrespective of whether the transaction or arrangement concerned has been avoided.

(5) *Subsections (1)* to *(3)* are without prejudice to— 25

- (a) the company's right at common law to claim damages for breach of duty; or
- (b) the company's right to make an application seeking the grant of equitable relief,

but the provisions of this section shall not be read as having the combined effect of enabling the company to be afforded more compensation for any damage or injury, or more protection of any proprietary right, than is just and equitable in the circumstances. 30

(6) Where a transaction or arrangement is entered into by a company and a person connected with a director of the company or of its holding company in contravention of *section 239* or *240*— 35

- (a) that director shall not be liable under *subsection (2)* (or under any law referred to in *subsection (5)*) if he or she shows that he or she took all reasonable steps to secure the company's compliance with *section 239* or *240*, as the case may be; and 40
- (b) in any case, a person so connected and any such other director as is mentioned in *subsection (2)* shall not be so liable if he or she shows that, at the time the transaction or arrangement was entered into (or, as the case may be, at the time the particular transaction was entered into in pursuance of the arrangement), he or she did not know 45

the relevant circumstances constituting the contravention.

5 **234.**—(1) This section applies to any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company. Power of court to grant relief to officers of company.

10 (2) In proceedings to which this section applies the court hearing the proceedings has the power of granting relief provided under *subsection (3)* if it appears to the court that the officer concerned is or may be liable in respect of the negligence, default, breach of duty or breach of trust (the “wrong concerned”) but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with his or her appointment), he or she ought fairly to be excused for the wrong concerned.

15 (3) The power referred to in *subsection (2)* is to relieve the officer concerned, either wholly or partly, from his or her liability in respect of the wrong concerned on such terms as the court may think fit.

20 **235.**—(1) If an officer of a company has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust (the “wrong concerned”) he or she may make the following application to the court. Anticipated claim: similar power of relief as under *section 234*.

25 (2) That application is an application to be relieved of liability in respect of the wrong concerned; on the making of such an application the court shall have the same power to relieve the applicant as it would have had (by virtue of *section 234*) if it had been a court before which proceedings against that person for the wrong concerned had been brought.

30 **236.**—(1) Subject to the provisions of this section, the following provision shall be void, namely, any provision— Any provision exempting officers of company from liability void (subject to exceptions).

(a) purporting to exempt any officer of a company from; or

(b) purporting to indemnify such an officer against,

35 any liability which by virtue of any enactment or rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company.

(2) *Subsection (1)* applies whether the provision concerned is contained in the constitution of a company or a contract with a company or otherwise.

40 (3) Notwithstanding *subsection (1)*, a company may, in pursuance of any such provision as is mentioned in that subsection, indemnify any officer of the company against any liability incurred by him or her—

45 (a) in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted; or

(b) in connection with any proceedings or application referred to in, or under, *section 234* or *235* in which relief is granted to him or her by the court.

(4) Notwithstanding *subsection (1)*, a company may purchase and maintain for any of its officers insurance in respect of any liability referred to in that subsection. 5

(5) Notwithstanding any provision contained in any enactment, the constitution of a company or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit. 10

(6) For the avoidance of doubt, if—

(a) any business, trade or activity has been carried on by means of a company, or other body corporate, registered or formed under the laws of another country;

(b) the period for which that business, trade or activity was so carried on was not less than 12 months preceding the date on which this subsection falls to be applied; 15

(c) a provision of the kind referred to in *subsection (1)(a)* or *(b)* in relation to officers of the company or other body corporate was in being and valid under the laws of that country; and 20

(d) a private company limited by shares is formed and registered to carry on that business, trade or activity,

then nothing in this section invalidates the operation of the provision referred to in *paragraph (c)* in respect of any negligence, default, breach of duty or breach of trust occurring before that private company limited by shares is formed and registered. 25

(7) Any directors' and officers' insurance purchased or maintained by a company before 6 April 2004 is as valid and effective as it would have been if this section had been in operation when that insurance was purchased or maintained. 30

(8) In this section—

(a) “officer” includes a statutory auditor;

(b) a reference to an officer includes a reference to any former or current officer of the company. 35

CHAPTER 3

Evidential provisions with respect to loans, other transactions, etc., between company and directors

Loans, etc., by company to directors: evidential provisions.

237.—(1) In this section “relevant proceedings” means civil proceedings in which it is claimed that a company has made a loan or quasi-loan to— 40

(a) a director of the company; or

(b) a director of its holding company; or

(c) a person connected with a director of any such company.

(2) In relevant proceedings if the terms of the loan or quasi — loan are not in writing then it shall be presumed, until the contrary is proved, that—

5 (a) the loan or quasi-loan is repayable on demand; and

(b) for any period before repayment of the amount of the loan or quasi-loan (or for any period before repayment of part of that amount) the amount or part has borne interest at the appropriate rate.

10 (3) In relevant proceedings if the terms of the loan or quasi-loan are in writing or partially in writing but—

15 (a) the case is one in which those terms are ambiguous with respect to the time at which, or the circumstances under which, the loan or quasi-loan is to be repaid, then it shall be presumed, until the contrary is proved, that the loan or quasi-loan is repayable on demand; or

20 (b) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan bears interest, then it shall be presumed, until the contrary is proved, that for any period before repayment of the amount of the loan or quasi-loan (or for any period before repayment of part of that amount) the amount or part has borne interest at the appropriate rate.

25 (4) If the case referred to in *paragraph (a) of subsection (3)* and the case referred to in *paragraph (b) of that subsection* both apply then both of the presumptions provided by that subsection shall apply.

30 (5) References in *subsection (3)* to the terms of a loan or quasi-loan being ambiguous with respect to a matter shall, if the terms of the loan or quasi-loan are partially in writing, be deemed to include references to the following case.

(6) That case is one in which—

(a) the written terms of the loan or quasi-loan do not make provision in respect of the matter concerned; and

35 (b) provision in respect of that matter is alleged to be made by those of the terms of the loan or quasi-loan that are not in writing.

40 **238.**—(1) In this section “relevant proceedings” means civil proceedings in which it is claimed that a transaction or arrangement entered into, or alleged to have been entered into—

(a) by a director of a company with the company or its holding company; or

(b) by a person connected with such director with that company or its holding company (the “related person”),

Loans, etc., by directors or connected persons to company or holding company: evidential provisions.

constitutes a loan or quasi-loan by the director or (as appropriate) the related person to that company or its holding company, as the case may be.

(2) In relevant proceedings, if the terms of the transaction or arrangement concerned either— 5

- (a) are not in writing; or
- (b) are in writing, or partially in writing, but are ambiguous as to whether the transaction or arrangement constitutes a loan or quasi-loan or not (or as to whether it constitutes a quasi-loan as distinct from a loan), 10

then it shall be presumed, until the contrary is proved, that the transaction or arrangement constitutes neither a loan nor a quasi-loan to the company or its holding company, as the case may be.

(3) In relevant proceedings, where it is proved that a loan or a quasi-loan was made to the company or its holding company by the director of the first mentioned company or the related person (whether the terms of the loan or quasi-loan are in writing, partially in writing or wholly oral) then, if— 15

- (a) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan bears interest, it shall be presumed, until the contrary is proved, that the loan or quasi-loan bears no interest; 20
- (b) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan is secured, it shall be presumed, until the contrary is proved, that the loan or quasi-loan is not secured; or 25
- (c) in the event that the loan or quasi-loan is proved to be secured and the case is one in which those terms are ambiguous with respect to the priority that the security concerned is to have as against other indebtedness of the company, it shall be presumed, until the contrary is proved, that the loan or quasi-loan is subordinate to all other indebtedness of the company. 30 35

(4) If more than one of the cases referred to in *paragraphs (a) to (c)* of *subsection (3)* apply then each of the presumptions provided by the applicable paragraphs shall apply.

(5) The reference in *subsection (2)(b)* to the terms of a transaction or arrangement being ambiguous as to whether the transaction or arrangement constitutes a loan or quasi-loan or not (or as to whether it constitutes a quasi-loan as distinct from a loan) shall, if the terms of the transaction or arrangement are partially in writing, be deemed to include a reference to the following case. 40

(6) That case is one in which— 45

- (a) the written terms of the transaction or arrangement do not specify what the nature of the transaction or arrangement is; and
- (b) the nature of the transaction or arrangement is alleged to be specified by those of its terms that are not in writing. 50

(7) References in *subsection (3)* to the terms of a loan or quasi-loan being ambiguous with respect to a matter shall, if the terms of the loan or quasi-loan are partially in writing, be deemed to include references to the following case.

- 5 (8) That case is one in which—
- (a) the written terms of the loan or quasi-loan do not make provision in respect of the matter concerned; and
 - (b) provision in respect of that matter is alleged to be made by those of the terms of the loan or quasi-loan that are not in writing.
- 10

CHAPTER 4

Substantive prohibitions or restrictions on loans to directors and other particular transactions involving conflict of interest

15 **239.**—(1) Subject to *subsections (4)* and *(5)*, a company (the “relevant company”) shall not enter into an arrangement under which—

Substantial transactions in respect of non-cash assets and involving directors, etc.

- (a) a director of the relevant company or of its holding company, or a person connected with such a director, acquires or is to acquire, one or more non-cash assets of the requisite value from the relevant company; or
 - (b) the relevant company acquires or is to acquire, one or more non-cash assets of the requisite value from such a director or a person so connected,
- 20

unless the arrangement is first approved—

- (i) by a resolution of the relevant company in general meeting; and
 - (ii) if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution of the holding company in general meeting.
- 25

30 (2) For the purposes of this section a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than €5,000 but, subject to that, exceeds €65,000 or 10 per cent of the amount of the relevant company’s relevant assets, and for those purposes the amount of a company’s relevant assets is—

35

- (a) except in a case falling within *paragraph (b)*, the value of its net assets determined by reference to the entity financial statements prepared under *section 291* and laid in accordance with *section 342* in respect of the last preceding financial year in respect of which such entity financial statements were so laid;
 - (b) where no entity financial statements have been prepared and laid under the foregoing sections before that time, the amount of its called-up share capital.
- 40

(3) An arrangement entered into by a company in contravention of this section and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of *section 233* by any other person for the loss or damage suffered by it; or 5
- (b) any rights acquired *bona fide* for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or 10
- (c) the arrangement is affirmed by a resolution of the company in general meeting passed within a reasonable period of time after the date on which the arrangement is entered into and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is affirmed by a resolution of the holding company in general meeting passed within a reasonable period of time after that date. 15 20

(4) *Subsection (1)* shall not apply in relation to any arrangement for the acquisition of a non-cash asset—

- (a) if the non-cash asset in question is or is to be acquired— 25
 - (i) by a holding company from any of its wholly owned subsidiaries; or
 - (ii) from a holding company by any of its wholly owned subsidiaries; or
 - (iii) by one wholly owned subsidiary of a holding company from another wholly owned subsidiary of that holding company; or 30
- (b) if the arrangement is entered into by a company which is being wound up unless the winding up is a members' voluntary winding up; or 35
- (c) if the arrangement involves the disposal of a company's assets by a receiver.

(5) *Subsection (1)(a)* shall not apply in relation to any arrangement under which a person acquires or is to acquire an asset from a company of which he or she is a member if the arrangement is made with that person in his or her character as such member. 40

(6) Without prejudice to *subsection (7)*, no approval is required to be given under this section by any body corporate unless it is a private company limited by shares.

(7) No approval is required to be given under this section by a wholly owned subsidiary of any body corporate. 45

(8) In this section—

(a) “non-cash asset” means any property or interest in property other than cash, and for this purpose “cash” includes foreign currency;

5 (b) any reference to the acquisition of a non-cash asset includes a reference to the creation or extinction of an estate or interest in, or a right over, any property and also a reference to the discharge of any person’s liability other than a liability for a liquidated sum; and

10 (c) “net assets”, in relation to a company, means the aggregate of the company’s assets less the aggregate of its liabilities, and for this purpose “liabilities” includes—

15 (i) where the company prepares Companies Act entity financial statements, any provision for liabilities (within the meaning of *paragraph 82 of Schedule 3*) that is made in those financial statements;

(ii) where the company prepares IFRS entity financial statements, any provision that is made in those financial statements.

20 **240.**—(1) Except as provided by *section 241* and *sections 243* to *246*, a company shall not— Prohibition of loans, etc. to directors and connected persons.

(a) make a loan or a quasi-loan to a director of the company or of its holding company or to a person connected with such a director;

25 (b) enter into a credit transaction as creditor for such a director or a person so connected;

(c) enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such a director or a person so connected.

30 (2) A company shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened *subsection (1)*, but, for the purposes of this Part, the transaction shall be treated as having been entered into on the date
35 of the arrangement.

(3) A company shall not take part in any arrangement under which—

40 (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened *subsection (1)* or (2); and

(b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

45 **241.**—(1) *Section 240* does not prohibit a company from entering into an arrangement with a director or a person connected with a director (whether, in either case, a director of the company or of its holding company) if— Arrangements of certain value.

- (a) the value of the arrangement; or
- (b) in a case where there are other arrangements entered into by the company with any director of the company, or any person connected with a director, the value of the arrangement and the total amount outstanding under those other arrangements,

is, or, as the case may be, is together, less than 10 per cent of the company's relevant assets.

(2) For the purposes of this section—

- (a) a company enters an arrangement with a person if it—
 - (i) makes a loan or quasi-loan to or enters into a credit transaction as creditor for that person; or
 - (ii) enters into a guarantee or provides any security in connection with a loan, quasi-loan or credit transaction made for that person by any other person; and
- (b) the amount of a company's relevant assets shall be determined in accordance with *section 239(2)*.

Reduction in amount of company's relevant assets.

242.—(1) This section applies to a company in respect of which the total amount outstanding under any arrangements referred to in *section 241* comes to exceed 10 per cent of the company's relevant assets for any reason but in particular because the value of those assets has fallen.

(2) The reference in *subsection (1)* to arrangements referred to in *section 241* does not include a reference to any arrangement or arrangements entered into in accordance with the Summary Approval Procedure.

(3) Where the directors of a company to which this section applies become aware, or ought reasonably to become aware, that there exists the situation referred to in *subsection (1)*, it shall be the duty of the company, its directors and any persons for whom the arrangements referred to in that subsection were made, to do the thing referred to in *subsection (4)* within the period specified in *subsection (5)*.

(4) The thing mentioned in *subsection (3)* is to amend the terms of the arrangements concerned so that the total amount outstanding under the arrangements again falls within the percentage limit referred to in *subsection (1)*.

(5) The period mentioned in *subsection (3)* is 2 months after the date that the directors become aware or ought reasonably to have become aware that the situation concerned referred to in *subsection (1)* exists.

(6) Where the terms of the arrangements referred to in *subsection (4)* are not amended within the period specified in *subsection (5)*, the arrangements shall be voidable at the instance of the company; but the same restrictions apply to this right of the company to avoid as are contained in *paragraphs (a) and (b) of section 247* on the right to avoid under that section.

243.—Section 240 does not prohibit a company from—

Availability of
Summary Approval
Procedure to permit
loans, etc.

- (a) making a loan or quasi-loan;
- (b) entering into a credit transaction; or
- (c) entering into a guarantee or providing any security,

5 of the kind described in *subsection (1)* of that section if the Summary Approval Procedure is followed in respect of the doing of the thing referred to in *paragraph (a), (b) or (c)*, as the case may be.

244.—(1) Section 240 does not prohibit a company from—

Intra-group
transactions.

- 10 (a) making a loan or quasi-loan to any body corporate which is its holding company, subsidiary or a subsidiary of its holding company; or
- 15 (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to any body corporate which is its holding company, subsidiary or a subsidiary of its holding company.

(2) Section 240 does not prohibit a company from—

- 20 (a) entering into a credit transaction as creditor for any body corporate which is its holding company, subsidiary or a subsidiary of its holding company; or
- (b) entering into a guarantee or providing any security in connection with any credit transaction made by any other person for any body corporate which is its holding company, subsidiary or a subsidiary of its holding company.

25 245.—(1) Section 240 does not prohibit a company from doing anything— Directors' expenses.

(a) to provide any of its directors with funds to meet vouched expenditure properly incurred or to be incurred by him or her—

(i) for the purposes of the company; or

30 (ii) for the purpose of enabling him or her properly to perform his or her duties as an officer of the company;

or

35 (b) to enable any of its directors to avoid incurring such expenditure.

(2) Where a company enters into any transaction that is permitted by *subsection (1)*, any liability falling on any person arising from any such transaction shall be discharged by him or her within 6 months after the date on which it was incurred.

40 (3) A person who contravenes *subsection (2)* shall be guilty of a category 4 offence.

Business transactions.

246.—(1) *Section 240* does not prohibit a company from—

- (a) making a loan or quasi-loan;
- (b) entering into a credit transaction; or
- (c) entering into a guarantee or providing any security,

of the kind described in *subsection (2)* of that section if the following 5
2 conditions are satisfied.

(2) Those conditions are—

- (a) the company enters into the transaction concerned in the ordinary course of its business; and
- (b) the value of the transaction is not greater, and the terms 10
on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which—
 - (i) the company ordinarily offers; or
 - (ii) it is not unreasonable to expect the company to have 15
offered,

to or in respect of a person of the same financial standing as that person but unconnected with the company.

Transaction or arrangement in breach of *section 240* voidable at instance of company.

247.—If a company enters into a transaction or arrangement in contravention of *section 240* the transaction or arrangement shall be 20
voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of *section 233* for the loss or damage suffered 25
by it; or
- (b) any rights acquired *bona fide* for value and without actual notice of the contravention by any person other than the person for whom the transaction or arrangement was made would be affected by its avoidance. 30

Personal liability for company debts in certain cases.

248.—(1) If—

- (a) a company is being wound up and is unable to pay its debts; and
- (b) the court considers that any arrangement of a kind described in *section 241(2)(a)* has contributed materially 35
to the company's inability to pay its debts or has substantially impeded the orderly winding up of it,

the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks it proper to do so, make the following declaration. 40

(2) That declaration is a declaration that any person for whose benefit the arrangement was made shall be personally liable, without any limitation of liability, for all or such part as may be specified by the court, of the debts and other liabilities of the company.

5 (3) In deciding whether to make a declaration under this section, the court shall have particular regard to whether and to what extent, any outstanding liabilities arising under any arrangement referred to in *subsection (1)* were discharged before the commencement of the winding up.

10 (4) In deciding the extent of any personal liability under this section, the court shall have particular regard to the extent to which the arrangement in question contributed materially to the company's inability to pay its debts or substantially impeded the orderly winding up of the company.

15 **249.**—If a company enters into a transaction or arrangement that contravenes *section 240*, any officer of it who is in default shall be guilty of a category 2 offence. Offence for contravention of *section 240*.

20 **250.**—(1) In this section “relevant term” means a term by which a director's employment with the company of which he or she is a director or, where he or she is the director of a holding company, his or her employment by any company comprised in the group, is to continue or may be continued, otherwise than at the instance of the company, for a period exceeding 5 years during which the employment— Contracts of employment of directors — control by members over guaranteed periods of employment.

25 (a) cannot be terminated by the company by the giving of notice; or

(b) can be so terminated only in specified circumstances.

30 (2) References in *subsection (1)* to employment being continued (or its potential to be continued) are references to its being continued (or its potential to be continued) whether under the original agreement concerned or under a new agreement entered into in pursuance of the original agreement concerned.

35 (3) A company shall not incorporate in any agreement a relevant term unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.

40 (4) A resolution of a company approving a relevant term shall not be passed at a general meeting of the company unless a written memorandum, setting out the proposed agreement incorporating the term, is available for inspection by members of the company both—

(a) at the registered office of the company for not less than the period of 15 days ending before the date of the meeting; and

(b) at the meeting itself.

45 (5) If it is proposed to use the means under *section 194* or *195*, in lieu of passing a resolution at a general meeting of the company, to approve a relevant term those means shall not be used unless a written memorandum setting out the proposed agreement incorporating the relevant term has been circulated to the members of the company

(being those entitled to attend and vote at a general meeting of the company) with the proposal for the written resolution.

(6) A term incorporated in an agreement in contravention of this section shall, to the extent that it contravenes this section, be void and the agreement shall be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice. 5

(7) For the purposes of this section—

“employment” includes employment under a contract for services;

“group”, in relation to a director of a holding company, means the group which consists of that company and its subsidiaries. 10

Anti-avoidance provision — section 250.

251.—(1) In any case where—

(a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by the giving of notice or can be so terminated only in specified circumstances; and 15

(b) more than 6 months before the expiration of the period for which he or she is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or by virtue of the original agreement on the other party to it) under which he or she is to be employed with the company, or where he or she is a director of a holding company, within the group, 20

the definition of “relevant term” in section 250 shall apply as if to the period for which the person is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement. 25

(2) Where subsection (1) has effect in relation to the definition of “relevant term” in section 250, subsection (6) of that section has effect as if there were substituted “the agreement and the original agreement referred to section 251(1) shall each be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice” for “the agreement shall be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice”. 30 35

(3) For the purposes of this section “employment” and “group” have the same meaning as they have for the purposes of section 250.

Approval of company necessary for payment by it to director or directors’ dependants for loss of office.

252.—(1) It shall not be lawful for a company to make to any director of the company any payment by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless the following conditions are first satisfied. 40

(2) Those conditions are—

(a) particulars relating to the proposed payment (including the amount of it) are disclosed to the members of the company; and 45

(b) the proposal is approved by resolution of the company in general meeting.

5 (3) Without prejudice to the exceptions provided for by *section 255(5)*, a payment made *bona fide* in discharge of an existing legal obligation does not fall within this section.

10 **253.**—(1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless the following conditions are first satisfied. Approval of company necessary for payment to director of compensation in connection with transfer of property.

(2) Those conditions are—

15 (a) particulars relating to the proposed payment (including the amount of it) are disclosed to the members of the company; and

(b) the proposal is approved by resolution of the company in general meeting.

20 (3) Where a payment which is not lawful under *subsection (1)* is made to a director of a company the amount received shall be deemed to have been received by him or her in trust for the company.

(4) Without prejudice to the exceptions provided for by *section 255(5)*, a payment made *bona fide* in discharge of an existing legal obligation does not fall within this section.

25 **254.**—(1) The following duty arises on the part of a director where, in connection with the transfer to any persons of all or any of the shares in a company being a transfer resulting from— Duty of director to disclose to company payments to be made to him or her in connection with transfer of shares in company.

(a) an offer made to the general body of shareholders; or

30 (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or

35 (c) an offer made by or on behalf of an individual with a view to his or her obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or

(d) any other offer which is conditional on acceptance to a given extent,

40 a payment is to be made to that director of the company by way of compensation for loss of office or as a consideration for or in connection with his or her retirement from office.

(2) That duty on the part of that director is to take all reasonable steps to secure that particulars of the proposed payment (including the amount of it) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) Without prejudice to the exceptions provided for by *section 255(5)*, a payment to be made, or that is made, *bona fide* in discharge of an existing legal obligation does not fall within this section.

(4) If—

(a) any such director fails to take reasonable steps as mentioned in *subsection (2)*; or 5

(b) any person who has been properly required by any such director to include the particulars specified in that subsection in, or send them with, any such notice so mentioned fails to do so, 10

he or she shall be guilty of a category 3 offence.

(5) Unless—

(a) the requirements of *subsections (1) and (2)* are complied with in relation to any such payment as is mentioned in *subsection (1)*; and 15

(b) the making of the proposed payment is, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares, 20

any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him or her in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum. 25

(6) Where the shareholders referred to in *paragraph (b) of subsection (5)* are not all the members of the company and no provision is made by the constitution for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of— 30

(a) this Part and the rest of *Parts 1 to 14*; and

(b) the company's constitution,

relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Director of Corporate Enforcement, on the application of any person concerned, may direct for the purpose of adapting them to the circumstances of the meeting. 35

(7) If at a meeting summoned for the purpose of approving any payment as required by *paragraph (b) of subsection (5)*, a quorum is not present and after the meeting has been adjourned to a later date a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved. 40

“Existing legal obligation” — definition and other provisions in relation to *sections 252 to 254*.

255.—(1) “Existing legal obligation” for the purposes of—

(a) *section 252(3)*, means an obligation of the company concerned, or any body corporate associated with it, that was not entered into in connection with, or in consequence 45

of, the event giving rise to the payment for loss of office in question;

5 (b) *sections 253(4) and 254(3)*, means an obligation of the person making, or proposing to make, the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.

(2) In the case of a payment to which both *sections 252 and 253* apply, or to which both *sections 252 and 254* apply, *paragraph (a)* of *subsection (1)* and not *paragraph (b)* of it shall have effect.

10 (3) Where in proceedings for the recovery of any payment which it is alleged is recoverable as having, by virtue of—

(a) *subsections (1) and (3) of section 253*; or

(b) *subsections (1), (2) and (5) of section 254*,

been received by any person in trust, it is shown that—

15 (i) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or 2 years after the date of that agreement or the offer leading to it; and

20 (ii) the company or any person to whom the transfer was made was privy to that arrangement,

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections concerned apply.

(4) If, in connection with any such transfer as is mentioned in *section 253 or 254*—

25 (a) the price to be paid to a director of the company for any shares in the company held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director,

30 the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

35 (5) References in *sections 252 to 254* to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office include references to payments to him or her by way of compensation for—

40 (a) loss of office as director of the company;

45 (b) the loss, while director of the company, or on or in connection with his or her ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary,

but do not include references to any *bona fide* payment by way of—

- (i) damages for breach of contract; or
- (ii) pension in respect of past services,

and, for the purposes of this subsection, “pension” includes any superannuation allowance, superannuation gratuity or similar payment. 5

(6) Nothing in *section 252* or *253* shall be taken to prejudice—

- (a) the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in that section or with respect to any other like payments made or to be made to the directors of a company; or 10
- (b) the operation of any rule of law or enactment in relation to the accountability (if any) of any director for any such payment received by him or her. 15

(7) References in *sections 252* to *254* and this section to a director include references to a past director.

(8) For the purposes of *subsection (1)(a)* a body corporate is associated with a company if one is the subsidiary of the other or both are subsidiaries of the same body corporate. 20

Contracts with sole members.

256.—(1) Subject to *subsection (2)*, where a single-member company enters into a contract with the sole member of the company and the sole member also represents the company in the transaction, whether as a director or otherwise, the single-member company shall, unless the contract is in writing, ensure that the terms of the contract are forthwith set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract. 25

(2) *Subsection (1)* shall not apply to contracts entered into in the ordinary course of the company’s business. 30

(3) If a company fails to comply with *subsection (1)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

(4) Subject to *subsection (5)*, nothing in this section shall be taken to prejudice the operation of any other enactment (including a provision of this Act) or rule of law applying to contracts between a company and a director of that company. 35

(5) Failure to comply with *subsection (1)* with respect to a contract shall not affect the validity of that contract.

CHAPTER 5 40

Disclosure of interests in shares and debentures

Interpretation generally (*Chapter 5*).

257.—(1) In this Chapter—

(a) “body corporate of the same group” means, in relation to a company, a body corporate which belongs to the same group of companies as that company belongs to;

5 (b) “child” does not include a person who has attained the age of majority; and

(c) a reference to a child of a director or secretary shall be deemed to include a reference to a child of the director’s civil partner or (as the case may be) the secretary’s civil partner who is ordinarily resident with (as the case may be)—

(i) the director and the civil partner; or

(ii) the secretary and the civil partner.

(2) For the avoidance of doubt, the use of the words “aggregate interest” in any provision of this Chapter, with reference to the interest of a director or secretary and the spouse (or civil partner) and children of the director or secretary in shares or debentures, does not operate to limit the provision’s effect (and, accordingly, does not prevent the director or secretary having the benefit of the provision) in either the situation where—

20 (a) the director or secretary alone has an interest in shares or debentures reckonable for the purposes of the provision, or

(b) one or more, but not all, of any foregoing class of persons has or have alone such a reckonable interest.

25 **258.**—(1) Subject to *section 261*, in this Chapter “disclosable interest” means, in relation to shares or debentures, any interest of any kind whatsoever in shares in, or debentures of, a body corporate.

“Disclosable interest” — meaning of that term.

(2) For that purpose there shall be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.

30 (3) It is also immaterial—

(a) whether or not the interest is held alone, jointly or in common with any other person; or

(b) whether the shares or debentures are identifiable or not.

35 **259.**—(1) Without prejudice to the other circumstances in which a person may have such an interest, a person shall, for the purposes of this Chapter, be regarded as having a disclosable interest in shares or debentures if—

Circumstances in which person is to be regarded as having disclosable interest in shares or debentures.

40 (a) the person enters into a contract for the purchase by him or her of them (whether for cash or other consideration);

(b) the person is the registered holder or joint holder of them;

(c) not being the registered holder, the person is entitled to exercise any right conferred by the holding of those shares or debentures or is entitled to control the exercise of any such right;

45

- (d) a body corporate is interested in them and—
 - (i) that body corporate or its directors are accustomed to act in accordance with the person’s directions or instructions; or
 - (ii) the person is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of that body corporate; 5
 - (e) otherwise than by virtue of having an interest under a trust—
 - (i) the person has a right to call for delivery of the shares or debentures to himself or herself or to his or her order; or 10
 - (ii) the person has a right to acquire an interest in shares or debentures, or is under an obligation to take an interest in shares or debentures, 15

whether in any case the right or obligation is conditional or absolute;
 - (f) the person is a beneficiary of a trust and—
 - (i) the property held on trust for that beneficiary includes any interest in shares or debentures; and 20
 - (ii) that person, apart from this paragraph, does not have an interest in the shares or debentures.
- (2) For the purpose of *subsection (1)(c)*, a person shall be taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if he or she— 25
- (a) has a right (whether subject to conditions or not), the exercise of which would make him or her so entitled; or
 - (b) is under an obligation (whether so subject or not), the fulfilment of which would make him or her so entitled.
- (3) For the purpose of *subsection (1)(d)*— 30
- (a) “voting power” does not include any power to vote which arises only in specified circumstances;
 - (b) where a person is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the “relevant voting power”), then, for the purposes of that provision, the relevant voting power shall be taken to be exercisable by that person. 35 40

Circumstances in which person shall be regarded as having ceased to have disclosable interest.

260.—A person shall, amongst other circumstances, be taken to have ceased to have a disclosable interest in shares or debentures for the purposes of this Chapter upon—

- (a) delivery to another person’s order of the shares or debentures in fulfilment of a contract for the purchase of them 45

by that other person or in satisfaction of a right of his or her to call for delivery of them; or

(b) failure by another person to deliver the shares or debentures in accordance with the terms of a contract or pursuant to a right to call for delivery of them; or

(c) the lapse of that person's right to call for delivery of the shares or debentures.

261.—The following interests shall not constitute disclosable interests for the purposes of this Chapter—

Interests that are not disclosable interests for the purposes of this Chapter.

(a) where property is held on trust and an interest in shares or debentures is comprised in that property—

(i) an interest in reversion or remainder;

(ii) an interest of a bare trustee; or

(iii) any discretionary interest;

(b) an interest of a person subsisting by virtue of—

(i) his or her holding—

(I) units in an authorised unit trust scheme within the meaning of the Unit Trusts Act 1990;

(II) units in an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011); or

(III) shares in an investment company within the meaning of *Part 24*;

or

(ii) a scheme made under section 46 of the Charities Act 1961;

(c) an interest for the life of himself or herself or of another person under a settlement in the case of which the property comprised in the settlement consists of or includes shares or debentures, and—

(i) the settlement is irrevocable; and

(ii) the settlor (within the meaning of section 10 of the Taxes Consolidation Act 1997) has no interest in any income arising under, or property comprised in, the settlement;

(d) an interest in shares or debentures held by a member of an authorised market operator carrying on business as a stock broker which is held by way of security only for the purposes of a transaction entered into by the person or other body concerned in the ordinary course of business of such person or other body;

- (e) any power or discretion vested in a person by virtue only of such person having been duly appointed as or acting as—
 - (i) an attorney of a person with an interest in shares or debentures; 5
 - (ii) a proxy of a member of, or holder of debentures in, a company or a representative of a body corporate which is a member of the holder of debentures of a company;
- (f) any interest in shares in, or debentures of, a body corporate where the aggregate interest of the director or secretary and spouse (or civil partner) and children of such director or secretary is in— 10
 - (i) shares representing 1 per cent or less, in nominal value, of the body corporate’s issued share capital of a class carrying rights to vote in all circumstances at general meetings of the body corporate (provided that the temporary suspension of voting rights in respect of shares comprised in issued share capital of a body corporate of any such class shall be disregarded); or 15 20
 - (ii) shares or debentures not carrying the right to vote at general meetings of the body corporate, save a right to vote which arises only in specified circumstances;
- (g) as regards circumstances in which an offer is made in relation to shares in a body corporate, being an offer— 25
 - (i) to which the Irish Takeover Panel Act 1997 or the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) applies or apply; and 30
 - (ii) which is conditional on acceptance to a given extent, an interest in those shares that would have arisen but for the offer not being accepted to the required extent;
- (h) such interests, or interests of such a class, as may be prescribed for the purposes of this subsection. 35

Duty to notify disclosable interests — first of the 5 cases in which duty arises – interests held at commencement of Chapter.

262.—(1) Subject to *subsection (3)* and *section 265*, a person who, at the commencement of this Chapter—

- (a) is a director or secretary of a company; and
- (b) is aware of—
 - (i) the person’s having; or 40
 - (ii) the person’s spouse or civil partner or a child of the person’s having,

a disclosable interest in shares in, or debentures of, that company (the “relevant company”) or a body corporate of the same group,

has the following duty.

5 (2) That duty is to notify the relevant company in writing of the particulars specified in *section 266* of the disclosable interest and the fact of its being so held.

(3) That duty does not arise if—

10 (a) the nature of the disclosable interest concerned is such as to constitute an interest of the kind specified in section 54 of the Act of 1990; and

(b) the relevant company has—

15 (i) before the commencement of this section, been notified, in accordance with Part IV of the Act of 1990, of the particulars required by that Part in relation to that interest; or

20 (ii) received, not later than 5 days after the commencement of this section, such particulars in relation to that interest by way of such a notification (being a notification sent not later than that commencement).

263.—(1) Subject to *section 265*, a person who—

(a) is a director or secretary of a company; and

(b) becomes aware of—

25 (i) the person’s having acquired or having ceased to have; or

(ii) the person’s spouse or civil partner, or a child of the person’s, having acquired or having ceased to have,

30 a disclosable interest in shares in, or debentures of, that company (the “relevant company”) or any body corporate of the same group,

has the following duty.

35 (2) That duty is to notify the relevant company in writing of the particulars specified in *section 266* of the disclosable interest and the fact of its being so acquired or, as the case may be, of its so ceasing to be held.

(3) Subject to *section 265*, a person who—

(a) becomes aware of—

(i) the person’s having; or

40 (ii) the person’s spouse or civil partner or a child of the person’s having,

Second and third cases in which duty to notify arises — interests acquired or ceasing to be held.

a disclosable interest in shares in, or debentures of, a company (the “relevant company”) or a body corporate of the same group;

and

- (b) becomes a director or secretary of the relevant company (not being the secretary of the relevant company at the time of so becoming a director or not being a director at the time of so becoming the secretary of the relevant company), 5

has the following duty. 10

(4) That duty is to notify the relevant company in writing of the particulars specified in *section 266* of the disclosable interest and the fact of its being so held.

Fourth and fifth cases in which duty to notify arises — grant or assignment of subscription rights, etc.

264.—(1) Subject to *section 265*, a director or secretary of a company (the “relevant company”) who— 15

- (a) (i) is granted by another body corporate of the same group a right to subscribe for shares in, or debentures of, that other body corporate; or

- (ii) exercises such a right so granted;

or 20

- (b) becomes aware of a spouse or civil partner of the director’s or secretary’s or a child of the director’s or secretary’s—

- (i) having been granted by such a body corporate such a right of subscription; or

- (ii) having exercised such a right so granted, 25

has, subject to *subsection (3)*, the following duty.

(2) That duty is to notify the relevant company in writing of—

- (a) the grant of the right of subscription, or the exercise of it, referred to in *paragraph (a)* or *(b)* of the preceding subsection (or, as the case may be, both the things referred to in those paragraphs); 30

- (b) subject to *subsection (5)*, the number or amount, and class, of shares or debentures involved and the consideration payable; and

- (c) if *section 266(6)* applies, the address there mentioned. 35

(3) If a director or secretary, at the time of the thing referred to in *subsection (1)(a)* being done, is not aware of the fact of the thing being done (the “relevant fact”) by reason of—

- (a) in the case of the thing referred to in *subsection (1)(a)(i)*, the grantor of the right not informing the director or secretary immediately of the grant; 40

(b) in the case of the thing referred to in *subsection (1)(a)(ii)*, the thing being done on behalf of the director or secretary by another person pursuant to an authority conferred on the person by the director or secretary; or

5 (c) in either such case, other exceptional circumstances,

then the duty under *subsection (2)*, with respect to that thing, only arises on the director or secretary becoming aware of the relevant fact.

10 (4) However, in any proceedings (civil or criminal) it shall be presumed, unless the contrary is shown, that none of the circumstances referred to in *subsection (3)* applies.

15 (5) If the aggregate interest of the director or secretary and spouse (or civil partner) and children of such director or secretary in shares in the body corporate concerned (both before and after the occurrence of the event or events referred to in *subsection (2)(a)*) is such as to fall within *section 261(f)(i)*, then the duty of notification under *subsection (2)* does not extend to the matters referred to in *paragraph (b)* of it.

20 (6) Subject to *section 265*, a director or secretary of a company (the “relevant company”) who—

(a) enters into a contract to sell shares in, or debentures of, the relevant company or any body corporate of the same group;

25 (b) assigns a right granted to him or her by the relevant company or a body corporate of the same group to subscribe for shares in, or debentures of, the relevant company or such body corporate; or

(c) becomes aware of a spouse or civil partner of the director’s or secretary’s or a child of the director’s or secretary’s—

30 (i) having entered into a contract to sell such shares or debentures; or

35 (ii) having assigned a right that has been granted to the spouse, civil partner or child by the relevant company or such body corporate to subscribe for shares in, or debentures of, the relevant company or such body corporate,

has, subject to *subsection (8)*, the following duty.

(7) That duty is to notify the relevant company in writing of—

40 (a) the entering into of the contract or the assigning of the right referred to in *paragraph (a), (b) or (c)* of the preceding subsection (or, as the case may be, the doing of 2 or more of the things referred to in those paragraphs);

45 (b) subject to *subsection (10)*, the number or amount, and class, of shares or debentures involved and the consideration payable; and

(c) if *section 266(6)* applies, the address there mentioned.

(8) If a director or secretary, at the time of the thing referred to in *subsection (6)(a)* or *(b)* being done, is not aware of the fact of the thing being done (the “relevant fact”) by reason of—

(a) the thing being done on behalf of the director or secretary by another person pursuant to an authority conferred on the person by the director or secretary; or 5

(b) other exceptional circumstances,

then the duty under *subsection (7)*, with respect to that thing, only arises on the director or secretary becoming aware of the relevant fact. 10

(9) However, in any proceedings (civil or criminal) it shall be presumed, unless the contrary is shown, that none of the circumstances referred to in *subsection (8)* applies.

(10) If the aggregate interest of the director or secretary and spouse (or civil partner) and children of such director or secretary in shares in the body corporate concerned (before the occurrence of the event or events referred to in *subsection (7)(a)*) is such as to fall within *section 261(f)(i)*, then the duty of notification under *subsection (7)* does not extend to the matters referred to in *paragraph (b)* of it. 15

Application of sections 262 to 264 and exceptions to them.

265.—(1) With respect to the application of *sections 262* to *264* (by virtue of *sections 222* and *223*) to shadow directors and *de facto* directors, the making of a notification by a person under *section 262*, *263* or *264* shall not, in itself, be proof that the person making the notification is a shadow director or *de facto* director. 20

(2) Nothing in *sections 262* to *264* shall operate so as to impose an obligation with respect to shares in a body corporate which is the wholly owned subsidiary of another body corporate. 25

(3) Nothing in *sections 262* to *264* shall operate to impose an obligation on a director or secretary of a company who is granted an option to subscribe for shares in, or debentures of, that company to make any notification to that company in respect of such grant. 30

Mode of notification by directors and secretaries under this Chapter.

266.—(1) In relation to the acquisition or disposal by a director or secretary of a company of shares or debentures the means specified in *subsection (2)* shall, if the director or secretary opts to use them, constitute a sufficient notification in writing to the company, for the purposes of this Chapter, of the fact of their acquisition or disposal and the particulars of the disclosable interest. 35

(2) Those means are the delivery, within 30 days after the date of the instrument, to the company of an instrument of transfer in respect of the shares or debentures, being an instrument that identifies— 40

(a) the director or secretary by name;

(b) the shares or debentures in question;

(c) the purchase or sale price therefor; and

(d) if *subsection (6)* applies, the address there mentioned. 45

5 (3) In any case not falling within *subsection (1)* or where the director or secretary opts not to use the foregoing means in a case falling within *subsection (1)*, the following means shall be used to notify in writing, for the purpose of *section 262* or *263*, the fact of a disclosable interest being held or of its being acquired or being ceased to be held (as the case may be) and the particulars thereof.

10 (4) Those means are the delivery to the company concerned (within 8 days after the date of the event giving rise to the duty to make the notification) of a statement in writing by or on behalf of the director or secretary containing the following particulars—

15 (a) a statement that the director or secretary, or his or her spouse or civil partner or a child of the director or secretary (as the case may be) has, has acquired or has ceased to have (as the case may be) a disclosable interest in shares in, or debentures of, the company or a body corporate of the same group;

(b) the number of shares or debentures and their class, and a statement of the names of the registered holders of the shares or debentures;

20 (c) in the case of an acquisition or disposal of shares or debentures, the consideration payable therefor; and

(d) if *subsection (6)* applies, the address there mentioned.

25 (5) The notification referred to in *section 264(2)* or (7) shall be made to the company within 5 days after the date of the event giving rise to the duty to make the notification; in a case where the circumstances referred to in *subsection (3)* or (8) of *section 264* apply, the date of the event giving rise to the duty to make the notification is the date on which the director or secretary becomes aware of the relevant fact referred to in that *subsection (3)* or (8).

30 (6) A shadow director or *de facto* director shall, in any notification made by him or her under this Chapter, specify his or her address and this applies whether the notification is in respect of himself or herself or a spouse or civil partner of such director or a child of such director.

35 **267.**—(1) Where a person authorises any other person (the “agent”) to acquire or dispose of, on his or her behalf, interests in shares in, or debentures of, a company, the person shall secure that the agent notifies him or her immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any duty on the person’s part to make a notification under this Chapter with respect to his or her interest in those shares or debentures. Enforcement of notification obligation.

45 (2) Subject to the subsequent provisions of this section, where a person fails to fulfil, within the period specified by this Chapter in that behalf, a duty to which he or she is, by virtue of *section 262*, *263* or *264*, subject, no right or interest of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him or her, whether directly or indirectly, by action or legal proceeding.

(3) Where any right or interest is restricted under *subsection (2)*—

50 (a) any person in default as is mentioned in that subsection or any other person affected by such restriction may apply

to the court for relief against a disability imposed by or arising out of that subsection;

(b) the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as respects any particular right or interest, on such terms and conditions as it sees fit; 5

(c) where an applicant for relief under this subsection is a person referred to in *subsection (2)*, the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant. 10

(4) Where a director or secretary is in default as mentioned in *subsection (2)*, then, notwithstanding that default, that subsection shall not apply in respect of the shares or debentures concerned if the following condition is satisfied. 15

(5) That condition is that the identity of the director or secretary and his or her holding, acquisition and disposal (as the case may be) of the shares or debentures in question and the consideration paid or payable therefor has, from not later than 30 days after the date the duty arose, been apparent on the face of all or any of the following registers or documents of the company concerned (including some or all of them when consulted together), namely— 20

(a) the register of members; 25

(b) the register of directors and secretaries;

(c) the register of interests under *section 268*;

(d) documents made available by that company with those registers.

(6) If a company in general meeting passes a special resolution providing that the following protection shall apply in favour of a third party having the following dealing in relation to shares in, or debentures of, the company specified in the resolution then, upon production of a copy of such resolution by the secretary of the company to the third party, a third party having any dealing with the company or the registered holder of the shares or debentures in question shall be entitled to presume, without further enquiry, that— 30 35

(a) the provisions of this Chapter have been complied with in relation to the shares or debentures; and

(b) the registered holder is entitled to deal with the shares or debentures registered in his or her name. 40

(7) *Subsection (2)* shall not apply to a duty relating to a person ceasing to be interested in shares in, or debentures of, a company.

(8) A person who fails without reasonable excuse to comply with *subsection (1)* shall be guilty of a category 3 offence. 45

(9) A person who fails to fulfil, within the period specified in this Chapter in that behalf, a duty to which he or she is, by virtue of *section 262, 263 or 264*, subject shall be guilty of a category 3 offence.

(10) Where before the commencement of this section, default has been made in complying with section 53 of the Act of 1990 in relation to shares in, or debentures of, a company, the board of directors of the company, at any time before the expiry of 18 months after that commencement, may, if authorised by an ordinary resolution of the company in that behalf, resolve that any restrictions that continue to operate (by virtue of section 58(3) of the Act of 1990) in relation to the shares or debentures shall, on and from the time of their so resolving, cease to operate if—

5 (a) the person upon whom the duty to make the notification concerned under that section 53 fell presents evidence (by way of affidavit or such other satisfactory means as the board may specify) to the board that the default concerned was inadvertent; and

10 (b) the board is satisfied from that evidence that the default was inadvertent,

and, where the board so resolves, such restrictions shall cease to operate accordingly.

20 **268.**—(1) A company shall keep a register of interests (the “register of interests”) for the purposes of this Chapter.

Register of interests: contents and entries.

(2) *Sections 216 to 218* (rights of inspection, requests for copies, etc.) apply to the register of interests.

25 (3) Whenever the company receives information from a director or secretary of the company in consequence of the fulfilment of a duty to which he or she is, by virtue of *section 262, 263 or 264*, subject, the company shall within 3 days after the date of such receipt enter in the register of interests that information and the date of the entry.

30 (4) A company shall, whenever it grants to a director or secretary of the company a right to subscribe for shares in, or debentures of, the company, enter in the register of interests against his or her name—

(a) the date on which the right is granted;

(b) the period during which or time at which it is exercisable;

35 (c) the consideration for the grant (or, if it be the case that there is no consideration, that fact); and

(d) the description of shares or debentures involved and the number or amount thereof, and the price to be paid therefor.

40 (5) Whenever such a right as is mentioned in *subsection (4)* is exercised by a director or secretary, the company shall enter in the register of interests against his or her name—

(a) that fact (identifying the right);

45 (b) the number or amount of shares or debentures in respect of which it is exercised; and

(c) if it be the case that they were registered in his or her name, that fact, and if not, the name or names of the

person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number or amount thereof registered in the name of each of them.

(6) The register of interests shall be so made up that the entries in it against the several names inscribed in it appear in chronological order. 5

(7) The nature and extent of an interest recorded in the register of interests of a director or secretary in any shares or debentures shall, if he or she so requires, be recorded in that register. 10

(8) A company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(9) If default is made by a company in complying with *subsection (1)* or any of *subsections (3) to (7)*, the company and any officer of it who is in default shall be guilty of a category 3 offence. 15

Supplemental provisions in relation to *section 268*.

269.—(1) Unless the register under *section 268* is in such a form as to constitute in itself an index, the company shall keep an index of the names entered in it which shall—

(a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and 20

(b) be kept at the same place as the register,

and the company shall, within 14 days after the date on which a name is entered in the register, make any necessary alteration in the index. 25

(2) In addition to the requirements of *section 217*, the register shall be, and remain, open and accessible to any person attending an annual general meeting of the company concerned at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting. 30

(3) If default is made by a company in complying with *subsection (1)* or *(2)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

Register of interests: removal of entries from it.

270.—(1) A company may remove an entry against a person's name from the register required to be kept by it under *section 268* (the "register") if more than 6 years have elapsed after the date of the entry being made, and either— 35

(a) that entry recorded the fact that the person in question has ceased to have an interest notifiable under this Chapter in shares in, or debentures of, the company; or 40

(b) it has been superseded by a later entry made under *section 268* against the same person's name,

and, in a case falling within *paragraph (a)*, the company may also remove that person's name from the register.

(2) Where a company removes a name from the register pursuant to *subsection (1)*, the company shall, within 14 days after the date of that removal, make any necessary alterations in any associated index.

5 (3) Entries in the register shall not be deleted except in accordance with *subsections (1) and (2)*.

(4) If an entry is deleted from the register in contravention of *subsection (1)*, the company concerned shall restore that entry to the register as soon as is reasonable and practicable.

10 (5) If default is made by a company in complying with *subsection (2), (3) or (4)*, the company and any officer of it who is in default shall be guilty of a category 3 offence.

CHAPTER 6

Responsibilities of officers of company – provisions explaining what being “in default” means and presumption regarding that matter

15 **271.**—(1) For the purposes of any provision of this Act which provides that an officer of a company who is in default shall be guilty of an offence, an officer who is in default is any officer who authorises or who, in breach of his or her duty as such officer, permits the default mentioned in the provision.

Meaning of “in default” in context of sanctions specified in respect of officers (whether directors or secretaries or not).

20 (2) In this section “default” includes a refusal to do a thing or a contravention of a provision.

272.—(1) In this section—

Presumption that default permitted and certain defence.

25 (a) “permitted”, in relation to the default, means permitted in breach of the defendant’s duty as an officer of the company concerned;

(b) “relevant proceedings” means proceedings for an offence under a provision of this Act, being a provision which provides that an officer of a company who is in default shall be guilty of an offence;

30 (c) a reference to a defendant in those proceedings is a reference to—

(i) the defendant; or

35 (ii) if there is more than one defendant, each of the one or more persons, other than the company, alleged to be in default,

being, in every case, a person who was an officer of the company at the relevant time.

40 (2) In relevant proceedings, it shall be presumed, unless the contrary is shown, that a defendant permitted the default if, from the evidence adduced by the prosecution of the commission by the company of the offence, it appears that no steps (being steps that were reasonable in the circumstances to have been taken by that defendant) were taken by that defendant to prevent the default.

45 (3) In relevant proceedings (including cases of relevant proceedings in which the foregoing presumption is rebutted), it shall,

subject to *subsection (4)*, be a defence for a defendant to prove that, due to circumstances beyond the control of that defendant, that defendant was unable to take all reasonable steps, being steps that were reasonable in the circumstances to have been taken by that defendant, to prevent the default. 5

(4) The defence provided for in *subsection (3)* is not available if this Act elsewhere provides for a defence in proceedings for the offence concerned.

PART 6

FINANCIAL STATEMENTS, ANNUAL RETURN AND AUDIT 10

CHAPTER 1

Preliminary

What this Part contains and use of prefixes — “Companies Act” and “IFRS”.

273.—(1) This Part contains the provisions regarding—

- (a) the accounting records to be kept, and the financial statements to be prepared, by companies; 15
- (b) the periodic returns to be made by companies to the Registrar; and
- (c) the auditing of financial statements of companies and matters related to the auditing of them and, in particular, the rules governing the appointment of statutory auditors to, and their removal from, office. 20

(2) Those financial statements shall be prepared in accordance with (as this Part authorises)—

- (a) the requirements of *Schedule 3* or *4* and the relevant requirements of this Part; or 25
- (b) international financial reporting standards and the relevant requirements of this Part,

and the prefix—

- (i) “Companies Act” is used in references in this Part to financial statements that must comply with the requirements referred to in *paragraph (a)*; and 30
- (ii) “IFRS” is used in references in this Part to financial statements that must comply with the requirements referred to in *paragraph (b)*.

Overall limitation on discretions with respect to length of financial year, timing of annual general meeting, etc.

274.—(1) The discretions of a company under— 35

- (a) *Part 4* with respect to the date of the holding of an annual general meeting; and
- (b) this Part with respect to the length of its financial year or to its annual return date,

are subject to the overall limitation that those discretions must be exercised in a manner that results in each of the following, namely: 40