



Companies Act 1985

1985 CHAPTER 6

PART X

ENFORCEMENT OF FAIR DEALING BY DIRECTORS

Restrictions on directors taking financial advantage

311 Prohibition on tax-free payments to directors

- (1) It is not lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.
- (2) Any provision contained in a company's articles, or in any contract, or in any resolution of a company or a company's directors, for payment to a director of remuneration as above mentioned has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

312 Payment to director for loss of office, etc.

It is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company.

313 Company approval for property transfer

- (1) It is not 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 a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars of the proposed payment (including its amount) have been disclosed to members of the company and the proposal approved by the company.

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- (2) Where a payment unlawful under this section is made to a director, the amount received is deemed to be received by him in trust for the company.

314 Director's duty of disclosure on takeover, etc.

- (1) This section applies where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—
- (a) an offer made to the general body of shareholders; or
 - (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
 - (c) an offer made by or on behalf of an individual with a view to his 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,
- a payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.
- (2) It is in those circumstances the director's duty to take all reasonable steps to secure that particulars of the proposed payment (including its amount) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.
- (3) If—
- (a) the director fails to take those steps, or
 - (b) any person who has been properly required by the director to include those particulars in or send them with the notice required by subsection (2) fails to do so,
- he is liable to a fine.

315 Consequences of non-compliance with s. 314

- (1) If in the case of any such payment to a director as is mentioned in section 314(1)—
- (a) his duty under that section is not complied with, or
 - (b) the making of the proposed payment is not, 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,
- any sum received by the director on account of the payment is deemed to have been received by him in trust for persons who have sold their shares as a result of the offer made; and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.
- (2) Where—
- (a) the shareholders referred to in subsection (1)(b) are not all the members of the company, and
 - (b) no provision is made by the articles for summoning or regulating the meeting referred to in that paragraph,
- the provisions of this Act and of the company's articles relating to general meetings of the company apply (for that purpose) to the meeting either without modification or with such modifications as the Secretary of State on the application of any person

concerned may direct for the purpose of adapting them to the circumstances of the meeting.

- (3) If at a meeting summoned for the purpose of approving any payment as required by subsection (1)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment is deemed for the purposes of that subsection to have been approved.

316 Provisions supplementing ss. 312-315

- (1) Where in proceedings for the recovery of any payment as having, by virtue of section 313(2) or 315(1), been received by any person in trust, it is shown that—

- (a) 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 two years after that agreement or the offer leading to it; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement,

the payment is deemed, except in so far as the contrary is shown, to be one to which the provisions mentioned above in this subsection apply.

- (2) If in connection with any such transfer as is mentioned in any of sections 313 to 315—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him 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,

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

- (3) References in sections 312 to 315 to payments made to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services.

" Pension" here includes any superannuation allowance, superannuation gratuity or similar payment.

- (4) Nothing in sections 313 to 315 prejudices the operation of any rule of law requiring disclosure to be made with respect to such payments as are there mentioned, or with respect to any other like payments made or to be made to a company's directors.

317 Directors to disclose interest in contracts

- (1) It is 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 interest at a meeting of the directors of the company.

- (2) In the case of a proposed contract, the declaration shall be made—

- (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration ; or

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- (b) 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 became so interested ;
- and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.
- (3) For purposes of this section, a general notice given to the directors of a company by a director to the effect that—
- (a) he 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 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 (within the meaning of section 346 below),
- is deemed a sufficient declaration of interest in relation to any such contract.
- (4) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
- (5) A reference in this section to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 22nd December 1980.
- (6) For purposes of this section, a transaction or arrangement of a kind described in section 330 (prohibition of loans, quasi-loans etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.
- (7) A director who fails to comply with this section is liable to a fine.
- (8) This section applies to a shadow director as it applies to a director, except that a shadow director shall declare his 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 had been a director, the declaration would be required by subsection (2) to be made ; or
 - (b) a notice which under subsection (3) falls to be treated as a sufficient declaration of that interest (or would fall to be so treated apart from subsection (4)).
- (9) Nothing in this section prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

318 Directors' service contracts to be open to inspection

- (1) Subject to the following provisions, every company shall keep at an appropriate place—
- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract ;
 - (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and

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- (c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.
- (2) All copies and memoranda kept by a company in pursuance of subsection (1) shall be kept at the same place.
- (3) The following are appropriate places for the purposes of subsection (1)—
 - (a) the company's registered office;
 - (b) the place where its register of members is kept (if other than its registered office);
 - (c) its principal place of business, provided that is situated in that part of Great Britain in which the company is registered.
- (4) Every company shall send notice in the prescribed form to the registrar of companies of the place where copies and memoranda are kept in compliance with subsection (1), and of any change in that place, save in a case in which they have at all times been kept at the company's registered office.
- (5) Subsection (1) does not apply to a director's contract of service with the company or with a subsidiary of it if that contract required him to work wholly or mainly outside the United Kingdom; but the company shall keep a memorandum—
 - (a) in the case of a contract of service with the company, giving the director's name and setting out the provisions of the contract relating to its duration ;
 - (b) in the case of a contract of service with a subsidiary, giving the director's name and the name and place of incorporation of the subsidiary, and setting out the provisions of the contract relating to its duration,at the same place as copies and memoranda are kept by the company in pursuance of subsection (1).
- (6) A shadow director is treated for purposes of this section as a director.
- (7) Every copy and memorandum required by subsection (1) or (5) to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day be allowed for inspection), be open to inspection of any member of the company without charge.
- (8) If—
 - (a) default is made in complying with subsection (1) or (5), or
 - (b) an inspection required under subsection (7) is refused, or
 - (c) default is made for 14 days in complying with subsection (4),the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (9) In the case of a refusal of an inspection required under subsection (7) of a copy or memorandum, the court may by order compel an immediate inspection of it.
- (10) Subsections (1) and (5) apply to a variation of a director's contract of service as they apply to the contract.
- (11) This section does not require that there be kept a copy of, or memorandum setting out the terms of, a contract (or its variation) at a time when the unexpired portion of the term for which the contract is to be in force is less than 12 months, or at a time

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at which the contract can, within the next ensuing 12 months, be terminated by the company without payment of compensation.

319 Director's contract of employment for more than 5 years

- (1) This section applies in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), for a period of more than 5 years during which the employment—
 - (a) cannot be terminated by the company by notice; or
 - (b) can be so terminated only in specified circumstances.
- (2) 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 notice or can be so terminated only in specified circumstances; and
 - (b) more than 6 months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it) under which he is to be employed with the company or, where he is a director of a holding company, within the group,this section applies as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.
- (3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1), 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.
- (4) No approval is required to be given under this section by any body corporate unless it is a company within the meaning of this Act, or is registered under section 680, or if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.
- (5) A resolution of a company approving such a term as is mentioned in subsection (1) 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 company's registered office for not less than 15 days ending with the date of the meeting; and
 - (b) at the meeting itself.
- (6) A term incorporated in an agreement in contravention of this section is, to the extent that it contravenes the section, void; and that agreement and, in a case where subsection (2) applies, the original agreement are deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.
- (7) In this section—
 - (a) "employment" includes employment under a contract for services; and
 - (b) "group", in relation to a director of a holding company, means the group which consists of that company and its subsidiaries;

and for purposes of this section a shadow director is treated as a director.

320 Substantial property transactions involving directors, etc.

- (1) With the exceptions provided by the section next following, a company shall not enter into an arrangement—
 - (a) whereby a director of the company or 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 company; or
 - (b) whereby the 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,unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.
- (2) For this purpose 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 £1,000 but (subject to that) exceeds £50,000 or 10 per cent, of the company's asset value, that is—
 - (a) except in a case falling within paragraph (b) below, the value of the company's net assets determined by reference to the accounts prepared and laid under Part VII in respect of the last preceding financial year in respect of which such accounts were so laid ; and
 - (b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.
- (3) For purposes of this section and sections 321 and 322, a shadow director is treated as a director.

321 Exceptions from s. 320

- (1) No approval is required to be given under section 320 by any body corporate unless it is a company within the meaning of this Act or registered under section 680 or, if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.
- (2) Section 320(1) does not apply to an arrangement for the acquisition of a non-cash asset—
 - (a) if the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiaries, or by one wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company, or
 - (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.
- (3) Section 320(1)(a) does not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

322 Liabilities arising from contravention of s. 320

- (1) An arrangement entered into by a company in contravention of section 320, and any transaction entered into in pursuance of the arrangement (whether by the company or

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any other person) is voidable at the instance of the company unless one or more of the conditions specified in the next subsection is satisfied.

- (2) Those conditions are that—
- (a) restitution of any money or 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 this section by any other person for the loss or damage suffered by it; or
 - (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
 - (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting 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 so affirmed with the approval of the holding company given by a resolution in general meeting.
- (3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 320, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction, and
 - (b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (4) Subsection (3) is without prejudice to any liability imposed otherwise than by that subsection, and is subject to the following two subsections; and the liability under subsection (3) arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1).
- (5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 320, that director is not liable under subsection (3) if he shows that he took all reasonable steps to secure the company's compliance with that section.
- (6) In any case, a person so connected and any such other director as is mentioned in subsection (3) is not so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

Share dealings by directors and their families

323 Prohibition on directors dealing in share options

- (1) It is an offence for a director of a company to buy—
- (a) a right to call for delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or
 - (b) a right to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or

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- (c) a right (as he may elect) to call for delivery at a specified price and within a specified time or to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures.
- (2) A person guilty of an offence under subsection (1) is liable to imprisonment or a fine, or both.
- (3) In subsection (1)—
- (a) " relevant shares ", in relation to a director of a company, means shares in the company or in any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, being shares as respects which there has been granted a listing on a stock exchange (whether in Great Britain or elsewhere);
 - (b) " relevant debentures ", in relation to a director of a company, means debentures of the company or of any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, being debentures as respects which there has been granted such a listing ; and
 - (c) " price " includes any consideration other than money.
- (4) This section applies to a shadow director as to a director.
- (5) This section is not to be taken as penalising a person who buys a right to subscribe for shares in, or debentures of, a body corporate or buys debentures of a body corporate that confer upon the holder of them a right to subscribe for, or to convert the debentures (in whole or in part) into, shares of that body.

324 Duty of director to disclose shareholdings in own company

- (1) A person who becomes a director of a company and at the time when he does so is interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, is under obligation to notify the company in writing—
- (a) of the subsistence of his interests at that time; and
 - (b) of the number of shares of each class in, and the amount of debentures of each class of, the company or other such body corporate in which each interest of his subsists at that time.
- (2) A director of a company is under obligation to notify the company in writing of the occurrence, while he is a director, of any of the following events—
- (a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
 - (b) the entering into by him of a contract to sell any such shares or debentures;
 - (c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; and
 - (d) the grant to him by another body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted;

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and notification to the company must state the number or amount, and class, of shares or debentures involved.

- (3) Schedule 13 has effect in connection with subsections (1) and (2) above; and of that Schedule—
- (a) Part I contains rules for the interpretation of, and otherwise in relation to, those subsections and applies in determining, for purposes of those subsections, whether a person has an interest in shares or debentures ;
 - (b) Part II applies with respect to the periods within which obligations imposed by the subsections must be fulfilled ; and
 - (c) Part III specifies certain circumstances in which obligations arising from subsection (2) are to be treated as not discharged;
- and subsections (1) and (2) are subject to any exceptions for which provision may be made by regulations made by the Secretary of State by statutory instrument.
- (4) Subsection (2) does not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a director.
- (5) An obligation imposed by this section is treated as not discharged unless the notice by means of which it purports to be discharged is expressed to be given in fulfilment of that obligation.
- (6) This section applies to shadow directors as to directors ; but nothing in it operates so as to impose an obligation with respect to shares in a body corporate which is the wholly-owned subsidiary of another body corporate.
- (7) A person who—
- (a) fails to discharge, within the proper period, an obligation to which he is subject under subsection (1) or (2), or
 - (b) in purported discharge of an obligation to which he is so subject, makes to the company a statement which he knows to be false, or recklessly makes to it a statement which is false,
- is guilty of an offence and liable to imprisonment or a fine, or both.
- (8) Section 732 (restriction on prosecutions) applies to an offence under this section.

325 Register of directors' interests notified under s. 324

- (1) Every company shall keep a register for the purposes of section 324.
- (2) Whenever a company receives information from a director given in fulfilment of an obligation imposed on him by that section, it is under obligation to enter in the register, against the director's name, the information received and the date of the entry.
- (3) The company is also under obligation, whenever it grants to a director a right to subscribe for shares in, or debentures of, the company to enter in the register against his name—
 - (a) the date on which the right is granted,
 - (b) the period during which, or time at which, it is exercisable,
 - (c) the consideration for the grant (or, if there is no consideration, that fact), and
 - (d) the description of shares or debentures involved and the number or amount of them, and the price to be paid for them (or the consideration, if otherwise than in money).

- (4) Whenever such a right as is mentioned above is exercised by a director, the company is under obligation to enter in the register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if they were registered in his 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 two persons or more) with the number or amount of the shares or debentures registered in the name of each of them.
- (5) Part IV of Schedule 13 has effect with respect to the register to be kept under this section, to the way in which entries in it are to be made, to the right of inspection, and generally.
- (6) For purposes of this section, a shadow director is deemed a director.

326 Sanctions for non-compliance

- (1) The following applies with respect to defaults in complying with, and to contraventions of, section 325 and Part IV of Schedule 13.
- (2) If default is made in complying with any of the following provisions—
 - (a) section 325(1), (2), (3) or (4), or
 - (b) Schedule 13, paragraph 21, 22 or 28,the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (3) If an inspection of the register required under paragraph 25 of the Schedule is refused, or a copy required under paragraph 26 is not sent within the proper period, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (4) If default is made for 14 days in complying with paragraph 27 of the Schedule (notice to registrar of where register is kept), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (5) If default is made in complying with paragraph 29 of the Schedule (register to be produced at annual general meeting), the company and every officer of it who is in default is liable to a fine.
- (6) In the case of a refusal of an inspection of the register required under paragraph 25 of the Schedule, the court may by order compel an immediate inspection of it; and in the case of failure to send within the proper period a copy required under paragraph 26, the court may by order direct that the copy be sent to the person requiring it.

327 Extension of s. 323 to spouses and children

- (1) Section 323 applies to—
 - (a) the wife or husband of a director of a company (not being herself or himself a director of it), and
 - (b) an infant son or infant daughter of a director (not being himself or herself a director of the company),as it applies to the director; but it is a defence for a person charged by virtue of this section with an offence under section 323 to prove that he (she) had no reason

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to believe that his (her) spouse or, as the case may be, parent was a director of the company in question.

- (2) For purposes of this section—
- (a) "son" includes step-son, and "daughter" includes step-daughter ("parent" being construed accordingly),
 - (b) "infant" means, in relation to Scotland, pupil or minor, and
 - (c) a shadow director of a company is deemed a director of it.

328 Extension of s. 324 to spouses and children

- (1) For the purposes of section 324—
- (a) an interest of the wife or husband of a director of a company (not being herself or himself a director of it) in shares or debentures is to be treated as the director's interest; and
 - (b) the same applies to an interest of an infant son or infant daughter of a director of a company (not being himself or herself a director of it) in shares or debentures.
- (2) For those purposes—
- (a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the wife or husband of a director of a company (not being herself or himself a director of it) is to be treated as having been entered into, exercised or made by, or (as the case may be) as having been made to, the director; and
 - (b) the same applies to a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director of it).
- (3) A director of a company is under obligation to notify the company in writing of the occurrence while he or she is a director, of either of the following events, namely—
- (a) the grant by the company to his (her) spouse, or to his or her infant son or infant daughter, of a right to subscribe for shares in, or debentures of, the company; and
 - (b) the exercise by his (her) spouse or by his or her infant son or infant daughter of such a right granted by the company to the wife, husband, son or daughter.
- (4) In a notice given to the company under subsection (3) there shall be stated—
- (a) in the case of the grant of a right, the like information as is required by section 324 to be stated by the director on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate; and
 - (b) in the case of the exercise of a right, the like information as is required by that section to be stated by the director on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.
- (5) An obligation imposed by subsection (3) on a director must be fulfilled by him before the end of 5 days beginning with the day following that on which the occurrence of the event giving rise to it comes to his knowledge; but in reckoning that period of days there is disregarded any Saturday or Sunday, and any day which is a bank holiday in any part of Great Britain.

- (6) A person who—
- (a) fails to fulfil, within the proper period, an obligation to which he is subject under subsection (3), or
 - (b) in purported fulfilment of such an obligation, makes to a company a statement which he knows to be false. or recklessly makes to a company a statement which is false,
- is guilty of an offence and liable to imprisonment or a fine, or both.
- (7) The rules set out in Part I of Schedule 13 have effect for the interpretation of, and otherwise in relation to, subsections (1) and (2); and subsections (5), (6) and (8) of section 324 apply with any requisite modification.
- (8) In this section, "son" includes step-son, "daughter" includes step-daughter, and "infant" means, in relation to Scotland, pupil or minor.
- (9) For purposes of section 325, an obligation imposed on a director by this section is to be treated as if imposed by section 324.

329 Duty to notify stock exchange of matters notified under preceding sections

- (1) Whenever a company whose shares or debentures are listed on a recognised stock exchange is notified of any matter by a director in consequence of the fulfilment of an obligation imposed by section 324 or 328, and that matter relates to shares or debentures so listed, the company is under obligation to notify that stock exchange of that matter; and the stock exchange may publish, in such manner as it may determine, any information received by it under this subsection.
- (2) An obligation imposed by subsection (1) must be fulfilled before the end of the day next following that on which it arises ; but there is disregarded for this purpose a day which is a Saturday or a Sunday or a bank holiday in any part of Great Britain.
- (3) If default is made in complying with this section, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

Section 732 (restriction on prosecutions) applies to an offence under this section.

*Restrictions on a company's power to make loans,
etc., to directors and persons connected with them*

330 General restriction on loans etc. to directors and persons connected with them

- (1) The prohibitions listed below in this section are subject to the exceptions in sections 332 to 338.
- (2) A company shall not—
- (a) make a loan to a director of the company or of its holding company;
 - (b) enter into any guarantee or provide any security in connection with a loan made by any person to such a director.
- (3) A relevant company shall not—
- (a) make a quasi-loan to a director of the company or of its holding company;
 - (b) make a loan or a quasi-loan to a person connected with such a director ;

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- (c) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any other person for such a director or a person so connected.
- (4) A relevant company shall not—
 - (a) enter into a credit transaction as creditor for such a director or a person so connected ;
 - (b) enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or a person so connected.
- (5) For purposes of sections 330 to 346, a shadow director is treated as a director.
- (6) 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 (2), (3) or (4); but for the purposes of sections 330 to 347 the transaction is to be treated as having been entered into on the date of the arrangement.
- (7) A company shall not take part in any arrangement whereby—
 - (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened any of subsections (2), (3), (4) or (6); 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.

331 Definitions for ss. 330 ff

- (1) The following subsections apply for the interpretation of sections 330 to 346.
- (2) " Guarantee " includes indemnity, and cognate expressions are to be construed accordingly.
- (3) A quasi-loan is a transaction under which one party (" the creditor") agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (" the borrower ") or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (" the borrower ")—
 - (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
 - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (4) Any reference to the person to whom a quasi-loan is made is a reference to the borrower; and 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.
- (5) "Recognised bank" means a company which is recognised as a bank for the purposes of the Banking Act 1979.
- (6) " Relevant company " means a company which—
 - (a) is a public company, or
 - (b) is a subsidiary of a public company, or

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- (c) is a subsidiary of a company which has as another subsidiary a public company, or
 - (d) has a subsidiary which is a public company.
- (7) A credit transaction is a transaction under which one party (" the creditor ")—
- (a) supplies any goods or sells any land under a hire-purchase agreement or a conditional sale agreement;
 - (b) leases or hires any land or goods in return for periodical payments;
 - (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.
- (8) " Services " means anything other than goods or land.
- (9) A transaction or arrangement is made " for " a person if—
- (a) in the case of a loan or quasi-loan, it is made to him;
 - (b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
 - (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 a credit transaction made for him ;
 - (d) in the case of an arrangement within subsection (6) or (7) of section 330, the transaction to which the arrangement relates was made for him ; and
 - (e) in the case of any other transaction or arrangement for the supply or transfer of, or of any interest in, goods, land or services, he is the person to whom the goods, land or services (or the interest) are supplied or transferred.
- (10) " Conditional sale agreement" means the same as in the Consumer Credit Act 1974.

332 Short-term quasi-loans

- (1) Subsection (3) of section 300 does not prohibit a company (" the creditor ") from making a quasi-loan to one of its directors or to a director of its holding company if—
- (a) the quasi-loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditure within 2 months of its being incurred; and
 - (b) the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant quasi-loan does not exceed £1,000.
- (2) A quasi-loan is relevant for this purpose if it was made to the director by virtue of this section by the creditor or its subsidiary or, where the director is a director of the creditor's holding company, any other subsidiary of that company; and " the amount outstanding " is the amount of the outstanding liabilities of the person to whom the quasi-loan was made.

333 Inter-company loans in same group

In the case of a relevant company which is a member of a group of companies (meaning a holding company and its subsidiaries), paragraphs (b) and (c) of section 330(3) do not prohibit the company from—

- (a) making a loan or quasi-loan to another member of that group; or

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- (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to another member of the group, by reason only that a director of one member of the group is associated with another.

334 Loans of small amounts

Without prejudice to any other provision of sections 332 to 338, paragraph (a) of section 330(2) does not prohibit a company from making a loan to a director of the company or of its holding company if the aggregate of the relevant amounts does not exceed £2,500.

335 Minor and business transactions

- (1) Section 330(4) does not prohibit a company from entering into a transaction for a person if the aggregate of the relevant amounts does not exceed £5,000.
- (2) Section 330(4) does not prohibit a company from entering into a transaction for a person if—
 - (a) the transaction is entered into by the company in the ordinary course of its business; and
 - (b) the value of the transaction is not greater, and the terms 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 it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

336 Transactions at behest of holding company

The following transactions are excepted from the prohibitions of section 330—

- (a) a loan or quasi-loan by a company to its holding company, or a company entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;
- (b) a company entering into a credit transaction as creditor for its holding company, or entering into a guarantee or providing any security in connection with a credit transaction made by any other person for its holding company.

337 Funding of director's expenditure on duty to company

- (1) A company is not prohibited by section 330 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company.
- (2) Nor does the section prohibit a company from doing anything to enable a director to avoid incurring such expenditure.
- (3) Subsections (1) and (2) apply only if one of the following conditions is satisfied—
 - (a) the thing in question is done with prior approval of the company given at a general meeting at which there are disclosed all the matters mentioned in the next subsection ;
 - (b) that thing is done on condition that, if the approval of the company is not so given at or before the next annual general meeting, the loan is to be repaid,

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or any other liability arising under any such transaction discharged, within 6 months from the conclusion of that meeting;

but those subsections do not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds £10,000.

- (4) The matters to be disclosed under subsection (3)(a) are—
- (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director,
 - (b) the amount of the funds to be provided by the company, and
 - (c) the extent of the company's liability under any transaction which is or is connected with the tiling in question.

338 Loan or quasi-loan by money-lending company

- (1) There is excepted from the prohibitions in section 330—
- (a) a loan or quasi-loan made by a money-lending company to any person ; or
 - (b) a money-lending company entering into a guarantee in connection with any other loan or quasi-loan.
- (2) "Money-lending company" means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees in connection with loans or quasi-loans.
- (3) Subsection (1) applies only if both the following conditions are satisfied—
- (a) the loan or quasi-loan in question is made by the company, or it enters into the guarantee, in the ordinary course of the company's business; and
 - (b) the amount of the loan or quasi-loan, or the amount guaranteed, is not greater, and the terms of the loan, quasi-loan or guarantee are not more favourable, in the case of the person to whom the loan or quasi-loan is made or in respect of whom the guarantee is entered into, than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing but unconnected with the company.
- (4) But subsection (1) does not authorise a relevant company (unless it is a recognised bank) to enter into any transaction if the aggregate of the relevant amounts exceeds £50,000.
- (5) In determining that aggregate, a company which a director does not control is deemed not to be connected with him.
- (6) The condition specified in subsection (3)(b) does not of itself prevent a company from making a loan to one of its directors or a director of its holding company—
- (a) for the purpose of facilitating the purchase, for use as that director's only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;
 - (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it;
 - (c) in substitution for any loan made by any person and falling within paragraph (a) or (b) of this subsection, if loans of that description are ordinarily made by the company to its employees and on terms no less favourable than those on which the transaction in question is made, and the aggregate of the relevant amounts does not exceed £50,000.

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339 " Relevant amounts " for purposes of ss. 334 ff

- (1) This section has effect for defining the "relevant amounts" to be aggregated under sections 334, 335(1), 337(3) and 338(4); and in relation to any proposed transaction or arrangement and the question whether it falls within one or other of the exceptions provided by those sections, "the relevant exception " is that exception; but where the relevant exception is the one provided by section 334 (loan of small amount), references in this section to a person connected with a director are to be disregarded.
- (2) Subject as follows, the relevant amounts in relation to a proposed transaction or arrangement are—
 - (a) the value of the proposed transaction or arrangement,
 - (b) the value of any existing arrangement which—
 - (i) falls within subsection (6) or (7) of section 330, and
 - (ii) also falls within subsection (3) of this section, and
 - (iii) was entered into by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries;
 - (c) the amount outstanding under any other transaction—
 - (i) falling within subsection (3) below, and
 - (ii) made by virtue of the relevant exception, and
 - (iii) made by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries.
- (3) A transaction falls within this subsection if it was made—
 - (a) for the director for whom the proposed transaction or arrangement is to be made, or for any person connected with that director ; or
 - (b) where the proposed transaction or arrangement is to be made for a person connected with a director of a company, for that director or any person connected with him;

and an arrangement also falls within this subsection if it relates to a transaction which does so.
- (4) But where the proposed transaction falls within section 338 and is one which a recognised bank proposes to enter into under subsection (6) of that section (housing loans, etc.), any other transaction or arrangement which apart from this subsection would fall within subsection (3) of this section does not do so unless it was entered into in pursuance of section 338(6).
- (5) A transaction entered into by a company which is (at the time of that transaction being entered into) a subsidiary of the company which is to make the proposed transaction, or is a subsidiary of that company's holding company, does not fall within subsection (3) if at the time when the question arises (that is to say, the question whether the proposed transaction or arrangement falls within any relevant exception), it no longer is such a subsidiary.
- (6) Values for purposes of subsection (2) of this section are to be determined in accordance with the section next following; and " the amount outstanding " for purposes of

subsection (2)(c) above is the value of the transaction less any amount by which that value has been reduced.

340 " Value " of transactions and arrangements

- (1) This section has effect for determining the value of a transaction or arrangement for purposes of sections 330 to 339.
- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a guarantee or security is the amount guaranteed or secured.
- (5) The value of an arrangement to which section 330(6) or (7) applies is 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.
- (6) The value of a transaction or arrangement not falling within subsections (2) to (5) above is 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.
- (7) For purposes of this section, the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason), whether or not any liability under the transaction or arrangement has been reduced, is deemed to exceed £50,000.

341 Civil remedies for breach of s. 330

- (1) If a company enters into a transaction or arrangement in contravention of section 330, the transaction or arrangement is 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 subsection (2)(b) below for the loss or damage suffered by it, or
 - (b) any rights acquired bona fide for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.
- (2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of section 330, that director and the person so connected and any other director of the company who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1)) is liable—
 - (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and

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- (b) (jointly and severally with any other person liable under this subsection) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (3) Subsection (2) is without prejudice to any liability imposed otherwise than by that subsection, but is subject to the next two subsections.
- (4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 330, that director is not liable under subsection (2) of this section if he shows that he took all reasonable steps to secure the company's compliance with that section.
- (5) In any case, a person so connected and any such other director as is mentioned in subsection (2) is not so liable if he shows that, at the time the arrangement or transaction was entered into, he did not know the relevant circumstances constituting the contravention.

342 Criminal penalties for breach of s. 330

- (1) A director of a relevant company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 330 is guilty of an offence.
- (2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of section 330 is guilty of an offence.
- (3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening section 330 is guilty of an offence.
- (4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.
- (5) A relevant company is not guilty of an offence under subsection (2) if it shows that, at the time the transaction or arrangement was entered into, it did not know the relevant circumstances.

343 Record of transactions not disclosed in company accounts

- (1) The following provisions of this section—
 - (a) apply in the case of a company which is, or is the holding company of, a recognised bank, and
 - (b) are subject to the exceptions provided by section 344.
- (2) Such a company shall maintain a register containing a copy of every transaction, arrangement or agreement of which particulars would, but for paragraph 4 of Schedule 6, be required by section 232 to be disclosed in the company's accounts or group accounts for the current financial year and for each of the preceding 10 financial years.
- (3) In the case of a transaction, arrangement or agreement which is not in writing, there shall be contained in the register a written memorandum setting out its terms.

- (4) Such a company shall before its annual general meeting make available at its registered office for not less than 15 days ending with the date of the meeting a statement containing the particulars of transactions, arrangements and agreements which the company would, but for paragraph 4 of Schedule 6, be required by section 232 to disclose in its accounts or group accounts for the last complete financial year preceding that meeting.
- (5) The statement shall be so made available for inspection by members of the company; and such a statement shall also be made available for their inspection at the annual general meeting.
- (6) It is the duty of the company's auditors to examine the statement before it is made available to members of the company and to make a report to the members on it; and the report shall be annexed to the statement before it is made so available.
- (7) The auditors' report shall state whether in their opinion the statement contains the particulars required by subsection (4); and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.
- (8) If a company fails to comply with any provision of subsections (2) to (5), every person who at the time of the failure is a director of it is guilty of an offence and liable to a fine; but—
 - (a) it is a defence in proceedings against a person for this offence to prove that he took all reasonable steps for securing compliance with the subsection concerned, and
 - (b) a person is not guilty of the offence by virtue only of being a shadow director of the company.
- (9) For purposes of the application of this section to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

344 Exceptions from s. 343

- (1) Section 343 does not apply in relation to—
 - (a) transactions or arrangements made or subsisting during a financial year by a company or by a subsidiary of a company for a person who was at any time during that year a director of the company or of its holding company or was connected with such a director, or
 - (b) an agreement made or subsisting during that year to enter into such a transaction or arrangement,

if the aggregate of the values of each transaction or arrangement made for that person, and of each agreement for such a transaction or arrangement, less the amount (if any) by which the value of those transactions, arrangements and agreements has been reduced, did not exceed £1,000 at any time during the financial year.

For purposes of this subsection, values are to be determined as under section 340.

- (2) Section 343(4) and (5) do not apply to a recognised bank which is the wholly-owned subsidiary of a company incorporated in the United Kingdom.

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Supplementary

345 Power to increase financial limits

- (1) The Secretary of State may by order in a statutory instrument substitute for any sum of money specified in this Part a larger sum specified in the order.
- (2) An order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Such an order does not have effect in relation to anything done or not done before its coming into force ; and accordingly, proceedings in respect of any liability (whether civil or criminal) incurred before that time may be continued or instituted as if the order had not been made.

346 " Connected persons ", etc.

- (1) This section has effect with respect to references in this Part to a person being " connected " with a director of a company, and to a director being " associated with " or " controlling " a body corporate.
- (2) A person is connected with a director of a company if, but only if, he (not being himself a director of it) is—
 - (a) that director's spouse, child or step-child ; or
 - (b) except where the context otherwise requires, a body corporate with which the director is associated; or
 - (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
 - (i) the director, his spouse or any children or step-children of his, or
 - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse, or any children or step-children of his, or any such body corporate ; or
 - (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraph (a), (b) or (c) of this subsection, is connected with that director; or
 - (e) a Scottish firm in which—
 - (i) that director is a partner,
 - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) above, is connected with that director, or
 - (iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c) above, is connected with that director.
- (3) In subsection (2)—
 - (a) a reference to the child or step-child of any person includes an illegitimate child of his, but does not include any person who has attained the age of 18 ; and
 - (b) paragraph (c) does not apply to a person acting in his capacity as trustee under an employees' share scheme or a pension scheme.

- (4) A director of a company is associated with a body corporate if, but only if, he and the persons connected with him, together—
- (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least one-fifth of that share capital; or
 - (b) are entitled to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of that body.
- (5) A director of a company is deemed to control a body corporate if, but only if—
- (a) he or any person connected with him is interested in any part of the equity share capital of that body or is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and
 - (b) that director, the persons connected with him and the other directors of that company, together, are interested in more than one-half of that share capital or are entitled to exercise or control the exercise of more than one-half of that voting power.
- (6) For purposes of subsections (4) and (5)—
- (a) a body corporate with which a director is associated is not to be treated as connected with that director unless it is also connected with him by virtue of subsection (2)(c) or (d); and
 - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is associated is not to be treated as connected with a director by reason only of that fact.
- (7) The rules set out in Part I of Schedule 13 apply for the purposes of subsections (4) and (5).
- (8) References in those subsections to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him ; but this is without prejudice to other provisions of subsections (4) and (5).

347 Transactions under foreign law

For purposes of sections 319 to 322 and 330 to 343, it is immaterial whether the law which (apart from this Act) governs any arrangement or transaction is the law of the United Kingdom, or of a part of it, or not.