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# Part A5 – Directors and Other Officers

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## Part A5 - Duties of Directors and other Officers

### Chapter 1

#### Preliminary and Definitions

##### Head 1 Interpretation provisions

- (1) In this Part, unless the context otherwise requires—

“credit transactions” has the meaning assigned to it by Subhead (3);

“guarantee” includes indemnity;

“quasi-loan” has the meaning assigned to it by Subhead (2); and

“licensed bank” means the holder of a licence under Section 9 of the Central Bank Act, 1971;

“approved stock exchange” means a stock exchange approved under the Irish Stock Exchange Act, 1995 or under comparable legislation regulating the authorisation of stock exchanges in other Member States of the European Union.

- (2) For the purposes of this Part—

- (a) 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”)—

- (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 borrower to reimburse the creditor;

- (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.

(3)

- (a) For the purposes of this Part a credit transaction is a transaction under which one party (“the creditor”)—

- (i) supplies any goods or sells any land under a hire-purchase agreement or conditional sale agreement;
- (ii) leases or licenses the use of land or hires goods in return for periodical payments;
- (iii) 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;

- (b) 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 a lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the company.

- (4) 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 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;

- (d) in the case of a guarantee or security, the amount guaranteed or secured;
- (e) in the case of an arrangement to which Head 17 (2) and (3) of this Part [equivalent of Section 31(2) and Section 31(3) of the Companies Act, 1990] 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.
- (5) For the purposes of Subhead (4), 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 is unascertainable, or for any other reason) shall, whether or not any liability under the transaction has been reduced, be deemed to exceed €65,000.
- (6) For the purposes of this Part, 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 to which Head 17 (2) and (3) of this Part [equivalent of Sections 31(2) or 31(3) of Companies Act, 1990] applies, 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 goods, land or services (or any interest therein), he is the person to whom the goods, land or services (or the interest) are supplied or transferred.
- (7) This Part, does not apply to arrangements or transactions entered into before the 1st February 1991 but, for the purposes of determining whether an arrangement is one to which Head 17 (2) and (3) of this Part [equivalent of Section 31(2) and Section 31(3) of the Companies Act, 1990] applies, the transaction to which the arrangement relates shall, if it was entered into before the 1st February 1991, be deemed to have been entered into thereafter.
- (8) This Part shall have effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 25 of the Companies Act, 1990, as amended by Section 75 of the Company Law Enforcement Act, 2001.*

*The cross-references have been amended in accordance with the new provisions and the amounts specified in Subheads (3)(b) and (5) have been converted from punts to euro and rounded off.*

*Subsection (7) has been amended insofar as the commencement date of the head is replaced by the specific.*

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## **Head 2 Connected persons**

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- (1) For the purposes of this Part, a person is connected with a director of a company if, but only if, the person (not being himself a director of the company) is –
- (a) that director's spouse, parent, brother, sister or child;
- (b) a person acting in his capacity as the trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls; or
- (c) in partnership within the meaning of Section 1(1) of the Partnership Act 1890, with that director.
- (2) 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.

- (3) For the purposes of this head, a director of a company shall be deemed to control a body corporate if, but only if, he 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, interested in one-half or more of the equity share capital of that body or entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.
- (4) In Subhead (3)—
- (a) “equity share capital” has the same meaning as in Part A1, Head 6(9) [equivalent of Section 155 of Companies Act, 1963]; and
- (b) references to voting power exercised by a director shall include references to voting power exercised by another body corporate which that director controls.
- (5) The provisions of Head 33 of this Part [equivalent of Section 54 of Companies Act, 1990] shall have effect for the purposes of Subhead (3) with the substitution of the words “one-half or more” for the words “one-third or more” in Subhead (2)(c) [equivalent of Sections 54 (5) and (6) of the Companies Act, 1990] of that head.
- (6) It shall be presumed for the purposes of this Part, until the contrary is shown, that the sole member of a single-member private limited company is a person connected with a director of that company.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 26 of the Companies Act, 1990, as amended by Section 76 of the Company Law Enforcement Act, 2001.*

*Subsection (6) has been amended insofar as the reference to S.I. No.275 of 1994, EC (Single-Member Private Limited Companies) Regulations, 1994, has been deleted in view of the fact that provision for a single member private-company limited by shares is now contained in Pillar A of the Bill.*

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## Head 3 Shadow directors

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- (1) Subject to Subhead (2), a person in accordance with whose directions or instructions the directors of a company are accustomed to act (in this Bill 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 in a professional capacity.
- (2) A body corporate is not to be regarded as a shadow director of any of its subsidiary companies.
- (3) A shadow director shall not be guilty of an offence under Part B10, Head 17(8) [equivalent of Section 44(8) of Companies Act, 1990] by virtue only of Subhead (1).
- (4) Part A5, Head 12 [equivalent of Section 194 of Companies Act, 1963] 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 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 Subhead (2) of that head to be made; or
- (b) a notice which under Subhead (3) of that head falls to be treated as a sufficient declaration of that interest or would fall to be so treated apart from the proviso; and Part A4, Heads 33 and 60 [equivalent of Section 145 of Companies Act, 1963] 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.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 27 of the Companies Act, 1990. The cross references have been amended in accordance with the new provisions of the Bill.*

*Subhead (2) is new. It follows, in part, Section 230(3) of the UK Company Law Reform Bill. The CLRG is of the view that it is appropriate to separate the law applicable to holding companies from the law applicable to directors as to treat holding companies as shadow directors in any situation is wrong – if there is a mischief to be addressed, it should be addressed head-on by regulating the dealings of holding companies qua holding company and not qua shadow director.*

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### **Head 4    De Facto Directors**

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- (1) Subject to Subhead (2), a person who occupies the position of director but who has not been formally appointed as a director (in this Bill referred to as a “de facto director”) shall be treated for the purposes of this Part as a director of a company provided that a person shall not be a de facto director by reason only of the fact that he gives advice in a professional capacity.
- (2) Head 12 of this Part [equivalent of Section 194 of Companies Act, 1963] shall apply in relation to a de facto director of a company as it applies in relation to a director of a company.

#### **Explanatory note**

*This head is a new head. The head gives a statutory definition to de facto directors for this Part.*

*This head extends the High Court decision in *Re Lynrowan Enterprises Ltd.* (31st July 2002) in that de facto directors shall now, for all purposes, be treated as directors of the company and not merely for the purposes of restriction orders. Thus, they will be under the same duties as ordinary directors but need not be registered.*

*A saving provision for those giving professional advice has also been inserted.*

# Chapter 2

## General Duties of Directors and Secretaries

*Subhead (5) re-enacts Section 383 (4) of the Companies Act, 1963.*

### Head 5 Duty of each director

- (1) It is the duty of each director of a company to ensure that the Companies Acts are complied with by the company.
- (2) For the purpose of any provision of the Companies Acts 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 duty as such officer, permits the default mentioned in the provision.
- (3) An officer shall be presumed to have permitted a default by the company unless the officer can establish that he took all reasonable steps to prevent it or that by reason of circumstances beyond his control, was unable to do so.
- (4) Upon notification of appointment as a director on the prescribed form, the director's signature should appear below a statement: "I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Acts, other statutes and at common law.
- (5) In this head 'default' includes a refusal or contravention.

#### **Explanatory note**

*This head is an amended re-enactment of Section 383 of the Companies Act 1963, as substituted by Section 100 of the Company Law Enforcement Act, 2001.*

*As an introductory provision to the Chapter of this Part dealing with the general duties of directors and secretaries, it sets out the overall duty of compliance by directors with the Companies Acts. It must be noted that this head now applies to registered directors, shadow directors and de facto directors equally.*

*Subheads (1), (2), and (3) are re-enactments of Sections 383(3), (1), and (2), and of the Companies Act, 1963 respectively.*

*Subhead (4) is new. This subhead implements the recommendation of the First Report of the Company Law Review Group that such an acknowledgement of the existence of directors' duties by the directors upon registration is desirable. This is achieved through requiring them to sign a declaration to that effect.*

### Head 6 Directors to have regard to interests of employees

- (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.
- (2) Accordingly, the duty imposed by this head 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.

#### **Explanatory note**

*This head re-enacts Section 52 of the Companies Act, 1990.*

### Head 7 Director's compliance statement and related statement

- (1) In this head—

'amount of turnover' and 'balance sheet total' have the same meanings as in Part A6, Head 58 [the equivalent of Section 8 of Companies (Amendment) Act, 1986];

'relevant obligations', in relation to a company, means the company's obligations under—

- (a) the Companies Acts, where the failure to comply with any such obligation is a category one offence or a category two offence or a Serious Market Abuse Offence or a Serious Prospectus Offence or a Serious Transparency Offence; and
- (b) tax law,  
  
'tax law' means—
  - (a) the Customs Acts,
  - (b) the statutes relating to the duties of excise and to the management of those duties,
  - (c) the Tax Acts,

- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Act, 1972 and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act, 1976 and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and to the management of that duty, 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.
- (2) The directors of a company to which this head applies shall also include in their report under Part A6, Head 37 [the equivalent of Section 158 of the Companies Act, 1963] a statement—
- (a) acknowledging that they are responsible for securing the company's compliance with its relevant obligations; and
- (b) confirming that the company has in place a compliance policy statement that is, in the opinion of the directors, appropriate for the company and, if this is not the case, specifying the reasons; and
- (c) confirming that the company has in place, appropriate arrangements or structures that are, in the opinion of the directors, designed to secure material compliance with its relevant obligations, which arrangements or structures may (at the discretion of the directors) include the company's reliance upon internal and/or external advisors who appear to the directors to have the requisite knowledge and experience to advise the company on compliance with its relevant obligations and if this is not the case, specifying the reasons; and
- (d) confirming that the company's arrangements or structures referred to in paragraph (c), have been reviewed during the financial year to which the report relates, and if this is not the case, specifying the reasons.
- (3) For the purposes of this head, a company's arrangements or structures are considered to be designed to secure material compliance with its relevant obligations if they provide a reasonable assurance of compliance in all material respects with those obligations.
- (4) Where the directors of a company to which this head applies fail to comply with Subhead (2), each director to whom the failure is attributable is guilty of a category three offence.
- (5) This head does not apply to a company in respect of any financial year of the company if, either—
- (a) its balance sheet total for the year does not exceed—
- (i) €12,500,000, or
- (ii) if an amount is prescribed under Part A14, Head 45 (1)(l) [the equivalent of Section 48(1)(l) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount,
- or, in the alternative to the provisions in (a),
- (b) the amount of its turnover for the year does not exceed—
- (i) €25,000,000, or
- (ii) if an amount is prescribed under Part A14 Head 45 (1)(l) [the equivalent of Section 48(1)(l) of the Companies (Auditing and Accounting) Act, 2003] for the purpose of this provision, the prescribed amount.
- (6) This head does not apply to any company that is of a class exempted under Part A14, Head 45 (1)(l) [equivalent of Section 48(1)(j) of the Companies (Auditing and Accounting) Act, 2003].
- Explanatory note**  
*This head is an amended re-enactment of Section 205E of the Companies Act, 1990 as inserted by Section 45 of the Companies (Auditing and Accounting) Act, 2003. The amendments have been made in accordance with the recommendations made by the Company Law Review Group in its 2005 Report on the Directors' Compliance Statement and subsequently adopted by the Minister. The previous Section 45 has not been enacted.*
- This head does not apply to guarantee companies and unlimited companies under Part B4 and B5 respectively. It has full application to DACs under Part B3 (subject to the exemption provided for in Subhead (5)) and to PLCs in Part B2*

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### Head 8 Duties of secretary

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- (1) The duties and responsibilities of the secretary of the company shall, without derogating from the secretary's statutory and other legal duties and responsibilities, be such duties and responsibilities as are delegated to the secretary by the board of directors.
- (2) The directors shall in their appointment of a secretary, who may be one of their number, have a duty to ensure that the person appointed as secretary has the suitable skills to maintain (or to procure the maintenance of) the records (other than accounting records) required to be kept under the Companies Acts.
- (3) Upon notification of appointment as a secretary on the prescribed form, the secretary's signature should appear below a statement: "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."

#### **Explanatory note**

*This head is new. The head sets out the duties and responsibilities of the secretary. The head also reflects that the secretary is appointed by and can be removed by the board of directors. The secretary is not responsible for company law compliance since the secretary does not have the authority to cause the company to comply, such being vested in the board of directors.*

*Subhead (1) sets out and recognises the role of the secretary as the person who, by order of the board of directors, convenes meetings, records their proceedings, is custodian of the registers required by the Companies Acts and the person to whom the directors are permitted and expected to delegate their responsibility to make filings under the Companies Acts. It also reflects that it is the directors who are primarily responsible for the management and direction of the company, and to that extent primarily responsible for compliance with the Companies Acts.*

*Subhead (2) imposes a duty on the directors to ensure that the secretary has the suitable skills to maintain records required by the Companies Acts. Such a duty is new. However, it is worth noting that a similar duty is imposed upon the directors of a PLC under Section 236 of the Companies Act, 1990.*

*Subhead (3) implements the recommendation of the First Report of the Company Law Review Group that such an acknowledgement of the existence of a secretary's duties by the secretary upon registration is desirable. This is achieved through requiring the secretary to sign a declaration to that effect. The wording of such a declaration recognises that the secretary may be a corporate body.*

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### Head 9 Fiduciary duties of directors

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- (1) Without prejudice to the provisions of any enactment (including this Bill) a director of a company shall owe the duties set out in Head 3 to his company (and the company alone), which shall be enforced in the same way as any other fiduciary duty owed to a company by its directors.
- (2) The duties set out in Subhead (3) 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 and the duties in Subhead (3) shall be interpreted and applied in the same way as common law rules or equitable principles and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the duties set out in Subhead (3)
- (3) Every director of a company shall—
  - (a) act in good faith in what the director considers to be the interests of the company;
  - (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 must exercise his powers only for the purposes allowed by law;
  - (d) not use the company's property, information or opportunities for his own or anyone else's benefit unless he is allowed to by the company's constitution or the use has been approved by a resolution of the company in general meeting;

- (e) not agree to restrict the director's power to exercise an independent judgment unless this is expressly permitted by the company's constitution and provided that if a director considers in good faith that it is in the interests of the company for a transaction 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;
  - (f) avoid any conflict between the director's duties to the company and the director's other, including personal, interests and may not retain any benefit derived from any engagement (other than a transaction or arrangement to which the director and the company are party) where there is such a conflict of interest unless the company's members in general meeting release the director from his duty to the company;
  - (g) owe the company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both:
    - (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
  - (h) have regard to the interests of the company's employees in general and to those of its members.
- (4) A director appointed or nominated for appointment by a member with an entitlement to so appoint or nominate under the constitution or a shareholders' agreement, may have regard to the interests of that member.

### **Explanatory note**

*This head is new and implements the recommendation of the First Report of the Company Law Review Group that the fiduciary duties owed by directors to the company be stated within the new companies code.*

*The fiduciary duties of the directors have been enunciated, until now, by the Irish courts. The Company Law Review Group recommended that the inaccessibility and incomprehensibility of the common law concerning directors' duties to the layperson should be addressed by their being stated within the body of the companies code. Furthermore, the fiduciary duties are stated in general rather than specific terms and since they are derived from principles established by the courts, they are not intended to be exhaustive.*

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## **Head 10 Other interests of directors**

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Save to the extent that the constitution of a company 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 subject to Head 9 of this Part and no such director shall be accountable to the company for any remuneration or other benefits received by him as a director or officer of, or from his interest in, such other company unless the company otherwise directs.

### **Explanatory note**

*This head is new and imports, in a slightly amended manner, Model Regulation 78 of Part I of Table A of the First Schedule to the Companies Act 1963. It is an exception to the fiduciary duties set out in Head 9 of this Part.*

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## **Head 11 Power of a director to act in a professional capacity for the company**

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Save to the extent that the constitution of a company provides otherwise, any director may act by himself or his firm in a professional capacity for the company of which he is a director and he or his firm shall be entitled to remuneration for professional services as if he were not a director, but nothing herein contained shall authorise a director or his firm to act as auditor to the company.

### **Explanatory note**

*This head is new and imports Model Regulation 87 of Part I of Table A of the First Schedule to the Companies Act, 1963. The purpose of this head is to elaborate upon the powers of the directors, notwithstanding the fact that the fiduciary duties are set out in this Part.*

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### Head 12 Duty of director to disclose his interest in contracts made by the company

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- (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 interest at a meeting of the directors of the company.
- (2) In the case of a proposed contract, the declaration, required by this head to be made by a director, shall 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 became so interested and in the case where a director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested.
- (3) Subject to Subhead (4), for the purposes of this head a general notice given to the directors of a company 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 Head 2 of this Part [equivalent of Section 26 of Companies Act, 1990]);

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

- (4) No such notice as aforesaid shall be of effect unless it is given at the meeting of 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 copy of every declaration made and notice given in pursuance of this head shall, within 3 days after the making or giving thereof, be entered into a book for this purpose. Such book shall be open for inspection without any charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company and at any meeting of the directors if any director so requests in sufficient time to enable the book to be available at the meeting.
- (6) Nothing in this head shall be taken to prejudice the operation of any rule of law restricting directors of a company from having interests in contracts with the company.
- (7) Any reference in this head to a contract shall be construed as including a reference to any transaction or arrangement (whether or not constituting a contract) made or entered into on or after the commencement of this Bill.
- (8) For the purposes of this head, a transaction or arrangement of a kind described in Head 17, 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 head), be treated as a transaction or arrangement in which that director is interested.

#### **Explanatory note**

*This head is an amended re-enactment of Section 194 of the Companies Act, 1963, as amended by Section 47(3) of the Companies Act, 1990.*

*Sections 194(5)(b) and 194(6) have not been included in Pillar A as private companies limited by shares are our only concern here. Those subsections will be included in Pillar B for companies other than the CLS. The reason for their exclusion from this Part is that since their purpose was to protect the investing public, it carries less weight in relation to the private company limited by shares as the shares cannot be offered to the public.*

*Furthermore, it was the opinion of the Company Law Review Group that such a declaration was a matter of contract and as such, there was no public interest in having the matter prosecuted.*

*Subheads (7) and (8) re-enact Sections 47 (1) and (2) of the Companies Act, 1990.*

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### Head 13 Liability to Account and Indemnify

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- (1) Subject to Head 14 of this Part [equivalent of Section 391 of Companies Act, 1963], where a director acts in breach of his duties under this Part, he shall be liable -
- (a) to account to the company for any gain which he makes directly or indirectly; and
  - (b) to indemnify the company for any loss or damage resulting from that breach of duty.
- (2) Subject to Subhead (4), where a company enters into a transaction or arrangement contrary to Head 16 [equivalent of Section 29 of Companies Act, 1990] or Head 17 of this Part [equivalent of Section 31 of Companies Act, 1990] with a director of the company or its holding company or a person connected with him, 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, shall (whether or not the transaction or arrangement has been avoided) be liable -
- (a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and
  - (b) (jointly and severally with any other person liable under this subhead) to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (3) Subheads (1) and (2) are without prejudice to the company's right at common law to claim damages for breach of duty.

- (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 in contravention of Head 16 [equivalent of Section 29 of the Companies Act, 1990] or Head 17 of this Part [equivalent of Section 31 of the Companies Act, 1990], that director shall not be liable under Subhead (2) if he shows that he took all reasonable steps to secure the company's compliance with that head and in any case, a person so connected and any such other officer as is mentioned in the said Subhead (2) shall not be 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.

#### **Explanatory note**

*This head is new and codifies the common law remedies of account and indemnity.*

*Subhead (2) replicates Sections 29(4) and 38(2) of the Companies Act, 1990.*

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### Head 14 Power of court to grant relief to officers of the company

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- (1) If in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him either wholly or partly from his liability on such terms as the court may think fit.
- (2) Where any such officer or person as aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the court for relief and the court on any such application shall have the same power to relieve him as under this head it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

- (3) Where any case to which Subhead (1) applies is being tried by a judge with a jury the judge, after hearing the evidence, may if he is satisfied that the defendant ought, in pursuance of that subhead, to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

**Explanatory note**

*This head is a re-enactment of Section 391 of the Companies Act, 1963.*

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### Head 15 Avoidance of provisions exempting officers and auditors of the company from liability

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- (1) Subject as hereinafter provided any provision whether contained in the constitution of a company or in any contract with a company or otherwise for exempting any officer of the company or any person employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void so however that—
- (a) nothing in this head shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and
- (b) notwithstanding anything in this head a company may in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under Head 14 of this Part [equivalent of Section 391 of Companies Act, 1963] in which relief is granted to him by the court.
- (2) Notwithstanding Subhead (1), a company may purchase and maintain for any of its officers or auditors, insurance in respect of any liability referred to in that subhead.

- (3) Notwithstanding any provision contained in an 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.
- (4) Any directors' and officers' insurance purchased or maintained by a company before the 6<sup>th</sup> April 2004 (commencement of Companies (Auditing and Accounting) Act, 2003) is as valid and effective as it would have been if those amendments had been in operation when that insurance was purchased or maintained.
- (5) In this head a reference to an officer or auditor includes any former or current officer or auditor of the company, as the case may be.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 200 of the Companies Act, 1963, as amended by para. 16 of the First Schedule to the Companies (Amendment) Act, 1983 and Section 56 of the Companies (Auditing and Accounting) Act, 2003.*

*References to the articles have been replaced by references to the constitution of the company.*

## Chapter 3

### Particular transactions involving conflict of interest

#### Head 16 Substantial property transactions involving directors, etc

- (1) Subject to Subheads (4) and (5), 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 the purposes of this head 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 €75,000 or ten per cent of the amount of the company's relevant assets and for those purposes the amount of a company's relevant assets is—
- (a) except in a case falling within paragraph (b), the value of its net assets determined by reference to the entity financial statements prepared in accordance with Head 12 of A6 and laid in accordance with the requirements of Part A6, Head 12 [equivalent of Section 148 of Companies Act, 1963] in respect of the last preceding financial year in respect of which such entity [company] financial statements were so laid;
  - (b) where no entity [company] financial statements have been prepared and laid under that head before that time, the amount of its called-up share capital.

- (3) An arrangement entered into by a company in contravention of this head 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 Head 13 (2) of this Part [equivalent of Section 29(4)(b) of Companies Act, 1990] 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 affirmed by a resolution of 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 by a resolution of the holding company in general meeting.
- (4) Subhead (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 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;
  - (c) if the arrangement involves the disposal of a company's assets by a receiver.
- (5) Subhead (1) (a) shall not apply in relation to any arrangement whereby a person acquires or 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 such member.

## Part A5 - Duties of Directors and other Officers

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- (6) No approval is required to be given under this head by any body corporate unless it is a company within the meaning of Pillar A or if it is a wholly owned subsidiary of any body corporate.

### **Explanatory note**

*This head is an amended re-enactment of Section 29 of the Companies Act, 1990. The relevant recommendations of the First Report of the Company Law Review Group have also been implemented. These include the amendment of Section 29(3) insofar as the “reasonable period” should be subject to ratification taking place at the next AGM and in any event not later than 15 months. It was further recommended that Section 29(7) be amended by the addition of a third exemption regarding the disposal of the company’s assets by the receiver.*

*The amounts specified in Subhead (2) have been converted into euro and rounded.*

*Section 29(4) of the Companies Act, 1990 has not been included in this head. Instead it is included in Part A5, Head 13 which specifically deals with the liability of directors to account and indemnify where they act in breach of their duties under this Part. Sections 29(5) & 29(6) have been deleted.*

*Subhead (6) has been newly inserted in accordance with the recommendation of the Review Group. Its aim is to clarify the scope of this provision.*

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### **Head 17 Prohibition of loans, etc. to directors and connected persons**

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- (1) Except as provided by Heads 18 to 23 of this Part [equivalent of Sections 32 to 37 of the Companies Act, 1990], a company shall not—
- (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;
  - (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.

- (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 Subhead (1), but for the purposes of this Part the transaction shall be treated as having been entered into on the date of the arrangement.

- (3) 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 Subhead (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.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 31 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

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### **Head 18 Arrangements of certain value**

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- (1) Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from entering into an arrangement with a director or a person connected with a director if—
- (a) the value of the arrangement; and
  - (b) the total amount outstanding under any other arrangements entered into by the company with any director of the company, or any person connected with a director, together is less than ten per cent of the company’s relevant assets.
- (2) For the purposes of this head—
- (a) a company enters an arrangement with a person if it makes a loan or quasi-loan to or enters into a credit transaction as creditor for that person; and
  - (b) the amount of a company’s relevant assets shall be determined in accordance with Part A5, Head 16 (2) [equivalent of Section 29(2) of Companies Act, 1990].

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 32 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

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## **Head 19 Reduction in amount of company's relevant assets**

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- (1) This head applies to a company in respect of which the total amount outstanding under any arrangements referred to in Part A5, Head 18 [equivalent of Section 32 of Companies Act, 1990] 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) Where the directors of a company become aware or ought reasonably to become aware, that there exists a situation referred to in Subhead (1), it shall be the duty of the company, its directors and any persons for whom the arrangements referred to in that subhead were made, to amend, within two months, the terms of the arrangements concerned so that the total amount outstanding under the arrangements again falls within the percentage limit referred to in that subhead.
- (3) Where the terms of the arrangements referred to in Subhead (2) are not amended within the period specified in that subhead, the arrangements shall be voidable at the instance of the company unless Part A5, Head 24 (1) (a) or (b) [equivalent of Section 38(1)(a) and (b) of Companies Act, 1990] applies.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 33 of the Companies Act, 1990, as amended by Section 77 of the Company Law Enforcement Act, 2001. The cross-references have been amended in accordance with the new provisions of the Bill.*

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## **Head 20 Group exceptions to prohibitions on loans etc**

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Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] does not prohibit a company from entering into a guarantee or providing any security in connection with a loan, quasi-loan or credit transaction made by any other person for a director

of the company or of its holding company or for a person connected with such a director, if the validation procedure in Part A4, Head 71 is followed, and for the purposes of the validation procedure, a guarantee or the provision of security in connection with a loan, quasi-loan or credit transaction is a restricted activity.

### **Explanatory note**

*This head is an amended re-enactment of Section 34 of the Companies Act, 1990, as amended by Section 78 of the Company Law Enforcement Act, 2001.*

*Those subsections of Section 34 of the Companies Act, 1990 relating to the validation of such restricted activities have been deleted in light of the fact that a single general validation procedure is now provided for in Part IV.*

*This new validation procedure has been introduced in accordance with the recommendations of the Company Law Review Group in its First Report.*

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## **Head 21 Transactions with holding company**

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Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from—

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

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 35 of the Companies Act, 1990, as amended by Section 79 of the Company Law Enforcement Act, 2001. The cross-references have been amended in accordance with the new provisions of the Bill.*

### Head 22 Directors' expenses

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- (1) Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from doing anything to provide any of its directors with funds to meet vouched expenditure properly incurred or to be incurred by him for the purposes of the company or the purpose of enabling him properly to perform his duties as an officer of the company or doing anything to enable any of its directors to avoid incurring such expenditure.
- (2) Where a company enters into any transaction pursuant to Subhead (1), any liability falling on any person arising from any such transaction shall be discharged by him within six months from the date on which it was incurred.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 36 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

### Head 23 Business transactions

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Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall not prohibit a company from making any loan or quasi-loan or entering into any credit transaction as creditor for any person if—

- (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 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 reasonable to expect the company to have offered, to or in respect of a person of the same financial standing as that person but unconnected with the company.

#### **Explanatory note**

*This head is a slightly amended re-enactment of Section 37 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

### Head 24 Civil remedies for breach of Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990]

---

Where a company enters into a transaction or arrangement in contravention of Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] the transaction or arrangement 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 Part A5, Head 13 (2) (b) [equivalent of Section 38(2)(b) of Companies Act, 1990] 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 other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

#### **Explanatory note**

*This head is an amended re-enactment of Section 38 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

*Section 38(2) has not been included. The reason for this is that there is now a head which deals with making directors liable where they act in breach of their duties under this Part, to account for any gain made and to indemnify the company in respect of any loss or damage which may result to the company. This is provided for in Part A5, Head 17.*

*Section 38(3) has also not been included as it is now provided for in Head 10(4) of this Part.*

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**Head 25 Personal liability for company debts in certain cases**

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- (1) If a company is being wound up and is unable to pay its debts and the court considers that any arrangement of a kind described in Part A5, Head 18 (2) (a) [equivalent of Section 32(2)(a) of the Companies Act, 1990] has contributed materially to the company's inability to pay its debts or has substantially impeded the orderly winding-up thereof, 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, declare 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.
- (2) In deciding whether to make a declaration under Subhead (1), the court shall have particular regard to whether and to what extent, any outstanding liabilities arising under any arrangement referred to in that subhead were discharged before the commencement of the winding-up.
- (3) In deciding the extent of any personal liability under this head, 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.

**Explanatory note**

*This head is a re-enactment of Section 39 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

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**Head 26 Criminal penalties for breach of Part A5, Head 17 [equivalent of Section 15 of the Companies (Auditing and Accounting) Act, 2003, formerly Section 31 of the Companies Act, 1990]**

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- (1) An officer of a 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 Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall be guilty of a category 2 offence.
- (2) A person who procures a company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Part A5, Head 17 [equivalent of Section 31 of the Companies Act, 1990] shall be guilty of a category two offence.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 40 of the Companies Act, 1990. The cross-references have been amended in accordance with the new provisions of the Bill.*

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**Head 27 Contracts of employment of directors**

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- (1) Subject to Subhead (6), a company shall not incorporate in any agreement, a term to which this head applies, 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.
- (2) This head applies to any term by which a director's employment with the company of which he is the 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 the original agreement), for a period exceeding five years during which the employment—

- (a) cannot be terminated by the company by notice; or
  - (b) can be so terminated only in specified circumstances.
- (3) 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 six 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 by virtue of the original agreement on the other party thereto) under which he is to be employed with the company or where he is a director of a holding company within the group,

Subhead (2) shall apply 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.

- (4) Except in the case of a written resolution, a resolution of a company approving a term to which this head applies 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 with the date of the meeting; and
  - (b) at the meeting itself.
- (5) In the case of a company replacing a general meeting by written resolution, the written memorandum referred to at Subhead (4) shall be circulated to members with the proposal for a written resolution.
- (6) A term incorporated in an agreement in contravention of this head shall, to the extent that it contravenes this head, be void and that agreement and in a case where Subhead (3) applies, the original agreement shall be deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this head—

- (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, the holding company and its subsidiaries.

### **Explanatory note**

*This head is an amended re-enactment of Section 28 of the Companies Act, 1990.*

*As Part A5 only applies to a CLS, Section 28(6) has been moved to Pillar B rather than re-enacted in this head.*

*Subsection (1) has been amended as a result of the proposed implementation of the recommendation of the Company Law Review Group in its First Report that a resolution required to be passed by the company in general meeting can now be passed by written resolution.*

*Subhead (5) is a new subhead. It has been inserted to provide that, where the CLS replaces the general meeting with a written resolution, that proposed resolution must be circulated to the members.*

---

## **Head 28 Approval of company necessary for payment by it to director or director’s dependants for loss of office**

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- (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 retirement from office, without particulars relating to the proposed payment (including the amount thereof) being disclosed to the members of the company and the proposal being approved by the company in general meeting.
- (2) The directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company or to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance, subject to particulars relating to the proposed payment being disclosed to the members of the company and the proposal being approved by resolution of the company.

**Explanatory note**

*This head is a new head. Subhead (1) is a re-enactment of Section 186 of the Companies Act, 1963.*

*Subhead (2) imports Model Regulation 90 of Part I of Table A of the First Schedule to the Companies Act, 1963.*

**Head 29 Approval of company necessary for payment to director of compensation in connection with transfer of property**

- (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 retirement from office, unless particulars relating to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal approved by resolution of the company
- (2) Where a payment which is not lawful pursuant to Subhead (1) is made to a director of the company the amount received shall be deemed to have been received by him in trust for the company.

**Explanatory note**

*This head is a slightly amended re-enactment of Section 187 of the Companies Act, 1963.*

*Subsection(1) has been amended insofar as "It is hereby declared that it is not lawful..." has been replaced by "It shall not be lawful..."*

*Subsection (2) has been amended insofar as "Where a payment which is hereby declared to be illegal..." has been replaced by "...which is not lawful pursuant to Subhead (1)..."*

**Head 30 Duty of director to disclose to company payments to be made to him in connection with transfer of shares in a company**

- (1) 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 a consideration for or in connection with his retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars of the proposed payment (including the amount thereof) shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

- (2) If—
  - (a) any such director fails to take reasonable steps as aforesaid; or
  - (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do, he shall be guilty of a category three offence.
- (3) Unless—
  - (a) the requirements of Subhead (1) are complied with in relation to any such payment as is therein mentioned; and

- (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 the said shares,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any 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.

- (4) Where the shareholders referred to in paragraph (b) of Subhead (3) 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 this Pillar and of 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 on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.
- (5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of Subhead (3), 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 subhead to have been approved.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 188 of the Companies Act, 1963. The reference to being liable to a fine has been changed to guilty of a categorised offence. The reference to the articles of the company have been replaced by a reference to the constitution of the company.*

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## **Head 31 Other provisions relating to payments to directors**

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- (1) Where in proceedings for the recovery of any payment as having by virtue of Part A5, Head 29 (1) and (2) [equivalent of Section 187 of the Companies Act, 1963] or Part A5, Head 30 (1) and (2) [equivalent of Section 188 of the Companies Act, 1963] 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 2 years after that agreement or the offer leading thereto; and
  - (b) 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 subheads apply.

- (2) If in connection with any such transfer as is mentioned in Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] or Part A5, Head 30 [equivalent of Section 188 of the Companies Act, 1963]
  - (a) the price to be paid to a director of the company 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, shall for the purposes of that head, be deemed 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) It is hereby declared that references in Part A5, Head 28 [equivalent of Section 186 of the Companies Act, 1963], Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] and Part A5, Head 30 [equivalent of Section 188 of the Companies Act, 1963] 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 retirement from office, include payments to him by way of compensation for loss of office as director of the company or for the loss while director of the company or on or in connection with his 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 company but 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 and for the purposes of this subhead, "pension" includes any superannuation allowance, superannuation gratuity or similar payment.
- (4) Nothing in Part A5, Head 28 [equivalent of Section 186 of the Companies Act, 1963] and Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company or to prejudice the operation of any rule of law in relation to the accountability (if any) of any director for any such payment received by him.
- (5) References in Part A5, Head 28 [equivalent of Section 186 of the Companies Act, 1963], Part A5, Head 29 [equivalent of Section 187 of the Companies Act, 1963] and Part A5, Head 30 [equivalent of Section 188 of the Companies Act, 1963] and this head to a director include references to a past director.

### **Explanatory note**

*This head is a slightly amended re-enactment of Section 189 of the Companies Act, 1963. The cross-references have been amended in accordance with the new provisions of the Bill.*

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## **Head 32 Contracts with sole members**

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- (1) Subject to Subhead (2), where a 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 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.
- (2) Subhead (1) shall not apply to contracts entered into in the ordinary course of the company's business.
- (3) If a company fails to comply with Subhead (1), the company and every officer of the company who is in default shall be guilty of a category three offence.
- (4) Subject to Subhead (5), nothing in this head shall be taken to prejudice the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.
- (5) Failure to comply with Subhead (1) with respect to a contract shall not affect the validity of that contract.

### **Explanatory note**

*This head is a slightly amended re-enactment of S.I. No.273 of 1993, EC (Single-Member Private Limited Companies) Regulations 1993, Reg.13. All cross-references have been updated in accordance with the structure of the new Bill. Furthermore, Subsection (1) has been amended by replacing the phrase "single-member company" with "company".*

## Chapter 4

### Disclosure of interests in shares and debentures

#### Head 33 Meaning of “disclosable interest”

(1) “Disclosable interest” in relation to shares or debentures, means subject to the succeeding subheads of this head, any interest of any kind whatsoever in shares or debentures of a company,

- (a) there being disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject;
- (b) whether or not the interest is held alone, jointly or in common with any other person; and
- (c) whether or not the shares or debentures are identifiable;

(2) A person shall be taken to have a disclosable interest in shares or debentures if—

- (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
- (b) not being the registered holder, he 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;
- (c) a body corporate is interested in them and—
  - (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
  - (ii) he is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of that body corporate;

and, for this purpose:

- (l) “voting power” shall not include any power to vote which arises only in specified circumstances;

(ll) 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 this paragraph the relevant voting power shall be taken to be exercisable by that person;

(d) otherwise than by virtue of having an interest under a trust—

- (i) he has a right to call for delivery of the shares or debentures to himself or to his order; or
- (ii) he has a right to acquire an interest in shares or debentures, or is under an obligation to take an interest in shares or debentures, whether in any case the right or obligation is conditional or absolute and for this purpose 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 has a right (whether subject to conditions or not), the exercise of which would make him so entitled, or is under an obligation (whether so subject or not), the fulfillment of which would make him so entitled;

(e)

- (i) the person is a beneficiary of a trust; and
- (ii) the property held on trust for that beneficiary includes any interest in shares or debentures; and
- (iii) that person, apart from this paragraph, does not have an interest in the shares or debentures.

(3) A person shall, amongst other circumstances, be taken to have ceased to have a disclosable interest in shares or debentures upon—

- (a) delivery to a another person’s order of shares or debentures in fulfillment of a contract for the purchase thereof by that other person or in satisfaction of a right of his to call for delivery thereof; or

- (b) failure by another person to deliver shares or debentures in accordance with the terms of a contract or pursuant to a right to call for delivery thereof; or
  - (c) the lapse of that person's right to call for delivery of shares or debentures.
- (4) The following interests shall not constitute disclosable interests—
- (a) where property is held on trust and an interest in shares or debentures is comprised in that property, an interest in reversion or remainder or of a bare trustee and any discretionary interest;
  - (b) an interest of a person subsisting by virtue of—
    - (i) his holding units in—
      - (I) an authorised unit trust scheme within the meaning of Section 3 of the Unit Trusts Act, 1990;
      - (II) an undertaking for collective investment in transferable securities, within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003 (S.I. No. 212 of 2003);
      - (III) an investment company within the meaning of Pillar B, Part 9 [equivalent of Part XIII of Companies Act, 1990];
    - (ii) a scheme made under Section 46 of the Charities Act, 1961;
  - (c) an interest for the life of himself 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 a recognised stock exchange 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 body concerned in the ordinary course of business of such person or 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;
    - (ii) a proxy of a member or debenture holder or representative of a body corporate, member or debenture holder of a company;
  - (f) any interest in shares where the aggregate interest of the director or secretary and spouse and minor children of such director or secretary is in:
    - (i) shares representing 1 per cent or less of the company's share capital of a class carrying rights to vote in all circumstances at general meetings of the company (provided that the temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class shall be disregarded); or
    - (ii) shares or debentures not carrying the right to vote at general meetings of the company or group company in question, save a right to vote which arises only in specified circumstances;
  - (g)
    - (i) An interest in shares arising on the acceptance of an offer subject to the Irish Takeover Panel Act, 1997 or the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 which is subject to a threshold acceptance condition which remains unfulfilled;

- (ii) For the purposes of subparagraph (i) a threshold acceptance condition is a condition that the offer is conditional as to acceptances unless acceptances of a particular amount or percentage are received or such condition is waived;

- (h) such interests, or interests of such a class, as may be prescribed for the purposes of this paragraph by regulations made by the Minister.

### **Explanatory note**

*This head is new. The head is comprised of a slightly amended re-enactment of Section 54 and 55 of the Companies Act, 1990.*

*Subheads (1)(a), (b) and (c) are, in substance, a re-enactment of Sections 54(2), (11) and (12) of the Companies Act, 1990, respectively*

*Subheads (2)(a) and (b) are a re-enactment of Section 54(4) of the Companies Act, 1990.*

*Subhead (2)(c) is, in substance, a re-enactment of Section 54(5) and (6) of the Companies Act, 1990.*

*Subhead (2)(d) is, in substance, a re-enactment of Section 54(7) and (8) of the Companies Act, 1990.*

*Subhead (2)(e) is a re-enactment of Section 54(3) of the Companies Act, 1990.*

*Subhead (3) is a re-enactment of Section 54(13) of the Companies Act, 1990.*

*Subheads (4)(a) – (d) are a slightly amended re-enactment of Section 55(1) of the Companies Act, 1990. The cross-references to the legislation concerning unit trusts have been updated in light of recent changes. In addition, an interest in an investment company has been included as a non-disclosable interest.*

*Subhead (4)(e) is a new provision stating which powers or discretion vested in a person constitute a non-disclosable interest.*

*Subhead (4)(e)(i) is new and includes an attorney of a person with an interest in shares or debentures.*

*Subhead (4)(e)(ii) is, in substance, a re-enactment of Section 54(9) of the Companies Act, 1990.*

*Subhead (4)(f) is new. It introduces an exception to the requirement of disclosure of shares or interests. This exception applies where the shares held amount to less than 1 per cent of the share capital of the company or where the shares or debentures do not carry a right to vote at general meetings, save for specified circumstances.*

*Subhead (4)(g) is a re-enactment of Section 55(1)(e) of the Companies Act, 1990.*

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## **Head 34 Duty of directors and secretary to disclose disclosable interests in certain shares and debentures**

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- (1) Subject to Part A5, Head 33 [equivalent of Section 54 of Companies Act, 1990], a person who, at the commencement of this Chapter:

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

- (b) is aware of:

- (i) his having, or

- (ii) a spouse or minor child of his having,

a disclosable interest in shares in or debentures of, the company or of any group company of the company;

shall notify the company in writing of requisite particulars of the disclosable interest, save where the requisite particulars of the disclosable interest appear in the register kept under Part A5, Head 37 [equivalent of Section 59 of Companies Act, 1990], having been entered in that register within the time specified in this Bill for future notifications under this Chapter of disclosable interests.

- (2) Subject to Part A5, Head 33 a person who:

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

- (ii) becomes aware of:

- (I) his having acquired or having ceased to have; or

- (II) a spouse or minor child of such person having acquired or having ceased to have;

a disclosable interest in shares in, or debentures of, the company or any group company of the company; or

- (b) (i) is aware of:

- (I) his having; or

- (II) a spouse or minor child of his having;

a disclosable interest in shares in or debentures of, the company or of any group company of the company;  
and

- (iii) becomes a director or secretary of the company (not being the secretary of the company at the time of so becoming a director or not being a director at the time of so becoming the secretary of the company)

shall notify the company in writing of requisite particulars of the disclosable interest and as the case may be, its acquisition or disposal.

- (3) A director or secretary of a company who is aware of:

- (a)
- (i) his being granted by another body corporate, being a group company of the company, of a right to subscribe for shares in, or debentures of, that other body corporate;
  - (ii) his exercise of such a right so granted; and
- (b) any of the transactions in paragraph (a) to which the spouse or a minor child of the director or secretary is party,

shall notify the company in writing of:

- (I) the occurrence of any of such events;
- (II) save where before and after the relevant event the aggregate disclosable interest of the director or secretary, his spouse and minor children before or after such event would be such that Part A5, Head 33 (1) would apply, the number or amount, and class, of shares or debentures involved and the consideration payable.

- (4) A director or secretary of a company who is aware of:

- (a) his entering a contract to sell shares in or debentures of, the company or of any group company of the company;

- (b) his assigning a right granted to him by the company or a group company of the company to subscribe for shares in, or debentures of, the company or such group company; and

- (c) any of the transactions in paragraphs (a) or (b) to which the spouse or a minor child of the director or secretary is party;

shall notify the company in writing of:

- (i) the occurrence of any of such events;
- (ii) save where the aggregate disclosable interest of the director or secretary, his spouse and minor children before such event would be such that Head 33 (4) (f) (i) would apply, the number or amount, and class, of shares or debentures involved and the consideration payable.

- (5) This head applies to shadow directors and de facto directors as to directors, but the making of a notification by a person under this head shall not, in itself, be proof that the person making the notification is a shadow director or de facto director.

- (6) Nothing in this head 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, and for this purpose a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members but that other and that other's wholly owned subsidiaries and its or their nominees.

- (7) Nothing in this head shall operate to impose an obligation on a director or secretary of a company who is granted an option to subscribe for shares or debentures of that company to make any notification to that company in respect of such grant.

### **Explanatory note**

*This head is a new head. It is taken, in substance, from Section 53 of the Companies Act, 1990 insofar as it imposes an obligation on directors and secretaries to notify their interests in shares or debentures of the company held by themselves or by their spouse or minor children. The latter requirement was previously contained in Section 64 of the Companies Act, 1990.*

*The obligation has also been expressly stated to apply to both de facto directors and shadow directors.*

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### Head 35 Mode of disclosure by directors and secretaries under this Chapter

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- (1) Where the shares or debentures are acquired or disposed of by the director or secretary, the “requisite particulars” shall, where the director or secretary so chooses, mean—
  - (a) the instrument of transfer of the shares or debentures, identifying:
    - (i) the director or secretary by name;
    - (ii) the shares or debentures in question;
    - (iii) the purchase or sale price therefor;
  - (b) delivered to the company within 30 days of the date of the instrument of transfer.
- (2) In any case other than those envisaged by Subhead (1) the “requisite particulars” shall mean a statement in writing to the company by or on behalf of the director or secretary:
  - (a) stating that the director or secretary, or spouse or minor child (as the case may be) has, has acquired or has ceased to have (as the case may be) a disclosable interest in shares or debentures of the company or a group company;
  - (b) identifying the number of shares or debentures and their class, and the registered holders of the shares or debentures;
  - (c) in the case of an acquisition or disposal, the consideration payable therefor;
  - (d) delivered to the company no later than 8 days of the event giving rise to the notification.
- (3) The notification required by Part A5, Head 34 (3) and (4) [equivalent of Section 53 of the Companies Act, 1990] must be delivered to the company no later than 8 days after the event giving rise to the notification.
- (4) A shadow director or de facto director must, in any notification under this Chapter, identify his address.

#### Explanatory note

*This head is new. The “requisite particulars” have been taken from Section 57(1) of the Companies Act, 1990. They have also been extended in accordance with the Recommendations of the First Report of the Company Law Review Group.*

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### Head 36 Enforcement of the notification obligation

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- (1) Where a person authorises any other person (“the agent”) to acquire or dispose of, on his behalf, interests in, shares in, or debentures of, a company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter with respect to his interest in those shares or debentures.
- (2) Subject to the succeeding subheads of this head, where a person fails to fulfill, within the proper period, an obligation to which he is subject by virtue of Part A5, Head 34 [equivalent of Section 53 of Companies Act, 1990] no right or interest of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.
- (3) Where any right or interest is restricted under Subhead (2):
  - (a) any person in default under that subhead or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of Subhead (2);
  - (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;
  - (c) where an applicant for relief under this subhead is a person referred to in Subhead (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.

- (4) Where—
- (a) a person fails to fulfill, within the proper period, an obligation to which he is subject by virtue of Part A5, Head 34 [equivalent of Section 53 of Companies Act, 1990] and;
  - (b)
    - (i) the identity of the director or secretary and his holding, acquisition and disposal of the shares or debentures in question and consideration paid or payable therefor has been apparent on the face of the register of members and/ or register of directors and secretaries and / or the register of share and debenture interests of directors and secretaries and /or the documents made available by that company with those registers, from not later than 30 days from when the obligation to notify has arisen; or
    - (ii) the members by resolution so resolve
- then:
- (I) all rights and interests of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him, whether directly or indirectly, by action or legal proceeding;
  - (II) upon production of a plain copy of any such special resolution certified by the company secretary for the time being as having been duly passed in compliance with this head, any third party having dealings with the company or the registered holder of the shares or debentures in question shall be entitled to presume without further enquiry that the provisions of this subhead have been complied with and that the registered holder is entitled to deal with the shares or debentures registered in his name,
  - (III) Subhead (3) shall not apply to an obligation relating to a person ceasing to be interested in shares in, or debentures of, a company.
- (5) A person who fails without reasonable excuse to comply with Subhead (1) shall be guilty of a category three offence.

- (6) A person who fails to fulfill, within the proper period, an obligation to which he is subject by virtue of Part A5, Head 34 [equivalent of Section 53 of the Companies Act, 1990] shall be guilty of a category three offence.

### **Explanatory note**

*This head is new and is taken in substance from Section 58 of the Companies Act, 1990.*

*Subheads (1) and (2) are re-enactments of Sections 58(1) and (3) of the Companies Act, 1990, respectively.*

*Subhead (3) is a re-enactment of Sections 58(4) and (5) of the Companies Act, 1990.*

*Subhead (4) is new. This allows a company's members to cure a breach of the disclosure obligation by passing a resolution or consider there is no breach where the interests are evident from another public register.*

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## **Head 37 Register of interests: contents and entries**

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- (1) Every company shall keep a register of directors' and secretaries' interests for the purposes of this Chapter.
- (2) Whenever the company receives information from a director or secretary in consequence of the fulfilment of an obligation imposed on him by [that head], the company shall within 3 days of such receipt enter in the register, against the name of that person, that information and the date of the entry.
- (3) Every company shall, whenever it grants to a director or secretary a right to subscribe for shares in, or debentures of, the company, 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 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 therefore.

(4) Whenever such a right as is mentioned in Subhead (3) is exercised by a director or secretary, the company shall enter in the register of interests against his name:

- (a) that fact (identifying the right);
- (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 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 thereof registered in the name of each of them.

- (5) The register to be kept under Subhead (1) shall be so made up that the entries therein against the several names inscribed therein appear in chronological order.
- (6) The nature and extent of an interest recorded in the said register of a director or secretary in any shares or debentures shall, if he so requires, be recorded in the said register.
- (7) The company shall not, by virtue of anything done for the purposes of this head, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.
- (8) If default is made in complying with Subheads (1) to (6), the company and every officer in default shall be guilty of a category three offence.

**Explanatory note**

*This head is new. The head is comprised of a re-enactment of various subsections of Sections 59 and 60 of the Companies Act, 1990.*

*Subheads (1) - (4) are a slightly amended re-enactment of Sections 59(1) - (4) of the Companies Act, 1990.*

*The 3-day requirement inserted into Subhead (2) has been taken from Section 60(2) of the Companies Act, 1990.*

*Subhead (5) - (7) are re-enactments of Sections 60(1), (3) and (4) of the Companies Act, 1990.*

**Head 38 Register of interests: maintenance and inspection**

- (1) The register provided for in Part A5, Head 37 shall—
  - (a) if the company's register of members is kept at its registered office, be kept there;
  - (b) if the company's register of members is not so kept, be kept at the company's registered office or at the place where its register of members is kept,

and shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of 50 cent or such less sum as the company may prescribe for each inspection.

- (2) The company shall send notice to the Registrar of the place where the said register is kept and of any change in that place, save in a case in which it has at all times been kept at its registered office.
- (3) Unless the said register is in such a form as to constitute in itself an index, the company shall keep an index of the names entered therein which shall—
  - (a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and
  - (b) be kept at the same place as the said register,

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

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- (4) Any member of the company or other person may require a copy of the said register or of any part thereof, on payment of 20 cent or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within the period of 10 days beginning with the day next following that on which the requirement is received by the company.
- (5) The said register shall also be and remain open and accessible to any person attending the company's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.
- (6) In the case of a refusal of an inspection, required under this head, of the said register, the court may by order, compel an immediate inspection thereof, and in the case of a failure to send within the proper period a copy required under this head, the court may by order direct that the copy required shall be sent to the person requiring it.
- (7) A company may remove an entry against a person's name from the register of interests in shares and debentures kept under Part A5, Head 37 [equivalent of Section 59 of the Companies Act, 1990] if more than 6 years has elapsed since the date of the entry being made, and either—
- (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
  - (b) it has been superseded by a later entry made under the said Part A5, Head 37 [equivalent of Section 59 of Companies Act, 1990] against the same person's name;
- and in a case within paragraph (a) the company may also remove that person's name from the register.
- (8) Where a name is removed from a company's register of interests in shares or debentures in pursuance of Subhead (7), the company shall within 14 days of the date of that removal make any necessary alterations in any associated index.
- (9) Entries in a company's register of interests in shares and debentures under this Chapter shall not be deleted except in accordance with Subhead (7) and (8) of this head.
- (10) If an entry is deleted from a company's register of interests in shares in contravention of Subhead (1), the company shall restore that entry to the register as soon as is reasonable and practicable.
- (11) If default is made in complying with Subheads (3), (4), (5) (8), (9) or (10), the company and every officer of it who is in default shall be guilty of a category 3 offence, and if default is made for 14 days in complying with Subhead (2) the company and every officer in default shall be guilty of a category two offence.

### **Explanatory note**

*This head is a new head. The head relates to the maintenance and inspection of the register of interests. The head is a slightly amended re-enactment of various provisions of Section 60, 61 and 62 of the Companies Act, 1990. The cross-references have been amended in light of the new provisions. Fees have also been converted into euro and rounded.*

