
STATUTORY INSTRUMENTS

1986 No. 1032

The Companies (Northern Ireland) Order 1986 (revoked)

PART XI

ENFORCEMENT OF FAIR DEALING BY DIRECTORS

F1 Order repealed (prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1284(2), 1295, 1300(2), [Sch. 16](#) and the repeal being partly in force, as to which see individual Articles (with savings (with adaptations) by Companies Act 2006 (Commencement No. 6, Saving and Commencement Nos. 3 and 5 (Amendment)) Order 2008 (S.I. 2008/674), arts. 2(3), {4}, Sch. 2) and subject to amendments (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b)(2), Sch. 1 paras. 135, 147, 148 {Sch. 2 Note 1} (with arts. 6, 11, 12) and subject to amendments (6.4.2008) by [S.R. 2008/133](#), {regs. 2, 3}

Restrictions on directors taking financial advantage

Prohibition on tax-free payments to directors

319.—(1) It is not lawful for a company to pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.

(2) Any provision contained in a company's articles, or in any contract or in any resolution of a company or a company's directors, for payment to a director of remuneration as mentioned in paragraph (1) has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

Payment to director for loss of office, etc.

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

Company approval for property transfer

321.—(1) It is not lawful, in connection with the transfer of the whole or any part of the undertaking or property of a company, for any payment to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars of the proposed payment (including its amount) have been disclosed to members of the company and the proposal approved by the company.

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

Status: Point in time view as at 01/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XI. (See end of Document for details)

Director's duty of disclosure on takeover, etc.

322.—(1) This Article applies where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders; or
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent,

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

(2) It is in those circumstances the director's duty to take all reasonable steps to secure that particulars of the proposed payment (including its amount) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) If—

- (a) the director fails to take those steps, or
- (b) any person who has been properly required by the director to include those particulars in or send them with the notice required by paragraph (2) fails to do so,

he is liable to a fine.

Consequences of non-compliance with Article 322

323.—(1) If in the case of any such payment to a director as is mentioned in Article 322(1)—

- (a) his duty under that Article is not complied with, or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting (summoned for the purpose) of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,

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

(2) Where—

- (a) the shareholders referred to in paragraph (1)(b) are not all the members of the company, and
- (b) no provision is made by the company's articles for summoning or regulating the meeting referred to in that paragraph,

the provisions of this Order and of the company's articles relating to general meetings of the company apply (for that purpose) to the meeting either without modification or with such modifications as the Department on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

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

Provisions supplementing Articles 320 to 323

324.—(1) Where in proceedings for the recovery of any payment as having, by virtue of Article 321(2) or 323(1), been received by any person in trust, it is shown that—

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

(b) the company or any person to whom the transfer was made was privy to that arrangement, the payment is deemed, except in so far as the contrary is shown, to be one to which the provisions mentioned in this paragraph apply.

(2) If in connection with any such transfer as is mentioned in any of Articles 321 to 323—

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

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

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

(3) References in Articles 320 to 323 to payments made to a director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services.

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

(4) Nothing in Articles 321 to 323 prejudices the operation of any rule of law requiring disclosure to be made with respect to such payments as are there mentioned, or with respect to any other like payments made or to be made to a company's directors.

Directors to disclose interest in contracts

325 ^{F1}.—(1) It is the duty of a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

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

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

(b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he become so interested;

and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes so interested.

(3) For the purposes of this Article, a general notice given to the directors of a company by a director to the effect that—

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

(b) he is to be regarded as interested in any contract which may after the date of the notice be made with a specified person who is connected with him (within the meaning of Article 354),

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

Status: Point in time view as at 01/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XI. (See end of Document for details)

(4) However, no such notice is of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(5) A reference in this Article to a contract includes any transaction or arrangement (whether or not constituting a contract) made or entered into on or after 1st July 1983.

(6) For the purposes of this Article, a transaction or arrangement of a kind described in Article 338 (prohibition of loans, quasi-loans, etc. to directors) made by a company for a director of the company or a person connected with such a director is treated (if it would not otherwise be so treated, and whether or not it is prohibited by that Article) as a transaction or arrangement in which that director is interested.

(7) A director who fails to comply with this Article is liable to a fine.

(8) This Article applies to a shadow director as it applies to a director, except that a shadow director shall declare his interest, not at a meeting of 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 paragraph (2) to be made; or
- (b) a notice which under paragraph (3) falls to be treated as a sufficient declaration of that interest (or would fall to be so treated apart from paragraph (4)).

(9) Nothing in this Article prejudices the operation of any rule of law restricting directors of a company from having an interest in contracts with the company.

F1 mod. by 2000 c. 38

Directors' service contracts to be open to inspection

326.—(1) Subject to the following provisions of this Article, every company shall keep at an appropriate place—

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract;
- (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms; and
- (c) in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of that contract or, if it is not in writing, a written memorandum setting out its terms.

(2) All copies and memoranda kept by a company in pursuance of paragraph (1) shall be kept at the same place.

(3) The following are appropriate places for the purposes of paragraph (1)—

- (a) the company's registered office;
- (b) the place where its register of members is kept (if other than its registered office);
- (c) its principal place of business, provided that it is situated in Northern Ireland.

(4) Every company shall send to the registrar notice in the prescribed form of the place where copies of contracts and memoranda are kept in compliance with paragraph (1), and of any change in that place (save in a case in which they have at all times been kept at the company's registered office).

(5) Paragraph (1) does not apply to a director's contract of service with the company or with a subsidiary of it if that contract required him to work wholly or mainly outside the United Kingdom; but the company shall keep a memorandum—

- (a) in the case of a contract of service with the company, giving the director's name and setting out the provisions of the contract relating to its duration;
- (b) in the case of a contract of service with a subsidiary, giving the director's name and the name and place of incorporation of the subsidiary, and setting out the provisions of the contract relating to its duration,

at the same place as copies and memoranda are kept by the company in pursuance of paragraph (1).

(6) A shadow director is treated for the purposes of this Article as a director.

(7) Every copy and memorandum required by paragraph (1) or (5) to be kept shall^{F2} . . . be open to inspection of any member of the company without charge.

(8) If—

- (a) default is made in complying with paragraph (1) or (5), or
- (b) an inspection required under paragraph (7) is refused, or
- (c) default is made for 14 days in complying with paragraph (4),

the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(9) In the case of a refusal of an inspection required under paragraph (7) of a copy or memorandum, the court may by order compel an immediate inspection of it.

(10) Paragraphs (1) and (5) apply to a variation of a director's contract of service as they apply to the contract.

(11) This Article does not require that there be kept a copy of, or memorandum setting out the terms of, a contract (or its variation) at a time when the unexpired portion of the term for which the contract is to be in force is less than 12 months, or at a time at which the contract can, within the next ensuing 12 months, be terminated by the company without payment of compensation.

F2 1990 NI 10

Director's contract of employment for more than 5 years

327.—(1) This Article applies in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director of a holding company, his employment within the group is to continue, or may be continued, otherwise than at the instance of the company (whether under the original agreement or under a new agreement entered into in pursuance of it), for a period of more than 5 years during which the employment—

- (a) cannot be terminated by the company by notice; or
- (b) can be so terminated only in specified circumstances.

(2) In any case where—

- (a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and
- (b) more than 6 months before the expiration of the period for which he is or is to be so employed, the company enters into a further agreement (otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it) under which he is to be employed with the company or, where he is a director of a holding company, within the group,

this Article applies as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

Status: Point in time view as at 01/04/2007.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Northern Ireland) Order 1986 (revoked), PART XI. (See end of Document for details)

(3) A company shall not incorporate in an agreement such a term as is mentioned in paragraph (1), unless the term is first approved by a resolution of the company in general meeting and, in the case of a director of a holding company, by a resolution of that company in general meeting.

(4) No approval is required to be given under this Article by any body corporate unless it is a company within the meaning of this Order, or is registered under Article 629, or if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

(5) A resolution of a company approving such a term as is mentioned in paragraph (1) shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting; and
- (b) at the meeting itself.

(6) A term incorporated in an agreement in contravention of this Article is, to the extent that it contravenes the Article, void; and that agreement and, in a case where paragraph (2) applies, the original agreement are deemed to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this Article—

- (a) “employment” includes employment under a contract for services; and
- (b) “group”, in relation to a director of a holding company, means the group which consists of that company and its subsidiaries;

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

Substantial property transactions involving directors, etc.

328^{F3}—(1) With the exceptions provided by Article 329, a company shall not enter into an arrangement—

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

unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than^{F4} £2,000] but (subject to that) exceeds^{F4} £100,000] or 10 per cent. of the company's asset value, that is—

- (a) except in a case falling within sub-paragraph (b), the value of the company's net assets determined by reference to the accounts prepared and laid under Part VIII in respect of the last preceding financial year in respect of which such accounts were so laid; and
- (b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.

(3) For the purposes of this Article and Articles 329 and 330, a shadow director is treated as a director.

F3 mod. by 2000 c. 38

F4 SR 1991/155

Exceptions from Article 328

329.—(1) No approval is required to be given under Article 328 by any body corporate unless it is a company within the meaning of this Order, or registered under Article 629 or, if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

(2) Article 328(1) does not apply to an arrangement for the acquisition of a non-cash asset—

- (a) if the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiaries, or by one wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company, or
- (b) if the arrangement is entered into by a company which is being wound up, unless the winding up is a members' voluntary winding up.

(3) Article 328(1)(a) does not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

[^{F5}(4) Article 328(1) does not apply to a transaction on a recognised investment exchange which is effected by a director, or a person connected with him, through the agency of a person who in relation to the transaction acts as an independent broker.

For this purpose an “independent broker” means—

- (a) in relation to a transaction on behalf of a director, a person who independently of the director selects the person with whom the transaction is to be effected, and
- (b) in relation to a transaction on behalf of a person connected with a director, a person who independently of that person or the director selects the person with whom the transaction is to be effected;

and “recognised”, in relation to an investment exchange, means recognised under the [^{F6} Financial Services and Markets Act 2000.]

F5	1990 NI 10
F6	SI 2001/3649

Liabilities arising from contravention of Article 328

330.—(1) An arrangement entered into by a company in contravention of Article 328, and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) is voidable at the instance of the company unless one or more of the conditions specified in paragraph (2) is satisfied.

(2) Those conditions are that—

- (a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this Article by any other person for the loss or damage suffered by it; or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or
- (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in a general meeting.

Status: Point in time view as at 01/04/2007.

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(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of Article 328, that director and the person so connected, and any other director of the company who authorised the arrangement or any transaction entered into in pursuance of such an arrangement, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction, and
- (b) (jointly and severally with any other person liable under this paragraph) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Paragraph (3) is without prejudice to any liability imposed otherwise than by that paragraph, and is subject to paragraphs (5) and (6); and the liability under paragraph (3) arises whether or not the arrangement or transaction entered into has been avoided in pursuance of paragraph (1).

(5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of Article 38, that director is not liable under paragraph (3) if he shows that he took all reasonable steps to secure the company's compliance with that Article.

(6) In any case, a person so connected and any such other director as is mentioned in paragraph (3) is not so liable if he shows that, at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

[^{F7}Invalidity of certain transactions involving directors, etc.

330A.—(1) This Article applies where a company enters into a transaction to which the parties include—

- (a) a director of the company or of its holding company, or
- (b) a person connected with such a director or a company with whom such a director is associated,

and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company's constitution.

(2) The transaction is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in paragraph (1) (a) or (b), and any director of the company who authorised the transaction, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in the above provisions shall be construed as excluding the operation of any other statutory provision or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

(5) The transaction ceases to be voidable if—

- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
- (b) the company is indemnified for any loss or damage resulting from the transaction, or
- (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
- (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the company is not liable under paragraph (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) This Article does not affect the operation of Article 45A in relation to any party to the transaction not within paragraph (1)(a) or (b).

But where a transaction is voidable by virtue of this Article and valid by virtue of that Article in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this Article “transaction” includes any act; and the reference in paragraph (1) to limitations under the company's constitution includes limitations deriving—

- (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
- (b) from any agreement between the members of the company or of any class of shareholders.]

F7 1990 NI 10, art. 45(1)

[^{F8}Contracts with sole members who are directors

330B.—(1) Subject to paragraph (2), where a private company limited by shares or by guarantee having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either 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) Paragraph (1) shall not apply to contracts entered into the ordinary course of the company's business.

(3) For the purposes of this Article a sole member who is a shadow director is treated as a director.

(4) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is liable to a fine.

(5) Subject to paragraph (6), nothing in this Article shall be construed as excluding the operation of any other statutory provision or rule of law applying to contracts between a company and a director of that company.

(6) Failure to comply with paragraph (1) with respect to a contract shall not affect the validity of that contract.]

F8 SR 1992/405

Share dealings by directors and their families

Prohibition on directors dealing in share options

331 ^{F9}.—(1) It is an offence for a director of a company to buy—

- (a) a right to call for delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or
- (b) a right to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures; or

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- (c) a right (as he may elect) to call for delivery at a specified price and within a specified time or to make delivery at a specified price and within a specified time of a specified number of relevant shares or a specified amount of relevant debentures.
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment or a fine, or both.
- (3) In paragraph (1)—
- (a) “relevant shares”, in relation to a director of a company, means shares in the company or in any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, being shares as respects which there has been granted a listing on a stock exchange (whether within the United Kingdom or elsewhere);
- (b) “relevant debentures”, in relation to a director of a company, means debentures of the company or of any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, being debentures as respects which there has been granted such a listing; and
- (c) “price” includes any consideration other than money.
- (4) This Article applies to a shadow director as to a director.
- (5) This Article is not to be taken as penalising a person who buys a right to subscribe for shares in, or debentures of, a body corporate or buys debentures of a body corporate that confer upon the holder of them a right to subscribe for, or to convert the debentures (in whole or in part) into, shares of that body.
- [^{F10}(6) This Article is not to be taken as penalising a director of a company who buys a right to call for delivery at a specified price within a specified time of a specified number of shares held as treasury shares by the company or by a relevant company which is that company's subsidiary or holding company or a subsidiary of that company's holding company.
- (7) For the purposes of paragraph (6)—
- (a) “relevant company” means a company listed in Article 1 of Council Directive [77/91/EEC](#), and
- (b) shares of a relevant company (other than a company within the meaning of Article 3(1)) are held as treasury shares if—
- (i) they fall within Article 172(4)(a) to (d) (qualifying shares), and
- (ii) they are held by the relevant company in accordance with provisions of the law of a member State implementing Articles 19 to 22 of that Directive.]

F9 mod. by [2000 c. 38](#)

F10 SR 2004/275

Duty of director to disclose shareholdings in own company

332 ^{F11}.—(1) A person who becomes a director of a company and at the time when he does so is interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, is under obligation to notify the company in writing—

- (a) of the subsistence of his interests at that time; and
- (b) of the number of shares of each class in, and the amount of debentures of each class of, the company or other such body corporate in which each interest of his subsists at that time.

(2) A director of a company is under obligation to notify the company in writing of the occurrence, while he is a director, of any of the following events—

- (a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
- (b) the entering into by him of a contract to sell any such shares or debentures;
- (c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; and
- (d) the grant to him by another body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted;

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

- (3) Schedule 13 has effect in connection with paragraphs (1) and (2); and of that Schedule—
 - (a) Part I contains rules for the interpretation of, and otherwise in relation to, those paragraphs and applies in determining, for the purposes of those paragraphs, whether a person has an interest in shares or debentures;
 - (b) Part II applies with respect to the periods within with obligations imposed by those paragraphs must be fulfilled; and
 - (c) Part III specifies certain circumstances in which obligations arising from paragraph (2) are to be treated as not discharged;

and paragraphs (1) and (2) are subject to any exceptions for which provision may be made by regulations made by the Department.

(4) Paragraph (2) does not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a director.

(5) An obligation imposed by this Article is treated as not discharged unless the notice by means of which it purports to be discharged is expressed to be given in fulfilment of that obligation.

(6) This Article applies to shadow directors as to directors; but nothing in it operates so as to impose an obligation with respect to shares in a body corporate which is the wholly-owned subsidiary of another body corporate.

- (7) A person who—
 - (a) fails to discharge, within the proper period, an obligation to which he is subject under paragraph (1) or (2), or
 - (b) in purported discharge of an obligation to which he is so subject, makes to the company a statement which he knows to be false, or recklessly makes to it a statement which is false,

is guilty of an offence and liable to imprisonment or a fine, or both.

- (8) Article 680 (restriction on prosecutions) applies to an offence under this Article.

F11 mod. by 2000 c. 38

Register of directors' interests notified under Article 332

333^{F12}.—(1) Every company shall keep a register for the purposes of Article 332.

(2) Whenever a company receives information from a director given in fulfilment of an obligation imposed on him by that Article, it is under obligation to enter in the register, against the director's name, the information received and the date of the entry.

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(3) The company is also under obligation, whenever it grants to a director a right to subscribe for shares in, or debentures of, the company, to enter in the register against his name—

- (a) the date on which the right is granted,
- (b) the period during which, or time at which, it is exercisable,
- (c) the consideration for the grant (or, if there is no consideration, that fact), and
- (d) the description of shares or debentures involved and the number or amount of them, and the price to be paid for them (or the consideration, of otherwise than in money).

(4) Whenever such a right as is mentioned in paragraph (3) is exercised by a director, the company is under obligation to enter in the register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if they were registered in his name, that fact and, if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of two persons or more) with the number or amount of the shares or debentures registered in the name of each of them.

(5) Part IV of Schedule 13 has effect with respect to the register to be kept under this Article, to the way in which entries in it are to be made, to the right of inspection, and generally.

(6) For the purposes of this Article, a shadow director is deemed a director.

F12 mod. by 2000 c. 38

Sanctions for non-compliance

334.—(1) This Article applies with respect to defaults in complying with, and to contraventions of, Article 333 and Part IV of Schedule 13.

(2) If default is made in complying with any of the following provisions—

- (a) Article 333(1), (2), (3) or (4), or
- (b) Schedule 13, paragraph 20, 21 or 27,

the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(3) If an inspection of the register required under paragraph 24 of that Schedule is refused, or a copy required under paragraph 25 is not sent within the proper period, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(4) If default is made for 14 days in complying with paragraph 26 of that Schedule (notice to registrar of where register is kept), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

(5) If default is made in complying with paragraph 28 of that Schedule (register to be produced at an annual general meeting), the company and every officer of it who is in default is liable to a fine.

(6) In the case of a refusal of an inspection of the register required under paragraph 24 of that Schedule, the court may by order compel an immediate inspection of it; and in the case of failure to send within the proper period a copy required under paragraph 25, the court may by order direct that the copy be sent to the person requiring it.

Extension of Article 331 to spouses ^{F13}, civil partners] and children

335.—(1) Article 331 applies to—

- (a) the wife or husband^{F13} or civil partner] of a director of a company (not being herself or himself a director of it), and

- (b) an infant son or infant daughter of a director (not being himself or herself a director of the company),

as it applies to the director; but it is a defence for a person charged by virtue of this Article with an offence under Article 331 to prove that he (she) had no reason to believe that his (her) spouse or, as the case may be,^{F13} civil partner or] parent was a director of the company in question.

(2) For the purposes of this Article—

- (a) “son” includes step-son^{F14} . . . , and “daughter” includes step-daughter^{F14} . . . (“parent” being construed accordingly), and
- (b) a shadow director of a company is deemed to be a director of it.

F13 2004 c.33

F14 1987 NI 22

Extension of Article 332 to spouses [^{F15}, civil partners] and children

336.—(1) For the purposes of Article 332—

- (a) an interest of the wife or husband^{F15} or civil partner] of a director of a company (not being herself or himself a director of it) in shares or debentures is to be treated as the director's interest; and
- (b) the same applies to an interest of an infant son or infant daughter of a director of a company (not being himself or herself a director of it) in shares or debentures.

(2) For those purposes—

- (a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the wife or husband^{F15} or civil partner] of a director of a company (not being herself or himself a director of it) is to be treated as having been entered into, exercised or made by, or (as the case may be) as having been made to the director; and
- (b) the same applies to a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director of it).

(3) A director of a company is under obligation to notify the company in writing of the occurrence while he or she is a director, of either of the following events, namely—

- (a) the grant by the company to his (her) spouse^{F15} or civil partner], or to his or her infant son or infant daughter, of a right to subscribe for shares in, or debentures of, the company; and
- (b) the exercise by his (her) spouse^{F15} or civil partner] or by his or her infant son or infant daughter of such a right granted by the company to the wife, husband,^{F15} civil partner,] son or daughter.

(4) In a notice given to the company under paragraph (3) there shall be stated—

- (a) in the case of the grant of a right, the like information as is required by Article 332 to be stated by the director on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate; and
- (b) in the case of the exercise of a right, the like information as is required by that Article to be stated by the director on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.

(5) An obligation imposed by paragraph (3) on a director must be fulfilled by him before the end of the 5 days beginning with the day following that on which the occurrence of the event giving rise

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to it comes to his knowledge; but in reckoning that period of days there is disregarded any Saturday or Sunday, and any day which is a bank holiday.

(6) A person who—

- (a) fails to fulfil, within the proper period, an obligation to which he is subject under paragraph (3), or
- (b) in purported fulfilment of such an obligation, makes to a company a statement which he knows to be false, or recklessly makes to a company a statement which is false,

is guilty of an offence and liable to imprisonment or a fine, or both.

(7) The rules set out in Part I of Schedule 13 have effect for the interpretation of, and otherwise in relation to, paragraphs (1) and (2); and paragraphs (5), (6) and (8) of Article 332 apply with any requisite modification.

(8) In this Article “son” includes step-son^{F16}. . . and “daughter” includes step-daughter^{F16}. . . .

(9) For the purposes of Article 333, an obligation imposed on a director by this Article is to be treated as if imposed by Article 332.

F15 2004 c.33

F16 1987 NI 22

Duty to notify stock exchange of matters notified under Articles 332 to 336

337.—(1) Whenever a company whose shares or debentures are listed on a^{F17} recognised investment exchange] is notified of any matter by a director in consequence of the fulfilment of an obligation imposed by Article 332 or 336, and that matter relates to shares or debentures so listed, the company is under obligation to notify^{F17} that investment exchange] of that matter; and^{F17} the investment exchange] may publish, in such manner as it may determine, any information received by it under this paragraph.

(2) An obligation imposed by paragraph (1) must be fulfilled before the end of the day next following that on which it arises; but there is disregarded for this purpose a day which is a Saturday or a Sunday or a bank holiday.

(3) If default is made in complying with this Article, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

Article 680 (restriction on prosecutions) applies to an offence under this Article.

^{F18}(4) In paragraph (1) "recognised investment exchange" has the same meaning as in Part 18 of the Financial Services and Markets Act 2000.]

F17 1986 c. 60

F18 SI 2001/3649

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

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

338^{F19}.—(1) The prohibitions listed in this Article are subject to the exceptions in Articles 340 to 346.

(2) A company shall not—

- (a) make a loan to a director of the company or of its holding company;
 - (b) enter into any guarantee or provide any security in connection with a loan made by any person to such a director.
- (3) A relevant company shall not—
- (a) make a quasi-loan to a director of the company or of its holding company; or
 - (b) make a loan or a quasi-loan to a person connected with such a director; or
 - (c) enter into a guarantee or provide any security in connection with a loan or quasi-loan made by any other person for such a director or a person so connected.
- (4) A relevant company shall not—
- (a) enter into a credit transaction as creditor for such a director or a person so connected;
 - (b) enter into any guarantee or provide any security in connection with a credit transaction made by any other person for such a director or a person so connected.
- (5) For the purposes of this Article and Articles 339 and 354, a shadow director is treated as a director.
- (6) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under any transaction which, if it had been entered into by the company, would have contravened paragraph (2), (3) or (4); but for the purposes of this Article and Articles 339 to 355 the transaction is to be treated as having been entered into on the date of the arrangement.
- (7) A company shall not take part in any arrangement whereby—
- (a) another person enters into a transaction which, if it had been entered into by the company, would have contravened any of paragraphs (2), (3), (4) and (6); and
 - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.

F19 mod. by 2000 c. 38

Interpretation for Articles 338ff.

- 339.**—(1) This Article applies for the interpretation of Articles 338 to 354.
- (2) “Guarantee” includes indemnity.
- (3) A quasi-loan is a transaction under which one party (“the creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (“the borrower”) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (“the borrower”)—
- (a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or
 - (b) in circumstances giving rise to a liability on the borrower to reimburse the creditor.
- (4) Any reference to the person to whom a quasi-loan is made is a reference to the borrower; and the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.
- (5) “Relevant company” means a company which—
- (a) is a public company, or
 - (b) is a subsidiary of a public company, or
 - (c) is a subsidiary of a company which has as another subsidiary a public company, or
 - (d) has a subsidiary which is a public company.

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- (6) A credit transaction is a transaction under which one party (“the creditor”)—
- (a) supplies any goods or sells any land under a hire purchase agreement or a conditional sale agreement;
 - (b) leases or hires any land or goods in return for periodical payments;
 - (c) otherwise disposes of land or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.
- (7) “Services” means anything other than goods or land.
- (8) A transaction or arrangement is made “for” a person if—
- (a) in the case of a loan or quasi-loan, it is made to him;
 - (b) in the case of a credit transaction, he is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
 - (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or a credit transaction made for him;
 - (d) in the case of an arrangement within Article 338(6) or (7), the transaction to which the arrangement relates was made for him; and
 - (e) in the case of any other transaction or arrangement for the supply or transfer of, or of any interest in, goods, land or services, he is the person to whom the goods, land or services (or the interest) are supplied or transferred.
- (9) “Conditional sale agreement” means the same as in the Consumer Credit Act 1974.

Short-term quasi-loans

340.—(1) Article 338(3) does not prohibit a company (“the creditor”) from making a quasi-loan to one of its directors or to a director of its holding company if—

- (a) the quasi-loan contains a term requiring the director or a person on his behalf to reimburse the creditor his expenditure within 2 months of its being incurred; and
- (b) the aggregate of the amount of that quasi-loan and of the amount outstanding under each relevant quasi-loan does not exceed^[F20] £5,000].

(2) A quasi-loan is relevant for this purpose if it was made to the director by virtue of this Article by the creditor or its subsidiary or, where the director is a director of the creditor's holding company, any other subsidiary of that company; and “the amount outstanding” is the amount of the outstanding liabilities of the person to whom the quasi-loan was made.

F20 1990 NI 10

Inter-company loans in the same group

341. In the case of a relevant company which is a member of a group of companies (meaning a holding company and its subsidiaries), Article 338(3)(b) and (c) does not prohibit the company from—

- (a) making a loan or quasi-loan to another member of that group; or
- (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to another member of the group,

by reason only that a director of one member of the group is associated with another.

Loans of small amounts

342. Without prejudice to any other provision of Articles 340 to 346, Article 338(2)(a) does not prohibit a company from making a loan to a director of the company or of its holding company if the aggregate of the relevant amounts does not exceed^[F21] £5,000].

F21 1990 NI 10

Minor and business transactions

343.—(1) Article 338(4) does not prohibit a company from entering into a transaction for a person if the aggregate of the relevant amounts does not exceed^[F22] £10,000].

- (2) Article 338(4) does not prohibit a company from entering into a transaction for a person if—
- (a) the transaction is entered into by the company in the ordinary course of its business; and
 - (b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which it is reasonable to expect the company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

F22 SR 1991/155

Transactions at behest of holding company

- 344.** The following transactions are excepted from the prohibitions in Article 338—
- (a) a loan or quasi-loan by a company to its holding company or a company entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to its holding company;
 - (b) a company entering into a credit transaction as creditor for its holding company, or entering into a guarantee or providing any security in connection with a credit transaction made by any other person for its holding company.

Funding of director's expenditure on duty to company

345.—(1) A company is not prohibited by Article 338 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company.

(2) Nor does that Article prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

- (3) Paragraphs (1) and (2) apply only if one of the following conditions is satisfied—
- (a) the thing in question is done with prior approval of the company given at a general meeting at which there are disclosed all the matters mentioned in paragraph (4);
 - (b) that thing is done on condition that, if the approval of the company is not so given at or before the next annual general meeting, the loan is to be repaid, or any other liability arising under any such transaction discharged, within 6 months from the conclusion of that meeting;

but those paragraphs do not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds^[F23] £20,000].

- (4) The matters to be disclosed under paragraph (3)(a) are—

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- (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director;
- (b) the amount of the funds to be provided by the company; and
- (c) the extent of the company's liability under any transaction which is or is connected with the thing in question.

F23 SR 1991/155

[^{F24}Funding of director's expenditure on defending proceedings

345A.—(1) A company is not prohibited by Article 338 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—

- (a) in defending any criminal or civil proceedings, or
- (b) in connection with any application under any of the provisions mentioned in paragraph (2).

(2) The provisions are—

- (a) Article 154(3) and (4), and
- (b) Article 675.

(3) Nor does Article 338 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

(4) Paragraphs (1) and (3) only apply to a loan or other thing done as mentioned in those paragraphs if the terms on which it is made or done will result in the loan falling to be repaid, or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—

- (a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,
- (b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or
- (c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.

(5) For the purposes of paragraph (4) a conviction, judgment or refusal of relief becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(6) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.]

F24 Art. 345A inserted (6.4.2006) by Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (S.I. 2005/1967 (N.I. 17)), arts. 1(2), 19; S.R. 2006/93, art. 2, Sch.

Loan or quasi-loan by money-lending company

346.—(1) There is excepted from the prohibitions in Article 338—

- (a) a loan or quasi-loan made by a money-lending company to any person; or
- (b) a money-lending company entering into a guarantee in connection with any other loan or quasi-loan.

(2) “Money-lending company” means a company whose ordinary business includes the making of loans or quasi-loans, or the giving of guarantees in connection with loans or quasi-loans.

(3) Paragraph (1) applies only if both the following conditions are satisfied—

- (a) the loan or quasi-loan in question is made by the company, or it enters into the guarantee, in the ordinary course of the company's business; and
- (b) the amount of the loan or quasi-loan, or the amount guaranteed, is not greater, and the terms of the loan, quasi-loan or guarantee are not more favourable, in the case of the person to whom the loan or quasi-loan is made or in respect of whom the guarantee is entered into, than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

(4) But paragraph (1) does not authorise a relevant company (unless it is^{F25} a banking company]) to enter into any transaction if the aggregate of the relevant amounts exceeds^{F26} £100,000].

(5) In determining that aggregate, a company which a director does not control is deemed not to be connected with him.

(6) The condition specified in paragraph 3(b) does not of itself prevent a company from making a loan to one of its directors or a director of its holding company—

- (a) for the purpose of facilitating the purchase, for use as that director's only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;
- (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it;
- (c) in substitution for any loan made by any person and failing within sub-paragraph (a) or (b);

if loans of that description are ordinarily made by the “company to its employees and on terms no less favourable than those on which the transaction in question is made, and the aggregate of the relevant amounts does not exceed^{F26} £100,000].

F25 1990 NI 5
F26 1990 NI 10

“Relevant amounts” for the purposes of Articles 342ff.

347.—(1) This Article has effect for defining the “relevant amounts” to be aggregated under Articles 342, 343(1), 345(3) and 346(4); and in relation to any proposed transaction or arrangement and the question whether it falls within one or other of the exceptions provided by those Articles, “the relevant exception” is that exception; but where the relevant exception is the one provided by Article 342 (loan of small amount), references in this Article to a person connected with a director are to be disregarded.

(2) Subject as follows, the relevant amounts in relation to a proposed transaction or arrangement are—

- (a) the value of the proposed transaction or arrangement,
- (b) the value of any existing arrangement which—
 - (i) falls within Article 338(6) or (7), and
 - (ii) also falls within paragraph (3) of this Article, and
 - (iii) was entered into by virtue of the relevant exception by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to

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be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries;

- (c) the amount outstanding under any other transaction—
 - (i) falling within paragraph (3), and
 - (ii) made by virtue of the relevant exception, and
 - (iii) made by the company or by a subsidiary of the company or, where the proposed transaction or arrangement is to be made for a director of its holding company or a person connected with such a director, by that holding company or any of its subsidiaries.
- (3) A transaction falls within this paragraph if it was made—
 - (a) for the director for whom the proposed transaction or arrangement is to be made, or for any person connected with that director; or
 - (b) where the proposed transaction or arrangement is to be made for a person connected with a director of a company, for that director or any person connected with him;

and an arrangement also falls within this paragraph if it relates to a transaction which does so.

(4) But where the proposed transaction falls within Article 346 and is one which^{F27} a banking company] proposes to enter into under Article 346(6) (housing loans, etc.), any other transaction or arrangement which apart from this paragraph would fall within paragraph (3) does not do so unless it was entered into in pursuance of Article 346(6).

(5) A transaction entered into by a company which is (at the time of that transaction being entered into) a subsidiary of the company which is to make the proposed transaction, or is a subsidiary of that company's holding company, does not fall within paragraph (3) if at the time when the question arises (that is to say, the question whether the proposed transaction or arrangement falls within any relevant exception), it no longer is such a subsidiary.

(6) Values for the purposes of paragraph (2) are to be determined in accordance with Article 348 and “the amount outstanding” for the purposes of paragraph (2)(c) is the value of the transaction less any amount by which that value has been reduced.

F27 1990 NI 5

“Value” of transactions and arrangements

348.—(1) This Article has effect for determining the value of a transaction or arrangement for the purposes of Articles 338 to 347.

- (2) The value of a loan is the amount of its principal.
- (3) The value of a quasi-loan is the amount, or maximum amount, which the person to whom the quasi-loan is made is liable to reimburse the creditor.
- (4) The value of a guarantee or security is the amount guaranteed or secured.
- (5) The value of an arrangement to which Article 338(6) or (7) applies is the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.
- (6) The value of a transaction or arrangement not falling within paragraphs (2) to (5) is the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied (at the time the transaction or arrangement is entered into) in the ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied, under the transaction or arrangement in question.

(7) For the purposes of this Article, the value of a transaction or arrangement which is not capable of being expressed as a specific sum of money (because the amount of any liability arising under the transaction or arrangement is unascertainable, or for any other reason), whether or not any liability under the transaction or arrangement has been reduced, is deemed to exceed^{F28} £100,000].

F28 SR 1991/155

Civil remedies for breach of Article 338

349.—(1) If a company enters into a transaction or arrangement in contravention of Article 338, the transaction or arrangement is voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of paragraph (2)(b) for the loss or damage suffered by it; or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of Article 338, that director and the person so connected and any other director of the company who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of paragraph (1)) is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
- (b) (jointly and severally with any other person liable under this paragraph) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) Paragraph (2) is without prejudice to any liability imposed otherwise than by that paragraph, but is subject to paragraphs (4) and (5).

(4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of Article 338, that director is not liable under paragraph (2) if he shows that he took all reasonable steps to secure the company's compliance with that Article.

(5) In any case, a person so connected and any such other director as is mentioned in paragraph (2) is not 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.

Criminal penalties for breach of Article 338

350.—(1) A director of a relevant company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Article 338 is guilty of an offence.

(2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of Article 338 is guilty of an offence.

(3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company was thereby contravening Article 338 is guilty of an offence.

(4) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

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(5) A relevant company is not guilty of an offence under paragraph (2) if it shows that, at the time the transaction or arrangement was entered into, it did not know the relevant circumstances.

Record of transactions not disclosed in company accounts

351.—(1) The following provisions of this Article—

- (a) apply in the case of a company which is, or is the holding company of,^{F29} a banking company], and
- (b) are subject to the exceptions provided by Article 352.

(2) Such a company shall maintain a register containing a copy of every transaction, arrangement or agreement of which particulars would, but for^{F29} paragraph 2 of Part IV of Schedule 9, be required] to be disclosed in the company's accounts or group accounts for the current financial year and for each of the preceding 10 financial years.

(3) In the case of a transaction, arrangement or agreement which is not in writing, there shall be contained in the register a written memorandum setting out its terms.

(4) Such a company shall before its annual general meeting make available at its registered office for not less than 15 days ending with the date of the meeting a statement containing the particulars of transactions, arrangements and agreements which the company would, but for^{F29} paragraph 2 of Part IV of Schedule 9, be required] to disclose in its accounts or group accounts for the last complete financial year preceding that meeting.

(5) The statement shall be so made available for inspection by members of the company; and such a statement shall also be made available for their inspection at the annual general meeting.

(6) It is the duty of the company's auditors to examine the statement before it is made available to members of the company and to make a report to the members on it; and the report shall be annexed to the statement before it is made so available.

(7) The auditors' report shall state whether in their opinion the statement contains the particulars required by paragraph (4); and, where their opinion is that it does not, they shall include in the report, so far as they are reasonably able to do so, a statement giving the required particulars.

(8) If a company fails to comply with any provision of paragraphs (2) to (5), every person who at the time of the failure is a director of it is guilty of an offence and liable to a fine; but—

- (a) it is a defence in proceedings against a person for this offence to prove that he took all reasonable steps for securing compliance with the paragraph concerned, and
- (b) a person is not guilty of the offence by virtue only of being a shadow director of the company.

(9) For the purposes of the application of this Article to loans and quasi-loans made by a company to persons connected with a person who at any time is a director of the company or of its holding company, a company which a person does not control is not connected with him.

F29 1990 NI 5

Exceptions from Article 351

352.—(1) Article 351 does not apply in relation to—

- (a) transactions or arrangements made or subsisting during a financial year by a company or by a subsidiary of a company for a person who was at any time during that year a director of the company or of its holding company or was connected with such a director, or

- (b) an agreement made or subsisting during that year to enter into such a transaction or arrangement,

if the aggregate of the values of each transaction or arrangement made for that person, and of each agreement for such a transaction or arrangement, less the amount (if any) by which the value of those transactions, arrangements and agreements has been reduced, did not exceed^[F30] £2,000] at any time during the financial year.

For the purposes of this paragraph, values are to be determined as under Article 348.

(2) Article 351(4) and (5) does not apply to^[F31] a banking company] which is the wholly-owned subsidiary of a company incorporated in the United Kingdom.

F30 SR 1991/155

F31 1990 NI 5

Supplementary

Power to increase financial limits

353.—(1) The Department may by order subject to negative resolution for any sum of money specified in this Part a larger sum specified in the order.

(2) An order under this Article does not have effect in relation to anything done or not done before its coming into operation; and accordingly, proceedings in respect of any liability (whether civil or criminal) incurred before that time may be continued or instituted as if the order had not been made.

“Connected persons”, etc.

354.—(1) This Article has effect with respect to references in this Part to a person being “connected” with a director of a company, and to a director being “associated with” or “controlling” a body corporate.

(2) A person is connected with a director of a company if, but only if, he (not being himself a director of it) is—

- (a) that director's spouse,^[F32] civil partner,] child, step-child or adopted child; or
- (b) except where the context otherwise requires, a body corporate with which the director is associated; or
- (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
 - (i) the director, his spouse^[F32] or civil partner] or any children, step-children or adopted children of his, or
 - (ii) a body corporate with which he is associated,or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse^[F32] or civil partner], or any children, step-children or adopted children of his, or any such body corporate; or
- (d) a person acting in his capacity as partner of that director or of any person who, by virtue of sub-paragraph (a), (b), or (c), is connected with that director; or
- (e) a Scottish firm in which—
 - (i) that director is a partner,
 - (ii) a partner is a person who, by virtue of a sub-paragraph (a), (b), or (c), is connected with that director, or

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- (iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of sub-paragraph (a), (b) or (c), is connected with that director.
- (3) In paragraph (2)—
- (a) a reference to the child, step-child or adopted child of any person includes an illegitimate child of his, but does not include any person who has attained the age of 18; and
 - (b) sub-paragraph (c) does not apply to a person acting in his capacity as trustee under an employees' share scheme or a pension scheme.
- (4) A director of a company is associated with a body corporate if, but only if, he and the persons connected with him, together—
- (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least one-fifth of that share capital^{F33} (excluding any shares in the company held as treasury shares)]; or
 - (b) are entitled to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of that body^{F33} (excluding any voting rights attached to any shares in the company held as treasury shares)].
- (5) A director of a company is deemed to control a body corporate if, but only if—
- (a) he or any person connected with him is interested in any part of the equity share capital of that body or is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and
 - (b) that director, the persons connected with him and the other directors of that company, together, are interested in more than one-half of that share capital^{F33} (excluding any shares in the company held as treasury shares)] or are entitled to exercise or control the exercise of more than one-half of that voting power^{F33} (excluding any voting rights attached to any shares in the company held as treasury shares)].
- (6) For the purposes of paragraphs (4) and (5)—
- (a) a body corporate with which a director is associated is not to be treated as connected with that director unless it is also connected with him by virtue of paragraph (2)(c) or (d); and
 - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is associated is not to be treated as connected with a director by reason only of that fact.
- (7) The rule set out in Part I of Schedule 13 apply for the purposes of paragraphs (4) and (5).
- (8) References in those paragraphs to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him; but this is without prejudice to other provisions of paragraphs (4) and (5).

F32 2004 c.33

F33 SR 2004/275

Modifications etc. (not altering text)

- C1** Art. 354(2) applied (with modifications) (1.7.2006) by [Industrial and Provident Societies Act \(Northern Ireland\) 1969 \(c. 24\), s. 7E\(3\)](#) (as inserted (1.7.2006) by [Industrial and Provident Societies \(Northern Ireland\) Order 2006 \(S.I. 2006/314 \(N.I. 3\)\)](#), arts. 1(3), [4](#); S.R. 2006/242, [art. 2](#))
- C2** Art. 354(3) applied (with modifications) (1.7.2006) by [Industrial and Provident Societies Act \(Northern Ireland\) 1969 \(c. 24\), s. 7E\(3\)](#) (as inserted (1.7.2006) by [Industrial and Provident Societies \(Northern Ireland\) Order 2006 \(S.I. 2006/314 \(N.I. 3\)\)](#), arts. 1(3), [4](#); S.R. 2006/242, [art. 2](#))

- C3** Art. 354(4) applied (with modifications) (1.7.2006) by Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), s. 7E(3) (as inserted (1.7.2006) by Industrial and Provident Societies (Northern Ireland) Order 2006 (S.I. 2006/314 (N.I. 3)), arts. 1(3), 4; S.R. 2006/242, **art. 2**)
- C4** Art. 354(5) applied (with modifications) (1.7.2006) by Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), s. 7E(3) (as inserted (1.7.2006) by Industrial and Provident Societies (Northern Ireland) Order 2006 (S.I. 2006/314 (N.I. 3)), arts. 1(3), 4; S.R. 2006/242, **art. 2**)
- C5** Art. 354(6) applied (with modifications) (1.7.2006) by Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), s. 7E(3) (as inserted (1.7.2006) by Industrial and Provident Societies (Northern Ireland) Order 2006 (S.I. 2006/314 (N.I. 3)), arts. 1(3), 4; S.R. 2006/242, **art. 2**)
- C6** Art. 354(7) applied (with modifications) (1.7.2006) by Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), s. 7E(3) (as inserted (1.7.2006) by Industrial and Provident Societies (Northern Ireland) Order 2006 (S.I. 2006/314 (N.I. 3)), arts. 1(3), 4; S.R. 2006/242, **art. 2**)
- C7** Art. 354(8) applied (with modifications) (1.7.2006) by Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), s. 7E(3) (as inserted (1.7.2006) by Industrial and Provident Societies (Northern Ireland) Order 2006 (S.I. 2006/314 (N.I. 3)), arts. 1(3), 4; S.R. 2006/242, **art. 2**)

Transactions under foreign law

355. For the purposes of Articles 327 to 330 and 338 to 351, it is immaterial whether the law which (apart from this Order) governs any arrangement or transaction is the law of the United Kingdom, or of a part of it, or not.

Status:

Point in time view as at 01/04/2007.

Changes to legislation:

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