

Tolley's

# Guide to Directors' Transactions

The provisions of the  
Companies Acts in practice

Michael Steen  
& John Aldis



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The provisions of the  
Companies Acts in practice

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This book has been carefully prepared but is for general guidance only. On any specific matter reference should be made to the appropriate source and professional advice obtained.

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## Foreword

The Companies Act 1980 introduced into British company law major new provisions regulating the lawfulness and disclosure in company accounts of transactions (including loans) between companies and their directors.

This guide draws on practical experience gained since the introduction of the 1980 Act which assists in understanding the complex provisions relating to transactions with directors; it also describes the provisions of earlier legislation relating to the disclosure of directors' and higher paid employees' remuneration, and the disclosure of directors' share and debenture interests. I believe that to have these related disclosure requirements in a single volume will be helpful to directors, company administrators and those responsible for preparing company accounts.

To assist companies in obtaining notification by their directors of particulars which require disclosure in the accounts or directors' report, Appendix 4 contains a suggested specimen form of notification which may be appropriate for completion by directors.

The statutory provisions described in this guide are intricate and there is little in the form of case law to help interpretation. Failure to comply with the provisions could result in both criminal and civil penalties as well as damaging publicity. It is therefore important that competent professional advice be sought where there is any uncertainty about the propriety or disclosure of transactions involving directors.

I believe that this guide, which will be of particular interest to accountants, lawyers and company administrators, will be of great assistance in understanding these complex statutory provisions.

Michael Renshall O.B.E.  
*London*  
*June 1983*

## Authors' note

The views expressed by the authors, Michael Steen and John Aldis, do not necessarily represent those of Peat, Marwick, Mitchell & Co. . The authors wish to acknowledge the assistance given to them by fellow members of staff in the Professional Practice Department of Peat, Marwick, Mitchell & Co., and, in particular to Dick Wilkins.

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## Abbreviations and References

1948 Act	=	the Companies Act 1948.
1967 Act	=	the Companies Act 1967.
1976 Act	=	the Companies Act 1976.
the Act/1980 Act	=	the Companies Act 1980.
1981 Act	=	the Companies Act 1981.
AER	=	All England Law Reports: (Butterworth & Co (Publishers) Ltd, Bell Yard, London WC2A 2LG).
CA	=	Companies Act.
FA 1976	=	Finance Act 1976.
ICTA 1970	=	Income and Corporation Taxes Act 1970.
p.l.c.	=	public limited company.
s	=	section.
Sch	=	Schedule (8A Sch 19 = Schedule 8A, paragraph 19).
SI	=	Statutory Instrument.
SSAP	=	Statement of Standard Accounting Practice.
UK	=	United Kingdom.
USM	=	Unlisted Securities Market.
WLR	=	Weekly Law Reports: (Incorporated Council of Law Reporting for England and Wales, 3 Stone Buildings, Lincoln's Inn, London WC2A 3XN).

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# Executive Summary

## Introduction

- 1.1 The Companies Act 1980 ('the 1980 Act') introduced major changes to UK law on the legality and disclosure of loans and similar transactions between companies and their directors. Further amendments were made by the Companies Act 1981 ('the 1981 Act').
- 1.2 This guide describes these complex rules, as well as the provisions of earlier legislation, relating to the disclosure of directors' remuneration and interests in shares and debentures, with a view to assisting in a general understanding of these provisions. It does not deal with, for example, the appointment, general and fiduciary duties, responsibilities and general accountability of directors or procedure at directors' meetings.
- 1.3 In view of the complexity of the legislation and the absence of decisions by the courts, particularly in relation to the provisions of the 1980 Act, competent professional advice should always be sought where there is any uncertainty whether a particular course of action is lawful or prudent, or where it is proposed to enter into arrangements which are either complex or are to be made under unusual circumstances.
- 1.4 As well as the specific statutory requirements dealt with in this guide, there may well be other rules imposed by professional bodies, associations etc. to which a company or a director is affiliated.
- 1.5 The 1980 Act repealed earlier legislation which prohibited loans to directors and replaced it with more comprehensive legislation, which, with effect from 22 December 1980, prohibits loans and similar specified types of transactions with directors but also allows some important exceptions to the prohibitions. A company's memorandum or articles of association may, however, be more restrictive than the 1980 Act and therefore not permit a transaction which is not prohibited by that Act.
- 1.6 Although the legislation applies to all companies formed under the Companies Acts (whether their members have limited or unlimited liability), the extent of the prohibitions depends on the status of the company: for 'relevant companies', that is public limited companies ('p.l.c.s') and companies in groups containing a p.l.c., the rules are

considerably more stringent. However, subject to a few *de minimis* exceptions, the transactions must be disclosed, whether or not they were prohibited. The disclosure rules apply to all transactions which subsisted during the financial year, whether or not the transactions took place before or after 22 December 1980. A table of the main prohibitions, exceptions and disclosure requirements is given at the end of this executive summary.

- 1.7 The important features of this legislation cannot be summarised without the risk of omitting important matters of detail. Various aspects which directors may wish to bear in mind are set out in the paragraphs which follow. The provisions of the 1980 Act are considered first.

## **Loans and similar transactions (Chapters 2 and 3)**

- 1.8 The prohibitions and exceptions (apart from the exceptions available to recognised banks and other money-lending companies which are considered in Chapter 7) contained in the 1980 Act are set out below:

(a) Applicable to all companies:

Loans to directors are generally prohibited, except for loans outstanding of up to £2,500 per director.

(b) Applicable only to 'relevant companies':

(i) The provisions are extended to prohibit:

- 'Quasi-loans', except where the aggregate amount outstanding is not greater than £1,000 and is repayable within two months.
- 'Credit transactions' not in the ordinary course of business, except where the aggregate amount outstanding is not greater than £5,000.

A 'quasi-loan' is, broadly, a payment of, or an undertaking to pay, an amount on behalf of a director, which is to be refunded to the company. This can include the private use by a director of a credit card issued in the company's name. A 'credit transaction' is, broadly, a transaction with deferred payment and would include a lease by a director of company premises, or a hire-purchase transaction.

- (ii) The rules are extended further to cover loans, quasi-loans and credit transactions with persons who are defined as being 'connected' with a director. These are principally the director's spouse, minor children and stepchildren, companies in which the director and connected persons control more than 20% of the voting power, partners of the director and trustees of settlements in which the director or connected persons are beneficiaries. Parents, brothers and sisters of directors are not included in the definition of connected persons.

An effect of exceptions described in (a) and (b)(i) is that minor transactions do not result in what is sometimes an unwitting contravention. The reason for the different limits is not readily apparent.

- 1.9 It is generally accepted that amounts held solely for bona fide business expenditure do not come within the ambit of the 1980 Act.
- 1.10 Any company may also advance money to a director to enable him to meet expenditure incurred or to be incurred by him for the purpose of the company's business or to enable him properly to perform his duties as an officer of the company. This should, for example, permit a bridging loan where the director is required to move for business purposes. The Act contains provisions for the approval by the shareholders of advances made under this exception, either before the advance is made or subsequently at the next annual general meeting. If this subsequent approval is withheld, the advance must be repaid within six months of the annual general meeting. The maximum amount which may be outstanding under this exception is £10,000 for a director of a relevant company. There is no statutory limit for a director of a non-relevant company.
- 1.11 The 1980 Act does not prohibit a holding company from lending money to a person who is a director of its subsidiary company but who is not also a director of that holding company or a superior holding company, provided that the subsidiary is not a party to the loan (for example, by guaranteeing it).
- 1.12 The 1980 Act introduces the term 'shadow directors', who are persons in accordance with whose directions or instructions the directors are accustomed to act. The rules which apply to transactions with directors apply equally to transactions with shadow directors.
- 1.13 Appendices 1 to 3 set out decision charts to assist in determining whether loans, quasi-loans and credit transactions are lawful.

## **Disclosure (Chapter 5)**

- 1.14 Particulars of loans, quasi-loans and credit transactions entered into by a company or by any of its subsidiaries, for directors of the company or of its holding company and their connected persons, must be disclosed by *all* companies in the notes to their accounts. This disclosure is required whether or not (a) the transactions were lawful, or (b) the company is a relevant company.
- 1.15 Thus, loans and quasi-loans to directors and their connected persons must be disclosed whether or not they exceed the permitted limits of £2,500 and £1,000 respectively. The only disclosure exception is for credit transactions (whether or not they are in the ordinary course of business) where their aggregate arm's length amount outstanding for a director and connected persons does not exceed £5,000 at any time in the year.

## **1.16**      *Executive Summary*

- 1.16    A company's accounts must also disclose particulars of other transactions with the company or its subsidiaries in which a director has a material interest, although there is a *de minimis* exception for transactions with a value up to £5,000, depending on the size of the company.

### **Substantial property transactions (Chapter 4)**

- 1.17    Acquisitions from or disposals to directors or their connected persons of non-cash assets (for example, real estate or securities) require prior approval of the company in general meeting where their value is greater than ten per cent of the company's net assets or £50,000, whichever is the smaller. This approval is not required for transactions having a value of less than £1,000. If this approval is not obtained, the transaction is voidable by the company. For these purposes, no distinction is drawn between relevant companies and other companies.

### **Stock Exchange requirements**

- 1.18    There are important Stock Exchange requirements for transactions between listed companies or companies traded on the unlisted securities market (USM) and their directors. These include the requirement that a (Class 4) circular be sent to members where such a company proposes to make an acquisition of an asset from, or a disposal to, one of its directors.

### **Share and debenture interests (Chapter 8)**

- 1.19    The directors' report or, at the option of the company, the notes to the accounts must give, for each person who was a director of the company at the end of its financial year, prescribed particulars of interests in the shares and debentures of group companies. Where a director has no such interests, a statement to this effect is required.
- 1.20    Directors are required to notify the company of relevant share and debenture interests within five days.
- 1.21    The Stock Exchange has published a model code for share and debenture transactions by directors, which listed and USM companies are required to adopt. The legislation relating to insider dealing may also be relevant in these circumstances.
- 1.22    The directors of a company are prohibited from buying options to purchase or sell listed shares or debentures of the company or any other member of the group.

### **Remuneration (Chapter 9)**

- 1.23    The notes to a company's accounts are required to disclose, in aggregate,



the remuneration of persons who were directors of the company at any time during the period covered by the accounts. This disclosure has to be made separately in respect of each of three categories, namely emoluments, pensions (other than those which are substantially funded by contributions) and compensation for loss of office.

- 1.24 Except for companies with aggregate directors' emoluments not exceeding £60,000 and which are not members of a group, the legislation requires separate disclosure in the accounts of the amounts of the chairman's emoluments and those of the highest paid director if greater than those of the chairman. Additionally, the emoluments of all the directors must be given in bands of £5,000, stating the number of directors whose emoluments fall within those bands; similar particulars are required in respect of employees earning over £30,000. The above limits are those effective for all accounts prepared on or after 31 December 1982.

## **Service contracts (Chapter 10)**

- 1.25 The legislation prohibits a company from granting to its directors a right of employment, which cannot be terminated at the option of the company, for a period exceeding five years, without first obtaining the approval of the company in general meeting.

## **Effective date**

- 1.26 The 1980 Act's provisions on loans and similar transactions came into force on 22 December 1980. Transactions which were lawfully made before that date were not retrospectively made unlawful. However, where they are transactions of a kind covered by the 1980 Act, they are nevertheless disclosable in company accounts for as long as they remain unsettled or otherwise undischarged. The rules regarding disclosure of remuneration, and notification of share and debenture interests were introduced in earlier legislation.

## **Confirmation by directors**

- 1.27 Appendix 4 contains a form of confirmation which company secretaries may wish to request from each director prior to completion of the annual accounts, in order to assist in obtaining particulars of remuneration, share and debenture interests and transactions which may require disclosure in the accounts or directors' report.

## **Taxation implications**

- 1.28 The items described in this book can have considerable taxation implications involving many branches of tax law. This book does not generally deal with tax matters but a brief reference is made in Appendix 5 to the important close company tax implications where loans are made to