

## PART 5 DUTIES OF DIRECTORS AND OTHER OFFICERS

### CHAPTER 1 Preliminary and definitions

#### Interpretation and application (Part 5)

219. (1) In this Part—

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

“guarantee” includes an indemnity;

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

(2) For the purposes of this Part—

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

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

(ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

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

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

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

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

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

(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.

(4) For the purposes of this Part a lease of land which reserves a nominal annual rent of not more than €100 is not a credit transaction where a company grants the lease in return for a premium or capital payment

which represents the open market value of the land thereby disposed of by the company.

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

(a) in the case of a loan, the principal of the loan;

(b) in the case of a quasi-loan, the amount or maximum amount which the person to whom the quasi-loan is made is liable to reimburse the creditor;

(c) in the case of a transaction or arrangement other than a loan or quasi-loan or a transaction or arrangement falling within paragraph (d) or (e), the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question;

(d) in the case of a guarantee or security, the amount guaranteed or secured;

(e) in the case of an arrangement to which section 239 (2) or (3) applies, the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.

(6) For the purposes of subsection (5), the value of a transaction or arrangement (or, as the case may be, of a transaction to which an arrangement relates) which is not capable of being expressed as a specific sum of money, whether because the amount of any liability arising under the transaction or arrangement is unascertainable or for any other reason, shall be deemed to exceed €65,000, and this subsection applies irrespective of whether any liability under the transaction or arrangement has been reduced.

(7) For the purposes of this Part, a transaction or arrangement is made for a person if—

(a) in the case of a loan or quasi-loan, it is made to him or her;

(b) in the case of a credit transaction, he or she is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;

(c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or her or a credit transaction made for him or her;

(d) in the case of an arrangement to which section 239 (2) or (3) applies, the transaction to which the arrangement relates was made for him or her; and

(e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he or she is the person to whom the goods, land or services (or the interest) are supplied or transferred.

(8) This Part does not apply to arrangements or transactions entered into before 1 February 1991 but, for the purposes of determining whether an arrangement is one to which section 239 (2) or (3) applies, the transaction to which the arrangement relates shall, if it was entered into before 1 February 1991, be deemed to have been entered into after that date.

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