

CHAPTER 4 Substantive prohibitions or restrictions on loans to directors and other particular transactions involving conflict of interest

Substantial transactions in respect of non-cash assets and involving directors, etc.

238. (1) Subject to subsections (4) and (5), a company (the “relevant company”) shall not enter into an arrangement under which—

(a) a director of the relevant company or of 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 relevant company, or

(b) the relevant 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—

(i) by a resolution of the relevant company in general meeting, and

(ii) if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution of the holding company in general meeting.

(2) For the purposes of this section a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than €5,000 but, subject to that, exceeds €65,000 or 10 per cent of the amount of the relevant company's relevant assets, and for those purposes the amount of a company's relevant assets is—

(a) except in a case falling within paragraph (b), the value of its net assets determined by reference to the entity financial statements prepared under section 290 and laid in accordance with section 341 in respect of the last preceding financial year in respect of which such entity financial statements were so laid,

(b) where no entity financial statements have been prepared and laid under the foregoing sections before that time, the amount of its called-up share capital.

(3) An arrangement entered into by a company in contravention of this section and any transaction entered into in pursuance of the arrangement (whether by the company or any other person) shall be voidable at the instance of the company unless—

(a) restitution of any money or any other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of section 232 by any other person for the loss or damage suffered by it, or

(b) any rights acquired bona fide for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance, or

(c) the arrangement is affirmed by a resolution of the company in general meeting passed within a reasonable period of time after the date on which the arrangement is entered into 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 affirmed by a resolution of the holding company in general meeting passed within a reasonable period of time after that date.

(4) Subsection (1) shall not apply in relation to any arrangement for the acquisition of a non-cash asset—

(a) if the non-cash asset in question is or is to be acquired—

(i) by a holding company from any of its wholly owned subsidiaries, or

(ii) from a holding company by any of its wholly owned subsidiaries, or

(iii) by one wholly owned subsidiary of a holding company from another wholly owned subsidiary of that 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, or

(c) if the arrangement involves the disposal of a company's assets by a receiver.

(5) Subsection (1)(a) shall not apply in relation to any arrangement under which a person acquires or is to acquire an asset from a company of which he or she is a member if the arrangement is made with that person in his or her character as such member.

(6) Without prejudice to subsection (7), no approval is required to be given under this section by any body corporate unless it is a company formed and registered under this Act or an existing company.

(7) No approval is required to be given under this section by a wholly owned subsidiary of any body corporate.

(8) In this section—

(a) “non-cash asset” means any property or interest in property other than cash, and for this purpose “cash” includes foreign currency,

(b) any reference to the acquisition of a non-cash asset includes a reference to the creation or extinction of an estate or interest in, or a right over, any property and also a reference to the discharge

of any person's liability other than a liability for a liquidated sum, and

(c) “net assets”, in relation to a company, means the aggregate of the company's assets less the aggregate of its liabilities, and for this purpose “liabilities” includes—

(i) where the company prepares Companies Act entity financial statements, any provision for liabilities ) that is made in those financial statements,

(ii) where the company prepares IFRS entity financial statements, any provision that is made in those financial statements.