

Loans, etc., by directors or connected persons to company or holding company: evidential provisions

237. (1) In this section “relevant proceedings” means civil proceedings in which it is claimed that a transaction or arrangement entered into, or alleged to have been entered into—

(a) by a director of a company with the company or its holding company, or

(b) by a person connected with such director with that company or its holding company (the “related person”),

constitutes a loan or quasi-loan by the director or (as appropriate) the related person to that company or its holding company, as the case may be.

(2) In relevant proceedings, if the terms of the transaction or arrangement concerned either—

(a) are not in writing, or

(b) are in writing, or partially in writing, but are ambiguous as to whether the transaction or arrangement constitutes a loan or quasi-loan or not (or as to whether it constitutes a quasi-loan as distinct from a loan),

then it shall be presumed, until the contrary is proved, that the transaction or arrangement constitutes neither a loan nor a quasi-loan to the company or its holding company, as the case may be.

(3) In relevant proceedings, where it is proved that a loan or a quasi-loan was made to the company or its holding company by the director of the first-mentioned company or the related person (whether the terms of the loan or quasi-loan are in writing, partially in writing or wholly oral) then, if—

(a) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan bears interest, it shall be presumed, until the contrary is proved, that the loan or quasi-loan bears no interest,

(b) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan is secured, it shall be presumed, until the contrary is proved, that the loan or quasi-loan is not secured, or

(c) in the event that the loan or quasi-loan is proved to be secured and the case is one in which those terms are ambiguous with respect to the priority that the security concerned is to have as against other indebtedness of the company, it shall be presumed, until the contrary is proved, that the loan or quasi-loan is subordinate to all other indebtedness of the company.

(4) If more than one of the cases referred to in paragraphs (a) to (c) of subsection (3) apply then each of the presumptions provided by the applicable paragraphs shall apply.

(5) The reference in subsection (2)(b) to the terms of a transaction or arrangement being ambiguous as to whether the transaction or arrangement constitutes a loan or quasi-loan or not (or as to whether it constitutes a quasi-loan as distinct from a loan) shall, if the terms of the transaction or arrangement are partially in writing, be deemed to include a reference to the following case.

(6) That case is one in which—

(a) the written terms of the transaction or arrangement do not specify what the nature of the transaction or arrangement is, and

(b) the nature of the transaction or arrangement is alleged to be specified by those of its terms that are not in writing.

(7) References in subsection (3) to the terms of a loan or quasi-loan being ambiguous with respect to a matter shall, if the terms of the loan or quasi-loan are partially in writing, be deemed to include references to the following case.

(8) That case is one in which—

(a) the written terms of the loan or quasi-loan do not make provision in respect of the matter concerned, and

(b) provision in respect of that matter is alleged to be made by those of the terms of the loan or quasi-loan that are not in writing.