

Bills Committee on Companies Bill

Follow-up to the Meetings on 3 and 10 June 2011

Supplementary Information

INTRODUCTION

In response to questions raised by Members at the meeting on 3 and 10 June 2011, this paper provides supplementary information on Part 10 (Directors and Company Secretaries) and Part 11 (Fair Dealing by Directors) of the Companies Bill (“CB”).

MEMBERS’ CONCERNS

2. In scrutinising Part 10 of the CB at the meetings on 3 and 10 June 2011, some Members raised concern about whether the court would take into account the size of the company as well as the function of the relevant director in relation to the company in considering the standard of the duty of care, skill and diligence to be expected of the director under the formulation in clause 456 of the CB. On the proposal to require ratification of conduct of directors by disinterested members’ approval, some Members sought our confirmation that the proposal would change the respective common law position.

3. On Part 11 of the CB, Members requested for a comparison between the major proposals in Part 11 and the relevant requirements under the Companies Ordinance.

PART 10

Directors’ Duty of Care, Skill and Diligence

4. As explained in Annex A to the Bills Committee Paper on Part 10 and Part 11 of the CB (LegCo Paper No. CB(1)2280/10-11(01)), the

current formulation of Clause 456, which is modeled on section 174 of the United Kingdom Companies Act 2006 (“UKCA 2006”), makes it clear that the court must take into account the functions carried out by the relevant director in relation to the company. This means that what is required of the director will depend on the functions carried out by the director, so that there will be variations not only between executive and non-executive directors, but also between different types of executive director (and equally of non-executives) and between different types and sizes of company.¹ A note providing more details on the development of the common law in this regard and relevant court cases in the United Kingdom is at **Annex A**. Relevant provisions on directors’ duties in the UKCA 2006 (sections 170 to 181) are extracted at **Annex B**.

Ratification of Directors’ Act

5. At present, the ratification of acts or omissions of directors is subject to common law rules, which generally require members’ approval in a general meeting to release the directors from their fiduciary duties. Under the common law, the general principles of shareholders’ rights to vote is that shareholders can vote in their own interests and have no personal obligation to vote in the interests of the company generally.² Consequently, a shareholder can vote on a resolution at a general meeting even where he has an interest in the subject matter of the resolution. This applies even where the shareholder is a director of the company. The rationale is that, a shareholder, unlike a director, is not a fiduciary for the company and is not subject to any rule against conflict of interest and duty.³ Further, it has always been recognized that a share is a piece of property which is to be enjoyed and exercised for the owner’s personal advantage.

6. However, the right of majority shareholders to vote in favour of a transaction is not unlimited and is subject to restrictions set out in case law. The right has always been subject to the doctrine of fraud on the

¹ Principles of Modern Company Law, by Gower and Davis, 8th Edition, at page 491.

² This was established in *Pender v Lushington* (1877) 6 Ch 70.

³ *North West Transportation Co Ltd v Beatty* (1887) 12 App Cases 589.

minority so that, for example, the majority cannot waive a breach of a fiduciary duty by a director, who is also a majority shareholder, by approving a misappropriation by him of the company's property.⁴ There is also a limitation on the right of majority shareholders to vote as regards the property of other members of the company. For example, in the context of the alteration of articles, it has been stated that the majority's powers to vote must be exercised bona fide for the benefit of the company as a whole.⁵ Abuse of the majority voting rights may be redressed by way of the unfair prejudice remedy or derivative action or be prevented by the court's inherent power to grant an injunction.

7. As explained in Annex A to the Bills Committee Paper on Part 10 and Part 11 of the CB (LegCo Paper No. CB(1)2280/10-11(01)), we propose to introduce a disinterested shareholders' approval requirement (clause 464) for ratification of directors conduct to address potential conflict of interest in situations where the majority shareholders are directors or are connected with the directors. The requirement is in addition to the limit under the common law as mentioned in paragraph 6 above.

PART 11

Fair Dealing by Directors

8. Regarding the major proposals in Part 11 of the CB (Fair Dealing by Directors), a table comparing the relevant requirements under the Companies Ordinance and the CB is at **Annex C**.

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⁴ That is what the majority tried to do in *Cook v Deeks* [1916] A.C. 554.

⁵ *Sidebottom v Kershaw, Leese & Co.* [1920] 1 Ch.154. An alteration of the articles by resolution in general meeting in order to enable some members to acquire the shares of other members must be bona fide for the benefit of the company as a whole.

Interpretation of the Standard of Directors' Duty of Care, Skill and Diligence in the United Kingdom

Common Law

1. Historically, the common law was based upon a subjectively formulated standard of care. The traditional view is found largely in 19th century cases which culminated in *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407 where Romer J. formulated the proposition that –

“a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience”.

2. Even before the enactment of the Companies Act 2006 (“CA 2006”), the law of directors’ duty of care was beginning to change. The courts were influenced by the development of the objective statutory standards for directors whose companies were facing insolvency, principally the wrongful trading provisions in section 214 of the Insolvency Act 1986,¹ and began to develop the common law requirements by analogy with those specific statutory provisions.
3. The test in section 214(4) of the Insolvency Act 1986 combines both objective and subjective criteria. The director is to be judged by the standards of the “reasonable” director, even though he himself is lacking or below average in knowledge, skill or experience, but he will also be judged by his own higher standards if these are above average.²
4. Real developments in the law of directors’ duty of care occurred in the 1990s in the two decisions by Hoffmann J. (*Norman v Theodore Goddard* [1991] BCLC 1027 and *Re D’Jan of London Ltd.* [1994] 1 BCLC 561³) in

¹ Section 214 of the Insolvency Act 1986 was introduced in 1985 as an alternative remedy to fraudulent trading.

² *Annotated Guide to the Insolvency Legislation by Sealy and Milman*, 13th edition, volume 1 at p.209.

³ In the *Re D’Jan*, the defendant as a director of the company signed an insurance proposal filled in by another without reading it. The proposal gave inaccurate information and enabled insurers to repudiate the policy. The liquidator brought an action against the director in negligence. The director was found negligent but the court exercised its discretion under section 727 of the Companies Act 1985 (“CA 1985”) because the negligence was not gross and the only interests that were put at risk at the time of the proposal form were

which he explicitly adopted as an accurate expression of the common law the test contained in section 214(4) of the Insolvency Act 1986, which reads as follows:

“For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both –

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
- (b) the general knowledge, skill and experience that that director has.”

This common law position was endorsed by both the United Kingdom Law Commission and the Company Law Review and is now set out in section 174 of CA 2006 (which section 456 of the Companies Bill is modeled on).

5. As section 174 of CA 2006 only came into operation on 1 October 2007, it is useful to see how the courts have applied section 214(4) of the Insolvency Act 1986 in practice. An earlier case decided under section 214(4) was *Re Produce Marketing Consortium Ltd* (1989) 5 BCC 569.⁴ In connection with the objective test under section 214(4), Knox J. accepted a submission that **the requirement to have regard to the functions carried out by the director in question in relation to the company, involves having regard to the particular company and its business, so that the general knowledge, skill and experience postulated will be much less extensive in a small company in a modest way of business, with simple accounting procedures and equipment, than it will be in a large company with sophisticated procedures.**
6. This approach could give scope for the courts to make allowances in the case of non-executive.⁵ The objective test looks at the knowledge and

those of the director and his wife. Therefore, the court was of the view that the director acted reasonably within the provisions of section 727 of CA 1985.

⁴ The company had a small number of directors and shareholders and none of the directors had any special qualification. The company had a large overdraft and its audited accounts showed that it was trading at a loss. Those accounts were late and did not show the current position, but the directors knew from their own knowledge of the business that there had been a substantial drop in turnover. Knox J. held that they ought to have realized that that meant that they had been trading at a loss. The court was satisfied that this knowledge should be imputed to them.

⁵ *Annotated Guide to the Insolvency Legislation*, by Sealy and Milman, 13th Edition, Volume 1 at page 209.

experience that may reasonably be expected of a person in the same position as the director, enabling **the court to take account of the differences of fact between the responsibilities of directors of different types and in different situations, for example between what executive directors and non-executive directors are expected to do.**⁶

Section 174 of CA 2006

7. It would be helpful to look at the United Kingdom Government's explanation relating to section 174 of CA 2006 to address the concerns raised at the debates in the Parliament.
8. In the House of Lords, the Attorney-General in response to a proposed amendment to remove subsection (2) or subsection (2)(b) explained section 174 as follows⁷ –
 - Section 174 of CA 2006 was not making a change from what is already the common law. It was accepted that the duty and standard of care is accurately stated in section 214(4) of the Insolvency Act 1986. The tests (objective and subjective) thereunder are cumulative.
 - A director having some particular qualification or experience may be one of the reasons why it is appropriate he should be a director of the company, so it certainly would not be inappropriate to take that into account.
 - The section sets out the standard of care required from a director and **would take into account the general knowledge, skills and experience of that director, but the standard, when that person is acting in a different capacity, may be different.**
 - So a non-executive director who was a lawyer by profession but not employed by the company in that capacity would not be expected to act as if he were the legal adviser to the company. But he would be expected to bring his general legal knowledge to bear in carrying out his functions as a non-executive director of the company.

⁶ *The Joint Report 1998* issued by The Law Commission and the Scottish Law Commission, paragraph 15.28.

⁷ *Hansard*, HL, GC col 284 – col 285 (6 February 2006).

9. In the House of Commons, the Solicitor-General explained section 174 as follows⁸ –

- **The standard of care takes account of the differences between the responsibilities of directors of different types and in different situations, for example, the chairman, chief executive, finance director, chairman of the audit committee or an independent non-executive director.** The objective element of the test looks at the general knowledge, skill and experience that may be reasonably expected of a person carrying out the same functions as the director in that company, enabling the court to take account of all such differences.
- The duty takes into account an individual's general knowledge, skill and experience that they are expected to deploy. However, the duty does not require the director to use all his skills. For example, a lawyer on the board of a company is not expected to second guess the lawyers advising the company, but to use his general knowledge, skill and ability to look at things. It might be that, as a result of those skills, he will have some questions about a decision with a legal impact and for which legal advice has been obtained. However, he is not expected to go off and spend a week researching the subject that a barrister has been employed to research in order to see if he agrees with it. That is not the required level of diligence. So it is about exercising reasonable care, skill and diligence. The non-executive director will use some of his experience and skill in his involvement, but he is not expected to have all the knowledge about the internal workings of the business that, say, an executive director is, and so the law will take account of people's different perspectives.

10. *Abbey Forwarding Limited (in liquidation) v Hone* [2010] EWHC 2029 (Ch) is a recent case which considered section 174 of CA 2006.⁹ The court expressed the view that in deciding whether directors have fallen short of their duty of skill and care, particularly where the breach of duty concerned the precise way in which the business was run, **evidence of what was**

⁸ *Hansard*, HC Comm D, col 602 – col 604 (11 July 2006).

⁹ The company (in liquidation) brought the action against its four former directors alleging that they have been negligent in allowing the company to be exposed to the liability to Her Majesty's Revenue & Customs in respect of excise duty and VAT.

normal in the field of commerce in which the company operates is of considerable relevance. The court ruled that taking various factors together, and in the absence of evidence about industry practice, it was not prepared to find the directors were in breach of their duty of skill and care to the company.

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22 June 2011**



Companies Act 2006

2006 CHAPTER 46

PART 10

A COMPANY'S DIRECTORS

CHAPTER 2

GENERAL DUTIES OF DIRECTORS

Introductory

170 Scope and nature of general duties

- (1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.
- (2) A person who ceases to be a director continues to be subject—
 - (a) to the duty in section 175 (duty to avoid conflicts of interest) as regards the exploitation of any property, information or opportunity of which he became aware at a time when he was a director, and
 - (b) to the duty in section 176 (duty not to accept benefits from third parties) as regards things done or omitted by him before he ceased to be a director.

To that extent those duties apply to a former director as to a director, subject to any necessary adaptations.

- (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
- (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Companies Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (5) The general duties apply to shadow directors where, and to the extent that, the corresponding common law rules or equitable principles so apply.

Annotations:

Modifications etc. (not altering text)

- C1** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 2(e)**
- C2** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), **Sch. 1 para. 2(e)**
- C3** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 2(e)**
- C4** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), arts. 1(2), 7, **Sch. para. 2(e)**

Commencement Information

- I1** S. 170 wholly in force at 1.10.2007; s. 170 not in force at Royal Assent see s. 1300; s. 170 in force at 1.10.2007 by [S.I. 2007/2194](#), **art. 2(1)(d)** (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

The general duties

171 Duty to act within powers

A director of a company must—

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred.

Annotations:

Modifications etc. (not altering text)

- C5** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 2(e)**
- C6** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), **Sch. 1 para. 2(e)**
- C7** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 2(e)**
- C8** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), arts. 1(2), 7, **Sch. para. 2(e)**

Commencement Information

- I2** S. 171 wholly in force at 1.10.2007; s. 171 not in force at Royal Assent see s. 1300; s. 171 in force at 1.10.2007 by [S.I. 2007/2194](#), **art. 2(1)(d)** (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

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172 Duty to promote the success of the company

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
 - (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.
- (2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.
- (3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Annotations:

Modifications etc. (not altering text)

- C9** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), [Sch. para. 2\(e\)](#)
- C10** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), [Sch. 1 para. 2\(e\)](#)
- C11** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, [Sch. 2 para. 2\(e\)](#)
- C12** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), arts. 1(2), 7, [Sch. para. 2\(e\)](#)

Commencement Information

- I3** S. 172 wholly in force at 1.10.2007; s. 172 not in force at Royal Assent see s. 1300; s. 172 in force at 1.10.2007 by [S.I. 2007/2194](#), [art. 2\(1\)\(d\)](#) (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

173 Duty to exercise independent judgment

- (1) A director of a company must exercise independent judgment.
- (2) This duty is not infringed by his acting—
 - (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors, or
 - (b) in a way authorised by the company's constitution.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Companies Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:

Modifications etc. (not altering text)

- C13** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 2(e)**
- C14** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), **Sch. 1 para. 2(e)**
- C15** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 2(e)**
- C16** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), arts. 1(2), 7, **Sch. para. 2(e)**

Commencement Information

- I4** S. 173 wholly in force at 1.10.2007; s. 173 not in force at Royal Assent see s. 1300; s. 173 in force at 1.10.2007 by [S.I. 2007/2194](#), **art. 2(1)(d)** (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

174 Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
 - (b) the general knowledge, skill and experience that the director has.

Annotations:

Modifications etc. (not altering text)

- C17** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 2(e)**
- C18** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), **Sch. 1 para. 2(e)**
- C19** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 2(e)**
- C20** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), arts. 1(2), 7, **Sch. para. 2(e)**

Commencement Information

- I5** S. 174 wholly in force at 1.10.2007; s. 174 not in force at Royal Assent see s. 1300; s. 174 in force at 1.10.2007 by [S.I. 2007/2194](#), **art. 2(1)(d)** (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

175 Duty to avoid conflicts of interest

- (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

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- (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).
- (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.
- (4) This duty is not infringed—
 - (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) if the matter has been authorised by the directors.
- (5) Authorisation may be given by the directors—
 - (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
 - (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.
- (6) The authorisation is effective only if—
 - (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and
 - (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
- (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Annotations:

Modifications etc. (not altering text)

- C21** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 2(e)**
- C22** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), **Sch. 1 para. 2(e)**
- C23** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 2(e)**
- C24** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), arts. 1(2), 7, **Sch. para. 2(e)**

176 Duty not to accept benefits from third parties

- (1) A director of a company must not accept a benefit from a third party conferred by reason of—
 - (a) his being a director, or
 - (b) his doing (or not doing) anything as director.
- (2) A “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Companies Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.
- (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Annotations:

Modifications etc. (not altering text)

- C25** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 2(e)**
- C26** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), **Sch. 1 para. 2(e)**
- C27** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 2(e)**
- C28** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), arts. 1(2), 7, **Sch. para. 2(e)**

177 Duty to declare interest in proposed transaction or arrangement

- (1) If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.
- (2) The declaration may (but need not) be made—
 - (a) at a meeting of the directors, or
 - (b) by notice to the directors in accordance with—
 - (i) section 184 (notice in writing), or
 - (ii) section 185 (general notice).
- (3) If a declaration of interest under this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- (4) Any declaration required by this section must be made before the company enters into the transaction or arrangement.
- (5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

For this purpose a director is treated as being aware of matters of which he ought reasonably to be aware.

- (6) A director need not declare an interest—
 - (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - (b) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or
 - (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—

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- (i) by a meeting of the directors, or
- (ii) by a committee of the directors appointed for the purpose under the company's constitution.

Annotations:

Modifications etc. (not altering text)

- C29** Ss. 170-177 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), [Sch. para. 2\(e\)](#)
- C30** Ss. 170-177 modified (8.00 a.m. on 29.9.2008) by the The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13(1)(3), [Sch. 1 para. 2\(e\)](#)
- C31** Ss. 170-177 modified (9.30 a.m. on 7.10.2008) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, [Sch. 2 para. 2\(e\)](#)
- C32** Ss. 170-177 modified (retrospective to 30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), arts. 1(2), 7, [Sch. para. 2\(e\)](#)

Supplementary provisions

178 Civil consequences of breach of general duties

- (1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.
- (2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

Annotations:

Commencement Information

- I6** [S. 178](#) wholly in force at 1.10.2007; [s. 178](#) not in force at Royal Assent see [s. 1300](#); [s. 178](#) in force at 1.10.2007 by [S.I. 2007/2194](#), [art. 2\(1\)\(d\)](#) (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

179 Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply in any given case.

Annotations:

Commencement Information

- I7** [S. 179](#) wholly in force at 1.10.2007; [s. 179](#) not in force at Royal Assent see [s. 1300](#); [s. 179](#) in force at 1.10.2007 by [S.I. 2007/2194](#), [art. 2\(1\)\(d\)](#) (with savings in [art. 12](#) and subject to transitional adaptations specified in [Sch. 1](#))

180 Consent, approval or authorisation by members

- (1) In a case where—

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Companies Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) section 175 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or
- (b) section 177 (duty to declare interest in proposed transaction or arrangement) is complied with,

the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company.

This is without prejudice to any enactment, or provision of the company's constitution, requiring such consent or approval.

- (2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 (transactions requiring approval of members), except that where that Chapter applies and—
 - (a) approval is given under that Chapter, or
 - (b) the matter is one as to which it is provided that approval is not needed,
 it is not necessary also to comply with section 175 (duty to avoid conflicts of interest) or section 176 (duty not to accept benefits from third parties).
- (3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 (transactions requiring approval of members).
- (4) The general duties—
 - (a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and
 - (b) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions.
- (5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.

Annotations:

Modifications etc. (not altering text)

C33 S. 180(2) modified (1.10.2008) by [The Companies Act 2006 \(Commencement No. 5, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/3495\)](#), art. 9, [Sch. 4 para. 49](#) (with savings in arts. 7, 12)

181 Modification of provisions in relation to charitable companies

- (1) In their application to a company that is a charity, the provisions of this Chapter have effect subject to this section.
- (2) Section 175 (duty to avoid conflicts of interest) has effect as if—
 - (a) for subsection (3) (which disapplies the duty to avoid conflicts of interest in the case of a transaction or arrangement with the company) there were substituted—

“(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company if or to the extent that the company's articles allow that duty to be so disapplied, which they

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may do only in relation to descriptions of transaction or arrangement specified in the company's articles.”;

- (b) for subsection (5) (which specifies how directors of a company may give authority under that section for a transaction or arrangement) there were substituted—

“(5) Authorisation may be given by the directors where the company's constitution includes provision enabling them to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.”.

- (3) Section 180(2)(b) (which disapplies certain duties under this Chapter in relation to cases excepted from requirement to obtain approval by members under Chapter 4) applies only if or to the extent that the company's articles allow those duties to be so disapplied, which they may do only in relation to descriptions of transaction or arrangement specified in the company's articles.

- (4) After section 26(5) of the Charities Act 1993 (c. 10) (power of Charity Commission to authorise dealings with charity property etc) insert—

“(5A) In the case of a charity that is a company, an order under this section may authorise an act notwithstanding that it involves the breach of a duty imposed on a director of the company under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors).”.

- (5) This section does not extend to Scotland.

Annotations:

Commencement Information

- I8** S. 181 wholly in force at 1.10.2007; s. 181 not in force at Royal Assent see s. 1300; s. 181 in force at 1.10.2007 by S.I. 2007/2194, art. 2(1)(d) (with savings in art. 12 and subject to transitional adaptations specified in Sch. 1)

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Companies Act 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:

- [S.R. 2010/101](#) commences (2010 c. 4)
- [S.R. 2011/11](#) commences (2008 c. 12 (N.I.))
- [S.I. 2010/10](#) commences (2008 c. 30)
- [S.I. 2010/2169](#) commences (2010 c. 29)
- [S.I. 2010/862](#) commences (2008 c. 17)
- Act applied in part (with modifications) by [S.I. 2011/245](#)
- Act excluded by [2010 asp 17](#)
- Act power to modify conferred by 1991 c. 56 s. 23(2E)-(2G) (as inserted) by [2010 c. 29](#)
- Act substituted for s. 1253D by [S.I. 2010/2537](#)
- Act text amended by [S.I. 2010/2537](#)
- Act text amended by [S.I. 2011/1043](#)

**Comparison between the Positions in
the Companies Ordinance (CO) and the Companies Bill (CB)
relating to Fair Dealing by Directors**

This paper compares the positions in the CO and the CB in respect of Fair Dealing by Directors. The comparison is divided into three parts covering different types of companies, namely –

I. Listed Companies;

II. Public Companies; and

III. Private Companies or Companies Limited by Guarantee.

I. Listed Companies

CO	CB
A. Loans, Quasi Loans and Credit Transactions	
1. General	
Prohibited from entering into loans, quasi loans or credit transactions with a director of the company or of its holding company, persons connected with them (see item 2 below) or another company being controlled by any one or more of the directors of the company or persons connected with them, unless the transaction falls under the exceptions (see “Exceptions” below).	Prohibited from entering into loans, quasi loans or credit transactions with a director of the company or of its holding company or entities connected with the director of the company, unless the transaction falls under the exceptions (see “Exceptions” below). Similar prohibitions as in the CO but are generally relaxed as follows – <ul style="list-style-type: none">● transaction with disinterested members’ approval is introduced as a new exception. (Under the CO, listed companies are strictly prohibited from entering into loans, quasi loans or credit transactions despite members’ approval);● other new exceptions are introduced and existing exceptions are widened by abolishing certain conditions or

CO	CB
	<p>relaxing the financial limits for the exceptions; and</p> <ul style="list-style-type: none"> the criminal penalty for breach is abolished. <p>However, the prohibitions are expanded in the sense that the scope of entities connected with a director is widened to cover parties who are closely associated with directors (as shown in <i>italic bold</i> in Item 2 below).</p>
<p>2. Scope of “persons connected with a director”</p>	
<p>Persons connected with a director include –</p> <p>(a) spouse;</p> <p>(b) minor child or minor step-child or minor illegitimate child;</p> <p>(c) trustee of a trust the beneficiary of which includes the director, spouse, minor child, minor step-child or minor illegitimate child;</p> <p>(d) partner of the director, spouse, minor child, minor step-child or minor illegitimate child, or specified trustee (see item (c) above).</p>	<p>A “connected entity” includes –</p> <p>(a) spouse;</p> <p>(b) child <i>of any age</i>, step-child <i>of any age</i>, illegitimate child <i>of any age</i> and <i>adopted child of any age</i>;</p> <p>(c) <i>parent</i>;</p> <p>(d) <i>cohabitee</i>;</p> <p>(e) <i>minor child, minor step-child, minor illegitimate child or minor adopted child of the cohabitee who lives with the director</i>;</p> <p>(f) trustee of a trust the beneficiary of which includes the director, spouse, minor child, minor step-child, minor illegitimate child or <i>minor adopted child</i>;</p> <p>(g) partner of the director, spouse, minor child, minor step-child, minor illegitimate child, <i>minor adopted child</i> or specified trustee (see item (f) above);</p> <p>(h) <i>an associated body corporate</i> (see clause 479. In gist, it refers to a body</p>

CO	CB
	<p>corporate where the director, the specified entities¹ or the director together with the specified entities are entitled to exercise or control the exercise of more than 30% of the voting power, or, the directors or a majority of the directors of the body corporate are accustomed to act in accordance with the directions or instructions of the directors or the directors' connected entities.)²</p>
3. Exceptions	
N/A	<i>New exception for transaction with disinterested members' approval.</i>
Exception for transaction with intra group companies.	Similar exception.
<p>Exception for meeting expenditure incurred for the purposes of the company or for performing duties as an officer of the company, subject to</p> <p>(a) the transaction is entered into with the prior approval of the company; or</p> <p>(b) any liability falling on any person in connection with the transaction shall be discharged within a specified time frame;</p> <p>and</p> <p>(c) the relevant amount does not exceed 5% of the company's net assets³.</p>	<p>Same as CO, but <i>not subject to the conditions.</i></p>

¹ The specified entity is -
(a) the spouse of the director;
(b) a minor child, minor step-child, minor illegitimate child or minor adopted child of the director;
or
(c) a specified trustee.

² The category of "associated body corporate" replaces the category of another company being controlled by any one or more of the directors of the company or persons connected with them.

³ See section 157HA(11) and (12) for the calculation of the "relevant amount" for the financial limit of 5% of the company's net assets.

CO	CB
<p>Exception for purchasing or improving residential premises, subject to</p> <p>(a) the company ordinarily enter into such transactions for its employees on no less favourable terms;</p> <p>(b) the amount of transaction does not exceed 80% of the value of the premises;</p> <p>(c) the transaction is secured by a legal mortgage; and</p> <p>(d) the relevant amount does not exceed 5% of the company's net assets.</p>	<p>Same as CO, <i>but</i></p> <p>(a) <i>not subject to the limit of 80% of the value of premises;</i></p> <p>(b) <i>the limit of 5% of the company's net assets has been relaxed to 10% of total assets.</i></p>
<p>Exception for leasing or hiring goods or land to a director in reasonable terms, subject to the relevant amount does not exceed 5% of the company's net assets.</p>	<p>Same as CO <i>but the limit of 5% of the company's net assets has been relaxed to 10% of total assets.</i></p>
<p>Exception for transaction entered into as ordinary business of that company provided that the amount is reasonable, subject to that the relevant amounts do not exceeds \$750,000 and 5% of the company's net assets⁴.</p>	<p>Same as CO <i>but the financial limits have been removed.</i></p>
<p>N/A</p>	<p><i>New exception for loan not exceeding 5% of total assets.</i></p>
<p>N/A</p>	<p><i>New exception for expenditure on defending proceedings.</i></p>
<p>N/A</p>	<p><i>New exception for expenditure in connection with investigation or regulatory action.</i></p>

⁴ See section 157HA(9) – (12) for the calculation of the “relevant amount” for the two financial limits of \$750,000 and of 5% of the company's net assets.

CO	CB
B. Loss-of-Office Payment⁵	
Prohibited from making loss-of-office payment to a director.	Prohibited from making loss-of-office payment to <ul style="list-style-type: none"> (a) a director of the company <i>or his connected entities</i>; (b) <i>a director of its holding company or his connected entities</i>; (c) <i>a person made at the direction of, or for the benefit of the above directors or connected entities.</i>
Exception for payment with the company's prior approval.	Exception for payment with <i>disinterested members' approval.</i>
Do not cover payment made in connection with a transfer of the undertaking or property of the company's subsidiary or shares in the subsidiary.	<i>Cover payment made in connection with a transfer of the undertaking or property of the company's subsidiary or shares in the subsidiary.</i>
C. Directors' Service Contract	
No restriction.	<i>Disinterested members' approval is required for any contracts under which the guaranteed term of employment of a director with the company exceeds or may exceed three years.</i>
D. Declaration of Interests	
A director, who has a material interest in a contract or proposed contract with the company which is of significance to the company's business, is required to disclose the nature of such interest to the other directors.	The ambit of disclosure is widened to cover – <ul style="list-style-type: none"> (a) "<i>transactions</i>" and "<i>arrangements</i>" instead of just "contracts"; (b) <i>material interest of entities connected with the director</i>; and

⁵ Reference to a director includes reference to a former director.

CO	CB
	(c) the “ <i>nature and extent</i> ” of the interest instead of just “nature” of the interest.

II. Public Companies

CO	CB
<p>The description below applies to –</p> <p>(a) unlisted public companies; and</p> <p>(b) private companies which are a member of a group of companies of which a listed company is a member.</p>	<p>The description below applies to –</p> <p>(a) unlisted public companies; and</p> <p>(b) private companies or companies limited by guarantee that is a subsidiary of a public company. (The scope is narrower than in the CO.)</p>
A. Loans, Quasi Loans and Credit Transactions	
1. General	
<p>Prohibited from entering into loans, quasi loans or credit transactions with a director of the company or of its holding company, or another company being controlled by any one or more of the directors of the company, unless the transaction falls under the exceptions (see “Exceptions” below). If the company is in the same group as a listed company, the prohibition is extended to persons connected with the above directors as set out in item 2 below and another company being controlled by them.</p>	<p>Prohibited from entering into loans, quasi loans or credit transactions with a director of the company or of its holding company or entities connected with the director of the company, unless the transaction falls under the exceptions (see “Exceptions” below).</p> <p>Similar prohibitions as in the CO but there are general relaxations which are the same as those set out above in respect of listed companies in Part I.</p> <p>The prohibitions are expanded in the sense that the scope of entities connected with a director is widened to cover parties who are closely associated with directors (as shown in <i>italic bold</i> in Item 2 below).</p>
2. Scope of “persons connected with a director”	
<p>Persons connected with a director include –</p> <p>(a) spouse;</p> <p>(b) minor child or minor step-child or minor illegitimate child;</p>	<p>A “connected entity” includes –</p> <p>(a) spouse;</p> <p>(b) child <i>of any age</i>, step-child <i>of any age</i>, illegitimate child <i>of any age</i> and <i>adopted child of any age</i>;</p>

CO	CB
<p>(c) trustee of a trust the beneficiary of which includes the director, spouse, minor child, minor step-child or minor illegitimate child;</p> <p>(d) partner of the director, spouse, minor child, minor step-child, minor illegitimate child, or specified trustee (see item (c) above).</p>	<p>(c) <i>parent</i>;</p> <p>(d) <i>cohabitee</i>;</p> <p>(e) <i>minor child, minor step-child, minor illegitimate child or minor adopted child of the cohabitee who lives with the director</i>;</p> <p>(f) trustee of a trust the beneficiary of which includes the director, spouse, minor child, minor step-child, minor illegitimate child or <i>minor adopted child</i>;</p> <p>(g) partner of the director, spouse, minor child, minor illegitimate child, <i>minor adopted child</i> or specified trustee (see item (f) above);</p> <p>(h) <i>an associated body corporate</i> (see clause 479. In gist, it refers to a body corporate where the director, the specified entities⁶ or the director together with the specified entities are entitled to exercise or control the exercise of more than 30% of the voting power, or, the directors or a majority of the directors of the body corporate are accustomed to act in accordance with the directions or instructions of the directors or the directors' connected entities.)⁷</p>
3. Exceptions	
N/A	<i>New exception for transaction with disinterested members' approval.</i>
Exception for transaction with intra group companies.	Similar exception.

⁶ See footnote 1.

⁷ The category of “associated body corporate” replaces the category of “another company being controlled by any one or more of the directors of the company”.

CO	CB
<p>Exception for meeting expenditure incurred for the purposes of the company or for performing duties as an officer of the company, subject to</p> <p>(a) the transaction is entered into with the prior approval of the company; or</p> <p>(b) any liability falling on any person in connection with the transaction shall be discharged within a specified time frame;</p> <p>and</p> <p>(c) the relevant amount does not exceed 5% of the company's net assets⁸.</p>	<p>Same as CO, <i>but not subject to the conditions.</i></p>
<p>Exception for purchasing or improving residential premises, subject to</p> <p>(a) the company ordinarily enter into such transactions for its employees on no less favourable terms;</p> <p>(b) the amount of transaction does not exceed 80% of the value of the premises;</p> <p>(c) the transaction is secured by a legal mortgage; and</p> <p>(d) the relevant amount does not exceed 5% of the company's net assets.</p>	<p>Same as CO, <i>but</i></p> <p>(a) <i>not subject to the limit of 80% of the value of premises;</i></p> <p>(b) <i>the limit of 5% of the company's net assets has been relaxed to 10% of total assets.</i></p>
<p>Exception for leasing or hiring goods or land to a director in reasonable terms, subject to the relevant amount does not exceed 5% of the company's net assets.</p>	<p>Same as CO <i>but the limit of 5% of the company's net assets has been relaxed to 10% of total assets.</i></p>
<p>Exception for transaction entered into as ordinary business of that company provided that the amount is reasonable, subject to that the relevant amounts do not</p>	<p>Same as CO <i>but the financial limits have been removed.</i></p>

⁸ See footnote 3.

CO	CB
exceeds \$750,000 and 5% of the company's net assets ⁹ .	
N/A	<i>New exception for loan not exceeding 5% of total assets.</i>
N/A	<i>New exception for expenditure on defending proceedings.</i>
N/A	<i>New exception for expenditure in connection with investigation or regulatory action.</i>
B. Loss-of-Office Payment¹⁰	
Prohibited from making loss-of-office payment to a director.	Prohibited from making loss-of-office payment to (a) a director of the company <i>or his connected entities</i> ; (b) <i>a director of its holding company or his connected entities</i> ; (c) <i>a person made at the direction of, or for the benefit of the above directors or connected entities.</i>
Exception for payment with the company's prior approval.	Exception for payment with members' approval. <i>Disinterested members' approval is required in the case of public companies.</i>
Do not cover payment made in connection with a transfer of the undertaking or property of the company's subsidiary or shares in the subsidiary.	<i>Cover payment made in connection with a transfer of the undertaking or property of the company's subsidiary or shares in the subsidiary.</i>
C. Directors' Service Contract	
No restriction.	<i>Members' approval is required for any contracts under which the guaranteed</i>

⁹ See footnote 4.

¹⁰ See footnote 5.

CO	CB
	<i>term of employment of a director with the company exceeds or may exceed three years. Disinterested members' approval is required in the case of public companies.</i>
D. Declaration of Interests	
A director, who has a material interest in a contract or proposed contract with the company which is of significance to the company's business, is required to disclose the nature of such interest to the other directors.	The ambit of disclosure is widened to cover – (a) <i>“transactions”</i> and <i>“arrangements”</i> instead of just “contracts”; (b) <i>material interest of entities connected with the director (if the company is a public company)</i> ; and (c) the <i>“nature and extent”</i> of the interest instead of just “nature” of the interest.

III. Private Companies or Companies Limited by Guarantee

CO	CB
The description below applies to private companies which are not a member of a group of companies of which a listed company is a member.	The description below applies to private companies or companies limited by guarantee that are not a subsidiary of a public company. (The scope is wider than in the CO.)
A. Loans	
1. General	
Prohibited from entering into loan transactions with a director of the company or of its holding company, or another company being controlled by any one or more of the directors of the company, unless the transaction falls under the exceptions (see “Exceptions” below).	<p>Prohibited from entering into loan transactions with a director of the company or of its holding company, unless the transaction falls under the exceptions (see “Exceptions” below).</p> <p>Similar prohibitions as in the CO but are generally relaxed as follows –</p> <ul style="list-style-type: none"> ● under the CB, a company limited by guarantee is of a separate category and is in essence treated in the same manner as a private company in so far as the provisions prohibiting loans, quasi loans and credit transactions are concerned; ● transactions with members’ approval is introduced as a new exception for a company limited by guarantee; and ● the introduction of other new exceptions, the widening of the existing exceptions and the abolishment of the criminal penalty for breach are the same as set out in Parts I and II above.
2. Exceptions	
Exception for transaction with members’ approval.	Same as CO (note: disinterested members’ approval is not required).

CO	CB
Exception for transaction with intra group companies.	Similar exception.
<p>Exception for meeting expenditure incurred for the purposes of the company or for performing duties as an officer of the company, subject to</p> <p>(a) the transaction is entered into with the prior approval of the company; or</p> <p>(b) any liability falling on any person in connection with the transaction shall be discharged within a specified time frame;</p> <p>and</p> <p>(c) the relevant amount does not exceed 5% of the company's net assets¹¹.</p>	Same as CO, <i>but not subject to the conditions.</i>
<p>Exception for purchasing or improving residential premises, subject to</p> <p>(a) the company ordinarily enter into such transactions for its employees on no less favourable terms;</p> <p>(b) the amount of transaction does not exceed 80% of the value of the premises;</p> <p>(c) the transaction is secured by a legal mortgage; and</p> <p>(d) the relevant amount does not exceed 5% of the company's net assets.</p>	<p>Same as CO, <i>but</i></p> <p>(a) <i>not subject to the limit of 80% of the value of premises;</i></p> <p>(b) <i>the limit of 5% of the company's net assets has been relaxed to 10% of total assets.</i></p>
Exception for leasing or hiring goods or land to a director in reasonable terms, subject to the relevant amount does not exceed 5% of the company's net assets.	Same as CO <i>but the limit of 5% of the company's net assets has been relaxed to 10% of total assets.</i>

¹¹ See footnote 3.

CO	CB
Exception for transaction entered into as ordinary business of that company provided that the amount is reasonable, subject to that the relevant amounts do not exceeds \$750,000 and 5% of the company's net assets ¹² .	Same as CO <i>but the financial limits have been removed.</i>
N/A	<i>New exception for loan not exceeding 5% of total assets.</i>
N/A	<i>New exception for expenditure on defending proceedings.</i>
N/A	<i>New exception for expenditure in connection with investigation or regulatory action.</i>
B. Loss-of-Office Payment¹³	
Prohibited from making loss-of-office payment to a director.	Prohibited from making loss-of-office payment to <ul style="list-style-type: none"> (a) a director of the company <i>or his connected entities</i>; (b) <i>a director of its holding company or his connected entities</i>; (c) <i>a person made at the direction of, or for the benefit of the above directors or connected entities.</i>
Exception for payment with the company's prior approval.	Exception for payment with members' approval (note: disinterested members' approval is not required).
Do not cover payment made in connection with a transfer of the undertaking or property of the company's subsidiary or shares in the subsidiary.	<i>Cover payment made in connection with a transfer of the undertaking or property of the company's subsidiary or shares in the subsidiary.</i>

¹² See footnote 4.

¹³ See footnote 5.

CO	CB
C. Directors' Service Contract	
No restriction.	<i>Members' approval is required for any contracts under which the guaranteed term of employment of a director with the company exceeds or may exceed three years</i> (note: disinterested members' approval is not required).
D. Declaration of Interests	
A director, who has a material interest in a contract or proposed contract with the company which is of significance to the company's business, is required to disclose the nature of such interest to the other directors.	The ambit of disclosure is widened to cover – (a) <i>“transactions”</i> and <i>“arrangements”</i> instead of just “contracts”; and (b) the <i>“nature and extent”</i> of the interest instead of just “nature” of the interest. (note: Requirement is not extended to persons connected with the director.)

Financial Services and the Treasury Bureau
Companies Registry
22 June 2011