

These notes refer to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27) which received Royal Assent on 28 October 2004

COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Auditors, Accounts, Directors' Liabilities and Investigations

Chapter 3: Directors' liabilities

Summary

Section 20 - Funding of director's expenditure on defending proceedings

114. Sections 330-344 of the Companies Act 1985 place restrictions on a company's power to make loans or quasi-loans to directors, or to enter into certain types of credit transaction with a director. The prohibition prevents a company from indemnifying a director on an 'as incurred' basis even against his legal expenses.
115. *Section 20* therefore inserts a *new section - section 337A* - into these sections of the 1985 Act. *New section 337A* provides that a company is not prohibited from funding a director's expenditure in defending any civil or criminal proceedings provided that the director:
- repays any loan; or
 - discharges any other liability to the company
- if he is convicted in any criminal proceedings or judgment is given against him in any civil proceedings, or he is unsuccessful in an application for relief from liability under the provisions for relief in the Companies Act. Under *new section 309B*, however, a company may permit a director not to repay a loan if all the circumstances for a QTPIP (see paragraph 110 above) are satisfied (particularly in a case in which judgment is given against him in proceedings brought by a third party).