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STATUTORY INSTRUMENTS

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**2005 No. 1967**

**The Companies (Audit, Investigations and  
Community Enterprise) (Northern Ireland) Order 2005**

**PART II**

**AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS**

**CHAPTER III**

**DIRECTORS' LIABILITIES**

**Relaxation of prohibition on provisions protecting directors etc. from liability**

**18.**—(1) After Article 317 of the 1986 Order (directors to have regard to interests of employees) insert—

**“Provisions protecting directors from liability**

**317A.**—(1) This Article applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.

(2) Any provision which purports to exempt (to any extent) a director of a company from any liability within paragraph (1) is void.

(3) Subject to paragraphs (4) and (5), any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—

- (a) the company, or
- (b) an associated company,

against any liability within paragraph (1) is void.

(4) Paragraph (3) does not apply to a qualifying third party indemnity provision within the meaning of Article 317B(1).

(5) Paragraph (3) does not prevent a company from purchasing and maintaining for a director of—

- (a) the company, or
- (b) an associated company,

insurance against any liability within paragraph (1).

(6) In this Article—

“associated company”, in relation to a company (“C”), means a company which is C’s subsidiary, or C’s holding company or a subsidiary of C’s holding company;

“provision” means a provision of any nature, whether or not it is contained in a company’s articles or in any contract with a company.

**Qualifying third party indemnity provisions**

**317B.**—(1) For the purposes of Article 317A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in Article 317A(3) in relation to which conditions A to C are satisfied.

(2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) to the company, or
- (b) to any associated company.

(3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—

- (a) a fine imposed in criminal proceedings, or
- (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).

(4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) in defending any criminal proceedings in which he is convicted, or
- (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
- (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—
  - (i) Article 154(3) or (4), or
  - (ii) Article 675.

(5) In sub-paragraph (a), (b) or (c) of paragraph (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.

(6) For the purposes of paragraph (5) a conviction, judgment or refusal of relief becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(7) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.

(8) In this Article “associated company” and “provision” have the same meaning as in Article 317A.

**Disclosure of qualifying third party indemnity provisions**

**317C.**—(1) Paragraphs (2) and (3) impose disclosure requirements in relation to a directors' report under Article 242 in respect of a financial year.

(2) If —

- (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
- (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,

the report must state that any such provision is or (as the case may be) was so in force.

(3) If the company has made a qualifying third party indemnity provision and—

- (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
- (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,

the report must state that any such provision is or (as the case may be) was so in force.

(4) Paragraph (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.

(5) Article 326 shall apply to—

- (a) the company, and
- (b) if the director is a director of an associated company, the associated company,

as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in Article 326(1).

(6) In this Article—

“associated company” and “provision” have the same meaning as in Article 317A; and  
“qualifying third party indemnity provision” has the meaning given by Article 317B(1).”.

(2) In Article 318 of that Order (provisions exempting officers and auditors from liability), the following provisions cease to have effect—

- (a) in paragraph (1), the words “any officer of the company or”, and
  - (b) in paragraph (3)—
    - (i) the words “officer or” (in both places), and
    - (ii) the words from “Article 154(3)” to “nominee) or”;
- and in the heading, for “exempting officers and” substitute “protecting”.

### **Funding of director’s expenditure on defending proceedings**

**19.** After Article 345 of the 1986 Order (funding of director’s expenditure on duty to company) insert—

#### **“Funding of director’s expenditure on defending proceedings**

**345A.**—(1) A company is not prohibited by Article 338 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him—

- (a) in defending any criminal or civil proceedings, or
- (b) in connection with any application under any of the provisions mentioned in paragraph (2).

(2) The provisions are—

- (a) Article 154(3) and (4), and
- (b) Article 675.

(3) Nor does Article 338 prohibit a company from doing anything to enable a director to avoid incurring such expenditure.

(4) Paragraphs (1) and (3) only apply to a loan or other thing done as mentioned in those paragraphs if the terms on which it is made or done will result in the loan falling to be repaid,

or any liability of the company under any transaction connected with the thing in question falling to be discharged, not later than—

- (a) in the event of the director being convicted in the proceedings, the date when the conviction becomes final,
- (b) in the event of judgment being given against him in the proceedings, the date when the judgment becomes final, or
- (c) in the event of the court refusing to grant him relief on the application, the date when the refusal of relief becomes final.

(5) For the purposes of paragraph (4) a conviction, judgment or refusal of relief becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(6) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.”.