

[No. 28.] *Company Law Enforcement Act*, [2001.]
2001.

Pt.8 S.74

being information or documents in their possession or control and relating to the matter the subject of the notice, as the Director may require.

(3B) Any written information given in response to a request of the Director under subsection (3A) shall in all legal proceedings be admissible without further proof, until the contrary is shown, as evidence of the facts stated therein.”

(d) in subsection (4), by the substitution for “subsection (1)” of “subsection (1), (3A) or (5)”, and

(e) by the insertion of the following after subsection (4):

“(5) Where, in the course of, and by virtue of, their carrying out an audit of the accounts of the company, information comes into the possession of the auditors of a company that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed an indictable offence under the Companies Acts, the auditors shall, forthwith after having formed it, notify that opinion to the Director and provide the Director with details of the grounds on which they have formed that opinion.

(6) No professional or legal duty to which an auditor is subject by virtue of his appointment as an auditor of a company shall be regarded as contravened by, and no liability to the company, its shareholders, creditors or other interested parties shall attach to, an auditor, by reason of his compliance with an obligation imposed on him by or under this section.”.

PART 9

TRANSACTIONS INVOLVING DIRECTORS

Amendment of section 25 of Act of 1990. **75.**—Section 25 of the Act of 1990 is amended by the insertion of the following after subsection (3):

“(3A) For the purposes of this Part, a lease of land which reserves a nominal annual rent of not more than £10 is not a credit transaction where a company grants the lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the company.”.

Amendment of section 26 of Act of 1990. **76.**—Section 26 of the Act of 1990 is amended—

(a) by the substitution of the following for subsection (1):

“(1) For the purposes of this Part, a person is connected with a director of a company if, but only if, the person (not being himself a director of the company) is—

(a) that director’s spouse, parent, brother, sister or child;

(b) a person acting in his capacity as the trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls;
or

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

(c) in partnership, within the meaning of section 1(1) of the Partnership Act, 1890, with that director.”, Pr.9 S.76

(b) by the substitution of the following for subsection (3):

“(3) For the purposes of this section, a director of a company shall be deemed to control a body corporate if, but only if, he is, alone or together with any other director or directors of the company, or any person connected with the director or such other director or directors, interested in one-half or more of the equity share capital of that body or entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.”,

and

(c) by the insertion of the following after subsection (5):

“(6) It shall be presumed for the purposes of this Part, until the contrary is shown, that the sole member of a single-member private limited company within the meaning of the European Communities (Single-Member Private Limited Companies) Regulations, 1994 (S.I. No. 275 of 1994) is a person connected with a director of that company.”.

77.—Section 33 of the Act of 1990 is amended by the insertion of the following after subsection (2): Amendment of section 33 of Act of 1990.

“(3) Where the terms of the arrangements referred to in subsection (2) are not amended within the period specified in that subsection, the arrangements shall be voidable at the instance of the company unless section 38(1)(a) or (b) applies.”.

78.—Section 34 of the Act of 1990 is repealed and the following substituted: Repeal and substitution of section 34 of Act of 1990 — Exceptions to section 31 in certain circumstances.

“34.—(1) Section 31 does not prohibit a company from entering into a guarantee or providing any security in connection with a loan, quasi-loan or credit transaction made by any other person for a director of the company or of its holding company, or for a person connected with such a director, if—

(a) the entering into the guarantee is, or the provision of the security is given, under the authority of a special resolution of the company passed not more than 12 months previously; and

(b) the company has forwarded with each notice of the meeting at which the special resolution is to be considered or, if the procedure detailed in subsection (6) is followed, the company has appended to the resolution, a copy of a statutory declaration which complies with subsections (2) and (3) and also delivers, within 21 days after the date on which the guarantee was entered into or the date on which the security was provided, as the case may be, a copy of the declaration to the registrar of companies for registration.

[No. 28.] *Company Law Enforcement Act,* [2001.]
2001.

Pr.9 S.78

(2) The statutory declaration shall be made at a meeting of the directors held not earlier than 24 days before the meeting referred to in subsection (1)(b) or, if the special resolution is passed in accordance with subsection (6), not earlier than 24 days before the signing of the special resolution, and shall be made by the directors or, in the case of a company having more than 2 directors, by a majority of the directors.

(3) The statutory declaration shall state—

- (a) the circumstances in which the guarantee is to be entered into or the security is to be provided;
- (b) the nature of the guarantee or security;
- (c) the person or persons to or for whom the loan, quasi-loan or credit transaction (in connection with which the guarantee is to be entered into or the security is to be provided) is to be made;
- (d) the purpose for which the company is entering into the guarantee or is providing the security;
- (e) the benefit which will accrue to the company directly or indirectly from entering into the guarantee or providing the security; and
- (f) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company, having entered into the guarantee or provided the security, will be able to pay its debts in full as they become due.

(4) A statutory declaration under subsection (3) has no effect for the purposes of this Act unless it is accompanied by a report—

- (a) drawn up in the prescribed form, by an independent person who is qualified at the time of the report to be appointed, or to continue to be, the auditor of the company; and
- (b) which shall state whether, in the opinion of the independent person, the statutory declaration is reasonable.

(5) Where a director of a company makes the statutory declaration without having reasonable grounds for the opinion that the company having entered into the guarantee or provided the security will be able to pay its debts in full as they become due—

- (a) the court, on the application of a liquidator, creditor, member or contributory of the company, may declare that the director shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company; and
- (b) if the company is wound up within 12 months after the making of the statutory declaration and its debts are not paid or provided for in full within 12 months after the commencement of the winding-up, it shall be presumed, until the contrary is shown, that the

[2001.] *Company Law Enforcement Act*, [No. 28.]
2001.

director did not have reasonable grounds for his opinion. Pr.9 S.78

(6) The special resolution referred to in subsection (1)(a) may be passed in accordance with section 141(8) of the Principal Act.

(7) Unless all of the members of the company entitled to vote at general meetings of the company vote in favour of the special resolution, the company shall not enter into the guarantee or provide the security before the expiry of 30 days after the special resolution has been passed or, if an application referred to in subsection (8) is made, until the application has been disposed of by the court.

(8) If application is made to the court in accordance with this section for the cancellation of the special resolution, the special resolution shall not have effect except to the extent to which it is confirmed by the court.

(9) Subject to subsection (10), an application referred to in subsection (8) may be made by the holders of not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class thereof.

(10) An application shall not be made under subsection (8) by a person who has consented to, signed or voted in favour of the special resolution.

(11) An application referred to in subsection (8) must be made within 28 days after the date on which the special resolution was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose."

79.—Section 35 of the Act of 1990 is amended by the substitution for "its holding company" (wherever occurring) of "any company which is its holding company, subsidiary or a subsidiary of its holding company".

Amendment of section 35 of Act of 1990 — Inter-company transactions in the same group.

PART 10

MISCELLANEOUS

80.—(1) The registrar of companies may accept for registration a document containing standard form text from the objects clause of a memorandum of association or from articles of association and shall assign a reference number to each document so registered.

Reference Memoranda and Articles of Association.

(2) Notwithstanding anything in the Companies Acts, a document filed pursuant to *subsection (1)* need not relate to a particular company or contain the registered number of a company.

(3) A memorandum or articles of association may contain a statement that it is to incorporate the text of a document previously registered with the registrar pursuant to *subsection (1)*, which document shall be identified by the reference number assigned to it by the registrar.

(4) Where a memorandum or articles of association contains a statement as referred to in *subsection (3)*, it shall be deemed for all purposes to incorporate within it the text of the relevant document