

Any provision exempting officers of company from liability void (subject to exceptions)

235. (1) Subject to the provisions of this section, the following provision shall be void, namely, any provision:

(a) purporting to exempt any officer of a company from; or

(b) purporting to indemnify such an officer against;

any liability which by virtue of any enactment or rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company.

(2) Subsection (1) applies whether the provision concerned is contained in the constitution of a company or a contract with a company or otherwise.

(3) Notwithstanding subsection (1), a company may, in pursuance of any such provision as is mentioned in that subsection, indemnify any officer of the company against any liability incurred by him or her—

(a) in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted; or

(b) in connection with any proceedings or application referred to in, or under, section 233 or 234 in which relief is granted to him or her by the court.

(4) Notwithstanding subsection (1), a company may purchase and maintain for any of its officers insurance in respect of any liability referred to in that subsection.

(5) Notwithstanding any provision contained in any enactment, the constitution of a company or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit.

(6) For the avoidance of doubt, if—

(a) any business, trade or activity has been carried on by means of a company, or other body corporate, registered or formed under the laws of another country,

(b) the period for which that business, trade or activity was so carried on was not less than 12 months preceding the date on which this subsection falls to be applied,

(c) a provision of the kind referred to in subsection (1)(a) or (b) in relation to officers of the company or other body corporate was in being and valid under the laws of that country, and

(d) a private company limited by shares is formed and registered to carry on that business, trade or activity,

then nothing in this section invalidates the operation of the provision referred to in paragraph (c) in respect of any negligence, default, breach of duty or breach of trust occurring before that private company limited by shares is formed and registered.

(7) Any directors' and officers' insurance purchased or maintained by a company before 6 April 2004 is as valid and effective as it would have been if this section had been in operation when that insurance was purchased or maintained.

(8) In this section—

(a) “officer” includes a statutory auditor,

(b) a reference to an officer includes a reference to any former or current officer of the company.