



Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

PART X

COMPANIES INCORPORATED OUTSIDE GREAT BRITAIN.

Prospectuses.

417 Dating of prospectus and particulars to be contained therein.

- (1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the Company has or has not established, or when formed will or will not establish, a place of business in Great Britain unless the prospectus is dated and—
- (a) contains particulars with respect to the following matters:—
 - (i) the instrument constituting or defining the constitution of the company;
 - (ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
 - (iii) an address in Great Britain where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
 - (iv) the date on which and the country in which, the company was incorporated;
 - (v) whether the company has established a place of business in Great Britain, and, if so, the address of its principal office in Great Britain;
 - (b) subject to the provisions of this section, states the matters specified in Part I of the Fourth Schedule to this Act and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

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Provided that the provisions of sub-paragraphs (i), (ii) and (iii) of paragraph (a) of this subsection shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business, and, in the application of Part I of the Fourth Schedule for the purposes of this subsection, paragraph 2 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.

- (2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of paragraph (a) or (b) of the foregoing subsection, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (3) It shall not be lawful for any person to issue to any person in Great Britain a form of application for shares in or debentures of such a company or intended company as is mentioned in subsection (1) of this section unless the form is issued with a prospectus which complies with this Part of this Act and the issue whereof in Great Britain does not contravene the provisions of section four hundred and nineteen of this Act:

Provided that this subsection shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

- (4) In the event of non-compliance with or contravention of any of the requirements imposed by paragraphs (a) and (b) of subsection (1) of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—
- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
 - (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
 - (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 16 of the Fourth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

- (5) This section—
- (a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
 - (b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

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- (6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

418 Exclusion of foregoing section and relaxation of Fourth Schedule in case of certain prospectuses.

- (1) Where—
- (a) it is proposed to offer to the public by a prospectus issued generally any shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain; and
 - (b) application is made to a prescribed stock exchange for permission for those shares or debentures to be dealt in or quoted on that stock exchange;
- there may on the request of the applicant be given by or on behalf of that stock exchange a certificate of exemption, that is to say, a certificate that, having regard to the proposals (as stated in the request) as to the size and other circumstances of the issue of shares or debentures and as to any limitation on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fourth Schedule to this Act would be unduly burdensome.
- (2) If a certificate of exemption is given, and if the proposals aforesaid are adhered to and the particulars and information required to be published in connection with the application for permission to the stock exchange are so published, then—
- (a) a prospectus giving the particulars and information aforesaid in the form in which they are so required to be published shall be deemed to comply with the requirements of the Fourth Schedule to this Act; and
 - (b) except in so far as it requires a prospectus to be dated, the last foregoing section shall not apply to any issue, after the permission applied for is given, of a prospectus or form of application relating to the shares or debentures.

419 Provisions as to expert's consent, and allotment.

- (1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain,—
- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
 - (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections fifty and fifty-one of this Act so far as applicable.
- (2) In this section the expression “expert ” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if

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it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

420 Registration of prospectus.

- (1) It shall not be lawful for any person to issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Great Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, unless before the issue, circulation or distribution of the prospectus in Great Britain, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the registrar of companies, and the prospectus states on the face of it that a copy as been so delivered, and there is endorsed on or attached to the copy—
 - (a) any consent to the issue of the prospectus required by the last foregoing section;
 - (b) a copy of any contract required by paragraph 14 of the Fourth Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus deemed by virtue of a certificate granted under section four hundred and eighteen of this Act to comply with the requirements of that Schedule, a contract or a copy thereof or a memorandum of a contract is required to be available for inspection in connection with the application under that section to the stock exchange in question, a copy or, as the case may be, a memorandum of that contract; and
 - (c) where the persons making any report required by Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 29 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (2) The references in paragraph (b) of the foregoing subsection to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation thereof or a copy embodying a translation of parts thereof.

421 Penalty for contravention of four foregoing sections.

Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of the four last foregoing sections shall be liable to a fine not exceeding five hundred pounds.

422 Civil liability for mis-statements in prospectus.

Section forty-three of this Act shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated

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outside Great, Britain, whether the company has or has not established, or when formed will or will not establish, a place of business in Great Britain, with the substitution, for references to section forty of this Act, of references to section four hundred and nineteen thereof.

423 Interpretation of provisions as to prospectuses.

- (1) Where any document by which any shares in or debentures of a company incorporated outside Great Britain are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section forty-five of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part of this Act, a prospectus issued by the company.
- (2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Act.
- (3) In this Part of this Act the expressions “prospectus”, “shares” and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.