



Companies Act 1985

1985 CHAPTER 6

PART III

CAPITAL ISSUES

CHAPTER I

ISSUES BY COMPANIES REGISTERED, OR TO BE REGISTERED, IN GREAT BRITAIN

The prospectus

56 Matters to be stated, and reports to be set out, in prospectus

- (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must comply—
 - (a) with Part I of Schedule 3 to this Act, as respects the matters to be stated in the prospectus, and
 - (b) with Part II of that Schedule, as respects the reports to be set out.
- (2) It is unlawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section.
- (3) Subsection (2) does not apply if it is shown that the form of application was issued either—
 - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures, or
 - (b) in relation to shares or debentures which were not offered to the public.
- (4) If a person acts in contravention of subsection (2), he is liable to a fine.
- (5) This section does not apply—

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- (a) 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, or
- (b) to the issue of a prospectus or form of application 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 listed on a prescribed stock exchange;

but subject to this, it applies to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

57 Attempted evasion of s. 56 to be void

A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of section 56, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

58 Document offering shares etc. for sale deemed a prospectus

- (1) If a company allots or agrees to allot its shares or debentures with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made is deemed for all purposes a prospectus issued by the company.
- (2) All enactments and rules of law as to the contents of prospectuses, and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures.

This is without prejudice to the liability (if any) of the persons by whom the offer is made, in respect of mis-statements in the document or otherwise in respect of it.

- (3) For purposes of this Act it is evidence (unless the contrary is proved) that an allotment of, or an agreement to allot, shares or debentures was made with a view to their being offered for sale to the public if it is shown—
 - (a) that an offer of the shares or debentures (or of any of them) for sale to the public was made within 6 months after the allotment or agreement to allot, or
 - (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.
- (4) Section 56 as applied by this section has effect as if it required a prospectus to state, in addition to the matters required by that section—
 - (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and
 - (b) the place and time at which the contract under which those shares or debentures have been or are to be allotted may be inspected.

59 Rule governing what is an " offer to the public "

- (1) Subject to the next section, any reference in this Act to offering shares or debentures to the public is to be read (subject to any provision to the contrary) as including a

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reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned, or as clients of the person issuing the prospectus, or in any other manner.

- (2) The same applies to any reference in this Act, or in a company's articles, to an invitation to the public to subscribe for shares or debentures.

60 Exceptions from rule in s. 59

- (1) Section 59 does not require an offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons receiving and making it.
- (2) In particular, a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures is not to be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as falling within the preceding subsection.
- (3) For purposes of that subsection, an offer of shares in or debentures of a private company, or an invitation to subscribe for such shares or debentures, is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving the offer or invitation if it falls within any of the following descriptions.
- (4) It is to be so regarded if it is made to—
- an existing member of the company making the offer or invitation,
 - an existing employee of that company,
 - a member of the family of such a member or employee, or
 - an existing debenture holder.
- (5) For purposes of subsection (4)(c), the members of a person's family are—
- the person's husband or wife, widow or widower and children (including stepchildren) and their descendants, and
 - any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person him or herself, or any of those relatives.
- (6) The offer or invitation is also to be so regarded if it is to subscribe for shares or debentures to be held under an employees share scheme.
- (7) The offer or invitation is also to be so regarded if it falls within subsection (4) or (6) and it is made on terms which permit the person to whom it is made to renounce his right to the allotment of shares or issue of debentures, but only in favour—
- of such a person as is mentioned in any of the paragraphs of subsection (4), or
 - where there is an employees' share scheme, of a person entitled to hold shares or debentures under the scheme.
- (8) Where application has been made to the Council of The Stock Exchange for admission of any securities to the Official List of the Stock Exchange, then an offer of those securities for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not deemed an offer to the public for purposes of this Part.

61 Prospectus containing statement by expert

- (1) A prospectus inviting persons to subscribe for a company's shares or debentures and including a statement purporting to be made by an expert shall not be issued unless—
- (a) he (the expert) has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to its issue with the statement included in the form and context in which it is in fact included; and
 - (b) a statement that he has given and not withdrawn that consent appears in the prospectus.
- (2) If a prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine.

62 Meaning of "expert"

The expression "expert", in both Chapters of this Part, includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

63 Prospectus to be dated

A prospectus issued by or on behalf of a company, or in relation to an intended company, shall be dated; and that date shall, unless the contrary is proved, be taken as its date of publication.