



# 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—
- (a) an existing member of the company making the offer or invitation,
  - (b) an existing employee of that company,
  - (c) a member of the family of such a member or employee, or
  - (d) an existing debenture holder.
- (5) For purposes of subsection (4)(c), the members of a person's family are—
- (a) the person's husband or wife, widow or widower and children (including stepchildren) and their descendants, and
  - (b) 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—
- (a) of such a person as is mentioned in any of the paragraphs of subsection (4), or
  - (b) 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.

### *Registration of prospectus*

## **64 Registration requirement applicable in all cases**

- (1) No prospectus shall be issued by or on behalf of a company, or in relation to an intended company, unless on or before the date of its publication there has been delivered to the registrar of companies for registration a copy of the prospectus—
  - (a) signed by every person who is named in it as a director or proposed director of the company, or by his agent authorised in writing, and
  - (b) having endorsed on or attached to it any consent to its issue required by section 61 from any person as an expert.
- (2) Where the prospectus is such a document as is referred to in section 58, the signatures required by subsection (1) above include those of every person making the offer, or his agent authorised in writing.

Where the offer is made by a company or a firm, it is sufficient for the purposes of this subsection if the document is signed on its behalf by two directors or (as the case may be) not less than half of the partners; and a director or partner may sign by his agent authorised in writing.

- (3) Every prospectus shall on its face—
  - (a) state that a copy has been delivered for registration as required by this section, and
  - (b) specify, or refer to statements in the prospectus specifying, any documents required by this or the following section to be endorsed on or attached to the copy delivered.

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- (4) The registrar shall not register a prospectus unless it is dated and the copy of it signed as required by this section and unless it has endorsed on or attached to it the documents (if any) specified in subsection (3)(b).
- (5) If a prospectus is issued without a copy of it being delivered to the registrar as required by this section, or without the copy so delivered having the required documents endorsed on or attached to it, the company and every person who is knowingly a party to the issue of the prospectus is liable to a fine and, for continued contravention, to a daily default fine.

## **65 Additional requirements in case of prospectus issued generally**

- (1) In the case of a prospectus issued generally (that is to persons who are not existing members or debenture holders of the company), the following provisions apply in addition to those of section 64.
- (2) The copy of the prospectus delivered to the registrar of companies must also have endorsed on or attached to it a copy of any contract required by paragraph 11 of Schedule 3 to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars of it.
- (3) In the case of a contract wholly or partly in a foreign language—
  - (a) the copy required by subsection (2) to be endorsed on or attached to the prospectus must be a copy of a translation of the contract into English or (as the case may be) a copy embodying a translation into English of the parts in a foreign language, and
  - (b) the translation must be certified in the prescribed manner to be a correct translation.
- (4) If the persons making any report required by Part II of Schedule 3 have made in the report, or have (without giving reasons) indicated in it, any such adjustments as are mentioned in paragraph 21 of the Schedule (profits, losses, assets, liabilities), the copy of the prospectus delivered to the registrar must have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for them.

### *Liabilities and offences in connection with prospectus*

## **66 Directors, etc. exempt from liability in certain cases**

- (1) In the event of non-compliance with or contravention of section 56, a director or other person responsible for the prospectus does not incur any liability by reason of that non-compliance or contravention if—
  - (a) as regards any matter not disclosed, he proves that he was not cognisant of it, 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 was otherwise such as ought (in the court's opinion, having regard to all the circumstances of the case) reasonably to be excused.

- (2) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 13 of Schedule 3 (disclosure of directors' interests), no director or other person incurs any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.
- (3) Nothing in section 56 or 57 or this section limits or diminishes any liability which a person may incur under the general law or this Act apart from those provisions.

## **67 Compensation for subscribers misled by statement in prospectus**

- (1) Where a prospectus invites persons to subscribe for a company's shares or debentures, compensation is payable to all those who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage which they may have sustained by reason of any untrue statement included in it.
- (2) The persons liable to pay the compensation are—
  - (a) every person who is a director of the company at the time of the issue of the prospectus,
  - (b) every person who authorised himself to be named, and is named, in the prospectus as a director or as having agreed to become a director (either immediately or after an interval of time),
  - (c) every person being a promoter of the company, and
  - (d) every person who has authorised the issue of the prospectus.
- (3) The above has effect subject to the two sections next following; and here and in those sections "promoter" means a promoter who was party to the preparation of the prospectus, or of the portion of it containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

## **68 Exemption from s. 67 for those acting with propriety**

- (1) A person is not liable under section 67 if he proves—
  - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent, or
  - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent, or
  - (c) that after issue of the prospectus and before allotment under it he, on becoming aware of any untrue statement in it, withdrew his consent to its issue and gave reasonable public notice of the withdrawal and of the reason for it.
- (2) A person is not liable under that section if he proves that—
  - (a) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true; and
  - (b) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable

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- ground to believe and did up to the time of issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 61 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment under it; and
- (c) as regards every untrue statement purporting to be made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.
- (3) Subsections (1) and (2) of this section do not apply in the case of a person liable, by reason of his having given a consent required of him by section 61, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.
- (4) Where under section 61 the consent of a person is required to the issue of a prospectus and he has given that consent, he is not by reason of his having given it liable under section 67 as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert
- (5) A person who, apart from this subsection, would under section 67 be liable, by reason of his having given a consent required of him by section 61, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—
- (a) that, having given his consent under the section to the issue of the prospectus, he withdrew it in writing before the delivery of a copy of the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment under it, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for it; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures (as the case may be) believe, that the statement was true.

## **69 Indemnity for innocent director or expert**

- (1) This section applies where—
- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director of it, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue, or
- (b) the consent of a person is required under section 61 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus.
- (2) The directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who authorised its issue are liable to indemnify the person named, or whose consent was required under section 61 (as the case may be), against all damages, costs and expenses to which he may be liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert (as the case may be), or

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in defending himself against any action or legal proceeding brought against him in respect of it.

- (3) A person is not deemed for purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 61 to the inclusion of a statement purporting to be made by him as an expert.

## **70 Criminal liability for untrue statements**

- (1) If a prospectus is issued with an untrue statement included in it, any person who authorised the issue of the prospectus is guilty of an offence and liable to imprisonment or a fine, or both, unless he proves either—
- (a) that the statement was immaterial, or
  - (b) that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.
- (2) A person is not deemed for purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 61 to the inclusion in it of a statement purporting to be made by him as an expert.

### *Supplementary*

## **71 Interpretation for ss. 56 to 70**

For purposes of sections 56 to 70—

- (a) a statement included in a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included, and
- (b) a statement is deemed to be included in a prospectus if it is contained in it, or in any report or memorandum appearing on its face, or by reference incorporated in, or issued with, the prospectus.