



# Companies Act 1985

## 1985 CHAPTER 6

### [<sup>F1</sup>] PART III

#### CAPITAL ISSUES

#### CHAPTER I

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

#### *[<sup>F1</sup>] Liabilities and offences in connection with prospectus*

#### Textual Amendments

- F1** Pt. III (ss. 56-79) repealed by [Financial Services Act 1986](#) (c. 60, SIF 69), ss. 211(1), 212(3), [Sch. 17 Pt. I](#) (the repeal coming into force as mentioned in [S.I. 1986/2246](#), art. 5, [Sch. 4](#), [S.I. 1988/740](#), arts. 2-7, Sch. (as amended by [S.I. 1988/1960](#), arts. 2-4 and by [S.I. 1988/2285](#), [arts. 2-6](#)) and [S.I. 1995/1538](#), [art. 2](#) and otherwise prosp.)

#### 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—
- as regards any matter not disclosed, he proves that he was not cognisant of it, or
  - he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or
  - 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.

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- (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 proceedings 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.]

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