



Financial Services Act 1986

1986 CHAPTER 60

PART V

OFFERS OF UNLISTED SECURITIES

158 Preliminary

- (1) This Part of this Act applies to any investment—
 - (a) which is not listed, or the subject of an application for listing, in accordance with Part IV of this Act; and
 - (b) falls within paragraph 1, 2, 4 or 5 of Schedule 1 to this Act
- (2) In the application of those paragraphs for the purposes of subsection (1) above—
 - (a) paragraphs 4 and 5 shall have effect with the omission of references to investments falling within paragraph 3; and
 - (b) paragraph 4 shall have effect as if it referred only to instruments issued by the person issuing the investment to be subscribed for.
- (3) In this Part of this Act—

" issuer ", in relation to any securities, means the person by whom they have been or are to be issued except that in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to this Act it means the person who issued or is to issue the securities to which the certificate or instrument relates;

" securities" means investments to which this section applies.
- (4) For the purposes of this Part of this Act an advertisement offers securities if—
 - (a) it invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
 - (b) it contains information calculated to lead directly or indirectly to a person entering into such an agreement.
- (5) In this Part of this Act " the registrar of companies ", in relation to any securities, means—

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- (a) if the securities are or are to be issued by a company incorporated in Great Britain, the registrar of companies in England and Wales or the registrar of companies in Scotland according to whether the company's registered office is in England and Wales or in Scotland ;
 - (b) if the securities are or are to be issued by a company incorporated in Northern Ireland, the registrar of companies for Northern Ireland ;
 - (c) in any other case, any of those registrars.
- (6) In this Part of this Act " approved exchange ", in relation to dealings in any securities, means a recognised investment exchange approved by the Secretary of State for the purposes of this Part of this Act either generally or in relation to such dealings, and the Secretary of State shall give notice in such manner as he thinks appropriate of the exchanges which are for the time being approved.

159 Offers of securities on admission to approved exchange

- (1) Subject to subsection (2) and section 161 below, no person shall issue or cause to be issued in the United Kingdom an advertisement offering any securities on the occasion of their admission to dealings on an approved exchange or on terms that they will be issued if admitted to such dealings unless—
- (a) a document (in this Part of this Act referred to as a " prospectus ") containing information about the securities has been submitted to and approved by the exchange and delivered for registration to the registrar of companies; or
 - (b) the advertisement is such that no agreement can be entered into in pursuance of it until such a prospectus has been submitted, approved and delivered as aforesaid.
- (2) Subsection (1) above does not apply if a prospectus relating to the securities has been delivered for registration under this Part of this Act in the previous twelve months and the approved exchange certifies that it is satisfied that persons likely to consider acquiring the securities will have sufficient information to enable them to decide whether to do so from that prospectus and any information published in connection with the admission of the securities.

160 Other offers of securities

- (1) Subject to subsections (5) and (6) and section 161 below, no person shall issue or cause to be issued in the United Kingdom an advertisement offering any securities which is a primary or secondary offer within the meaning of this section unless—
- (a) he has delivered for registration to the registrar of companies a prospectus relating to the securities and expressed to be in respect of the offer ; or
 - (b) the advertisement is such that no agreement can be entered into in pursuance of it until such a prospectus has been delivered by him as aforesaid.
- (2) For the purposes of this section a primary offer is an advertisement issued otherwise than as mentioned in section 159(1) above inviting persons to enter into an agreement for or with a view to subscribing (whether or not in cash) for or underwriting the securities to which it relates or containing information calculated to lead directly or indirectly to their doing so.
- (3) For the purposes of this section a secondary offer is any other advertisement issued otherwise than as mentioned in section 159(1) above inviting persons to enter into an agreement for or with a view to acquiring the securities to which it relates or

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- containing information calculated to lead directly or indirectly to their doing so, being an advertisement issued or caused to be issued by—
- (a) a person who has acquired the securities from the issuer with a view to issuing such an advertisement in respect of them;
 - (b) a person who, with a view to issuing such an advertisement in respect of them, has acquired the securities otherwise than from the issuer but without their having been admitted to dealings on an approved exchange or held by a person who acquired them as an investment and without any intention that such an advertisement should be issued in respect of them ; or
 - (c) a person who is a controller of the issuer or has been such a controller in the previous twelve months and who is acting with the consent or participation of the issuer in issuing the advertisement.
- (4) For the purposes of subsection (3)(a) above it shall be presumed in the absence of evidence to the contrary that a person has acquired securities with a view to issuing an advertisement offering the securities if he issues it or causes it to be issued—
- (a) within six months after the issue of the securities ; or
 - (b) before the consideration due from him for their acquisition is received by the person from whom he acquired them.
- (5) Subsection (1) above does not apply to a secondary offer if such a prospectus as is mentioned in that subsection has been delivered in accordance with that subsection in respect of an offer of the same securities made in the previous six months by a person making a primary offer or a previous secondary offer.
- (6) Subsection (1) above does not apply to an advertisement issued in such circumstances as may be specified by an order made by the Secretary of State for the purpose of exempting from that subsection—
- (a) advertisements appearing to him to have a private character, whether by reason of a connection between the person issuing them and those to whom they are addressed or otherwise;
 - (b) advertisements appearing to him to deal with investments only incidentally;
 - (c) advertisements issued to persons appearing to him to be sufficiently expert to understand any risks involved; or
 - (d) such other classes of advertisement as he thinks fit.
- (7) Without prejudice to subsection (6)(c) above an order made by the Secretary of State may exempt from subsection (1) above an advertisement issued in whatever circumstances if it relates to securities appearing to him to be of a kind that can be expected normally to be bought or dealt in only by persons sufficiently expert to understand any risks involved.
- (8) An order under subsection (6) or (7) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.
- (9) An order made by virtue of subsection (6)(a), (b) or (c) or by virtue of subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order shall be made by virtue of subsection (6)(d) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

161 Exceptions

- (1) Sections 159 and 160 above do not apply to any advertisement offering securities if the offer is conditional on their admission to listing in accordance with Part IV of this Act and section 159 above does not apply to any advertisement offering securities if they have been listed in accordance with that Part in the previous twelve months and the approved exchange in question certifies that persons likely to consider acquiring them will have sufficient information to enable them to decide whether to do so.
- (2) Neither of those sections applies to any such advertisement as is mentioned in section 58(2) above.
- (3) Neither of those sections applies if other securities issued by the same person (whether or not securities of the same class as those to which the offer relates) are already dealt in on an approved exchange and the exchange certifies that persons likely to consider acquiring the securities to which the offer relates will have sufficient information to enable them to decide whether to do so having regard to the steps that have been taken to comply in respect of those other securities with the requirements imposed by the exchange for the purpose of complying with paragraph 2(2) (b) of Schedule 4 to this Act, to the nature of the securities to which the offer relates, to the circumstances of their issue and to the information about the issuer which is available to investors by virtue of any enactment.
- (4) If it appears to the Secretary of State that the law of a country or territory outside the United Kingdom provides investors in the United Kingdom with protection at least equivalent to that provided by Part IV of this Act or this Part of this Act in respect of securities dealt in on an exchange or exchanges in that country or territory he may by order specify circumstances in which those sections are not to apply to advertisements offering those securities.
- (5) An order under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

162 Form and content of prospectus

- (1) A prospectus shall contain such information and comply with such other requirements as may be prescribed by rules made by the Secretary of State for the purposes of this section.
- (2) Rules under this section may make provision whereby compliance with any requirements imposed by or under the law of a country or territory outside the United Kingdom is treated as compliance with any requirements of the rules.
- (3) If it appears to the Secretary of State that an approved exchange has rules in respect of prospectuses relating to securities dealt in on the exchange, and practices in exercising any powers conferred by the rules, which provide investors with protection at least equivalent to that provided by rules under this section he may direct that any such prospectus shall be subject to the rules of the exchange instead of the rules made under this section.

163 General duty of disclosure in prospectus

- (1) In addition to the information required to be included in a prospectus by virtue of rules applying to it by virtue of section 162 above a prospectus shall contain all such information as investors and their professional advisers would reasonably require, and

- reasonably expect to find there, for the purpose of making an informed assessment of—
- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
 - (b) the rights attaching to those securities.
- (2) The information to be included by virtue of this section shall be such information as is mentioned in subsection (1) above which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.
- (3) In determining what information is required to be included in a prospectus by virtue of this section regard shall be had—
- (a) to the nature of the securities and of the issuer of the securities;
 - (b) to the nature of the persons likely to consider their acquisition;
 - (c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind which those persons may reasonably be expected to consult; and
 - (d) to any information available to investors or their professional advisers by virtue of any enactment or by virtue of requirements imposed by a recognised investment exchange for the purpose of complying with paragraph 2(2)(b) of Schedule 4 to this Act.

164 Supplementary prospectus

- (1) Where a prospectus has been registered under this Part of this Act in respect of an offer of securities and at any time while an agreement in respect of those securities can be entered into in pursuance of that offer—
- (a) there is a significant change affecting any matter contained in the prospectus whose inclusion was required by rules applying to it by virtue of section 162 above or by section 163 above ; or
 - (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared,
- the person who delivered the prospectus for registration to the registrar of companies shall deliver to him for registration a supplementary prospectus containing particulars of the change or new matter.
- (2) In subsection (1) above " significant " means significant for the purpose of making an informed assessment of the matters mentioned in section 163(1) above.
- (3) Where the person who delivered the prospectus for registration is not aware of the change or new matter in question he shall not be under any duty to comply with subsection (1) above unless he is notified of it by a person responsible for the prospectus ; but any person responsible for the prospectus who is aware of such a matter shall be under a duty to give him notice of it.
- (4) Subsection (1) above applies also as respects matters contained in a supplementary prospectus previously registered under this section in respect of the securities in question.

165 Exemptions from disclosure

- (1) If in the case of any approved exchange the Secretary of State so directs, the exchange shall have power to authorise the omission from a prospectus or supplementary prospectus of any information the inclusion of which would otherwise be required by section 163 above—
 - (a) on the ground that its disclosure would be contrary to the public interest;
 - (b) subject to subsection (2) below, on the ground that its disclosure would be seriously detrimental to the issuer of the securities; or
 - (c) in the case of securities which fall within paragraph 2 of Schedule 1 to this Act and are of any class specified by the rules of the exchange, on the ground that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in the securities.
- (2) No authority shall be granted under subsection (1)(6) above in respect of, and no such authority shall be regarded as extending to, information the non-disclosure of which would be likely to mislead a person considering the acquisition of the securities as to any facts the knowledge of which it is essential for him to have in order to make an informed assessment.
- (3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in a prospectus or supplementary prospectus for which they are themselves responsible) would be contrary to the public interest and the exchange shall be entitled to act on any such certificate in exercising its powers under subsection (1)(a) above.

166 Compensation for false or misleading prospectus

- (1) Subject to section 167 below, the person or persons responsible for a prospectus or supplementary prospectus shall be liable to pay compensation to any person who has acquired the securities to which the prospectus relates and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by section 163 or 164 above.
- (2) Where rules applicable to a prospectus by virtue of section 162 above require it to include information as to any particular matter on the basis that the prospectus must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the prospectus of the information shall be treated for the purpose of subsection (1) above as a statement that there is no such matter.
- (3) Subject to section 167 below, a person who fails to comply with section 164 above shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.
- (4) This section does not affect any liability which any person may incur apart from this section.
- (5) References in this section to the acquisition by any person of securities include references to his contracting to acquire them or an interest in them.

167 Exemption from liability to pay compensation

- (1) A person shall not incur any liability under section 166(1) above for any loss in respect of securities caused by any such statement or omission as is there mentioned if he

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satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and—

- (a) that he continued in that belief until the time when the securities were acquired ; or
- (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the securities in question ; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons ; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused;

but paragraph (d) above does not apply where the securities are dealt in on an approved exchange unless he satisfies the court that he continued in that belief until after the commencement of dealings in the securities on that exchange.

- (2) A person shall not incur any liability under section 166(1) above for any loss in respect of securities caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the prospectus or supplementary prospectus with that other person's consent if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and—

- (a) that he continued in that belief until the time when the securities were acquired ; or
- (b) that they were acquired before it was reasonably practicable to bring the fact that the expert was not competent or had not consented to the attention of persons likely to acquire the securities in question ; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons ; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused;

but paragraph (d) above does not apply where the securities are dealt in on an approved exchange unless he satisfies the court that he continued in that belief until after the commencement of dealings in the securities on that exchange.

- (3) Without prejudice to subsections (1) and (2) above, a person shall not incur any liability under section 166(1) above for any loss in respect of any securities caused by any such statement or omission as is there mentioned if he satisfies the court—

- (a) that before the securities were acquired a correction or, where the statement was such as is mentioned in subsection (2) above, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities in question; or
- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

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- (4) A person shall not incur any liability under section 166(1) above for any loss resulting from a statement made by an official person or contained in a public official document which is included in the prospectus or supplementary prospectus if he satisfies the court that the statement is accurately and fairly reproduced.
- (5) A person shall not incur any liability under section 166(1) or (3) above if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge that the statement was false or misleading, of the omitted matter or of the change or new matter, as the case may be.
- (6) A person shall not incur any liability under section 166(3) above if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for a supplementary prospectus.
- (7) In this section " expert" includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

168 Persons responsible for prospectus

- (1) For the purposes of this Part of this Act the persons responsible for a prospectus or supplementary prospectus are—
 - (a) the issuer of the securities to which the prospectus or supplementary prospectus relates;
 - (b) where the issuer is a body corporate, each person who is a director of that body at the time when the prospectus or supplementary prospectus is delivered for registration;
 - (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body either immediately or at a future time ;
 - (d) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
 - (e) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus.
- (2) A person is not responsible under subsection (1)(a), (b) or (c) above unless the issuer has made or authorised the offer in relation to which the prospectus or supplementary prospectus was delivered for registration; and a person is not responsible for a prospectus or supplementary prospectus by virtue of subsection (1)(b) above if it is delivered for registration without his knowledge or consent and on becoming aware of its delivery he forthwith gives reasonable public notice that it was delivered without his knowledge or consent.
- (3) Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus he is responsible under subsection (1) (d) or (e) above for only that part and only if it is included in (or substantially in) the form and context to which he has agreed.

- (4) Where a prospectus or supplementary prospectus relates to securities which are to be issued in connection with an offer by (or by a wholly-owned subsidiary of) the issuer for, or an agreement for the acquisition by (or by a wholly-owned subsidiary of) the issuer of, securities issued by another person or in connection with any arrangement whereby the whole of the undertaking of another person is to become the undertaking of the issuer (of a wholly-owned subsidiary of the issuer or of a body corporate which will become such a subsidiary by virtue of the arrangement) then if—
- (a) that other person; and
 - (b) where that other person is a body corporate, each person who is a director of that body at the time when the prospectus or supplementary prospectus is delivered for registration and each other person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director of that body,
- is responsible by virtue of paragraph (d) of subsection (1) above for any part of the prospectus or supplementary prospectus relating to that other person or to the securities or undertaking to which the offer, agreement or arrangement relates, no person shall be responsible for that part under paragraph (a), (b) or (c) of that subsection but without prejudice to his being responsible under paragraph (d).
- (5) Neither paragraph (b) nor paragraph (c) of subsection (1) above nor paragraph (b) of subsection (4) above applies in the case of any director if the prospectus or supplementary prospectus is subject to the rules of an approved exchange by virtue of section 162(3) above and he is certified by the exchange as a person to whom that paragraph should not apply by reason of his having an interest, or of any other circumstances, making it inappropriate for him to be responsible by virtue of that paragraph.
- (6) In this section " wholly-owned subsidiary ", in relation to a person other than a body corporate, means any body corporate that would be his wholly-owned subsidiary if he were a body corporate.
- (7) Nothing in this section shall be construed as making a person responsible for any prospectus or supplementary prospectus by reason only of giving advice as to its contents in a professional capacity.
- (8) Where by virtue of this section the issuer of any shares pays or is liable to pay compensation under section 166 above for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription for those shares or as to the amount paid up or deemed to be paid up on them.

169 Terms and implementation of offer

- (1) The Secretary of State may make rules—
- (a) regulating the terms on which a person may offer securities by an advertisement to which this Part of this Act applies; and
 - (b) otherwise regulating his conduct with a view to ensuring that the persons to whom the offer is addressed are treated equally and fairly.
- (2) Rules under this section may, in particular, make provision with respect to the giving of priority as between persons to whom an offer is made and with respect to the payment of commissions.

(3) Section 162(2) above shall apply also to rules made under this section.

170 Advertisements by private companies and old public companies

- (1) No private company and no old public company shall issue or cause to be issued in the United Kingdom any advertisement offering securities to be issued by that company.
- (2) Subsection (1) above shall not apply to an advertisement issued in such circumstances as may be specified by an order made by the Secretary of State for the purpose of exempting from that subsection such advertisements as are mentioned in section 160(6)(a), (b) or (c) above.
- (3) An order under subsection (2) above may require any person who by virtue of the order is authorised to issue an advertisement to comply with such requirements as are specified in the order.
- (4) An order under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament
- (5) In this section " old public company " has the meaning given in section 1 of the Companies Consolidation (Consequential Provisions) Act 1985 or the corresponding Northern Ireland provision.

171 Contraventions

- (1) An authorised person who—
 - (a) contravenes section 159 or 160 above or rules made under section 169 above ;
 - (b) contravenes any requirement imposed by an order under section 160(6) or (7) or 170 above ; or
 - (c) on behalf of a company issues or causes to be issued an advertisement which that company is prohibited from issuing by section 170 above,shall be treated as having contravened rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.
- (2) Section 57 above shall apply to a company which issues or causes to be issued an advertisement in contravention of section 170 above as it applies to a person who issues an advertisement in contravention of that section.
- (3) A person, other than an authorised person, who contravenes section 159 or 160, the rules made under section 169 or any requirement imposed by an order under section 160(6) or (7) or 170 above shall be guilty of an offence and liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) A person who in the ordinary course of a business other than investment business issues an advertisement to the order of another person shall not be guilty of an offence under subsection (3) above in respect of a contravention of section 159 or 160 above if he proves that he believed on reasonable grounds that neither section 159 nor

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section 160 above applied to the advertisement or that one of those sections had been complied with in respect of the advertisement.

- (5) Without prejudice to any liability under section 166 above, a person shall not be regarded as having contravened section 159 or 160 above by reason only of a prospectus not having fully complied with the requirements of this Part of this Act as to its form and content.
- (6) Any contravention to which this section applies shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.