

342. Dating of prospectus and particulars to be contained therein

- (1) Subject to section 342A, it shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong unless the prospectus is dated (which date shall, unless the contrary is proved, be taken as the date of publication of the prospectus) and — (*Amended 86 of 1992 s. 12; 30 of 2004 s. 2*)
- (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 Hong Kong where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English or Chinese a translation thereof in English or Chinese certified in the prescribed manner, can be inspected; (*Amended 83 of 1995 s. 19*)
 - (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 Hong Kong, and, if so, the address of its principal office in Hong Kong;
- (b) subject to the provisions of this section, is either in the English language and contains a Chinese translation or in the Chinese language and contains an English translation, and states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule: (*Amended 83 of 1995 s. 19*)

Provided that the provisions of paragraph (a)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of this subsection, paragraph 5 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company. (*Amended 6 of 1984 s. 259*)

- (2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of subsection (1)(a) or (b), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (2A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 2 of the Eighteenth Schedule. (*Added 30 of 2004 s. 2*)
- (3) Subject to section 342A, it shall not be lawful for any person to issue to any person in Hong Kong a form of application for shares in or debentures of such a company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in Hong Kong does not contravene the provisions of section 342B: (*Amended 6 of 1984 s. 259; 86 of 1992 s. 12*)

Provided that this subsection shall not apply if it is shown that the form of application was issued— (*Amended 30 of 2004 s. 2*)

- (a) in connexion with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; (*Amended 30 of 2004 s. 2*)
- (b) in relation to shares or debentures which were not offered to the public; or (*Amended 30 of 2004 s. 2*)

- (c) in connexion with an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (*Added 30 of 2004 s. 2*)
- (4) In the event of non-compliance with or contravention of any of the requirements imposed by subsection (1)(a) and (b), 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 19 of the Third Schedule, 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 shall not apply—
 - (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 a 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 recognized stock market; (*Amended 6 of 1984 s. 259; 10 of 1987 s. 11; 5 of 2002 s. 407*)

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

- (6) Nothing in this section shall limit or diminish any liability which any person may incur under— (*Amended 28 of 2012 ss. 912 & 920*)
 - (a) the general law;
 - (b) the provisions of the pre-amended Ordinance having a continuing effect under Schedule 11 to the Companies Ordinance (Cap. 622) or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1);
 - (c) this Ordinance apart from this section; or
 - (d) the Companies Ordinance (Cap. 622). (*Amended 28 of 2012 ss. 912 & 920*)
- (7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong. (*Added 30 of 2004 s. 2*)
- (8) In subsection (7), **guarantor corporation** (提供擔保的法團), in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong, means a corporation that guarantees or agrees to guarantee—
 - (a) the repayment of any money received or to be received by the company in response to the offer or invitation;
 - (b) any other obligations of the company under or in respect of the debentures; or
 - (c) in favour of the company any amount—
 - (i) to which the company is entitled; and

- (ii) receipt of which, as stated in the prospectus concerned, is intended to enable the company to wholly or partly discharge any of its obligations under or in respect of the debentures. *(Added 30 of 2004 s. 2)*

(Replaced 78 of 1972 s. 18)

[cf. 1948 c. 38 s. 417 U.K.]