

38. Specific requirements as to particulars in prospectus

- (1) Subject to the provisions of section 38A, every prospectus issued by or on behalf of a company must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation, and must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule. *(Replaced 78 of 1972 s. 5. Amended 83 of 1995 s. 5)*
- (1A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 1 of the Eighteenth Schedule. *(Added 78 of 1972 s. 5. Amended 83 of 1995 s. 5; 23 of 2004 s. 56; 30 of 2004 s. 2)*
- (1B) If any prospectus is issued which does not comply with or contravenes the requirements of subsections (1) and (1A), the company and every person who is knowingly a party to the issue thereof shall be liable to a fine. *(Added 78 of 1972 s. 5. Amended 7 of 1990 s. 2)*
- (2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.
- (3) Subject to the provisions of section 38A, it shall not be lawful 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: *(Amended 78 of 1972 s. 5)*
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;
 - (b) in relation to shares or debentures which were not offered to the public; or
 - (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)*
- If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine. *(Amended 6 of 1984 s. 259; 7 of 1990 s. 2; 30 of 2004 s. 2)*
- (3A) This section shall not prevent the publication of the English version only of a prospectus in an English language newspaper or the Chinese version only in a Chinese language newspaper, nor the publication in such newspaper together with the prospectus of a form of application relating thereto. *(Added 6 of 1984 s. 22)*
- (4) In the event of non-compliance with or contravention of any of the requirements of this section, 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 was 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 specified in paragraph 19 of Part I 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. (*Amended 78 of 1972 s. 5*)

(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 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 a form of application whether issued on the formation of a company or subsequently. (*Replaced 78 of 1972 s. 5*)

(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. (*Replaced 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, 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*)

[*cf. 1929 c. 23 s. 35 U.K.*]