

41. Document containing offer of shares or debentures for sale to be deemed prospectus

- (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and 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, shall 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, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Ordinance, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures 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.
- (3) Section 38D as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 38 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
 - (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 the said shares or debentures have been or are to be allotted, or a copy thereof, may be inspected. (*Amended 78 of 1972 s. 9*)
- (4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by 2 directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

[cf. 1929 c. 23 s. 38 U.K.]