

COMPANY LAW ADVISORY COMMITTEE
INCLUSION IN PROSPECTUS OF PERSONAL DETAILS
RELATING TO STAFF
MEMORANDUM FOR STANDING COMMITTEE OF ATTORNEYS-GENERAL

1. In its Fifth Report, the Company Law Advisory Committee recommends that personal particulars should be given in a prospectus of the names address and ages of at least five employees of the company and a brief statement of their business experience (see Report paragraph 70 and Appendix "A", 5th Schedule, clause 6)

2. In their comments on this recommendation, the officers said:

"Whilst it is unlikely that a company would give details of its junior employees, cases will arise where advantage will be taken of the absence of any criteria to be applied in the selection, to omit details of a person whose association with the company in some office short of directorship may by reason of his past history be of interest to prospective investors.

The Standing Committee may wish to invite the Eggleston Committee to comment on the suggestion that if some provision such as has been proposed is to be included in the Act it should require disclosure of details in relation to persons holding managerial or secretarial positions or any position where there is a direct connecting link by way of delegation from the Board or from an Executive Committee of the Board.

The officers suggest the Ministers may see some advantage in extending disclosure along the lines recommended by the Committee to any company with whom the issuing company has entered into an agreement for the management of the whole or a substantial part of the issuing company's business."

These comments involve two separate ideas:

(a) that the recommendation made by us is so framed that it may enable the company to avoid disclosure of the fact that a particular person is associated with the company in a managerial capacity;

(b) that the obligation of disclosure should be extended to cover cases in which an arrangement has been made for another

company to manage the business of the company issuing the prospectus.

As to (a), the object of the recommendation was to create a situation in which the company would, in effect, have to show that it had staff of sufficient capacity to handle the type of venture in which it was proposing to engage. It was not designed to ascertain whether any of the managerial staff had criminal records or other discreditable histories. The Act provides that undischarged bankrupts and persons convicted of certain offences are debarred from taking part in the management of companies (sections 117, 122). To compel disclosure of the names of all managerial staff might have the practical effect of extending this prohibition to persons convicted of other offences: since a company might well hesitate to employ such a person in a managerial capacity. At all events, the proposal made by the officers rather reverses the emphasis of our recommendation. We were concerned to provide an answer to the question "Does this company employ persons who are competent to carry on the proposed business?" The proposal of the officers seems designed principally to provide an answer to the question "Is this company employing someone whose past record shows that he is not to be trusted?" To give effect to such a policy it would be necessary to require disclosure not merely of past business experience, but of past misconduct. It would, however, be fairly easy to avoid such a requirement; dishonest promoters would so arrange the employment of staff that those whose past records might cause embarrassment would be relieved of any managerial duties during the currency of the prospectus. There are, moreover, severe practical difficulties in defining what are "managerial" positions, which, particularly in large organizations, can extend well down the line in the management hierarchy.

5. As to (b) somewhat the same considerations apply as apply to the first point. Our object in recommending the disclosure was not so much to detect criminals as to enable the investor to judge whether the company had employees possessing the requisite skill and experience. If they have arranged for another company to manage their affairs, they will presumably be unable to muster enough skilled staff of their own to make a reasonable showing under the requirement to give details of five people in their employ, and they will virtually be compelled to go into detail regarding the staff of the management company. If they do not, at least the investor is warned that the company which is seeking his money does not have any experienced staff of its own.

6. In order to extend the requirement in the way suggested by the officers, it would be necessary to cover not only management agreements, but those under which the company pays fees to consultants, or employs a management company which in turn pays fees to consultants. Unless we are to erect an extremely complicated structure of the same kind as that relating to substantial shareholdings, evasion of the requirement will be easy. But, as we have said above, our aim is not to insist on disclosure which will require the company to disclose any known swindlers on its payroll, but to put every company in a position in which it has to give such details of its staff that it will be unwilling to go to the public unless it is in a position to show that it has experienced personnel available to it. If it cannot do this the investor will be warned of the inadequacy.

7. For these reasons, we do not recommend the extension of the provision in question to cover the matters suggested by the officers ' memorandum.

8. This is not to say that disclosure as to management contracts may not in some circumstances be important. Such a contract would normally be a material contract requiring disclosure in the prospectus, in the case of mutual funds, we will have to consider whether special provision for disclosing the remuneration of management companies and consultants should be included. In considering the duties and responsibilities of directors, we shall also give consideration to the question whether an agreement committing the management of the whole or substantially the whole of the company's business to another company or to individuals should require the approval of a general meeting.

R. M. EGGLESTON

Chairman
Company Law Advisory Committee.

22nd June 1971.