

COMPANY LAW ADVISORY COMMITTEE

VARIATION OF INTEREST RATES IN PROSPECTUSES

1. This paper raises the question whether a company that has issued a prospectus should be permitted to amend the prospectus by substituting a different rate of interest for that stated in the prospectus, without re-submitting the prospectus for the approval of the Registrar.

2. At the present time there is no provision for the amendment of a prospectus in this way, and although it is stated that the Registrars have acquiesced in this practice, the distribution of a prospectus so altered would seem to be a breach of the Act.

3. So far as the statutory requirements are concerned, there would not appear to be any information that must be given in the prospectus that would be affected by a change in the rate of interest. There may, however, be information in the prospectus which would become inaccurate if the interest rate were altered. The obvious example is a statement of the interest cover provided by the present earnings of the company, but other examples could be given, such as estimates of the future profitability of the company or of its ability to earn profits on the money proposed to be borrowed.

4. Under the proposals contained in our Fifth Report, clause 45(3) of the Fifth Schedule requires that in the case of debentures or debenture stock, a statement of interest cover shall be included. If the interest rate were altered, this statement would of course need amendment.

5. The amendments required, however, may be much more extensive. If we take the case of a new company, formed to conduct some enterprise on the basis that part of its funds will be obtained from a share issue, and part from borrowing from debenture holders, the prospectus may well contain reports by experts expressing their opinion that the proposition is a viable one. If the rate of interest on the debentures is increased (and the need for this may arise from a poor reception for the debentures, rather than an increase in general interest rates) the views of the experts will be of no value, but they could hardly be liable to those who subscribe on the faith of the altered prospectus. In such a case, it would seem to be necessary to procure fresh consents

from all those whose consents were given to the original prospectus. It would also be necessary to require the directors to make a fresh statement in terms of paragraphs (a), (b) and (c) of clause 35 of our draft of the Fifth Schedule, and to enact some provision to ensure that the civil and criminal liability of the persons referred to in Section 46 of our draft was the same as if the altered prospectus were an original prospectus. Finally, the safeguard provided by section 42(2A) should be preserved. This means, in effect, that the same procedure should be gone through as if a new prospectus were being approved.

6. It does not seem possible to lay down in advance the circumstances in which a change in the rate of interest would leave other parts of the prospectus unaffected. For this reason, the Registrars would have to be free to exercise a discretion as to whether an amendment of the prospectus would be permitted, or whether the company or the promoters should be required to start afresh.

7. The foregoing are some of the difficulties that we can envisage. If Ministers feel that the attempt should be made to evolve a system which would enable copies of the original prospectus to be used, while maintaining the safeguards to which we have referred, the Committee will give the matter further consideration.

Chairman,

Company Law Advisory Committee.

26th October 1971.