



**ENTREPRENEURIAL
BUSINESS LAWYERS**

Business Plan Warnings

Unauthorised financial promotions (i.e. Business Plans which do not meet the requirements of the Prospectus Regulations) may be distributed to certain prescribed categories of investor provided that the individual circulating the Business Plan has reasonable grounds for believing that the persons to which the Business Plan is being circulated falls within one of the prescribed categories, and they contain a “health warning” in the following terms:

Warning: The content of this promotion has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on this promotion for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.

The warning must (a) be given at the beginning of the Business Plan; (b) precede any other written or pictorial matter; (c) be in a font size consistent with the text forming the remainder of the Business Plan; (d) be indelible; (e) be legible; (f) be printed in black, bold type; (g) be surrounded by a black border which does not interfere with the text of the warning; and (h) not be hidden, obscured or interrupted by any other written or pictorial matter.

There are a number of categories of exempt

persons to whom unauthorised financial promotions may be sent but most frequently relied upon are “Certified High Net Worth Individuals” and “Self-certified Sophisticated Investors”. In addition to the warning noted above, when relying on these exemptions, Business Plans must also be accompanied by wording which makes clear that:

(i) that the communication is exempt from the general restriction on communication of invitations or inducements to engage in investment activity on the ground that it is being communicated to a High Net Worth Individual or Self-certified Sophisticated Investor (as appropriate); (ii) the requirements that must be met in order to qualify as either a high net worth individual or self-certified sophisticated investor and (iii) that any individual who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

It should be noted that where any communication of invitations or inducements to engage in investment activity is made (ie not just in a written Business Plan, but for example in a “pitch” to prospective investors), the same warning must be made and accompanied by

the same indications. Where it is not reasonably practicable to accompany such a communication with the above warning, the warning must be given orally together with an indication that the recipient will receive the warning in legible form and that, before receipt of that warning, that person should consider carefully any decision to engage in investment activity to which the communication relates. This follow-up warning must be provided within 2 business days and the wording in the follow-up warning would need to be amended slightly so that the relevant financial promotion is clearly referred to.

The following form the basis of the certificates that are signed by investors.

Definition of Certified High Net Worth

Individual: *an individual who has signed (within the 12 months ending on the day on which the communication is made) a certificate to the effect that at least one of the following applies:-*

- (a) *the recipient had, during the financial year immediately preceding the date of certification, an annual income to the value of £100,000 or more; or*
- (b) *the recipient held, throughout the financial year immediately preceding the date of certification, net assets to the value of £250,000 or more.*

“Net assets” for these purposes do not include:-

- (i) property which is a primary residence or any loan secured on that residence; (ii) any rights under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of service or on death or retirement and to which the relevant individual (or his/her dependents are), or may be, entitled.*

Definition of Self-certified Sophisticated

Investor: *an individual who has signed (within the 12 months ending on the day on which the communication is made) a certificate to the effect that at least one of the following applies:-*

- (a) *the recipient is a member of a network or syndicate of business angels and has been so for at least the last six months prior to the date of certification;*
- (b) *the recipient has made more than one investment in an unlisted company in the two years prior to the date of certification;*
- (c) *the recipient works, or has worked in the two years prior to the date of certification, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;*
- (d) *the recipient is currently, or has been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.*

In the event that you are unsure of whether or not an individual has signed such a certificate, a certificate in the form prescribed by the statute should be included with any Business Plan sent. MBM Commercial can provide template certificates for this purpose, together with accompanying explanatory notes for their valid completion.

Unauthorised financial promotion is a criminal offence (under the provisions of Section 21 of the Financial Services and Markets Act 2000 (“FSMA”)) which carries a custodial sentence and it is therefore important to observe these provisions carefully. It should also be noted that the parties responsible for the Business Plan remain liable under the provisions of

Section 397 of the FSMA (for false and misleading statements and practices) and should therefore take care to ensure that the document is accurate and complete. A breach of Section 397 also carries a custodial sentence.

While all reasonable care has been taken in the preparation of this guide, no responsibility is accepted by MBM Commercial LLP for any errors it may contain, whether caused by negligence or otherwise, or for any loss, howsoever caused, occasioned to any person by reliance on it. Individual advice should be sought before considering any of the matters detailed in this guide.

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