

MBM COMMERCIAL LLP

**BRIEFING NOTE - BUSINESS PLAN WARNINGS**

With effect from 3<sup>rd</sup> March 2005 unauthorised financial promotions (ie Business Plans which do not meet the requirements of the Prospectus Regulations) may be distributed to certain prescribed categories of investor provided they contain a “health warning” in the following terms and which meet the following requirements:

**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.

The Business Plan must also be accompanied by a number of prescribed statements (see our style of health warning for use on Business Plans which also sets out the prescribed categories of investor).

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.

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.

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**For further details please contact Sandy Finlayson or Stuart Hendry at MBM Commercial LLP (tel: 0845 408 5453).**

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.