

LL.B IV SEMESTER

SUBJECT- COMPANY LAW 2013

TOPIC- PROSPECTUS

PROSPECTUS:

Section 2(70) of the Companies Act, 2013 defines a prospectus as ““A prospectus means Any documents described or issued as a prospectus and includes any notices, circular, advertisement, or other documents inviting deposit from the public or documents inviting offer from the public for the subscription of shares or debentures in a company.” A prospectus also includes shelf prospectus and red herring prospectus. A prospectus is not merely an advertisement.

A document shall be called a prospectus if it satisfy two things:

1. It invites subscription to shares or debentures or invites deposits.
2. The aforesaid invitation is made to the public.

CONTENTS OF A PROSPECTUS:

1. Address of the registered office of the company.
2. Name and address of company secretary, auditors, bankers, underwriters etc.
3. Dates of the opening and closing of the issue.
4. Declaration about the issue of allotment letters and refunds within the prescribed time.
5. A statement by the board of directors about the separate bank account where all monies received out of shares issued are to be transferred.
6. Details about underwriting of the issue.
7. Consent of directors, auditors, bankers to the issue, expert's opinion if any.
8. The authority for the issue and the details of the resolution passed therefore.
9. Procedure and time schedule for allotment and issue of securities.
10. Capital structure of the company.
11. Main objects and present business of the company and its location.
12. Main object of public offer and terms of the present issue.

13. Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash.

14. Details of directors including their appointment and remuneration.

15. Disclosure about sources of promoter's contribution.

16. Particulars relation to management perception of risk factors specific to the project, gestation period of the project, extent of progress made in the project and deadlines for completion of the project.

VARIOUS CATEGORIES OF PROSPECTUS

(1)SHELF PROSPECTUS

Shelf prospectus can be defined as a prospectus that has been issued by any public financial institution, company or bank for one or more issues of securities or class of securities as mentioned in the prospectus. When a shelf prospectus is issued then the issuer does not need to issue a separate prospectus for each offering he can offer or sell securities without issuing any further prospectus. The provisions related to shelf prospectus has been discussed under *section 31 of the Companies Act, 2013*.

The regulations are to be provided by the Securities and Exchange Board of India for any class or classes of companies that may file a shelf prospectus at the stage of the first offer of securities to the registrar. The prospectus shall prescribe the validity period of the prospectus and it should be not be exceeding one year. This period commences from the opening date of the first offer of the securities. For any second or further offer, no separate prospectus is required. While filing for a shelf prospectus, a company is required to file an information memorandum along with it.

Information Memorandum [Section 31(2)] .The company which is filing a shelf prospectus is required to file the information memorandum. It should contain all the facts regarding the new charges created, what changes have undergone in the financial position of the company since the first offer of the security or between the two offers.

It should be filed with the registrar within three months before the issue of the second or subsequent offer made under the shelf prospectus as given under *Rule 4CCA of section 60A(3) under the Companies (Central Government's) General Rules and Forms, 1956.*

When any company or a person has received an application for the allotment of securities with advance payment of subscription before any changes have been made, then he must be informed about the changes. If he desires to withdraw the application within 15 days then the money must be refunded to them. After the information memorandum has been filed, if any offer or securities is made, the memorandum along with the shelf prospectus is considered as a prospectus.

(2)RED HERRING PROSPECTUS

Red herring prospectus is the prospectus which lacks the complete particulars about the quantum of the price of the securities. A company may issue a red herring prospectus **prior to the issue of prospectus** when it is proposing to make an offer of securities. This type of prospectus needs to be filed with the registrar at least three days prior to the opening of the subscription list or the offer. The obligations carried by a red herring prospectus are same as a prospectus. If there is any variation between a red herring prospectus and a prospectus then it should be highlighted in the prospectus as variations. When the offer of securities closes then the prospectus has to state the total capital raised either raised by the way of debt or share capital. It also has to state the closing price of the securities. Any other details which have not been included in the prospectus need to be registered with the registrar and SEBI.

The applicant or subscriber has right under **Section 60B(7)** to withdraw the application on any intimation of variation within 7 days of such intimation and the withdrawal should be communicated in writing.

(3)ABRIDGED PROSPECTUS

The abridged prospectus is a summary of a prospectus filed before the registrar. It contains all the features of a prospectus. An abridged prospectus contains all the

information of the prospectus in brief so that it should be convenient and quick for an investor to know all the useful information in short.

Section 33(1) of the Companies Act, 2013 also states that when any form for the purchase of securities of a company is issued, it must be accompanied by an abridged prospectus.

It contains all the useful and materialistic information so that the investor can take a rational decision and it also reduces the cost of public issue of the capital as it is a short form of a prospectus.

(4)DEEMED PROSPECTUS

A deemed prospectus has been stated under **section 25(1) of the Companies Act, 2013**. When any company to offer securities for sale to the public, allots or agrees to allot securities, the document will be considered as a deemed prospectus through which the offer is made to the public for sale. The document is deemed to be a prospectus of a company for all purposes and all the provision of content and liabilities of a prospectus will be applied upon it.

In the case of **SEBI v. Kunnamkulam Paper Mills Ltd.**, it was held by the court that where a rights issue is made to the existing members with a right to renounce in the favour of others, it becomes a deemed prospectus if the number of such others exceeds fifty.

LEGAL REQUIREMENT REGARDING ISSUE OF PROSPECTUS: (SEC. 26)

The Companies Act has defined some legal requirements about the issue and registration of a prospectus. The issue of the prospectus would be deemed to be legal only if the requirements are met.

1. Issue After The Incorporation: As a rule, the prospectus of a company can only be issued after its incorporation. A prospectus issued by, or on behalf of a company, or in relation to an intended company, shall be dated, and that date shall be taken as the date of publication of the prospectus.

2. Registration Of Prospectus: it is mandatory to get the prospectus registered with the Registrar of Companies before it is issued to the public. The procedure of getting the prospectus registered is as under:

A. A copy of the prospectus, duly signed by every person who is named therein as a director or a proposed director of the company must be filed with Registrar of Companies before the prospectus is issued to the public.

B. The following document must be attached thereto:

i) Consent to the issue of the prospectus required under any person as an expert confirming his written consent to the issue thereof, and that he has not withdrawn his consent as aforesaid appears in the prospectus.

ii) Copies of all contracts entered into with respect to the appointment of the managing director, directors and other officers of the company must also be filed with Registrar.

iii) If the auditor or accountant of the company has made any adjustments in the company's account, the said adjustments and the reasons thereof must be filed with the documents.

iv) There must be a copy of the application which is to be filled for the issue of the company's shares and debentures attached with the prospectus.

v) The prospectus must have the written consent of all the persons who have been named as auditors, solicitors, bankers, brokers, etc.

C. Every prospectus must have, on the face of it, a statement that:

i) A copy of the prospectus has been delivered to the Registrar for registration.

ii) Specifies that any documents required to be endorsed by this section have been delivered to the Registrar.

D. A copy of the prospectus must be filed with the Registrar of Companies.

E. According to the Section 26, no prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration.

If a prospectus issued in contravention of the above -stated provisions, then the company and every person who knows a party to the issue of the prospectus shall be punishable with a fine.

MISLEADING PROSPECTUS OR MIS-STATEMENT IN PROSPECTUS:

A prospectus is said to be misleading or untrue in two following cases:

1. A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included.
2. Omission from prospectus of any matter to mislead the investors.

CRIMINAL LIABILITY FOR MIS-STATEMENT IN PROSPECTUS (SECTION 34):

Where a prospectus, issued, circulated or distributed:

1. includes any statement which is untrue or misleading in form or context in which it is included; or
2. where any inclusion or omission of any matter is likely to mislead;

Every person who authorises the issue of such prospectus shall be liable under section 447 i.e. fraud.

DEFENCES AVAILABLE IN THIS SECTION ARE:

1. Person prove that statement or omission was immaterial;
2. Person has reasonable ground to believe and did believe that statement was true; or
3. Person has reasonable ground to believe and did believe that the inclusion or omission was necessary.

CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS (SECTION 35):

Where a person has subscribed for securities of a company acting upon any misleading statement, inclusion or omission and has sustained any loss or damage as its consequence, the company and every person who:

1. is a director at the time of the issue of prospectus;
2. has named as director or as proposed director with his consent;
3. is a promoter of the company;
4. has authorised the issue of the prospectus; and
5. is an expert;

shall be liable to pay compensation to effected person. This civil liability shall be in addition to the criminal liability under section 36. Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person shall be personally responsible, without any limitation of liability, for all or any of

the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.