

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. Statement in lieu of Prospectus: A public company, which does not raise its capital by public issue, need not issue a prospectus. In such a case a statement in lieu of prospectus must be filed with the Registrar 3 days before the allotment of shares or debentures is made. It should be dated and signed by each director or proposed director and should contain the same particulars as are required in case of prospectus proper.

2. Deemed Prospectus: Section 25 of the companies Act, 2013 provides that all documents containing offer of shares or debentures for sale shall be included within the definition of the term prospectus and shall be deemed as prospectus by implication of law.

Unless the contrary is proved an allotment of or an agreement to allot shares or debentures shall be deemed to have been made with a view to the shares or debentures being offered for sale to the public if it is shown

- a. That the offer of the shares or debentures of or any of them for sale to the public was made within 6 month after the allotment or agreement to allot; or
- b. That at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been received by it.

All enactments and rules of law as to the contents of prospectus shall apply to deemed prospectus.

3. Abridged Prospectus [Sec. 2(1)]: Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf. No form of application for the purchase of any of the securities of a company shall be

issued unless such form is accompanied by an abridged prospectus. A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

Legal requirement regarding issue of prospectus: (Sec. 26 of the Companies Act, 2013)

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.

Defences under this section are:

1. he has withdrawn his consent or never give his consent;
2. the prospectus was issued without his knowledge or consent and when he become aware, gave a reasonable public notice that prospectus was issued without his knowledge or consent.