

Corporate Law

Prospectus and Share Capital

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Meaning of Prospectus

According to **Section 2(70)** of the Companies Act, 2013:

“Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.”

Key Points

- ▶ It is an **invitation to the public**
- ▶ Issued by a **public company**
- ▶ Purpose is to **raise capital**
- ▶ Must contain **true and correct information**

Objectives of Issuing a Prospectus

- To invite the public to subscribe for shares or debentures
- To provide **material information** about the company
- To ensure **transparency and investor protection**
- To comply with **legal requirements**

Types of Prospectus

1. Red Herring Prospectus (Section 32)

- ▶ Issued before final price is fixed
- ▶ Does **not contain complete details**
- ▶ Common in IPOs

2. Shelf Prospectus (Section 31)

- ▶ Valid for **one year**
- ▶ Company can issue securities in **multiple tranches**
- ▶ Mainly used by **financial institutions**

3. Deemed Prospectus (Section 25)

- ▶ Issued by intermediaries
- ▶ Company allots shares to intermediaries who sell to public

4. Abridged Prospectus (Section 2(1))

- ▶ A summarized version
- ▶ Must accompany application forms

Contents of a Prospectus

A. General Information

- ▶ Name and address of company
- ▶ Registered office
- ▶ Object of the company
- ▶ Date of incorporation

B. Capital Structure

- ▶ Authorized, issued, subscribed capital
- ▶ Details of shares and debentures


C. Management Details

- ▶ Names of directors
- ▶ Managing director / CEO

D. Financial Information

- ▶ Profit & loss account
- ▶ Auditor's report
- ▶ Previous financial results

E. Other Disclosures

- ▶ Pending litigation
 - ▶ Underwriting details
 - ▶ Minimum subscription
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Statement in Lieu of Prospectus

Meaning

A document filed when a public company:

- ▶ Does **not invite public subscription**
- ▶ Issues shares privately
- ▶ **Legal Provision**
- ▶ Section 26(1)

Misstatement in Prospectus

Meaning

Any:

- ▶ False statement
- ▶ Misleading statement
- ▶ Omission of material facts

Liability for Misstatement

A. Civil Liability (Section 35)

- ▶ Persons liable:
- ▶ Directors
- ▶ Promoters

▶ Experts

▶ Remedies:

▶ Compensation for loss

▶ Rescission of contract

B. Criminal Liability (Section 34)

▶ Punishment:

▶ Imprisonment up to **10 years**

▶ Fine up to **₹3 lakh**



Defences Available

A person is not liable if:

- ▶ Statement was immaterial
- ▶ He withdrew consent
- ▶ He had reasonable grounds to believe it was true
- ▶ **Important Case Laws (Prospectus)**
- ▶ **New Brunswick Railway Co. v. Muggeridge**
- ▶ Prospectus must contain full disclosure

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- ▶ Half-truths amount to misrepresentation

SHARE CAPITAL

Meaning of Share Capital

Definition

Share capital means the capital raised by a company by issuing shares.

Kinds of Share Capital

1. Authorized Capital

- ▶ Maximum capital a company can issue

2. Issued Capital

- ▶ Capital offered to the public

3. Subscribed Capital

- ▶ Capital subscribed by public

4. Called-up Capital

- ▶ Amount called from shareholders

5. Paid-up Capital

- ▶ Amount actually paid

Types of Shares (Section 43)

1. Equity Shares

- ▶ Voting rights
- ▶ Dividend varies

2. Preference Shares

- ▶ Fixed dividend
- ▶ Priority in repayment

Types of Preference Shares

- ▶ Cumulative
- ▶ Non-cumulative
- ▶ Participating
- ▶ Non-participating
- ▶ Redeemable
- ▶ Irredeemable (not allowed now)

Issue of Shares

A. Issue at Par

- ▶ Issued at face value

B. Issue at Premium (Section 52)

- ▶ Excess over face value

Used for:

- ▶ Bonus issue
- ▶ Writing off expenses

C. Issue at Discount

- ▶ Generally **not allowed**

Issue of Shares for Consideration Other than Cash

- ▶ For assets
- ▶ For services
- ▶ For business purchase
- ▶ **Bonus Shares**
- ▶ **Meaning**
- ▶ Shares issued free to existing shareholders
- ▶ **Conditions**
- ▶ Authorized by Articles
- ▶ Fully paid shares
- ▶ No default in payment

Rights Issue (Section 62)

Offered to existing shareholders

Proportionate basis

Time limit: **15–30 days**

Sweat Equity Shares (Section 54)

▶ Issued to:

▶ Employees

▶ Directors

▶ For:

▶ Technical know-how

▶ Value addition

Employee Stock Option Plan (ESOP)

▶ Shares given to employees at concessional rates

▶ Encourages employee retention

Forfeiture of Shares

Meaning

- ▶ Cancellation due to non-payment of calls

Conditions

- ▶ As per Articles
- ▶ Proper notice

Re-issue of Forfeited Shares

- ▶ Can be reissued at discount
- ▶ Discount \leq forfeited amount

Alteration of Share Capital (Section 61)

- ▶ Company may:
- ▶ Increase capital
- ▶ Consolidate shares
- ▶ Convert shares
- ▶ Cancel unissued shares
- ▶ **Reduction of Share Capital (Section 66)**
- ▶ Requires:
- ▶ Special resolution
- ▶ Tribunal approval