

# Corporate Law

## Prospectus and Share Capital

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# Meaning of Prospectus

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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

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- 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

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## 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

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## **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

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## **D. Financial Information**

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

## **E. Other Disclosures**

- ▶ Pending litigation
- ▶ Underwriting details
- ▶ Minimum subscription

# Statement in Lieu of Prospectus

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## Meaning

A document filed when a public company:

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

# Misstatement in Prospectus

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## Meaning

Any:

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

Liability for Misstatement

### **A. Civil Liability (Section 35)**

- ▶ Persons liable:
- ▶ Directors
- ▶ Promoters

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- ▶ 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

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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

**R v. Kylsant**

- ▶ Half-truths amount to misrepresentation

# SHARE CAPITAL

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## **Meaning of Share Capital**

### **Definition**

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

# Kinds of Share Capital

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## 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)

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## 1. Equity Shares

- ▶ Voting rights
- ▶ Dividend varies

## 2. Preference Shares

- ▶ Fixed dividend
- ▶ Priority in repayment

# Types of Preference Shares

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

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## **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

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- ▶ 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)

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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

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## 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)

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