Public offer & Private Placement (Sec 23)

Issue of Securities

- **Public Co**
  - Prospectus / Public offer
    - IPO
    - FPO
    - OFS
  - Private Placement
  - Right Issue
  - Bonus Share Issue
- **Private Co**
  - Private Placement
  - Right Issue
  - Bonus Issue

Public offer of securities to be in dematerialised format (Sec 29)

- Every Co making a listed public offer have to issue their securities only in dematerialised form.

Unlisted Public Co. → have to issue their securities only in dematerialised format

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Private companies have option of ~~issuing~~

→ convert its securities into dematerialised form
→ issue its securities in physical form
→ issue its securities in dematerialised form

Matters to be stated in the Prospectus Sec 26

① Every prospectus issued by the company shall be dated and signed. and shall state such information as specified by SEBI in consultation with the Central Govt. [Acc to Companies Act]
Until then follow SEBI Regulation Under SEBI Act.

② Exceptions:→
Thus, there is no need for all the above disclosures in the prospectus in the following 2 Cases:→
(a) Securities are issued to existing members/debth
(b) Shares/debentures being issued are exactly similar to previously listed shares/debentures

③ Date indicated in the prospectus shall be deemed to be the date of its publication.

④ Prospectus has to be signed by every director or ~~proposed~~ proposed director.

⑤ Experts statement shall be included in the prospectus
- Such an expert shall not be interested or engaged in the Management, formation, promotion of the company.
- His written consent has to be taken which should not be withdrawn before delivering the copy of the prospectus with the ROC.

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(6) Every copy of the prospectus has to be filed with the ROC along with all the documents that are required to be attached (e.g- financials)

(7) No prospectus shall be valid if it is issued more than 90 days after the date on which a copy was delivered to the ROC.

\# Allotment of Shares [Sec 26 + 39] combo
& sec 40

Personal liability of directors, Joint & Severally @ 15% pa

(not refunded)

Prospectus must be valid for

90 days — 30 days — 15 days →

Copy sent to registrar (Prospectus to R.O.C) | Issue Public | Minimum Subscription | Refund

not followed, allotment → void-ab-initio

Sec 26

Sec 39

Allotment of Securities Sec 39 :→

1. No, allotment of securities shall be made unless the amount stated in the prospectus as minimum amount has been received.

2. The amount payable on application shall not be less than 5% of the nominal value (Face value).

3. If the minimum amount has not been subscribed within 30 days from the issue of the prospectus then it shall be repayed within 15 days from the closure of the issues else the directors shall be jointly and severally liable to repay the money with interest @ 15% p.a.

Contract with underwriter will also be submitted to ROC at the time of prospectus

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Securities to be dealt with in Stock Exchanges
Sec 40

① Every company shall before making a public offer make an application to one or more recognised stock exchanges and obtain permission for the securities to be dealt in such stock exchange.

② All the money received ~~on~~ from such application shall be kept in seprate bank account in a scheduled bank & it shall not be utilised for any purpose other than :-

(a) Adjustment against allotment of securities or
(b) repayment of money within the specified time → 15 days.

③ If the articles of the company authorised the company can pay underwriting commission to an underwriter appointed out of
(a) Proceeds of the issue or
(b) Profit of the company or
(c) Both

④ Rate of Commission
(a) Shares → max 5% of Issue Price or any lesser rate given in articles
(b) Debentures → max 2.5% of Issue Price or any lesser rate given in articles

⑤ Underwriting commission can be paid in cash or in kind.

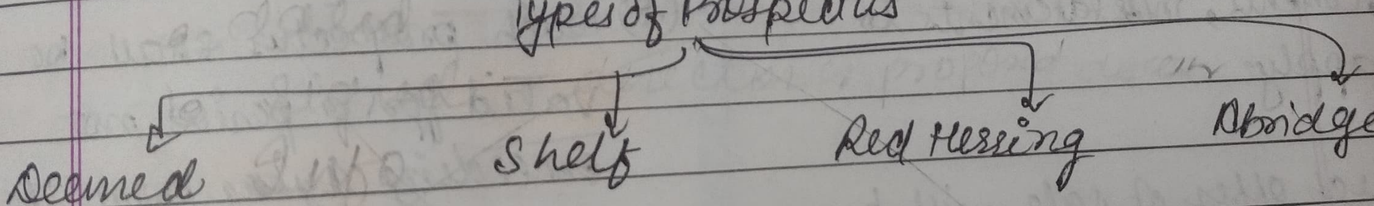
Prospectus Sec 2(70)

Prospectus

is a **Any document** which is inviting offers from **Public** for subscription or **Securities** for purchase of any Body corporate

- N- Notice Or
- A- Advertisement Or
- C- Circular Or
- O- Other document

Types of Prospectus



Types of Prospectus

Deemed Prospectus Sec 25

① Company allots securities with a view to offer them for sale to the public. Such offer for sale is deemed is a prospectus

② All enactments (Provisions), rules, contents, misstatements to apply.

③ Such offer of sale will be prospectus if
- securities are offered to the public within 6 months
- at the end of the offer, whole consideration was not received

Shelf Prospectus Sec 31

① Such classes of companies are specified by SEBI any file a shelf prospectus with the ROC during the 1st offer of securities.

② Such prospectus shall be valid for a period not exceeding 1 year from the date of opening of the 1st offer.

③ Company shall file an Information Memorandum (PAS2) containing
- all material facts relating to new changes created
- Changes in the financial position.

④ Such memorandum together with shelf Prospectus shall be deemed to be a prospectus.

Red Herring Prospectus Sec 32

① A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

② Company shall file it with ROC at least 3 days prior to the opening of the offer.

③ Any variation between the red herring prospectus and a prospectus shall be highlighted as variations related to Quantum & Price

④ Upon the closing of the offer, the prospectus shall state the total capital raised, the closing price & other details which were not included in red herring prospectus.

eg – Chillamba
Under sub कम हुआ है
over sub ज्यादा है

Abridged Prospectus Sec 33

① Abridged prospectus means a memorandum containing salient features of a prospectus.

Private Placement
Offer for sale document
One intermediary allot
Sold to Public
Within 6 months
(not paid full consideration)
(Iraada tha to give public)
Pinkadge
1 yr → shelf (1st issue)
Infoⁿ memorandum (PAS2)
Financial change
measure → details
Quantum & Price — Price decided / Issue Price
no. of shares
Basically draft → Red Herring Prospectus
Book Building
normal bids
Cost of Price → IPO
Highlight variation
major important
v.v. important
Under sub
over sub

Criminal – आपको आपके kaand की सजा मिलेगी [draw]
Civil – अपने kaand की वजह से दूसरे नुकसान की भरपाई करो। [Janta को Nuksaan]

Golden Rule of framing a Prospectus :-

[Every fact should be true, wholly true and nothing but true]

(Only an original allottee will get these remedies) ← **Prospectus**

↓

decision में हाँ या ना हो सकता है। significant ← **Material facts**

↓

Mis-statement →
- ① Wrong disclosure (इरादा/धोखा, fraud)
- ② Non-disclosure
- ③ Half-disclosure (Rex Vs Kylsant) → Half truth

↓ remedies

Section 34	VVV Important	Section 35
Criminal liability		**Civil liability** (नुकसान हुआ जिसको)

Criminal liability

① punished U/s 447

Exception (defence): remedies

(i) facts are immaterial

(ii) He has reasonable grounds to believe & he did believe upto the time of issue of prospectus that the statement was true.

447 → Jail → min 3 yrs; → max 10 yrs

fine → min – amount of fraud; → max – 3 x Amount of fraud (times)

Civil liability

① Company & every person who
→ is a director
→ is a proposed director
→ is a expert
→ has authorised the issue of the prospectus
→ promoter

Shall be liable to pay compensation to every person who has sustained losses on the account of misleading prospectus

Exceptions (defences) :-

(i) He withdrew his consent before the issue of the prospectus.

(ii) Prospectus was issued without his knowledge, and on becoming aware he withdrew his consent by issuing a public notice.

~~(iii) Statement~~

Note:- Statement made by the expert or any extract from a report of an expert is misstated and the expert has not withdrawn his written consent then the expert (only) will be liable.

Private Placement (Sec 42)

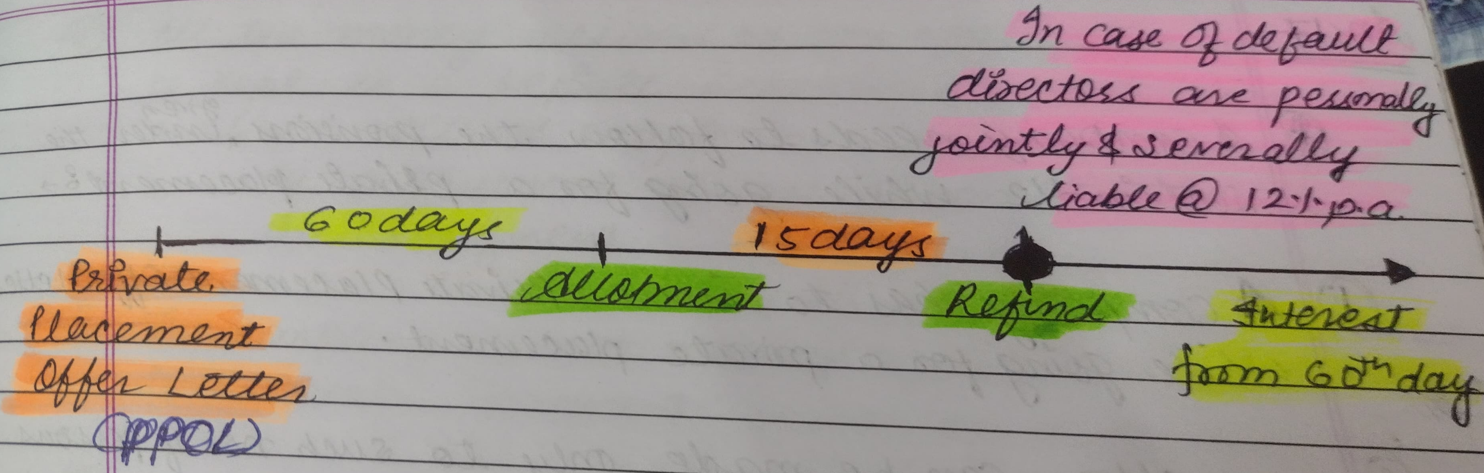
Private Placement

- Special Resolution
- No Public Advertisement to be Released
- Private Placement Offer Letter (PPL)
  - ↓ PAS 4
  - ↓ Max 200 persons
  - ↓ Exclude
    - Employees
    - Qualified Institutionals Buyers (QIB)
- Amount to be Paid only through Banks
- File Return of Allotment
  - ↓ ROC
  - ↓ 15 Days
  - ↓ PAS 3
- Amount received to be kept in a separate Scheduled Bank A/c
  - Allotment
  - Repayment

⇓

If there is any Variation in the above terms, Then it will be Deemed to be a Public Issue.

Act + 50 as or prescribed
Rule - 200


In case of default
directors are personally
jointly & severally
liable @ 12% p.a.
60 days
15 days
Private
Placement
Offer Letter
(PPOL)
Allotment
Refund
Interest
from 60th day

Advertisement of Prospectus (sec 30)

it should contain

- Object
- liability of member
- Names of signatories (subscriber)
- No of shares subscribed by signatories
- Capital structure.

Regulation of issue & transfer of securities (sec 24)

- SEBI followed by listed Co & the Co applied for listing.
- SEBI has empower to administer
  - a) Issue
  - b) transfer
  - c) non payment of dividend

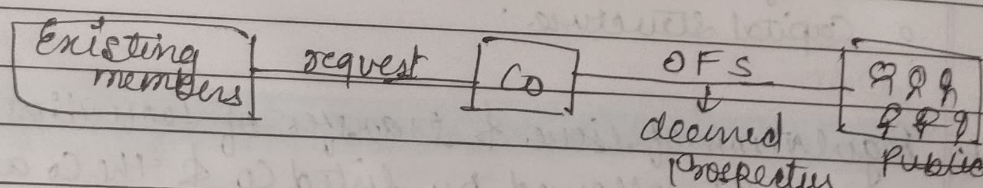
Variation in terms of contract or objects stated in prospectus (Sec 27)

change

- Special resolution in GM. (Postal Ballot)
- notice to shareholder "PAS1"
- Published in newspaper (1 English + 1 Vernacular)
- dissenting shareholder will be given opportunity to exit.

Offer of Sale of shares by certain members of Co (Sec 28)

- Offer for sale is issued by companies to dilute promoters shareholding or to provide exit route to venture capitalist.



- It is very diff^n from IPO/FPO, as in OFS shares are offloaded by earlier allotters through Co instead of directly by issuer Co.

Sec 25 deemed Prospectus	Sec 28 OFS
Issue House (✓) Malafide Intension B/s affected New shares	(✗) Bonafide Intension B/s not affected Existing shares

Global depository Receipts (sec 41)