

PROSPECTUS

Public offer - The issue of Securities by the public co & private co. The Sec Prescribes the mode of issue of Securities

Prospectus - as per Sec 2(70)

Prospectus means any document issued as a Prospectus, & includes a red herring prospectus, shelf prospectus, any notice, circular document inviting offers from the public.

Summary of modes (for issue of Securities)

Mode of issue	Public Co	Private Co
Private Placement	Yes	Yes
Right issue / Bonus issue	Yes	Yes
Public offer (including IPO, FPO or OFS)	Yes	No
Compliance with SEBI rules & regulations	Yes	No

Civil liability in case of Mis-Statement in Prospectus - (Sec-35)

Offence U/s 35

Loss or damage to Subscriber of Securities as a consequence of acting on basis of inclusion of any matter in the Prospectus which is misleading the Subscriber

Who shall be held liable?

Company & Every person who is/has;

a director

authorised himself

a promoter

an expert referred

authorised the issue of the Prospectus

Liability for an offence U/s 35.

Punishment U/s 36 a co & every other person shall also be liable to pay compensation to every person who has sustained loss (or) damage.

Exception to liability for guilty U/s 35(2)

- * He withdrew his consent to be a director of co & prospectus issued without his consent & authority.
- * He has given reasonable public notice to effect, that prospectus was issued without his knowledge & consent.
- * He made the statement on the authority of an expert whom he believed to be competent & that the expert had given his consent & had not withdrawn it.
- * He had reasonable ground for believing the statement to be true & that he did believe it to be true up to the time of allotment.
- * The statement was a correct copy of some extract from an official document & that he had in fact believed

Criminal liability for mis-statements in prospectus

Offence V/S 34

Where a prospectus is issued, circulated that includes

- any statement which is untrue (or) misleading in form in which it is included
- where any inclusion (or) omission of any matter is likely to mislead.

Who shall be held liable

- Every person who authorised the issue of such prospectus

Liability for an offence V/S 34

- Such person found guilty V/S 34 shall be liable for punishment under Section 447 of this act. fine 10L (or) 1% of turnover \downarrow Punishment 6M

Exception to liability for guilty V/S 34

- Proviso to Sec-34 provides the instances when a person shall not be held guilty V/S 34 of this act, if he proves that;
 - > Such mis-statement (or) omission was immaterial
 - > He had reasonable grounds to believe, & did up to the time of issue of the prospectus believe that the statement was true (or) the inclusion (or) omission was necessary.

Requirements as regards to issue of prospectus

- > matters to be stated in a prospectus
- > Registration of prospectus
- > Approval of prospectus by various agencies
- > The lead financial institution underwriting the issue, if applicable
- > Penalty fine - 50000 to 300000 {Punishment with fine} - some

Conditions for payment of underwriting commission V/S 40.

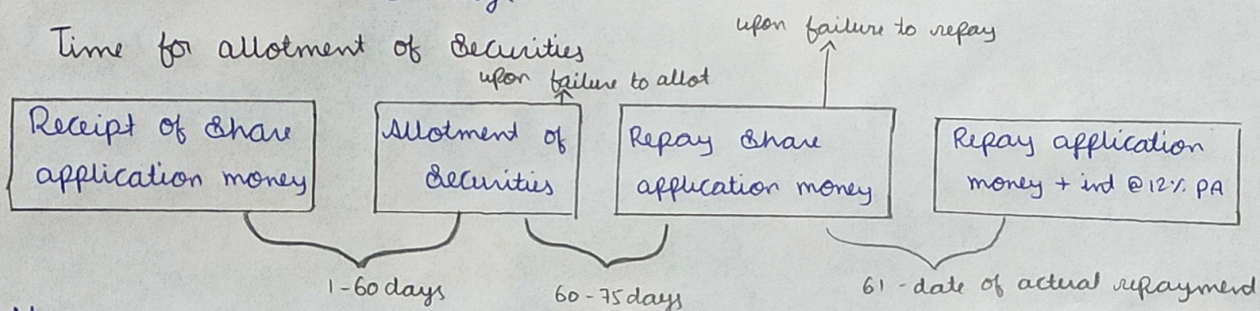
meaning: In an UWC b/w the Co & UWS, the UWS guarantee the minimum subscription

- The payment should be authorised by AOA
- Rate Max 5% (issue price) (or) rate prescribed by AOA Shares \downarrow
Max 2.5% (issue price) (or) rate prescribed by AOA debentures \downarrow
- Copy of UW agreement - ROC along with the prospectus
- Eligibility - 1. UWC - payable on SHS / debentures & not subscribed in UWC is payable even if a single share / debenture is not subscribed by UWS
- 2. UWC can be paid out of P/L or as well as share capital
- Details of name, address of UWS, No. of shares / debentures, UW rate etc.
Commission may be paid in cash (or) lumpsum (or) in kind

PRIVATE PLACEMENT.

"private placement" means any offer of Securities to subscribe Securities to a select group of persons by a Co through issue of a private placement offer letter & which satisfies the conditions specified in this section

- * A Co may, subject to the provisions of this section, make a private placement of Securities
- * Made to only selected group of identified persons
- * Private placement offers & application has to be a specific offer with no right of remuneration
- * Maximum to 200 members / persons in a FY
- * Limit of 200 excludes Bonus Shares & ESOPs
- * Offer to more than 200 persons is deemed as public offer
- * Limit of 200 is reckoned individuals for each kind of Security i.e. Eq. Pref. & debentures
- * Payment shall be accepted only by banking channels & not by cash
- * Complete prohibition on marketing (or) public advertisement
- * No new private placement unless the earlier issue is completed (or) withdrawn [even if for different class of Security]
- * If Co contravenes any provision, Co shall refund all monies with 12% interest within 30 days.



Money received shall be kept in separate bank a/c & non utilised for purpose other than

- adjustment against allotment (or)
- Refund when Co is unable to allot

NOTE:

if allotted, return of allotted filed within ROC within 15 days

Global Depository Receipts

Special resolution is required to issue GDRs

Conditions:

- > Board Resolution + SR
- > GDR issued by overseas depository Bank & underlying Shares are kept in the custody of domestic custodian
- > Co to comply with GDR Scheme + other regulations of RBI
- > obtain compliance report from a professional