

Chapter - 3 Prospectus and Allotment of Securities

Public Company - Public offer - IPO, FPO, AFS

private placement

Right Issue

Bonus Issue

private company - private placement

Right Issue

Bonus Issue

Securities

① Shares, scrips, Bonds, Debentures

② Derivative

③ units of collective Investment

④ Security Receipts

⑤ Government Securities

⑥ Rights or Interests

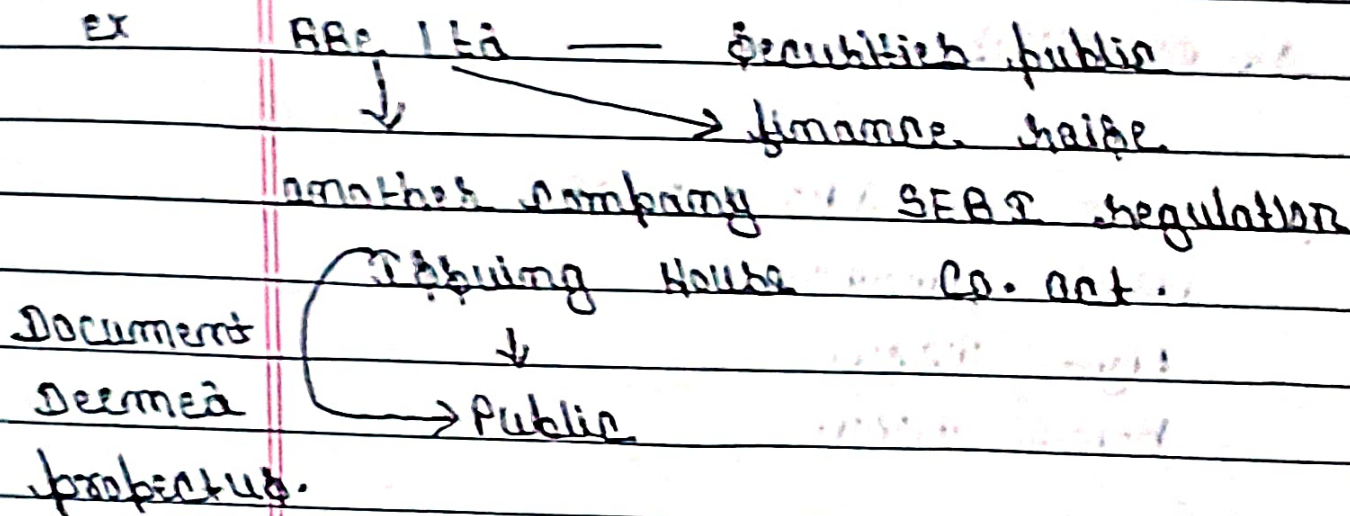
⑦ Special purpose securities

* Insurance policy



Not a security.

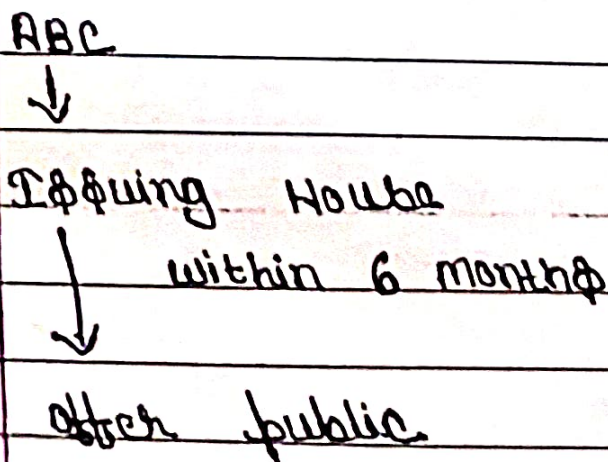
Section: 25 (deemed prospectus)



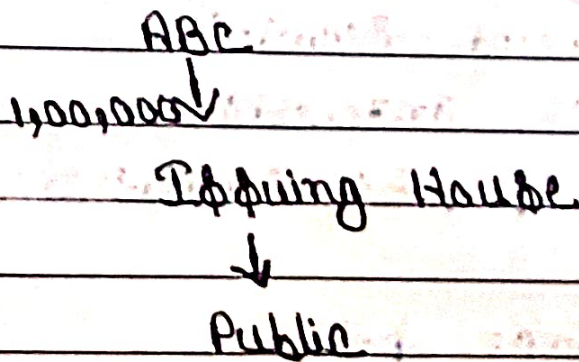
- * Company जब किसी OR के through अपनी securities publicise करती है और, वे जो compliance house है document issue करती है उसे Deemed prospectus कहा है

apply of deemed prospectus.

Situation: 1



Situation: 2



Requirements in case of deemed prospectus

ABC $\rightarrow$ D.P + Amount + Contract

Document $\rightarrow$ Director / M.A $\rightarrow$ Public

Prospectus

$\Rightarrow$ Any document described as prospectus

$\Rightarrow$ Includes half prospectus

Red Herring prospectus

$\Rightarrow$ Any notice, circular or other document inviting offers.

Deemed prospectus

- $\Rightarrow$ when co. offers securities
 - $\Rightarrow$ such securities "being offered"
 - $\Rightarrow$ to public for sale
- within 6 months or where full consideration not received.

Content (prospectus + following)

amount received or to be received

Time & place at which contract can be imputed

person making offer named as director &

sign by 2 directors.

* Notice to individual person privately can't be treated as deemed prospectus.

Conditions in regard to Experts' Statement [Sub-section 5]

- (a) If he is engaged or interested in the formation or promotion or management of the company or
- (b) If the expert has not given written consent to the issue or the prospectus, or
- (c) If he has withdrawn the consent before the delivery of a copy of the prospectus to the Registrar for filing.

Example

C.A ↓ Mr. A	Information	C.S Mr. B
Mr. A	Mr. B	Mr. B
Opinion	Opinion	Opinion
Consent	Consent	Consent
Not withdrawn	R.O.C. file	Withdrawn
	Withdrawn	Consent
NO	YES	NO

Section: 2.6Content of prospectus

- Dated
- Signed
- Signed copy to R.A.C.
 - ↳ all directors existing + proposed
 - Doc. Reg. & Co. must issue in 90 days
- a declaration on compliance with Company Act 2013
Security Contract Regulation Act 1956
Sebi Act 1992
- C.A/C.S/Valuer/CMA
Expert's statement should be excluded If expert engaged in formation of company

Content on face of prospectus

- Copy delivery to R.A.C.
- Doc. to be attached to copy or statements in prospectus which specify these documents.

Penalty

Co. + officers - 5,00,000 - 3,00,000

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

Advertisement

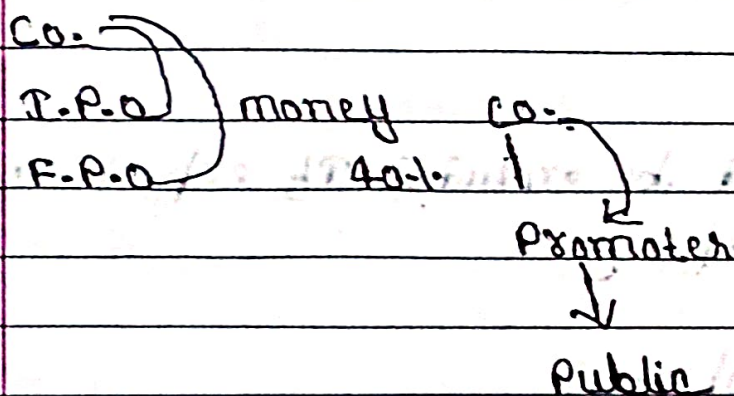
Special resolution

No Investment in spec. of other

differring - exit opportunity promoter
controlling shareholder.

offer of sale of share by certain members of
company [Section 28]

Example



Short: offer of sale

→ existing members

offering share to public.

→ doc - treated as prospectus

→ authorize Co. to carry all trans

offer of sale of share [28]

members

in consultation with B.O.D

may offer whole or part of share

Sec. - by which such offer is made is deemed prospectus.

Members shall collectively authorise company to take actions in this behalf

Reimburse expense to company

Sec. 29 Demat form

Co- making public offer / prescribed companies / unlisted co.

shall convert security in demat form

shall issue securities in demat form only.

Sec. 30 Advertisement of prospectus

Adverse Advertisement should have

- object.
- liability of members
- share capital
- Name of subscribers
- capital structure [Debt / Equity]

Sec: 21 Shelf prospectus

A prospectus by which one or more issues are possible without a further issue of prospectus.

Validity - 1 year

Commence from date of opening of 1st offer

First offer of securities - prospectus to be filed with R.O.C.

For subsequent offers

Information Memorandum [P.A.S-2] 30 days prior to issue.

- Details of issue
- the creating of charges
- changes in financial position b/w 1st offers & subsequent who gave advance. If they wish to withdraw them refund in 15 days.

Sec: 32

Red herring prospectus

Doesn't include particular about quantum or price

Need of Red herring prospectus

→ avail most of favorable market conditions

It's issued prior to issue of actual prospectus

- obligation of main prospectus apply to Red herring prospectus also.

Any variation should be highlighted

- once the offer is closed company.

shall issue complete prospectus

having details on total capital raised

closing price.

Concept of Abridged prospectus - Issue of Application form for securities [Section 33]

Abridged: Summarised form important information

Types of prospectus Summary

Deemed prospectus
for securities

→ further offer to public

Shelf prospectus

→ 1 year validity

→ P.M.

Red Herring prospectus

→ qty / price

Right to claim damages [Section 2(1)(b)]

when misstatement amount to 1/5

fraud
this right is available even after liquidation.

conditions to claim damages

- ⇒ fraudulent misrepresentation
- ⇒ person believed & acted on it
- ⇒ & suffered damages

Civil Liability [Sec-35]

- Company
- Director at the time of issue of prospectus
- person who authorized to be named as director
- promoter
- person who authorized prospectus
- Expert

All are the liable to pay compensation to persons who suffered damages.

when a person is not guilty

- ⇒ withdrew his consent to be director

→ public notice that prospectus issued without high knowledge.

⇒ Reasonable ground to believe that prospectus statements of authorised authority of expert-
 ⇒ statements on basis of official doc.

* personally liable for all losses if intent to defraud.

Criminal Liability [Sec-34]

where prospectus issued, circulated with misleading statements.

every person who authorise the issue
 liable u/s 447. except

→ If mis-statement was immaterial or

→ He had reasonable ground to believe.

Damages for deceit

→ fraudulent

→ original allottee

→ actually received

This is available even where remedy of rescission is lost.

Summary

Receiption	Damage	Civil	Criminal liability
T.C.A	even after liquidation	liability	any person authori
Cancellation	fraud loss	Co.P, N.P.D	e prospectus
prospectus		misplacement	447
		Investor loss	Immaterial
		A Tower	R.G.T.B

Damages for receipt

loss suffered / not
Intentional / unimite
national.

Punishment for fraud [Section 447]Example

50,000 → upto 50 lakh or upto 5 years impr-
70,000 → 1,00,000 → fraud or 3x fraud or 6 month max 10 year
10000 public - fraud upto 3 times of fraud
Interest and 3 years - 10 years -

Section: 36 : Fraudulently Inducing a person to invest

- with a view to obtain credit facilities
 - or to acquire, dispose, underwrite securities
 - or to secure profit.
- Punishment: Sec: 447

Section: 37 : Affected parties can file a suit

- Any person
- Group of person or
- Any associated of persons

Section: 38 : Personation for Acquisition Etc.

- 1 If a person makes or abets application for securities in fictitious names
- 2 multiple application in different name or combination for subscribing securities or
- 3 induces co. allot or register in fictitious name

Punishment - Sec: 447

Court may order disgorgement.

Section: 39 Allotment of securities

- Acceptance by company of offer to take shares
- minimum subscription
- mentioned in prospectus
- received by cheque or other instrument

S.E.B.T - min. subscription is 90% of issue

Quantum of amount payable on application

5% of nominal value of security

S.E.B.T - 25% of issue price, in case of offer for sale It is 100%.

If minimum subscription not received

- in 30 days of issue of prospectus
- co. should refund money in 15 days after closure of issue.

Return of allotment

form = P.A.S - 3

when - in 30 days of allotment to R.O.C.

Details.

Name of allottees

Address

Occupation If any

No. of shares

If consideration other than cash

- a copy of contract of goods/ services
- duly stamped
- If contract is not in written form then It should be written & duly stamped then submitted
- a report of registered valuer
- valuation report by reg. valuer.
- If securities issued u/s 62(i)(c)

punishment for default

1000/ day or 100000 whichever is less.

Section: 4.0

Securities to be dealt with in Stock Exchanges

Suppose Mr A if purchases 1,000 share and he has to pay 50% of money to the company

1,000 share = ₹ 20,000

800 = He pay = 10,000

Purchase = 800 share = 16,000

Adjusted 10,000 = $\frac{10000}{6000}$

Rest of the money pay 6000

Stock exchange - Recognised prospectus

application forms abridged

subscribe

acceptance

allotment

PAF - 3 form

Reg. of members.