chapter-3
prospectus and Allotment of Securities

Public Company - Public offer - IPO, FPO, OFS
private placement
Right Issue
Bonus Issue

private company - private placement
Right Issue
Bonus Issue

Securities

1. Shares, scrips, Bonds, Debenture
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.

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Section: 25 (Deemed prospectus)

ex ABC Ltd — Securities public
↓ → finance raise
another company SEBI regulation
Issuing House Co. act.
↓
Public

Document Deemed prospectus.

* company जब किसी or के through अपने securities Subscribe करती है और वे जो compliance house है document Issue करती है उसे Deemed prospectus कहते है

apply of Deemed prospectus.

Situation: 1

ABC
↓
Issuing House
within 6 months
↓
offer public

Situation: 2

ABC
1,00,000 ↓
Issuing House.
↓
Public.

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Requirements in case of Deemed prospectus :

ABC → D.P + Amount + contract
I.H → Director / Mr. A
Document → Public

Prospectus

⇒ Any document described as prospectus
⇒ Includes shelf prospectus
Red Herring prospectus

⇒ Any notice, circular or other document inviting offers.

Deemed prospectus

⇒ when co. allots securities
⇒ such securities beings offered
⇒ 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 inspected
person making offer named as directors
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(c) If he has withdrawn the consent before the delivery of a copy of the prospectus to the Registar for filling.

Example

C.A ↓ Mr.A	formation	C.S Mr B
M.A	Mr B	Mr B
opinion consent not withdrawn	opinion Consent R.O.C file withdraw	opinion consent withdrawn consent
NO	Yes	NO

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Section: 26

Content of prospectus

→ Dated
→ Signed
→ Signed copy to R.O.C
↳ all directors   existing + proposed
Roc 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
Experts statement should be excluded If expert engaged in formation of company

Content on face of prospectus

→ Copy delivery to R.O.C
→ Doc. to be attached to copy or statements in prospectus which specify those documents.

Penalty

Co. + officers - ~~50000~~ 50,000 - 3,00,000

Section: 27 (Variation In terms of Contract or objects Stated In Prospectus)

Advertisement
Special resolution
No Investment in sec. of other
Dissenting - exit opportunity promoter
controlling shareholder.

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

Example

Co.
I.P.O
F.P.O
money 40%
co.
Promoter
Public

Short : offer of sale
→ existing members
offering share to public.

→ doc. treated as prospectus
→ authorise co. to carry all trans

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offer of Sale of Share [28]

members
in consultation with B.O.D
may offer whole or Part of Share

Doc. 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
Advers Advertisement should have
→ object.
→ Liability of members
→ Share capital
→ Name of subscribers
→ capital structure [Debt / Equity]

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Sec : 31 **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 proper

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.

Galaxy F14 5G

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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 perior to issue of actual prospectus

- obligation of main prospectus apply to Red hearing 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.

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Concept of Abridged prospectus - Issue of Application forms for securities [section 33]

Abridged: summarised form important information

Types of prospectus Summary

Deemed prospectus
for securities
↳ futher offer to public

Shelf prospectus
↳ 1year validity
↳ P.M

Red Herring prospectus
↳ Qty / price

Right to claim damages [Indian Contract Act]
when misstatement amounts to

fraud
this right is available even after liquidation.

Conditions to claim damages

⇒ fraudulent mis representation
⇒ 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 name as director
- promoter
- person who authorised 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

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→ public notice that prospectus issued without his knowledge.

→ Reasonable ground to believe that propespectus
→ statements of authorised authority of expert-
→ statements on basis of offical docs.

☆ personally liable for all losses If intent to defrault.

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 fact
→ original allottee
→ actually deceived

This is available even where remedy of recission is lost.

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Summary

Recission — Damage — Civil — Criminal liability
T-C-A — even after liquidation liability — any person authori
Cancellation — fraud loss — Co.P, D, PD — e prospectus
Misstatement — 447
prospectus — Invetor loss — Immaterial
A Tower — R.G.T.B

Damages for deceit — loss suffered / not
Intentional / unimite
national.

Punishment for fraud [Section 447]

Example

70,000 → 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
70,000 → 10000 public Interest — fraud upto 3 times of fraud and 3 years - 10 years.

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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 apprative for securities in ficititious 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.

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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.I - min. subscription is 90% of issue

Quantum of amount payable on application
5% of nominal value of security
S.E.B.I - 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.

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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(1)(c)

punishment for default

1000/ day or 100000 whichever is less.

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Section 40
Securities to be dealt with In Stock Exchanges

Suppose Mr A is purchases 1,000 Share and he ~~to~~ was pay 50% of money to the company

1,000 Share - ₹ 20,000
800 = He pay = 10,000
purchase = 800 Share = 16000
Adjusted 10,000 = 10000
6000

Rest of the money pay 6000

Stock exchange - Recognised prospectus

application forms abridged

Subscribe
acceptance
allotment
PAS - 3 form
reg. of member.